CODE OF ORDINANCES CITY OF MENOMINEE, MICHIGAN

Published in 2012 by Order of the City Council

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_____

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This Code constitutes a recodification of the general and permanent ordinances of the City of Menominee, Michigan.

Source materials used in the preparation of the Code were the 1979 Code, as supplemented through July 17, 2011, and ordinances subsequently adopted by the city council. The source of each section is included in the history note appearing in parentheses at the end thereof. The absence of such a note indicates that the section is new and was adopted for the first time with the adoption of the Code. By use of the comparative tables appearing in the back of this Code, the reader can locate any section of the 1979 Code, as supplemented, and any subsequent ordinance included herein.

The chapters of the Code have been conveniently arranged in alphabetical order, and the various sections within each chapter have been catchlined to facilitate usage. Notes which tie related sections of the Code together and which refer to relevant state law have been included. A table listing the state law citations and setting forth their location within the Code is included at the back of this Code.

Chapter and Section Numbering System

The chapter and section numbering system used in this Code is the same system used in many state and local government codes. Each section number consists of two parts separated by a dash. The figure before the dash refers to the chapter number, and the figure after the dash refers to the position of the section within the chapter. Thus, the second section of chapter 1 is numbered 1-2, and the first section of chapter 6 is 6-1. Under this system, each section is identified with its chapter, and at the same time new sections can be inserted in their proper place by using the decimal system for amendments. For example, if new material consisting of one section that would logically come between sections 6-1 and 6-2 is desired to be added, such new section would be numbered 6-1.5. New articles and new divisions may be included in the same way or, in the case of articles, may be placed at the end of the chapter embracing the subject, and, in the case of divisions, may be placed at the end of the article embracing the subject. The next successive number shall be assigned to the new article or division. New chapters may be included by using one of the reserved chapter numbers. Care should be taken that the alphabetical arrangement of chapters is maintained when including new chapters.

Page Numbering System

The page numbering system used in this Code is a prefix system. The letters to the left of the colon are an abbreviation which represents a certain portion of the volume. The number to the right of the colon represents the number of the page in that portion. In the case of a chapter of the Code, the number to the left of the colon indicates the number of the chapter. In the case of an appendix to the Code, the letter immediately to the left of the colon indicates the letter of the appendix. The following are typical parts of codes of ordinances, which may or may not appear in this Code at this time, and their corresponding prefixes:

CHARTER	CHT:1
CHARTER COMPARATIVE TABLE	CHTCT:1

CODE	CD1:1
CODE APPENDIX	CDA:1
CODE COMPARATIVE TABLES	CCT:1
STATE LAW REFERENCE TABLE	SLT:1
CHARTER INDEX	CHTi:1
CODE INDEX	CDi:1

Indexes

The indexes have been prepared with the greatest of care. Each particular item has been placed under several headings, some of which are couched in lay phraseology, others in legal terminology, and still others in language generally used by local government officials and employees. There are numerous cross references within the indexes themselves that stand as guideposts to direct the user to the particular item in which the user is interested.

Looseleaf Supplements

A special feature of this publication is the looseleaf system of binding and supplemental servicing of the publication. With this system, the publication will be kept up to date. Subsequent amendatory legislation will be properly edited, and the affected page or pages will be reprinted. These new pages will be distributed to holders of copies of the publication, with instructions for the manner of inserting the new pages and deleting the obsolete pages.

Keeping this publication up to date at all times will depend largely upon the holder of the publication. As revised pages are received, it will then become the responsibility of the holder to have the amendments inserted according to the attached instructions. It is strongly recommended by the publisher that all such amendments be inserted immediately upon receipt to avoid misplacing them and, in addition, that all deleted pages be saved and filed for historical reference purposes.

Acknowledgments

This publication was under the direct supervision of Roger D. Merriam, Senior Code Attorney, and Shelly Hayes, Editor, of the Municipal Code Corporation, Tallahassee, Florida. Credit is gratefully given to the other members of the publisher's staff for their sincere interest and able assistance throughout the project.

The publisher is most grateful to Mr. Robert J. Jamo, City Attorney, for his cooperation and assistance during the progress of the work on this publication. It is hoped that his efforts and those of the publisher have resulted in a Code of Ordinances which will make the active law of the city readily accessible to all citizens and which will be a valuable tool in the day-to-day administration of the city's affairs.

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references; numbering system; code comparative table; state law reference table; and indexes. Such material may not be used or reproduced for commercial purposes without the express written consent of Municipal Code Corporation and the City of Menominee, Michigan.

ORDINANCE NO.: 2013-1

AN ORDINANCE ADOPTING AND ENACTING A NEW CODE FOR THE CITY OF MENOMINEE, MICHIGAN; PROVIDING FOR THE REPEAL OF CERTAIN ORDINANCES NOT INCLUDED THEREIN; PROVIDING A PENALTY FOR THE VIOLATION THEREOF; PROVIDING FOR THE MANNER OF AMENDING SUCH CODE; AND PROVIDING WHEN SUCH CODE AND THIS ORDINANCE SHALL BECOME EFFECTIVE.

THE CITY OF MENOMINEE HEREBY ORDAINS:

Section 1. The Code entitled "Code of Ordinances, City of Menominee, Michigan," published by Municipal Code Corporation, consisting of chapters 1 through 109, each inclusive, is adopted.

Section 2. All ordinances of a general and permanent nature enacted on or before July 18, 2011, and not included in the Code or recognized and continued in force by reference therein, are repealed.

Section 3. The repeal provided for in section 2 hereof shall not be construed to revive any ordinance or part thereof that has been repealed by a subsequent ordinance that is repealed by this ordinance.

Section 4. Unless another penalty is expressly provided, every person convicted of a violation of any provision of the Code or any ordinance, rule or regulation adopted or issued in pursuance thereof shall be responsible for a municipal civil infraction and subject to a civil fine as follows: (1) For the first violation, the civil fine shall be $50.00, plus costs and other sanctions; (2) For the second violation, the civil fine shall be $100.00, plus costs and other sanctions; (3) For the third violation, the civil fine shall be $500.00, plus costs and other sanctions. Any person determined responsible to responsible with explanation for a municipal civil infraction shall be liable for the payment of the costs of prosecution in an amount of not less than $9.00 and not more than $500.00. Except as otherwise provided by law or ordinance with respect to: (1) Violations of this Code that are continuous with respect to time, each day that the violation continues is a separate offense; (2) Other violations of this Code, each violation constitutes a separate offense.

In addition to the penalty prescribed above, the city may pursue other remedies such as abatement of nuisances, injunctive relief and revocation of licenses or permits.

Section 5. Additions or amendments to the Code when passed in such form as to indicate an intention to make the same a part of the Code shall be deemed to be incorporated in the Code, so that reference to the Code includes the additions and amendments.

Section 6. Ordinances adopted after July 18, 2011, which amend or refer to ordinances that have been codified in the Code shall be construed as if they amend or refer to like provisions of the Code.

Section 7. This ordinance shall become effective on March 1, 2013.

SUPPLEMENT HISTORY TABLE

The table below allows users of this Code to quickly and accurately determine what ordinances have been considered for codification in each supplement. Ordinances that are of a general and permanent nature are codified in the Code Book and are considered "Codified." Ordinances that are not of a general and permanent nature are not codified in the Code Book and are considered "Not Codified."

In addition, by adding to this table with each supplement, users of this Code of Ordinances will be able to gain a more complete picture of the Code's historical evolution.

Ord. No.	Date Adopted	Codified/ Not Codified	Supp. No.
2013-1	1-21-2013	Codified	Supp. No. 1
2019-003	6-26-2019	Codified	Supp. No. 2

PART I - CITY CHARTER[1]

Footnotes:

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Editor's note— Printed in this part is the Menominee City Charter as adopted at the November 1995 election and effective on January 1, 1996. An amendment adopted on November 4, 1997, was also included in the version furnished to the publisher. Subsequent amendments are indicated by parenthetical history notes following amended provisions. The absence of a history note indicates that the provision remains unchanged from the original. Obvious misspellings have been corrected without notation. For stylistic purposes, a uniform system of headings, catchlines and citations to state statutes has been used. Additions made for clarity are indicated by brackets.

ARTICLE I. - POWERS OF THE CITY

Sec. 1.01. - Powers of the City.

The city shall have all powers possible for a city to have under the constitution and laws of this state as fully and completely as though they were specifically enumerated in this charter.

Sec. 1.02. - Construction.

The powers of the city under this charter shall be construed liberally in favor of the city and the specific mention of particular powers in the charter shall not be construed as limiting in any way the general power granted in this article.

Sec. 1.03. - Intergovernmental Relations.

The city may exercise any of its powers or perform any of its functions and may participate in the financing thereof, jointly or in cooperation, by contract or otherwise, with any one or more states or any state civil division or agency or the United States or any of its agencies.

Sec. 1.04. - City Regarded as a Township.

For the purpose of assessing and levying taxes in the city, for the purpose of equalizing such assessments by the board of review, and for equalizing the same as to state and county taxes by the Board of County Commissioners and for collecting taxes and returning property for the non-payment thereof, the whole city shall be regarded as a township, and the city clerk/treasurer shall perform the same duties and shall have the same powers as township treasurer as far as it may be necessary to

faithfully perform his or her duties as such treasurer. The council shall establish a board of review whose composition, powers and procedures shall be in substantial conformity with the provisions of Section 211.28 through 211.33 of the Michigan Compiled Laws [MCL 211.28—211.33].

State Law reference— Mandatory that charter provide for levy of taxes, MCL 117.3(i).

ARTICLE II. - CITY COUNCIL[2]

Footnotes:

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State Law reference— Mandatory that charter provide for officers, MCL 117.3(a); mandatory that charter provide for the qualifications, duties, and compensation of the city's officers, MCL 117.3(d).

Sec. 2.01. - General Powers and Duties.

All powers of the city shall be vested in the city council, except as otherwise provided by law or this charter and the council shall provide for the exercise thereof and for the performance of all duties and obligations imposed on the city by law.

Sec. 2.02. - Composition, Eligibility, Election and Terms.

(a) *Composition.* There shall be a city council composed of the mayor and eight (8) members. Two councilmembers shall be nominated and elected by the voters in each of four (4) council districts. The mayor shall be elected in accordance with the provisions of section 2.03.

(b) *Eligibility.* Only registered voters of the city shall be eligible to hold the office of councilmember or mayor. Candidates for city council must reside in the ward they seek to represent at the time nominating petitions are filed and thereafter. An elected councilmember who ceases to reside in the ward he or she was elected to serve shall forfeit the office as specified in Section 2.06(b)(1) of this Charter.

(c) *Election and Terms.* The regular election of councilmembers shall be held on the first Tuesday after the first Monday of November in each odd numbered year, in the manner provided by law. At the first election under this charter eight (8) councilmembers shall be elected; candidates receiving the highest vote totals in each ward shall serve a four (4) year term and the candidates receiving the second highest vote totals shall serve a two (2) year term. Thereafter, all councilmembers shall serve for terms of four (4) years. The terms of councilmembers shall begin the 1st day of January after their election.

State Law reference— Mandatory that charter provide for election of mayor and council, MCL 117.3(a).

Sec. 2.03. - Mayor.

A mayor shall be elected for a term of four (4) years at the first election under this charter and every four (4) years thereafter at the regular election. The mayor shall be for all intents and purposes a voting member of the city council and shall preside at meetings of the council, represent the city in intergovernmental relationships, appoint with the advice and consent of the council the members of citizen advisory boards and commissions, present an annual state of the city message and perform other duties specified by the council. The mayor shall be recognized as head of the city government for all ceremonial purposes and by the governor for purposes of military law and shall be the chief executive officer of the city, but shall have no administrative duties. The council shall elect from among its members

a deputy mayor who shall act as mayor during the absence or disability of the mayor and, if a vacancy occurs, shall become mayor for the remainder of the unexpired term. The Mayor shall be considered a councilmember elect in determining the number of votes required for certain actions under subsequent provisions of this charter.

State Law reference— Mandatory that charter provide for election of mayor and council, MCL 117.3(a).

Sec. 2.04. - Compensation; Expenses.

The city council may determine the annual salary of the mayor and councilmembers by ordinance, but no ordinance increasing such salary shall become effective until the date of commencement of the terms of councilmembers elected at the next regular election. The mayor and councilmembers shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties of office provided that such expenses are approved by a majority of council.

Sec. 2.05. - Prohibitions.

(a) *Holding Other Office.* Except where authorized by law, no councilmember shall hold any other elected public office during the term for which the member was elected to the council. No councilmember shall hold any other city office or city employment during the terms for which the member was elected to the council. No former councilmember shall hold any compensated appointive office or employment with the city until one (1) year after the expiration of the term for which the member was elected to the council. Nothing in this section shall be construed to prohibit the council from selecting any current or former councilmember to represent the city on the governing board of any regional or other intergovernmental agency.

(b) *Appointments and Removals.* Neither the city council nor any of its members shall in any manner control, other than by confirmation provided for in this charter, or demand the appointment or removal of any city administrative officer or employee whom the city manager or any subordinate of the city manager is empowered to appoint, but the council may express its views and fully and freely discuss with the city manager anything pertaining to appointment and removal of such officers and employees.

(c) *Interference with Administration.* Except for the purpose of inquiries and investigations under section 2.08, the council or its members shall deal with city officers and employees who are subject to the direction and supervision of the city manager solely through the city manager. Neither the council nor its members shall give orders to any such officer or employee, either publicly or privately.

(d) *Council May Not Sell Parks.* No park, cemetery, or any part thereof shall be sold unless approved by a majority of the electors voting thereon.

Sec. 2.06. - Vacancies; Forfeiture of Office; Filling of Vacancies.

(a) *Vacancies.* The office of a councilmember shall become vacant upon the member's death, resignation, removal from office or forfeiture of office in any manner authorized by law.

(b) *Forfeiture of Office.* A councilmember shall forfeit that office if the councilmember:

(1) Lacks at any time during the term of office for which elected any qualification for the office prescribed by this charter or by law;

(2) Violates any express prohibition of this charter;

(3) Is convicted of a crime involving moral turpitude; or

(4) Fails to attend three consecutive regular meetings of the council without being excused by the council.

(c) *Filling of Vacancies.* A vacancy in the city council shall be filled for the remainder of the unexpired term, if any, at the next regular election following not less than sixty (60) days upon the occurrence of

the vacancy, but the council, by a majority vote of all its remaining members, shall appoint an eligible person pursuant to [section] 2.02(b) to fill the vacancy until the person elected to serve the remainder of the unexpired term takes office. If the council fails to do so within thirty (30) days following the occurrence of the vacancy, the election authorities shall call a special election to fill the vacancy, to be held not sooner than ninety (90) days and not later than one hundred twenty (120) days following the occurrence of the vacancy, and to be otherwise governed by law. Notwithstanding the requirement in section 2.10, if at any time the membership of the council is reduced to less than five (5), the remaining members may by majority action appoint additional members to raise the membership to nine (9).

Sec. 2.07. - Judge of Qualifications.

[(a)] The city council shall be the judge of the election and qualifications of its members and of the grounds for forfeiture of their office. The council shall have the power to set additional standards of conduct for its members beyond those specified in the charter and may provide for such penalties as it deems appropriate including forfeiture of office. In order to exercise these powers, the council shall have power to subpoena witnesses, administer oaths and require the production of evidence.

[(b)] A member charged with conduct constituting grounds for forfeiture of office shall be entitled to a public hearing on demand. Notice of such hearing shall be published in one or more newspapers of general circulation in the city at least one week in advance of the hearing. Decisions made by the council under this section shall be subject to judicial review.

Sec. 2.08. - Investigations.

The city council may make investigations into the affairs of the city and the conduct of any city department, office or agency and for this purpose may subpoena witnesses, administer oaths, take testimony and require the production of evidence. Failure or refusal to obey a lawful order issued in the exercise of these powers by the council shall be a misdemeanor punishable by a fine of not more than five hundred dollars ($500.00), or by imprisonment for not more than ninety (90) days or both.

Sec. 2.09. - Independent Audit.

The city council shall provide for an independent annual audit of all city accounts and may provide for more frequent audits as it deems necessary. Such audits shall be made by a certified public accountant or firm of such accountants who have no personal interest, direct or indirect, in the fiscal affairs of the city government or any of its officers. The council may, without requiring competitive bids, designate such accountant or firm annually or for a period not exceeding three (3) years, but the designation for any particular fiscal year shall be made no later than thirty (30) days after the beginning of such fiscal year. If the state makes such an audit, the council may accept it as satisfying the requirements of this section.

Sec. 2.10. - Procedure.

(a) *Meetings.* The council shall meet regularly at least once in every month at such times and places as the council may prescribe by rule. Special meetings may be held on the call of the mayor or of three (3) or more members and, whenever practicable, upon no less than eighteen [(18)] hours notice to each member. Except as allowed by state law, all meetings shall be public in accordance with the Michigan Open Meetings Act [MCL 15.261 et seq.].

(b) *Rules and Journal.* The city council shall determine its own rules and order of business and shall provide for keeping a journal of its proceedings. This journal shall be a public record and shall be recorded in the English language.

(c) *Voting.* Five (5) members of the council shall constitute a quorum, but a smaller number may adjourn from time to time and may compel the attendance of absent members in the manner and subject to the penalties prescribed by the rules of the council. No action of the council, except as otherwise provided in the preceding sentence and in section 2.06, shall be valid or binding unless adopted by the affirmative vote of five (5) or more members of the council.

(d) *Two-Thirds Vote Required on Certain Action.* No office shall be created or abolished nor any tax or assessment be imposed, street, alley, or public grounds be vacated, real estate or any interest therein purchased, leased, sold, or disposed of, or private property be taken for public use, unless two-thirds (2/3) of all the councilmembers elect concur. No vote of the council shall be reconsidered or rescinded at a special or regular meeting, unless there be present as many council members as were present when such vote was taken. No money shall be appropriated except by ordinance or resolution of the council. No resolution or ordinance shall be passed or adopted except by the vote of a majority of all the councilmembers elected to office, except as otherwise provided in this charter.

(e) *Method of Voting.* Unless a two-thirds (2/3) vote is required in paragraph (d) immediately above or a member present demands the vote be taken by a roll call vote, the vote of the council on all questions shall be without roll call.

State Law reference— Mandatory that charter require compliance with the Open Meetings Act, MCL 117.3(l); mandatory that charter provide for adopting, continuing, amending, and repealing and publishing ordinances, MCL 117.3(k); mandatory that charter provide for keeping journal of council sessions in English, MCL 117.3(l).

Sec. 2.11. - Action Requiring an Ordinance.

In addition to other acts required by law or by specific provision of this charter to be done by ordinance, those acts of the city council shall be by ordinance which:

(1) Adopt or amend an administrative code or establish, alter, or abolish any city department, office or agency;

(2) Provide for a fine or other penalty or establish a rule or regulation for violation of which a fine or other penalty is imposed;

(3) Levy taxes;

(4) Grant, renew or extend a franchise;

(5) Regulate the rate charged for its services by a public utility;

(6) Regulate land use and development; and

(7) Amend or repeal any ordinance previously adopted.

Acts other than those referred to in the preceding sentence may be done either by ordinance or by resolution.

Sec. 2.12. - Ordinances in General.

(a) *Form.* Every proposed ordinance shall be introduced in writing and in the form required for final adoption. No ordinance shall contain more than one subject which shall be clearly expressed in its title. The enacting clause shall be "The City of Menominee hereby ordains…." Any ordinance which repeals or amends an existing ordinance or part of the city code shall set out in full the ordinance, sections or subsections to be repealed or amended, and shall indicate matters to be omitted by enclosing it in brackets or by strikeout type and shall indicate new matters by underscoring or by italics.

(b) *Procedures.* An ordinance may be introduced by any council member or committee. Upon introduction of any ordinance, the city clerk shall set a public hearing and publish notice thereof and a summary of the proposed ordinance at least seven (7) days in advance of the public hearing. The Clerk shall provide copies of the proposed ordinance to council members and the City Manager and make copies available in the clerk's office for public review. The public hearing may be held separately or in connection with a regular or special council meeting and may be adjourned from time to time; all persons interested shall have an opportunity to be heard. After the hearing the council may adopt the

ordinance with or without amendment or reject it. As soon as practicable after adoption, the clerk shall have the ordinance and a notice of its adoption published and available at a reasonable price.

(c) *Effective Date.* Unless otherwise provided in the text of the ordinances, every adopted ordinance shall become effective upon publication and the expiration of twenty (20) days after adoption or at any later date specified therein.

(d) *"Publish" Defined.* As used in this section, the term "publish" means to print in one or more newspapers of general circulation in the city:

(1) The ordinance or a brief summary thereof; and

(2) The places where copies of it have been filed and the times when they are available for public inspection and purchase at a reasonable price.

Sec. 2.13. - Emergency Ordinances.

To meet a public emergency affecting life, health, property or the public peace, the city council may adopt one or more emergency ordinances, but such ordinances may not levy taxes, grant, renew or extend a franchise, regulate the rate charged by any public utility for its services or authorize the borrowing of money except as provided in section 5.07(b). An emergency ordinance shall be introduced in the form and manner prescribed for ordinances generally, except that it shall be plainly designated as an emergency ordinance and shall contain, after the enacting clause, a declaration stating that an emergency exists and describing it in clear and specific terms. An emergency ordinance may be adopted with or without amendment or rejected at the meeting at which it is introduced, but the affirmative vote of at least five members shall be required for adoption. After its adoption, the ordinance shall be published and printed as prescribed for other adopted ordinances. It shall become effective upon adoption and publication or at such later time as the ordinance may specify. Every emergency ordinance except one made pursuant to section 5.07(b) shall automatically stand repealed as of the sixty-first (61st) day following the date on which it was adopted, but this shall not prevent re-enactment of the ordinance in the manner specified in this section if the emergency still exists. An emergency ordinance may also be repealed by adoption of a repealing ordinance in the same manner specified in this section for adoption of emergency ordinances.

Sec. 2.14. - Codes of Technical Regulations.

The city council may adopt any standard code of technical regulations by reference thereto in an adopting ordinance. The procedure and requirements governing such an adopting ordinance shall be as prescribed for ordinances generally except that:

(1) The requirements of section 2.12 for distribution and filing of copies of the ordinance shall be construed to include copies of the code of technical regulations as well as of the adopting ordinance; and

(2) A copy of each adopted code of technical regulations as well as of the adopting ordinance shall be authenticated and recorded by the city clerk pursuant to section 2.15(a).

Copies of any adopted code of technical regulations shall be made available by the city clerk for distribution or for purchase at a reasonable price.

State Law reference— Adoption by reference, MCL 117.3(k).

Sec. 2.15. - Authentication and Recording; Codification; Printing.

(a) *Authentication and Recording.* The city clerk shall authenticate by signing and shall record in full in a properly indexed book kept for the purpose all ordinances and resolutions adopted by the city council.

(b) *Codification.* Within three (3) years after adoption of this charter and at least every ten (10) years thereafter, the city council shall provide for the preparation of a general codification of all city

ordinances and resolutions having the force and effect of law. The general codification shall be adopted by the council by ordinance and shall be published promptly in bound or loose-leaf form, together with this charter and any amendments thereto, pertinent provisions of the constitution and other laws of the state of Michigan and such codes of technical regulations and other rules and regulations as the council may specify. This compilation shall be known and cited officially as the Menominee Ordinance Code. Copies of the code shall be furnished to city officers, placed in libraries and public offices for free public reference and made available for purchase by the public at a reasonable price fixed by the council.

(c) *Printing of Ordinances and Resolutions.* The city council shall cause each ordinance and resolution having the force and effect of law and each amendment to this charter to be printed promptly following its adoption and the printed ordinances, resolutions and charter amendments shall be distributed or sold to the public at reasonable prices as fixed by the council. Following publication of the first Menominee Ordinance Code and at all times thereafter, the ordinances, resolutions and charter amendments shall be printed in substantially the same style as the code currently in effect and shall be suitable in form for integration therein. The council shall make such further arrangements as it deems desirable with respect to reproduction and distribution of any current changes in or additions to the provisions of the constitution and other laws of the state of Michigan or the codes of technical regulations and other rules and regulations included in the code.

State Law reference— Ordinance codification, MCL 117.5b.

ARTICLE III. - CITY MANAGER[3]

Footnotes:

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State Law reference— Mandatory that charter provide for officers, MCL 117.3(a); mandatory that charter provide for the qualifications, duties, and compensation of the city's officers, MCL 117.3(d).

Sec. 3.01. - Appointment; Qualifications; Compensation.

The city council by a majority vote of its total membership shall appoint a city manager for an indefinite term and fix the manager's compensation. The city manager shall be appointed solely on the basis of executive and administrative qualifications. The manager need not be a resident of the city or state at the time of appointment but may reside outside the city while in office only with the approval of the council.

Sec. 3.02. - Removal.

The city manager may be suspended by a resolution approved by the majority of the total membership of the city council which shall set forth the reasons for suspension and proposed removal. A copy of such resolution shall be served immediately upon the city manager. The city manager shall have fifteen (15) days in which to reply thereto in writing and upon request, shall be afforded a public hearing, which shall occur not earlier than ten (10) days nor later than fifteen (15) days after such hearing is requested. After the public hearing, if one be requested, and after full consideration, the city council by a majority vote of its total membership may adopt a final resolution of removal. The city manager shall continue to receive full salary until the effective date of a final resolution of removal.

Sec. 3.03. - Acting City Manager.

By letter filed with the city clerk, the city manager shall designate a city officer or employee to exercise the powers and perform the duties of city manager during the manager's temporary absence or

disability. The city council may revoke such designation at any time and appoint another officer of the city to serve until the city manager returns.

Sec. 3.04. - Powers and Duties of the City Manager.

The city manager shall be the chief administrative officer of the city responsible to the Council for the administration of all city affairs placed in the manager's charge by or under this charter. The city manager shall:

(1) Appoint, hire, and, when necessary for the good of the service, suspend or remove all city employees and appointive administrative officers provided for by or under this charter, except as otherwise provided by law, this charter or personnel rules adopted pursuant to this charter. The city manager may authorize any administrative officer subject to the manager's direction and supervision to exercise these powers with respect to subordinates in that officer's department, office or agency;

(2) Direct and supervise the administration of all departments, offices and agencies of the city, except as otherwise provided by this charter or by law;

(3) Attend all city council meetings. The city manager shall have the right to take part in discussion, but shall not vote;

(4) See that all laws, provisions of this charter and acts of the city council, subject to enforcement by the city manager or by officers subject to the manager's direction and supervision, are faithfully executed;

(5) Prepare and submit the annual budget and capital program to the city council;

(6) Submit to the city council and make available to the public a complete report on the finances and administrative activities of the city as of the end of each fiscal year;

(7) Make such other reports as the city council may require concerning the operations of city departments, offices and agencies subject to the city manager's direction and supervision;

(8) Keep the city council fully advised as to the financial condition and future needs of the city;

(9) Make recommendations to the city council concerning the affairs of the city;

(10) Provide staff support services for the mayor and councilmembers; and

(11) Perform such other duties as are specified in this charter or may be required by the city council.

ARTICLE IV. - DEPARTMENTS, OFFICES AND AGENCIES[4]

Footnotes:

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State Law reference— Mandatory that charter provide for officers, MCL 117.3(a); mandatory that charter provide for the qualifications, duties, and compensation of the city's officers, MCL 117.3(d).

Sec. 4.01. - General Provisions.

(a) *Creation of Departments.* The city council may establish city departments, offices or agencies in addition to those created by this charter and may prescribe the functions of all departments, offices and agencies, except that no function assigned by this charter to a particular department, office or agency may be discontinued or, unless this charter specifically so provides, assigned to any other.

(b) *Direction by City Manager.* All departments, offices and agencies under the direction and supervision of the city manager shall be administered by an officer appointed by and subject to the direction and

supervision of the manager. With the consent of city council, the city manager may serve as the head of one or more such departments, offices or agencies or may appoint one person as the head of two or more of them.

(c) *Confirmation by the Council.* All department heads shall be appointed by the city manager subject to the approval of a two-thirds (2/3) majority of the councilmembers elect.

Sec. 4.02. - Legal Officer.

There may be a legal officer of the city appointed by the city manager subject to confirmation by a two-thirds (2/3) majority of the councilmembers elect. The legal officer shall serve as chief legal adviser to the council, the manager and all city departments, offices and agencies, shall represent the city in all legal proceedings and shall perform any other duties prescribed by state law, by this charter or by ordinance.

Sec. 4.03. - City Clerk/Treasurer.

A city clerk/treasurer, whose duties shall be prescribed by city council and/or state law, shall be appointed by city manager subject to confirmation of two-thirds (2/3) of councilmembers elect.

The city clerk/treasurer shall have the custody, care, control and possession of all moneys, bonds, mortgages, notes, leases and evidence of value belonging to the city.

Sec. 4.04. - City Assessor.

A city assessor, whose duties shall be prescribed by the city council and/or state law, shall be appointed by city manager subject to confirmation of two-thirds (2/3) of the councilmembers elect.

Sec. 4.05. - Planning.

Consistent with all applicable federal and state laws with respect to land use, development and environmental protection, the city council shall:

(1) Designate an agency or agencies to carry out the planning function and such decision-making responsibilities as may be specified by ordinance;

(2) Adopt a comprehensive plan and determine to what extent zoning and other land use control ordinances must be consistent with the plan; and

(3) Adopt development regulations, to be specified by ordinance, to implement the plan.

Sec. 4.06. - City officers.

The city council shall provide for the qualifications, duties and compensation of the city officers except as otherwise provided in this charter.

ARTICLE V. - FINANCIAL PROCEDURES[5]

Footnotes:

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State Law reference— Revised Municipal Finance Act, MCL 141.2101 et seq.; Uniform Budgeting and Accounting Act, MCL 141.421 et seq.

Sec. 5.01. - City Taxes, Payment and Collection of.

Payment and collection of the city taxes in and for said city shall be made at a time separate and distinct from the payment of state, county and school taxes and as hereinafter prescribed.

Sec. 5.01a. - Limitation on Amount Raised by General Tax.

Except as otherwise provided by law or this charter, the aggregate amount which the council may raise by general tax upon the taxable real and personal property in the city, for the purpose of defraying the general expenses and liabilities of the corporation, exclusive of taxes for school and schoolhouse purposes, shall not exceed in one year, one and one-half percent (1½%).

State Law reference— Mandatory that charter provide for tax limits, MCL 117.3(g).

Sec. 5.02. - Fiscal Year.

The fiscal year of the City of Menominee shall commence on the first day of July in each year unless otherwise provided by ordinance or state statute.

Sec. 5.02a. - System of Accounts.

The city council shall provide for a system of accounts that conform to a uniform system of accounts as required by state law.

State Law reference— Mandatory charter provisions, MCL 117.3(n).

Sec. 5.03. - Annual Appropriation Bill.

Not later than the first Monday of March of each year, every department and board of the city shall submit to the city manager an itemized estimate of its expected income and expenditures during the next fiscal year, for the department or activities under its control. The city manager shall prepare and submit to the council, not later than sixty (60) days prior to the beginning of the next fiscal year, a recommended budget within the tax limit and other revenue sources of the city, covering the next fiscal year. Such recommended budget shall include therein at least the following information:

(1) Detailed estimates with supporting explanation of proposed expenditures of each department, board, utility and agency of the city and all such estimates shall show the actual appropriation and expenditures for corresponding items for the last preceding fiscal year and estimated expenditures for the balance of the current fiscal year;

(2) Statements of the bonded and other indebtedness of the city, showing the debt redemption and interest requirements, the debt authorized and unissued and the condition of sinking funds, if any;

(3) Detailed estimates of all anticipated revenues of the city from sources other than taxes, with a comparative statement of the amounts estimated for and actually received from each of the same or similar sources for the last preceding fiscal year, in full, and estimated revenues for the balance for the current fiscal year;

(4) A state of the estimated accumulated cash and unencumbered balances or deficits at the end of the current fiscal year;

(5) An estimate of the amount of money to be raised from current and delinquent taxes and the amount to be raised from bond issues which, together with available unappropriated surplus and any revenues from other sources, will be necessary to meet the proposed expenditures, and any deficiency for the current year;

(6) The Annual Appropriation Bill shall be passed not later than thirty (30) days prior to the beginning of the next fiscal year;

(7) Property tax and budget publications and hearings shall comply with state statutes.

State Law reference— Mandatory that charter provide for annual appropriation of money, MCL 117.3(h).

Sec. 5.04. - Amendments after Adoption.

(a) *Supplemental Appropriations.* If during the fiscal year the city manager certifies that there are available for appropriation revenues in excess of those estimated in the budget, the city council, by ordinance, may make supplemental appropriations for the year up to the amount of such excess.

(b) *Reduction of Appropriations.* If at any time during the fiscal year it appears probable to the city manager that the revenues or fund balances available will be insufficient to finance the expenditures for which appropriations have been authorized, the manager shall report to the city council without delay, indicating the estimated amount of the deficit, any remedial action taken by the manager and recommendations as to any other steps to be taken. The council shall then take such further action as it deems necessary to prevent any deficit and for that purpose it may by ordinance reduce one or more appropriations.

(c) *Transfer of Appropriations.* At any time during the fiscal year the city council may by resolution transfer part or all of the unencumbered appropriation balance from one department or major organizational unit to the appropriation for other departments or major organizational units. The manager may transfer part or all of any unencumbered appropriation balances among programs within a department or organizational unit and shall report such transfers to the council in writing in a timely manner.

(d) *Limitation; Effective Date.* No appropriation for debt service may be reduced or transferred, and no appropriation may be reduced below any amount required by law to be appropriated or by more than the amount of the unencumbered balance thereof. The supplemental and emergency appropriations and reduction or transfer of appropriations authorized by this section may be made effective immediately upon adoption.

Sec. 5.05. - Lapse of Appropriations.

Every appropriation, except an appropriation for a capital expenditure, shall lapse at the close of the fiscal year to the extent that it has not been expended or encumbered. An appropriation for a capital expenditure shall continue in force until expended, revised or repealed; the purpose of any such appropriation shall be deemed abandoned if three years pass without any disbursement from or encumbrance of the appropriation.

Sec. 5.06. - Administration of the Budget.

The city council shall provide, by ordinance, the procedures for administering the budget.

Sec. 5.07. - Overspending of Appropriations Prohibited.

No payment shall be made or obligation incurred against any allotment or appropriation except in accordance with appropriations duly made and unless the city manager or his designee first certifies that there is a sufficient unencumbered balance in such allotment or appropriation and that sufficient funds therefrom are or will be available to cover the claim or meet the obligation when it becomes due and payable. Any authorization of payment or incurring of obligation in violation of the provisions of this charter shall be void and any payment so made illegal. A violation of this provision shall be cause for removal of any officer who knowingly authorized or made such payment or incurred such obligation. Such officer may also be liable to the city for any amount so paid. Except where prohibited by law, however, nothing in this charter shall be construed to prevent the making or authorizing of payments or making of contracts for capital improvements to be financed wholly or partly by the issuance of bonds or to prevent the making of any contract or lease providing for payments beyond the end of the fiscal year, but only if such action is made or approved by ordinance.

Sec. 5.08. - Capital Program.

(a) *Submission to City Council.* The city manager shall prepare and submit to the city council a three (3) year capital program no later than the final date for submission of the budget.

(b) *Contents.* The capital program shall include:

(1) A clear general summary of its contents;

(2) A list of all capital improvements and other capital expenditures which are proposed to be undertaken during the three (3) fiscal years next ensuing with appropriate supporting information as to the necessity for each;

(3) Cost estimates and recommended time schedules for each improvement or other capital expenditure;

(4) Method of financing upon which each capital expenditure is to be reliant; and

(5) The estimated annual cost of operating and maintaining the facilities to be constructed or acquired.

The above shall be revised and extended each year with regard to capital improvements still pending or in process of construction or acquisition.

Sec. 5.09. - City Council Action on Capital Program.

(a) *Notice and Hearing.* The city council shall publish in one or more newspapers of general circulation in the city the general summary of the capital program and a notice stating:

(1) The times and places where copies of the capital program are available for inspection by the public; and

(2) The time and place, not less than two (2) weeks after such publication, for a public hearing on the capital program.

(b) *Adoption.* The city council by resolution shall adopt the capital program with or without amendment after the public hearing and on or before the 1st day of the March of each year.

Sec. 5.10. - Public Records.

Copies of the budget, capital program and appropriation and revenue ordinances shall be public records and shall be made available to the public at suitable places in the city. All records of the city shall be made available to the general public in compliance with the Freedom of Information Act.

Sec. 5.11. - Tax Warrant for City Tax Roll.

A tax warrant for the collection of the taxes as shown by the city tax roll above provided for shall be issued in form and manner now provided for issuing the general tax warrant in said city, but the same shall issue and be placed in the hands of the city treasurer, or other officers authorized by law to collect taxes, and under the same regulations and restrictions as now regarding the furnishing of bonds, on or before the twenty-fifth [(25)] day of July of each year, and which said warrant shall require the collection of such taxes on or before the first day of September following. The same collection charges shall be imposed in the collection of such taxes as is now provided by law therefor, and all delinquent taxes shall be returned and proceedings for the collection thereof had, and in the same manner as is now provided by law therefor.

Sec. 5.12. - Return of Delinquent Taxes; Collection Period; Penalties.

The city council may, by ordinance, make provision for any and all detail necessary and proper to carry into effect the intents and purposes of this title, provide for the proper return and collection of delinquent taxes, extend the period for the collection of such taxes, provide for the imposition of penalties and collection charges, in accordance with those now imposed by the general law of the state, on account of delayed payment and may fix the date or dates for the imposition of such charges and penalties.

ARTICLE VI. - ELECTIONS[6]

Footnotes:

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State Law reference— Mandatory that charter provide for the time, manner and place of holding elections, MCL 117.3(c); Michigan Election Law, MCL 168.1 et seq.

Sec. 6.01. - City Elections.

(a) *Regular Elections.* The regular city election shall be held at the time established by state law.

(b) *Registered Voter Defined.* All citizens legally registered under the constitution and laws of the state of Michigan to vote in the city shall be registered voters of the city within the meaning of this charter.

(c) *Special Elections.* Special elections may be called by resolution of the City Council. Said resolution shall set forth the time, purpose and place of such special election, provided that the Council shall not have power to call more than two (2) special elections within one (1) year.

(d) *Municipal Non-Partisan Primary Elections.* A municipal non-partisan primary election for the nomination of candidates for offices to be filled at a regular municipal election shall be held at the same time as is provided by the general election laws for the nomination of other non-partisan officers.

(e) *Nominating Petitions.* Every candidate for any municipal elective office shall file a nominating petition which shall be according to and conformable to the provisions of the general election laws of the state regulating the filing of nominating petitions for other non-partisan candidates. Such petition shall be signed by electors equal in number to not less than three percent (3%) nor more than five percent (5%) of those who voted for the candidate receiving the highest number of votes for such office at the last preceding city regular election. No elector shall sign such nominating petition for more candidates for each office than there are persons to be elected to such office.

(f) *Publications of Names for Whom Petitions are Filed.* Within seven (7) days following the expiration of the time for filing such petitions for candidates, the city clerk shall cause to be published for two (2) successive days in all the daily newspapers published and circulating in the city, the names of all candidates that are to appear on the primary ballot. He shall also at the same time publish a notice of said primary election giving the time and voting places for such election.

(g) *City Clerk to Prepare Primary Election Ballots.* The City Clerk shall prepare and have printed for each ward, and shall cause to be delivered to the polling place in that ward, a number of said ballots equal to at least twice the number of votes cast in such ward at the last general municipal election for the office of Mayor.

(h) *When Primary Election Eliminated.* If upon the expiration of the time for filing nominating petitions for any elective city office, such petitions have been filed for not more than twice the number of candidates for such office to be elected at the following regular city election, then no primary election shall be held with respect to such office; and the city clerk shall thereupon cause to be published once in all the daily newspapers published and circulating in the city, notice of elimination of such primary election.

(i) *Ballots.* The ballots for all municipal elections called for the purpose of nominating or electing any municipal officer and for questions or propositions to be voted upon shall be prepared by the city clerk, in the same general form as the ballot provided for by the General Election Law for other non-partisan elections, so far as is applicable, and such ballot shall be printed without any part mark, emblem, vignette or designation whatever.

(j) *Election Procedure.* All primary and regular general city elections for the nomination and election of officers of the city shall be non-partisan. The general election laws of the state shall apply to and control, as near as may be, all procedures relating to notices of, to registrations for, and the conduct

of all city elections, except as such general laws relate to political parties or partisan procedures, and except as otherwise provided by this charter.

(k) *Election Commission.* An election commission consisting of the city clerk, city assessor, and city attorney is hereby created. The commission shall have charge of all activities and duties required of it by law relating to the conduct of elections in the city. In any case where election procedure is in doubt, the election commission shall prescribe the procedure to follow.

State Law reference— Mandatory that charter provide for nomination of elective officers by partisan or nonpartisan primary, by petition or by convention, MCL 117.3(b); Michigan Election Law, MCL 168.1 et seq.; registration of electors, MCL 168.491 et seq.; poll hours, MCL 169.720; Board of city election commissioners, MCL 168.25 et seq.; preparation and distribution of primary ballots, MCL 168.559 et seq.

Sec. 6.02. - Council Districts.

(a) Number of Districts. There shall be four (4) city council wards each of which shall have equal representation in the city council. The boundaries of the wards shall be the boundaries established by the council from time to time.

(b) For the time being, the City shall be divided into four (4) wards conforming to the existing wards in the City.

(c) The clerk shall maintain and keep available in his office for public inspection an official description and map of the current boundaries of the City and wards.

(d) The council shall have power to implement and enforce this title by appropriate legislation by ordinance subject to the requirements of state law.

State Law reference— Mandatory that charter provide for wards, MCL 117.3(e); election precincts, MCL 168.654 et seq.

ARTICLE VII. - GENERAL PROVISIONS

Sec. 7.01. - Conflicts of Interest; Board of Ethics.

(a) *Conflicts of Interest.* The conflicts of interest rules shall be established by the council and shall conform to the requirements of Section eight of 1968 Public Act 317 [MCL 15.321 et seq.].

(b) *Board of Ethics.* The city council may, by ordinance, establish an independent board of ethics to administer and enforce the conflict of interest ordinance.

ARTICLE VIII. - TRANSITION/SEPARABILITY PROVISION

Sec. 8.01. - Officers and Employees.

(a) *Rights and Privileges Preserved.* Nothing in this charter except as otherwise specifically provided shall affect or impair the rights or privileges of persons who are city officers or employees at the time of its adoption.

(b) *Continuance of Office or Employment.* Except as specifically provided by this charter, if at the time this charter takes full effect a city administrative officer or employee holds any office or position which is or can be abolished by or under this charter, he or she shall continue in such office or position until the taking effect of some specific provision under this charter directing that he or she vacate the office or position.

Sec. 8.02. - Departments, Offices and Agencies.

(a) *Transfer of Powers.* If a city department, office or agency is abolished by this charter, the powers and duties given it by law shall be transferred to the city department, office or agency designated in this charter or, if the charter makes no provision, designated by the city council.

(b) *Property and Records.* All property, records and equipment of any department, office or agency existing when this charter is adopted shall be transferred to the department, office or agency assuming its powers and duties, but, in the event that the powers or duties are to be discontinued or divided between units or in the event that any conflict arises regarding a transfer, such property, records or equipment shall be transferred to one or more departments, offices or agencies designated by the city council in accordance with this charter.

Sec. 8.03. - Pending Matters.

All rights, claims, actions, orders, contracts and legal administrative proceedings shall continue except as modified pursuant to the provisions of this charter and in each case shall be maintained, carried on or dealt with by the city department, office or agency appropriate under this charter.

Sec. 8.04. - State Municipal Laws.

All ordinances, resolutions, orders and regulations existing at the effective date of the newly adopted charter shall remain in full force and effect upon adoption of the new charter unless they conflict with effective operation of the new charter.

Sec. 8.05. - Schedule.

(a) *First Election.* At the time of its adoption, this charter shall be in effect to the extent necessary in order that the first election of members of the city council may be conducted in accordance with the provisions of this charter. The first general election shall be held on the first Tuesday of November 1995. If needed, primary elections shall be held on the first Tuesday following the first Monday of August 1995.

(b) *Time of Taking full Effect.* The charter shall be in full effect for all purposes on and after the date and time of the first meeting of the newly elected city council provided in section 8.05(c).

(c) *First Council Meeting.* On the first Monday of January following the first election of city councilmembers under this charter, the newly elected members of the council shall meet at 7:00 p.m. at City Hall:

(1) For the purpose of electing the deputy mayor, appointing or considering the appointment of a city manager or acting city manager, and choosing, if it so desires, one of its members to act as temporary clerk pending appointment of a city clerk pursuant to [section] 2.08; and

(2) For the purpose of adopting ordinances and resolutions necessary to effect the transition of government under this charter and to maintain effective city government during that transition.

(d) *Temporary Ordinances.* In adopting ordinances as provided in section 9.05(c), the city council shall follow the procedures prescribed in Article II, except that at its first meeting or any meeting held within 60 days thereafter, the council may adopt temporary ordinances to deal with cases in which there is an urgent need for prompt action in connection with the transition of government and in which the delay incident to the appropriate ordinance procedure would probably cause serious hardship or impairment of effective city government. Every temporary ordinance shall be plainly labeled as such but shall be introduced in the form and manner prescribed for ordinances generally. A temporary ordinance may be considered and may be adopted with or without amendment or rejected at the meeting at which it is introduced. After adoption of a temporary ordinance, the council shall cause it to be printed and published as prescribed for other adopted ordinances. A temporary ordinance shall become effective upon adoption and publication or at such later time preceding automatic repeal under this subsection as it may specify, and the referendum power shall not extend to any such ordinance.

Every temporary ordinance, including any amendments made thereto after adoption, shall automatically stand repealed as of the ninety-first (91st) day following the date on which it was adopted, renewed or otherwise continued except by adoption in the manner prescribed in Article II for ordinances of the kind concerned.

(e) *Initial Expenses.* The initial expenses of the city council, including the expense of recruiting a city manager, shall be paid by the city on vouchers signed by the council chairman.

(f) *Initial Salary of Mayor and Councilmembers.* The mayor shall receive an annual salary in the amount of one thousand two-hundred fifty dollars ($1,250.00) and each other councilmember in the amount of one thousand dollars ($1,000.00), until such amount is changed by the council in accordance with the provisions of this charter.

Sec. 8.06. - Separability.

If any provision of this charter is held invalid, the other provisions of the charter shall not be affected thereby. If the application of the charter or any of its provisions to any person or circumstance is held invalid, the other application of the charter and its provisions to other persons or circumstances shall not be affected thereby.

ARTICLE IX. - INITIATIVE AND REFERENDUM

Sec. 9.01. - General Authority.

(a) *Initiative.* The registered voters of the city shall have power to propose ordinances to the Council. If the Council fails to adopt an ordinance so proposed without any change in substance the said voters shall have the power to adopt or reject it at a city election, but such power shall not extend to the budget or capital program or any ordinance relating to appropriation of money, levy of taxes or salaries of city officers or employees.

(b) *Referendum.* The registered voters of the city shall have power to require reconsideration by the Council of any adopted ordinance. If the Council fails to repeal an ordinance so reconsidered, the said voters shall have the power to approve or reject it at a city election, but such power shall not extend to the budget or capital program or any emergency ordinance or ordinance relating to appropriation of money or levy of taxes.

Sec. 9.02. - Commencement of Proceeding; Petitioners' Committee; Affidavit.

[(a)] Any five (5) registered voters may commence initiative or referendum proceedings by filing with the city clerk an affidavit stating they will constitute the petitioners' committee and be responsible for circulating the petition and filing it in proper form, stating their names and addresses and specifying the address to which all notices to the committee are to be sent, and setting out in full the proposed initiative ordinance or citing the ordinance sought to be reconsidered.

[(b)] Promptly after the affidavit of the petitioners' committee is filed the clerk shall issue the appropriate petition blanks to the petitioners' committee.

Sec. 9.03. - Petitions.

(a) *Number of Signatures.* Initiative and referendum petitions must be signed by registered voters of the city equal in number to at least fifteen per cent (15%) of the total number of registered voters registered to vote at the last regular election.

(b) *Form and Content.* All papers of a petition shall be uniform in size and style and shall be assembled as one instrument for filing. Each signature shall be executed in ink or indelible pencil and shall be followed by the address of the person signing. Petitions shall contain or have attached thereto throughout their circulation the full text of the ordinance proposed or sought to be reconsidered.

(c) *Affidavit of Circulator.* Each paper of a petition shall have attached to it when filed an affidavit executed by the person circulating it stating that he or she personally circulated the paper, the number of signatures thereon, that all the signatures were affixed in his or her presence, that he or she believes them to be the genuine signatures of the persons whose names they purport to be and that each signer had an opportunity before signing to read the full text of the ordinance proposed or sought to be reconsidered.

(d) *Time for Filing Referendum Petitions.* Referendum petitions must be filed within thirty (30) days after adoption by the Council of the ordinance sought to be reconsidered.

Sec. 9.04. - Procedure after Filing.

(a) *Certificate of Clerk; Amendment.* Within twenty (20) days after the petition is filed, the city clerk shall complete a certificate as to its sufficiency, specifying, if it is insufficient, the particulars wherein it is defective and shall promptly send a copy of the certificate to the petitioners' committee by registered mail. A petition certified insufficient for lack of the required number of valid signatures may be amended once if the petitioners' committee files a notice of intention to amend it with the clerk within two days after receiving the copy of his or her certificate and files a supplementary petition upon additional papers within ten days after receiving the copy of such certificate. Such supplementary petition shall comply with the requirements of subsections (b) and (c) of section 9.03, and within five (5) days after it is filed the clerk shall complete a certificate as to the sufficiency of the petition as amended and promptly send a copy of such certificate to the petitioners' committee by registered mail as in the case of an original petition. If a petition or amended petition is certified sufficient, or if a petition or amended petition is certified insufficient and the petitioners' committee does not elect to amend or request Council review under subsection (b) of this section within the time required, the clerk shall promptly present his or her certificate to the Council and the certificate shall then be a final determination as to the sufficiency of the petition.

(b) *Council Review.* If a petition has been certified insufficient and the petitioners' committee does not file notice of intention to amend it or if an amended petition has been certified insufficient, the committee may, within two (2) days after receiving the copy of such certificate, file a request that it be reviewed by the Council. The Council shall review the certificate at its next meeting following the filing of such request and approve or disapprove it, and the Council's determination shall then be a final determination as to the sufficiency of the petition.

(c) *Court Review; New Petition.* A final determination as to the sufficiency of a petition shall be subject to court review. A final determination of insufficiency, even if sustained upon court review, shall not prejudice the filing of a new petition for the same purpose.

Sec. 9.05. - Referendum Petitions; Suspension of Effect of Ordinance.

When a referendum petition is filed with the city clerk, the ordinance sought to be reconsidered shall be suspended from taking effect. Such suspension shall terminate when:

(1) There is a final determination of insufficiency of the petition; or

(2) The petitioners' committee withdraws the petition; or

(3) The Council repeals the ordinance; or

(4) Thirty (30) days have elapsed after a vote of the city on the ordinance.

Sec. 9.06. - Action on Petitions.

(a) *Action by Council.* When an initiative or referendum petition has been finally determined sufficient, the Council shall promptly consider the proposed initiative ordinance in the manner provided in Article II or reconsider the referred ordinance by voting its repeal. If the Council fails to adopt a proposed initiative ordinance without any change in substance within sixty (60) days or fails to repeal the referred ordinance within thirty (30) days after the date the petition was finally determined sufficient, it shall submit the proposed or referred ordinance to the voters of the city.

(b) *Submission to Voters.* The vote of the city on a proposed or referred ordinance shall be held not less than thirty (30) days and not later than one (1) year from the date of the final Council vote thereon. If no regular city election is to be held within the period prescribed in this subsection, the Council shall provide for a special election; otherwise, the vote shall be held at the same time as such regular election, except that the Council may in its discretion provide for a special election at an earlier date within the prescribed period. Copies of the proposed or referred ordinance shall be made available at the polls.

(c) *Withdrawal of Petitions.* An initiative or referendum petition may be withdrawn at any time prior to the fifteenth (15th) day preceding the day scheduled for a vote of the city by filing with the city clerk a request for withdrawal signed by at least four (4) members of the petitioners' committee. Upon the filing of such request the petition shall have no further force or effect and all proceedings thereon shall be terminated.

Sec. 9.07. - Results of Election.

(a) *Initiative.* If a majority of the register voters voting on a proposed initiative ordinance vote in its favor, it shall be considered adopted upon certification of the election results and shall be treated in all respects in the same manner as ordinances of the same kind adopted by the Council. If conflicting ordinances are approved at the same election, the one receiving the greatest number of affirmative votes shall prevail to the extent of such conflict.

(b) *Referendum.* If a majority of the registered voters voting on a referred ordinance vote against it, it shall be considered repealed upon certification of the election results.

ARTICLE X. - CHARTER AMENDMENT

Sec. 10.01. - Amendment of Charter.

Procedures for amending this charter shall be as provided in Section Twenty-one (21) through Twenty-five (25) of the Home Rule Cities Act [MCL 117.21—117.25].

ARTICLE XI. - UTILITIES

Sec. 11.01. - General Powers Respecting Duties.

Subject to statutory provisions, the city shall also have the power to acquire, own, establish, construct, operate, improve, enlarge, extend, repair and maintain, either within or without its corporate limits, including, but not by way of limitation, public utilities for supplying light, heat, power, gas, sewage collection and treatment, and garbage facilities and facilities for the storage and parking of vehicles within its corporate limits. And the city may make a contract, upon such terms including terms of present or deferred payment, and upon such conditions and in such manner as the municipality may deem proper, to purchase, operate and maintain any existing public utility property for supplying water, heat, light, power or transportation to the city and the inhabitants thereof. No such contract shall bind the municipality unless the proposition therefor shall receive the affirmative vote of three-fifths (3/5) of the electors voting thereon at a regular or special election.

Sec. 11.02. - When Council May Establish Works for Utilities.

Whenever the council of said city shall, by resolution, declare that it is expedient for said city to acquire by purchase or to construct as the case may be, works for the purpose of supplying said city and the inhabitants thereof, or either, with gas, electric or other utilities, then the council shall have power to take such action as shall be deemed expedient to accomplish such purpose.

Sec. 11.03. - When Question to be Submitted to Electors.

In case the council shall declare that it is expedient for the city to acquire by purchase or construct, as the case may be, works for the purpose of supplying the city and its inhabitants thereof, or either, with

electric or other utilities, then the council shall direct and cause to be made and recorded in their proceedings an estimate of the expense thereof, and the question of raising the amount required for such purpose shall be submitted to the council as provided in this charter and shall be determined by a majority of the electors voting at such election by ballot upon the question.

Sec. 11.04. - City May Borrow Money; Council May Issue Bonds, Etc.; Proviso.

It shall be lawful for the city to borrow any sum of money not exceeding ten per cent (10%) of the assessed value of the property in said city as shown by the last preceding assessment roll, to be used exclusively for the purpose of purchasing or constructing and maintaining such utilities as provided in the preceding sections of this title. The council shall have power to fix the time and place of payment of the principal and interest of the debt contracted under the provisions of this title and to issue bonds of the city therefor, but the rate of such interest shall not exceed the maximum rate provided for by law. Such bonds shall not be sold for less than their par value. Provided, that the total amount expended for the purchase or construction of such utilities shall not exceed the amount of the estimate of the expense thereof provided for in section 11.03.

Sec. 11.05. - Council May Raise Money for Repairs, Etc.; Amount.

After such utilities have been purchased or constructed as aforesaid in the city, the council may then raise and expend in making repairs or alterations or in extending such works, such sum as may be deemed advisable without submitting the question to the electors of the city; but the sum so to be raised in any one year shall be included and shall not increase the total amount which by the provisions of section 5.01a of this charter, the council is authorized to raise.

Sec. 11.06. - To Fix Rates.

The council shall have power to fix such just and equitable rates as may be deemed advisable for supplying the inhabitants of the city with utilities. The council shall establish a scale of rates to be charged and paid for such utilities, and from time to time may either modify, amend, increase or diminish such rates.

Sec. 11.07. - When May Appropriate Private Property.

If it shall be necessary in the judgment of the council to appropriate private property either within or without the city for the construction and maintenance or for the due operation of the utilities, the right to occupy and hold the same and the ownership therein and thereto, may be acquired by the city in the manner and with like effect as provided by law for the taking of private property for public use.

Sec. 11.08. - May Make Contract for Utilities.

The council may contract from year to year or for a period of time not exceeding ten years with any person or persons or with any duly authorized corporation for the supplying of said city or the inhabitants thereof or both with gas, electric or other utilities upon such terms and conditions as may be agreed; and may grant to such person or persons or corporation the right to the use of the streets, alleys, wharves and public grounds of the city as shall necessary to enable such person, persons or corporation to construct and operate proper works for the supplying of such utility upon such terms and conditions as shall be specified in such contract. No such contract shall bind the municipality unless the proposition therefor shall receive the affirmative vote of three-fifths (3/5) of the electors voting thereon at a regular or special election.

Sec. 11.09. - To Provide for Control Care, Etc.

The council may enact such ordinances and adopt such resolutions as may be necessary for the care, protection, preservation and control of such utilities works and all the fixtures, appurtenances, apparatus, buildings and machinery connected therewith or belonging thereto and to carry into effect the

provisions of this title and the power herein conferred in respect to the erection, purchase, management, and control of such utilities.

ARTICLE XII. - LIBRARY

Sec. 12.01. - Council to Maintain Free Public Library.

There is hereby recognized and established, and the council of the City of Menominee shall have power to maintain a free public library for the use and benefit of the inhabitants of said city and the public library now being maintained by said city is hereby recognized as the free public library of said city and the same shall be designated as Spies Public Library. The council shall by ordinance adopt the procedure for governing, managing and maintaining the said library.

ARTICLE XIII. - SPECIAL ASSESSMENTS

Sec. 13.01. - Special Assessments; Cost of Public Improvements.

Council shall have the power:

A. To assess and re-assess the cost or any portion thereof, of any public improvements to a special district;

B. To assess the cost or any portion thereof of installing a boulevard lighting system of any nature upon the lands abutting thereupon;

C. To make public improvements with the city, and as to public improvements which are of such a nature as to benefit especially any property or properties within a district, the council shall have the power to determine by resolution, that the whole or any part of the expense of any public improvement shall be defrayed by special assessment upon the property in districts especially benefited, in proportion to the benefits derived or to be derived, and shall so declare by resolution which shall state the estimate cost of the improvement, what proportion of the cost thereof shall be paid by special assessment, and what part, if any, shall be a general obligation of the city, the number of installments in which assessments shall be levied and whether the assessments shall be based upon special benefits, frontage, area values or other factors permitted by law, or a combination thereof.

Sec. 13.02. - Definition of "Cost."

"Cost," as used in this article, includes necessary condemnation cost and necessary expenses incurred for engineering, financial, legal, administrative and other services involved in the making and financing of the improvement and the levying and collecting of the special assessments therefor. Where any such service is rendered by city employees, the city may include the fair and reasonable cost of rendering the service. The inclusion of any cost specified in this paragraph as part of the cost of an improvement for which special assessments have heretofore been levied is validated.

Sec. 13.03. - Special Assessment; Procedure to be Fixed by Ordinance.

The council shall prescribe, by ordinance, the complete special assessment procedure governing the initiation of projects, preparation of plans and cost estimates, creation of special assessment districts, notice and hearings, making the governing of special assessment rolls, correction of errors in such rolls, the number of installments in which special assessments may be paid, collection of special assessments, refunds and any other matters concerning the making and financing of improvements by the special assessment method. Such ordinance shall authorize additional assessments if the prior assessment proves insufficient to pay for the improvement and cost incident thereto or in case of invalidity in whole or in part, and it shall also provide for the refund of excessive assessments, provided however, that if the excess is less than five percent (5%) of the total cost, it may be placed in a general fund of the city.

Sec. 13.04. - Assessment Lien.

Upon the confirmation of each special assessment thereon shall become a debt to the city from the persons to whom they are assessed, and, until paid, shall be a lien upon the property assessed, for the amount of such assessment and all interest and charges thereon.

ARTICLE XIV. - SAVINGS CLAUSE

Sec. 14.01. - Savings Clause.

If any section or part of a section of this Charter proves to be invalid or unconstitutional, the same shall not be held to invalidate or impair the validity, force, or effect of any other section or part of a section of this charter unless it clearly appears that such other section or part of a section is wholly or unnecessarily dependent for its operation upon the section or part of a section so held invalid or unconstitutional.

CHARTER COMPARATIVE TABLE

The Charter was adopted at the November 1995 election and effective on January 1, 1996. An amendment adopted on November 4, 1997, was included in the version furnished to the publisher. The location of subsequent amendments are shown below.

Adoption Date	Section	Section this Charter
11- 4-1997(Ord.)		Char., Arts. I—XIV

PART II - CODE OF ORDINANCES

Subpart A - GENERAL ORDINANCES

Chapter 1 - GENERAL PROVISIONS

Sec. 1-1. - Designation and citation of Code.

The ordinances embraced in this and the following chapters shall constitute and be designated the "Code of Ordinances, City of Menominee, Michigan," and may be so cited. The ordinances may also be cited as the "Menominee, Michigan Code." The Code consists of subparts A and B.

(Code 1979, § 1:1.0)

State Law reference— Authority to codify ordinances, MCL 117.5b.

Sec. 1-2. - Definitions and rules of construction.

The following definitions and rules of construction apply to this Code and to all ordinances and resolutions, unless the context requires otherwise:

Generally. All provisions of this Code shall be construed according to their fair import and so as to promote justice and the objects of the Code. When provisions conflict, the specific shall prevail over the general. All provisions shall be liberally construed so that the intent of the City Council may be

effectuated. Words and phrases shall be construed according to the common and approved usage of the language, but technical words, technical phrases and words and phrases that have acquired peculiar and appropriate meanings in law shall be construed according to such meanings.

Charter. The term "Charter" means the Charter of the City of Menominee, Michigan.

City. The term "City" means the City of Menominee, Michigan.

City Council or *council.* The term "City Council" or "council" means the City Council of the City of Menominee, Michigan.

Code. The term "Code" means the Code of Ordinances, City of Menominee, Michigan, as designated in section 1-1.

Computation of time. In computing a period of days, the first day is excluded and the last day is included. If the last day of any period or a fixed or final day is a Saturday, Sunday or legal holiday, the period or day is extended to include the next day that is not a Saturday, Sunday or legal holiday.

Conjunctions. In a provision involving two or more items, conditions, provisions or events, which items, conditions, provisions or events are connected by the term "and," "or" or "either…or," the term shall be interpreted as follows:

(1) The term "and" indicates that all the connected terms, conditions, provisions or events apply.

(2) The term "or" indicates that the connected terms, conditions, provisions or events apply singly or in any combination.

(3) The term "either…or" indicates that the connected terms, conditions, provisions or events apply singly, but not in combination.

County. The term "county" means Menominee County, Michigan.

Delegation of authority. A provision that authorizes or requires a City officer or City employee to perform an act or make a decision authorizes such officer or employee to act or make a decision through subordinates to the extent permitted by law. Such delegation of performance does not, however, affect the named officer's personal accountability and responsibility for the act or decision.

Gender. The term of one gender include all other genders.

Includes and *including.* The terms "includes" and "including" are terms of enlargement and not of limitation or exclusive enumeration, and the use of the terms does not create a presumption that components not expressed are excluded.

May. The term "may" is to be construed as being permissive and not mandatory.

May not. The term "may not" states a prohibition.

Month. The term "month" means a calendar month.

Must. The term "must" is to be construed as being mandatory.

Number. The singular includes the plural and the plural includes the singular.

Oath and *sworn.* The term "oath" includes an affirmation in all cases where an affirmation may be substituted for an oath. In similar cases, the term "sworn" includes the term "affirmed."

Officers, departments, boards, commissions and *employees.* References to officers, departments, boards, commissions or employees are to City officers, City departments, City boards, City councils and City employees.

Owner. The term "owner," as applied to property, includes any part owner, joint owner, tenant in common, tenant in partnership, joint tenant or tenant by the entirety of the whole or part of such property. With respect to special assessments, however, the owner shall be considered to be the person who appears on the assessment roll for the purpose of giving notice and billing.

Person. The term "person" means any individual, partnership, corporation, association, club, joint venture, estate, trust, governmental unit, and any other group or combination acting as a unit, and the individuals constituting such group or unit.

Personal property. The term "personal property" means any property other than real property.

Premises. The term "premises," as applied to real property, includes land and structures.

Property. The term "property" means real and personal property.

Public acts. References to public acts are references to the Public Acts of Michigan. (For example, a reference to Public Act No. 168 of 1959 is a reference to Act No. 158 of the Public Acts of Michigan of 1959.) Any reference to a public act, whether by act number or by short title, is a reference to such act, as amended from time to time.

Public place. The term "public place" means any place to or upon which the public resorts or travels, whether such place is owned or controlled by the City or any agency of the state, or is a place to or upon which the public resorts or travels by custom, or by invitation, express or implied.

Real property. The term "real property" includes land and fixtures.

Road, street, highway and *alley.* The terms "road," "street" and "highway" mean the entire width subject to an easement for a public right-of-way or owned in fee by the City, county or state, of every way or place, of whatever nature, whenever any part thereof is open to the use of the public as a matter of right for purposes of public travel. The term "alley" means any such way or place providing a secondary means of ingress and egress from property.

Shall. The term "shall" is to be construed as being mandatory.

Sidewalk. The term "sidewalk" means that portion of a street between the curb lines or lateral lines and the right-of-way lines which is intended for the use of pedestrians.

Signature and *subscription.* The terms "signature" and "subscription" include a mark when the person cannot write.

State. The term "state" means the State of Michigan.

Swear. The term "swear" includes the term "affirm."

Tense. The present tense includes the past and future tense. The future tense includes the present tense.

Week. The term "week" means seven consecutive days.

Written. Except for signatures, the term "written" includes any representation of words, letters, symbols or figures.

Year. The term "year" means 12 consecutive months.

(Code 1979, §§ 1:2.1, 1:2.10)

State Law reference— Definitions and rules of construction applicable to state statutes, MCL 8.3 et seq.

Sec. 1-3. - Section catchlines, history notes, editor's notes and state law references; internal references.

(a) Unless otherwise provided, the catchlines of the several sections of this Code printed in boldface type are intended as mere catchwords to indicate the contents of the section and are not titles of such sections, or of any part of the section. No provision of this Code shall be held invalid by reason of deficiency in any chapter or section heading

(b) The history or source notes appearing in parentheses after sections in this Code have no legal effect and only indicate general legislative history. Editor's notes, charter references and state law references

that appear in this Code after sections or subsections or that otherwise appear in footnote form are editorial additions provided for the convenience of the user of this Code and have no legal effect.

(c) Unless specified otherwise, all references in this Code to chapters or sections are to chapters or sections of this Code.

(Code 1979, § 1:2.3(3))

State Law reference— Catchlines in state statutes, MCL 8.4b.

Sec. 1-4. - Effect of repeal of ordinances.

(a) Unless specifically provided otherwise, the repeal of a repealing ordinance does not revive any repealed ordinance.

(b) The repeal or amendment of an ordinance does not affect any punishment or penalty incurred before the repeal took effect, nor does such repeal or amendment affect any suit, prosecution or proceeding pending at the time of the amendment or repeal.

State Law reference— Effect of repeal of state statutes, MCL 8.4, 8.4a.

Sec. 1-5. - Amendments to Code.

(a) All ordinances adopted subsequent to this Code that amend, repeal or in any way affect this Code may be numbered in accordance with the numbering system of the Code and printed for inclusion in the Code.

(b) Amendments to provisions of this Code may be made with the following language: "Section (chapter, article, division or subdivision, as appropriate) _____ of the Code of Ordinances, City of Menominee, Michigan, is hereby amended to read as follows:…."

(c) If a new section, subdivision, division, article or chapter is to be added to the Code, the following language may be used: "Section (chapter, article, division or subdivision, as appropriate) _____ of the Code of Ordinances, City of Menominee, Michigan, is hereby created to read as follows:…."

(d) All provisions desired to be repealed should be repealed specifically by section, subdivision, division, article or chapter number, as appropriate, or by setting out the repealed provisions in full in the repealing ordinance.

(Code 1979, § 1:2.4)

Sec. 1-6. - Supplementation of Code.

(a) Supplements to this Code shall be prepared and printed whenever authorized or directed by the City. A supplement to this 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 the supplement shall be so numbered that they will fit properly into the Code and will, where necessary, replace pages that have become obsolete or partially obsolete. 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 that 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 person authorized to prepare the supplement may make formal, nonsubstantive changes in ordinances and parts or ordinances included in the supplement, as necessary to embody them into a unified code. For example, the person may:

(1) Arrange the material into appropriate organizational units.

(2) Supply appropriate catchlines, headings and titles for chapters, articles, divisions, subdivisions, sections and subsections to be included in the Code and make changes in any such catchlines, headings and titles or in any such catchlines, headings and titles already in the Code.

(3) Assign appropriate numbers to chapters, articles, divisions, subdivisions and sections to be added to the Code.

(4) Where necessary to accommodate new material, change existing numbers assigned to chapters, articles, divisions, subdivisions or sections.

(5) Change the term "this ordinance" or similar terms to "this chapter," "this article," "this division," "this subdivision," "this section, " "this subsection" or "sections _____ to _____ (inserting section numbers to indicate the sections of the Code that embody the substantive sections of the ordinance incorporated in the Code)".

(6) Make other nonsubstantive changes necessary to preserve the original meaning of the ordinances inserted in the Code.

Sec. 1-7. - General penalty; continuing violations.

(a) *Definitions.* In this section, the term "violation of this Code" means any of the following:

(1) Doing an act that is prohibited or made or declared unlawful, an offense, a violation, a misdemeanor or a municipal civil infraction by ordinance or by rule or regulation.

(2) Failure to perform an act that is required to be performed by ordinance or by rule or regulation.

(3) Failure to perform an act, if the failure is prohibited or is made or declared unlawful, an offense, a violation, a misdemeanor or a municipal civil infraction by ordinance or by rule or regulation.

(b) *Additional violations.* In this section, the term "violation of this Code" includes:

(1) Causing, securing, aiding, abetting, concealing, counseling, procuring, facilitating, commanding, assisting in or soliciting a violation of this Code as defined in subsection (a) of this section.

(2) Attempting to commit a violation of this Code as defined in subsection (a) of this section.

(3) Conspiring with one or more persons to commit a violation of this Code as defined in subsection (a) of this section.

(c) *Application to City officers and City employees.* In this section, the term "violation of this Code" does not include the failure of a City officer or City employee to perform an official duty, unless it is specifically provided that the failure to perform the duty is to be punished as provided in this section.

(d) *Misdemeanor violations.* This subsection does not apply to any municipal civil infraction . Except as otherwise provided by law, a person convicted of a violation of this Code that is not a municipal civil infraction shall be guilty of a misdemeanor and punished by a fine not to exceed $500.00, imprisonment for a period of not more than 90 days, or both; however, unless otherwise provided by law, a person convicted of a violation of any provision of this Code that substantially corresponds to a violation of state law that is a misdemeanor for which the maximum period of imprisonment is 93 days shall be punished by a fine of not more than $500.00, imprisonment for a term of not more than 93 days, or both. The following provisions apply to persons who are punished pursuant to this subsection:

(1) The costs and expenses of such prosecutions, including witness fees, jurors' fees, sheriff's fees, stenographer's fees and other like expenses incurred on behalf of the City, shall be paid out of the City's general fund.

(2) In an action brought by the City against the defendant, wherein the defendant is found guilty by a court of competent jurisdiction, the costs and expenses of the prosecution, including witness fees, stenographer's fees, and other like expenses incurred on behalf of the City, shall be payable by the defendant along with any fines imposed if any.

(3) Whenever any person shall become entitled to receive any monies from the City under an order for the same shall be drawn by the City attorney and filed with the City clerk/treasurer for action in the manner provided by the Charter for auditing allowing and paying claims against the City.

(4) Whenever any person shall be ordered to pay any monies to the City under an order for the same shall be drawn by the judge and said funds shall be transferred to the City not less than semi-annually.

(e) *Municipal civil infractions.*

(1) Except as otherwise provided by law or ordinance, violations of this Code shall be municipal civil infractions and persons who violate this Code shall be responsible for a municipal civil infraction.

(2) The sanction for a violation that is a municipal civil infraction shall be a civil fine in an amount as set forth in this Code or any ordinance, plus any costs, damages, expenses and other sanctions as authorized by law.

(3) Unless otherwise specifically provided for with respect to a particular municipal civil infraction violation by this Code or any ordinance, the civil fine for a:

a. First violation shall be $50.00, plus costs and other sanctions.

b. Second violation shall be $100.00, plus costs and other sanctions.

c. Third violation shall be $500.00, plus costs and other sanctions.

(4) In addition to the provisions of subsection (e)(3) of this section, any person determined responsible or responsible with explanation for a municipal civil infraction shall be liable for the payment of the costs of prosecution in an amount of not less than $9.00 and not more than $500.00.

(5) Persons responsible for civil infraction violations of articles II and IV of chapter 12 shall pay the costs incurred by the City in abating the violation in addition to the normal fines. The City may, when applicable, collect such costs through the special assessment procedures in chapter 20.

(6) A person who fails to answer a citation, notice or pay a fine for a violation of this Code that is designated as a civil infraction, is guilty of a misdemeanor and shall be punished as provided in subsection (d) of this section.

(f) *Separate offenses.* Except as otherwise provided by law or ordinance with respect to:

(1) Violations of this Code that are continuous with respect to time, each day that the violation continues is a separate offense.

(2) Other violations of this Code, each violation constitutes a separate offense.

(g) *Other remedies.*

(1) The imposition of a penalty or sanction under subsection (d) or (e) of this section does not prevent suspension or revocation of a license, permit or franchise, or other administrative sanctions.

(2) Violations of this Code that are continuous with respect to time are a public nuisance and may be abated by injunctive or other equitable relief. The imposition of a penalty does not prevent injunctive relief, or civil or quasi-judicial enforcement.

(Code 1979, §§ 1:2.5(1), (2), (3)(b), 1:2.8, 12:1.2, 12:1.3, 12:1.6, 12:1.7, 12:2.1, 12:2.2)

State Law reference— Penalty for ordinance violations, MCL 117.3(k), 117.41; municipal civil infractions, MCL 117.4l, 600.8701 et seq.

Sec. 1-8. - Severability.

Except as otherwise expressly provided to the contrary, if any portion of this Code or the application thereof to any person or circumstance shall be found to be invalid by a court, such invalidity shall not affect the remaining portions or applications of the ordinance which can be given effect without the invalid portion or application, if such remaining portions or applications are not determined by the court to be inoperable, and, to this end, this Code is declared to be severable. The provisions of this section shall apply to the amendment or addition to any section of this Code whether or not the wording of this section is set forth in the ordinance, unless otherwise indicated.

(Code 1979, § 1:2.3(1), (20))

State Law reference— Severability of state statutes, MCL 8.5.

Sec. 1-9. - Provisions deemed continuation of existing ordinances.

The provisions of this Code, insofar as they are substantially the same as legislation previously adopted by the City relating to the same subject matter, shall be construed as restatements and continuations thereof and not as new enactments.

State Law reference— Similar provisions as to state statutes, MCL 8.3u.

Sec. 1-10. - Code does not affect prior offenses, rights, etc.

(a) Nothing in this Code or the ordinance adopting this Code affects any offense or act committed or done, any penalty or forfeiture incurred, or any contract or right established before the effective date of this Code.

(b) The adoption of this Code does not authorize any use or the continuation of any use of a structure or premises in violation of any City ordinance on the effective date of this Code.

Sec. 1-11. - Certain ordinances not affected by Code.

Nothing in this Code or the ordinance adopting this Code affects the validity of any of the following ordinances or portion of such ordinances, and all such provisions continue in full force and effect to the same extent as if published at length in this Code:

(1) Annexing property into the City or describing the corporate limits.

(2) Detaching property or excluding property from the City.

(3) Promising or guaranteeing the payment of money or authorizing the issuance of bonds or other instruments of indebtedness.

(4) Authorizing or approving any contract, deed or agreement.

(5) Making or approving any appropriation or budget.

(6) Providing for salaries or other employee benefits.

(7) Granting any right or franchise.

(8) Adopting or amending a comprehensive plan.

(9) Levying or imposing any special assessment.

(10) Dedicating, establishing, naming, locating, relocating, opening, paving, widening, repairing or vacating any road, street, sidewalk or alley.

(11) Establishing the grade of any road, street or sidewalk.

(12) Dedicating, accepting or vacating any plat.

(13) Levying, imposing or otherwise relating to taxes.

(14) Granting a tax exemption for specific property.

(15) Prescribing traffic regulations for specific locations; or ordering, requiring or authorizing the erection or installation of traffic control signs, signals, devices or markings, or parking meters.

(16) Rezoning property or amending the zoning map.

(17) That is temporary, although general in effect.

(18) That is special, although permanent in effect.

(19) The purpose of which has been accomplished.

Chapter 2 - ADMINISTRATION[1]

Footnotes:

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State Law reference— Home rule cities generally, MCL 117.1 et seq.

ARTICLE I. - IN GENERAL

Secs. 2-1—2-18. - Reserved.

ARTICLE II. - CITY COUNCIL

Secs. 2-19—2-39. - Reserved.

ARTICLE III. - OFFICERS AND EMPLOYEES

DIVISION 1. - GENERALLY

Sec. 2-40. - Indemnification of officers, agents and employees.

(a) *Civil.*

(1) Whenever a claim is made or a civil action is commenced against a City official, employee or agent, including members of volunteer boards, commissions or committees acting on the City's behalf, for injuries to person, or property caused by his negligence while acting within the scope of his employment or authority, the City may pay for, hire or furnish the services of an attorney to represent the City official, employee, agent or volunteer in that action.

(2) The City may negotiate, compromise, settle and pay the claim, either before or after suit is commenced. If a money judgment is entered against the official, employee, agent or volunteer arising out of his course of employment or conduct while acting within the scope of his authority as a City official, employee, agent or volunteer member of a board, commission or committee, the City may indemnify him or pay, settle or compromise the judgment.

(b) *Criminal and quasicriminal.* When a criminal or quasicriminal action is instituted against a City official or employee based upon his conduct in the course of employment, if the employee or official had a

reasonable basis for believing that he was acting within the scope of his authority at the time of the alleged conduct, the City may pay for, hire or furnish the services of an attorney to provide advice or representation or both to the official or employee in the action.

(c) *No City liability.* Nothing in this article shall be construed to impose any liability on the City.

(d) *Application.* A City official, employee or agent including a volunteer member of a City board, commission or committee shall inform the City attorney of any civil action or claim against him as soon as it is practicable. A City official or employee shall inform the City attorney of any criminal or quasicriminal action against him as soon as is practicable. The City attorney will review the claim and report to the City Council on whether the claim satisfies the requirements of this article. The City Council shall determine, by a simple majority, whether to provide legal counsel and indemnification in accordance with the terms of this article.

(Code 1979, § 1:10.1)

Sec. 2-41. - Appearance tickets.

All City officers and City employees may issue and serve appearance tickets for violations of ordinances if they are authorized to enforce such ordinances.

State Law reference— Appearance tickets, MCL 764.9c.

Sec. 2-42. - Municipal civil infraction notices and citations.

Unless prohibited by law, all City officers and City employees shall be deemed authorized local officials for purposes of issuing and serving municipal civil infraction notices and municipal civil infraction citations for violations of ordinances.

State Law reference— Municipal civil infractions, MCL 600.8701 et seq.

Secs. 2-43—2-72. - Reserved.

DIVISION 2. - SPECIFIC OFFICERS

Sec. 2-73. - City assessor.

(a) The City assessor shall serve in such capacity until resignation or until the City manager shall, when necessary for the good of the service, suspend or remove him, in accordance with law, the City Charter and personnel rules adopted pursuant to charter.

(b) The duties of the City assessor shall be prescribed by City Council and/or state law. General duties shall include assessment administration, conducting on-site appraisals of real and personal property to determine cash value, recording data and preparing assessment rolls as directed under and according to state laws.

(c) Additional duties of the City assessor may be set and modified by the City manager with approval of the City Council.

(Code 1979, § 1:3.2)

State Law reference— Tax assessments generally, MCL 211.10 et seq.

Sec. 2-74. - City attorney.

(a) The City attorney shall serve in such capacity until resignation or until the City manager shall, when necessary for the good of the service, suspend or remove him, in accordance with law, the City Charter and personnel rules adopted pursuant to charter.

(b) The City attorney shall serve as chief legal adviser to the council, City manager, all City departments, offices and agencies and render legal opinions on matters of concern to the City; shall prosecute all City ordinance violations and represent the City in all legal proceedings before courts, tribunals or agencies where contested legal issues may be brought; shall perform any other duties prescribed by state or federal law, City Charter or any City ordinance.

(c) All legal opinions rendered by the City attorney for the information of City officials, upon any matter affecting the legal business of the City, shall be filed with the City clerk/treasurer for reference and preservation.

(Code 1979, § 1:3.3)

Sec. 2-75. - City engineer.

(a) Pursuant to the provisions of section 4.01(a) of the 1996 City Charter, there is hereby authorized the office of City engineer.

(b) The City engineer shall serve in such capacity until resignation or until the City manager shall, when necessary for the good of the service, suspend or remove him, in accordance with law, the City Charter and personnel rules adopted pursuant to Charter.

(Code 1979, § 1:3.4(1), (2))

Sec. 2-76. - City clerk/treasurer.

(a) The City clerk/treasurer shall serve in such capacity until resignation or until the City manager shall, when necessary for the good of the service, suspend or remove him, in accordance with law, the City Charter and personnel rules adopted pursuant to Charter.

(b) The duties of the City clerk/treasurer shall be prescribed by City Council and/or state law. General duties shall include accounting functions, tax collections, utility billing procedures, collection of monies for the City, serve as clerk of the City Council and other boards and commissions, and administer elections.

(c) The City clerk/treasurer shall have the custody, care, control and possession of all moneys, bonds, mortgages, notes, leases and evidence of value belonging to the City. The clerk/treasurer shall be the official record keeper of the City and hold all papers, contracts, and documents required to be retained or received on behalf of the City.

(d) Additional duties of the City clerk/treasurer may be set and modified by the City manager with approval of the City Council.

(Code 1979, § 1:3.5)

Sec. 2-77. - Director of public works.

(a) Pursuant to the provisions of section 4.01(a) of the 1996 City Charter, there is hereby authorized the office of director of public works.

(b) The director of public works shall serve in such capacity until resignation or until the City manager shall, when necessary for the good of the service, suspend or remove him, in accordance with law, the City Charter and personnel rules adopted pursuant to Charter.

(Code 1979, § 1:3.6(1), (2))

Sec. 2-78. - Building inspector/code enforcement officer/zoning administrator.

(a) Pursuant to the provisions of section 4.01(a) of the 1996 City Charter, the City Council establishes the office of building inspector/code enforcement officer/zoning administrator.

(b) The building inspector/code enforcement officer/zoning administrator shall serve in such capacity until resignation or until the City manager shall, when necessary for the good of the service, suspend or remove him, in accordance with law, the City Charter and personnel rules adopted pursuant to Charter.

(Code 1979, § 1:3.7(1), (2))

Sec. 2-79. - Police officers.

The minimum employment standards for law enforcement officers as established and adopted by the Michigan Commission on Law Enforcement Standards (MCOLES) in accordance with Public Act No. 203 of 1965 (MCL 28.601 et seq.) are hereby adopted as minimum qualifications for police officers.

(Code 1979, § 1:3.13)

Secs. 2-80—2-101. - Reserved.

DIVISION 3. - CODE OF ETHICS[2]

Footnotes:

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State Law reference— Standards of conduct for public officers and employees, MCL 15.341 et seq.

Sec. 2-102. - Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

City official means any person elected, appointed, or otherwise serving in any capacity with the City in any position established by the City Charter or by City ordinance which involves the exercise of a public power, trust, or duty. The term "City official" includes any official or employee of the City, whether or not they receive compensation, including consultants and persons who serve on advisory boards and commissions.

Compensation means any money, thing of value, or other compensatory or pecuniary benefit conferred upon, received, or to be received in return for, or as reimbursement for, services rendered or to be rendered.

Controlling authorities means those persons identified in section 2-105 to whom inquiries must be directed.

Decision making means to exercise public power to adopt ordinances, regulations, administrative procedures or standards, render quasijudicial decisions, establish executive policy, or render a governmental decision as that term is defined in section 2a of Public Act No. 196 of 1973 (MCL 15.342a).

Economic interest means any interest having value or capable of valuation in monetary terms.

Employee means an individual employed by the City, whether parttime or fulltime, but excludes elected officials and City contractors.

Gift means anything of value given without consideration or expectation of return.

Official duties or *official action* means a decision, recommendation, approval, disapproval, or other action or failure to act that involves the use of discretionary authority.

Relative means a person who is related to an official or employee as spouse or as any of the following, whether by blood or by adoption: parent, child, brother or sister, aunt or uncle, niece or nephew, grandparent, grandchild, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepfather or stepmother, stepson or stepdaughter, stepbrother or stepsister, half-brother or half-sister.

Substantial means anything of significant worth and importance, or of considerable value as distinguished from something with little value, social tokenism, or merely nominal.

(Code 1979, § 1:11.3)

Sec. 2-103. - Findings.

It is hereby declared the policy of the City that all officials and employees must avoid conflicts between their private interests and those of the general public whom they serve. To enhance the faith of the people and the integrity and impartiality of all officials and employees of the City, it is necessary that adequate guidelines be provided for separating their roles as private citizens from their roles as public servants. Where government is based on the consent of the governed, every citizen is entitled to have complete confidence in the integrity of his government. Each individual official, employee, or advisor of government must help to earn, and must honor that trust by his own integrity and conduct in all official duties and actions.

(Code 1979, § 1:11.1)

Sec. 2-104. - Statement of purpose and policy.

(a) This division is adopted as a code of ethics to:

(1) State principles of ethics which are to be applied in public service;

(2) Help motivate public servants to pursue ethical ideals which exceed minimum standards;

(3) Provide a process by which public servants may identify and resolve ethical issues;

(4) Identify minimum standards of ethical conduct for public servants;

(5) Inform the public of the minimum standards to which their public servants are expected to adhere;

(6) Promote public confidence in the integrity of public servants;

(7) Encourage members of the public to seek public office or employment, to serve on public boards, to assist public servants as volunteers, and to take pride in participating in the governmental process;

(8) Establish sanctions, when appropriate, for public servants who violate the public trust;

(9) Protect to the fullest extent possible the rights of all individuals who are subject in any way to the provisions of this division.

(b) This division is intended to establish the policy that City officials and employees of the City and their relatives shall avoid any action which might result in or create the appearance of impropriety, including:

(1) Using public employment or office for private gain;

(2) Giving or accepting preferential treatment to or from any organization or person;

(3) Impeding City efficiency or economy;

(4) Losing complete independence or impartiality of action;

(5) Making a City decision outside official channels;

(6) Affecting adversely the confidence of the public or integrity of the City government; or

(7) Giving or accepting preferential treatment in the use of City property.

(c) The code of ethics is intended to be preventative and punitive. It should not be construed to interfere with or abrogate in any way the provisions of any state statutes, the City Charter, other City ordinances, or any collectively bargained agreement.

(d) This declaration of policy is not intended to prevent any City official or employee of the City from receiving compensation for work performed on his own time as a private citizen and not involving City business.

(e) This declaration of policy is not intended to apply to contributions to political campaigns that are governed by state law.

(Code 1979, § 1:11.2)

Sec. 2-105. - Violation, enforcement, controlling authority, and advisory opinions.

(a) All matters concerning conflict of interest as set forth in section 2-108 and the code of ethical conduct as set forth in section 2-109 shall be directed to one of the two following controlling authorities depending upon the employment status of the City official or employee involved, or group concerned, and the nature of the action requested:

(1) Elected and appointed City officials to the mayor, City Council, and City attorney.

(2) Employees, full-time and part-time, of the City to the City manager and City attorney.

(b) The listed authorities in subsection (a) of this section, when requested, shall take appropriate action on the basis of consensus upon any complaint or request for information, or to otherwise resolve matters concerning this code of ethics. The appropriate action to be taken in any individual case shall be at the discretion of the controlling authority involved, which may include but is not limited to any of the following:

(1) Referral of the matter to a higher authority.

(2) Pursuing further investigation by the controlling authority.

(3) Taking or recommending appropriate disciplinary action including removal from office, appointed position, or employment, in accordance with the City Charter, City Code, state law, or the regulations or policies of the City, or any collectively bargained agreement.

(4) Deeming no action to be required.

(5) Pursuing such other course of action which is reasonable, just, and appropriate under the circumstances.

(c) The controlling authorities listed in subsection (a) of this section may render written advisory opinions, when deemed appropriate, interpreting the code of ethical conduct as set forth in section 2-109. Any City official or employee may seek guidance from the controlling authority upon written request and an advisory opinion shall be requested on questions directly relating to the propriety of their conduct as City officials and employees. Each written request and advisory opinion shall be confidential unless released by the requester.

(1) Request for opinions shall be in writing.

(2) Advisory opinions may include guidance to any employee on questions as to:

a. Whether an identifiable conflict exists between his personal interests or obligations and his official duties.

b. Whether his participation in his official capacity would involve discretionary judgment with significant effect on the disposition of the matter in conflict.

c. What degree his interest exceeds that of other persons who belong to the same economic group or general class.

d. Whether the result of the potential conflict is substantial or constitutes a real threat to the independence of his judgment.

e. Whether he possesses certain knowledge or expertise, which the City will require to achieve a sound decision.

f. What effect his participation under the circumstances would have on the confidence of the people in the impartiality of their City officials and employees.

g. Whether a disclosure of his personal interests would be advisable, and, if so, how such disclosure should be made to safeguard the public interest.

h. Whether it would operate in the best interest of the City for him to withdraw or abstain from participation or to direct or pursue a particular course of action in the matter.

(Code 1979, § 1:11.6)

Sec. 2-106. - Remedies ordered by court.

A court, in rendering a judgment in an action brought pursuant to section 2-110, shall order, as the court considers appropriate, reinstatement of the employee, the payment of back wages, full reinstatement of fringe benefits and seniority rights, actual damages, or any combination of these remedies. A court may also award the complainant all or a portion of the costs of litigation, including reasonable attorney fees and witness fees, if the court determines that the award is appropriate.

(Code 1979, § 1:11; Ord. of 6-20-2005, § 9)

Sec. 2-107. - Notices of employee protections and obligations.

The City shall post notices and use other appropriate means to keep its employees informed of their protections and obligation under this division.

(Code 1979, § 1:11.10)

Sec. 2-108. - Conflict of interest in contracts with City officials prohibited.

No City official or employee shall be a party, directly or indirectly, to any contract with the City or directly or indirectly solicit any contract with the City, except as may be permitted by the provisions of Public Act No. 317 of 1968 (MCL 15.321 et seq.).

(Code 1979, § 1:11.4)

Sec. 2-109. - Code of ethical conduct.

(a) *Gratuities.* No City official or employee of the City shall solicit, accept, or receive, directly or indirectly, any substantial gift, whether in the form of money, service, loan, travel, entertainment, hospitality, thing, promise of future employment, promise of benefit, or in any other form of an economic interest, under circumstances in which it can reasonably be inferred that the gift is intended to influence him in the performance of his official duties or is intended as a reward for any official action or inaction on his part.

(b) *Preferential treatment.* No City official or employee of the City shall use, or attempt to use, their official position to unreasonably secure, request, or grant any privilege, exemption, advantage, contract, or preferential treatment for themselves, a relative, or others.

(c) *Use of information.* No City official or employee of the City who acquires information in the course of their official duties, which information by law or policy is not available at the time to the general public, shall use or withhold such information to further the private economic interests of themselves, a relative, or anyone else.

(d) *Full disclosure.*

(1) No City official or employee of the City shall participate, as an agent or representative of the City, in approving, disapproving, debating, voting, abstaining from voting, recommending, or otherwise acting upon any matter in which he or a relative has a direct or indirect economic interest without disclosing the full nature and extent of their interests. Such a disclosure must be made before the time to perform their duty or concurrently with that performance. If the City official or employee is a member of a decision making or advising body, they must make disclosure to the chair and other members of the body on the official record. Otherwise, a disclosure would be appropriately addressed by an appointed City official or employee to the supervisory head of their organization, or by an elected officer to the general public. In the case of the City manager or City attorney, he shall make such disclosure to the mayor.

(2) All City Council members, the City manager, all City department heads and all regular full-time and part-time City employees, shall file an annual disclosure statement with the City clerk/treasurer on or before April 15 of each year. The statement shall disclose and detail any interest of the filer in any company, business, trust or entity of any kind doing business with or licensed or regulated by the City for the past year and state the type of interest, cost, income and benefits received and present value. The statement shall also include any interest of the filer's immediate family in any such company, business, trust or entity. The disclosure statement shall be a public document.

(3) Provided, however, that disclosure need not be made of benefits received from any entity when an ownership interest is the only connection, and:

a. The company has stock traded on a national exchange and the filer owns $25,000.00 or less of stock of the entity; or

b. The stock holder owns one percent or less of the total stock by value; whichever is greater, provided further that wages or salary received from a public community college, junior college or state college or university need not be reported.

(e) *Outside business dealings.*

(1) No City official or employee of the City shall engage in or accept employment or render services for a private or public interest when that employment or service is incompatible or in conflict with the discharge of the City official's or employee's official duties or when that employment may tend to impair his independence of judgment or action in the performance of official duties.

(2) No City official or employee shall engage in a business transaction in which the City official, or employee may benefit financially from his official position or authority or benefit financially from confidential information which the City official or employee has obtained or may obtain by reason of that position or authority.

(f) *Doing business with the City.* No City official or employee shall engage in business with the City, directly or indirectly, without first filing a complete written disclosure statement for each business

activity having an economic interest. Such disclosure shall be made on an annual basis or before any business activity or decision affecting an interest not previously disclosed by an annual disclosure.

(g) *Suppression of public information.* No City official or employee of the City shall suppress any public City report, document, or other information available to the general public because it might tend to affect unfavorably his private financial or political interest.

(h) *Use of City property.* No City official or employee of the City shall, directly or indirectly, make use of or permit a relative or other person to make use of City property of any kind or City personnel resources for purely personal gain or economic benefit. City officials or employees shall strive to protect and conserve all City property including equipment and supplies entrusted or issued to them.

(i) *Legal process.* No City Council member, City official, or employee shall interfere with the ordinary course of law enforcement within the City, and no special favors, consideration, or disposition shall be suggested to or requested of any law enforcement person of the City including City manager, police chief, police officers, code enforcement officers, City attorney, and/or administrative staff concerning any City law enforcement matter including, but not limited to, parking tickets, traffic tickets, ordinance tickets, or municipal civil infraction citations. This subsection shall not prohibit the City manager, City attorney, and all law enforcement officials from exercising the usual power, control, and discretion which are part of their duties. Nor shall this subsection prohibit the mayor and City Council from making policy decisions, enacting legislation, and directing the affairs of the City in accordance with their legal powers and responsibility.

(Code 1979, § 1:11.5)

Sec. 2-110. - Whistleblower protections.

(a) A City official or employee who has knowledge that a City official or employee has violated section 2-109 may report the existence of the violation to a supervisor, person, agency, or organization. A City official or employee who reports or is about to report a violation of section 2-109 shall not be subject to any of the following sanctions because they reported or were about to report a violation of section 2-109:

(1) Dismissal from employment or office.

(2) Withholding of salary increases that are ordinarily forthcoming to the employee.

(3) Withholding of promotions that are ordinarily forthcoming to the employee.

(4) Demotion in employment status.

(5) Transfer of employment location.

(b) Whenever a City official or employee who has reported or who intends to report a violation of section 2-109 may be subject to any of the sanctions under this section for reasons other than the City official's or employee's actions in reporting or intending to report a violation of section 2-109, the appointing or supervisory authority before the imposition of a sanction shall establish by a preponderance of evidence that the sanction to be imposed is not imposed because the City official or employee reported or intended to report a violation of section 2-109.

(Code 1979, § 1:11.7)

Sec. 2-111. - Whistleblower civil actions for relief or damages.

(a) As used in this section, the term "damages" means damages for injury or loss caused by each violation of section 2-110, including reasonable attorney fees.

(b) A person who alleges a violation of section 2-110 may bring a civil action for appropriate injunctive relief, or actual damages, or both within 90 days after the occurrence of the alleged violation.

(c) An action commenced pursuant to subsection (b) of this section may be brought in the circuit court for the county.

(d) This section shall not be construed to diminish or impair the rights of a person under any collective bargaining agreement that he may derive benefits from.

(Code 1979, § 1:11.8)

Secs. 2-112—2-135. - Reserved.

ARTICLE IV. - MUNICIPAL CIVIL INFRACTIONS[3]

Footnotes:

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State Law reference— Municipal civil infractions, MCL 600.8701 et seq.

Sec. 2-136. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Authorized local official means a police officer or other personnel of the City legally authorized to issue municipal civil infraction citations.

Citation means a written complaint or notice to appear in court upon which an authorized local official records the occurrence or existence of one or more municipal civil infractions by the person cited.

Municipal civil infraction determination means a determination that a defendant is responsible for a municipal civil infraction by one of the following:

(1) An admission of responsibility for the municipal civil infraction.

(2) An admission of responsibility for the municipal civil infraction, with explanation.

(3) A preponderance of the evidence at an informal hearing or formal hearing on the question under section 2-143 or 2-144, respectively.

(4) A default judgment for failing to appear as directed by a citation or other notice, at a scheduled appearance under section 2-141(c)(2) or (d), at an informal hearing under section 2-143, or at a formal hearing under section 2-144.

State Law reference— Similar provisions, MCL 600.8701.

Sec. 2-137. - Commencement; jurisdiction of courts; time and place of appearance.

(a) A municipal civil infraction action is commenced upon the issuance of a citation as provided in section 2-139.

(b) The district court has jurisdiction over municipal civil infraction actions.

(c) The time specified in a citation for appearance shall be within a reasonable time after the citation is issued.

(d) The place specified in the citation for appearance shall be the district court.

State Law reference— Similar provisions, MCL 600.8703.

Sec. 2-138. - Citation—Numbering; form; contents; modification; treatment as under oath.

(a) Each citation shall be numbered consecutively, be in a form as approved by the state court administrator, and consist of the following parts:

(1) The original, which is a complaint and notice to appear by the authorized official and shall be filed with the court in which the appearance is to be made.

(2) The first copy, which shall be retained by the ordinance enforcement agency.

(3) The second copy, which shall be issued to the alleged violator if the violation is a misdemeanor.

(4) The third copy, which shall be issued to the alleged violator if the violation is a municipal civil infraction.

(b) With the prior approval of the state court administrator, the citation may be modified as to content or number of copies to accommodate law enforcement and local court procedures and practices. Use of this citation for violations other than municipal civil infractions is optional.

(c) A citation for a municipal civil infraction signed by an authorized local official shall be treated as made under oath if the violation alleged in the citation occurred in the presence of the authorized local official signing the complaint and if the citation contains the following statement immediately above the date and signature of the official: "I declare under the penalties of perjury that the statements above are true to the best of my information, knowledge, and belief."

State Law reference— Similar provisions, MCL 600.8705.

Sec. 2-139. - Same—Preparation; issuance; service; municipal ordinance violation notice.

(a) An authorized local official who witnesses a person violate an ordinance, a violation of which is a municipal civil infraction, shall prepare and subscribe, as soon as possible and as completely as possible, an original and three copies of a citation, except as provided in subsection (f) of this section.

(b) An authorized local official may issue a citation to a person if, based upon investigation, the official has reasonable cause to believe that the person is responsible for a municipal civil infraction. An authorized local official may issue a citation to a person if, based upon investigation of a complaint by someone who allegedly witnessed the person violate an ordinance, a violation of which is a municipal civil infraction, the official has reasonable cause to believe that the person is responsible for a municipal civil infraction and if the City attorney approves in writing the issuance of the citation.

(c) Except as otherwise provided under subsection (d) of this section, the authorized local official shall personally serve the third copy of the citation upon the alleged violator.

(d) In a municipal civil infraction action involving the use or occupancy of land or a building or other structure, a copy of the citation need not be personally served upon the alleged violator but may be served upon an owner or occupant of the land, building, or structure by posting the copy on the land or attaching the copy to the building or structure. In addition, a copy of the citation shall be sent by first-class mail to the owner of the land, building, or structure at the owner's last known address.

(e) A citation served under subsection (d) of this section for a violation involving the use or occupancy of land or a building or other structure shall be processed in the same manner as a citation served personally upon a defendant pursuant to subsection (a) or (b) of this section.

(f) If the City has established a municipal ordinance violations bureau, an authorized local official of the City may issue and serve a municipal ordinance violation notice, instead of a citation, under the same circumstances and upon the same persons as provided in this section for the service of a citation. If an authorized local official issues and serves a municipal ordinance violation notice and if an admission of responsibility is not made and the civil fine and costs, if any, prescribed by ordinance for the violation

are not paid at the municipal ordinance violations bureau, a citation may be filed with the court described in section 2-137(d) and a copy of the citation may be served by first-class mail upon the alleged violator at his last known address. The citation filed with the court pursuant to this subsection need not comply in all particulars with section 2-138 but shall consist of a sworn complaint containing the allegations stated in the municipal ordinance violation notice and shall fairly inform the defendant how to respond to the citation. A citation issued under this subsection shall be processed in the same manner as a citation issued personally to a defendant pursuant to subsection (a) or (b) of this section. As used in this subsection, the term "municipal ordinance violation notice" means a notice, other than a citation, directing a person to appear at a municipal ordinance violations bureau in the City and to pay the fine and costs, if any, prescribed by ordinance for the violation of the ordinance.

State Law reference— Similar provisions, MCL 600.8707.

Sec. 2-140. - Same—Admission; denial of responsibility; filing of sworn complaint; failure to appear; warrant for arrest.

If an authorized local official issues a citation under section 2-139, the court may accept an admission with explanation or an admission or denial of responsibility upon the citation without the necessity of a sworn complaint. If the defendant denies responsibility for the municipal civil infraction, further proceedings shall not be held until a sworn complaint is filed with the court. A warrant for arrest for failure to appear on the municipal civil infraction citation under section 2-147(i) shall not be issued until a sworn complaint relative to the municipal civil infraction is filed with the court.

State Law reference— Similar provisions, MCL 600.8710.

Sec. 2-141. - Same—Appearance; response to allegations; acceptance of admission; sanctions; admission of responsibility with explanation; effect; denial of responsibility; hearing.

(a) A person to whom a citation is issued under section 2-139 shall appear by or at the time specified in the citation and may respond to the allegations in the citation as provided in this section.

(b) If the defendant wishes to admit responsibility for the municipal civil infraction, the defendant may do so by appearing in person, by representation, or by mail. If appearance is made by representation or mail, the court may accept the admission with the same effect as though the defendant personally appeared in court. Upon acceptance of the admission, the court may order any of the sanctions permitted under section 2-147.

(c) If the defendant wishes to admit responsibility for the municipal civil infraction with explanation, the defendant may do so in either of the following ways:

(1) By appearing by mail.

(2) By contacting the court in person, by mail, by telephone, or by representation to obtain from the court a scheduled date and time for an appearance, at which time the defendant shall appear in court in person or by representation.

(d) If a defendant admits responsibility for a municipal civil infraction with explanation under subsection (c) of this section, the court shall accept the admission as though the defendant has admitted responsibility under subsection (b) of this section and may consider the defendant's explanation by way of mitigating any sanction that the court may order under section 2-147. If appearance is made by representation or mail, the court may accept the admission with the same effect as though the defendant personally appeared in court, but the court may require the defendant to provide a further explanation or to appear in court.

(e) If the defendant wishes to deny responsibility for a municipal civil infraction, the defendant shall do so by appearing for an informal or formal hearing. If the hearing date is not specified on the citation, the

defendant shall contact the court in person, by representation, by mail, or by telephone, and obtain a scheduled date and time to appear for an informal or formal hearing. If the hearing date is specified on the citation, the defendant shall appear on that date. The hearing shall be an informal hearing, unless a formal hearing is requested by the defendant or the City as provided by section 2-142. If a hearing is scheduled by telephone, the court shall mail the defendant a confirming notice of that hearing by regular mail to the address appearing on the citation or to an address that is furnished by the defendant. An informal hearing shall be conducted pursuant to section 2-143, and a formal hearing shall be conducted pursuant to section 2-144.

State Law reference— Similar provisions, MCL 600.8715.

Sec. 2-142. - Request for formal hearing.

(a) The court shall schedule a formal hearing if either the defendant or the City expressly requests a formal hearing as provided by this section.

(b) A request for a formal hearing must be received by the court at least ten days before the hearing date. The request may be made in person, by representation, by mail, or by telephone.

(c) The party requesting a formal hearing shall notify the other parties of the request. Notification of the request must be received by the other parties at least ten days before the hearing date. The notification of a request for a formal hearing may be made in person, by representation, by mail, or by telephone.

State Law reference— Similar provisions, MCL 600.8717.

Sec. 2-143. - Informal hearing.

(a) An informal hearing shall be conducted by a district court magistrate, if authorized by the judge of the district court. A district court magistrate may administer oaths, examine witnesses, and make findings of fact and conclusions of law at an informal hearing. The judge or district court magistrate shall conduct the informal hearing in an informal manner so as to do substantial justice according to the rules of substantive law, but is not bound by the statutory provisions or rules of practice, procedure, pleading, or evidence, except provisions relating to privileged communications. There shall not be a jury at an informal hearing. A verbatim record of an informal hearing is not required.

(b) At an informal hearing, the defendant shall not be represented by an attorney and the City shall not be represented by the City attorney.

(c) Notice of a scheduled informal hearing shall be given to the City. The City and defendant may subpoena witnesses. Witness fees need not be paid in advance to a witness. Witness fees for a witness on behalf of the City are payable by the district control unit of the district court or by the City.

(d) If the judge or district court magistrate determines by a preponderance of the evidence that the defendant is responsible for a municipal civil infraction, the judge or magistrate shall enter an order against the defendant as provided in section 2-147. Otherwise, a judgment shall be entered for the defendant, but the defendant is not entitled to costs of the action.

(e) The City and defendant are entitled to appeal an adverse judgment entered at an informal hearing. An appeal shall be de novo in the form of a scheduled formal hearing as follows:

(1) The appeal from a judge of the district court shall be heard by a different judge of the district.

(2) The appeal from a district court magistrate shall be heard by a judge of the district.

State Law reference— Similar provisions, MCL 600.8719.

Sec. 2-144. - Formal hearing.

(a) A formal hearing shall be conducted only by a judge of the district court.

(b) In a formal hearing, the defendant may be represented by an attorney, but is not entitled to counsel appointed at public expense.

(c) Notice of a formal hearing shall be given to the prosecuting attorney or the attorney who represents the City. That attorney shall appear in court for a formal hearing and is responsible for the issuance of a subpoena to each witness for the City. The defendant may also subpoena witnesses. Witness fees need not be paid in advance to a witness. Witness fees for a witness on behalf of the City are payable by the district control unit of the district court.

(d) There shall not be a jury trial in a formal hearing.

(e) If the judge determines by a preponderance of the evidence that the defendant is responsible for a municipal civil infraction, the judge shall enter an order against the defendant as provided in section 2-147. Otherwise, a judgment shall be entered for the defendant, but the defendant is not entitled to costs of the action.

State Law reference— Similar provisions, MCL 600.8721.

Sec. 2-145. - Failure to appear; default judgment.

If the defendant fails to appear as directed by the citation or other notice at a scheduled appearance under section 2-141(c)(2) or (d), at a scheduled informal hearing, or at a scheduled formal hearing, the court shall enter a default judgment against the defendant.

State Law reference— Similar provisions, MCL 600.8723.

Sec. 2-146. - Issuance of citation; fee prohibited; violation.

(a) An authorized local official issuing a citation under this division for a municipal civil infraction shall not accept a fee for issuing the citation.

(b) An authorized local official who violates this section is guilty of misconduct in office and subject to removal from office.

State Law reference— Similar provisions, MCL 600.8725.

Sec. 2-147. - Municipal civil infraction; civil fine, costs, justice system assessments, damages, and expenses.

(a) A municipal civil infraction is not a lesser included offense of a criminal offense or an ordinance violation that is not a civil infraction.

(b) If a defendant is determined to be responsible or responsible "with explanation" for a municipal civil infraction, the judge or district court magistrate may order the defendant to pay a civil fine, costs as provided in subsection (c) of this section, and the justice system assessment as provided in subsection (d) of this section. In the order of judgment, the judge or district court magistrate may grant a defendant permission to pay a civil fine, costs, and assessment within a specified period of time or in specified installments. Otherwise, the civil fine, costs, and assessment are due immediately.

(c) If a defendant is ordered to pay a civil fine under subsection (b) of this section, the judge or district court magistrate shall summarily tax and determine the costs of the action, which are not limited to the costs taxable in ordinary civil actions and may include all expenses, direct and indirect, to which the City has been put in connection with the municipal civil infraction, up to the entry of judgment. Costs

of not more than $500.00 shall be ordered. Except as otherwise provided by law, costs shall be payable to the general fund of the City.

(d) In addition to any fine or cost ordered to be paid under subsection (b) of this section, the judge or district court magistrate shall order the defendant to pay a justice system assessment of $10.00. Upon payment of the assessment, the City clerk/treasurer of the court shall transmit the assessment collected to the state treasurer for deposit in the justice system fund created in section 181 of the Revised Judicature Act of 1961 (MCL 600.181).

(e) In addition to ordering the defendant to pay a civil fine, costs, and a justice system assessment, the judge or district court magistrate may issue a writ or order under section 8302 of this Revised Judicature Act of 1961 (MCL 600.8302).

(f) A district court magistrate shall impose the sanctions permitted under subsections (b) and (e) of this section only to the extent expressly authorized by the chief judge or only judge of the district court district.

(g) The district court may establish a schedule of civil fines, costs, and assessments to be imposed for municipal civil infractions that occur within the City. If a schedule is established, it shall be prominently posted and readily available for public inspection. A schedule need not include all municipal civil infractions. A schedule may exclude cases on the basis of a defendant's prior record of municipal civil infractions.

(h) A default in the payment of a civil fine, costs, and assessment ordered under subsection (b), (c), or (d) of this section or an installment of the fine, costs, or assessment may be collected by a means authorized for the enforcement of a judgment under chapter 40 of the Revised Judicature Act of 1961 (MCL 600.4001 et seq.) or chapter 60 of the Revised Judicature Act of 1961 (MCL 600.6001 et seq.).

(i) If a defendant fails to comply with an order or judgment issued pursuant to this section within the time prescribed by the court, the court may proceed under section 2-148 or 2-149, as applicable.

(j) A defendant who fails to answer a citation or notice to appear in court for a municipal civil infraction is guilty of a misdemeanor.

State Law reference— Similar provisions, MCL 600.8727.

Sec. 2-148. - Payment of fine, costs, assessment, damages, or expenses; default as civil contempt.

(a) If a defendant defaults in the payment of a civil fine, costs, assessment, or any installment, as ordered pursuant to section 2-147, the court, upon the motion of the City or upon its own motion, may require the defendant to show cause why the defendant should not be held in civil contempt and may issue a summons, an order to show cause, or a bench warrant of arrest for the defendant's appearance.

(b) If a corporation or an association is ordered to pay a civil fine, costs, assessment, or damages or expenses, the individuals authorized to make disbursement shall pay the fine, costs, assessment, or damages or expenses, and their failure to do so shall be civil contempt unless they make the showing required in this section.

(c) Unless the defendant shows that the default was not attributable to an intentional refusal to obey the order of the court or to a failure on his part to make a good faith effort to obtain the funds required for payment, the court shall find that the default constitutes a civil contempt and may order the defendant committed until all or a specified part of the amount due is paid.

(d) If it appears that the default in the payment of a fine, costs, assessment, or damages or expenses does not constitute civil contempt, the court may enter an order allowing the defendant additional time for payment, reducing the amount of payment or of each installment, or revoking the fine, costs, assessment, or damages or expenses.

(e) The term of imprisonment on civil contempt for nonpayment of a civil fine, costs, assessment, or damages or expenses shall be specified in the order of commitment and shall not exceed one day for

each $30.00 due. A person committed for nonpayment of a civil fine, costs, assessment, or damages or expenses shall be given credit toward payment for each day of imprisonment and each day of detention in default of recognizance before judgment at the rate of $30.00 per day.

(f) A defendant committed to imprisonment for civil contempt for nonpayment of a civil fine, costs, assessment, or damages or expenses shall not be discharged from custody until one of the following occurs:

(1) The defendant is credited with the amount due pursuant to subsection (e) of this section.

(2) The amount due is collected through execution of process or otherwise.

(3) The amount due is satisfied pursuant to a combination of subsections (f)(1) and (2) of this section.

(g) The civil contempt shall be purged upon discharge of the defendant pursuant to subsection (f) of this section.

State Law reference— Similar provisions, MCL 600.8729.

Sec. 2-149. - Violation involving land, building, or other structure; nonpayment of civil fine, costs, or installment; lien.

(a) If a defendant does not pay a civil fine, costs, or assessment or an installment ordered under section 2-147 within 30 days after the date on which payment is due under section 2-147 in a municipal civil infraction action brought for a violation involving the use or occupation of land or a building or other structure, the City may obtain a lien against the land, building, or structure involved in the violation by recording a copy of the court order requiring payment of the fines, costs, and assessment with the register of deeds for the county in which the land, building, or structure is located. The court order shall not be recorded unless a legal description of the property is incorporated in or attached to the court order. The lien is effective immediately upon recording of the court order with the register of deeds.

(b) The court order recorded with the register of deeds shall constitute notice of the pendency of the lien. In addition, a written notice of the lien shall be sent by the City by first-class mail to the owner of record of the land, building, or structure at the owner's last known address.

(c) The lien may be enforced and discharged by the City in the manner prescribed by its charter, by the General Property Tax Act (MCL 211.1 et seq.) or by an ordinance. However, property is not subject to sale under General Property Tax Act (MCL 211.1 et seq.) for nonpayment of a civil fine, costs, or assessment or an installment ordered under section 2-147 unless the property is also subject to sale under General Property Tax Act (MCL 211.1 et seq.) for delinquent property taxes.

(d) A lien created under this section has priority over any other lien unless one or more of the following apply:

(1) The other lien is a lien for taxes or special assessments.

(2) The other lien is created before May 1, 1994.

(3) Federal law provides that the other lien has priority.

(4) The other lien is recorded before the lien under this section is recorded.

(e) The City may institute an action in a court of competent jurisdiction for the collection of the judgment imposed by a court order for a municipal civil infraction. However, an attempt by the City to collect the judgment by any process does not invalidate or waive the lien upon the land, building, or structure.

(f) A lien provided for by this section shall not continue for a period longer than five years after a copy of the court order imposing a fine, costs, or assessment is recorded, unless within that time an action to enforce the lien is commenced.

State Law reference— Similar provisions, MCL 600.8731.

Sec. 2-150. - Municipal civil infraction; additional costs.

If the defendant in a municipal civil infraction action is determined responsible for a municipal civil infraction, the judge or district court magistrate, in addition to any fine, costs, and assessment imposed under section 2-147, may assess additional costs incurred in compelling the appearance of the defendant, which additional costs shall be returned to the general fund of City.

State Law reference— Similar provisions, MCL 600.8735.

Secs. 2-151—2-170. - Reserved.

ARTICLE V. - FINANCE[4]

Footnotes:

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State Law reference— Revised Municipal Finance Act, MCL 141.2101 et seq.; Uniform Budgeting and Accounting Act, MCL 141.421a et seq.

Secs. 2-171—2-193. - Reserved.

ARTICLE VI. - BOARDS, COMMISSIONS AND AUTHORITIES

DIVISION 1. - GENERALLY

Secs. 2-194—2-224. - Reserved.

DIVISION 2. - CEMETERY BOARD OF TRUSTEES

Sec. 2-225. - Established; membership.

There shall be a cemetery board of trustees composed of three members appointed for terms of three years. Terms commence on the second Monday in May. Upon the death, removal or resignation of any one of said trustees, the mayor shall, with the consent of council as soon thereafter as practicable, appoint another elector of said City for the unexpired term. The City manager and City clerk/treasurer with the trustees so appointed shall constitute a board of cemetery trustees.

(Code 1979, § 1:8.13(1))

Sec. 2-226. - Chair and meetings.

The City manager shall be chair of said cemetery board of trustees and the City clerk/treasurer shall be the City clerk/treasurer. Before entering upon the duties of their office, the trustees shall take an oath or affirmation as in the case of other officers of the City. The cemetery board of trustees may prescribe the rules governing its proceedings and shall cause full minutes of its proceedings and doings to be kept in a book for that purpose which shall be deemed a public record.

(Code 1979, § 1:8.13(2))

Sec. 2-227. - General functions.

(a) Except as otherwise provided by ordinance, Charter or state law, the cemetery board of trustees shall have the government, control, direction and management of the public cemeteries of the City and all personal and real property belonging thereto and shall make or cause to be made general and detailed plans for the improvement of the same and shall carry out said plans as the council shall from time to time approve of and raise or appropriate money therefor or as it shall have funds at its disposal for such purpose. All expenditures of public funds and of all public or private structure, work, or improvements in and about the public cemeteries shall be under the direction of the cemetery board of trustees who shall make and enter rules and regulations of the government and control and the preservation of the cemeteries not in conflict with the ordinances now in force or which may hereafter be adopted by the council. The cemetery board of trustees shall cause all its rules and regulations to be entered in a book to be kept for that purpose, signed by the chair and City clerk/treasurer. The council may by ordinance invest the cemetery board of trustees with such powers and authority as may be necessary for the care, management and preservation of the cemetery grounds and the tombs and monuments therein and the appurtenances thereof. In addition to the duties herein mentioned the cemetery board of trustees shall perform such other duties as the council may prescribe.

(b) The cemetery board of trustees shall have power in its discretion to take, receive and hold any property, real or personal, by devise or otherwise, which may be granted, transferred or devised to such cemetery board of trustees in trust for the purpose of caring for and keeping in good order and repair any given lot or lots, or portions thereof, specified in any such trust. The cemetery board of trustees shall fix the price of burial rights and make the sales thereof. The conveyance of such burial rights shall be executed on behalf of said cemetery board of trustees by the City clerk/treasurer and be recorded in the office of the City clerk/treasurer.

(c) The cemetery board of trustees shall cause to be made and filed in the office of the City clerk/treasurer plats of all public cemeteries of the City and subdivisions thereof, showing the number, name and location of all lots, blocks, parcels, walks, drives and other improvements and features together with an abstract of all certificates, conveyances, or deeds of lots or parcels thereof, showing to whom granted, date of conveyance, description and price of burial rights in lots or parcels and all internments made and monuments erected therein and such other particulars as they shall deem proper to be recorded. It shall be the duty of the City clerk/treasurer to preserve said plats and abstracts and also a book to be known as the cemetery record in which said abstracts or the items thereof, and such other particulars and information as the cemetery board of trustees may require, shall be recorded. These plats, abstracts and records shall be public records.

(Code 1979, § 1:8.13(3), (5), (6))

Sec. 2-228. - Appointment of cemetery directors.

After receiving advice on the matter from the cemetery board of trustees, the City manager shall appoint one or more cemetery directors, subject to the approval of the council, who shall be in all matters pertaining to the care and management of the cemetery under the direction of the City manager. The cemetery director shall receive such salary as the council shall by ordinance or resolution direct.

(Code 1979, § 1:8.13(4))

Sec. 2-229. - Finances and contracts.

Upon the application of the cemetery board of trustees to the council thereof, the council shall have power, in its discretion, to appropriate or raise money for the care, management and improvement of the public cemeteries of said City. The cemetery board of trustees shall make no purchase of real or personal property or enter into any contract or upon any work or improvement requiring the expenditure therefore of an amount in excess of $2,000.00 without the consent of the council previously obtained.

(Code 1979, § 1:8.13(7))

Sec. 2-230. - Reports.

The cemetery board of trustees shall make a written report to the council on or before the first Monday in March of each year which shall embrace a statement of the condition of the property and improvements under its control and the doings of said cemetery board of trustees in relation thereto for the preceding year and of the receipts of said cemetery board of trustees from all sources and the amounts thereof, together with an itemized account of its disbursements for the preceding year. This statement shall be certified by the members of the cemetery board of trustees and shall be filed with the City clerk/treasurer and published with the other proceedings of the council. The cemetery board of trustees shall also report in writing to the council of its doings from time to time as the council shall require.

(Code 1979, § 1:8.13(8))

Secs. 2-231—2-253. - Reserved.

DIVISION 3. - DOWNTOWN DEVELOPMENT AUTHORITY[5]

Footnotes:

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State Law reference— Downtown development authorities, MCL 125.1651 et seq.

Sec. 2-254. - Established.

There is hereby established the Menominee Downtown Development Authority.

(Code 1979, § 1:8.9(2))

State Law reference— Power to establish downtown development authority, MCL 125.1652.

Sec. 2-255. - Board.

The downtown development authority shall be under the supervision and control of the board consisting of the mayor and 12 members.

(Code 1979, § 1:8.9(3))

State Law reference— Downtown development authority board, MCL 125.1654.

Sec. 2-256. - Downtown development district boundaries.

The downtown district is hereby designated to be the property within the following described boundaries:

(1) Commencing at the intersection of the south line of Tenth Avenue extended and the west shoreline of Green Bay; thence southeasterly along said shoreline to the south line of Lot 5, Block

11, Ludington and Carpenters first addition and subdivision of parts of Block 8, 14, and 15; thence southwesterly along said Lot 5, Block 11 to east line of First Street; thence southeasterly along east line of First Street to north line of Fourth Avenue; thence southwesterly along the north line of Fourth Avenue to the intersection of said line and the east line of Second Street; thence northwesterly along the east line of Second Street, to its intersection with the south line of Tenth Avenue; thence northeasterly on the south line of Tenth Avenue to the point of beginning;

(2) The V.A. Lundgren, Jr. land described as: East 55.4' in south line and East 55.5' in north line of Lot 1 in Block 2 of Gewehr's second addition to the City;

(3) Municipal Water Plant land described as: Lot 4 and North 84 feet of Lot 5, Block 1 of Gewehr's 2nd addition to the City; CMSTP and P land described as Lots 1, 2, 3, Block 6 and Lots 18, 19, and 20, Block 6, Plat of Menominee;

(4) That part of Block 1 of Quimby's addition to the City now occupied by the Washington School Building and the land adjacent thereto described as follows: Commencing at intersection of the west line of Second Street and the north line of Ninth Avenue; thence northwesterly along the west line of Second Street 122 feet to the westerly end of iron mesh fence; thence southeasterly to a four inch iron pipe embedded in the center of the gate entryway to school ground located at the north line of Ninth Avenue and which point is 146 feet, ten inches from point of beginning; thence east along the north line of Ninth Avenue to the point of beginning.

(Code 1979, § 1:8.9(21))

Sec. 2-257. - Downtown district.

(a) *Establishment.* A downtown district of the City of Menominee Downtown Development Authority (the DDA) is established and known as "Downtown Development Area No. 2" and is legally described as follows:

(1) Commencing at the intersection of the south line of Tenth Avenue extended and the west shoreline of Green Bay; thence southeasterly along said shoreline to the south line of Lot 5, Block 11, Ludington and Carpenters first addition and subdivision of parts of Block 8, 14, and 15; thence southwesterly along said Lot 5, Block 11 to east line off First Street; thence southeasterly along east line of First Street to north line of Fourth Avenue; thence southwesterly along the north line of Fourth Avenue to the intersection of said line and east line of Second Street; thence northwesterly along the east line of Second Street, to its intersection with the south line of Tenth Avenue; thence northeasterly on the south line of Tenth Avenue to the point of beginning.

(2) The V.A. Lundgren, Jr. land described as: East 55.4' in south line and East 55.5' in west line of Lot 1 in Block 2 of Gewehr's second addition to the City of Menominee; Municipal Water Plant land described as: Lot 4 and North 84 feet of Lot 5, Block 1 of Gewehr's second addition to the City of Menominee; CMSTP and P land described as Lots 1, 2 and 3, Block 6 and Lots 18, 19 and 20, Block 6, Plat of Menominee; that part of Block 1 of Quimby's addition to the City formerly occupied by the Washington School Building and the land adjacent thereto described as follows: Commencing at intersection of the west line of Second Street and the north line of Ninth Avenue; thence northwesterly along the west line of Second Street 221 feet; thence west along an established iron fence 122 feet to the westerly end of iron mesh fence; thence southeasterly to a four-inch iron pipe imbedded in the center of the gate entry way to school ground located at the north line of Ninth Avenue at which point is 146 feet ten inches from point of beginning; thence east along the north line of Ninth Avenue to the point of beginning.

(3) Excepting the parcel described as:

a. That part of Lot 3, Block 1 according to the recorded plat of Gewehr's Addition to the City and of Lots 1, 2, and 3, Block 1 according to the recorded plat of John Quimby's Lots to the City and of Lots 8, 9, and 10, Block 1, according to the recorded plat of John Quimby's First Addition to the City described as: Commencing at the northeast corner of Lot 3, Block 1 of

Nicholas Gewehr's Addition to the City; thence westerly along the north line of said Lot 3 extended to the easterly line of Kirby Street (now Second Street); thence southerly along the easterly line of Kirby Street to the north line of Liberty Street, (now Ninth Avenue); thence easterly along the north line of Liberty Street to the westerly line of Sheridan Road (now First Street); thence northerly along the westerly line of Sheridan Road to the place of beginning, excepting therefrom the following parcels: The lands occupied by: that certain theater building, and garage building; and all that portion of the arcade lying westerly of the party wall portion of the westerly wall of the four story main building; the marquee or canopy over the first street entrance to the arcade; and that portion of the premises lying westerly of the theater and garage building bounded by 9th Avenue on the south and Second Street on the west, and further excepting: the north ten feet of said Lot 3, Block 1 of the plat of Gewehr's Addition, and that portion thereof (if any) lying within the right-of-way of First Street as now laid out;

b. Quimby's first addition S half of Lot 2, Block 8 952 First Street;

c. Quimby's Lots Bleeker City N 25' of S 27' 1" of W 129' of Lot 2, Block 3;

d. Quimby's Lots Bleeker City S 2' 11" of W 129.3' of Lot 2 and N 45 of E 116.3' of W 129.3' of Lot 3 Block 3;

e. Quimby's Lots Bleeker City N 45' of W 133' of Lot 2, Block 5.

(b) *Findings with respect to plan.* The development and tax increment financing plan, entitled the "Tax Increment Financing and Downtown Development Area Plan" for downtown Development Area No. 2 (the plan) constitutes a public purpose and the following findings are made with respect thereto:

(1) A development area citizens council known as the "City of Menominee Downtown Citizens Advisory Council" has reviewed and recommended the plan for approval;

(2) The plan meets the requirements of Public Act No. 197 of 1975 (MCL 125.1651 et seq.), including specifically section 17(2) of such Act (MCL 125.1667(2));

(3) The proposed method of financing the public facilities identified in the plan is feasible and the downtown development authority has the ability to arrange the financing as described in the plan;

(4) The development described in the plan is reasonable and necessary to carry out the purposes of Public Act No. 197 of 1975 (MCL 125.1651 et seq.);

(5) The plan is in reasonable accord with the City's master plan;

(6) Necessary public services including fire and police protection and utilities are adequate to service Downtown Development Area No. 2;

(7) No changes in zoning are required to implement the plan; and

(8) Changes in streets and utilities required to implement the plan are identified in the plan and are reasonably necessary to implement the plan and for the City.

(c) *Approval of plan.* The plan is hereby approved.

(Code 1979, § 8:6.2(1)—(3))

Secs. 2-258—2-277. - Reserved.

DIVISION 4. - HARBOR-INDUSTRIAL COMMISSION

Sec. 2-278. - Created.

A harbor and industrial commission is hereby provided and created and shall be known as the "Menominee Harbor-Industrial Commission."

(Code 1979, § 1:8.1(1))

Sec. 2-279. - Membership and officers.

Such harbor and industrial commission shall consist of seven members, six who shall be appointed by the mayor of the City and confirmed by the council; and the City manager ex officio shall be a voting member thereof. All members shall be residents of the City. Terms of office shall be staggered. All members shall hold their offices for a term of five years each, or until their successors shall be appointed, confirmed and qualified. Vacancies shall be filled by like appointment for unexpired terms. All members shall qualify by taking the oath of office provided for officers of the City. The City clerk/treasurer ex officio shall be secretary of the commission. A chair of the commission and a vice-chair shall be elected from the membership who, upon such election, shall hold offices for the term of one year. A majority of the members of such commission shall constitute a quorum for the transaction of business.

(Code 1979, § 1:8.1(2))

Sec. 2-280. - Functions.

(a) Such harbor and industrial commission shall be the official body representing the City on all matters pertaining to its harbors and waters and shipping facilities and interests. It shall be the duty of its members to obtain available information on, and to study, the needs of the harbors and their appurtenances and shipping interest, both with reference to the City and its joint aspects with Marinette, and it shall be the duty of the harbor and industrial commission to make such recommendations to the council from time to time for the proper maintenance, improvement and betterment of the harbor and its docks, warehouses, wharves and slips, and its harbor, dock, wharf and other facilities, equipment, and its shipping interests, including terminals and services, and shipping facilities and interest in general, as may seem needful and practical, and to take such steps as may seem practical to cause such recommendations to be carried out and to be put into effect, subject to approval of the council, the harbor and industrial commission shall obtain available information on and study industrial activity and development in relation to the harbors and waters of the City and from time to time furnish such information together with the harbor and industrial commission's recommendations thereon, to the City Council.

(b) The harbor and industrial commission is authorized to recommend to the City Council the adoption and enactment of ordinances designed to safeguard the public beyond the limits of harbors, channels, connecting waterways, or other navigational facilities within the City or its political jurisdiction.

(c) The commission shall meet and confer jointly with the harbor commission of the City on the joint Menominee-Marinette Harbor, on matters of common interest and which affect the joint harbor or facilities or improvement, and it may join with such commission in making such recommendations to the City Council as may seem advisable, and it may join with such commission in making or causing to be made a general plan for the development of the joint harbor, subject to the approval of the City Council.

(d) The harbor and industrial commission is authorized to disperse its budget allocation, in performance of its duties set forth in this division.

(Code 1979, § 1:8.1(3)—(6))

Secs. 2-281—2-308. - Reserved.

DIVISION 5. - HOUSING COMMISSION[6]

Footnotes:

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State Law reference— Housing commission, MCL 124.651 et seq.

Sec. 2-309. - Created.

Pursuant to Public Act No. 18 of 1933 (ex. sess.) (MCL 125.651 et seq.), and to accomplish the purposes set forth in section 2 of said Act No. 18 as amended (MCL 125.652), namely; to purchase, acquire, construct and maintain, operate, improve, extend or repair housing facilities, and to eliminate housing conditions which are detrimental to public peace, safety, morals or welfare, a commission is hereby created in and for the City to be known as the "Menominee Housing Commission."

(Code 1979, § 1:8.6(1); Ord. of 7-18-2011)

State Law reference— Authority to create housing commission, MCL 125.653.

Sec. 2-310. - Appointed members; term of office; compensation.

(a) The City housing commission shall consist of five members appointed by the mayor and confirmed by the City Council. The term of office of members of the City housing commission shall be five years. Pursuant to section 4(2) of Public Act No. 18 of 1933 (ex. sess.) (MCL 125.654(2)), at least one member of the City housing commission shall be a tenant of public or subsidized housing. Members may be removed from the City housing commission in accordance with section 4 of Public Act No. 18 of 1933 (ex. sess.) (MCL 125.654).

(b) The members of the City housing commission shall serve without compensation; provided, however, they may be reimbursed for actual expenses incurred in serving as a member of the City housing commission in an amount to be determined by the City housing commission.

(Code 1979, § 1:8.6(2); Ord. of 7-18-2011)

Sec. 2-311. - Powers and duties.

(a) The City housing commission shall have all the powers and duties vested or permitted to be vested in the City housing commission by Public Act No. 18 of 1933 (ex. sess.) (MCL 125.651 et seq.), and any laws heretofore or hereafter enacted which are supplemental thereto, it being the intention of this chapter to vest in the City housing commission all powers and duties permitted by law.

(b) The City housing commission may appoint a director who may also serve as secretary, and other employees or officers as are necessary. The City housing commission shall prescribe the duties of its officers and employees and shall have the sole authority to fix their compensation, fringe benefits, and terms and conditions of employment.

(Code 1979, § 1:8.6(3); Ord. of 7-18-2011)

State Law reference— Similar provisions, MCL 125.655.

Sec. 2-312. - Reports to City Council.

The City housing commission shall make an annual report of its activities to the City Council and shall make such other reports as the City Council may from time to time require.

(Code 1979, § 1:8.6(4); Ord. of 7-18-2011)

State Law reference— Similar provisions, MCL 125.659.

Secs. 2-313—2-342. - Reserved.

DIVISION 6. - SPIES LIBRARY BOARD OF TRUSTEES

Sec. 2-343. - Appointment; membership.

The mayor, with the approval of the City Council, will appoint five citizens of the City to the Spies Library Board of Trustees. The City manager will be an ex officio non-voting member of the library board. Appointments of trustees shall be five years commencing on May 1. In case of the first vacancy on the library board, the City manager, ex officio, will become a voting member of the board. For subsequent vacancies the mayor may appoint another citizen to fulfill the original term of office. Trustees appointed shall serve without compensation and shall be subject to removal by the mayor for negligence or want of attention to the duties of office, or for any misuse of their trust. The Spies Public Library and the City Council will also follow any other guidelines as they are set forth by the Library of Michigan for Trustee Appointment.

(Code 1979, § 1:8.14(1))

Sec. 2-344. - Officers.

The library board of trustees shall organize the board by election of one of its members as president and one as vice president of the board. The library director shall serve as secretary of the board, but shall have no voting privileges.

(Code 1979, § 1:8.14(2))

Sec. 2-345. - Quorum and meetings.

A majority of the board shall constitute a quorum, and by its rules said board may provide for stated and special meetings and for the appointment of officers pro tem, and such other regulations as it may deem proper for the management of library affairs.

(Code 1979, § 1:8.14(3))

Sec. 2-346. - Library director.

The City manager will appoint the library director in accordance with the Charter. The library board of trustees may provide input and assist in the selection process. This appointment is subject to confirmation by the City Council.

(Code 1979, § 1:8.14(4))

Sec. 2-347. - Records.

The records of the library board of trustees shall be kept as public records in the office of the library director.

(Code 1979, § 1:8.14(5))

Sec. 2-348. - Annual report.

The library board of trustees will complete an annual report. This report will be sent to the City Council and a copy kept on file at the Spies Public Library.

(Code 1979, § 1:8.14(6))

Sec. 2-349. - Proposed budget to council.

The library board shall each year prior to the passage of the annual appropriation bill by City Council, render to the council an estimate of the amount necessary to be provided as the probable expense of the library for the ensuing year.

(Code 1979, § 1:8.14(7))

Sec. 2-350. - Power to establish rules.

The library board shall have power to establish rules and regulations for its own procedure and for the conduct of the library, and the protection, use and management thereof, and of the library buildings and lot. Such rules and regulations shall not conflict with any ordinance of the City or its Charter.

(Code 1979, § 1:8.14(8))

Chapter 4 - ANIMALS[1]

Footnotes:

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State Law reference— Dog Law of 1919, MCL 287.261 et seq.

ARTICLE I. - IN GENERAL

Sec. 4-1. - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Animal means any live nonhuman, vertebrate creature, domestic or wild.

Animal-at-large means any animal not leashed and under the restraint of a person capable of controlling the animal while off the premises of the owner.

Animal control officer means a person designated by the police chief, which person is qualified to perform such duties under the laws of this City as more specifically stated in section 4-24.

Animal control shelter means any facility operated by a humane society, municipal agency or its authorized agents or other entity for the purpose of impounding or caring for animals held under the authority of this chapter or state law.

Circus means a commercial variety show featuring animal acts for public entertainment.

Commercial animal establishment means any pet shop, grooming shop, auction, riding school or stable, zoological park, circus, performing animal exhibition, or kennel.

Grooming shop means a commercial establishment where animals are bathed, clipped, plucked, or otherwise groomed.

Guard dog means a dog that will detect and warn its owner or handler that an intruder is present in or near the area that is being secured. Such dogs must be specifically identified as guard dogs on license applications.

Kennel means any premises wherein any person engages in the business of boarding, breeding, buying, letting for hire, training for a fee, or selling dogs or cats in numbers in excess of three.

Owner means any person, partnership, or corporation owning, keeping or harboring one or more animals. An animal shall be deemed to be harbored if it is fed or sheltered for three consecutive days or more.

Performing animal exhibition means any spectacle, display, act, or event other than circuses, in which performing animals are used.

Pet or *companion animal* means an animal kept for pleasure rather than utility, that has traditionally, through a long association with humans, lived in a state of dependence upon humans or under the dominion and control of humans and has been kept as a tame household pet, including but not limited to: dogs, cats, hamsters, gerbils, ferrets, potbellied pigs, chinchillas, mice, rabbits, cockatiels, cockatoos, canaries, doves, finches, parakeets, parrots, nonvenomous snakes, constrictor snakes eight feet or less in length, turtles, frogs, and tropical and marine fish.

Pet shop means any person, partnership, or corporation, whether operated separately or in connection with another business enterprise, except for a licensed kennel, that buys, sells, or boards any species of animal.

Public nuisance means any animal which:

(1) Molests passersby or passing vehicles.

(2) Attacks other animals.

(3) Trespasses on school grounds.

(4) Is repeatedly at large.

(5) Damages private or public property.

(6) Barks, whines, howls or otherwise emits vocal sounds in an excessive, continuous, or untimely fashion.

Restrained means any animal secured by a leash or lead, under the control of a responsible person and obedient to that person's commands, or within the real property limits of its owner.

Riding school or *stable* means any place which has available for hire, boarding and/or riding instruction, any horse, pony, donkey, mule or burro.

Veterinary hospital means any establishment maintained or operated by a licensed veterinarian for surgery, diagnosis and treatment of diseases and injuries of animals.

Vicious animals means any specific animal that attacks, bites, or injures human beings or domesticated animals without adequate provocation, or which, because of temperament, conditioning, or training, has a known propensity to attack, bite, or injure human beings or domesticated animals.

Wild animal means those animals that are not domestic or any cross of those animals not domestic to North America, including the following:

(1) Apes, monkeys, and related forms, excepting monkeys used to assist disabled persons;

(2) Poisonous reptiles and other animals, spiders, and insects capable of inflicting a severe or deadly bite;

(3) All species of constrictor snakes more than eight feet in length;

(4) Cats from the wild family, including, but not limited to, bobcats, cheetahs, cougars, jaguars, leopards, lions, lynxes, mountain lions, panthers, pumas, tigers;

(5) Nondomesticated carnivorous animals, including hybrid crosses of nondomesticated carnivorous animals, including, but not limited to, raccoons, skunks, foxes and wolves;

(6) All known species of crocodilia more than 30 inches in length, including, but not limited to, crocodiles and alligators;

(7) All known species of chondrichthyes more than 36 inches in length, including, but not limited to, sharks;

(8) All known species of struthio, including, but not limited to, ostriches, emus, and other ratites;

(9) Artiodactyla, including, but not limited to, camels and other hooved mammals with an even number of toes.

Zoological park means any facility, other than a pet shop or kennel, displaying or exhibiting one or more species of nondomesticated animals operated by a person, partnership, corporation, or government agency.

(Code 1979, § 2:1.1)

Sec. 4-2. - Interference with enforcement.

No person shall interfere with, disturb, disrupt or in any fashion prevent the animal control officer or law enforcement officer from fulfilling his duties under this chapter.

(Code 1979, § 2:1.13(C))

Secs. 4-3—4-22. - Reserved.

ARTICLE II. - ADMINISTRATION AND ENFORCEMENT

Sec. 4-23. - Enforcement generally.

The provisions of this chapter shall be enforced by those persons or agencies designated by municipal authority.

(Code 1979, § 2:1.13(A)(1))

Sec. 4-24. - Animal control officer.

(a) The animal control officer shall be hired by the chief of police, by and with the consent of the City Council. The animal control officer shall serve in such a capacity in accordance with municipal policy, and shall receive such compensation as the City Council shall determine.

(b) It shall be the duty of the animal control officer to seize, take up and impound:

(1) Any animal reported to have bitten a person.

(2) Any animal whose owner cannot be identified or located to correct, or be cited for a violation of this chapter.

(c) The animal control officer shall be properly deputized as a police officer for the limited purposes of enforcement of this chapter and shall be legally authorized to have the power to issue citations to those persons in violation of the provisions of this chapter.

(d) Additional duties of the animal control officer may be set and modified by the chief of police.

(Code 1979, § 2:1.2)

Sec. 4-25. - Impoundment and violation notice.

(a) Unrestrained dogs, cats and nuisance animals shall be taken by the police animal control officers or humane officers, and impounded in an appropriate shelter and there confined in a humane manner.

(b) Impounded animals shall be kept for not less than seven working days, if anyone has been bitten or scratched by the animal such that skin was broken or blood was drawn, otherwise it may be released to its owner, upon proof:

(1) Of responsibility for or ownership of the animal;

(2) Of licensure of the animal;

(3) Of proof of current rabies inoculation; and

(4) Payment of any impound fees.

(c) If, by a license, collar, tag or other means, the owner of an impounded animal can be identified, the animal control officer shall immediately upon impoundment notify the owner by telephone or mail that his animal has been impounded. Such an animal will be held up to seven days from written notice of impoundment before subsection (g) of this section applies, unless earlier claimed by its owner.

(d) An owner reclaiming an impounded cat shall pay a fee equal to the cost to the City of impoundment.

(e) An owner reclaiming an impounded dog shall pay a fee equal to the cost to the City of impoundment.

(f) An owner reclaiming any other impounded animal shall pay the fee charged by the impounding facility.

(g) Any animal not reclaimed by its owner within four days of acquisition shall become the property of the local government authority, or humane society, and shall be placed for adoption in a suitable home or humanely euthanized, subject to subsection (c) of this section.

(Code 1979, § 2:1.5)

Secs. 4-26—4-53. - Reserved.

ARTICLE III. - ANIMAL CONTROL[2]

Footnotes:

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State Law reference— Authority to adopt animal control ordinance, MCL 287.290.

Sec. 4-54. - Restraint.

(a) All dogs or other animals shall be kept under restraint. Cats shall not be allowed to roam freely off their owner's property.

(b) No owner shall fail to exercise proper care and control of his animals to prevent them from becoming a public nuisance.

(c) Every female animal in heat shall be confined in a building or secure enclosure in such a manner that such female animal cannot come into contact with another animal except for planned breeding.

(d) Every vicious animal as determined by the City animal control officer or police officers, shall be confined by the owner within a building or secure enclosure and shall be securely muzzled or caged whenever off the premises of its owner.

(e) If any person is bitten by an animal, it shall be the duty of that person, and the owner or custodian of the animal having knowledge of the bite to report it to the City police department within 12 hours. If the owner or custodian of any animal has any reason to believe or suspect that such animal has become infected with rabies, it shall be the duty of that person to report to the City police department within 12 hours of learning of the rabies infection.

(f) The parent or guardian of any minor claiming ownership of any animal subject to this article shall be deemed to be the animal's owner and shall be charged for all penalties and fees imposed by this article.

(Code 1979, §§ 2:1.4, 2:1.13(1)(f))

Sec. 4-55. - Animals in heat.

It shall be unlawful for any owner, custodian or harborer of any animal to suffer or permit such animal to go beyond the premises of such owner, custodian or harborer unleashed while in heat.

(Code 1979, § 2:1.13(A)(1)(a))

Sec. 4-56. - Licensing of dogs and cats.

(a) Any person owning, keeping, harboring, or having custody of any dog or cat or other pet with access to the outdoors over six months of age within this municipality must obtain a license, as herein provided, for each animal owned or kept.

(b) Any person owning, keeping, harboring, or having custody of any dog or cat or other pet with access to the outdoors over six months of age within this municipality must obtain a current rabies certificate issued by a licensed veterinarian or anti-rabies clinic, using a vaccine licensed by the U.S. Department of Agriculture for each animal owned or kept.

(c) Application for dog licenses shall be made to the county treasurer or its designated agent which shall include name and address of applicant, breed, sex, age, color and markings of the animal, the appropriate fee, and a valid rabies certificate issued by a licensed veterinarian or anti-rabies cling, using a vaccine licensed by the U.S. Department of Agriculture. Applications for cat licenses shall be made to the City clerk/treasurer, and shall include name and address of applicant, breed, sex, age, color and markings of the animal, the appropriate fee, and a valid rabies certificate issued by a licensed veterinarian or anti-rabies clinic, using a vaccine licensed by the U.S. Department of Agriculture. Application for licensing other pets having access to the outdoors shall be made to the City clerk/treasurer and shall include name and address of applicant, species, breed, sex, age, color and markings of the animal, the appropriate fee and the appropriate proof of vaccination as determined by a local veterinarian for the species of animal involved.

(d) If not revoked, licenses for the keeping of animals shall be for a period of up to one year.

(e) Application for a license must be made within 30 days, after obtaining an animal over six months old, except that this requirement will not apply to a nonresident keeping an animal within the municipality for no longer than 60 days.

(f) License fees shall not be required for Seeing Eye dogs, hearing dogs, governmental police dogs, or other certified animals that are trained to assist a physically limited person as defined in section 1 of Public Act No. 1 of 1966 (MCL 125.1351).

(g) Upon acceptance of the license application and fee, the City clerk/treasurer shall issue a durable tag with an identifying number and the year of issuance. Tags should be designed so that they may be conveniently fastened or riveted to the animal's collar or harness.

(h) Licensed animals must wear identification tags or collars, if possible, at all times when off the premises of the owners.

(i) The City clerk/treasurer shall maintain a record of the identifying numbers of all tags issued and shall make this record available to the public and to the animal control officer.

(j) The required licensing period in the City shall begin with the fiscal year September 1 to August 31, and shall run for one year. Persons applying for a license more than six months after the start of the fiscal year, shall be required to pay 50 percent of the fee stipulated in this section for the first year of ownership of a specific dog or cat.

(k) A license shall be issued by the City after payment of the fee established by resolution.

(l) A duplicate license may be obtained upon payment of a replacement fee in the amount established by resolution.

(m) No person may use any license for any animal other than the animal for which it was issued. If ownership of a licensed animal is transferred, the license may also be transferred, upon notice to the City clerk/treasurer, to reflect the name and address of the new owner. It is the new owner's responsibility to notify the City clerk/treasurer of such change.

(n) No more than three domesticated animals required to be licensed may be kept in any household without a special permit, issued by the City police chief. This permit will be issued pursuant to criteria developed by the City police department, a copy of which shall be made available to the public, upon request, upon payment of copying costs.

(Code 1979, § 2:1.3(A)—(J), (L)—(O))

Sec. 4-57. - License tag and rabies vaccination tag.

It shall be unlawful and a municipal civil infraction for any owner, custodian or harborer of any animal to fail to keep the license and rabies vaccination tag attached to the animal's collar at all times.

(Code 1979, § 2:1.13(A)(1)(b))

Sec. 4-58. - Removal of animal excreta.

It shall be unlawful and a municipal civil infraction for any owner or custodian of any animal to fail to clean up and removal any excreta from any public or private property immediately after the discharge of such waste.

(Code 1979, § 2:1.13(A)(1)(c))

Sec. 4-59. - Animals in places where food is sold.

It shall be unlawful and a municipal civil infraction for any person to bring an animal into any restaurant, store, or business where food is sold. This section does not apply to any animal assisting a physically limited person.

(Code 1979, § 2:1.13(A)(1)(d))

Sec. 4-60. - Animal noise and breaches of the peace.

It shall be unlawful and a municipal civil infraction for any person to allow an animal under such person's care, custody or control, through loud and frequent barking, howling growling, or any other noise, to cause unreasonable annoyance to any of the people of the City, or to breach the peace.

(Code 1979, § 2:1.13(A)(1)(e))

Sec. 4-61. - Animals molesting passersby.

It shall be unlawful and a municipal civil infraction for any person to allow an animal under such person's care, custody or control to molest a passerby on a public way or on premises not that of the owner, custodian or harborer of the animal.

(Code 1979, § 2:1.13(A)(1)(g))

Sec. 4-62. - Horses, cattle and other animals not to be kept within City; exception.

Horses, cattle and other animals not normally regarded as household pets, shall not kept be within the City, except for use as transportation or while transporting the animal to a veterinarian or as permitted by the City manager. Application may be made to the City manager for a permit to use animals other than household pets, in parades, displays, performances or under such circumstances that the City manager deems appropriate, bearing in mind the health, safety, welfare and interests of the City and its residents. Such a permit must be obtained before the animals are brought into the City.

(Code 1979, § 2:1.13(A)(2))

Sec. 4-63. - Damaging property or injuring persons.

No person shall permit an animal under such person's care, custody or control to:

(1) Cause damage to property of persons other than the owner;

(2) Attack, off the premises of such person, an animal not on the property of such person;

(3) Threaten, attack or bite any person lawfully present on the premises.

(Code 1979, § 2:1.13(A)(3))

Sec. 4-64. - Animal care and cruelty.

(a) No owner shall fail to provide his animals with sufficient good and wholesome food and water, proper shelter and protection from the weather, veterinary care when needed to prevent suffering, and with humane care and treatment.

(b) No person shall beat, cruelly ill treat, torment, overload, overwork, or otherwise abuse an animal, or cause, instigate, or permit any dogfight, cockfight, bullfight, or other combat between animals or between animals and humans.

(c) No owner of an animal shall abandon such animal.

(d) No person, other than a licensed veterinarian, shall crop a dog's ears, or bob its tail.

(e) Any person who, as the operator of a motor vehicle, strikes a domestic animal shall stop at once and shall immediately report such injury or death to the animals owner; in the event the owner cannot be ascertained and located, such operator shall at once report the accident to the City police department.

(f) No person shall expose any known poisonous substance, whether mixed with food or not, so that the same shall be likely to be eaten by any animal or child, provided that it shall not be unlawful for a person to expose, on his own property, common rat poison mixed only with vegetable substances.

(g) If any violation, whether a civil infraction or a misdemeanor, continues from day to day, each day's violation shall be deemed a separate violation. If any person is found guilty by a court of violating this section, his permit to own, keep, harbor, or have custody of animals shall be deemed automatically revoked and no new permit may be issued.

(Code 1979, §§ 2:1.6, 2:1.14, 2:4.2)

State Law reference— Cruelty to animals, MCL 750.49 et seq.

Sec. 4-65. - Keeping of wild animals.

(a) No person shall keep, possess, breed, exchange, buy or sell, or harbor on his premises, or permit others to do so, any wild or vicious animal, whether gratuitously or for a fee. This prohibition shall not apply to the following:

(1) Zoological parks and aquariums that are credited by the American Zoo and Aquarium Association;

(2) Circuses; or

(3) Bona fide scientific, medical, or educational research facilities.

(b) No person shall keep or possess or permit to be kept or possessed any wild animal as a pet.

(c) The animal control officer may issue a temporary permit for the keeping, care, and protection of an infant animal native to this area which has been deemed to be homeless until such time as it can be transferred to the control of the state department of natural resources.

(Code 1979, § 2:1.7)

Sec. 4-66. - Performing animal exhibitions.

(a) No performing animal exhibition or circus shall be permitted in which animals are induced or encouraged to perform through the use of chemical, mechanical, electrical, or manual devices in a manner which will cause, or is likely to cause, physical injury, pain or suffering.

(b) All equipment used on a performing animal shall fit properly and be in good working condition.

(Code 1979, § 2:1.10)

Sec. 4-67. - Spaying and neutering.

(a) No unclaimed dog or cat shall be released for adoption by any animal control shelter operated by the City or its agent or other entity, without being spayed or neutered, or without a written agreement from the adopter guaranteeing that such animal will be spayed or neutered within a time certain.

(b) A deposit sufficient to cover the cost of sterilization for dogs and cars must be paid at the time of adoption, for animals to be sterilized at a future date certain.

(Code 1979, § 2:1.12)

Sec. 4-68. - Feeding of deer prohibited.

(a) *Generally.* No person may place any grain, fruit or vegetable material outdoors on any public or private property for the purpose of feeding whitetail deer.

(b) *Presumption.* There shall be a rebuttable presumption that either of the following acts are for the purpose of feeding whitetail deer:

(1) The placement of grain, fruit, or vegetable material in an aggregate quantity of greater than one-half gallon at a height of less than six feet off the ground.

(2) The placement of grain, fruit, or vegetable material in an aggregate quantity of greater than one-half gallon in a drop feeder or similar device regardless of the height of the grain, fruit or vegetable material.

(c) *Exceptions.* This section shall not apply to the following situations:

(1) *Naturally growing materials.* Naturally growing grain, fruit or vegetable material.

(2) *Bird feeders.* Unmodified commercially purchased bird feeders or their equivalent.

(Code 1979, § 2:1.15(A)—(C))

Chapter 6 - BUSINESSES

ARTICLE I. - IN GENERAL

Secs. 6-1—6-18. - Reserved.

ARTICLE II. - VEHICLES CARRYING PASSENGERS FOR HIRE

Sec. 6-19. - License.

(a) *Required.* It shall be unlawful for any person to engage in the business of transporting passengers for hire, without first obtaining a license pursuant to the provisions of this chapter.

(b) *Application.* Applications for licenses shall be made in writing to the City clerk/treasurer, and shall include, in addition to the form 6-19 c.c., the following:

(1) The name, address and phone number of applicant;

(2) The intended place of business;

(3) The type and number of vehicles to be operated;

(4) Proof that he can obtain a bond or insurance policy, before the date of requested licensing, containing:

a. Michigan No-Fault Automobile Insurance;

b. Liability insurance for personal injury in an amount not less than $100,000.00 for liability for injury to or death of one person; and subject to such limit for each person; further providing for an amount not less than $300,000.00 for liability for one accident;

c. Insurance for property damage in an amount not less than $25,000.00 as the limit of liability in any one accident;

d. A provision that the company issuing such policies or certificates shall not cancel the same, without first giving the City clerk/treasurer ten days' written notice of such intended cancellation.

(c) *Decision on issuance.* The City clerk/treasurer shall deny, or tentatively approve such application, and notify the applicant of such decision.

(d) *Prerequisites to license issuance.* If granted tentative approval, the applicant must do the following before a license is issued:

(1) Pay the licensing fee established by resolution;

(2) File a bond or policy, as described in subsection (b)(4) of this section, in the City clerk/treasurer's office;

(3) Submit an inspection sheet from a licensed mechanic stating that each vehicle is equipped with proper brakes, light, tires, horn, exhaust system, mirrors, safety belts, windshield wiper, and is in good general operating condition.

(e) *Issuance.* When all requirements of this chapter are met, the City clerk/treasurer may issue a license to the owner. Each vehicle shall receive a separate number.

(f) *Display.* Each vehicle operated for carrying passengers for hire, shall display on each side, in letters not less than two inches high, the name of the owner, and the City license number for that vehicle.

(g) *Term; partial year licenses.* Licenses are valid for a period of one year, revocable at will, upon ten days notice by the City. All licenses shall expire April 1 next following the date of their issues; no abatement of license fee shall result from a part-year license.

(h) *Horse taxis.* Operators of horse taxies need not comply with the provisions of subsection (b)(4) of this section or with the requirements of subsection (d)(3) of this section. The routes over which a horse taxi service may operate may be limited. The chief of police may limit routes over which horse taxies operate based upon safety and traffic considerations on arterial highways, and heavily traveled local streets where the operation of a horse taxi may constitute a hazard to motorized traffic, or the high concentration of motorized traffic may constitute a hazard to the operator, passengers, and animals of the horse taxi. The applicant for a horse taxi license shall state the routes over which authority to operate is requested. The license issued shall define approved horse taxi routes.

(Code 1979, § 4:2.1)

Sec. 6-20. - Drivers.

(a) It shall be unlawful for any person operating a vehicle transporting passengers for hire to have in his possession a lighted cigarette, cigar or pipe.

(b) Every driver of a vehicle licensed as herein provided shall have the right to demand payment of the legal fare in advance, and may refuse employment unless prepaid, but no driver of such vehicle shall otherwise refuse or neglect to convey any orderly person or persons upon request anywhere in the City unless previously engaged or unable to do so. No driver of such licensed vehicle shall carry any other person that the first employing such vehicle without the consent of said passenger.

(Code 1979, § 4:2.2(1), (2))

Sec. 6-21. - Vehicle inspection and maintenance.

Every owner of a vehicle licensed pursuant to the provisions of this article must institute a system of regular weekly inspection of all vehicles and equipment, and keep all vehicles and their equipment in proper repair and in a sanitary condition at all times. A record of all such inspection shall be kept by the owner, and shall be made available to the City when requested, including license renewal time.

(Code 1979, § 4:2.2(3))

Secs. 6-22—6-45. - Reserved.

ARTICLE III. - PEDDLERS AND SOLICITORS[1]

Footnotes:

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State Law reference— Transient merchants, MCL 445.371 et seq.

DIVISION 1. - GENERALLY

Sec. 6-46. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Door-to-door salesman means any person, whether resident of the City or not, traveling either by foot, motor vehicle, or any other type of conveyance, from place to place, house to house, or street to street, selling or attempting to sell goods, merchandise, insurance, books or magazines, personal property of any nature whatsoever or services.

Itinerant vendor means every person who opens, establishes or starts business in the City and obtains and occupies premises or sets up and sells from a truck, cart, stand or similar structure, within the City for the purpose of offering for sale goods, wares, merchandise or services and which said business has not been assessed for personal property taxes. A person who sells goods, wares or merchandise to local merchants and dealers who are already engaged in or about to engage in business in the City is excepted from this definition.

Peddler means any person, whether a resident of the City or not, traveling by foot, motor vehicle, or any other type of conveyance, from place to place, but not door to door, or from street to street, selling or offering for sale, good, merchandise, books or magazines, refreshments, personal property or services of any nature whatsoever, or who, without traveling from place to place shall sell or offer the same for sale from any motor vehicle or other type of conveyance.

Solicitor.

(1) The term "solicitor" means any person, whether resident of the City or not, traveling either by foot, motor vehicle, or any other type of conveyance, from place to place, house to house, or street to street, taking or attempting to take orders for sale of goods, merchandise, insurance, books or magazines, personal property of any nature whatsoever for future delivery, or for services to be furnished or performed in the future, whether or not such individual has, carries, or exposes for sale a sample of the subject of such sale or whether he is collecting advance payments on such sales or not, provided, that such definition includes any person who for himself or for another person hires, leases, uses or occupies any building, structure, premises, hotel room, lodginghouse, apartment or other place within the City for the sole purpose of exhibiting samples and taking orders for future delivery.

(2) The term "solicitor" includes the term "canvasser" and also includes any person who, through the use of a telephone or citizens band radio, solicits or attempts to solicit orders for the sale of tickets, goods, wares, merchandise or personal property of any nature whatsoever for future delivery or for services to be furnished or performed in the future, and shall also include a person seeking to obtain gifts or contributions or money, clothing or any other valuable thing for the support or benefit of any charitable or nonprofit association, organization, corporation or project, and shall also include a person who is seeking information on the background, occupation, economic status, social status, religious status, political status, attitudes, viewpoints, occupants

of a residence, telephone number, addresses, furnishings, or the like of another person for the purpose of compiling information as raw data or refined data into a document, record, book or directory to be sold, or to be used wholly or in part for commercial purposes.

(Code 1979, § 4:3.2)

Sec. 6-47. - Purpose.

The purpose of this article is twofold:

(1) It is the intent of council to regulate the practices of solicitors, peddlers and itinerant vendors in order to limit the interruption to residents of the City;

(2) It is further the intent of council to protect the residents of the City from unfair business practices by the identification of persons involved and the sources of the goods or services offered.

(Code 1979, § 4:3.0)

Sec. 6-48. - Exemptions.

(a) Persons engaged in news gathering for printed or electronic news media in existence at the time of the solicitation are exempt from the provisions of this article.

(b) Residents of the county or Marinette County, Wisconsin, for a period of one year or more prior to the date of application for license are exempt from the photograph requirement and fingerprinting requirement.

(c) Itinerant vendors offering fruit or vegetables which they have grown or raised except when other goods not of their own growing or raising are also offered for sale are exempt from sections 6-81(4), (6) and 6-83.

(d) Not for profit organizations, which upon investigation pursuant to section 6-82 are found to:

(1) Have had a constant and substantial local membership for at least five years;

(2) Maintained a favorable reputation for business practices and dealings;

may be allowed to satisfy the second objective of this article (as stated at section 6-47) through form 6-19 N-F-P.

(e) Itinerant vendors participating in events under the sponsorship of the City need not secure a permit under this article, or pay fees as required by this article unless such permit or fees are made a requirement of the City-sponsored event. The City-sponsored event may require that itinerant vendors otherwise meet the qualifications of this article.

(Code 1979, § 4:3.13)

Sec. 6-49. - Complaints; violations.

Any complaints of the business practices and dealing of persons regulated by this article should be made to the police desk, and such complaints will be kept in the file of that licensee.

(Code 1979, § 4:3.14(1))

Sec. 6-50. - Duty of itinerant vendors.

The person licensed as the itinerant vendor must be present at the place where the itinerant vendor conducts business at all times during which said business is in operation. The licensed vendor may not delegate to a person not licensed pursuant to this article the operation of the itinerant vendor's business. An itinerant vendor may not operate from more than one business location at any one time. An itinerant vendor may not operate from publicly owned properties.

(Code 1979, § 4:3.5(1))

Sec. 6-51. - Entry onto posted premises; failure to leave premises.

(a) No solicitor or salesman shall enter any premises upon which is posted a notice containing print at least four inches in height containing the words "no peddlers" or "no solicitors" or other words to same effect.

(b) Any solicitor or salesman who has gained entrance to any residence, whether invited or not, shall immediately and peacefully depart from the premises upon request to do so by any occupant.

(Code 1979, §§ 4:3.6—4:3.8)

Sec. 6-52. - Time limit on soliciting.

It is hereby declared to be unlawful and shall constitute a nuisance for any person, whether registered under this article or not, to go upon any premises and ring the doorbell upon or near any door of a residence located thereon, or rap or knock on any door or create any sound in any other manner calculated to attract the attention of the occupant of such residence, for the purpose of securing an audience with the occupant thereof or to engage in selling or soliciting, as herein defined, prior to 9:00 a.m. or after 8:00 p.m. of any week day, or at any time on Sunday or a state or national holiday.

(Code 1979, § 4:3.10)

Sec. 6-53. - Acts required during each solicitation.

Immediately upon obtaining an audience with any occupant of any premises for the purpose of soliciting or selling as described in this article, each solicitor or salesman shall do all of the following in the order prescribed:

(1) Present his permit to the occupant.

(2) Request the occupant to read the permit.

(3) Inform the occupant in a clear language of the nature and purpose of the solicitation and whether he is representing a governmental entity or whether he is representing a private person or organization.

(4) In the case of a solicitation for information, advise the occupant that the occupant need not provide any, or all, of the information the solicitor requests.

(Code 1979, § 4:3.11)

Secs. 6-54—6-79. - Reserved.

DIVISION 2. - PERMIT AND LICENSE

Sec. 6-80. - License required.

It shall be unlawful for any peddler, solicitor, or itinerant vendor as defined in section 6-46 to engage in such business within the City without first obtaining a license therefor in compliance with the provisions of this article.

(Code 1979, § 4:3.1)

Sec. 6-81. - Application.

Applicants for a permit and license under this article must file with the City clerk/treasurer a sworn application in writing on form 6-81 c.c. furnished by the City clerk/treasurer. Form 6-81 c.c. shall give the following information:

(1) The name and description of the individual applicant.

(2) The permanent home address and full local address of the applicant.

(3) A statement of the purpose for which the solicitation, selling, peddling, or itinerant vending is to be made.

(4) If employed, the name and address of the employer together with credentials establishing the exact relationship between the employee and employer.

(5) Length of time for which the permit and license is sought.

(6) The place where the goods or property proposed to be sold, or orders taken for the sale thereof, are manufactured or produced, where such goods or products are located at the time said application is filed, and the proposed method of delivery.

(7) Two photographs of the applicant taken within 60 days immediately prior to the date of the filing of such application. Such pictures shall be not less than two by two inches and no greater than three by four inches showing the head and shoulders of the applicant in a clear and distinguishable manner.

(8) The fingerprints of the applicants and the names of at least two reliable property owners of the County of Menominee, Michigan who will certify to the applicant's good character and business responsibility of an applicant as will enable an investigator to properly evaluate such character and business responsibility.

(9) A statement as to the method of solicitation, peddling or vending to be used by the applicant.

(10) The date or approximate date of the last time applicant has filed form 6-81 c.c., if any.

(11) If a license issued to the applicant under this article has ever been revoked.

(12) If the applicant has ever been convicted of a crime, except misdemeanor traffic law violations, in this or any other state, or in violation of United States Federal Law.

(13) The applicant's social security number.

(14) Identification of any vehicle to be used in soliciting or peddling.

(Code 1979, § 4:3.3)

Sec. 6-82. - Investigation and issuance.

(a) Upon the City clerk/treasurer's receipt of the completed form 6-81 c.c., the original shall be referred to the chief of police, who shall cause such investigation of the applicant's business and moral character to be made for the protection of the public good. The phrase "business and moral character" means the propensity on the part of the person to serve the public in the licensed area in a fair, honest, and open manner.

(b) The chief of police, when investigating the applicant's business and moral character, shall consider the following factors: whom the applicant works for or is in business with; and whether the applicant has ever been convicted of a felony or crime involving theft or dishonesty. A judgment of guilt in a criminal prosecution or a judgment in a civil action shall not be used, in and of itself, as proof of a person's lack of business and moral character. It may be used as evidence in the determination, and when so used the person shall be notified and shall be permitted to rebut the evidence by showing that at the current time he has the ability to, and is likely to, serve the public in a fair, honest, and open manner, that he is rehabilitated, or that the substance of the former offense is not reasonably related to the occupation or profession for which he seeks to be licensed. The following criminal records shall not be used, examined, or requested in a determination of business and moral character:

(1) Records of an arrest not followed by a conviction.

(2) Records of a conviction which has been reversed or vacated, including the arrest records relevant to that conviction.

(3) Records of an arrest or conviction for a misdemeanor or a felony unrelated to the person's likelihood to serve the public in a fair, honest, and open manner.

(4) Records of an arrest or conviction for a misdemeanor for the conviction of which a person may not be incarcerated in a jail or prison.

After review of these factors, the chief of police shall make a determination of the applicant's business and moral character. If the applicant's business and moral character is found to be unsatisfactory, the chief of police shall state his reasons in writing. This information will be presented to the City clerk/treasurer who shall notify the applicant that his application is disapproved and that no license will be issued. The notice shall contain a complete record of the evidence upon which the determination was based. The person shall be entitled, as of right, to a hearing before the chief of police if he has relevant evidence not previously considered, regarding his qualifications.

(c) If, as a result of such investigation, the applicant's business and moral character is found to be satisfactory, the chief of police shall endorse upon the application his approval, and the City clerk/treasurer, upon payment of the prescribed license fee, shall deliver to the applicant his permit and issue a license. Such license shall contain the signature and seal of the City clerk/treasurer, and shall show:

(1) The name, address and photograph of the licensee;

(2) The class of license issued and the kinds of goods to be sold thereunder;

(3) The amount of the fee paid;

(4) The date of issuance and the length of time the license shall be operative and in force;

(5) The license number and other identifying description of any vehicle to be used in soliciting.

The City clerk/treasurer shall keep a permanent record of all licenses issued.

(Code 1979, § 4:3.4)

Sec. 6-83. - Permit and license fees.

(a) For a permit and license pursuant to this article, fees in the amount established by resolution shall be paid to the City.

(b) The initial application fee may be waived for applicants who, in the past, have received permits from the City.

(Code 1979, § 4:3.12)

Sec. 6-84. - Revocation.

The chief of police may revoke any permit and license if the holder is convicted of a violation of any provisions of this article or has made any false material statement in the application, or otherwise becomes disqualified for this article. Upon such revocation, written notice thereof shall be given by the chief of police to the holder of the certificate, in person, or by ordinary mail to his residence address as set forth in the application. Upon the giving of such notice, the permit and license shall become null and void.

(Code 1979, § 4:3.5)

Chapter 8 - ELECTIONS[1]

Footnotes:

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State Law reference— Michigan Election Law, MCL 168.1 et seq.

Sec. 8-1. - Ward boundaries.

The City shall be composed of four wards with boundaries as follows:

(1) *Ward 1.* The first ward shall be bounded by the waters of Green Bay on the east, 15th Avenue on the north, to 14th Street as extended on the west, from 15th Avenue South to 11th Avenue, then west along 11th Avenue to 15th Street, then south on 15th Street to the Menominee River and the waters of the Menominee River on the south.

(2) *Ward 2.* Beginning at the Menominee River proceed north along 15th Street to 11th Avenue, east on 11th Avenue to 14th Street, north along 14th Street to 16th Avenue, west on 16th Avenue to 15th Street, north on 15th Street to 20th Avenue, west on 20th Avenue to 18th Street, south on 18th Street to 18th Avenue, west on 18th Avenue to the City limits.

(3) *Ward 3.* The third ward shall be bounded by the waters of Green Bay on the east, the south boundary begins where 15th Avenue meets the waters of Green Bay, then west along 15th Avenue to 14th Street, north on 14th Street to 16th Avenue, west on 16th Avenue to 15th Street, north on 15th Street to 20th Avenue, west on 20th Avenue to 18th Street, south on 18th Street to 18th Avenue, west on 18th Avenue to the west City limits; the northern boundary begins where 30th Avenue extended would meet the waters of Green Bay, then westerly along 30th Avenue extended to 15th Street, north on 15th Street to 32nd Avenue, west on 32nd Avenue to 16th Street, north on 16th Street to 38th Avenue, west along 38th Avenue to the western City limits.

(4) *Ward 4.* The south boundary begins where 30th Avenue extended would meet the waters of Green Bay, then westerly along 30th Avenue extended to 15th Street, north on 15th Street to 32nd Avenue, west on 32nd Avenue to 16th Street, north on 16th Street to 38th Avenue, west along 38th Avenue to the western City limits; the western City limits form the western boundary, the waters of Green Bay form the eastern boundary and the northern City limits form the northern boundary.

(Code 1979, § 1:5.1)

Chapter 10 - EMERGENCY MANAGEMENT AND EMERGENCY SERVICES[1]

Footnotes:

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State Law reference— Emergency management, MCL 30.401 et seq.; Private Security Business and Security Alarm Act, MCL 338.1051 et seq.

ARTICLE I. - IN GENERAL

Secs. 10-1—10-18. - Reserved.

ARTICLE II. - ALARM SYSTEMS[2]

Footnotes:

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State Law reference— Emergency management, MCL 30.401 et seq.; Private Security Business and Security Alarm Act, MCL 338.1051 et seq.

DIVISION 1. - GENERALLY

Secs. 10-19—10-39. - Reserved.

DIVISION 2. - TELEPHONIC

Sec. 10-40. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Call system means a telephone alarm system which operates by placing a call on regularly used telephone lines by a machine activated by intrusion, heat, smoke, or other stimuli which then transmits a signal, message or warning.

Chief of police means the chief of police or any representative designated by him.

Direct line system means a telephone alarm system which operates on its own separate telephone line which when activated by intrusion, heat, smoke or other stimuli then transmits a signal, message, or warning.

Telephonic alarm system means any mechanism, equipment or device which is designed to operate automatically through the use of public telephone facilities to transmit a signal, message or warning to another location.

(Code 1979, § 2:7.1(1))

Sec. 10-41. - Permit.

(a) *Required.* No person shall operate or maintain telephonic alarm system which automatically transmits a signal, message, or warning to any City emergency dispatch office telephone line, without a permit as authorized by this article.

(b) *Application.* Applications for permits to install, maintain or operate a telephonic alarm system which is intended to automatically transmit a signal, message or warning to any City emergency dispatch office telephone line shall be filed with the chief of police on forms supplied by the City, together with

an application fee as set forth in subsection (d) of this section. Said application shall set forth the name, address and telephone number of both the installer of the system and the person or business on whose premises the system will be installed, as well as a description of the system and the location where it is proposed to be installed. The chief of police shall approve such application if he finds that:

(1) The use of said alarm system to transmit a signal, message or warning to a designated emergency dispatch office telephone line will not interfere with the orderly conduct of City business.

(2) The person installing the system maintains an adequate service organization to repair, maintain and otherwise service telephonic alarm systems sold, leased, or installed by him.

(c) *Terms.* A separate application is required for each year, or part thereof, for which a telephonic alarm system permit is requested. Telephonic alarm system permits shall be issued from September 1 of each year and effective through August 31 of the following year. A permit issued from September 1 through August 31 of the following year shall be effective through September 30 of the following year. There shall be no reduction of the permit fee for a permit issued for part of a year.

(d) *Fees.*

(1) There shall be a one time initiation fee in the amount established by resolution.

(2) Annually an application for a permit for a direct line telephonic alarm system shall be accompanied by a fee in the amount established by resolution.

(3) An application for a call telephonic alarm system shall be accompanied by a fee in the amount established by resolution.

(4) Fees hereunder shall be paid to the City police department who shall deposit same with the City clerk/treasurer.

(e) *Hold harmless agreement.* Each applicant for a telephonic alarm system permit must agree in writing that in consideration of the City agreeing to permit the applicant to operate a telephonic alarm system to the City emergency dispatch office, that the applicant agrees to hold harmless the City all of its officers, agents, and employees from all liability arising out of the receipt or the failure to receive any signal, message or warning, the response, or the lack of response to such signal, message or warning.

(f) *Revocation.* The chief of police may revoke any permit issued pursuant to the provisions of this subsection, after giving written notice to the permit holder and an opportunity for the permit holder to be heard, if he determines that the telephonic alarm system installed pursuant to said permit has been installed, maintained or operated in violation of the provisions of this chapter, or of any term or condition of said permit, for failure to make annual application for a permit as required by subsection (c) of this section, or for failure to pay the permit fee as provided by this section.

(Code 1979, § 2:7.1(2), (3), (6)—(9))

Sec. 10-42. - Right of inspection.

The chief of police shall have the right to inspect any telephonic alarm system on the premises where it is intended to function prior to issuance of any permit for its operation and he may cause an inspection of such system to be made at any time after issuance of a permit to determine whether it is being used in conformity with the terms of the permit and the provisions of this article.

(Code 1979, § 2:7.1(4))

Sec. 10-43. - Restricted numbers.

It shall be unlawful for any person, firm or corporation to install, operate or maintain a telephonic alarm system which automatically transmits a signal, message, or warning to any City emergency

dispatch office telephone line, except to such telephone number or numbers as designated by the permit issued under the provisions of this article.

(Code 1979, § 2:7.1(5))

Sec. 10-44. - False alarms.

In the event a signal, message or warning is received by the emergency dispatch office and upon response thereto by law enforcement or firefighting personnel and equipment, or both, and it is determined that such signal, message or warning resulted from a malfunction of the telephonic alarm system or otherwise was a false alarm for no apparent reason, then the applicant shall be assessed a charge as determined by the police chief as attached to the application.

(Code 1979, § 2:7.1(10))

Chapter 11 - MARIHUANA, MARIHUANA ESTABLISHMENTS

Sec. 11-1. - Title.

This chapter shall be known as and may be cited as the "City of Menominee Prohibition of Marihuana Establishments Ordinance."

(Ord. No. 2019-003, § I, 6-26-2019)

Sec. 11-2. - Definitions.

Words used herein shall have the definitions as provided for in the Michigan Regulation and Taxation of Marihuana Act, MCL 333.27951, et seq., as may be amended.

(Ord. No. 2019-003, § II, 6-26-2019)

Sec. 11-3. - No marihuana establishments.

(a) The City of Menominee hereby prohibits the establishment and/or operation of any and all marihuana establishments within the boundaries of the city pursuant to the Michigan Regulation and Taxation of Marihuana Act, MCL 333.27951, et. seq., as may be amended.

(b) This prohibition includes, but is not limited to, the following marihuana establishments:

(1) Marihuana grower.

(2) Marihuana safety compliance facility.

(3) Marihuana processor.

(4) Marihuana microbusiness.

(5) Marihuana retailer.

(6) Marihuana secure transporter.

(7) Any other marihuana-related business that is subject to licensing. by the State Department of Licensing and Regulatory Affairs under the Michigan Regulation and Taxation of Marihuana Act, MCL 333.27951, et seq.

(Ord. No. 2019-003, § III, 6-26-2019)

Sec. 11-4. - Violations and penalties.

(a) Any person who disobeys, neglects or refuses to comply with any provision of this chapter or who causes, allows or consents to any of the same shall be deemed to be responsible for the violation of this chapter. A violation of this chapter is deemed to be a nuisance per se.

(b) A violation of this chapter is a municipal civil infraction, for which the fines shall not be less than $100.00 nor more than $500.00, in the discretion of the court. The foregoing sanctions shall be in addition to the rights of the city to proceed at law or equity with other appropriate and proper remedies. Additionally, the violator shall pay costs which may include all expenses, direct and indirect, which the city incurs in connection with the municipal civil infraction.

(c) Each day during which any violation continues shall be deemed a separate offense.

(d) In addition, the city may seek injunctive relief against persons alleged to be in violation of this chapter, and such other relief as may be provided by law.

(e) This chapter shall be administered and enforced by the code enforcement officer of the city or by such other person(s) as designated by the city manager from time to time.

(Ord. No. 2019-003, § IV, 6-26-2019)

Chapter 12 - NUISANCES[1]

Footnotes:

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State Law reference— Public nuisances, MCL 600.3801 et seq.; nuisance abatement, MCL 600.2940.

ARTICLE I. - IN GENERAL

Sec. 12-1. - Condemnation board.

(a) The condemnation board shall consist of three members who must be residents of the City and may be City employees. Members of the condemnation board shall serve for terms of three years. All condemnation board members shall be appointed by the mayor, subject to confirmation by City Council. The chair of this condemnation board shall be designated by the mayor.

(b) This condemnation board shall hear appeals of decisions by the building inspector made pursuant to article II of this chapter, relating to dangerous or unlawful buildings or structures, and article III of this chapter, dangerous property, junk and abandoned vehicles, but only if the appeal is filed in writing within ten days of issuance of the decision of which review is sought.

(c) The conduct of the board shall be controlled as specified in articles II and III of this chapter.

(Code 1979, § 1:8.12)

Secs. 12-2—12-20. - Reserved.

ARTICLE II. - DANGEROUS BUILDINGS AND STRUCTURES[2]

Footnotes:

State Law reference— Dangerous buildings, MCL 125.539 et seq.

Sec. 12-21. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Dangerous building means any building or structure which has any of the following defects or is any of the following conditions:

(1) Whenever any door, aisle, passageway, stairway, or other means of exit does not conform to the approved fire code of the City, it shall be considered that such dwelling does not meet the requirements of this chapter.

(2) Whenever any portion has been damaged by fire, wind, flood, or by any other cause in such a manner that the structural strength or stability is appreciably less than it was before such catastrophe and is less than the minimum requirements of this chapter or City building code for a new building or similar structure, purpose or location.

(3) Whenever any portion or member or appurtenance is likely to fall or to become detached or dislodged, or to collapse and thereby injure persons or damage property.

(4) Whenever any portion has settled to such an extent that walls or other structural portions have materially less resistance to winds than is required in the case of new construction by this chapter or City building code.

(5) Whenever the building or structure or any part, because of dilapidation, deterioration, decay, faulty construction, or because of the removal or movement of some portion of the ground necessary for the purpose of supporting such building or portion thereof, or for other reasons, is likely to partially or completely collapse, or some portion of the foundation or underpinning is likely to fall or give way.

(6) Whenever the building or structure has been so damaged by fire, wind or flood, or has become so dilapidated or deteriorated as to become an attractive nuisance to children who might play therein to their danger, or as to afford a harbor for vagrants or criminals or as to enable persons to resort thereto for the purpose of committing a nuisance or unlawful acts.

(7) Whenever a building or structure used or intended to be used for dwelling purposes, because of dilapidation, decay, damage, or faulty construction or arrangement or otherwise, is unsanitary, unfit for human habitation or is in a condition that is likely to cause sickness or disease when so determined by the health officer, or is likely to work injury to the health, safety or general welfare of those living within.

(8) Whenever any building becomes vacant, dilapidated and open at door or window, leaving the interior of the building exposed to the elements or accessible to entrance by trespassers.

(9) Whenever the building imposes danger to the community in any other manner.

Any such building or structure is hereby declared to be and constitutes a public hazard and a public nuisance dangerous to the health, safety and welfare of the inhabitants of the City and of those traveling near such lots, buildings or structures.

(Code 1979, § 2:5.1(1))

Sec. 12-22. - Prohibition.

It shall be unlawful to maintain or permit the existence of any dangerous building or structure in the City; and it shall be unlawful for the owner, occupant or person in custody of any dangerous building or

structure to permit it to remain in such condition, or to occupy or use such building or structure, or permit it to be occupied or used while it remains in a dangerous condition.

(Code 1979, § 2:5.1(2))

Sec. 12-23. - Notice requirements.

(a) Whenever the building inspector, fire chief, health officer or their agents, are of the opinion that any building or structure in the City is dangerous as defined in section 12-21, he may file a written statement to this effect with the building inspector's office. The building inspector may then issue notice of the dangerous and unlawful condition. Such notice shall state:

(1) A reasonably definite description of the unlawful defect in, or conditions of, the dangerous building;

(2) The time and place of the hearing to determine if the building should be condemned;

(3) That he has the right to produce witnesses in his own behalf and cross examine the witnesses who testify against him, so he may show cause why the building should not be ordered to be demolished or otherwise made safe;

(4) That after a full consideration and a fair determination according to the evidence, the condemnation board, or City Council shall either issue or deny an order for the demolition or making safe of the building or structure.

(b) Such notice shall be in writing and served upon the occupant thereof, if any, posted upon the building in a conspicuous place, and served to each owner of, or party in interest in, the building in whose name the property appears on the tax rolls, as provided in Public Act No. 162 of 1962 (MCL 211.741 et seq.).

(Code 1979, § 2:5.1(3))

Sec. 12-24. - Removal by City.

(a) The condemnation board shall take testimony, under oath, of the enforcing agency, the owner of the property and any interested party. The owner shall have the opportunity to produce witnesses in his own behalf, and cross examine the witnesses who testify against him, so he may show cause why the building should not be ordered to be demolished or otherwise made safe. The condemnation board shall render a decision either finding that the criteria of section 12-21 do not exist or ordering the building to be demolished or otherwise made safe. Methods of making the building safe other than demolition may be employed, if reasonable.

(b) The decision of the condemnation board shall be written. It shall incorporate into a formal record their findings of fact and conclusions of law. The decision of the condemnation board shall be forwarded to the City Council and received as a part of the proceedings of the council not later than the second regular meeting after the close of the hearing.

(c) An official record of the hearing shall be prepared which may include:

(1) Notices, pleadings, motions and intermediate rulings;

(2) Questions and offer of proof, objections and rulings thereon;

(3) Evidence presented;

(4) Matters officially noticed, except matters so obvious that a statement of them would serve no useful purpose;

(5) Proposed findings and exceptions;

(6) Any decision, opinion, order or report by the officer presiding at the hearing and by the agency.

(d) Oral proceedings at which evidence is presented shall be recorded, but need not be transcribed unless requested by a party who shall pay for the transcription of the portion requested except as otherwise provided by law.

(e) If it is determined by the hearing board that the building or structure should be demolished or otherwise made safe, they shall so order, fixing a time in the order for the owner, agent or lessee to comply therewith.

(f) If the owner, agent or lessee fails to appear or neglects or refuses to comply with the order, the condemnation board shall file a report of its findings and a copy of its order with the City Council and request that the necessary action be taken to demolish or otherwise make safe the building or structure. A copy of the findings and order of the hearing officer shall be served on the owner, agency or lessee in the manner prescribed in section 12-23.

(g) The City Council shall fix a date for hearing, reviewing the findings and order of the hearing board and shall give notice to the owner, agent or lessee in the manner prescribed in section 12-23.

(h) The condemnation hearing shall then be placed on the City Council agenda, such hearing to be held not sooner than ten days after the last service of the notice described in this article is completed.

(i) At the City Council hearing, the owner, agent or lessee shall be given the opportunity to argue the findings of the hearing board but not to present new evidence. The City Council shall either approve, disapprove, or modify the order for demolition or making safe of the building or structure and give the owner a notice of such a decision.

(j) The City Council may use the same recording requirements set out in subsections (b) and (c) of this section.

(k) An owner aggrieved by the final decision of the City Council under this article may appeal the decision or order to the circuit court by filing a petition for an order superintending control within 20 days from the date of the decision.

(l) If the owner does not either file an appeal or comply with the condemnation board's order within 20 days, the City may proceed with the action as decided in subsection (i) of this section.

(m) The cost of the demolition or making the building safe shall be a lien against the real property and shall be reported to the City assessor who shall assess the cost against the property on which the building or structure is located.

(Code 1979, § 2:5.1(4))

Sec. 12-25. - Emergencies.

(a) In the event of an emergency such as flood, fire, tornado, explosion or other sudden or unexpected occurrence demanding that immediate measures be taken to protect the public health, safety and welfare, the City Council grants to the mayor the power to act in behalf of the City to take immediate action as such emergencies dictate, to protect the health, safety and welfare of the City.

(b) When such emergency situations so demand, the mayor acting in behalf of the City may dispense with the hearing and notice requirements of section 12-23(a)(4), if due to public necessity in emergency situations, such notice and hearing would place the health, safety and welfare of the public in imminent danger.

(c) If the exigency might so allow, an attempt shall be made to preserve some type of evidence, such as by photographs, as to the value of the property and need for the action taken.

(d) When it becomes reasonable to do so, the City Council shall hold a hearing to determine the appropriateness of the action authorized under section 12-24(a) and how much, if any, compensation is proper.

(e) Such hearing shall be in accord with the notice requirements of section 12-24(h) and (i), and recording requirements of section 12-24(b) and (c).

(f) At the City Council hearing the owner, agent, or lessee shall be given the opportunity to show cause as set out in section 12-24(a).

(Code 1979, § 2:5.1(5))

Secs. 12-26—12-53. - Reserved.

ARTICLE III. - DANGEROUS PROPERTY, JUNK AND ABANDONED VEHICLES[3]

Footnotes:

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State Law reference— Abandoned vehicles, MCL 257.252a et seq.

Sec. 12-54. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Abandoned vehicle means any vehicle which has remained on private property without the consent of the property owner, or any public street, alley, sidewalk, right-of-way or parking lot for a period of 48 consecutive hours or more.

Dangerous property means any property which has any one of the following conditions present:

(1) Parts of machinery or motor vehicles, unused furniture, stoves, refrigerators, or any castoff material of any kind, whether or not same could be put to any reasonable use.

(2) Junk automobiles which is defined to include without limitation, any motor vehicle which is not licensed for use upon highways of the state for a period in excess of 30 days, and shall also include, whether licensed or not, any motor vehicle which is inoperative for any reason for a period in excess of 30 days; provided that there is excepted from this definition, unlicensed, but operative vehicles which are kept as stock in trade of a regularly licensed and established new or used automobile dealer.

(3) Junk equipment which is defined to include equipment which is inoperative for any reason for a period of 30 days; provided that there is excepted from this definition any inoperable equipment which is completely enclosed within a building or stored within an area completely sealed off from view by a fence or walls.

(Code 1979, § 2:5.2(1))

Sec. 12-55. - Prohibitions.

(a) It is hereby determined that the storage of accumulation of junk, junk automobiles, junk equipment, upon or about any private property with the City tends to result in blighted and deteriorated neighborhoods, the increase of criminal activity, the spread of vermin and disease, is dangerous to persons and property and is contrary to the public place, health, safety and general welfare of the community and constitutes a public nuisance.

(b) It shall be unlawful to store or permit the storage of accumulation of junk, junk automobiles, junk equipment, or except within a completely enclosed building or fence upon the premises of a duly licensed junk dealer, junk buyer, dealer in used parts, dealer in secondhand goods or junk gatherer.

(Code 1979, § 2:5.2(2))

Sec. 12-56. - Notice requirements.

(a) Whenever the building inspector, fire chief, health officer or their agents, are in the opinion that any property in the City is dangerous as defined in section 12-54, he may file a written statement to this effect with the building inspector's office. The building inspector may then issue notice of the dangerous and unlawful conditions to the person or entity whose name appears on the tax rolls of the City, and the occupant thereof, if any, by first class mail. Such notice shall state:

(1) The name of the owner of record and mailing address as it appears on the tax rolls of the City, the address and description of the property;

(2) A reasonably definite description of the unlawful defect in, or conditions of, the dangerous property;

(3) The corrective action that needs to be taken with as complete a description as reasonably possible, reserving the right of the City to determine what corrective action means and entails;

(4) The amount of reasonable time for the corrective action to be commenced and completed;

(5) That the owner or occupant affected by the notice may file a request for a hearing of the condemnation board with the office of the building inspector within ten days after the day the notice was mailed;

(6) That failure to file a request for hearing within ten days shall automatically deem the notice to be an order.

(b) Such notice shall be in writing and in addition to being mailed to the property owner of record and occupant shall also be posted at the property in a conspicuous place.

(c) Such abandoned vehicles or junk vehicles, or parts of either, shall be removed, impounded and disposed of in accordance with the law.

(Code 1979, § 2:5.2(3))

Sec. 12-57. - Hearing.

(a) The owner or occupant affected by any notice which has been issued in connection with the enforcement of any provision of this article, may request and shall be granted a hearing on the matter before the condemnation board; provided that such person shall file in the office of the building inspector a written petition requesting such hearing and setting forth a brief statement of the grounds therefore within ten days after the notice was mailed. Upon receipt of such petition, the condemnation board shall set a time and place for such hearing and shall give the petitioner written notice thereof. At such hearing, the petitioner shall be given an opportunity to be heard and to show why such notice should be modified or withdrawn. The hearing shall be commenced not later than ten days after the day on which the petition was filed; provided that upon application of the petitioner, the condemnation board may postpone the date of the hearing for a reasonable time beyond such ten-day period if in the judgment of the board the petitioner has submitted a good and sufficient reason for such postponement.

(b) The condemnation board shall take testimony, under oath, of the enforcing agency, the owner of the property and any interested party. The owner shall have the opportunity to produce witnesses in his own behalf, and cross examine the witnesses who testify against him, so he may show cause why the

property should not be ordered to be cleaned up or otherwise made safe. The condemnation board shall render a decision either finding that the criteria of article II of this chapter do not exist ordering the property to be cleaned up or otherwise made safe. If the condemnation board sustains or modifies such notice, it shall be deemed to be an order. Any notice served pursuant to this article shall automatically become an order if a written petition for a hearing is not filed in the office of the building inspector within ten days after such notice is mailed.

(c) The decision of the condemnation board shall be written. It shall incorporate into a formal record their findings of fact and conclusions of law. The decision of the condemnation board shall be forwarded to the City Council not later than the second regular meeting after the close of the hearing.

(d) An official record of the hearing shall be prepared which may include:

(1) Notices, pleadings, motions and intermediate rulings;

(2) Questions and offer of proof, objections and rulings thereon;

(3) Evidence presented;

(4) Matters officially noticed, except matters so obvious that a statement of them would serve no useful purpose;

(5) Proposed findings and exceptions.

(e) Oral proceedings at which evidence is presented shall be recorded, but need not be transcribed unless requested by a party who shall pay for the transcription of the portion requested except as otherwise provided by law.

(f) If it is determined by the hearing board that the property should be cleaned up or otherwise made safe, they shall so order, fixing a time in the order for the owner, agent or lessee to comply therewith. Said order shall be in writing and shall be mailed by the building inspector to the owner and petitioner, if not the same, by first class mail and shall also be posted at the property in a conspicuous place.

(Code 1979, § 2:5.2(5))

Sec. 12-58. - Failure to comply.

(a) Any person who shall violate this section shall be responsible for a civil infraction.

(b) In addition to the penalties described herein, in the event the corrective action is not completed on the date so identified in the order, the City may clean up or make the property safe and shall refer the cost thereof to the City Council, and the City Council shall adopt a special assessment resolution, and said special assessment shall be a lien against the real property and shall be reported to the City assessor and City clerk/treasurer pursuant to section 20-11.

(Code 1979, § 2:5.2(6))

Sec. 12-59. - Emergencies.

(a) In the event of an emergency such as flood, fire, tornado, explosion or other sudden or unexpected occurrence demanding that immediate measures be taken to protect the public health, safety and welfare, the City Council grants to the mayor the power to act in behalf of the City to take immediate action as such emergencies dictate, to protect the health, safety and welfare of the City.

(b) When such emergency situations so demand, the mayor acting in behalf of the City may dispense with the hearing and notice requirements of this article, if due to public necessity in emergency situations, such notice and hearing would place the health, safety and welfare of the public in imminent danger.

(c) If the exigency might so allow, an attempt shall be made to preserve some type of evidence, such as by photographs, as to the value of the property and need for the action taken.

(d) When it becomes reasonable to do so, the City Council shall hold a hearing to determine the appropriateness of the action authorized under section 12-57 and how much, if any, compensation is proper.

(e) Such hearing shall be in accord with the notice requirements of section 12-56 and recording requirements of section 12-57.

(f) At the condemnation board hearing, the owner, agent or lessee shall be given the opportunity to show cause, as set out in section 12-56.

(Code 1979, § 2:5.2(7))

Secs. 12-60—12-76. - Reserved.

ARTICLE IV. - WEEDS[4]

Footnotes:

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State Law reference— Noxious weeds, MCL 247.61 et seq.

Sec. 12-77. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Noxious, poisonous and/or injurious weeds includes those species and varieties designated as noxious weeds by the State Noxious Weeds Act, Public Act No. 359 of 1941 (MCL 247.61 et seq.). In addition, the following species and varieties of plants are hereby designated as injurious weeds and declared to be a common nuisance: ragweed (any species of Ambrosia), poison ivy (Rhus radicans), poison sumac (Toxicondendron vernix), poison oak (Toxicondendron quercifolium), marijuana (Cannabis sativa), belladonna (Amaryllis belladonna), and any species or varieties of plants or weeds actually or potentially injurious to the public health.

(Code 1979, § 2:5.3(2))

Sec. 12-78. - Prohibition.

(a) It shall be unlawful for any person having control or management of any land, public, private, occupied, or vacant in the City to have noxious, poisonous and/or injurious weeds, as herein defined, growing on such land.

(b) It shall be unlawful for any person having control or management of any land, public, private, occupied or vacant, in the City, to have weeds or grass of any species or variety growing more than one foot high.

(Code 1979, § 2:5.3(1), (3))

Sec. 12-79. - Removal by City.

Upon notice by the City code enforcement officer, the mayor, or such other person as may be authorized by the mayor and City Council to enforce this article to the person or entity whose name appears on the tax rolls of the City that a violation of this article exists upon the premises, or in that area between the center of the public street which abuts the property and the property line, and if at the expiration of the time limit set in the notice, the violations of this article have not been abated, the code enforcement officer, mayor or person duly authorized by the mayor and council to enforce this article, may abate the violation of this article by the proper department of the City, or may hire the work done by private contractor. The City Council shall by resolution fix the charges for abating the violation of this article, for work performed by the appropriate department of the City, or fix the charge for engaging a private contractor plus necessary and appropriate administrative expenses, and expenses related to the loss of use of public funds. Such charges and expenses shall be recoverable by the City as a special assessment upon the premises in accordance with the procedures prescribed in section 20-11.

(Code 1979, § 2:5.3(4))

Chapter 14 - OFFENSES AND MISCELLANEOUS PROVISIONS

ARTICLE I. - IN GENERAL

Sec. 14-1. - Curfew for minors.

(a) No minor under the age of 17 years shall loiter, idle, wander, congregate or play in or upon the public streets, highways, roads, alleys, parks, public buildings, places of amusement and entertainment, vacant lots or other unsupervised places in the City, either on foot or in or upon any conveyance being driven or parked thereon, between the hours of 10:00 p.m. and 5:00 a.m.

(b) The provisions of this section shall not apply:

(1) When such minor is accompanied by a parent or guardian or some adult delegated by the parent or guardian to accompany the child.

(2) When such minor is upon an emergency errand directed by such minor's parent or guardian.

(3) When such minor is returning directly home from a school activity, entertainment, recreational activity or dance.

(4) When such minor is returning directly home from lawful employment that makes it necessary to be in the places referenced in this section during the proscribed period of time.

(5) When such minor is attending or traveling directly to or from an activity involving the exercise of First Amendment rights of free speech, freedom of assembly or free exercise of religion.

(6) When such minor is engaged in interstate travel with the consent of his parent or guardian.

(c) No person of the age of 17 years or over shall assist, aid, abet, allow, permit or encourage any minor under the age of 17 years to violate the provisions of subsection (a) of this section.

(d) Responsibility of parents and guardians. A parent, guardian or other adult person is responsible for the conduct of minor children under his care and custody and shall not knowingly permit his minor children to violate the provisions of subsection (a) of this section.

(Code 1979, § 2:3.1)

State Law reference— Juvenile curfews, MCL 722.751 et seq.

Sec. 14-2. - Prohibiting boating.

It shall be unlawful for any person to be engaged in a boating activity of any type between the west side of the Hattie Street (west end) Bridge and the Scott Paper Company dam.

(Code 1979, § 2:8.1(1))

Secs. 14-3—14-26. - Reserved.

ARTICLE II. - OFFENSES AGAINST THE PERSON

Secs. 14-27—14-55. - Reserved.

ARTICLE III. - OFFENSES AGAINST PROPERTY RIGHTS

Sec. 14-56. - Trespass.

(a) *Generally.* It shall be unlawful for any person to enter upon the lands or premises of another, or of any municipality or school district, without lawful authority, after having been forbidden to do so by the owner, occupant, person in charge of such premises, or the agent or servant of any of the foregoing, or for any person to be upon the lands or premises of another, or of any municipality or school district, without lawful authority, upon being notified to depart therefrom by the owner, occupant, person in charge of such premises, or the agent or servant of any of the foregoing, who without lawful authority refuses or neglects to depart therefrom.

(b) *Riverside Cemetery.*

(1) The cemetery director shall determine the seasonal opening and closing dates for Riverside Cemetery and shall give public notice of the same by a public notice in the local newspaper.

(2) It shall be unlawful for any person to trespass upon the premises of Riverside Cemetery during the hours of 8:30 p.m. to 8:00 a.m. from April 1 through October 31 and from 6:30 p.m. to 8:00 a.m. from November 1 through March 31.

(3) It shall be unlawful for any person to operate a motor vehicle upon the premises of Riverside Cemetery except during the hours listed in subsection (b)(1) of this section, and provided further that such motor vehicle be operated upon the established roadways of Riverside Cemetery.

(4) It shall be unlawful for any person to operate an unlicensed motor vehicle upon the premises of Riverside Cemetery.

(c) *Water tower.* It shall be unlawful for any person without authority to do so to enter upon that parcel of land upon which the City water tower is located, said land being described as follows: The part of section 27, Township 32 North, Range 27 West, beginning at a point in the north and south one-half section line which point is 725 feet north of the south one-quarter section line with the north boundary line of 36th Avenue extended to said point; thence west on said north line of 36th Avenue so extended 200 feet; thence north on line parallel to said north and one-quarter section line, 250 feet; thence east on a line parallel with said north boundary line of 36th Avenue, 200 feet; thence south on a line parallel with said north and south one-quarter section line 250 feet to point of beginning, commonly referred to as the "Water Tower Hill."

(d) *Henes Park.* It shall be unlawful for any person to trespass upon Henes Park:

(1) Between the hours of 11:00 p.m. and 7:00 a.m., except as otherwise provided in this subsection.

(2) From the park season opening until the day following Labor Day:

a. Between the hours of 8:30 p.m. to 9:00 a.m. weekdays (Monday through Friday), with the exception that nonvehicular traffic is allowed in the park from 7:00 a.m. to 9:00 a.m.;

b. Between the hours of 8:30 p.m. to 7:00 a.m. on weekends (Saturday and Sunday).

(3) From the day following Labor Day until the park season closing:

a. Between the hours of: 6:00 p.m. to 9:00 a.m. weekdays (Monday through Friday) with the exception that nonvehicular traffic is allowed in the park from 7:00 a.m. to 9:00 a.m.;

b. Between 6:00 p.m. to 7:00 a.m. on weekends (Saturday and Sunday).

(e) *Recycling center.* It shall be unlawful for any person to enter upon the premises of the Recycling Center at the times other than posted as being open and at times other than those when in fact it is actually open to the public.

(Code 1979, § 2:6.1(1)—(4))

State Law reference— Trespass, MCL 750.546 et seq.

Sec. 14-57. - Motor vehicles on land of another.

(a) It shall be unlawful for any person to have his motor vehicle upon the lands or premises of another, or of any municipality or school district, upon being notified to depart therefrom by the owner, occupant, person in charge of such premises, or the agent or servant of any of the foregoing, who without lawful authority refuses or neglects to remove his vehicle therefrom.

(b) In addition to any penalty such a vehicle shall be subject to the towing/impoundment provisions of section 26-49.

(Code 1979, § 2:6.3)

State Law reference— Trespass, MCL 750.546 et seq.

Sec. 14-58. - Property damage.

It shall be unlawful for any person to willfully destroy, remove, damage, alter or in any manner deface any property not his own, or any public school building, or any public building, bridge, fire hydrant, alarm box, street light, street sign, traffic control device, railroad sign or signal, parking meter, or shade tree belonging to the City or located in the public places of the City or mark or post handbills on, or in any manner mar the walls of, any public building, or fence, tree, or pole within the City, or destroy, take or meddle with any property belonging to the City, or remove the same from the building or place where it may be kept, placed or stored, without proper authority.

(Code 1979, § 2:4.2(9))

State Law reference— Malicious mischief generally, MCL 750.377a et seq.

Secs. 14-59—14-89. - Reserved.

ARTICLE IV. - OFFENSE AGAINST PUBLIC SAFETY

Sec. 14-90. - Carrying dangerous weapons.

It shall be unlawful for any person to carry in any public street, highway, alley, park, building or any other place open to the public, or to have concealed or otherwise in any vehicle operated or occupied by him, an air pistol, BB gun, starting gun, pellet gun, blank cartridge gun, rifle, shotgun, black jack, sling shot, sand club, metal or plastic knuckles, karate sticks, night sticks, knife, razor, sharp or blunt instrument or any other dangerous or deadly weapon, except as otherwise permitted by law.

(Code 1979, § 2:6.5)

State Law reference— Firearms and other weapons, MCL 750.222; local firearm regulations, MCL 123.1101 et seq.

Sec. 14-91. - Discharging firearms, air guns, fireworks, etc.

It shall be unlawful for any person to discharge any firearm, air gun, fireworks, BB gun, or any toy projecting lead or missiles, except in a regularly established shooting gallery or range, providing that this section shall not be construed to prohibit any officer of the law from discharging a firearm in the performance of his duty; or to apply to any citizen when lawfully defending person or property. Further, this section shall not apply to the discharge of a firearm by the holder of a state of federal permit for a particular purpose, or to the discharge of a firearm with the prior authorization of the police chief and the City manager. The police chief and the City manager shall give such permission upon a showing that public safety, peace and order will not be endangered.

(Code 1979, § 2:4.2(6))

State Law reference— Firearms and other weapons, MCL 750.222; local firearm regulations, MCL 123.1101 et seq.

Sec. 14-92. - Wrongfully throwing objects.

It shall be unlawful for any person to wrongfully propel any object toward any person, automobile, or property.

(Code 1979, § 2:4.2(8))

Sec. 14-93. - Abandoned iceboxes.

Any person who knowingly leaves in a place accessible to children, any abandoned, unattended or discarded ice box, refrigerator or other container of a kind and size sufficient to permit the entrapment and suffocation of a child therein, without first removing the snap lock or other locking device from the lid or cover thereof, and without otherwise rendering the same incapable of entrapping a child, shall be guilty of a misdemeanor.

(Code 1979, § 2:5.4(1))

State Law reference— Similar provisions, MCL 750.493d.

Sec. 14-94. - Endangering safety of others.

It shall be unlawful for any person to directly endanger the safety of another person or property.

(Code 1979, § 2:4.2(1))

Secs. 14-95—14-116. - Reserved.

ARTICLE V. - OFFENSES AGAINST PUBLIC PEACE AND ORDER

Sec. 14-117. - Jostling or crowding others.

It shall be unlawful for any person to jostle or roughly crowd people unnecessarily in a public place.

(Code 1979, § 2:4.2(3))

State Law reference— Similar provisions, MCL 750.167(1)(l).

Sec. 14-118. - Speech provoking breach of the peace.

It shall be unlawful for any person to speak any statement to another person, or about another person, capable of being heard by such person, which is derogatory, inflammatory, profane, disrespectful, which suggests sexual activity as a statement of disdain or contempt, which questions the lineage of such person, or which in any way can be reasonably interpreted to raise the anger of such person hearing such communications. This section does not limit the free flow of ideas in speech but does prohibit such speech as may interrupt a peaceful, lawful, presence in public places.

(Code 1979, § 2:4.2(4))

Sec. 14-119. - Disturbing religious worship.

It shall be unlawful for any person to willfully interrupt or disturb any assembly of people met for the worship of God.

(Code 1979, § 2:4.2(5))

State Law reference— Disturbing religious meetings, MCL 750.169.

Sec. 14-120. - Loitering.

It shall be unlawful for any person to loiter on or in any street, sidewalk, office, business establishment, or public place. For the purpose of this section, the term "loitering" means the act of standing or idling on, in or about any street, sidewalk, school property, office, business establishment or public place so as to hinder, impede or tend to hinder or impede the passage of pedestrians or vehicles.

(Code 1979, § 2:4.1(1))

Sec. 14-121. - Obstruction of streets and sidewalks.

No person shall encumber, obstruct or encroach upon, or impede passage upon any public highway, street, sidewalk, alley or other public place within the City.

(Code 1979, § 2:4.3(1))

Sec. 14-122. - Noise.

It shall be unlawful for any person to create, assist in creating, permit, continue, or permit the continuance of any excessive, unnecessary, or unusually loud noise, or any noise which either annoys or disturbs a reasonable person of normal sensitivities or injures, or endangers the comfort, repose, health, peace, or safety of others within the City. The following acts, among others, are declared to be loud,

disturbing, injurious, unnecessary and unlawful noises in violation of this section, but this enumeration shall not be deemed to be exclusive.

(1) *Hours in which music, noise, etc., clearly audible beyond premises boundaries is prohibited.* An owner, custodian, lessee, or licensee of a premises which is a source of music, noise, or other disturbance which is clearly audible beyond the boundaries of said premises after 10:00 p.m. and before 7:00 a.m., is guilty an offense.

(2) *Unreasonably loud, raucous or disturbing music, noise, etc., near hospitals, other residences, etc.* An owner, custodian, lessee, licensee or person in charge of premises from which noise may be heard beyond the premises which is unreasonably loud, raucous or disturbing; or premises from which musical instruments, radio, television, phonograph, stereo system, compact disc player, cassette player, eight track player, or sound amplification devices generate sound in such manner, or magnitude so as to disturb the peace and quiet of the neighborhood, having due regard for the proximity of places of residence, hospitals, other residential institutions and any other conditions affected by such noise is guilty of an offense.

(3) *Unreasonably loud, raucous or disturbing music, noise, etc., emitting from a motor vehicle.* An owner, operator, person in charge of, in possession, exercising control over or responsible for a motor vehicle, whether in operation or parked, on public or private property, from which sound, music, noise, loud voices and the like, produced by radio, phonograph, stereo system, compact disc player, cassette player, eight track player, television set, amplified or unamplified musical instrument, microphone, sound system, sound amplification device or any other means of sound production, including but not limited to loud voices, is plainly audible at a distance of 30 feet from the vehicle which is the source of the referenced noises in this subsection is guilty of an offense.

(4) *Hours in which a person yelling, shouting, etc., are prohibited near hospitals, hotels, etc.* Any person yelling, shouting, hooting, whistling, singing or making any other loud noises on the public streets, or places open to the general public, between the hours of 10:00 p.m. and 7:00 a.m., or making any such noise at any time or place so as to disturb the quiet, comfort, or repose of persons in any dwelling, hotel, hospital, or other type of residence, or in any office or of any persons in the vicinity is guilty an offense.

(Code 1979, § 2:4.4)

Sec. 14-123. - Public intoxication.

It shall be unlawful for any person to be intoxicated in a public place if such person is either endangering directly the safety of another person, or of property, or is acting in a manner that causes a public disturbance.

State Law reference— Similar provisions, MCL 750.167(1)(e); local public intoxication ordinances, MCL 333.6523.

Secs. 14-124—14-142. - Reserved.

ARTICLE VI. - OFFENSES AGAINST PUBLIC MORALS

Sec. 14-143. - Nude bathing.

It shall be unlawful for anyone to bathe in a nude condition in the waters of Green Bay or the Menominee River within the City limits.

(Code 1979, § 5:3.2(1))

State Law reference— Indecent exposure, MCL 750.335a.

Sec. 14-144. - Public urination or defecation.

It shall be unlawful for any person to urinate or defecate on public or private property unless in an area properly enclosed and specifically designated for this purpose.

(Code 1979, § 2:4.2(11))

Sec. 14-145. - Open house parties.

(a) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Alcoholic beverage means an alcoholic liquor as defined in section 105 of the Michigan Liquor Control Code of 1998 (MCL 436.1105).

Allow means to give permission for, or approval of, possession or consumption of an alcoholic beverage or a controlled substance, by any of the following means:

(1) In writing.

(2) By one or more oral statements.

(3) By any form of conduct, including a failure to take corrective action, that would cause a reasonable person to believe that permission or approval has been given.

Control over any premises, residence, or other real property means the authority to regulate, direct, restrain, superintend, control, or govern the conduct of other individuals on or within that premises, residence, or other real property, and includes, but is not limited to, a possessory right.

Controlled substance means that term as defined in section 7104 of the Public Health Code (MCL 333.7104).

Corrective action means any of the following:

(1) Making a prompt demand that the minor or other individual depart from the premises, residence, or other real property, or refrain from the unlawful possession or consumption of the alcoholic beverage or controlled substance on or within that premises, residence, or other real property, and taking additional action described in subsection (2) or (3) of this definition if the minor or other individual does not comply with the request.

(2) Making a prompt report of the unlawful possession or consumption of alcoholic liquor or a controlled substance to a law enforcement agency having jurisdiction over the violation.

(3) Making a prompt report of the unlawful possession or consumption of alcoholic liquor or a controlled substance to another person having a greater degree of authority or control over the conduct of persons on or within the premises, residence, or other real property.

Minor means an individual less than 21 years of age.

Premises means a permanent or temporary place of assembly, other than a residence, including, but not limited to, any of the following:

(1) A meeting hall, meeting room, or conference room.

(2) A public or private park.

Residence means a permanent or temporary place of dwelling, including, but not limited to, any of the following:

(1) A house, apartment, condominium, or mobile home.

(2) A cottage, cabin, trailer, or tent.

(3) A motel unit, hotel unit, or bed and breakfast unit.

Social gathering means an assembly of two or more individuals for any purpose, unless all of the individuals attending the assembly are members of the same household or immediate family.

(b) *Prohibited.* Except as otherwise provided in subsection (c) of this section, an owner, tenant, or other person having control over any premises, residence, or other real property shall not knowingly allow either of the following:

(1) A minor to consume or possess an alcoholic beverage at a social gathering on or within that premises, residence, or other real property.

(2) Any individual to consume or possess a controlled substance at a social gathering on or within that premises, residence, or other real property.

(c) *Exceptions.* This section does not apply to the use, consumption, or possession of a controlled substance by an individual pursuant to a lawful prescription, or to the use, consumption, or possession of an alcoholic beverage by a minor for religious purposes.

(d) *Rebuttable presumption.* Evidence of all of the following gives rise to a rebuttable presumption that the defendant allowed the consumption or possession of an alcoholic beverage or a controlled substance on or within a premises, residence, or other real property, in violation of this section:

(1) The defendant had control over the premises, residence, or other real property.

(2) The defendant knew that a minor was consuming or in possession of an alcoholic beverage or knew that an individual was consuming or in possession of a controlled substance at a social gathering on or within that premises, residence, or other real property.

(3) The defendant failed to take corrective action.

(e) *Alcoholic beverages.* This section does not authorize selling or furnishing an alcoholic beverage to a minor.

(f) *Penalty.* A criminal penalty provided for under this section may be imposed in addition to any penalty that may be imposed for any other criminal offense arising from the same conduct.

(Code 1979, § 2:6.7)

State Law reference— Similar provisions, MCL 750.141a.

Sec. 14-146. - Possession or consumption by minors.

(a) Except as permitted by state law, a person less than 21 years of age shall not purchase or attempt to purchase alcoholic liquor, consume or attempt to consume alcoholic liquor, possess or attempt to possess alcoholic liquor, or have any bodily alcohol content.

(b) In this section:

Alcoholic liquor means any spirituous, vinous, malt or fermented liquor, liquids and compounds, whether or not medicated, proprietary, patented and by whatever name called, containing one-half of one percent or more of alcohol by volume which are fit for use for beverage purposes.

Minor means any person less than 21 years of age.

(c) Any minor who violates subsection (a) of this section shall be punishable as follows:

(1) For the first violation, a fine of not more than $100.00 and may be ordered to participate in substance abuse prevention services or substance abuse treatment and rehabilitation services, to perform community service and to undergo substance abuse screening and assessment at his own expense as described in state law.

(2) For a violation following a prior conviction or juvenile adjudication for a violation of subsection (a) of this section or a substantially corresponding state law, by imprisonment for not more than 30 days but only if the minor has been found by the court to have violated an order of probation, failed to successfully complete any treatment, screening or community service ordered by the court, or failed to pay any fine for that conviction or juvenile adjudication, a fine of not more than $200.00 and may be ordered to participate in substance abuse prevention services or substance abuse treatment and rehabilitation services, to perform community service, and to undergo substance abuse screening and assessment at his own expense as described in state law.

(3) For a violation following two or more prior convictions or juvenile adjudications for a violation of subsection (a) of this section or a substantially corresponding state law, by imprisonment for not more than 60 days but only if the minor has been found by the court to have violated an order of probation, failed to successfully complete any treatment, screening or community service ordered by the court, or failed to pay any fine for that conviction or juvenile adjudication, a fine of not more than $500.00 and may be ordered to participate in substance abuse prevention services or substance abuse treatment and rehabilitation services, to perform community service, and to undergo substance abuse screening and assessment at his own expense as described in state law.

(4) In accordance with and as provided in state law, when an individual who has not previously been convicted of or received a juvenile adjudication for a violation of subsection (a) of this section or a substantially corresponding state law pleads guilty to a violation of subsection (a) of this section, the court, without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and place the individual on probation upon terms and conditions as provided in state law. Upon violation of a term or condition of probation or upon a finding that the individual utilizing this subsection in another court, the court may enter an adjudication of guilt and proceed as otherwise provided by law. Upon fulfillment of the terms and conditions of probation, the court shall discharge the individual and dismiss the proceedings, which shall have the same effect as provided in state law.

State Law reference— Purchase, consumption or possession of alcoholic liquor by underage persons, MCL 436.1703.

Secs. 14-147—14-173. - Reserved.

ARTICLE VII. - OFFENSES AGAINST GOVERNMENTAL FUNCTIONS

Sec. 14-174. - Resisting or obstructing public officers or employees.

It shall be unlawful for any person to interfere with, impede, obstruct, resist, hinder, or wrongfully oppose any public officer or employee in the discharge of official duties.

(Code 1979, §§ 1:2.5(3)(a), 2:4.2(7))

State Law reference— Obstruction of police, MCL 750.479.

Sec. 14-175. - Avoiding prosecution for ordinance violations; obstructing justice.

(a) It shall be unlawful for any person to willfully offer information, or sign any statement, in what would reasonably appear to be an attempt to avoid prosecution for a violation of this Code.

(b) It shall be unlawful for any person to conspire with others to violate any section of this Code to avoid or thwart prosecution for ordinance violations or to otherwise obstruct justice.

(Code 1979, § 1:2.5(3)(b), (c))

Chapter 16 - PARKS AND RECREATION

ARTICLE I. - IN GENERAL

Sec. 16-1. - Supervision; compliance with park closure rules.

All parks in the City shall be operated and maintained under the direction of the recreation director who shall see to the operation and maintenance of the City parks under his supervision. The recreation director shall perform his duties subject to the supervision of the City manager. Unless otherwise provided in these provisions, the City Council shall determine the opening and closing hours for all City parks and shall post those hours in each park. A person's failure to comply with park closure rules shall constitute an offense.

(Code 1979, § 5:1.1(1))

Sec. 16-2. - Enforcement.

The City police department shall enforce all provisions relating to parks.

(Code 1979, § 5:1.1(2))

Sec. 16-3. - Launching restriction.

(a) Boats launched at the River Park and/or marina launches are subject to the following restrictions: No boat shall be launched at either facility which weights more than 8,000 pounds and/or is more than 30 feet in length.

(b) Parties who may be cited for this offense are the person or persons launching the boat as well as its registered owner. Proof that a boat in excess of 8,000 pounds and/or greater than 30 feet in length was launched from the marina or river park boat launch and proof that the defendant named in the complaint actually launched the boat or was the registered owner of the boat on the date it was launched shall constitute prima facie evidence that defendant committed this offense.

(c) The City police department has the duty and authority to enforce this chapter.

(Code 1979, § 5:3.4(1)—(3))

Secs. 16-4—16-24. - Reserved.

ARTICLE II. - BOARD OF PARK COMMISSIONERS FOR JOHN HENES PARK

Sec. 16-25. - Created; membership.

There is hereby created a board of park commissioners for the John Henes Park composed of five members who shall be freeholders and electors of the City and who shall serve without compensation for a six-year term. They shall be appointed by the mayor by and with the advice and consent of the majority of the council elect. Vacancies occurring in said board shall be filled in the same manner as the original appointments, and such appointees shall hold such office for the unexpired term of the member so vacating said office.

(Code 1979, § 1:8.5(1))

Sec. 16-26. - Officers.

The board of park commissioners for the John Henes Park shall triannually organize and elect one of its members chair. A majority of the board shall constitute a quorum for the transaction of business. The City clerk/treasurer shall be ex officio clerk of said board but shall have no vote therein. It shall be the clerk's duty to perform all the clerical labor required by said board and to have charge of all its books, records, accounts and papers.

(Code 1979, § 1:8.5(2))

Sec. 16-27. - Bylaws and rules for transaction of business.

The board of park commissioners for the John Henes Park shall have the power to make and adopt such bylaws, rules and regulations as it may deem necessary and expedient for the transaction of their business.

(Code 1979, § 1:8.5(3))

Sec. 16-28. - Functions.

(a) The board of park commissioners for the John Henes Park shall have the government, supervision, control, direction and management of the John Henes Park of the City of Menominee and all personal and real property belonging thereto, and shall make or cause to be made general and detailed plans for the improvement of the same, and shall carry out the plans as it shall have funds at its disposal for such purpose. All expenditures of public funds and the making of all structure work or improvements in or about the park of said City shall be under the direction of the board. The board shall make and enter rules and regulations for the government and control of the preservation of the park, and shall cause all rules and regulations to be entered in a book to be kept for that purpose signed by the chair and City clerk/treasurer. It shall be unlawful for any person to violate any rules and regulations made pursuant to this subsection.

(b) The board shall make a written report to the council on or before the first Monday in March in each year, which shall embrace a statement of the condition of the property and improvements under its control and the doings of the board for the preceding year; and of the receipts of the board from all sources and the amount thereof, together with an itemized receipt.

(c) On or before the first Monday in May in each year, the board shall submit to the council careful estimates in detail of the amount of money which, according to the judgment of the board, will be needed for improvements, current expenses and other necessary disbursements for the ensuing year, specifying as near as may be, each item and amount and the purpose for which it is to be used.

(d) The board shall have power in its discretion to lease to any yachting association or club organized in the City for yachting purposes a site on the John Henes Park for a clubhouse, also the right to construct a breakwater extending southerly therefrom into the water of Green Bay; provided, however, that no cost or expense shall accrue to said City therefrom.

(Code 1979, § 1:8.5(4), (6)—(8))

Sec. 16-29. - Finances.

Upon the application of the board of park commissioners for the John Henes Park to the City Council, the City Council shall, at its discretion, appropriate or raise money for the care, management or improvement of the park.

(Code 1979, § 1:8.5(5))

Secs. 16-30—16-46. - Reserved.

ARTICLE III. - PUBLIC CONDUCT IN PARKS

DIVISION 1. - GENERALLY

Sec. 16-47. - Park closing.

Any park section or parts of a park may be declared closed to the public by the police chief or his designee or the recreation director, at any time and for any interval of time, either temporarily or at designated intervals, when these officials, individually or collectively, determine that public safety or park maintenance requires.

(Code 1979, § 5:1.1(13))

Sec. 16-48. - Payment of user fees.

No use is allowed in any park for which a charge is made without the consent of the City Council.

(Code 1979, § 5:1.1(3))

Sec. 16-49. - Park use permit.

(a) *Required.* All organized uses of City parks for public gatherings, programs, festivals, rallies or demonstrations require the issuance of a park use permit from the recreation director. This park use permit must be in the possession of the person designated as in charge of the organized activity. Educational field trips organized by a school or activities conducted by a governmental agency acting within the scope of its designated authority are exempt from the permit requirement set forth in this section.

(b) *Application.* Applications for a permit to use a park shall be filed with the recreation director not more than 180 days before the date of the proposed activity. The form of this application shall be established by the recreation director and approved by the City Council.

(c) *Issuance.* Upon payment of any fee established for the park use permit, the recreation director shall determine whether the following listed criteria are satisfied. If the recreation director so determines, the permit shall be granted. If the recreation director does not make such a determination, the matter may be referred to the City manager for review and final determination.

(1) The proposed activity or use of the park will not unreasonably interfere with or detract from the general public's enjoyment of the park;

(2) The proposed activity and use will not unreasonably interfere with or detract from the promotion of public health, welfare, safety and recreation;

(3) The facilities desired have not been reserved for other uses at the day and hour required in the application;

(4) The conduct of such activity will not substantially interrupt the safety and orderly movement of traffic;

(5) The conduct of such activity will not require the diversion of so great a number of police officers of the City to properly police such activity and the areas contiguous thereto, as to prevent normal police protection to the City;

(6) The conduct of such activity is not reasonably likely to cause injury to persons or property, incite violence, crime or disorderly conduct;

(7) Such activity is not to be held for the sole purpose of advertising any product, goods or event, and is not designed to be held purely for private profit, except by recognized nonprofit organizations;

(8) The activity planned shall not create unreasonable noise within the remainder of the park or the surrounding neighborhood by natural or amplified means.

(d) *Assurance of performance.* The recreation director may require, as a condition of the issuance of a park use permit, that a bond or other security be posted to cover the cost of any cleanup of debris or repair of damage to park property. Any bond so required shall be in a form and in such amount as is acceptable to the recreation director, as necessary to protect the interests of the public and its property.

(Code 1979, § 5:1.1(4)—(7))

Sec. 16-50. - Sales.

(a) A license or permit to vend, sell, peddle or offer for sale any commodity or article within any park is required. Applications for such license or permit shall be filed with the recreation director, who shall establish the form and criteria required for issuance, subject to the approval of the City Council.

(b) Upon payment of any fee established for a park sales license or permit, the recreation director shall determine whether all necessary criteria have been satisfied. If the recreation director so determines, the license or permit shall be granted. If the recreation director does not make such a determination, the matter may be referred to the City manager for review and final determination.

(c) Upon compliance with the following criteria, to the satisfaction of the recreation director, a license to sell items within a City park shall be granted:

(1) The applicant must be a recognized nonprofit or charitable organization.

(2) All items intended for sale must be identified and are subject to approval by the recreation director as appropriate for the event and for sale on City property.

(3) Licenses to sell items are issued to organizations, only. Individual members or participants in an event may not sell under any such license.

(4) Park sales licenses will be issued only in conjunction with a special event for which a park use permit has been issued by the recreation director.

(5) Concession stands in City parks shall be operated by groups affiliated with the City and under the direction of the recreation director, for the benefit of the affiliated program. The recreation director may determine that concession stands may be available for operation by other groups or individuals not affiliated with the City. If such operation is permitted, an operating contract must be approved by the City manager and the City Council prior to taking effect. Any such contract is good for that season only.

(Code 1979, § 5:1.1(15), (16))

Sec. 16-51. - Clean up after use.

Each person, firm or corporation using the public parks and grounds shall clean up all debris, leaving the premises in good order and the facilities in a neat and sanitary condition.

(Code 1979, § 5:1.1(8))

Sec. 16-52. - Damage to park property.

No person shall obstruct any walk or drive in any park and no person shall injure, mar, or damage in any manner, any monument, ornament, fence, bridge, seat, fountain, shrub, flower, playground equipment, fireplace, picnic table or other public property within or pertaining to any park, nor harass any of the animals at John Henes Park.

(Code 1979, § 5:1.1(10))

State Law reference— Malicious mischief generally, MCL 750.377a et seq.

Sec. 16-53. - Alcoholic beverages.

(a) Except in areas so designated by the City Council and posted to include any restrictions, it shall be unlawful for any person to have in his possession, custody or control, any alcoholic beverages within the City's parks.

(b) Any person or nonprofit organization applying for a park use permit desiring to dispense alcoholic beverages for sale or without charge during the event must first secure a license for the same from the state liquor control commission and display evidence of such license to the recreation director at the time said application is sought, and upon issuance of a parks use permit shall adhere to the terms and conditions of the permit and the liquor control commission license. In addition, any applicant seeking to dispense alcoholic beverages under a park use permit shall secure insurance as specified by section 803 of the Michigan Liquor Control Act of 1998 (MCL 436.1803) naming the City as an additional insured in limits of not less than $500,000.00 as to any one person and not less than a total of $1,000,000.00 to all persons as occasioned by any event giving rise to a cause of action for violation of state liquor laws, or any related statute or common law basis of liability. Insurance hereunder shall not be deemed to be a waiver of governmental immunity by the City or any of its officers, employees or agents. Each applicant for a park use permit shall also attach to such application evidence of issuance of such insurance as required herein.

(Code 1979, § 5:1.1(17), (19))

Sec. 16-54. - Animals.

(a) *Pets.* Dogs are permitted in parks, subject to the conditions set forth in subsections (b) through (d) of this section, unless a sign is posted bearing the legend "No dogs allowed." In the event such a sign is posted, it shall not apply to any dog which is used as a guide dog or leader dog for a blind person, to a hearing dog for a deaf or audibly impaired person, or to a service dog for a physically limited person, as each of those terms is defined by state law.

(b) *Leash required.* In park areas where dogs are permitted, all dogs shall at all times be kept on a leash no more than six feet in length, and kept under the immediate control of the owner, handler or person accompanying the animal.

(c) *Off-limits areas.* Dogs and other household pets are not permitted in any park beach areas, playgrounds, tennis courts, or on sports fields and bleachers. This subsection does not apply to any dog which is used as a guide dog or leader dog for a blind person, to a hearing dog for a deaf or audibly impaired person, or to a service dog for a physically limited person, as each of those terms is defined by state law.

(d) *Excrement removal.* No person owning, handling or accompanying a dog shall allow or permit that dog to be in any area of the park unless that person has in their immediate possession an appropriate

device for the scooping of dog excrement and an appropriate depository for the transmission of dog excrement to a receptacle located either in the park or on property possessed or owned by that person. No person who is in control of or accompanying a dog in a park shall fail to place such dog's excrement in such a receptacle and depository.

(e) *Posted areas.* The City manager is authorized to have parks or park areas designated as "No dogs allowed" by having signs posted, as deemed necessary for the public health, safety and welfare.

(Code 1979, § 5:1.1(14)(a)—(14)(e))

State Law reference— Right of certain persons to be accompanied by service dog, MCL 750.502c.

Sec. 16-55. - Operation of vehicles.

(a) No person shall operate any motor vehicle, motorcycle, or minibike on any park property not designated as a driveway or parking area.

(b) No person shall park any motor vehicle on any park property that has not been designated as a parking area.

(c) It shall be unlawful for any person to operate any motorized vehicle or conveyance upon any park within the City that has not been registered for use and operation on public roadways, or any water recreation vehicles which are not properly registered or licensed for use on the waterways, which is not also at all times during the use in said parks, displaying the appropriate license issued as a result of said registration.

(Code 1979, § 5:1.1(20))

Sec. 16-56. - Permitted fires.

No person shall kindle or build fires in any park except in fireplaces or stoves intended for that purpose. Prior to leaving such fires, it shall be the duty of all persons using a fire to see that it is fully extinguished.

(Code 1979, § 5:1.1(9))

Sec. 16-57. - Signs.

It shall be unlawful for anyone to paste, glue, tack or otherwise post any sign, placard, advertisement, or inscription whatsoever, nor shall any person erect or cause to be erected any sign whatsoever on any public lands or highways or roads adjacent to a public park, provided that this section shall not apply to any properly authorized government officials in pursuit of any official duty nor any directional signs for an authorized park use so long as such signs are posted no more than one hour before the event begins and are removed when no longer needed, but by no means later than park closing time on the date of the park use.

(Code 1979, § 5:1.1(18))

Sec. 16-58. - Sound systems.

No person shall use a sound amplification device in excess of the sound level at which the content of such sound is distinguished by persons of average hearing at a distance of 30 feet from the source of

such amplification device unless such device is used in conjunction with a park use permit and is authorized by such permit. Any sound amplification device used in conflict with this provision is subject to seizure by the City police department or other authorized law enforcement agency.

(Code 1979, § 5:1.1(11))

Sec. 16-59. - Swimming.

The recreation director shall designate the beaches at which public swimming is authorized in the City parks. All such beaches shall be posted to set forth the hours during which lifeguards will be provided and the rules that will apply in the swimming areas. Swimming is not advised on any beach at which lifeguards are not assigned and on duty.

(Code 1979, § 5:1.1(12))

Secs. 16-60—16-76. - Reserved.

DIVISION 2. - SPECIFIC FACILITIES

Sec. 16-77. - John Henes Park.

(a) It shall be unlawful to violate any Code provisions in John Henes Park, in addition to section 16-53, as modified, in that the sale of alcoholic beverages is not allowed in John Henes Park.

(b) In John Henes Park, it shall also be unlawful for any person:

(1) To drive any motor vehicle, motorcycle, bicycle on any park thereof not designated by the Board of Henes Park Commissioners as a driveway or parking area;

(2) To drive any vehicle to the left after entering said park;

(3) To park any vehicle on the traveled portion of such driveway;

(4) To park any motor vehicle, motorcycle, or bicycle on any part thereof which has not been declared and designated by said park commissioners as a parking area; and

(5) To trespass upon John Henes Park from the park season opening until the day following Labor Day, between the hours of:

8:30 p.m. to 9:00 a.m.	Monday through Friday;
8:30 p.m. to 7:00 a.m.	Saturday and Sunday except that nonvehicular traffic is allowed in the park beginning at 6:00 a.m. any day.

(6) To trespass upon John Henes Park from the day following Labor Day until the park season closing between the hours of:

6:00 p.m. to 9:00 a.m.	Monday through Friday.
6:00 p.m. to 7:00 a.m.	Saturday and Sunday except that nonvehicular traffic is allowed in the park beginning at 6:00 a.m. any day.

(c) From the day after park season closing until the date of park season opening, the following year, no vehicular or motorized traffic is allowed in John Henes Park. Pedestrians, only, are permitted to use the park from 6:00 a.m. to 5:00 p.m. during this period of park season closure.

(d) Violations of any portion of this section shall be deemed to be a misdemeanor offense. All officers and directors of any organization or corporation, which is deemed to have violated this offense, shall be individually responsible for the actions of such corporation or organization.

(Code 1979, § 5:2.2(A))

Sec. 16-78. - Veterans Memorial Park, Dubey Park, Triangle Park, West End Park, Water Tower Park.

(a) It shall be unlawful for any person to enter upon or remain in any of these parks after the hour of 10:00 p.m. and before the hour of 6:00 a.m. any day of the week, all year around.

(b) Violations of any portion of this section shall be deemed to be a misdemeanor offense. All officers and directors of any organization or corporation, which is deemed to have violated this offense, shall be individually responsible for the actions of such corporation or organization.

(Code 1979, § 5:2.2(B))

Sec. 16-79. - Great Lakes Memorial Marina Park.

(a) It shall be unlawful for any person to enter upon or remain in Great Lakes Memorial Marina Park after the hour of 10:00 p.m. and before the hour of 6:00 a.m. any day of the week, all year around.

(b) Violations of any portion of this section shall be deemed to be a misdemeanor offense. All officers and directors of any organization or corporation, which is deemed to have violated this offense, shall be individually responsible for the actions of such corporation or organization.

(Code 1979, § 5:2.2(C))

Sec. 16-80. - River Park Campground.

(a) All persons who enter upon the grounds of River Park Campground shall obey the parks rules and regulations, as posted or provided by park personnel. Campers are responsible to inform their guests of these rules. River Park Campground quiet hours begin at 11:00 p.m., at which time no noise that will disturb neighboring campers is permitted. After 12:00 midnight and until 6:00 a.m. the following morning, River Park Campground is closed to all but registered campers.

(b) Violations of any portion of this section shall be deemed to be a misdemeanor offense. All officers and directors of any organization or corporation, which is deemed to have violated this offense, shall be individually responsible for the actions of such corporation or organization.

(Code 1979, § 5:2.2(D))

Chapter 18 - SOLID WASTE[1]

Footnotes:

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State Law reference— Solid waste management, MCL 324.11501 et seq.; authority to regulate solid waste disposal, MCL 324.4301, 123.361 et seq.; littering, MCL 324.8901 et seq.

ARTICLE I. - IN GENERAL

Sec. 18-1. - Unlawful dumping or disposal.

(a) No person shall deposit anywhere in the City any garbage, refuse, junk, grass clippings, and other items for collection by the City which were not generated by a business, industry, residence or other source which is located within the corporate limits of the City.

(b) No person shall deposit any items in, at, near, or in the vicinity of the City recycling center except when it is open, during posted hours. At no time shall garbage, refuse, junk, grass clippings or other items not specifically designated by the City as accepted recyclables be left at, in, near or in the vicinity of the recycling center. Only recyclables generated by a business, industry, residence or other source which is located within the corporate limits of the City may be deposited at the recycling center.

(Code 1979, § 2:9.1(1)—(3))

State Law reference— Littering, MCL 324.8901 et seq.

Secs. 18-2—18-20. - Reserved.

ARTICLE II. - COLLECTION[2]

Footnotes:

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State Law reference— Authority to regulate solid waste disposal, MCL 324.4301, 123.361 et seq.; littering, MCL 324.8901 et seq.

Sec. 18-21. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Ashes means the residue from the burning of wood, coal, coke, and refuse in heating and cooking occurring in households, apartments, offices or other business places, but not to include residue from industrial plants or operations.

Building materials includes wood, glass, roots, trees, land clearing products, masonry and all other waste resulting from the construction or demolition of buildings or land clearing.

Commercial rubbish means the miscellaneous waste and materials resulting from the operation of mercantile enterprises and includes packing boxes and cartons, excelsior, paper and rubbish from offices, stores and mercantile establishments but excludes construction and trade wastes.

Container means a storage area for 33-gallon-capacity plastic bags.

Designated contract hauler or *municipal hauler* means the person who contracts with the City for the pickup and disposal of refuse, and garbage materials for all residential and small business service users of the City.

Domestic rubbish means nonputrescible solid waste materials resulting from housekeeping and ordinary mercantile enterprises, and includes such material as cardboard, plastic, paper, wood, glass, and cloth articles. The term "domestic rubbish" excludes ashes, tires, metal containers and building materials.

Garbage means all solid putrescible waste such as rejected food wastes, accumulation of animal, fruit or vegetable matter used or intended for food or that attends the preparation, use, cooking, dealing in or storing of meat, fish, fowl, fruit or vegetables together with other incidental admixtures and animal manure and offal.

Refuse means solid wastes, and includes garbage, yard waste, domestic rubbish, commercial rubbish, and ashes but does not include body wastes, building materials, trade waste, and hazardous waste.

Residential and small business refuse collection service means the service for collection and disposal of refuse provided by the schedule of the designated contract hauler as administered through its contract with the City.

Residential and small business refuse collection service user means the owner, tenant, and/or occupant of a residential building or structure containing no more than four residences, and small businesses generating no more than six bags of garbage per week.

Solid waste means garbage, rubbish, ashes, incinerator ash, incinerator residue, street cleanings, municipal and industrial sludges, and solid commercial and solid industrial waste, animal waste, but does not include human body waste, liquid or other waste regulated by statute, ferrous, or nonferrous scrap directed to a scrap metal processor or to a reuser of ferrous or nonferrous products.

Trade waste means the waste material resulting from commercial or industrial operations and is not classified as municipal waste, except as hereinafter provided.

Yard waste means grass clippings, lawn, or tree trimmings, leaves and dead garden plants from the normal household. It shall not include sod, tree stumps, tree parts over three inches in diameter, or refuse from work of landscape gardens or private companies such as landscaping firms or nurseries.

(Code 1979, § 10:3.1)

Sec. 18-22. - City collection service.

(a) The City shall provide refuse collection service to all residential and small business properties in the City. Owners and occupants of such properties shall adhere to the provisions of the City ordinances and the rules and regulations promulgated thereunder. Use of the City refuse collection service is mandatory.

(b) The collection, removal and disposal of solid waste shall be conducted under the supervision, direction and control of the City manager.

(c) The municipal weekly collection of refuse shall be limited to the removal of the contents of such rubbish and garbage containers as herein defined; and any other waste materials incapable of being temporarily placed in such container or not classified as refuse shall be removed by such occupant or owner from their premises at their own expense and by private carrier.

(d) The City manager shall make reasonable rules and regulations concerning the collection of solid waste as he shall deem proper, subject to approval of the City Council. No person shall fail to observe any such rule or regulation so adopted and approved. Upon order of the City manager, the City solid waste collection service may be discontinued to any property where the owner or occupant fails or refuses to comply with the provisions of this article or any rule or regulation adopted pursuant hereto, and such service need not thereafter be reinstated until such violation is remedied to the satisfaction of the manager.

(Code 1979, § 10:3.2)

Sec. 18-23. - Littering.

(a) It is unlawful for any person, firm or corporation to litter or permit to be littered on any of the streets, alleys, sidewalks, drains or drain easements or other public places within the City by throwing, depositing, dripping, dumping, or spilling any trash, paper, dirt, mud, ashes, sand, glass, leaves, garbage, rubbish, debris or other materials or to deposit or cause the same to be deposited upon or permit the same to be accumulated upon any premises other than in containers as designated in this article.

(b) It is unlawful to discharge any commercial or industrial water or any polluted or contaminated waste upon the sidewalks, streets, alleys or gutters within the City at any time.

(c) It is unlawful for any person to assist, aid, abet, or encourage any persons, firms or corporations to violate the provisions of this article.

(Code 1979, § 10:3.10)

State Law reference— Littering, MCL 324.8901 et seq.

Sec. 18-24. - Spreading of wastes in alleys.

No person shall deposit or cause to be deposited or sort, scatter, or leave any rubbish, earth, ashes, cinders, sawdust, hay, glass, manure, filth, paper, dirt, grass, leaves, twigs, shrubs, garbage, or other waste material, or build or maintain any structure of things whatsoever for containing the same in any public street, alley or public property of the City.

(Code 1979, § 10:3.11)

State Law reference— Littering, MCL 324.8901 et seq.

Sec. 18-25. - Occupants' duty.

In the case of any alley, street, or easement, where any substance has been deposited in violation of this article, it shall be the duty of every owner or occupant of any lot or premises to remove from one-half of said alley, or street, or easement, adjoining said lot or premises all such substances. It shall be the duty of every occupant of premises abutting upon an alley, street, or easement to keep his adjoining half of said alley, street, or easement in a clean, neat and orderly condition and to keep all weeds and grasses removed or cut to a height not to exceed one foot at all times.

(Code 1979, § 10:3.12)

Sec. 18-26. - Keeping and storage of wastes.

(a) Garbage, ashes and rubbish may be mixed but shall be kept in containers of a type specified in section 18-27.

(b) Garbage shall be wrapped in paper or plastic and shall be drained of excess moisture.

(c) Refuse made up of or containing small or fine particles such as dust, cold ashes, or sawdust shall be contained in plastic bags.

(Code 1979, § 10:3.3)

Sec. 18-27. - Containers.

(a) *Required.* For every building used as a single dwelling, where waste accumulates, the occupant or owner and, in the case of multiple dwellings as defined in the state housing code, the owner, lessee or agent shall cause waste containers to be provided for the building as needed for temporary storage of all refuse, as herein defined, until scheduled removal by the municipal collector. In buildings other than dwellings, the person or persons responsible for or causing an accumulation of garbage, ashes, rubbish, or other waste material shall be held responsible for furnishing and maintaining proper containers for such materials. All plastic bags containing garbage to be collected shall be removed from such containers when placed at the designated collection site for each parcel.

(b) *Garbage containers.*

(1) For garbage or any mixture containing garbage, containers shall be watertight and vermin proof.

(2) All containers shall be maintained in a sanitary and safe condition.

(3) The City requires garbage to be placed in approved plastic bags. Such bags are not to be placed in the designated collection area any earlier than 5:00 p.m. the night before pickup and secured with tops stapled, tied or otherwise fastened so that garbage will not scatter or litter the area if tipped or spilled. The designated collection area is at curbside or street side of the street or avenue that corresponds to the property address, unless another location is specifically designated for a particular property by the City manager.

(4) Only approved plastic bags will be collected by the municipal hauler. Approved plastic bags shall be of sufficient thickness and strength to support the weight of the garbage or rubbish contained without tearing or otherwise disintegrating when lifted and shall be limited to a 33-gallon capacity and weigh no more than 40 pounds when full. Torn or otherwise defective or spilled plastic bags will not be picked up by the municipal collector, but must be removed and properly disposed of by the property owner or occupant, in accordance with this article, by the end of the scheduled collection day.

(c) *Rubbish containers.* Rubbish containers shall be the same as those described for garbage.

(d) *Storage location.* No person shall place or maintain storage containers for garbage, waste, rubbish or debris of any nature in front of a residence or in the area from the front of the residence to the roadway and, if on a vacant lot, then not closer than 30 feet back from the lot line at the street.

(e) *Placement for collection.*

(1) All plastic bags of rubbish or garbage shall be placed at ground level on the occupant's property in the designated collection area for collection by the municipal collector of rubbish and garbage.

(2) When plastic bags of rubbish or garbage are set in a rack or stand, said rack or stand shall provide for the convenient removal and replacement of the plastic bags without requiring more than a one-foot vertical lift from said rack or stand.

(3) The municipal collector shall not collect rubbish or garbage if not in the required plastic bags and if not properly placed in the designated area. It is the responsibility of the property owner or occupant to dispose of any garbage or rubbish not removed by the municipal collector by the end of the scheduled collection day

(f) *Number of containers.* The City shall provide for weekly collection of refuse. City collection shall be limited to not more than six bags per household or business establishment.

(Code 1979, §§ 10:3.4—10:3.9)

Sec. 18-28. - Collection charge; resolution; failure to pay; lien upon property.

(a) Charges to defray the costs of the collection, transport and disposal of all forms of municipal waste shall be determined by a duly adopted resolution of the City Council and published in the same manner as an ordinance pursuant to the Charter. Charges may include, but not be limited to, rates for the sale of refuse and compost stickers, rates charged through utility billings for all or part of the service. Charges may also include millage rates when duly adopted pursuant to the Charter and existing laws governing the establishment of operational millage levies.

(b) It shall be a violation of this article for a residential or small business service user to fail to pay the charges for the collection and disposal of refuse and recyclable materials levied and collected by the City.

(c) Charges levied through the utility billing or as a tax levy shall be determined on the basis of meeting minimal availability of service costs as well as providing for costs associated with the recycling of waste, if recycling is provided. If such charges are levied as taxes, the normal procedures in both the City Charter and state law shall govern regarding the determination and implementation of an appropriate millage rate.

(d) For all charges financed through the utility billing system and not paid within 30 days of the date of any bill, a penalty of ten percent of the current charges will be added to the account balance. Charges for refuse collection appearing on utility bills shall constitute a lien on the property served and all account balances, including any accumulated penalty charges, in excess of six months in arrears shall be placed on the next general tax roll of the City with a ten percent penalty, shall become a valid tax lien against the property served, and shall be collected as part of the general City taxes. For all charges financed through a millage levy or all delinquent utility charges placed on the City tax rolls, all of the laws pertaining to the collection of property taxes shall govern.

(e) Except as otherwise provided in this chapter, certain persons may be eligible to receive a waiver of refuse/recycling fees subject to policy established from time to time by resolution of the City Council. The board of review shall have the authority to waive any part or all of such fees for a period of up to one year if it finds that special circumstances or financial hardships exist to warrant such waiver.

(Code 1979, § 10:3.13)

Chapter 20 - SPECIAL ASSESSMENTS

Sec. 20-1. - Definitions.

When used in this chapter and other applicable portions of this Code, the following terms shall have the meanings respectively ascribed, as follows:

Cost.

(1) The term "cost," when referring to the cost on any improvement, includes the cost of surveys, plans, land, rights-of-way, spreading of rolls, notices, advertising, financing and construction and all other costs incident to the making of such improvement, the special assessments therefor and the financing thereof.

(2) The term "cost" means the same as provided in Charter section 13.02.

Improvement means any public improvement, any part of the cost of which is to be assessed against one or more lots or parcels of land to be especially benefited thereby in proportion to the benefit to be derived therefrom.

(Code 1979, § 8:2.1(1))

Sec. 20-2. - City Council authority.

The council shall have power to determine that the whole or any part of the cost of any improvement shall be defrayed by special assessments upon the property especially benefited, but such determination shall not be made until the preliminary proceedings provided for in section 20-4 shall have been completed.

(Code 1979, § 8:2.1(2))

Sec. 20-3. - Scheduling, grouping and financing of improvements; construction and cut-off dates.

In order to permit adequate scheduling, grouping and financing of improvements, all petitions shall be received 12 months in advance of the estimated construction dates. Cut-off dates for review and approval of petitions will be January 1 and August 1 of each year.

(Code 1979, § 8:2.1(3))

Sec. 20-4. - Preliminary proceedings.

Before determining to make any improvement, any part of the cost of which is to be defrayed by special assessment, the council shall, by resolution, require the City engineer to prepare, or cause to be prepared, plans and specifications therefor and an estimate of the cost thereof, and to file the same with the City clerk/treasurer together with his recommendation as to what proportion of the cost should be paid by special assessment may be applied, and the land which should be included in the special assessment district. After the report is filed with the City clerk/treasurer, it shall be presented to the council and said report shall be available for public examination. Whenever any land which should be included in the special assessment district may not be assessed because it is owned by a public agency, a written agreement shall be reached whenever possible providing for the payment of such agency's benefiting share of the cost of the improvement. This agreement, or advice that such agreement cannot be reached, shall be presented to the council prior to the adoption by council of the resolution provided for by section 20-5.

(Code 1979, § 8:2.1(4))

Sec. 20-5. - City Council determination.

After said report is presented to the council, the council may, by resolution, approve the plans and specifications and estimate the cost, determine to make the improvement and to defray the whole or any part of the cost of the improvement by special assessment upon the property especially benefited in proportion to the benefits thereto. By such resolution the council shall approve the plans and specifications for the improvement; determine the estimated cost thereof; determine what proportion of such cost shall be paid by special assessment upon the property especially benefited and what part, if any, shall be general obligation of the City; designate the district or land and premises upon which special assessments shall be levied; and direct the City clerk/treasurer to prepare a special assessment roll in accordance with the council's determination.

(Code 1979, § 8:2.1(5))

Sec. 20-6. - Preparation of roll.

The assessor shall thereupon prepare a special assessment roll including all lots and parcels of land within the special assessment district designated by the council, and shall assess to each such lot or parcel of land such relative portion of the whole sum to be levied against all the lands in the special assessment district as the benefit to such lot or parcel of land bears to the total benefits to all lands in such district. There shall also be entered upon such roll the amount which has been assessed to the City at large, if any.

(Code 1979, § 8:2.1(6))

Sec. 20-7. - Filing roll.

When the assessor shall have completed such assessment roll, he shall attach thereto, or endorse thereon, his certificate to the effect that the roll has been made by him pursuant to a resolution of the council (giving date of adoption of same) and that in making the assessments therein he has as near as may be, according to his best judgment, conformed in all respects to the directions contained in such resolution, and to the City Charter and the provisions of this chapter. Thereupon he shall file special assessment roll with the City clerk/treasurer who shall present the same to the council.

(Code 1979, § 8:2.1(7))

Sec. 20-8. - Public hearing.

Upon receipt of a special assessment roll the council shall order it and the information presented to the council by the City assessor, pursuant to section 20-4 hereof, filed in the office of the City clerk/treasurer for public examination; shall fix the time and place when it will meet and review such roll and hear all persons interested in the necessity of the improvement; and shall direct the City clerk/treasurer to give notice of said hearing. Such notice shall specify the time and place of such hearing and shall be published once in the official newspaper of the City, not less than ten days prior to the date of such hearing. A like ten-day notice shall also be sent by mail by the City clerk/treasurer to each owner of the property subject to assessment, as indicated by the records of the City assessor's office.

(Code 1979, § 8:2.1(8))

State Law reference— Required notices and hearings, MCL 211.741 et seq.

Sec. 20-9. - Objections to roll.

Any person deeming himself aggrieved by the special assessment roll or the necessity of the improvement may file his objections thereto in writing with the City clerk/treasurer prior to the close of said hearing, which written objections shall specify in what respect he deems himself aggrieved. No original assessment roll shall be confirmed except by the affirmative vote of two-thirds of the members of the council if prior to such confirmation written objections to the proposed improvement have been filed by the owners of property which will be required to bear over 50 percent of the amount of such special assessment.

(Code 1979, § 8:2.1(9))

Sec. 20-10. - Confirmation.

The council shall meet and review the said special assessment roll at the time and place appointed, or at an adjourned date therefor, and shall consider any written objections thereto. The council may correct said roll as to any assessment or description of any lot or parcel of land, or other errors appearing therein. Any changes made in such roll shall be noted in the council minutes. After such hearing and review, the council may confirm such special assessment roll with such corrections as it may have made, if any, or may refer it back to the assessor for revision or may annul it and any proceedings in connection therewith. Upon confirmation of any special assessment roll the council shall determine the number of installments in which the assessments may be paid, and shall determine the rate of interest to be charged on installments but not to exceed the rate of interest as allowed by law. The City clerk/treasurer shall endorse the date of confirmation upon each special assessment roll. Such roll shall, upon confirmation, be final and conclusive.

(Code 1979, § 8:2.1(10))

Sec. 20-11. - Assessing single lots.

When any expense shall have been incurred by the City upon or in respect to any single premises, which expense is chargeable against such premises and the owner thereof under the provisions of the Charter, this Code, or law of the state and is not of that class required to be pro-rated among several lots and parcels of land in a special assessment district, an account of the labor, material or services for which such expense was incurred, verified by the clerk, with a description of the lot and the name of the owner, if known, shall be reported to the City clerk/treasurer who shall immediately charge and bill the owner, if known. Such bill shall be sent by first class mail to the owner of the property to be assessed and such bill shall notify said owner of the time of the meeting of the council, not sooner than 30 days thereafter, when the council will meet for the purpose of adopting a resolution placing a special assessment upon said property for such charges unless the same are paid prior to the date of such meeting. At such meeting the council shall adopt, a special assessment resolution covering each parcel of land for which such charges have not been theretofore paid in full. As many parcels may be included in single resolution as shall be convenient. Upon adoption of such resolution the council may authorize installment payments, and if installment payments are authorized, shall determine the number of installments and the rate of interest to be charged thereon, but not to exceed the rate of interest as allowed by law. Immediately after the adoption of such resolution, the City clerk/treasurer shall give notice of the several amounts so determined to the several persons chargeable therewith. Such notice shall be sent by first class mail to the last known addresses of such persons as shown on the assessment roll of the City, or by publication. Such notice shall state the basis of the assessment, and the amount thereof, and shall give a reasonable time, not less than three days, within which payment shall be made to the treasurer. In all cases where payment is not made within the time set, the fact shall be reported by the City clerk/treasurer to the assessor, who shall charge such amounts, together with a penalty of ten percent of such amounts, against the persons or real property chargeable therewith, on the next tax roll. Assessments for the construction, rebuilding and repair of sidewalks shall be levied under the provisions of this section.

(Code 1979, § 8:2.1(11))

Sec. 20-12. - General procedures inapplicable.

The special assessment resolution shall be treated as a special assessment roll and the adoption of such resolution shall correspond to the confirmation of a special assessment roll. The provisions of sections 20-1 through 20-11 with reference to special assessments generally and the proceedings necessary to be had before making the improvements, shall not apply to assessments contemplated under sections 20-11 and 20-13 and the following sections of this chapter shall, however, be applicable to single lot assessments.

(Code 1979, § 8:2.1(12))

Sec. 20-13. - Attachment of lien.

All special assessments contained in any special assessment roll, including any part thereof deferred as to payment, shall, from the date of confirmation of such roll, constitute a lien upon the respective lots of parcels of land assessed and until paid shall be a charge against the respective owners of the several lots and parcels of land. Such lien shall be of the same character and effect as the lien created for City taxes and shall include accrued interest and penalties. No judgment or decree, nor any act of the council vacating a special assessment, shall destroy or impair the lien of the City upon the premises assessed for such amount of the assessment as may be equitably charged against the same, or as by a regular mode of proceeding might be lawfully assessed thereon.

(Code 1979, § 8:2.1(13))

Sec. 20-14. - Due date.

Upon confirmation of any special assessment roll, the council shall determine the number of installments in which the assessments may be paid, the due date of the first installment shall be the next August 1st unless otherwise directed by the council and the due dates of the subsequent installments of the special assessment roll if the special assessment roll is divided into more than one installment shall be August 1 of each following year, the rate of interest to be charged on the installments, but not to exceed the rate of interest allowed by law, and the date when said interest shall commence. The special assessment installment then due shall become part of the regular August property tax statement and shall not be collected separate therefrom.

(Code 1979, § 8:2.1(14))

Sec. 20-15. - Handling of the assessment roll.

After confirmation, the City clerk/treasurer shall divide the assessments into installments when so ordered by the council; provided that if such division operates to make any installment less than $10.00, then the City clerk/treasurer shall reduce the number of installments so that each installment shall be above and as near $10.00 as possible. The City clerk/treasurer shall mail statements of the several assessments to the respective owners as indicated by the records of the assessor, of the several lots and parcels of land assessed, stating the amount of the assessment and the manner in which it may be paid; provided, however, that failure to mail any such statement shall not invalidate the assessment or entitle the owner to an extension of time within which to pay the assessment.

(Code 1979, § 8:2.1(15))

Sec. 20-16. - Delinquent installment.

When any such special assessment, or installments thereof when divided into installments, shall have been due and unpaid, the same shall draw interest and penalty as any regular tax.

(Code 1979, § 8:2.1(16))

Sec. 20-17. - Early payment.

The whole of any assessment or one or more full installments thereof, may be paid during the first 30 days after confirmation of the roll, without interest or penalty. After expiration of this 30-day period, the

second and subsequent installments, not yet reported to the assessor for adding to the August tax roll, may be discharged by paying the face amount of such installment, plus interest thereon computed to the date of payment.

(Code 1979, § 8:2.1(17))

Sec. 20-18. - Installment due dates and reporting procedure.

Subsequent installments shall be due and payable annually on August 1 of each year and shall be collected by the City clerk/treasurer from the original special assessment roll. Special assessments shall be reported by the City clerk/treasurer to the assessor not later than July 1 of each year, who shall then spread the same upon the August tax roll. In addition to the principal amount of each annual installment, there shall be added thereto and collected from the special assessment roll by the City clerk/treasurer as a part of each such installment, the interest due on the entire unpaid balance of the special assessment computed August 1 of the year in which the installment is due; provided, that when any annual installment shall have been prepared as herein provided, then there shall be due and payable on August 1 of such year, only the interest upon the unpaid balance of the special assessment. In collecting each installment from the special assessment roll, the City clerk/treasurer shall have the same rights and remedies as provided in the charter for the collection of other taxes. If any annual installment, the interest thereon or the amount due annually as interest on the unpaid balance of the assessment due in any year as herein provided, shall not be paid before March 1 of the fiscal year when due, the amounts thereof shall be declared delinquent and shall be reported by the City clerk/treasurer to the assessor and county treasurer with the August property tax and shall draw the same penalties and interest as assigned to any regular tax.

(Code 1979, § 8:2.1(18))

Sec. 20-19. - Determining actual cost.

Upon completion of the improvement and payment of the cost thereof, the City clerk/treasurer shall certify the total cost of said improvement to the council, together with the amount of the original roll for said improvement.

(Code 1979, § 8:2.1(19))

Sec. 20-20. - Deficiency assessments and refunds.

Should the assessments in any special assessment roll, including the amount assessed to the City at large, prove insufficient for any reason to pay the cost of the improvement for which they were made or in case of invalidity in whole or in part of the assessment, then the council may take additional assessments against the City and the several lots and parcels of land within the special assessment district, in the same ratio as the original assessments, to supply the deficiency; or the council may determine that such deficiency shall be paid by the City, but the total amount assessed against any lot or parcel of land shall not exceed the value of the benefits received from the improvement. Should the assessments levied prove to be more than necessary to defray the cost of the improvement, then the council shall refund the excessive assessments, provided however, that if the excess is less than five percent of the total cost, it may be placed in a general fund of the City.

(Code 1979, § 8:2.1(20))

Chapter 22 - STREETS, SIDEWALKS AND OTHER PUBLIC PLACES

ARTICLE I. - IN GENERAL

Sec. 22-1. - Vacating of streets, alleys, common thoroughfares or rights-of-way.

Before the City Council considers, upon request, recommendation or its own initiative, whether to vacate a public street, alley, other common thoroughfare or right-of-way, it will first conduct a public hearing on the question, pursuant to the following conditions:

(1) The City manager shall set the time and place of each public hearing to be conducted under this chapter.

(2) A notice of the public hearing will be published a minimum of seven days before the hearing in a local newspaper of general circulation.

(3) Notice will be sent, by regular mail, seven days or more before the hearing, to owners of property located within 300 feet of any portion of the area under consideration to be vacated, identifying the precise area under consideration and the date, time and location of the public hearing. This notice shall be sent to the address and person identified on the City assessment roll as the current owner of the property. Failure to send such notice to any owner of property shall not invalidate the public hearing process.

(4) A copy of all relevant information pertaining to the potential vacation under consideration will be available for review in the City clerk/treasurer's offices during regular business hours, for seven days prior to the public hearing.

(5) Absent any express vote by the City Council to deviate therefrom, the City Council will not vote on the question of vacating the area under consideration at the same meeting in which it conducts this public hearing.

(Code 1979, § 7:6.1)

State Law reference— Recording of street vacations in platted areas, MCL 560.256 et seq.

Sec. 22-2. - Sidewalk construction/maintenance.

(a) The owners of the parcels of land abutting streets where sidewalks are constructed, or have been ordered or shall hereafter be ordered to be constructed, shall construct such walks, if not already constructed, and if already constructed or hereafter to be constructed, shall hereafter, or thereafter, as the case may be, maintain and keep in repair all such walks in conformity with the provisions of this Code for the building of sidewalks as they now exist or may hereafter be altered or established, so that said walks shall at all times be in a good and safe condition for public travel thereon.

(b) All sidewalks, crosswalks, and driveways over and across sidewalks to be hereafter constructed shall be Portland cement concrete sidewalks, and shall be constructed in accordance with the grade and specifications prepared by the City engineer, approved by the council and on file in the office of the City building inspector who shall without charge therefor, provide a copy of the same upon request to any person, firm or corporation granted a permit as aforesaid to construct or repair sidewalks, crosswalks, or driveways over and across sidewalks.

(c) No cement sidewalks shall be hereafter constructed until the building inspector shall first issue a permit for such construction in conformity with the provisions of this article.

(d) Whenever in the opinion of the building inspector any sidewalk shall have become so worn, damaged or decayed as that the public safety or convenience requires that such sidewalk shall be generally repaired, reconstructed, or replaced

(e) Adoption of appropriate rules by City engineer.

(1) The City engineer shall adopt appropriate rules applicable to sidewalks, crosswalks, driveways, railway crossings, parking lots and sewer lines, including but not limited to their construction, location and materials used as the City engineer shall deem appropriate.

(2) Failure to comply with these rules, as adopted by the City engineer, or take corrective steps required by the City engineer to conform to such rules, within a reasonable time, as established by the City engineer, shall constitute an offense.

(Code 1979, § 7:2.2)

Secs. 22-3—22-22. - Reserved.

ARTICLE II. - PUBLIC IMPROVEMENTS FINANCING AND CONSTRUCTION

Sec. 22-23. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Local public improvements means any public improvement conferring a special benefit on any parcel or parcels of land distinct from the benefit from such improvement to the City at large, including, by way of illustration but not limitation, sidewalks, water mains and connections, storm sewers, sanitary sewers, street grading, graveling and paving, curbs, gutters and the like.

Sanitary sewer means a sewer which carries sewage and to which storm, surface, and ground waters are not intentionally admitted.

Sidewalk means any concrete walkway constructed in that portion of the street right-of-way designated particularly for pedestrian travel.

Storm sewer or *storm drain* means a sewer which carries storm and surface waters and drainage, but to which sewage and polluted industrial wastes are not intentionally admitted.

Street means that part of any street, alley or public thoroughfare open to the public for vehicular or pedestrian traffic.

Water connection means that part of the water distribution system connecting the water main to a point between the curb line and property line, including the curb box and curb stop.

Water main means that part of the water distribution system located within easement lines or street and designed to supply more than one water connection.

(Code 1979, § 8:2.2(1))

Sec. 22-24. - Financing policy.

Except as otherwise provided this article or regulation of the City planning commission, in respect to approval of plats, it shall be the general policy of the City to finance construction by the City of local public improvements by special assessment, pursuant to chapter 20.

(Code 1979, § 8:2.2(2))

Sec. 22-25. - Petitions.

The owners of property within the City may apply to the council, by petition, for the construction of any local public improvement. The filing of any such petition shall be advisory only, and the City shall not

be required to construct any improvement petitioned for, and the City may proceed to construct any local improvement without a petition therefor having been filed.

(Code 1979, § 8:2.2(3))

Sec. 22-26. - Division of costs.

(a) In the interest of uniformity, it is declared to be the policy of the City to require the owner of property specially benefiting to defray the cost of local public improvements in the manner herein provided. The cost of such local public improvement as required by the Charter shall be divided as follows:

Type of Improvement	City's Share	Benefit District's Share
Water mains and connections	The sum by which the cost of construction of the improvement exceeds the benefit district share	Cost of water facilities connecting district with existing water distribution system, plus cost of water mains and connections

(1) Water service will only be provided to those lots or parcels of property which have a water main installed across the entire frontage of the lot or parcel unless the water and wastewater utility board grants a specific variance from this policy. Variances may be granted at the option of the board provided the property owner has paid through special assessment for a minimum of 60 feet of frontage costs or a connection fee for 60 feet of frontage. For lots with less than 60 feet of frontage the connection or special assessment fee will be calculated on the actual front footage.

(2) Variances and payment of the charges for their issuance will not release property owners from future assessments for footage greater than the 60-foot minimum.

(3) Property owners will be given credit for all assessed or connection fee footage when a fronting main is constructed in the future and special assessments are made.

Type of Improvement	City's Share	Benefit District's Share	
Sanitary sewers	The sum by which the cost of construction of the improvement exceeds the benefit district share	1)	The cost of all lateral sewers, manholes, and extras within the benefit district whether laid within streets, intersections, or on private property
		2)	The proportional cost of sewers needed to service the benefit district whether such sewers are to be constructed as a part of the public improvement or are already in existence and whether or not such

			sewers are within or outside the benefit district, as determined by the council
Storm sewers	50 percent City	-0-	
	50 percent water/wastewater utility board		
Street grading and graveling	50 percent	50 percent	
Street paving	50 percent	50 percent	
Curbs and gutters	50 percent	50 percent	
Sidewalks	As the council determines	As the council determines	

(b) In any case where the division of costs herein established does not, as determined by the council, accurately reflect the benefit to the City at large and the private benefit, such other division as shall be equitable may be adopted by the council, within the guidelines of the Charter.

(Code 1979, § 8:2.2(4))

Sec. 22-27. - Special assessment installments.

When council shall confirm any special assessment pursuant to chapter 20 for any local public improvement, it shall specify whether such assessment shall be payable in installments and if so payable, the number of installments. It shall be the policy of the City to permit the payment of special assessment for local public improvements, as hereafter mentioned, to be paid in installments and, and unless otherwise specified by the Council in the resolution confirming any assessment, the number of installments in which each assessment shall be payable may be as follows:

Type of Improvement	Number of Installments
Sidewalks	6
Water mains and connections	6

Storm sewers	6
Lateral sanitary sewers	6
Street grading and graveling (included in street paving)	6
Street paving (except concrete)	6
Street paving (concrete)	10
Curbs and gutters	6

(Code 1979, § 8:2.2(5))

Sec. 22-28. - Sidewalk assessment procedure.

Nothing herein contained shall be deemed to affect the procedure for assessing the cost of sidewalk construction, rebuilding and repair which shall be governed by the procedure established for single lots as set forth in chapter 20 and section 22-2.

(Code 1979, § 8:2.2(6))

Sec. 22-29. - Construction by agreement.

The owner or owners of any ten or more contiguous parcels of land within the City, may petition the City Council for the construction of any local public improvement where the cost of such construction is to be privately financed. The City Engineer is authorized to furnish such owner or owners of land with estimates of the cost of such construction or any part thereof, if performed by the City. Every such petition shall indicate whether the petitioners desire to construct such facilities themselves or to contract with the City to perform such work. The City Council shall by resolution grant or deny said petition within a reasonable time and every such resolution shall specify whether the petitioners are authorized to construct said improvements themselves or authorized only to contract with the City for the construction thereof, or authorized to either to construct the same themselves or contract with the City for such construction at their option. Whenever any person or persons shall be authorized to install any local public improvement privately, he shall file a bond in an amount twice the estimate given by the City Engineer, and in a form to be approved by the City Attorney, conditioned on the prompt completion of the work and the observance of all provisions of this Code and regulations of the City pertaining thereto, and the payment of the expense to the City in connection therewith. If any owner or owners shall enter into a contract with the City for the performance of any such work, such contract shall be in a form approved by the City Attorney and the City Engineer, and such contract shall in all cases require such advance payment and progress payments as shall be recommended by the City Engineer and approved by the City Council.

(Code 1979, § 8:2.2(7))

Sec. 22-30. - Improvement charges.

(a) An improvement charge shall be levied against a property newly annexed to the City to provide the property's fair share of the cost of improvements which benefit such property, which costs were financed by special assessment and for which the City was charged a City's share, as the term " City's share" is defined in section 22-26, or for which costs the City became otherwise obligated. The improvement charge shall be in an amount to be determined by a Council resolution to cover the property's pro rata share of the amount which the City paid as a City's share or became otherwise obligated to pay, for such improvements. A resolution determining the charge to be levied shall be promptly recorded in the office of the Register of Deeds of the County. The improvement charge shall become payable at a time to be fixed by Council resolution, and the Council may, by resolution, permit the payment of said charges to be made in installments over a six year period, or other period with interest at six percent per annum.

(b) Said improvement charges, including any part thereof deferred as to payment, shall, from the date of the improvement charge resolution approved by Council, constitute a lien upon the respective lots or parcels of land annexed and until paid shall be a charge against the respective owners of the several lots and parcels of land. Such lien shall be of the same character and effect as the lien created for City taxes and shall include accrued interest and penalties. When any such improvement charge, or an installment thereof when divided into installments, shall have been due and unpaid for more than 30 days on May 1 in any year, the same shall be reported by the City Clerk/Treasurer to the Assessor, and such amounts, together with a charge of five percent of the amount of the improvement charge or installment thereof, and unpaid interest shall be added to the August tax roll.

(Code 1979, § 8:2.2(8))

Secs. 22-31—22-48. - Reserved.

ARTICLE III. - SNOW REMOVAL

Sec. 22-49. - Moving snow onto street.

(a) It shall be unlawful for any person other than a City employee in performance of his duties, to move, or cause to move, any snow onto the streets of the City.

(b) The costs of abatement shall be as follows:

(1) When a citation has been issued for a violation of this article, the Code Enforcement Officer may cause City employees to abate such violations.

(2) Fees in the amount established by resolution shall be levied for such removal of the obstruction.

(Code 1979, § 7:5.1(1), (3))

Sec. 22-50. - Commercial/public buildings.

(a) It shall be unlawful for any person responsible for the general operation of a building open to the public for business or other purpose to not have the sidewalks and crosswalks adjacent to and on such premises, clear of, or in the physical process of being cleared of, snow and ice, within 24 hours of the last snowfall of one inch or more.

(b) The costs of abatement shall be as follows:

(1) When a citation has been issued for a violation of this section, the code enforcement officer may cause City employees to abate such violations.

(2) Fees in the amount established by resolution shall be levied for such removal of the obstruction.

(Code 1979, § 7:5.2)

Sec. 22-51. - Residential property.

(a) It shall be unlawful for any owner of property not covered by section 22-50, to not have the sidewalks on such property clear of, or in the physical process of clearing, snow and ice by 10:00 a.m., after 24 hours has passed since the last snowfall of one inch or more. The code enforcement officer may extend an individual property owner's time to comply with this article upon a showing of special circumstances, such as short term absence from the City, emergency medical condition or similar temporary situation. Such an extension of time, if granted, is limited only to the immediately preceding snowfall and is not continuous.

(b) The costs of abatement shall be as follows:

(1) When a citation has been issued for a violation of this section, the code enforcement officer may cause City employees to abate such violations.

(2) Fees in the amount established by resolution shall be levied for such removal of the obstruction.

(Code 1979, § 7:5.3)

Secs. 22-52—22-75. - Reserved.

ARTICLE IV. - SIDEWALK CAFES

Sec. 22-76. - Sidewalk cafe permits.

(a) *Permit conditions.* The City clerk/treasurer may issue to an adjacent food service establishment in all areas of the City a revocable sidewalk cafe permit to occupy a portion of adjacent City right-of-way to place tables and chairs, planters and windscreens adjacent to the tables and chairs in conjunction with selling and consuming food and beverages under the following terms and conditions:

(1) *Prohibitions.* The occupancy must not:

a. Interfere with the use of the right-of-way for pedestrian or vehicular travel.

b. Unreasonably interfere with the view, access to, or use of property adjacent to said street.

c. Reduce the pedestrian travel area of any sidewalk to less than that required in the Americans with Disabilities Act. The pedestrian travel area shall not include trees, bushes, walls, fire hydrants, tree grates or any other fixtures permanently located in the right-of-way.

d. Cause damage to the street or sidewalk or to trees, benches, landscaping, or other objects lawfully located in the right-of-way. Any anchoring system to secure an item to the sidewalk shall be approved by the City manager in writing prior to installation.

e. Cause a violation of any state or local laws.

f. Be principally used for off-premises advertising. All signs must conform to the sign regulations.

g. Conceal or detract from the appearance of landscaping features in or adjacent to the street.

h. Be in or adjacent to property zoned exclusively for residential purposes.

i. Be attached to or reduce the effectiveness of or access to any utility pole, sign or other traffic control device.

j. Cause increased risk of theft or vandalism.

k. Violate regulations adopted by the City Council pursuant to this Code.

l. Serve liquor unless the business holds a sidewalk cafe with alcohol permit issued by the City clerk/treasurer.

m. Obstruct or interfere with any accessible parking or loading spaces and accessible routes to buildings.

n. Sell or serve food, beverages or other merchandise to customers in vehicles parked adjacent to or nearby the public right-of-way and sidewalk.

(2) *Notice.* Notice to the adjacent property owners or occupants on both sides of the applicant's property shall be required before issuing a permit to occupy any right-of-way area between the edge of the vehicle use area of the right-of-way and the right-of-way property line.

(3) *Fee.* Prior to the issuance of a permit, a fee in an amount established by resolution of the City Council shall be paid to the City clerk/treasurer. This fee shall be tripled if any such occupancy occurred prior to the issuance of a permit.

(4) *Insurance.* The permittee shall show proof of and maintain comprehensive general liability insurance and have the City as an additional named insured. The City clerk/treasurer shall determine the amount of such insurance.

(5) *Food service establishment.* Food service establishment shall be defined in accordance with its meaning in the Food Law of 2000 (MCL 289.1101 et seq.).

(6) *Regulations.* The City manager may control the occupancy pursuant to a sidewalk cafe permit.

(b) *Duration.* Permits shall be valid only for the period of time specified on such permit. Permits shall not be issued for any period starting before April 1, and extending beyond November 1, for the year in which such permit is granted.

(c) *Display.* A permit shall only be valid if displayed in a manner visible to the public.

(d) *Permit revocation.* Any permit may be revoked by the City clerk/treasurer upon a finding that the occupancy does not meet the standards of this Code, any other provisions of this Code, or other applicable law or regulation, or that the right-of-way is needed for other street or utility purposes. Upon such revocation, the fee paid for any period after termination of the street occupancy shall be fully or partially refunded depending on duration of occupancy.

(e) *Appeal.* Persons who are refused a permit or have had their permit revoked may request in writing a hearing on that determination before the City manager. The decision of the manager may be appealed to the City Council. Requests for a hearing or an appeal must be made within five days of the questioned decision.

(Code 1979, § 7:6.1)

Sec. 22-77. - Sidewalk cafe with alcohol permits.

(a) *Permit conditions.* The City clerk/treasurer may issue to an adjacent food service establishment in all areas of the City a revocable sidewalk cafe with alcohol permit to occupy a portion of adjacent City right-of-way to place tables and chairs, planters and windscreens adjacent to the tables and chairs in conjunction with selling and consuming food and alcoholic beverages, provided the following terms and conditions are met:

(1) *License required.* The operator of the sidewalk cafe shall take whatever steps are necessary to procure the appropriate license from the state liquor control commission if he intends to serve alcoholic beverages in the sidewalk cafe area and shall comply with all other laws and regulations concerning the serving of alcoholic beverages in the state. The business regularly closes on all nights no later than 11:00 p.m.

(2) *Service of liquor.* Service of alcohol at the sidewalk cafe does not violate any state, federal or local laws, promulgated rules, or policies or executive orders of the city.

(3) *Barrier.* A barrier shall surround the sidewalk cafe. Generally the barrier shall be 36 inches or less in height. The barrier may be required to be removed when the establishment closes each day or other specified times, or be in a fixed location only to be removed at the end of the permit period.

(4) *Signage.* The business must post a sign in a prominent location that is one square foot that indicates "No beverages beyond the barrier of this sidewalk cafe." Specifically, the sign shall be posted within the perimeter of the sidewalk cafe.

(5) *Hour at which liquor service is prohibited.* Liquor may not be served beyond 11:00 p.m.

(6) *Prohibitions.* The occupancy must not:

a. Interfere with the use of the right-of-way for pedestrian or vehicular travel.

b. Unreasonably interfere with the view, access to, or use of property adjacent to said street.

c. Reduce the pedestrian travel area of any sidewalk to less than that required in the Americans with Disabilities Act. The pedestrian travel area shall not include trees, bushes, walls, parking meters, fire hydrants, tree grates or any other fixtures permanently located in the right-of-way.

d. Cause damage to the street or sidewalk or to trees, benches, landscaping, or other objects lawfully located in the right-of-way. Any anchoring system to secure an item to the sidewalk shall be approved by the City manager in writing prior to installation.

e. Cause a violation of any state or local laws.

f. Be principally used for off-premises advertising. All signs must conform to the sign regulations.

g. Conceal or detract from the appearance of landscaping features in or adjacent to the street.

h. Be in or adjacent to property zoned exclusively for residential purposes.

i. Be attached to or reduce the effectiveness of or access to any utility pole, sign or other traffic control device.

j. Cause increased risk of theft or vandalism.

k. Violate regulations adopted by the City Council pursuant to this Code.

l. Obstruct or interfere with any accessible parking or loading spaces and accessible routes to buildings.

m. Sell or serve food, beverages or other merchandise to customers in vehicles parked adjacent to or nearby the public right-of-way and sidewalk.

(7) *Notice.* Notice to the adjacent property owners or occupants on both sides of the applicant's property shall be required before issuing a permit to occupy any right-of-way area between the edge of the vehicle use area of the right-of-way and the right-of-way property line.

(8) *Fee.* Prior to the issuance of a permit, a fee in an amount established by resolution of the City Council shall be paid to the City clerk/treasurer. This fee shall be tripled if any such occupancy occurred prior to the issuance of a permit.

(9) *Insurance.* The permittee shall show proof of and maintain comprehensive general liability insurance and liquor liability insurance and have the City as an additional named insured. The City clerk/treasurer shall determine the amount of such insurance.

(10) *Food service establishment.* Food service establishment shall be defined in accordance with its meaning in the Food Law of 2000 (MCL 289.1101 et seq.).

(11) *Regulations.* The City manager may control the occupancy pursuant to a sidewalk cafe with alcohol permit.

(b) *Duration.* Permits shall be valid only for the period of time specified on such permit. Permits shall not be issued for any period starting before April 1, and extending beyond November 1, for the year in which such permit is granted.

(c) *Permit review.* The application for a sidewalk cafe with alcohol permit shall include an elevation drawing for the barrier and a plot plan for the barrier and the cafe's location. Such application documents shall be reviewed by the building inspector/code enforcement officer prior to the issuance of such permit. It shall be approved only if the location, barrier, materials and design are in accordance with any the City master plan, this section and any applicable ordinances, laws, or policies.

(d) *Display.* A permit shall only be valid if displayed in a manner visible to the public.

(e) *Permit revocation.* Any permit may be revoked by the City clerk/treasurer upon a finding that the occupancy does not meet the standards of this Code, any other provisions of this Code, or other applicable law or regulation, or that the right-of-way is needed for other street or utility purposes. Upon such revocation, the fee paid for any period after termination of the street occupancy shall be fully or partially refunded depending on duration of occupancy.

(f) *Appeal.* Persons who are refused a permit or have had their permit revoked may request in writing a hearing on that determination before the City manager. The decision of the manager may be appealed to the City Council. Requests for a hearing or an appeal must be made within five days of the questioned decision.

(Code 1979, § 7:6.2)

Secs. 22-78—22-97. - Reserved.

ARTICLE V. - TELECOMMUNICATIONS RIGHTS-OF-WAY OVERSIGHT[1]

Footnotes:

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State Law reference— Metropolitan Extension Telecommunications Rights-of-Way Oversight Act, MCL 484.3101 et seq.

Sec. 22-98. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. All other terms defined in this article shall have the same meaning as defined or provided in the Act (MCL 484.3101 et seq.).

Act means the Metropolitan Extension Telecommunications Rights-of-Way Oversight Act (Act No. 48 of the Public Acts of 2002) (MCL 484.3101 et seq.).

City Council means the City Council of the City of Menominee or its designee. This section does not authorize delegation of any decision or function that is required by law to be made by the City Council.

MPSC means the state public service commission in the department of consumer and industry services, and has the same meaning as the term "commission" in the Act.

Permit means a non-exclusive permit issued pursuant to the Act and this article to a telecommunications provider to use the public rights-of-way in the City for its telecommunications facilities.

(Code 1979, § 10:4.3)

Sec. 22-99. - Purpose.

The purposes of this article 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 (MCL 484.3101 et seq.) and other applicable law, and to ensure that the City qualifies for distributions under the Act by modifying the fees charged to providers and complying with the Act.

(Code 1979, § 10:4.1)

Sec. 22-100. - Conflict.

Nothing in this article shall be construed in such a manner as to conflict with the Act or other applicable law.

(Code 1979, § 10:4.2)

Sec. 22-101. - Existing rights.

Pursuant to section 4(2) of the Act (MCL 484.3104(2)), except as expressly provided herein with respect to fees, this article shall not affect any existing rights that a telecommunications provider or the City may have under a permit issued by the City or under a contract between the City and a telecommunications provider related to the use of the public rights-of-way.

(Code 1979, § 10:4.16)

Sec. 22-102. - Compliance with Act.

The City hereby declares that its policy and intent in adopting this article is to fully comply with the requirements of the Act, and the provisions hereof should be construed in such a manner as to achieve that purpose. The City 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 (MCL 15.231 et seq.), as provided in section 22-104(c);

(2) Allowing certain previously issued permits to satisfy the permit requirements hereof, in accordance with section 22-104(f);

(3) Allowing existing providers additional time in which to submit an application for a permit, and excusing such providers from the $500.00 application fee, in accordance with section 22-104(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 City, in accordance with section 22-105(a);

(5) Notifying the MPSC when the City has granted or denied a permit, in accordance with section 22-105(a);

(6) Not unreasonably denying an application for a permit, in accordance with section 22-105(a);

(7) Issuing a permit in the form approved by the MPSC, with or without additional or different permit terms, as provided in section 22-105(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 section 22-105(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 section 22-105(d);

(10) Not charging any telecommunications providers any additional fees for construction or engineering permits, in accordance with section 22-106;

(11) Providing each telecommunications provider affected by the City's right-of-way fees with a copy of this ordinance, in accordance with section 22-111;

(12) Submitting an annual report to the authority, in accordance with section 22-113; and

(13) Not holding a cable television operator in default for a failure to pay certain franchise fees, in accordance with section 22-114.

(Code 1979, § 10:4.17)

Sec. 22-103. - Reservation of police powers.

Pursuant to section 15(2) of the Act (MCL 484.3115(2)), this article shall not limit the City's right to review and approve a telecommunication provider's access to and ongoing use of a public right-of-way or limit the City's authority to ensure and protect the health, safety, and welfare of the public.

(Code 1979, § 10:4.18)

Sec. 22-104. - Permit.

(a) *Required.* Except as otherwise provided in the Act, a telecommunications provider using or seeking to use public rights-of-way in the City for its telecommunications facilities shall apply for and obtain a permit pursuant to this article.

(b) *Application.* Telecommunications providers shall apply for a permit on an application form approved by the MPSC in accordance with section 6(1) of the Act (MCL 484.3106(1)). A telecommunications provider shall file one copy of the application with the City clerk/treasurer, one copy with the City manager, and one copy with the City attorney. Upon receipt, the City clerk/treasurer shall make three copies of the application and distribute a copy to recipients designated by the City manager. 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 section 6(5) of the Act (MCL 484.3106(5)).

(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 (MCL 15.231 et seq.) pursuant to section 6(5) of the Act (MCL 484.3106(5)), 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 non-refundable application fee in the amount of $500.00.

(e) *Additional information.* The City manager may request an applicant to submit such additional information which the City manager 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 City manager. If the City and the applicant cannot agree on the requirement of additional information requested by the City, the City or the applicant shall notify the MPSC as provided in section 6(2) of the Act (MCL 484.3106(2)).

(f) *Previously issued permits.* Pursuant to section 5(1) of the Act (MCL 484.3105(1)), authorizations or permits previously issued by the City under section 251 of the Michigan Telecommunications Act (MCL 484.2251) and authorizations or permits issued by the City to telecommunications providers prior to the 1995 enactment of section 251 of the Michigan Telecommunications Act but after 1985 shall satisfy the permit requirements of this article.

(g) *Existing providers.* Pursuant to section 5(3) of the Act (MCL 484.3105(3)), within 180 days from November 1, 2002, the effective date of the Act, a telecommunications provider with facilities located in a public right-of-way in the City as of such date, that has not previously obtained authorization or a permit under section 251 of the Michigan Telecommunications Act (MCL 484.2251), shall submit to the City an application for a permit in accordance with the requirements of this article. Pursuant to section 5(3) of the Act (MCL 484.3105(3)), a telecommunications provider submitting an application under this subsection is not required to pay the $500.00 application fee required under subsection (d) of this section. A provider under this subsection shall be given up to an additional 180 days to submit the permit application if allowed by the authority, as provided in section 5(4) of the Act (MCL 484.3105(4)).

(Code 1979, § 10:4.4)

Sec. 22-105. - Issuance of permit.

(a) *Approval or denial.* The authority to approve or deny an application for a permit is hereby delegated to the City manager. Pursuant to section 15(3) of the Act (MCL 484.3115(3)), the City manager 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 section 4(b) of this article for access to a public right-of-way within the City. Pursuant to section 6(6) of the Act (MCL 484.3106(6)), the City manager shall notify the MPSC when the City manager 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 City manager shall not unreasonably deny an application for a permit.

(b) *Form of permit.* If an application for permit is approved, the City manager shall issue the permit in the form approved by the MPSC, with or without additional or different permit terms, in accordance with sections 6(1), 6(2) and 15 of the Act (MCL 484.3106(1), 484.3106(2) and 484.3115).

(c) *Conditions.* Pursuant to section 15(4) of the Act (MCL 484.3115(4)), the City manager 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 section 15(3) of the Act (MCL 484.3115(4)), and without limitation on subsection (c) of this section, the City manager 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.

(Code 1979, § 10:4.5)

Sec. 22-106. - Construction/engineering permit.

A telecommunications provider shall not commence construction upon, over, across, or under the public rights-of-way in the City without first obtaining a construction or engineering permit as required for construction within the public rights-of-way. No fee shall be charged for such a construction or engineering permit.

(Code 1979, § 10:4.6)

Sec. 22-107. - Conduit or utility poles.

Pursuant to section 4(3) of the Act (MCL 484.3104(3)), obtaining a permit or paying the fees required under the Act or under this article does not give a telecommunications provider a right to use conduit or utility poles.

(Code 1979, § 10:4.7)

Sec. 22-108. - Route maps.

Pursuant to section 6(7) of the Act (MCL 484.3106(7)), a telecommunications provider shall, within 90 days after the substantial completion of construction of new telecommunications facilities in the City, submit route maps showing the location of the telecommunications facilities to both the MPSC and to the City. The route maps should be in [paper or electronic] format unless and until the MPSC determines otherwise, in accordance with section 6(8) of the Act (MCL 484.3106(8)).

(Code 1979, § 10:4.8)

Sec. 22-109. - Repair of damage.

Pursuant to section 15(5) of the Act (MCL 484.3115(5)), 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 City, 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 pre-existing condition.

(Code 1979, § 10:4.9)

Sec. 22-110. - Establishment and payment of maintenance fee.

In addition to the non-refundable application fee paid to the City set forth in section 22-104(d), a telecommunications provider with telecommunications facilities in the City's public rights-of-way shall pay an annual maintenance fee to the authority pursuant to section 8 of the Act (MCL 484.3108).

(Code 1979, § 10:4.10)

Sec. 22-111. - Modification of existing fees.

(a) In compliance with the requirements of section 13(1) of the Act (MCL 484.3113(1)), the City hereby modifies, to the extent necessary, any fees charged to telecommunications providers after November 1, 2002, the effective date of the Act, 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. In compliance with the requirements of section 13(4) of the Act (MCL 484.3113(4)), the City also hereby approves modification of the fees of providers with telecommunication facilities in public rights-of-way within the City's boundaries, so that those providers pay only those fees required under section 8 of the Act (MCL 484.3108). The City shall provide each telecommunications provider affected by the fee with a copy of this article, in compliance with the requirement of section 13(4) of the Act (MCL 484.3113(4)). 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 City's policy and intent, and upon application by a provider or discovery by the City, shall be promptly refunded as having been charged in error.

(b) Pursuant to section 13(5) of the Act (MCL 484.3113(5)), if section 8 of the Act (MCL 484.3108) is found to be invalid or unconstitutional, the modification of fees under subsection (a) of this section shall be void from the date the modification was made.

(Code 1979, §§ 10:4.11, 10:4.12)

Sec. 22-112. - Use of funds.

Pursuant section 10(4) of the Act (MCL 484.3110(4)), all amounts received by the City from the authority shall be used by the City solely for rights-of-way related purposes. In conformance with that requirement, all funds received by the City from the authority shall be deposited into the major street fund and/or the local street fund maintained by the City under Public Act No. 51 of 1951 (MCL 247.651 et seq.).

(Code 1979, § 10:4.13)

Sec. 22-113. - Annual report.

Pursuant to section 10(5) of the Act (MCL 484.3110(5)), the City manager shall file an annual report with the authority on the use and disposition of funds annually distributed by the authority.

(Code 1979, § 10:4.14)

Sec. 22-114. - Cable television operators.

Pursuant to section 13(6) of the Act (MCL 484.3113(6)), the City 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.

(Code 1979, § 10:4.15)

Secs. 22-115—22-130. - Reserved.

ARTICLE VI. - TREES AND SHRUBS

Sec. 22-131. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Master tree plan means the document created as described in this article.

Park includes all public lands under the jurisdiction of the department of public works and the River Park campground under the jurisdiction of the recreation department.

Property owner means the person listed as owner of record of the property as shown in the City assessor's office.

Public places means all grounds owned by the City and not included in streets, highways, or parks.

Public trees includes all trees and shrubs now or hereafter growing on any street, highway, park or other public place, including those planted by adjoining property owners.

Shrub includes all woody-stemmed perennial plants other than trees.

Street includes all streets owned by the City and shall be identified as major streets or minor streets according to the administrative standards of Public Act No. 51 of 1951 (MCL 247.651 et seq.) and all alleys.

Tree includes all woody perennial plants having one or more stems. For the purposes of this article, the term "tree" includes shrubs as herein defined. Trees shall be designated by the heights they can attain as follows:

(1) Large - attaining a height of more than 45 feet.

(2) Medium - attaining a height of 20 to 45 feet.

(3) Small - attaining a height of less than 20 feet.

Treelawn means that part of a street or highway not covered by sidewalk or other paving, lying between the property line and that portion of the street or highway used for vehicular traffic.

(Code 1979, § 7:4.1(1))

Sec. 22-132. - Adminstration.

(a) *Generally.* The public works committee shall be the designated body having review and advisory authority for the administration of this article. The public works committee shall serve as the City tree board. Their duties shall include determining the needs of the City in relation to its trees and a planting and maintenance program for them, and determining the kind and locations for trees to be planted throughout the City and development of Arboricultural Specifications and Standards of Practice.

(b) *Duties of City engineer.*

(1) The City engineer shall have the duty to advise the City tree board on the promulgation of the rules, regulations, arboricultural specifications, and to assist in the development of the master tree plan.

(2) The City engineer shall have the duty to issue permits for work on public trees by persons other than City employees. The City engineer shall inspect all work done under a permit issued in accordance with the provisions of this article.

(3) The City engineer shall have the authority to enforce this article and the specifications and standards adopted pursuant to this article. This authority shall include the authority to issue orders, and to issue citations for violations of orders.

(4) The City engineer shall have the duty to direct the planting, maintenance, and removal of all trees growing now or hereafter in any public area of the City according to the adopted standards and specifications including the master tree plan.

(Code 1979, § 7:4.1(2)—(4))

Sec. 22-133. - Master tree plan.

The City tree board shall formulate a master tree plan. The master tree plan shall contain a long-term maintenance plan for trees along streets and in public places.

(Code 1979, § 7:4.1(5))

Sec. 22-134. - Permits required for planting, maintenance or removal.

No person shall plant, prune, remove, or otherwise disturb any tree on any street or City property without first filing an application and procuring a permit from the City engineer.

(Code 1979, § 7:4.1(6))

Sec. 22-135. - Adoption of Arboricultural Specifications and Standards of Practice.

The City tree board shall develop and adopt Arboricultural Specifications and Standards of Practice, which shall govern as rules for the planting, maintenance, removal and replacement of trees in public places in the City. Copies of these rules shall be available for public inspection in the office of the City engineer. The City tree board shall have the authority to amend these rules from time to time as necessary.

(Code 1979, § 7:4.1(7))

Sec. 22-136. - Adherence to standards—Planting conformity.

Any person planting or otherwise placing a tree on any street right-of-way or other public place shall do so in conformity with the rules and standards adopted pursuant to this article.

(Code 1979, § 7:4.1(8)(a))

Sec. 22-137. - Same—Improper planting.

Whenever any tree shall be set out in conflict with the provisions of this article, it shall be lawful for the City engineer to order removal of the same, and the cost thereof shall be assessed to the adjoining property owner as provided by law in the case of special assessments.

(Code 1979, § 7:4.1(8)(b))

Sec. 22-138. - Same—Maintenance.

Whenever any public tree is to be sprayed, fertilized, pruned, or otherwise maintained under a permit issued by the City engineer, all such work shall be done in accordance with the Arboricultural Specifications and Standards of Practice adopted pursuant to this article.

(Code 1979, § 7:4.1(8)(c))

Sec. 22-139. - Same—Removal and/or replacement.

When any public tree is to be removed and/or replaced, such work shall be done in accordance with the master tree plan and the Arboricultural Specifications and Standards of Practice adopted pursuant to this article.

(Code 1979, § 7:4.1(8)(d))

Sec. 22-140. - Planting, removal, and replacement of public trees.

(a) *Planting.* No person shall plant a tree on any street or in any park or other public place without first filing an application and receiving a permit from the City engineer. Such planting shall be done in accordance this article, and the Arboricultural Specifications and Standards of Practice.

(b) *Removal and replacement by City.* Wherever it is necessary to remove a public tree because it is dead, diseased, damaged, or in connection with the paving of a sidewalk, or the paving of a street, the City shall remove such trees as determined by the City engineer.

(c) *Removal and replacement by private citizen/utility companies.* No person shall remove a public tree without a permit from the City engineer. The tree shall be replaced by the person as directed in the permit from the City engineer. The person shall bear the cost of such removal and replacement.

(d) *Ownership and maintenance.* All trees now or hereafter planted on streets or highways, or in parks or other public places, shall be the property of the City. The City shall assume future maintenance responsibility for said trees.

(Code 1979, § 7:4.1(9))

Sec. 22-141. - Maintenance of trees and shrubs.

(a) *Generally.* It shall be the responsibility of any person owning any real property to maintain the trees or shrubs on that property so that he does not endanger or cause a nuisance to persons or property occupying adjoining streets, public places, or private properties. This responsibility shall include, but not be limited to, pruning, removal or other maintenance for the following reasons:

(1) Pruning trees and shrubs in accordance with this subsection (a)(1). Said trees and shrubs shall be pruned in a manner so that they will not:

a. Obstruct or shade streetlights;

b. Obstruct the passage of pedestrians on sidewalks;

c. Obstruct the vision of traffic signs;

d. Obstruct view of any street or alley intersection; or

e. Obstruct the view of traffic using the street.

The minimum clearance of any overhanging portion thereof shall be ten feet over sidewalks, and 12 feet over all streets except major streets which shall have a clearance of 16 feet.

(2) The pruning or removal of any dead, diseased, decayed or damaged trees or parts of trees that overhang or otherwise endanger persons or property on adjoining property, on streets, or in other public places.

(3) The maintenance of clear vision triangles at street intersections.

(b) *Orders to prune.*

(1) Should any person owning real property bordering on any street fail to prune trees as herein provided, the City engineer shall order such person within ten days after receipt of written notice, to so prune such trees.

(2) The order required herein shall be served by mailing a notice of the order to the property owner at the address shown on the tax roll in the City assessor's office. Said notice shall be sent by certified mail.

(3) When a person to whom an order is directed shall fail to comply within the specified time, it shall be lawful for the City to carry out the work ordered on such trees, and assess the exact cost thereof to the owner as provided by law in the case of special assessment.

(Code 1979, § 7:4.1(10)(a)—(d))

Sec. 22-142. - Emergency removal.

When the City manager, after consulting with the City engineer, shall determine that any tree is presenting an immediate danger to life or property, he shall have the authority to order its immediate removal. Said order shall be served upon the property owner in person. In the instance where the property owner is not immediately available, or able to perform the ordered removal, the City manager may order such work done by the City personnel, or by a contractor hired by the City. If the City performs the work, the cost of said work shall be assessed against the property owner as provided by law in the case of special assessments.

(Code 1979, § 7:4.1(10)(e))

Sec. 22-143. - Abuse or mutilation of public trees.

Unless specifically authorized by a permit from the City, no person shall intentionally damage, cut, carve, transplant or remove any tree.

(Code 1979, § 7:4.1(11))

Sec. 22-144. - Interference with City engineer or department of public works.

No person shall hinder, prevent, delay or interfere with the City engineer or any of his assistants, or with any employees of the department of public works, while they are engaged in carrying out the execution or enforcement of this article; provided, however, that nothing herein shall be construed as an attempt to prohibit the pursuit of any remedy, legal or equitable, in any court of competent jurisdiction for the protection of property rights by the owner of any property within the City.

(Code 1979, § 7:4.1(12))

Sec. 22-145. - Tree protection measurers.

(a) All trees on any street or other public property near any excavation shall be guarded in a manner specified by the City. No person shall excavate any ditches, tunnels, trenches, or lay any driveway or other pavement within a radius of ten feet from any public tree without obtaining a permit from the City.

(b) No person shall deposit, place, store, or maintain upon any street, highway, park or other public place of the City any stone, brick, sand, gravel, dirt, concrete, or other materials, which may impede the free passage of water, air and fertilizer to the roots of any tree growing therein.

(Code 1979, § 7:4.1(13), (14))

Chapter 24 - TAXATION[1]

Footnotes:

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State Law reference— Property taxes generally, MCL 211.1 et seq.

Sec. 24-1. - Board of review.

The board of review of the City shall consist of three members. They shall be appointed by the mayor with the advice and consent of the council. The board of review shall perform such functions and

fulfill such duties and obligations as are prescribed by Charter, ordinance, and law. The members of the board of review shall receive such compensation as may be fixed by the council.

(Code 1979, § 1:8.3)

State Law reference— Board of review generally, MCL 211.28 et seq.

Chapter 26 - TRAFFIC AND VEHICLES[1]

Footnotes:

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State Law reference— Michigan Vehicle Code, MCL 257.1 et seq.; powers of local authorities, MCL 257.605, 257.606.

ARTICLE I. - IN GENERAL

Sec. 26-1. - State vehicle code adopted.

(a) The Michigan Vehicle Code (MCL 257.1 et seq.) is adopted by reference for enforcement as a local ordinance, as authorized by section 3(k) of Public Act No. 279 of 1909 (MCL 117.3(k)), for the purpose of enacting and enforcing the provisions of the state vehicle code within the City.

(b) References in the state vehicle code to local authorities shall mean the City as the local authority enforcing the state vehicle code within the City.

(c) Citations to the state vehicle code as adopted by the City shall be prefaced with an "L" to identify local ordinance.

(d) The penalties provided by the state vehicle code are adopted by reference, provided, however, that, except as provided in this subsection, the City may not enforce any provisions of the state vehicle code for which the maximum period of imprisonment is greater than 93 days. In addition, violations of section 625(1)(c) of the Michigan Vehicle Code (MCL 257.625(1)(c)) shall be punishable by one or more of the following:

(1) Community service for not more than 360 hours.

(2) Imprisonment for not more than 180 days.

(3) A fine of not less than $200.00 or more than $700.00.

(Code 1979, 9:1; Ord. of 8-21-2000, §§ 1, 3, 4, 6)

State Law reference— Authority to adopt Michigan Vehicle Code by reference, MCL 117.3(k); powers of local authorities, MCL 257.605, 257.606; authority for enhanced DUI penalties, MCL 117.3(k), 117.4i(k).

Sec. 26-2. - Deposit of litter on streets prohibited.

(a) A person shall not, without the consent of the public authority having supervision of a street, deposit, place, dump, throw, or leave, or cause or permit the dumping, depositing, placing, throwing, or leaving of, any destructive or injurious material, any rubbish, refuse, waste material, garbage, offal, paper, glass, cans, bottles, trash, or debris on any street.

(b) A person who throws or drops, or permits to be thrown or dropped, on a street any of the material or matter listed in subsection (a) of this section shall immediately remove it or cause it to be removed.

(Code 1979, § 9:1.1(1.1(13)))

State Law reference— Littering, MCL 324.8901 et seq.

Sec. 26-3. - Operation of snowmobiles on public highway.

(a) No person shall operate a snowmobile on any of the public highways, streets, sidewalks, alleys or other public places, except in designated areas, in the City. The term "snowmobile," as used in this chapter, means a motor-driven vehicle which is designed for travel primarily on snow or ice and which utilizes sled-type runners or skis, an endless belt tread, or combination of sled-type runners or skis or endless belt, or other similar means of contact with the surface on which it is operated.

(b) A person who violates this section is responsible for a civil infraction.

(c) In a proceeding for a violation of this section involving prohibited operation or conduct, the registration number displayed on a snowmobile constitutes prima facie evidence that the owner of the snowmobile was the person operating the snowmobile at the time of this offense.

(Code 1979, § 9:1.1(1.1(32), (33)))

State Law reference— Snowmobiles, MCL 324.82101 et seq.

Sec. 26-4. - Stopping snowmobile at direction of uniformed police officer; violation; identification of official law enforcement vehicle.

(a) The operator of a snowmobile who is given a visual or audible signal by hand, voice, emergency light, or siren by a police officer, who is acting in the lawful performance of his duty, which directs the operator to bring his snowmobile to a stop shall do so. An operator shall not willingly fail to obey the direction by increasing his speed, extinguishing his lights, or otherwise attempting to flee or elude the officer.

(b) The officer who gives the signal shall be in uniform. A vehicle or snowmobile that is used at night for purposes of enforcing this chapter shall be identified as an official law enforcement vehicle or snowmobile.

(Code 1979, § 9:1.1(1.1(34)))

State Law reference— Snowmobiles, MCL 324.82101 et seq.

Secs. 26-5—26-45. - Reserved.

ARTICLE II. - ADMINISTRATION AND ENFORCEMENT

Sec. 26-46. - Traffic engineer.

(a) The office of traffic engineer is hereby established. The traffic engineer shall be appointed in a manner prescribed by the City Council and shall exercise the powers and duties provided in this Code in a manner which is consistent with prevailing traffic engineering and safety practices and which is in the best interests of this governmental unit. If a traffic engineer is not appointed, the authority of such engineer shall be vested in the chief of police.

(b) The general duties of the traffic engineer are as follows:

(1) To plan and determine the installation and proper timing and maintenance of traffic-control devices.

(2) To conduct engineering analysis of traffic accidents and to devise remedial measures.

(3) To conduct engineering investigations of traffic conditions.

(4) To plan the operation of traffic on the streets of this governmental unit, including parking areas.

(5) To cooperate with other officials of this governmental unit in the development of ways and means to improve traffic conditions.

(6) To carry out the additional powers and duties imposed by the ordinances of the City.

(Code 1979, § 9:1.1(1.1(1)), (2))

Sec. 26-47. - Emergency regulations.

The chief of police is hereby empowered to make and enforce temporary regulations to cover emergencies or special conditions. Temporary regulations shall remain in effect for not more than 90 days.

(Code 1979, § 9:1.1(1.1(3)))

Sec. 26-48. - Traffic control orders.

(a) The authority in this Code to regulate traffic shall be exercised by the traffic engineer by the issuance of traffic control orders which shall specify the rules and regulations adopted or established by him. Such traffic control orders shall become effective upon being filed with the City clerk/treasurer and upon erection of adequate signs or signals which give notice of the existence of such regulation, if signs or signals are required by the provisions of this Code which pertain to such regulations.

(b) Traffic control orders may be issued by the traffic engineer on his own authority, but when so issued shall be known as temporary traffic control orders and shall not be effective after the expiration of 90 days from the date of filing and such temporary traffic control orders shall not be renewed or extended, except upon approval by the City Council.

(c) Permanent traffic control orders shall be issued by the traffic engineer, approved by the City Council, and filed with the City clerk/treasurer.

(d) Temporary orders shall become permanent orders upon being approved by the City Council and notice of such approval shall be filed with the City clerk/treasurer.

(e) All traffic control orders, and any actions, which modify or repeal such orders, shall be kept by the City clerk/treasurer in a separate book, which shall be known as the traffic control order book.

(f) A copy of a traffic control order, certified by the City clerk/treasurer to be a true copy compared by him with the original in his office, shall be permitted into evidence in all courts and proceedings in the same manner as the original would be permitted into evidence if produced. If it appears that a traffic control sign, signal, or device that conforms to the provisions of this Code, was erected or in place when the alleged violation of this Code occurred, such showing shall be prima facie evidence of the existence of a lawful traffic control order which authorizes such traffic control, sign, signal or device and it is not necessary for the prosecution to affirmatively show the existence of a valid traffic control order in such cases, unless and until such presumption is rebutted by competent evidence.

(Code 1979, § 9:1.1(1.1(4)))

Sec. 26-49. - Towing and impounding of vehicles.

(a) Definitions. The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Boot. The term "boot":

(1) When used as a noun, means a device used to lock on the wheel of a vehicle to handcuff it, so to speak, making it undriveable until it is released from the custody of the police.

(2) When used as a verb, means to affix such a locking device to the wheel of a vehicle.

Impound includes when a boot is placed on a wheel of a vehicle, as well as when a vehicle is towed away.

Tow means when a vehicle is moved from one place to another through power other than its own, whether or not it is thereafter impounded.

(b) Application. This section shall apply whenever any ordinance or state statute mentions the towing, impounding, or moving of vehicles.

(c) Authorization. Members of the police department are hereby authorized to cause a vehicle to be towed and/or impounded, pursuant to the provisions of this article, under the following circumstances:

(1) When any vehicle is left unattended upon any bridge, viaduct, or causeway, where such vehicle constitutes an obstruction to traffic.

(2) When a vehicle upon a street or highway is so disabled as to constitute an obstruction to traffic and the person in charge of the vehicle are by reason of physical injury incapacitated to such an extent as to be unable to provide for its custody or removal.

(3) When any vehicle is left unattended upon a street or highway and is so parked illegally as to constitute a definite hazard or obstruction to the normal movement of traffic.

(4) When a vehicle is found being driven upon a street or highway and is not in proper condition to be driven.

(5) When the driver of such vehicle is taken into custody by the police department and such vehicle would thereby be left unattended upon a street or highway.

(6) When removal is necessary in the interest of public safety because of fire, flood, storm, snow or to promote the expeditious movement of traffic.

(7) When the vehicle is illegally parked during a plow period, in violation of section 26-98.

(8) When any Code provision calls for the towing and/or impounding of a vehicle.

(9) After receipt by that department of a written complaint by a person aggrieved by a violation of section 14-57 that said vehicle is unlawfully parked on such private property without the consent of the owner thereof and in violation of section 14-57. Such vehicle, after an investigation of facts constituting the alleged violation, may be removed and impounded.

(d) It shall be unlawful for any person to tamper with or attempt to remove a boot which has been placed on a vehicle, without specific permission from the police department.

(e) Before any impounded vehicles are released, the registered owner or operator shall pay the penalty set out at section 26-97 or post satisfactory bond with the appropriate magistrate.

(Code 1979, § 9:2.5)

Secs. 26-50—26-71. - Reserved.

ARTICLE III. - VEHICLE OPERATION

Sec. 26-72. - Splashing prohibited; violation as civil infraction.

(a) A driver of a motor vehicle shall not recklessly, willfully, wantonly, or carelessly operate his vehicle in such manner as to splash snow, rain, water, mud, dirt, or debris on any person who is on a sidewalk, crosswalk, or safety zone.

(b) A person who violates this section is responsible for a civil infraction.

(Code 1979, § 9:1.1(1.1(11)))

Sec. 26-73. - Operation of a vehicle with unnecessary noise prohibited; violation as civil infraction.

(a) A person shall not operate a motor vehicle with unnecessary noise and shall not start, move, or turn a motor vehicle or apply the brakes or the power on a motor vehicle or in any manner operate the vehicle so as to cause the tires to squeal or the tires or vehicle to make any noise not usually connected with the operation of the motor vehicle, except in cases of any emergency.

(b) A person who violates this section is responsible for a civil infraction.

(Code 1979, § 9:1.1(1.1(12)))

Sec. 26-74. - Vehicle starting from parked position; violation as civil infraction.

(a) A vehicle starting from a parked position shall yield to moving vehicles the right-of-way, and the operator of such vehicle shall give a timely and visible waning signal before so starting.

(b) A person who violates this section is responsible for a civil infraction.

(Code 1979, § 9:1.1(1.1(29)))

Sec. 26-75. - Vehicle parked at angle to curb and about to start; yielding right-of-way, backing into lane of moving traffic; violation as civil infraction.

(a) A vehicle which is parked at an angle to the curb and which is about to start shall yield to moving vehicles the right-of-way; and the operator of the vehicle shall not back such vehicle from the curb into the lane of moving traffic unless such maneuver can be made in safety and without conflict with moving vehicles.

(b) A person who violates this section is responsible for a civil infraction.

(Code 1979, § 9:1.1(1.1(30)))

Sec. 26-76. - Off-road traffic.

No person shall operate a motor vehicle, or other mode of conveyance, other than on a public highway, street, alley or property owned by the driver. A person who violates this section is responsible for a civil infraction.

(Code 1979, § 9:1.1(1.1(35)))

Secs. 26-77—26-95. - Reserved.

ARTICLE IV. - PARKING[2]

Footnotes:

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State Law reference— Powers to regulate parking, MCL 257.606(1)(a); parking, MCL 257.672 et seq.

Sec. 26-96. - Parking violation bureau.

(a) *Creation.* Pursuant to section 8395 of the Revised Judicature Act of 1961 (MCL 600.8395), the City hereby establishes a parking violations bureau. The parking violations bureau is hereby authorized to accept pleas of guilty in parking violation cases and to collect and retain fines and costs as provided in this Code.

(b) *Control.* The parking violations bureau shall be under the supervision and control of the police chief. The chief shall establish a convenient location for the parking violations bureau, appoint qualified City employees to administer the bureau and adopt rules and regulations for the operation thereof. The decisions made by the police chief under this section are subject to the approval and/or modification of council.

(c) *Powers.*

(1) No violation not scheduled in section 26-97 shall be disposed of by the parking violations bureau. 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 such bureau may refuse to dispose of such violation, in which case any person having knowledge of acts may make a sworn complaint before any court having jurisdiction of the offense as provided by law.

(2) 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 fact or matter relating to such violation.

(d) *Rights of those ticketed.* 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 in any way diminish the rights, privileges and protection accorded to him by law.

(e) *Tickets as notice.* The issuance of a traffic ticket or notice of violation by a police officer of the City 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 include 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 advise that a warrant for the arrest of the person to whom the ticket was issued will be sought if such person fails to respond within the time limited.

(Code 1979, § 9:2.1)

Sec. 26-97. - Schedule of parking fines.

(a) The following fines shall be charged for parking violations:

(1) Restricted parking ..... $25.00.

(2) Double parking ..... 25.00.

(3) No parking zone (yellow) ..... 25.00.

(4) Blocking alley ..... 25.00.

(5) Blocking driveway ..... 25.00.

(6) Plow period ..... 50.00.

(7) Parked wrong side of street ..... 25.00.

(8) Disabled parking ..... 25.00.

(9) Parking in permitted spaces without permit ..... 25.00.

(10) Other ..... 25.00.

(b) With the exception of disabled parking violations and flow period violations, all the above stated fines, will automatically increase to $35.00 if the violation is not settled within five days of date served. Plow period violations will increase to $75.00 if not paid within five days.

(c) For purposes of this article, the term "restricted parking" means parking in an area, during a time period or under circumstances that such parking has been prohibited or controlled by ordinance or traffic order of the City, in areas where notification of such prohibition or control is posted or otherwise publicized at the time of the parking.

(Code 1979, § 9:2.2)

Sec. 26-98. - Wintertime parking.

(a) *Plow periods.* The hours of 2:30 a.m. to 6:00 a.m. every day during December 1 to April 1 are hereby designated as "plow periods."

(b) *Parking prohibited.* It shall be unlawful to park on any street, alley, or other public place during plow periods except as set out in this section.

(c) *Parking restricted.* At the direction of the City manager, parking may be restricted to the north sides of avenues and the west sides of streets during non-plow periods (6:00 a.m. to 2:30 a.m.). This restriction may be enforced by the City manager according to need and shall be immediately effective upon giving 24-hour public notice by publication in a newspaper of general circulation in the City.

(d) *Off-street municipal parking lots.*

(1) The parking of vehicles within the off street parking lots located at Fifth Avenue and Second Street, Sixth Avenue and First Street, Sixth Avenue and Second Street, Ninth Avenue and Second Street, and west of 405 Sixth Avenue from December 1 of each year to April 1 of the following year during the hours of 2:30 a.m. to 6:30 a.m. shall be by combination of permit and open parking. Only automobiles and pick up trucks, and van type vehicles shall be parked in these lots. No trailers, boats, wave runners, or recreational vehicles shall be parked in these lots during the period of December 1 to April 1.

(2) Permits shall be issued upon application to the chief of police or his designee and shall be restricted to no more than one-third the total number of parking spaces available within each lot as determined by the chief of police.

(3) Applications for permits shall contain the registered owner of the vehicle, type of vehicle, vehicle registration and telephone number of the owner. Applications for permits may be denied by the chief of police or his designee. Anyone denied application may appeal to the public safety committee by corresponding in writing to the City clerk/treasurer requesting a meeting with the committee. Fees for the permits will be established by City Council and restructured at their discretion.

(4) Permits issued by the City shall be of sufficient size to be clearly visible, numbered in sequence and shall be placed upon a vehicle in such a position which makes it clearly visible.

(e) *Violations.* Violations of this section are civil infractions. Any vehicle parked other than allowed by subsections (b) through (d) of this section shall be ticketed and subject to the impounding and towing provisions of section 26-99.

(Code 1979, § 9:2.4)

Sec. 26-99. - Parking for certain purposes prohibited; violation as civil infraction.

(a) A person shall not park a vehicle, trailer or boat on any street for the principal purpose of doing any of the following:

(1) Displaying such vehicle, trailer or boat for sale.

(2) Washing, polishing, greasing, or repairing such vehicle, trailer or boat, except for repairs necessitated by an emergency.

(3) Displaying advertising.

(4) Selling merchandise from such vehicle, trailer or boat, except in a duly established marketplace or when so authorized or licensed under the ordinance of this governmental unit.

(5) Storage for more than 48 continuous hours.

(b) A person who violates this section is responsible for a civil infraction.

(Code 1979, § 9:1.1(1.1(31)))

Sec. 26-100. - Boat launches.

(a) Boat trailers parked in the vicinity of the River Park boat launch and/or the marina boat launch and the 18th Avenue boat launch must obtain and pay for a daily or annual launch permit. This daily permit must be affixed to the vehicle. A daily sticker entitles the user to launch a boat into and remove it from the water for that day. If the return trip will not be made the same day, it must be so indicated on the launch permit to avoid citation. A boat trailer parked in the vicinity of the City boat launches is presumed to have used the launches and must bear a launch permit to avoid citation, since parking in those areas is intended for boat trailers using the launches.

(b) Proof that the particular trailer described in the complaint was parked in violation of subsection (a) of this section together with proof that the defendant named in the complaint was, at the time of such parking, the owner of such trailer, shall constitute in evidence a presumption that the owner of such trailer was the person who parked or placed such trailer at the point where, and for the time during which, such violation occurred.

(c) The City police department has the duty and authority to enforce this article. Enforcement may occur by placing a parking ticket on the vehicle connected to the trailer in violation of this section.

(d) Those persons found in violation of this section will be subject to a $10.00 fine.

(Code 1979, § 5:3.3(1)—(3))

Secs. 26-101—26-128. - Reserved.

ARTICLE V. - BICYCLES AND PLAY VEHICLES[3]

Footnotes:

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State Law reference— Power to regulate bicycles, MCL 257.606(1)(i); bicycles generally, MCL 257.656 et seq.

Sec. 26-129. - Vehicles on bicycle paths.

(a) A person shall not operate a vehicle upon or across a bicycle path except to enter or leave adjacent property.

(b) A person shall not park a vehicle upon a bicycle path.

(c) A person who violates this section is responsible for a civil infraction.

(Code 1979, § 9:1.1(1.1(14)))

Sec. 26-130. - Bicycle registration and licenses.

No bicycle shall be operated on any of the streets, alleys, or other public places in the City unless the same shall first have been licensed under the provision hereof.

(1) Bicycle licenses shall be issued by the City police department upon payment of the fee, if any, established for such licenses. Upon issuing such license, the police department shall make a record of the number of such license, identification number of such bicycle, the make thereof and the owner's name and address, and shall issue to such owner a bicycle license which shall be affixed to the post of the bicycle under the seat. Provided, that no license shall be issued hereunder unless and until the satisfactory evidence of ownership is provided.

(2) Upon the sale or transfer of a bicycle, the purchaser thereof shall present evidence of his ownership of the bicycle and secure a license therefor, in the manner set forth in subsection (1) of this section.

(3) It shall be unlawful for any person to mutilate any bicycle license or remove any such license from a bicycle for a purpose other than to replace the same with a new license.

(4) It shall be unlawful for any person to ride a bicycle on any street, alley or other place in the City unless said bicycle has been licensed and there is affixed thereto a license as provided in subsection (1) of this section.

(5) It shall be unlawful for the owner of any bicycle to allow any other person to ride the same on any street, alley or other public place in the City unless the bicycle has been licensed and there is affixed thereto a license as provided in subsection (1) of this section.

(Code 1979, § 9:1.1(1.1(15)))

Sec. 26-131. - Skateboards.

(a) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Skateboard means and includes any board or platform device having at least two axles with wheels on each and of a style commonly occurring on roller skates, or any similar device; such device is intended to be ridden by a person who propels himself by pushing the platform forward and then riding upon it as it coasts. Such device is without handlebars or other steering mechanisms.

(b) *Prohibited actions.*

(1) *Riding abreast.* When more than two persons in a group are riding skateboards, they shall ride single file.

(2) *Clinging to vehicles.* No person riding a skateboard shall cling or attach himself to any other moving vehicle.

(c) *Riding on streets, sidewalks and with reasonable regard to safety.*

(1) No person shall ride or operate a skateboard upon or within the main traveled portion of any street or highway within the City, nor shall any person cross any street or highway within the City by means of a skateboard, except within a marked crosswalk. This section shall not apply on a street which has been closed by order of the police department.

(2) The rider of a skateboard emerging from an alley, driveway, garage, or private sidewalk, shall stop immediately prior to entering onto or across a public sidewalk, or onto or across a public sidewalk line projected across an alley, and shall exercise extreme care in making such movements.

(3) Riding on sidewalks.

a. Skateboards may be ridden on sidewalks in public parks and in residential districts, but in single file only. Under all circumstances, the skateboard user shall yield the right-of-way to pedestrians using the sidewalk, and due and proper care shall at all times be exercised by the user of the skateboard for the pedestrian.

b. When approaching a pedestrian on a sidewalk, the speed of operation shall be reduced to a speed which is no greater than necessary to continue the operation of the skateboard and shall not be increased until the pedestrian has passed.

c. No skateboard shall be ridden upon any sidewalk in the business portion of the City.

(4) No skateboard shall be ridden at any time faster than is reasonable or proper, and every skateboard shall be ridden with reasonable regard to the safety of the rider and other persons and property.

(d) *Observance of all traffic laws.*

(1) *Traffic regulations.* Every person riding a skateboard shall strictly observe all traffic signs and signals and all other rules and regulations, and shall obey the orders and directions of every officer of the City authorized to direct or regulate traffic.

(2) *Right-of-way.* Any person riding a skateboard shall yield the right-of-way in the following circumstances:

a. When a pedestrian is crossing or about to cross a roadway.

b. When a pedestrian is in a crosswalk or in an intersection when the signal light changes.

c. When a vehicle is stopped to yield right-of-way to a pedestrian.

d. When a blind person, using a cane or guide dog, is crossing any highway or intersection.

e. When traffic is so close as to be a hazard.

(3) *Riding through safety zones.* No rider of a skateboard shall ride through any safety zone, unless directed by traffic signals, police officer, or an official posted sign.

(4) *Crossing sidewalk, emerging from driveway, alley or garage.* Any person riding a skateboard shall stop before crossing a crosswalk, sidewalk or intersection, or when emerging from an alley, garage, or driveway.

(5) *Blocking road or intersection.* No person riding a skateboard shall block any road or intersection so as to interfere with other vehicles or pedestrians.

(e) *Enforcement.* The chief of police or his designee shall enforce the provisions of this section.

(f) *Violations.* A person who violates any of the regulations of skateboard use is responsible for a civil infraction.

(Code 1979, § 9:1.1(1.1(16)))

Secs. 26-132—26-160. - Reserved.

ARTICLE VI. - PEDESTRIANS

Sec. 26-161. - Right-of-way in crosswalk; violation as civil infraction.

(a) When traffic control signals are not in place or are not in operation, the driver of a vehicle shall yield the right-of-way, slowing down or stopping if need be to so yield, to a pedestrian crossing the roadway within a crosswalk when the pedestrian is on the half of the roadway on which the vehicle is traveling or when the pedestrian is approaching so closely from the opposite half of the roadway as to be in danger, but a pedestrian shall not suddenly leave a curb or other place of safety and walk or run into the path of a vehicle which is so close that it is impossible for the driver to yield.

(b) A person who violates this section is responsible for a civil infraction.

(Code 1979, § 9:1.1(1.1(17)))

Sec. 26-162. - Passing vehicle stopped at intersections to permit pedestrian to cross prohibited; violation as civil infraction.

(a) When any vehicle is stopped at a marked crosswalk or at any unmarked crosswalk at an intersection to permit a pedestrian to cross the roadway, the driver of any other vehicle approaching from the rear shall not overtake and pass such stopped vehicle.

(b) A person who violates this section is responsible for a civil infraction.

(Code 1979, § 9:1.1(1.1(18)))

Sec. 26-163. - Crossing roadway at right angles to curb required; violation as civil infraction.

(a) A pedestrian shall not, except in a marked crosswalk, cross a roadway at any other place than by a route at right angles to the curb or by the shortest route to the opposite curb.

(b) A person who violates this section is responsible for a civil infraction.

(Code 1979, § 9:1.1(1.1(19)))

Sec. 26-164. - Yielding right-of-way to vehicles generally; violation as civil infraction.

(a) Every pedestrian who crosses a roadway at any point other than within a marked crosswalk at an intersection shall yield the right-of-way to all vehicles on the roadway.

(b) A person who violates this section is responsible for a civil infraction.

(Code 1979, § 9:1.1(1.1(20)))

Sec. 26-165. - Yielding right-of-way to emergency vehicles; violation as civil infraction.

(a) A pedestrian shall yield the right-of-way to an authorized emergency vehicle under the conditions prescribed in section 653 of the Michigan Vehicle Code (MCL 257.653).

(b) A person who violates this section is responsible for a civil infraction.

(Code 1979, § 9:1.1(1.1(21)))

Sec. 26-166. - Crossing between adjacent intersections; violation as civil infraction.

(a) Where traffic control signals are in operation, pedestrians shall not cross the roadway except in a marked crosswalk.

(b) A person who violates this section is responsible for a civil infraction.

(Code 1979, § 9:1.1(1.1(22)))

Sec. 26-167. - Crossing roadway in business district; violation as civil infraction.

(a) In any business district, a pedestrian shall not cross a roadway other than in a crosswalk.

(b) A person who violates this section is responsible for a civil infraction.

(Code 1979, § 9:1.1(1.1(23)))

Sec. 26-168. - Obedience to bridge and railroad barriers; violation as civil infraction.

(a) A pedestrian shall not pass through, around, over, or under any crossing gate or barrier at a railroad grade crossing or bridge while such gate or barrier is closed or is being opened or closed.

(b) A person who violates this section is responsible for a civil infraction.

(Code 1979, § 9:1.1(1.1(24)))

Sec. 26-169. - Walking on roadway when sidewalk provided prohibited; walking on street or highway when sidewalks not provided; violation as civil infraction.

(a) Where sidewalks are provided, it is unlawful for pedestrians to walk on the roadway. Where sidewalks are not provided, pedestrians shall, when practicable, walk on the left side of the street or highway facing traffic.

(b) A person who violates this section is responsible for a civil infraction.

(Code 1979, § 9:1.1(1.1(25)))

Sec. 26-170. - Soliciting ride, employment, or business in roadway prohibited; violation as civil infraction.

(a) A person shall not stand in any roadway for the purpose of soliciting a ride, employment, or business from the occupant of a vehicle.

(b) A person who violates this section is responsible for a civil infraction.

(Code 1979, § 9:1.1(1.1(26)))

Sec. 26-171. - Stopping for blind pedestrians; violation as a misdemeanor.

(a) Any driver of a vehicle who approaches within ten feet of a person who is wholly or partially blind, who is carrying a cane or walking stick which is white or white tipped with red, or who is being led by a guide dog wearing a harness and walking on either side, or slightly in front, of the blind person shall immediately come to a full stop and shall take such precautions before proceeding as may be necessary to avoid accident or injury to the wholly or partially blind person.

(b) A person who violates of this section is guilty of a misdemeanor.

(Code 1979, § 9:1.1(1.1(27)))

Sec. 26-172. - Drivers; exercising due care; violation as civil infraction.

(a) Notwithstanding the foregoing provisions of this article, every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian on any roadway, shall give warning by sounding the horn when necessary, and shall exercise proper precaution upon observing any child or any confused or incapacitated person on a roadway.

(b) A person who violates this section is responsible for a civil infraction.

(Code 1979, § 9:1.1(1.1(28)))

Chapter 28 - UTILITIES

ARTICLE I. - IN GENERAL

Sec. 28-1. - Water pipes, hydrants, etc.

It shall be unlawful for any person or persons to open, close or shut any gate or valve in any of the hydrants, water pipes or mains, or cut, tap or make connections with or in any manner obstruct, increase or diminish the flow of water in any of said pipes or mains, without authorization from the water and wastewater utility board nor shall anyone damage or obstruct any drinking fountain, or take away any water therefrom; provided nothing herein contained shall prevent the City fire department taking water from any and all hydrants.

(Code 1979, § 2:6.2(1))

Sec. 28-2. - Cross connection control.

(a) The City adopts by reference the Water Supply Cross Connection Rules of the Michigan Department of Public Health, being R325.11401 through R325.11407 of the Michigan Administrative Code. This section does not supersede the state plumbing code, but is supplementary to it.

(b) It shall be the duty of the water utility to cause inspections to be made of all properties serviced 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 established by the City water utility and as approved by the state department of public health.

(c) The representative of the water utility shall have the right to enter at any reasonable time any property served by a connection to the public water supply system of the City for the purpose of inspecting the piping system or systems thereof for 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.

(d) The water utility is hereby authorized and directed to discontinue water service after reasonable notice to any property wherein any connection in violation of this chapter 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 has been eliminated in compliance with the provisions of this section.

(e) The potable water supply system made available to the properties served by the public water supply shall be protected from possible contamination as specified by this chapter and by the state plumbing code. Any water outlet which could be used for potable and domestic purposes and which is not supplied by the potable system must be labeled in a conspicuous manner as: water unsafe for drinking.

(f) Any person or customer found guilty of violating any of the provisions of this chapter, or any written order of the water utility, in pursuance hereof, shall be guilty of an offense.

(Code 1979, § 10:1.9)

Secs. 28-3—28-22. - Reserved.

ARTICLE II. - COMBINED WATER AND SEWER SYSTEM

DIVISION 1. - GENERALLY

Sec. 28-23. - Water and wastewater utilities board.

(a) A water and wastewater utilities board is hereby established.

(b) The water and wastewater utilities board shall consist of five members who shall be freeholders and electors of the city.

(c) Four members of the water and wastewater utilities board shall be appointed by the mayor with the consent of the City Council. Each term shall be for a period of five years and shall be staggered so that only one membership expires in a given year.

(d) The City manager shall be an ex officio voting member of the water and wastewater utility board.

(e) Every May, the water and wastewater utilities board shall organize and elect one member president. A majority of the water and wastewater utilities board shall constitute a quorum for the transaction of business. The City clerk/treasurer shall be ex officio clerk of the water and wastewater utilities board but shall have no vote therein. It shall be the City clerk/treasurer's duty to perform all clerical labor required by the water and wastewater utilities board and to have charge of all its books, records, accounts and papers.

(f) The water and wastewater utilities board, subject to the direction of the City Council, may be charged and entrusted with any other public improvements or works as the City Council may, by ordinance, place under its management, supervision or control.

(g) The water and wastewater utilities board shall have power to make and adopt all such bylaws, rules and regulations as they may deem necessary and expedient for the transaction of their business consistent with this Code.

(h) The water and wastewater utilities board shall have the power to use its judgment in dispersing its budget allocation.

(i) The water and wastewater utilities board's fiscal year shall be consistent with the City's fiscal year. Accurate accounts shall be kept under the direction of the water and wastewater utilities board and all money received and disbursed by it, and a full statement thereof, together with a complete statement in detail of all work done, shall be reported to, and audited by, the City Council or by any committee it may appoint for such purpose.

(j) The water and wastewater utilities board may provide when and to whom all water rates and other moneys collected shall be paid and what steps consistent with those provided in this Code shall be taken to enforce payment. (See also section 28-54 pertaining to billings and billing enforcement).

(k) All wages and salaries of water distribution employees and supervisors shall be paid from this board's budget.

(l) The board may receive such compensation as the council may from time to time determine.

(Code 1979, § 1:8.2)

Sec. 28-24. - Combined sewer and water system.

(a) It is hereby determined to be necessary for the public health, benefit and welfare of the City, to continue to operate the water supply system and the sewage disposal system as one combined system, designated as the "Water Supply and Sewage Disposal System of the City of Menominee," under the provisions of the Revenue Bond Act of 1933 (MCL 141.101 et seq.).

(b) The City water supply and sewage disposal system shall be operated and maintained as one system on a combined rate basis and shall include all wells, pumps, pump house, water mains and laterals, water and sewer pumping stations, water storage and treatment facilities, sewers, sewage treatment plant and all attendant facilities and equipment which are used or useful in the operation and maintenance of the water supply and sewage disposal system, now in existence or hereafter acquired.

(c) Records for the water supply portion of the system shall be kept separately from sewage disposal records. These records shall include all expenses and revenues associated with each of these two categories within the overall system.

(d) The following shall use of information and data obtained from users:

(1) Information and data on 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.

(2) A user may request that the information provided by the user remain confidential. A request for confidentiality made by a user must be made at the time information is submitted. A request for confidentiality must be made on each page containing confidential information by clearly stamping on each page the words "confidential business information." No request for confidentiality can be honored with respect to effluent data.

(3) Information submitted to the City by a user may be made available upon written request to governmental agencies for uses related to this article, the national pollutant discharge elimination system (NPDES) permit, or pretreatment programs; provided, however, that such portions of a report shall be available for use by the state or any state agency in judicial review or enforcement proceedings involving the person furnishing the report.

(Code 1979, § 10:1.0(1)—(4))

Secs. 28-25—28-51. - Reserved.

DIVISION 2. - RATES AND CHARGES

Sec. 28-52. - Water supply and wastewater system and treatment rates.

(a) The rates to be charged and collected for the operation and maintenance of the municipal water supply and wastewater system and the treatment of wastewater shall be as established by resolution.

(b) Rate schedule for providing temporary water service in the City:

(1) Temporary service is defined as any metered usage with a duration of less than 90 days, and an annual usage of less than 180 days total and is located within the City limits of the City.

(2) All requests for temporary water usage will be submitted based on the following schedule:

a. Less than 100,000 gallons per day: 30 days' prior notice;

b. 100,000 to 500,000 gallons per day: 60 days' prior notice;

c. Over 500,000 gallons per day: 90 days' prior notice.

(3) All requests for temporary water usage will be approved by the water and wastewater utilities board, and will be based upon the availability capacity of the municipal water treatment facility.

(4) All costs for the setup and removal of a temporary water service will be the responsibility of the customer, regardless of whether or not any water is used.

(5) Minimum charge for the use of a water meter is one quarter (three months).

(c) Metered rates, contract rates and industrial surcharges shall be reviewed and audited annually, and the rates and surcharges shall be adjusted accordingly to reflect the variation in cost-rate-revenue pattern as it changes during the useful life of the wastewater treatment facility.

(d) No deduction shall be made from any consumer's account for water consumed which does not reach the sanitary sewer unless such water is taken from a separate metered connection (i.e., yard meter) with the water supply main; and such allowed deduction shall be the existing sewer rate. Any consumer having a separate meter for such purpose shall pay for that meter installation.

(e) Each residential consumer using water from private wells or sources other than the City water system, which is wasted to the sanitary sewer system, shall be billed at $36.90 per quarter, or if the wastewater is metered, at the existing wastewater rate.

(f) A unit of service shall consist of any residential or small commercial aggregation of space or area occupied for a distinct purpose, such as residence, apartment, flat or store.

(g) The charge for each additional unit of service will not be made when the unit of service is separately metered and billed.

(h) A consumer located outside the corporate limits of the City receiving water or wastewater service or both, shall be charged 1.83 times the rate charged consumers within the City.

(i) Meter size shall be determined by the water utility based on peak demand needs. Meters shall be installed and removed pursuant to rules and regulations of the water utility. All metered services, 1½ inches and larger shall be equipped with meter bypass plumbing at the owner's expense. The bypass shall be controlled by the water utility. The consumer shall have 180 days from date of written notification from the water utility to install bypass plumbing.

(Code 1979, § 10:1.1)

Sec. 28-53. - Rates for industrial discharges.

(a) Industrial users of the sewage system shall be charged:

(1) The same rates prevailing under section 28-54(a) pertaining to sewage system rates, plus:

a. If the character of the sewage or any manufacturing or industrial plant or any other building or premises shall be such as to impose any unreasonable burden upon the sewers of the system or upon the sewage treatment plant in excess of a maximum limit prescribed in this division, then an additional charge shall be made over and above the regular rates, or the City shall require that such sewage be treated by the person, firm or corporation responsible therefor being emptied into the sewer or the right to empty such sewage shall be denied, if necessary, to protect the system or any part thereof. Surcharges required shall be computed as the prorated share of the annual costs of operation and maintenance, including

replacement, attributable to treating a substance, multiplied by the ratio of weight of surchargeable excess of the discharged substance to the total weight of such substance that is treated in that year.

b. Any wastewater discharged into the sewer system having a substance in excess of those prescribed in section 28-87 shall be permitted only if provided for in a special agreement with the industrial concern discharging the wastewater, and only if such agreement provides for the payment by the industrial concern for the full cost of treating such excess constituents in the wastewater.

(2) All users having concentrations in excess of 200 parts per million BOD or suspended solids in excess of 250 parts per million in the sewage discharge shall have metering and sampling as required by the wastewater treatment plant superintendent. They shall be billed for excess over normal concentrations at the following rates established by resolution.

(b) Other pollutants that increase the cost of treatment not covered by this chapter but determined necessary for treatment by the water and wastewater utilities board shall be subjected to an additional charge which shall be negotiated between the user and the water and wastewater utilities board.

(Code 1979, § 10:1.2)

Sec. 28-54. - Billings.

(a) Charges for service shall be collected quarterly, provided however, billing may be changed to monthly in such circumstances as are deemed advisable by the water and wastewater utilities board and the bills shall specify the date they are due. Water billings and other bills due the water and wastewater utilities board shall be sent only to the person owning the property on which the bill is incurred. No bills will be sent to the renters unless the provisions of section 21 of the Revenue Bond Act of 1933 (MCL 141.121) and subsection (b) of this section are specifically satisfied.

(b) Enforcement. The charges for services which are under the provisions of section 21 of the Revenue Bond Act of 1933 (MCL 141.121) will be made a lien on all premises served thereby, unless notice is given that a tenant is responsible, are hereby recognized to constitute such lien, and whenever any such charge against any piece of property shall be delinquent for six months, the City official or official in charge of the collection therefor shall certify to the City assessor the fact of such delinquency whereupon such charge shall be entered upon the next tax roll as a charge against said premises and shall be collected and the lien thereof enforced in the same manner as general City taxes against such premises are collected, and the lien thereof enforced; provided, however, where a notice is given that a tenant is responsible for such charges and services, as provided by said section 21 (MCL 141.121), or a customer is located outside of the City limits service shall not be rendered such premises until a cash deposit in the amount established by resolution shall have been made as security for payment of such charges and service.

(c) In addition to other remedies provided, the City shall have the right to shut off and discontinue the supply of water to any premises for the nonpayment of charges when due. If such charges are not paid within 30 days after the due date thereof, services to such premises may be discontinued. Service so discontinued shall not be restored until all sums then due and owing shall be paid plus a turn on and turn off charge as set in the current rate schedule.

(d) No free service shall be furnished to any person, including nonprofit organizations.

(e) Premises on private water supply connected to the sewerage system may be disconnected from the sewerage system for nonpayment of services.

(f) The City will maintain and keep proper books of records and accounts, separate from all other records and accounts, in which shall be made full and correct entries of all transactions relating to the system. The City will 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 supply such audit report to authorized public officials on request.

(1) In conjunction with the audit there shall be an annual review of the sewer charge system for adequacies meeting expected expenditures for the following year.

(2) Classification of old and new industrial users should also be reviewed annually.

(3) The City will maintain and carry 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 and sewage disposal systems. All monies received for losses under any such insurance policies shall be applied solely to the replacement and restoration of the property damage or destroyed.

(g) Duly authorized employees or representatives of the City bearing proper credentials and identification shall be permitted to enter upon all properties for the purpose of inspection, observation, measurement, sampling and testing in accordance with the provisions of this division.

(h) The sewerage system shall be operated on the basis of a fiscal year commencing on July 1 and ending on June 30.

(i) The rates hereby fixed are estimated to be sufficient to provide for the payment of any or all indebtedness, to provide for the expenses of administration and operation and such expenses of maintenance of such system as are necessary to preserve the same in good repair and working order, to build up a reasonable reserve for equipment replacement thereof. Such rates shall be fixed and revised from time to time as may be necessary to produce these amounts. An annual audit shall be prepared. Based on said audit, rates for sewage services shall be reviewed annually and revised as necessary to meet system expenses and to ensure that all user classes pay their proportionate share of operation, maintenance and equipment replacement cost. If any of the replacement funds are spent before the 20-year period and where the replacement fund is based on the sinking fund method, the annual cost must be reviewed to compensate for the loss in principal.

(Code 1979, § 10:1.3)

State Law reference— Liens, MCL 141.121(3).

Secs. 28-55—28-81. - Reserved.

ARTICLE III. - SEWAGE DISPOSAL

Sec. 28-82. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Act, the Act, the Federal Water Pollution Control Act and *the Clean Water Act* are used interchangeably in this article and refer to Public Law 92-500, as adopted in 1972 and amended by Public Law 95-127 in 1977, and any succeeding amendments.

Alternative discharge limit means limits set by the City in lieu of the promulgated National Categorical Pretreatment Standards, for integrated facilities in accordance with the combined wastestream formula as set by the EPA.

Authorized representative of industrial user means:

(1) A principal executive officer of at least the level of vice-president, if the industrial user is a corporation;

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

(3) A duly authorized representative of the individual designated in subsections (1) and (2) of this definition if such representative is responsible for the overall operation of the facilities from which the indirect discharge originates.

Biochemical oxygen demand (BOD) means the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure, five days at 20 degrees centigrade expressed in terms of weight and concentration (milligrams per liter).

Building drain means that part of the lowest horizontal piping of a drainage system which receives the drainage from soil, waste and other drainage pipes inside the walls of the building and conveys it to the building sewer, beginning five feet outside the inner face of the building wall.

Building sewers means the extension from the building drains to the public sewer or other places of disposal.

Chemical oxygen demand (COD). The term "chemical oxygen demand (COD)":

(1) Means a measure of the oxygen consuming capacity of inorganic and organic matter present in water or wastewater.

(2) Is expressed as the amount of oxygen consumed from a chemical oxidant in a laboratory determination.

(3) Does not differentiate between stable and unstable organic matter and thus does not necessarily correlate with biochemical oxygen demand.

(4) Is also known as OC and DOC, oxygen consumed and dichromate oxygen consumed, respectively.

Chlorine demand means the difference between the amount of chlorine added to water or wastewater and the amount of residual chlorine remaining at the end of a specified contact period. The demand for any given water varies with the amount of chlorine applied, time of contact and temperature.

Combined sewer means a sewer receiving both surface runoff and sewage.

Combined wastestream means the wastestream at industrial facilities where regulated process effluent is mixed with other wastewaters (either regulated or unregulated) prior to treatment.

Compatible pollutant means a substance amenable to treatment in the wastewater treatment plant such as biochemical oxygen demand, suspended, solids, pH and fecal coliform bacteria, plus additional pollutants identified in the NPDES permit if the publicly owned treatment works was designed to treat such pollutants, and in fact does remove such pollutant to a substantial degree. Examples of such additional pollutants may include: chemical oxygen demand, total organic carbon, phosphorus and phosphorus compounds, nitrogen compounds, fats, oils and greases of animal or vegetable origin.

Composite sample means a series of samples taken over a specific period of time and eventually combined into one sample whose volume is proportional to the flow in the wastestream.

Cooling water means the water discharged from any use such as air conditioning, cooling or refrigeration, or to which the only pollutant added is heat.

Debt service charges means the charges levied to customers of the wastewater system which are used to pay principal, interest and administrative costs of retiring the debt incurred for construction of the sewage works. The debt service charge shall be in addition to the user charge.

Environmental protection agency or *EPA* means the U.S. Environmental Protection Agency administrator or other duly authorized official.

Federal grant means a grant in aid in construction of wastewater treatment works provided under PL 92-500, or the Federal Clean Water Act.

Footing drain means a pipe or conduit which is placed around the perimeter of a building foundation and which intentionally admits groundwater.

Garbage means solid wastes from the preparation, cooking and dispensing of food and from the handling, storage and sale of produce.

Grab sample means a sample which is taken from a wastestream on a one-time basis with no regard to the flow in the wastestream and without consideration of time.

Holding-tank waste means any waste from holding tanks such as vessels, chemical toilets, campers, trailers, septic tanks, and vacuum pump tank trucks.

Incompatible pollutants means any pollutant which is not a compatible pollutant.

Industrial waste means the wastewater discharges from industrial, manufacturing, trade or business processes, or wastewater discharge from any structure with these characteristics, as distinct from their employee's domestic wastes or wastes from sanitary conveniences.

Infiltration means that portion of groundwater which is unintentionally admitted to a sewer.

Integrated facilities means industrial facilities with a combined wastestream.

Interference means the inhibition or disruption of the sewage treatment plant processes or operations which contribute to a violation of the NPDES permit or reduce the efficiency of the sewage works. The term "interference" also includes prevention of sewage sludge use or disposal by the sewage works.

Laboratory determination means the measurements, tests and analyses of the characteristics of waters and wastes in accordance with the methods contained in the latest edition at the time of any such measurements, tests, or analysis of Standard Methods for Examination of Water and Wastewater, a joint publication of the American Public Health Association, the American Waterworks Association and the Water Pollution Control Federation, the methods contained in 40 CFR 136 or in accordance with any other method prescribed by the rules and regulations promulgated pursuant to this division.

National categorical pretreatment standard means any federal regulation containing pollutant discharge limits promulgated by the EPA which applies to a specific category of industrial users.

National outlet means any outlet into a watercourse, pond, ditch, lake or other body of surface water or groundwater.

National pollutant discharge elimination system or *NPDES permit* means a permit issued pursuant to section 402 of the Act (33 USC 1342).

National prohibitive discharge standard or *prohibitive discharge standard* means any regulation developed under the authority of 307(b) of the Act and 40 CFR 403.5.

New source.

(1) The term "new source" means any building, structure, facility or installation from which there is, or may be, a discharge of pollutants, the construction of which commenced after publication by the EPA of proposed pretreatment standards under section 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 shall 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 subsections (1)a through c of this definition, but otherwise alters, replaces or adds to existing process or production equipment.

(3) Construction of a new source as defined in this section has commenced if the owner or operator has:

a. Begun or caused to begin, as part of a continuous onsite construction program:

1. Any placement, assembly or installation of facilities or equipment;

2. Significant site preparation work including clearing, excavation or removal of existing buildings, structures or facilities which is necessary for the placement, assembly or installation of new source facilities or equipment; or

b. Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss and contracts for feasibility engineering and design studies do not constitute a contractual obligation under this subsection.

Normal domestic sewage means sewage with a concentration of less than:

(1) 200 milligrams per liter biochemical oxygen demand; and

(2) 250 milligrams per liter of suspended solids.

Operation and maintenance means all work, materials, equipment, utilities, administration and other effort required to operate and maintain the sewage works consistent with insuring adequate treatment of wastewater to produce an effluent in compliance with the NPDES permit and other applicable state and federal regulations, and includes the cost of replacement.

pH means the logarithm (base 10) of the reciprocal of the concentration of hydrogen ions expressed in grams per liter of solution.

Pollutant means any of various chemicals, substances, and refuse materials such as solid waste, sewage, garbage, sewage sludge, chemical wastes, biological materials, radioactive materials, heat, and industrial, municipal and agricultural wastes which impair the purity of the water and soil.

Pollution means the manmade or man-induced alteration of the chemical, physical, biological, or radiological integrity of water.

POTW means publicly owned treatment works.

Pretreatment or *treatment* means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutants, or the alteration of the nature of pollutant properties in wastewater to a less harmful state prior to or in lieu of discharging or otherwise introducing such pollutants into the sewage works. The reduction or alteration can be obtained by physical, chemical or biological processes, or process changes by other means, except as prohibited by 40 CFR 403.6(d).

Pretreatment requirements means any substantive or procedural requirement for treating of a waste prior to inclusion in the sewage works.

Pretreatment standards means national categorical pretreatment standards, alternative discharge limits, or other federal, state, or local standards, whichever are applicable.

Properly shredded garbage means garbage that has been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than half inch in any dimension.

Public sewer means a sewer in which all owners of abutting properties have equal rights, and is controlled by the City.

Replacement means the replacement in whole or in part of any equipment in the wastewater transportation or treatment systems to ensure continuous treatment of wastewater in accordance with the NPDES permit and other state and federal regulations.

Sanitary sewer means a sewer which carries sewage and to which stormwaters, surface waters and groundwaters are not intentionally admitted.

Sewage or *wastewater* means the liquid and water-carried industrial or domestic wastes from dwellings, commercial buildings, industrial facilities and institutions, together with any groundwater, surface water and stormwater that may be present, whether treated or untreated, which is contributed into or permitted to enter the sewage works.

Sewage treatment or *wastewater treatment plant* means any arrangement of devices and structures used for treating sewage.

Sewage works means all municipal facilities for collecting, pumping, treating and disposing of sewage.

Sewer means a pipe or conduit for carrying sewage.

Sewer service charge means the sum of any applicable user charges, surcharges and debt service charge.

Significant industrial user (SIU).

(1) The term "significant industrial user" means:

a. Any industrial user of the publicly owned treatment works (POTW) subject to categorical standards.

b. Any noncategorical industrial user of the publicly owned treatment works that discharges 25,000 gallons per day or more of process wastewater, or that contributes a process wastestream which makes up five percent or more of the dry weather hydraulic or organic capacity of the publicly owned treatment works, or that has reasonable potential, in the opinion of the City, to adversely affect the publicly owned treatment works or its operation.

(2) The City need not designate as significant any noncategorical user that, in the opinion of the City and with the agreement of the approval authority (MDNR), has no potential for affecting the publicly owned treatment works or its operation or for violating any pretreatment requirements.

Significant noncompliance , for the purpose of this article, means an industrial user is in significant noncompliance if its violation meets one or more of the following criteria:

(1) Chronic violations of wastewater discharge limits, defined here as those in which 66 percent or more of all of the measurements taken during a six-month period exceed (by any magnitude) the daily maximum limit of the average limit for the same pollutant parameter;

(2) Technical review criteria (TRC) violations, defined here as those in which 33 percent or more of all of the measurements for each pollutant parameter taken during a six-month period equal or exceed the product of the daily maximum limit or the average limit multiplied by the applicable TRC (TRC equals 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 (daily maximum or longer-term average) that the control authority determines has caused, alone or in combination with other discharges, interference or pass through (including endangering the health of POTW 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 POTWs exercise of its emergency authority to halt or prevent such a discharge;

(5) Failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in a local control mechanism or enforcement order for starting construction, completing construction, or attaining final compliance;

(6) Failure to provide, within 30 days after the due date, required reports such as baseline monitoring reports, 90-day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules;

(7) Failure to accurately report noncompliance;

(8) Any other violation or group of violations which the control authority determines will adversely affect the operation or implementation of the local pretreatment program.

Significant violation means those violations which remain uncorrected 45 days after notification of noncompliance, which are a part of a pattern of noncompliance over a 12-month period, which involve a failure to accurately report noncompliance, or which result in the exercise of the sewage works' emergency authority under 40 CFR 403.8(f)(2)(vi)(B).

Slug means any discharge of water, sewage, or industrial waste which, in concentration of any given constituent or in quantity of flow, exceeds for any period of duration longer than 15 minutes more than five times the average 24-hour concentration of flows during normal operation.

Standard industrial classification (SIC) means a classification pursuant to the Standard Industrial Classification Manual issued by the Executive Office of the president, Office of Management and Budget, 1972.

Storm sewer or *storm drain* means a sewer which carries stormwaters and surface waters and drainage, but excludes sewage and polluted industrial wastes.

Stormwater means any flow occurring during or following any form of natural precipitation or resulting therefrom.

Superintendent means the wastewater treatment plant superintendent for the City.

Surcharge means an extra charge to cover the cost of treating, sampling and testing extra strength sewage.

Suspended solids means the total suspended matter that floats on the surface of, or is suspended in, water, wastewater or other liquids, and which is removable by laboratory filtration according to a standard laboratory determination.

Toxic pollutant means any pollutant or combination of pollutants which is or can potentially be harmful to public health or environment including those listed as toxic in regulations promulgated by the administrator of the Environmental Protection Agency under the provisions of CWA 307(a) or other Acts.

User means any person who contributes, causes or permits the contribution of wastewater into the sewage works.

User charge means a charge levied on users of a treatment works for the cost of operation and maintenance of sewerage works pursuant to section 204(b) of PL 92-500 and includes the cost of replacement.

User class means the kind of user connected to sanitary sewers, including but not limited to residential, industrial, commercial, institutional and governmental.

(1) *Residential user.* A user of the treatment works whose premises or buildings are used primarily as a domicile for one or more persons, including dwelling units such as detached, semi-detached and row houses, mobile homes, apartments, or permanent multifamily dwellings. (Transit lodging is not included, it is considered commercial.)

(2) *Industrial user.* Any user who discharges an industrial waste, as defined in this section.

(3) *Commercial user.* An establishment listed in the office of management and budget's Standard Industrial Classification Manual (SICM), (1972 edition) involved in a commercial enterprise,

business or service which, based on a determination by the City, discharges primarily segregated domestic wastes or wastes from sanitary conveniences and which is not a residential user or an industrial user.

(4) *Institutional user.* Any establishment listed in the SICM involved in a social, charitable, religious, or educational function which, based on a determination by the City, discharges primarily segregated domestic wastes or wastes from sanitary conveniences.

(5) *Governmental user.* Any federal, state or local government user of the wastewater treatment works.

Watercourse means a channel in which a flow of water occurs, either continuously or intermittently.

Waters of the state means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, reservoirs, aquifers, irrigations 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.

(Code 1979, § 10:1.01)

Sec. 28-83. - Abbreviations.

The following abbreviations shall have the designated meanings:

ASTM	American Society for Testing and Materials
BOD	Biochemical oxygen demand
CFR	Code of Federal Regulations
COD	Chemical oxygen demand
CWA	Clean Water Act
EPA	Environmental Protection Agency
l	Liter
MDNR	Michigan Department of Natural Resources
mg	Milligrams
mg/l	Milligrams per liter
NPDES	National pollutant discharge elimination system
POTW	Publicly owned treatment works

SIC	Standard industrial classification
SIU	Significant industrial user
SS	Suspended solids
USC	United States Code
O & M	Operation and maintenance
WPCF	Water Pollution Control Federation
WWTP	Wastewater treatment plant

(Code 1979, § 10:1.02)

Sec. 28-84. - Penalties.

(a) Any person who shall violate any provision of this article shall be guilty of a misdemeanor and, upon conviction thereof, shall be guilty of an offense. This remedy shall be in addition to the provisions of section 12754 of the Public Health Code (MCL 333.12754).

(b) Any person violating any of the provisions of this article shall become liable to the City for any expense, loss, or damage occasioned by the City by reason of such violation.

(c) Any person who knowingly makes any false statements, representation or certification in any application, record, report, plan or other document filed or required to be maintained pursuant to this article, or who falsifies, tampers with or knowingly renders inaccurate any monitoring device or method required under this article, shall be guilty of a misdemeanor.

(d) Any person found to have violated any pretreatment requirement or any condition or limitation of its permit to discharge or equivalent control mechanism is guilty of an offense.

(Code 1979, § 10:1.6.2)

Sec. 28-85. - Enforcement.

(a) Any user subject to enforcement action under the provisions of this article may request a hearing before the City water and wastewater utilities board within ten days of receipt of notification of proposed enforcement action. A hearing is to be held by the City water and wastewater utilities board concerning the violation, the reasons why the action is to be taken, the proposed enforcement action, and permitting the user to show cause before the City water and wastewater utilities board why the proposed enforcement action should not be taken.

(b) The City water and wastewater utilities board may conduct the hearing and take the evidence, or may designate any officer, employee, or other qualified person, to:

(1) Issue in the name of the City, notices of hearing requesting the attendance and testimony of witnesses and the production of evidence relevant to any matter involved in such hearings; or

(2) Take the evidence.

(c) At any hearing held pursuant to this article, testimony taken must be under oath and recorded stenographically. The transcript, so recorded, will be made available to any member of the public or any party to the hearing upon payment of the usual charges thereof.

(d) After the City water and wastewater utilities board has reviewed the evidence, it may issue an order to the user responsible for the discharge directing that, following a specified time period, the sewer service be discontinued unless adequate treatment facilities, devices or other related appurtenances shall have been installed on existing treatment facilities, and that said devices or other related appurtenances are properly operated. Further orders and directives as are necessary and appropriate may be issued.

(e) The City water and wastewater utilities board shall also establish appropriate surcharges or fees to reimburse the additional cost of operation and maintenance of the wastewater treatment works due to the violations of this article.

(f) Upon receipt of the utilities board's order pursuant to subsection (d) of this section, an aggrieved party may appeal the order to the City Council for review and reconsideration under the following terms and conditions:

(1) Within ten days from the date the order is received from the City water and wastewater utilities board, the aggrieved party shall formally notify, in writing, the City Council of their intent to appeal the City water and wastewater utilities board's order issued pursuant to this section.

(2) Within 30 days from the date the order is received, the aggrieved party shall submit to the City Council the grounds on which the appeal is based together with all documents, evidence, transcripts, and information in support of said party's position. In addition, the aggrieved party shall file five copies of their grounds for appeal with the City Council and serve an additional copy on the City water and wastewater utilities board.

(3) The City water and wastewater utilities board shall have 30 days to respond to the aggrieved party's grounds for appeal and to submit all evidence, documents and information in support of any order issued pursuant to this section. The City water and wastewater utilities board shall file with the City Council five copies of its responsive pleading and shall serve an additional copy on the aggrieved party or his designated agent.

(4) Within 30 days of receiving the City water and wastewater utilities board's response to the aggrieved party's appeal, the City Council shall meet and review all responsible pleadings pertaining to said appeal and shall issue an order affirming the City water and wastewater utilities board's order, affirming the City water and wastewater utilities board's order in part and reversing in part, or reversing the City water and wastewater utilities board's order in full. The City Council shall immediately forward a copy of its order to all interested parties of record.

(g) If any person discharges sewage, industrial wastes or other wastes into the City wastewater disposal system contrary to the provisions of this article, federal or state pretreatment requirements, or any order of the City, the City may commence an action for appropriate legal and/or equitable relief in the applicable court of this county.

(Code 1979, § 10:1.6.3)

Sec. 28-86. - Powers and authority of inspectors.

The following shall be the powers and authority of the inspectors:

(1) The superintendent and other duly authorized employees of the City bearing proper credentials and identification shall be permitted to enter upon all properties for the purpose of inspection,

observation, measurement, sampling and testing in accordance with the provisions of this article. The superintendent or his representatives shall have no authority to inquire into any processes, including metallurgical, chemical, oil, refining, ceramic, paper, or other industries, beyond that point have a direct bearing on the kind and source of discharge to the sewers or waterways or facilities for waste treatment.

(2) While performing the necessary work on private properties referred to in subsection (a) of this section, the superintendent or duly authorized employees of the City shall observe all safety rules applicable to the premises established by the company and the company shall be held harmless for injury or death to the City employees and the City shall indemnify the company against loss or damage to its property by City employees and against liability claims and demands for personal injury or property damage asserted against the company and growing out of the gauging and sampling operation, except as such may be caused by negligence or failures of the company to maintain safe conditions as required in section 28-89.

(Code 1979, § 10:1.6.1)

Sec. 28-87. - Use of sewers.

The following shall be the regulations for the use of sewers:

(1) No person shall connect any rain water leader, area drain, drain tile, from footings of buildings, roof drains, foundation drains, floor drains connecting directly to an underground building drain, or make any similar connection, with any public sanitary sewer which empties into any sewage ejector, lift station or sewage disposal plant maintained by the City, nor drain any lot or area drain into any manhole connecting with any such sanitary sewer or disposal plant in the City.

(2) No person shall open any storm sewer or connect any rain water leader or area drain therewith without written permission from the City engineer who shall grant such permission upon his investigation and determination, as soon as practicable, after a request therefor is made to him, that said opening or connection is not likely to produce the drainage effect prohibited in subsection (a) of this section.

(3) Any person having ownership or title to any building, structure or land area in the City, including residences:

a. Whereupon any water leader, area drain or similar connection is attached, which directly or indirectly discharges into a public sanitary sewer which empties into any sewage ejector, lift station or sewage disposal plant maintained by the City;

b. That are in any way connected in such a way as to drain a lot or area into any manhole connecting with any such sanitary sewer or plant;

c. That in any way maintains, uses or suffers to exist any connection prohibited by subsection (a) of this section;

d. To which any sanitary sewer lateral is connected to a storm sewer lateral or storm sewer main;

shall remove such connection within one year after written notice is served upon him by the water and wastewater utilities board of the City that any of these conditions exist in the building, structure or area. The water and wastewater utilities board shall upon written application therefor, relieve any such person from such compliance from the date of compliance stated in the notice of hardship reasons claimed by the applicant, but in no event for more than two years from the date of service of said written notice.

(4) No user shall contribute or cause to be contributed, directly or indirectly, any pollutant or wastewater which will pass through or interfere with the operation or performance of the sewage works. A user may not contribute the following substances to the sewage works:

a. Any liquids, solids, or gases which by reason of their nature or quantity are, or may be, sufficient either alone or by interaction with other substances to cause fire or explosion or be injurious in any other way to the sewage works or to operation of the sewage works.

b. Solid or vicous substances which may cause obstruction to the flow in a sewer or other interference with the operation of the wastewater treatment facilities.

c. Any wastewater having a pH less than 6.0 or greater than 9.5, or wastewater having any other corrosive property capable of causing damage or hazard to structures, equipment, or personnel of the sewage works.

d. Any wastewater containing toxic pollutants or of high chlorine demand 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 sewage works, or exceed the limitation set forth in the EPA categorical pretreatment standard, or any other federal, state or county standards.

e. Any noxious or malodorous liquids, gases, solids which either singly or by interaction with other wastes are sufficient to create a public nuisance or hazard to life or are sufficient to prevent entry into the sewers for maintenance and repair.

f. Any substance which may cause the sewage works' effluent or any other product of the sewage works such as residues, sludges, or scums, to be unsuitable to land application or reclamation and reuse or to interfere with the reclamation process.

g. Any substance which will cause the sewage works to violate its NPDES permit or the receiving water quality standards.

h. Any wastewater with color of sufficient light absorbency to interfere with treatment plant process, prevent analytical determinations, or create any aesthetic effect on the treatment plant effluent, such as, but not limited to, dye wastes and vegetable tanning solutions.

i. Any wastewater having a temperature which will inhibit biological activity in the sewage works resulting in interference, but in no case wastewater with a temperature at the introduction into the sewage works which exceeds 66 degrees Celsius (150 degrees Fahrenheit) or is lower than zero degrees Celsius (32 degrees Fahrenheit).

j. Any pollutants, including oxygen demanding pollutants (BOD, etc.) released at a flow rate and/or pollutant concentration which will cause interference to the sewage works.

k. Any wastewater containing any radioactive wastes or isotopes of such half-life or concentration as may exceed limits established by applicable state or federal regulations.

l. Any wastewater which causes a hazard to human life or creates a public nuisance.

(5) It shall be unlawful for any person to place, deposit or permit to be deposited in an unsanitary manner upon public or private property within the City, or in any area under its jurisdictions, any human or animal excrement, garbage or other objectionable waste.

(6) It shall be unlawful to discharge any sanitary sewage, industrial waste, or other polluted water, except where suitable treatment has been provided in accordance with the provisions of this article.

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

(8) No unauthorized person shall uncover, make any connections with or opening into, use, alter, or disturb any public sewer or appurtenances thereof without first obtaining a written permit from the City.

(9) Stormwater, groundwater, water from footing drains and all other unpolluted drainage shall be discharged into such sewers as are specifically designed as combined sewers or storm sewers, or to a natural outlet, except as otherwise provided in this article. Industrial cooling water or

unpolluted process waters may be discharged upon application and approval of the City and the appropriate state agency into a storm sewer or natural outlet.

(10) No user shall ever increase the use of process water or, in any way, attempt to dilute a partial discharge or complete substitute for adequate treatment to achieve compliance with the limitations contained in the national categorical pretreatment standards, alternative discharge limits, or in any other pollutant-specific limitation developed by the City or state. Dilution may be an acceptable means of complying with some of the prohibitions set forth in this article, upon prior written approval by the City.

(11) All significant industrial users of the City's treatment works must obtain a permit or equivalent control mechanism from the superintendent within 30 days of enactment of this article amendment. Following that date, no discharge of waste by a significant industrial user is allowed without a permit. New sources, as defined at section 28-82, must install and start up all necessary pollution control equipment, whether mandated by state or federal law or otherwise required in their permits to discharge or equivalent control mechanism, prior to discharge. New sources must achieve compliance with all laws and permit or control device conditions within the shortest time feasible, as determined by the superintendent, not to exceed 90 days after commencement of discharge.

a. The City will notify each significant industrial user of its status as a categorical or noncategorical user and issue the required permit or equivalent control mechanism, with appropriate limitations, conditions, or pretreatment requirements.

b. Noncategorical significant industrial users must sample their effluent twice yearly and report results to the publicly owned treatment plant.

c. The publicly owned treatment plant must inspect and sample all significant industrial users at least yearly.

d. All industrial users must prepare and submit to the publicly owned treatment works within 30 days after receipt of their permit to discharge waste through the City a plan for slug control and any other foreseeable spill or discharge that could cause problems regarding the publicly owned treatment works, its workers or the environment in any way. The publicly owned treatment works shall evaluate these plans at least every two years and notify the industrial user of any need to amend, update or alter its plan. Failure to correct a plan after such notification by the publicly owned treatment works may constitute a permit violation, pursuant to subsection (12) of this section.

e. All significant industrial users must submit compliance reports to the City at least every six months certifying that they are in compliance with the terms and conditions of their permits to discharge or equivalent control mechanisms.

1. Compliance reports must be based on data obtained during the period covered by the report, using an appropriate amount of samples.

2. All monitoring performed by the industrial users must be conducted using the procedures approved in 40 CFR 136.

3. Compliance reports must be signed by an authorized representative of the industrial user.

4. Any violation or noncompliance with its permit to discharge or equivalent control mechanism shall be reported by the significant industrial user to the City within 24 hours of its occurrence. Within 30 days of the violation or noncompliance, the significant industrial user must resample its discharge and submit analysis results to the City, unless the City conducts the resample.

f. New sources and existing sources that become categorical industrial users subsequent to promulgation of categorical standards must submit baseline monitoring reports (BMRs) at least 90 days prior to commencement of discharge. New sources must include information

on pretreatment methods they intend to use and provide data on production, flow and amounts of regulated pollutants.

g. All industrial users must promptly notify the City in advance of substantial changes in the volume or character of pollutants in their discharge to the publicly owned treatment works. A substantial change can be any deviation from the normally expected volume or character of pollutants.

h. All industrial users are prohibited from discharging pollutants with the following characteristics:

1. Wastestreams with a closed cup flashpoint of less than 140 degrees Fahrenheit.

2. Pollutants causing toxic gases, vapors and fumes that may cause worker health and safety problems.

3. Oil and grease in amounts causing pass through or interference.

4. Trucked or hauled waste unless done in conformance with subsection (12)b of this section.

This list of prohibited pollutants is not exhaustive. In determining limitations or conditions applicable to specific industrial users, the superintendent is not restricted to prohibiting only the pollutants listed in subsection (11)h of this section, but may further restrict or limit appropriate items for the type of waste sought to be discharged.

(12) Permits or equivalent control mechanisms shall specify the conditions pursuant to which the industrial user may discharge waste into the treatment works, including, but not limited to, specific limitations pertaining to the quality, quantity, condition or chemical makeup of waste discharged. Pretreatment of waste may be compelled. Dilution of waste is prohibited to meet pretreatment standards and requirements. The superintendent shall establish the limits and conditions of each industrial user's permit, based upon the particular waste involved and in accordance with relevant MDNR and federal regulations or guidelines, as called for by the particular circumstances.

a. Failure to comply with the conditions or limitations included in each permit voids the permit to discharge. The superintendent shall determine the seriousness of the noncompliance and direct the industrial user on how to correct the situation within ten days of discovery or notification of the noncompliance, as well as the enforcement action to be taken by the City. Industrial users may respond in accordance with this section.

b. All waste trucked or hauled by an industrial user is prohibited from discharge into the treatment works system except at points specifically designated by the City on an industrial user's permit or equivalent control mechanism. In the event that a permit or equivalent control mechanism for trucked or hauled waste is not issued or fails to specify a designated discharge point, then the only permissible point of discharge is the City's treatment plant.

c. All industrial users must operate their waste treatment systems at all times. Bypass of the treatment system may only be allowed under the following circumstances, for the least amount of time necessary:

1. For essential maintenance, only, so long as such bypass does not cause a violation of pretreatment standards or local limits.

2. If unavoidable and to prevent loss of life, personal injury or severe property damage, but only if there were no feasible alternatives to bypass are available.

3. If an industrial user knows in advance of the need for a bypass, prior notification to the City is required.

4. The City must be notified of an unanticipated bypass orally within 24 hours of occurrence, followed up with receipt by the City of written notice within five days of the occurrence.

(13) Upset provision.

a. Definition. For the purposes of this section, the term "upset" means an exceptional incident in which there is unintentional and temporary noncompliance with categorical pretreatment standards because of factors beyond the reasonable control of the industrial user. The term "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.

b. Effect of an upset. An upset shall constitute an affirmative defense to an action brought for noncompliance with categorical pretreatment standards if the requirements of subsection (13)c of this section are met.

c. Conditions necessary for a demonstration of upset. An industrial user who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

1. An upset occurred and the industrial user can identify the cause 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;

3. The industrial user has submitted the following information to the POTW and control authority within 24 hours of becoming aware of the upset (if this information is provided orally, a written submission must be provided within five days):

(i) A description of the indirect discharge and cause of noncompliance;

(ii) The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue;

(iii) Steps being taken and/or planned to reduce, eliminate and prevent recurrence of the noncompliance.

d. Burden of proof. In any enforcement proceeding, the industrial user seeking to establish the occurrence of an upset shall have the burden of proof.

e. Reviewability of agency consideration of claims of upset. In the usual exercise of prosecutorial discretion, agency information personnel should review any claims that noncompliance was caused by an upset. No determinations made in the course of the review constitute final agency action subject to judicial review. Industrial users will have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with categorical pretreatment standards.

f. User responsibility in case of upset. The industrial user shall control production or all discharges to the extent necessary to maintain compliance with categorical pretreatment standards 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.

(Code 1979, § 10:1.5)

Sec. 28-88. - Connections.

The following shall be the regulations for connections:

(1) Structures in which sanitary sewage originates within the City shall be connected to any available public sanitary sewer in the City, before such premises may be used for human habitation, unless otherwise resolved by the City Council. The term "available public sanitary sewer" is defined by section 12751(c) of the Public Health Code (MCL 333.12751(c)).

(2) It shall be unlawful for any person to discharge sewage upon a public street or into any stream or watercourse or into any private drain or cesspool or outhouse, or into any septic tank, or any place other than public sanitary sewer, where it is available, unless otherwise resolved by the City Council.

(3) It shall be unlawful for any person to sewage service any premises with a septic tank after the expiration of 18 months from the time a serviceable sanitary sewer is laid in the public street or alley adjoining such premises, unless otherwise resolved by the City Council.

(4) It shall be unlawful for any person to water service any premises with water service other than that supplied by the City through such water distributing pipes after the expiration of 18 months from the time water supply distributing pipes shall have been laid in the public street or alley adjoining such premises.

(5) Where a public sanitary sewer is not available under the provisions of section 28-87(7), the building sewer shall be connected to a private sewage disposal system, complying with county health department regulations.

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

(7) No unauthorized person shall uncover, make any connections with or openings into, alter or disturb any public sewer or appurtenance thereof without first obtaining a written permit from the City. No building sewer shall be covered until after it has been inspected and approved by the authorized official.

(8) All costs and expense incident to the installation and connection of the building sewer to the public sewer connection shall be borne by the owner.

(9) A separate and independent building sewer shall be provided for every building.

(10) Old building sewers may be used in connection with the new building only when they are found on examination and test to meet all requirements of this article.

(11) A newly constructed building sewer shall be cast iron or vitrified clay sewer pipe. Joints shall be tight and waterproof; materials and joints shall be as approved by the City. Any part of the building sewer that is located within ten feet of a water service pipe shall be constructed of cast iron. If installed in filled or unstable ground, the building sewer shall be of cast iron soil pipe, except that the nonmetallic material may be accepted if laid on a suitable concrete bed or cradle. Transitions or connections will be constructed only with fabricated connection fittings approved by the City.

(12) The size and slope of the building sewer shall be subject to the approval of the City, but in no event shall the diameter be less than four inches. The slope of such four-inch pipe shall not be less than one-eighth inch per foot, unless otherwise permitted.

(13) Whenever possible, the building sewer shall be brought to the building at an elevation below the basement floor. No building sewer shall be laid parallel to or within three feet of any bearing wall which might thereby be weakened. The depth shall be sufficient to afford protection from frost. The building sewer shall be laid at uniform grade and in a straight line.

(14) In all buildings in which any building drain is too low to permit gravity flow to the public sewer, sanitary sewage carried by such drain shall be lifted by a pumping system approved by the City and discharged to the building sewer.

(15) No sewer connection will be permitted unless there is capacity available in all downstream sewers, lift stations, force mains and the sewage treatment plant, including capacity for treatment of BOD and suspended solids.

(16) All extensions and alterations or the system of sewer mains shall be under the supervision of the City. Each petition for the extension of sewer mains shall be addressed to the City, and the City shall consider the petition and advise the petitioners of its decision.

(17) Any person, being the owner of property within the City proposed to be dedicated to the City for street or utility right-of-way purposes, installing sewer mains within the area so proposed to be dedicated, at his own expense, shall first submit plans and specifications for such work to the City for its approval. After such plans and specifications have been approved by the City as consistent with the general sewage disposal system and engineering plans and specifications for the sewage disposal system in the City, the work shall be done under the supervision of the City, who shall require that such tests be made as he may consider necessary to determine that the sewer mains meet the standards of other sewer mains in the City, and no sewage shall be admitted into such mains until he accepts the installation on behalf of the City. The provisions of this subsection shall also apply to any installation of sewer mains outside of the City, where permissions have been granted by the City to connect such mains to the existing City sewage disposal system.

(18) Before any connection is made to the City sewer main, application for a permit therefor, must be made in writing to the City by the owner of the premises to be served, or by his authorized representative. The application shall be made on forms provided by the City.

(19) After the permit for service connection has been granted, and before the connection is made, the owner shall pay a permit fee for tapping the main and installation of the sewer main from the main to the premises. The permit fee shall be determined and paid according to a schedule of fees established by the City.

(Code 1979, § 10:1.6)

Sec. 28-89. - Regulations of sewage discharges.

The following shall be the regulations for sewage discharges:

(1) Pretreatment. Where required or when, in the opinion of the wastewater treatment superintendent, constituents that are harmful to the sewage system, wastewater treatment processes or operation of the pollution control works are present in the wastes discharged to the sewer system, then the contributor of such wastes to the wastewater collection system of the City shall provide, at his expense, such preliminary treatment or processing facilities as may be necessary to render his wastes acceptable for admission to the public sewers.

(2) Emission odors. Any odors found by the wastewater treatment superintendent to be necessary for odor treatment at a public sewer shall be treated by the water and wastewater utilities board under the direction of the wastewater treatment superintendent and at the cost of the person admitting such sewage.

(3) Refuse to treat. The City shall have the right to refuse to treat any industrial wastes either totally or in part and require the person to treat such industrial waste at his expense.

(4) Control manholes. All persons discharging industrial wastes in excess of normal concentrations into a public sewer or when directed by the wastewater treatment superintendent shall construct and maintain needed control manholes to facilitate observation, measurement and sampling of their wastes. Control manholes shall be located and built in a manner approved by the wastewater treatment superintendent. If measuring devices are to be permanently installed, they shall be of a type approved by the wastewater treatment superintendent. Control manholes, and related equipment, shall be installed at the expense of the person discharging the waste, and shall be maintained by him in safe condition, accessible and in proper operating condition at all times.

(5) Metering of waste. Devices for metering the volume of waste discharged may be required by the wastewater treatment superintendent if those volumes cannot otherwise be determined from the metered water consumption records. Metering devices for determining the volume of waste shall be owned and maintained by the person. Following approval and installation, such meters may not be removed without the consent of the wastewater treatment superintendent.

(6) Waste sampling. Industrial wastes discharged into the public sewers shall be subject to periodic inspection and a determination of character and concentration. The determination shall be made

as often as deemed necessary by the wastewater treatment superintendent. If any said testing by the City shall show a changed degree of pollutional load in the sewage or waste being discharged, such new test results shall be used in computing the subsequent billings, but no reduction unless at least a full day of operation of the person's plant has undergone the test. Any person may request testing of the person discharging the waste and such tests shall be of a minimum of 24 hours' duration. If the wastewater treatment superintendent is satisfied that such test was made when the plant was operating under normal conditions, the results of these tests shall be used in computing the subsequent billing in the manner previously prescribed.

(7) Wells. Waste from private wells or sources other than the City water systems, which is wasted to the sanitary sewer may be metered. Space for a meter shall be provided by the consumer. The meter shall be installed and controlled by the water and wastewater utilities board. The consumer will be billed at the charge for sewage treatment provided in subsection (5) of this section. If City water is not available to the customer and a meter is required and installed, the customer will pay for the meter installation and its maintenance.

(8) Service charge. A charge for service calls by an employee of the City water and wastewater utilities board will be made for any non-repair service provided by the City water and wastewater utilities board (i.e., turning on/off water, etc.).

(9) Grease, oil and sand interceptors shall be provided when liquid wastes contain grease in excessive amounts, or other harmful ingredients; except that such interceptors shall not be required for single-family or multiple-family dwelling units. All interceptors shall be of a type and capacity approved by the City engineer and shall be located as to be readily and easily accessible for cleaning and inspection. Grease and oil 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.

(10) When installed, all grease, oil and sand interceptors shall be maintained by the owner, at his expense, in continuously efficient operation at all times.

(11) No statement contained in this section shall be construed as preventing any special agreement between the City and any industrial concern whereby an industrial waste of usual strength or character may be accepted, subject to payment by the industrial concern, provided such agreement shall not violate NPDES requirements and provided user charges and surcharges as provided in this article are agreed to in the agreement.

(12) Upon the promulgation of the national categorical pretreatment standards, alternative discharge limits, or other federal or state limitations, for a particular industrial subcategory, the pretreatment standard, if more stringent than limitations imposed under this article for sources in that subcategory, shall immediately supersede the limitations imposed under this article and shall be considered part of this article. The City shall notify all affected users of the applicable reporting requirements.

(13) No person shall discharge wastewater such that the concentrations of pollutants contained in a representative 24-hour composite sample shall exceed the following without the permission of the superintendent:

0.005	mg/l beryllium
2.0	mg/l cadmium
3.0	mg/l copper
1.0	mg/l cyanide

1.0	mg/l lead
0.0005	mg/l mercury
3.0	mg/l nickel
4.0	mg/l total chromium
3.0	mg/l zinc
100	mg/l oil and grease
200	mg/l BOD
250	mg/l suspended solids

The City shall annually review the quantities of industrial pollutants listed in the table in this subsection which are discharged or proposed to be discharged to the sewage works. The City shall recommend any revisions to these limits necessary to ensure that the NPDES permit, federal pretreatment standards and water resources limits are met to ensure that the industrial discharge will not interfere with the treatment process of sludge disposal.

(14) If the character of the wastewater from any manufacturing or industrial plant or any other building or premises exceeds the strength of normal domestic sewage or shall be such as to impose any unreasonable burden upon the sewers of the system or upon the sewage treatment plant in excess of a maximum limit prescribed in this article, then an additional charge shall be made over and above the regular rates, or the City shall require that such sewage be treated by the person, firm or corporation responsible therefor being emptied into the sewer or the right to empty such sewage shall be denied, if necessary, to protect the system or any part thereof. Surcharges required shall be computed as the prorated share of the annual costs of operation and maintenance, including replacement, attributable to treating a substance, multiplied by the ratio of weight of surchargeable excess of the discharged substance to the total weight of such substance that is treated in that year. The strength of such wastes shall be determined by composite samples taken over a sufficient period of time to ensure a representative sample. The cost of sampling and testing shall be borne by the industry or establishment, whether owner or lessee. Tests shall be made by the user, an independent laboratory, or at the wastewater treatment plant.

(15) Any wastewater discharged into the sewer system having a substance in excess of those prescribed in subsection (13) of this section, may be permitted provided payment by the industrial concern for the full cost of treating such excess constituents in the wastewater is made and acceptance of the waste does not cause violation of EPA guidelines or NPDES requirements.

(16) Where required by the state or otherwise directed by the City, a user shall provide protection from accidental discharge of prohibited materials or other substances regulated by this article. Facilities to prevent accidental discharge of prohibited materials shall be provided and maintained at the owner's or user's own cost and expense. Detailed plans showing facilities and operating

procedure to provide this protection shall be submitted to the superintendent for review, and shall be approved by the City before construction of the facility. All required users shall complete such a program within 90 days notification by the City. If required by the City, a user who commences contribution to the sewage works after the effective date of the ordinance from which this article is derived shall not be permitted to introduce pollutants into the system until accidental discharge procedures have been approved by the City. Review and approval of such plans and operating procedures shall not relieve the industrial user from the responsibility to modify the user's facility as necessary to meet the requirements of this article. In the case of an accidental discharge, it is the responsibility of the user to immediately telephone and notify the sewage works of the incident. The notification shall include location of discharge, type of waste, concentration and volume, and corrective actions.

(17) Within five days following an accidental discharge, the user shall submit to the superintendent a detailed written report describing the cause of the discharge and the measures to be taken by the user to prevent similar future occurrences. Such notification shall not relieve the user of any expense, loss, damage or other liability which may be incurred as a result of damage to the sewage works, fish kills, or any other damage to person or property; nor shall such notification relieve the user of any fines, civil penalties, or other liability which may be imposed by this article or other applicable law. Failure to file a report shall be a separate violation of this article, the City may use one of the following methods:

a. The amount of water supplied to the premises by the public water system as shown upon the water meter if the premises are metered;

b. If the premises are supplied with river water or water from private wells, the amount of water supplied from such sources may be metered at the source or metered at its point of discharge prior to entry into the public sewer;

c. If such premises are used for an industrial or commercial purpose of such a nature that the water supplied to the premises cannot be entirely discharged into the sewer system, the estimate of the amount of sewage discharged into the sewer system made by the City from the water, gas or electric supply, or metered at its point of discharge prior to entry into the public sewer;

d. The volume of sewage discharged into the sewer system as determined by measurements and samples taken at a manhole installed by the owner of the property served by the sewer system at his own expense in accordance with the terms and conditions of the permit issued by the City pursuant to this section; or

e. A figure determined by the City by any combination of the foregoing or by any other equitable method.

(18) It shall be unlawful to discharge to the waters of the state within the City, or in any area under the jurisdiction of said City and/or to the sewage works, any wastewater except as provided by an NPDES permit and/or as authorized by the City in accordance with the provisions of this article, legislation adopted by the state, and regulations promulgated thereunder, and legislation adopted by the United States Congress, and regulations promulgated thereunder.

(19) All industrial users proposing to connect to or to contribute to the sewage works shall submit information on the user, processes and wastewater to the superintendent before connecting to or contribution to the sewage works. All existing industrial users connected to or contributing to the sewage works shall submit this information within 30 days after the effective date of the ordinance from which this article is derived. The information submitted must be sufficient for the City to determine the impact of the user's discharge on the sewage works and the need for pretreatment. The user shall submit, in units and terms appropriate for evaluation, the following information:

a. Name, address and location (if different from the address).

b. A list of any environmental control permits held by, or for, the facility.

c. A description of the users operation, average rate of production, standard industrial classification (SIC) number according to the Standard Industrial Classification Manual, Bureau of the Budget, 1972, as amended. This description shall include a schematic process diagram which indicates the points of discharge to the wastewater collection system of the City from the regulated process.

d. Wastewater constituents and characteristics including but not limited to those mentioned in this article as determined by a reliable analytical laboratory.

1. All sampling and analysis shall be performed in accordance with the procedures and methods detailed in:

(i) Standard Methods of the Examination of Water and Wastewater, American Public Health Association.

(ii) Manual of Methods for Chemical Analysis of Water and Wastes, United State Environmental Protection Agency.

(iii) Annual Book of Standards, Part 131, Water, Atmospheric Analysis, 1975, American Society of Testing Materials.

(iv) 40 CFR 136, as amended.

2. Where feasible, samples must be obtained through flow proportioned composite sampling techniques as specified in the applicable categorical pretreatment standard promulgated by EPA.

3. Where the flow of the wastewater stream being sampled is less than 950,000 liters per day (approximately 250,000 gallon per day), the user contributing industrial waste must take three samples within a two week period. Where the flow of the wastewater discharged is greater than 950,000 liters per day, the user must take samples within a two week period. Samples must be taken immediately downstream from the pretreatment facilities if pretreatment facilities exist, or immediately downstream from the regulated process if no pretreatment exists. If a combined wastestream results from the mixing of wastewaters from regulated processes prior to pretreatment, the user contributing industrial waste to the wastewater stream must measure flows and concentration in accordance with 40 CFR 403.6(e) in order to provide data necessary to determine compliance with pretreatment standards.

e. The measured average daily and maximum daily flow in gallons per day to the wastewater collection system of the City from the regulated process streams, if any, and from other streams. The data provided from such other streams shall be in conformance with, and according to the form at of 40 CFR 403.6(e).

f. Average daily wastewater flow rates, including daily, monthly and seasonal variations, if any.

g. Industries identified as significant industrial users or subject to the national categorical pretreatment standards or those required by the City must submit site plans, floor plans, mechanical and plumbing plans and details to show all sewers, sewer connections, and appurtenances by the size, location and elevation. Such users must obtain a permit from the superintendent which will regulate the manner in which use of the publicly owned treatment works will be allowed to each such user.

h. Description of activities, facilities and plant processes on the premises including all materials which are or could be discharged.

i. Where known, the nature and concentration of any pollutants in the discharge which are limited by any City, state or federal pretreatment standards, and a statement regarding whether or not the pretreatment standards are being met on a consistent basis and if not, whether additional operation and maintenance and/or additional pretreatment is required by the industrial user to meet applicable pretreatment standards.

j. If additional pretreatment and/or operation and maintenance will be required to meet the pretreatment standards; the shortest schedule by which the user will provide such additional pretreatment. The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard. The following conditions shall apply to this schedule:

1. The schedule shall contain increments of progress 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.

2. No increment referred to in subsection (19)j.1 of this section shall exceed nine months.

3. Not 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 City including, as a minimum, whether or not it complied with the increment of progress to be met on such date and, if not, the date on which it expects to comply with this increment of progress, the reason for delay, and the steps being taken by the user to return the construction to the schedule established. In no event shall more than nine months elapse between such progress reports to the City.

k. Each product produced by type, amount, process or processes and rate of production.

l. Type and amount of raw materials processed, average and maximum per day.

m. Number and type of employees, hours of operation of plant and proposed or actual hours of operation of pretreatment system.

n. Any other information as may be deemed by the City to be necessary to evaluate the impact of the discharge on the sewage works.

(20) Within six months of the promulgation or revisions of a pretreatment standard, all affected users must submit to the superintendent the information required by subsections (18)h and i of this section.

(21) Wastewater discharges shall be expressly subject to all provisions of this article and all other applicable regulations established by the City. The City may:

a. Limit the average and maximum wastewater constituents and characteristics;

b. Limit the average and maximum rate and time of discharge or make requirements for flow regulations and equalization;

c. Require the installation and maintenance of inspection and sampling facilities;

d. Establish specifications for monitoring programs which may include sampling locations, frequency of sampling, number, types and standards for tests and reporting schedule;

e. Establish compliance schedules;

f. Require submission of technical reports or discharge reports;

g. Require the maintaining, retaining and furnishing of plant records relating to wastewater discharge as specified by the City, and affording the City access thereto, and copying thereof;

h. Require notification of the City for any new introduction of wastewater constituents or any substantial change in the volume or character of the wastewater constituents being introduced into the wastewater treatment system;

i. Require notification of slug discharges and accidental spills;

j. Require other conditions as deemed appropriate by the City to ensure compliance with this article.

(22) Users of the wastewater treatment collection system contributing industrial waste subject to a categorical pretreatment standard or, in the case of a new source, following commencement of the introduction of wastewater into the sewage works, any user subject to pretreatment standards and requirements, within the limits of this article, shall submit to the superintendent a report in accordance with 40 CFR 403.12(e) indicating the nature and concentration of all pollutants in the discharge from the regulated process which are limited by pretreatment standards and requirements and the average and maximum daily flow for these process units in the user facility which are limited by such pretreatment standards or requirements if the user contributing industrial waste as imposed by the City or from some other source, a mass limitation, the report shall indicate the mass of pollutants regulated by pretreatment standards in the discharge from the user contributing said industrial wastewater. The report shall state whether the applicable pretreatment standards or requirements are being met on a consistent basis and, if not, what additional operation and maintenance and/or pretreatment is necessary to bring the user into compliance with the applicable pretreatment standards or requirements. This statement shall be signed by an authorized representative of the industrial user, and certified by a qualified professional. The reports required by this section shall be submitted to the superintendent of the City wastewater treatment plant during the month of June and the month of December each year, and shall cover the time period for the six months ending May 31, and November 30, respectively. (Reference 40 CFR 403.12.)

(23) The City shall inspect the facilities of any user to ascertain whether the purpose of this article is being met and all requirements are being complied with. Persons or occupants of premises where wastewater is created or discharged shall allow the superintendent or his representative ready access at all reasonable times to all parts of the premises for the purposes of inspection, sampling, records examination, records copying or in the performance of any of their duties. The City, MDNR and EPA shall have the right to set up on the user's property such devices as are necessary to conduct sampling inspection, compliance monitoring and/or metering operations. Where a user has security measures in force which would require proper identification and clearance before entry into their premises, the user shall make necessary arrangements with their security guards so that upon presentation of suitable identification, personnel from the City, MDNR and EPA will be permitted to enter, without delay, for the purposes of performing their specific responsibilities.

(24) Industrial users shall provide necessary wastewater treatment as required to comply with this article and shall achieve compliance with all pretreatment standards within the time limitations as specified by the federal pretreatment regulations and as required by the City. Any facilities required to pretreat wastewater to a level acceptable to the City shall be provided, operated, and maintained at the user's expense. Detailed plans showing the pretreatment facilities and operating procedures shall be submitted to the superintendent for review, and shall be approved by the City before construction of the facility. The review of such plans and operating procedures will in no way relieve the user from the responsibility of modifying the facility as necessary to produce an effluent acceptable to the City under the provisions of this article. Any subsequent changes in the pretreatment facilities or method of operation shall be reported to and be acceptable to the City prior to the user's initiation of the changes. As required by 40 CFR 403.8(f)(2)(vii), the City shall annually publish in the major local newspaper a list of the users which were significantly violating any applicable pretreatment requirements or standards during the 12 previous months. The notification shall also summarize any enforcement actions taken against the user during the same 12 months. All records relating to compliance with pretreatment standards shall be made available to officials of the EPA or MDNR upon request.

(25) The City may suspend wastewater treatment service to a contributor of industrial waste to the wastewater collection system when such suspension is necessary, in the opinion of the superintendent, in order to stop an actual of threatened discharge which presents or may present an imminent or substantial endangerment to the health or welfare of persons after informal notice to the source of such industrial waste, but without a prior hearing.

a. Any person notified of a suspension of the wastewater treatment service shall immediately stop or eliminate the contribution. In the event of a failure of the person to comply voluntarily

with the suspension order, the City shall take such steps as are deemed necessary including immediate severance of the sewer connection, to prevent or minimize damage to the sewage works system or endangerment to any individuals.

b. After notice and the opportunity to be heard, the superintendent of the wastewater treatment plant may halt a contribution of industrial waster to the wastewater collection system by a source of industrial waste which presents, or may present a damage to the environment, or which threatens to interfere with the operation of the wastewater treatment plant, whether or not such an interference may cause or contribute to a violation by the City of its NPDES permit.

c. The City shall reinstate the wastewater treatment service upon proof of the elimination of the noncomplying discharge. A detailed written statement submitted by the user describing the causes of the harmful contribution and the measures taken to prevent any future occurrence shall be submitted to the superintendent within 15 days of the date of occurrence of such noncomplying discharge.

(26) The opportunity to be heard, where it is granted, or exists, in this article, shall consist of:

a. A statement of:

1. The conditions regarding a contributor of industrial waste which present, or may present, a danger to the environment, or which threaten to interfere with the operation of the wastewater treatment plant;

2. The actual interference observed, or the basis for the concern that a potential for interference with the operation of the wastewater treatment plant exists, as a consequence of the contribution of an industrial waste source to wastewater collection system of the City; or

3. The basis for concern that a source of industrial waste contributed to the wastewater collection system of the City may result in a threat to the environment.

b. A date, time and place where a hearing will be held if requested, by the contributor of industrial waste to the wastewater and collection system of the City.

c. The contributor of industrial waste will be permitted the opportunity to cross examine witnesses, present evidence of its own, and be represented by counsel.

d. A hearing, if requested, shall be considered a judicial proceeding, and shall be heard by the water and wastewater utilities board. The water and wastewater utilities board, after hearing evidence, may retire to deliberate upon and consider the evidence, reach findings of fact, and conclusions of law out of the presence of the parties, and the public.

e. The water and wastewater utilities board shall render a written finding of fact and conclusion of law.

f. Appeal from a decision of the water and wastewater utilities board shall be to the appropriate court of the state.

(27) Whenever the City finds that any user has violated or is violating this article, or any prohibition, limitation of requirements contained herein, the superintendent may serve upon such person a written notice stating the nature of the violation. Within 30 days of the date of the notice, a plan for the satisfactory correction thereof shall be submitted to the superintendent by the user.

(Code 1979, § 10:1.4)

ARTICLE I. - IN GENERAL

Sec. 101-1. - Applicability of chapter 1.

The provisions of chapter 1 of this Code apply to this subpart.

Sec. 101-2. - Status.

While this subpart is a codification of the ordinances pertaining to land development regulations, provisions in subpart A of this Code may also pertain to land development. The failure to include provisions in this subpart does not excuse failure to comply with such provisions.

Secs. 101-3—101-22. - Reserved.

ARTICLE II. - PLANNING COMMISSION[1]

Footnotes:

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State Law reference— Planning commissions, MCL 125.3811 et seq.

Sec. 101-23. - Created.

To carry out a municipal plan as provided in Public Act No. 33 of 2008 (MCL 125.3801 et seq.), a planning commission to be known as the Planning Commission of the City of Menominee, is hereby created.

(Code 1979, § 1:8.7(1))

State Law reference— Authority to create planning commission, MCL 125.3811.

Sec. 101-24. - Membership.

The planning commission shall consist of nine members who shall be appointed by the mayor subject to the approval by a majority vote of the City Council.

(Code 1979, § 1:8.7(2))

State Law reference— Planning commission membership, MCL 125.3815.

Chapter 103 - BUILDINGS AND BUILDING REGULATIONS[1]

Footnotes:

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State Law reference— State construction code, MCL 125.1501 et seq.

ARTICLE I. - IN GENERAL

Sec. 103-1. - Heat supply from outdoor heating units.

(a) Definitions. The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Outdoor heating units means:

(1) Accessory structures located on a parcel of land that supply a source of heat to another structure that is not attached to the outdoor heating unit, whether located on the same or a different parcel of land.

(2) Any form of heat generated from the outdoor heating unit is intended to be within the coverage of this section, whether burning wood, coal, natural gas, any other combustible material or electrically powered.

(b) Any buildings or structures located within the City must be heated by systems wholly contained within the building to be heated. Outdoor heating units are not permissible and may not be installed or operated in the City. Industrial heating plants that services more than one building are not included in this definition and are not prohibited by this section.

(c) All sources of heat for buildings in the City shall otherwise comply with the requirements of state codes, as adopted by this Code, and all City ordinances, to the extent that other applicable laws or ordinances may conflict with this ban on outdoor heating units, this specific section shall have priority to the extent permissible by applicable law.

(Code 1979, § 3:3.6)

Secs. 103-2—103-20. - Reserved.

ARTICLE II. - STATE CONSTRUCTION CODE[2]

Footnotes:

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State Law reference— State construction code, MCL 125.1501 et seq.

Sec. 103-21. - Construction board of appeals.

(a) The construction board of appeals shall hear appeals of decisions by the building inspector and code enforcement officer (except for those heard by the condemnation board) which are filed in writing within ten days of issuance of the decision of which review is sought.

(b) The construction board of appeals shall consist of five members who are architects, or skilled building tradespersons (e.g., plumbers, electricians, mechanical contractors, carpenters and the like) who are residents of the City. A majority of the board shall constitute a quorum. Decisions shall be based on a majority of the members present provided a quorum exists. The term of each member shall be staggered. Members of the board shall serve for terms of three years. All members shall be appointed by the mayor subject to confirmation by City Council. The chair of this board shall be designated by the mayor.

(Code 1979, § 1:8.11)

State Law reference— Construction board of appeals, MCL 125.1514.

Sec. 103-22. - State building and residential code.

(a) Pursuant to the provisions of the state building and residential code, in accordance with Public Act No. 230 of 1972 (MCL 125.1501 et seq.), the building inspector of the City is hereby designated as the enforcing agency to discharge the responsibilities of the City under such act. The City assumes responsibility for the administration and enforcement of said Act throughout its corporate limits. To achieve these ends, the building inspector shall have the cooperation and services of those officers and employees normally charged with enforcement of this Code. In addition, he shall have the authority to enlist the services of the City officials and employees necessary to achieve the goals of the chapter.

(b) Subject to approval and/or modifications by City Council the building official is hereby vested with the authority to promulgate rules and schedules of fees, consistent with and necessary to achieve the goals of this chapter.

Secs. 103-23—103-49. - Reserved.

ARTICLE III. - PROPERTY MAINTENANCE CODE

Sec. 103-50. - Adoption.

The International Property Maintenance Code, 2009 edition, is hereby adopted as the property maintenance code for the control of buildings and structures as herein provided. All of the regulations, provisions, penalties, conditions and terms of such publication are hereby adopted, and made part hereof, as if fully set out in this article, subject to the additions, deletions and changes set forth in section 103-51. One copy of such publication, as amended by the ordinance from which this section is derived, is on file and available for review by the public in the City clerk/treasurer's office.

(Code 1979, § 3:6.1)

State Law reference— Adoption by reference, MCL 117.3(k).

Sec. 103-51. - Additions, insertions and changes.

The International Property Maintenance Code, 2009 edition, is amended and revised as follows:

101.1 Title (amended). These regulations shall be known as the Property Maintenance Code of the City of Menominee hereinafter referred to as "this code."

102.3 Application of other codes (amended). Any repairs, additions or alterations to a structure, or changes of occupancy, shall be done in accordance with the procedures and provisions of the building, plumbing, electrical and mechanical codes adopted by the state construction code commission pursuant to section 4 of Public Act No. 230 of 1972 (MCL 125.1504) and in effect at the time of application for appropriate permits to carry out such work.

106.2 Penalty (amended). Any individual, corporation, partnership or any other group acting as a unit who shall violate a provision of this code shall be responsible for a municipal civil infraction.

108.1 General (amended). All actions taken by the City pertinent to dangerous buildings and structures shall be in accordance with chapter 12 article II; chapter 14 (offenses and miscellaneous provisions).

108.1 through 108.7 (deleted).

109.4 Emergency repairs. Costs incurred in the performance of emergency work shall be paid from the treasury of the jurisdiction on approval of the code official. The legal counsel of the jurisdiction shall

institute appropriate action against the owner of the premises where the unsafe structure is or was located for the recovery of such costs.

110.1 General (amended). All actions taken by the City pertinent to demolition shall be in accordance with chapter 12 article II; chapter 14 (offenses and miscellaneous provisions).

110.2 through 110.4 (deleted).

111.2 Board of appeals (amended). The board of appeals shall be the City construction board of appeals, constituted in accordance with section 103-21, except for those matters under. Chapter 12 article II; chapter 14, (offenses and miscellaneous provisions) which shall be heard by the condemnation board, as established by section 12-1. For purposes of hearing appeals of decisions, notices or orders of the code official, such decisions, notices or orders having been issued pursuant to carrying out the provisions of this code, the conduct of the board of appeals shall be in accordance with sections 111.3 through 111.7.

111.2.1 through 111.2.5 (deleted).

302.4 Weeds (amended). All actions taken by the City pertinent to weeds shall be in accordance with section 12-78 (nuisances).

302.8 Motor vehicles (deleted).

304.14 Insect screens. During the period from May 1 to November 1, every door, window and other outside opening utilized or required for ventilation purposes serving any structure containing habitable rooms, food preparation areas, food service areas, or any areas where products to be included or utilized in food for human consumption are processed, manufactured, packaged or stored, shall be supplied with approved tightly fitting screens of not less than 16 mesh per inch and every swinging door shall have a self-closing device in good working condition.

507.4 Commercial buildings (added). A grease interceptor (grease trap) shall be required in restaurants, hotel kitchens, bars, factory kitchens and restaurants, clubs and other food preparation establishments. Food waste grinders shall not discharge to the building drainage system through a grease interceptor.

602.3 Heat supply (amended). Every owner and operator of any building who rents, leases or lets one or more dwelling unit, rooming unit, dormitory or guestroom on terms, either express or implied, to furnish heat to the occupants thereof shall supply sufficient heat during the period from September 1 to June 1 to maintain the room temperatures specified in section 602.2 during the hours between 6:30 a.m. and 10:30 p.m. of each day and not less than 60 degrees Fahrenheit (16 degrees Celsius) during other hours.

602.4 Nonresidential structures (amended). Every enclosed occupied work space shall be supplied with sufficient heat during the period from September 1 to June 1 to maintain a temperature of not less than 65 degrees Fahrenheit (18 degrees Celsius) during all working hours. Exceptions:

(1) Processing, storage and operation areas that require cooling or special temperature conditions.

(2) Areas in which persons are primarily engaged in vigorous physical activities.

604.2 Service (amended). The size and usage of appliances and equipment shall serve as a basis for determining the need for additional facilities in accordance with NFPA 70 listed in chapter 8. Every dwelling shall be served by a main service that is not less than 100 amperes, three wires. Where a single service serves more than one dwelling unit, access to the service disconnect and to all branch circuit overcurrent devices serving a dwelling unit shall be accessible to the occupants of the dwelling unit at all times without passing through another dwelling unit.

605.2 Receptacles (amended). Every habitable space in a dwelling shall contain at least two separate and remote electrical receptacle outlets. Every bathroom shall contain at least one receptacle outlet. All receptacle outlets located in bathrooms shall receive its power supply from a circuit protected by a ground-fault circuit interrupter. Every laundry area shall be equipped with at least one grounded-type receptacle.

704.3 Power source (amended). The power source for smoke detectors shall be either an AC primary power source with an internal automatic battery backup or a monitorized battery primary power source. After January 1, 2001, all required smoke detectors shall be connected without disconnecting means to an AC primary power source, and shall be equipped with an internal automatic battery backup.

(Code 1979, § 3:6.2)

Secs. 103-52—103-100. - Reserved.

ARTICLE IV. - REGISTRATION AND INSPECTION OF RENTAL HOUSING

Sec. 103-101. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Owner means, in addition to the person or entity shown by the office of the County Register of Deeds to hold title to any affected property, any person, other than the occupant of the building, to whom control of the building has been assigned by lease, land contract or similar contract.

Rental housing unit means any building or portion of a building let in return for a valuable consideration for a period of 30 days or more, which provides complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation.

(Code 1979, § 3:2.1)

Sec. 103-102. - Administration.

The provisions of this article shall be administered by the code enforcement officer.

(Code 1979, § 3:2.2)

Sec. 103-103. - Registration of rental housing units.

(a) Within 30 days of the effective date of the ordinance from which this article is derived the City shall publish three times in a newspaper of general circulation within the City a notice stating the registration requirements of this section. The City shall also mail a copy of said notice by first class mail to the owner of record of each property listed in the assessment rolls of the City on the effective date of the ordinance from which this article is derived as residential property which does not qualify for a 100 percent homestead property tax exemption.

(b) Within 180 days of the effective date of the ordinance from which this article is derived, the owner of any building containing a rental housing unit within the corporate limits of the City shall register each such building with the code enforcement officer by filing a registration form provided by the City, stating the address of each rental housing unit within the building, the name and address of the agent in charge of the building (if other than the owner), the name and address of the owner of the building, and number of rental units contained in the building. The code enforcement officer shall examine each registration form for completeness, and if complete, shall issue a certificate of registration for each unit, to the owner, within ten working days of receipt of the form. The certificate of registration shall be mailed to the owner by first class mail.

(c) Failure to submit a completed registration form shall be unlawful.

(d) A certificate of registration issued pursuant to this section shall expire 30 days after the initial inspection has been conducted in accordance with section 103-104(c).

(Code 1979, § 3:2.3)

Sec. 103-104. - Initial inspection.

(a) Prior to December 31 of the fourth calendar year after the date of issuance of the certificate of registration, the code enforcement officer shall schedule an inspection of each rental housing unit and notify both the owner, and the occupant of the unit, of the date and time of the scheduled inspection for compliance with the requirements of article III of this chapter. The inspection of all rental housing units in the City shall be scheduled in such a manner as to distribute the total number of inspections to be performed over the four-year period as uniformly as possible, for the purpose of providing the code enforcement officer the opportunity to conduct the required inspections in an orderly and efficient manner. Notice of Inspection shall be mailed to the owner of the rental housing property, at the address indicated on the registration form, and to the occupant of the rental housing unit, at the address of the unit, by first class mail not less than ten working days prior to the scheduled inspection. Notice to the occupant of the unit may be addressed to "occupant".

(b) The owner of the rental property or the occupant of the rental housing unit may contact the code enforcement officer not less than 72 hours before the scheduled date and time of the inspection to reschedule the inspection, if the scheduled date and time would present a hardship to the owner or occupant. Upon such contact by the owner or occupant, the code enforcement officer will reschedule the inspection for a date and time which is mutually agreeable to the owner and the occupant, subject to the limitation that the inspection shall be conducted within 30 calendar days of the date of mailing of the notice of inspection. Failure or refusal on the part of the owner or occupant to consent to the required inspection within 30 days of mailing of the notice of inspection shall be unlawful. Consent on the part of the occupant of the rental housing unit to allow inspection of the unit shall be deemed by the code enforcement officer to be sufficient permission to enter the unit for purposes of inspection.

(c) Inspection of a rental housing unit shall be made between the hours of 8:00 a.m. and 6:00 p.m. on business days by an inspector employed by the City, on presentation of an identification card provided by the City. A person other than the occupant, the owner, or their agents shall not accompany the inspector unless his presence is necessary for the enforcement of this article. An inspection pursuant to this article shall be solely for the purposes of enforcing this article and article III of this chapter.

(d) Prior to December 31 of the fourth calendar year after the date of issuance of the certificate of registration, the owner of any rental housing unit which has not yet undergone initial inspection and which is at the time vacant and untenanted may, at his option, request that the unit be inspected during the period of vacancy. The code enforcement officer shall schedule an inspection time within three working days of such request.

(Code 1979, § 3:2.4)

Sec. 103-105. - Compliance with property maintenance code.

If, during any inspection, it is determined that violation of article III of this chapter exists, the procedures indicated within that article shall be invoked to obtain correction of the violation. A certificate of compliance shall not be issued pursuant to this article until correction of any and all violations have been made, and correction has been verified by reinspection by the code enforcement officer.

(Code 1979, § 3:2.5)

Sec. 103-106. - Certificate of compliance.

(a) When it has been determined by inspection that a rental housing unit is in compliance with article III of this chapter, the code enforcement officer shall issue a certificate of compliance for the unit to the owner within ten working days of the inspection. The certificate of compliance shall be mailed to the owner by first class mail.

(b) The certificate of compliance shall be valid through December 31 of the fourth calendar year after the year during which the first inspection was conducted pursuant to the previous certificate of registration or certificate of compliance.

(c) The certificate of compliance shall state the following:

(1) The address of the rental housing unit.

(2) The name and address of the agent (if any) in charge of the unit.

(3) The name and address of the owner of the building.

(4) The date of issue.

(5) The date of expiration.

(d) When it has been determined by inspection that a violation of article III of this chapter exists in a structure which do not present an immediate threat to the health, safety and welfare of the occupants, the code enforcement officer may issue a temporary certificate of compliance for a period not to exceed one year. Upon expiration of the temporary certificate of compliance, the rental housing unit shall be reinspected in accordance with section 103-107(c), and if found to be fully in compliance with article III of this chapter, the code enforcement officer shall issue a certificate of compliance in accordance with the provisions of this section. In no case shall the temporary certificate of compliance be renewed or the expiration date be extended.

(Code 1979, § 3:2.6)

Sec. 103-107. - Inspections after initial inspection.

(a) During the year in which the certificate of compliance for a rental housing unit will expire, the code enforcement officer shall schedule an inspection of the unit and notify both the owner and the occupant of the unit of the date and time of the scheduled inspection for compliance with the requirements of article III of this chapter. A notice of inspection shall be mailed to the owner of the rental housing property, at the address indicated on the registration form, and to the occupant of the rental housing unit, at the address of the unit, by first class mail not less than ten working days prior to the scheduled inspection. Notice to the occupant of the unit may be addressed to "Occupant".

(b) The owner of the rental property or the occupant of the rental housing unit may contact the code enforcement officer not less than 72 hours before the scheduled date and time of the inspection to reschedule the inspection, if the scheduled date and time would present a hardship to the owner, or occupant. Upon such contact by the owner or occupant, the code enforcement officer will attempt to reschedule the inspection for a date and time which is mutually agreeable to the owner, occupant, and the code enforcement officer, subject to the limitation that the inspection shall be conducted within 30 calendar days of the date of mailing of the notice of inspection. Failure or refusal on the part of the owner or occupant to consent to the required inspection within 30 days of mailing of the notice of inspection shall be unlawful. Consent on the part of the occupant of the rental housing unit to allow inspection of the unit shall be deemed by the code enforcement officer to be sufficient permission to enter the unit for purposes of inspection.

(c) Inspection of a rental housing unit shall be made between the hours of 8:00 a.m. and 6:00 p.m. on business days by an inspector employed by the City, on presentation of an identification card provided by the City. A person other than the occupant, the owner, or their agents shall not accompany the inspector unless his presence is necessary for the enforcement of this article. An inspection pursuant to this article shall be solely for the purposes of enforcing this article and article III of this chapter.

(d) In order that the owner of the building may have adequate time to correct any violations that may be found on inspection, the code enforcement officer shall schedule the initial inspection for an expiring certificate of compliance no later than November 1 of the year of expiration. The owner or occupant may request rescheduling or the inspection at a later date, according to the terms of subsection (b) of this section.

(e) The owner of any rental housing unit for which a current valid certificate of compliance has been issued and which is at the time vacant and untenanted may, at his option, request that the unit be inspected during the period of vacancy. The code enforcement officer shall schedule an inspection time within three working days of such request.

(Code 1979, § 3:2.7)

Sec. 103-108. - Rental housing units created after the effective date of article.

It shall be unlawful for any person to cause a rental housing unit to be occupied by a tenant unless a valid certificate of registration or certificate of compliance has been issued for the unit as required by this article. Failure to comply with the provisions of this section shall constitute a violation of this article by the owner, and shall subject the owner to the penalty provisions created after the effective date of the ordinance from which this article is derived.

(Code 1979, § 3:2.8)

Sec. 103-109. - Inspection standard.

The standard of inspection pursuant to this article shall be article III of this chapter.

(Code 1979, § 3:2.9)

Sec. 103-110. - Fee for registration and inspection.

No fee will be charged for initial registration of rental housing units as required by this article. The owner of any rental housing unit inspected pursuant to the requirements of this article shall pay an inspection fee as established by resolution.

(Code 1979, § 3:2.10)

Sec. 103-111. - Other lawfully authorized inspections.

The provisions of this article shall not be construed to prevent inspections other than those provided for in this article, provided that such inspections are otherwise lawfully authorized. The code enforcement officer shall make an inspection of a rental housing unit on written allegation by the occupant of violations of the article III of this chapter.

(Code 1979, § 3:2.11)

Sec. 103-112. - Notice of violation.

On determination by the code enforcement officer that a violation of the terms of this article has occurred, written notice shall be given to the owner by certified mail. Such notice shall contain a reasonably accurate statement of the violation, and of the actions necessary to correct the violation by the owner. The notice shall require correction of the violation within ten days of receipt of the notice. If the

violation is not corrected within the ten-day period, the code enforcement officer shall issue a citation to the owner.

(Code 1979, § 3:2.12)

Chapter 105 - HISTORIC PRESERVATION[1]

Footnotes:

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State Law reference— Local Historic Districts Act, MCL 399.201 et seq.

ARTICLE I. - IN GENERAL

Sec. 105-1. - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Alter or *alteration* means work that changes the detail of a resource but does not change the basic size or shape.

Certificate of appropriateness means the written approval of a permit application for work that is appropriate and does not adversely affect a resource.

Committee means an historic district study committee appointed by the City Council.

Demolition means the razing or destruction, whether entirely or in part, of a resource and includes, but is not limited to demolition by neglect.

Demolition by neglect means neglect in maintaining, repairing, or securing a resource that results in deterioration of an exterior feature of the resource or the loss of structural integrity of the resource.

Denial means the written rejection of a permit application for work that is inappropriate and that adversely affects a resource.

Department means the Michigan Department of History, Arts, and Libraries.

Fire alarm system means a system designed to detect and annunciate the presence of fire or by-products of fire. The term "fire alarm system" includes smoke alarms.

Historic district means an area, or group of areas not necessarily having contiguous boundaries, that contains one resource or a group of resources that are related by history, architecture, archeology, engineering or culture.

Historic district commission means the City of Menominee Historic District Commission.

Historic resource means a publicly or privately owned building, structure, site, object, feature or open space that is significant in the history, architecture, archeology, engineering or culture of the City, the state or the United States.

Historical preservation means the identification, evaluation, establishment, protection, rehabilitation, restoration or reconstruction of resources significant in history, architecture, archeology, engineering or culture.

Notice to proceed means the written permission to issue a permit for work that is inappropriate and that adversely affects a resource.

Open space means undeveloped land, a naturally landscaped area, or a formal or manmade landscape area that provides a connective link or a buffer between resources.

Ordinary maintenance means keeping a resource unimpaired and in good condition through ongoing minor intervention, undertaken from time to time, in its exterior condition. The term "ordinary maintenance" does not change the external appearance of the resource except through the elimination of the usual and expected effects of weathering, age and use. The term "ordinary maintenance" does not constitute work for the purpose of this act.

Proposed historic district means an area, or group of areas not necessarily having contiguous boundaries that has delineated boundaries and that is under review by a committee or standing committee for the purpose of making a recommendation as to whether it should be established as an historic district or added to an established historic district.

Repair means to restore a decayed or damaged resource to a good or sound condition by any process. A repair that changes the external appearance of a resource constitutes work for the purpose of this chapter.

Resource means one or more publicly or privately owned historic or nonhistoric buildings, structures, sites, objects, features or open spaces located within an historic district.

Smoke alarm means a single-station or multiple-station alarm responsive to smoke and not connected to a system. As used in this chapter:

(1) *Single-station alarm* means an assembly incorporating a detector, the control equipment, and the alarm sounding device into a single unit, operated from a power supply either in the unit or obtained at the point of installation.

(2) *Multiple-station alarm* means two or more single-station alarms that are capable of interconnection such that actuation of one alarm causes all integrated separate audible alarms to operate.

Standing committee means a permanent body established by the City Council to conduct the activities of an historic district study committee on a continuing basis.

Work means construction, addition, alteration, repair, moving, excavation or demolition of a resource located within an historic district.

(Code 1979, § 11:1.1202)

State Law reference— Similar provisions, MCL 399.201a.

Sec. 105-2. - Purpose.

The City finds that historic preservation is a public purpose and that the state legislature has authorized municipalities to regulate by ordinance work in the municipalities' historic districts. The purpose of this chapter is to:

(1) Safeguard the heritage of the City by preserving one or more historic districts in the City reflecting elements of its cultural, social, economic, political or architectural history;

(2) Stabilize and improve property values in such district and the surrounding areas;

(3) Foster civic beauty;

(4) Strengthen the local economy;

(5) Promote the use of historic districts for the education, pleasure and welfare of the citizens of the City and of the state; and

(6) Assist property owners in recognizing and protecting their historic resources.

(Code 1979, § 11:1.1201)

State Law reference— Similar provisions, MCL 399.202.

Sec. 105-3. - Penalty.

(a) A person, individual, partnership, firm, corporation, organization, institution or agency of government that violates this chapter is responsible for a civil infraction and may be fined up to $5,000.00.

(b) A person, individual, partnership, firm, corporation, organization, institution, or agency of government that violates this chapter may be ordered by the court to pay the costs to restore or replicate a resource unlawfully constructed, added to, altered, repaired, moved, excavated, or demolished.

(Code 1979, § 11:1.1221)

State Law reference— Similar provisions, MCL 399.215.

Sec. 105-4. - Acceptance of gifts, grants, or bequests.

(a) The City may accept gifts, grants or bequests from the state or federal government for historic preservation purposes; it may accept public or private gifts, grants or bequests for said purposes; provided, however, that such gifts, grants or bequests are not used for the purpose of paying any fees or expenses arising out of any litigation; further, the City Council may appoint the historic district commission, a standing committee or another agency, to administer on behalf of the City said gifts, grants or bequests for the purposes herein provided.

(b) The City clerk/treasurer shall be custodian of these funds and authorized expenditures shall be certified by the City clerk/treasurer, and such other person or official as designated by City Council. An annual report shall be presented to City Council by this fund's administrator on all amounts received or expended.

(Code 1979, § 11:1.1206)

State Law reference— Similar provisions, MCL 399.206.

Secs. 105-5—105-26. - Reserved.

ARTICLE II. - HISTORIC DISTRICT COMMISSION[2]

Footnotes:

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State Law reference— Historic district commission, MCL 399.204.

Sec. 105-27. - Created.

In order to execute the purposes declared in this article, there is hereby created a commission to be called the "City of Menominee Historic District Commission."

(Code 1979, § 11:1.1204(1))

State Law reference— Historic district commission authorized, MCL 399.204.

Sec. 105-28. - Membership.

(a) The historic district commission shall consist of seven members whose residence is located in the City. They shall be appointed by the mayor, with the advice and consent of the City Council, for terms of office of three years.

(b) At least one member of the historic district commission shall be appointed from a list of citizens submitted by a duly organized and existing preservation society and at least one member of the historic district commission shall be a graduate of an accredited school of architecture who has two years of architectural experience or who is an architect duly registered in this state, if such person resides in the City and is available for appointment. A majority of the members of the historic district commission shall have a clearly demonstrated interest in or knowledge of historic preservation.

(c) A vacancy occurring in the membership of the historic district commission for any cause shall be filled within 60 calendar days by a person appointed by the mayor with the advice and consent of the City Council, for the unexpired term.

(d) The members of the historic district commission shall serve without compensation.

(e) All commissioners shall be governed by the City's code of ethics. Any member or members of the historic district commission may be removed by vote of the City Council for inefficiency, neglect of duty, unresolved conflict of interest, or malfeasance in office after due consideration by the City Council. The City Council shall issue its directive to any member being considered for removal indicating the time, date and place for consideration by the City Council along with the specification of grounds upon which removal is being considered. At the time and place set, said member shall have an opportunity to be heard and may be represented by council. Decisions by City Council shall be final and shall be based upon the record of said show cause proceedings. The record of all such proceedings shall be taken and preserved for one year unless a longer retention is requested by the member under consideration for removal.

(f) Absence from four consecutive regular meetings of the historic district commission shall automatically operate to vacate the seat of a member of the historic district commission unless the absence is excused by the historic district commission by resolution setting forth such excuse.

(Code 1979, § 11:1.1204(2))

State Law reference— Historic district commission membership, MCL 399.204.

Sec. 105-29. - Officers.

(a) The historic district commission shall elect from its membership a chair and a vice-chair whose terms of office shall be fixed by the historic district commission. The chair shall preside over the historic district commission and shall have the right to vote. The vice-chair, in the case of the absence or disability of the chair, shall perform the duties of the chair.

(b) A secretary shall be appointed and shall keep a record of all resolutions, proceedings and actions of the historic district commission and report regularly to the City Council.

(Code 1979, § 11:1.1204(3))

Sec. 105-30. - Meetings.

(a) At least four members of the historic district commission shall constitute a quorum for the transaction of its business. The historic district commission shall adopt rules or bylaws for the transaction of its

business which shall provide for the time and place of meetings. They shall provide for the call of meetings by the chair or by at least two members of the historic district commission. All meetings of the historic district commission shall be open to the public and any person or his duly constituted representative shall be entitled to appear and be heard on any matter before the historic district commission reaches its decision.

(b) Public notice of the time, date and place of meetings shall be given in the manner required by the Open Meetings Act (MCL 15.261 et seq.). The notice must be posted at City hall. A meeting agenda shall be part of the notice and shall include a listing of each permit application to be reviewed or considered by the historic district commission. The requirements of the aforementioned act include:

(1) For each meeting of the historic district commission, a public notice stating the date, time and place of the meeting shall be posted at least 18 hours before the meeting;

(2) For a change in the schedule of meetings of the historic district commission, a notice shall be posted within three days after the meeting at which the change is made stating the new dates, times and places of the meetings;

(3) Nothing in this section shall bar the historic district commission from meeting in an emergency session should there be a severe and imminent threat to the health, safety or welfare of the public when two-thirds of the historic district commission members decide that delay would be detrimental to efforts to lessen or respond to the threat.

(c) The historic district commission shall keep a record which shall be kept in compliance with the Freedom of Information Act (MCL 15.231 et seq.) of its resolutions, proceedings and actions. The concurring affirmative vote of four members shall constitute approval of plans before it for review or for adoption of any resolution, motion or other action of the historic district commission.

(Code 1979, § 11:1.1204(3))

Sec. 105-31. - General powers and duties.

(a) In reviewing plans, the historic district commission shall follow the United States Secretary of the Interior's standards for rehabilitation and guidelines for rehabilitating historic buildings, as set forth in 36 CFR 67. Design review standards and guidelines that address special design characteristics of historic districts administered by the commission may be followed if they are equivalent in guidance to the Secretary of the Interior's standards and guidelines and are established or approved by the state department of history, arts and libraries.

(1) The historic or architectural value and significance of the resource and its relationship to the historic value of the surrounding area;

(2) The relationship of the exterior architectural features of such resource to the rest of the resource and to the surrounding area;

(3) The general compatibility of the exterior design, arrangement, texture and materials proposed to be used;

(4) To any other factor, including aesthetics, which it deems pertinent;

(5) Whether the applicant has certified in the application that the property where work will be undertaken has, or will have before the proposed project completion date, a fire alarm system or a smoke alarm complying with the requirements of the Stille-DeRossett-Hale Single State Construction Code Act (MCL 125.1501 et seq.).

(b) The historic district commission shall review plans for proposed major changes to open spaces in an historic district, such as the removal of large trees (over 12 inches in diameter as measured four feet above ground) or the making of major contour changes in terrain features. The historic district commission may use its discretion to decide if proposed changes are major in nature or not.

(c) The historic district commission shall review and act upon exterior features of a resource and shall not review and act upon interior arrangements unless interior work will cause visible changes to the exterior of the resource. The historic district commission shall not disapprove applications except in regard to considerations, as set forth in subsection (a) of this section.

(Code 1979, § 11:1.1205)

State Law reference— Historic district commission, MCL 399.205(3), (4).

Sec. 105-32. - Reports.

The historic district commission shall submit an annual report to the City Council of the general activities of the historic district commission and shall submit such special reports as requested by the City Council.

(Code 1979, § 11:1.1204(3))

Secs. 105-33—105-52. - Reserved.

ARTICLE III. - HISTORIC DISTRICTS

Sec. 105-53. - Establishment; study committee, duties; preliminary report, contents; hearing, notice; final report, recommendations; ordinances; availability of writings to public.

(a) The City may, by ordinance, establish one or more historic districts. The historic districts shall be administered by a commission established pursuant to section 105-28. Before establishing an historic district, the City Council shall appoint an historic district study committee. The committee shall contain a majority of persons who have a clearly demonstrated interest in or knowledge of historic preservation, and shall contain representation from one or more duly organized local historic preservation organizations. The committee shall do all of the following:

(1) Conduct a photographic inventory of resources within each proposed historic district following procedures established or approved by the department.

(2) Conduct basic research of each proposed historic district and the historic resources located within that district.

(3) Determine the total number of historic and nonhistoric resources within a proposed historic district and the percentage of historic resources of that total. In evaluating the significance of historic resources, the committee shall be guided by the selection criteria for evaluation issued by the United States Secretary of the Interior for inclusion of resources in the national register of historic places, as set forth in 36 CFR 60, and criteria established or approved by the department, if any.

(4) Prepare a preliminary historic district study committee report that addresses at a minimum all of the following:

a. The charge of the committee.

b. The composition of the committee membership.

c. The historic district or districts studied.

d. The boundaries for each proposed historic district in writing and on maps.

e. The history of each proposed historic district.

f. The significance of each district as a whole, as well as a sufficient number of its individual resources to fully represent the variety of resources found within the district, relative to the evaluation criteria.

(5) Transmit copies of the preliminary report for review and recommendations to the local planning body, to the department, to the state historical commission, and to the state historic preservation review board.

(6) Make copies of the preliminary report available to the public pursuant to subsection (d) of this section.

(b) Not less than 60 calendar days after the transmittal of the preliminary report, the committee shall hold a public hearing in compliance with the Open Meetings Act (MCL 15.261 et seq.). Public notice of the time, date, and place of the hearing shall be given in the manner required by the Open Meetings Act (MCL 15.261 et seq.). Written notice shall be mailed by first-class mail not less than 14 calendar days before the hearing to the owners of properties within the proposed historic district, as listed on the tax rolls of the local unit.

(c) After the date of the public hearing, the committee and the City Council shall have not more than one year, unless otherwise authorized by the legislative body of the local unit, to take the following actions:

(1) The committee shall prepare and submit a final report with its recommendations and the recommendations, if any, of the local planning body to the City Council. If the recommendation is to establish an historic district or districts, the final report shall include a draft of a proposed ordinance.

(2) After receiving a final report that recommends the establishment of an historic district, the City Council, at its discretion, may introduce and pass or reject an ordinance. If the City passes an ordinance establishing one or more historic districts, the City shall file a copy of that ordinance, including a legal description of the property or properties located within the historic district or districts, with the register of deeds. The City shall not pass an ordinance establishing a contiguous historic district less than 60 days after a majority of the property owners within the proposed historic district, as listed on the tax rolls of the local unit, have approved the establishment of the historic district pursuant to a written petition.

(d) A writing prepared, owned, used, in the possession of, or retained by a committee in the performance of an official function shall be made available to the public in compliance with the Freedom of Information Act (MCL 15.231 et seq.).

(Code 1979, § 11:1.1222)

State Law reference— Similar provisions, MCL 399.203.

Sec. 105-54. - Procedures for establishing, modifying, or eliminating historic districts; resolutions; emergency moratorium on pending work.

(a) The City may at any time, establish by ordinance additional historic districts, including proposed districts previously considered and rejected, may modify boundaries of an existing historic district, or may eliminate an existing historic district. Before establishing, modifying, or eliminating an historic district, an historic district study committee appointed by the City Council, except as provided in subsection (b) of this section, shall comply with the procedures set forth in this section and shall consider any previously written committee reports pertinent to the proposed action. To conduct these activities, the City may retain the initial committee, establish a standing committee, or establish a committee to consider only specific proposed districts and then be dissolved.

(b) If considering elimination of an historic district, a committee shall follow the procedures set forth in this section for issuing a preliminary report, holding a public hearing, and issuing a final report but with the intent of showing one or more of the following:

(1) The historic district has lost those physical characteristics that enabled establishment of the district.

(2) The historic district was not significant in the way previously defined.

(3) The historic district was established pursuant to defective procedures.

(c) Upon receipt of substantial evidence showing the presence of historic, architectural, archaeological, engineering, or cultural significance of a proposed historic district, the City Council may, at its discretion, adopt a resolution requiring that all applications for permits within the proposed historic district be referred to the historic district commission as prescribed in sections 105-31 and 105-56. The historic district commission shall review permit applications with the same powers that would apply if the proposed historic district was an established historic district. The review may continue in the proposed historic district for not more than one year, or until such time as the City approves or rejects the establishment of the historic district by ordinance, whichever occurs first.

(d) If the City Council determines that pending work will cause irreparable harm to resources located within an established historic district or a proposed historic district, the City Council may by resolution declare an emergency moratorium of all such work for a period not to exceed six months. The City Council may extend the emergency moratorium for an additional period not to exceed six months upon finding that the threat of irreparable harm to resources is still present. Any pending permit application concerning a resource subject to an emergency moratorium may be summarily denied.

(Code 1979, § 11:1.1223)

State Law reference— Similar provisions, MCL 339.214.

Sec. 105-55. - Boundaries of district.

An historic district is hereby established comprising the land and premises and structures on said lands, described as follows:

(1) Commencing at the intersection of the south line of Tenth Avenue extended and the west shoreline of Green Bay; thence southeasterly along said shoreline to a point where an extension of the north line of Fourth Avenue will intersect said shoreline; thence southwesterly along the north line of Fourth Avenue to the intersection of said line and the east line of Second Street; thence northwesterly along the east line of Second Street to its intersection with the South line of Tenth Avenue; thence northeasterly on the south line of Tenth Avenue to the point of beginning;

(2) The V.A. Lundgren, Jr. land described as: East 55.4 feet in South line and East 55.5 feet in West line of Lot 1 in Block 2 of Gewehrs 2nd Addition to the City; Municipal Water Plant land described as: Lot 4 and North 84 feet of Lot 5, Block 1 of Gewehrs 2nd addition to the City;

(3) Old C M & ST P Depot property described as: Lots 1, 2, 3 Block 6 and Lots 18, 19 and 20, Block 6, Plat of Menominee;

(4) That part of Block 1 of Quimby's Addition to the City formerly occupied by the Washington School building and the land adjacent thereto described as follows: Commencing at the intersection of the west line of Second Street and the north line of Ninth Avenue; thence northwesterly along the west line of Second Street 221 feet; thence west along an established iron mesh fence 122 feet to the westerly end of iron mesh fence; thence southeasterly to a four-inch iron pipe embedded in the center of the gate entryway to school ground located at the north line of Ninth Avenue and which point is 146 feet ten inches from point of beginning; thence east along the north line of Ninth Avenue to the point of beginning.

(Code 1979, § 11:1.1203)

Sec. 105-56. - Procedure for review of plans.

(a) *Filing of application.* Application for a building permit to construct, alter, repair, move, add to, excavate or demolish any resource in an historic district shall be made to the building department. The application shall state whether the resource is in an historic district such as the City historic district. Plans and photographs shall be submitted showing the resource in question and also showing its relation to adjacent resources.

(1) Upon the filing of such application, the building department shall immediately determine:

a. The zoning classification of the parcel;

b. Whether the parcel is within a residential zoning district;

c. Whether the work will be done on a new or existing residence; or

d. Whether the work will be done on a new or existing residential accessory structure.

(2) The building department shall immediately notify the historic district commission of the receipt of such application and shall transmit it together with accompanying plans and other information to the historic district commission. If the parcel is determined to be within any zoning classification other than residential or for consideration of any kind of request other than work on a new or existing residence or new or existing residential accessory structure, the processing requirements for site plan review as set forth in the zoning chapter must be completed and approved prior to review by the historic district commission. The planning commission may, however, at any time during its review refer such application to the historic district commission for the historic district commission's preliminary review. Upon approval of the required site plan in accordance with the zoning chapter, the building department shall immediately notify the historic district commission of the application and shall transmit the application to the historic district commission for its review.

(3) The building department shall not issue a permit and no proposed work shall proceed until the historic district commission has acted on the application by issuing a certificate of appropriateness or a notice to proceed.

(4) The historic district commission shall not issue a certificate of appropriateness unless the applicant certifies in the application that the property where work will be undertaken has, or will have before the proposed project completion date, a fire alarm system or a smoke alarm complying with the requirements of the Stille-DeRossett-Hale Single State Construction Code Act (MCL 125.1501 et seq.). The City may charge a reasonable fee to process a permit application.

(b) *Action upon application.* The historic district commission shall meet after a complete application has been received by the building department, and shall review the plans according to the duties and powers specified herein in a meeting held in compliance with the Open Meetings Act. No fees shall be charged to process a permit application through the historic district commission beyond the existing building department fees. The failure of the historic district commission to approve or disapprove of such plans within 60 days from the date of a complete application for permit, unless otherwise mutually agreed upon by the applicant and the historic district commission in writing, shall be deemed to constitute approval and the building department shall proceed to process the application without regard to a certificate of appropriateness.

(c) *Approval of application.* If the historic district commission approves such plans, it shall issue a certificate of appropriateness which is to be signed by the chair, attached to the application for a building permit and immediately transmitted to the building department. The chair shall also stamp all prints submitted to the historic district commission signifying its approval. After the certificate of appropriateness has been issued and the building permit granted to the applicant, the building department shall, from time to time, inspect the work approved by such permit and shall take such action as is necessary to force compliance with the approved plan.

(d) *Denial of application.* If the historic district commission disapproves of such plans, it shall state its reasons for doing so and shall transmit a record of such action and reasons therefore in writing to the building department and to the applicant. The historic district commission may advise what it thinks is proper if it disapproves of the plan submitted. The applicant, if he so desires, may make modifications to his plan and shall have the right to resubmit the application at any time after so doing. A denial of a

permit application shall be binding on the building department, building inspector or any such other relevant authority. The denial of the plan shall also include a notice to the applicant of his rights of appeal to the City Council, the state historic preservation review board and to the circuit court.

(e) *Ordinary maintenance or repair.* Nothing in this article shall be construed to prevent ordinary maintenance or repair of a resource within the historic district or to prevent work on any resource under a permit issued by the building inspector/code enforcement officer/zoning administrator before the ordinance from which this article is derived was adopted.

(f) *Notice to proceed. Work* within an historic district shall be permitted through the issuance of a notice to proceed by the historic district commission if any of the following conditions prevail and if the proposed work can be demonstrated by a finding of the historic district commission to be necessary to substantially improve or correct any of the following conditions:

(1) The resource constitutes a hazard to the safety of the public or to the structure's occupants.

(2) The resource is a deterrent to a major improvement program that will be of substantial benefit to the community and the applicant proposing the work has obtained all necessary planning and zoning approvals, financing, and environmental clearances.

(3) Retaining the resource will cause undue financial hardship to the owner when a governmental action, an act of God, or other events beyond the owner's control created the hardship, and all feasible alternatives to eliminate the financial hardship, which may include offering the resource for sale at its fair market value or moving the resource to a vacant site within the historic district, have been attempted and exhausted by the owner.

(4) Retaining the resource is not in the interest of the majority of the community.

(g) *Delegation of authority.* The historic district commission may delegate the issuance of certificates of appropriateness for specified minor classes of work to its staff, to the inspector of buildings, or to another delegated authority. The historic district commission shall provide to the delegated authority specific written standards for issuing the certificates of appropriateness under this subsection. Said delegated authorities shall come before the next regularly scheduled historic district commission meeting and the historic district commission shall review the certificates of appropriateness so issued. These reviews are to serve the purpose of keeping the historic district commission informed as to what certificates of appropriateness for minor work have been issued since the last historic district commission meeting. On a quarterly basis, the historic district commission shall review the certificates of appropriateness, if any, issued by the aforesaid delegated authority to determine whether or not the delegated responsibilities should be continued.

(Code 1979, § 11:1.1211)

State Law reference— Similar provisions, MCL 339.205.

Sec. 105-57. - Demolition by neglect.

(a) Upon a finding by the historic district commission that an historic resource either in the historic district or in a proposed historic district, which is subject to historic district commission review pursuant to the terms of this article, is threatened by demolition by neglect, the historic district commission may do either of the following:

(1) Require the owner of the resource to repair all conditions contributing to demolition by neglect; or

(2) If the owner does not make the repairs within a reasonable time, the historic district commission or its agent may elect to, but is not required to, enter the property and make such repairs as are necessary to prevent demolition by neglect, provided:

a. That an estimate of the anticipated cost is provided to City Council and it authorizes going forward with the repairs, designating the source of the funds to be made available; and

b. The historic district commission, through grants, donations or other efforts on its own, provides the funding necessary to accomplish the necessary repairs. Such funds shall be handled and accounted for in accordance with section 105-4.

(b) The costs of the work shall be charged to the owner, and may be levied by the City as a special assessment against the property. The historic district commission or its agents may enter the property for purposes of this section upon obtaining an order from the circuit court. All funds recovered from a property owner pursuant to this provision shall be returned to the same source from which it was obtained.

(Code 1979, § 11:1.1212)

State Law reference— Similar provisions, MCL 339.205.

Sec. 105-58. - Failure to obtain certificate of appropriateness.

(a) When work has been done upon an historic resource without a certificate of appropriateness, and the historic district commission finds that the work does not qualify for a certificate of appropriateness, the historic district commission may require an owner to restore the resource to the condition the resource was in before the inappropriate work was conducted or modify the work so that it qualifies for a certificate of appropriateness.

(b) If the owner does not comply with the restoration or modification requirement within a reasonable time, the historic district commission may seek an order from the circuit court to require the owner to restore the resource to its former condition or to modify the work so that it qualifies for a certificate of appropriateness.

(c) If the owner does not comply or cannot comply with the order of the court, the historic district commission or its agent may elect to, but is not required to, enter the property and conduct work necessary to restore the resource to its former condition or modify the work so that it qualifies for a certificate of appropriateness in accordance with the court's order. The cost of the work shall be charged to the owner and may be levied by the City as a special assessment against the property. When acting pursuant to said order of the circuit court, the historic district commission or its agent may enter a property for purposes of this section.

(Code 1979, § 11:1.1213)

State Law reference— Similar provisions, MCL 339.205.

Sec. 105-59. - Plan for preservation of structure.

(a) In case of an application for work affecting the appearance of a resource which the historic district commission deems so valuable to the City, state or nation that the loss or alteration thereof will adversely affect the public purpose of the City, state or nation, the historic district commission shall endeavor to work out with the owner an economically feasible plan for preservation of the resource. Standards for rehabilitation shall be those developed by and currently utilized by the U.S. Secretary of the Interior entitled. The Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings (1983).

(b) If all efforts by the historic district commission to preserve a resource fail, or if it is determined by the City Council that public ownership is most suitable, the City Council, if considered to be in the public interest, may acquire the resource using public funds, public or private gifts, grants, or proceeds from the issuance of revenue bonds. Such an acquisition shall be based upon the recommendation of the

historic district commission or standing committee. The historic district commission or standing committee is responsible for maintaining the publicly owned resources using its own funds, if not specifically designated for other purposes, or public funds committed for that use by the City Council. Upon recommendation of the historic district commission or standing committee, the City may sell resources acquired under this section with protective easements included in the property transfer documents, if appropriate.

(Code 1979, § 11:1.1214)

State Law reference— Similar provisions, MCL 339.205.

Sec. 105-60. - Signs.

(a) All proposed exterior signs for those buildings within the historic district shall be subject to review and approval by the historic district commission and therefore subject to the application procedure set forth in section 105-56. All applications for approval of proposed signs shall indicate sign location, size, materials, colors, letter style, hanging device and exterior illumination method, if any, in addition to the other application requirements.

(b) All signs constructed within the district are also subject to the provisions of chapter 109.

(c) To ensure that the scale, shape and type of signs within the district are consistent with the character of the district, the building inspector of the City shall distribute a set of guidelines to the applicant which outline suggestions for installing signs in the district. These design guidelines are subject to review and approval by the Michigan Historical Center.

(Code 1979, § 11:1.1215)

Sec. 105-61. - Appeals.

(a) An applicant aggrieved by a decision of the historic district commission concerning a permit application may file an appeal with the state historic preservation review board of the Michigan Department of History, Arts and Libraries. The appeal shall be filed within 60 days after the decision is furnished to the applicant. The appellant may submit all or part of the appellant's evidence and arguments in written form. The review board may affirm, modify, or set aside a decision of the historic district commission and may order the historic district commission to issue a certificate of appropriateness or a notice to proceed. A permit applicant aggrieved by the decision of the review board may appeal the decision to the Circuit Court for Menominee County.

(b) Any citizen or duly organized historic preservation organization in the City, as well as resource property owners, jointly or severally aggrieved by a decision of the historic district commission may appeal the decision to the county circuit court, except that a permit applicant aggrieved by an historic district commission decision may not appeal to the court without first exhausting the administrative appeal described in subsection (a) of this section.

(Code 1979, § 11:1.1220)

State Law reference— Similar provisions, MCL 339.205, 399.211.

Chapter 107 - MISCELLANEOUS PROVISIONS

Sec. 107-1. - Building numbers.

(a) All buildings upon the streets in the City shall be numbered according to the plat prepared by the City engineer and on file in the office of the City clerk/treasurer entitled, "City of Menominee Building Numbering Plat of 1950."

(b) It shall be the duty of the owner of buildings to affix numbers to said buildings in a conspicuous place on the front thereof according to said plat.

(Code 1979, § 1:4.2)

Chapter 109 - ZONING[1]

Footnotes:

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State Law reference— Michigan Zoning Enabling Act, MCL 125.3101 et seq.

ARTICLE I. - IN GENERAL

Sec. 109-1. - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Accessory building means a detached building whose purpose is related but subordinate to that of the principal building on a given parcel of land. Detached garages, tool sheds and barns are all examples of accessory buildings.

Accessory use means a land use whose purpose is related and incidental to the permitted use. An accessory use must in some way serve the principal use and unless otherwise authorized by this chapter, must be located on the same lot.

Adult foster care facility.

(1) The term "adult foster care facility" means a governmental or nongovernmental establishment that provides foster care to adults. Subject to section 26a(1) of Public Act No. 218 of 1979 (MCL 400.726a(1)), adult foster care facility includes facilities and foster care family homes for adults who are aged, mentally ill, developmentally disabled, or physically disabled who require supervision on an ongoing basis but who do not require continuous nursing care. The term "adult foster care facility" does not include any of the following:

a. A nursing home licensed under article 17 of the Public Health Code (MCL 333.20101 et seq.).

b. A home for the aged licensed under article 17 of the Public Health Code (MCL 333.20101 et seq.).

c. A hospital licensed under article 17 of the Public Health Code (MCL 333.20101 et seq.).

d. A hospital for the mentally ill or a facility for the developmentally disabled operated by the department of community health under the Mental Health Code (MCL 330.1001 et seq.).

e. A county infirmary operated by a county department of social services or family independence agency under section 55 of the Social Welfare Act (MCL 400.55).

f. A child caring institution, children's camp, foster family home, or foster family group home licensed or approved under Public Act No. 116 of 1973 (MCL 722.111 et seq.), if the number of residents who become 18 years of age while residing in the institution, camp, or home does not exceed the following:

1. Two, if the total number of residents is ten or fewer.
2. Three, if the total number of residents is not less than 11 and not more than 14.
3. Four, if the total number of residents is not less than 15 and not more than 20.
4. Five, if the total number of residents is 21 or more.

g. A foster family home licensed or approved under Public Act No. 116 of 1973 (MCL 722.111 et seq.) that has a person who is 18 years of age or older placed in the foster family home under section 5(7) of Public Act No. 116 of 1973 (MCL 722.115(7)).

h. An establishment commonly described as an alcohol or a substance abuse rehabilitation center, a residential facility for persons released from or assigned to adult correctional institutions, a maternity home, or a hotel or roominghouse that does not provide or offer to provide foster care.

i. A facility created by Public Act No. 152 of 1885 (MCL 36.1 et seq.).

(2) The term "adult foster care facility" includes:

a. Adult foster care family home: A private residence in which the licensee is a member of the household and an occupant, with the approved capacity to receive six or fewer adults. An adult foster care family home shall be considered a state licensed residential care facility.

b. Adult foster care small group home: An adult foster care facility with the approved capacity to receive 12 or fewer adults to be provided with foster care.

c. Adult foster care large group home: An adult foster care facility with the approved capacity to receive at least 13 but not more than 20 adults to be provided with foster care.

State Law reference— Similar provisions, MCL 400.703.

Advertising sign/structure means any outdoor sign, display, device, figure, painting, drawing, message, placard, poster, billboard or other comparable object, used as a means to convey information or direct attention to a business, product, service, activity or commodity.

Alley means a generally narrow vehicular or pedestrian right-of-way that permits access to a rear yard, parking lot or other area of a parcel. Alleys are not designed for general traffic and afford only a secondary means of access to the property.

Alteration/alter, as applied to a building or structure, means a change or rearrangement in the structural parts or in the means of egress; an enlargement, whether by extending on a side or by increasing in height; or the moving from one location or position to another.

Apartment means a room or group of rooms designed to function as a single, complete dwelling unit and located in a multiple-family dwelling.

Aquifer means subsurface rock or other materials capable of holding a significant amount of water in their interstices. Certain types of materials, such as coarse sands, gravel and limestone, are more likely to produce aquifers.

Automobile/gasoline service stations means structures and premises used or designed to be used for the retail sale of fuels, lubricants, tires, batteries, and other operating commodities and services for motor vehicles, including space and facilities for the installation of such commodities and/or space for services such as polishing, washing, cleaning, greasing, tire replacement or repair, but not including those services included in the definition of automobile repair/commercial garages. Specific examples include gasoline retail sales locations, quick lube establishments, tire shops, muffler shops, and car washes.

Automobile repair/commercial garages means premises where any of the following activities are carried out: general repairs; engine rebuilding; collision service, such as body, frame or fender straightening and repair; painting; or undercoating of vehicles, including passenger cars and trucks.

Basement means that portion of a building which is partially or wholly below grade.

Bed and breakfast means a single-family residential structure, including sleeping rooms occupied by the innkeeper, with one or more rooms available for rent to transient tenants, and where meals are provided at no extra cost to its transient tenants.

Berm means an earthen mound of variable height and width, used as visual relief or transitional area between different land uses or uses of differing intensity.

Bond means a form of insurance required of an individual or firm to secure the performance of an obligation, as in a performance bond.

Borrow pit means any excavation made for the purpose of obtaining the excavated material for use off of the lot on which the excavation is located.

Buffer means a strip of land, including a specified type and amount of planting or structures, which may be required to protect/screen one type of land use from another or minimize or eliminate conflicts between them.

Building means a combination of materials, whether portable or fixed, forming a structure affording a facility or shelter for use or occupancy by persons, animals or property.

Building area means the area included within the horizontal projection on the ground below of the surrounding exterior walls exclusive of courts, as modified below.

Building or structure includes any part thereof.

Building height means the vertical distance measured from grade to the highest point of the structure.

Building line means a line that establishes the distance between a building or structure and a lot line at the points where the building or structure is nearest the front, side and rear lines of the lot.

(1) For purposes of defining building lines, enclosed porches or stairs, and unenclosed porches or stairs having foundations and roofs which would allow them to be enclosed in compliance with the building code by the construction of exterior walls shall be taken as part of the building.

(2) For purposes of defining building lines, the following rules shall govern:

a. In portions of the perimeter of a building or structure where the roof and exterior walls are clearly defined, and where the roof overhangs the exterior walls by 18 inched or less measured in the horizontal plane perpendicular to the plane of the exterior wall, the building line shall be a line parallel to the nearest lot line and passing through the horizontal projection on the ground below of the plane of the exterior wall at the point nearest that lot line.

b. In portions of the perimeter of a building or structure where the roof and exterior walls are clearly defined and the roof overhangs the exterior walls by more than 18 inches, measured in the horizontal plane perpendicular to the plane of the exterior wall, or in portions of the building or structure where the roof is clearly defined but the exterior walls are absent, the building line shall be a line parallel to the nearest lot line and passing through the horizontal projection on the ground below of the point on a line parallel to the edge of the roof and placed 18 inches in from the outer edge of the roof, measured in the horizontal plane, where that line is nearest that lot line.

c. For structures which do not have clearly defined exterior walls or roofs (such as towers, signs, tanks and the like), the building line shall be parallel to the nearest lot line and coincide with the horizontal projection of the structure on the earth below, or with a line connecting the points of contact of the structure with the earth, whichever is nearer the lot line.

Building, public means a building owned or controlled by an agency of local, state or federal government, and used exclusively in the discharge of its governmental function, except that buildings owned or controlled by private agencies performing governmental functions under contract with a governmental agency, or used in whole or in part for residential purposes shall not be included in this definition.

Campground means a public or private open area divided into campsites that, at a minimum, provides a potable water supply and some form of toilet facilities.

Child care facility means a facility licensed under the Public Act No. 116 of 1973 (MCL 722.111 et seq.). The term "child care facility" includes:

(1) *Child care center* means any facility, other than a private residence, in which one or more preschool or school age children are given care and supervision for periods of less than 24 hours per day, and where the parents or guardians are not immediately available to the child. The term "child care center" or "day care center" includes a facility that provides care for not less than two consecutive weeks, regardless of the number of hours of care per day. The facility is generally described as a child care center, day care center, day nursery, nursery school, parent cooperative preschool, play group, before- or after-school program, or drop-in center. The term "child care center" does not include:

a. A Sunday school, a vacation bible school, or a religious instructional class that is conducted by a religious organization where children are attending for not more than three hours per day for an indefinite period or for not more than eight hours per day for a period not to exceed four weeks during a 12-month period.

b. A facility operated by a religious organization where children are in the religious organization's care for not more than three hours while persons responsible for the children are attending religious services.

c. A program that is primarily supervised, school-age-child-focused training in a specific subject, including, but not limited to, dancing, drama, music, or religion. This exclusion applies only to the time a child is involved in supervised, school-age-child-focused training.

d. A program that is primarily an incident of group athletic or social activities for school-age children sponsored by or under the supervision of an organized club or hobby group, including, but not limited to, youth clubs, scouting, and school-age recreational or supplementary education programs. This exclusion applies only to the time the school-age child is engaged in the group athletic or social activities and if the school-age child can come and go at will.

(2) *Family day care home* means a private home in which one but fewer than seven minor children are received for care and supervision for periods of less than 24 hours a day, unattended by a parent or legal guardian, except children related to an adult member of the family by blood, marriage or adoption. The term "family day care home" includes a home in which care is given to an unrelated minor child for more than four weeks during a calendar year. The term "family day care home" does not include an individual providing babysitting services for another individual. As used in this subsection, the term "providing babysitting services" means caring for a child on behalf of the child's parent or guardian when the annual compensation for providing those services does not equal or exceed $600.00 or an amount that would according to the Internal Revenue Code of 1986 obligate the child's parent or guardian to provide a Form 1099-MISC to the individual for compensation paid during the calendar year for those services.

(3) *Group day care home* means a private home in which more than six but not more than 12 minor children are given care and supervision for periods of less than 24 hours a day, unattended by a parent or legal guardian, except children related to an adult member of the family by blood, marriage or adoption. The term "group day care home" includes a home in which care is given to an unrelated minor child for more than four weeks during a calendar year.

(4) *Foster family home* means a private home in which one but not more than four minor children, who are not related to an adult member of the household by blood or marriage, or who are not placed in the household under the Michigan Adoption Code (MCL 710.21 et seq.), are given care and supervision for 24 hours a day, for four or more days a week, for two or more consecutive weeks, unattended by a parent or legal guardian. A foster family home shall be considered a state licensed residential care facility.

(5) *Foster family group home* means a private home in which more than four but fewer than seven minor children, who are not related to an adult member of the household by blood or marriage, or who are not placed in the household under the Michigan Adoption Code (MCL 710.21 et seq.) are provided care for 24 hours a day, for four or more days a week, for two or more consecutive weeks, unattended by a parent or legal guardian. A foster family group home shall be considered a state licensed residential care facility.

State Law reference— Similar provision, MCL 722.111.

Commercial vehicle means any motor vehicle which has a commercial license and/or which has a gross vehicle weight rating (GVWR) of over 10,000 pounds.

Convalescent or nursing home means a residential facility designed to provide a range of personal and medical care services to chronically ill or disabled individuals and which is licensed by the state.

Convenience retail means any establishment which devotes between 200 square feet and 5,000 square feet of floor space to the display and retail sales of food or beverages.

Corner lot. See *Lot, corner.*

Cul-de-sac means a street with an outlet at only one end and a turnaround area at the other end.

Density means the number of dwelling units situated on or to be developed on an area of land.

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

Directional sign means a sign which gives a name, place, location and general nature of a specific establishment or attraction and is intended to give directions to that place.

Drive-in facilities means commercial enterprises that permit the consumer to do business or be entertained without leaving his car.

Driveway means a private vehicular access to property from a public street or alley. Driveways accessing properties where one-family or two-family dwellings are located shall be 24 feet or less in width, and shall lead to a legal parking stall in a garage, a rear yard, or a side yard.

Dwelling, single-family, means a building or portion of a building, including a manufactured home, designed for, or as, one-dwelling unit with common cooking and utilities and complies with the following regulations:

(1) The dwelling shall meet all pertinent requirements of the building code and property maintenance code.

(2) The single-family dwelling, including manufactured homes and manufactured or modular housing, shall have a minimum exterior breadth/caliper/width of 20 feet. (Thus, the minimum dimension between any two opposing exterior walls, measured at any point on the horizontal, shall be at least 20 feet.)

a. *Exception 1.* The minimum dimension between two opposing exterior walls may be less than 20 feet, provided that the portion of the building area lying between such exterior walls is less than 30 percent of the building area, and the aggregate of all such areas is less than 50 percent of the building area.

b. *Exception 2.* Dwellings manufactured under the Manufactured Housing Construction and Safety Standards as promulgated by the United States Department of Housing and Urban Development, 24 CFR 3280, as amended, and installed in a licensed manufactured home park.

(3) If the dwelling is manufactured off the site, it shall be installed with the wheels removed. In addition, a dwelling shall not have an exposed towing mechanism, undercarriage or chassis.

(4) Every single-family dwelling hereafter erected or installed in the City shall be supported in part or whole by, and shall be provided with continuous exterior load bearing foundation walls of masonry units, concrete, or preservative pressure-treated wood meeting the requirements of the all pertinent building codes. The exterior foundation walls shall be without openings or penetrations except as necessary to provide for building utilities or access, light, and ventilation to the space enclosed by the foundation.

Dwelling, two-family/duplex, means a building containing two dwelling units.

Dwelling unit means a single unit providing complete, independent living facilities for one family, including permanent provisions for living, sleeping, eating, cooking and sanitation.

Earth shelter home means a building which is partially or entirely below grade and is designed and intended to be used as a single-family residence.

Easement means an interest in or right over land of another, providing secondary access to the property (i.e., as in utility easement).

Echo apartment means a complete, self contained living unit created within an existing single-family home (dwelling). It has its own kitchen, bath, living area, sleeping area, usually a separate entrance and is intended to provide accommodations for up to two family members of those persons occupying the single-family dwelling only.

Educational institution means a public or private elementary or secondary school, college, university, or other institution for higher education.

Erect means the act of construction or alteration of any building or structure.

Essential services means the erection, construction, alteration or maintenance, by public utilities or municipal departments or commissions, of overhead, surface or underground gas, electrical, steam, petroleum or water distribution or transmission systems, collection, communication, supply or disposal systems, including mains, drains, sewers, pipes, conduits, tunnels, wires, cables, fire alarm boxes, police call boxes, traffic signals, hydrants, towers, poles and similar equipment and accessories in connection therewith, but not including buildings, except those necessary to house the foregoing, reasonably necessary for the department or commission or for the public health or safety or general welfare, shall be permitted as authorized or regulated by law and other ordinances of the pertinent jurisdiction in any use district, it being the intention thereof to except such erection, construction, alteration, and maintenance from the application of this chapter, except electrical substations and gas regulator stations, which require a special use permit as provided elsewhere in this chapter.

Explosive means a chemical compound or mechanical mixture that is commonly used or intended for the purpose of producing an explosion, that contains any oxidizing and combustible units or other ingredients, in such proportions, quantities or packing that an ignition by fire, friction, concussion, percussion or detonator of any part of the compound or mixture may cause such a sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructive effects on contiguous objects or destroying life and limb.

Family means an individual, two or more persons related by blood, marriage, adoption, or legal custody, or a group, not to exceed six persons, not related by blood or marriage, occupying premises and living as a single nonprofit housekeeping unit with single culinary facilities, as distinguished from a group occupying a boardinghouse, lodginghouse, club, fraternity, hotel or similar dwelling for group use. Guests residing on the premises for less than 30 days, and domestic servants residing on the premises, shall be considered as part of the family.

Farm means a parcel of land containing at least 20 acres which is used for agricultural purposes, but which the raising of fur bearing animals, livery or boarding stables and dog kennels are not included.

Fence means an accessory structure intended for use as a barrier to property ingress and egress, as a screen from objectionable vista, noise and/or for decorative use. A fence may be living, as in a hedge or other plantings.

Fence, screening, means an accessory structure to screen and separate a use from the adjacent property.

Filling means the raising or elevating of the surface of land by the deposition of any matter.

Flood means a rise in the water level of a waterbody or the rapid accumulation of water from runoff or other sources, so that land that is normally dry is temporarily inundated by water. For the purpose of the national flood insurance program, the term "flooding" is also defined to include mud slides connected with accumulation of water and land subsidence along waterbodies.

Flood, base, means the base flood elevation shall be used to define areas prone to flooding and shall describe, at minimum, the depth or peak elevation of flooding (including wave height) which has a one percent (100-year flood) or greater chance of occurring in any given year. The term "base flood" is the minimum level of flooding that the national flood insurance program requires a community to protect itself against in floodplain management regulations.

Floodplain means that area of land adjoining a lake, river or stream which will be inundated by a base flood.

Floor area, gross, means the area within the perimeter of the outside walls of the building under consideration, without deduction for hallways, stairs, closets, thickness of walls, columns or other features, but not including courtyards.

Floor area, net, means for purposes of determining the number of parking spaces, the actual area occupied by the principal use, not including accessory areas such as toilet rooms or storage rooms, or thickness of walls.

Floor area ratio means the ratio between the amount of gross floor area permitted to be constructed on a building lot and the size of the lot.

Front yard. See *Yard, front.*

Garage means a building or portion of a building arranged for parking or storage of vehicles.

General retail means stores which sell dry goods, package foods, hardware, appliances, furniture, electronics, jewelry and other similar merchandise directly to the public, but not including those uses meeting the definition of "convenience retail" as given in this chapter.

Grade means a reference plane representing the average of finished ground level adjoining the building at all exterior walls. When the finished ground level slopes away from the exterior walls, the reference plane shall be established by the lowest points within the area between the building and the lot line or, when the lot line is more than six feet from the building, between the building and a point six feet from the building.

Hazardous materials means substances or materials in quantities or forms that may pose an unreasonable risk to health, safety or property when stored, transported or used in commerce, as determined by the state department of transportation.

Hedge means a boundary formed by a row of shrubs or low growing trees planted with little or no space in between when mature.

Home occupation means an accessory use of a professional or service character conducted within a dwelling by the family residents thereof and which does not change the character thereof. The use of a single-family dwelling by an occupant of the residence to give instruction in a craft or fine art within the residence shall also be considered a home occupation.

Hotel means a building arranged for shelter and sleeping accommodations for occupants who are primarily transient in nature, occupying the facilities for a period of less than 30 days, but which does not comply with the definition of bed and breakfast.

House, lodging or boarding, means a building which is arranged or used for lodging within a dwelling unit, with or without meals, for a period exceeding 30 days, of individuals who are not members of a family residing within the dwelling unit.

Household pet means any domesticated dog, cat or other animal kept for friendship or hunting purposes. The term "household pet" does not include wild animals, animals that are normally raised for fur or meat, or animals which can reasonably be expected to weigh more than 200 pounds at maturity.

Identification sign means a sign which pertains to the use of a premises and contains any or all of the following information:

(1) The occupant of the use.

(2) The address of the use.

(3) The kind of business and/or the principal commodity sold on the premises.

Junkyard means any land or building over 200 square feet in area used for the abandonment, storage, keeping, collecting or baling of paper, rags, scrap metals, other scrap or discarded materials or for abandonment, demolition, dismantling, storage or salvaging of automobiles or other vehicles or machinery or parts thereof.

Kennel, commercial, means any lot or premises used for the commercial sale, boarding or treatment of dogs, cats or other domestic animals and which has a license from the chief of police.

Loading space means an off-street space on the same lot with a building or group of buildings, for the temporary parking of a commercial vehicle while loading or unloading merchandise or materials.

Lot means any parcel of land which is identified on the tax rolls of the City as a separate parcel of land for purposes of tax assessment.

Lot, corner, means a lot at the junction of and fronting or abutting on two or more intersecting streets or roads, at which the angle of interception is no greater than 125 degrees. This chapter specifies that corner lots have two front yards, one rear yard and one side yard. In areas of the lot where a front and rear yard overlap according to the definitions contained in this chapter, the requirements for the front yard shall have precedence.

Lot area means the area of land within the boundary of a lot excluding any part under water.

Lot coverage means the part or percent of the lot covered by the "building area" of buildings or structures, as defined herein.

Lot depth means the horizontal distance between the front and rear lot lines, measured along the median between the side lot lines. For corner lots, the measurement is to be made along the median between the side lot line and the front lot line which is opposite the side lot line.

Lot of record means a parcel of land which is part of a subdivision and is shown on a map thereof which has been recorded by the county register of deeds or a parcel of land described by metes and bounds, the deed to which has been recorded in said office.

Lot width shall be measured as described in the following:

(1) *Corner lots.* The second side lot line is to be taken as the front lot line opposite the side lot line.

(2) *Lots with parallel side lot lines.* The width shall be measured on a straight line which is perpendicular to the side lot lines.

(3) *Lots with nonparallel side lot lines.* The lot width shall be measured on a straight line which is parallel to a straight line which connects the side lot lines where they intersect the front property line. The width measuring line shall be located at the distance of the required front yard from the front property line. The required minimum straight line distance between the side lot lines where they intersect the front property lines shall be not less than 80 percent of the required lot width.

Minimum lot size means the smallest or least area of a parcel allowed in said district, as stated in article IV of this chapter.

Manufactured home means a single-family dwelling manufactured pursuant to the provisions of the Manufactured Housing Construction and Safety Standards as promulgated by the United States Department of Housing and Urban Development, 24 CFR 3280, as amended.

Manufactured home park means any lot, parcel or tract of land under the control or management of any person, occupied or designated for occupancy by more than two manufactured homes and including any accessory buildings, structures or enclosures comprising facilities used by the park residents. Such shall comply with the provisions of this chapter and the Mobile Home Commission Act (MCL 125.2301 et seq.).

Modification. The term "modification" means:

(1) Portions of the building not provided with surrounding walls shall be included in the building area if included within the horizontal projection of the floor above, or of the horizontal projection on the ground below of a line parallel to the edge of the roof and placed 18 inches in from the outer edge of the roof, measured in the horizontal plane perpendicular to the edge of the roof, whichever provides the greater area.

(2) In portions of a building or structure where the roof and exterior walls are clearly defined and the roof projects 18 inches or less, measured in the horizontal plane perpendicular to the plane of the exterior wall, the horizontal extension of the roof beyond the exterior walls shall not be included in the building area.

(3) In portions of a building or structure where the roof and exterior walls are clearly defined and the roof projects more than 18 inches beyond the plane of the exterior wall, measured in the horizontal plane perpendicular to the plane of the exterior wall, the building area shall be calculated from the horizontal projection on the ground below of a line parallel to the plane of the exterior wall, and placed 18 inches in from the outer edge of the roof, measured horizontally.

(4) The building area of structures which do not have clearly defined exterior walls or roofs (such as towers, signs, tanks and the like) shall be calculated as the horizontal projection of the structure on the earth below, or as the area defined by a line connecting the points of contact of the structure with the earth, whichever provides the greater area.

Motel. See *Hotel.*

Multiple-family dwelling means a structure having three or more dwelling/housing units within a single building.

New construction means structures from which the start of construction commenced on or after May 9, 2004.

Nonconforming buildings/structures means a building or structure (or portion thereof) lawfully existing on May 9, 2004, or at the time of subsequent amendment to this chapter that does not conform to the provisions of this chapter relative to height, bulk, area, placement or yards for the zoning district in which it is located.

Nonconforming lot means a lot lawfully existing on May 9, 2004, or at the time of subsequent amendment to this chapter that does not conform to the provisions of this chapter or subsequent amendment thereto relative to lot dimensions or area for the zoning district in which it is located.

Nonconforming use means a use of land lawfully existing on May 9, 2004, or at the time of subsequent amendment to this chapter that does not conform to the provisions of this chapter relative to use of land for the zoning district in which it is located.

Nuisance means an activity consisting of an unlawful or unreasonable use of property by an individual that causes injury or damages to another or to the public in general. Common examples of phenomena generally considered to constitute nuisances include excessive noise, odor, smoke or vibration.

On-premises sign means a sign which advertises only goods, services, facilities, events or attractions available on the premises where located, identifies the owner or occupant or directs traffic on the premises. All other signs are off-premises signs.

Open space, required means the yard space of a lot which is established by and between the street or the lot lines and required setback line and which shall be open, unoccupied and unobstructed by any structure or any part thereof, except as otherwise provided in this chapter.

Open space ratio means the ratio between open space on the lot, whether required or not, and the total lot area.

Owner means the person or entity shown by the county register of deeds office to hold title to any affected property, and as used in this chapter, also includes any person to whom control of the property has been assigned by lease, land contract or similar contract of record with the county register of deeds.

Parking space means a land area meeting the size requirements of section 109-506, exclusive of driveways and aisles, so prepared as to be usable for the parking of a motor vehicle and so located as to be readily accessible to a public street or alley.

Performance bond means a bond posted by a contractor or subcontractor that contains the guarantee of a surety that a specific project will be completed and meet any standards or specifications that have been agreed upon.

Performance standards means general criteria that are set to ensure that a particular structure, type of land use or development will be able to meet certain minimum standards or that its effects on the community will not exceed set limits.

Planned unit development means a land area which has both individual building sites and common land, such as a park, and which is designed and developed under one owner or organized group as a separate neighborhood or community unit.

Pond means any excavation exceeding 250 square feet in horizontal area, to any depth, which contains water, and which does not comply with the requirements of the building code for swimming pools.

Principal structure means the main structure to which the premises are devoted.

Principal use means the main use to which the premises are devoted and the principal purpose for which the premises exist.

Proof of equitable title means a recorded land contract agreement or recorded deed conveying to the purchaser interest in real estate and/or any assignments of the purchasers interest thereof.

Public utility means any person, firm, corporation, municipal department or board authorized to furnish the public electricity, gas, steam, sanitary sewer, telephone, telegraph, transportation or water service.

Railroad station means an area of land on property owned or controlled by a railroad which is arranged to be used for the purpose of loading and/or unloading freight or passengers, or both, from trains. The term "railroad station" does not include an area which is located entirely on the premises of a single customer of the railroad, and used for the loading and/or unloading of freight in conjunction with the principal use of the premises.

Rear lot line means the line that is opposite from the front lot line. Where there is more than one front lot line, the rear lot line shall be taken to be that lot line which is opposite a front lot line and furthest from the principal building or proposed principal building on the lot.

Recreation vehicle means a vehicle or unit that is mounted on or drawn by another vehicle, and is primarily designed for temporary living. The term "recreational vehicle" includes travel trailers, camping trailers, truck campers and motor homes.

Religious institution means a church, synagogue, mosque or other building used exclusively for the purpose of worship, including buildings and land used exclusively for purposes related to the use for worship of the principal structure.

Restaurant means an establishment where food and/or beverages are cooked or prepared and offered for sale, where consumption is permitted on the premises whether or not entertainment is offered and includes establishments commonly known as bars, grills, cafes, taverns and nightclubs permitting consumption of food on the premises.

Right-of-way means a street, alley or other thoroughfare or easement permanently established for passage of persons or vehicles.

Self-service storage means a building or group of buildings consisting of individual, self-contained units that are leased to individuals, organizations or businesses for storage of personal property.

Sign means any words, lettering, parts of letters, figures, numerals, phrases, sentences, emblems, devices, trade names or marks or combination thereof, by which anything is made known, such as designation of an individual, a firm, an association, a profession, a business, an event or activity, or a commodity or product, which are visible from any public way and used as an outdoor display.

Special use permit means a permit issued by the planning commission to a person intending to undertake the operation of a use upon land or within a structure or building specifically identified in the affected zoning district under special uses authorized by permit.

State-licensed residential facility means a residential structure licensed by the state under the Adult Foster Care Facility Licensing Act, Public Act 218 of 1979, or the Child Care Organizations Act, Public Act 116 of 1973, and provides residential services for six or fewer persons under 24-hour supervision or care. State licensed residential facilities include:

(1) Adult foster care family homes.

(2) Foster family homes.

(3) Foster family group homes.

State Law reference— Similar provisions, MCL 125.3101(t).

Story means that portion of a building included between the surface of any floor and the surface of the floor above it, or if there is no floor above it, then the space between the floor and the ceiling above it.

Street means a public dedicated right-of-way which affords traffic circulation and means of access to abutting property.

Structural alteration means any change in the supporting members of a building such as bearing walls, columns, beams or girders or any substantial changes in the roof and exterior walls.

Structure means anything constructed or erected, the use of which requires location on the ground or attached to something having location on the ground.

Swimming pool means any structure or container located either above or below grade designed to hold water to a depth of greater than 24 inches intended for swimming or bathing. A swimming pool shall be considered as an accessory building for the purposes of determining required yard spaces and maximum lot coverage.

Tower, freestanding, means towers erected for communication and/or reception and used privately or for commercial purposes.

Undefined terms. Any term not defined herein shall have the meaning of common or standard use.

Variance means a modification of the literal provisions of this zoning chapter granted in specific cases when strict enforcement of this zoning chapter would cause practical difficulty owing to circumstances unique to the individual property on which the variance is granted.

Vehicle sales means the offering for sale of more than three new or used automobiles, trucks, boats, aircraft, or recreational vehicles on a single lot within a 12-month period.

Warehouse means a building or portion thereof used for storage of goods, merchandise or other property. The term "warehouse" shall not be deemed to include the storage area in connection with a purely retail business when located on the same property, or a use meeting the definition of the term "self-service storage."

Wild animal means any animal which a person is prohibited from possessing by law, or any animal which is likely to bite without provocation or has a known propensity to attack or injure human beings or household pets, including but not limited to alligator (family), deer (family), opossum (family), badger, dog

(wild family), primate (family), bear, dog-wolf, raccoon, bird (wild), ferret, skunk, cat (wild family), spider (poisonous), coyote, lizard (poisonous), weasel (family), marten or any hybrid animal which is part wild.

Yard, front, means an open, unoccupied space extending the full width of the lot between the front lot line and the nearest building line of the principal building on the lot.

Yard, front required, means the minimum required yard extending the full width of the lot and situated between the front line and the front building line, parallel to the street line. The depth of the required front yard shall be measured at right angles to the street line, in the case of a straight street line, and radial to the street line, in the case of a curved street line.

Yard, rear, means an open unoccupied space extending the full width of the lot between the rear line of the lot and the rear building line of the principal building on the lot.

Yard, rear required, means the minimum required yard extending the full width of the lot and situated between a rear property line and the rear building line, parallel to the rear property line. The depth of the required rear yard shall be measured at right angles to the rear property line, in the case of a straight rear property line, and radial to the rear property line, in the case of a curved rear property line.

Yard, side, means an open, unoccupied space on the same lot with the principal building, between the side building line of the principal building and the adjacent side line of the lot and extending from the rear line of the front yard to the front line of the rear yard.

Yard, side required, means the minimum required yard extending between the front yard and rear building line and situated between a side property line and the side building line, parallel to the side property line. The width of the required side yard shall be measured at right angles to the side property line, in the case of a straight side property line, and radial to the side property line, in the case of a curved side property line.

(Code 1979, §§ 11:1.201—11:1.203(E))

Sec. 109-2. - Violations and penalty.

It shall be unlawful for any person to commence operations of any kind that are in violation of the terms of this chapter, and any violations shall be subject to the penalties herein prescribed.

(1) *Inspection of violation.* The code enforcement officer or his agent shall inspect each alleged violation of this chapter within ten working days of receipt of a notice of an alleged violation.

(2) *Notice of violation, correction period.* On determination by the code enforcement officer that a violation of the terms of this chapter has occurred, written notice shall be given to the owner by first class mail. Such notice shall contain a reasonably accurate statement of the violation, and of the actions necessary to correct the violation by the owner. The notice shall require correction of the violation within a stated number of days of receipt of the notice. If the violation is not corrected within the stated period, the code enforcement officer shall issue a citation to the owner.

(3) *Penalties.* Any individual, corporation, partnership or any other group acting as a unit who shall violate a provision of this chapter shall be responsible for a municipal civil infraction. Each week that a violation continues after due notice has been served shall be deemed a separate offense.

(Code 1979, § 11:1.352)

State Law reference— Authority to make violations a municipal civil infraction, MCL 125.3407.

Sec. 109-3. - Purposes.

The provisions of this chapter are based primarily upon the Menominee City General Plan which was established to provide a logical framework to guide the development of the City in the future. The plan concerns the use of land and the arrangement of physical facilities and institutions in the City. The plan also considers the impact of the natural environment upon the City as well as manmade influences. The establishment of these zoning districts and regulations are intended to promote the public health, safety and general welfare by encouraging the use of lands in accordance with their character and adaptability, while limiting the improper use of land.

(Code 1979, § 11:1.102)

Sec. 109-4. - Relationship to other laws.

(a) Except as provided in subsection (b) of this section, whenever regulations or restrictions imposed by this chapter are either more or less restrictive than regulations or restrictions imposed by any governmental authority through legislation, rules or regulations, the regulations, rules or restrictions which are more restrictive or which impose higher standards or requirements shall govern.

(b) Except as otherwise provided in the Michigan Zoning Enabling Act (MCL 124.3101 et seq.), provisions in this chapter adopted pursuant to the Michigan Zoning Enabling Act (MCL 124.3101 et seq.) shall be controlling in the case of any inconsistencies between such provisions and an ordinance adopted under any other law.

(c) Regardless of any other provision of this chapter, no land shall be used and no structure erected or maintained in violation of any state or federal laws and administrative rules and regulations including pollution control or environmental law or regulation.

(Code 1979, § 11:1.104)

State Law reference— Zoning ordinance as controlling, MCL 125.3210.

Sec. 109-5. - Application of this chapter.

No structure shall be constructed, erected, placed or maintained, and no land use commenced or continued within the City except as specifically or by necessary implication, authorized by this chapter. Where a lot is devoted to a permitted principal use, customary accessory uses and structures are authorized except as prohibited specifically or by necessary implication.

(Code 1979, § 11:1.107)

Sec. 109-6. - Exemptions.

Except with respect to the location, construction and use of buildings and building sites, the development and use of land by public utilities, including cable TV, for public utility purposes is exempt from regulation under this chapter. Railroad tracks and stations are also exempt.

(Code 1979, § 11:1.108)

Secs. 109-7—109-30. - Reserved.

ARTICLE II. - ADMINISTRATION AND ENFORCEMENT

DIVISION 1. - GENERALLY

Sec. 109-31. - Zoning-related functions and the entity responsible for the same.

Zoning Function	Code Enforcement Officer	Planning Commission	City Council	Board of Appeals
Zoning permits	X [b]			X [c]
Building permits	X [b]			X [c]
Zoning violations	X [b]			X [c]
Enforcement	X [b]			X [c]
Rezoning	X	X [b]		
Text amendments		X	X [b]	
Lot division		X [b]		
Interpretations	X			X [c]
Appeals				X [c]
Classification of				
Nonconformities	X [b]			X [c]
Site plan reviews	X [b]			X [c]
Special use permits		X [b]		
Planned unit				
Developments		X	X [b]	

[a] Plans are submitted to and reviewed by City engineer.

[b] Jurisdiction is final unless matter is appealed to appropriate board of appeals.

[c] Unless appealed to the court.

(Code 1979, § 11:1.360)

Sec. 109-32. - Administrative standards.

(a) *Established.* Whenever, in the course of administration and enforcement of this article, it is necessary or desirable to make any administrative decision, then, in addition to any other standards set forth in this article, the decision shall be consistent with the intent and purpose of this article to protect the public health, safety and welfare and shall authorize any land use or activity only if it is determined to be compatible with adjacent uses of land, the natural environment and the capacity of affected public services and facilities. Under no circumstances, however, does the code enforcement officer, any of his subordinates or any elected official have the authority to waive, alter or change any provision of this article except pursuant to the Michigan Zoning Enabling Act (MCL 124.3101 et seq.) and this subsection.

(b) *Presumption of necessity of certain actions.* Whenever any condition or limitation is included in any variance, approval, permit or other action taken pursuant to this chapter, it shall be conclusively presumed that the authorizing officer or body considered such condition or limitation necessary to carry out the spirit and purpose of this chapter or the requirements of some provision hereby to protect the public health, safety and welfare and that the officer or board would not have granted the variance, approval, permit or other action unless the condition or limitation was lawful.

(Code 1979, §§ 11:1.103, 11:1.105)

Sec. 109-33. - City officers and employees relieved from personal responsibility.

Any officer or employee of the City charged with the enforcement of this chapter, member of the planning commission or zoning board of appeals, while acting for the City, shall not thereby become liable personally and is hereby relieved from all personal liability for any damage that may accrue to persons or property as a result of any act required or permitted in the discharge of his official duties. Any suit instituted against any officer or employee because of an act performed by him in the lawful discharge of his duties and under the provisions of this chapter shall be defended by the legal representative of the City until the final termination of the proceedings. In no case shall the code enforcement officer or any of his subordinates, planning commissioner or member of the zoning board of appeals be liable for costs in any action, suit or proceedings that may be instituted in pursuance of the provisions of this chapter. Any officer of the office of the code enforcement officer or board member acting in good faith and without malice, shall be free from liability for acts performed under any ordinance provision or by reason of any act or omission in the performance of his official duties in connection herewith.

(Code 1979, § 11:1.302)

Sec. 109-34. - Administration.

The provisions of this chapter shall be administered by the City planning commission and the City Council pursuant to the Michigan Zoning Enabling Act (MCL 125.3801 et seq.). The planning commission shall have the primary responsibility for the administration of this chapter; and may adopt and file rules and guidelines with the City Council to assist the code enforcement officer in enforcing this chapter.

(Code 1979, § 11:1.301)

Sec. 109-35. - Duties of code enforcement officer; reports to code enforcement officer.

(a) *Responsibilities to enforce chapter provisions; waiver of standards.* It shall be the responsibility of the code enforcement officer to enforce the provisions of this chapter and in doing so shall perform the

duties which follow. However, in no case shall the code enforcement officer or any of his subordinates waive any of the provisions or standards contained in this chapter:

(1) *Issue permits.* All applications for zoning permits shall be submitted to the office of the code enforcement officer, who shall issue zoning permits and certificates of occupancy when applicable provisions of this chapter have been complied with.

(2) *File applications.* The office of the code enforcement officer shall maintain files of all applications for zoning permits and for certificates of occupancy and shall keep records of all zoning permits and certificates of occupancy issued. These shall be filed in the office of the code enforcement officer. Such files and records shall be open to public inspection. Copies shall be furnished at a cost determined by the City Council upon request of any person.

(3) *Official copies.* Maintain one official copy of an updated zoning ordinance and zoning map.

(4) *Inspections.* The office of the code enforcement officer shall be empowered to make inspections of buildings or premises in order to properly carry out the enforcement of this chapter.

(5) *Record of complaints.* The office of the code enforcement officer shall keep a record of every identifiable complaint of a violation of any of the provisions of this chapter, and of the action taken consequent to each such complaint. Such records shall be public record.

(6) *Report to the City Council.* The code enforcement officer shall report to the City Council periodically at intervals of not greater than one year, summarizing for the period since the last previous report of all building permits, certificates of occupancy, all complaints of violations, all appeals, variances and exceptions granted by the zoning board of appeals and the action taken subsequent thereto. The planning commission shall receive copies of the periodic reports made to the City Council.

(7) *Site plan reviews.* The code enforcement officer shall review site plans in accordance with division 4 of this article.

(8) *Floodplain management administrative duties* : The code enforcement officer shall be responsible for the administration of the national flood insurance program.

(b) *Violations to be reported in written form.* Any and all building or land use activities considered possible violations of the provisions of this chapter observed or communicated to the City police department or to any City official shall be reported to the office of the code enforcement officer in written form.

(Code 1979, §§ 11:1.303, 11:1.351)

Sec. 109-36. - Duties of planning commission.

In accordance with the Michigan Zoning Enabling Act (MCL 125.3101 et seq.) and the Michigan Planning Enabling Act (MCL 125.3801 et seq.), it shall be the responsibility of the planning commission to oversee the administration and enforcement of this chapter and in doing so shall perform the following duties:

(1) Adopt rules and guidelines for the proper administration and enforcement of this chapter, as deemed necessary;

(2) Act as a policy board on matters of enforcement and administration of this chapter not covered by adopted rules or guidelines;

(3) Conduct public hearings;

(4) Make comprehensive review and recommend changes to the zoning ordinance, at minimum every five years or as needed;

(5) Review all requests for special use permits and approve or deny the application based on the conditions of article VI of this chapter;

(6) Review all proposed amendments to the zoning ordinance for compliance with the requirements of this chapter and thence recommend appropriate action to the City Council for approval, disapproval or modification;

(7) Review all applications for division of a lot, according to the terms of section 109-595;

(8) Classify a use which is not specifically mentioned as part of the use regulations of any district so that it conforms to a comparable permitted or prohibited use, in accordance with the purpose and intent of each district; and

(9) Any other duties as required by the Michigan Zoning Enabling Act (MCL 125.3101 et seq.) and the Michigan Planning Enabling Act (MCL 125.3801 et seq.).

(Code 1979, § 11:1.310)

Sec. 109-37. - Fees.

All fees for inspections and the issuance of permits or certificates required under this chapter shall be collected by the office of the code enforcement officer in advance of issuance. The amount of such fees shall be established by resolution of the City Council.

(Code 1979, § 11:1.335)

Sec. 109-38. - Inspections.

The office of the code enforcement officer shall make such inspections as are deemed necessary to ensure compliance with this chapter.

(Code 1979, § 11:1.334)

Secs. 109-39—109-64. - Reserved.

DIVISION 2. - PERMITS, CERTIFICATES AND OTHER APPROVALS

Sec. 109-65. - Administration of zoning permits and certificates of occupancy.

In cases where a building permit is required under the Stille-Derossett-Hale Single State Construction Code Act (MCL 125.1501 et seq.), the application and issuance of a zoning permit and a certificate of occupancy shall be fully coordinated and integrated into the building permit application and inspection process. As such, an application for a building permit shall also serve as an application for a zoning permit, and the granting or final approval of a building permit shall constitute a final approval of a zoning permit and eligibility for a certificate of occupancy.

(Code 1979, § 11:1.342)

Sec. 109-66. - Suspension of permit.

Any permit issued by the office of the code enforcement officer shall become invalid if work does not start within six months of issuance or work stops for a period of six months prior to completion of the permitted work.

(Code 1979, § 11:1.331)

Sec. 109-67. - Previous approvals.

When amendments to this chapter are made, conformity with the amended provisions of the ordinance shall not be required for construction or use for which a lawful permit was issued prior to the effective date of the amendment of the ordinance from which this article is derived, unless such conformity is specifically required in the amended ordinance. However, the previously authorized construction shall be completed, or the previously authorized use commenced within two years after the date of issue of the permit, or the permit shall become void.

(Code 1979, § 11:1.332)

Sec. 109-68. - Revocation of permits.

The code enforcement officer may revoke a permit or approval issued under the provisions of this chapter in case of any false statement or misrepresentation of fact in the application or on the plans on which the permit or approval was based. A permit or approval may also be revoked if the appellant or permit holder fails to comply with any lawful condition established by the planning commission or zoning board of appeals.

(Code 1979, § 11:1.333)

Sec. 109-69. - Zoning permits.

(a) *Issuance requirements.* The following provisions shall apply in the issuance of any zoning permit in addition to any requirements for a particular use contained in this chapter:

(1) *Commencement.* Excavation for a pond, borrow pit, building or structure shall not be commenced, filling of property, the erection, addition to, alteration of, moving of any building or structure shall not be undertaken, land shall not be used or an existing use of land shall not be changed to a use of a different type or class, until a zoning permit has been secured from the office of the code enforcement officer.

(2) *Application for zoning permit.* Application for a zoning permit shall be made by the owner of the lot on which the proposed construction or use is to take place. There shall be submitted to the code enforcement officer with each application for a zoning permit an accurate scale map showing the following:

a. The location, shape, area, dimensions and legal description of the parcel and location of easements;

b. The location, dimensions, height of the existing and/or proposed structures to be erected, altered or moved on the parcel;

c. The existing or intended uses;

d. The proposed number of sleeping rooms, dwelling units, occupants, employees, customers and other users;

e. The yard, open space and parking space dimensions; and

f. Any change to the contour of the parcel involved.

(b) *Permit for new principal or use; proof of equitable title.* An application for a zoning permit for any new principal structure or use shall be accompanied by proof of equitable title. In order to ensure compliance with dimensional requirements of this chapter and to protect public easements and private property from encroachment, the code enforcement officer may require a recorded survey to resolve concerns that arise with an application for a zoning permit.

(Code 1979, § 11:1.320)

Sec. 109-70. - Certificate of use and occupancy.

(a) *New construction.* After May 9, 2004, no new building, addition or other facility shall be occupied or used until a certificate of occupancy has been obtained from the code enforcement officer. Such certificate shall be issued only where it appears that the proposed use of the particular land as developed at the time of issuance will be in full compliance with all of the use and other regulations of this chapter and that the prescribed fee has been paid. Temporary certificates of occupancy shall be issued only as specifically authorized in this chapter.

(b) *Sale of premises.*

(1) Prior to the sale (whether by warranty deed, land contract, lease purchase or any other conveyance mechanism) of an existing structure, whether used for residential or business purposes or both, an application for a certificate of occupancy must be filed with the building inspector and an inspection of the structure conducted. The owner of the premises or his agent must contact the code enforcement officer to request an inspection. This inspection shall be for the purpose of determining compliance with article III of chapter 103 (property maintenance code).

(2) If, during an inspection, violations of the property maintenance code are noted, said violations must be corrected before a certificate of occupancy will be issued, with the exception that the code enforcement officer may, at his discretion, issue a temporary certificate of occupancy for a period not to exceed one year, to allow occupancy of a structure while corrections of violations which are deemed not to pose a threat to the safety of the occupants or the public are made. Such temporary certificate of occupancy shall clearly state the corrections to be made and the expiration date of the certificate, and the penalty that may arise from occupying the building beyond the expiration date of the temporary certificate of occupancy without having corrected the violations noted in the inspection, requested reinspection, and obtained a final certificate of occupancy. Occupancy or use of an existing structure after a change in ownership without first obtaining a certificate of occupancy is a violation of this chapter.

(Code 1979, § 11:1.340)

Sec. 109-71. - Certificates of occupancy for existing buildings.

New certificates of occupancy may be issued upon request of the owner for existing building, structures or parts thereof following an inspection and the correction of all defects pursuant to section 109-70.

(Code 1979, § 11:1.341)

Secs. 109-72—109-100. - Reserved.

DIVISION 3. - ZONING BOARD OF APPEALS; APPEALS AND VARIANCES[2]

Footnotes:

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State Law reference— Zoning board of appeals, MCL 125.3601 et seq.

Subdivision I. - In General

Sec. 109-101. - Establishment.

There is hereby established a zoning board of appeals in accordance with the Michigan Zoning Enabling Act (MCL 125.3101 et seq.). The board of appeals shall perform its duties and exercise its powers in such a way that the objectives of this chapter may be equitably achieved.

(Code 1979, § 11:1.411)

State Law reference— Zoning board of appeals required, MCL 125.3601.

Sec. 109-102. - Membership and terms of office.

(a) The zoning board of appeals shall consist of seven members and up to two alternates.

(1) The first member of the zoning board of appeals shall be a member of the planning commission. The second member may be a member of the City Council, however, this member shall not serve as chair of the board of appeals. The remaining members shall be selected from the electors residing in the City and should be representative of the various interests present in the City such as environmental, governmental, business, and other socio economic interests.

(2) All members shall be appointed by the mayor with consent by the City Council. Except as noted in subsection (a)(1) of this section, no other member shall be an elected officer of the City, or an employee of the City. Members, other than the planning commission and, if appointed, City Council representative shall each serve a term of three years staggered in such a way that the term of at least one member expires each year.

(3) The planning commission representative and, if appointed, City Council representative, who shall not be the same member, shall only serve while holding office on those respective bodies.

(4) A member of the zoning board of appeals may be paid a reasonable per diem and reimbursed for expenses actually incurred in the discharge of his duties.

(5) A member of the zoning board of appeals shall disqualify himself from a vote in which the member has a conflict of interest and remove himself from being involved in any discussion regarding the case. Failure of a member to disqualify himself from a vote in which the member has a conflict of interest shall constitute misconduct in office.

(b) The mayor, with consent by the City Council, may appoint up to two alternate members with the same qualifications as regular members for the same terms as the regular members.

(1) An alternate may be called to serve as a regular member in the absence of a regular member if the regular member will be unable to attend one or more meetings. An alternate member may also be called to serve as a member for the purpose of reaching a decision on a case in which the member has abstained for reasons of conflict of interest.

(2) The alternate member shall serve in the case until a final decision is made, and shall have the same voting rights as a regular member of the zoning board of appeals.

(Code 1979, § 11:1.412)

State Law reference— Similar provisions, MCL 125.3601.

Sec. 109-103. - Duties.

The zoning board of appeals shall have the duty to rule on petitions for appeal, interpretation, or variance, as provided for in this chapter.

(Code 1979, § 11:1.414)

Sec. 109-104. - Powers.

(a) The zoning board of appeals shall have the power to make final determinations, within its jurisdiction and duties herein prescribed, in such a way that the objectives of this chapter may be equitably achieved in order that there shall be uniform interpretation and flexibility in the enforcement of this chapter or to fulfill any other responsibilities bestowed upon the zoning board of appeals by this chapter.

(b) The zoning board of appeals may require that a bond be furnished to insure compliance with the requirements, specifications and conditions imposed with the granting of any variance. The amount and type of the bond shall be determined by the zoning board of appeals. The amount of the bond shall be based on the estimated cost of compliance with the requirements, specifications and conditions imposed by the board, and may be reduced from time to time as partial compliance is achieved.

(Code 1979, § 11:1.415)

State Law reference— General powers of board of zoning appeals, MCL 125.3603; performance guarantees, MCL 125.3505.

Sec. 109-105. - Rules of procedure.

The zoning board of appeals shall adopt rules of procedure for the conduct of its meetings and implementation of its duties. The zoning board of appeals shall choose its own chair and, in his absence, an acting chair, who may administer oaths and compel the attendance of witnesses.

(Code 1979, § 11:1.421)

State Law reference— Procedural rules authorized, MCL 125.3601.

Sec. 109-106. - Meetings.

The zoning board of appeals shall not conduct business unless a majority of the members are present. Four members of the zoning board of appeals shall comprise a quorum for the purpose of conducting a meeting of the zoning board of appeals. Meetings shall be held at the call of the chair or the code enforcement officer with written notices mailed by first class mail to the address of each member of the zoning board of appeals. All meetings of the zoning board of appeals shall be open to the public.

(Code 1979, § 11:1.422)

State Law reference— Required majority for decisions, MCL 125.3603.

Sec. 109-107. - Records.

(a) A record of proceedings, or minutes, of the zoning board of appeals shall be kept by the City clerk/treasurer.

(b) Minutes of all meetings shall be in writing and shall contain the grounds of every determination made by the zoning board of appeals, including all evidence and data considered and all findings of fact and conclusions drawn by the board for every case, together with the vote of the members and the final

disposition of each case. Such minutes shall be filed in the office of the City clerk/treasurer and shall be available to the public.

(c) The record of proceedings for each appeal, interpretation, or variance shall also be filed in the office of the code enforcement officer, and shall contain the following information, when applicable:

(1) The application (for an appeal, variance or interpretation).

(2) Any reports, plans, surveys or photos.

(3) Notice of public hearing to affected parties in a newspaper.

(4) Letter from the office of the code enforcement officer granting or denying the application or referring it to the zoning board of appeals and all other relevant records related to the case.

(5) Affidavit of publication of notice of hearing.

(6) Record of testimony heard and evidence presented.

(7) A copy of the zoning section in question.

(8) Briefs, correspondence or other communications made to the zoning board of appeals.

(9) Statement of facts found by the board, of its own knowledge, regarding the request, including any information gained from personal inspection.

(10) Decision of the board as specifically related to the findings of fact.

(11) A copy of any other correspondence to the appellant regarding the request.

(Code 1979, § 11:1.423)

Sec. 109-108. - Hearings.

The zoning board of appeals shall fix a reasonable time and date for a public hearing, not to exceed 45 days from the date of filing any petition of appeal, interpretation, or variance with the code enforcement officer. The petitioner may be represented at the hearing in person or by agent or attorney.

(Code 1979, § 11:1.424)

Sec. 109-109. - Notification.

A notice of hearing shall state the time, place and object of the hearing, and shall be made as follows:

(1) Notice of all zoning board of appeals hearings shall be published in a newspaper of general circulation. All notices of a hearing shall be mailed and published not less than 15 days prior to the date on which the hearing is to be held in accordance with the Michigan Zoning Enabling Act (MCL 125.3101 et seq.).

(2) In all cases involving a variance request, or an appeal or an interpretation involving a specific property, a notice of hearing shall be mailed by first class mail or personal delivery not less than 15 days prior to the hearing to the owners of the property for which approval or review is requested and all owners of record and to all occupants of real property within 300 feet of the lot or lots to which the variance would apply. Such notice shall conform to the requirements set forth in the Michigan Zoning Enabling Act (MCL 125.3101 et seq.).

(Code 1979, § 11:1.425)

Sec. 109-110. - Required vote.

The concurring vote of a majority of the membership of the zoning board of appeals shall be necessary to reverse any order, requirement, decision or determination of the code enforcement officer or to decide in favor of the applicant on any matter upon which they are required to pass under this ordinance or to affect any variance.

(Code 1979, § 11:1.426)

State Law reference— Similar provisions, MCL 125.3603.

Sec. 109-111. - Decisions.

The zoning board of appeals shall return a decision on a case within 60 days after a request or appeal has been filed, unless an extension of time is agreed upon by the appellant and a majority of the membership of the zoning board of appeals present. Any decision of the zoning board of appeals shall not become final until the zoning board of appeals has certified its decision in writing or approves the minutes of its decision. Any decision of the zoning board of appeals may be appealed to the circuit court within 21 days after the zoning board of appeals certifies its decision in writing, or 30 days after the minutes of the meeting at which the decision is rendered are approved, whichever occurs first.

(Code 1979, § 11:1.427)

Secs. 109-112—109-135. - Reserved.

Subdivision II. - Appeals[3]

Footnotes:

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State Law reference— Appeals, MCL 125.3604.

Sec. 109-136. - Filing of appeal.

An appeal may be taken by any person aggrieved or by an officer, department or board of the City from which the appeal arises of any order, requirement, decision or determination made by any administrative official charged with the enforcement of this chapter.

(Code 1979, § 11:1.431)

Sec. 109-137. - Procedure on appeals.

An appeal under this section shall be taken within such time as prescribed by the zoning board of appeals by general rule, by filing with the body or officer from whom the appeal is taken and with the zoning board of appeals a notice of appeal specifying the grounds for the appeal. The body or officer from whom the appeal is taken shall immediately transmit to the zoning board of appeals all of the papers constituting the record upon which the action appealed from was taken. Notwithstanding the forgoing, before such an appeal shall be processed, the fees for the appeal, as hereinafter set forth, shall be paid to the City.

(Code 1979, § 11:1.432)

Sec. 109-138. - Decision.

After conducting a public hearing as required by the Michigan Zoning Enabling Act (MCL 125.3101 et seq.) to take testimony pertinent to the petition for appeal, the board of appeals may reverse or affirm, wholly or partially, or may modify the order, requirement, decision or determination from which the appeal is taken, and to that end shall have all powers of the officer from whom the appeal is taken. The decision shall be based solely on the laws, ordinances and administrative rules governing the actions of the officer from whom the appeal is taken. In the hearing of a petition for appeal, the zoning board of appeals shall have no power to vary or waive any requirement of any law, ordinance or administrative rule.

(Code 1979, § 11:1.433)

Sec. 109-139. - Nonconformity appeals.

The board of appeals shall hear nonconformity appeals according to the terms of section 109-267.

(Code 1979, § 11:1.434)

Sec. 109-140. - Fees on appeal.

Appeals fees shall be established, from time to time, by resolution of the City Council.

(Code 1979, § 11:1.435)

Sec. 109-141. - Stay of proceedings.

An appeal stays all proceedings in furtherance of the action appealed. However, if the officer or body from whom the appeal is taken certifies to the zoning board of appeals, after the notice or petition of appeal shall have been filed, that by reason of facts stated in the certificate, a stay would in the opinion of the body or officer cause imminent peril to life or property, proceedings may be stayed only by a restraining order issued by the zoning board of appeals or the circuit court.

(Code 1979, § 11:1.436)

Secs. 109-142—109-165. - Reserved.

Subdivision III. - Interpretations and Variances

Sec. 109-166. - Interpretations of provisions.

The zoning board of appeals shall have the power to:

(1) Interpret, upon request, the provisions of this chapter in such a way as to carry out the intent and purpose of the chapter;

(2) Determine the precise location of the boundary lines between zoning districts;

(3) Determine the off-street parking and loading space requirements of any use not specifically mentioned in section 109-502;

(4) Floodplain mapping disputes.

a. Where disputes as to the location of the flood hazard boundary of an inland lake or stream arise, such disputes shall be resolved by the state department of environmental quality.

b. Where disputes as to the location of the flood hazard boundary of the Great Lakes arise, such disputes shall be resolved by the zoning board of appeals, after submission of a topographical survey made by a land surveyor licensed by the state, showing the contour line of the 100-year flood elevation in relation to the boundaries of the parcel of the land in question.

(Code 1979, § 11:1.437)

Sec. 109-167. - Variances.

After conducting a public hearing as required by the Michigan Zoning Enabling Act (MCL 125.3101 et seq.), the board of appeals may authorize specific variances from such requirements as: lot area and width regulations, yard and depth regulations, off-street parking and loading space requirements and sign and billboard regulations, provided all of the basic conditions listed herein and any one of the standards listed thereafter shall be satisfied.

(1) *Standards.* A variance from this chapter:

a. Will not be contrary to the public interest or to the intent and purpose of this chapter.

b. Shall not permit the establishment within a district of any use which is not permitted by right within that district or any use variance for which a special use permit is required pursuant to article VI of this chapter.

c. Will not cause a substantial adverse effect upon property values in the immediate vicinity or in the district in which the property of the applicant is located.

d. Is not one where the specific conditions relating to the property are so general or recurrent in nature as to make the formulation of a general regulation for such conditions reasonably practical.

e. Will relate only to property that is owned or occupied by the appellant.

f. The condition which is the basis for the application has not been created by the applicant.

g. Will not establish unwanted precedent.

(2) *Special conditions.* When all of the standards in subsection (1) of this section can be satisfied, a variance may be granted when one of the following special conditions can be clearly demonstrated:

a. Where there are practical difficulties which prevent carrying out the strict letter of this chapter. These difficulties shall not only be deemed economic, but shall be evaluated in terms of the use of a particular parcel of land.

b. Where there are exceptional or extraordinary circumstances or physical conditions such as narrowness, shallowness, shape, or topography of the property involved or to the intended use of the property that do not generally apply to other property or uses in the same zoning district. Such circumstances or conditions shall have not resulted from any act of the appellant subsequent to May 9, 2004.

c. Where such variation is necessary for the preservation of a substantial property right possessed by other properties in the same zoning district.

(3) *Additional rules.* In addition to the conditions in subsections (1) and (2) of this section, the following rules shall be applied to the granting of variances:

a. The board of appeals may specify, in writing, such conditions as it deems necessary to secure the objectives and purposes of this chapter. The breach of any such condition shall automatically invalidate the permit granted.

b. Every variance granted under the provisions of this chapter shall become null and void unless the construction authorized by such variance or permit has been commenced within six months after the granting of the variance and the occupancy of land, premises or buildings authorized by the variance has taken place within one year after the granting of the variance.

c. No application for a variance which has been denied, wholly or in part, by the board of appeals shall be resubmitted for a period of one year from the date of the last denial except on the grounds of newly discovered evidence or proof of changed conditions, found to be valid upon inspection by the board of appeals.

(Code 1979, § 11:1.438)

State Law reference— Variances, MCL 125.3604.

Secs. 109-168—109-187. - Reserved.

DIVISION 4. - SITE PLANS[4]

Footnotes:

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State Law reference— Site plans, MCL 125.3501.

Sec. 109-188. - Site plan requirement.

No building or structure shall be erected or enlarged, no driveway, paved area, or parking area constructed and no use requiring a special use permit commenced or expanded until a site plan therefor has been submitted and approved. This requirement does not apply to the construction or enlargement of a single-family or two-family dwelling nor to the construction of a garage or other structure which is accessory to a single-family or two-family dwelling located in district R-1, R-2 or R-3 nor to alternations or additions in district M-1 where such alternations or additions are entirely located at least 100 feet from any lot line and do not involve making provision for additional parking or the construction, alteration or abandonment of any driveway. Exemption from site plan requirements does not authorize violation of any provision of this section. No certificate of occupancy shall be granted until all improvements shown on an approved site plan have been completed in accordance therewith, provided that, upon a finding by the code enforcement officer that certain improvements cannot be completed due to season or other factors beyond the control of the developer, a temporary certificate of occupancy may be issued bearing an expiration date, which date shall allow reasonable time for completion, upon posting of a cash bond in double the sum estimated by the code enforcement officer to be needed to complete all required improvements, conditioned on completion of all required improvements prior to the expiration date of the temporary certificate of occupancy and forfeiture of any portion thereof not so applied. No action or inaction by the City in respect to any required improvement shall serve to extend the time of validity of any temporary certificate of occupancy or excuse any violation of this section. A temporary certificate of occupancy may, however, be extended by the code enforcement officer in time and from time to time for good cause shown and any such extension shall operate to extend, for the same period, the time for completion under the terms of the bond.

(Code 1979, § 11:1.801)

Sec. 109-189. - Application requirements.

(a) Every site plan shall be submitted to the code enforcement officer on one or more sheets of paper measuring not more than 24 by 36 inches, drawn to a scale not more than 40 feet to the inch, which shall show the following:

(1) The boundary lines of the lot or lots included in the site plan including angles, dimensions and reference to a section corner, quarter corner or point on a recorded plat, an arrow pointing north and the lot area of the land included in the site plan.

(2) Existing and proposed grades and drainage systems and structures with topographic contours at intervals not exceeding two feet.

(3) The shape, size, location, height and building area of all structures and the finished ground and basement floor grades.

(4) Natural features such as woodlots, streams and lakes or ponds and manmade features such as existing roads and structures, with indication as to which are to be retained and which removed or altered. Adjacent properties, existing property line elevations and the uses of all adjacent properties shall be identified.

(5) Proposed street, driveways, parking spaces, landing spaces and sidewalks with all curbs. The width of streets, driveways and sidewalks and the total number of parking spaces shall be shown.

(6) The size and location of all existing and proposed public and private utilities and required landscaping.

(7) A vicinity sketch showing the location of the site in relation to the surrounding street system.

(8) A legal description of the land included in the site plan and of the lot.

(9) The name, address and telephone number of the owner, developer and designer.

(10) Any other information necessary to establish compliance with this and other ordinances or the availability of adequate utility capacity.

(b) Where the site plan involves construction or alteration costing more than $10,000.00, it shall be certified by a registered architect, landscape architect, surveyor or civil engineer. The code enforcement officer may waive the furnishing of any of the information specified in subsection (a) of this section, where it is obviously unneeded to determine whether or not the site plan is eligible for approval.

(Code 1979, § 11:1.811)

Sec. 109-190. - Review procedure.

Upon receipt of any site plan, the code enforcement officer shall review it to determine whether it is in proper form, contains all of the required information, shows compliance with this and all other provisions of this Code and demonstrates the adequacy of utility service. Upon demand by the proposer of the site plan, the code enforcement officer shall, within ten days, approve it in writing or deny approval in writing, setting forth in detail his reasons which shall be limited to any defect in form or required information, any violation of any provision of this chapter or other provision of the this Code or the inadequacy of any utility and any changes which would make the plan acceptable. The proposer or any citizen may appeal the decision of the code enforcement officer to the zoning board of appeals.

(Code 1979, § 11:1.812)

Sec. 109-191. - Optional preliminary review by planning commission.

In order to assist in the design phase of a project, the developer may request, and shall be granted, the opportunity to submit a preliminary site plan to the planning commission for its comments and recommendations.

(Code 1979, § 11:1.813)

Secs. 109-192—109-220. - Reserved.

DIVISION 5. - AMENDMENTS[5]

Footnotes:

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State Law reference— Amendments to zoning ordinances, MCL 125.3202, 125.3401 et seq.

Sec. 109-221. - Authorization for amendments.

The regulations and provisions stated in the text of this chapter and the boundaries of zoning districts shown on the zoning districts map of the City may be amended pursuant to the Michigan Zoning Enabling Act (MCL 125.3101 et seq.).

(Code 1979, § 11:1.1301)

Sec. 109-222. - Fees.

(a) *Resolution.* The City Council shall establish, by resolution, fees for zoning amendment petitions.

(b) *Payment.* Such fee shall be paid in full at the time of application and no part of such fee shall be returnable to the petitioner.

(c) *City agencies exempt.* Fees shall not be required for amendments proposed or requested by any agent of the City.

(Code 1979, §§ 11:1.1311—11:1.1313)

Sec. 109-223. - Petition for change of zoning.

All petitions for amendment shall be submitted as provided herein:

(1) The petitioner shall cause to be delivered to the code enforcement officer, not less than 15 days before any regular meeting of the planning commission, one copy of the petition and supporting documents.

(2) A petition shall be made for each lot which is not contiguous to any adjacent lot being proposed for the same type amendment.

(Code 1979, § 11:1.1321)

Sec. 109-224. - Review of petition.

The code enforcement officer shall review each petition to ensure compliance with the provisions of this chapter.

(1) Any petition not in compliance with this chapter shall be returned to the petitioner.

(2) Any petition not in compliance with this chapter shall not constitute filing to commence the running of time for processing the petition.

(3) Any petition meeting the requirements of this chapter will be scheduled for public hearing by the code enforcement officer unless the petition is withdrawn by the petitioner.

(Code 1979, § 11:1.1322)

Sec. 109-225. - Any interested party may present testimony.

Any person may present testimony or evidence in support of or opposition to a proposed amendment at the public hearing, or may submit a written statement to the code enforcement officer prior to the hearing at which the petition will be considered. Any written comments received prior to the hearing shall be read into the record of the public hearing by the code enforcement officer.

(Code 1979, § 11:1.1323)

Sec. 109-226. - Submission of petition to planning commission.

A copy of the petition shall be submitted to the City planning commission through the office of the code enforcement officer at it's next regular meeting after filing with the code enforcement officer, for review and recommendation. The planning commission shall take action to recommend approval or denial of the proposed amendment based upon the petition's level of conformity with the City general plan. The planning commission's recommendation shall be in writing and shall fully explain the relationship of the proposed amendment to the documents mentioned herein and other applicable planning criteria. Such recommendations shall be made within 40 days of receipt of the petition, to the City Council.

(Code 1979, § 11:1.1331)

Sec. 109-227. - Findings of fact required.

In reviewing any petition for a zoning amendment, the planning commission shall identify and evaluate all factors relevant to the petition and shall report its findings in full, along with its resulting recommendations for the proper disposition of the petition to the City Council. The facts to be expressly considered by the planning commission shall include, but shall not be limited to, the following:

(1) What, if any, identifiable conditions related to the petition have changed which justify the petitioned change in zoning.

(2) What, if any, error in judgment, procedure or administration was made in the original ordinance which justifies the petitioned change in zoning.

(3) What is the precedent and the possible effects of such precedent which might result from the approval or denial of the petition.

(4) What is the impact of the amendment on the ability of the City and other governmental agencies to provide adequate public services and facilities and/or programs that might reasonably be required in the future if the petition is approved.

(5) Does the petitioned zoning change adversely affect the environmental conditions or value of the surrounding property.

(6) Does the petitioned zoning change generally comply with the adopted City general plan.

(7) Are there any significant negative environmental impacts which would reasonably occur if the petitioned zoning change and resulting allowed structures were built such as:

a. Surface water drainage problems.

b. Wastewater disposal problems.

c. Adverse effect on surface or subsurface water quality.

d. The loss of valuable natural resources (such as forest, wetlands, historic sites, wildlife or mineral deposits).

(Code 1979, § 11:1.1340)

Sec. 109-228. - Public hearings.

(a) The planning commission shall conduct at least one public hearing on each petition for amendment notice of which shall be given in accordance with the Michigan Zoning Enabling Act (MCL 125.3101 et seq.):

(1) By publication in a newspaper of general circulation in the City not less than 15 days before the date of the hearing.

(2) Not less than 15 days notice of the time and place of the hearing shall also be given by mail to each electric, gas or pipeline, telephone public utility company, any telecommunications service provider, any railroad company operating within the district or zone effected and any airport manager of an airport that registers its name and mailing address with the office of the code enforcement officer for the purpose of receiving the notice of public hearings.

(3) If the proposal involves rezoning of property, notice shall be mailed by first class mail to the owners of all properties for which rezoning is proposed, not less than 15 days before the hearing to all persons to whom real property is assessed within 300 feet of the property and to the occupants of all structures within 300 feet of the property. If the name of the occupant is not known, the term "occupant" may be used in making notification. Notification need not be given to more than one occupant of a structure, except that if a structure contains more than one dwelling unit or spatial area owned or leased by different individuals, partnerships, businesses or organizations, one occupant of each unit or spatial area shall receive notice. In the case of a single structure containing more than four dwelling units or other distinct special areas owned or leased by different individuals, partnerships, businesses or organizations, notice may be given to the manager or owner of the structure who shall be requested to post the notice at the primary entrance to the structure.

(b) The notices shall include a summary of the regulatory effect of the amendment, including the geographic area affected, or the text of the amendment, the time and place of the hearing, and the places and times at which the tentative text and maps of the zoning ordinance may be examined, and when and where written comments will be received. The notice shall include the street addresses of all property affected by the request, if known; if no address exists, other means of property identification may be used. The code enforcement officer shall maintain a file of each affidavit of mailing or affidavit of publication for each mailing or publication made under this section.

(Code 1979, § 11:1.1359)

Sec. 109-229. - Planning commission recommendations.

All findings of fact shall be made a part of the public records of the meetings of the planning commission and the City Council. After the hearing, the City planning commission shall submit a summary

of the comments received at the public hearing, its findings of fact, and the proposed amendment, including any zoning maps and other related material to the City Council, along with its recommendation for approval or denial of the proposed amendment.

(Code 1979, § 11:1.1360)

State Law reference— Similar provisions, MCL 125.3306, 125.3103, 125.3202.

Sec. 109-230. - Consideration by the City Council.

(a) After receiving the recommendations of the planning commission, the City Council, at any regular meeting or at any special meeting called for the purpose, shall consider said findings of fact and recommendation and vote upon the adoption of the petitioned amendment. Such action shall be by majority vote of the members of the City Council. The notice shall be published in accordance with the Michigan Zoning Enabling Act (MCL 125.3101 et seq.).

(b) Further, it is understood pursuant to the Michigan Zoning Enabling Act (MCL 125.3101 et seq.) that the City Council may, at its discretion, make a change or changes to the proposed amendment, or may refer the petition back to the planning commission. If the City Council does not refer a proposed change back to the planning commission, the planning commission shall have 30 days from and after such referral in which to make a further recommendation to the City Council after which the City Council shall take action as it determines necessary. In the event that a petition is referred back to the planning commission, the City Council shall make specific mention of their objections to the results of the planning commission's findings and recommendation.

(c) It is further understood that, in order to lessen the possibility of adverse litigation concerning the zoning decisions of the City Council, the council shall list reasons or make a complete record of the rationale for the action taken on each petition for amendment to the chapter.

(Code 1979, § 11:1.1370)

Sec. 109-231. - Protest petition.

An amendment is subject to a protest petition, as provided in the Michigan Zoning Enabling Act (MCL 125.3101 et seq.). Upon the presentation of a protest petition meeting the following requirements, an amendment to the zoning ordinance, which is the object of the petition, shall be passed only by a two-thirds vote of the City Council, unless a larger vote, but not to exceed three quarters vote, is required by ordinance or charter. The protest petition shall be presented to the City Council before final City Council action on the amendment, and shall be signed by one of the following:

(1) The owners of at least 20 percent of the area included in the proposed change.

(2) The owners of at least 20 percent of the area of land included within an area extending outward 100 feet from any point on the boundary of the land included in the proposed change.

Note— For the purpose of this section, publicly owned land shall be excluded in calculating the 20 percent land area requirement.

(Code 1979, § 11:1.1371)

State Law reference— Similar provisions, MCL 125.3403.

Sec. 109-232. - Effective date of amendment.

The amendment shall become effective seven days following publication of the notice of ordinance adoption, as specified in section 109-233, or at such later date after publication as specified by the City Council and duly noted in the notice of ordinance adoption.

(Code 1979, § 11:1.1380)

Sec. 109-233. - Notice of ordinance adoption.

Following the adoption of an amendment by the City Council, one notice of adoption shall be published in accordance with the Michigan Zoning Enabling Act (MCL 125.3101 et seq.), in a newspaper of general circulation in the City within 15 days after its adoption. A copy of the notice of adoption shall be sent by mail to the manager of any airport that has registered its name and mailing address with the office of the code enforcement officer for the purpose of receiving notice under section 109-228. The notice of adoption shall include the following information:

(1) A summary of the regulatory effect of the amendment, including the geographic area affected, or the text of the amendment.

(2) The effective date of the amendment of the ordinance from which this article is derived.

(3) The place and time where a copy of the ordinance may be purchased or inspected.

(Code 1979, § 11:1.1390)

Secs. 109-234—109-259. - Reserved.

ARTICLE III. - NONCONFORMING USES OF LAND AND STRUCTURES[6]

Footnotes:

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State Law reference— Nonconforming structures or uses, MCL 125.3208.

Sec. 109-260. - Intent and purpose.

(a) It is the intent of this article to permit legal nonconforming lots, structures or uses to continue until they are removed, but not to encourage their survival.

(b) It is recognized that there exists within the districts established by the ordinance and subsequent amendments lots, structures and uses of land and structures which were lawful before this section was passed or amended, which would be prohibited, regulated or restricted under the terms of this section or future amendments.

(c) Where, on May 9, 2004, or at the effective date of amendment of the ordinance from which this article is derived, lawful use of a lot which fails to conform to the minimum requirements of this chapter for area or width exists, such use may be continued, so long as it remains otherwise lawful, subject to the following provisions: No structure occupying the nonconforming lot may be expanded or enlarged in such a way as to reduce the required yards or open spaces to a dimension or area which is less than that required by this chapter and/or open space requirements are already reduced by a structure to a dimension which is less than that required by this chapter on May 9, 2004, or at the time of subsequent amendment to this chapter, such nonconformity shall not be increased.

(Code 1979, § 11:1.1101)

Sec. 109-261. - Nonconforming uses of land.

Where, on May 9, 2004, or at the effective date of amendment of the ordinance from which this article is derived, lawful use of land exists that is made no longer permissible under the terms of this section as enacted or amended, such use may be continued, so long as it remains otherwise lawful, subject to the following provisions:

(1) No such nonconforming use shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied on May 9, 2004, or at the effective date of amendment of the ordinance from which this article is derived.

(2) No such nonconforming use shall be moved in whole or in part to any other portion of the lot or parcel occupied by such use on May 9, 2004, or at the effective date of amendment of the ordinance from which this article is derived.

Exception: Nonconforming uses situated in a district other than a residential zone (R-1, R-2, R-3 or R-4) may be allowed to expand to an extent permitted by the planning commission after following the procedures outlined in sections 109-387 through 109-389 and meeting the basis of determination contained in section 109-390.

(Code 1979, § 11:1.1103)

Sec. 109-262. - Nonconforming structures.

Where a lawful structure exists on May 9, 2004, or at the effective date of amendment of the ordinance from which this article is derived that could not be built under the terms of this chapter by reason of restrictions on area lot coverage, height, yards or other characteristics of the structure or location on the lot, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

(1) No such structure may be enlarged or altered in a way which increases its nonconformity, but the use of a structure and/or the structure itself may be changed or altered to a use permitted in the district in which it is located, provided that all such changes are also in conformance with the requirements of the district in which it is located. Furthermore, any nonconforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such use and which existed on May 9, 2004, or at the time of the amendment of this chapter, but no such use shall be extended to occupy any land outside such building.

(2) Should such structure be moved for any reason for any distance whatever, it shall thereafter conform to the regulations for the district in which it is located after it is moved.

(3) Any structure or structure and land in combination, in or on which a nonconforming use is superseded by a permitted use, shall thereafter conform to the regulations for the district in which such structure is located, and the nonconforming use may not thereafter be resumed.

(4) Where nonconforming use status applies to a structure and premises in combination, removal or destruction of the structure shall eliminate the nonconforming status of the land.

(Code 1979, § 11:1.1104)

Sec. 109-263. - Change in nonconforming uses in industrial districts.

(a) Irrespective of other requirements of this chapter, in any industrial district, if no structural alterations are made, any nonconforming use of a structure and premises may be changed to another nonconforming use, provided that the board of appeals, either by general rule or by making findings in the specific case, shall find that the proposed use is equally appropriate or more appropriate to the

district than the existing nonconforming use. In permitting such change, the board of appeals may require appropriate conditions and safeguards in accord with the purpose and intent of this section.

(b) Where a nonconforming use of a structure, land or structure and land in combination is hereafter changed to a use found by the board of appeals to be more appropriate to the district, it shall not thereafter be changed to a less appropriate use.

(Code 1979, § 11:1.1105)

Sec. 109-264. - Repairs and maintenance.

On any building devoted in whole or in part to any nonconforming use, work may be done in any period of 12 consecutive months on ordinary repairs, or on repair or replacement of nonbearing walls, fixtures, wiring or plumbing to an extent not exceeding 50 percent of the assessed value of the building, provided that the cubic content of the building as it existed at the time of passage or amendment of this section shall not be increased. Nothing in this section shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official.

(Code 1979, § 11:1.1106)

Sec. 109-265. - Change of tenancy or ownership.

As long as there is no change in the character or nature of the nonconforming use, a change of tenancy or ownership is allowed.

(Code 1979, § 11:1.1107)

Sec. 109-266. - District changes.

Whenever the boundaries of a district shall be changed so as to transfer an area from one district to another district of another classification, the provisions of this section shall also apply to any existing lots or uses of land that become nonconforming as a result of the boundary changes.

(Code 1979, § 11:1.1108)

Sec. 109-267. - Hardship cases.

Nonconforming buildings or structures may be structurally changed, altered or enlarged with the approval of the board of appeals when the board finds that the request is a case of exceptional hardship in which failure to grant the relief requested would unreasonably restrict continued use of the property or would restrict valuable benefits that the public currently derives from the property as used in its nonconforming status, except that any approval for structural changes, alteration or enlargement may be granted only with a finding by the board of appeals that approval will not have an adverse effect on surrounding property and that it will be the minimum necessary to relieve the hardship.

(Code 1979, § 11:1.1109)

Sec. 109-268. - Illegal uses.

Uses of structures or land existing on May 9, 2004, that were established without approval of zoning compliance or without a valid building permit or those that cannot be proved conclusively as existing prior

to May 9, 2004, shall be declared illegal and are not entitled to the status and rights accorded legally established nonconforming uses.

(Code 1979, § 11:1.1110)

Secs. 109-269—109-299. - Reserved.

ARTICLE IV. - ZONING DISTRICTS ESTABLISHED; ZONING MAP[7]

Footnotes:

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State Law reference— Zoning districts authorized, MCL 125.3201.

Sec. 109-300. - Establishment of districts.

For the purposes of this article, the City is hereby divided into the following districts:

R-1	Low Density, Single-Family Residential District
R-2	Medium Density, Single-Family and Two-Family Residential District
R-3	Multiple-Family Residential District
R-4	Manufactured Home Residential District
D-1	Development District
C-1	General Business District
C-2	Waterfront and Central Business District
M-1	Industry District
M-2	Industrial Park District
PL	Public Lands District

(Code 1979, § 11:1.602)

Sec. 109-301. - Zoning districts maps.

The boundaries of the respective districts are defined and established as depicted on the map entitled "Zoning District Map of Menominee, Michigan," which is an integral part of this chapter, and which, with the explanatory matter thereon, shall be published as part of this section and is hereby incorporated by reference.

(1) The Zoning District Map of Menominee, Michigan, and subsequent amendments to said map shall bear the signature of the chair of the City planning commission, shall be certified by the mayor shall be attested by the City clerk/treasurer and shall bear the following words:

> "This is to certify that this map is the official zoning map of the Menominee City Zoning Ordinance adopted on the (insert date and effective date of adoption of the ordinance)."

(2) If amendments are made in district boundaries or other matter depicted on the official zoning map, such changes shall not be considered final, and building permits shall not be issued until the appropriate amendments have been made on the official zoning map. Such amendments shall be made within ten normal working days after the effective date of the amendment of the ordinance from which this article is derived. Each amendment shall be accompanied by a reference number on the map which shall refer to the official action of the City Council. One copy of the official zoning map shall be maintained and kept up to date in the office of the City clerk/treasurer.

(Code 1979, § 11:1.603)

Sec. 109-302. - Replacement of official zoning map.

(a) In the event that the official zoning map becomes damaged, destroyed, lost or difficult to interpret because of the nature or number of changes made thereto, the City Council may, by ordinance, adopt a new official zoning map which shall supersede the prior official zoning map. The new official zoning map may correct drafting or other errors or omissions on the prior official zoning map, but no such corrections shall have the effect of amending the zoning ordinance or the prior official zoning map. The new official zoning map shall be identified by the signature of the mayor, attested by the City clerk, and bear the seal of the City under the following words:

"This is to certify that this is the official zoning map referred to in the zoning ordinance of the City of Menominee, adopted on the November 4, 1991, and effective on the November 24, 1991, which replaces and supersedes the official zoning map which was adopted on _____."

(b) Unless the prior official zoning map has been lost, or has been totally destroyed, the prior map or any significant parts thereof remaining, shall be preserved together with all available records pertaining to its adoption or amendment.

(Code 1979, § 11:1.604)

Sec. 109-303. - Rules of interpretation of official zoning map.

(a) Where a question arises with respect to the boundaries of any district, the following shall govern:

(1) Where boundaries follow streets or highways, the centerline of the street or highway shall be the boundary line or lines.

(2) Where boundaries follow the shoreline of a stream, lake or other body of water, such shall follow such shoreline, and in the event of change in the shoreline, such shall be the actual shoreline; where boundaries follow the centerline of streams, rivers, canals or other bodies of water, such shall follow the centerlines thereof.

(3) A boundary indicated as approximately following a recorded lot line or the line bounding a parcel shall be construed as following such line.

(4) A boundary indicated as following the municipal boundary line of a City or township shall be construed as following such line.

(5) A boundary indicated as following a railroad line shall be construed as following the centerline of the right-of-way.

(6) A distance not specifically indicated in the official zoning map shall be determined by the scale of the map to the nearest foot.

(b) Should the requirements specified in subsection (a) of this section not fully explain a question of boundaries, the board of appeals shall have the authority to make an interpretation on appeal based upon the aforementioned standards.

(Code 1979, § 11:1.605)

Secs. 109-304—109-324. - Reserved.

ARTICLE V. - ZONING DISTRICT REGULATIONS[8]

Footnotes:

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State Law reference— Zoning district regulations authorized, MCL 125.3201.

Sec. 109-325. - Compliance.

(a) Every building or structure erected, any use of land, building or structure, any structural alteration or relocation of an existing building or structure and any enlargement of or addition to an existing use of land, building or structure occurring after the effective date of the ordinance from which this article is derived shall be subject to all regulations of this article which are applicable within the zoning district in which such land use, building or structure shall be located.

(b) Uses are permitted by right only if specifically listed as uses permitted by right in the various zoning districts. Accessory uses are permitted as indicated in the various zoning districts and if such uses are clearly incidental to the permitted principal uses. Uses permitted under special conditions upon compliance with article IX of this chapter are permitted as listed or where provided for, if the required conditions are met.

(c) A use of land, buildings or structures not specifically mentioned in the provisions of this article shall be classified upon appeal or by request of the code enforcement officer by the planning commission pursuant to section 109-36.

(d) No part of a setback area, other open space or off-street parking or loading space required in connection with any use of land, building or structure, for the purpose of complying with this article, shall be included as part of a setback area, open space or off-street parking lot or loading space similarly required for any other use, building or structure.

(e) No use of land, buildings, structures or portions thereof requiring more than ten parking spaces, as provided in article VIII of this chapter shall be erected or utilized without the prior approval of the site plan in accordance with division 4 of article II of this chapter.

(Code 1979, § 11:1.606)

Sec. 109-326. - Permitted uses.

The regulations herein established in order to promote the public health, safety and general welfare of the residents of the City are uniform throughout each district and shall be applied consistently to each class of land, building or structure within each district. Within each district so established there are three categories of uses:

(1) *Uses permitted by right.* Such uses shall be allowed when in accordance with the provisions of this article.

(2) *Use permitted under special conditions.* Such use shall be allowed subject to the specific conditions imposed for said use in the article.

(3) *Use permitted by issuance of a special use permit.* The special use permit has been established to facilitate the inclusion within a district of certain uses which present potential injurious effects upon the surrounding property, public safety, public health, public services or the general welfare of the community, unless such use is authorized under the specific conditions which may vary depending on the land uses in the surrounding area.

(Code 1979, § 11:1.607)

Sec. 109-327. - R-1, Low Density, Single-Family Residential.

(a) *Scope, intent and purpose.* The provisions of this section apply to the R-1 district. The intent and purpose of the R-1 district is to establish and preserve quiet neighborhoods of single-family homes. This district shall be free from other land uses except those which are both compatible with and convenient to the residents of such a district.

(1) *Uses permitted by right.*

a. Single-family detached dwellings.

b. State-licensed residential facilities.

c. Family day care homes.

(2) *Uses with special conditions.* Uses permitted under special conditions upon compliance with article IX of this chapter.

a. Echo apartments.

b. Home occupations.

c. Public service installations.

d. Borrow pits.

e. Ponds.

(3) *Uses with special use permit.* Uses permitted by the issuance of a special use permit upon compliance with the provisions of article VI of this chapter.

(b) *Dimensional requirements.*

(1) *Generally.* All lots shall conform to the minimum dimensions for lot area, lot width, front, rear and side yards; all lots shall conform with the required dimensions for maximum lot coverage, minimum floor area and maximum height of buildings specified in the site development standards as set forth in this article, except as otherwise stated in the text of this section or as modified by article VI of this chapter, special use permits; article IX of this chapter, supplemental regulations; or as varied by the zoning board of appeals pursuant to division 3 article II of this chapter.

(2) *Principal structures.*

R-1 District Only	
Minimum lot area	10,000 square feet
Minimum lot width	80 feet
Minimum front yard	25 feet (see note 1)
Minimum side yard	6 feet (see note 2)
Minimum rear yard	40 feet
Maximum building height	37 feet
Minimum building area	1,000 square feet (see note 3)
Maximum lot coverage (total)	35 percent

Note 1—In situations where residences already exist on either side of the proposed residence, the new structure shall not protrude further into the front yard than the adjacent residence with the smallest front yard setback. When applied to a corner lot, the new structure shall not protrude further into any front yard than an adjacent dwelling fronting the same street as the yard at issue. This provision shall apply to the construction of new principal structures only, and shall not apply to additions or alterations to existing structures.

;le=2;Note 2—In situations where direct vehicular access to the rear yard from a public street or alley or recorded permanent easement of access does not exist, one required side yard shall have a dimension of ten feet, measured perpendicular to the side property line. The required side yard so formed shall not be encroached by porches, chimneys, accessory buildings, or other structures that would prevent the passage of a vehicle through the side yard.

;le=2;Note 3—Total area of all portions of all stories having a ceiling height of seven feet, six inches or more, including the thickness of surrounding walls, but excluding basements and attached garages.

(3) *Accessory buildings.*

R-1 District Only	
Must be more than 4 feet from the principal structure	
Minimum front yard	Same as principal structure

Minimum side yard	3 feet
Minimum rear yard	3 feet from rear property line
Maximum building height	21 feet
Maximum building size	(See section 109-569)
Maximum lot coverage (total)	35 percent
Maximum rear yard coverage by accessory buildings	30 percent

(Code 1979, §§ 11:1.610—11:1.612)

Sec. 109-328. - R-2, Medium Density, Single-Family and Two-Family Residential District.

(a) *Scope, intent and purpose.* The provisions of this section apply to the R-2 district. The intent and purpose of the R-2 district is to provide areas for medium density residential development in portions of the City already developed at similar densities. The district also allows for some limited nonresidential uses which are determined to be both compatible and convenient to the district's residents.

(1) *Uses permitted by right.*

a. Single-family detached dwellings.

b. Two-family dwellings.

c. State-licensed residential facilities.

d. Family day care homes.

(2) *Uses with special conditions.* Uses permitted under special conditions upon compliance with division 7 of article IX of this chapter.

a. Accessory (echo) apartments.

b. Home occupations.

c. Public service installations.

d. Lodginghouses and boardinghouses.

e. Public recreation and playground areas.

f. Borrow pits.

g. Ponds.

(3) *Uses with special use permit.* Uses permitted by the issuance of a special use permit upon compliance with the provisions of division 7 of article IX of this chapter.

(b) *Dimensional requirements for R-2 zones.*

(1) *Generally.* All lots conform to the minimum dimensions for lot area, lot width, front, rear and side yards; all lots shall conform with the required dimensions for maximum lot coverage, minimum floor area and maximum height of buildings specified in the site development standards as set forth in this article, except as otherwise stated in the text of this section or as modified by article VI of this chapter, special use permit; article IX of this chapter, supplemental regulations; or as varied by the zoning board of appeals pursuant to division 3 of article II of this chapter.

(2) *Principal structures.*

R-2 District Only	
Minimum lot area	7,000 square feet
Minimum lot width	60 feet
Minimum front yard	20 feet (See note 1)
Minimum side yard	6 feet (See note 2)
Minimum rear yard	40 feet
Maximum building height	37 feet
Minimum building area	1,000 square feet (See note 3)
Maximum lot coverage (total)	35 percent

;le=2;Note 1—In situations where residences already exist on either side of the proposed residence, the new structure shall not protrude further into the front yard than the adjacent residence with the smallest front yard setback. When applied to a corner lot, the new structure shall not protrude further into any front yard than an adjacent dwelling fronting the same street as the yard at issue. This provision shall apply to the construction of new principal structures only, and shall not apply to additions or alterations to existing structures.

;le=2;Note 2—In situations where direct vehicular access to the rear yard from a public street or alley or recorded permanent easement of access does not exist, one required side yard shall have a dimension of ten feet, measured perpendicular to the side property line. The required side yard so formed shall not be encroached by porches, chimneys, accessory buildings, or other structures that would prevent the passage of a vehicle through the side yard.

;le=2;Note 3—Total area of all portions of all stories having a ceiling height of seven feet, six inches or more, including the thickness of surrounding walls, but excluding basements and attached garages.

(3) *Accessory buildings.*

R-2 District Only	
Must be more than 4 feet from the principal structure	
Minimum front yard	Same as principal structure
Minimum side yard	3 feet
Minimum rear yard	3 feet from rear property line
Maximum building height	21 feet
Maximum building size	(See section 109-569)
Maximum lot coverage (total)	35 percent
Maximum rear yard coverage by accessory buildings	30 percent

(Code 1979, §§ 11:1.620—11:1.622)

Sec. 109-329. - R-3, Multiple-family Residential District.

(a) *Scope, intent and purpose.* The provisions of this section apply to the R-3 district. This district is provided to accommodate a higher density of residential development than is allowed in R-1 and R-2 districts. This district shall only include areas within the City which are located adjacent to arterial and/or collector streets. Said district shall also be located near neighborhood commercial services and other essential services necessary to service the needs of high density development.

(1) *Uses permitted by right.*

a. Two-family detached dwelling.

b. State-licensed residential facilities.

c. Family day care homes.

d. Multiple-family dwellings.

(2) *Uses with special conditions.* Uses permitted under special conditions upon compliance with division 7 of article IX of this chapter.

a. Home occupations.

b. Public service installations.

c. Lodginghouses and boardinghouses.

d. Public recreation and playground areas.

e. Borrow pits.

f. Ponds.

g. Uses permitted by the issuance of a special use permit upon compliance with the provisions of article VI of this chapter.

(b) *Dimensional requirements for R-3 zones.*

(1) *Generally.* All lots of record shall conform to the minimum dimensions for lot area, lot width, front, rear and side yards; all lots shall conform with the required dimensions for maximum lot coverage, minimum floor area and maximum height of buildings specified in the site development standards as set forth in this article, except as otherwise stated in the text of this section or as modified by article VI of this chapter, special use permit; article IX of this chapter, supplemental regulations; or as varied by the zoning board of appeals pursuant to division 3 of article II of this chapter.

(2) *Principal structures.*

R-3 District Only	
Minimum lot area	4,500 square feet
Minimum lot width	60 feet
Minimum front yard	20 feet (See note 1)
Minimum side yard	6 feet (See note 2)
Minimum rear yard	40 feet
Maximum building height	55 feet
Minimum building area	1,000 square feet (See note 3)
Maximum lot coverage (total)	35 percent

;le=2;Note 1—In situations where residences already exist on either side of the proposed residence, the new structure shall not protrude further into the front yard than the adjacent residence with the smallest front yard setback. When applied to a corner lot, the new structure shall not protrude further into any front yard than an adjacent dwelling fronting the same street as the yard at issue. This provision shall apply to the construction of new principal structures only, and shall not apply to additions or alterations to existing structures.

;le=2;Note 2—In situations where direct vehicular access to the rear yard from a public street or alley or recorded permanent easement of access does not exist, one required side yard shall have a dimension of ten feet, measured perpendicular to the side property line. The required side yard so formed shall not be encroached by porches, chimneys, accessory

buildings, or other structures that would prevent the passage of a vehicle through the side yard.

;le=2;Note 3—Total area of all portions of all stories having a ceiling height of seven feet, six inches or more, including the thickness of surrounding walls, but excluding basements and attached garages.

(3) *Accessory buildings.*

R-3 District Only	
Must be more than 4 feet from the principal structure	
Minimum front yard	Same as principal structure
Minimum side yard	3 feet
Minimum rear yard	3 feet from rear property line
Maximum building height	21 feet
Maximum building size	(See section 109-569)
Maximum lot coverage (total)	35 percent
Maximum rear yard coverage by accessory buildings	30 percent

(Code 1979, §§ 11:1.630—11:1.632)

Sec. 109-330. - R-4, Manufactured Home Residential District.

(a) *Scope, intent and purpose.* The provisions of this section apply to the R-4 district. The intent and purpose of the R-4 district is to provide areas in the City for the location of manufactured home parks and to ensure that the residents of such areas will be provided with certain minimum standards of design, safety and convenience. The areas shall be situated in localities where street condition, utility size and condition, as well as other public services, are available and conducive to higher density residential development.

(1) *Uses permitted by right.*

a. State-licensed residential facilities.

b. Family day care homes.

c. Manufactured home parks.

(2) *Uses with special conditions.* Uses permitted under special conditions upon compliance with division 7 of article IX of this chapter.

a. Home occupations.

b. Public service installations.

c. Public recreation and playground areas.

d. Borrow pits.

e. Ponds.

(3) *Uses with special use permit.* Uses permitted by the issuance of a special use permit upon compliance with the provisions of article VI of this chapter.

(b) *Dimensional requirements for R-4 zones.*

(1) *Generally.* All lots of record shall conform to the minimum dimensions for lot area, lot width, front, rear and side yards; all lots shall conform with the required dimensions for maximum lot coverage, minimum floor area and maximum height of buildings specified in the site development standards as set forth in this article, except as otherwise stated in the text of this section or as modified by article VI of this chapter, special use permit; article IX of this chapter, supplemental regulations; or as varied by the zoning board of appeals pursuant to division 3 of article II of this chapter.

(2) *Park area.*

R-4 District Only	
Minimum lot area	80,000 square feet per park
Minimum lot width	200 feet
Minimum front yard	30 feet
Minimum side yard	20 feet
Minimum rear yard	40 feet
Maximum building height	37 feet

(3) *Per manufactured home.*

R-4 District Only	
Minimum lot area	5,500 square feet per unit
Minimum front yard	25 feet (within park)

Minimum side yard	10 feet
Minimum rear yard	25 feet
Maximum building height	35 feet
Maximum building size	None
Maximum lot coverage	35 percent
Distance from a permanent building	50 feet
Distance from a pedestrian walk	7 feet
Distance from waterways, etc.	50 feet
Distance from parking area	10 feet (minimum)

Minimum lot area may be reduced by 20 percent if recreation area is increased by a corresponding amount.

(Code 1979, §§ 11:1.640—11:1.642)

Sec. 109-331. - D-1, Development District.

(a) *Scope, intent and purpose.* The provisions of this section apply to the D-1 district. This district allows for a variety of residential and commercial uses in those areas of the City where different or unlike uses already exist side by side. In order to minimize the inherent conflict between some uses, the district requires, in some instances, greater minimum side and rear yards and/or buffers of natural and manmade materials between unlike uses. Generally speaking, the greater the difference between adjoining land uses, the more distance and screens will be required.

(1) *Uses with special conditions.* Uses permitted under special conditions (includes both conditions contained in this section and division 7 of article IX or article VI of this chapter):

a. Single-family dwellings.

b. Two-family dwellings.

c. Accessory (echo) apartments.

d. Home occupations.

e. Public service installations.

f. Private residential swimming pools. Private swimming pools (those which are constructed to be used with a single-family dwelling) do not require a permit if the pool is less than 24 inches

deep and less than 250 square feet in area, except when equipped permanently with a water receiving system or involving structural materials.

Where there is a swimming pool that is 24 inches deep or more at any point, a fence or enclosure shall be erected no less than four feet above the underlying ground. All gates must be self latching with latches made inaccessible from the outside to small children. Whenever an enclosed swimming pool is installed, it shall meet all applicable setback requirements.

g. Public recreation and playground areas.

h. Signs and name plates. See section 109-463.

i. Vehicle parking. Off-street parking spaces shall be provided as specified in article VIII of this chapter.

j. Customary accessory uses.

k. Temporary buildings. For uses incidental to construction work, such buildings shall be removed upon the completion or abandonment of the construction work or within the period of one year, whichever period of time is the shortest.

l. Household pets may be kept on a noncommercial basis when properly housed and fenced. Except when a kennel license has been granted or written permission has been given by the chief of police, household pets may not exceed two in number for any one residence, and shall at all times be housed or fenced within an enclosure or restrained by a rope which will not permit them to run at large outside the confines of the owner's property or otherwise kept under control of the owner. No other animals shall be kept on residential land unless the same are situated on a farm of not less than 20 acres. (Please refer to the definition of household pet.)

m. Nursing homes.

n. Public (federal, state and local) buildings and structures.

o. Retail green house and nurseries.

p. Automobile parts and tire stores.

q. Automobile/gasoline service stations and commercial garages.

r. Building materials, farm implements and garden supplies for retail sales (without outdoor storage).

s. Convenience retail.

t. Fast food establishment (without drive-through service).

u. General retail.

v. Banks and other financial institutions.

w. Miscellaneous business and service establishments.

x. Funeral homes.

y. Office establishments.

z. Condominiums and site condominiums.

aa. Community residential care facilities of six or less persons.

bb. Lodginghouses and boardinghouses.

cc. State licensed residential care facilities.

dd. Laundromats and dry cleaners.

ee. Restaurants and taverns.

ff. Vehicular sales and service.

gg. Residential units are permitted on floors other than the first/ground floor level (loft areas), providing all applicable provisions of the current construction code are met.

hh. Medical services.

ii. Rapid printing establishments.

jj. Family day care homes.

(2) *Uses with special use permit.* Uses permitted by the issuance of a special use permit upon compliance with the provisions of article VI of this chapter:

a. Golf courses and country clubs.

b. Educational institutions such as public or private elementary and secondary schools and institutions for higher education.

c. Residential planned unit developments.

d. Commercial free standing towers.

e. Bed and breakfasts.

f. Multiple-family dwellings.

g. Sanitariums.

h. Religious institutions.

i. Fast food establishments (with drive-through service).

j. Veterinary hospital.

k. Indoor theater.

l. Shopping center.

m. Building materials, farm implements and garden supplies for retail sales (with outdoor storage).

n. Pool halls, video arcades, bowling alleys, dance halls, etc.

o. Motels and hotels.

p. Publishing houses.

q. Truck and rail terminals.

r. Warehousing.

s. Other uses similar and compatible.

t. Self service storage; upon completion of compliance with division 7 of article VI of this chapter (supplemental regulations.)

u. Child care center/day care center.

(b) *Dimensional requirements.* All lots of record shall conform to the minimum dimensions for lot area, lot width, front, rear and side yards; all lots shall conform with the required dimensions for maximum lot coverage, minimum floor area and maximum height of buildings specified in the site development standards as set forth in this article, except as otherwise stated in the text of this section or as modified by article VI of this chapter, special use permit; division 7 of article IX of this chapter, supplemental regulations; or as varied by the zoning board of appeals pursuant to division 3 of article II of this chapter.

D-1 District Only	
Minimum lot area	4,000 square feet per unit
Minimum lot width	50 feet
Minimum front yard	25 feet
Minimum side yard	10 feet
Minimum rear yard	40 feet

Specification of Land Uses	
Single-family dwellings	1
Two family dwellings	1
Nursing homes	2/3
Public buildings	2/3
Public service installations	2/3
Public recreation	2/3
Retail greenhouses/nurseries	3
Auto parts and tires	3
Automobile service stations	3
Gasoline service stations	3
Building materials, farm implements and garden supplies	2/3
Convenience retail	2

Fast food establishment	3
General retail	2/3
Banks and lending institutions	2/3
Miscellaneous business service establishments	2
Funeral homes	2
Office establishments	2
All other land uses	3

(c) *Required buffer/landscaping.*

(1) In the D-1 district when unlike land uses, as classified in the table in subsection (b) of this section, are being proposed, the party initiating the new or change in use will be required to construct a buffer which meets or exceeds the minimum requirements as delineated in subsection (d) of this section. Berms will be required of the initiating party regardless of whether it is the less intensive of the two uses.

(2) Berms will be required, wherever applicable, on the rear and two side property lines of an interior parcel and on the rear and side lines of a corner parcel.

(3) The class of buffer required will depend on the immediately adjoining land use. Therefore, it may not be uncommon to have one class of buffer along a rear property line and different buffer on the respective side property lines.

Proposed Land Use Class	Adjacent	Existing	Land Use Class
	1	2	3
1	-	B	C
2	B	-	A
3	C	B	-

(4) Required buffer.

(d) *Minimum buffer requirements (per 100 feet).*

Berm Class	Trees	Shrubs	Evergreens	Width
A	1	3	2	5
B	2	6	4	10
C	5	15	10	10

Note— For buffer classes B and C only, four-foot-high earthen berm may be substituted for 50 percent of the required plants. Also for buffer classes B and C only, a six-foot stockade fence or similar may be substituted for 50 percent of the required plants.

(1) Buffers or performance bonds must be in place prior to the issuance of the occupancy permit.

(2) Parking is not permitted in the required buffer.

(3) Please refer to section 109-545 for recommended plant types and minimum sizes. (Note: Spacing does not apply.)

(Code 1979, §§ 11:1.650—11:1.654)

Sec. 109-332. - C-1, General Business District.

(a) *Scope, intent and purpose.* The provisions of this section apply to the C-1 district. The general business district encompasses the majority of the City's commercial districts and is intended to include a broad range of enterprises from the small commercial establishments and professional offices to neighborhood shopping centers to strip commercial development to shopping centers and malls. Parcels included in this district should be situated on either arterial or collector streets and be developed as not to harm adjoining residential areas. Small scaled uses are permitted by right while larger developments require a special use permit.

(1) *Uses permitted by right.*

a. Retail greenhouses and nurseries.

b. Veterinary hospitals.

c. Automobile parts and tires.

d. Convenience retail.

e. General retail.

f. Medical services.

g. Banks and other financial institutions.

h. Miscellaneous business service establishments.

i. Funeral homes.

j. Laundromats and dry cleaners.

k. Motels and hotels.

l. Office establishments.

m. Indoor theaters.

n. Pool halls, video arcades, bowling alleys, dance halls and similar uses.

o. Restaurants and taverns.

p. Rapid printing establishments.

q. Child care/day care center.

r. Public (federal, state and local) buildings and structures.

(2) *Uses with special conditions.* Uses permitted under special conditions upon compliance with division 7 of article IX of this chapter:

a. Public service installations.

b. Building materials, farm implements or garden supplies for retail sales (without outdoor storage).

c. Fast food establishments without drive-through service.

d. Residential units are permitted on floors other than the first/ground floor level (loft areas), providing all applicable provisions of the current construction code are met.

e. Jobbing and machine shops.

f. Self-service storage.

g. Vehicle sales.

h. Automobile/gasoline service stations and commercial garages.

i. Borrow pits.

j. Ponds.

(3) *Uses with special use permit.* Uses permitted by the issuance of a special use permit upon compliance with the provisions of article VI of this chapter.

(b) *Dimensional requirements for C-1 zones.* All lots of record shall conform to the minimum dimensions for lot area, lot width, front, rear and side yards; all lots shall conform with the required dimensions for maximum lot coverage, minimum floor area and maximum height of buildings specified in the site development standards as set forth in this article, except as otherwise stated in the text of this section or as modified by article VI of this chapter, special use permit; division 7 of article IX of this chapter, supplemental regulations; or as varied by the zoning board of appeals pursuant to division 3 of article II of this chapter.

C-1 District Only	
Minimum lot area	4,000 square feet
Minimum lot width	40 feet
Minimum front yard	25 feet

Minimum side yard	10 feet
Minimum rear yard	15 feet
Maximum building height	35 feet
Maximum lot coverage	50 percent
Minimum landscaped open space	20 percent

(Code 1979, §§ 11:1.660—11:1.662)

Sec. 109-333. - C-2, Waterfront and Central Business District.

(a) *Scope, intent and purpose.* The provisions of this section apply to the C-2 district. The C-2 district includes established business areas both near and away from the waterfront and where applicable is designed to accommodate, preserve and encourage commerce on or near the waterfront. The requirements of this district are designed to allow each enterprise to maximize the advantage of being on or near the water wherever applicable. This is accomplished, in part, by requiring 25 percent of the lot width to remain clear of any structures in order to help preserve views of the water. An (h) after a district means that is a use permitted in the historic district

(1) *Uses permitted by right.*

a. Retail greenhouses and nurseries.

b. Veterinary hospitals.

c. Automobile parts and tires.

d. Convenience retail (h).

e. General retail (h).

f. Medical services (h).

g. Banks and other financial institutions (h).

h. Miscellaneous business service establishments (h).

i. Funeral homes (h).

j. Laundromats and dry cleaners (h).

k. Motels and hotels (h).

l. Office establishments (h).

m. Indoor theaters (h).

n. Pool halls, video arcades, bowling alleys, dance halls, similar uses (h).

o. Restaurants and taverns (h).

p. Vehicles sales.

q. Rapid printing establishments.

r. Child care/day care center.

s. Public (federal, state and local) buildings and structures.

(2) *Uses with special conditions.* Uses permitted under special conditions upon compliance with division 7 of article IX of this chapter:

a. Public service installations (h).

b. Automobile/gasoline service stations and automobile repair/commercial garages.

c. Building materials, farm implements or garden supplies for retail sales (without outdoor storage).

d. Fast food establishments (without drive-through service) (h).

e. Residential units are permitted on floors other than the first/ground floor level (loft areas) providing all applicable provisions of the current construction code are met (h).

f. Self-service storage.

(3) *Uses with special use permit.* Uses permitted by the issuance of a special use permit upon compliance with the provisions of article VI of this chapter.

(b) *Dimensional requirements for C-2 zones.* All lots of record shall conform to the minimum dimensions for lot area, lot width, front, rear and side yards; all lots shall conform with the required dimensions for maximum lot coverage, minimum floor area and maximum height of buildings specified in the site development standards as set forth in this article, except as otherwise stated in the text of this section or as modified by article VI of this chapter, special use permit; division 7 of article IX of this chapter, supplemental regulations; or as varied by the zoning board of appeals pursuant to division 3 of article II of this chapter.

C-2 District Only	
Minimum lot area	4,000 square feet
Minimum lot width	40 feet
Minimum front yard	10 feet
Minimum side yard	25 percent of lot width in open space (designated waterfront areas only. See note 2)Minimum side yard
(in nondesignated waterfront areas)	0 feet
Minimum rear yard	10 feet
Maximum building height	75 feet
Maximum lot coverage	60 percent

Minimum landscaped open space	0 percent

;le=2;Note 1—The dimensional requirements of the table in subsection (c) of this section are not applicable to structures/buildings located in the historic district and existing on May 9, 2004, or at the time of subsequent amendment to this article.

;le=2;Note 2—Any lot within a C-2 district, and lying between First Street or that portion of 10th Street which is between the intersections of 7th Street and of North Shore Drive and the waters of Green Bay is a designated waterfront area.

Where it has been determined that the proposed structure, building or parcel is in the historic overlay district, the developer shall be required to meet the requirements of division 6 of article II of this chapter.

(Code 1979, §§ 11:1.670—11:1.672)

Sec. 109-334. - M-1, Industry District.

(a) *Scope, intent and purpose.* The provisions of this section apply to the M-1 district. It is the intent of this district to provide for a variety of industrial uses characterized by relatively low traffic generation and the absence of objectionable external affects. Such areas are intended to have existing utilities and be free of incompatible uses and designed and developed so as not to harm adjoining conforming uses.

(1) *Uses permitted by right.*

a. Building materials, farm implements or garden supplies for retail sales (with outdoor storage).

b. Jobbing and machine shops.

c. Manufacturing plants.

d. Publishing houses.

e. Truck and rail terminals.

f. Warehousing.

g. Millwork plants.

h. Automobile parts and tires.

(2) *Uses with special conditions.* Uses permitted under special conditions upon compliance with division 7 of article IX of this chapter.

a. Open outdoor storage.

b. Research and development laboratories.

c. Contractor yards.

d. Woodyards.

e. Exterior above ground storage of hazardous materials.

f. Public service installations.

g. Industrial laundry.

h. Self-service storage.

(3) *Uses with special use permit.* Uses permitted by the issuance of a special use permit upon compliance with the provisions of article VI of this chapter.

(b) *Performance standards.* It shall be unlawful to carry on or permit to be carried on any activity or operation of use of any land, building or equipment that produces irritants to the sensory perceptions greater than the measures herein established which are hereby determined to be the maximum permissible hazards to humans or to human activity.

(1) *Sound.* Objectionable noises due to intensity, intermittence, beat frequency, or shrillness, shall be muffled so as not to become a nuisance to adjacent uses.

(2) *Odor.* The emission of noxious, odorous matter such as to produce a public nuisance or hazard beyond lot lines, is prohibited.

(3) *Gasses.* The escape of or emission of any gas which is injurious or destructive or explosive shall be unlawful and may be summarily caused to be abated.

(4) *Glare and heat.* Any operation producing intense glare or heat shall be performed within an enclosure so as to completely obscure and shield such operation from direct view from any point along the lot line except during the period of construction of the facilities to be used and occupied.

(5) *Light.* Exterior lighting shall be so installed that the surface of the source of light shall not be visible and shall be so arranged as far as practical to reflect light away from any residential use and in no case shall more than one footcandle power of light cross a lot line five feet above the ground in a residential district. These standards assume a snow-free condition.

(6) *Smoke, dust, dirt and fly ash.* It shall be unlawful to discharge into the atmosphere from any single source of emission whatsoever any air contaminator in violation of state and federal law.

(7) *Drifted and blown material.* The drifting or airborne transmission beyond the lot line of dust, particles or debris from any open stock pile shall be unlawful and may be summarily caused to be abated.

(8) *Other forms of air pollution.* It shall be unlawful to discharge into the atmosphere any substance in excess of standards approved by the state department of environmental quality.

(9) *Liquid or solid wastes.* It shall be unlawful to discharge at any point any materials in such a way or of such nature or temperature as can contaminate any surface waters, land or aquifers, or otherwise cause the emission of dangerous or objectionable elements, except in accord with standards approved by the state department of environmental quality.

(10) *Hazardous wastes.* Hazardous wastes as defined by the state department of environmental quality shall be disposed of by methods approved by the state department of environmental quality.

(c) *Dimensional requirements for m-1 zones.* All lots of record shall conform to the minimum dimensions for lot area, lot width, front, rear and side yards; all lots shall conform with the required dimensions for maximum lot coverage, minimum floor area and maximum height of buildings specified in the site development standards as set forth in this article and in this section, except as otherwise stated in the text of this section or as modified by article VI of this chapter, special use permits; division 7 of article IX of this chapter, supplemental regulations; or as varied by the zoning board of appeals pursuant to division 3 of article II of this chapter.

M-1 District Only	
Minimum lot area	20,000 square feet
Minimum lot width	60 feet

Minimum front yard	10 feet
Minimum side yard	10 feet
Minimum rear yard	10 feet
Maximum building height	75 feet
Maximum lot coverage	60 percent
Minimum landscaped open space	10 percent

(Code 1979, §§ 11:1.681—11:1.683)

Sec. 109-335. - M-2, Industrial Park District.

(a) *Scope, intent and purpose.* The provisions of this section apply to the M-2 district. It is the intent of this district to establish and preserve suitable areas for industrial parks.

(1) Uses permitted by right: All uses permitted in section 109-334(a)(1).

(2) Uses permitted under special conditions upon compliance with division 7 of article IX of this chapter: All uses permitted in section 109-334(a)(2).

(3) Uses permitted by the issuance of a special use permit upon compliance with the provisions of article VI of this chapter.

(b) *Dimensional requirements for M-2 zones.* All dimensional requirements set forth in section 109-334(c) shall apply except where they conflict with the following provisions, in which case, the following provisions shall apply:

(1) No part of any building or structure shall be erected, constructed, reconstructed, substantially altered or extended nearer than 50 feet from the street line of any such site within said park. Employee parking of vehicles shall be prohibited within 50 feet of said line. Said 50 feet shall be graded and sodded or graded and seeded between the public highway shoulder and the building face in such manner as will produce a reasonable lawn, except in such areas thereof as may be required for landscaped areas, driveways, walks or visitor parking.

(2) No trees may be removed from any building site or parking lot site unless reasonably necessary for the use of such site. All peripheral trees shall be retained at all times.

(3) All driveways within said park shall be surfaced with hot mixed asphalt concrete or Portland cement concrete from the public highway to the front building face. All walks shall be of Portland cement concrete. All landscaping of drives and walks shall be completed at the time of the construction of the building or structure erected on such sites.

(4) No part of any building shall be erected, constructed or extended nearer than ten feet of any interior side lot line.

(5) The total of all buildings and structures erected on any such site shall not occupy more than one-third of the total area of said site.

(6) The front of all buildings and structures on any site within said park shall be faced with decorative masonry or other material approved by the City Council, and said facing shall extend a minimum of 20 feet on each side of all buildings or structures to a natural dividing point. Where concrete block masonry is used, it shall be painted two coats of paint and shall be a decorative pattern block or other decorative treatment of plain block as approved by the City Council. All faces of buildings and structures shall be kept in good repair and appearance at all times.

(7) All buildings on the lots shall be constructed of wood, masonry, steel or concrete or any combination thereof.

(8) One parking stall for vehicles on areas less than 180 square feet, excluding drives and approaches shall be provided on each site for every 1,000 square feet of building area or one stall for every two employees, whichever is greater. Parking stalls shall be added to each site as required to accommodate all employees. Variance may be granted by the City Council for warehouses or similar uses upon reasonable proof that such parking restrictions are not realistic. City streets within said park shall not be designed by the City to provide parking thereon.

(9) All loading docks shall be on the rear or side of the buildings located in the industrial park.

(10) All material or products stored outside of the building shall be so stored at the rear of such building set back line from the street and shall be screened from view from the street with solid fencing or screening approved by the City Council. All trash and refuse shall be enclosed by a fence of solid material such as will provide a suitable visual screen thereof. Minimum height of such fences shall be six feet. Such fences shall be kept painted and in reasonable repair so as to be generally accepted for reasonable appearance. Wire fence shall not be acceptable for such purpose.

(11) No rubbish may be burned on the premises of any site except in an incinerator especially constructed and designed for such operation.

(12) No signs or billboards shall be permitted other than signs on the site which advertise the product manufactured on such site or which describes the name of the firm or corporation owning or occupying such site. No signs shall be permitted which extend above the elevation of the roofline of the closest building on the same building site. All signs shall be nonflashing and nonmoving and shall be above six feet in height from the ground when located in front yards, shall not be ornamented and shall require the approval of the City Council prior to installation thereof.

(13) The following uses shall not be permitted in the park:

a. Auto wrecking or repairing, salvage yards, used material yards, storage or baling of waste or scrap metals, bottles or junk.

b. Central mixing plant for asphalt, mortar, plaster or concrete.

(14) The City shall have the right at any time to enter upon a site which has been vacated or abandoned for a period of 90 days or more, for the purpose of performing such maintenance as may be necessary to prevent the exterior of any building and grounds from deteriorating or becoming unsightly or otherwise detracting from the appearance and general character of the park. Any expense incurred by the City thereon shall be charged against the said property so vacated or abandoned and it shall be the obligation of the owner, lessee or sublessee to pay such expense to the City upon written demand by the City for such payment.

(15) All public utilities within any site area installed by the developer or the owner of such site shall be underground, including electricity supply, telephone service, gas, water and sewer services within the lot areas of such site.

(Code 1979, §§ 11:1.690—11:1.692)

Sec. 109-336. - PL, Public Lands District.

(a) *Scope, intent and purpose.* The provisions of this section apply to the PL district. It is the intent of this district to establish and preserve suitable areas for facilities and institutions which are owned or operated by governmental or quasi-governmental agencies for purposes necessary to secure the public health, safety or welfare, and which require relatively large land areas which are free from other uses.

(1) *Uses permitted by right.* Uses permitted by right: None.

(2) *Uses with special conditions.* Uses permitted under special conditions upon compliance with division 7 of article IX of this chapter: None.

(3) *Uses with special use permit.* Uses permitted by the issuance of a special use permit upon compliance with the provisions of article VI of this chapter.

(b) *Dimensional requirements for PL zones.* Due to the varied nature of the uses contemplated within the district, the specific dimensional requirements for any use within the district are to be approved by the planning commission and stated in the special use permit issued for each specific use.

(Code 1979, §§ 11:1.695—11:1.697)

Secs. 109-337—109-360. - Reserved.

ARTICLE VI. - SPECIAL PERMITS AND SPECIAL PERMIT USES[9]

Footnotes:

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State Law reference— Special land uses, MCL 125.3202.

DIVISION 1. - GENERALLY

Sec. 109-361. - Intent and purpose.

(a) Rather than permitting all of the many and varied land use activities within individual and limited zoning districts, it is the intent of this article to provide a set of procedures and standards for specific uses of land or structures that will allow, on one hand, practical latitude for the developer, but that will at the same time, maintain sound provisions for the protection of the health, safety and general welfare of the inhabitants of the City. In order to provide controllable and reasonable flexibility, this section permits detailed review of certain specified types of land use activities which, because of their particular and unique characteristics, require special consideration in relation to the welfare of adjacent properties and to the community as a whole. Land and structure uses possessing these characteristics may be authorized within certain zone districts by the issuance of a special use permit. By such a procedure, the City planning commission has the opportunity to impose conditions and safeguards upon each use which are deemed necessary for the protection of the public welfare.

(b) The provisions of this article and other provisions found in this chapter designate specific uses that require a special use permit and, in addition, specify the procedures and standards which must be met before such a permit can be issued.

(Code 1979, § 11:1.702)

Sec. 109-362. - Compliance.

It shall be the duty and obligation of the owner or operator, if such is under a management arrangement, to at all times be in compliance with the use requirements of this chapter and the

stipulations of the special use permit under which their particular use is governed. Failure thereof shall be in violation of this article and the continuance thereof is hereby declared to be a nuisance per se.

(Code 1979, § 11:1.710)

Sec. 109-363. - Specific requirements.

The general standards and regulations of this article are basic to all uses authorized by special use permit. The specific and detailed regulations set forth or referred to hereafter in other specified sections of this chapter relate to particular uses and are hereafter requirements which must be met by those uses, in addition to the aforementioned general standards and regulations.

(Code 1979, § 11:1.712)

Sec. 109-364. - Special uses that may be permitted.

The following uses may be permitted within the districts cited, contingent on the issuance of a special use permit and compliance with the other provisions of this chapter:

Use	Districts Permitted
Nursing homes	R-3
Adult foster care small and large homes	R-3
Religious institutions	R-1, R-2, R-3, R-4, D-1, C-1, C-2(H)
Private educational institutions	R-1, R-2, R-3, R-4, D-1, C-1, C-2, PL
Bed and breakfasts	R-1, R-2, R-3, R-4, D-1, C-1, C-2(H)
Campgrounds and RV parks	R-3, R-4, C-1, C-2, PL
Public recreation and playground areas	R-1, R-2, R-3, R-4, C-1, C-2(H), PL
Golf courses	R-1, R-2, R-3, R-4, D-1, PL
Chemical processing plants	M-1, M-2
Drop forging, punch pressing and plating operations	M-1, M-2

Dry bulk blending plant and/or handling of liquid nitrogen fertilizer and anhydrous ammonia	M-1, M-2
Refineries and power generation	M-1, M-2
Pulp mills	M-1, M-2
Sawmills	M-1
Portable asphalt plant	M-1, M-2
Hotels and motels	D-1
Junkyards	M-1
Fast food establishments with drive-through	D-1, C-1, C-2
Public buildings (local, state, federal buildings)	R-1, R-2, R-3, R-4, C-1, C-2(h), PL
Indoor theaters	D-1, C-1, C-2
Building materials, farm implements or garden supplies for retail sales (with outdoor storage)	D-1, C-1, C-2
Heavy construction contractor establishments	M-1
Grain and seed elevator	M-1, M-2
Commercial freestanding tower	D-1, C-1, C-2, M-1, M-2
Shopping centers/malls	D-1, C-1, C-2
Pool halls, video arcades, bowling alleys, dance halls, etc.	D-1
Multiple-family dwellings	D-1, R-2, R-4, C-1, C-2
Veterinary hospital	D-1
Publishing houses	D-1

Truck and rail terminals	D-1, C-1, M-1, M-2
Warehousing	D-1, C-1, M-1, M-2
Passenger ferry terminal	M-1
Uses determined by the planning commission to be compatible with the purpose and intent of the district.	PL

;hn0; (Code 1979, § 11:1.720)

Secs. 109-365—109-386. - Reserved.

DIVISION 2. - PERMITS

Sec. 109-387. - Permit procedures.

An application for a special use permit for any land or structure use permitted under this section shall be submitted and processed under the following procedures:

(1) *Submission of application.* An application shall be submitted through the code enforcement officer or his agent for consideration to the planning commission on a form provided by the code enforcement office not less than 30 days before any regular meeting of the planning commission. The application shall be accompanied by payment of the fee as established by the City Council to cover costs of processing the application. No part of any fee shall be refundable.

(2) *Required information.* One copy of an application for a special use permit shall be presented to the code enforcement officer or his agent and accompanied by the following documents and information. A site plan, drawn to a readable scale, of the property involved and adjacent property which describes:

a. All property boundaries and dimensions thereof;

b. The location and use of all existing and proposed structures;

c. The location of all existing and proposed structures, driveways, utilities and other improvements to be constructed as a part of the project;

d. The current zoning classifications on the subject property and all adjacent property;

e. The location of any waterbody or floodplain within 500 feet of the subject property; and

f. The site plan shall include the name of the applicant, the scale used, a north arrow, the date prepared and the name and address of the preparer if other than the applicant.

(3) *Incomplete applications.*

a. An application made without full compliance with this article shall be returned to the applicant.

b. An application which is incomplete shall not constitute submission so as to commence the running of time for processing the application.

c. An application complying with the provisions of this article shall be scheduled for public hearing by the planning commission.

(4) *Others having interest.* Any person having an interest in any application may present any petition or document supporting his position for or against such application.

a. All documents shall be submitted to the code enforcement officer or his agent no later than five days before the hearing at which the application will be considered.

b. It shall be incumbent upon the applicant to furnish adequate evidence in support of the proposed use complying with the provisions of this article. It shall be the obligation of the applicant to furnish sufficient evidence or proof of present and future compliance with the provisions of the article.

c. Until a special use permit has been issued for any use requiring the same in this article and until a building permit has been granted pursuant to the special use permit, there shall be no construction or excavation on said land nor shall there be made any use of land related to the request for the special use permit.

(Code 1979, § 11:1.703)

Sec. 109-388. - Public hearing.

(a) After a preliminary review of the site plan and an application for a special use permit by the code enforcement officer, the City planning commission shall hold a hearing on the site plan and special use request. Notice of the hearing shall be given, by mail or personal delivery, to the owners of property for which special use permit approval is being considered, and to all persons to whom real property is assessed within 300 feet of the boundary of the property in question and to the occupants of all structures within 300 feet. Notice of the public hearing shall also be published in a newspaper of general distribution in the City. Public notice shall be given not less than 15 days before the date of the public hearing on the application in accordance with the Michigan Zoning Enabling Act (MCL 125.3101 et seq.). If the name of the occupant is not known, the term "occupant" may be used in making notification. Notification need not be given to more than one occupant of a structure, except that if a structure contains more than one dwelling unit or spatial area owned or leased by different individuals, partnerships, businesses or organizations, one occupant of each unit or spatial area shall receive notice. In the case of a single structure containing more than four dwelling units or other distinct special areas owned or leased by different individuals, partnerships, businesses or organizations, notice may be given to the manager or owner of the structure who shall be requested to post the notice at the primary entrance to the structure.

(b) Each notice given under this section shall:

(1) Describe the nature of the special use request;

(2) Indicate the property, including the address or addresses if one or more addresses exist which is the subject of the special use request;

(3) State when, where and at what time the public hearing on the special use request will be considered;

(4) Indicate when and where written comments will be received concerning the request; and

(5) Contain a request to the owner to provide a copy of the notice to the occupant or occupants of the property or structure if the occupant is other than the owner.

(Code 1979, § 11:1.704)

Sec. 109-389. - Review and approval.

(a) The review of an application and site plan requesting a special use permit shall be made by the City planning commission in accord with the procedures and standards specified in this article. If a

submitted application and site plan do not meet the requirements of this article, they may not be approved. However, if the applicant agrees to make changes to the site plan and application in order to bring them into compliance with this article, such changes shall be allowed and shall be either noted on the application or site plan itself, attached to it, or the documents shall be resubmitted incorporating said changes. A site plan and application for a special use permit shall be approved if they comply in all respects with the requirements of this article and other applicable City ordinances, and state or federal laws, rules or regulations. Approval and issuance of a special use permit shall signify prior approval of the application and site plan; therefore, any modification shall become part of the special use permit and shall be enforceable as such. The decision to approve or deny a request for a special use permit shall be retained as a part of the record of action on the request and shall incorporate a statement of conclusions which specifies the basis for the decision, any changes to the originally submitted application and site plan necessary to ensure compliance with this ordinance and any conditions imposed with approval. Once a special use permit is issued, all site development and use of land on the property affected shall be consistent with the approved special use permit, unless a change conforming to this article requirements receives the mutual agreement of the landowner and the City planning commission and is documented as such.

(b) Oral proceedings at the public hearing and review and approval or denial by the planning commission shall be recorded, but need not be transcribed unless requested by a party who shall pay for the transcription of the portion requested except as otherwise provided by law.

(Code 1979, § 11:1.705)

Sec. 109-390. - Basis of determination.

Before denying or granting approval of a request for a special land use permit, the City planning commission shall ensure that the standards specified in this section, as well as applicable standards established elsewhere in this article, shall be satisfied by the completion and operation of the special land use under consideration.

(1) *General standards.* The City planning commission shall review the particular circumstances of the special land use under consideration in terms of the following standards, and shall grant the issuance of the special land use permit only upon a finding of compliance with each of the following standards, as well as applicable standards elsewhere in this article:

a. The proposed use, activities, processes, materials, equipment and conditions of operation will not be detrimental to the public welfare, persons or property by reason of excessive noise, fumes, dust, glare, traffic or objectionable odors.

b. Essential public facilities and services such as roads, fire and police protection, drainage facilities, refuse disposal, schools are adequate for the proposed use or are capable of being adequately provided.

c. Requirements for additional public services and facilities which will be created by the proposed use will not be detrimental to the economic welfare of the City.

d. All standards set forth in this zoning chapter will be complied with.

e. All administrative requirements pertaining to the issuance of the special land use permit have or will be complied with.

f. The proposed use, activities, processes, materials and equipment and conditions of operations shall be consistent with the City general plan.

g. Where feasible, the proposed activity shall not be located such that it will directly or indirectly have a substantial adverse impact on the natural resources of the City. Specifically, wetlands waterways and waterbodies protected by part 303 of the Natural Resources and Environmental Protection Act (MCL 324.30301 et seq.), part 91 of the Natural Resources and Environmental Protection Act (MCL 324.9301 et seq.), part 325 of the Natural Resources

and Environmental Protection Act (MCL 324.32501 et seq.), part 323 of the Natural Resources and Environmental Protection Act (MCL 324.32301 et seq.), the United States River and Harbor of 1899, part 451 of the Natural Resources and Environmental Protection Act (MCL 324.45101 et seq.) and other applicable land and water related laws in the state.

(2) *Conditions.*

a. The City planning commission may grant approval, approval with conditions or disapproval of a special land use application in accordance with the requirements of the Michigan Zoning Enabling Act (MCL 125.3101 et seq.). If the planning commission grants approval with conditions, the planning commission shall have the authority to require conditions necessary to ensure compliance with the standards contained in this or other applicable City ordinances and regulations. Such conditions shall be enforced by the City's code enforcement officer.

b. The conditions may include conditions necessary to ensure that public services and facilities affected by a proposed land use or activity will be capable of accommodating increased service and facility loads caused by the land use or activity, to protect the natural environment and conserve natural resources and energy, to ensure compatibility with adjacent uses of land and to promote the use of land in a socially and economically desirable manner.

(3) *Performance guarantee.* In reviewing a special use permit, the City planning commission may require that a cash deposit, certified check, irrevocable bank letter of credit or surety bond be furnished by the developer to insure compliance with an approved site plan and the special use permit requirements. Such guarantees shall be deposited with the City clerk/treasurer at the time of the issuance of the special use permit. In fixing the amount of such performance guarantee, the City planning commission shall limit it to reasonable improvements required to meet the standards of this article and to protect the natural resources or the health, safety and welfare of the residents of the City and future users or inhabitants of the proposed project or project area including, but not limited to streets, lighting, utilities, sidewalks, screening and drainage. The term "improvements," as used in this section, does not include the entire project which is the subject of zoning approval nor to improvements for which a performance guarantee has been deposited pursuant to other applicable public acts. The City planning commission and the project developer shall establish an agreeable procedure for the rebate of any cash deposits required under this section, in reasonable proportion to the ratio of work completed on the required improvements as work progresses. Said agreement shall be written as an element of the conditions surrounding the approval of the special use permit.

(Code 1979, § 11:1.706)

Sec. 109-391. - Effective date of special use permit.

(a) Within 21 days of the approval of an application by the planning commission, the code enforcement officer shall transmit to the applicant a written permit stating the following:

(1) The date of approval of the application.

(2) A clear statement of any conditions attached to the approval by the planning commission.

(3) The terms of any performance guarantee imposed by the planning commission.

(4) The conditions governing the transfer or the permit.

(5) The terms governing the expiration of the permit.

The applicant shall signify acceptance of the terms of the permit as provided for on the form, a copy of which shall be returned to the City clerk/treasurer along with any performance guarantee required. The special use permit shall become effective on receipt of form by the City clerk/treasurer.

(b) A building permit shall not be issued until approval of such special use permit by the planning commission.

(c) Land subject to a special use permit may not be used or occupied for purposes of such special use until after a certificate of occupancy for same has been issued pursuant to section 109-65.

(Code 1979, § 11:1.707)

Sec. 109-392. - Transfer and/or expiration of special use permit.

(a) *Transfer of special use permit.* In order to ensure continued compliance with the terms of this article and a special use permit issued under it, each special use permit shall specify reasonable terms for transfer of a valid special use permit from the present landowner or operator to a subsequent owner or operator. The responsibility for said transfer in accord with the terms of the special use permit shall be that of the permit holder of record with the City. Failure of a special use permit holder to properly transfer a special use permit shall not release the permit holder of record from ordinance penalties for any subsequent action undertaken on the land in violation of the terms of the special use permit. Transfer of a special use permit shall be made on a form supplied by the code enforcement officer for that purpose. Proper completion of the form shall require documentation of assumption by the new owner of an interest in the land/operation in question and a written agreement that the new owner/operator will assume the obligations and responsibilities specified in the special use permit, including deposit of a bond or other performance guarantee when so required by the special use permit. When such transfer has been properly completed and any bond or other performance guarantee deposited properly with the City by the new permit holder, any bond or performance guarantee on deposit with the City by the previous permit holder shall be returned in accord with the terms of this article.

(b) *Expiration of special use permit.* A special use permit shall be valid for as long as the permitted use continues in accordance with the terms stated therein, unless otherwise stated in the special use permit. If there is not compliance with the terms of the special use permit within six months from the date of its issuance, then it shall automatically expire and be of no further effect or validity.

(1) Approval of a special use permit shall be valid regardless of change of ownership, provided that all terms and conditions of the permit are met by subsequent owner.

(2) The code enforcement officer is authorized to notify the applicant, in writing and mailed to the address listed on the application, that such special use permit has expired. Failure to receive a written notice from the code enforcement officer does not affect the expiration date.

(Code 1979, § 11:1.708)

Sec. 109-393. - Reapplication.

No application for a special use permit which has been denied, wholly or in part, by the planning commission, shall be resubmitted until the expiration of one year from the date of such denial, except on the grounds of newly discovered evidence or proof of changed conditions.

(Code 1979, § 11:1.709)

Sec. 109-394. - Effect.

Any use for which a special use permit has been granted shall be deemed a conforming use permitted in the district in which such use is located provided:

(1) Such permit was issued in conformity with the provisions of this article;

(2) Such permit shall be deemed to affect only the lot or portion thereof and uses thereupon for which the special use permit shall have been explicitly granted; and

(3) Such permit authorizes a use which is subsequently built, operated and maintained to compliance with this article, the special use permit and all conditions established with its approval.

(Code 1979, § 11:1.711)

Secs. 109-395—109-416. - Reserved.

DIVISION 3. - SITE DEVELOPMENT REQUIREMENTS

Sec. 109-417. - Compliance.

A special use permit shall not be issued for the occupancy of a structure or parcel of land, except upon compliance with the provisions of this division.

(Code 1979, § 11:1.730)

Sec. 109-418. - Nursing homes, adult foster small and large group care homes.

The following provisions apply to nursing homes, adult foster small and large group care homes:

(1) Site shall be adjacent to and served by a principal collector as identified in the City general plan.

(2) Site shall be a minimum of one acre.

(3) No building shall be closer than 50 feet to any property or street right-of-way line.

(4) No more than 25 percent of the gross site shall be covered by buildings.

(5) Ambulance and delivery areas shall be obscured from view by a solid wall six feet in height. Access to and from the delivery and ambulance area shall be directly from a street.

(Code 1979, § 11:1.732)

Sec. 109-419. - Religious institutions.

The following provisions apply to religious institutions:

(1) The proposed site shall be at least one acre in size plus one half acre per 100 seats in the main auditorium.

(2) The proposed site shall be so located as to have at least one property line on either a principal or secondary collector street.

(3) No building shall be erected to a height greater than that permitted in the district in which it is located, unless the building is set back an additional one foot for each foot of additional height above the district height limitation.

(Code 1979, § 11:1.733)

Sec. 109-420. - Educational institutions.

The following provisions apply to educational institutions:

(1) The proposed site shall be at least one acre in area.

(2) No building shall be closer than 30 feet to any property or street line. No building shall be erected to a height greater than that permitted in the district in which it is located unless the building is set back an additional foot for each foot of height above the district limitations.

(3) All buildings shall be of an appearance that shall be harmonious and unified as a group.

(4) No more than 50 percent of the gross site area shall be covered by buildings.

(5) All signs shall be in compliance with this division.

(6) Off-street parking shall be in compliance with the provisions of article VIII of this chapter. No parking shall be allowed in the minimum front yard and the parking area shall be screened from surrounding residential areas by a wall or fence, in combination with suitable plant materials as specified in this division.

(Code 1979, § 11:1.734)

Sec. 109-421. - Bed and breakfasts.

The following provisions apply to bed and breakfast establishments:

(1) The premises shall have at least two exits to the outdoors.

(2) Rooms utilized for sleeping shall have a minimum size of 100 square feet for two occupants with an additional 30 square feet for each additional occupant to a maximum of four occupants per room.

(3) Each building used as a bed and breakfast shall be equipped with smoke detectors as required by the building code for new single-family dwellings.

(4) The dwelling unit in which the bed and breakfast takes place shall be the principal residence of the operator and said operator shall live on the premises when bed and breakfast operation is active.

(5) There shall be one off-street parking stall for each bedroom designated for guests on the premises.

(6) Retail sales are not permitted.

(7) Meals shall be served to guests only.

(8) Lavatories and bathing facilities shall be available to all persons using the premises.

(9) The maximum stay for any occupant of a bed and breakfast operation shall be 30 consecutive days.

(10) The applicant shall provide a scaled floor plan of the premise as part of the application.

(11) A minimum of one fire extinguisher, in proper working order, shall be located on each floor.

(Code 1979, § 11:1.735)

Sec. 109-422. - Campgrounds and RV parks, public recreation and golf courses.

The following provisions apply to campgrounds and RV parks, public recreation and golf courses:

(1) The site shall have direct access to a principal or secondary collector street.

(2) All principal and accessory buildings as well as parking areas shall not be less than 100 feet from any property line.

(3) All lighting shall be shielded to reduce glare and shall be so arranged and maintained as to direct the light away from all residential lands which adjoin the site.

(Code 1979, § 11:1.736)

Sec. 109-423. - Chemical processing, drop forging, punch pressing, etc.

Chemical processing, drop forging, punch pressing and plating operations, dry bulk blending plant and/or handling of liquid nitrogen fertilizer and anhydrous ammonia, refineries and power generation, sawmills, portable asphalt plants, and pulp mills shall conform to the performance standards stated at section 109-334.

(Code 1979, § 11:1.737)

Sec. 109-424. - Hotels and motels.

The following provisions apply to hotels and motels:

(1) Minimum gross floor area of each guest unit shall be 250 square feet.

(2) The minimum lot size shall be one acre with a minimum street frontage of 150 feet.

(3) Site shall have direct access to a principal collector street.

(4) There shall be at least 800 square feet of lot area for each guest unit.

(5) The maximum lot coverage of all buildings, including accessory buildings shall not exceed 25 percent.

(6) All buildings shall observe a setback of not less than 75 feet from any road right-of-way and no less than 40 feet from any side or rear property line.

(Code 1979, § 11:1.738)

Sec. 109-425. - Junkyards.

The following provisions apply to junkyards:

(1) Junkyards shall be established and maintained in accordance with all applicable state laws.

(2) The site shall be a minimum of ten acres in size.

(3) A solid fence, wall or earthen berm at least eight feet in height shall be provided around the periphery of the site to screen said site from surrounding property. Such fence, wall or berm shall be of sound construction, painted or otherwise finished neatly and inconspicuously.

(4) All activities shall be confined within the enclosed area. There shall be no stocking of material above the height of the fence or wall, except that movable equipment used on the site may exceed the wall or fence height. No equipment, material or lighting shall be used or stored outside the enclosed area.

(5) All enclosed areas shall be set back at least 100 feet from any street property line. Such front yard setback shall be planted with trees, grass and shrubs to minimize the appearance of the installation. The spacing and type of plant materials shall be approved by the planning commission.

(6) No open burning shall be permitted and all industrial processes involving the use of equipment for cutting, compressing or packaging shall be conducted within a completely enclosed building.

(7) Whenever the installation abuts a residential district, a transition strip at least 200 feet in width shall be provided between the enclosed area and the adjoining district. Such strip shall contain plants, grass and structural screens of a type approved by the planning commission.

(Code 1979, § 11:1.739)

Sec. 109-426. - Fast food establishments with drive-through.

The following provisions apply to fast food establishments with drive-through service:

(1) *Site development standards.* Drive-in restaurants and fast food establishments shall be subject to the following restrictions:

a. Minimum lot area: 20,000 square feet.

b. Minimum lot width: 125 feet.

c. Structure location: The location of all structures, including partially enclosed or covered service areas, shall conform to the following requirements:

1. Front setback: 75 feet.

2. Side setback: 25 feet.

3. Rear setback: 25 feet.

(2) *Motor vehicle access.* All points of entrance or exit for motor vehicles shall be no closer than 30 feet from the intersection of the right-of-way lines of two streets and no closer than ten feet from an adjacent property line. The minimum driveway width at the curbline shall be 30 feet. The minimum width of access drive shall be 16 feet. The angle of intersection of the centerline of any driveway with the centerline of the street shall be no less than 60 degrees unless separate acceleration and deceleration lanes are provided. No more than two driveway approaches shall be permitted on any street frontage.

(3) *Outdoor storage areas.* All outdoor storage areas, including areas for the storage of trash and rubbish, shall be surrounded by an opaque wall at least six feet high and a view-obstructing door.

(4) *Litter and debris.* Drive-in restaurant management shall provide adequate trash and litter containers and policing for the parking lot and the shoulders of adjacent roadways. These areas shall be completely cleared of accumulated debris as often as necessary to ensure a neat appearance, but no less than once at the close of each business day.

(Code 1979, § 11:1.740)

Sec. 109-427. - Public buildings (local, state and federal buildings).

The following provisions apply to public buildings (local, state and federal buildings):

(1) Not more than 30 percent of the lot area may be covered by buildings.

(2) All buildings shall be harmonious in appearance with any surrounding or adjacent residential area and shall be similar in design and appearance to other buildings on the same site.

(Code 1979, § 11:1.741)

Sec. 109-428. - Indoor theaters.

Each indoor theater building shall have a lobby or waiting area of three square feet for each seat in the largest viewing or performance room within the building, exclusive of areas required by the building code for egress.

(Code 1979, § 11:1.742)

Sec. 109-429. - Lumber and building supply yards with outdoor storage, heavy construction contractor establishment and/or open outdoor storage.

The following provisions apply to lumber and building supply yards with outdoor storage, heavy construction contractor establishment and/or open outdoor storage:

(1) Materials and equipment stored outdoors shall be screened from adjoining residential areas with an opaque fence or screen.

(2) No materials stored outdoors shall be placed in a required yard.

(Code 1979, § 11:1.743)

Sec. 109-430. - Commercial freestanding towers.

The following provisions apply to commercial freestanding towers:

(1) The distance from the base of the tower to the nearest property line shall not be less than the height of the tower.

(2) The base of the tower and wire/cable supports shall be fenced with a minimum of a six-foot chainlink fence.

(3) Strobe lights shall not be used unless required by state or federal law.

(4) Owners/operators shall rectify any interference with the lawful broadcast or receiving of signals within the electromagnetic spectrum resulting from the construction and operation of the tower.

(Code 1979, § 11:1.744)

Sec. 109-431. - Shopping centers/malls.

The following provisions apply to shopping centers/malls:

(1) Access to the shopping center shall be provided by at least one principal collector street.

(2) All areas accessible to vehicles shall be paved and maintained so as to provide a permanent, durable and dustless surface.

(3) No structure, with the exception of permitted signs, fences, water towers and light poles shall be located closer to any property line than a distance equal to twice its height.

(4) All outdoor illumination shall be so arranged so that it is deflected from adjacent properties and streets and so that it shall in no way impair the safe movement of traffic.

(5) All shopping centers/malls, when located in or adjacent to a residential district or when adjacent to a school, hospital or other public institution, shall include, as an integral part of the site development, a strip of land 20 feet in width on all sides of the site abutting such districts or developments. No part of such land may be utilized for any shopping center function, but shall be occupied by plant materials, shrubs or structural fences and walls, used separately or in combination. The site plan and specifications for a shopping center shall include the proposed arrangement of such plantings and structures.

Note— The 20-foot transition strip is part of the required front, rear and side yards and not in addition to these requirements.

(Code 1979, § 11:1.745)

Sec. 109-432. - Multiple-family dwellings.

The proposed site for a multiple family dwelling shall have not less than 50 feet of frontage on Green Bay or the Menominee River.

(Code 1979, § 11:1.746)

Secs. 109-433—109-462. - Reserved.

ARTICLE VII. - SIGNS

Sec. 109-463. - Legislative findings pertaining to signs.

It is hereby determined that regulation of the location, size, placement and certain features of signs is necessary to enable the public to locate goods, services and facilities without difficulty and confusion, to prevent wasteful use of natural resources in competition among businesses for attention, to prevent hazards to life and property and to ensure the continued attractiveness of the community and protect property values. It is further determined that signs which may lawfully be erected and maintained under the provisions of this article are consistent with customary usage, and that signs which may not lawfully be erected or maintained under the provisions hereof are not consistent with customary usage, are an abuse thereof, and are an unwarranted invasion of the rights of legitimate business interests and of the public.

(Code 1979, § 11:1.900)

Sec. 109-464. - Appeals.

The zoning board of appeals may authorize a reduction, modification or waiver of any of the requirements of this article upon request, provided the standards established in section 109-36 are fully met.

(Code 1979, § 11:1.905)

Sec. 109-465. - Substitutions regarding commercial and noncommercial speech.

The owner of any sign which is otherwise allowed by this article may substitute noncommercial speech in lieu of any other commercial speech or noncommercial speech. This substitution of copy may be made without any additional approval or permitting. The purpose of this provision is to prevent any inadvertent favoring of commercial speech over noncommercial speech, or favoring of any particular noncommercial speech over any other noncommercial speech. This provision prevails over any more specific provision to the contrary.

Sec. 109-466. - Permit.

(a) *Required.* No sign, billboard, nameplate, marquee or other advertising structure shall be erected, replaced, structurally altered, enlarged, illuminated, changed in purpose or relocated without first obtaining a sign permit pursuant to subsection (b) of this section, except those signs specifically exempted in section 109-468.

(b) *Application.* An application for a sign permit shall be made to the office of the code enforcement officer by submission of a form, designed for this purpose, by the owner of the property on which the sign is proposed to be located or by his agent or lessee. Said application shall contain the following information:

(1) Property owner's name, address and signature of approval.

(2) Applicant's name, address and phone number.

(3) Address or legal description of property on which the sign is proposed.

(4) Name and address of the owner of the sign.

(5) Total display area in square feet.

(6) If the sign is pole- or ground-mounted, a site plan drawn to scale, showing location of sign, property lines, location of structures on property, and adjacent streets and alleys, with a detail drawing of the sign and its supporting structure.

(7) If the sign is a wall or wall projecting type, an elevation drawing of the building elevation on which the sign will be displayed, showing location of the sign on the wall.

(8) A scale drawing of the display face or faces of the sign.

(9) Complete construction plans and specifications for any proposed structure.

(c) *Review of application.* The code enforcement officer shall review all properly filed applications for sign permits and issue permits only for those proposed signs fully meeting the criteria established in this article and the state construction code. The code enforcement officer shall approve or reject said application within seven full working days of receipt of a completed application submittal.

(d) *Application fees.* A schedule of permit fees shall be established and amended from time to time to reflect the cost of administering this article, by resolution of the City Council.

(Code 1979, §§ 11:1.901—11:1.904)

Sec. 109-467. - Prohibited signs.

The following listed signs are prohibited in any district:

(1) A sign erected upon the roof of a building above the building height as defined in this chapter.

(2) Any sign which obstructs the ingress or egress from a required door, window or other required exit.

(3) Signs attached to trees, fence posts, utility poles, rocks or other natural features, or painted on the roofs of buildings.

(Code 1979, § 11:1.906)

Sec. 109-468. - Exempt signs.

The following signs are exempt from the provisions of this regulation, including permit requirements:

(1) Signs prohibiting trespass on private property, when not more than two square feet in display area.

(2) Signs identifying a building's address and/or the names of the residents, not to exceed two square feet in display area.

(3) Traffic control, directional, warning or informational signs placed within a public right-of-way, when authorized by a public agency having appropriate jurisdiction.

(4) Flags bearing the official insignia of a nation, state, country, or educational institution.

(5) Historic markers, signs identifying the name of buildings or date of erection, and official notices of any court or public agency, not exceeding four square feet in display area.

(6) Fluttering banners, pennants, ribbons or similar devices used for advertising purposes, provided such devices do not meet the definition of "sign" as stated in this chapter.

(7) Signs located on the rolling stock of common carriers or on motor vehicles or trailers bearing current license plates which are traveling or lawfully parking upon public highways or lawfully parked upon any other premises for a period not exceeding four hours or for a longer period where the primary purpose of such parking is not the display of any sign.

(8) On-premises signs located inside an enclosed building and visible through a window or windows thereof where the area of such signs does not exceed 20 percent of the area of the window or windows.

(9) Ground-mounted signs of eight square feet or less per face advocating or opposing a candidate for public office or a position on an issue to be determined at an election, between the 21st day before the election and the fifth day after the election.

(10) Signs visible only from the premises on which located or visible off the premises only through a window or windows from which they are set back at least ten feet.

(11) On-premises directional signs and signs for the purpose of controlling on-site parking, not exceeding five square feet in display area.

(Code 1979, § 11:1.907)

Sec. 109-469. - Obsolete sign or sign copy.

(a) Whenever, due to cessation of the use of a structure or structures, a sign ceases to advertise or identify goods, services, or activities available or taking place on the lot on which the sign is located, the sign copy shall be covered or removed within 30 days after written notification from the code enforcement officer. Upon failure to comply with such notice, the code enforcement officer is hereby authorized to cause removal of such sign copy, and any expense incident thereto shall be paid by the owner of the building, structure, or ground on which the sign is located.

(b) Whenever the use of land changes to a new use, all sign structures associated with previous use of the land shall be modified as necessary to comply with the sign regulations pertinent to the new use, or removed from the property.

(c) Whenever a use of land ceases due to demolition or buildings or structures, any sign structures associated with the use shall be removed from the property within six months of the termination of use, unless a new use of the land is commenced within that time, and said sign structures are reused as indicated in subsection (b) of this section. The owner of the property shall be granted an additional six months on written request to the code enforcement officer.

(Code 1979, § 11:1.908)

Sec. 109-470. - Signs located on or over a right-of-way.

(a) No sign shall be located within the right-of-way of any street or alley, nor project over such right-of-way.

(b) Exceptions.

(1) In any C-1 or C-2 district, a wall projecting sign may project over the right-of-way a maximum distance of four feet, provided that the sign is otherwise in compliance with this article, and that the bottom of the sign is at least ten feet above the ground below.

(2) Within the historic district, portable double-faced signs (sandwich sign) may be placed between the curbline of the street and the edge of the right-of-way under the following conditions:

a. The area of any side of the sandwich sign shall not exceed 16 square feet, and the height of the sign shall not exceed six feet.

b. The sandwich sign shall be placed as to not obstruct pedestrian traffic.

c. Only one sandwich sign shall be permitted for each commercial establishment and/or building.

d. Sandwich signs shall be stored from view whenever the enterprise is not open for business for more than one hour.

(Code 1979, § 11:1.909)

Sec. 109-471. - Off-premises advertising signs.

(a) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Off-premises advertising sign means a sign advertising other than goods, services, or activities available or taking place on the lot on which the sign is located. When a sign consists principally of a brand name or trade name advertising and the product or service advertised is only incidental to the principal activity, or if it brings rental income to the property owner or sign owner, it shall be considered to be an off-premises advertising sign.

(b) *Standards.* Off-premises advertising signs shall be governed by the following standards:

(1) Off-premises advertising signs shall not be erected within the City except within 120 feet of the rights-of-way of highways U.S. 41 or M-35.

(2) There shall be not less than 1,000 feet between any two off premises advertising sign locations, and no such sign shall be located within 100 feet of any residentially zoned property.

(3) Off-premises signs shall be pole-mounted. Off-premises signs shall not be displayed on the walls of buildings, and such signs shall not be supported by adjacent buildings.

(4) Only one double faced sign shall be allowed per location, provided that the faces of the double faced sign are located not more than 36 inches apart at the widest part and not more than 12 inches apart at the narrowest point, and that the gross area of each face does not exceed 300 square feet.

(5) No part of the sign shall exceed 30 feet in height.

(6) The bottom of the display area of the sign shall be not lower than ten feet above the elevation of the centerline of the adjacent highway, and the space between the bottom of the display area and the ground below shall not be enclosed except as necessary to structurally support the sign.

(Code 1979, § 11:1.910)

Sec. 109-472. - Temporary use signs.

The following signs shall be allowed for the duration specified provided they are within the size limitations specified:

(1) Use: Real estate sale, rent, or lease in residential districts (no permit required).

a. Maximum size per face: Six square feet (single-family), ten square feet (multiple-family).

b. Maximum duration: 15 days after the purpose of sign is fulfilled.

(2) Use: Real estate, all other districts (no permit required).

a. Maximum size per face: 32 square feet.

b. Maximum duration: 15 days after the purpose of sign is fulfilled.

(3) Use: Building construction signs in residential districts (no permit required).

a. Maximum size per face: 20 square feet, (single-family), 32 square feet (multiple-family).

b. Maximum duration: First occupancy of building.

(4) Use: Building construction, all other districts except residential (no permit required).

a. Maximum size per face: 32 square feet.

b. Maximum duration: First occupancy of building.

(5) Use: Signs advertising goods, services or events on the premises on which the sign is displayed, in commercial and industrial districts. (This regulation includes trailer signs. Permit required. See note 2.)

a. Maximum total display area: 100 square feet.

b. Maximum duration: 90 days each permit. Two permits maximum per year.

(6) Use: Garage sales, auctions, estate sales, fund-raising events by non-profit agencies. (No permit required.)

a. Maximum size per face: Six square feet.

b. Maximum duration: Three days

Note 1—For single-family subdivisions under development: Signs shall be removed within one year after sale of 90 percent of all lots.

Note 2—Trailer signs shall have owner's name and address clearly imprinted for identification purposes.

(Code 1979, § 11:1.911)

Sec. 109-473. - On-premises sign requirements.

On-premises sign requirements for specific uses are contained in the following:

(1) *Use for educational institution, religious institution, institution for human care, cemetery, park and conservation area, public building.*

a. *Sign type: Ground or pole.*

1. Maximum display area: 32 square feet.

2. Maximum height: eight feet.

3. Sign purpose: Identification and information.

4. Maximum number of signs: One per principal use.

b. *Sign type: Wall.*

1. Maximum display area: ten percent area of wall area of wall on which sign is mounted.

2. Maximum height: Not above upper wall line.

3. Sign purpose: Identification and information.

4. Maximum number of signs: One per principal use.

(2) *Use for golf course, commercial airport, surface mining, solid waste transfer station. Sign type: Ground.*

a. Maximum display area: 32 square feet.

b. Maximum height: Eight feet.

c. Sign purpose: Identification.

d. Maximum number of signs: One per enterprise.

(3) *Use for manufactured home parks, group housing developments, major subdivisions. Sign type: Ground.*

a. Maximum display area: 40 square feet.

b. Maximum height: Eight feet.

c. Sign purpose: Identification.

d. Maximum number of signs: One per street entrance.

(4) *Use for day care center, adult foster care home, or home occupation in a residential district. Sign type: Wall.*

a. Maximum display area: Four square feet.

b. Maximum height: Not above front wall.

c. Sign purpose: Identification.

d. Maximum number of signs: One.

(5) *Use for individual industrial and commercial establishments.*

a. *Sign type: Wall or projecting.*

1. Maximum display area: 15 percent of wall area of wall on which sign is mounted.
2. Maximum height: not above upper wall line.
3. Sign purpose: Identification.
4. Maximum number of signs: No maximum.

b. *Sign type: Pole.*

1. Maximum display area: 100 square feet.
2. Maximum height: 30 feet.
3. Sign purpose: Identification.
4. Maximum number of signs: one pole or one ground sign. (See note 1.)

c. *Sign type: Ground.*

1. Maximum display area: 75 square feet.
2. Maximum height: 12 feet.
3. Sign purpose: Identification.
4. Maximum number of signs: One pole or one ground sign. (See note 1.)

(6) *Use for shopping center or mall as provided for in section 109-431.*

a. *Sign type: Wall or projecting.*

1. Maximum display area: 15 percent of wall area wall on which sign is mounted.
2. Maximum height: Not above upper wall line.
3. Sign purpose: Identification.
4. Maximum number of signs: No maximum.

b. *Sign type: Pole.*

1. Maximum display area: One square feet for each front foot of building with a maximum of 300 square feet.
2. Maximum height: 50 feet.
3. Sign purpose: Identification of shopping center and/or identification of individual businesses in shopping center.
4. Maximum number of signs: One pole or one ground sign. (See note 1.)

c. *Sign type: Ground.*

1. Maximum display area: One square feet for each front foot of building with a maximum of 300 square feet.
2. Maximum height: 20 feet.
3. Sign purpose: Identification of shopping center and/or identification of individual businesses in shopping center.
4. Maximum number of signs: One pole or one ground sign. (See note 1.)

(7) *Use for industrial parks.*

a. *Sign type: Pole.*

1. Maximum display area: 100 square feet.
2. Maximum height: 30 feet.
3. Sign purpose: Identification.
4. Maximum number of signs: One sign per street entrance.

b. *Sign type: Ground.*

1. Maximum display area: 75 square feet.
2. Maximum height: 12 square feet.
3. Sign purpose: Identification.
4. Maximum number of signs: One sign per street entrance.

Note 1—Corner lots may have one sign on each street with a maximum display area or 100 square feet each.

(Code 1979, § 11:1.912)

Sec. 109-474. - Sign setback requirements.

No portion of any sign shall be placed within six feet of the vertical plane of any interior property line. No portion of any sign shall project beyond the vertical plane of any property line adjacent to a public right-of-way, except as allowed by section 109-468.

(Code 1979, § 11:1.913)

Secs. 109-475—109-501. - Reserved.

ARTICLE VIII. - OFF-STREET PARKING

Sec. 109-502. - Minimum parking spaces by land use.

(a) Except as designated in subsection (b) of this section, no use shall be commenced or enlarged without first providing for and continuously maintaining off-street motor vehicle parking in the amount shown as follows:

Single-family and two-family dwelling and manufactured homes	2 per dwelling unit
Roominghouses, fraternities, sororities, dormitories	0.5 times the maximum lawful number of occupants
Hotels	1.2 per room in addition to spaces required for restaurant facilities
Multiple-family dwellings (except elderly housing)	0.5 per dwelling unit
Elderly housing	0.50 per dwelling unit
Churches, theaters, facilities for spectator sports, auditoriums, concert halls	0.25 times the seating capacity
Golf courses	7 per hole
Barbershops and beauty parlors	2 plus 1.5 per chair
Bowling centers	5 per lane in addition to spaces required for restaurant and bar facilities
Fast food take-out establishments	0.01 times net floor area in square feet
Restaurants (except drive-ins)	1.2 per 100 square feet of net floor area
Furniture, appliance, household equipment, carpet and hardware store, repair shops including shoe repair, contractor's showrooms and offices, museums and galleries.	1.0 per 100 square feet of floor space
Convenience retail:	
Bars and taverns	1.0 per 75 square feet

Gas stations	1 per pump plus 2 per lift (in addition to stopping places adjacent to pumps)
Laundromats	0.5 per washing machine
Doctors' and dentists' offices	3 per 100 square feet of waiting room area and 3 per doctor or dentist
Banks	0.5 per 100 square feet of net floor area
Warehouses	0.75 times maximum number of employees on premises at any one time
Hospitals	1.5 per bed
Convalescent and nursing homes	0.25 per bed
Meeting halls without fixed seats	1 per 25 square feet of net floor area
For uses not specifically listed above, the requirements listed as follows are applicable:	
Retail stores and service	1 per 250 square feet of net floor area and outdoor sales space
Offices	1 per 300 square feet of net floor area plus one for each employee generally on the premises
Other commercial and industrial	0.75 tires maximum number of employees on premises at any one time

Where the proposed use is not listed in the foregoing table, the requirement shall be the same as for the listed use which most closely resembles the proposed use in terms of generating a need for parking places. Where application of the parking requirement as shown in the foregoing table results

in a requirement of a fractional space, any fraction less than one half shall be disregarded and any fraction of one half or more shall require one space.

(b) There shall be an exemption to the requirement set forth in subsection (a) of this section as follows:

(1) In the designated downtown historic district, described as follows: Commencing at the intersection of the south line of Tenth Avenue extended and the west shoreline of Green Bay; thence southeasterly along said shoreline to a point where an extension of the north line of Fourth Avenue will intersect said shoreline; thence southwesterly along the north line of Fourth Avenue to the intersection of said lien and the east line of Second Street; thence northwesterly along the east line of Second Street to its intersection with the south line of Tenth Avenue; thence northeasterly on the south line of Tenth Avenue to the point of beginning. The V. A. Lundgren Jr. land described as: East 55.4, in south line and east 55.5 feet in west line of lot 1 in block 2 of Gewehrs 2nd Addition to the City; municipal water plant land described as: lot 4 and north 84 feet of lot 5, block 1 of Gewehrs 2nd addition to the City; Old C M ST P & P Depot property described as: lots 1, 2, 3 block 6 and lots 18, 19 and 20, block 6, plat of the City; that part of block one of Quimby's Addition to the City formerly occupied by the Washington School building and the land adjacent thereto described as follows: Commencing at the intersection of the west line of Second Street and the north line of Ninth Avenue; thence northwesterly along the west line of Second Street 221 feet; thence west along an established iron mesh fence 122 feet to the westerly end of iron mesh fence; thence southeasterly to a four-inch iron pipe embedded in the center of the gate entryway to school ground located at the north line of Ninth Avenue and which point is 146 feet ten inches from point of beginning; thence east along the north line of Ninth Avenue to the point of beginning.

a. Retail, commercial or other like businesses shall be exempt to the extent that they will not be required to provide the first 20 parking spaces as may be designated by subsection (a) of this section.

b. Residential units shall be exempt provided that land adjacent or contiguous to the building and owned by the building owner shall be used for residential parking for that building. Provided further that any excess residential parking may occur in municipal parking lots within the downtown historic district.

c. The opera house shall be exempt from these provisions.

(2) These exemptions are limited as written such that all other zoning and parking regulations remain in full force and effect.

(Code 1979, §§ 11:1.1001, 11:1.1002)

Sec. 109-503. - Location of off-street parking.

In districts R-1, R-2, R-3 and R-4 required off-street parking shall be provided on the lot on which is located the use to which the parking pertains. In other districts, such parking may be provided either on the same lot or on another lot not in one of the districts listed herein where the lot on which the parking spaces are located and the lot on which the use requiring them is located are not separated by more than 200 feet at their closest points.

(Code 1979, § 11:1.1011)

Sec. 109-504. - Site approval required for parking on another lot.

Where off-street parking is located on a lot other than the lot occupied by the use which requires it, site plan approval for both lots is required.

(Code 1979, § 11:1.1012)

Sec. 109-505. - Storage of vehicles in required parking prohibited.

(a) The use of any required parking space for the storage of any motor vehicle for sale or for any other purpose other than the parking of motor vehicles is prohibited.

(b) All shrubs and bushes must also meet the requirements of all applicable ordinances.

(Code 1979, § 11:1.1013)

Sec. 109-506. - Standards for parking spaces.

The following minimum design standards shall be observed in laying out off-street parking facilities:

Parking Angle	Stall Width (feet)	Aisle Width (feet)	Parking Stall Length (feet)	Curb to Curb (feet)
0 to 15	9	12	23	30
16 to 37	9	11	19	47
36 to 5	9	13	19	54
58 to 74	9	18	19	61
75 to 90	9	24	19	63

(Code 1979, § 11:1.1014)

Sec. 109-507. - Parking in front setback prohibited.

Off-street parking is not permitted in residential districts between any street and the front setback line except upon a driveway.

(Code 1979, § 11:1.1015)

Sec. 109-508. - Parking near property line.

No parking space shall be located within three feet of any lot line, and curbs or wheel stops shall be maintained to prevent any part of a parked vehicle from encroaching on this area. For purposes of measurement and location, a parking space shall be considered as extending three feet beyond a curb or

wheel stop where the space is so oriented that the end of a motor vehicle will project over it when the space is used as intended.

(Code 1979, § 11:1.1016)

Sec. 109-509. - Paving of parking and loading areas required.

Except in districts R-1, R-2 and R-3, all driveways, parking areas and loading areas shall be paved with bituminous or concrete surfacing.

(Code 1979, § 11:1.1017)

Sec. 109-510. - Parking area illumination.

All parking area illumination shall be confined within and directed only onto the parking area.

(Code 1979, § 11:1.1018)

Sec. 109-511. - Zoning board of appeals may reduce off-street parking requirements.

The zoning board of appeals shall have power, upon written application of the owner of any lot, to reduce the amount of off-street parking required thereon upon a showing that, due to the particular circumstances of the situation, the requirement of the article is excessive. It shall also have power to modify the paving requirement upon a showing that the parking area will have light use and will create no dust or other nuisance. It may attach such reasonable condition to any relief granted as is necessary to carry out the spirit and purpose of this article, including a requirement, where the number of required parking spaces is reduced, that an area be graded and maintained as lawn without trees, in such fashion that it can be made into a parking area if necessary. Any relief granted under this subsection may be modified or revoked at any time, but not until the owner of the lot has been given ten days' notice of the proposed action and an opportunity to be heard at the meeting at which such action is proposed.

(Code 1979, § 11:1.1019)

Sec. 109-512. - Parking allowed only in identifiable parking areas.

Off-street parking is permitted only in identifiable parking areas with paved or gravel surfaces. In districts R-1 and R-2, there shall be no more than four parking spaces on any lot.

(Code 1979, § 11:1.1020)

Sec. 109-513. - Off-street loading and waiting areas.

Except as otherwise allowed by a permit issued by the chief of police, no nonresidential use shall be commenced or enlarged without making adequate provision for any truck unloading or waiting that is likely to result from the conduct of that use. Loading and waiting areas shall be provided in sufficient amount that it will be unnecessary for trucks to use public streets or alleys, required motor vehicle parking spaces or driveway access to them or, except in districts M-1 and M-2, any area between any front lot line and the front setback line for waiting, loading or unloading.

(Code 1979, § 11:1.1022)

Sec. 109-514. - Reserve capacity.

No land use which incorporates a drive-through service in its operation shall be commenced or enlarged without first providing for and continuously maintaining reservoir areas in the following amounts in order that cars waiting for entry to the facility do not obstruct traffic on adjacent streets:

Minimum Reserve Spaces by Land Use	
Land Use	Spaces Required
Drive-through bank	5 spaces per drive
Drive-through restaurant	6 spaces per window
Drive-through automatic car wash	9 spaces
Other drive-through facilities	3 spaces

(Code 1979, § 11:1.1023)

Secs. 109-515—109-536. - Reserved.

ARTICLE IX. - SUPPLEMENTARY REGULATIONS

DIVISION 1. - GENERALLY

Sec. 109-537. - Access to a street.

All lots of record created after May 9, 2004, shall have frontage on a public street.

(Code 1979, § 11:1.511)

Sec. 109-538. - Rear dwelling prohibited.

No building in the rear of and on the same lot with a principal building shall be used for residential purposes except for watchmen, caretakers and domestic employees whose employment is related to the functions of the principal building, provided that all other requirements of this article are satisfied.

(Code 1979, § 11:1.512)

Sec. 109-539. - Unsafe buildings.

Nothing in this article shall prevent compliance with an order by an appropriate authority to demolish, correct, improve, strengthen or restore to a safe condition any building declared to be unsafe.

(Code 1979, § 11:1.513)

Sec. 109-540. - Grading and filling of property.

The final grade surface of ground areas remaining after the construction of a building or structure and any earth changes made in connection with the use of land shall be designed and landscaped such that surface water flows away from the building or structure and is collected or managed in a manner which avoids: any increase in surface water discharge onto adjacent properties or public roads, the erosion of or filling of any road ditch; the blockage of any public watercourse; the creation of standing water over a private sewage disposal drainage field, and any unnecessary impoundment of surface water. When it is determined by the code enforcement officer, after consultation with the City engineer, that inadequate surface water control exists, no certificate of occupancy shall be issued until the situation is corrected and approved by the code enforcement officer.

(Code 1979, § 11:1.514)

Sec. 109-541. - Required water supply and sanitary sewerage facilities.

After May 9, 2004, no structure for human occupancy shall be erected, altered or moved upon any lot or premises and used in whole or in part for dwelling, business, industrial or recreational purposes unless it shall be provided with a safe, potable water supply and with a safe and effective means of collection, treatment and disposal of human excreta and domestic, commercial and industrial wastes. All such installations and facilities shall conform with the minimum requirements of the Delta-Menominee District Health Department, state department of public health and/or department of environmental quality.

(Code 1979, § 11:1.515)

Sec. 109-542. - Soil erosion and sedimentation.

All development in all districts shall conform to part 91 of the Natural Resources and Environmental Protection Act (MCL 324.9101 et seq.), the State Soil Erosion and Sedimentation Control Act.

(Code 1979, § 11:1.516)

Sec. 109-543. - Use of structure for temporary dwellings.

No structure shall be used for dwelling purposes that does not meet the minimum standards, as defined in this article, article III of chapter 103 (property maintenance code), and the Stille-Derossett-Hale Single Construction Code Act (MCL 125.1501 et seq.). No garage or other accessory building, trailer coach, cellar, basement, tent, cabin, partial structure, whether of a fixed or portable construction, shall be erected or moved onto a lot and used for any dwelling purpose for any length of time. The terms "cellar" and "basement," as used in this section, shall not be construed to include earth-sheltered homes.

(Code 1979, § 11:1.517)

Sec. 109-544. - Temporary buildings.

Application to erect or install temporary buildings or structures for use during the construction process, for uses incidental to construction work, shall be included in the permit application for the construction to which they pertain. Such temporary buildings or structures shall be removed prior to a certificate of occupancy being issued for the construction to which they pertain. Temporary structures for

other purposes may be erected only pursuant to a variance granted by the construction board of appeals, and shall comply with the provisions of the building code governing temporary structures.

(Code 1979, § 11:1.518)

Sec. 109-545. - Vegetation.

(a) *Required planting screens.* Except in districts R-1, R-2, R-3 and PL, wherever any parking, loading, trash collection, outdoor storage, merchandising or service area lies within 50 feet of any R-1, R-2 or R-3 district, a planting screen of sufficient length to interfere with the view thereof from the adjoining district shall be required unless the view is otherwise blocked. Where, because of intense shade or soil conditions, a planting screen cannot be expected to thrive, a wooden fence or masonry will be substituted.

(b) *Planting screen specifications.*

(1) All planting screens required by this article shall consist of plants at least 30 inches high when planted, maintained in a healthy condition and so pruned as to provide maximum opacity from the ground to a height of five feet. One of the plant materials in the following list shall be used and plants shall be located no farther apart than the distance indicated in each case.

Plant	Distance Apart (feet)
Multiflora Rose	2
Forsythia	3
Lilac	3
Privet	1½
Arbor Vitae	4
Barberry	3
Pfitzer Juniper	4
Scotch Pine	5

(2) Substitution of other plant materials shall be permitted only upon certification by the code enforcement officer that the proposed planting can be expected to thrive and provide equivalent screening and will create no nuisance or hazard.

(c) *Required tree plantings.* In every zoning district in which there is a required percentage of lot area devoted to landscaped open space, one tree is required for each 2,000 square feet or fraction thereof

on each lot. Such trees are required whenever any improvement is made which requires site plan approval. All trees required by this section shall be at least ten feet high when planted after May 9, 2004, and shall be maintained in a healthy condition. They shall not be pruned, except to remove dead wood, in such a manner to prevent growth to a height of at least 15 feet or to reduce existing height below 15 feet. Where new tree plantings are otherwise required, existing trees having a height of at least eight feet may be counted as required trees if not of one of the varieties prohibited below and if the earth under their branches remains undisturbed. The following varieties of trees are prohibited in meeting the requirements of this section: poplars, willows, American elms, seed bearing locusts, box elders and any species which does not normally grow to a height of 15 feet in the City.

(d) *Time of completion; maintenance.* All tree plantings and planting screens required by this article shall be installed prior to occupancy or commencement of use, where compliance with the preceding sentence is not possible because of the season of the year, the code enforcement officer shall grant an appropriate delay, but shall issue no permanent certificate of occupancy until completion of all required plantings. Any zoning compliance permit or certificate of occupancy may be revoked, after 30 days' written notice, whenever planting screens or required tree plantings are not maintained as required in this article.

(Code 1979, §§ 11:1.1030—11:1.1033)

Secs. 109-546—109-568. - Reserved.

DIVISION 2. - USE REGULATIONS

Sec. 109-569. - Accessory buildings; allowable area.

(a) The total area of all accessory buildings which are accessory to a one-family or two-family dwelling, together with the area of any garages which may be part of the one-family or two-family dwelling, when added together shall not exceed 900 square feet unless the dwelling is located on a lot with an area exceeding 10,000 square feet in area; in which case, the total area of accessory buildings and attached garages may not exceed nine percent of the area of the lot, or 1,100 square feet, whichever is less.

(b) The total area of all accessory buildings which are accessory to a multiple-family dwelling, together with any attached garages which may be part of the multiple-family dwelling, when added together shall not exceed 400 square feet per dwelling unit.

(Code 1979, § 11:1.521)

Sec. 109-570. - Parking of commercial vehicles in residential districts.

The parking and/or storage, other than in the public right-of-way, of any vehicle with a gross vehicle weight rating (GVWR) of 10,000 pounds or more is not permitted to exceed four hours in any 24-hour period in any residential district.

(Code 1979, § 11:1.522)

Sec. 109-571. - Parking in front and other yards.

(a) The parking and/or storage of recreational vehicles, snowmobiles, motorcycles, scooters, three and four wheelers, boats, golf carts and other similar vehicles is not permitted in any front yard of any dwelling. The parking and/or storage of said vehicles elsewhere on the lot is permitted, providing applicable side and rear yard setbacks are met as they pertain to accessory buildings, and also providing that said vehicles are operable.

Note— Parking in a driveway, not to exceed 48 hours during any seven day period is exempt from these provisions.

(b) Long term parking and storage of recreational vehicles in a driveway is allowed if special circumstances exist.

(Code 1979, § 11:1.523)

Sec. 109-572. - Lots divided between two or more districts.

For any lot existing when this section was originally enacted which is divided into two or more districts by this division, and which is less than 20,000 square feet in area, the owner may, at his option, use the entire lot for any purpose allowed by this division for any portion of the lot.

(Code 1979, § 11:1.524)

Secs. 109-573—109-592. - Reserved.

DIVISION 3. - AREA REGULATIONS

Sec. 109-593. - Exception to required lot area for residential districts.

Any residential lot created prior to May 9, 2004, may be used for any permitted use even though the lot area and/or dimensions are less than those required for the district in which the lot is located provided:

(1) That the other dimensional requirements of the district are met;

(2) That no contiguous land or lot is owned by the owner of the lot in question;

(3) That no lot shall be so reduced in area that the required open spaces will be smaller than those established as a minimum for the district in which the lot is located; and

(4) That any lot so excepted shall be no less than 40 feet in width, at the street line.

(Code 1979, § 11:1.531)

Sec. 109-594. - Lot area can be allocated once.

(a) No portion of a lot can be used more than once in complying with the provisions for lot area and yard dimensions for the construction of a proposed building or the alteration of an existing building.

(b) Where a residential use exists as a nonconforming use, other uses shall not be commenced or continued within the required front, rear, and side yards of the principal residential structure as stated in this division for the district having the smallest yard requirement in which the existing residential use would be a use by right if it were located in said district.

(c) Where a minimum area requirement for any use is specified in this division, no other use shall be commenced within that required area.

(Code 1979, § 11:1.532)

Sec. 109-595. - Lot division.

The division or reduction in size of a lot is prohibited, unless approved following application to the planning commission. The application shall be on a form approved by the planning commission, and shall be filed with the City assessor. No building permit shall be issued or any building construction commenced on any lot or residual created by division of a lot prior to planning commission approval. No lot shall be divided in such a way that any new or residual lot resulting from the division fails to comply with the minimum dimensions or lot area herein prescribed. The division of a lot resulting in a parcel of land that is smaller in area than prescribed herein may be permitted only if the nonconforming parcel so created is added to an adjacent existing lot. The application shall so state and shall be in affidavit form.

(Code 1979, § 11:1.533)

Secs. 109-596—109-623. - Reserved.

DIVISION 4. - YARDS

Sec. 109-624. - Rear yard reduction.

When there is a public alley at the rear of a lot upon which the lot abuts for its full width, measurements of the depth of the rear yard may be made to the centerline of such alley.

(Code 1979, § 11:1.541)

Sec. 109-625. - Permitted yard encroachments.

(a) Paved areas, patios and porches without roofs shall not be subject to side and rear yard requirements provided:

(1) The paved area, patio, or porch is without walls, parapets or other forms of enclosure, except guardrails meeting the minimum requirements of the building code or fences as allowed by this division;

(2) The highest finished elevation of the paved area, patio, or porch is not over four feet above the average surrounding finished ground grade; and

(3) No portion of any paved area, patio, or porch, except a paved driveway, is closer than five feet to any lot line. A paved driveway shall be set back two feet from any property line which does not abut a public road or alley.

(b) Enclosed porches and unenclosed porches with roofs shall be considered an integral part of the building and shall, therefore, be subject to all yard and area dimensional requirements established for principal buildings.

(c) Special structural elements such as cornices, sills, belt courses, chimneys, gutters, eaves, pilasters and similar structural features may project into any yard a maximum of 1½ feet, provided that they are at least 1½ feet from any property line.

(d) Outside stairways and balconies which are unenclosed and without roofs, and which connect to floors above the first floor may project into the yard area a maximum of five feet, provided that they are at least 1½ feet from any property line.

(e) Porches which are without roofs and without walls, parapets or other forms of enclosure except guardrails meeting the minimum requirements of the building code may project into a front yard a maximum of six feet, provided that they are at least five feet from any front property line. Exception: The porch may be roofed if it does not exceed eight feet in width, measured parallel to the front line of the building.

(f) Stairways not exceeding eight feet in width, leading from ground level to a porch or landing at or below the level of the first floor shall be allowed in the required front yard, provided that the stairway is without a roof and the lowest riser of the stairway is at least three feet from the front property line.

(Code 1979, § 11:1.542)

Sec. 109-626. - Other uses prohibited in residential yards.

Where residential uses exist in districts where other uses are permitted, whether or not the residential use is conforming in that district, no other use shall be conducted in whole or in part in those portions of the lot lying between the principal building and any street. For corner lots, this prohibition shall extend to the area of the lot lying between the street property lines and the front building lines of the principal building.

(Code 1979, § 11:1.543)

Secs. 109-627—109-655. - Reserved.

DIVISION 5. - HEIGHT

Sec. 109-656. - Permitted exceptions; structural appurtenances.

(a) The following structural appurtenances shall be permitted to exceed the height limitations:

(1) Ornamental in purpose, such as church spires, belfries, cupolas, domes, ornamental towers, flag poles and monuments.

(2) Appurtenances to mechanical or structural functions, such as chimneys and smoke stacks, water tanks, elevator and stairwell penthouses, ventilators, bulkheads, radio towers, masts, aerials, television antennas, fire and hose towers and cooling towers.

(3) Commercial freestanding towers when not attached to a building or structure, shall be constructed in compliance with state and federal regulations pertinent thereto.

(4) Freestanding towers, such as TV or radio towers, intended primarily to serve the occupants of the main structure, shall not exceed 1½ times the structural height limitations for structures in that district.

(b) Height exceptions for other structural appurtenances may be authorized by the code enforcement officer or planning commission, as applicable, during site plan review only when all of the following conditions are satisfied:

(1) No portion of any building or structure, permitted as an exception to a height limitation, shall be used for human occupancy or for commercial enterprise.

(2) Any structural exception to height limitations shall be erected only to such height as may be necessary to accomplish the purpose it is intended to serve, so as not to become a hazard.

(3) If the roof area of structural elements permitted to exceed the height limitations exceed 20 percent of the gross roof area, they shall be considered as integral parts of the whole structure and thereby shall not exceed the height limitations.

(Code 1979, § 11:1.551)

Sec. 109-657. - Residential structures in residential districts.

There shall be no height exceptions permitted for residential structures in residential districts.

(Code 1979, § 11:1.552)

Sec. 109-658. - Business and industrial districts.

(a) In any business or industrial district, any principal building may be erected to a height in excess of that specified for the district, provided each front, side and rear yard is increased one foot for each one foot of such additional height.

(b) In those districts not requiring one or more yard setbacks, any portion of a principal building may be erected to a height in excess of that specified for that particular district, provided that such portion is set back from all street, lot and required yard lines one foot for each foot of additional height.

(Code 1979, § 11:1.553)

Secs. 109-659—109-689. - Reserved.

DIVISION 6. - FENCES, WALLS, HEDGES AND FENCE SCREENS

Sec. 109-690. - Compliance; permit required.

It shall be unlawful for any person to construct or cause to have constructed any fence, wall, hedge or fence screen upon any property within the City, except in accordance with the requirements provided herein. Any person desiring to build or cause to be built a fence upon property in the City shall first apply to the office of the code enforcement officer for a permit. The applicant, in fulfillment of the permit requirements, shall provide the code enforcement officer with any information necessary for the determination of whether the erection of the proposed fence would be contrary to the provisions of this division and the state construction code.

(Code 1979, § 11:1.560)

Sec. 109-691. - Variances.

The board of appeals may authorize a variance of any of the requirements of this division upon request, providing the standards established in division 3 of article II of this chapter are fully met.

(Code 1979, § 11:1.564)

Sec. 109-692. - Fence permits.

(a) *Application.* An application for a fence permit shall be made to the office of the code enforcement officer by submission of a form designed for this purpose. The owner of the property on which the fence is proposed to be located or his agent or lessee shall submit an application. Said application shall contain the following information:

(1) Property owner's name and address;

(2) Applicant's name, address and phone number;

(3) Address and legal description of the property on which the fence is proposed;

(4) Location of fence, including distances from property boundaries;

(5) Height and length of fence;

(6) Complete construction plans and specifications for the fence; and

(7) Survey of property or other information determined necessary to locate property lines.

(b) *Review of applications.* The code enforcement officer shall review all properly filed applications for fence permits and issue permits only for those applicants fully meeting the criteria established in this division and the state construction code. The code enforcement officer shall approve or reject.

(c) *Fees.* A schedule of permit fees shall be established and amended from time to time to reflect the cost of administering this division, by resolution of the City Council.

(Code 1979, §§ 11:1.561—11:1.563)

Sec. 109-693. - Specifications for fences, walls, hedges and fence screens.

(a) In this section, the term "fence" means any fence, wall, hedge or fence screen.

(b) No part of a fence, wall, hedge or fence screen shall intrude into or break the vertical plane at the property line. Shrubs and trees planted for the purpose of creating a hedge shall be planted so that the trunk or main stem of the plant is no closer than three feet from any property line.

(c) No fence, wall, hedge or fence screen shall hereafter be erected within a required front yard in excess of 48 inches in height or which obstruct vision to an extent which exceeds 50 percent. This subsection does not prevent fences which obstruct vision to an extent not greater than 20 percent, with no part or element of the fence greater than six inches in its maximum diameter or width.

(d) No fence, wall, hedge or fence screen shall hereafter be erected within a required side yard in excess of 48 inches in height. This subsection does not prevent fences in a required side yard which are located at least 12 feet from any dwelling on an adjoining parcel of land (measured perpendicular to the fence).

(e) No fence shall hereafter be erected in excess of six feet in height in a D-1 or residential district.

(f) All fences hereafter erected adjacent to an alley shall be set back a minimum of ten feet from the centerline of an alley.

(g) Fences in residential districts shall not contain barbed wire or chainlink fences with sharp wire edges exposed.

(h) Fences located in a required side or rear yard in an industrial or commercial district may be extended to ten feet without restriction as to solid matter or closed construction.

(i) Decorative or ornamental sides of fence, wall and fence screen shall face the adjoining properties (face the outside). This subsection does not apply to fences fronting on an alley.

(Code 1979, § 11:1.565)

Sec. 109-694. - General requirements.

(a) No fence shall be constructed or maintained which is charged or connected with an electrical current.

(b) No fence, wall, sign, screen or any planting shall be erected or maintained in such a way as to obstruct vision between a height of three feet and ten feet within the triangular area formed by the intersection of the street right-of-way lines and a line connecting two points which are located on those intersecting right-of-way lines 30 feet from the point of intersection of the right-of-way lines. The three-foot height limit shall be measured from the lowest elevation of the segment or the intersecting roads' centerline which lies between the point of intersection of the other centerline and the extension of line drawn through the points 30 feet from the intersection of the right-of-way lines. This subsection does not apply to fences which obstruct vision to an extent not greater than 20 percent, with no part or element of the fence greater than six inches in its maximum diameter or width.

(c) Except in a residential district, no fence, wall, sign, screen or any planting shall be erected or maintained in such a way as to obstruct vision between a height of three and ten feet within the triangular area formed by the intersection of a street right-of-way line and a driveway and a line connecting two points which are located on the right-of-way line and the driveway 20 feet from the point of intersection of the right-of-way line and the driveway. The three-foot height limit shall be measured from the lowest elevation of the segment of the intersecting road and the driveway's extension of the line drawn through the points 20 feet from the intersection of the right-of-way line and the driveway. This subsection does not apply to fences which obstruct vision to an extent not greater than 20 percent, with no part or element of the fence greater than six inches in its maximum diameter or width.

(Code 1979, § 11:1.566)

Sec. 109-695. - Maintenance of nuisance prohibited.

(a) Fences shall be located and maintained so as not to endanger life or property.

(b) Any fence which, through lack of repair, type of construction or otherwise, endangers life or property is hereby declared a nuisance, and unsafe.

(c) Any fence which through dilapidation shall become out of plumb at an angle greater than 30 degrees from the vertical is hereby declared a nuisance, and unsafe.

(d) If unsafe conditions exist in regard to a fence, the code enforcement officer shall serve on the owner, agent, or person in control of the property upon which the fence is located a written notice describing the unsafe condition and specifying the required repairs or modifications to be made to render the fence safe, or requiring the unsafe fence or any portion thereof to be removed, and shall provide a time limit for such repair, modification or removal.

(Code 1979, § 11:1.567)

Secs. 109-696—109-718. - Reserved.

DIVISION 7. - REQUIREMENTS FOR SPECIFIC USES

Sec. 109-719. - Home occupations.

(a) *Definition.* In this section, the term "home occupation" means a use conducted entirely within an enclosed dwelling, employing only inhabitants of the dwelling except as indicated in this section, which is clearly incidental and secondary to residential occupancy and does not change the character of the dwelling, and which complies with all of the requirements of this section. The term "home occupation" includes the use of a single-family residence by an occupant of that residence for a home occupation to give instruction in a craft or fine art within the residence.

(b) *Location.* Home occupations are permitted in the following districts: R-1, R-2, R-3, R-4, D-1, and in existing nonconforming residential uses in other districts.

(c) *Intent.* It is the intent of this section to eliminate as home occupations all uses except those which conform to the standards set forth in this section, in order to maintain the character of a neighborhood, avoid nuisance to neighbors, and reduce strain on public funds. Custom and tradition are intentionally excluded as criteria. In general, a home occupation is an accessory use so located and conducted that the average neighbor, under normal circumstances, would not be aware of its existence other than an announcement or identification sign in accordance with the sign provisions of this division. The standards for home occupations are intended to ensure compatibility with other permitted uses as clearly secondary or incidental status in relation to the residential use of the principal building as the criteria for determining whether a proposed accessory use qualifies as a home occupation.

(d) *Standards.*

(1) No persons other than members of the immediate household permanently occupying the dwelling shall be employed in the home occupation, except as allowed in subsection (f) of this section.

(2) No more than 50 percent of the area of one story of the principal building shall be devoted to the home occupation, not to exceed 600 square feet.

(3) The outdoor storage of materials and outdoor activities shall not be permitted, except as allowed in subsection (f) of this section.

(4) Dwelling units other than single-family residences housing home occupations which generate traffic and result in customers shall have an exterior entrance which is exclusive to that dwelling and accessible to the public.

(5) No home occupation shall create noise, dust, vibration, smell, smoke, glare, electrical interference, excessive vehicular traffic or any hazard or nuisance to any greater or more frequent extent than that usually experienced in any average residential district under normal circumstances where no home occupations exist.

(6) No home occupation (use) shall be permitted which would change the fire rating of the dwelling.

(7) The home occupation shall be conducted entirely within the principal building that is used as the residential dwelling.

(8) An accessory building may be used for storage of items incidental to the home occupation and shall not exceed 600 square feet.

(9) No home occupations shall be permitted which utilizes explosives or hazardous substances or results in the production of explosives or hazardous materials.

(e) *Registration.* All persons intending to conduct a home occupation shall register the home occupation with the code enforcement officer.

(f) *Day care homes.* The uses defined in section 109-1 as family day care homes and group day care homes shall be considered to be a home occupation for purposes of enforcement of this Code. An outdoor play area shall be permitted. A group day care home may employ one individual who is not an inhabitant of the dwelling in which the day care activity is conducted.

(Code 1979, § 11:1.581)

Sec. 109-720. - Echo apartments.

(a) *Defined.* Please refer to section 109-1.

(b) *Location.* Echo apartments are permitted in single-family dwellings only.

(c) *Intent.* It is the intent of this section to allow echo apartments in households where, because of advancing age, illness or death of a spouse or other family member, assistance or companionship is needed. The individual requiring the assistance may reside in either the echo apartment or the principle dwelling unit.

(d) *Standards.*

(1) No alteration or conversion of the area devoted to the echo apartment shall take place without the acquisition of a building permit.

(2) The echo apartment may continue as long as the medical or other reason for allowing the echo apartment exists. Upon cessation of the medical or other condition, the echo apartment shall be converted for use exclusively as a single-family residence.

(Code 1979, § 11:1.582)

Sec. 109-721. - Public service installations.

(a) *Structures included.* This section applies to public utility transfer stations and substations, gas regulator stations and radio, television and microwave transmitting and receiving apparatus, but excluding freestanding towers.

(b) *Location.* All districts.

(c) *Standards.*

(1) The lot area and width shall not be less than that specified for the district in which the proposed use is located.

(2) The yard and setback requirements shall not be less than that specified for the district in which the proposed use is located.

(3) No building shall be erected to a height greater than that permitted in the district in which the proposed use is located.

(4) Not more than 30 percent of the lot area may be covered by buildings.

(5) All buildings shall be harmonious in appearance with any surrounding residential area and screened by suitable plant material and shall be fenced as approved by the planning commission.

(6) Where mechanical equipment is located in the open, it shall be screened from any surrounding residential area by suitable plant material and shall be fenced as approved by the planning commission.

(7) All signs and off-street parking shall be in compliance with this chapter.

(Code 1979, § 11:1.583)

Sec. 109-722. - Public recreation and playground areas.

The following provisions apply to public recreation and playground areas:

(1) *Location.* R-2, R-3, R-4 and D-1.

(2) *Standards.*

a. The proposed site shall be at least 20,000 square feet in size.

b. Playground areas shall be provided with a four-foot fence along streets and adjacent property lines.

c. Buildings and structures shall meet the dimensional requirements of the district in which they are located.

d. All buildings shall be harmonious with the surrounding residential area.

e. All signs and parking shall comply with this chapter.

(Code 1979, § 11:1.584)

Sec. 109-723. - Lodginghouses and boardinghouses.

The following provisions apply to lodginghouses and boardinghouses:

(1) *Location.* R-2, R-3 and D-I.

(2) *Standards.*

a. Subject dwelling shall be occupied by a resident family.

b. No more than four nontransient roomers may be accommodated in the dwelling.

c. A proposed parking plan shall be reviewed and approved by the code enforcement officer prior to the boarding of any nontransient roomers. Parking spaces for all vehicles must be accommodated on the subject parcel and will not be permitted in the front yard.

(Code 1979, § 11:1.585)

Sec. 109-724. - Automobile/gasoline service station and automobile repair/commercial garages.

The following provisions apply to automobile/gasoline service station and automobile repair/commercial garages:

(1) *Location.* D-1, C-1 and C-2.

(2) *Standards.* All automobile/gasoline service stations and automobile repair/commercial garages shall comply with the following standards:

a. The minimum site size shall be 10,000 square feet, unless gasoline is sold, in which case, the minimum site size shall be 15,000 square feet, and in addition, meet the following:

1. Have 500 square feet of site area for each additional pump over four and an additional 1,000 square feet for each service bay over two.

2. Where convenience retail is included as a use, there shall be one parking space or an additional 200 square feet for each 50 square feet of retail sales area.

b. The minimum site width shall be 100 feet, unless gasoline is sold, in which case the minimum site width shall be 150 feet.

c. Building and structure setbacks: Fuel dispensers shall be set back no less than 50 feet from all street or highway right-of-way lines and shall be no closer than 25 feet from any property line.

d. Access drives: There shall be no more than two access driveway approaches from each public street, each of which shall be no less than ten feet nor wider than 40 feet in width at the property line.

1. The entire service area shall be paved with a permanent surface of concrete or asphalt.

2. No driveway or curb cut shall be located within 15 feet of an adjoining property line.

3. Any two driveways shall be separated by at least 20 feet.

e. Tree lawn areas, except where crossed by access drives, shall be planted and maintained as lawn or landscaped areas, and shall not be paved.

f. All equipment, including hydraulic hoist, pits, greasing and washing areas, repair bays and the like, shall be fully enclosed within a building.

g. All activities, except those carried on at the gas pump, shall take place within a fully enclosed building.

h. All sign and name plates shall comply with section 109-463.

(Code 1979, § 11:1.586)

Sec. 109-725. - Adult entertainment.

No adult book store, adult motion picture theater, adult cabaret, establishment selling beer or intoxicating liquor for consumption on the premises, pawn shop, pool hall or billiard hall, tattoo parlor, adult video rental, shoe shine parlor or dance hall shall be established after May 9, 2004, within 1,000

feet of any existing such use or within 500 feet of any residential use. These requirements may be reduced or waived by the board of appeals if it determines that the proposed use will not be contrary to the public interest or injurious to nearby properties and that the spirit and purpose of this article will be observed, that the proposed use will not enlarge or encourage the development of a skid row area, that the establishment of the proposed use will not be contrary to any program of neighborhood conservation or urban renewal program and that all applicable regulations of this chapter will be observed.

(Code 1979, § 11:1.587)

Sec. 109-726. - Fast food establishments without drive-through service.

The following provisions apply to fast food establishments without drive-through service:

(1) *Locations.* C-1, C-2 and D-1.

(2) *Standards.* The standards and requirements set forth in section 109-426, fast food establishments with a drive-through service are applicable to this use.

(Code 1979, § 11:1.588)

Sec. 109-727. - Open outdoor storage, contractor yards, wood yards, building materials sales (with outdoor storage).

The following provisions apply to open outdoor storage, contractor yards, wood yards, building materials sales (with outdoor storage):

(1) *Locations.* C-1, C-2 and D-1.

(2) *Standards.* Please refer to section 109-429, lumber and building supply yards with outdoor storage, heavy construction contractor establishments and open outdoor storage for standards and requirements applicable to uses falling under this chapter.

(Code 1979, § 11:1.589)

Sec. 109-728. - Jobbing and machine shops and research and development laboratories.

The following provisions apply to jobbing and machine shops and research and development laboratories:

(1) *Locations.* C-1 and M-1.

(2) *Standards.*

a. Shall conform to the performance standards contained in section 109-423.

b. The manufacturing, testing or development of explosive materials is prohibited.

c. Outdoor activities and the storage of materials is prohibited.

(Code 1979, § 11:1.590)

Sec. 109-729. - Individual self-storage facilities.

The following provisions apply to individual self-storage facilities:

(1) *Location.* M-1, C-1, C-2, and D-1.

(2) *Standards.*

a. The use of the premises shall be limited to storage of personal property only, and shall not be used for operating any other business or activity, or for storage of merchandise or stock-in-trade.

b. No storage of combustible or flammable liquids, combustible fibers or explosive materials as defined in the fire prevention code shall be permitted within the self-storage facility. A permanent placard shall be placed within each individual storage unit notifying the tenant of this prohibition.

c. No storage outside of a self-storage building shall be permitted.

d. The maximum building height of any structure shall be 20 feet.

e. No building shall be located closer than 20 feet to any property line, except that where the property line abuts a residential district, then no building shall be located closer than 40 feet to the contiguous residential-zoned property.

f. Where the site abuts a residential district, there shall be provided a six-foot high chainlink fence.

g. All areas of the property subject to vehicular traffic shall be paved with concrete or bituminous paving.

h. Maximum lot coverage shall not exceed 40 percent.

(Code 1979, § 11:1.591)

Sec. 109-730. - Vehicle sales.

The following provisions apply to vehicle sales:

(1) *Location.* C-1.

(2) *Standards.*

a. The minimum area devoted exclusively to this use shall be 15,000 square feet.

b. The minimum frontage of the area devoted to this use on a single public street shall be 100 feet.

c. Every site devoted to this use shall be provided with a building of at least 600 square feet, containing a toilet room meeting the requirements of the state building code and the sanitary code of the Delta-Menominee District Health Department, one service bay with minimum dimension of 16 by 24 feet, and an office area where business is conducted.

d. All outdoor areas used for the display of vehicles for sale, as well as drives and customer parking areas, shall be paved with concrete or bituminous paving.

(Code 1979, § 11:1.592)

Sec. 109-731. - Borrow pits.

The following provisions apply to borrow pits:

(1) *Location.* All districts.

(2) *Standards.*

a. Excavated material shall not be removed from a lot within the City except for purposes of site development of the lot from which the excavated material originates, as part of a specific construction or development project otherwise permitted by this chapter.

b. If, when completed, the proposed excavation will meet the definition of a pond as stated in this chapter, the resulting pond shall comply with the standards set forth in section 109-732.

c. Prior to the removal of more than 500 cubic yards of excavated material from a lot, written application for a zoning permit shall be made to the code enforcement officer by the owner of the lot from which excavated material is to be removed, or by the owner's agent. The application shall state:

1. The quantity of excavated material to be removed.
2. The reason for removal of the excavated material.
3. The final grade of the lot from which the material is to be removed, in the form of a topographic drawing.
4. The property or properties where the excavated material will be deposited.
5. A description of the materials to be removed.

(Code 1979, § 11:1.593)

Sec. 109-732. - Ponds.

The following provisions apply to ponds:

(1) *Location.* All districts.

(2) *Standards.*

a. A pond shall not be constructed on a lot less than one acre in size.

b. A pond having a slope steeper than one foot vertical to four feet horizontal between a line placed eight feet inland and parallel to the water's edge and a bottom contour line placed at six-foot depth shall be enclosed as required by the building code for private swimming pools.

c. A pond shall not be constructed within 50 feet of any property line.

(Code 1979, § 11:1.594)

CODE COMPARATIVE TABLE

1979 CODE

This table gives the location within this Code of those sections of the 1979 Code, as supplemented through July 17, 2011, which are included herein.

1979 Code Section	Section in Code
1:1.0	1-1

1:2.1	1-2
1:2.3(1)	1-8
1:2.3(3)	1-3
1:2.3(20)	1-8
1:2.4	1-5
1:2.5(1), (2)	1-7
1:2.5(3)(a)	14-174
1:2.5(3)(b)	1-7
	14-175
1:2.5(3)(c)	14-175
1:2.8	1-7
1:2.10	1-2
1:3.2, 1:3.3	2-73, 2-74
1:3.4(1), (2)	2-75
1:3.5	2-76
1:3.6(1), (2)	2-77
1:3.7(1), (2)	2-78
1:3.13	2-79
1:4.2	107-1
1:5.1	8-1

1:8.1(1), 1:8.1(2)	2-278, 2-279
1:8.1(3)—(6)	2-280
1:8.2	28-23
1:8.3	24-1
1:8.5(1)—1:8.5(5)	16-25—16-29
1:8.5(6)—(8)	16-28
1:8.6(1)—1:8.6(4)	2-309—2-312
1:8.7(1), 1:8.7(2)	101-23, 101-24
1:8.9(2), 1:8.9(3)	2-254, 2-255
1:8.9(21)	2-256
1:8.11	103-21
1:8.12	12-1
1:8.13(1)—1:8.13(4)	2-225—2-228
1:8.13(5), 1:8.13(6)	2-227
1:8.13(7), 1:8.13(8)	2-229, 2-230
1:8.14(1)—1:8.14(8)	2-343—2-350
1:10.1	2-40
1:11	2-106
1:11.1, 1:11.2	2-103, 2-104
1:11.3	2-102

1:11.4, 1:11.5	2-108, 2-109
1:11.6	2-105
1:11.7, 1:11.8	2-110, 2-111
1:11.10	2-107
2:1.1	4-1
2:1.2	4-24
2:1.3(A)—(J)	4-56
2:1.3(L)—(O)	
2:1.4	4-54
2:1.5	4-25
2:1.6, 2:1.7	4-64, 4-65
2:1.10	4-66
2:1.12	4-67
2:1.13(1)(f)	4-54
2:1.13(A)(1)	4-23
2:1.13(A)(1)(a)	4-55
2:1.13(A)(1)(b)—2:1.13(A)(1)(g)	4-57—4-61
2:1.13(A)(2), 2:1.13(A)(3)	4-62, 4-63
2:1.13(C)	4-2
2:1.14	4-64

2:1.15(A)—(C)	4-68
2:3.1	14-1
2:4.1(1)	14-120
2:4.2	4-64
2:4.2(1)	14-94
2:4.2(3)—2:4.2(5)	14-117—14-119
2:4.2(6)	14-91
2:4.2(7)	14-174
2:4.2(8)	14-92
2:4.2(9)	14-58
2:4.2(11)	14-144
2:4.3(1)	14-121
2:4.4	14-122
2:5.1(1)—2:5.1(5)	12-21—12-25
2:5.2(1)—2:5.2(3)	12-54—12-56
2:5.2(5)—2:5.2(7)	12-57—12-59
2:5.3(1)	12-78
2:5.3(2)—2:5.3(4)	12-77—12-79
2:5.4(1)	14-93
2:6.1(1)—(4)	14-56

2:6.2(1)	28-1
2:6.3	14-57
2:6.5	14-90
2:6.6	14-146
2:6.7	14-145
2:7.1(1), 2:7.1(2)	10-40, 10-41
2:7.1(3)—2:7.1(5)	10-41—10-43
2:7.1(6)—(9)	10-41
2:7.1(10)	10-44
2:8.1(1)	14-2
2:9.1(1)—(3)	18-1
3:2.0—3:2.12	103-101— 103-112
3:3.6	103-1
3:6.1, 3:6.2	103-50, 103-51
4:2.1	6-19
4:2.2(1), (2)	6-20
4:2.2(3)	6-21
4:3.0	6-47
4:3.1	6-80
4:3.2	6-46

4:3.3, 4:3.4	6-81, 6-82
4:3.5	6-84
4:3.5(1)	6-50
4:3.6—4:3.8	6-51
4:3.10, 4:3.11	6-52, 6-53
4:3.12	6-83
4:3.13	6-48
4:3.14(1)	6-49
5:1.1(1), 5:1.1(2)	16-1, 16-2
5:1.1(3)	16-48
5:1.1(4)—(7)	16-49
5:1.1(8)	16-51
5:1.1(9)	16-56
5:1.1(10)	16-52
5:1.1(11), 5:1.1(12)	16-58, 16-59
5:1.1(13)	16-47
5:1.1(14)(a)—(e)	16-54
5:1.1(15), (16)	16-50
5:1.1(17)	16-53
5:1.1(18)	16-57

5:1.1(19)	16-53
5:1.1(20)	16-55
5:2.2(A)—5:2.2(D)	16-77—16-80
5:3.2(1)	14-143
5:3.3(1)—(3)	26-100
5:3.4 (1)—(3)	16-3
7:2.2	22-2
7:4.1(1)	22-131
7:4.1(2)—(4)	22-132
7:4.1(5)—7:4.1(7)	22-133—22-135
7:4.1(8)(a)—7:4.1(8)(d)	22-136—22-139
7:4.1(9)	22-140
7:4.1(10)(a)—(d)	22-141
7:4.1(10)(e)	22-142
7:4.1(11)—7:4.1(13)	22-143—22-145
7:4.1(14)	22-145
7:5.1(1)	22-49
7:5.1(3)	22-49
7:5.2, 7:5.3	22-50, 22-51
7:6.1	22-1

7:6.1, 7:6.2	22-76, 22-77
8:2.1(1)—8:2.1(20)	20-1—20-20
8:2.2(1)—8:2.2(8)	22-23—22-30
8:6.2 (1)—(3)	2-257
9:1	26-1
9:1.1(1.1(1), (2))	26-46
9:1.1(1.1(3)), 9:1.1(1.1(4))	26-47, 26-48
9:1.1(1.1(11)), 9:1.1(1.1(12))	26-72, 26-73
9:1.1(1.1(13))	26-2
9:1.1(1.1(14))—9:1.1(1.1(16))	26-129—26-131
9:1.1(1.1(17))—9:1.1(1.1(28))	26-161—26-172
9:1.1(1.1(29)), 9:1.1(1.1(30))	26-74, 26-75
9:1.1(1.1(31))	26-99
9:1.1(1.1(32), (33)), 9:1.1(1.1(34))	26-3, 26-4
9:1.1(1.1(35))	26-76
9:2.1, 9:2.2	26-96, 26-97
9:2.4	26-98
9:2.5	26-49
10:1.0(1)—(4)	28-24

10:1.1—10:1.3	28-52—28-54
10:1.4	28-89
10:1.5, 10:1.6	28-87, 28-88
10:1.6.1	28-86
10:1.6.2, 10:1.6.3	28-84, 28-85
10:1.9	28-2
10:1.01, 10:1.02	28-82, 28-83
10:3.1, 10:3.2	18-21, 18-22
10:3.3	18-26
10:3.4—10:3.9	18-27
10:3.10—10:3.12	18-23—18-25
10:3.13	18-28
10:4.1, 10:4.2	22-99, 22-100
10:4.3	22-98
10:4.4—10:4.11	22-104—22-111
10:4.12—10:4.15	22-111—22-114
10:4.16—10:4.18	22-101—22-103
11:1.102	109-3
11:1.103	109-32
11:1.104	109-4

11:1.105	109-32
11:1.107, 11:1.108	109-5, 109-6
11:1.201—11:1.203(E)	109-1
11:1.301	109-34
11:1.302	109-33
11:1.303	109-35
11:1.310	109-36
11:1.320	109-69
11:1.331—11:1.333	109-66—109-68
11:1.334	109-38
11:1.335	109-37
11:1.340, 11:1.341	109-70, 109-71
11:1.342	109-65
11:1.351	109-35
11:1.352	109-2
11:1.360	109-31
11:1.411, 11:1.412	109-101, 109-102
11:1.414, 11:1.415	109-103, 109-104
11:1.421—11:1.427	109-105— 109-111

11:1.431—11:1.436	109-136— 109-141
11:1.437, 11:1.438	109-166, 109-167
11:1.511—11:1.518	109-537— 109-544
11:1.521—11:1.524	109-569— 109-572
11:1.531—11:1.533	109-593— 109-595
11:1.541—11:1.543	109-624— 109-626
11:1.551—11:1.553	109-656— 109-658
11:1.560	109-690
11:1.561—11:1.563	109-692
11:1.564	109-691
11:1.565—11:1.567	109-693— 109-695
11:1.581—11:1.594	109-719— 109-732
11:1.602—11:1.605	109-300— 109-303
11:1.606, 11:1.607	109-325, 109-326
11:1.610—11:1.612	109-327

11:1.620—11:1.622	109-328
11:1.630—11:1.632	109-329
11:1.640—11:1.642	109-330
11:1.650—11:1.654	109-331
11:1.660—11:1.662	109-332
11:1.670—11:1.672	109-333
11:1.681—11:1.683	109-334
11:1.690—11:1.692	109-335
11:1.695—11:1.697	109-336
11:1.702	109-361
11:1.703—11:1.709	109-387— 109-393
11:1.710	109-362
11:1.711	109-394
11:1.712	109-363
11:1.720	109-364
11:1.730	109-417
11:1.732—11:1.746	109-418— 109-432
11:1.801	109-188
11:1.811—11:1.813	109-189— 109-191

11:1.900	109-463
11:1.901—11:1.904	109-466
11:1.905	109-464
11:1.906—11:1.913	109-467— 109-474
11:1.1001, 11:1.1002	109-502
11:1.1011—11:1.1020	109-503— 109-512
11:1.1022, 11:1.1023	109-513, 109-514
11:1.1030—11:1.1033	109-545
11:1.1101	109-260
11:1.1103—11:1.1110	109-261— 109-268
11:1.1201	105-2
11:1.1202	105-1
11:1.1203	105-55
11:1.1204(1)—11:1.1204(3)	105-27—105-30
11:1.1204(3)	105-32
11:1.1205	105-31
11:1.1206	105-4
11:1.1211—11:1.1215	105-56—105-60

11:1.1220	105-61
11:1.1221	105-3
11:1.1222, 11:1.1223	105-53, 105-54
11:1.1301	109-221
11:1.1311—11:1.1313	109-222
11:1.1321—11:1.1323	109-223— 109-225
11:1.1331	109-226
11:1.1340	109-227
11:1.1359, 11:1.1360	109-228, 109-229
11:1.1370, 11:1.1371	109-230, 109-231
11:1.1380	109-232
11:1.1390	109-233
12:1.2, 12:1.3	1-7
12:1.6, 12:1.7	1-7

CODE COMPARATIVE TABLE

ORDINANCES

This table gives the location within this Code of those ordinances which are included herein.

Ordinance Number	Adoption Date	Section	Section in Code
	8-21-2000(Ord.)	1	26-1
		3, 4	26-1
		6	26-1
	6-20-2005(Ord.)	9	2-106
	7-18-2011(Ord.)		2-309—2-312
2013-1	1-21-2013	1—7 Added	Adopt. Ord., pg. xi
2019-003	6-26-2019	I—IV Added	11-1—11-4

STATE LAW REFERENCE TABLE

This table shows the location within the Charter and Code, either in the text or notes following the text, of references to the Michigan Compiled Laws (MCL).

MCL Section	Section in Code
8.3 et seq.	1-2
8.3u	1-9
8.4a	1-4
8.4b	1-3
8.5	1-8
15.231 et seq.	22-102

	22-104
	105-30
	105-53
15.261 et seq.	Char. § 2.10
	105-30
	105-53
15.321 et seq.	Char. § 7.01
	2-108
15.341 et seq.	Ch. 2, Art. III, Div. 3
15.342a	2-102
28.601 et seq.	2-79
30.401 et seq.	Ch. 10
	Ch. 10, Art. II
36.1 et seq.	109-1
117.1 et seq.	Ch. 2
117.3(a)	Char. Art. II— Char. Art. IV
	Char. § 2.02
	Char. § 2.03
117.3(b)	Char. § 6.01

117.3(c)	Char. Art. VI
117.3(e)	Char. § 6.02
117.3(g)	Char. § 5.01a
117.3(h)	Char. § 5.03
117.3(i)	Char. § 1.04
117.3(k)	Char. § 2.10
	Char. § 2.14
	1-7
	26-1
	103-50
117.3(n)	Char. § 5.02a
117.4i(k)	26-1
117.4l	1-7
117.5b	1-1
117.21—117.25	Char. § 2.15
	Char. § 10.01
123.361 et seq.	Ch. 18
	Ch. 18, Art. II
123.1101 et seq.	14-90, 14-91
124.651 et seq.	Ch. 2, Art. VI, Div. 5

124.3101 et seq.	109-4
	109-32
125.539 et seq.	Ch. 12, Art. II
125.651 et seq.	2-311
125.651	2-309
125.652	2-309
125.653	2-309
125.654(2)	2-310
125.655	2-311
125.659	2-312
125.1351	4-56
125.1501 et seq.	Ch. 103
	Ch. 103, Art. II
	103-22
	105-31
	105-56
	109-65
125.1501	109-543
125.1504	103-51
125.1514	103-21

125.1651 et seq.	Ch. 2, Art. VI, Div. 3
	2-257
125.1652	2-254
125.1654	2-255
125.1667(2)	2-257
125.2301 et seq.	109-1
125.3101 et seq.	Ch. 109
	109-36
	109-101
	109-109
	109-138
	109-167
	109-221
	109-228
	109-230, 109-231
	109-233
	109-388
	109-390
125.3101(t)	109-1

125.3103	109-229
125.3201	Ch. 109, Art. IV, Ch. 109, Art. V
125.3202	Ch. 109, Art. II, Div. 5
	Ch. 109, Art. VI
	109-229
125.3208	Ch. 109, Art. III
125.3210	109-4
125.3306	109-229
125.3401 et seq.	Ch. 109, Art. II, Div. 5
125.3403	109-231
125.3407	109-2
125.3501	Ch. 109, Art. II, Div. 4
125.3505	109-104
125.3601 et seq.	Ch. 109, Art. II, Div. 3
125.3601	109-101, 109-102
	109-105
125.3603	109-104

	109-106
	109-110
125.3604	Ch. 109, Art. II, Div. 3, Subdiv. II
	109-167
125.3801 et seq.	101-23
	109-34
	109-36
125.3811 et seq.	Ch. 101, Art. II
125.3811	101-23
125.3815	101-24
141.101 et seq.	28-24
141.421 et seq.	Char. Art. V
141.121	28-54
141.421a et seq.	Ch. 2, Art. V
141.2101 et seq.	Char. Art. V
	Ch. 2, Art. V
168.1 et seq.	Char. Art. VI
	Char. § 6.01
	Ch. 8
168.25 et seq.	Char. § 6.01

168.491 et seq.	Char. § 6.01
168.559 et seq.	Char. § 6.01
168.654 et seq.	Char. § 6.02
169.720	Char. § 6.01
211.1 et seq.	2-149
	Ch. 24
211.10 et seq.	2-73
211.28—211.33	Char. § 1.04
211.28 et seq.	24-1
211.741 et seq.	20-8
211.741	12-23
247.61 et seq.	Ch. 12, Art. IV
	12-77
247.651 et seq.	22-112
	22-131
257.1 et seq.	Ch. 26
	26-1
257.252a et seq.	Ch. 12, Art. III
257.605	Ch. 26
	26-1

257.606	Ch. 26
	26-1
257.606(1)(a)	Ch. 26, Art. IV
257.625(1)(c)	26-1
257.606(1)(i)	Ch. 26, Art. V
257.653	26-165
257.656 et seq.	Ch. 26, Art. V
257.672 et seq.	Ch. 26, Art. IV
287.261 et seq.	Ch. 4
287.290	Ch. 4, Art. III
289.1101 et seq.	22-76, 22-77
324.4301	Ch. 18
	Ch. 18, Art. II
324.8901 et seq.	Ch. 18
	Ch. 18, Art. II
	18-1
	18-23, 18-24
	26-2
324.9101 et seq.	109-542
324.9301 et seq.	109-390

324.11501 et seq.	Ch. 18
324.30301 et seq.	109-390
324.32301 et seq.	109-390
324.32501 et seq.	109-390
324.45101 et seq.	109-390
324.82101 et seq.	26-3, 26-4
330.1001 et seq.	109-1
333.6523	14-123
333.7104	14-145
333.12751(c)	28-88
333.12754	28-84
333.20101 et seq.	109-1
333.27951	11-2
—	11-3
338.1051 et seq.	Ch. 10
	Ch. 10, Art. II
339.205	105-56—105-59
	105-61
339.214	105-54
399.201 et seq.	Ch. 105

399.201a	105-1
399.202	105-2
399.203	105-53
399.204	Ch. 105, Art. II
	105-27, 105-28
399.205(3)	105-31
399.206	105-4
399.211	105-61
399.215	105-3
400.55	109-1
400.703	109-1
400.726a(1)	109-1
436.1105	14-145
436.1703	14-146
436.1803	16-53
445.371 et seq.	Ch. 6, Art. III
484.2251	22-104
484.3101 et seq.	Ch. 22, Art. V
	22-98, 22-99
484.3104(2)	22-101

484.3104(3)	22-107
484.3105(3)	22-104
484.3106(2)	22-104
484.3106(6)	22-105
484.3106(7)	22-108
484.3108	22-110, 22-111
484.3110(4), 484.3110(5)	22-112, 22-113
484.3113(4)	22-111
484.3113(6)	22-114
484.3115	22-105
484.3115(2)	22-103
484.3115(5)	22-109
560.256 et seq.	22-1
600.181	2-147
600.2940	Ch. 12
600.3801 et seq.	Ch. 12
600.4001 et seq.	2-147
600.6001 et seq.	2-147
600.8302	2-147
600.8395	26-96

600.8701 et seq.	1-7
	Ch. 2, Art. IV
	2-42
600.8701	2-136
600.8703	2-137
600.8705	2-138
600.8707	2-139
600.8710	2-140
600.8715	2-141
600.8717	2-142
600.8719	2-143
600.8721	2-144
600.8723	2-145
600.8725	2-146
600.8727	2-147
600.8729	2-148
600.8731	2-149
600.8735	2-150
710.21 et seq.	109-1
722.111 et seq.	109-1

722.115(7)	109-1
722.751 et seq.	14-1
750.49 et seq.	4-64
750.141a	14-145
750.167(1)(e)	14-123
750.167(1)(l)	14-117
750.169	14-119
750.222	14-90, 14-91
750.335a	14-143
750.377a et seq.	14-58
	16-52
750.479	14-174
750.493d	14-93
750.502c	16-54
750.546 et seq.	14-56, 14-57
764.9c	2-41