

VILLAGE OF BIRCH RUN, MICHIGAN

CODE OF ORDINANCES

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THE CHARTER

10.000

CHARTER

Village of Birch Run, Michigan

char. Eff. Dec. 5, 1955

Preamble. We, the people of the Village of Birch Run, by virtue of authority of the Constitution and Public Act 278 of 1909, as amended, do hereby ordain and establish this home rule charter for the Village of Birch Run.

10.010

CHAPTER 1

NAME AND BOUNDARIES

10.011 Sec. 1.1 NAME AND BOUNDARIES.

The name of this village shall be the Village of Birch Run. It shall include within its limits the territory hereinafter described, together with such territory as may from time to time be attached thereto, and less such territory as may from time to time be detached therefrom, in accordance with statute:

“Commencing at the Northwest corner of the Northeast quarter (1/4) of Section Thirty (30), Town Ten (10) North, Range Six (6) East, in Birch Run Township, Saginaw County, Michigan, running thence South on the North and South quarter (1/4) line of said section to the East and West quarter (1/4) line of said section, thence East on said East and West quarter (1/4) line to a point on the so-called County Drain Five Hundred Sixty-Two (562) feet West of the East section line of said section, thence Southeasterly along the center line of said drain to a point One Hundred Sixty-Five (165) feet South of said East and West quarter line and Five Hundred and Two (502) feet West of the East line of Said section, running thence East Two Hundred Eighty-Two (282) feet, thence North Ninety-Nine (99) feet, thence East Two Hundred Twenty (220) feet to the East line of said section, thence North on said section line Sixty-Six (66) feet to the East and West quarter (1/4) line of said Section Thirty (30), thence East on the East and West quarter (1/4) line of Section Twenty-Nine (29), Town Ten (10) North, Range Six (6) East, to the East section line of said Section Twenty-Nine (29), thence North along said East section line of said Section Twenty-Nine (29), to the Northeast corner of said Section Twenty-Nine (29), thence continuing North on the East section line of Section Twenty (20), Town Ten 10 North, Range Six (6) East, One Hundred (100) rods, thence West parallel with the South line of said section Eighty (80) rods to the East one-eighth (1/8) line thence North on said East one-eighth (1/8) line Sixty (60) rods to the East and West quarter (1/4) line of said Section Twenty (20), thence West on said East and West quarter (1/4) line of said Section Twenty (20) to the West one-eighth (1/8) line of said Section Twenty (20), thence North along said West one-eighth (1/8) line to the North one-eighth (1/8) line of said Section Twenty (20), thence West on said North one-eighth (1/8) line to the West line of said Section Twenty (20), thence continuing West on the North one-eighth (1/8) line of Section Nineteen (19), Town Ten (10) North, Range

Six (6) East to the North and South quarter (1/4) line of said Section Nineteen (19), and thence South on said North and South quarter (1/4) line of said Section Nineteen (19) to the point of beginning, being a part of Sections Nineteen (19), Twenty (20), Twenty-Nine (29), and Thirty (30), of Town Ten (10) North, Range Six (6) East, Township of Birch Run, Saginaw County, Michigan.

(char. eff. Dec. 5, 1955)

10.030

CHAPTER 2

MUNICIPAL POWERS

10.031 Sec. 2.1 GENERAL POWERS.

Unless otherwise provided or limited in this charter, the village and its officers shall possess and be vested with any and all powers, privileges and immunities, expressed or implied, which villages and their officers are, or hereafter may be, permitted to exercise or to provide for in their charters under statute and constitution, including all powers, privileges and immunities which villages are, or may be, permitted to provide in their charters under the Constitution and statute, including all the powers, privileges and immunities granted to villages and their officers by Public Act 3 of 1895, and including all powers, privileges and immunities which villages are, or may be, permitted to provide in their charters by Public Act 278 of 1909, as fully and completely as though these powers, privileges and immunities were specifically enumerated and provided for in this charter, and in no case shall any enumeration of particular powers, privileges or immunities herein be held to be exclusive.

The village and its officers shall have power to exercise all municipal powers in the management and control of municipal property and in the administration of the municipal government, whether such powers be herein expressly enumerated or not; to do any act to advance the interest of the village, the good government and prosperity of the municipality and its inhabitants; to make all laws which shall be necessary and proper for carrying into execution the foregoing powers and all other powers vested by the Constitution in villages, except where forbidden, or where the subject is covered exclusively by a general law.

(char. eff. Dec. 5, 1955)

10.032 Sec. 2.2 FURTHER DEFINITION OF POWERS.

In addition to the powers possessed by the village under statute and Constitution, and those set forth throughout this charter, the village shall have power with respect to and may, by ordinance and other lawful acts of its officers, provide for the following subject to any specific limitation placed thereon by this charter:

(a) The regulation of trade, occupations and amusements within its boundaries, including the sale of intoxicating liquors and the number of licenses to be issued therefor, and for suppressing saloons for the sale of spiritous and intoxicating liquors;

(b) The use, enjoyment, regulation, improvement and control of the surface of its streets, alleys, public ways and other public places and of the space above and beneath them, within the limits of the village;

(c) The acquisition by purchase, gift, condemnation, lease, construction, or in any manner permitted by statute, of private property of every type and nature for public use, which property may be located within or without the County of Saginaw and which may be required for or incidental to the present or future exercise of the purposes, powers and duties of the city, either proprietary or otherwise; for the maintenance, development, operation, leasing and disposal of village property subject to any restrictions placed thereon by statute or this charter; provided, specifically, that if it shall be necessary to take and appropriate private property for the public uses or purposes specified in this section, the right to occupy and hold the same, and the ownership therein and thereto, may be acquired by the village in the manner, and with like effect, as provided by the general laws of this state relating to the taking of private property for public use in cities and villages, including Chapter XIII of Public Act 3 of 1895.

(d) The selling and delivering of water, heat, power and light without its corporate limits to an amount not to exceed that permitted by statute and the Constitution;

(e) The use upon the payment of reasonable compensation, by others than the owners, of property located in the streets; alleys and public places and used in the operation of a public utility; a plan of streets and alleys within its limits;

(g) The use, control and regulation of streams, water and watercourses within its boundaries, but not so as to conflict with the laws or actions thereunder where a navigable stream is bridged or dammed;

(h) The enforcement of all such local, police, sanitary and other regulations as are not in conflict with the general laws;

(i) The prohibiting or regulating of the use, occupancy, sanitation and parking of house trailers within the village, and the right of the village to so regulate any house trailer shall not be abrogated because of any detachment thereof from its wheels or because of placing it on, or attaching it to the ground by means of any temporary or permanent foundation or in any manner whatsoever.

(char. eff. Dec. 5, 1955)

10.033 Sec. 2.3 FURTHER DEFINITION OF POWERS.

In accordance with the authority granted in Section 25 of Public Act 278 of 1909, the following sections of Public Act 3 of 1895, which is a statute of Michigan which relates to the powers or government of villages generally, are hereby adopted as part of this charter by the following reference thereto, but the village shall not be subject to any limitations or restrictions of said act except as provided in this charter, and this recitation of powers shall not be held to be exclusive.

- (a) Section 1 of Chapter VII (67.1 C.L. 1948), which section lists certain specific powers of villages and their Councils;
- (b) Section 2 of Chapter VII, (67.2 C.L. 1948), which section grants the Council authority with regard to the issuance of licenses and providing for the support and relief of the poor;
- (c) Section 3 of Chapter VII (67.3 C.L. 1948), which section gives the Council authority to provide and maintain animal pounds.
- (d) Section 8 of Chapter VU (67.8 C.L. 1948), which section gives the Council control of sidewalks in the villages.
- (e) Sections 9 and 10 of Chapter VII (67.9 and 67.10 C.L. 1948), which sections give the Council power to require owners and occupants of premises to remove snow and ice from the sidewalks in front of or adjacent to such premises and provide for enforcement of such power; and for such purposes the Council shall be the Board of Special Assessors referred to therein;
- (f) Sections 48, 49 and 50 of Chapter VII (67.48, 67.49 and 67.50 C.L. 1948), which sections give the Council power to prevent and remove or abate nuisances within the village and provides for enforcement of such power;
- (g) Section 51 of Chapter VII (67.51 C.L. 1948), which section gives the Council control over the location of offensive trades.

(char. eff. Dec. 5, 1955)

10.034 Sec. 2.4 INTERGOVERNMENTAL CONTRACTS.

The village shall have the power to join with any governmental unit or agency, or with any number or combination thereof, by contract or otherwise as may be permitted by law, to have performed (a) jointly, or (b) by one or more of them for or on behalf of the other or others, or (c) by any other person, firm or corporation, any function, which is permitted to be so performed by law by such governmental unit or agency.

(char. eff. Dec. 5, 1955)

10.035 Sec. 2.5 OUTSIDE FIRE PROTECTION.

In the exercise of the powers contained in Section 2.1, the Council shall have the right to contract with persons, firms, corporations or governing bodies to furnish fire protection to property outside the village boundaries for a fair consideration, if the Council shall find that the financial interests of the village are advanced by obtaining payments therefor; or that the prosperity of the municipality and the inhabitants are advanced through preventing a conflagration which might spread within the village or through protecting from fire, industrial or commercial properties at which residents of the village are employed.

(char. eff. Dec. 5, 1955)

10.060

CHAPTER 3

ELECTIONS

10.061 Sec. 3.1 ELECTION DISTRICTS: VOTING PRECINCTS.

The village shall constitute one election district and one voting precinct, except that the Council may by ordinance establish additional precincts, not in excess of the minimum number required by law. The Council shall fix the location of the polling places.

(char. eff. Dec. 5, 1955)

10.062 Sec. 3.2 QUALIFICATIONS OF ELECTORS.

The residents of the village having the qualifications of electors in the State of Michigan shall be electors of the village.

(char. eff. Dec. 5, 1955)

10.063 Sec. 3.3 ELECTION PROCEDURES.

The election of all village officers shall be on a nonpartisan basis. The general election statutes shall apply to and control, as near as may be, all procedures relating to registration and election except as such statutes relate to political parties or partisan procedure and except as otherwise provided in this charter.

(char. eff. Dec. 5, 1955)

10.064 Sec. 3.4 ELECTION DATES.

A regular village election shall be held on the second Monday in March in each odd numbered year.

(char. eff. Dec. 5, 1950)

10.065 Sec. 3.5 ELECTIVE OFFICERS AND TERMS OF OFFICE.

The elective officers of the village shall be a Village Council of five members, one of whom shall be elected by the Council as Village President. At each regular village election, three Councilmen shall be elected on a single ballot. Each elector shall be entitled to vote for not more than three candidates. The two candidates receiving the highest number of votes shall be elected for a term of four years and the candidate receiving the third highest number of votes shall be elected for a term of two years, all such terms to commence on the Monday next following the date of such election.

(char. eff. Dec. 5, 1955)

10.066 Sec. 3.6 NOMINATIONS.

The method of nomination of the elective officers shall be by petition signed by not less than fifteen nor more than twenty-five qualified electors of the village. No person shall sign his name to a greater number of petitions for office than there will be persons elected to said office at said election. Where the signature of any individual appears on more petitions than he is so permitted to sign, such signatures shall be counted only to the extent he is so permitted to sign in the order of the respective dates of filing the petitions containing such signatures.

Nomination petitions shall be filed with the Clerk between the fortieth day preceding such election and five o'clock in the afternoon on the thirtieth day preceding such election. The Clerk shall publish notice of the last day so permitted for filing petitions at least one week before, and not more than three weeks before such last day.

The form of petition shall be substantially as that designated by the Secretary of State for the nomination of nonpartisan judicial officers. A supply of official petition forms shall be provided by the Clerk.

(char. eff. Dec. 5, 1955)

10.067 Sec. 3.7 APPROVAL OF PETITIONS.

The Clerk shall accept only nomination petitions which conform with the form provided and maintained by him and which, considered together, contain the required number of valid signatures for candidates having those qualifications required for elective office by this charter. When a petition is filed by a person other than the person whose name appears thereon as candidate, it may be accepted only when accompanied by the written consent of the candidate. The Clerk shall, forthwith after the filing of a petition, notify in writing any candidate whose petition is then known not to meet the requirements of this charter, but the failure to so notify any candidate shall in no way prevent final determination that the petition does not meet such requirements.

Within five days after the last date for filing petitions, the Clerk shall make his final determination as to the validity and sufficiency of each nomination petition and whether or not the candidate has the qualifications required for office by this charter and shall write his determinations thereof on the face of the petition. The Clerk shall immediately notify in writing the candidate whose name appears thereon of his determinations. Such notice to any candidate whose petition is found invalid or insufficient shall be delivered by personal messenger if possible. Any candidate whose petition is so found invalid or insufficient shall be allowed to file supplementary or replacement petitions before five o'clock in the afternoon on the fifth day after the last date for filing original petitions; thereafter no further petitions may be filed.

The names of the candidates who file valid and sufficient nomination petitions shall be certified by the Clerk to the Election Commission to be placed upon the ballot for the next subsequent regular village election or the next special election for the filling of vacancies in office, as the case may be.

In the event that the number of petitions filed for any election does not equal or exceed twice the number of such offices to be filled at such election, the Council shall, by resolution, nominate such additional qualified persons as maybe necessary to make the number of candidates equal to twice the number of offices to be filled. Such resolution shall be passed within one week after the last day for filing supplementary petitions for such election. Persons so nominated by the Council shall qualify as candidates only if they file with the Clerk within three days after such nomination their written consent thereto.

(char. eff. Dec. 5, 1955)

10.068 Sec. 3.8 ELECTION COMMISSION.

The Election Commission shall consist of the Clerk, the Treasurer and the Chief of Police, of which the Clerk shall be Chairman. Such Commission shall have the duties and powers conferred on Village Election Commissions by statute.

(char. eff. Dec. 5, 1955)

10.069 Sec. 3.9 ELECTION INSPECTORS.

The Council shall before each election appoint for each precinct of the village a Board of Inspectors of Election consisting of not less than three qualified electors, and shall fix their compensation.

(char. eff. Dec. 5, 1955)

10.070 Sec. 3.10 NOTICE OF ELECTIONS.

Notice of the time and place of holding any village election and of the officers to be elected and the questions and propositions to be voted upon shall be given by the Clerk by publishing such notice not less than ten days prior to such election.

(char. eff. Dec. 5, 1955)

10.071 Sec. 3.11 VOTING HOURS.

The polls of all elections shall be opened and closed at the time prescribed by statute for the opening and closing of polls at state elections.

(char. eff. Dec. 5, 1955)

10.072 Sec. 3.12. FORM OF BALLOT.

The form, printing, and numbering of ballots in all village elections shall conform as nearly as may be to that prescribed by statute, except that no party designation or emblem shall appear. In all elections, the names of qualified candidates shall be rotated systematically, in the manner prescribed by statute for rotation of names.

(char. eff. Dec. 5, 1955)

10.073 Sec. 3.13 SPECIAL ELECTIONS.

Special village elections shall be held when called by resolution of the Council at least forty days in advance of such election, or when required by this charter or statute. Any resolution calling a special election shall set forth the purpose of such election. The Council shall not call more special elections within any year than the number permitted by statute.

(char. eff. Dec. 5, 1955)

10.074 Sec. 3.14 CANVASS OF VOTES.

The Council shall be the Board of Canvassers to canvass the votes at village elections. It shall meet at seven-thirty in the evening on the day following each village election and publicly canvass the returns of such election and determine the results of the election upon each question and proposition voted upon and what persons are duly elected to the several offices, and shall notify in writing the successful candidates of their election. The number of candidates for Council equal to the number to be elected who receive the highest number of votes shall be elected. The Clerk shall make under the corporate seal of the village duplicate certificates of the determinations of the Board and shall file one certificate with the County Clerk and the other in his own office.

(char. eff. Dec. 5, 1955)

10.075 Sec. 3.15 RECOUNT.

A recount of the votes cast at any village election for any office or upon any proposition may be had in accordance with election statutes. Unless otherwise required by statute, (1) a recount petition shall be filed with the Clerk by five o'clock in the afternoon on the second full day after the Board of Canvassers has made its official report, (2) any counter petition shall be filed by five o'clock in the afternoon on the next full day thereafter, and (3) no officer shall be qualified to take office until the final determination of any recount of the votes cast for such office.

(char. eff. Dec. 5, 1955)

10.076 Sec. 3.16 RECALL.

Any elected official may be recalled from office by the electors of the village in the manner provided by statute. A vacancy created by such recall shall be filled in the manner prescribed by statute.

(char. eff. Dec. 5, 1955)

10.100

CHAPTER 4

ORGANIZATION OF GOVERNMENT

10.101 Sec. 4.1 THE COUNCIL.

There shall be a Council of five members, one of whom shall serve as President. The Council shall constitute the legislative and governing body of the village and shall have power and authority, except as otherwise provided in this charter or by statute, to exercise all powers conferred upon or possessed by the city, and shall have the power and authority to adopt such laws, ordinances and resolutions as it shall deem proper in the exercise thereof. In all cases where the word "Council" is used in this charter, the same shall be synonymous with any other term used in any statute or federal law in referring to municipal legislative or governing bodies.

(char. eff. Dec. 5, 1955)

10.102 Sec. 4.2 COMPENSATION OF PRESIDENT AND COUNCILMEN.

Each Councilman shall receive as compensation not more than \$25.00 for each regular and special meeting of the Council which he attends and that the compensation of the Village President in addition to that compensation received as a member of the Council shall be fixed by the Council within the limits of budget appropriations. Such salaries shall be paid monthly and, except as otherwise provided in this charter, shall constitute the only compensation which they may be paid for the discharge of any official duty for or on behalf of the village during their tenure of office except in the case of (a) a Councilman who may be elected Clerk and (b) Councilmen who are members of the Fire Department. The President and Councilmen may, however, upon order of the Council, be paid such necessary bona fide expenses incurred in service in behalf of the village as are authorized and itemized.

(char. eff. Dec. 5, 1955; amend. by ord. eff. Mar. 8, 1971)

10.103 Sec. 4.3 ELECTION OF PRESIDENT.

The Council shall at its first meeting following each regular village election elect one of its members to serve as President for a term expiring at the first Council meeting following the next regular village election. In the event of absence or disability of the President, the Council may designate another of its members to serve as acting President during such absence or disability.

(char. eff. Dec. 5, 1955)

10.104 Sec. 4.4 DUTIES OF PRESIDENT.

The duties of the President shall be as follows:

- (a) Insofar as required by statute, and for all ceremonial purposes, he shall be the executive head of the village;
- (b) He shall have a voice and vote in the proceedings of the Council equal with that of the other members of the Council, but shall have no veto power. He shall be the presiding officer of the Council.
- (c) He shall be the conservator of the peace and may in emergencies exercise within the village the powers conferred upon sheriffs to suppress riots and disorder, and shall have the authority to command the assistance of all able-bodied citizens to aid in the enforcement of the ordinances of the village and to suppress riot and disorder.
- (d) He shall execute or authenticate by his signature such instruments as the Council, this charter or any statute or law of the United States shall require.
- (e) He shall exercise only such powers as this charter or the Council shall specifically confer upon him, except as may be required by statute.

(char. eff. Dec. 5, 1955)

10.105 Sec. 4.5 ADMINISTRATIVE SERVICE.

The administrative officers of the village shall be the Clerk, Treasurer, Assessor, Chief of Police, Fire Chief, Superintendent of Public Works and such additional administrative officers as may be created by ordinance or resolution. The Council may combine any administrative offices in any manner it deems necessary or advisable for the proper and efficient operation of the village, except that the offices of Clerk and Treasurer shall not be combined nor shall one person hold both such offices.

The Council shall elect a Clerk for an indefinite period who shall serve at its pleasure. The compensation of the Village Clerk shall be fixed by the Council within the limits of budget appropriations. All other administrative officers shall be appointed by the Council for an indefinite period, shall serve at the pleasure of the Council and shall have their compensation fixed by the Council. Except as may be otherwise provided by statute or this charter, the Council shall by resolution establish such departments of the village as it deems necessary or advisable and shall prescribe therein the functions of each department and the duties, authorities and responsibilities of the officers of each.

All personnel employed by the village who are not elected officers or declared to be administrative officers by, or under the authority of, this section shall be deemed to be employees. All employees of the village shall be employed and discharged by the Council upon the recommendation of the administrative officer in charge of the department in which such employees work, or is to work.

(char. eff. Dec. 5, 1955; amend. by ord. eff. Mar. 8, 1971)

10.106 Sec. 4.6 CLERK: FUNCTIONS AND DUTIES.

The functions and the duties of the Clerk shall be as follows:

- (a) He shall be the Clerk of the Council and shall attend all meetings of the Council and shall keep a permanent journal of its proceedings in the English language.
- (b) He shall be custodian of the village seal, and shall affix it to all documents and instruments requiring the seal and shall attest the same. He shall be custodian of all papers, documents and records pertaining to the village, the custody of which is not otherwise provided for.
- (c) He shall certify by his signature all resolutions and ordinances enacted by the Council.
- (d) He shall, unless assigned by ordinance to another officer, be responsible for maintaining the system of accounts of the village, which shall conform to any uniform system required by law and to generally accepted principles and procedures of governmental

accounting. He shall make a monthly financial statement to the Council.

(e) He shall have power to administer oaths of office.

(f) He shall perform such other duties as may be prescribed by him by this charter or by the Council.

(char. eff. Dec. 5, 1955)

10.107 Sec. 4.7 TREASURER: FUNCTIONS AND DUTIES.

The functions and duties of the Treasurer shall be as follows:

(a) He shall have custody of all moneys of the village and all evidences of indebtedness belonging to the village or held in trust by the village.

(b) He shall collect all moneys of the village the collection of which is not provided for elsewhere by charter or ordinances. He shall receive from other officers and employees of the village all money belonging to and receivable by the villages that may be collected by them, including fines, license fees, taxes, assessments and all other charges. All money shall be turned over to the Treasurer promptly after collection or receipt and he shall in all cases give a receipt therefor.

(c) He shall disburse all village funds in accordance with the provisions of statute, this charter and procedures to be established by the Council.

(d) He shall have such powers, duties and prerogatives in regard to the collection and custody of village taxes as are conferred by statute upon Township Treasurers in connection with state, county, township and school district taxes.

(e) He shall perform such other duties as may be prescribed for him by this charter or by the Council.

(char. eff. Dec. 5, 1955)

10.108 Sec. 4.8 ASSESSOR: FUNCTIONS AND DUTIES.

The Assessor shall possess all the powers vested in, and shall be charged with all the duties imposed upon, assessing officers by statute. He shall prepare all regular and special assessment rolls in the manner prescribed by this charter and by statute. He shall perform such other duties as may be prescribed for him by this charter or by the Council.

(char. eff. Dec. 5, 1955)

10.109 Sec. 4.9 SUPERINTENDENT OF PUBLIC WORKS: FUNCTIONS & DUTIES.

The Superintendent of Public Works shall be in charge of streets, alleys and public places and property. He shall supervise and manage all utilities and public works and services of the village. He shall perform such other duties as may be prescribed for him by the Council.

(char. eff. Dec. 5, 1955)

10.110 Sec. 4.10 DEPUTY ADMINISTRATIVE OFFICERS.

The Council may appoint deputies to any of the administrative officers and may terminate the status of such deputies at its pleasure. Such deputies shall, in each case, possess all the powers and authorities of their superior officers except as the same may be from time to time limited by the Council.

(char. eff. Dec. 5, 1955)

10.111 Sec. 4.11 INDEPENDENT BOARDS AND COMMISSIONS.

The Council may not create any board or commission, other than those provided for in this charter, to administer any department or agency of the village government except those activities which by statute are required to be so administered. The Council may, however, establish (a) semi-judicial appeal boards and, (b) boards or commissions to serve solely in an advisory capacity.

(char. eff. Dec. 5, 1955)

10.140

CHAPTER 5

GENERAL PROVISIONS REGARDING OFFICERS AND PERSONNEL OF THE VILLAGE

10.141 Sec. 5.1 ELIGIBILITY FOR OFFICE IN VILLAGE.

No person shall hold any elective office of the village unless he has been a resident of the village for at least two years immediately prior to the last day for filing supplemental petitions for such office and is also a qualified and registered elector of the village on such day and throughout his tenure of office.

The Council shall be the sole judge of the election and qualification of its own members.

All administrative officers shall be citizens of the United States.

No elective officer may be appointed as an administrative officer or in any way be employed by the village during the term of office for which he was elected, except that the Council may elect one of its own members as Clerk and except that Councilmen may serve as firemen.

(char. eff. Dec. 5, 1955)

10.142 Sec. 5.2 VACANCIES IN OFFICE.

The office of any Councilman including the President shall be declared vacant by the Council before the expiration of the term of such office:

- (a) For any reason specified by statute or by this charter as creating a vacancy in office;
- (b) If no person is elected to, or qualifies for, the office at the election at which such office is to be filled;
- (c) If he shall be found guilty by a competent tribunal of any act constituting misconduct in office under the provisions of this charter;
- (d) If he shall miss four consecutive regular meetings of the Council or twenty-five per cent of such meetings in any fiscal year of the village unless such absence shall be excused by the Council and the reason therefor entered in its proceedings at the time of each absence;
- (e) If he is removed from office by the Council in accordance with the provisions of Section 5.3.

The office of any member of any board or commission created by this charter shall be declared vacant for reasons (a), (c), or (e) as listed in the foregoing part of this section.

(char. eff. Dec. 5, 1955)

10.143 Sec. 5.3 REMOVALS FROM OFFICE.

Removals of Councilmen (including the President) and members of boards or commissions created by this charter by the Council shall be made for either of the following reasons: (1) for any reason specified by statute for removal of village officers by the Governor, (2) for any act declared by this charter to constitute misconduct in office. Such removals by the Council shall be made only after hearing of which such officer has been given notice by the Clerk at least ten days in advance either personally or by delivering the same at his last known place of residence. Such notice shall include a copy of the charges against such officer. The hearing shall afford an opportunity to the officer, in person or by attorney, to be heard in his defense, to cross-examine witnesses and to present testimony. If such officer shall neglect to appear at such hearing and answer such charges, his failure to do so may be deemed cause for his removal. A majority vote of the members of the Council in office at the time, exclusive of any member whose removal is being considered, shall be required for any such removal.

(char. eff. Dec. 5, 1955)

10.144 Sec. 5.4 RESIGNATIONS.

Resignations of elective officers shall be made in writing and filed with the Clerk and shall be acted upon by the Council at its next regular meeting following receipt thereof by the Clerk.

(char. eff. Dec. 5, 1955)

10.145 Sec. 5.5 FILLING VACANCIES.

- (a) Vacancies in offices elective or appointive by the Council shall be filled in the manner provided for the original filling of such office.
- (b) Vacancies in the office of Councilman or President shall, within sixty days after such vacancy occurs, be filled for the unexpired term of the officer whose office has become vacant by appointment by a majority vote of the members of the Council then in office of a person possessing the qualifications for the office.

If any such vacancy in the position of Councilman is not so filled within sixty days, or if three or more vacancies exist simultaneously in such position, the Clerk shall within ten days thereafter call a special election to be held within sixty days thereafter to fill such vacancies for the unexpired terms of the officers whose offices have become vacant.

Notwithstanding the foregoing, no vacancy in an elective office shall be filled in any manner if the term of office of the person whose office has become vacant expires within ninety days after the vacancy occurs.

(char. eff. Dec. 5, 1955)

10.146 Sec. 5.6 NO CHANGE IN TERM OF OFFICE OR COMPENSATION.

Except by procedures provided in this charter, the terms of Councilmen and of members of boards or commissions appointed for a definite term shall not be shortened or extended beyond the period for which the officer was elected or appointed, except that a Councilman shall, after his term has expired, continue to hold office until his successor is elected or appointed and has qualified. Where

several terms of Councilmen expire simultaneously the Councilman who was elected by the highest number of votes (or any appointee who filled his position) shall be deemed to be succeeded by the candidate who received the highest number of votes, that Councilman who was elected by the second highest number of votes, by the candidate who receives the second highest number of votes, etc.

The salary of any elective officer shall not be changed from the day he is elected until the end of the term of office for which he was elected.

(char. eff. Dec. 5, 1955)

10.147 Sec. 5.7 COMPENSATION OF EMPLOYEES AND OFFICERS.

The compensation of all employees and officers of the village whose compensation is not provided for herein shall be fixed by the Council within the limits of budget appropriations.

No officers shall be paid on a fee basis. The respective salaries and compensation of officers and employees as fixed pursuant to this charter shall be in full for all official services of such officers or employees and shall be in lieu of all fees, commissions and other compensation receivable by such officers or employees for their services.

Any such fees, commissions and other compensation shall belong to the village and shall be collected and accounted for by such officers or employees and be paid into the village treasury and a statement thereof is filed periodically with the Clerk.

Nothing contained in this section shall prohibit the payment of necessary bona fide expenses incurred in service in behalf of the village.

(char. eff. Dec. 5, 1955)

10.148 Sec. 5.8 OATH OF OFFICE AND BOND.

Every officer, elective or appointive, before entering upon the duties of his office shall take the oath of office prescribed for public officers by the Constitution and shall file the oath with the Clerk, together with any bond required by statute, this charter or the Council. In case of failure to comply with the provisions of this section within ten days from the date he is notified in writing of his election or appointment, such officer shall be deemed to have declined the office and such office shall thereupon become vacant unless the Council shall, by resolution, extend the time in which such officer may qualify.

(char. eff. Dec. 5, 1955)

10.149 Sec. 5.9 SURETY BONDS.

Except as otherwise provided in this charter, all officers of the village whose duties involve the custody of public property or the handling of public funds, either by way of receipt or disbursement or both, and all other officers and employees so required by the Council, shall, before they enter upon the duties of their respective offices, file with the village an official bond, in such form and amount as the Council shall direct and approve. Such official bond of every officer and employee shall be conditioned that he will faithfully perform the duties of his office, and will on demand deliver over to his successor in office, or other proper officer or an agent of the village, all books, papers, moneys, effects and property belonging thereto, or appertaining to his office, which may be in his custody as an officer or employee; and such bonds may be further conditioned as the Council prescribes. The official bond of every officer whose duty it may be to receive or pay out money, besides being conditioned as above required, shall be further conditioned that he will, on demand, pay over or account for to the village or any proper officer or agent thereof, all moneys received by him as such officer or employee. The requirements of this paragraph may be met by the purchase of one or more appropriate blanket surety bonds covering all, or a group of, village employees and officers.

All official bonds shall be corporate surety bonds and the premiums thereon shall be paid by the village. All bonds of all officers or employees shall be filed with the Clerk, except that any bond pertaining solely to the Clerk shall be filed with the Treasurer.

(char. eff. Dec. 5, 1955)

10.150 Sec. 5.10 DELIVERY OF OFFICE.

Whenever any officer or employee shall cease to hold such office or employment for any reason whatsoever, he shall within five days, or sooner demand, deliver to his successor in office or to his superior all the books, papers, moneys and effects in his custody as such officer or employee. Any officer violating this provision may be proceeded against in the same manner as public officers generally for a like offense under statute. Any employee found guilty of violating this provision by a competent tribunal may be punished by a fine of not to exceed One Hundred Dollars or imprisonment for not to exceed ninety days, or both, in the discretion of the Court.

(char. eff. Dec. 5, 1955)

10.170

CHAPTER 6

THE COUNCIL: PROCEDURE AND MISCELLANEOUS POWERS AND DUTIES

10.171 Sec. 6.1 REGULAR MEETINGS.

The Council shall provide by resolution for the time and place of its regular meetings and shall hold at least one such meeting each month. A regular meeting shall be held on the Monday following each regular village election.

(char. eff. Dec. 5, 1955)

10.172 Sec. 6.2 SPECIAL MEETINGS.

Special meetings shall be called by the Clerk on the written request of the President or any two members of the Council on at least six hours written notice to each member of the Council, served personally or left at his usual place of residence, but a special meeting may be held on shorter notice if all members of the Council are present or have waived notice thereof in writing.

(char. eff. Dec. 5, 1955)

10.173 Sec. 6.3 BUSINESS OF SPECIAL MEETINGS.

No business shall be transacted at any special meeting unless the same has been stated in the notice of such meeting. However, any business which might lawfully come before a regular meeting may be transacted at a special meeting if all the members of the Council present consent thereto and all the members absent file their written consent.

(char. eff. Dec. 5, 1955)

10.174 Sec. 6.4 MEETINGS TO BE PUBLIC.

All regular and special meetings of the Council shall be open to the public and citizens shall have a reasonable opportunity to be heard.

(char. eff. Dec. 5, 1955)

10.175 Sec. 6.5 QUORUM: ADJOURNMENT OF MEETING.

A majority of the members of the Council in office shall be a quorum for the transaction of business at the Council meetings, but in the absence of a quorum a lesser number may adjourn any meeting to a later time or date, and in the absence of all members the Clerk may adjourn any meeting for not longer than one week.

(char. eff. Dec. 5, 1955)

10.176 Sec. 6.6 COMPULSORY ATTENDANCE AND CONDUCT AT MEETINGS.

Any two or more members of the Council may by vote either request or compel the attendance of its members and other officers of the village at any meeting. Any member of the Council or other officer who when notified of such request for his attendance fails to attend such meeting for reasons other than confining illness or absence from Saginaw County shall be deemed guilty of misconduct in office unless excused by the Council. The presiding officer shall enforce orderly conduct at meetings and any members of the Council or other officer who shall fail to conduct himself in an orderly manner at any meeting shall be deemed guilty of misconduct in office. The Chief of Police shall serve as the sergeant-at-arms of the Council in the enforcement of the provisions of this section.

(char. eff. Dec. 5, 1955)

10.177 Sec. 6.7 ORGANIZATION AND RULES OF THE COUNCIL.

The Council shall determine its own organization, rules and order of business subject to the following provisions:

(a) A journal of proceedings of each meeting in the English language shall be kept by the Clerk and shall be signed by the presiding officer and Clerk of meeting;

(b) A vote upon all ordinances and resolutions shall be taken by "Yes" and "No" vote and entered upon the records, except that where the vote is unanimous it shall only be necessary to so state;

(c) No member of the Council shall vote on any question in which he has a financial interest, other than the common public interest, or on any question concerning his own conduct, but on all other questions each member who is present shall vote when his name is called unless excused by the unanimous consent of the remaining members present. Any member refusing to vote except when not so required by this paragraph shall be guilty of misconduct in office;

(d) Any standing committees of the Council shall be composed of at least three members. The Council shall not assign the administration of any department of the village to any member or committee of the Council.

(char. eff. Dec. 5, 1955)

10.178 Sec. 6.8 PUBLIC HEALTH AND SAFETY.

The Council shall see that provision is made for the public peace and health and for the safety of persons and property. The Council shall constitute the Board of Health of the village, and it and its officers shall possess all powers, privileges and immunities granted to Boards of Health by statute.

(char. eff. Dec. 5, 1955)

10.200

CHAPTER 7

LEGISLATION

10.201 Sec. 7.1 ORDINANCES, RESOLUTIONS, MOTIONS AND ORDERS.

All official action of the Council shall be by ordinance, resolution, motion or order. Action by resolution, motion or order shall be limited to matters required or permitted to be so done by this charter or state or federal law or pertaining to the internal affairs or concerns of the village government. All other acts of the Council and all acts carrying a penalty for the violation thereof shall be by ordinance. Each ordinance shall be identified by a short title and serial number.

The style of all ordinances shall be: "The Village of Birch Run Ordains."

(char. eff. Dec. 5, 1955)

10.202 Sec. 7.2 ENACTMENT, AMENDMENT, REPEAL AND EFFECTIVE DATE OF ORDINANCES.

(a) Ordinances may be enacted by the affirmative vote of not less than three members of the Council, (b) no ordinance shall be amended or repealed except by an ordinance adopted as aforesaid, and (c) the effective date of all ordinances shall be prescribed therein but the effective date shall not be earlier than ten days after enactment or before publication thereof. It is provided, however, that an ordinance which is declared therein to be an emergency ordinance which is immediately necessary for the preservation of the public peace, health or safety may be given earlier effect than ten days after its enactment by four affirmative votes if four or five members of the Council are present at the meeting at which it is enacted or by three affirmative votes if three or four members of the Council are present at the meeting at which it is enacted.

No ordinance granting any public utility franchise shall be enacted except in accordance with the provisions of Section 14.1.

No ordinance shall be amended by reference to its title only, but the revised sections of the ordinance, as amended, shall be enacted and published in full. However, an ordinance or section thereof may be repealed by reference to its title and ordinance number only.

(char. eff. Dec. 5, 1955)

10.203 Sec. 7.3 PUBLICATION AND RECORDING OF ORDINANCES.

Each ordinance enacted by the Council shall be published within ten days after its enactment. All ordinances shall be recorded by the Clerk in a book to be called "The Ordinance Book" and it shall be the duty of the President and Clerk to authenticate such records by their official signatures thereon. The Clerk shall enter in such book after the publication of each ordinance the date and method of publication, which shall be prima facie evidence of such publication, but the failure to so record and authenticate such ordinance shall not invalidate it or suspend its operation.

(char. eff. Dec. 5, 1955)

10.204 Sec. 7.4 PENALTIES FOR VIOLATION OF ORDINANCES.

Any ordinance may provide for the punishment of those who violate its provisions, not to exceed a fine of One Hundred Dollars and ninety days imprisonment.

(char. eff. Dec. 5, 1955)

10.205 Sec. 7.5 ACTIONS.

(a) Action to vacate, discontinue or abolish any highway, street, lane, alley or other public place, or part thereof, shall be by resolution. After the introduction of such resolution and before its final adoption, the Council shall hold a public hearing thereon and shall publish notice of such hearing at least one week prior thereto.

(b) The following actions shall require the affirmative vote of three members of the Council for the effectiveness thereof:

- (1) Vacating, discontinuing or abolishing any highway, street, lane, alley or other public place, or part thereof;
- (2) Leasing, selling, or disposing of any city-owned real estate, or interest therein;
- (3) Condemning private property for public use;
- (4) Creating or abolishing any office;
- (5) Appropriating any money;
- (6) Imposing any tax or assessment;
- (7) Reconsidering or rescinding any vote of Council.

(char. eff. Dec. 5, 1955)

10.206 Sec. 7.6 TECHNICAL CODES ADOPTED BY REFERENCE.

Subject to the provisions of this section, there may be adopted as a village ordinance or code, by reference thereto in an adopting ordinance, in whole or part, provisions of (a) any Michigan statute or (b) any detailed technical regulation promulgated or enacted by (1) any state or federal agency, (2) any municipality, or (3) any organization or association which has developed a recognized standard code or set of such technical regulations. Such adopting ordinance shall clearly identify and state the purpose of the provisions or regulations so adopted. Where any ordinance or code, or amendment thereto, adopting provisions by reference is enacted, all requirements for its publication may be met, other provisions of this charter notwithstanding, by (a) publishing the ordinance citing such provisions in a manner provided by this charter for the publication of other ordinances and including as part of such publication a notice that printed copies of the provisions so cited are available for inspection by and distribution to the public at the office of the Clerk, and (b) so making copies available for public inspection and for distribution to the public at a reasonable charge.

(char. eff. Dec. 5, 1955)

10.207 Sec. 7.7 SEVERABILITY OF ORDINANCES.

Unless an ordinance shall expressly provide to the contrary, if any portion of an ordinance or the application thereof to any person or circumstances 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, provided such remaining portions or applications are not determined by the Court to be inoperable, and to this end ordinances are declared to be severable.

(char. eff. Dec. 5, 1955)

10.208 Sec. 7.8 INITIATIVE AND REFERENDUM.

An ordinance may be initiated by petition, or a referendum on an enacted ordinance may be had by petition, as hereinafter provided.

(char. eff. Dec. 5, 1955)

10.209 Sec. 7.9 INITIATORY AND REFERENDARY PETITIONS.

An initiatory or a referendary petition shall be signed by not less than thirty-five percent of the registered electors of the village, as of the date of the last regular village election, and all signatures on said petitions shall be obtained within thirty days before the date of filing the petition by the Clerk. Any such petition shall be addressed to the Council and may be the aggregate of two or more petition papers identical as to contents and simultaneously filed by one person. An initiatory petition shall set forth in full the ordinance it proposes to initiate, and no petition shall propose to initiate more than one ordinance. A referendary petition shall identify the ordinance, or part thereof it proposes to have repealed.

Each signer of a petition shall sign his name and shall place thereon after his name the date and his place of residence by street and number or by other customary designation. To each petition paper there shall be attached a sworn affidavit by the circulation thereof, stating the number of signers thereof, and that each signature thereon is the genuine signature of the person whose name it purports to be, and that it was made in the presence of the affined. Such petition shall be filed with the Clerk who shall, within fifteen days, canvass the signatures thereon. If the petition does not contain a sufficient number of signatures of registered electors of the city, the Clerk shall notify forthwith the person filing such petition and fifteen days from such notification shall be allowed for the filing of supplemental petition papers. When a petition with sufficient signatures is filed within the time allowed by this section, the Clerk shall present the petition to the Council at its next regular meeting.

(char. eff. Dec. 5, 1955)

10.210 Sec. 7.10 COUNCIL PROCEDURE ON INITIATORY AND REFERENDARY PETITIONS.

Upon receiving an initiatory or referendary petition from the Clerk, the Council shall, within thirty days, unless otherwise provided by statute, either,

- (a) Adopt the ordinance as submitted by an initiatory petition;
- (b) Repeal the ordinance, or part thereof, referred to by a referendary petition; or
- (c) Determine to submit the proposal provided for in the petition to the electors.

(char. eff. Dec. 5, 1955)

10.211 Sec. 7.11 SUBMISSION OF INITIATORY & REFERENDARY ORDINANCES TO ELECTORS.

Should the Council decide to submit the proposal to the electors, it shall be submitted at the next election held in the village for any other purpose, or, in the discretion of the Council, at a special election called for that specific purpose. The result of all elections held under the provisions of this section shall be determined by a majority vote of the electors voting thereon, except in cases where otherwise required by statute or Constitution.

(char. eff. Dec. 5, 1955)

10.212 Sec. 7.12 ORDINANCES SUSPENDED; MISCELLANEOUS PROVISIONS ON INITIATORY AND REFERENDARY PETITIONS.

The presentation to the Council by the Clerk of a valid and Sufficient referendary petition proposing to repeal an ordinance which has been in effect one year or less on the date of filing such petition shall automatically suspend the operation of the ordinance in question pending repeal by the Council or final determination by the electors.

An ordinance adopted by the electorate through initiatory proceedings may not be amended or repealed for a period of one year after the date of the election at which it was adopted, and an ordinance repealed by the electorate may not be re-enacted for a period of one year after the date of the election at which it was repealed. It is provided, however, that any ordinance may be adopted, amended or repealed at any time by appropriate referendum or initiatory procedure in accordance with the foregoing provisions of this chapter or if submitted to the electorate by the Council on its own motion.

If two or more ordinances adopted at the same election shall have conflicting provisions, the provisions in the ordinance receiving the highest number of affirmative votes shall govern.

(char. eff. Dec. 5, 1955)

10.240

CHAPTER 8

GENERAL FINANCE

10.241 Sec. 8.1 FISCAL YEAR.

The fiscal year of the village and of all its agencies shall begin on the first day of July of each year and end on the thirtieth day of June of the following year.

(char. eff. Dec. 5, 1955)

10.242 Sec. 8.2 BUDGET PROCEDURE.

At the first regular Council meeting in April of each year the Clerk shall submit a recommended budget for the ensuing fiscal year, which budget shall contain at least the following:

(a) Detailed estimates, with supporting explanations, of all proposed expenditures for each department and office of the village, together with the expenditures for corresponding items for the last preceding fiscal year in full and for the current fiscal year to March 1 and estimated expenditures for the balance of the current fiscal year.

(b) Statements of the bonded and other indebtedness of the village, showing the debt redemption and interest requirements, the debt authorized and unissued and the condition of sinking funds, if any.

(c) Detailed estimates of all anticipated revenues of the village from sources other than taxes, with a comparative statement of the amounts received by the village from each of the same or similar sources for the last preceding fiscal year in full and for the current fiscal year to March 1 and estimated revenues for the balance of the current fiscal year.

(d) A statement of the estimated balance or deficit for the end of the current fiscal year.

(e) 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 any available unappropriated surplus and any revenues from other sources, will be necessary to meet the proposed expenditures.

(f) Such other supporting information as the Council may request.

(char. eff. Dec. 5, 1955)

10.243 Sec. 8.3 ADOPTION OF BUDGET.

Not later than the first regular monthly meeting in May the Council shall by resolution adopt the budget for the next fiscal year and shall appropriate the money needed for municipal purposes during such year and shall in such resolution provide for a levy of the amount necessary to be raised by taxes upon real and personal property for municipal purposes subject to the limitations contained in Section 9.1.

(char. eff. Dec. 5, 1955; amend. eff. Mar. 12, 1979)

10.244 Sec. 8.4 BUDGET CONTROL.

Except for purposes which are to be financed by the issuance of bonds or by special assessment, or for other purposes not chargeable to a budget appropriation, no money shall be drawn from the treasury of the village except in accordance with an appropriation thereof, for such specific purpose, nor shall any obligation for the expenditure of money be incurred without an appropriation covering all payments which will be due under such obligation in the current fiscal year. The Council by resolution may transfer any unencumbered appropriation balance, or any portion thereof, from one account, department, fund or agency to another. The Council may make additional appropriations during the fiscal year for unanticipated expenditures required of the village, but such additional appropriations shall not exceed the amount by which actual and anticipated revenues of the year exceed the revenues as estimated in the budget unless the appropriations are necessary to relieve an emergency endangering the public health, peace or safety.

Except in those cases where there is no other logical account to which an expenditure can be charged, expenditures shall not be charged directly to the contingent fund (or other similar fund); instead, the necessary part of the appropriation for the contingent fund (or other

similar fund) shall be transferred to the logical account and the expenditures then charged to such account.

At the beginning of each quarterly period during the fiscal year, and more often if required by the Council, the officer responsible for the maintenance of the village accounting system shall submit to the Council data showing the relation between the estimated and actual revenues and expenditures to date; and if it shall appear that the revenues are less than anticipated, the Council may reduce appropriations, except amounts required for debt and interest charges, to such a degree as may be necessary to keep expenditures within the revenues.

The balance in any budget appropriation which has not been encumbered at the end of the fiscal year shall revert to the general fund.

(char. eff. Dec. 5, 1955)

10.245 Sec. 8.5 DEPOSITORY.

The Council shall designate depositories for village funds and shall provide for the regular deposit of all village moneys.

(char. eff. Dec. 5, 1955)

10.246 Sec. 8.6 INDEPENDENT AUDIT.

An independent audit shall be made of all village accounts at least annually and more frequently if deemed necessary by the Council.

Such audit shall be made by an independent accountant experienced in public accounting to be selected by the Council.

(char. eff. Dec. 5, 1955)

10.270

CHAPTER 9

TAXATION

10.271 Sec. 9.1 POWER TO TAX.

The village shall have the power to lay and collect taxes for municipal purposes. The annual general ad valorem tax levy shall not exceed one-half of one percent of the assessed value of all real and personal property subject to taxation in the village exclusive of any levies authorized by general statute to be made beyond charter tax rate limitations. It is provided, however, that this tax limitation may be increased for a period of not to exceed three years at any one time to not more than one and one-half percent of the assessed valuation of such real and personal property by a majority vote of those electors voting thereon at any regular village election or special election called for that purpose. In any such election held hereunder for the raising of the tax limitation, only those persons who own property assessed for taxes in the village and their husbands and wives shall be entitled to vote.

(char. eff. Dec. 5, 1955)

10.272 Sec. 9.2 EXEMPTION FROM TAXATION.

The subjects of ad valorem taxation for village purposes shall be the same as for state, county and school purposes under statute. Except as otherwise provided by this charter, village taxes shall be levied, collected and returned in the manner provided by statute.

(char. eff. Dec. 5, 1955)

10.273 Sec. 9.3 EXEMPTION FROM TAXES.

No exemptions from taxation shall not be allowed except as expressly required or permitted by statute. In the case of exemptions made to persons who in the opinion of the Assessor and Board of Review, by reason of poverty, are unable to contribute toward the public charges, there shall be required annually, as a condition to the grant of such exemption, a written statement under oath of the financial inability of such person or persons to pay taxes, which statement shall be filed with the Board of Review and made a part of its records.

(char. eff. Dec. 5, 1955)

10.274 Sec. 9.4 TAX DAY.

Subject to the exceptions provided or permitted by statute, the taxable status of persons and property shall be determined as of the first day of January, which shall be deemed the tax day.

(char. eff. Dec. 5, 1955)

10.275 Sec. 9.5 PREPARATION OF THE ASSESSMENT ROLL.

On or before the first Monday in March in each year the Assessor shall prepare and certify an assessment roll of all property in the village subject to taxation. Such roll shall be prepared in accordance with statute and shall show separate figures for the value of land and of the building improvements.

(char. eff. Dec. 5, 1955)

10.276 Sec. 9.6 BOARD OF REVIEW.

The Board of Review shall be composed of three freeholders of the village who shall meet the eligibility requirements contained in Section 5.1, and who during their term of office shall not be village officers or employees or nominees or candidates for elective village office. One member of the Board shall be appointed by the Council annually in January 1958, and each thereafter for a term of three years, to replace the member whose term expires that year. The Council shall fix the compensation of the members of the Board. The Board shall annually in February select its own Chairman for the ensuing year, and the Assessor shall be Clerk of the Board and shall be entitled to be heard at its sessions but shall have no vote.

(char. eff. Dec. 5, 1955)

10.277 Sec. 9.7 MEETINGS OF BOARD OF REVIEW.

The Board of Review shall convene in its first session on the second Monday in March of each year at such time of day and place as shall be designated by the Council and shall remain in session for at least four hours for the purpose of reviewing and correcting the roll. In each case in which the assessed value of any property is increased over the amount shown on the assessment roll as prepared by the Assessor or any property is added to such roll by the Board, or the Board has resolved to consider at its second session such increasing of an assessment of the adding of any property to such roll, the Assessor shall give notice thereof to the owners as shown by such roll by first class letter mailed not later than the day following the end of the first session of the Board. Such notice shall state the date, time, place and purpose of the second session of the Board. The failure to give any such notice or of the owner to receive it shall not invalidate any assessment roll or assessment thereon.

(char. eff. Dec. 5, 1955)

10.278 Sec. 9.8 ENDORSEMENT OF ROLL.

The Board of Review shall convene in its second session on the fourth Monday in March of each year at such time of day and place as shall be designated by the Council and shall continue in session until all interested persons have had an opportunity to be heard, but in no case for less than four hours. At the second session, the Board may not increase any assessment or add any property to the rolls, except in those cases in which the Board resolved at its first session to consider such increase or addition at its second session.

(char. eff. Dec. 5, 1955)

10.279 Sec. 9.9 NOTICE OF MEETINGS.

Notice of the time and place of the sessions of the Board of Review shall be published by the Clerk at least ten days prior to each session of the Board.

(char. eff. Dec. 5, 1955)

10.280 Sec. 9.10 DUTIES AND FUNCTIONS OF BOARD OF REVIEW.

For the purpose of reviewing and correcting assessments, the Board of Review shall have the same powers and perform like duties in all respects as are by statute conferred upon and required of Boards of Review in townships, except as otherwise provided in this charter. It shall hear the complaints of all persons considering themselves aggrieved by assessments, and if it shall appear that any person or property has been wrongfully assessed or omitted from the roll, the Board shall correct the roll in such manner as it deems just. In all cases the roll shall be reviewed according to the facts existing on the tax day and no change in the status of any property after said day shall be considered by the Board in making its decisions. Except as otherwise provided by statute, no person other than the Board of Review shall make or authorize any change upon, or additions or corrections to, the assessment roll. It shall be the duty of the Assessor to keep a permanent record of all proceedings and to enter therein all resolutions and decisions of the Board.

(char. eff. Dec. 5, 1955)

10.281 Sec. 9.11 ENDORSEMENT OF ROLL.

After the Board of Review has completed its review of the assessment roll, and not later than the first Monday in April, the majority of its members shall endorse thereon and sign a statement to the effect that the same is the assessment roll of the village for the year in which it has been prepared. The omission of such endorsement shall not affect the validity of such roll.

(char. eff. Dec. 5, 1955)

10.282 Sec. 9.12 CLERK TO CERTIFY TAX LEVY.

Within three days after the Council has adopted the budget for the ensuing year, the Clerk shall certify to the Assessor the total amount which the Council determines shall be raised by general ad valorem tax. He shall also certify all amounts of current or delinquent special assessments and all other amounts which the Council requires to be assessed, reassessed or charged upon any property or against any person.

(char. eff. Dec. 5, 1955)

10.283 Sec. 9.13 VILLAGE TAX ROLL.

After the Board of Review has completed its review of the assessment roll, the Assessor shall prepare a copy of the assessment roll to be known as the "Village Tax Roll," and upon receiving the certification of the several amounts to be raised, as provided in Section 9.12, the Assessor shall spread upon said tax roll the several amounts determined by the Commission to be charged, assessed or reassessed against persons or property. He shall also spread the amounts of the general ad valorem village tax according to and in proportion to the several valuations set forth in said assessment roll. To avoid fractions in computation on any tax roll, the Assessor may add to the amount of the several taxes to be raised not more than the amount prescribed by statute. Any excess created thereby on any tax roll shall belong to the village.

(char. eff. Dec. 5, 1955)

10.284 Sec. 9.14 TAX ROLL CERTIFIED FOR COLLECTION.

After spreading the taxes the Assessor shall certify the tax roll and the President shall annex his warrant thereto directing and requiring the Treasurer to collect prior to October 1 of that year from the several persons named in said tax roll the several sums mentioned therein opposite their respective names as a tax or assessment and granting to him for the purpose of collecting the taxes, assessments and charges on such roll and statutory powers and immunities possessed by Township Treasurers for the collection of taxes. On May 25th the roll shall be delivered to the Treasurer for collection.

(char. eff. Dec. 5, 1955; amend. eff. Mar. 12, 1979)

10.285 Sec. 9.15 TAX LIEN ON PROPERTY.

On July first, the taxes thus assessed shall become a debt due to the village from the persons to whom they are assessed and the amounts assessed on any interest in real property shall become a lien upon such real property, for such amounts and for all interest and charges thereon, and all personal taxes shall become a first lien on all personal property of such persons so assessed. Such lien shall take precedence over all other claims, encumbrances and liens to the extent provided by statute and shall continue until such taxes, interest and charges are paid.

(char. eff. Dec. 5, 1955)

10.286 Sec. 9.16 TAXES DUE: NOTIFICATION THEREOF.

Village taxes shall be due on July first of each year. The Treasurer shall not be required to call upon the persons named in the village tax roll, nor to make personal demand for the payment of taxes, but he shall publish between June twenty-fifth and July first notice of the time when said taxes will be due for collection and the penalties and fees for late payment of same.

Failure on the part of the Treasurer to give said notice shall not invalidate the taxes on said tax roll nor release the person or property assessed from the penalties and fees provided in this chapter in case of late payment or nonpayment of the same.

(char. eff. Dec. 5, 1955)

10.287 Sec. 9.17 COLLECTION FEES.

All taxes paid on or before August thirty-first of each year shall be collected by the Treasurer without collection fee. On September first he shall add to all taxes then unpaid two per cent of said taxes as a collection fee and on the first day of October and of each succeeding month he shall add to all taxes then unpaid an additional one-half of one percent of said taxes as a collection fee. Such collection fee shall belong to the village and constitute a charge and shall be a lien against the property to which the taxes themselves apply, collectible in the same manner as the taxes to which they are added.

It is provided, however, that if delivery of the tax roll to the Treasurer, as provided in Section 9.14, is delayed for any reason by more than thirty days after June twenty-fifth, the application of the schedule of collection fees provided herein shall be postponed thirty days for the first thirty days of such delay and shall be postponed an additional thirty days for each additional thirty days, or major fraction thereof, of such delay.

(char. eff. Dec. 5, 1955)

10.288 Sec. 9.18 DELINQUENT TAX ROLL TO COUNTY TREASURER.

All village taxes remaining uncollected by the Treasurer on the first day of October following the date when said roll was received by him shall be returned to the County Treasurer to the extent and in the same manner and like effect as provided by statute for returns by Township Treasurers of township, school and county taxes. Such returns shall include all the additional assessments, charges and fees herein before provided which shall be added to the amount assessed in said tax roll against each property or person. The taxes thus returned shall be collected in the same manner as other taxes returned to the County Treasurer are collected in accordance with statute and shall remain a lien upon the property against which they are assessed until paid.

(char. eff. Dec. 5, 1955; amend. eff. Mar. 12, 1979)

10.310

BORROWING POWER

10.311 Sec. 10.1 GRANT OF AUTHORITY TO BORROW.

Subject to the applicable provisions of statute and Constitution, the Council may by ordinance or resolution borrow money and issue bonds and other evidence of indebtedness therefor, for any purpose within the scope of powers vested in the village. Such bonds or other evidences of indebtedness shall include, but not be limited to, the following types:

- (a) General obligation bonds which pledge the full faith, credit and resources of the village for the payment of such obligations, including bonds for the village's portion of public improvements;
- (b) Notes issued in anticipation of the collection of taxes, but the proceeds of such notes may be spent only in accordance with appropriations as provided by Section 8.4;
- (c) In case of fire, flood or other calamity requiring an emergency fund for the relief of the inhabitants of the village, or for the repairing or rebuilding of any of its municipal buildings, works, bridges or streets, emergency obligations therefor due in not more than three years;
- (d) Bonds issued in anticipation of special assessments, which bonds may be an obligation of one or more special assessment districts, or may be both an obligation of such special assessment district or districts, and the general obligation of the village;
- (e) Mortgage bonds for the acquiring, owning, purchasing, constructing or operating of any public utility as provided in Article 8, Section 23, of the Constitution provided such bonds shall not impose any liability upon the village but shall be secured only upon the property and revenues of such public utility, including a franchise, stating the terms upon which, in case of foreclosure, the purchaser may operate the same, which franchise shall in no case extend for a longer period than twenty years from the date of the sale of such utility and franchise on foreclosure. Such mortgage bonds shall be sold to yield not to exceed six percent per annum. A sinking fund shall be created in the event of the issuance of such bonds, by setting aside such percentage of the gross or net earnings of the public utility as may be deemed sufficient for such payment.
- (f) Bonds for the refunding of the funded indebtedness of the village;
- (g) Revenue bonds as authorized by Public Act 94 of 1933 which are secured only by the revenues from a public improvement and do not constitute a general obligation of the village.

(char. eff. Dec. 5, 1955)

10.312 Sec. 10.2 LIMITS OF BORROWING POWERS.

The net bonded indebtedness incurred for all public purposes shall not at any time exceed ten percent of the assessed value of all the real and personal property in the village subject to taxation as shown by the last preceding assessment roll of the village, provided that in computing such net bonded indebtedness there shall be excluded money borrowed under the following sections: 10.1 (b) (tax anticipation notes), 10.1 (d) (special assessment bonds even though they are also a general obligation of the village), 10.1 (e) (mortgage bonds), 10.1 (g) (revenue bonds), and any other obligations excluded by statute or Constitution from such limitation. The resources of the sinking fund pledged for the retirement of any outstanding bonds shall also be deducted from the amount of the bonded indebtedness.

The amount of emergency loans which the Council makes under the provision of Section 10.1. (c) may not exceed one-fourth of one percent of the assessed value of all the real and personal property in the village (or such larger percentage as villages may by statute be permitted to provide in their charter) notwithstanding such loan may increase the indebtedness of the village beyond the limitation fixed in the preceding paragraph.

The total amount of such special assessment bonds issued under Section 10.1 (e) which are a general obligation of the village shall at no time by reason of future issues, other than issues of refunding bonds, exceed the statutory limitations thereon, nor shall such bonds be issued in any calendar year in excess of the amount so permitted to be issued by statute unless authorized by a vote of the electors in the manner provided by statute.

(char. eff. Dec. 5, 1955)

10.313 Sec. 10.3 VOTE OF ELECTORS REQUIRED.

Unless approved by three-fifths of the electors voting thereon at any general or special election, the Council shall not have power to authorize any issue of bonds except special assessment bonds, bonds for the village portion of local improvements, not to exceed forty percent of the cost of such improvement, refunding bonds for relief from fire, flood or calamity or for payment of judgements, revenue bonds and other bonds excluded by statute from the requirement for such vote. Only those electors having the constitutional qualifications for voting on the approval of bond issues shall be entitled to vote on such question.

(char. eff. Dec. 5, 1955)

10.314 Sec. 10.4 PREPARATION AND RECORD OF BONDS.

Every bond issued by the village shall contain on its face a statement specifying the object for which the same is issued. It shall be unlawful for any officer of the village to sign or issue any such bonds unless such statement is set forth on the face of the same, or to use such bonds or the proceeds from the sale thereof for any object other than that mentioned on the face of such bond. Any officer who shall violate any of the provisions of this section shall be deemed guilty of misconduct in office.

Bonds and all other evidences of indebtedness issued by the village shall be signed by the President and Clerk under the seal of the village. The coupons evidencing the interest upon said bonds may be executed with the facsimile signatures of the President and the Clerk. A complete and detailed record of all bonds shall be kept by the Clerk.

Upon the payment of any bond or other evidences of indebtedness, the same shall be cancelled.

(char. eff. Dec. 5, 1955)

10.315 Sec. 10.5 UNISSUED BONDS.

Any authorization by the electors for the issuance of bonds by the village shall be void if such bonds shall not be issued within three years from the date of such authorization.

(char. eff. Dec. 5, 1955)

10.316 Sec. 10.6 INSTALLMENT PAYMENT CONTRACTS.

The Council may enter into installment contracts for the purchase of property or capital equipment. Each of such contracts shall not extend over a greater period than 20 years nor shall the total of principal payable under all such contracts exceed the sum of \$100,000.00. All such deferred payments shall be included in the budget for the year in which the installment is payable.

(char. eff. Dec. 5, 1955; amend. eff. Mar. 12, 1979)

10.340

CHAPTER 11

SPECIAL ASSESSMENTS

10.341 Sec. 11.1 GENERAL POWER RELATIVE TO SPECIAL ASSESSMENTS.

The Council shall have the power to determine by resolution that the whole or any part of the expense of any public improvement be defrayed by special assessment upon the property especially benefitted in proportion to the benefits derived or to be derived.

(char. eff. Dec. 5, 1955)

10.342 Sec. 11.2 PROCEDURE IN PROVIDING FOR SPECIAL ASSESSMENTS.

(a) No resolution determining to proceed with any public improvement to be defrayed by special assessment shall be enacted until cost estimates have been prepared and a public hearing has been held on the advisability of so proceeding, which hearing shall be held not less than ten days after notice thereof has been published and sent by first class mail to all property owners in the proposed district as shown by the current assessment roll of the village.

(b) Such resolution shall state the nature of the public improvement, the estimated cost thereof, the portion of the cost to be paid by special assessment and the portion to be paid from the general funds of the village, shall designate the district or lands and premises upon which special assessments shall be levied and shall direct the method of determining the benefits upon the property in the district.

(c) The Assessor shall thereupon prepare a special assessment roll and shall enter and describe thereon all of the lands and premises to be assessed, together with the names of the persons if known, owning such lands and chargeable with the assessment thereon, and shall assess the cost of such improvements against said lands and premises in the manner directed by the foregoing resolution. When such roll has been completed, it shall be endorsed by the Assessor and filed with the Clerk.

(d) A public hearing shall be held by the Council for the purpose of correcting and viewing such roll, which hearing shall be held not less than ten days after notice thereof has been published and sent by first class mail to all property owners in the proposed district as shown by the current assessment roll of the village. At such hearing the Council shall review said roll and hear all objections thereto and may correct the roll and may then, or at a later date, confirm the roll as reported or corrected. It is provided, however, that no original special assessment roll shall be confirmed except by the affirmative vote of four 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 more than 50 percent of the amount of such special assessment.

(e) No public improvement to be financed in whole or part by special assessment shall be made before the confirmation of the special assessment roll for such improvement.

(char. eff. Dec. 5, 1955)

10.343 Sec. 11.3 DISPOSITION OF EXCESSIVE SPECIAL ASSESSMENTS.

The excess by which any special assessment proves larger than the actual cost of the improvement and expenses incidental thereto may be placed in the general fund of the village if such excess is five percent or less of the assessment, but should the assessment prove larger than necessary by more than five percent the entire excess shall be refunded on a pro rata basis to the owners of the property assessed as shown by the current assessment roll of the city. Such refunds shall be made by credit against future unpaid installments to the extent

such installments then exist and the balance of such refund shall be cash. No refunds be made which contravene the provisions of any outstanding evidence of indebtedness secured in whole or part by such special assessment.

(char. eff. Dec. 5, 1955)

10.344 Sec. 11.4 ADDITIONAL ASSESSMENTS; CORRECTION OF INVALID SPECIAL ASSESSMENTS.

Additional pro rata assessments may be made when any special assessment roll proves insufficient to pay for the improvement for which it was levied and the expenses incident therein provided that the additional pro rata assessment shall not exceed twenty-five percent of the assessment as originally confirmed unless a meeting of the Council be held to review such additional assessment, for which meeting notices shall be published and mailed as provided in the case of review of the original special assessment roll.

Whenever any special assessment shall, in the opinion of the Council, be invalid by reason of irregularity or informality in the proceedings, or if any Court of competent jurisdiction shall adjudge such assessment to be illegal, the Council shall, whether the improvement has been made or not, or whether any part of the assessment has been paid or not, have power to cause a new assessment to be made for the same purpose for which the former assessment was made. All proceedings on such reassessment and for the collection thereof shall be conducted in the same manner as provided for the original assessment, and whenever any sum or part thereof levied upon any property in the assessment so set aside has been paid and not refunded, the payment so made shall be applied upon the reassessment or if the payments exceed the amount of the reassessment refunds shall be made.

No judgement or decree nor any act of the Council vacating a special assessment shall destroy or impair the lien of the village upon the premises assessed for such amount of the assessment as may be equitably charged against the same or as by regular mode of proceedings might have been lawfully assessed thereupon.

(char. eff. Dec. 5, 1955)

10.345 Sec. 11.5 CONTESTED ASSESSMENTS.

No suit or action of any kind shall be instituted or maintained for the purpose of contesting or enjoining the collection of any special assessment (a) unless within thirty days after the confirmation of the special assessment roll written notice given to the Council of intention to file such suit or action, stating the grounds on which it is claimed such assessment is illegal and (b) unless such suit or action shall be commenced within sixty days after confirmation of the roll.

(char. eff. Dec. 5, 1955)

10.346 Sec. 11.6 LIEN AND COLLECTION OF SPECIAL ASSESSMENTS.

LIEN. Upon the confirmation of each special assessment roll the special assessments shall become a debt to the village from the persons to whom they are assessed and shall until paid be a lien upon the property assessed for the amount of such assessments and all interest and charges thereon. Such lien shall be of the same character and effect as created by this charter for village taxes.

DUE DATE. Special assessments shall become due on such date as the Council shall prescribe.

INSTALLMENT PAYMENTS. Any assessment may be made payable in early installments not to exceed fifteen in number. The initial installment shall be due on such date as the Council shall prescribe. Subsequent yearly installments shall be spread on the annual village tax roll. The second installment shall be collected as part of the first village tax roll which becomes due six months or more after the due date of the initial installment. All unpaid future installments, from such date as the Council shall prescribe, shall bear interest at a rate not exceeding six percent per annum which interest computed to the following September first shall be spread yearly upon the village tax roll together as one item with the amount of the installment then being spread. The Council may provide for advance payment of unpaid installments with interest computed to such date as the Council prescribes.

COLLECTION FEES. Each special assessment, or the initial installment of such assessment when installment payments are provided for, shall be collected by the Treasurer without collection fee for a period ending on the last day of the second month following the month in which the assessment or initial installment falls due. On the first day of the third month following such due date, the Treasurer shall add to such assessment or initial installment a collection fee of two percent of the amount thereof, and on the first day of each succeeding month he shall add an additional one-half of one percent collection fee. All collection fees shall belong to the village and be collectible in the same manner as the collection fee on village taxes.

DELINQUENT ASSESSMENTS. Special assessments or initial installments which become due other than on July first shall, if unpaid for thirty days or more on May first of any year, be certified as delinquent to the Council by the Treasurer and the Council shall place such delinquent assessments on the tax roll for that year together as one item with accrued collection fees thereon to September first of such year.

COLLECTION WHEN PART OF TAX ROLL. Special assessments or installments thereof which become due on July first of any year, and delinquent assessments together with accrued interest and collection fees thereon which have been placed upon the village tax roll, shall be collected in all respects as are village taxes due on such date and shall be returned to the County Treasurer with such taxes if unpaid on the following March first.

(char. eff. Dec. 5, 1955)

10.347 Sec. 11.7 SPECIAL ASSESSMENT ACCOUNTS.

Except as otherwise provided in this charter, moneys raised by special assessment for any public improvement shall be segregated in a special fund or account and may be used only to pay for the costs of the improvement for which the assessment was levied and expenses

incidental thereto or to repay any money borrowed therefor.

(char. eff. Dec. 5, 1955)

10.348 Sec. 11.8 ADDITIONAL PROCEDURE MAY BE PROVIDED BY ORDINANCE.

The Council may provide by ordinance for any additional procedure in connection with the entire procedure of constructing improvements by special assessment not inconsistent with the provisions of this charter.

(char. eff. Dec. 5, 1955)

10.349 Sec. 11.9 FAILURE TO MAIL NOTICE.

Failure to mail any notice required to be so sent by this chapter or by ordinance shall not invalidate any special assessment or special assessment roll.

(char. eff. Dec. 5, 1955)

10.370

CHAPTER 12

PURCHASING - CONTRACTS; LEASES

10.371 Sec. 12.1 PURCHASE AND SALE OF PROPERTY.

The Council shall designate an administrative officer of the village as Purchasing Agent, and he shall be responsible for the purchase and sale of all village property. Comparative prices shall be obtained for the purchase or sale of all materials, supplies and public improvements except (a) in the employment of professional services and (b) when the Purchasing Agent (or the Council as hereinafter provided) shall determine that no advantage to the village would result therefrom.

The Council may authorize the Purchasing Agent to make purchases and sales within a prescribed dollar limit without prior approval of the Council. However, in all sales or purchases in excess of Five Hundred Dollars, (a) the sale or purchase shall be approved by the Council (b) formal sealed bids shall be obtained unless the Council by formal unanimous resolution of those present at the meeting determines that no advantage to the village will result from competitive bidding, and (c) for purchases over One Thousand Dollars the requirements of Section 12.2 shall be complied with. No sale or purchase shall be divided for the purpose of circumventing the dollar value limitation contained in this section. The Council may authorize the making of public improvements or the performance of any other village work by any village department or agency without competitive bidding.

Purchases shall be made from the lowest competent bidder meeting specifications; sales shall be made to the bidder whose bid is most advantageous to the village.

All purchases and sales in excess of Twenty-Five Dollars shall be evidenced by written contract or purchase order.

The Council may by ordinance establish detailed purchasing, sale and contract procedures not inconsistent with this charter.

(char. eff. Dec. 5, 1955)

10.372 Sec. 12.2 CONTRACTS.

The authority to contract on behalf of the village is vested in the Council and shall be exercised in accordance with the provisions of statute and this charter, provided that purchases and sales may be made by the Purchasing Agent subject to the provisions of Section 12.1. No contract except (a) an agreement of employment or (b) an agreement for the purchase or sale of goods, wares or merchandise in an amount of One Thousand Dollars or less, shall be made unless the same shall have first been submitted to an attorney and his opinion obtained with respect to its legality of form and unless the officer responsible for maintaining the village accounts shall first have certified that an appropriation has been made for payment thereof, or that sufficient funds will be available if it be for a purpose to be financed by the issuance of bonds or special assessments or for some other purpose not chargeable to a budget appropriation. In the case of a contract obligating the village to periodic payments in future fiscal years for the furnishing of a continuing service or the leasing of property, such certification shall not cover those payments on the contract which will be due in future fiscal years, but this exception shall not apply to a contract for the construction of a public improvement unless such public improvement is being purchased by installment payments under the provisions of Section 10.6. A copy of all contracts requiring such opinion and certification shall be filed in the office of the Clerk. No contract shall be divided for the purpose of circumventing the dollar value limitation contained in this section.

No contract shall be amended after the same has been made except upon the authority of the Council (except that the Purchasing Agent may amend the terms of purchases and sales made by him subject to the provisions of Section 12.1).

No compensation shall be paid to any contractor or vendor except in accordance with the terms of the contract.

(char. eff. Dec. 5, 1955)

10.373 Sec. 12.3 RESTRICTION ON POWERS TO LET PROPERTY.

Any agreement or contract for the renting or letting of public property for a period longer than three years shall be subject to the same referendum procedure as provided in the case of ordinances passed by the Council. However, a summary of the terms of any such agreement or contract shall be published within ten days after its approval by the Council and any petition for such referendum must be filed within thirty days after such publication to be effective.

The transfer or assignment of any agreement or contract for the renting or letting of public property may be made only upon approval of the Council, but approval of such transfer shall not be subject to referendum.

(char. eff. Dec. 5, 1955)

10.400

CHAPTER 13

MUNICIPAL OWNED UTILITIES

10.401 Sec. 13.1 GENERAL POWERS RESPECTING UTILITIES.

The village shall possess and hereby reserves to itself all the powers granted to villages by statute and Constitution to acquire, construct, own, 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 water, light, heat, power, gas, sewage treatment and garbage disposal facilities, or any of them, to the municipality and the inhabitant thereof; and also to sell and deliver water, light, heat, power, gas and other public utility services without its corporate limits to an amount not to exceed the limitations set by statute and Constitution.

(char. eff. Dec. 5, 1955)

10.402 Sec. 13.2 MANAGEMENT OF MUNICIPALITY OWNED UTILITIES.

All municipality owned utilities shall be administered as a regular department of the village government under one or more department heads appointed by, and serving at the pleasure of, the Council and not by an independent board or commission.

(char. eff. Dec. 5, 1955)

10.403 Sec. 13.3 RATES.

The Council shall have power to fix from time to time such just and reasonable rates as may be deemed advisable for supplying the inhabitants of the village and others with such public utility services as the village may provide. There shall be no discrimination in such rates within any classification of users thereof, nor shall free service be permitted, but higher rates may be charged for services outside the village limits.

(char. eff. Dec. 5, 1955)

10.404 Sec. 13.4 UTILITY RATES AND CHARGES - COLLECTION.

The Council shall provide by ordinance for the collection of all public utility rates and charges made by the village. With respect to water, the village shall have all the powers granted to villages by Public Act 178 of 1939. When any person, firm or corporation shall fail or refuse to pay any sums due on utility bills, the service upon which such delinquency exists may be discontinued and suit may be instituted by the village for the collection of the same in any competent tribunal.

(char. eff. Dec. 5, 1955)

10.405 Sec. 13.5 DISPOSAL OF UTILITY PLANTS AND PROPERTY.

Unless approved by a three-fifths majority vote of the electors voting thereon at a regular or special election, the village shall not sell, exchange, lease or in any way dispose of any property, easements, equipment, privilege or asset belonging to and appertaining to any municipally owned public utility which is needed to continue operating such utility. All contracts, negotiations, licenses, grants, leases or other forms of transfer in violation of this section shall be void and of no effect as against the village. The restrictions of this section shall not apply to the sale or exchange of any articles of machinery or equipment of any village owned public utility which are worn out or useless or which have been, or could with advantage to the service be, replaced by new and improved machinery or equipment, to the leasing of property not necessary for the operation of the utility, or to the exchange of property or easements for other needed property or easements.

(char. eff. Dec. 5, 1955)

10.406 Sec. 13.6 UTILITY ACCOUNTS.

Transactions pertaining to the ownership and operation by the village of each public utility shall be recorded in a separate group of accounts under an appropriate fund caption, which accounts shall be classified in accordance with generally accepted utility accounting practice. Charges for all service furnished to, or rendered by, other village departments or agencies shall be recorded. An annual report shall be prepared to show fairly the financial position of the utility and the results of its operations, which report shall be available for inspection at the office of the Clerk.

(char. eff. Dec. 5, 1955)

10.431

CHAPTER 14

PUBLIC UTILITY FRANCHISES

10.431 Sec. 14.1 GRANTING OF PUBLIC UTILITY FRANCHISES.

Public utility franchises and all renewals, extensions thereof and amendments thereto shall be granted by ordinance only. No exclusive franchise shall ever be granted. No franchise shall be granted for a longer period than thirty years.

No franchise ordinance which is not subject to revocation at the will of the Council shall be enacted nor become operative until the same shall have first been referred to the people at a regular or special election and received the affirmative vote of three-fifths of the electors voting thereon. No such franchise ordinance shall be approved by the Council for referral to the electorate before thirty days after application therefor has been filed with the Council nor until a public hearing has been held thereon, nor until the grantee named therein has filed with the Clerk his unconditional acceptance of all terms of such franchise. No special election for such purpose shall be ordered by the Council unless the expense of holding such election, as determined by the Council shall have first been paid to the Treasurer by the grantee.

A franchise ordinance or renewal or extension thereof or amendment thereto which is subject to revocation at the will of the Council may be enacted by the Council without referral to the voters, but shall not be enacted unless it shall have been in the form in which it is finally enacted and shall have so been on file in the office of the Clerk for public inspection for at least four weeks after publication of a notice that such ordinance is so on file.

(char. eff. Dec. 5, 1955)

10.432 Sec. 14.2 CONDITIONS OF PUBLIC UTILITY FRANCHISE.

All public utility franchises granted after the adoption of this charter, whether it be so provided in the granting ordinance or not, shall be subject to the following rights of the village, but this enumeration shall not be exclusive or impair the right of the Council to insert in such franchise any provision within the power of the village to impose or require:

- (a) To repeal the same for misuse, non-use or failure to comply with the provisions thereof;
- (b) To require proper and adequate extension of plant and service and maintenance thereof at the highest practicable standard of efficiency;
- (c) To establish reasonable standards of service and quality of products and prevent unjust discrimination in service or rates;
- (d) To require continuous and uninterrupted service to the public in accordance with the terms of the franchise throughout the entire period thereof;
- (e) To use, control and regulate the use of its streets, alleys, bridges and public places and the space above and beneath them;
- (f) To impose such other regulations as may be determined by the Council to be conducive to the safety, welfare and accommodation of the public.

(char. eff. Dec. 5, 1955)

10.433 Sec. 14.3 REGULATION OF RATES.

All public utility franchises shall make provision therein for fixing rates, fares and charges and may provide for readjustments thereof at periodic intervals. The value of the property of the utility used as a basis for fixing such rates, fares and charges shall in no event include a value predicated upon the franchise, goodwill or prospective profits.

(char. eff. Dec. 5, 1955)

10.434 Sec. 14.4 USE OF PUBLIC PLACES BY UTILITIES.

Every public utility whether it has a franchise or not shall pay such part of the cost of improvement or maintenance of streets, alleys, bridges and public places as shall arise from its use thereof and shall protect and save the village harmless from all damages arising from said use. Every such public utility may be required by the village to permit joint use of its property and appurtenances located in the streets, alleys and other public places of the village by the village and by other utilities insofar as such joint use may be reasonably practicable and upon payment of reasonable rental therefor. In the absence of agreement and upon application by any public utility, the Council shall provide for arbitration of the terms and conditions of such joint use and the compensation to be paid therefor, and the arbitration award shall be final.

(char. eff. Dec. 5, 1955)

10.460

CHAPTER 15

MISCELLANEOUS

10.461 Sec. 15.1 RECORDS TO BE PUBLIC.

All records of the village shall be public and shall be available for inspection at all reasonable times.

(char. eff. Dec. 5, 1955)

10.462 Sec. 15.2 DEFINITIONS AND INTERPRETATIONS.

Except as otherwise specifically provided or indicated by the context:

- (a) All words used in the charter indicating the present tense shall not be limited to the time of the adoption of this charter but shall extend to and include the time of the happening of any event or requirement for which provision is made herein.
- (b) The singular number shall include the plural, the plural number shall include the singular and the masculine gender shall extend to and include the feminine gender and the neuter.
- (c) The word “**person**” may extend and be applied to bodies politic and corporate and to partnerships as well as to individuals.
- (d) The words “**printed**” and “**printing**” shall include reproductions by printing, engraving, stencil duplication, lithographing or any similar method.
- (e) Except in reference to signatures, the words “**written**” and “**in writing**” shall include printing and typewriting.
- (f) The word “**officer**” shall include the President and other members of the Council, the administrative officers, and members of the village boards and commissions created by or pursuant to this charter.
- (g) The word “**statute**” shall denote the Public Acts of the State of Michigan as in effect at the time the provision of the charter containing the word “**statute**” is to be applied.
- (h) The word “**Constitution**” shall denote the Constitution of the State of Michigan as in effect at the time the provision of the charter containing the word “**Constitution**” is to be applied.
- (i) All references to specific Local or Public Acts shall be to such Local or Public Acts of the State of Michigan as in effect at the time the reference to such act is to be applied.
- (j) All references to section numbers shall refer to section numbers of this charter.

(char. eff. Dec. 5, 1955)

10.463 Sec. 15.3 DEFINITION OF PUBLICATION, MAILING OF NOTICES.

The requirement contained in this charter for the publishing or publication of notices or ordinances shall be met by posting copies thereof in five of the most public places in the village by the Clerk or his designated agent. The affidavit of the Clerk or such agent of such posting shall be prima facie evidence of such publication.

In any case in which this charter requires the mailing of notices the affidavit of the officer or employee responsible for such mailing that such notice was mailed shall be prima facie evidence of such mailing.

(char. eff. Dec. 5, 1955)

10.464 Sec. 15.4 VILLAGE LIABILITY.

In accordance with the authority granted in Section 25 of Public Act 278 of 1909, Section 7 of Chapter VII of Public Act 3 of 1895, which section in part limits the liability of villages and prescribes a procedure for claims against the village, is hereby adopted as part of this chapter by this reference thereto, but the village shall not be subject to any limitations or restrictions of said act except as provided in this charter.

(char. eff. Dec. 5, 1955)

10.465 Sec. 15.5 TRUSTS.

All trusts established for any municipal purpose shall be used and continued in accordance with the terms of such trust, subject to the cy pres doctrine. The Council may in its discretion receive and hold any property in trust for any municipal purpose and shall apply the same to the execution of such trust and for no other purpose except in cases where the cy pres doctrine shall apply.

(char. eff. Dec. 5, 1955)

10.466 Sec. 15.6 SUNDAYS AND HOLIDAYS.

Whenever the date fixed by this charter or by ordinance for the doing or completion of any act falls on a Sunday or legal holiday, such act shall be done or completed on the next succeeding day which is not a Sunday or legal holiday.

(char. eff. Dec. 5, 1955)

10.467 Sec. 15.7 PENALTIES FOR MISCONDUCT IN OFFICE.

Any officer of the village found guilty by a Court of competent jurisdiction of any act declared by this charter to constitute misconduct in office may be punished by a fine of not to exceed One Hundred Dollars or imprisonment for not to exceed ninety days or both in the discretion of the Court. The punishment provided in this section shall be in addition to that of having the office declared vacant as provided in Section 5.2.

(char. eff. Dec. 5, 1955)

10.468 Sec. 15.8 CHAPTER AND SECTION HEADINGS.

The chapter, section and subsection headings used in this charter are for convenience only and shall not be considered as part of the charter.

(char. eff. Dec. 5, 1955)

10.469 Sec. 15.9 AMENDMENTS.

This charter may be amended at any time in the manner provided by statute. Should two or more amendments adopted at the same election have conflicting provisions the one receiving the largest affirmative vote shall prevail as to those provisions.

(char. eff. Dec.5, 1955)

10.470 Sec. 15.11 SEVERABILITY OF CHARTER PROVISIONS.

If any provision, section, article or clause of this charter or the application thereof to any person or circumstances shall be found to be invalid by a Court, such invalidity shall not affect any remaining portion or application of the charter which can be given effect without the invalid portion or application, provided such remaining portions or applications are not determined by the Court to be inoperable, and to this end this charter is declared to be severable.

(char. eff. Dec. 5, 1955)

10.490

CHAPTER 16

SCHEDULE

10.491 Sec. 16.1 ELECTION ON ADOPTION OF CHARTER.

(a) **DATE.** This charter shall be submitted to a vote of the registered electors of the Village of Birch Run at a special election to be held on Monday, November 28th, 1955. At the same special election the elective officers provided for in this charter shall be elected as hereinafter provided. The charter shall be adopted if a majority of the ballots cast thereon are in favor of adoption.

(b) **FORM OF BALLOT.** The form of the ballot for the submission of this charter shall be as follows:

INSTRUCTIONS: A cross (x) in the square [] before the word "Yes" is in favor of the proposed charter, and a cross (x) in the square [] before the word "No" is against the proposed charter.

Before leaving the booth, fold the ballot so that the initials of the Inspector may be seen on the outside.

Shall the proposed amended charter for the Village of Birch Run drafted by the Charter Commission elected on August 17th, 1954, be adopted?

[] Yes

[] No

(c) **ELECTION COMMISSION.** The Charter Commission shall serve as the Election Commission for this special election and the Clerk of the Charter Commission shall be Clerk of the Election Commission.

(d) **POLLING PLACE.** The polling place for this special election shall be the Birch Run Township Fire Hall, Village of Birch Run, Michigan.

(e) **INSPECTORS OF ELECTION.** The Inspectors of election for this special election shall be for the following qualified electors of the village: Oscar Block, Herman Veitengruber and Jack O'Hare. They shall receive no compensation for their services.

(f) **BOARD OF CANVASSERS.** The Board of Canvassers for this election shall be the following three qualified electors of the village: Louis Lather, Dale Hadsall and Fenton Cullen. The Board shall meet at the Birch Run Township Fire Hall, Village of Birch Run, Michigan, at 8 p.m. on Tuesday, November 29th, 1955, to canvass the results of such election.

(g) **REGISTRATION.** The persons designated to act as Inspectors of this election shall constitute a Board of Registration for the purpose of making the first registration of qualified voters in the village. Said Board shall be authorized to procure the necessary books or files and forms to conduct such registration. The last day for registration shall be the twentieth day preceding said election. The Board of Registration shall on such last day for registration secure from the Clerk of Birch Run Township his record of the persons who are both residents of the Village of Birch Run as hereinbefore defined and registered voters of the Township of Birch Run on such day and shall incorporate such records with their records and shall cause all such persons to be registered as village electors in the same manner as though such persons had then and there applied for registration and all such persons shall be deemed to be registered village electors. Subsequent to the election, the registration records shall be delivered to the Clerk of the village and shall constitute the original registration roll of the village.

(h) **NOTICE OF REGISTRATION.** The Secretary of the Election Commission shall give notice for the Board of Registration of the days, hours and place that the registration will be conducted by posting notices thereof in at least five of the most conspicuous places in the village, on or before October 26th, 1955.

(i) **NOTICE OF ELECTION.** The Secretary of the Election Commission shall cause to be published with the charter and posted in at least ten public places in the village not less than two weeks prior to the November 28th, 1955 election notices of such election, of the location of the polling places, that on the date fixed therefor the question of adopting this proposed amended charter will be voted upon and that the elective officers provided for in this charter will be elected on the same date.

(j) **PROCEDURE GOVERNING ELECTIONS.** In all respects not otherwise provided for in this chapter of this charter, the election procedure shall be in accordance with the provisions of the other chapters of this charter.

(char. eff. Dec. 5, 1955)

10.492 Sec. 16.2 FIRST ELECTION OF VILLAGE OFFICERS.

(a) **ELECTION.** The first election of officers provided for in this charter shall be held on Monday, November 28th, 1955, in conjunction with the election on the adoption of this charter. At this election the voters shall be entitled to vote for not more than five candidates for Council.

(b) **TERMS.** The two candidates for Council who receive the two highest number of votes shall be declared elected for a term beginning on Monday, December 5th, 1955, and ending on the Monday next following the date of the regular village election in 1959. The three candidates for Council who receive the third, fourth and fifth highest number of votes shall be declared elected for a term beginning on Monday, December 5th, 1955, and ending on the Monday next following the date of the regular village election in 1957. After this election the provisions contained in this charter relative to elections and terms of elective officers shall govern.

(c) **NOMINATIONS.** Candidates for the first election of officers shall be nominated by petition in a manner identical to that provided for in Section 3.6 and 3.7, except that (1) petitions shall be filed with the Clerk of the Election Commission who shall perform all the duties in connection with such nomination petitions as are required by this charter of the Village Clerk, and (2) nomination petitions shall be filed not before Wednesday, November 9th, 1955 and not after 5 p.m., Friday, November 18th, 1955, and there shall be no opportunity thereafter to file corrected, supplemental or replacement petitions, other provisions of this charter notwithstanding. Notice of the days permitted for filing nomination petitions and of the number to be elected to each office shall be published both in the same manner provided in this charter for the publication of notices and by newspaper publication in the same issue of the newspaper in which the charter is published. The Clerk of the Election Commission shall on November 7th, 1955, make available a supply of official petition forms as required by Section 3.6. The Clerk of the Election Commission shall make his final determinations as to the validity and sufficiency of such nomination petitions on or before Monday, November 21st, 1955, other provisions of this charter notwithstanding. The names of those candidates who file valid and sufficient nomination petitions and have the qualifications required for office shall be certified to the Election Commission to be placed on the ballot.

(d) **OTHER ELECTION PROCEDURE.** In all respects not otherwise provided for in this section the procedure for the election of officers shall be in accordance with the provisions of Section 16.1.

(char. eff. Dec. 5, 1955)

10.493 Sec. 16.3 EFFECTIVE DATE OF CHARTER.

For the purpose of initiating the procedure for the election on the adoption of this charter and for nominating and electing the first city officers this charter shall take effect on October 25, 1955. For all other purposes this charter shall take effect on Monday, December 5th, 1955, at 8 p.m. Eastern Standard Time. At such time the first officers elected under this charter shall assemble at the Birch Run Township Fire Hall, Village of Birch Run, Michigan. The meeting shall be called to order by a member of the Charter Commission designated by it for the purpose. Such member shall administer the oath of office to each elective officer of the village, and such officers shall thereupon be qualified for and shall assume the duties of their office.

Such officers shall then have control over the territory, constituting the village as provided in this charter.

(char. eff. Dec. 5, 1955)

10.494 Sec. 16.4 INTERIM FINANCE AND TAXATION PROVISIONS.

The first Council of the village shall have power to borrow in anticipation of its first collection of taxes sufficient money for the purpose of paying in full the just and legal expenses of the incorporation of the village and establishment of a government for the village and the payment of necessary operating expenses of the village from the time this charter becomes law until such time as the first taxes are collected. Such loan shall be made in the manner provided by statute for tax anticipation notes.

A village tax levy for the year 1956 may be made by the Council in accordance with the provisions of Chapters 8 and 9 of this charter.

The period from the effective date of this charter to June 30th, 1956, shall constitute a special interim fiscal period and the appropriations and accounts of such period shall be kept separate from the appropriations and accounts for the regular fiscal year beginning July 1st, 1956. However, no separate audit need be made of this interim fiscal period; it shall instead be audited at the same time that the 1956-57 fiscal year is audited.

(char. eff. Dec. 5, 1955)

10.495 Sec. 16.5 FIRST BOARD OF REVIEW.

Before January 1, 1956, the Council shall appoint a Board of Review of three persons, who meet the qualifications for the office as provided in this charter, shall designate a Chairman to serve until February, 1958, and shall fix their compensation. Such members shall take office January 1st, 1956. One such member shall be designated to serve for a term expiring in January, 1958, one for a term expiring in January, 1959, and one for a term expiring in January, 1960. Thereafter the provisions of Section 9.6 shall govern.

(char. eff. Dec. 5, 1955)

10.496 Sec. 16.6 TOWNSHIP ASSETS; SHARING OF STATE AID.

The Council shall take immediate steps to obtain the share of the village in real property owned by the Township of Birch Run, and in distributions of state funds, moneys or grants which by law are required to be distributed among cities, villages, townships and (or) counties of the state in accordance with Section 10 of Public Act 278 of 1909, as amended.

(char. eff. Dec. 5, 1955)

10.497 Sec. 16.7 STATUS OF SCHEDULE CHAPTER.

The purpose of this schedule is to inaugurate the government of the village under this charter and it shall constitute a part of this charter only to the extent and for the time required to accomplish this end.

(char. eff. Dec. 5, 1955)

Resolution of Adoption: October 25, 1955

Approved: November 8, 1955

Published: November 9, 1955

Effective: December 5, 1955

TITLE I: GENERAL PROVISIONS

Chapter

10. GENERAL PROVISIONS

CHAPTER 10: GENERAL PROVISIONS

Section

- 10.01 How code designated and cited
- 10.02 Definitions
- 10.03 Section catchlines and other headings
- 10.04 Certain ordinances not affected by code
- 10.05 Continuation of ordinances
- 10.06 Prior rights, offenses and the like
- 10.07 Ordinances repealed not reenacted
- 10.08 Amendments to code
- 10.09 Supplementation of code
- 10.10 Appearance tickets
- 10.11 Separability of provisions
- 10.99 General penalty

§ 10.01 HOW CODE DESIGNATED AND CITED.

This code shall constitute and be designated as the “Village of Birch Run Code.”

§ 10.02 DEFINITIONS.

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

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

CIVIL INFRACTION. An act or omission that is prohibited by this code or any ordinance of the village, but which is not a crime under this code or any other ordinance of the village, and for which civil sanctions, including without limitation, fines, damages, expenses and costs may be ordered, as authorized by Ch. 87 of Public Act 236 of 1961, being M.C.L.A. §§ 600.8701 through 600.8735, as amended. A municipal civil infraction is not a lesser included offense of any criminal offense in this code.

CODE. The Village of Birch Run Code as designated in § 10.01.

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

COUNTY. County of Saginaw, Michigan.

JUVENILE. Any person under 17 years of age.

MINOR. A person under 21 years of age.

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

ORDINANCES. The ordinances of Birch Run and all amendments thereto.

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

STATE. The term **THE STATE** or **THIS STATE** shall be construed to mean the State of Michigan.

§ 10.03 SECTION CATCHLINES AND OTHER HEADINGS.

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

§ 10.04 CERTAIN ORDINANCES NOT AFFECTED BY CODE.

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

(A) Promising or guaranteeing the payment of money for the village, authorizing the issuance of any bonds of the village, any evidence of the village’s indebtedness, any contract or obligations assumed by the village;

(B) Containing any administrative provisions of the Village Council;

(C) Granting any right or franchise;

(D) Dedicating, naming, establishing, locating, relocating, opening, paving, widening, vacating and the like, any street or public way in the village;

(E) Making any appropriation;

(F) Levying or imposing taxes;

(G) Establishing or prescribing grades in the village;

(H) Providing for local improvements and assessing taxes therefore;

(I) Dedicating or accepting any plat or subdivision in the village;

(J) Extending or contracting the boundaries of the village;

(K) Prescribing the number, classification or compensation of any village officers or employees;

(L) Prescribing specific parking restrictions, no-parking zones, specific speed zones, parking meter zones and specific stop or yield intersections or other traffic ordinances pertaining to specific streets;

(M) Pertaining to re-zoning; and

(N) (1) Any other ordinance, or part thereof, which is not of a general and permanent nature; and all ordinances are hereby recognized as continuing in full force and effect to the same extent as if set out at length in this code.

(2) The ordinances are on file in the Village Clerk's office.

§ 10.05 CONTINUATION OF ORDINANCES.

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

§ 10.06 PRIOR RIGHTS, OFFENSES AND THE LIKE.

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

§ 10.07 ORDINANCES REPEALED NOT REENACTED.

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

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

§ 10.08 AMENDMENTS TO CODE.

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

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

§ 10.09 SUPPLEMENTATION OF CODE.

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

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

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

(1) Organize the ordinance material into appropriate subdivisions;

(2) Provide appropriate catchlines, headings and titles for sections and other subdivisions of the code printed in the supplement, and make changes in catchlines, headings and titles;

(3) Assign appropriate numbers to sections and other subdivisions to be inserted in the code and, where necessary, to accommodate new material, change existing section or other subdivision numbers;

(4) Change the words "this ordinance" or words of the same meaning to "this chapter", "this article", "this division" and the like, as the case may be, or to "sections ____ to ____" (inserting section numbers to indicate the sections of the code which embody the substantive sections of the ordinance incorporated into the code); and

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

§ 10.10 APPEARANCE TICKETS.

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

- (A) Building Inspector;
- (B) Fire Marshal; and
- (C) Fire Chief.

§ 10.11 SEPARABILITY OF PROVISIONS.

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

§ 10.99 GENERAL PENALTY.

(A) Any person violating any provision of this code for which a penalty is not otherwise specified, either in that provision or elsewhere in the code, shall be guilty of a misdemeanor, and upon conviction thereof in any court of competent jurisdiction shall be subject to a fine of not more than \$500, or to imprisonment in the county jail for a period of not more than 90 days, or to both the fine and imprisonment in the discretion of the court.

(B) Provisions of this code prescribing any penalty shall not apply to the failure of any village officer or employee to perform an official duty.

(C) The sanction for a violation which is a municipal civil infraction shall be a civil fine in the amount as provided by this code or any ordinance, plus any costs, damages, expenses and other sanctions, as authorized under Public Act 736 of 1961, Ch. 87, being M.C.L.A. §§ 600.101 through 600.9911, as amended and other applicable laws.

(1) Unless otherwise specifically provided for a particular municipal civil infraction violation by this code or any ordinance, the civil fine for a violation shall be not less than \$50 nor more than \$500, plus costs and other sanctions, for each infraction. Costs shall include all expenses, direct and indirect, to which the village has been put in connection with the municipal civil infraction. In no case, however, shall costs of less than \$10 nor more than \$500 be ordered.

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

- (a) The fine for any offense which is a first repeat offense shall be no less than \$150 and no more than \$500, plus costs;
- (b) The fine for any offense which is a second repeat offense or any subsequent repeat offense shall be no less than \$500, plus costs; and
- (c) Repeat offenses are determined on the basis of the date of the commission of the offenses.

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

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

(F) In addition to any remedies available at law, the village may bring an action for an injunction or other process against a person to restrain, prevent or abate any violation of this code or any village ordinance. The penalty or sanction shall be in addition to the abatement of the violating condition, any injunctive relief, revocation of any permit or license or other process.

(G) The penalties and sanctions provided by this section, unless another penalty or sanction as expressly provided, shall apply to the amendment of any section of this code and/or any addition to this code whether or not the penalty or sanction is reenacted in the amendatory ordinance.

Cross-reference:

Civil infractions, see Ch. 35

TITLE III: ADMINISTRATION

Chapter

- 30. GENERAL PROVISIONS**
- 31. VILLAGE OFFICIALS**
- 32. VILLAGE ORGANIZATIONS**
- 33. PURCHASING PROCEDURES**
- 34. CODE OF ETHICS**

CHAPTER 30: GENERAL PROVISIONS

Section

30.01 Records Management and Retention Policy

§ 30.01 RECORDS MANAGEMENT AND RETENTION POLICY.

(A) The Department shall maintain a records management program to provide for the development, implementation and coordination of standards, procedures and techniques for forms management, and for the creation, retention, maintenance, preservation and disposition of the records of this municipality. All records of this municipality are and shall remain the property of this municipality and shall be preserved, stored, transferred, destroyed, disposed of, and otherwise managed pursuant to this section and other applicable provisions of law.

(B) In managing the records of this municipality, the Department shall do all the following:

- (1) Establish, implement, and maintain standards, procedures, and techniques of records management throughout municipality agencies.
- (2) Provide education, training, and information programs to municipality agencies regarding each phase of records management.
- (3) Promote the establishment of a vital records program in each municipality agency by assisting in identifying and preserving records considered to be critically essential to the continued operation of municipality government or necessary to the protection of the rights and privileges of its citizens, or both. Preservation of designated vital records shall be accomplished by storing duplicate copies of the original records in a secure remote records center to assure retention of those records in the event of disaster and loss of original records.
- (4) Operate a records center or centers for the purpose of providing maintenance, security, and preservation of municipality records.
- (5) Provide centralized microfilming service and, after the effective date of rules promulgated under the records media act to govern optical storage, service for off-site storage of optical discs as an integral part of the records management program.
- (6) Provide safeguards against unauthorized or unlawful disposal, removal, or loss of municipality records.
- (7) Initiate action to recover a municipality record that may have been removed unlawfully or without authorization.
- (8) Establish retention and disposal schedules for the official records of each municipality agency with consideration to their administrative, fiscal, legal and archival value.

(C) The Department shall issue directives that provide for all of the following:

- (1) The security of records maintained by municipality agencies.
- (2) The establishment of retention and disposal schedules for all records in view of their administrative, fiscal, legal, and archival value.
- (3) The submission of proposed retention and disposal schedule to the manager or mayor, the auditor, the municipal attorney, and the council for review and approval.
- (4) The transfer of records from a custodian municipality agency to a municipality records center or to the custody of the secretary of state.
- (5) The disposal of records pursuant to retention and disposal schedules, or the transfer of records to the custody of the secretary of state.
- (6) The establishment of a records management liaison officer in each department to assist in maintaining a records management program.
- (7) The cooperation of other municipality departments in complying with this section.
- (8) The storage of records in orderly filing systems designed to make records conveniently accessible for use.

(Ord. 03-01, passed 3-6-2003)

CHAPTER 31: VILLAGE OFFICIALS

Section

Village Ordinance Enforcement Officer

31.01 Village Ordinance Enforcement Officer

Code Enforcement Officer

31.15 Title and purpose

31.16 Position created

31.17 Duties

VILLAGE ORDINANCE ENFORCEMENT OFFICER

§ 31.01 VILLAGE ORDINANCE ENFORCEMENT OFFICER.

(A) *Village Ordinance Enforcement Officer.* The position of Village Ordinance Enforcement Officer is hereby created, who shall serve at the pleasure of the Village Council. The Village Ordinance Enforcement Officer shall have the duties and powers as set forth in this section, as well as the authority granted under M.S.A. § 28.868 through M.S.A. § 28.868(7), and shall be authorized to take such action as is permitted by law to secure compliance with the provisions of the ordinances of the Village of Birch Run.

(B) *Duties.* The Village Ordinance Enforcement Officer shall be empowered to carry out all of the provisions of the ordinances of the Village of Birch Run, including but not limited to the duties of the Zoning Administrator and Village Weed Agent (§§ 95.01 to 95.07, 95.99).

(1992 Code, §§ 1.001, 1.002) (Ord. 1-87, passed 2-9-1987)

CODE ENFORCEMENT OFFICER

§ 31.15 TITLE AND PURPOSE.

(A) This subchapter shall be known and referred to as the Code Enforcement Officer Ordinance.

(B) A Code Enforcement Officer or officers for the enforcement of parking regulations under the Uniform Traffic Code as adopted by the village shall be established.

(1992 Code, §§ 2.001, 2.002) (Ord. 4-90, passed 6-11-1990)

§ 31.16 POSITION CREATED.

The position of Code Enforcement Officer(s) is hereby created who shall be appointed by the Village Council and upon recommendation of the Chief of Police and shall serve at the pleasure of the Village Council. No person under 18 years of age shall serve as Code Enforcement Officer(s).

(1992 Code, § 2.003) (Ord. 4-90, passed 6-11-1990)

§ 31.17 DUTIES.

(A) *Issue and serve appearance tickets.* The Code Enforcement Officer(s) shall be authorized to issue and serve appearance tickets as defined in M.C.L.A. §§ 257.951 *et seq.* for violations of the parking regulations of the Uniform Traffic Code. The Code Enforcement Officer(s) may serve appearance tickets only when he or she has reasonable cause to believe that a person has committed a violation of the respective ordinance provisions of the village

(B) *Actions to secure compliance.* The Code Enforcement Officer shall further take such additional actions as permitted by law to secure compliance with the village ordinance code provisions.

(1992 Code, § 2.004) (Ord. 4-90, passed 6-11-1990)

Cross-reference:

Traffic rules, see Ch. 70

CHAPTER 32: VILLAGE ORGANIZATIONS

Section

32.01 Parking Violations Bureau

32.02 Construction Board of Appeals

32.03 Planning Commission

§ 32.01 PARKING VIOLATIONS BUREAU.

(A) *Title.* This section shall be known and may be cited as Birch Run Village Parking Violations Bureau Ordinance.

(B) *Bureau established.* Pursuant to § 8395 of the Revised Judicature Act, State of Michigan, as added by Public Act 154 of 1968, being M.C.L.A. §§ 600.8101 *et seq.*, a Parking Violations Bureau, for the purpose of handling alleged parking violations within the village, is hereby established. The Parking Violations Bureau shall be under the supervision and control of the Village Clerk.

(C) *Location; administration.* The Village Clerk shall, subject to the approval of the Village Council, establish a convenient location for the Parking Violations Bureau, appoint qualified village employees to administer the Bureau and adopt rules and regulations for the operation thereof.

(D) *Violation; disposing of.* No violation not scheduled in division (G) below 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 the Bureau may refuse to dispose of the violation, in which case any person having knowledge of the facts may make a sworn complaint before any court having jurisdiction of the offense, as provided by law.

(E) *Violations processed before the court.* 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 the alleged violation. No person shall be required to dispose of a parking violation at the Parking Violations Bureau, and all persons shall be entitled to have any 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 his or her, or in any way diminish the rights, privileges and protection accorded to him or her by law.

(F) *Traffic ticket; notice of violation.* The issuance of a traffic ticket or notice of violation by a police officer of the village shall be deemed an allegation of a parking violation. The traffic ticket or notice of violation shall indicate the length of time in which the person to whom the same was issued must respond before the Parking Violations Bureau. It shall also indicate the address of the Bureau, the hours during which the Bureau is open, the amount of the penalty scheduled for the offense for which the ticket was issued and advise that a warrant for the arrest of the person to whom the ticket was issued will be sought if such a person fails to respond within the time limited.

(G) (1) *Schedule of offenses and fines.*

<i>Offense</i>	<i>Penalty Code</i>
<i>Offense</i>	<i>Penalty Code</i>
<i>Prohibited Parking Signs Unnecessary</i>	
On sidewalk	A
In front of drive	A
Within intersection	A
Within 15 feet of hydrant	A
On crosswalk	A
Within 20 feet of corner lot lines	A
Within 30 feet of street side traffic sign or signal	A
Within 50 feet of operating railroad crossing	A
Within 20 feet of fire station entrance	A
Within 75 feet of fire station entrance on opposite side of street (signs required)	A
Beside street excavation when traffic obstructed	A
Double parking	A
On bridge or viaduct or within tunnel	A
Within 200 feet of accident where police in attendance	A
Blocking emergency exit	A
Blocking fire escape	A
Parking on all paved streets and village owned parking lots during prohibited hours	A
In prohibited zone (signs required)	A
In alley	A
In a parking space which is clearly identified by an official sign as being reserved for use by handicappers and which is on public property or private property that is available for public use	B
Vehicles greater than 2 axles parked on any paved street or village owned parking lot (excludes village vehicles)	A
<i>Parking For Prohibited Purposes</i>	
Improper parallel parking	A
Displaying vehicle for sale	A
Working or repairing vehicle	A

Displaying advertising	A
Selling merchandise	A
Storage over 48 hours	A
Wrong side of roadway	A
Loading zone violation	A
Taxicab, parking other than cab stand	A
Fire lane violation	A
Leaving keys in vehicle	A

(2) *Fine schedule.* The fine schedule for penalty codes established in division (G)(1) above shall be determined from time to time by resolution of the Village Council.

(Ord. 04-03, passed 9-27-2004; Ord. - -, passed 3-26-2018) Penalty, see § 10.99

§ 32.02 CONSTRUCTION BOARD OF APPEALS.

(A) *Adoption.* This section is adopted pursuant to provisions of Public Act 278 of 1909, as amended and Public Act 230 of 1972, being M.C.L.A. §§ 125.1501 through 125.1531, as amended for the purpose of creating a Construction Board of Appeals for the Village of Birch Run.

(B) *Establishment of Board.* The Construction Board of Appeals shall consist of not less than three nor more than seven members. Members appointed to the Construction Board of Appeals shall serve two-year terms. Appointments to the Board shall be made by the Village President and approved by the Village Council. It is recommended that representation is given to each of the codes enforced by the village.

(C) *Eligibility to serve on Board.* A member of the Board of Appeals shall be qualified by experience or training to perform the duties as so prescribed in this section. Members must have background in construction and a working knowledge of the codes being enforced by the Village of Birch Run in order to process appeals and consider variances.

(D) *Procedures.*

(1) Failure to grant, in whole or in part, or deny an application for permit within a maximum of 15 days, is deemed a denial of the application for the purpose of authorizing the institution of an appeal.

(2) Applications for an appeal must be submitted to the Zoning Administrator for processing.

(3) Requests for appeals shall be heard and a decision made thereon at a public meeting within 30 days of the filing of same with the Zoning Administrator, unless other mutually agreed upon arrangements have been made.

(4) The business of the Construction Board of Appeals must be conducted at a public meeting which shall be held in compliance with Public Act 267 of 1976, being M.C.L.A. §§ 15.261 through 15.275 (Open Meetings Act).

(5) Notice of meetings shall be posted at least 18 hours prior to a meeting in a visible location accessible by the public.

(6) Minutes must be kept of all meetings of a public body and must contain the date, time and place of the meeting, members present and absent, any decision made and a reference to the substance and disposition of all call votes, including how each member voted.

(7) Drafts of proposed minutes are to be made available for public inspection not more than eight business days after the meeting to which the minutes refer. Approved minutes shall be available for public inspection not later than five business days after the meeting at which the minutes are approved by the public body.

(E) *Notice to interested parties.*

(1) Public Act 230 of 1972, being M.C.L.A. §§ 125.1501 through 125.1531, as amended, requires the Construction Board of Appeals to hear, render and file its decision with a statement of reasons for the decision with the Village of Birch Run, not more than 30 days after the submission of the appeal.

(2) Interested parties in an appeal or variance proceeding must be properly notified and given reasonable notice of the hearing. The notice shall include:

- (a) A statement of the date, hour and place of nature of the hearing;
- (b) A statement of the legal authority and jurisdiction under which the hearing is to be held;
- (c) A reference to the particular sections of the statutes, rules or codes involved; and
- (d) A brief statement of matters asserted.

(3) Notice to interested parties shall be sent by certified mail.

(F) *Hearings.*

(1) Hearings shall be conducted in an impartial manner.

(2) If a party fails to appear after proper service of notification, the Construction Board of Appeals may proceed with the hearing and make its decision in the absence of the party, or may postpone the hearing, keeping in mind the decision must be rendered within 30 days from the date of the request.

(3) If a quorum of the Board of Appeals is not present, the appellant should be given the right to request a postponement of the hearing.

(4) Interested parties served with a notice of the hearing may file written answers before the date set for the hearing.

(5) Parties shall be given the opportunity to present oral and written arguments on issues of law and police and an opportunity to present evidence and argument on issues of fact.

(6) A party may cross-examine a witness, including the author of a document prepared by, on behalf of or for use of the Village of Birch Run and offered in evidence.

(7) A party may submit rebuttal evidence.

(8) An officer of the Construction Board of Appeals may administer an oath or affirmation to a witness in a matter before the Board.

(9) The Chairperson, or person so designated, should act as the presiding officer and may do all of the following:

(a) Administer oaths and affirmations;

(b) Regulate the course of the hearing; and

(c) Direct parties to confer to consider simplification of the issues by consent of the parties.

(G) *Variance from code.*

(1) Section 15 of Public Act 230 provides that the Board of Appeals may grant a specific variance to a substantive requirement of the code if the literal application of the substantive requirement would result in an exceptional, practical difficulty to the applicant, and if both the following requirements are satisfied:

(a) The performance of the particular item or part of the building or structure with respect to which the variance is granted shall be adequate for its intended use and shall not substantially deviate from performance required by the code of that particular item or part for the health, safety and welfare of the people of the state; and

(b) The specific condition justifying the variance shall be neither so general nor recurrent in nature as to make an amendment of the code with respect to the condition reasonably practical or desirable.

(2) A Board of Appeals may attach, in writing, any condition in connection with the granting of a variance that, in its judgment, is necessary to protect the health, safety and welfare of the people of the state. In no case shall more than the minimum variance from the code be granted than is necessary to alleviate the exceptional, practical difficulty.

(H) *Decisions.*

(1) The decision of the Construction Board of Appeals shall be made in writing with a statement of reasons for the decision. The decision should include findings of fact and conclusions of law, which are based on the evidence and on matters officially noticed and be accompanied by a concise and explicit statement of the underlying facts supporting them. Conclusion of law shall be supported by authority or reasoned opinion.

(2) A decision or order shall be delivered by certified mail to all parties concerned.

(3) All records of and material used shall be maintained and made available to the public.

(I) *Breach of condition(s).* The breach of a condition shall automatically invalidate the variance and any permit, license and certificate granted on the basis of it.

(J) *Cost of a filing an appeal.* Cost of filing an appeal shall reflect those costs actually incurred by the Village of Birch Run in processing and hearing the appeal.

(1992 Code §§ 113.001–113.008, 113.010) (Ord. 6-96, passed 8-19-1996)

§ 32.03 PLANNING COMMISSION.

(A) There is hereby constituted a planning commission to be known as “The Village of Birch Run Planning Commission”, the Commission to have all powers and duties as provided in Act 33 of the Public Acts of 2008 as amended.

(B) The Village of Birch Run Planning Commission shall consist of seven members. The members shall be appointed by the Village President with the approval of the Birch Run Village Council. The membership of the Planning Commission shall be representative of important segments of the village, such as the economic, governmental, educational, and social development of the community, in accordance with the major interests as they exist in the village, such as agriculture, natural resources, recreation, education, public health, government, transportation, industry, and commerce. The membership shall also be representative of the entire geography of the village to the extent practicable. Up to two members of the Planning Commission may be a non-electors. Up to two of the members, but not more than one third of the Planning Commission, may be ex-officio members consisting of the Village President, a Village Council member, the Village Manager or a staff person designated by the Village Manager.

(C) The Village President shall fill any vacancy in the membership of the Commission for the unexpired term with the approval of a majority of the members of the Birch Run Village Council.

(D) The term of the members of the Commission shall be three years commencing from the date of appointment, except for ex-officio members. The terms of elected ex-officio members shall correspond to their term of office. The terms of non-elected ex-officio members shall correspond to the Village President's term of office.

(E) The Village Council may remove a member of the Planning Commission for misfeasance, malfeasance, or nonfeasance in office upon written charges and after a public hearing. Failure of a member to disclose a potential conflict of interest as required by § 17(9) of the Michigan Planning Enabling Act constitutes malfeasance in office. For the purpose of this section, **CONFLICT OF INTEREST** shall be defined as outlined in the Village of Birch Run conflict of interest ordinance #99-2, as amended.

(F) The Planning Commission shall make an annual written report to the Village Council concerning its operations and the status of planning activities, including recommendations regarding actions by the Village Council related to planning and development.

(G) The Village Council may employ a planning director and other personnel as it considers necessary, contract for the services of planning and other technicians, and incur other expenses, within a budget authorized by it.

(H) Members of a planning commission may be compensated for their services as provided by the Village Council.

(I) After preparing the annual report required under division (F) of this section, the Planning Commission may prepare a detailed budget and submit the budget to Village Council for approval or disapproval. The Village Council annually may appropriate funds for carrying out the purposes and functions permitted under this act, and may match local government funds with federal, state, county, or other local government or private grants, contributions, or endowments.

(Ord. 2011-01, passed 4-28-2011)

CHAPTER 33: PURCHASING PROCEDURES

Section

33.01 Conveyance of real and personal property under control and ownership of village

§ 33.01 CONVEYANCE OF REAL AND PERSONAL PROPERTY UNDER CONTROL AND OWNERSHIP OF VILLAGE.

(A) *Title.* This section shall be known by and may be cited as the Village of Birch Run Sale of Village Owned Property Ordinance. The intent of this section is to comply with (M.C.L.A. § 67.4) regulating the sale of publicly owned real and personal property under the control of the Village of Birch Run.

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

NOTICE OF INTENT TO SELL. The specific advertisement prepared for announcing the sale and providing specific information on real and/or personal property available for sale.

PERSONAL PROPERTY. All property other than real property including, but not limited to, goods, chattels, effects, furniture, equipment and vehicles.

REAL PROPERTY. All lands owned by the village, all buildings and fixtures on the land and appurtenances thereto pursuant to the General Property Tax Act, Public Act 206 of 1983, being M.C.L.A. §§ 211.1 through 211.157, as amended.

VILLAGE COUNCIL. The elected legislative body of the Village of Birch Run.

VILLAGE MANAGER. The Chief Administrative Officer for the Village of Birch Run.

VILLAGE PRESIDENT. The Chief Elected Official for the Village of Birch Run.

(C) *Sale of real property.*

(1) The Village of Birch Run shall offer the sale of village owned real property through a public request for proposals process by publishing a Notice of Intent to Sell - Request for Proposals.

(a) The Notice of Intent to Sell - Request for Proposals shall include the following information:

1. A legal description of the real property considered for sale;
2. Request for proposal requirements including, but not limited to, intended use of property, time line for implementation and completion of proposed project, guarantees for completing project as proposed, financial consideration for property, name and address of purchaser, name and address of developer and other information as established by the Village Council;
3. Required waivers for environmental or other liability;
4. Deadline for acceptance of sealed bids;
5. The location where sealed bids can be submitted;

6. The person responsible for receiving the sealed bids;
 7. Other information or requirements deemed appropriate by the Village Council for the sale of the real property; and
 8. Bid bond requirements, at the amount set by the Village Council, to be submitted by each bidder.
- (b) The Notice of Intent to Sell - Request for Proposals shall include the village's right to reject all bids.
- (c) The Notice of Intent to Sell - Request for Proposals shall be posted for at least six weeks in three public places within the village limits.
- (d) The Notice of Intent to Sell - Request for Proposals shall appear in a newspaper of general circulation at least four weeks prior to the scheduled date for bid opening.
- (2) The Village of Birch Run shall offer the sale of public parks, pursuant to M.C.L.A. § 67.4, with the consent of a majority of the qualified electors of the village.
- (3) The real property may be sold at a public or private sale.
- (4) The Village Manager shall be responsible for the compilation of proposals received and submitting the information to the Birch Run Village Council. Pursuant to § 10.371 of the Village Charter, the sale shall be made to the purchaser whose proposal is the most advantageous to the Village of Birch Run, long-term.
- (5) Real estate, or interest in real estate, shall be sold by a majority vote of the Village Council. The vote shall be by roll call and entered into the record.
- (6) The Village President and the Village Clerk shall be, by resolution, authorized and directed to act as signatories in the execution of the sale of the real property.
- (7) The Village Clerk shall be responsible for maintaining official records on and notifying the Village Auditor of the sale of village owned real property. The records shall be made available to the public consistent with the Michigan Freedom of Information Act.
- (D) *Sale of personal property.*
- (1) The Village of Birch Run shall sell publicly owned personal property, which value exceeds \$250, by providing a Notice of Intent to Sell.
- (a) The Notice of Intent to Sell shall include the following information:
1. A description of the personal property considered for sale;
 2. Any minimum bid requirements as established by the Village Council;
 3. Deadline for acceptance of sealed bids;
 4. The location where sealed bids can be submitted;
 5. The person responsible for receiving sealed bids; and
 6. Other information or requirements deemed appropriate by the Village Council for the sale of personal property.
- (b) The Notice of Intent to Sell shall include the village's right to reject all bids.
- (c) The Notice of Intent to Sell shall be posted for 30 days in three public places within the village limits.
- (d) The Notice of Intent to Sell appear in a newspaper of general circulation.
- (2) The Village Manager shall be responsible for compiling a summary of bids received and submitting the information along with a recommendation to the Village Council. Pursuant to § 10.371 of the Village Charter, the sale shall be made to the bidder whose bid is most advantageous to the village.
- (3) Once determined to be most advantageous to the village, the personal property may lie sold by an affirmative vote of the Village Council. The vote shall be by roll call and entered into the record.
- (4) The Village President and the Village Clerk shall be, by resolution, authorized and directed to act as signatories in the execution of the sale of the personal property.
- (5) The Village Clerk shall be responsible for maintaining official records on and notifying the Village Auditor of the sale of village owned personal property. The records shall be made available to the public consistent with the Michigan Freedom of Information Act.
- (Prior Code, §§ 3.001 - 3.004) (Ord. 99-1, passed 2-22-1999; Ord. 00-01, passed 5-1-2000)

CHAPTER 34: CODE OF ETHICS

- 34.02 Purpose and intent
- 34.03 Definitions
- 34.04 Conflicts of interest
- 34.05 Procedures for disclosure of conflict of interest
- 34.06 Appearance of impropriety
- 34.07 Use of village property
- 34.08 Other prohibited conduct
- 34.09 Nepotism
- 34.10 Interpretation
- 34.11 Savings
- 34.99 Penalty

§ 34.01 TITLE.

This chapter shall be referred to as the Code of Ethics Ordinance and shall apply to all elected and appointed officials and employees of the Village of Birch Run.

(1992 Code, § 4.001) (Ord. 99-2, passed 3-22-1999)

§ 34.02 PURPOSE AND INTENT.

(A) In an effort to maintain the public trust, the Birch Run Village Council hereby declares that all public officials and employees of the village shall avoid any conflict between their private interests and those of the general public they serve.

(B) Furthermore, to enhance the faith of the citizens in the integrity and impartiality of the elected and appointed officials of the Village of Birch Run, it is necessary to provide specific guidelines for dealing with conflicts of interest, nepotism and the proper conduct of officials and employees.

(C) The Village of Birch Run intends that its officials and employees will avoid any action which might result in or create the appearance of:

- (1) Using public office or employment for private gain;
- (2) Giving or accepting preferential treatment or monetary gain to or from any person or organization;
- (3) Impeding government efficiency or economy;
- (4) A lack of independence or impartiality of action;
- (5) Making an official decision outside of proper channels; or
- (6) Affecting adversely the confidence of the public in the integrity of the Village of Birch Run.

(1992 Code, § 4.002) (Ord. 99-2, passed 3-22-1999)

§ 34.03 DEFINITIONS.

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

AFFINITY. A relationship by marriage.

BUSINESS. A corporation, sole proprietorship, firm, enterprise, franchise, association, organization, self-employed individual holding company, joint stock company, receivership, trust or other entity which is organized for profit.

BUSINESS TRANSACTION WITH THE VILLAGE. Includes, but is not limited to, contracts, loans, grants, the fixing of rates or fees and the issuance of permits.

BUSINESS WITH WHICH THE INDIVIDUAL IS ASSOCIATED. A business in which any of the following applies:

- (1) The individual is an owner, partner, director, officer or employee;
- (2) A member of the individual's immediate family is an owner, partner, director, officer or employee;
- (3) The individual or a member of the individual's immediate family is a holder of stock worth at least \$1,000 at fair market value or which represent more than a 5% equity interest in the business; and
- (4) The individual or a member of the individual's immediate family is a stockholder of a publicly traded business who holds stock worth at least \$25,000 at fair market value or which represents more than a 10% equity interest in the publicly traded business, other than publicly traded stock under a trading account if the individual reports the name and address of the stockholder.

CONFIDENTIAL INFORMATION. Information which has been obtained in the course of one's official capacity or employment with the village which is not known by or available to the general public, or which is obtained on the basis of a promise of confidentiality or which is required to be held confidential by law or regulation or which the employees or official has been directed to keep confidential. Confidential information may include information regarding labor negotiations, police matters, employee records, purchase of property or pending litigation.

EMPLOYEE. An individual who works for the village either under appointment or contract in return for financial compensation.

GIFT. A payment, subscription, advance, forbearance, rendering or deposit of money, services or anything of value, made without exchange of reasonable consideration. **GIFT** does not include anything of value received as a devise, bequest or inheritance or a loan or credit arrangement made according to reasonable and prevailing rates and terms and which does not discriminate in favor of or against an official or employee of the village. **GIFT** does not include a gift received from the following:

(1) A relative within the fifth degree of family, under the civil law computation method, to the officer or employee, or the spouse of such a relative; or

(2) A spouse of the officer or employee, or a spouse's relative within the fifth degree of family to the spouse, under the civil law computation method.

IMMEDIATE FAMILY. A son, daughter, spouse, dependent, as defined by the Internal Revenue Code, parent, parent-in-law, brother, sister, brother-in-law, sister-in-law, step-parent, step-brother or step-sister of an official or employee of the village.

OFFICIAL. A person elected or appointed to serve the Village of Birch Run in any capacity.

PUBLIC SERVANT. All persons serving any public entity, except members of the legislature and state officers who are within the provisions of § 10 of Art. 4 of the State of Michigan Constitution as implemented by legislative act.

VILLAGE. Any authority, department, commission, committee, council, board or any other agency of the Village of Birch Run.

(1992 Code, § 4.003) (Ord. 99-2, passed 3-22-1999)

§ 34.04 CONFLICTS OF INTEREST.

(A) *Conflicts of interest generally.* Whenever the performance of his or her official duties will require an official or employee to deliberate or vote on any matter from which he or she may derive personal or financial gain, the official or employee shall make full public disclosure of the nature and extent of the interest to the village body which has the power to decide the matter.

(B) *Conflicts of interest in non-contractual business transactions with the village.* No village official or employee, on his or her own behalf or on behalf of another person, shall have any interest in any non-contractual business transaction with the village unless that official or employee shall first make full public disclosure of the nature of the interest. However, no official or employee shall be prohibited from participating in any non-contractual business transaction with the village involving a non-contractual business with which the individual is associated when the official or employee is not involved, directly or indirectly, or refrains from participation in the decision on the award of the transaction or the Village Council, after reviewing the circumstances, determines that the award of the non-contractual business transaction to the official or employee is in the best interest of the village.

(C) *Conflicts of interest in contractual business transactions with the village.* Public Act 317 of 1968, as amended, § 3, being M.C.L.A. §§ 15.321 through 15.330.

(1) Division (B) above does not apply to either of the following:

(a) A public servant who is paid for working an average of 25 hours per week or less for a public entity; and

(b) A public servant who is an employee of a public community college, junior college, state college or university.

(2) A contract as defined in and limited by division (B) above involving a public entity and a public servant described in division (C) (1) above, shall meet all of the following requirements:

(a) The public servant promptly discloses any pecuniary interest in the contract to the official body that has power to approve the contract, which disclosure shall be made a matter of record in its official proceedings. Unless the public servant making the disclosure will directly benefit from the contract in an amount less than \$250 and less than 5% of the public cost of the contract, and the public servant files a sworn affidavit to that effect with the official body or the contract is for emergency repairs or services, the disclosure shall be made in either of the following manners:

1. The public servant promptly discloses in writing to the presiding officer, or if the presiding officer is the public servant who is a party to the contract, to the Clerk, the pecuniary interest in the contract at least seven days prior to the meeting at which a vote will be taken. The disclosure shall be made public in the same manner as a public meeting notice; and

2. The public servant discloses the pecuniary interest at a public meeting of the official body. The vote shall be taken at a meeting of the official body held at least seven days after the meeting at which the disclosure is made. If the amount of the direct benefit to the public servant is more than \$5,000, disclosure must be made as provided under this section.

(b) The contract is approved by a vote of not less than 2/3 of the full membership of the approving body in open session without the vote of the public servant making the disclosure.

(c) The official body discloses the following summary information in its official minutes:

1. The name of each party involved in the contract;

2. The terms of the contract, including duration, financial consideration between parties, facilities or services of the public entity included in the contract and the nature and degree of assignment of employees of the public entity for fulfillment of the contract; and

3. The nature of any pecuniary interest.

(3) This section and division (C)(2) above do not prevent a public servant from making or participating in making a governmental decision to the extent that law requires the public servant's participation. If 2/3 of the members are not eligible under this act to vote on a contract or to constitute a quorum, a member may be counted for purposes of a quorum and may vote on the contract if the member will directly benefit from the contract in an amount less than \$250 and less than 5% of the public cost of the contract and the member files a sworn affidavit to that effect with the official proceedings. As used in this section, **GOVERNMENTAL DECISION** means a determination, action, vote or disposition upon a motion, proposal, recommendation, resolution, ordinance, order or measure on which a vote by members of a local legislative or governing body of a public entity is required and by which a public body effectuates or formulates public policy.

(D) *Dual employment.* No village official or employee shall engage in employment with, or render services for, any person or entity engaged in any business transaction with the village unless the official or employee shall first make full public disclosure of the nature and extent of the interest.

(E) *Dual representation.* Each village official or employee shall make full public disclosure of any special privileges or exemptions he or she will receive because of his or her position with the village.

(1992 Code, § 4.004) (Ord. 99-2, passed 3-22-1999) Penalty, see § 34.99

§ 34.05 PROCEDURES FOR DISCLOSURE OF CONFLICT OF INTEREST.

(A) Whenever full public disclosure is required under this chapter, the disclosure shall be made orally on the record in open session at a meeting of the village body involved or in writing filed with the Village Clerk. The disclosure shall become part of the official record of the village body involved and, if applicable, shall also become part of the official record of a regularly scheduled meeting of the Village Council.

(B) Each disclosure shall include, if applicable:

(1) The identity of all individuals involved;

(2) The sources and amount of income or other financial gain that may be involved; and

(3) The terms of the business transaction, including but not limited to, duration, consideration between the parties, facilities or services of the village that are involved, the nature and degree of any assignment of village employees and the nature of any financial interest.

(C) The matter may be approved by a vote of not less than 2/3 of the full membership of the approving body in open session, without the vote of the official or employee making the disclosure.

(1992 Code, § 4.005) (Ord. 99-2, passed 3-22-1999)

§ 34.06 APPEARANCE OF IMPROPRIETY.

An appearance of impropriety shall occur when an official or employee is involved in a decision concerning action of a village body which will affect an immediate family member, even if that official or employee derives no direct or indirect financial benefit from the action. An appearance of impropriety shall be fully disclosed on the official record to the village body. After the disclosure, the official or employee may participate in the decision only if he or she has informed the village body in advance that he or she will so participate.

(1992 Code, § 4.006) (Ord. 99-2, passed 3-22-1999)

§ 34.07 USE OF VILLAGE PROPERTY.

No official or employee shall request, use or permit the use of any village owned or supported property, including but not limited to, any vehicle, equipment, material, labor, service or money for his or her own personal convenience or private advantage, or that of any other person, unless expressly permitted by the Village Council or its designee.

(1992 Code, § 4.007) (Ord. 99-2, passed 3-22-1999) Penalty, see § 34.99

§ 34.08 OTHER PROHIBITED CONDUCT.

A village official or employee shall not engage in any of the following conduct:

(A) Divulging confidential information to any person not authorized to obtain such information;

(B) Benefitting financially from the disclosure of confidential information;

(C) Representing his or her own personal opinion as that of the village;

(D) Misusing village personnel resources, property, funds or assets for personal gain;

(E) Soliciting or accepting a gift or loan of money, goods, services or other things of value which would tend to influence the manner in which the official or employee performs his or her official duties:

(1) Gifts or favors for personal gain should not be solicited from an individual or an organization that does business with the village or seeks to do so. The size of the gift or favor is immaterial. Soliciting gifts or favors, either directly or indirectly, is strictly prohibited. If a gift is offered, a report should be completed and filed with the Village Clerk.

(2) The acceptance of inexpensive advertising gifts, such as pens, pencils, key rings, calendars, coffee cups and the like or other small items, such as boxes of candy, nuts or plants and the like shared by an entire office and/or enjoyed by the public are not considered gifts of value and can be accepted.

(3) Any gift of cash, including gift certificates, is strictly prohibited.

(F) Engaging in employment or rendering services which are incompatible with the discharge of his or her official duties or which would tend to impair his or her independent judgment. A former village employee or volunteer who is receiving retirement or pension and/or health care benefits from the village may serve on the Village Council. However, if any business comes before the Village Council which pertains to or affects the benefits, the former employee or volunteer shall disclose his or her interest and shall refrain from voting on the matter. A change in the village's retirement or pension and health care benefits shall be approved by a 2/3 vote of the membership of the Village Council without the vote of the former employee or volunteer; and

(G) A Village Council member's addressing a body, including but not limited to the Zoning Board of Appeals, which is appointed by the Village Council, for the purpose of influencing a decision of that body.

(1992 Code, § 4.008) (Ord. 99-2, passed 3-22-1999) Penalty, see § 34.99

§ 34.09 NEPOTISM.

Unless the Village Council determines by a 4/5 vote of its members which vote shall be recorded as part of the official proceedings, that the best interest of the village will be served by his or her employment or appointment, the following relatives of any elected official are disqualified from holding any office or position of employment during the term for which the elected official was elected or appointed: spouse, child, parent, grandchild, grandparent, brother, sister, half-brother, half-sister or the spouse of any of them. All relationships shall include those arising from adoption. This section shall in no way disqualify the relatives or their spouses who are bona fide appointed officers or employees of the village at the time of the election or appointment of the official, or who are presently employed by the village at the time of the adoption of this chapter.

(1992 Code, § 4.009) (Ord. 99-2, passed 3-22-1999)

§ 34.10 INTERPRETATION.

In no event shall this chapter be interpreted to prohibit conduct otherwise expressly allowed by the Village Charter or other applicable law.

(1992 Code, § 4.010) (Ord. 99-2, passed 3-22-1999)

§ 34.11 SAVINGS.

All proceedings pending and all rights and liability existing, acquired or incurred at the time this chapter takes effect, are saved and may be consummated according to the law in force when they are commenced.

(1992 Code, § 4.013) (Ord. 99-2, passed 3-22-1999)

§ 34.99 PENALTY.

(A) Business transactions with the village involving prohibited activities on the part of officials or employees shall be voidable by a decree of a court of proper jurisdiction in accordance with state law, including but not limited to Public Act 317 of 1968, being M.C.L.A. §§ 15.321 through 15.330, as amended.

(B) Any official who violates any provision of this chapter shall be guilty of misconduct and subject to removal from office as provided by the Village Charter.

(C) Any person who violates, disobeys, omits, neglects or refuses to comply with any provision of this chapter shall be punished, upon conviction, by a fine of not more than \$100, and costs of prosecution or by imprisonment for a period not exceeding 90 days, or both fine and imprisonment, in the discretion of the court.

(1992 Code, § 4.011) (Ord. 99-2, passed 3-22-1999)

CHAPTER 35: CIVIL INFRACTIONS

Section

35.01 Title

35.02 Purpose and intent

35.03 Definitions

- 35.04 Authorized village official
- 35.05 Municipal civil infraction action; commencement
- 35.06 Municipal civil infraction citations; issuance and service
- 35.07 Municipal civil infraction citations; contents
- 35.08 Municipal Ordinance Violations Bureau
- 35.99 Penalty

§ 35.01 TITLE.

This chapter shall be referred to as the Village of Birch Run Municipal Civil Infraction Ordinance.

(Ord. 04-04, passed 10-25-2004)

§ 35.02 PURPOSE AND INTENT.

The purpose of the Village of Birch Run Municipal Civil Infraction Ordinance is to:

- (A) Streamline the enforcement process for violation of local laws, ordinances, rules and regulations;
- (B) Offer immediate notice to the violator of the violation via the issuance of tickets;
- (C) Establish a schedule of fines for violation of local laws, ordinances, rules and regulations; and
- (D) Establish a Municipal Ordinance Violation Bureau.

(Ord. 04-04, passed 10-25-2004)

§ 35.03 DEFINITIONS.

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

ACT. Public Act 236 of 1961, being M.C.L.A. §§ 600.101 through 600.9948, as amended.

AUTHORIZED VILLAGE OFFICIAL. The Police Chief or a police officer, full-time and part-time, acting on the directive of the Police Chief.

BUREAU. The Village of Birch Run Municipal Ordinance Violations Bureau as established by this chapter.

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

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

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

VILLAGE. The Village of Birch Run.

(Ord. 04-04, passed 10-25-2004)

§ 35.04 AUTHORIZED VILLAGE OFFICIAL.

The following employees and/or officials of the village are hereby designated as the authorized village official to issue municipal civil infraction citations (directing alleged violators to appear in court) or municipal infraction violation notices (directing alleged violators to appear at the Village of Birch Run Municipal Ordinance Violations Bureau) as provided by this chapter:

- (A) Police Chief; and
- (B) Police officers; full-time and part-time acting on the directive of the Police Chief.

(Ord. 04-04, passed 10-25-2004)

§ 35.05 MUNICIPAL CIVIL INFRACTION ACTION; COMMENCEMENT.

A municipal civil infraction action may be commenced upon the issuance by an authorized village official of:

- (A) A municipal civil infraction citation directing the alleged violator to appear in court; or
- (B) A municipal civil infraction violation notice directing the alleged violator to appear at the Village of Birch Run Municipal Ordinance Violations Bureau.

(Ord. 04-04, passed 10-25-2004)

§ 35.06 MUNICIPAL CIVIL INFRACTION CITATIONS; ISSUANCE AND SERVICE.

Municipal civil infraction citations shall be issued and served by authorized village officials as follows:

(A) The time for appearance specified in a citation shall be within a reasonable time after the citation is issued which shall not exceed 14 calendar days following the issuance;

(B) The place for appearance specified in a citation shall be the District Court for Saginaw County;

(C) Each citation shall be numbered consecutively and shall be in a form approved by the State Court Administrator. The original citation shall be filed with the District Court. Copies of the citation shall be retained by the village and issued to the alleged violator as provided by § 8705 of the Act;

(D) A citation for a municipal civil infraction signed by an authorized village official shall be treated as made under oath if the violation alleged in the citation occurred in the presence of the 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;"

(E) An authorized village official who witnesses a person commit a municipal civil infraction shall prepare and subscribe, as soon as possible and as completely as possible, an original and required copies of a citation;

(F) An authorized village official may issue a citation to a person if:

(1) Based upon investigation, the official has reasonable cause to believe that the person is responsible for a municipal civil infraction; or

(2) Based upon investigation of a complaint by someone who allegedly witnessed the person commit a municipal civil infraction, the official has reasonable cause to believe that the person is responsible for an infraction and if the prosecuting attorney or Village Attorney approves in writing the issuance of the citation.

(G) Municipal civil infraction citations shall be served by an authorized village official as follows:

(1) Except as provided by § 35.08(G), an authorized village official shall personally serve a copy of the citation upon the alleged violator; and

(2) If the municipal civil infraction action involves the use or occupancy of land, a building or other structure, a copy of the citation does not need to be personally served upon the alleged violator, but may be served upon an owner or occupant of the land, building or structure, by posting a copy of the citation 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.

(Ord. 04-04, passed 10-25-2004)

§ 35.07 MUNICIPAL CIVIL INFRACTION CITATIONS; CONTENTS.

(A) A municipal ordinance citation shall contain the name and address of the alleged violator, the municipal civil infraction alleged, the place where the alleged violator shall appear in court, the telephone number of the court and the time at or by which the appearance shall be made.

(B) Further, the citation shall inform the alleged violator that he or she may do one of the following:

(1) Admit responsibility for the municipal civil infraction by mail, in person or by representation, at or by the time specified for appearance;

(2) Admit responsibility for the municipal civil infraction with explanation by mail, in person or by representation, at or by the time specified for appearance; and

(3) Deny responsibility for the municipal civil infraction by doing either of the following:

(a) Appearing in person for an informal hearing before a judge or District Court Magistrate, without the opportunity of being represented by an attorney, unless a formal hearing before a judge is requested by the village; and

(b) Appearing in court for a formal hearing before a judge, with the opportunity of being represented by an attorney.

(C) The citation shall also inform the alleged violator of all of the following:

(1) That if the alleged violator desires to admit responsibility with explanation in person or by representation, the alleged violator must apply to the court in person, by mail, by telephone or by representation within the time specified for appearance and obtain a scheduled date and time for an appearance;

(2) That if the alleged violator desires to deny responsibility, the alleged violator must apply to the court in person, by mail, by telephone or by representation within the time specified for appearance and obtain a scheduled date and time to appear for a hearing, unless a hearing date is specified on the citation;

(3) That a hearing shall be an informal hearing unless a formal hearing is requested by the alleged violator or the village;

(4) That at an informal hearing the alleged violator must appear in person before a judge or District Court Magistrate, without the opportunity of being represented by an attorney; and

(5) That at a formal hearing, the alleged violator must appear in person before a judge with the opportunity of being represented by an attorney.

(D) The citation shall contain a notice in bold-faced-type that the failure of the alleged violator to appear within the time specified in the citation, or at the time scheduled for a hearing or appearance is a misdemeanor and will result in entry of a default judgment against the alleged violator on a municipal civil infraction.

(Ord. 04-04, passed 10-25-2004)

§ 35.08 MUNICIPAL ORDINANCE VIOLATIONS BUREAU.

(A) *Bureau established.* The Birch Run Village Council hereby establishes a Municipal Ordinance Violations Bureau (Bureau) as authorized under § 8396 of the Act to accept admissions of responsibility for municipal civil infractions in response to municipal civil infraction violation notices issued and served by authorized village officials, and to collect and retain civil fines and costs as prescribed by this or any ordinance.

(B) *Location; supervision; employees; rules and regulations.* The Bureau shall be located at the Birch Run Village Offices and shall be under the supervision and control of the DDA Director and/or Village Manager. The DDA Director and/or Village Manager, subject to the approval of the Birch Run Village Council, shall adopt rules and regulations for the operation of the Bureau and appoint any necessary, qualified village employees to administer the Bureau.

(C) *Disposition of violations.* The Bureau may dispose only of municipal civil infraction violations for which a fine has been scheduled and for which a municipal civil infraction violation notice (as compared with a citation) has been issued. The fact that a fine has been scheduled for a particular violation shall not entitle any person to dispose of the violation at the Bureau. Nothing in this chapter shall prevent or restrict the village from issuing a municipal civil infraction citation for any violation or from prosecuting any violation in a court of competent jurisdiction. No person shall be required to dispose of a municipal civil infraction violation at the Bureau and may have the violation processed before a court of appropriate jurisdiction. The unwillingness for any person to dispose of any violation at the Bureau shall not prejudice the person or in any way diminish the person's rights, privileges and protection accorded by law.

(D) *Bureau limited to accepting admissions of responsibility.* The scope of the Bureau's authority shall be limited to accepting admissions of responsibility for municipal civil infractions and collecting and retaining civil fines and costs as a result of those admissions. The Bureau shall not accept payment of a fine from any person who denies having committed the offense or who admits responsibility only with explanation, and in no event shall the Bureau determine, or attempt to determine, the truth or falsity of any fact or matter relating to an alleged violation.

(E) *Municipal civil infraction violation notices.* Municipal civil infraction violation notices shall be issued and served by authorized village officials under the same circumstances and upon the same persons as are citations, as provided for in divisions (F) and (G) below. In addition to any other information required by this or any ordinance, the notice of violation shall indicate the time by which the alleged violator must appear at the Bureau, the methods by which an appearance may be made, the address and telephone number of the Bureau, the hours during which the Bureau is open, the amount of the fine scheduled for the alleged violation and the consequences for failure to appear and pay the required fine within the required time.

(F) *Appearance; payment of fines and costs.* An alleged violator receiving a municipal civil infraction violation notice shall appear at the Bureau and pay the specified fine and costs at or by the time specified for appearance in the municipal civil infraction violation notice. An appearance may be made by mail, in person or by representation.

(G) *Procedure where admission of responsibility not made, or fine not paid.* If an authorized village 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 the schedule of fines for the violation are not paid at the Bureau, a municipal civil infraction citation may be filed with the District Court and a copy of the citation may be served by first-class mail upon the alleged violator at the alleged violator's last known address. The citation filed with the court does not need to comply in all respects with the requirements for citations as provided by §§ 8705 and 8709 of the Act, but shall consist of a sworn complaint containing the allegations stated in the municipal ordinance violation notice and shall fairly inform the alleged violator how to respond to the citation.

(Ord. 04-04, passed 10-25-2004)

§ 35.99 PENALTY.

(A) *Violations.*

(1) The sanction for a violation which is a municipal civil infraction shall be a civil fine in the amount as provided by this or any ordinance, plus any costs, damages, expenses and other sanctions, as authorized under Ch. 87 of Public Act 236 of 1961, being M.C.L.A. §§ 600.101 through 600.9948, as amended, and other applicable laws.

(a) Unless otherwise specifically provided for a particular municipal civil infraction violation by this or any ordinance, the civil fine for a violation shall be not less than \$50, plus costs and other sanctions for each infraction.

(b) Increased civil fines may be imposed for repeated violations by a person of any requirement or provision of this or any ordinance. As used in this section, **REPEAT OFFENSE** means a second (or any subsequent) municipal civil infraction violation of the same requirement or provision:

1. Committed by a person within any six-month period (unless some other period is specifically provided by this or any ordinance); and

2. For which the person admits responsibility or is determined to be responsible. Unless otherwise specifically provided by this or any ordinance for a particular municipal civil infraction violation, the increased fine for a repeat offense shall be as follows:

a. The fine for any offense which is a first repeat offense shall be no less than \$75, plus costs; and

b. The fine for any offense which is a second repeat offense or any subsequent repeat offense shall be no less than \$100, plus costs.

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

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

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

(B) *Failure to appear; penalty.* A person served with a municipal civil infraction citation as provided in § 35.05 who fails to appear within the time specified in the citation or at the time scheduled for a hearing or appearance is guilty of a misdemeanor, punishable by a fine of not more than \$100 or imprisonment for not more than 90 days, or to both the fine and imprisonment in the discretion of the Court. Failure to appear will also result in the entry of a default judgment on the municipal civil infraction.

(Ord. 04-04, passed 10-25-2004)

TITLE V: PUBLIC WORKS

Chapter

50. GENERAL CODES

51. WATER

52. WATER AND SEWERS

53. SEWERS

CHAPTER 50: GENERAL CODES

Section

50.01 Enforcement Agency

50.99 Penalty

§ 50.01 ENFORCEMENT AGENCY.

Pursuant to the provisions of the Michigan Building, Electrical, Mechanical, Plumbing and Residential Code, in accordance with § 8b (6) of Public Act 230 of 1972, being M.C.L.A. §§ 125.1501 through 125.1531, as amended, the Building, Electrical, Mechanical and Plumbing Official of the Village of Birch Run is hereby designated as the Enforcing Agency to discharge the responsibilities of the Village of Birch Run under Public Act 230, as amended, State of Michigan. The Village of Birch Run assumes responsibility for the administration and enforcement of the Act throughout its corporate limits.

(Ord. 02-2006, passed 4-24-2006)

§ 50.99 PENALTY.

(A) *Infraction.* Any person or other entity that violates any of the provisions of § 50.01 is responsible for a municipal civil infraction as defined by Michigan Law and subject to a civil fine determined in accordance with the following schedule:

Each offense	\$100
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(B) *Repeat offences.*

(1) The court shall exercise its discretion in setting the appropriate fine and shall take into consideration, among other relevant factors, the ongoing, flagrant and/or abusive nature of the violation and the repetitive nature of the offense.

(2) Additionally, the violator shall be ordered to pay restitution to the Village of Birch Run, which may include all direct and indirect expenses which the village has incurred in connection with the violation enforcement action for each citation. In no case, however, shall restitution of less than \$9 or more than \$500 be ordered for each citation.

(3) A violator of § 50.01 shall also be subject to the additional sanctions, remedies and judicial orders as are authorized under

CHAPTER 51: WATER

Section

Water System Capital Expansion and Maintenance Charge

- 51.01 Adoption
- 51.02 Definitions
- 51.03 Water connection charge
- 51.04 Payments
- 51.05 Investment
- 51.06 Expenditure
- 51.07 No connection without payment
- 51.08 Enforcement; violation deemed nuisance

Water Supply System

- 51.25 Necessity; description of system
 - 51.26 Cost
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 - 51.29 Revenue bonds; how payable
 - 51.30 Bondholders; rights
 - 51.31 Management and control of systems
 - 51.32 Rates and charges; water service connections; billing; accounts; cross-connections
 - 51.33 No free service
 - 51.34 Rates to be sufficient for operation of system
 - 51.35 Operating year
 - 51.36 Funds
 - 51.37 Transfer of monies
 - 51.38 Investment of monies
 - 51.39 Bond sale in accordance with proper legislation
 - 51.40 Proceeds of bond sale
 - 51.41 Responsibilities of village to bondholders
 - 51.42 Additional bonds
 - 51.43 Form of bonds and coupons
 - 51.44 Authority to issue and sell bonds
 - 51.99 Penalty
- Appendix A: Equivalency charges for sewer connection

WATER SYSTEM CAPITAL EXPANSION AND MAINTENANCE CHARGE

§ 51.01 ADOPTION.

This subchapter is adopted pursuant to the provisions of Public Act 94 of 1933, being M.C.L.A. §§ 141.101 through 141.138, as amended and Public Act 185 of 1957, being M.C.L.A. §§ 123.731 through 123.786, as amended, for the purpose of raising funds to assist with future expansion of and/or major maintenance to the Village of Birch Run water system.

(1992 Code, § 87.001) (Ord. 7-96, passed 8-19-1996)

§ 51.02 DEFINITIONS.

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

CONNECTION. Any physical connection to a water main or any appurtenances thereof.

CUSTOMER. All persons, corporations, partnerships, sole proprietorships, trusts, estates or other business entities which own or operate any structure which is connected to the Village of Birch Run water system.

SPRINKLER LINE. Those water lines installed for the purpose of watering landscape items and/or lawns.

SYSTEM. Any water main, pumps, pumping stations and other related appurtenances.

VILLAGE COUNCIL. The Birch Run Village Council.

(1992 Code, § 87.002) (Ord. 7-96, passed 8-19-1996)

§ 51.03 WATER CONNECTION CHARGE.

(A) Each new water customer connecting to the Village of Birch Run water system shall be charged a connection fee of \$1,000 times the size of water line for each installed.

(B) There shall be a minimum connection fee of \$1,000.

(C) This charge is not applicable to sprinkler lines.

(1992 Code, § 87.003) (Ord. 7-96, passed 8-19-1996)

§ 51.04 PAYMENTS.

The water connection fee shall be due to the Village of Birch Run prior to the actual connection to the water system. The payment shall be made at the time an application for water service is completed and returned to the Village of Birch Run Office.

(1992 Code, § 87.004) (Ord. 7-96, passed 8-19-1996)

§ 51.05 INVESTMENT.

Monies deposited in the fund together with the interest earned thereon shall be invested by the Village Treasurer in investments permitted in § 1(a)(c)(d) or (e) of Public Act 20 of 1943, being 129.91 through 129.96, as amended.

(1992 Code, § 87.005) (Ord. 7-96, passed 8-19-1996)

§ 51.06 EXPENDITURE.

Monies deposited in this fund shall be used to assist with the costs associated with or arising from the expansion of and/or major maintenance to the Village of Birch Run water system.

(1992 Code, § 87.006) (Ord. 7-96, passed 8-19-1996)

§ 51.07 NO CONNECTION WITHOUT PAYMENT.

No connection to the Village of Birch Run water system shall be permitted until the water connection charge is collected in full.

(1992 Code, § 87.007) (Ord. 7-96, passed 8-19-1996) Penalty, see § 51.99

§ 51.08 ENFORCEMENT; VIOLATION DEEMED NUISANCE.

The provisions of this subchapter shall be enforceable through the bringing of appropriate action for injunction, mandamus or otherwise, in any court of competent jurisdiction. Any violation of this subchapter is deemed to be a nuisance per se.

(1992 Code, § 87.008) (Ord. 7-96, passed 8-19-1996)

WATER SUPPLY SYSTEM

§ 51.25 NECESSITY; DESCRIPTION OF SYSTEM.

It is hereby determined to be necessary for the public health, safety and welfare of the Village of Birch Run to acquire and construct in accordance with detailed maps, plans and specifications therefore prepared by the Spicer Engineering Company, consulting engineers of Saginaw, Michigan, a water supply system for the village consisting of necessary wells, pumping equipment, water mains, an elevated storage tank and hydrants, together with necessary appurtenances and attachments thereto.

(1992 Code, § 80.001) (Ord. 1-62, passed - - 1962)

§ 51.26 COST.

The cost of the water improvements has been estimated by the engineers to be \$173,000, including the payment of incidental expenses

as specified in § 51.27, which estimate of cost is hereby approved and confirmed, and the period of usefulness of the public improvements is estimated to be not less than 40 years. The public improvements will be financed in part by the revenue bonds issued pursuant to this subchapter, and the balance of the cost will be provided from the proceeds of sale of Village General Obligation Bonds in the amount of \$73,000.

(1992 Code, § 80.002) (Ord. 1-62, passed - - 1962)

§ 51.27 REVENUE BONDS TO BE ISSUED; DEFINITIONS.

(A) To pay part of the cost of acquiring and constructing the water improvements, including the payment of engineering, legal, financial and other expenses incident thereto and incident to the issuance and sale of the bonds, and including payment of interest on the bonds to be issued coming due on October 1, 1962, and April 1, 1963, and the estimated operation and maintenance expenses for the first six months of operation of the system, it is hereby determined that the Village of Birch Run shall borrow the sum of \$100,000, and that revenue bonds be issued therefore pursuant to the provisions of Public Act 94 of 1933, being M.C.L.A. §§ 141.101 through 141.138, as amended, which bonds are referred to in this subchapter as the bonds.

(B) Whenever the words **THE SYSTEM** are referred to in this subchapter, they shall be understood to mean the complete water supply system of the Village of Birch Run, including all wells, pumps, pump houses, water mains, storage facilities, treatment facilities, water intakes and all other facilities used or useful in the supply and distribution of water for domestic, commercial or industrial uses and for fire protection purposes, including all appurtenances thereto and including all extensions and improvements thereto, which may hereafter be acquired.

(C) Whenever the words **PUBLIC IMPROVEMENTS** are used in this subchapter, they shall be understood to mean the improvements authorized to be acquired and constructed under the provisions of this subchapter.

(D) Whenever the words **REVENUES** and **NET REVENUES** are used in this subchapter, they shall be understood to have the meanings as defined in § 3, Public Act 94 of 1933, being M.C.L.A. §§ 141.101 through 141.138, as amended.

(1992 Code, § 80.003) (Ord. 1-62, passed - - 1962)

§ 51.28 REVENUE BONDS; DESCRIPTION.

(A) The bonds shall be designated Water Supply System Revenue Bonds, and shall not be general obligations of the Village of Birch Run, but revenue bonds payable out of the net revenues of the system after provision has been made for the payment of expenses of administration, operation and maintenance and shall consist of 100 bonds of the denomination of \$1,000 each, dated as of May 1, 1962, numbered in direct order of maturity from 1 to 100, both inclusive and maturing as follows:

<i>Amount</i>	<i>Date</i>
\$1,000	April 1, 1964
\$2,000	April 1 of each of the years 1965 and 1966
\$3,000	April 1, 1967
\$4,000	April 1, 1968
\$5,000	April 1 of each of the years 1969 and 1970
\$6,000	April 1 of each year from 1971 to 1983, both inclusive

(B) The bonds to bear interest at the rate or rates not exceeding 5% per annum, payable on October 1, 1962, and semi-annually thereafter on April 1 and October 1 of each year, both principal and interest to be payable in lawful money of the United States of America at a bank or trust company to be designated by the purchaser of the bonds.

(C) Bonds numbered 1 to 22, both inclusive, maturing in the years 1964 to 1969, both inclusive, will not be subject to prior redemption.

(D) Bonds numbered 23 to 100, both inclusive, maturing in the years 1970 and 1983, both inclusive, will be subject to redemption prior to maturity, at the option of the village, in inverse numerical order on any interest payment date on or after April 1, 1969.

(E) Bonds called for redemption shall be redeemed at par and accrued interest to the date fixed for redemption, plus a premium for each bond so redeemed as follows:

- (1) Forty dollars on each bond called for redemption on or after April 1, 1969, but before April 1, 1972;
- (2) Thirty dollars on each bond called for redemption on or after April 1, 1972, but before April 1, 1975;
- (3) Twenty dollars on each bond called for redemption on or after April 1, 1975, but before April 1, 1979; and
- (4) Ten dollars on each bond called for redemption on or after April 1, 1979, but before maturity.

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

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

(H) The bonds shall be signed by the President and countersigned by the Village Clerk and shall have the corporate seal of the village impressed thereon and shall have interest coupons attached bearing the facsimile signatures of the President and Village Clerk.

(1992 Code, § 80.004) (Ord. 1-62, passed - - 1962)

§ 51.29 REVENUE BONDS; HOW PAYABLE.

The bonds and the attached coupons shall not be a general obligation or indebtedness of the Village of Birch Run, but shall be payable solely from the net revenues derived from the operation of the system, and to secure the payment, there is hereby created a statutory first lien upon the whole of the net revenues of the system to continue until the payment in full of the principal and interest on the bonds.

(1992 Code, § 80.005) (Ord. 1-62, passed - - 1962)

§ 51.30 BONDHOLDERS; RIGHTS.

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

(B) If there be any default in the payment of the principal of or interest upon any of the bonds, any court having jurisdiction in any proper action may appoint a receiver to administer and operate the system on behalf of the village, and under the direction of the court and by and with the approval of the court to perform all of the duties of the officials of the village, more particularly set forth herein and in Public Act 94 of 1933, being M.C.L.A. §§ 141.101 through 141.138, as amended.

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

(1992 Code, § 80.006) (Ord. 1-62, passed - - 1962)

§ 51.31 MANAGEMENT AND CONTROL OF SYSTEMS.

The construction, alteration, repair and management of the system shall be under the supervision and control of the Village Council. The Village Council may employ the person or persons in the capacity or capacities as it deems advisable to carry on the efficient management and operation of the system, subject to the approval of the Village Council. The Village Council may make the rules, orders and regulations as it deems advisable and necessary to assure the efficient management and operation of the system.

(1992 Code, § 80.007) (Ord. 1-62, passed - - 1962)

§ 51.32 RATES AND CHARGES; WATER SERVICE CONNECTIONS; BILLING; ACCOUNTS; CROSS-CONNECTIONS.

(A) Each lot, parcel of land or building occupied or used for a separate purpose or by a separate tenant or family shall be considered as a separate premises for the purposes of this subchapter.

(B) For the use of water through fire hydrants and for the availability of the water, the village shall pay to the water supply system, in equal quarterly installments, the sum of \$50 per hydrant, per year, the payments to be made from funds legally available for the purpose or from the proceeds of taxes which the village shall levy.

(C) The installation of water service connections from water mains to private premises within the village and the township shall be made by the village and a reasonable charge made therefore. The owner shall pay, in addition to all other charges and fees provided for herein, in advance of the commencement of the tapping, the actual cost to the village plus 10%.

(D) No service connection shall be constructed for the purpose of introducing water to any premises within the village or the township until an application for a permit for the connection has been made in writing to an appropriate official designated by the Village Council. Upon receipt by the Village Treasurer of monies required to be paid for connections under this subchapter, installation may be commenced by the village.

(E) Water service connections shall be installed only by the village and upon prepayment of the connection cost and cost of furnishing and installing the meter. The Village Council shall from time to time determine the average connection cost for the village and the township and this shall be payment complete for all material and labor involved in tapping the main, laying the proper pipe from the distribution main to the curb stop and box, the furnishing and placing of the curb stop and box and the furnishing and installation of the meter. Type "K" copper will be used at all tap-ins and may continue into the structure or the tap-in may be connected to two-inch Polybutylene CTS OD, 250 psi, SDR 9, ASTM D-2666 water service piping, which may be installed to within five feet of a structure, at which point there will be a connection of type "K" copper. All water service connections shall be to the depth of five feet under the surface of the street or lowest part of the gutter. No water service connection shall be laid in the same trench with a sewer pipe unless supported upon an earth shelf at least one foot above the sewer and 1-1/2 feet horizontally from the sewer. The village shall install a brass curb stop with a valve box which shall be placed approximately on the street line or private property line of roads and highways and this curb stop shall be under the exclusive control of the village.

(F) No person shall open or use water from any public or private fire hydrant for any purpose except for extinguishing fires unless a written permit from the village has been issued for the use.

(G) The village shall establish and maintain a separate account entitled Township of Birch Run Water Account, into which shall be deposited all monies received for water service charges and other charges which shall be established by the Township of Birch Run for water customers within the township. The village shall prepare and provide to the Township of Birch Run a monthly accounting allocating to the township its proportionate share, based upon water consumption of township customers of all operational and other costs of the system and that the amount shall be transferred from the Township of Birch Run Water Account to a village account. In addition, the village shall charge each Township customer the sum of \$.75 per quarter to defray administrative costs. This amount shall be adjusted by the Village Council from time to time to reflect actual costs. The amounts are to be transferred from the Township Water Account to the Village Water Account, monthly. The Village of Birch Run shall be responsible for payment of all bills, including payment for water purchased from the City of Saginaw, pertaining to the operation, administration and maintenance of the water supply system. In addition to the operational and administrative costs, the village shall charge the Township Water Account, for the purpose of defraying the costs of maintenance and repairs within the system, a charge of \$.05 per 1,000 gallons of water supplied to the township which shall be charged until a fund for this purpose is established in the amount of \$1,000. No further charges shall be made until the fund is reduced below \$1,000 in which case the charges shall be resumed to maintain the fund at \$1,000. The village shall utilize this fund to pay the township's proportionate share of repairs and maintenance of the system. After the payment of all operational, administrative and maintenance costs, as aforesaid, the village shall transfer, monthly, 90% of the balance in the Township Water Account to a Township Water Savings Account established by the township.

(H) The charge for water services which are, under the provisions of § 121 of Public Act 94 of 1933, being M.C.L.A. §§ 141.101 through 141.138, as amended, made a lien on all premises within the Village of Birch Run served thereby, unless notice is given that a tenant is responsible, are hereby recognized to constitute the lien and whenever any charge against any piece of property shall be delinquent for six months the village official or officials in charge of the collection thereof shall certify annually, on April 1 of each year, to the Tax Assessing Officer of the village, the fact of the delinquency whereupon the charge shall be by him or her entered upon the next tax roll as a charge against the premises and shall be collected and the lien thereon enforced in the same manner as general village taxes against the premises are collected and the lien thereof enforced; provided, however, where notice is given that a tenant is responsible for the charges and services as provided by the § 21, no further service shall be rendered the premises until a cash deposit of not less than \$100 shall have been paid as a security for payment of the charges and services. Prior to April 1 of each year, the village shall supply the Township of Birch Run with a list of properties where charges for water service have been delinquent for six months, and the Township of Birch Run shall thereupon collect the charges for payment to the village in accordance with the statutes in the case made and provided.

(1992 Code, § 80.008) (Ord. 1-62, passed - - 1962; Ord. 1-63, passed 7-17-1963; Ord. 1-74, passed 1-21-1974; Ord. 7-76, passed 6-24-1976; Ord. passed 8-22-1994; Ord. 00-05, passed 9-25-2000) Penalty, see § 51.99

§ 51.33 NO FREE SERVICE.

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

(1992 Code, § 80.009) (Ord. 1-62, passed - - 1962) Penalty, see § 51.99

§ 51.34 RATES TO BE SUFFICIENT FOR OPERATION OF SYSTEM.

The rates hereby fixed are estimated to be sufficient to provide for the payment of the expenses of administration and operation and the expenses for maintenance of the system as are necessary to preserve the same in good repair and working order, provide for the payment of the interest upon and the principal of all the bonds as and when the same become due and payable, the creation of the reserve therefore required by this subchapter and to provide for the other expenditures and funds for the system as this subchapter may require. The rates shall be fixed and revised from time to time as may be necessary to produce these amounts, and it is hereby covenanted and agreed at all times to fix and maintain the rates for services furnished by the system as shall be sufficient to provide for the foregoing.

(1992 Code, § 80.010) (Ord. 1-62, passed - - 1962)

§ 51.35 OPERATING YEAR.

The system shall be operated on the basis of an operating year commencing on July 1 and ending on the last day of June next following.

(1992 Code, § 80.011) (Ord. 1-62, passed - - 1962; Ord. 1-63, passed 9-17-1963)

§ 51.36 FUNDS.

Revenues of the system shall be set aside, as collected and deposited in a separate depository account in Frankenmuth State Bank, Birch Run Branch, Birch Run, Michigan, a bank duly qualified to do business in Michigan, in an account to be designated Water Supply System Receiving Fund (hereinafter, for brevity, referred to as the Receiving Fund), and the revenues so deposited are pledged for the purpose of the following funds and shall be transferred from the Receiving Fund periodically in the manner and at the times hereinafter specified.

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

year, shall adopt a budget covering the foregoing expenses for each year, and the total expenses shall not exceed the total amount specified in the budget, except by a vote of 4/5 of the members of the Village Council.

(B) *Bond and Interest Redemption Fund.* There shall next be established and maintained a separate depository account, designated as the Bond and Interest Redemption Fund, the monies on deposit therein from time to time to be used solely for the purpose of paying the principal of and interest upon the bonds hereby authorized. The monies in the Bond and Interest Redemption Fund (including the Bond Reserve Account hereinafter established) shall be kept on deposit with the bank or trust company where the principal and interest on the bonds herein authorized are currently payable. Out of the revenues remaining in the Receiving Fund after provision has been made for expenses of operation and maintenance of the system, there shall next be set aside, quarterly, in the Bond and Interest Redemption Fund, a sum proportionately sufficient to provide for the payment of the principal of and interest upon all outstanding bonds payable from the revenues of the system, as and when the same become due and payable. Commencing April 1, 1963, the amount so set aside for interest each quarter during the first six months of each operating year shall not be less than 1/2 of the total amount of interest maturing on the following October 1, and each quarter during the last six months of each operating period shall be not less than 1/2 of the total amount of interest maturing on the following April 1. The amount so set aside for principal during each quarter commencing April 1, 1963, shall be not less than 1/4 of the amount of principal maturing on the following April 1. If there shall be any deficiency in the amount previously required to be set aside, then the amount of the deficiency shall be added to the current requirements. There is hereby established in the Bond and Interest Redemption Fund a separate account to be known as the Bond Reserve Account into which there shall be paid, in equal quarterly installments from the revenues of the system after provision has been made for the Operation and Maintenance Fund and the Bond and Interest Redemption Fund, the sum of \$2,000 during each of the operating years beginning April 1, 1963, and April 1, 1964, and the sum of \$3,000 during each of the operating years beginning April 1, 1965, and April 1, 1966, so that there shall be accumulated in the Bond Reserve Account the sum of \$10,000. The Bond Reserve Account shall be accumulated in its full amount not later than the close of the operating year commencing April 1, 1966. The monies in the Bond Reserve Account shall be used solely for the payment of the principal and interest on the bonds as to which there would otherwise be default. If at any time it shall be necessary to use monies in the Bond Reserve Account for the payment, then the monies so used shall be replaced from the net revenues first received thereafter which are not required by this subchapter to be used for operation and maintenance or for current principal and interest requirements; provided, however, that the Bond Reserve Account shall not be regarded as monies otherwise appropriated or pledged for the purpose of determining the sufficiency of funds available for redemption for callable bonds. No further payments need be made into the Bond and Interest Redemption Fund after enough of the bonds have been retired so that the amount then held in the fund (including the Bond Reserve Account) is equal to the entire amount of principal and interest which will be payable at the time of maturity of all the bonds then remaining outstanding.

(C) *Replacement Fund.* There shall next be established and maintained a separate depository account designated as the Replacement Fund, which shall be used solely for the purpose of making major repairs and replacements to the system. There shall be deposited in the account, in equal quarterly installments, after providing for all requirements of the Operation and Maintenance Fund and the Bond and Interest Redemption Fund (including the Bond Reserve Account), the sum of \$1,000 during the operating year beginning April 1, 1964, and the sum of \$2,000 during each of the operating years beginning April 1, 1965, and April 1, 1966, so that the fund shall total \$5,000. If, at any time it shall be necessary to use monies in the fund for the purpose, the monies so used shall be replaced from the net revenues in the Receiving Fund which are not required by this subchapter to be used for the Operation and Maintenance Fund or the Bond and Interest Redemption Fund (including the Bond Reserve Account).

(D) *Improvement Fund.* There shall next be established and maintained an Improvement Fund for the purpose of making improvements, extensions and enlargements to the system. There shall be deposited into the fund each quarter after providing for all of the foregoing requirements, the sum as the Village Council shall determine.

(E) *Surplus monies.* Monies remaining in the Receiving Fund at the end of any operating year, after full satisfaction of the requirements of the foregoing funds, may, at the option of the Village Council, be transferred to the Bond and Interest Redemption Fund and used for the purpose of calling bonds for redemption in the manner herein specified, or transferred to the Improvement Fund or used to pay principal and interest on General Obligations Bonds of the village issued for water purposes; provided, however, that if there should be any deficit in the Operation and Maintenance Fund, Bond and Interest Redemption Fund (including the Bond Reserve Account) or the Replacement Fund on account of default in setting aside therein the amounts hereinbefore required, then transfers shall be made from the monies remaining in the Receiving Fund at the end of any operating year to the funds in the priority and order named, to the extent of the deficits.

(1992 Code, § 80.012) (Ord. 1-62, passed - - 1962)

§ 51.37 TRANSFER OF MONIES.

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

(1992 Code, § 80.013) (Ord. 1-62, passed - - 1962)

§ 51.38 INVESTMENT OF MONIES.

Monies in any fund or account established by the provisions of this subchapter, including monies derived from the proceeds of sale of the bonds, may be invested in obligations of the United States of America in the manner and subject to the limitations provided in Public Act 94 of 1933, being M.C.L.A. §§ 141.101 through 141.138, as amended. In the event the investments are made, the securities representing the same shall be kept on deposit with the bank or trust company having on deposit the fund or funds from which the purchase was made. Income received from the investments shall be credited to the fund from which the investments were made.

(1992 Code, § 80.014) (Ord. 1-62, passed - - 1962)

§ 51.39 BOND SALE IN ACCORDANCE WITH PROPER LEGISLATION.

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

(1992 Code, § 80.015) (Ord. 1-62, passed - - 1962)

§ 51.40 PROCEEDS OF BOND SALE.

(A) The proceeds of the sale of the bonds herein authorized to be issued shall be deposited in Frankenmuth State Bank, Birch Run Branch, Birch Run, Michigan. From the proceeds of sale of the bonds there shall be immediately transferred to the Bond and Interest Redemption Fund, the accrued interest and premium, if any, received on sale and delivery of the bonds as well as an amount representing interest for the period for which interest is capitalized, and to the Operation and Maintenance Fund an amount representing capitalized operation and maintenance expenses. The balance of the proceeds shall be applied solely in payment of the cost of the public improvements hereinbefore described and any engineering, legal and other expenses incident thereto and to the financing thereof. Payments for construction, either on account or otherwise, shall not be made unless the registered engineer in charge of the work shall file with the Village Council a signed statement to the effect that the work has been completed in accordance with the plans and specifications therefore, that it was done pursuant to and in accordance with the contract therefore, and that the work is entirely satisfactory.

(B) Any unexpended balance of the proceeds of sale remaining, after completion of the public improvements herein authorized, may, in the discretion of the Village Council and to the extent of 15% of the amount of the bonds authorized by this subchapter, be used for further improvements, enlargements and extensions to the system, provided that at the time of the expenditure the use be approved by the Municipal Finance Commission. Any remaining balance after the expenditure shall be paid into the Bond and Interest Redemption Fund and shall be used for the redemption of callable bonds, or prior to the first call date only, purchasing bonds on the open market at not more than the fair market value thereof, and at a price in any event not exceeding the first call price.

(1992 Code, § 80.016) (Ord. 1-62, passed - - 1962)

§ 51.41 RESPONSIBILITIES OF VILLAGE TO BONDHOLDERS.

The Village of Birch Run covenants and agrees with the successive holders of the bonds and coupons that so long as any of the bonds remain outstanding and unpaid as to either principal or interest.

(A) The Village of Birch Run will maintain the system in good repair and working order and will operate the same efficiently and will faithfully and punctually perform all duties with reference to the system required by the constitution and laws of the State of Michigan, including the making and collecting of sufficient rates for water services rendered by the system, and the segregation and application of the revenues of the system in the manner provided in this subchapter.

(B) The Village Council will cause to be maintained and kept proper books of record and account, separate from all other records and accounts of the village, in which shall be made full and correct entries of all transactions relating to the system. Not later than 60 days after the close of each operating year, the Village Council will cause to be prepared on forms furnished by the Municipal Finance Commission, if the forms are available, a statement in reasonable detail, sworn to by its Chief Accounting Officer, showing the cash income and disbursements of the system during each operating year, the assets and liabilities of the system at the beginning and close of the fiscal year, and the other information as is necessary to enable any taxpayer of the village, user of the service furnished or any holder or owner of the bonds or anyone acting in their interest, to be fully informed as to all matters pertaining to the financial operation of the system during the year. A certified copy of the statement shall be filed within 75 days after the close of each operating year with the Municipal Finance Commission, and a copy sent to the Manager of the account purchasing the bonds. The statement and books of record and account shall at all reasonable times be open to inspection by any taxpayer of the village, user of the service or holder or holders of any bonds or anyone acting in their behalf. The Village Council will also cause an annual audit of the books of record and account for the preceding operating year to be made each year by a recognized independent certified public accountant, and will mail a copy of the audit to the manager of the syndicate or account purchasing the bonds. The audit shall be completed and so made available not later than three months after the close of each operating year.

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

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

(1992 Code, § 80.017) (Ord. 1-62, passed - - 1962)

§ 51.42 ADDITIONAL BONDS.

The right is reserved, in accordance with the provisions of Public Act 94 of 1933, being M.C.L.A §§ 141.101 through 141.138, as amended, to issue additional bonds payable from the revenues of the system, which shall be of equal standing with the bonds herein

authorized but only for the following purposes:

(A) To complete the public improvements in accordance with the plans and specifications therefore, and the bonds shall not be authorized unless the consulting engineers or the successor engineers in charge of construction, shall execute a certificate evidencing the fact that additional funds are needed to complete the public improvements in accordance with the plans and specifications therefore. If the certificate shall be so executed and filed with the Village Clerk, it shall be the duty of the Village Council to provide for and issue additional revenue bonds in the amount stated in the certificate to be necessary to complete the public improvements in accordance with the plans and specifications.

(B) For subsequent extensions and improvements to the system; provided that no additional bonds shall be issued unless the average annual net revenues for the last two preceding completed operating years of the system, or the net revenues for the last completed operating year, whichever is lower, when supplemented by the net revenues estimated to accrue from an increase in rates imposed at or prior to the time of authorization of the additional bonds and/or when supplemented by the net revenues estimated to accrue from the extensions and improvements to be built from the proceeds of sale of the additional bonds, shall be equal to at least 1-1/2 times the largest annual principal and interest requirements thereafter maturing on the bonds herein authorized, on any then previously issued bonds of equal standing with the bonds herein authorized, and on the additional bonds then being issued. For the purpose of determining net revenues under the above requirements, if the village shall raise the water rates at or prior to the time of authorizing the additional bonds, then the net revenues of the system for each of the last two preceding operating years, or the net revenues of the last preceding operating year, as the case may be, shall be augmented to an amount reflecting the effect of the increase had the village's water billings during the years been at the increased rates. In addition, the net revenues for each of the last two preceding operating years shall be increased by an amount to reflect the increase in net revenues estimated to accrue from the extensions and improvements. Prior to the issuance of any additional bonds pursuant to this section, there shall be filed with the Village Clerk a statement showing the net revenues for each of the two preceding completed operating years, the net additional or augmented revenues reflecting the application of the increased rates, and from the additions and extensions to be acquired and constructed, if any, and the annual principal and interest requirements on all outstanding bonds payable from revenues of the system and the bonds proposed to be issued. The statement shall be executed by a registered engineer appointed by the village. Permission of the Municipal Finance Commission (or the other state body having jurisdiction over the issuance of municipal bonds) to issue the additional bonds shall constitute a conclusive presumption of the existence of conditions permitting the issuance thereof.

Except as herein authorized, no additional bonds having equal standing with the bonds of this issue shall be authorized or issued.

(1992 Code, § 80.018) (Ord. 1-62, passed - - 1962)

§ 51.43 FORM OF BONDS AND COUPONS.

The bonds and coupons shall be in substantially the following form:

UNITED STATES OF AMERICA
STATE OF MICHIGAN
COUNTY OF SAGINAW
VILLAGE OF BIRCH RUN
WATER SUPPLY SYSTEM REVENUE BOND

No. _____

\$1,000.00

KNOW ALL MEN BY THE PRESENTS that the VILLAGE OF BIRCH RUN, County of Saginaw, State of Michigan, for value received, hereby promises to pay to the bearer or, if registered, to the registered holder hereof, but only out of the revenues of the water supply system of the Village of Birch Run, including all appurtenances, extensions and improvements thereto, the sum of

ONE THOUSAND DOLLARS

on the first day of April, A.D. 19 ____, with interest thereon from the date hereof until paid at the rate of _____ percent (_____%) per annum, payable on October 1, 1962, and semiannually thereafter on the first day of April and October of each year, upon presentation and surrender of the proper interest coupons hereto attached as they severally become due. Both principal of and interest on this bond are payable in lawful money of the United States of America at _____, and for the prompt payment thereof, the gross revenues of the water supply system of the Village of Birch Run, including all appurtenances, extensions and improvements thereto, after provision has been made for reasonable and necessary expenses of operation, administration and maintenance, are hereby irrevocably pledged and a statutory first lien thereon is hereby created.

This bond is one of a series of one hundred (100) bonds of even date and like tenor, except as to rate of interest and date of maturity, aggregating the principal sum of one hundred thousand dollars (\$100,000.00), numbered consecutively in direct order of maturity from 1 to 100, inclusive, issued pursuant to Ordinance No. 1, 1962, adopted by the Village Council on March 19th, 1962, and under and in full compliance with the Constitution and statutes of the State of Michigan, including specifically Act 94, Public Acts of Michigan, 1933, as amended, for the purpose of defraying part of the cost of acquiring and constructing a water supply system for the village.

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

Bonds of this issue numbered 1 to 22, inclusive, maturing in the years 1964 to 1969, inclusive, are not subject to prior redemption.

The right is reserved of redeeming bonds numbered 23 to 100, inclusive, maturing in the years 1970 to 1983, inclusive, at the option of the Village, in inverse numerical order, on any interest payment date on or after April 1, 1969, at par and accrued interest, plus a premium as follows:

- Forty dollars (\$40.00) on each bond called for redemption on or after April 1, 1969, but before April 1, 1972;
- Thirty dollars (\$30.00) on each bond called for redemption on or after April 1, 1972, but before April 1, 1975;
- Twenty dollars (\$20.00) on each bond called for redemption on or after April 1, 1975, but before April 1, 1979;
- Ten dollars (\$10.00) on each bond called for redemption on or after April 1, 1979, but before maturity.

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

This bond is a self-liquidating bond and is not a general obligation of the Village of Birch Run, and does not constitute an indebtedness of the Village of Birch Run within any constitutional or statutory limitation, and is payable, both as to principal and interest, solely from the revenues of said water supply system of the village. The principal of and interest on this bond are secured by the statutory lien hereinbefore mentioned.

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

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

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

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

IN WITNESS WHEREOF, the Village of Birch Run, County of Saginaw, State of Michigan, by its Village Council, has caused this bond to be signed in the name of said Village

by its President and to be countersigned by its Village Clerk, and the corporate seal of the Village to be hereunto affixed, and the coupons hereto attached to be signed by the facsimile signatures of its President and Village Clerk, all as of the first day of May, A.D., 1962.

VILLAGE OF BIRCH RUN

By _____

President

(Seal)

Countersigned:

Village Clerk

(Form of Coupon)

No. _____ \$ _____

On the first day of _____, A.D., 19 _____, the Village of Birch Run, County of Saginaw, State of Michigan, will pay to the bearer hereof the sum of _____ dollars in the manner and out of the revenues described in said bond at _____, being the semi-annual interest due that date on its Water Supply System Revenue Bond, dated May 1, 1962, No. _____.

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

President

Village Clerk

REGISTRATION
NOTHING TO BE WRITTEN HEREON
EXCEPT BY VILLAGE TREASURER

Date of Registration	Name of Registered Owner	Registrar
_____	_____	_____
_____	_____	_____

(1992 Code, § 80.019) (Ord. 1-62, passed - - 1962)

§ 51.44 AUTHORITY TO ISSUE AND SELL BONDS.

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

(1992 Code, § 80.020) (Ord. 1-62, passed - - 1962)

§ 51.99 PENALTY.

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

(B) Any person, firm or corporation convicted of violating §§ 51.01 through 51.08 shall be guilty of a misdemeanor and subject to a fine of not to exceed \$100 or imprisoned in the county jail for a period not exceeding 90 days, or both the fine and imprisonment, in the discretion of the court together with the costs for the prosecution.

(1992 Code, § 87.009) (Ord. 7-96, passed 8-19-1996)

Appendix A: Equivalency Charges For Sewer Connection

<i>Use</i>	<i>Units</i>	<i>Unit Factor</i>
<i>Use</i>	<i>Units</i>	<i>Unit Factor</i>
Auto dealers	1.5	Per premise plus 0.20 per 1,000 square feet of building including service area
Auto repair/collision	1.5	Per premise plus 0.20 per 1,000 square feet of building including service area
Auto wash (coin operated do-it yourself, 10 gallons or less per car)	1.2	Per stall
Auto wash (mechanical, over 10 gallons per car, not recycled)	12	Per stall or production line including approach and drying area
Auto wash (mechanical, over 10 gallons per car, recycled)	6	Per stall or production line including approach and drying area
Banks, savings and loans and other financial institutions	0.75	Per 1,000 square feet minimum 1 unit
Bar	2.5	Per bar, plus 5 per 1,000 square feet over 500 square feet
Barber shop	1	Per shop, plus 0.1 per chair after 2
Beauty shops	1	Per shop, plus 0.1 per booth after 2
Bowling alleys (no bar)	1	Per premise, plus 0.2 per alley
<i>Campgrounds</i>		
Modern campground with water and sewer to each	0.5	Per site
Modern campground serviced by a service building	0.3	Per site
Primitive campground operated in conjunction with a modern campground	0.18	Per site, laundry, community buildings and office to be computed separately

Apartment complexes (including condominiums)	1	Per dwelling unit
Churches and funeral chapels	0.25	Per 1,000 square feet minimum 1 unit
Cleaners (cleaning and pressing facilities)	1	Per premise plus 0.6 per 500 square feet
Clinics (medical or dental)	1	Per premise plus 0.6 per exam room
Convalescent or boarding homes	1.5	Per premise plus 0.25 per bedroom
Convents	1	Per premise plus 0.25 per bedroom
Country and athletic clubs	1.5	Per 1,000 square feet of clubhouse plus 0.3 per table
Drug store	1	Per premise plus snack bar and 0.1 per 1,000 square feet
Factories (office and production-process)	0.40	Per 1,000 square feet 0.15 per employee whichever is greater, minimum 1 unit

<i>Use</i>	<i>Units</i>	<i>Unit Factor</i>
<i>Use</i>	<i>Units</i>	<i>Unit Factor</i>
Factories (wet process)		To be established by the Zoning Administrator and approved by the Village Council based on the estimated water use
Fast food restaurants, snack bars, drive-ins and the like	0.3	Per table up to 15 tables; 0.5 per table thereafter. Add for drive-in windows 20% of tables for each window a minimum total of 5 units whichever is greater
Funeral home	1.5	Per 1,000 square feet minimum 1 unit, plus residence to be computed separately
Grocery stores and supermarkets	1	Per premise plus 0.4 per 1,000 square feet
Hospitals	1.1	Per bed
Hotels, motels, and bed and breakfasts	0.50	Per bedroom plus restaurant and bar and residence
Laundry (self serve)	1	Per premise plus 0.5 per washer
Mobile homes (free standing)	1	Per unit
Mobile homes (in parks)	1	Per pad or site
Multiple-family residences including duplex or row houses	1	Per dwelling unit
Post office	1	Per 1,000 square feet minimum 1 unit
Professional offices	0.25	Per 500 square feet, minimum 1 unit
Public institutions	0.75	Per 800 square feet, minimum 2 units
Restaurants (meals only; not fast food)	0.3	Per table up to 15 tables; 0.5 per table thereafter
Restaurants (meals and drinks; not fast food)	9.5	Per 1,000 square feet of eating area, minimum 1.5 units
Restaurants auxiliary dining rooms when used less than 20 hours per week	1.5	Per 1,000 square feet, minimum 2 units
Retail stores (other than listed)	1	Per premise plus 0.2 per 1,000 square feet
Retirement complexes	0.85	Per dwelling unit
Schools		
Without cafeterias, gymnasiums or showers	1.6	Per classroom
With cafeterias and without gyms or showers	2.5	Per classroom plus 3 per 1,000 square feet cafeteria and kitchen area

With cafeterias, gymnasiums and showers		Same as above plus 2.2 per 1,000 square feet for gym and locker room area
Service stations	0.6	Per 1,000 square feet of building area; minimum 1 unit
Single-family residences	1	Per residence
Theaters (drive-in)	0.05	Per car space; minimum 1 unit
Theaters	0.05	Per seat; minimum 1 unit
Warehouse and storage	0.1	Per 1,000 square feet, minimum 1 unit
Veterinary facility	1.8	Per facility
Veterinary facility with kennels	1.8	Per facility, plus 0.5 per 5 kennels

(1992 Code, § 85.015) (Ord. 1-62, passed - - 1962; Ord. 8-96, passed 9-16-1996)

CHAPTER 52: WATER AND SEWERS

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RULES AND REGULATIONS

§ 52.01 TITLE.

This subchapter shall be called the Birch Run Water and Sewer System Rules and Regulations Ordinance.

(1992 Code, § 81.001) (Ord. 00-05, passed 9-25-2000)

§ 52.02 PURPOSE.

The purpose of this subchapter is to provide rules and regulations for the operation and management of the Birch Run water and sewer systems and to provide procedures for amending those rules and regulations from time to time. Additionally, this subchapter is intended to set forth the procedures for collection of quarterly service fees, late penalties and other charges established by the Birch Run Village Council and to set forth the procedure for notification of discontinuation of service. This subchapter shall regulate the connection of water and sewer service to the water and sewer system, the seasonal consumption of water, the discharge of sewage into the sanitary sewer system, cross-connection inspection and other items related to the daily management and operation of the water and sewer system.

(1992 Code, § 81.002) (Ord. 00-05, passed 9-25-2000)

§ 52.03 DEFINITIONS.

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

BUILDING DRAIN. That part of the lowest horizontal piping of a drainage system which receives the discharge 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 SEWER. The extension from the building drain to the public sanitary sewer or other place of disposal.

COMBINED SEWER. A sewer receiving both surface run-off and sewage.

GARBAGE. Solid wastes from the preparation, cooking and dispensing of food and from the handling, storage and sale of produce.

INDUSTRIAL WASTES. The liquid wastes from industrial processes as distinct from sanitary sewage.

INSPECTOR. Any person or persons duly authorized by the Council to inspect and approve the installation of building water and sewer services and their connection to the public water and/or sanitary sewer system.

NATURAL OUTLET. Any outlet into a watercourse, pond, ditch, lake or other body of surface or ground water.

OPERATOR. The Operator of the Municipal Sewage Works of the Village of Birch Run, Michigan, or his or her authorized deputy, agent or representative.

PERSON. Any individual, firm, company, association, society, corporation or group.

PROPERLY SHREDDED GARBAGE. The wastes from the preparation, cooking and dispensing of food that have 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 a 1/2 inch in any dimension.

PUBLIC SANITARY SEWER. A sewer dedicated to transporting sewage to approved treatment facilities with all owners of abutting properties having equal rights and is controlled by public authority, which storm, surface and/or ground waters are not admitted.

SEWAGE. A combination of the water-carried wastes from residences, business buildings, institutions and industrial establishments.

SEWAGE WORKS. All facilities for collecting pumping, treating and disposing of sewage.

SEWER LINE. A pipe or conduit for carrying sewage.

SHALL. Is mandatory; **MAY** is permissive.

STORM SEWER or **STORM DRAIN.** A sewer, which carries storm and surface waters and drainage, but excludes sewage and polluted industrial wastes.

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

(1992 Code, § 81.003) (Ord. 00-05, passed 9-25-2000)

§ 52.04 PROMULGATION OF RULES AND REGULATIONS.

(A) The Birch Run Village Council shall, by resolution, promulgate rules and regulations for the daily operation and management of the Birch Run water and sewer systems.

(B) The rules and regulations shall include invoice and collection of quarterly water service fees, late penalties, discontinuation of service, inspections, implementation of water bans, limitation on connections and other matters related to or arising from the daily management and operation of the Birch Run water and sewer systems.

(1992 Code, § 81.004) (Ord. 00-05, passed 9-25-2000)

§ 52.05 PROCEDURES FOR ADOPTING RULES AND REGULATIONS AND ESTABLISHING RATES.

The Birch Run Village Council shall hold a hearing to receive public input on proposed rules and regulations or rate adjustments prior to the adoption of those rules and regulations and implementation of the new rates. Notice of the public hearing shall appear in a newspaper of general circulation at least five days prior to the scheduled hearing date.

(1992 Code, § 81.005) (Ord. 00-05, passed 9-25-2000)

§ 52.06 INSTITUTION OF WATER BAN.

From time to time, the Village Council will need to institute an odd and/or even or full ban on seasonal use of water for irrigating lawns and gardens or washing vehicles, filling pools and/or other nonessential water use.

(1992 Code, § 81.006) (Ord. 00-05, passed 9-25-2000)

§ 52.07 USE OF PUBLIC SEWERS REQUIRED.

(A) *Depositing sewage upon public or private property; unlawful.* It shall be unlawful for any person to place, deposit or permit to be deposited in any unsanitary manner upon public or private property within the Village of Birch Run, Michigan, or in any area under the jurisdiction of the Village of Birch Run, any human or animal excrement, garbage or other objectionable waste which ordinarily would be regarded as sewage or industrial wastes.

(B) *Discharging untreated sewage into natural outlet; unlawful.* It shall be unlawful to discharge to any natural outlet within the Village of Birch Run, or in any area under the jurisdiction of the Village of Birch Run, any sanitary sewage, industrial waste or other polluted waters, except where suitable treatment has been provided in accordance with subsequent provisions of this subchapter.

(C) *Privy and septic tank; unlawful; exceptions.* Except as hereinafter provided, it shall be unlawful to construct or maintain any privy, privy vault, septic tank, cesspool or other facilities intended or used for the disposal of sewage.

(D) *Connections to sewer; required.* The owner of all houses, buildings or properties used for human occupancy, employment, recreation or other purposes situated within the Village of Birch Run, and abutting any street, alley or right-of-way in which there is now located, or may in the future be located, a public sanitary sewer of the Village of Birch Run, is hereby required at his or her expense to install suitable toilet facilities therein, and to connect the facilities directly to the proper public sanitary sewer in accordance with the provisions of this subchapter, within six months (180 days) after date of official notice to do so, provided that the public sanitary sewer is within 100 feet of the property line.

(1992 Code, § 81.007) (Ord. 00-05, passed 9-25-2000) Penalty, see § 52.99

§ 52.08 PUBLIC SEWAGE DISPOSAL.

(A) *Connection to sewer; when required.* At the times as a public sanitary sewer becomes available to a property served by a sewage disposal system, as provided in § 52.07(D), a direct connection shall be made to the public sanitary sewer in compliance with this subchapter, and any septic tanks, cesspools and similar private sewage disposal facilities shall be abandoned and filled with suitable material.

(B) *Additional requirements.* No statement contained in this section shall be construed to interfere with any additional requirements that may be imposed by the State Board of Public Health and/or the Michigan Department of Environmental Quality or its designated agency for sanitary sewer and water systems.

(1992 Code, § 81.008) (Ord. 00-05, passed 9-25-2000)

§ 52.09 BUILDING WATER SERVICE, SEWERS AND CONNECTIONS.

(A) *Work on water and sewer system; permit, bond; surety required.* 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 Village of Birch Run. Before a permit may be issued for excavating for plumbing in any street, way or alley, the person applying for the permit shall have executed unto the Village of Birch Run and deposited with the Treasurer a corporate surety in the sum of \$1,000 conditioned that he or she will perform faithfully all work with due care and skill, and in accordance with the laws, rules and regulations established under the authority or any ordinances of the Village of Birch Run, pertaining to plumbing. This bond shall state that the person will indemnify and save harmless the Village of Birch Run, and the owner of the premises against all damages, costs, expenses, outlays and claims of every nature and kind arising out of negligence on his or her part in connection with plumbing or excavating for plumbing as prescribed in this subchapter. The bond shall remain in force and must be executed for a period of two years except that on the expiration it shall remain in force as to all penalties, claims and demands that may have accrued thereunder prior to the expiration.

(B) *Building water and sewer permits; fees.* There shall be two classes of building sewer permits. One for residential service, and one for service to establishments producing industrial waste. In either case, the owner or his or her agent shall make application on a special form furnished by the Village of Birch Run. The permit applications shall be supplemented by any plans, specifications or other information considered pertinent in the judgement of the Inspector. A permit, inspection and connection fee, as established by the Birch Run Village Council, shall be paid to the Village Treasurer at the time the application is filed.

(C) *Costs to be borne by owner.* All costs and expenses incidental to the installation and connection of the building sewer shall be borne by the owner. The owner or the person installing the building sewer for the owner shall indemnify the village from any loss or damage that may directly or indirectly be occasioned by the installation.

(D) *Separate sewer for every building; exceptions.* A separate and independent building sewer shall be provided for every building, except where one building stands at the rear of another on an interior lot and no private sewer is available or can be construed to the rear through an adjoining alley, court, yard or driveway, the building sewer from the front building may be extended to the rear building and the whole considered as one building sewer. Other exceptions will be allowed only by special permission granted by the Birch Run Village Council.

(E) *Old building water lines and sewers must meet requirements.* Old building sewer or portions thereof may be used in connection with new buildings only when they are found on examination and test by the Inspector to meet all requirements of this subchapter.

(F) *Building sewer construction; specifications.* The building sewer shall be constructed of either vitrified clay sewer pipe and fittings

meeting the current A.S.T.M. specifications for standard or extra strength clay sewer pipe, asbestos cement meeting the current A.S.T.M. specifications, extra heavy cast iron soil pipe meeting the current A.S.T.M. specifications or the Department of Commerce Commercial Standards for extra heavy cast iron soil pipe and fittings, concrete sewer pipe and fitting meeting the current A.S.T.M. specifications for standard or extra strength concrete sewer pipe or Polyvinyl Chloride (PVC) pipe meeting the current A.S.T.M. standards. If installed in filled or unstable ground, the building sewer shall be of cast iron soil pipe, except that vitrified clay pipe or asbestos cement or concrete pipe, may be accepted if laid on a suitable improved bed or cradle as approved by the Inspector.

(G) *Building water line construction; specifications.* Only the village upon prepayment of the connection cost and cost of furnishing and installing the meter shall install water service connections. The Village Council shall from time to time determine the average connection cost for the village and the township and this shall payment complete for all material and labor involved in tapping the main, laying the proper pipe from the distribution main to the curb stop and box and the furnishing and placing of the curb stop and box and the furnishing and installation of the meter. Type "K" copper will be used at all tap-ins and may continue into the structure or the tap-ins may be connected to two-inch Polybutylene CTS OD, 250 psi, SDR 9, ASTM D-2666 water service piping, which may be installed to within five feet of a structure, at which point there will be a connection of Type "K" copper. All water service connections shall be to the depth of five feet under the surface of the street or lowest part of the gutter. No water service connection shall be laid in the same trench with a sewer pipe unless supported upon an earth shelf at least one foot above the sewer and 1-1/2 feet horizontally from the sewer. The village shall install a brass curb stop with a valve box which shall be placed approximately on the street line or private property line of roads and highways and this curb stop shall be under the exclusive control of the village.

(H) *Joints; connections.* All joints and connections shall be made gas tight and watertight. Vitrified clay sewer pipe and PVC shall be fitted with factory made resilient compression joints meeting the current A.S.T.M. specifications for vitrified clay pipe joints having resilient properties (Designation C 425). Asbestos cement or concrete sewer pipe joints shall be of the rubber ring, flexible compression type, similar and equal to joint specified for vitrified clay pipe. The joints and connections shall conform to the manufacturer's recommendations. All water joints and connections shall meet AWWA current standards.

(I) *Size; slope.* The size and slope of the building sewers shall be subject to the approval of the Inspector, but in no event shall the diameter be less than six inches. The slope of the six-inch pipe shall not be less than 1/8 inch per foot, except as otherwise approved by the operator. There shall be one clean out for every 90 feet of sewer line or part thereof.

(J) *Excavations for water and sewer; pipe laying.* 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. All excavations required for the installation of a building water and sewer shall be open trench work unless otherwise approved by the Inspector. Pipe laying and backfill shall be performed in accordance with current A.S.T.M. specifications except that no backfill shall be placed until the work has been inspected by the Inspector or his or her representative.

(K) *Lifting sewage by artificial means; when required.* In all buildings in which any building drain is too low to permit gravity flow to the public sanitary sewer, sanitary sewage carried by the drains shall be lifted by approved artificial means and discharged to the building sanitary sewer.

(L) *Connection to public sanitary sewer.* The connection of the building sanitary sewer into the public sanitary sewer shall be made at the "Y" branch designated for that property, if the branch is available at a suitable location. Any connection not made at the designated "Y" branch in the main sanitary sewer shall be made only as directed by the Inspector.

(M) *Inspection.* The applicant for the building water line and/or sanitary sewer shall notify that the Inspector when the building water main and/or sanitary sewer is ready for inspection and connection to the public sewer. The connection shall be made under the supervision of the Inspector or his or her representatives.

(N) *Excavations; regulations.* All excavations for building water line and sanitary sewer installation shall be adequately guarded with barricades and lights so as to protect the public from hazard. Streets, sidewalks, parkways and other public property disturbed in the course of the work shall be restored in a manner satisfactory to the village. All excavations shall conform to standards as established by OSHA, MIOSHA and any other regulating agency of professional organization.

(O) *Engineered drawings required.* Prior to connecting to the Village of Birch Run sanitary sewer and water systems, all nonsingle-family residential users must provide the Village of Birch Run drawings and specifications prepared by a State of Michigan licensed engineer of the proposed sanitary sewer and/or water line from the main to the structure. The engineered drawing shall include information on the items in divisions (F) through (N) above, impact analysis and other information pertinent to determining impact on the sanitary sewer and water systems.

(1992 Code, § 81.009) (Ord. 00-05, passed 9-25-2000) Penalty, see § 52.99

§ 52.10 USE OF PUBLIC SEWERS.

(A) *Discharge of unpolluted drainage into sanitary sewer; prohibited.* No person shall discharge or cause to be discharged any storm water, surface water, ground water, roof run-off, foundation drainage, cooling water or unpolluted industrial process waters to any sanitary sewer.

(B) *Discharge of harmful waters or wastes; prohibited.* No person shall discharge or cause to be discharged to any public sewer any harmful waters or wastes, whether liquid, solid or gas, capable of causing obstruction to the flow in sewers, damage or hazard to structures, equipment and personnel of the sewage works or other interference with the proper operation of the sewage works.

(C) *Interceptors.* Grease, oil and sand interceptors shall be provided when, in the opinion of the Inspector, they are necessary for the proper handling of liquid wastes containing grease in excessive amounts, or any flammable wastes, sand and other harmful ingredients

except that the interceptors shall not be required for private living quarters or dwelling units. Where installed, they shall be maintained by the owner, at his or her expense, in continuously efficient operation at all times.

(D) *Preliminary treatment facilities.* The admission into the public sanitary sewers of any waters or wastes having harmful or objectionable characteristics shall be subject to the review and approval of the operator who may prescribe limits on the strength and character of these waters or wastes. Where necessary, in the opinion of the operator, the owner shall provide, at his or her expense, the preliminary treatment as may be necessary to treat these wastes prior to discharge to the public sanitary sewer. Plans, specifications and any other pertinent information relating to proposed preliminary treatment facilities shall be submitted for the approval of the operator and if required to the Michigan State Board of Public Health and/or the Michigan Department of Environmental Quality, and no construction of the facilities shall be commenced until the approval is obtained in writing. Where preliminary treatment facilities are provided for any waters or wastes, they shall be maintained continuously in satisfactory and effective operation by the owner at his or her expense.

(E) *Sampling; water analysis.* When required by the operator, the owner of any property served by a building sanitary sewer carrying industrial wastes shall install and maintain at his or her expense a suitable control manhole in the building sanitary sewer to facilitate observation, sampling and measurement of the wastes. All measurements, tests and analyses of the characteristics of water and wastes shall be determined in accordance with Standard Methods for the Examination of Water and Sewage, and shall be determined at the control manhole or upon suitable samples taken at the control manhole. In the event that no special manhole has been required, the control manhole shall be considered to be the nearest downstream manhole in the public sanitary sewer to the point at which the building sanitary sewer is connected.

(1992 Code, § 81.010) (Ord. 00-05, passed 9-25-2000) Penalty, see § 52.99

§ 52.11 PROTECTION FROM DAMAGE.

No unauthorized person shall maliciously, willfully or negligently break, damage, destroy, uncover, deface or tamper with any structure, appurtenance or equipment which is a part of the municipal water system and sewage works. Any person violating this provision shall be subject to immediate arrest under charge of disorderly conduct or damage to public property exceeding \$100.

(1992 Code, § 81.011) (Ord. 00-05, passed 9-25-2000) Penalty, see § 52.99

§ 52.12 POWERS AND AUTHORITY OF INSPECTORS; CROSS-CONNECTION INSPECTIONS.

(A) The operator, Inspector and other duly authorized employees of the village bearing proper credentials and identification shall be permitted to enter upon all properties for the purpose of inspections, observations, measurements, sampling and testing, in accordance with the provisions of this subchapter or the State of Michigan.

(B) The Village of Birch Run hereby adopts by reference the Water Supply Cross-Connection Rules of the Michigan Department of Public Health, being M.A.C. R325.431 to R325.440. It shall be the duty of the Village of Birch Run to cause inspections to be made of all properties, both within the village and the township served by the Birch Run public water supply system. The frequency of inspections shall be not less than once every three years. A representative of the village shall have the right to enter at any reasonable time property served by a connection to the Birch Run public water system for the purpose of inspecting the piping system or systems thereof for cross-connections. The Village of Birch Run is hereby authorized and directed to discontinue water service after reasonable notice to any property, both within and without the village, wherein any connection in violation of this subchapter exists and to take other measures necessary to eliminate the danger of contamination of the Birch Run public water supply system. Water service to the property shall not be restored until the cross-connections have been eliminated in compliance with the provisions of this subchapter.

(C) The operator, Inspector and other duly authorized employees of the village bearing proper credentials and identifications shall be permitted to enter upon all properties for the purpose of conducting sanitary sewer cross-connection inspections and other inspections to ensure compliance with this subchapter and other appropriate state laws.

(1992 Code, § 81.012) (Ord. 00-05, passed 9-25-2000)

§ 52.13 CONDITIONS OF SERVICE.

(A) *Building water line and sanitary sewer; village and/or customer expense.* The Village of Birch Run shall install and maintain, at its expense, that portion of the service from the main to the lot or easement line, and the customer shall install and maintain at his or her expense that portion of the service from the lot or easement line to his or her premises. The size and slope of the building sanitary sewers shall be subject to the approval of the authorized personnel of the Village of Birch Run, but in no event shall the diameter be less than six inches. Whenever possible, the building sanitary sewer shall be brought to the building at an elevation below the basement floor. Each building shall be separately metered.

(B) *Violations.* Applications may be canceled and/or sewer service discontinued by the Village of Birch Run for any violation of any rule, regulation or condition of service and especially for any of the following reasons:

- (1) Misrepresentation in the application as to the property or fixtures to be serviced by the sanitary sewer or water system;
- (2) Nonpayment of bills; and
- (3) Improper or imperfect service pipes and fixtures or failure to keep same in suitable state of repair.

(C) *Bills and notices.* Bills and notices relating to the conduct of the business of the Village of Birch Run will be mailed to the customer at the address listed on the application, unless a change of address has been filed in writing at the business office of the Village of Birch Run, and the Village of Birch Run shall not otherwise be responsible for delivery of any bill or notice, nor will the customer be

excused from nonpayment of a bill or from any performance required in the notice.

(D) *Bills; unpaid bills.*

(1) Bills for water and sewer service are due and payable at the business office of the Village of Birch Run or to any designated agent on their date of issue. The past due date shall be day 30 of the month after the period of service.

(2) All bills not paid on or before the due date shall be termed delinquent, and the Village of Birch Run shall serve on the customer a written final notice of the delinquency. If a delinquent bill is not paid within 15 days after original date due, the water and/or sewer service to the use will be subject to discontinuance, or other measures as state law will allow.

(E) *Re-connection.* Where the water or sewer service supplied to a customer has been discontinued for nonpayment of a delinquent bill, the Village of Birch Run reserves the right to request a nominal sum to be placed on deposit with the Village of Birch Run for the purpose of establishing or maintaining any customer's credit. The re-connection will not be made until all delinquent bills and other charges, if any, owed by the customer to the Village of Birch Run have been paid.

(F) *Interruption of service.* The Village of Birch Run shall make all reasonable efforts to eliminate interruption of service, and when the interruption occurs, will endeavor to re-establish service with the shortest possible delay. Whenever service is interrupted for purpose of working on the distribution and collection system or the treatment equipment, all consumers affected by the interruption will be notified in advance whenever it is possible to do so.

(G) *Claims; village not responsible.* The Village of Birch Run shall, in no event, be held responsible for claim made against it by reason of the breaking of any mains or service pipes, or by reason of any other interruption of the service caused by the breaking of machinery or stoppage for necessary repairs, and no person shall be entitled to damage nor have any portion of a payment refunded for any interruption.

(H) *Inspection.* The premises receiving water and/or sanitary sewer service shall at all reasonable hours be subject to inspection by duly authorized personnel of the Village of Birch Run.

(I) *Special terms and conditions.* Special terms and conditions may be made where water and sanitary sewer service is used by the Village of Birch Run or community for public purposes such as public parks and the like.

(J) *Rules may change.* These rules may be changed or amended.

(1992 Code, § 81.014) (Ord. 00-05, passed 9-25-2000)

WATER AND SEWER FACILITIES CAPITAL EXPANSION RATE ORDINANCE

§ 52.30 PURPOSE; ADOPTION OF ORDINANCE.

This subchapter is adopted pursuant to the provisions of Public Act 94 of 1933, being M.C.L.A. §§ 141.101 through 141.138, as amended (Act 94) and Public Act 185 of 1957, being M.C.L.A. §§ 123.731 through 123.786, as amended, for the purpose of raising sufficient funds to enlarge the sewer and water system of the Village of Birch Run.

(1992 Code, § 85.001) (Ord. 2-91, passed 6-14-1991)

§ 52.31 DEFINITIONS.

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

1982 ORDINANCES. The Sewer Use Ordinance No. 3-82 (§§ 53.01 through 53.05) and the Sewer User Charge Ordinance No. 4-82 (§§ 53.20 through 53.23) both of which were adopted March 8, 1982, and took effect on April 23, 1983, as amended.

ACT 94. Public Act 94 of 1933, being M.C.L.A. §§ 141.101 through 141.138, as amended.

ACT 185. Public Act 185 of 1957, being M.C.L.A. §§ 123.731 through 123.786, as amended.

BIRCH RUN SEWAGE DISPOSAL SYSTEM NO. 2. The sanitary sewer system improvements being undertaken by the village through the County of Saginaw pursuant to a contract dated as of June 1, 1990, as amended.

CAPITAL IMPROVEMENTS TO THE SYSTEM. Any capital improvements to the sewer system or the water system of the village which shall include any real or personal property or the cost of installation or construction thereof with a useful life of one year or more. It shall not include any expenditure of any type for operating expenses.

FUND. The Sewer and Water Capital Expansion Fund shall mean the fund created by § 52.33.

OPERATING YEAR. The operating year of the system which shall be the fiscal year of the village beginning July 1 and ending June 30.

ORDINANCE. This ordinance entitled Village of Birch Run Capital Sewage Charge Ordinance.

RATES. The capital expansion charges for public utility services set forth in § 52.35, including any further amendment thereto.

SEWER SYSTEM. The existing sewer system operated by the Village of Birch Run, any improvements thereto, or extension thereof, including, but not limited to, Birch Run Sewage Disposal System No. 2.

SYSTEM. The sewer system and the water system.

UNIT. A measure of equivalent use based upon a single-family residence being one unit as set forth in Appendix A to this subchapter which shall be of part of the ordinance.

USER. All persons, corporations, partnerships, sole proprietorships, trusts or estates or other business entities which own or operate any structure which is connected to the Village sewer system or water system.

VILLAGE. The Village of Birch Run.

VILLAGE COUNCIL. The Village Council of the Village of Birch Run.

WATER SYSTEM. The water system of the Village of Birch Run as it now exists, including any extensions or improvements thereto. (1992 Code, § 85.002) (Ord. 2-91, passed 6-14-1991; Ord. 3-91, passed 11-11-1991)

§ 52.32 COLLECTION OF CAPITAL EXPANSION CHARGE.

(A) *Capital expansion charges for public services.* The village, in addition to other sewer and/or water charges, shall charge each user of the sewer system and/or water system a separate capital charge for connection to the Sewer system and/or water system of the village, which charge shall pay a part of the cost of future expansion to the current system which shall by this reference be included as a part of this subchapter.

(B) *Payments.*

(1) *Time of payment.* The charges to a user shall be collected in cash upon application for a building permit and prior to connection to the system with the provisions of the rate schedule set forth in § 52.35.

(2) *Collection.* The collection of all charges shall be made by the Village Treasurer.

(1992 Code, §§ 85.003, 85.004) (Ord. 2-91, passed 6-14-1991; Ord. 3-91, passed 11-11-1991; Ord. 97-3, passed 6-16-1997; Ord. 99-6, passed 8-23-1999)

§ 52.33 SEWER AND WATER CAPITAL EXPANSION FUND.

(A) *Creation of fund.* There is hereby created a Sewer and Water Capital Expansion Fund which shall be a segregated fund created on the books of the village and accounted for separately.

(B) *Investment.* A money deposited in the fund together with the interest earned thereon shall be invested by the Village Treasurer in investments permitted in § 1.(a)(c)(d) or (e) of Public Act 20 of 1943, being M.C.L.A. §§ 129.91 through 129.96, as amended.

(C) *Expenditure.* Out of the money generated by rates on deposit in the fund, the following priority of expenditure shall be observed.

(1) Out of the monies in the fund, there shall first be set aside an amount equal to:

(a) One-third of the amount owing by the village to the county under a contract between the village and the County of Saginaw dated as of June 1, 1990, pursuant to which the county issued bonds except that the amount shall be reduced by whatever amount (if any) less than \$1,500,000 in principal amount the bonds were originally issued. This amount shall be paid to the village in semi-annual installments as the village is required to make its payments to the county beginning July 1, 1996.

(b) In the event the Township of Birch Run connects to the sewer system and pays the village its share of the cost of the joint sewer line to Genesee County on or before July 1, 1995, the amounts to be paid to the village under division (C)(1)(a) above shall be reduced by any amounts received by the village from the Township of Birch Run.

(2) Once the amounts required by division (C)(1) above have been paid (or are set aside for future payments) there shall next be set aside funds to be used for capital improvements to the system.

(1992 Code, §§ 85.005 - 85.007) (Ord. 2-91, passed 6-14-1991)

§ 52.34 CONNECTIONS AND ENFORCEMENT.

(A) *No connection without payment.* No connection to the sewer system shall be permitted until the Capital Expansion charge is collected in cash or all conditions for a deferred payment have been satisfied.

(B) *Enforcement; violation deemed nuisance.* The provisions of this subchapter shall be enforceable through the bringing of appropriate action for injunction, mandamus or otherwise, in any court having jurisdiction. Any violation of this subchapter is deemed to be a nuisance per se.

(1992 Code, §§ 85.008, 85.009) (Ord. 2-91, passed 6-14-1991; Ord. 3-91, passed 11-11-1991) Penalty, see § 52.99

§ 52.35 RATES; SANITARY CONNECTION CHARGE.

(A) The charge for connection to the sanitary sewer system of the Village of Birch Run shall be \$1,650 per unit effective July 1, 1991. Unless the Village Council determines the rate of inflation is less or more in a resolution adopted by May 1 each year, the charge shall increase annually on July 1 at a rate of 4.5% which new rate shall be in effect for a year. The Sanitary Sewer Connection charges are set forth in Appendix A, which is incorporated herein by reference as if appearing in total and is on file in the village offices.

(B) In the event the actual use of the property for which a charge is to be made includes more than one of the uses specified in a category set forth in Appendix A, which is incorporated herein by reference as if appearing in total and is on file in the village offices,

the charge shall be made for each of the individual uses as set forth thereon and the total of the charges shall be the amount due.

(C) In the event the actual use of the property for which a charge is to be made is not covered by the specific categories set forth in Appendix A, which is incorporated herein by reference as if appearing in total and is on file in the village offices, the Village Zoning Administrator shall assign a category or categories to the use as shall individually or in combination most nearly describe the actual use, subject to a right of appeal to the Village Council whose decision shall be final.

(1992 Code, § 85.011) (Ord. 2-91, passed 6-14-1991; Ord. 3-91, passed 11-11-1991)

§ 52.99 PENALTY.

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

(B) (1) *Violations; notice.* Any person found to be violating any provision of §§ 52.01 through 52.13 except §§ 52.06 and 52.10, shall be guilty of a municipal civil infraction. The village shall issue a municipal civil infraction citation. The village may make arrangements for the person(s) to correct the violation(s). The Village of Birch Run shall submit all violators of §§ 52.06 and 52.10 to a court of competent jurisdiction for enforcement under applicable criminal charges. Any violator shall have 15 days to correct any violation charged under §§ 52.01 through 52.13.

(2) *Penalties for violation.* Any person who shall continue any violation beyond the time limit provided for in § 52.12(A) shall be guilty of a municipal civil infraction and shall be fined in an amount set forth therein for each violation. Each day in which any violation shall continue shall be deemed a separate offense.

(3) *Violators liable to village.* Any person violating any of the provisions of §§ 52.01 through 52.13 shall become liable to the Village of Birch Run for any expense, loss or damage occasioned the Village of Birch Run by reason of the violation.

(C) Any person, firm or corporation convicted of disposing of sewage in a manner contrary to the provisions of §§ 52.30 through 52.35, or failing to connect with an available public sewer as provided herein, or in any other way violating the provisions of §§ 52.30 through 52.35, shall be guilty of a misdemeanor and subjected to a fine of not to exceed \$100 or imprisonment in the county jail for a period not exceeding 90 days, or both the fine and imprisonment in the discretion of the court, together with costs for the prosecution.

(1992 Code, §§ 81.013, 85.010) (Ord. 2-91, passed 6-14-1991; Ord. 3-91, passed 11-11-1991; Ord. 00-05, passed 9-25-2000)

CHAPTER 53: SEWERS

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SEWER USE

§ 53.01 DEFINITIONS.

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

AUTHORITY. The Village of Birch Run, Saginaw County, Michigan.

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

BUILDING DRAIN. That part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste and other drainage pipes inside the walls of a building and conveys it to the building sewer beginning three feet outside the building wall.

BUILDING DRAIN; SANITARY. A building drain which conveys sanitary and/or industrial sewage only.

BUILDING DRAIN; STORM. A building drain which conveys storm water or other clear water drainage only.

BUILDING SEWER. The extension from the building drain to the public sewer or other place of disposal (also called **HOUSE CONNECTION**).

BUILDING SEWER; SANITARY. A building sewer which conveys sanitary and/or industrial sewage only.

BUILDING SEWER; STORM. A building sewer which conveys storm water or other clear water drainage only.

COMBINED SEWAGE. A combination of both sanitary and industrial wastewater and storm or surface water.

COMBINED SEWER. A sewer intended to receive both wastewater and storm or surface water.

COMMERCIAL USER. A user of the treatment works engaged in the purchase or sale of goods or services or the transaction of business.

COMPATIBLE POLLUTANT. Biochemical oxygen demand and suspended solids, pH and fecal coliform bacteria, plus additional pollutants identified in the NPDES permit if the treatment works was designed to treat the pollutants, and in fact does remove the pollutants to a substantial degree. The term substantial degree is not subject to precise definition, but generally contemplates removal in the order of 80% or greater. Minor incidental removals in the order of 10 to 30% are not considered substantial. Examples of the additional pollutants which may be considered compatible to include:

- (1) Chemical oxygen demand;
- (2) Total organic carbon;
- (3) Phosphorus and phosphorus compounds;
- (4) Nitrogen and nitrogen compounds; and
- (5) Fats, oils and grease of animal or vegetable origin (except as prohibited where these materials would interfere with the operation of the treatment works).

CONTROL MANHOLE. A structure built on a sewer service through which sewage passes and can be sampled and will permit flow measurements taken.

FECAL COLIFORM. Any of a number of organisms common to the intestinal tract of man and animals, whose presence in sanitary sewage is an indicator of pollution.

FLOATABLE OIL. Oil, fat or grease in a physical state, such that will separate by gravity from wastewater by treatment in a pretreatment facility approved by the village.

GARBAGE. Solid wastes from the domestic and commercial preparation, cooking dispensing of food and from the commercial handling, storage and sale of produce.

GOVERNMENTAL USER. A federal, state or local government user of the treatment works which has an executive, legislative, judicial, administrative or regulatory activity.

INCOMPATIBLE POLLUTANT. Any pollutant that is not defined as a compatible pollutant, including non-biodegradable dissolved solids.

INDUSTRIAL USER.

(1) Any non-governmental, nonresidential user of a publicly owned treatment works which discharges more than the equivalent of 25,000 gallons per day (gpd) of sanitary wastes and which is identified in the *Standard Industrial Classification Manual, 1972*, Office of Management and Budget, as amended and supplemented under one of the following divisions:

- (a) Division A. Agriculture, Forestry and Fishing;
- (b) Division B. Mining;
- (c) Division D. Manufacturing;

(d) Division E. Transportation, Communications, Electric, Gas and Sanitary Services; and

(e) Division I. Services:

1. In determining the amount of a user's discharge for purposes of industrial cost recovery, the grantee may exclude domestic wastes or discharges from sanitary conveniences; and

2. After applying the sanitary waste exclusion in division (1)(e)1. above (if the grantee chooses to do so,) dischargers in the above divisions that have a volume exceeding 25,000 gpd or the weight of biochemical oxygen demand (BOD) or suspended solids (SS) equivalent to that weight found in 25,000 gpd of sanitary waste are considered industrial users. Sanitary wastes, for purposes of this calculation of equivalency, are the wastes discharged from residential users. The grantee, with the Regional Administrator's approval, shall define the strength of the residential discharges in terms of parameters including, as a minimum, BOD and SS per volume of flow.

(2) Any non-governmental user of a publicly owned treatment works which discharges wastewater to the treatment works which contains toxic pollutants or poisonous solids, liquids or gases in sufficient quantity either singly or by interaction with other wastes, to contaminate the sludge of any municipal systems, or to injure or to interfere with any sewage treatment process, or which constitutes a hazard to humans or animals, creates a public nuisance or creates any hazard in or has an adverse effect on the waters receiving any discharge from the treatment works.

(3) All commercial users of an individual system constructed with grant assistance under § 201(h) of the Act and this subpart.

INDUSTRIAL WASTE. Any solids, liquids or gaseous substances discharged, permitted to flow or escaping from any industrial, manufacturing, commercial or business establishment or process or from the development, recovery or processing of any natural resources. It does not include, and is distinct from, sanitary sewage generated by employees.

INFILTRATION. The water entering a sewer system, including building drains and sewers, from the ground, through such means as, but not limited to, defective pipes, pipe joints, connections or manhole walls. (**INFILTRATION** does not include and is distinguished from inflow).

INFILTRATION INFLOW. The total quantity of water from both infiltration and inflow without distinguishing the source.

INFLOW. The water discharged into a sewer system, including building drains and sewers, from sources as, but not limited to, roof leaders, cellars, yards and area drains, foundation drains, unpolluted cooling water discharges, drains from springs and swampy areas, manhole covers, cross-connections from storm sewers and combined sewers, catch basins, storm waters, surface run-off, street wash waters or drainage. (**INFLOW** does not include, and is distinguished from, **INFILTRATION**).

INSTITUTIONAL USER. A user of the treatment works involved in a social, charitable, religious, educational or other special purpose activity.

MAJOR CONTRIBUTING INDUSTRY. An industry that:

- (1) Has a flow of 50,000 gallons or more per average work day;
- (2) Has a flow greater than 5% of the flow carried by the municipal system receiving the wastes;
- (3) Has in its waste a toxic pollutant in toxic amounts as defined in standards issued under § 307(a) of Pub. Law No. 92-500; or
- (4) Has a significant impact, either singly or in combination with other contributing industries on a treatment works or on the quality of effluent from that treatment works.

NATURAL OUTLET. Any outlet, including storm sewers and combined sewer overflows, into a water course, pond, ditch, lake or other body of surface or ground water.

NORMAL DOMESTIC SEWAGE. Sewage resulting from a normal household with a flow of 333 gallons per day and containing 0.57 pounds per day of BOD and suspended solids.

NPDES PERMIT. A permit issued under the National Pollutant Discharge Elimination System for discharge of wastewaters to the navigable waters of the United States pursuant to § 402 of Pub. Law No. 92-500.

PERSON. Any individual, firm, company, municipality, association, society, corporation or group discharging any wastewater to the treatment works.

pH. The reciprocal of the logarithm of the hydrogen ion concentration. The concentration is the weight of hydrogen ions, in grams per liter of solution.

PRETREATMENT. The treatment of industrial sewage from privately owned industrial sources prior to introduction into a public treatment works.

PROPERLY SHREDDED GARBAGE. The wastes from the preparation, cooking and dispensing of food that have been shredded to such a degree that all particles will be carried freely under flow conditions, normally prevailing in public sewers, with no particle greater than 1/2 inch in any dimension.

PRIVATE SEWER. A sewer which is not owned by the village.

PUBLIC SEWER. A sewer which is owned and controlled by the village and will consist of the following components:

COLLECTOR SEWER. A sewer whose primary purpose is to collect wastewater from individual point source discharges.

FORCEMAIN. A pipe in which waste water is carried under pressure.

INTERCEPTOR SEWER. A sewer whose primary purpose is to convey wastewaters from collector sewers to the sewage treatment plant.

PUMPING STATION. A station positioned in the public sewer system at which wastewater is pumped to a higher level.

RESIDENTIAL USER. A user of the treatment works whose premises or building is used primarily as a domicile for one or more persons and whose wastes originate from normal living activities of its inhabitants.

SANITARY SEWER. A sewer which carries sanitary and industrial wastes only, and to which storm, surface and ground water are not intentionally or legally admitted.

SEWAGE. The combination of liquid and solid wastes from residences, commercial buildings, industrial plants, institutions and governmental edifices (including polluted cooling water). The three most common types of sewage are:

COMBINED SEWAGE. A combination of wastes including sanitary sewage, industrial sewage and intentionally admitted storm water, infiltration and inflow.

INDUSTRIAL SEWAGE. A combination of liquid and solid waste discharged from any industrial establishment, resulting from any trade or process carried on in that establishment. (This shall include wastes from pretreatment facilities and polluted cooling water but is separate and distinct from sanitary sewage from employees).

SANITARY SEWAGE. The combination of liquids and solid waste discharged from toilet and other sanitary plumbing facilities resulting from human habitation.

SHALL. Is mandatory; **MAY** is permissive.

SLUG. Any discharge of sewage or wastewater which, in concentration of any given constituent or in quantity of flow, exceeds for any period of duration longer than 30 minutes, more than three times the average 24-hour concentration of flows during normal operation and shall adversely affect the treatment works.

STORM SEWER. A sewer for conveying storm water, ground water or unpolluted water from any other source and to which sewage is not intentionally admitted.

SUSPENDED SOLIDS. Solids that either float on the surface of, or are in suspension in water, sewage or other liquids and which are removable by laboratory filtering.

TOTAL SOLIDS. The sum of suspended and dissolved solids.

TOXIC AMOUNTS. Concentrations of any pollutant or combination of pollutants, which upon exposure to or assimilation into any organism, will cause adverse effects, such as cancer, genetic mutations and physiological manifestations, as defined in standards issued pursuant to § 307(a) of Pub. Law No. 92-500.

TREATMENT WORKS. All devices and systems used in the storage, treatment, recycling and reclamation of wastewater including intercepting sewers, outfall sewers and wastewater collection systems.

UNPOLLUTED WATER. Water of quality equal to or better than the effluent criteria in effect, or water that would not cause violation of receiving water quality standards and would not be benefitted by discharge to the treatment works.

WASTEWATER. Water polluted with sanitary sewage, industrial sewage, combined sewage or any other substance which when contained in wastewater must be removed or diluted to a substantial degree before the wastewater can be reclaimed for discharge to a water course or reused.

WATER COURSE. A natural or artificial channel for the passage of water either continuously or intermittently.

(1992 Code, § 82.001) (Ord. 3-82, passed - - 1982)

§ 53.02 USE OF PUBLIC SEWERS.

(A) *Unpolluted discharges to sanitary sewers.* No person shall discharge or cause to be discharged to any sanitary sewer, either directly or indirectly, storm water, surface water, ground water, roof run-off, subsurface drainage, cooling water, unpolluted water or unpolluted industrial process water. The village shall require the removal of unpolluted waters from any wastewater collection or treatment facility if the removal is cost-effective and is in the best interest of all users of those facilities.

(B) *Unpolluted discharges to storm sewers.* Storm water, surface water, ground water, roof run-off, subsurface drainage, cooling water, unpolluted water or unpolluted industrial process water may be admitted to storm sewers which have adequate capacity for their accommodation. No person shall use the sewers, however, without the specific permission of the village.

(C) *Depositing polluted water on public or private property.* No person shall place, deposit or permit to be deposited in any unsanitary manner on public or private property within the jurisdiction of the authority, any wastewater or other polluted waters except where suitable treatment has been provided in accordance with provisions of this subchapter and the NPDES permit.

(D) *Discharge of polluted water to natural outlet.* No person shall discharge or cause to be discharged to any natural outlet any wastewater or other polluted waters, except where suitable treatment has been provided in accordance with provisions of this subchapter and NPDES permit No. MI0028398.

(E) *Private sewage disposal systems.* No person shall construct or maintain any privy, privy vault, septic tank, cesspool or other facility intended or used for the disposal of wastewater except as hereinafter provided. In the event any existing private sewage system shall, in the opinion of the Village Council, become a hazard to health, safety or general welfare of any persons or property, then the owner thereof shall be required, at his or her expense, to install suitable sewage facilities therein, and to connect the facilities directly with the proper public sewer in accordance with the provisions of this subchapter, within 90 days after date of official notice to do so. Where a public sanitary sewer is not available, the building sewer shall be connected to a private sewage disposal system in accordance with the specifications of the Saginaw County Health Department and the village. The owner shall operate and maintain the private sewage disposal facilities in a sanitary manner at all times, at no expense to the village. In the event that the owner of the property, upon which the same is located, shall fail to abandon and correct upon reasonable notice a private sewage disposal system, then and in such case, the village may do so, and charge the cost thereof to the property owner and to the occupant of the property, and the charge shall become a debt, collectible as such.

(F) *Connection to sewer.* With six months from the time a collector sewer becomes available (within 50 feet of the property line) to any person, the person shall make connection. The connection, however, shall be subject to the review and approval of the village and shall be contingent upon the availability of capacity in all downstream sewers, pump stations, forcemains and the sewage treatment plant including compatible pollutant capacity.

(G) *Prohibited wastes.* No person shall discharge or cause to be discharged to any public sewer, any wastes which would interfere with the operation or performance of the treatment works. Specifically, the following wastes shall not be introduced into the treatment works:

- (1) Wastes which create a fire or explosion hazard in the treatment works;
- (2) Wastes which will cause corrosive structural damage to treatment works, but in no case with a pH lower than 6;
- (3) Solid or viscous wastes in amounts which would cause obstruction to the flow in sewers, or other interference with the proper operation of the treatment works; and
- (4) Wastes at a flow rate and/or pollutant discharge rate (slugs) which are excessive over relatively short time periods so that there is a treatment process upset and subsequent loss of treatment efficiency.

(H) *Industrial wastes; rights of treatment authority management.* Treatment Authority Management, whenever necessary, with regard to discharge or proposed discharge of industrial wastes into any sewer, shall have the right to:

- (1) Require new industries or industries with significant increase in discharge to submit information on wastewater characteristics and obtain prior approval for discharges;
- (2) Reject the wastes in whole or in part for any reason deemed appropriate by the village;
- (3) Require pretreatment of the wastes to within the limits of normal sewage as defined;
- (4) Require control of flow equalization of the wastes so as to avoid any slug loads or excessive loads that may be harmful to the treatment works; and
- (5) Require payment of a surcharge on any excessive flows or loadings discharged to the treatment works to cover the additional costs of having capacity for and treating the wastes.

(I) *Pretreatment of industrial wastes.* Pretreatment of industrial wastes from major contributing industries prior to discharge to the treatment works is required and is subject to the rules and regulations adopted by the United States Environmental Protection Agency (USEPA) and published in the Federal Register, June 26, 1978, and any more stringent requirements established by the village, and any subsequent federal guidelines and rules and regulations. (As specific pretreatment levels are established, they should be incorporated into this section).

(J) *Treatment facilities.* Plans, specifications and any other pertinent information relating to pretreatment or control facilities shall be submitted for approval of the village and no construction of the facilities shall be commenced until approval in writing is granted. Where the facilities are provided, they shall be maintained continuously in satisfactory and effective operating order by the owner at his or her expense and shall be subject to periodic inspection by the village to determine that the facilities are being operated in conformance with applicable federal, state and local laws and permits. The owner shall maintain operating records and shall submit to the village a monthly summary report of the character of the influent and effluent to show the performance of the treatment facilities and for comparison against the village monitoring records.

(K) *Measurements, tests and analyses.* The village may require users of the treatment works, other than residential users, to supply pertinent information on wastewater flow characteristics. The measurements, test and analysis shall be made at the users' expense. If made by the village, an appropriate charge may be assessed to the user as established by the village.

(L) *Control manhole.* The owner of any property serviced by a building sewer carrying industrial wastes or other nonresidential wastewater may be required by the village to install a control manhole together with the necessary meters and other appurtenances in the building to facilitate observation, sampling and measurement of the wastes. The structures, when required, shall be accessible and safely located and shall be constructed in accordance with plans approved by the village. The structures shall be installed by the owner at his or her expense and shall be maintained by him or her so as to be safe and accessible at all times.

(M) *Sampling and analysis.* The strength of wastewaters shall be determined, for periodic establishment of charges provided for in this subchapter, from samples taken at the aforementioned structure at any period of time and of the duration and in the manner as the village may elect, or, at any place mutually agreed upon between the user and the village. Appropriate charges for sampling and analysis may be assessed to the user at the option of the village, the results of routine sampling and analysis by the user may also be used for

determination.

(N) *Rules for measurements, tests and analyses.* All measurements, tests and analysis of the characteristics of waters and wastes to which reference is made in this subchapter shall be determined in accordance with latest edition of Standard Methods except for applications for NPDES permits and reports thereof which shall be conducted in accordance with rules and regulations adopted by the USEPA, published in the Federal Register October 16, 1973 (38 C.F.R. pt. 20758), and any subsequent revisions subject to approval by the village.

(O) *Interceptors or traps.* Grease, oil and sand interceptors or traps shall be provided when, in the opinion of the village, they are necessary for the proper handling of liquid wastes containing grease in excessive amounts, or any flammable wastes, sand and other harmful ingredients, except that the interceptors or traps will not be required for private living quarters or dwelling units. All interceptors or traps shall be of a type and capacity approved by the village and shall be located so as to be readily and easily assessable for cleaning and inspection. They shall be construed of impervious materials capable of withstanding abrupt and extreme changes in temperatures and shall be of substantial construction, to be gastight, watertight and equipped with easily removable covers. Where installed, all grease, oil and sand interceptors or traps shall be maintained by the owner, at his or her expense, in continuously efficient operation at all times.

(P) *Unusual flows or wastes.* Users of the treatment works shall immediately notify the village of any unusual flows or wastes that are discharged accidentally or otherwise to the sewer system.

(Q) *Special agreements.* No statement contained in this section shall be constructed as preventing any special agreement or arrangement between the village and any industrial concern whereby an industrial waste of unusual strength or character may be accepted by the village for treatment. In all such cases the provisions set forth herein in the sewage rate ordinance will be governing factors in any contracts entered into.

(1992 Code, § 82.002) (Ord. 3-82, passed - - 1982) Penalty, see § 53.99

§ 53.03 BUILDING SEWERS AND CONNECTIONS.

(A) *Permit required.* No unauthorized person shall uncover, make any connections with or opening into, use, alter or disturb any public sewer or appurtenance thereof without first obtaining a written permit from the village.

(B) *Permit fee.* After the permit for a service connection has been granted and before the connection is made, the owner shall pay a permit fee for tapping the public sewer and for that portion of the building sewer situated between the property line and the public sewer as established by the village.

(C) *Separate sewer for every building; exception.* A separate and independent building sewer shall be provided for every building, except where one building stands at the rear of another on an interior lot and no private sewer is available or can be constructed to the rear building through an adjoining alley, court, yard or driveway, the building sewer from the front building may be extended to the rear building.

(D) *Old sewers.* Old building sewers may be used in connection with new buildings only when they are found, on examination and test by the village, to meet all requirements of this subchapter.

(E) *Pipe specifications; transition device.* The building sewer shall be polyvinyl chloride (PVC) or acrylonitrile-butadiene-styrene (ABS) pipe with solvent weld joints. Wall thickness shall be Schedule 40 with all materials conforming to ASTM D-2661, D-2665 and D-1785. An approved transition device shall be installed between the six-inch sewer service and the PVC or ABS building sewer.

(F) *Size and slope.* The size and slope of the building sewer shall be subject to the approval of the village, but in no event shall the diameter be less than four inches. The slope of the building sewer shall be not less than 1/8 inch per foot if six-inch or larger diameter pipe is used, and 1/4-inch slope per foot if four-inch diameter pipe is used.

(G) *Elevation; laying sewer.* 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 straight alignment insofar as possible. Changes in direction shall be made only with properly curved pipe and fittings.

(H) *Lifting sewage by artificial means.* In all buildings in which any building drain is too low to permit gravity flow to the public sewer, sanitary sewage carried by the drains shall be lifted by approved artificial means and discharged to the building sewer, the cost to be borne by the property owner.

(I) *Joints and connections.* All joints and connections shall be gastight and watertight, utilizing premium rubber joints conforming to the requirements of ASTM Des. C-425.

(J) *Excavations, pipe laying and backfill.* All excavations required for the installation of a building sewer shall be open trench work unless otherwise approved by the village. Pipe laying and backfill shall be performed in accordance with good practice, except that no backfill shall be placed until the work has been inspected.

(K) *Connection into public sewer.* The connection of the building sewer into the public sewer shall be made only at a wye branch provided for that purpose.

(1992 Code, § 82.003) (Ord. 3-82, passed - - 1982) Penalty, see § 53.99

§ 53.04 PROTECTION FROM DAMAGE.

No unauthorized person shall maliciously, willfully or negligently break, damage, destroy, uncover, deface or tamper with any structure, appurtenance or equipment which is a part of the municipal sewage works. Any person violating this provision shall be subject to immediate arrest under charge of disorderly conduct.

(1992 Code, § 82.004) (Ord. 3-82, passed - - 1982) Penalty, see § 53.99

§ 53.05 POWER AND AUTHORITY OF INSPECTORS.

Agents of the village, the Michigan Department of Natural Resources and the United States Environmental Protection Agency shall be permitted to enter all properties for purpose of inspection, observation, measurement, sampling and testing in accordance with the provisions of this subchapter.

(1992 Code, § 82.005) (Ord. 3-82, passed - - 1982)

SEWER USER CHARGE

§ 53.20 DEFINITIONS.

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

AUTHORITY. Village of Birch Run, Saginaw County, Michigan.

BIOCHEMICAL OXYGEN DEMAND (BOD). The quantity of decomposable organic matter by aerobic biochemical action under standard laboratory procedures for five days at 20°C and expressed in milligrams per liter (mg/l). The laboratory determinations shall be made in accordance with procedures set forth in Standard Methods.

NORMAL DOMESTIC STRENGTH. Wastewater discharged at concentration levels typical of normal human activity. These levels are:

<i>Mg/l</i>	<i>For</i>
200 mg/l	BOD
200 mg/l	Suspended solids

OPERATION AND MAINTENANCE COSTS. The total annual cost of operating and maintaining the waste treatment facilities.

PERSON. Any individual, firm, company, municipality, association, society, corporation or group.

PREMISE. Each lot or parcel of land, building or household having a connection to the authority sewer system.

REPLACEMENT COSTS. Expenditures for obtaining and installing equipment, accessories and appurtenances which are necessary during the service life of the treatment works to maintain capacity and performance for which the works were designed and constructed and includes the replacement costs.

SEGREGATED DOMESTIC WASTES. Wastes from users which are generated from activities of a domestic nature and which are measurable and/or set apart from industrial discharges.

SHALL. Is mandatory; **MAY** is permissive.

STANDARD METHODS. The examination and analytical procedures set forth in the most recent edition of *Standard Methods for the Examination of Water and Wastewater*, published jointly by the American Public Health Association, American Water Works Association and Water Pollution Control Federation and as set forth in Federal Register Reprint 40 C.F.R. pt. 136, *Guidelines Establishing Test Procedures for Analysis of Pollutants*.

SURCHARGES. A charge levied on users of a treatment works for the cost of handling wastewaters which are discharged in concentrations greater than normal domestic strengths.

SUSPENDED SOLIDS. Solids which either float on the surface of or are in suspension in water, sewage or other liquid discharged to the treatment works which are removable by laboratory filtration and is expressed in milligrams per liter (mg/l). Quantitative determinations shall be made in accordance with procedures set forth in Standard Methods.

TREATMENT WORKS. An arrangement of devices and structures for collecting, conveying and treating wastewater.

USER CHARGES. A system of charges levied on users of a treatment works for the cost of operation and maintenance, including replacement of the works.

USERS. Each recipient of wastewater treatment services provided by the village as classified in § 53.23(B).

WASTEWATER. The spent water of the community. It may be a combination of liquid and water-carried wastes from residences, commercial buildings, industrial plants and institutions, together with any groundwater, surface water and storm water that may be present.

(1992 Code, § 84.001) (Ord. 4-82, passed - - 1982)

§ 53.21 USER CLASSES SUBJECT TO CHARGES.

(A) *Flat rate user charge.* Charges shall be levied for wastewater treatment services rendered to each lot, parcel of real estate or building having a connection with the village treatment facilities or otherwise being provided with service, either directly or indirectly. Charges shall be based upon a flat rate user charge.

(B) *Applicable rules and regulations.* All rates and charges are subject to the rules and regulations adopted by the United States Environmental Protection Agency under Pub. Law No. 92-500, published in the Federal Register and implemented on February 11, 1974 (39 C.F.R. pt. 5252).

(C) *Classification of users.* For purposes of this subchapter, users of the treatment works shall be classified as follows:

(1) *Residential.* A user of the treatment works whose premises or building is used primarily as a domicile for one or more persons and whose wastes originate from normal living activities of its inhabitants.

(2) *Commercial.* A user of the treatment works engaged in the purchase or sale of goods, transaction of business or otherwise rendering a service.

(3) *Institutional.* A user of the treatment works involved in a social, charitable, religious, educational or other special purpose activities.

(4) *Governmental.* A federal, state or local government user of the treatment works which has executive, legislative, judicial, administrative or regulatory activities.

(5) *Industrial.* A manufacturing or process facility which is engaged in a productive or profit-making venture.

(1992 Code, § 84.002) (Ord. 4-82, passed - - 1982)

§ 53.22 ADMINISTRATION.

(A) *Collection of data.* During the fiscal year, the village shall collect data from the treatment facilities, accounting for flows and loadings received at the treatment plant attributable to each user class. In addition, the cost data associated with the treatment of each user class's wastes shall also be collected and retained for future reference.

(B) *Estimate of anticipated costs.* Prior to the close of each fiscal year, the village shall prepare an estimate of anticipated costs of operation and maintenance, including replacement for the forthcoming fiscal year. The estimates shall be prepared in accordance with generally accepted accounting principles. Based upon the anticipated budget and data from the previous fiscal year, the rates will be reviewed and adjusted periodically with the following criteria applied.

(1) *Generating revenues.* Revenues to offset the cost of operation and maintenance costs, including replacement of the treatment works shall be generated by each user class in proportion to each user's contribution to the total wastewater loadings and cost to treat each user's wastes.

(2) *Rate sufficiency.* The rate shall generate sufficient revenues to offset the costs of all treatment works operation and maintenance costs, including replacement and the other expenditures authorized by this subchapter.

(3) *Replacement costs.* Replacement cost needs shall be determined by an evaluation of treatment facilities assets utilizing asset values of the treatment facilities, service lives, salvage values, level of the replacement fund and other criteria determined appropriate.

(C) *Accounts.* Revenues generated by user charge rates shall be deposited in a separate account and used solely for the purposes of operation and maintenance costs, including replacement of the treatment works.

(D) *No free service.* There shall be no free service or discounts of the established rates provided any user.

(1992 Code, § 84.003) (Ord. 4-82, passed - - 1982)

§ 53.23 USER CHARGE RATES.

(A) *User charges; nonindustrial users.* Sewer user charges for all classes of users, except industrial, shall be billed quarterly at the following rates.

<i>Type</i>	<i>Amount</i>
Residential	\$18
Commercial	\$18 minimum plus \$1.07 for each 1,000 gallons of water consumption over 15,000 gallons per quarter
Exit motel complex	\$1,950
High school	\$1,370
Middle school	\$510
Township	\$730

(B) *User charges; industrial users.*

(1) Industrial users shall be billed quarterly with the billing based upon measured quantities of flow, BOD and suspended solids determined daily and totaled quarterly at the following unit charges:

<i>Type</i>	<i>Amount</i>
Flow	\$.75 per 1,000 gallons
BOD	\$.05 per pound
SS	\$.05 per pound

(2) Any industrial user discharging at or below normal domestic strength will be charged at the commercial user charge.

(C) *Measuring volume of sewage.* Where a significant portion of the customer's water does not and cannot enter the treatment works either directly or indirectly, and where the quantity of water entering the premises is estimated at more than 5,000 gallons per month, the person having charge of the property may request permission from the village to install, at his or her own expense, an approved sewage measuring device or devices to determine the volume of sewage that actually enters the treatment works. The rates and charges will apply only to that portion of water or actual sewage entering the treatment works. Rate for sewage shall be the same as the commercial water consumption rate noted above (i.e. \$18 plus \$1.07 per 1,000 gallons of sewage in excess of 15,000 gallons per quarter).

(D) *Extra-strength wastes.* Each industrial or nonindustrial user who discharges wastes into the treatment works shall be subject to a surcharge in addition to regular sewer charges, based on BOD and suspended solids, if the waste load contributed to the treatment works has a loading greater than normal domestic strength wastes or is in excess of the normal load contributed by the user. The magnitudes of the extra-strength wastes shall be determined in accordance with sampling and testing procedures established in this subchapter.

(E) *Surcharge rates.* The rates for excess strength surcharges shall be double the rates for normal strength sewage.

(F) *Property owner; liability.* The charge for treatment works service shall be billed to the owner of each lot, parcel of real estate or building having a connection with the village treatment facilities. If a tenant is billed, the owner shall in no way be relieved of liability in the event payment is not made by the tenant as herein required. The owner shall have the right to examine the village's collection records to ascertain whether the charges have been paid.

(1992 Code, § 84.004) (Ord. 4-82, passed - - 1982)

SEWER DISPOSAL SYSTEM; RATES AND CHARGES

§ 53.40 DEFINITIONS.

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

CHARGES FOR SEWAGE DISPOSAL SERVICES or **CHARGES.** The amount charged to each premises in the village connected to the system for sewage disposal services including a debt service factor.

CONTROL. The Village Council of the Village of Birch Run, the legislative and governing body thereof.

PREMISES. The lands included within the boundaries of a single description as set forth from time to time on the general tax rolls of the village as a single taxable item in the name of the taxpayer or taxpayers at one address, but in the case of platted lots shall be limited to a single platted lot unless an existing building or structure is so located on more than one lot as to make the same a single description for purposes of assessment or conveyance now or hereafter.

SEWAGE DISPOSAL DISTRICT or **DISTRICT.** Birch Run Sewage Disposal District, as described in the resolution of the Saginaw County Board of Supervisors, adopted June 10, 1969, or any amendments thereto. **SEWAGE DISPOSAL DISTRICT** or **DISTRICT** is hereby expanded to include the following described premises outside of limits of the Village of Birch Run:

Section 21, T.10 N.-R.6E

The south 270 feet of the west 441 feet of the east 962.37 feet of the southwest 1/4 and § 28, T.10 north.-R.6 east.

Commencing at a point 298.76 feet east from the northwest corner of § 28; thence south.18°-34 feet 43 inches east, 677.55 feet; thence east, parallel with the north section line, 423.30 feet; thence north 431 feet; thence east parallel with the north section line to a point located 250 feet, at right angles, southwesterly of the centerline of Dixie Highway; thence southeasterly, parallel with the centerline of Dixie Highway; thence southeasterly, parallel with the centerline of Dixie Highway to a point located on a line extended at right angles to Dixie Highway being 420 feet southeasterly; measured along the centerline of Dixie Highway from East Birch Run Road; thence northeasterly on the line, 250 feet to the centerline of Dixie Highway; thence northeasterly, 409.2 feet to a point located 577.5 feet east of the centerline of Dixie Highway measured on the north line of the section and 198 feet south of the north line; thence east 250 feet parallel with the north line of the section to the centerline of Bogart Drain; thence northwesterly on the Drain centerline, 211.5 feet to the north section line; thence westerly, along the north line of the section to the point of beginning.

Also, commencing at a point on the centerline of Dixie Highway, 420 feet southeasterly from the north section line; thence continuing southeasterly on the centerline, 89 feet; thence north. 60°-50 feet east, 277 feet; thence south 29 °-10 feet east, 15 feet; thence north.60°-50 feet-00 inches east, 120.55 feet; thence north 87°-50 feet-00 inches west, 104.78 feet; thence south 65° west, 409.2 feet to the point of beginning.

SEWAGE DISPOSAL SERVICES. The collection, transportation, treatment and disposal of sanitary sewage emanating from premises now or hereafter connected, directly or indirectly, to the sewage disposal system.

SEWAGE DISPOSAL SYSTEM. The Birch Run sewage disposal system established and to be constructed by the county under contract with the village dated June 10, 1969, and leased to the village and all extensions, enlargements and improvements thereto.

SYSTEM. The sewage disposal system as now or hereafter established and constructed by the county and leased to the village to serve the residents of the village.

UNIT or UNITS. Shall be related to the quantity of sanitary sewage ordinarily arising from the occupancy of a residence building by a single-family of ordinary size, as shall from time to time be defined by the village and assigned to premises in the district.

VILLAGE. The Village of Birch Run and the term **COUNTY** shall be constructed to mean the County of Saginaw, both in the State of Michigan.

(1992 Code, § 83.001) (Ord. 3-69, passed - - 1969; Ord. 1-81, passed 4-13-1981)

§ 53.41 USE OF SYSTEM; PROHIBITED CONNECTIONS.

The system shall be used for the collection and transportation of sanitary sewage only. Downspouts, footing drains, weep tile or any conduit that carries storm water or ground water, alone or in combination with sanitary sewage, shall not be connected to the system, directly or indirectly. Industrial and commercial waste shall be discharged into the system only in compliance with the standards and regulations of the county.

(1992 Code, § 83.002) (Ord. 3-69, passed - - 1969)

§ 53.42 CONNECTION REQUIRED; TIME LIMIT.

Premises within the village on which are now or hereafter located any buildings or structures for which direct connection to the system is available shall not be used or occupied by persons, firms or corporations for any purpose, after the effective date hereof, unless the premises are connected to the sewage disposal system; provided, that premises within the village so improved and used or occupied on the effective date hereof shall be connected to the system within six months after the completion of the system.

(1992 Code, § 83.003) (Ord. 3-69, passed - - 1969)

§ 53.43 CHARGES; NO FREE SERVICE.

(A) Charges for sewage disposal services to each premises within the village connected with the sewage disposal system shall be determined by the Council, as provided in the agreement with the county, and shall be fixed by resolution adopted and amended from time to time by the Council and subject to any obligations and limitations set forth in the agreement pertaining to the system between the village and the county, or any amendments thereto which charges shall include an amount of \$18 per unit per quarter for debt service. No free service shall be furnished by the system to the village or to any person, firm or corporation, public or private, or to any public agency or instrumentality. Charges for services furnished by the system shall be billed and collected quarterly, the first such charges for each premises to be due and payable on the first day of the calendar quarter following by at least one month the date the premises are connected to the system and successive charges to be due and payable on the first day of each quarter annual period thereafter. Charges shall be billed at least one month before their due date.

(B) Charges for sewage disposal services to premises outside the Village of Birch Run, more specifically described in the foregoing amendment to § 53.40, shall be determined by the Village Council and shall be fixed by resolution adopted and amended from time to time by the Council. The charges shall be subject to any obligations and limitations set forth in the agreement between the Saginaw County Department of Public Works and the Village Council, and shall include an amount not less than \$18 per unit per quarter for debt services.

(1992 Code, § 83.004) (Ord. 3-69, passed - - 1969)

§ 53.44 DELINQUENT CHARGES; DISCOUNTING SERVICE.

If any charges for sewage disposal services are not paid on or before the due date, then a penalty of 10% shall be added thereto and commencing 90 days after the due date, the charges for sewage disposal services shall draw interest at the rate of 6% per annum. In the event that the charges for any services furnished to any premises or the installments shall not be paid within 120 days after the due date, then all furnished by the sewage disposal system may be discontinued. Service so discontinued shall not be restored until all sums then due and owing, including penalties and interest, shall be paid, plus a shut-off charge of \$25 and a turn on charge of \$25 respectively.

(1992 Code, § 83.005) (Ord. 3-69, passed - - 1969)

§ 53.45 DELINQUENT CHARGES; LIEN.

Charges for sewage disposal services furnished by the system to any premises shall be a lien thereon as of the due date thereof, and on May 1 of each year the Village Clerk shall certify any charges which have been delinquent 90 days or more, plus penalties and interest accrued thereon, to the Council who shall cause the same to be entered upon the next village tax roll against the premises to which the services shall have been rendered and against which the connection fee, availability fee or service stub charge has been placed, the unpaid charges and fees, with penalties and interest accrued thereon, shall be collected and the lien shall be enforced in the same manner as provided in respect to taxes assessed upon the roll.

(1992 Code, § 83.006) (Ord. 3-69, passed - - 1969)

§ 53.46 ENFORCEMENT; VIOLATION DEEMED NUISANCE.

The provisions of this subchapter shall be enforceable through the bringing of appropriate action for injunction, mandamus or otherwise, in any court having jurisdiction. Any violation of this subchapter is deemed to be a nuisance per se.

(1992 Code, § 83.007) (Ord. 3-69, passed - - 1969)

§ 53.99 PENALTY.

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

(B) (1) *Lien*. In the event of nonpayment of any charges made by the village to users of the treatment works, the charge is hereby made a lien upon the corresponding lot, parcel of land or premises served by the treatment works, and if the same is not paid when due and payable, it shall be certified to the village who shall place same on the tax duplicate as a tax lien or assessment against the lot or parcel of land with interest and penalties allowed by law and be collected in the same manner and at the same time as other taxes are collected.

(2) *Penalty; liability*. Any person violating the provision of §§ 53.01 through 53.05 shall be subject to a penalty of \$500 per violation. Each day that the violation continues shall constitute a separate and distinct offense. In addition, any user whose violating discharge causes downstream damages shall be liable totally for all expenses incurred to repair the damages.

(C) (1) *Delinquent charges*. Charges for treatment works service levied pursuant to §§ 53.20 through 53.23 shall be due and payable on or before the due dates shown on the bills. Any service charge not paid by the due date shall be considered delinquent. The delinquent charges together with any applied penalty shall be collectable as hereinafter set forth.

(2) *Lien*. Delinquent treatment works service charges may be made in lien against the property served. In such cases, delinquent service charges, together with a mandatory penalty of 10%, shall be placed on the tax rolls and be collected in the same manner as regular taxes and assessments are collected.

(3) *Civil action*. In addition to the foregoing remedies, the village shall have the right to bring a civil action to recover any delinquent charges together with a penalty of 10% and a reasonable attorney's fee. It shall also have the right to foreclose any lien established under the provisions §§ 53.20 through 53.23 with recovery of the charges, penalty of 10% and a reasonable attorney's fee.

(D) Any person, firm or corporation convicted of disposing of sewage in a manner contrary to the provisions of §§ 53.40 through 53.46, or failing to connect with an available public sewer as provided herein, or in any other way violating the provisions of §§ 53.40 through 53.46, shall be guilty of a misdemeanor and subjected to a fine of not to exceed \$100 or imprisonment in the county jail for a period not exceeding 90 days or both the fine and imprisonment, in the discretion of the court together with costs for the prosecution.

(1992 Code, §§ 82.006, 83.008, 84.005) (Ord. 3-69, passed - - 1969; Ord. 3-82, passed - - 1982; Ord. 4-82, passed - - 1982)

TITLE VII: TRAFFIC CODE

Chapter

70. TRAFFIC RULES

CHAPTER 70: TRAFFIC RULES

Section

- 70.01 Traffic control
- 70.02 Motor Vehicle Code; adopted by reference
- 70.03 School busses
- 70.04 Motor Carrier Safety Act; adopted by reference
- 70.99 Penalty

Cross-reference:

Code Enforcement Officer, see §§ 31.15 et seq.

§ 70.01 TRAFFIC CONTROL.

(A) *Parallel parking*. Parallel parking is hereby established as the only proper means of parking motor vehicles upon any public streets in the Village of Birch Run, unless otherwise designated by resolution of the Birch Run Village Council. **PARALLEL PARKING** is defined as the passenger side wheel of the vehicle adjacent to the curb.

(B) *Maximum speed limit*. The maximum speed limit shall be 25 mph upon any village street or thoroughfare, except where otherwise posted.

(C) *Parking prohibited; hours, (size, sale and display)*. Parking between the hours of 3:00 a.m. and 7:00 a.m. is prohibited on all paved streets and village owned parking lots within the Village of Birch Run. The Council may permit and designate parking at the aforementioned locations by resolution.

(1) Parking of vehicles greater than two axles that are not owned by the village is prohibited on all paved streets and village owned

parking lots within the Village of Birch Run. The Council may permit and designate parking at the aforementioned locations by resolution.

(2) The sale or display of commercial or non-commercial vehicles is prohibited within all village streets and parking lots. The Council may permit the sale or display of vehicles at the aforementioned locations by resolution.

(D) *Parking on sidewalks; prohibited.* No vehicle may be parked at any time on any of the sidewalks in the village.

(E) *U-turn prohibited.* It is unlawful to make a U-turn with any motor vehicle on Main Street, Church Street, Maple Road, Conquest Street and Racine Street.

(F) *Stop signs.* All operators of motor vehicles within the corporate limits of the Village of Birch Run shall be required to stop the vehicle upon entering any through street and to remain stopped until it is safe to enter the street, within the street to be posted by proper signs.

(G) *Large, over the road trucks; prohibited in residential areas.* The operation of large double bottom trucks, 16-wheel trucks, all semi-tractor trailer trucks and all other large over the road vehicles are prohibited on certain residential streets of the Village of Birch Run, at all times and signs shall be erected on the effective residential streets, which are:

(1) Ash Street, Beech Street, Elm Street, Emelia Street, Lynn Street, Maple Street, Oak Street, Poellet Street and Rottiers Street; and

(2) The use or operation of these large trucks is prohibited unless they are emergency vehicles, repair and service vehicles, repair vehicles for public utilities, and/or moving and delivery vehicles.

(1992 Code, §§ 40.001 - 40.009) (Ord. 10-80, passed - - 1980; Ord. 3-86, passed 5-21-1986; Ord. 03-02, passed 9-29-2003) Penalty, see § 70.99

§ 70.02 MOTOR VEHICLE CODE; ADOPTED BY REFERENCE.

The Michigan Vehicle Code is hereby adopted by reference and incorporated herein as if set out in full.

(1992 Code, § 46.004) (Ord. 00-02, passed 5-1-2000)

§ 70.03 SCHOOL BUSES.

(A) *Overtaking stopped bus; prohibited.* The driver of a vehicle shall not overtake or meet and pass any school bus which has stopped for the purpose of receiving or discharging passengers.

(B) *Stopping for bus; resumption of motion; passengers; controlling intersections.* The driver of a vehicle overtaking or meeting any school bus which has stopped and is displaying two alternately flashing red lights located at the same level shall bring the vehicle to a full stop at least ten feet from the school bus and shall not proceed until the school bus resumes motion or the school bus driver signals to proceed or the visual signals are no longer actuated. The driver of the school bus, before resuming motion, shall signal stopped traffic to proceed and shall, when resuming motion, proceed in such a manner as to allow congested traffic to disburse by keeping the bus as near to the right side of the road as can be done with safety. Passengers crossing the road upon being discharged from a school bus shall cross in front of the stopped school bus. At an intersection where traffic is controlled by an officer or a traffic stop and go signal, a vehicle need not be brought to a full stop before passing any school bus, but may proceed past the school bus at a speed not greater than is reasonable and proper and in no event greater than ten mph and with due caution for the safety of passengers being received or discharged from the school bus.

(C) *Visibility of bus in stopped position.* No school bus driver shall stop his or her bus for the purpose of receiving or discharging passengers unless the bus is clearly visible in its stopped position to approaching or overtaking drivers of vehicles for a distance of at least 500 feet.

(D) *Divided highway.* The driver of a vehicle upon any highway which has been divided into two roadways by leaving an intervening space, by a physical barrier or clearly indicated dividing sections so constructed as to impede vehicular traffic, need not stop upon meeting a school bus which has stopped across the dividing space, barrier or section.

(E) *Signs erected.* Signs shall be erected giving notice of the regulations provided for in this section and shall be posted upon or at the entrance of any area or part thereof to be affected in such a way as to be sufficiently legible by an ordinarily observant person.

(1992 Code, §§ 42.001 – 42.005) (Ord. 1-70, passed - - 1970) Penalty, see § 70.99

§ 70.04 MOTOR CARRIER SAFETY ACT; ADOPTED BY REFERENCE.

The Motor Carrier Safety Act, Act 181 of 1963, as amended, is hereby adopted by reference and incorporated herein as if set out in full.

(Ord. - -, passed 4-23-2011) Penalty, see § 70.99

§ 70.99 PENALTY.

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

(B) The penalties provided by the Michigan Vehicle Code are adopted by reference; provided, however, the Village of Birch Run may not enforce any provision of the Michigan Vehicle Code either of which the maximum period of imprisonment is greater than 93 days or maximum fine is greater than \$500.

(C) Any person violating any of the provisions of § 70.03 shall be deemed guilty of a misdemeanor and shall be punished by a fine of not to exceed \$100, or by imprisonment in the county jail for not to exceed 90 days or by both the fine and imprisonment, in the discretion of the court.

(D) The penalties provided by the Motor Carrier Safety Act, Act 181 of 1963, are hereby adopted by reference.

(1992 Code, §§ 42.006, 46.006) (Ord. 1-70, passed - - 1970; Ord. 00-02, passed 5-1-2000; Ord. - -, passed 4-23-2011)

TITLE IX: GENERAL REGULATIONS

Chapter

- 90. ANIMALS
- 91. FIRE PREVENTION; FIREWORKS
- 92. STREETS AND SIDEWALKS
- 93. HEALTH AND SANITATION
- 94. PARKS AND RECREATION
- 95. WEEDS
- 96. NOISE CONTROL

CHAPTER 90: ANIMALS

Section

Animal Control

- 90.01 Title
- 90.02 Cruelty to animals
- 90.03 Dangerous animals
- 90.04 Kennel control
- 90.05 Barking dogs
- 90.06 Dog regulation
- 90.07 Impounding
- 90.08 Rabies; surrendering animal
- 90.09 Running-at-large and sanitation
- 90.10 Bees, wasps, hornets, honey bees; prohibited; exception

Kennel Control

- 90.25 Establishment of kennels; prohibited
- 90.26 Kennel defined
- 90.27 Short title
- 90.99 Penalty

ANIMAL CONTROL

§ 90.01 TITLE.

This subchapter shall be known and cited as the Animal Control Ordinance.

(1992 Code, § 60.001) (Ord. 2-95, passed - - 1995)

§ 90.02 CRUELTY TO ANIMALS.

(A) A person shall be liable for cruel treatment or abuse where he or she overrides, overloads, drives when overloaded, overworks, tortures, torments, deprives of necessary sustenance, cruelly beats, mutilates, cruelly kills or causes any such described acts to any animals. Whoever having the charge or custody of any animal either as owner or otherwise, that inflicts unnecessary cruelty upon the same, or willfully fails to provide the same with proper food, drink, shelter or protection from the weather is guilty of cruelty to animals

as described in this section. The cropping of dog ears shall be considered to be a mutilation or cruelty to animals within the meaning of this section, unless the cropping is performed by a registered veterinary surgeon, while the dog is under an anesthetic.

(B) No person except an authorized officer, acting in his or her official capacity, shall molest, injure, kill or capture any wild bird or animal, or molest or disturb any wild bird's nest or the contents thereof.

(C) It shall be unlawful for any person to throw or deposit any poisonous substance on any exposed public or private place where it endangers, or is likely to endanger, any animal or bird.

(1992 Code, § 60.002) (Ord. 2-95, passed - - 1995) Penalty, see § 90.99

§ 90.03 DANGEROUS ANIMALS.

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

OWNER. A person keeping, possessing, harboring, or having the care or custody of a dog.

PROVOKE. To perform a willful act or omission that an ordinary and reasonable person would conclude is likely to precipitate the bite or attack by an ordinary dog.

TORMENT. An act or omission that causes unjustifiable pain, suffering, and distress to an animal, or causes mental and emotional anguish in the dog as evidenced by its altered behavior, for a purpose such as sadistic pleasure, coercion, or punishment that an ordinary and reasonable person would conclude is likely to precipitate the bite or attack.

VICIOUS DOG.

(a) Any dog:

1. With a known propensity, tendency, or disposition to attack without provocation; to cause injury; or to otherwise threaten the safety of human beings or domestic animals;
2. Which, without provocation, has attacked or bitten a human being or domestic animal;
3. Owned or harbored primarily or in part for the purpose of dog fighting or trained for dog fighting; or
4. Which, without provocation, chases or approaches a person upon the streets, sidewalks, or any public or private property in a menacing fashion or apparent attitude of attack.

(b) However, a **VICIOUS DOG** does not include any of the following:

1. A dog that bites or attacks a person who provokes or torments the dog;
2. A dog that bites or attacks a person who is knowingly trespassing on the property of the dog's owner; or
3. A dog that is responding in a manner that an ordinary and reasonable person would conclude was designed to protect a person if that person is engaged in a lawful activity or is the subject of an assault.

(B) *Exemptions.* This section shall not apply to dogs used by a police department or law enforcement agency.

(C) *Harboring a vicious dog.* No person shall own or harbor a vicious dog, except pursuant to division (F) of this section, or a dog that has been bitten by any animal known to have been afflicted with rabies.

(D) *Declaring a dog vicious.* If a police officer has reasonable cause to believe that a dog is vicious, the Chief of Police, or his designee, may declare it to be a vicious dog and may direct that the dog be immediately impounded.

(E) *Notice of vicious dog declaration.* Within five days of declaring a dog vicious, the Chief of Police, or his designee, shall notify the dog's owner in writing of the declaration of viciousness. The notice shall identify the requirements and conditions for maintaining a vicious dog as set forth in this section. If the owner cannot be located, the dog may be immediately impounded, and notice shall be posted on the owner's property or sent by first class mail to the owner's last known address.

(F) *Requirements for keeping a vicious dog.* The owner of a vicious dog who wishes to keep the vicious dog, shall be subject to the following:

(1) *Confinement.* All vicious dogs shall be securely confined indoors or in an enclosed and locked pen or structure upon the premises of the owner. The pen or structure must have minimum dimensions of five feet by ten feet and must have secure sides and a secure top attached to the sides. If no bottom is secured to the sides, the sides must be imbedded into the ground no less than two feet. All pens or structures must be adequately lighted and kept clean and sanitary. The enclosure must also protect the dog from the elements. The dog must be provided with fresh water at all times and fed regularly.

(2) *Leash and muzzle.* The owner of a vicious dog shall not allow the dog to go outside the house or its kennel, pen, or structure unless the dog is muzzled, restrained by a chain or leash not more than four feet in length, and under the physical control of a person of at least 14 years of age. The muzzle must not cause injury to the dog or interfere with its vision or respiration, but must prevent the dog from biting any human or animal.

(3) *Signs.* The owner of a vicious dog shall display in a prominent place on the owner's premises a clearly visible warning sign indicating that there is a vicious dog on the premises. The sign must be readable from the public highway or thoroughfare. The owner shall also display a sign with a symbol warning children of the presence of a vicious dog. Similar signs shall be posted on the dog's

kennel, pen, or enclosed structure.

(4) *Insurance.* The owner of a vicious dog must provide proof to the Village Clerk that the owner has procured public liability insurance with a single incident amount of \$100,000 per dog insuring the owner, with the village named an additional insured, for any damage or personal injury which may be caused by the owner's vicious dog.

(G) *Impoundment and destruction of vicious dog.*

(1) After the Chief of Police, or his designee, has ordered the impoundment of a dog he shall apply to the District Court for the destruction of a dog by filing a sworn complaint if:

(a) The dog has attacked, bitten, or injured a human being or domestic animal;

(b) The dog is a vicious dog as defined in division (A) and/or the owner has failed to comply with the requirements and conditions for keeping a vicious dog as required in division (F);

(c) The dog poses a threat of serious harm to the public health or safety;

(d) The dog is rabid; or

(e) There is any other reason provided by this code or state law.

(2) The Chief of Police, or his designee, may ask the court to impose the conditions in division (F) on continued ownership of a dog that the court determines to be vicious but does not meet the criteria for destruction.

(H) *Impoundment and destruction of vicious dog.* Within five days of an impoundment, the village shall notify the dog's owner in writing of the impoundment in accordance with the notification procedure set forth in division (E).

(I) *Change of status of vicious dog.* The owner of a vicious dog shall immediately notify the Chief of Police if the vicious dog is unconfined and on the loose or has attacked a human being or domestic animal.

(J) *Change of ownership of vicious dog.* If the owner of a vicious dog sells, gives away, or otherwise transfers ownership of the vicious dog, he shall within three days provide the Chief of Police with the name, address, and telephone number of the new owner. The previous owner shall notify the new owner of the dog's designation as a vicious dog and of the requirements and conditions for keeping a vicious dog.

(K) *Fighting.* No person shall possess, harbor, or maintain care or custody of any dog for the purpose of dog fighting nor shall any person train, torment, badger, bait, or use any dog for the reason of causing or encouraging the dog to attack human beings or domestic animals.

(L) *Other vicious animals.* Except as otherwise provided herein, it shall be illegal to own or harbor any mammal, amphibian, reptile, or fowl of a species which, due to size, vicious nature, or other characteristics, constitutes a danger to human life, physical well-being, or property, including, but not limited to lions, tigers, leopards, panthers, bears, wolves, apes, gorillas, monkeys of a species whose average adult weight is 20 pounds or more, foxes, elephants, and snakes which are poisonous or otherwise present a risk of serious physical harm or death to human beings as a result of their nature or physical makeup, including all constrictors. This section shall not apply to the ownership or possession of any such mammal, amphibian, reptile, or fowl for a temporary event such as a circus, sporting event, or zoo exhibition where such mammal, amphibian, reptile, or fowl are handled by trained and experienced professional caretakers, or possession of such creatures for veterinary care, or in a bona fide educational or medical institution, museum, or other place where they are kept as live specimens for public view or for the purpose of instruction or study.

(Ord. - -, passed 6-25-2018) Penalty, see § 90.99

§ 90.04 KENNEL CONTROL.

(A) No person, partnership or corporation may establish, within the limits of the Village of Birch Run, a kennel or other establishment for the breeding of dogs or cats.

(B) For purposes of this subchapter, a **KENNEL** shall be defined as the keeping of more than two animals, either two dogs or two cats or one cat and one dog over four months of age at a single residence.

(1992 Code, § 60.004) (Ord. 2-95, passed - - 1995) Penalty, see § 90.99

§ 90.05 BARKING DOGS.

No person shall harbor or keep any dog, which by loud, frequent or habitual barking, yelping or howling shall cause a serious annoyance in the neighborhood, or to people passing to and fro upon the streets, sidewalks or public highways.

(1992 Code, § 60.005) (Ord. 2-95, passed - - 1995) Penalty, see § 90.99

§ 90.06 DOG REGULATION.

(A) No person who is the owner of any female dog shall permit or allow the female dog to go out of a fenced area or a building when the dog is in heat.

(B) No person shall own, harbor or keep a dog that has been bitten by an animal known or reasonably suspected or having been afflicted with rabies at the time the dog was bitten, unless the dog shall have been surrendered to the County Dog Warden, held for observation and released.

(1992 Code, § 60.006) (Ord. 2-95, passed - - 1995) Penalty, see § 90.99

§ 90.07 IMPOUNDING.

Upon violation of any of the ordinances relating to dogs, cats, fowl, animals or bees, the Saginaw County Dog Warden or the Police Department of the Village of Birch Run is hereby authorized to seize and impound dogs, cats, fowl, animals and bees at either the Saginaw County Dog Pound or any other appropriate facility set up for this purpose.

(1992 Code, § 60.007) (Ord. 2-95, passed - - 1995)

§ 90.08 RABIES; SURRENDERING ANIMAL.

Any person who shall have in his or her possession a dog, cat, fowl or animal which has contracted rabies or which has been subjected to the same or which is suspected of having rabies or which has bitten any person, shall upon demand of the Police Department or County Dog Warden, produce and surrender up the dog, cat, fowl or animal to be held for observation as recommended by law.

(1992 Code, § 60.008) (Ord. 2-95, passed - - 1995)

§ 90.09 RUNNING-AT-LARGE AND SANITATION.

(A) No person owning, harboring, keeping or in charge of any dog or cat shall cause, suffer or allow the animal to soil, defile, defecate or to commit any nuisance on any public thoroughfare, sidewalk, or upon any public property whatsoever, or upon any private property without permission of the owner of the property unless the person has in his or her immediate possession an appropriate device for scooping excrement and an appropriate depository for the transmission of excrement to a receptacle located on property owned or possessed by the person. This section shall not apply to a person who is visually or physically handicapped.

(B) It shall be unlawful to maintain dogs, cats or other permissible domestic animals in any place in the Village of Birch Run which is not clean and sanitary and free from refuse, obnoxious odors, animal offal or spoiled food.

(C) It shall be unlawful for any person or persons as owner, keeper or under whose control the same may be, to allow any dog or dogs to run-at-large upon the property of any person, other than the property of the owner of the dog or dogs, within the limits of the village, without the written consent of the owner, keeper or person having control or supervision of the premises. All animals shall be on a leash of no more than six feet in length when the animals are being exercised.

(1992 Code, § 60.009) (Ord. 2-95, passed - - 1995) Penalty, see § 90.99

§ 90.10 BEES, WASPS, HORNETS, HONEY BEES; PROHIBITED; EXCEPTION.

No person in the Village of Birch Run shall raise, transport or keep bees, wasps, hornets or honey bees. This section shall not apply to persons keeping honey bees at the time of adoption.

(1992 Code, § 60.010) (Ord. 2-95, passed - - 1995) Penalty, see § 90.99

KENNEL CONTROL

§ 90.25 ESTABLISHMENT OF KENNELS; PROHIBITED.

No person, individual or corporation may establish, within the limits of the Village of Birch Run, a kennel or other establishment for the breeding, sale or boarding of dogs.

(1992 Code, § 61.001) (Ord. 1-60, passed - - 1960) Penalty, see § 90.99

§ 90.26 KENNEL DEFINED.

For purposes of this subchapter, a **KENNEL** shall be defined as the keeping of more than two dogs and two cats over four months of age at a single premises.

(1992 Code, § 61.002) (Ord. 1-60, passed - - 1960)

§ 90.27 SHORT TITLE.

The short title of this subchapter shall be Birch Run Kennel Control Ordinance.

(1992 Code, § 61.005) (Ord. 1-60, passed - - 1960)

§ 90.99 PENALTY.

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

(B) Any person or persons violating any provisions of §§ 90.01 through 90.10, upon conviction thereof, shall be punished by a fine not to exceed \$500, or by imprisonment in the Saginaw County Jail for a term not to exceed 90 days, or both the fine and imprisonment, together with costs of prosecution.

(C) Violation of §§ 90.25 through 90.27 shall be deemed a misdemeanor, and may be punished by a fine of not to exceed \$100, or by imprisonment in the county jail for a term not to exceed 30 days, either or both.

(1992 Code, §§ 60.011, 61.003) (Ord. 1-60, passed - - 1960; Ord. 2-95, passed - - 1995)

CHAPTER 91: FIRE PREVENTION; FIREWORKS

Section

Burning Ordinance

- 91.01 Title
- 91.02 Purpose
- 91.03 General prohibition
- 91.04 Refuse
- 91.05 Garbage
- 91.06 Yard waste
- 91.07 Smoke, soot, gases, sparks and embers
- 91.08 Burning uses permitted
- 91.09 Compliance with federal and state law

Fireworks Ordinance

- 91.20 Title
- 91.21 Purpose
- 91.22 Definitions
- 91.23 General prohibition on ignition, discharge, and use of consumer fireworks
- 91.24 Additional prohibitions
- 91.25 Permit, application, and site plan
- 91.26 Requirements and restrictions
- 91.27 Enforcement, seizure of fireworks, and penalties

- 91.99 Penalty

BURNING ORDINANCE

§ 91.01 TITLE.

This subchapter may be known and cited as the Burning and Emissions Control Ordinance of the Village of Birch Run.

(Ord. 04-2006, passed 6-26-2006)

§ 91.02 PURPOSE.

The purpose of this subchapter is to regulate burning, provide standards for receptacles used for burning, reduce air pollution, prohibit the emission of smoke, soot, cinders, noxious acids, fumes and gases detrimental to health, safety or welfare.

(Ord. 04-2006, passed 6-26-2006)

§ 91.03 GENERAL PROHIBITION.

It shall be unlawful for any person or persons to burn, or cause to burn, assist in burning, permit, continue or permit continuance of the burning of any combustible material within the village limits of the Village of Birch Run, except as prescribed herein.

(Ord. 04-2006, passed 6-26-2006) Penalty, see § 91.99

§ 91.04 REFUSE.

It shall be unlawful to burn any refuse outside any building at any time in the Village of Birch Run. **REFUSE** shall mean any combustible trash, including but not limited to paper, cardboard, cartons, boxes, rubber, plastics, construction waste materials and non-combustible trash, including but not limited to, metals, tin cans and glass.

(Ord. 04-2006, passed 6-26-2006) Penalty, see § 91.99

§ 91.05 GARBAGE.

It shall be unlawful to burn garbage inside or outside any building at any time in the Village of Birch Run. **GARBAGE** shall mean

rejected food wastes, including waste accumulations 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, fruits or vegetables.

(Ord. 04-2006, passed 6-26-2006) Penalty, see § 91.99

§ 91.06 YARD WASTE.

No person or persons shall cause or permit open burning of yard waste, including leaves, grass clippings, vegetable or other garden debris, shrubbery, brush, tree clippings or similar materials to occur upon any privately owned premises or public place.

(Ord. 04-2006, passed 6-26-2006) Penalty, see § 91.99

§ 91.07 SMOKE, SOOT, GASES, SPARKS AND EMBERS.

It shall be unlawful for any person or persons to permit or cause the escape of the quantities of smoke, soot, cinders, noxious acids, fumes and gases, or the emission of sparks or burning embers in the place or manner as to be detrimental to any person or to the public, or to endanger the health, comfort and safety of any person or of the public, or in such a manner as to cause or have a tendency to cause injury or damage to property or business.

(Ord. 04-2006, passed 6-26-2006) Penalty, see § 91.99

§ 91.08 BURNING USES PERMITTED.

The following types of limited burning shall be permitted within the Village of Birch Run, subject to the restrictions set forth herein.

(A) Fires are permitted for the cooking and smoking of food provided that the fires are confined to a barbeque grill, barbeque pit or smokehouse, and provided further that the emission of smoke and fumes do not irritate, annoy or constitute a nuisance to anyone or the property of anyone in the vicinity thereof. The burning shall be done on private property and not on the street, sidewalk, parkway or other public place.

(B) Burning and/or use of candles, lanterns, lamps, bug repellent, torches and fireplaces manufactured for small recreational fires are permitted, provided that the emission of smoke and fumes do not irritate, annoy or constitute a nuisance to anyone or the property of anyone in the vicinity thereof.

(C) Burning is permitted within a fireplace, furnace or incinerator constructed for that purpose and located within a building in accordance with the following standards:

(1) The combustion chamber must be vented through a chimney, stack or constructed so that smoke, fumes or gases will not escape within the building;

(2) Shall not emit cinders, dust, fly ash, noxious acids, harmful or offensive fumes or gases that irritate, annoy or constitute a nuisance to anyone or the property of anyone in the vicinity thereof; and

(3) Operation of incinerators shall meet all emissions limits as set forth by state and federal regulations.

(Ord. 04-2006, passed 6-26-2006; Ord. - - , passed 9-23-2013)

§ 91.09 COMPLIANCE WITH FEDERAL AND STATE LAW.

Notwithstanding anything set forth in this subchapter, all burning permitted under the terms and provisions of this subchapter shall also be conducted and performed in compliance with all federal and state laws, statutes, rules and regulations applicable thereto.

(Ord. 04-2006, passed 6-26-2006)

FIREWORKS ORDINANCE

§ 91.20 TITLE.

This subchapter may be known and cited as the Fireworks Ordinance of the Village of Birch Run.

(Ord. - - , passed 10-27-2014)

§ 91.21 PURPOSE.

The purpose of this subchapter is to establish a safe environment for the use or discharge of fireworks and to regulate the public health, safety, and general welfare of persons and property, in particular to ensure protection for the viewing public and the property owners surrounding the discharge site of fireworks.

(Ord. - - , passed 10-27-2014)

§ 91.22 DEFINITIONS.

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

ARTICLES PYROTECHNIC. Pyrotechnic devices for professional use that are similar to consumer fireworks in chemical composition and construction but not intended for consumer use, that meet the weight limits for consumer fireworks but are not labeled as such, and that are classified as UN0431 or UN0432 under 49 C.F.R. 172.101.

CONSUMER FIREWORKS. Fireworks devices that are designed to produce visible effects by combustion, that are regulated to comply with the construction, chemical composition, and labeling regulations promulgated by the United States Consumer Product Safety Commission under 16 C.F.R. parts 1500 and 1507, and that are listed in APA standard 87-1, 3.1.2, 3.1.3, or 3.5. Examples include, but are not limited to, aerials, roman candles, bottle rockets, firecrackers, helicopter/aerial spinners, reloadable shell devices, missile-type devices, single tube devices with report and other items that leave the ground. Consumer fireworks does not include low-impact fireworks.

DISPLAY FIREWORKS. Large fireworks devices and explosive materials intended for use in firework displays and designed to produce visible or audible effects by combustion, deflagration, or detonation, as provided in 27 C.F.R. 555.11, 49 C.F.R. 172, and APA standard 87-1, 4.1.

FEDERAL HOLIDAY. Federal holidays are defined as:

- (1) New Year's Day (January 1)
- (2) Birthday of Martin Luther King, Jr. (third Monday in January)
- (3) President's Day (third Monday in February)
- (4) Memorial Day (last Monday in May)
- (5) Independence Day (July 4)
- (6) Labor Day (first Monday in September)
- (7) Columbus Day (second Monday in October)
- (8) Veteran's Day (November 11)
- (9) Thanksgiving Day (fourth Thursday in November)
- (10) Christmas Day (December 25).

FIREWORK or FIREWORKS. Any composition or device, except for a starting pistol, a flare gun, or a flare, designed for the purpose of producing a visible or audible effect by combustion, deflagration, or detonation. Fireworks consist of consumer fireworks, low-impact fireworks, articles pyrotechnic, display fireworks, and special effects.

LOW IMPACT FIREWORKS. Any ground-based and some handheld sparkling devices as that phrase is defined under APA standard 87-1, 3.1, 3.1.1.1 to 3.1.1.8, and 3.5.

NOVELTY FIREWORKS. That term as defined under APA standard 87-1, 3.2, 3.2.1, 3.2.2, 3.2.3, 3.2.4, and 3.2.5 and all of the following:

- (1) Toy plastic or paper caps for toy pistols in sheets, strips, rolls, or individual caps containing not more than .25 of a grain of explosive content per cap, in packages labeled to indicate the maximum explosive content per cap.
- (2) Toy pistols, toy cannons, toy canes, toy trick noisemakers, and toy guns in which toy caps as described in division (1) are used, that are constructed so that the hand cannot come into contact with the cap when in place for explosion, and that are designed to break apart or be separated so as to form a missile by the explosion.
- (3) Flitter sparklers in paper tubes not exceeding 1/8 inch in diameter.
- (4) Toy snakes not containing mercury, if packed in cardboard boxes with not more than 12 pieces per box for retail sale and if the manufacturer's name and the quantity contained in each box are printed on the box; and toy smoke devices.

PERSON. An individual, agent, association, charitable organization, company, limited liability company, corporation, labor organization, legal representative, partnership, unincorporated organization, or any other legal or commercial entity.

SPECIAL EFFECTS. A combination of chemical elements or chemical compounds capable of burning independently of the oxygen of the atmosphere and designed and intended to produce an audible, visual, mechanical, or thermal effect as an integral part of a motion picture, radio, television, theatrical or opera production, or live entertainment.

USE OF FIREWORKS. The ignition, discharge, and use of fireworks.

(Ord. - -, passed 10-27-2014)

§ 91.23 GENERAL PROHIBITION ON IGNITION, DISCHARGE, AND USE OF CONSUMER FIREWORKS.

No person shall ignite, discharge, or use fireworks within the Village of Birch Run at any time, except that:

(A) Fireworks may be discharged in strict compliance with any permit issued by the village in accordance with the Michigan Fireworks Safety Act, Act 256 of 2011 and this subchapter.

(B) The use of consumer fireworks is permitted the day before, the day of, and the day after a federal holiday, however no person shall ignite, discharge, or use consumer fireworks on said days, between the hours of 1:00 a.m. and 8:00 a.m. local time.

(C) The use of low impact fireworks will be permitted year-round, however no person shall ignite, discharge, or use low impact fireworks between the hours of 11:00 p.m. and 8:00 a.m. local time.

(Ord. - -, passed 10-27-2014)

§ 91.24 ADDITIONAL PROHIBITIONS.

(A) Consumer fireworks shall not be ignited, discharged, or used from any of the following locations without the owner or legal representative's express written permission:

- (1) On public property, including streets and rights-of-way;
- (2) On school property;
- (3) On church property; or
- (4) From the property of another person.

(B) Consumer fireworks shall not be ignited, discharged, or used by a person under the influence of alcoholic liquor or a controlled substance, or a combination of both, as defined by M.C.L.A. § 257.1d and M.C.L.A. § 257.8b.

(C) Low impact fireworks shall not be ignited, discharged, or used by a person under the influence of alcoholic liquor or a controlled substance or a combination of both, as defined by M.C.L.A. § 257.1d and M.C.L.A. § 257.8b.

(D) Any person who uses fireworks shall be in compliance with all other applicable laws or ordinances.

(Ord. - -, passed 10-27-2014)

§ 91.25 PERMIT, APPLICATION, AND SITE PLAN.

(A) Any person wishing to use consumer fireworks or display fireworks on any day except the day before, day of, or day after a federal holiday shall, at least 30 days prior to the event, pay a fee established by the Birch Run Village Council, submit an application for a permit on a form created by the Michigan Department of Licensing and Regulatory Affairs, and secure permission from the Village Council prior to the event.

(B) A site plan of the area where the event is to be conducted shall be submitted with the application. The site plan shall set forth all structures in the area and the discharge site fallout area. The site plan shall furthermore set forth the distance separating the mortars used to launch the fireworks and the structures and also set forth the distance separating the mortars and the spectators viewing the display. All site plans must be approved by the Birch Run Township Fire Department Chief prior to Village Council approval. The approval by the Birch Run Township Fire Department Chief or Village Council may be subject to such conditions as the Birch Run Township Fire Department Chief or his designee may impose to properly safeguard the public, both as to persons and property; and subject to the provisions of the Michigan Fireworks Safety Act, Act 256 of 2011.

(Ord. - -, passed 10-27-2014)

§ 91.26 REQUIREMENTS AND RESTRICTIONS.

(A) Every person who ignites, discharges, or uses fireworks shall follow National Fire Protection Association (NFPA) Code 1123 for Fireworks Display and/or the Village of Birch Run requirements, whichever is more restrictive.

(B) Every person who is granted a permit to ignite, discharge, or use fireworks shall maintain personal liability insurance/property damage liability insurance in the amount of \$2,000,000 as a minimum during each event. Additional insurance may be required based upon conditions and/or the location of the display. The Village of Birch Run and its employees and/or officers shall be named as additional named insured on the insurance policy. The insurance policy must be submitted with the aforementioned application and shall be subject to review by the village's liability insurance provider. The insurance policy shall also include coverage for the cleanup after the event has ended.

(C) Any person using fireworks shall be responsible for all shells or devices being fired or burned. In the event any shell does not explode, the person shall secure the area until the unexploded shell is found and properly disposed of.

(D) Smoking in an area where fireworks are being used is prohibited under NFPA 1124, 7.3.11.1.

(E) Nothing herein limits the liability of any individual for injury to any person or property as a result of the use of fireworks, including any fire suppression costs incurred as a result of improper, careless, or negligent use of fireworks.

(Ord. - -, passed 10-27-2014)

§ 91.27 ENFORCEMENT, SEIZURE OF FIREWORKS, AND PENALTIES.

(A) This subchapter may be enforced by the Village of Birch Run Police Chief, Birch Run Township Fire Chief, their designees, and any sworn law enforcement officers.

(B) If an enforcing official determines that a violation of this subchapter or the Michigan Fireworks Safety Act has occurred, the official may seize the fireworks as evidence of such violation.

(C) Any person violating any provision of this subchapter for which no specific penalty is prescribed shall be subject to § 10.99.

(D) Upon conviction, or finding of responsibility, for a violation of this subchapter, the village may dispose of or destroy any consumer fireworks or low impact fireworks retained as evidence for prosecution of the violation.

(E) In addition to any other penalty provided herein, a person who is convicted, or found responsible, for a violation of this subchapter shall reimburse the village for the costs of storing, disposing of, or destroying any consumer or low impact fireworks seized, as provided for herein.

(Ord. - -, passed 10-27-2014)

§ 91.99 PENALTY.

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

(B) Any violation of any provision of §§ 91.01 through 91.09 shall constitute a municipal civil infraction and shall be handled through the process outlined in Chapter 35.

(Ord. 04-2006, passed 6-26-2006)

CHAPTER 92: STREETS AND SIDEWALKS

Section

Sidewalks

- 92.01 Lot and premises owners' responsibilities
- 92.02 Requirements; reasonable notice by certified mail
- 92.03 Responsibility of expenses; assessment
- 92.04 Sidewalks; state of disrepair or unsafe prohibited
- 92.05 Same; written permit required for construction or repair; specifications
- 92.99 Penalty

SIDEWALKS

§ 92.01 LOT AND PREMISES OWNERS' RESPONSIBILITIES.

The Village Council may, by resolution, require the owners of lots and premises to build, lay, construct, maintain and/or repair sidewalks in the public streets adjacent to and abutting upon the lots and premises, according to those specifications hereinafter set forth.

(1992 Code, § 86.001) (Ord. 4-92, passed 11-9-1992)

§ 92.02 REQUIREMENTS; REASONABLE NOTICE BY CERTIFIED MAIL.

Reasonable notice of the requirement to build or repair sidewalks shall be given by certified mail directed to the last known address of the owners, as indicated by the village tax rolls.

(1992 Code, § 86.002) (Ord. 4-92, passed 11-9-1992)

§ 92.03 RESPONSIBILITY OF EXPENSES; ASSESSMENT.

The expense of the sidewalks shall be paid by the owners of the lots or premises, by the village from the general fund or by a combination of both as the Village Council may deem feasible and just. If the owners of any lot or premises shall fail to build or repair the sidewalks within the time and in the manner as the Village Council may require, the Village Council may cause the sidewalks to be built or repaired and the expense thereof shall be assessed against the property and owners and shall be collected and treated in the same manner as taxes assessed under the general laws of the State of Michigan.

(1992 Code, § 86.003) (Ord. 4-92, passed 11-9-1992)

§ 92.04 SIDEWALKS; STATE OF DISREPAIR OR UNSAFE PROHIBITED.

No person shall permit any sidewalk which adjoins property owned by him or her to fall into a state of disrepair or be unsafe.

(1992 Code, § 86.004) (Ord. 4-92, passed 11-9-1992) Penalty, see § 92.99

§ 92.05 SAME; WRITTEN PERMIT REQUIRED FOR CONSTRUCTION OR REPAIR; SPECIFICATIONS.

No person shall construct or repair any sidewalk without first obtaining a written permit therefore from the Village Office, which construction or repair shall be in accordance with the following specifications:

(A) All sidewalks shall be at least four feet in width;

(B) All sidewalks shall be at least four inches in thickness, except places accessible to motor vehicles which shall be at least six inches in thickness;

(C) Concrete shall be of a least 3,000 pounds test;

(D) All sidewalks shall be located two feet outside abutting property lines, unless there is a conflict with other utilities, then that part of the two feet will be waived;

(E) Grade elevations shall be established by the Department of Public Works or Village Engineer;

(F) Any variance in the location or specifications hereof shall be subject to approval of the Village Council; and

(G) All sidewalks constructed over filled trenches shall be six inches in thickness and shall be reinforced with three reinforcing rods of at least 1/2-inch thickness at all points where they are constructed over the filled trenches. The reinforcing rods, when installed, shall be placed so as to extend at least two feet on either side of the filled trench so as to provide undisturbed soil for support.

(1992 Code, § 86.005) (Ord. 4-92, passed 11-9-1992) Penalty, see § 92.99

§ 92.99 PENALTY.

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

(B) Any person, firm or corporation who shall knowingly violate or refuse to comply with, or resist the enforcement of any of the provisions of §§ 92.01 through 92.05, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than \$100 or imprisonment in the county jail for not more than 90 days or both. The rights and remedies provided herein are cumulative and in addition to all other remedies provided by law. Any sentence hereunder shall not exempt the offender from compliance with the provisions hereof.

(1992 Code, § 86.006) (Ord. 4-92, passed 11-9-1992)

CHAPTER 93: HEALTH AND SANITATION

Section

Anti-Blight Ordinance

93.01 Short title

93.02 Definitions

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Littering

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93.29 Clearing of litter from private property by the village

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ANTI-BLIGHT ORDINANCE

§ 93.01 SHORT TITLE.

This subchapter shall be known as The Village of Birch Run Anti-Blight Ordinance.

(Ord. 03-03, passed 6-23-2003)

§ 93.02 DEFINITIONS.

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

ABANDONED VEHICLES. Any vehicle or trailer which has remained on private property for a period of 48 continuous hours or more, without the consent of the owner or occupant of the property for a period of 48 continuous hours or more after the consent of the owner or occupant of the property has been revoked.

BLIGHTED STRUCTURE. Any dwelling and/or mobile home used as a legal dwelling, travel trailer, recreational vehicle, garage or outbuilding, or any factory, shop, store, office building, warehouse or any other structure or part of a structure which, because of fire, wind or other natural disaster or physical deterioration is no longer habitable as a dwelling, nor useful for the purpose for which it may have been intended.

BUILDING MATERIALS. Lumber, brick, concrete or cinder blocks, plumbing materials, electrical wiring or equipment, heating ducts or equipment, shingles, mortar, concrete or cement, nails screws or any other materials used in constructing any structure.

JUNK. Parts of machines, motor vehicles, recreational vehicles, travel trailer, broken and unusable furniture, stoves, refrigerators or other appliances, remnants of wood, metal or any other cast-off material of any kind whether or not the same could be put to any reasonable use and second-hand or used materials.

JUNK MOTOR VEHICLES OR TRAILER. Any vehicle or trailer which is not licensed for use upon the highways of the State of Michigan for a period in excess of 30 days, and shall also include, whether licensed or not, any motor vehicle or trailer which is inoperative for any reason for a period of seven days; provided that there is excepted from this definition, operative vehicles or trailers which are kept as the stock in trade of a regularly licensed and established new or used automobile dealer or trailer dealer, provided further the vehicles or trailers excepted as are upon the premises of a motor vehicle or trailer repair garage.

PERSON. All natural persons, firms, co-partnerships, corporations and all associations of natural persons, incorporated or unincorporated, whether acting by themselves or by a servant, agent or employee. All persons who violate any of the provisions of this subchapter, whether as owner, occupant, lessee, agent, servant or employees shall, except as herein otherwise provided, be equally liable as principals.

TRASH and RUBBISH. Any and all forms of debris not herein otherwise classified.

VEHICLE. As used in this subchapter, is defined to include the term **TRAILER, RECREATIONAL VEHICLE, TRAVEL TRAILER** and/or a so-called **MOBILE HOME** being used as a dwelling, and which mobile home may not meet the minimum requirements of the Village of Birch Run Zoning Ordinance pertaining to a legal dwelling.

(Ord. 03-03, passed 6-23-2003)

§ 93.03 RESTRICTIONS.

(A) It is hereby determined that the storage or accumulation of trash, junk, second-hand materials, junk vehicles, abandoned vehicles, building materials and the maintenance of blighted structures upon any private property within the Village of Birch Run tends to result in blighted and deteriorated neighborhoods, the spread of vermin and disease, the increase in criminal activity and therefore is contrary to the public peace, health, safety and general welfare of the community.

(B) It shall be unlawful for any person to store, or to permit the storage or accumulation of trash, rubbish, second-hand materials, junk, junk vehicles nor to abandon same on any private property in the village except within a completely enclosed building or upon the premises of a properly zoned or legally operating, licensed or approved junk dealer, junk buyer, dealer in used auto parts, dealer in second-hand goods or junk, operator of an automobile repair garage and/or automobile wrecker business.

(C) It shall be unlawful for any person to keep or maintain any blighted or vacant structure, dwelling, garage, outbuilding, factory, shop, store or warehouse unless the same is kept securely locked, the windows kept glazed or neatly boarded up and otherwise protected to prevent entrance thereto by unauthorized persons or unless the structure is in the course of construction in accordance with a valid building permit issued by the Village of Birch Run, and unless the construction is completed within a reasonable time.

(D) It shall be unlawful for any person to store or permit the storage or accumulation of building materials on any private property, except in a completely enclosed building or except where the building materials are part of the stock in trade or business located on the property, or except when the materials are being used in the construction of a structure on the property in accordance with a valid building permit issued by the Village of Birch Run and unless the construction is completed within a reasonable time.

(E) It shall be unlawful for any person to place or store interior type furniture which would be adversely affected by the elements and/or susceptible to infestation by insects, rats, or other vermin, outside a structure or in a covered and/or uncovered porch. Such prohibited furniture shall include, but not be limited to, upholstered couches and chairs or other fabric-covered articles not designed or intended for exterior use. This division shall not apply during a lawful yard sale or garage sale while such furniture is offered for sale; nor shall it apply while such furniture is otherwise lawfully held for garbage collection or recycling at the curbside or other such area designated by the village for such pickup.

(F) A violation of the provisions of this section shall be a municipal civil infraction. If, upon inspection, the Village Building Inspector, Zoning Administrator, Ordinance Enforcement Officer, any Village Police Officer, deputy sheriff, Fire Inspector, health officer, Village Manager or County Health Officer shall find that any property within the village is being used in violation of the above sections of this subchapter, the owner and/or occupant shall be notified of the violation which may be given by a certified letter to the

owner or occupant as it appears on the tax rolls of the Village of Birch Run or by service upon the occupant personally by any official of the Village of Birch Run or the Saginaw County Health Department, or as the Village Council shall otherwise provide. The notice shall provide that the violation be abated by repair or removed within not less than two nor more than 60 days.

(G) If the owner and/or occupant of the premises shall not cause the materials in violation of this subchapter, as described above, to be abated or removed within the time prescribed in the notice, the village shall proceed to secure compliance as provided in Chapter 35. Further, the village may institute in an appropriate court injunction, mandamus, abatement or other appropriate proceedings to prevent, enjoin, abate or remove any violations of this subchapter.

(Ord. 03-03, passed 6-23-2003; Ord. - -, passed 9-22-2014) Penalty, see § 93.99

§ 93.04 INCONSISTENT ORDINANCES.

(A) All other ordinances of the village inconsistent with the provisions of this subchapter are, to the extent of the inconsistency, superseded by this subchapter.

(B) Provided, however, the repeal shall not abate any action now pending under or by virtue of the ordinance or any parts thereof herein repealed, nor shall the repeal discontinue, abate, modify or alter any penalty accrued or to occur or affect the rights of any person, firm or corporation, or waive any rights of this village under any section or provision of the ordinance, or any part thereof herein repealed existing at the time of the passage of this subchapter.

(Ord. 03-03, passed 6-23-2003)

§ 93.05 PUBLICATION.

Pursuant to the provisions of Ch. 7, § 7.3 of the Birch Run Village Charter, the Birch Run Village Clerk be and hereby is directed to forthwith and cause publication.

(Ord. 03-03, passed 6-23-2003)

LITTERING

§ 93.20 PURPOSE AND INTENT.

The purpose and intent of this subchapter is to protect the public health, safety, environment, and general welfare through the regulation and prevention of litter. The objectives of this subchapter are:

(A) Provide for uniform prohibition throughout the village of any and all littering on public or private property; and

(B) Prevent the desecration of the beauty and quality of life of the village and prevent harm to the public health, safety, environment, and general welfare, including the degradation of water and aquatic resources caused by litter.

(Ord. 03-2007, passed 1-28-2008)

§ 93.21 APPLICABILITY.

This subchapter shall apply to all public and private property within the village.

(Ord. 03-2007, passed 1-28-2008)

§ 93.22 DEFINITIONS.

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

CONSTRUCTION SITE. Any residential, commercial, industrial, or other area, lot, or site which construction or demolition of any type is conducted including roads at buildings, and at all other places actively being constructed, demolished, renovated, or repaired.

CONSTRUCTION WASTE. Solid waste that is produced or generated during construction, demolition, remodeling, or repair of pavements, houses, commercial buildings, and other structures. **CONSTRUCTION WASTES** include, but are not limited to lumber, wire, sheet rock, broken brick, shingles, glass, pipes, concrete, paving materials, and metal and plastics if the metal or plastics are a part of the materials of construction or empty containers for such materials. Paints, coatings, solvents, asbestos, any liquid, compressed gases or semi-liquids and garbage are not **CONSTRUCTION WASTES**.

DISCARD. To abandon, dispose of, burn, incinerate, accumulate, store or treat before or instead of being abandoned, disposed of burned or incinerated.

DISCARDED MATERIAL. A material that is abandoned, disposed of, burned, incinerated, accumulated, stored or treated before or instead of being abandoned, disposed of, burned or incinerated.

DISPOSE. To discharge, deposit, inject, dump, spill, leak or place any solid waste into or on any land or water so that the solid waste or any constituent of it may enter the environment or be emitted into the air or discharged into any waters.

FIRE-WOOD. A product used for the production of heat in residential uses where the logs are cut-split-stacked and in ready condition for use. When used as herein defined **FIRE-WOOD** is not deemed as litter.

LITTER. Any organic or inorganic waste material, rubbish, refuse, garbage, trash, hulls, peelings, debris, grass, weeds, leaves and

branches, ashes, sand, gravel, slag, brickbats, metal, plastic, and glass containers, broken glass, dead animals or intentionally or unintentionally discarded materials of every kind and description. **LITTER** shall also include the discarding or disposal of personal property on or adjacent to a sidewalk or road right of way during the course of serving or executing a writ of restitution or other court order which requires the removal of personal property from a building.

NUISANCE. Any use of premises or of building exteriors which is detrimental to the property of others, is a public health, safety or welfare concern, or which causes or tends to cause substantial diminution in the value of other property in the neighborhood in which such premises is located. This includes but is not limited to the keeping of the following: ashes, rubbish, garbage, lumber, bricks, cinder blocks, insulation materials, building debris, refuse, litter, or waste of any kind whether liquid or solid.

PERSON. Any individual, corporation, association, firm, receiver, guardian, trustee, executor, administrator, fiduciary, representative, or group of individuals or entities of any kind.

PUBLIC or PRIVATE PROPERTY. Any real property, whether improved or unimproved.

RECEPTACLE. A container that is specifically designed, constructed, and placed for use as a depository for litter or solid waste.

REFUSE. All solid waste products having the character of solids rather than liquids and that are composed wholly or partially of materials such as garbage, trash, rubbish, litter, residues from clean up of spills or contamination, or other discarded materials.

RUBBISH. Combustible or slowly putrescible discarded materials, which include but are not limited to trees, wood, leaves, trimmings from shrubs or trees, printed matter, plastic and paper products, grass, rags, and other combustible or slowly putrescible materials not included under the term garbage.

SANITARY WASTE or DOMESTIC WASTE or DOMESTIC SEWERAGE. Water borne, human or animal excreta or body wastes and normal culinary, laundry, and washing wastes.

SOLID WASTE or WASTE. Any garbage, refuse, rubbish, trash, or other discarded material, but does not include solid or dissolved materials in domestic sewage, solid or dissolved materials in irrigation return flows, industrial discharges, or special nuclear or by-product materials.

VILLAGE. The Village of Birch Run.

(Ord. 03-2007, passed 1-28-2008)

§ 93.23 PROHIBITION AGAINST LITTERING PUBLIC OR PRIVATE PROPERTY OR WATERS.

(A) It shall be unlawful for any person, in person or by his or her agent, employee, or servant to discard or dispose of litter, or to cause or permit the same on any public or private property in the village limits, or any waters within the village limits, any drain, sewer or receiving basin within the limits of this village unless:

- (1) The property is designated by the state or by any of its agencies or political subdivisions for the disposal of such litter, and such person is authorized by the proper public authority to use such property;
- (2) The litter is placed into a receptacle or container installed on such property; or
- (3) The person is the owner or tenant in lawful possession of such property, or has first obtained consent of the owner or tenant in lawful possession, or unless the act is done under the personal direction of the owner or tenant, all in a manner consistent with the public welfare;
- (4) The material is deposited under a permit authorized by any ordinance of the village or is deposited in or conducted into the village sewer system through lawful drains in accordance with the ordinances of the village relating thereto;

(B) Notwithstanding anything else contained herein to the contrary, it shall be unlawful for any person, either in person or by his or her agent, employee or servant, to discard or dispose of, garbage, waste or litter of any kind or nature, household or commercial, in any litter receptacle or container, public or private, which garbage, waste or litter, household or commercial, has been generated outside of the village and which is brought into the village limits; except that this section shall not apply to garbage, waste or litter, household or commercial, dumped or deposited into a property licensed waste transfer station.

(Ord. 03-2007, passed 1-28-2008) Penalty, see § 93.99

§ 93.24 SWEEPING LITTER INTO STREETS PROHIBITED.

No person shall sweep into or discard or dispose of, in any gutter, street, or other public place within the village the accumulation of litter from any building or lot or from any public or private sidewalk or driveway. Persons owning or occupying property shall keep the sidewalk and/or road-right-of-way adjacent to and abutting their private property free of litter.

(Ord. 03-2007, passed 1-28-2008) Penalty, see § 93.99

§ 93.25 VEHICLE LOADS CAUSING LITTER.

(A) It shall be unlawful for any person, firm or corporation, in person or by his or her or its agent, employee, or servant, to use any vehicle to haul any litter, dirt, rubbish, articles or things of substance whether liquid or solid, unless such vehicle is covered to prevent any part of its load from spilling or dropping at all times while such vehicle is in motion on any street or alley in the village.

(B) Provided, however, that the requirements herein for covering such vehicles shall not apply to vehicles operating in compliance

with the right to farm act or carrying brush cuttings, tree trimmings, branches, logs and similar waste material, if such matter is securely lashed to such vehicle to prevent spilling or dropping of the aforesaid.

(Ord. 03-2007, passed 1-28-2008) Penalty, see § 93.99

§ 93.26 CONSTRUCTION SITES.

(A) *Litter prohibited.* It shall be unlawful for any owner or agent of a construction site, or any contractor on a construction site, to cause, permit, or allow the presence of litter on such site outside of a proper receptacle or to cause, permit, or allow litter or waste to be spilled, discharged, or blown by wind or water. It shall be the responsibility of the owner or agent of the property and each contractor performing work on the site to keep the property free of litter.

(B) *Receptacles required.* The owner, agent, or contractor in charge of a construction site shall furnish on such site receptacles sufficient to contain worker's litter and receptacles sufficient to contain all construction waste. All receptacles shall be conveniently available and maintained and secured or covered so as to prevent litter and waste from being spilled, discharged, or blown by wind or water. The primary contractor should determine the number and capacity of receptacles, but no less than one receptacle for worker's litter and no less than one receptacle for construction waste shall be placed at each construction site. Receptacles required under this subsection shall be not less than ten-gallons' capacity. All receptacles shall be emptied as necessary, but not less frequently than weekly, except that receptacles used exclusively to contain construction waste shall be serviced with sufficient frequency to prevent spillage from overflow and to prevent offensive odors. All receptacles required under this subsection shall remain conveniently available on the site from the time construction activity commences until the construction activity ceases.

(C) *Exclusion.* The requirement for receptacles in this section shall not apply to any construction site on which only repair or renovation of a building is taking place, provided that no litter or construction waste is placed, stored, or otherwise accumulated on the exterior of the property outside of a proper receptacle and any such receptacle is maintained in accordance with this subchapter.

(D) *Portable toilets required.* The owner, agent or contractor in charge of a construction site shall furnish no less than one portable toilet facility on such site but in any event such number shall be sufficient to service the sanitary waste needs for the site. It shall be unlawful for the owner, agent or contractor in charge of a construction site to cause, permit or allow such facility to spill or discharge on the site or into waters located on the site. It shall be the responsibility of the owner, agent or contractor in charge of a construction site to have such facility emptied, serviced and maintained on an as needed basis.

(E) *Concrete truck washout.* It shall be unlawful for the owner, agent or contractor in charge of a construction site to permit and unlawful for the driver operator or other employee on a concrete truck to wash or discharge excess concrete from the chute, pump, drum or barrel of a concrete truck onto a construction site, upon the village right-of-way or village streets.

(F) *Chemical storage.* Any chemicals stored on a construction site shall be stored in approved containers, properly secured; it shall be unlawful for the owner, agent or contractor in charge of a construction site to permit the improper storage of chemicals on a construction site.

(Ord. 03-2007, passed 1-28-2008) Penalty, see § 93.99

§ 93.27 LITTER RECEPTACLES AT PLACES FREQUENTED BY THE PUBLIC.

(A) *Receptacles required.* Every owner, occupant, tenant, or lessee in control of any property that is held out to the public as a place for assemblage, for the transaction of business or recreation, or as a public way shall provide adequate receptacles of sufficient number and size to contain all litter generated by those persons frequenting that public place. The owner, occupant, tenant, or lessee in control of any property shall determine the number and size of the receptacles, except that no less than one receptacle shall be placed at each site. Receptacles shall be no less than ten-gallons' in capacity and clearly marked and designed to prevent the escape of litter and waste. Any person owning or in control of any property at which receptacles are required by this subchapter shall at his or her own expense be responsible for the placement, and maintenance of such receptacles as required by this subchapter.

(B) *Periodic emptying of receptacles.* All litter and solid waste shall be removed from receptacles as necessary, but not less frequently than weekly, and all receptacles shall be maintained in a sanitary and serviceable condition.

(Ord. 03-2007, passed 1-28-2008) Penalty, see § 93.99

§ 93.28 DUTY OF OWNERS AND OCCUPANTS.

(A) *General requirement.* It shall be the responsibility of each owner, agent, occupant, or lessee to keep his or her property free of litter. The owner, agent, occupant, or lessee of any property shall be responsible for removing litter accumulating on the property.

(B) *Litter prohibited.* No owner, agent, occupant, or lessee of any property shall allow the storage or accumulation of litter on the exterior of said property outside of a receptacle that is covered, secured, and maintained so as to prevent blowing, spilling, scattering, or leaking of the litter and waste contained therein, except that this requirement shall not apply to an area designated and approved by a governmental agency as a permitted disposal site.

(C) *Adjacent and surrounding areas.* It shall be the responsibility of each proprietor and each operator of any business, industry, or institution to keep the adjacent and surrounding areas free of litter. These areas include, but are not limited to public and private sidewalks, roads, and alleys; grounds; parking lots; loading and unloading areas; and all vacant lots that are owned or leased by such establishment or institution. Removal of any litter shall be performed in accordance with this subchapter.

(D) *Placement of solid waste for pickup.* Solid waste or other litter shall not be placed within the public right of way for regular solid waste collection by the village or its authorized agent or contractor for a period in excess of a total of 24 hours prior to or after the

regularly scheduled pickup date and time. All containers and litter shall be removed within the time specified in this section.

(Ord. 03-2007, passed 1-28-2008) Penalty, see § 93.99

§ 93.29 CLEARING OF LITTER FROM PRIVATE PROPERTY BY THE VILLAGE.

(A) Notice to remove.

(1) The Building and/or Zoning Administrator is hereby authorized and empowered to notify the owner of any private property within the village or the agent of such owner to properly dispose of litter located on such owner's property and/or adjacent and abutting sidewalk and/or road right-of-way. Such notice shall be, personally served, or by certified mail, express mail or by an authorized delivery service, addressed to said owner at the address as shown on the most current tax records of the village.

(2) Furthermore, the notice requirement shall not apply to cases of imminent danger to the public health, safety or welfare which, in the village's sole discretion, must be corrected immediately. Such factors may include fire hazards, environmental hazards, rodent or pest infestation, or any other reasonable condition upon the property which the village reasonably believes justifies, immediate, enter upon and abatement of the nuisance and/or dangerous condition.

(B) Action on non compliance. Upon the failure, neglect or refusal, of any, person as outlined in division (A) above, to properly dispose of litter or the condition within the time prescribed in the notice or if the litter or condition is determined to be a public health, safety or welfare issue by the Building or Zoning Administrator, the village is hereby authorized and empowered to immediately remove and properly dispose of such litter and/or condition and proceed with the collection proceedings as stated within this subchapter.

(C) Charge included in tax bill. When the village has effected the removal of such litter, condition or has paid for its removal, the actual cost thereof, plus accrued interest at the rate as outlined in the Village Charter, § 10.287 Section 9.17, shall be due and payable by the owner of the subject property at the time of receipt of such bill.

(D) Recorded statement constitutes lien. Where the full amount due the village is not paid by such owner within 60 days after the village has billed the owner for disposal of such litter, as provided for in division (C) above, the Building and/or Zoning Administrator, shall cause to be recorded in the Register of Deeds Office, a sworn statement showing the cost and expense incurred for the work, the date the work was done, and the location of the property, and shall remain in full force and effect for the amount due in principal and interest, plus costs of court, if any, for collection, until final payment has been made. The costs and expenses shall constitute a lien against the real property in favor of the village and shall be collected in the same manner as it is provided, by law for the collection of real property taxes pursuant to M.C.L. A. §§ 211.1 *et seq.*

(Ord. 03-2007, passed 1-28-2008) Penalty, see § 93.99

§ 93.30 COMPATIBILITY WITH OTHER REGULATIONS.

This subchapter is not intended to interfere with, abrogate, and or annul any other ordinance, rule or regulation, stature, or other provision of law. The requirements of this subchapter should be considered minimum requirements, and where any provision of this subchapter imposes restrictions different from those imposed by any other ordinance, rule or regulation, or other provision of law, whichever provisions are more restrictive or impose higher protective standards for human health or the environment shall be considered to take precedence.

(Ord. 03-2007, passed 1-28-2008) Penalty, see § 93.99

§ 93.31 VIOLATIONS.

(A) Violations. It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of §§ 93.20 to 93.30. Any person who has violated or continues to violate the provisions of §§ 93.20 to 93.30, may be subject to the enforcement actions outlined in this section or may be restrained by injunction or otherwise sentenced in a manner provided by law.

(B) Evidence.

(1) Whenever litter is thrown, deposited, dropped or dumped from any motor vehicle, boat, airplane, or other conveyance in violation of this subchapter, it shall be prima facie evidence that the registered owner/operator of the conveyance has violated §§ 93.20 to 93.30.

(2) Except as provided in division (B)(1) above, whenever any litter which is dumped, deposited, thrown or left on public or private property in violation of §§ 93.20 to 93.30 is discovered to contain any article or articles, including but not limited to letters, bills, publications or other writing which display the name of the person thereon in such a manner as to indicate that the article belongs or belonged to such person, it shall be a rebuttable presumption that such person has violated §§ 93.20 to 93.30, unless said person has proof that a licensed disposal company is or was responsible for its disposal.

(C) Notification. Notice of a violation of §§ 93.20 to 93.30 shall be made by serving a citation by mail or in person by an officer, agent or official of the village empowered by the Code of Ordinances of the village or by the State of Michigan to issue citations on behalf of the village.

(Ord. 03-2007, passed 1-28-2008) Penalty, see § 93.99

§ 93.99 PENALTY.

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

(B) A person who violates any provision of §§ 93.20 to 93.30 is responsible for a municipal civil infraction, subject to payment of a civil fine as set forth in Chapter 35, plus costs and other sanctions for each infraction. Repeat offenses shall be subject to increased fines as provided by Chapter 35.

(Ord. 03-2007, passed 1-28-2008)

CHAPTER 94: PARKS AND RECREATION

Section

Parks

94.01 Hours

94.02 Alcoholic beverages, narcotic drugs; prohibited

94.99 Penalty

PARKS

§ 94.01 HOURS.

(A) All public village parks within the Village of Birch Run, Saginaw County, Michigan, shall be closed to the public between the hours of 10:00 p.m. and 9:00 a.m. of the following day.

(B) Any person present in any park during the prohibited hours and who refuses to leave the park when requested to do so by a police officer shall be guilty of a misdemeanor.

(C) Exceptions to the closing times contained herein may be made by the Village Council to accommodate the holding of special events at certain times within village parks. Provided, however, that notice of the changes shall be published in a newspaper of general circulation within the Village of Birch Run not less than ten days prior to any event.

(1992 Code, § 130.001) (Ord. 1-71, passed - - 1971) Penalty, see § 94.99

§ 94.02 ALCOHOLIC BEVERAGES, NARCOTIC DRUGS; PROHIBITED.

Any person who shall possess, consume or have under his or her control, any alcoholic beverage or narcotic drugs in any public village park within the Village of Birch Run shall be guilty of a misdemeanor.

(1992 Code, § 130.002) (Ord. 1-71, passed - - 1971) Penalty, see § 94.99

§ 94.99 PENALTY.

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

(B) Any person who shall be convicted of violating any of the provisions of §§ 94.01 through 94.02 shall be guilty of a misdemeanor and shall be punished by a fine of not to exceed \$500 or by imprisonment in the Saginaw County Jail for not to exceed 90 days, or by both the fine and imprisonment at the discretion of the court.

(1992 Code, § 130.003) (Ord. 1-71, passed - - 1971)

CHAPTER 95: WEEDS

Section

Weed, Tall Grass and Tall Brush Control

95.01 Title

95.02 Purpose and intent

95.03 Definitions

95.04 Application of ordinance

95.05 Unlawful to permit noxious and tall weeds, tall grass and tall brush; presence thereof a public nuisance

95.06 Notification to and duty of owner

95.07 Failure of owner to comply

95.08 Collection of cost from owner

95.09 Savings clause

WEED, TALL GRASS AND TALL BRUSH CONTROL

§ 95.01 TITLE.

This subchapter shall be referred to as the Weed, Grass and Brush Control Ordinance and shall apply to all property within the Village of Birch Run.

(Ord. 03-05, passed 9-29-2003; Ord. - - , passed 9-27-2010)

§ 95.02 PURPOSE AND INTENT.

It is the intent of this subchapter to secure the public health, safety and welfare of the residents and property owners of the Village of Birch Run, by the control and regulation of grass and maintenance of certain weeds and growth within the village; to provide penalties for the violation thereof; and to repeal all ordinances or parts of ordinances in conflict therewith.

(Ord. 03-05, passed 9-29-2003; Ord. - - , passed 9-27-2010)

§ 95.03 DEFINITIONS.

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

COMMISSIONER OF WEEDS, GRASS AND BRUSH CONTROL or **COMMISSIONER.** The DDA Director/Village Manager or his or her designee.

LOT. A parcel of land located within the Village of Birch Run as identified on the tax rolls for the County of Saginaw.

NOXIOUS WEEDS. Shall include, but is not limited to:

- (1) Canada thistle (*Cirsium arvense*);
- (2) Dodders (any species of *Cuscuta*);
- (3) Mustards (charlock, black mustard and Indian mustard, species of *Brassica* or *Sinapis*);
- (4) Wild carrot (*Daucus carota*);
- (5) Bindweed (*Convolvulus arvensis*);
- (6) Perennial sowthistle (*Sonchus arvensis*);
- (7) Hoary alyssum (*Berteroa incana*);
- (8) Ragweed (*Amrosia elatior* 1);
- (9) Poison ivy (*Rhus toxicodendron*);
- (10) Poison sumac (*Toxicodendron vermic*);
- (11) Oxeyes daisies;
- (12) Goldenrod; and
- (13) Dandelion.

OTHER PLANTS. Those recognized as deleterious to health, safety or public welfare and recognized as a common nuisance.

OWNER. The person(s) listed on the current property tax roll.

PARCEL. Any lot of land located within the Village of Birch Run as identified on the tax rolls for the County of Saginaw.

TALL BRUSH. Any brush exceeding three feet in height.

TALL GRASS. Any grass exceeding nine inches in height.

TALL WEEDS. Any weed exceeding nine inches in height.

VILLAGE. The Village of Birch Run.

VILLAGE COUNCIL. The Birch Run Village Council.

WEEDS. All noxious weeds, tall grass, tall brush, tall weeds and other plants, as defined above.

WOODLOT. A vacant tract of land comprising of a minimum of 75% of mature trees.

(Ord. 03-05, passed 9-29-2003; Ord. - - , passed 9-27-2010)

§ 95.04 APPLICATION OF ORDINANCE.

This subchapter shall apply to and cover all weeds, as defined above, found growing in the Village of Birch Run with the following

exceptions:

(A) The entire lot in a platted subdivision shall be maintained within this subchapter;

(B) Other lots and parcels shall be maintained within 100 feet of a street or property line right-of-way as determined by the Commissioner; and

(C) Woodlots shall be exempt from the weed cutting requirements of this subchapter up to a height of 24 inches.

(Ord. 03-05, passed 9-29-2003; Ord. - - , passed 9-27-2010)

§ 95.05 UNLAWFUL TO PERMIT NOXIOUS AND TALL WEEDS, TALL GRASS AND TALL BRUSH; PRESENCE THEREOF A PUBLIC NUISANCE.

(A) It shall be unlawful for the owner of any lot or parcel adjacent to a public street within the village, to cause or permit to grow on the lots, any weeds and to provide for their removal from public streets and sidewalks.

(B) The presences of the weeds, upon the lots or their remnants cast upon sidewalks or public streets are hereby deemed to be detrimental to the public health, safety and welfare and shall constitute a public nuisance.

(Ord. 03-05, passed 9-29-2003; Ord. - - , passed 9-27-2010) Penalty, see § 95.99

§ 95.06 NOTIFICATION TO AND DUTY OF OWNER.

(A) *First notification.* The Village Clerk shall, during the month of March of each year, give notice of the requirements and provisions of this subchapter by publishing a notice one time in a newspaper of general circulation within the Village of Birch Run, as provide for by M.C.L.A. § 247.64a. It shall also state that weeds not cut and their removal from public sidewalks and streets by May 1 of that year may be cut or removed by the village and the owner of the property charged a fine and cost for the removal of same. The village may cut the weeds and grass as many times as is necessary and charge the costs thereof to the owner.

(B) *Second notification.* After May 1, the Commissioner or his or her designee shall prepare a list of all property owners who have failed to cut weeds on their property or provided for the removal of same from public sidewalks and streets as required in division (A) above. The village shall send by first class mail a second notification to each property owner on the list, notifying him or her that he or she has ten days from the date of the notice to comply with the weed cutting and removal requirements of the subchapter or he or she will be subject to the violation and penalty as stated in § 95.99.

(C) *Duty.* It shall be the duty of all owners of land on which weeds are found to be growing to destroy and cut same before they reach a seed bearing stage and remove the remains from all public sidewalks and streets within the village, which will prevent such weeds from becoming a detriment to public health and safety.

(D) *Exception.* In the event a property is an agricultural field which is not used for the growing of agricultural crops, only the first 100 feet from an adjoining road or property line shall be subject to the weed cutting requirements of this subchapter.

(Ord. 03-05, passed 9-29-2003; Ord. - - , passed 9-27-2010)

§ 95.07 FAILURE OF OWNER TO COMPLY.

If any person shall fail to comply with the provisions of this ordinance, the Village or its authorized representative shall, cause all such noxious weeds and grass to be cut or destroyed upon lands of the persons who have not complied with the provisions of this ordinance. The Village shall keep an account of expenses incurred with respect to each parcel of land which is entered upon in carrying out the provisions of this ordinance. The Village Council shall establish by resolution an hourly rate (a fraction of an hour shall be charged the full hourly rate) and an administrative fee which shall be charged by the Village for carrying out the provisions of this ordinance. In order to reimburse the Village for its expenses in administering the inspection, scheduling and notification procedures required under this ordinance, there shall be an annual one-time fee which shall be charged to the owner. Failure to remit payment within the specified time period shall result in said fine and cost placed as a tax lien on said parcel.

(Ord. - - , passed 9-27-2010)

§ 95.08 COLLECTION OF COST FROM OWNER.

A copy of the account as provided in § 95.07, including an account of the costs incurred on each of the several descriptions or parcels of property, shall be transmitted to the Village Treasurer. The amount shall be a lien against the premises, to be enforced in the manner provided by the general laws of the State of Michigan for the enforcement of tax liens.

(Ord. - - , passed 9-27-2010)

§ 95.09 SAVINGS CLAUSE.

All proceedings pending and all rights and liability existing, acquired or incurred at the time this subchapter takes effect are saved and may be consummated according to the law in force when they were commenced.

(Ord. 03-05, passed 9-29-2003; Ord. - - , passed 9-27-2010)

§ 95.99 PENALTY.

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

(B) A person who has violated, or continues to violate, any provision of §§ 95.01 through 95.09 shall be responsible for the violation punishable as a civil infraction, with a fine of not more than \$100 per parcel. Each day that a violation continues shall constitute a separate violation.

(C) The village is hereby authorized to issue municipal civil infraction citations under §§ 95.01 through 95.09, directing alleged violators to appear in court, or to issue municipal civil infractions notices directing alleged violators to appear at the Village of Birch Run Violations Bureau as provided under the ordinances of the Village.

(D) A civil infraction shall not be a bar against, or a prerequisite for, taking any other action against a person.

(Ord. 03-05, passed 9-29-2003; Ord. - - , passed 9-27-2010)

CHAPTER 96: NOISE CONTROL

Section

- 96.01 Title
- 96.02 Purpose and intent
- 96.03 Definitions
- 96.04 Excessive noise prohibited
- 96.05 Excessive noise standard
- 96.06 Noises prohibited
- 96.07 Municipal civil infraction

§ 96.01 TITLE.

This chapter shall be referred to as the “Village of Birch Run Noise Control Ordinance” and shall apply to all individuals residing in or traveling through the Village of Birch Run corporate limits.

(1992 Code, § 74.002) (Ord. 99-7, passed 11-8-1999)

§ 96.02 PURPOSE AND INTENT.

(A) The creation of excessive, unnecessary or unusually loud noises within the limits of the Village of Birch Run is an increasing condition with regards to extent and volumes;

(B) The creation or maintenance of excessive, unnecessary; unnatural or unusually loud noises which are prolonged, unusual and unnatural in their time, place and use affect the and are a detriment to public health, comfort, convenience, safety, welfare and prosperity of the residents of the Village of Birch Run; and

(C) The necessity in public interest for the provisions and prohibitions hereinafter contained and enacted, is declared as a matter of legislative determination and public policy, and it is further declared that the provisions and prohibitions hereinafter contained and enacted are in pursuance of securing and promoting the public health, comfort, convenience, safety, welfare and prosperity and the peace and quiet of the Village of Birch Run, its inhabitants and visitors.

(1992 Code, § 74.003) (Ord. 99-7, passed 11-8-1999)

§ 96.03 DEFINITIONS.

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

AIR COMPRESSION TOOLS. Pile driver, steam shovel, pneumatic hammer, derrick, steam or electric hoist or other appliance, the use of which is attended by loud or unusual noise.

BLOWERS. Power fan or any internal combustion engine, the operation of which causes noise due to the explosion of operating gases or fluids.

DRUMS. Any of various types of percussive musical instruments consisting of a hollow cylinder or hemisphere of wood, metal, and the like usually with skin stretched tightly over the end or ends.

EXHAUSTS. The discharge into the open air of the exhaust of any steam engine, stationary internal combustion engine, motor boat or motor vehicle except through a muffler or other device, which will effectively prevent loud or explosive noises therefrom.

HORNS. Instruments for making loud warning noises usually installed on or connected to motorized vehicles.

LOUD SPEAKERS, AMPLIFIERS FOR ADVERTISING. The use or operation of any radio receiving set, musical instrument, phonograph, loudspeaker, sound amplifier or other machine or device for the producing or reproducing sound which is cast upon the public streets or parking lots for the purpose of commercial advertising or attracting the attention of the public to any building or structure.

MOBILE SOUND AMPLIFYING EQUIPMENT. Any sound amplifying equipment capable of being operated while being transported from place to place and shall include without limitation any sound amplifying equipment upon or in any vehicle, including motorcycle or moped.

PARKING LOT. A public or private lot designated for and accessible to the general public on which to park a motorized vehicle.

SOUND AMPLIFYING EQUIPMENT. Any machine or device for the amplification of the human noise, music or any other sound.

STEAM WHISTLES. Whistle or warning devices usually associated with any locomotive.

STREET. A public or private roadway, highway or other place opened to the general public or generally accessible to motor vehicles.

YELLING, SHOUTING, AND THE LIKE. Yelling, shouting, hooting, whistling, or singing.

(1992 Code, § 74.004) (Ord. 99-7, passed 11-8-1999)

§ 96.04 EXCESSIVE NOISE PROHIBITED.

It shall be unlawful for any person to willfully make or continue, or cause to be made or continued any loud, unnecessary, and unusual noise which disturbs the peace or quiet of any neighborhood or which causes discomfort or annoyance to any reasonable person of normal sensitivity residing in the area.

(1992 Code, § 74.005) (Ord. 99-7, passed 11-8-1999)

§ 96.05 EXCESSIVE NOISE STANDARD.

The standard which may be considered in determining whether a violation of the provisions of this section exists may include, but not be limited to, the following:

- (A) The level of noise;
- (B) Whether the nature of the noise is usual or unusual;
- (C) Whether the origin of the noise is natural or unnatural;
- (D) The level and intensity of the background noise, if any;
- (E) The proximity of the noise to residential sleeping facilities;
- (F) The nature and zoning of the area within which the noise emanates;
- (G) The density of the inhabitation of the area within which the noise emanates;
- (H) The time of the day and night the noise occurs;
- (I) The duration of the noise; and
- (J) Whether the noise is recurrent, intermittent or constant.

(1992 Code, § 74.006) (Ord. 99-7, passed 11-8-1999)

§ 96.06 NOISES PROHIBITED.

The following acts, among others, are declared to be loud, disturbing, unnecessary and excessive noises in violation of this chapter:

(A) *Horns, signaling devices, and the like.* The sound of any horn or signaling device on any automobile, motorcycle or other vehicle on any street or public place of the Village of Birth Run, except as a danger warning; the creation by means of any signaling device of any unreasonably loud or harsh sound; and the sounding of any device for an unnecessary or unreasonable period of time. The use of any signaling device except one operated by hand or electricity; the use of any horn, whistle or other device operated by engine exhaust; and the use of any signaling device when traffic is for any reason held up.

(B) *Sound amplifying equipment.*

(1) Sound amplifying equipment shall not be permitted on streets or parking lots. However, it shall not include that portion of a public street temporarily closed to vehicular traffic by public authority to accommodate or permit a public assembly.

(2) No person shall use or permit the use of any sound amplifying equipment or mobile sound amplifying equipment, the sound of which is cast upon any street, alley or public property so as to produce sound that is already audible more than 50 feet from the point of amplification. Nothing in this section shall be deemed to prohibit:

- (a) The use of any device by a governmental agency in the furtherance of its authorized function;
- (b) The use of such device to warn of imminent danger;
- (c) The reasonable use of any device by a church or other nonprofit religious organization upon its premises for the dissemination of music or bell tones as a call to, recessional from or integral part of religious service.
- (d) The use of a chime to indicate the time at not more frequent intervals than 15 minutes; or
- (e) The dissemination of sound during a parade, outdoor band concert or theatrical performance provided the volume of sound is

not unreasonable loud, raucous, jarring, disturbing or a nuisance to persons more than 50 feet from the point of amplification.

(C) *Loud speakers and amplifiers.*

(D) *Yelling, shouting, and the like.* Yelling, shouting, and the like on the public streets, particularly between the hours of 10:00 p.m. and 7:00 a.m. or at any time or place so as to annoy or disturb the quiet, comfort or repose of persons in any office or in any dwelling, hotel or other type of residence, or of any persons in the vicinity

(E) *Animals, birds, and the like.* The keeping of any animal or bird which by causing frequent or long continued noise shall disturb the comfort or repose of any persons in the vicinity

(F) *Steam whistles.* The blowing of any locomotive steam whistle or steam whistle attached to any stationary boiler except to give notice of the time to begin or stop work or as a warning of fire or danger, or upon request of proper governmental authorities.

(G) *Exhausts.* Except through a muffler or other device, which would effectively prevent loud or explosive noises therefrom.

(H) *Defect in vehicle or load.* The use of any automobile, motorcycle or vehicle so out of repair, so loaded or in such manner as to create loud and unnecessary grating, grinding, rattling or other noise.

(I) *Loading, unloading, opening boxes.* The creation of a loud and excessive noise in connection with loading or unloading any vehicle or the opening and destruction of bales, boxes, crates and containers.

(J) *Construction or repairing of buildings.* The erection (including excavation), demolition, alteration or repair of any building other than between the hours of 7:00 a.m. and 9:30 p.m. on weekdays, except in case of urgent necessity in the interest of public health and safety, and then only with a permit from the Building Inspector, which permit may be granted for a period not to exceed three days while the emergency continues and which permit may be renewed for periods of three days or less while the emergency continues. If the Building Inspector should determine that the public health and safety will not be impaired by the erection, demolition, alteration or repair of any building or the excavation of streets and highways within the hours of 9:30 p.m. and 7:00 a.m. and if he or she shall further determine that loss or inconvenience would result to any party in interest, he or she may grant permission for the work to be done within the hours of 9:30 p.m. and 7:00 a.m. upon application being made at the time the permit for the work is awarded or during the progress of the work.

(K) *Schools, churches.* The creation of any excessive noise on any street adjacent to any school, institution of learning or church, which unreasonably interferes with the workings of the institution, or which disturbs or unduly annoys the students or staff, provided conspicuous signs are displayed in the streets indicating that the same is a school or church street.

(L) *Hawkers, peddlers.* The shouting and crying of peddlers, hawkers and vendors which disturbs the peace and quiet of the neighborhood.

(M) *Drums.* The use of any drum or other instrument or device for the purpose of attracting attention by creation of noise to any performance, show or sale.

(N) *Air compression tools.* The operation between the hours of 9:30 p.m. and 7:00 a.m. of any pile driver, which is attended by loud or unusual noise.

(O) *Blowers.* The operation of any noise-creating blower, which causes noise due to the explosion of operating gases or fluids, unless the noises from the blower or fan are muffled and the engine is equipped with a muffler device sufficient to deaden the noise.

(1992 Code, § 74.007) (Ord. 99-7, passed 11-8-1999)

§ 96.07 MUNICIPAL CIVIL INFRACTION.

A person who violates any provision of this chapter is responsible for a municipal civil infraction, subject to payment of a civil fine as set forth in the Village of Birch Run Municipal Civil Infraction Ordinance, plus costs and other sanctions for each infraction. Repeat offenses shall be subject to increased fines as provided by Civil Infraction Ordinance.

(1992 Code, § 74.008) (Ord. 99-7, passed 11-8-1999) Penalty, see § 10.99

TITLE XI: BUSINESS REGULATIONS

Chapter

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111. PERMITS

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PEDDLERS LICENSING

§ 110.001 TITLE.

This subchapter shall be known and may be cited as the Birch Run Village Peddlers Licensing Ordinance.

(Ord. 01-2006, passed 3-27-2006)

§ 110.002 DEFINITIONS.

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

CHARITABLE. The words patriotic, philanthropic, social service, welfare, benevolent, educational, civic or fraternal, either actual or purported.

CONTRIBUTION. Alms, food, clothing, money, subscription, property or donations under the guise of a loan of money or property.

LICENSING AGENT. The Village Clerk or the other village official or employee as may be designated by resolution of the Village Council.

PEDDLER. Any person who travels from house to house or place to place, or who, on the streets or alleys or open places, or in public grounds or places, sells or offers for sale, or exposes for sale, any goods, wares or merchandise to any person not a dealer therein, or who takes orders for the purchase of goods, wares or merchandise by samples, lists, catalogue or subscription for magazines and books from any person not a dealer therein. The term **PEDDLER**, as used in this chapter, shall not be applicable to any party selling the products of his or her own farm, orchard or garden on those premises.

PERSON. Any individual, partnership, association or corporation.

PROMOTER. Any person who promotes, manages, supervises, organizes or attempts to promote, manage, supervise or organize a campaign of solicitation.

RELIGIOUS and **RELIGION.** Shall not mean and include the word charitable, as defined in this section, but shall be given their commonly accepted definitions.

SOLICIT and **SOLICITATION.** The request, directly or indirectly, of money, credit, property, financial assistance or other thing of value on the plea or representation that money, credit, property, financial assistance or other thing of value will be used for a charitable or religious purpose by means of going from door to door.

VILLAGE. The Village of Birch Run.

(Ord. 01-2006, passed 3-27-2006)

§ 110.003 PURPOSE.

Numerous complaints that have been received by police and village officials from occupants of residences and dwelling units about persons who have gained, or sought to gain, admittance to their residences for the purpose of soliciting or, on the pretext of soliciting, have by their conduct made nuisances of themselves by disturbing and annoying the occupants, or by their acts and conduct have violated the right of the occupants to the quiet and peaceful enjoyment and security of their homes; and in some cases persons have sought admittance to a residence as a solicitor for the purpose of gaining information for some illegal act. The village declares that the regulations established by this section are necessary for the safety, health, comfort, good order, protection and welfare of those residents of the village who desire the protection of the regulations established by this subchapter.

(Ord. 01-2006, passed 3-27-2006)

§ 110.004 VEHICLE AND EQUIPMENT USE AT NIGHT.

No vehicle or other equipment shall be operated, propelled, located or otherwise used on the public streets, sidewalks, parks or other public ways or places, between 9:00 p.m. and 8:00 a.m., by any person licensed under this section for the purpose of carrying on the licensed activity; provided, however, that:

(A) The Police Department may authorize the use of equipment for street vending within the hours, where the occasion, locations and circumstances are such that there is no danger to the public or the operator and on the terms and conditions as the Department finds necessary as to the time, location, equipment and mode of operation to protect the public and operator from hazard; and

(B) Motor vehicles, licensed under the state statutes and meeting their requirements may be operated as authorized thereby.

(Ord. 01-2006, passed 3-27-2006) Penalty, see § 110.999

§ 110.005 MISREPRESENTATIONS BY SOLICITORS.

No person shall directly or indirectly solicit contributions for any purpose by misrepresentation of his or her name, occupation, financial condition, social condition or residence, and no person shall make or perpetrate any other misstatement, deception or fraud in connection with any solicitation of any contribution for any purpose in the village.

(Ord. 01-2006, passed 3-27-2006) Penalty, see § 110.999

§ 110.006 HOURS.

No peddler shall operate between the hours of 9:00 p.m. and 8:00 a.m.

(Ord. 01-2006, passed 3-27-2006) Penalty, see § 110.999

§ 110.007 COURTEOUS; RESPECTFUL OF RESIDENT RIGHTS.

Persons engaged in these activities shall at all times be courteous and respectful of the private property and rights to privacy of village residents.

(Ord. 01-2006, passed 3-27-2006)

§ 110.008 REQUEST TO LEAVE.

If a resident requests a peddler to leave the premises, he or she shall immediately do so without further discussion

(Ord. 01-2006, passed 3-27-2006)

Statutory reference:

Refusal to leave, see M.C.L.A. § 750.552

§ 110.009 PROPER ENTRY ONTO PRIVATE PROPERTY.

No person engaged as a peddler shall enter onto private property for the purposes except that he or she may enter only from the driveway and proceed directly to the entrance that represents the street address of the private property. This is intended to prohibit the individuals from crossing from one parcel to another and not using the public right-of-way; i.e., they shall not walk across front yards and shall not enter side yards or rear yards.

(Ord. 01-2006, passed 3-27-2006) Penalty, see § 110.999

§ 110.010 LICENSE; REQUIRED.

No person shall act as a peddler unless the person shall first obtain a license from the Village Clerk's office.

(Ord. 01-2006, passed 3-27-2006) Penalty, see § 110.999

Statutory reference:

Veteran's license for peddlers, see M.C.L.A. §§ 35.441et seq.

§ 110.011 APPLICATION.

Any person desirous of obtaining a license as a peddler shall apply to the Village Clerk, upon proper forms to be furnished by the Village Clerk, or his or her designee and signed by the applicant, stating:

- (A) In what manner he or she intends to travel, trade or conduct business;
- (B) His or her name, age and permanent home address;
- (C) A physical description of himself or herself;
- (D) If employed, the name and address of his or her employer;
- (E) The address of his or her place of residence for the past three years; and
- (F) The name and class of the license desired with two true photographs of the applicant. The application for a license must be filed with the Village Clerk, or his or her designee, 14 days prior to the start of any sale.

(Ord. 01-2006, passed 3-27-2006)

§ 110.012 FEE.

Licenses issued shall be charged a non-refundable fee as determined from time to time by resolution of the Village Council, which shall be paid for at the time the application is filed. Exempt from the payment of the fee shall be any licensed village business operating normally from a permanent location but conducting a door to door advertising campaign.

(Ord. 01-2006, passed 3-27-2006)

§ 110.013 INVESTIGATION AND ISSUANCE.

(A) The Village Clerk, or his or her designee, may withhold the granting of a license applied for until the time as may be required to receive information on the applicant from the Police Department. Whenever the Village Clerk, or his or her designee, receives information from any source indicating that the applicant has violated any law or ordinance of any state or municipality, the Village Clerk, or his or her designee, shall refer the application to the Village Manager and Police Chief who will determine whether the license shall be granted.

(B) The Village Clerk, or his or her designee, is authorized to issue licenses to those who have complied with the provisions of this subchapter.

(Ord. 01-2006, passed 3-27-2006)

§ 110.014 DURATION OF LICENSE.

No peddler shall be issued a license for more than 30 days per one calendar year.

(Ord. 01-2006, passed 3-27-2006) Penalty, see § 110.999

§ 110.015 FORM AND CONTENT.

Each license granted shall be in such form as to contain a true photograph of the licensee, the name, address, physical description, length of time the license is issued for and description of how business will be conducted.

(Ord. 01-2006, passed 3-27-2006)

§ 110.016 EXPIRATION DATE.

All licenses issued shall expire 30 days from the date of issue, unless a prior date is fixed therein.

(Ord. 01-2006, passed 3-27-2006)

§ 110.017 NONTRANSFERABLE; RETURN UPON EXPIRATION.

Any license issued shall be nontransferable and shall be returned to the Village Clerk within two days after its date of expiration, together with all facsimile copies thereof.

(Ord. 01-2006, passed 3-27-2006)

§ 110.018 ALTERCATIONS PROHIBITED.

No licensee shall alter, remove or obliterate any entry made on his or her license.

(Ord. 01-2006, passed 3-27-2006) Penalty, see § 110.999

§ 110.019 CARRIED BY LICENSEE.

All licensees, while going from door to door, shall carry with them, at all times, the license issued under the provisions of this subchapter.

(Ord. 01-2006, passed 3-27-2006)

§ 110.020 SOLICITOR CREDENTIALS.

All persons to whom licenses have been issued shall furnish proper credentials to their solicitors for the solicitation.

(A) *Content.* The credentials shall include:

- (1) The name of the organization;
- (2) The name of the license holder;
- (3) The date;
- (4) A statement describing the holder's charitable or religious activity;
- (5) A description of the purpose of the solicitation;
- (6) The signature of the license holder or of the holder's chief executive officer;
- (7) The name, address, age, sex and signature of the solicitor to whom the credentials are issued; and
- (8) The specific period of time during which the solicitor is authorized to solicit on behalf of the license holder.

(B) *Copy filed and approved by Village Clerk.* A copy of the credentials must be filed with the Village Clerk, or his or her designee, at the time the application for a license is filed and must be approved by the Village Clerk, or his or her designee, as conforming to the requirements of this subchapter.

(Ord. 01-2006, passed 3-27-2006)

§ 110.021 SUSPENSION.

(A) The Village Clerk, or his or her designee, shall have the power to suspend any license issued for violation of a village ordinance or any condition or regulation under which the license was granted.

(B) The Village Clerk, or his or her designee, shall report all suspensions to the Village Manager and Police Chief, which may, for cause shown, revoke or reinstate the license after giving the licensee reasonable notice and an opportunity to be heard.

(Ord. 01-2006, passed 3-27-2006)

§ 110.022 REVOCATION.

Failure to exercise proper courtesy and respect or engaging in obnoxious sales tactics or behavior shall be grounds for the withdrawal of the license and further police action as permitted by law.

(A) Upon written complaint to the Village Clerk or another village official by offended citizens, the Village Manager and Police Chief shall meet with the licensee to determine whether or not the complaint justifies revocation of the license.

(B) If the licensee disagrees with the determination, he or she may appeal to the Village Council at its next regular meeting. Until the meeting, the license will be suspended and no further activity shall be conducted.

(C) In the event of revocation, the license fee shall not be refunded. No person whose license has been revoked shall receive another license for a period of one year thereafter.

(Ord. 01-2006, passed 3-27-2006) Penalty, see § 110.999

§ 110.023 RECORDS OF LICENSES.

A full, complete record of each license issued, including renewals, suspensions or revocations thereof and serious complaints and charges against the licensee, together with his or her photograph, shall be kept on file by the Village Clerk, or his or her designee.

(Ord. 01-2006, passed 3-27-2006)

§ 110.024 EXEMPTIONS.

(A) *Non-pecuniary, profit organizations.* The provisions of this subchapter shall not apply to any established society, association or corporation that is organized and operated exclusively for religious, philanthropic, benevolent, fraternal, charitable or reformatory purposes and not operated for pecuniary profit, where:

- (1) No part of the net earning of which benefits any person, private shareholder or individual;
- (2) The solicitation of the organization is conducted among the members thereof by other members or officers thereof, voluntarily and without remuneration for the solicitation; or
- (3) The solicitation is in the form of collections or contributions at the regular exercises or services of any church, religious society, lodge, benevolent order or fraternity or similar organizations or of any branch thereof.

(B) *School related youth activities.* Any group or individual associated with any school related youth activities such as Girl Scouts, Little League, soccer leagues and Boy Scouts shall be exempt from the provisions of this subchapter.

(Ord. 01-2006, passed 3-27-2006)

§ 110.025 PERMITTED HOURS OF SOLICITING FOR EXEMPTIONS.

No person or organization shall conduct charitable or religious solicitations between the hours of 9:00 p.m. and 8:00 a.m.

(Ord. 01-2006, passed 3-27-2006) Penalty, see § 110.999

§ 110.026 RECORDS OF DONATIONS AND CONTRIBUTIONS.

No person shall solicit any contributions for any charitable or religious purpose without maintaining a system of accounting whereby all donations and all disbursements are entered upon the books or records of the person's treasurer or other financial officer.

(Ord. 01-2006, passed 3-27-2006) Penalty, see § 110.999

BUSINESS LICENSING

§ 110.040 TITLE.

This subchapter shall be known and may be cited as the Birch Run Village Business Licensing Ordinance.

(Ord. - - , passed 6-28-2010)

§ 110.041 DEFINITIONS.

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

BUSINESS. Any trade, occupation, profession, work, commerce or other activity owned or operated for profit by any person within the Village of Birch Run excluding, however, political, charitable and religious establishments and home occupation establishments.

HOME OCCUPATION. Any business carried on by one or more members of a family residing on the premises providing it be operated in its entirety within the principal dwelling, not have a separate entrance from outside the building, not involve alteration or construction not customarily found in dwellings, not using any mechanical equipment except that which is used normally for purely domestic or household purposes, not using more than 25% of the total actual floor area of the dwelling and not displaying or creating outside the structure of the dwelling any external evidence of the operation of the home occupation except for one non-animated, non-illuminated wall sign having an area of not more than one square foot.

LICENSING AGENT. The Village Clerk or other village official or employee as may be designated by resolution of the Village Council.

PERSON. Any individual, partnership, association or corporation.

VILLAGE. The Village of Birch Run.

(Ord. - - , passed 6-28-2010)

§ 110.042 PURPOSE.

The purpose of this subchapter is to assist the village with information to provide more adequate police and fire protection, more equal and equitable real and personal property assessment and taxation, better efficiency and economy in furnishing public utility services, more comprehensive and informed planning and zoning for uses of land and structures within the village and to establish a registry of businesses operating in the village for the general information of the public and for promotion of the general welfare.

(Ord. - - , passed 6-28-2010)

§ 110.043 LICENSE REQUIRED.

No person may commence or continue a business, as herein defined, within the village without having first obtained the village license therefore as hereinafter provided and without maintaining the license in current effect during any business operation or activity.

(Ord. - - , passed 6-28-2010) Penalty, see § 110.999

§ 110.044 LICENSE APPLICATION FEE.

(A) No license to commence a business shall be issued until the owner or operator thereof shall have first submitted an application to the Licensing Agent of the village on a form provided by the Licensing Agent for the purpose.

(B) A non-refundable fee as determined from time to time by resolution of the Village Council shall accompany the application.

(C) Upon payment of the fee and compliance with this subchapter, the Licensing Agent shall issue a license to the person to commence the business designated in the application.

(Ord. - - , passed 6-28-2010) Penalty, see § 110.999

§ 110.045 ISSUANCE, RENEWAL AND TRANSFER OF LICENSE.

The license issued under this subchapter shall be effective until December 31 of the succeeding year with renewals of same to be issued upon application and payment of a renewal fee as determined from time to time by resolution of the Village Council, therefore, in the same manner as set forth herein for the original issuance of the license. The Licensing Agent shall not issue a license to an existing or

proposed business where the existing or proposed business would be illegal under any law or ordinance of the United States of America, the State of Michigan, the County of Saginaw or the Village of Birch Run. A license holder may not transfer his or her license to any person or business without the prior approval of the Birch Run Village Council. No license shall be issued until all fees relating to sanitary sewer and water to the premise(s), personal property taxes, if applicable, or other charges arising under village ordinances are paid in full or as permitted by ordinance. No license shall be issued unless the applicant has fully completed the application and has complied with all federal, state and local laws, ordinances, rules and regulations.

(Ord. - - , passed 6-28-2010)

§ 110.046 INSPECTION.

The Licensing Agent shall have the right of inspection of the business premises to assure compliance with this subchapter. In the event of any noncompliance with the provisions of this subchapter after a license has been issued, the same may be revoked by order of the Licensing Agent until noncompliance has been corrected as determined by the Agent. The licensee may appeal all revocations to the Village Council which, for cause shown, may uphold the revocation or reinstate the license after giving the licensee reasonable notice and after holding a hearing at which time the licensee shall have an opportunity to be heard. In event of the revocation of the license, the license fee shall not be refunded.

(Ord. - - , passed 6-28-2010)

§ 110.047 EXCEPTIONS.

No license shall be required by any political, charitable or religious establishment situated within the village or any home occupation business as defined herein. Provisions of this subchapter are not applicable to any agent of the United States of America, the State of Michigan or any political subdivisions thereof.

(Ord. - - , passed 6-28-2010) Penalty, see § 110.999

ADULT ENTERTAINMENT LICENSING

§ 110.060 TITLE.

This subchapter shall be known and may be cited as the Village of Birch Run Adult Entertainment Ordinance.

(Ord. 2011-02, passed 4-28-2011)

§ 110.061 DEFINITIONS.

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

SEXUALLY ORIENTED BUSINESS. An adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio, or sexual encounter center. The following definitions shall apply to **SEXUALLY ORIENTED BUSINESSES**:

(1) **ADULT ARCADE.** Any place to which the public is permitted or invited wherein cash-operated, credit-operated, coin-operated or slug-operated or electronically, internet or mechanically controlled still or motion picture machines, projectors or other image producing devices are maintained to show images and where the images so displayed are distinguished or characterized by the depicting or describing of “sexually explicit activities” or “specified anatomical areas”.

(2) **ADULT BOOKSTORE** or **ADULT VIDEO STORE.** An establishment which offers for sale or rental for any form of consideration, as one of its principal business purposes, any one or more of the following:

(a) Books, computer diskettes, tapes or hard drives, magazines, periodicals or other printed matter or photographs, films, motion pictures, video matter or photographs, cassettes or video reproductions, slides or other visual representation and/or items which depict or describe “sexually explicit activities” or “specified anatomical areas” or which are characterized by their emphasis upon exhibition or description of “sexually explicit activities” or “specified anatomical areas”; or

(b) Instruments, devices or paraphernalia which are characterized by their emphasis upon “sexually explicit activities” or “specified anatomical areas” or designed for use in connection with “sexually explicit activities”; or

(c) Items, materials or paraphernalia depicting, displaying, advertising or packaged as “sexually explicit activities” or which depict or describe, or are characterized by their emphasis upon, the exhibition or description of “specified anatomical areas”.

(d) For purposes of this subchapter, **PRINCIPAL BUSINESS PURPOSE** means:

1. The devotion of a significant or substantial portion of its stock-in-trade or interior floor space, meaning 30% or more of the interior floor area as defined by the applicable Building

Code; or

2. The receipt of 50% or more of its annual revenues from the sale of the items listed above. Revenue is a gross increase in assets or a gross decrease in liabilities recognized and measured in conformity with generally accepted accounting principles; or

3. The devotion of a significant or substantial portion of its advertising expenditures to the promotion of the sale, rental or viewing of books, magazines, periodicals or other printed matter, or photographs, film, motion pictures, video cassettes, compact discs,

slides or other visual representations, items, materials, or paraphernalia which are characterized by the depiction, description, display, advertising or packaging of “sexually explicit activities” or “specified anatomical areas”.

4. An establishment may have other **PRINCIPAL BUSINESS PURPOSES** that do not involve the offering for sale, rental or viewing of materials depicting or describing “sexually explicit activities” or “specified anatomical areas”, and still be characterized as an adult book store, adult novelty or retail store or adult video store. Such other business purposes will not serve to exempt such establishment from being categorized as an adult bookstore, adult novelty store, adult video store, so long as the establishment falls within the definition of an adult bookstore, adult novelty store or adult video store as set forth above.

(3) **ADULT CABARET.** A nightclub, bar, restaurant or similar commercial establishment, whether or not alcohol is served, which regularly features:

(a) Persons who appear in a state of restricted nudity, and/or other material while opaque does not completely cover the entire buttocks (e.g., g-strings) or all portions of the breast below the topmost portion of the areola; or

(b) Live performances of an erotic nature which are characterized by the partial exposure of “specified anatomical areas” or “sexually explicit activities” that occur away from the common area of the establishment, such as on a stage, on poles, in booths, cubicles, rooms, compartments or stalls separate from the common areas of the premises wherein an entertainer or waitress provides adult entertainment to members of the public, a patron or a member, when such adult entertainment is held, conducted, operated or maintained for a direct or indirect profit; or

(c) Films, motion pictures, video cassettes, compact discs, slides or other photographic reproductions which are characterized by the depiction or description of “sexually explicit activities” or “specified anatomical areas”.

(4) **ADULT MASSAGE PARLOR.** Any place where, for any form of consideration or gratuity, massage, alcohol rub, administration of fomentations, electric or magnetic treatments, or any other manipulation of the human body which occurs as part of or in connection with specified sexual activities, or where any person providing such treatment, manipulation, or service related thereto, exposes his or her specified anatomical areas. The definition of sexually oriented business shall not include the practice of massage in any licensed hospital, nor by a licensed chiropractor or osteopath, nor by any nurse or technician working under the supervision of a licensed physician, surgeon, chiropractor or osteopath, nor by trainers for any amateur, semi-professional or professional athlete or athletic team or school athletic program nor a therapeutic massage practitioner. An **ADULT MASSAGE PARLOR** is considered a sexually oriented business for purposes of this subchapter.

(5) **ADULT MOTEL.** A hotel, motel or similar establishment which:

(a) Offers accommodations to the public for any form of consideration and provides patrons with closed-circuit television transmission, films, motion pictures, video cassettes, compact discs, slides or other photographic reproductions which are regularly characterized by the depiction or description of “sexually explicit activities” or “specified anatomical areas”; and which advertises the availability of this adult type of material by means of a sign, visible from the public right-of-way, or by means of any off-premises advertising, including, but not limited to, newspapers, magazines, pamphlets or leaflets, radio, internet or television; or

(b) Permits patrons to be filmed or photographed performing “sexually explicit activities” or displaying “specified anatomical areas” for electric transmission over the World Wide Web; or

(c) Offers a sleeping room for rent for a period of time that is less than ten hours; or

(d) Allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than ten hours.

(6) **ADULT MOTION PICTURE THEATER.** An establishment where, for any form of consideration, films, motion pictures, video cassettes, compact discs, slides or similar photographic reproductions are regularly shown which are characterized by the depiction or description of “sexually explicit activities”

(7) **ADULT THEATER.** A theater, concert hall, auditorium or similar establishment which regularly features persons who appear in a state of nudity or live performances which are characterized by the exposure of “specified anatomical areas” or by the performance of “sexually explicit activities”. This definition does not include a theater which features occasional live nude performances with serious literary, artistic or political value and which has no adverse secondary effects.

(8) **ADULT USE BUSINESS.** An adult arcade, adult bookstore, adult novelty or retail store, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude modeling studio and/or a sexual encounter establishment or any business determined by the Building Official, Village Manager, and/or the Chief of Police, to be an adult use because of the similarities in the characteristics and activities of the business with regulated adult business uses, such as nudity, semi-nudity, exposure of “sexually explicit activities” and/or “specified anatomical areas”. The definition of **ADULT USE BUSINESS** shall not include an establishment where a medical practitioner, psychologist, psychiatrist or similar professional person licensed by the state engages in medically approved and recognized sexual therapy.

(9) **ALCOHOLIC COMMERCIAL ESTABLISHMENT.** Any hotel, motel, tavern, restaurant, park, nightclub, cocktail lounge, burlesque house, bar, cabaret, taproom, club or other similar establishment licensed by the State of Michigan Liquor Control Commission, or where alcoholic beverages, including beer, are dispensed and/or consumed. This definition shall exclude a theater or auditorium.

(10) **ENTERTAINER.** A person who performs some type of activity or pose with the intent of allowing others to witness that activity or pose.

(11) **ESCORT.** A person who, for consideration in any form, agrees or offers to act as a companion, guide or date for another person, or who agrees or offers to privately perform as an entertainer, including, but not limited to, the modeling of lingerie, the removal

of clothing and the performance of a dance or skit. Under this definition, **PRIVATELY** shall mean a performance for an individual or that individual's guests.

(12) **ESCORT AGENCY.** A person or business association that furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes, for a fee, tip or other consideration.

(13) **ESTABLISHMENT.** Any of the following:

- (a) The opening or commencement of any sexually oriented business as a new business; or
- (b) The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business; or
- (c) The location or relocation of any sexually oriented business.

(14) **LICENSEE.** The individual listed as an applicant on the application of a sexually oriented business license, or a person whose name appears on a license to operate an adult use business.

(15) **LICENSING OFFICER.** The Clerk of the Village of Birch Run or his/her designee.

(16) **MANAGER.** An operator, other than a licensee, who is employed by a sexually oriented business to act as a manager or supervisor of employees, or is otherwise responsible for the operation of the sexually oriented business.

(17) **MASSAGE.** The treating of external parts of the body for remedial or hygienic purposes, consisting of stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulating with the hands or with the aid of any mechanical or electrical apparatus or appliances, with or without such supplementary aids as rubbing alcohol, liniments, antiseptics, oils, powder, creams, lotions, ointment or other such similar preparations commonly used in the practice of massage, under such circumstances that it is reasonably expected that the person to whom the treatment is provided shall pay any consideration whatsoever therefore. For purposes of this subchapter, the term **BODYWORK** shall mean massage.

(18) **NUDE MODEL STUDIO.** Any place where a person appears in a state of nudity or displays "specific anatomical areas", and is provided money or any form of consideration to be observed, sketched, drawn, painted, sculpted, photographed or similarly depicted by other persons. This includes modeling studios that provide for nude modeling on an occasional basis, but it does not include a modeling studio whose primary function is to provide art classes as part of a college, university or educational institution and which is certified by the State of Michigan.

(19) **NUDITY or A STATE OF NUDITY.** The appearance of a human bare buttock, anus, male genitals, female genitals or female breasts.

(20) **OPERATOR.** The owner, licensee, manager or person in charge of any premises.

(21) **PEEP BOOTH.** An adult motion picture theater with a viewing room or cubical of less than 150 square feet of floor space.

(22) **PREMISES or LICENSED PREMISES.** Any premises that requires a sexually oriented business license and that is classified as a sexually oriented business.

(23) **PRINCIPAL OWNER.** Any person owning, directly or beneficially:

- (a) Ten percent (10%) or more of a corporation's equity securities; or
- (b) Ten percent (10%) or more of the membership interests in a limited liability company; or
- (c) In the case of any other legal entity, 10% or more of the ownership interests in the entity.

(24) **PRIVATE ROOM.** A room in a hotel/motel that is not a peep booth, has a bed and a bath in the room or adjacent room, and is used primarily for lodging.

(25) **REGULAR or REGULARLY.** Recurring, attending or functioning at fixed or uniform intervals.

(26) **SEMI-NUDE.** A state of dress in which clothing covers no more than the genitals, pubic region and areola of the female breast, as well as portions of the body covered by supporting straps or devices.

(27) **SEXUAL ENCOUNTER CENTER.** A business or enterprise that, as one of its primary business purposes, offers a place where two or more persons may congregate, associate or consort for the purpose of "sexually explicit activities" or the exposure of "specified anatomical areas" for any form of consideration, including, but not limited to:

- (a) Physical contact in the form of wrestling or tumbling between persons of the same or opposite sex; or
- (b) Activities when one or more of the persons is in a state of nudity or semi-nudity; or
- (c) Permits patrons to display or be filmed or photographed performing "sexually explicit activities" or displaying "specified anatomical areas" for recording or transmission over the World Wide Web or any other media.

(28) **SEXUALLY EXPLICIT ACTIVITIES.** Any of the following:

- (a) The fondling or other erotic touching of human genitals, pubic region, buttocks, anus or female breasts; or
- (b) Sex acts, normal or perverted, actual or simulated, including, but not limited to, intercourse, oral copulation or sodomy; or
- (c) Masturbation, actual or simulated; or

- (d) Any activity intended to arouse, appeal to or gratify a person's lust, passions or sexual desires; or
- (e) The display of human genitals in a state of sexual stimulation, arousal or tumescence; or
- (f) The display of excretory function as part of or in connection with any of the activity set forth in divisions (a) through (e) of this definition.

(29) **SEXUALLY ORIENTED BUSINESS.** An adult arcade, adult bookstore or adult video store, adult novelty or retail store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio, sexual encounter center or similar establishment or any place that permits patrons to be filmed or photographed performing "sexually explicit activities" or displaying "specified anatomical areas" for electronic transmission over the World Wide Web. "Sexually oriented" when used to describe film, motion picture, videocassette, slides, or other photographic reproductions shall mean film, movies, motion picture videocassette, slides or other photographic reproductions that regularly depict material which is distinguished or characterized by an emphasis on matter depicting or describing "sexually explicit activities" or "specified anatomical areas" offered for observation by the patron(s) on the premises of a sexually oriented business. The definition of **SEXUALLY ORIENTED BUSINESS** shall not include an establishment where a medical practitioner, psychologist, psychiatrist or similar professional person licensed by the State engages in medically approved and recognized sexual therapy.

(30) **SPECIFIED ANATOMICAL AREAS.** Any of the following:

- (a) Less than completely and opaquely covered human genitals, pubic region or pubic hair, buttock, or female breast or breasts or any portion thereof that is situated below a point immediately above the top of the areola, or any combination of the foregoing; or
- (b) Human genitals in a state of sexual arousal, even if opaquely and completely covered.

(31) **SPECIFIED CRIMINAL ACTS.** Sexual crimes against children, sexual abuse, criminal sexual conduct, rape, crimes classified as sexual crimes by the State of Michigan or any other state, or crimes connected with another adult use business, including, but not limited to, the distribution of obscenity, prostitution and/or pandering.

(32) **SIGNIFICANT OR SUBSTANTIAL PORTION.** Thirty percent (30%) or more of the term modified by such phrase. If a business has 29% percent or less of its stock-in-trade or interior floor space devoted to sexually oriented material, the use does not qualify as a regulated use. However, based upon the potential negative secondary impacts which relate to the sale, display and/or exhibition of sexually oriented materials, additional regulations of these materials is required as follows:

(a) *Floor space/display restrictions.* The sale, display or exhibition of sexually oriented materials shall be limited to no more than 29% of the total stock in trade or interior floor space. The sexually oriented materials shall be located in the rear portion of a building away from its main entrance area. The sexually oriented materials shall be separated by racks, walls or other means that would restrict visibility into the area displaying the sexually oriented materials. No sexually explicit materials shall be permitted to be placed on the non-adult side of this separation.

(b) No sexually explicit materials shall be displayed in any of the business's windows at any time or visible from the exterior of the business or building. Additionally, no portion of the ceiling in a business or building will be permitted to be used to display sexually explicit materials.

(c) Magazines that contain "sexually explicit activities" or "specified anatomical areas" may be located outside an area specifically devoted to sexually explicit materials. However, the merchandise rack on which the materials are placed must be located immediately adjacent to the separate area that sells the sexually explicit materials, and contain opaque blinders that only allow viewing of the magazine title.

(d) *Height restrictions.* The height of the racks and display walls upon which sexually explicit material can be displayed shall be limited to six feet.

(Ord. 2011-02, passed 4-28-2011)

§ 110.062 PURPOSE AND INTENT.

Sexually oriented business. It is recognized that there are some uses, which because of their very nature, have serious objectionable operational characteristics, particularly when several of them are concentrated under certain circumstances thereby having a deleterious effect upon the adjacent areas. Special regulation of these uses is necessary to ensure that these adverse effects will not contribute to the blighting or downgrading of the surrounding neighborhood. These special regulations are itemized in this Chapter. Prior to adopting these regulations, the Village of Birch Run and other entities reviewed studies prepared on these uses, reviewed ordinances and regulations prepared by other municipalities, and reviewed applicable federal and state case law. Based on evidence of the adverse effects of adult uses presented in hearings and in reports and on findings incorporated in the cases of *Pap's AM v Township of Strittmather*, 4 F Supp 2d 710 (ND Ohio 1998); *JL Spoons Inc v Township of Brunswick*, 49 F Supp 2d 1032 (ND Ohio 1999); *Triplett Grille Inc v Township of Akron*, 40 F3d 129 (6th Cir 1994); *Nightclubs Inc v Township of Paducah*, 202 F3d 884 (6th Cir 2000); *O'Connor v Township and County of Denver*, 894 F2d 1210 (10th Cir 1990); *Deja Vu of Nashville Inc et al v Metropolitan Government of Nashville and Davidson County*, 2001 USA App LEXIS 26007 (6th Cir Dec 6, 2001); *ZJ Gifts D-2 LLC v Township of Aurora*, 136 F3d 683 (10th Cir 1998); *Connection Distribution Co v Reno*, 154 F3d 281 (6th Cir 1998); *Sundance Associates v Reno*, 139 F3d 804 (10th Cir 1998); *American Library Association v Reno*, 33 F3d 78 (DC Cir 1994); *American Target Advertising Inc v Giani*, 199 F3d 1241 (10th Cir 2000); *ZJ Gifts D-2 LLC v Township of Aurora*, 136 F3d 683 (10th Cir 1998); *ILQ Investments Inc v Township of Rochester*, 25 F3d 1413 (8th Cir 1994); *Bigg Wolf Discount Video Movie Sales Inc v Montgomery County*, 2002 US Dist LEXIS 1896 (D Md Feb 6 2002); *Currence v Cincinnati*, 2002 US App LEXIS 1258 (3rd Cir Jan 24, 2002); and other cases; and on testimony to Congress in 136 Cong Rec S 8987; 135 Cong Rec S 14519; 135 Cong Rec S 5636; 134 Cong Rec E 3750; and reports of secondary effects occurring in and around sexually oriented businesses, including, but not limited to, Phoenix, Arizona - 1979; Minneapolis,

Minnesota-1980; Houston, Texas - 1997; Amarillo, Texas; Garden Grove, California - 1991; Los Angeles, California - 1977; Whittier, California - 1978; Austin, Texas - 1986; Seattle, Washington - 1989; Oklahoma Township, Oklahoma - 1986; Cleveland, Ohio - and Dallas, Texas - 1997; St. Croix County, Wisconsin - 1993; Bellevue, Washington, - 1998; Newport News, Virginia -1996; New York Times Square 1993; Bellevue, Washington, - 1998; Newport news, Virginia - 1996; new York Times Square study - 1994; Phoenix, Arizona - 1995-98; and also on findings from the paper entitled *Stripclubs According to Strippers: Exposing Workplace Sexual Violence*, by Kelly Holsopple, Program Director, Freedom and Justice Center for Prostitution Resources, Minneapolis, Minnesota, and from *Sexually Oriented Businesses: An Insider's View*, by David Sherman, presented to the Michigan House committee on Ethics and Constitutional Law, Jan 12, 2000, and the Report of the Attorney General's Working Group On the Regulation of Sexually Oriented Businesses (June 6, 1989, State of Minnesota), the Village Council finds that sexually oriented businesses as a category of establishments are correlated with harmful secondary effects, and that the foregoing reports are reasonably believed to be relevant to the problems that the Village of Birch Run is seeking to abate and prevent in the future. The primary control or regulation is for the purpose of preventing a concentration of these uses in any one area that would create such adverse effect(s). Sexually oriented businesses, as defined herein, shall be subject to the regulations of this chapter. Additional purposes include the protection, preservation and the improvement of the character and quality of the residential neighborhoods of the Village of Birch Run.

(Ord. 2011-02, passed 4-28-2011)

§ 110.063 CLASSIFICATION.

Sexually oriented businesses are classified as, and include, the following.

- (A) Adult arcades.
- (B) Adult bookstores or adult video stores.
- (C) Adult cabarets.
- (D) Adult massage parlors.
- (E) Adult motels.
- (F) Adult motion picture theaters.
- (G) Adult theaters.
- (H) Adult nudity or retail stores.
- (I) Escort and escort agencies.
- (J) Nude model studios.
- (K) Sexual encounter centers.

(Ord. 2011-02, passed 4-28-2011)

§ 110.064 LOCATION OF SEXUALLY ORIENTED BUSINESS; MISCELLANEOUS REQUIREMENTS.

- (A) (1) A sexually oriented business shall not be located closer than 1,000 feet to the property line of any of the following:
 - (a) Church, religious institution, or building used primarily for religious worship and related religious activities;
 - (b) Public or private elementary or secondary school, vocational school, special education school, junior college or university;
 - (c) Any single-family, two-family or multiple-family zoning district;
 - (d) Any planned unit development;
 - (e) Lot or parcel in residential use;
 - (f) Public park;
 - (g) Existing sexually oriented business; and
 - (h) Child care facility, nursery or preschool.

(2) Measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the property site boundary of a sexually oriented business to the nearest property line of the premises of any use, district or right-of-way listed above. The distance between any two sexually oriented businesses shall be measured in a straight line, without regard to intervening structures or objects from the site or property boundary in which each business is located. Access easements or portions of the parcel that are exclusively used to provide access to the site of the sexually oriented business shall be excluded from the parcel boundary in determining whether the site complies with the required separation. The intent of this exclusion is to allow sexually oriented businesses to comply with the separation requirement from major thoroughfares by means of an access easement or access strip of land from the site to the thoroughfare.

(B) A sexually oriented business site shall only be located within a zoning district where it is listed as an allowable use.

(C) A person is in violation of this section if he or she causes or permits the operation, establishment, substantial enlargement, or transfer of ownership or control of a sexually oriented business within 1,000 feet of another sexually oriented business.

(D) A person is in violation of this section if he or she causes or permits the operation, establishment or maintenance of more than one sexually oriented business in the same building, structure or portion thereof or the substantial enlargement of any sexually oriented business in any building, structure or portion thereof containing another sexually oriented business.

(E) All off-street parking areas and entry door areas of a sexually oriented business shall be illuminated from dusk until the closing time of the business with a lighting system which meets the standards found in the Village of Birch Run Zoning Ordinance for exterior lighting.

(F) No employee in a sexually oriented business shall knowingly or intentionally appear in view of any patron in a semi-nude condition unless the employee, while semi-nude, shall be and remains at least six feet from all patrons and on a fixed stage at least 18 inches from the floor in a room of at least 600 square feet.

(G) No employee in a sexually oriented business shall knowingly or intentionally mingle with patrons unless they are not dancing or have not danced for at least 30 minutes.

(Ord. 2011-02, passed 4-28-2011) Penalty, see § 110.999

§ 110.065 NUDE ENTERTAINMENT PROHIBITED IN ALCOHOLIC COMMERCIAL ESTABLISHMENTS.

(A) It shall be unlawful for any person to perform in any alcoholic commercial establishment, to knowingly permit or allow to be performed therein, any of the following acts or conduct:

(1) The public performance of acts or simulated acts of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellations, or any sexual acts which are prohibited by law;

(2) The actual or simulated touching, caressing or fondling on the breasts, buttocks, anus or genitals in public; or

(3) The actual or simulated public displaying of the pubic hair, anus, vulva or genitals.

(B) It shall be unlawful for the owner, operator, agent or employee of an alcoholic commercial establishment to allow any female to appear in an alcoholic commercial establishment so costumed or dressed that one or both breasts are wholly or substantially exposed to public view. Topless or bottomless or totally uncovered waitresses, bartenders or barmaids, entertainers including dancers, impersonators, lingerie shows, or any other form for the attraction or entertainment of customers, is strictly prohibited. **WHOLLY OR SUBSTANTIALLY EXPOSED TO PUBLIC VIEW** as it pertains to breasts shall mean the showing of the female breast in an alcoholic commercial establishment with less than a fully opaque covering of all portions of the areola and nipple, and the prohibition shall also extend to such events similar to wet t-shirt contests.

(Ord. 2011-02, passed 4-28-2011) Penalty, see § 110.999

§ 110.066 EXTERIOR DISPLAY AND SIGNS.

A sexually oriented business is in violation of this subchapter if:

(A) The merchandise or activities of the establishment are visible from any point outside the establishment;

(B) The exterior portions of the establishment or signs having any words, lettering, photographs, silhouettes, drawings or pictorial representations of any specified anatomical area or sexually explicit activity as defined in this subchapter; or

(C) There shall be no use of neon or flashing lights.

(Ord. 2011-02, passed 4-28-2011) Penalty, see § 110.999

§ 110.067 LICENSE REQUIRED, FEE AND APPROVAL.

Approval shall be granted on the condition that the operator or owner of a sexually oriented business obtains a license to operate the business as required by §§ 110.040 through 110.047, as amended, of the code of ordinances. The licensing agent shall not issue a license to an existing or proposed business where the existing or proposed business would be illegal under any law or ordinance of the United States of America, the State of Michigan, the County of Saginaw or the Village of Birch Run.

(Ord. 2011-02, passed 4-28-2011)

§ 110.068 ENFORCEMENT.

Any violation of any provision of this chapter shall constitute a municipal civil infraction and shall be handled through the process outlined in Chapter 35: Civil Infractions and Village Ordinance #00-03 as amended.

(Ord. 2011-02, passed 4-28-2011)

§ 110.069 INJUNCTION.

In addition to the provisions of this subchapter, the village, at its option, may commence proceedings in a court of competent jurisdiction under the appropriate court rule or statute to enjoin any activity conducted by a sexually oriented business that is deemed to be in violation of these provisions.

(Ord. 2011-02, passed 4-28-2011)

§ 110.070 APPEALS.

Any applicant who requests a license to operate a sexually oriented business as defined within this subchapter, and who deems aggrieved by a decision of the approving body to deny the license to operate may by written request file an appeal to the Zoning Board of Appeals, as provided under the Zoning Ordinance.

(Ord. 2011-02, passed 4-28-2011)

RENTAL HOUSING LICENSING

§ 110.085 TITLE.

This subchapter shall be known and may be cited as the Village of Birch Run Rental Housing Licensing Ordinance.

(1992 Code, § 112.001) (Ord. 2-82, passed - - 1982; Ord. 04-02, passed 2-23-2004)

§ 110.086 DEFINITIONS.

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

BLOOD RELATION. A person who is related to another by birth or adoption rather than by marriage.

BLOOD RELATIVE. One related by blood or origin; especially on sharing an ancestor with another.

BUILDING OFFICIAL. The officer or other designated authority charged with the administration and enforcement of the Building Code.

HOTELS. An establishment that provides lodging and usually meals and other services for travelers and other paying guests.

LICENSING AGENT. The Village Clerk or other village official or employee as may be designated by resolution of the Village Council.

PERSON. Any individual, individuals, partnership, association or corporation.

RENTAL HOUSING UNIT. Any single-family, multi-family, rental house, rooming house, apartment house, duplex, triplex, quadplex, sixplex or any other structure which is leased out or rented to a person for his or her family dwelling, homestead and/or place of residence.

VILLAGE. The Village of Birch Run.

(1992 Code, § 112.002) (Ord. 2-82, passed - - 1982; Ord. 04-02, passed 2-23-2004)

§ 110.087 PURPOSE.

The purpose of this subchapter is to assist the village with information to provide for adequate police and fire protection, insure the safety of dwellings located within the village which are offered to the general public for rental or leasing purposes, for equal and equitable real and personal property assessment and taxation, establish a registry of rental dwellings operated in the village for the general information of the public and for promotion of the general welfare and to insure that the rental residences comply with the Property Maintenance Ordinance for the protection of persons residing in same.

(1992 Code, § 112.003) (Ord. 2-82, passed - - 1982; Ord. 04-02, passed 2-23-2004)

§ 110.088 LICENSE REQUIRED.

No persons shall operate a rental housing unit containing one, two or more dwelling units, multi-family dwellings, rooming house and other structures which are leased or ready for lease to the public unless that person first obtains a license as provided under this section. The license issued under this subchapter shall be effective through December 31 of the year in which it was issued.

(1992 Code, § 112.004) (Ord. 2-82, passed - - 1982; Ord. 04-02, passed 2-23-2004) Penalty, see § 110.999

§ 110.089 COMPLIANCE WITH ORDINANCES.

No license to operate a rental housing unit shall be issued unless the rental housing unit complies with all the ordinances and codes of the village.

(1992 Code, § 112.005) (Ord. 2-82, passed - - 1982; Ord. 04-02, passed 2-23-2004)

§ 110.090 VIOLATIONS; EXEMPTION.

(A) Operation of a rental housing unit without a license as provided under this subchapter shall be a violation of this subchapter.

(B) Hotels are specifically exempted from the provisions of this subchapter.

(1992 Code, § 112.006) (Ord. 2-82, passed - - 1982; Ord. 04-02, passed 2-23-2004) Penalty, see § 110.999

§ 110.091 INSPECTION.

A rental housing unit requiring a license under this subchapter for operation may be inspected by the building official at any reasonable time. Inspections may be required by the building official at the time of the issuance of the license. Additional inspections may be made on the order of the building official to ascertain compliance with the provisions of the village ordinances. Following completion of the

inspections, the building official shall provide the owner or operator of the rental housing unit with a written notice of any deficiencies which exist in the rental housing unit, and the date for correction of the deficiencies.

(1992 Code, § 112.007) (Ord. 2-82, passed - - 1982; Ord. 04-02, passed 2-23-2004)

§ 110.092 CORRECTION OF VIOLATIONS.

(A) A person who has not corrected violations necessary to entitle him or her to a renewal of the rental license of which he or she has applied and paid the fee, and who has a valid contract in writing with a qualified licensed contractor for the performance of work and furnishing of materials to correct the violation, may petition the building official in writing for the temporary extension of the license. A renewal fee shall be required upon the approval of the petition by the building official.

(B) The petition shall be on a form provided by the village and shall contain the information therein requested and reasonably necessary to its decision. It shall include a written and signed statement by the person under contract to correct the violation, specifying the anticipated date of beginning and completion of the work. If after review of the petition the building official finds that:

(1) The delay in the correction of the violation is reasonable, taking into consideration the availability of qualified persons to do the work and the current work load; and

(2) The work can reasonably be undertaken and completed while the premises are occupied or that appropriate provision has been made for housing the tenant and/or tenants elsewhere during the necessary period when the rental housing unit is not habitable because of the work of correcting the ordinance violation; the building official shall issue a temporary extension of license. The temporary license shall expire on the date that the corrective work is scheduled to be completed. The petitioner shall, on or before the scheduled completion date, request a reinspection. The building official shall reinspect the rental housing unit and approve or deny the renewal license and list any remaining violations, as above provided.

(1992 Code, § 112.008) (Ord. 2-82, passed - - 1982; Ord. 04-02, passed 2-23-2004)

§ 110.093 APPEALS.

Any person directly affected by a decision of the building official or a notice or order issued under this subchapter may appeal as outlined in the Property Maintenance Ordinance, Ord. No. 04-01 § 111.

(1992 Code, § 112.009) (Ord. 2-82, passed - - 1982; Ord. 04-02, passed 2-23-2004)

§ 110.094 FEES.

(A) A current fee schedule is attached to this subchapter.

(B) Fees for the licensing of rental housing and to ascertain compliance with adopted codes within the village, shall be re-established from time to time by resolution of the Village Council.

(1992 Code, § 112.010) (Ord. 2-82, passed - - 1982; Ord. 04-02, passed 2-23-2004)

§ 110.095 EXCEPTIONS FOR BLOOD RELATIVE.

An exception to this subchapter may be made for a rental housing unit which is provided to a blood relative or blood relation of a person; provided that the blood relation be adequately documented as required by the building official and further provided that the rental housing unit is not furnished to the person for no rent.

(1992 Code) (Ord. 2-82, passed - - 1982; Ord. 04-02, passed 2-23-2004)

§ 110.999 PENALTY.

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

(B) All violations of §§ 110.001 through 110.026 shall constitute a municipal civil infraction and shall be handled through the process outlined in Chapter 35.

(C) Any violation of §§ 110.040 through 110.047 or any part thereof shall be punishable by a fine not to exceed \$100, plus costs and/or confinement in the Saginaw County Jail for a term not to exceed 90 days. In addition, the village shall have the right to proceed in any court of competent jurisdiction for the purpose of obtaining an injunction, restraining order or other appropriate remedy to compel compliance with §§ 110.040 through 110.047.

(D) (1) A person who has violated, or continues to violate, any provision of §§ 110.060 through 110.070 shall be responsible for the violation punishable as a civil infraction, with a fine of not more than \$100 per violation. Each day that a violation continues shall constitute a separate violation.

(2) The village is hereby authorized to issue municipal civil infraction citations under §§ 110.060 through 110.070, directing alleged violators to appear in court, or to issue municipal civil infractions notices directing alleged violators to appear at the Village of Birch Run Violations Bureau as provided under the ordinances of the village. A civil infraction shall not be a bar against, or a prerequisite for, taking any other action against a person.

(E) Any violation of §§ 110.085 through 110.095 or any part thereof, shall be deemed a municipal civil infraction and enforced as such.

CHAPTER 111: PERMITS

Section

Special Event Permit

- 111.01 Purpose
- 111.02 Definitions
- 111.03 Special event application
- 111.04 Revocation of the permit
- 111.05 Traffic control and safety requirements
- 111.06 Liability insurance requirements
- 111.07 Litter
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- 111.10 Special event signs
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Recreation and Dance Hall

- 111.30 Permit required
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SPECIAL EVENT PERMIT

§ 111.01 PURPOSE.

To insure that events and activities open to the public are conducted in a manner that will minimize safety hazards and preserve the peace and tranquility of the citizens of the village and surrounding areas within which they are conducted.

(Ord. 02-02, passed 7-22-2002)

§ 111.02 DEFINITIONS.

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

(B) Unless specifically defined below, words or phrases used in this subchapter shall be interpreted so as to give them the meaning they have in common usage and to give this subchapter its most reasonable application.

ATTENDANT. Any person who obtains admission to an outdoor assembly by the payment of money or by the rendering of services in lieu of the payment of money for admission.

PERSON. An individual, partnership, corporation, limited liability company or any other business or charitable organization.

SPECIAL EVENT. An outdoor event or activity open to the public, whether free of charge or by paid admission, that is conducted occasionally and is not part of the normal daily activities of the sponsoring individual or organization. Examples include, but are not limited to fairs, auction sales, tractor pulls, circus and/or carnivals, concerts, car shows and vehicle races. The following events and activities are excluded from this subchapter:

- (a) Events and/or activities conducted on village property;
- (b) Events and/or activities conducted on school or church property when the event and/or activity is sponsored by the school or church;

(c) Events and/or activities conducted on private, residential premises where no admission is charged, anticipated attendance is fewer than 100 persons or there is no commercial activity planned;

(d) Private garage sales, family reunions and/or gatherings, single farm auctions or estate auctions; and

(e) An event held entirely within the confines of a permanently enclosed and covered structure.

SPECIAL EVENT PERMIT. A formal application filed with Village of Birch Run detailing the time, location and nature of the outdoor event or activity to be conducted.

SPONSOR. Any person who organizes, promotes, conducts or causes to be conducted, an outdoor assembly.

(Ord. 02-02, passed 7-22-2002)

§ 111.03 SPECIAL EVENT APPLICATION.

(A) *Application.* Any individual or organization wishing to sponsor or hold a special event in the Village of Birch Run shall be required to complete and file a Village of Birch Run Special Event Application at least 45 days prior to conducting the event. The application shall be on a form approved by the Village Council.

(B) *Procedure.*

(1) Obtain special event application form from the Village of Birch Run Office;

(2) Complete and file the application, along with any required additional documentation, with the Village Zoning Administrator. The processing fee, which is established from time to time by the Village Council, shall also be paid; and

(3) The Zoning Administrator will approve, approve with conditions or deny the request based on the applicant's demonstration of compliance with special event requirements. As a result of the review, the village may place special conditions on the event to insure that public interest is served. The special conditions may include, but are not limited to security personnel, water facilities, sanitary facilities and parking.

(C) *Appeals and petitions.* A person aggrieved by any final decision of the Village Zoning Administrator may appeal the decision to the Village Council by filing a petition within 21 days from the date of the decision. The hearing on the petition will be scheduled at the next regular meeting not fewer than five days from the date the petition is received.

(Ord. 02-02, passed 7-22-2002)

§ 111.04 REVOCATION OF THE PERMIT.

A permit may be suspended or revoked if:

(A) The applicant fails to comply with any or all of the requirements of this subchapter, with any or all conditions imposed hereto or with any other applicable provision of state or local law; or

(B) The applicant has knowingly made a false, misleading or fraudulent statement in the application or in any supporting document.

(Ord. 02-02, passed 7-22-2002)

§ 111.05 TRAFFIC CONTROL AND SAFETY REQUIREMENTS.

(A) *Other permits.* The applicant shall provide evidence of compliance with all appropriate federal, state, county and local permits as appropriate.

(B) *Traffic control.* The special event sponsor shall be responsible for complying with all usual traffic and road safety procedures required for the area where the event is to be held. This shall include a plan for managing road or highway traffic if the event is expected to attract much heavier than usual vehicular traffic to the area. Consideration also must be given to the impact of traffic to the event upon other residents or commercial establishments in the vicinity of the event.

(C) *Parking.* The special event sponsor shall, as part of the application, provide a plan for adequate parking of the number of vehicles anticipated at the event.

(D) *Food safety.* An event that is serving food must comply with all requirements of the Saginaw County Health Department. Commercial food vendors must supply a valid certificate of insurance naming the Village of Birch Run as an additional insured prior to opening the food stand.

(E) *Lighting.* Exterior lighting shall be installed in such a manner so that it does not impede the vision of traffic along adjacent roadways. Facilities using night lighting adjoining a residentially zoned property shall deflect lighting away from these areas.

(F) *Safety.* The event sponsor must demonstrate that adequate measures are in place to insure reasonable safety for event participants and spectators, as well as for residents and/or occupants of areas adjacent to the event location. Events are categorized according to the level of risk, as defined herein:

(1) *Low hazard.* Involves no physical activity by participants and no severe exposure to spectators. Examples include, but are not limited to, meetings, seminars and auctions.

(2) *Moderate hazard.* Involves limited physical activity by participants and no severe exposure to spectators. Events in this

category include, but are not limited to, amateur team sports, dances, political rallies, flea markets and picnics.

(3) *High hazard.* Involves major participation by participants and/or moderate exposure to spectators. Events in this category include, but are not limited to, parades with floats, marathons and/or foot races and circus and/or carnivals.

(4) *Severe hazard.* Involves severe exposure to spectators and/or participants. Examples in this category include, but are not limited to, fireworks displays, alcoholic beverage sales, music concerts and vehicle races.

(Ord. 02-02, passed 7-22-2002)

§ 111.06 LIABILITY INSURANCE REQUIREMENTS.

(A) *Liability insurance.* All sponsors of special events shall carry liability insurance with coverage of at least \$1,000,000, with the exception of events in the low hazard category. The village may require higher levels of insurance based on risk factors and past experience. An event sponsor shall provide the Village of Birch Run with a valid certificate of insurance naming the Village of Birch Run as an additional insured prior to the event.

(B) *Participant waiver of responsibility.* When the nature of the event, in the opinion of the Village Council, presents a high degree of risk to participants, the Village of Birch Run may require the event sponsor to obtain signed indemnification agreements from participants. The indemnification agreement shall be on a form approved by the Village Council.

(Ord. 02-02, passed 7-22-2002)

§ 111.07 LITTER.

(A) The special event sponsor shall provide for solid waste storage on, and removal from the premises. Storage shall be in approved, covered, fly-tight and rodent proof containers, provided in sufficient quantity to accommodate the number of attendees.

(B) It is the responsibility of event sponsors to remove, within 24 hours, all debris and litter generated by the event. Those who fail to do so are subject to the penalties set forth in §§ 93.20 through 93.23.

(C) Prior to issuance of any license, the licensee shall provide the village with a true copy of an executed agreement in force and effect with a licensed refuse collect, or other approved methods which will assure proper, effective and frequent removal of solid waste from the premises so as to neither create nor cause a nuisance or menace to the public health. The licensee shall implement effective control measures to minimize the presence of rodents, flies, roaches and other vermin on the premises. Poisonous materials, such as insecticides or rodenticides shall not be used in any way so as to contaminate food, equipment or otherwise constitute a hazard to the public.

(Ord. 02-02, passed 7-22-2002)

§ 111.08 NOISE CONTROL.

The special event sponsor shall comply with the current Village Noise Control Ordinance.

(Ord. 02-02, passed 7-22-2002)

§ 111.09 HOURS OF OPERATION.

Operating hours for all uses shall be determined by the Zoning Administrator and approved by the Village Manager.

(Ord. 02-02, passed 7-22-2002)

§ 111.10 SPECIAL EVENT SIGNS.

(A) The special event application shall include a description of the advertising signs that are proposed to be used for the event. The use of signs shall conform to the event description contained in the application in its approved form. All signs and/or banners must conform to the regulations listed in the Village of Birch Run Zoning Ordinance.

(B) Special event signs may be displayed during the event in compliance with the Village of Birch Run Zoning Ordinance.

(Ord. 02-02, passed 7-22-2002)

§ 111.11 LOCATION AND/OR DURATION.

Special events are allowed only in those areas zoned for the use for not more than 11 days. The Village Council, regardless of the zoning of that particular area may approve a permit for not more than four days for a special event in another area. No special event shall be located within 200 feet of any residential structure, including motels, hotels and any structure being used for the overnight sleeping of persons.

(Ord. 02-02, passed 7-22-2002) Penalty, see § 111.99

§ 111.12 ENFORCEMENT.

(A) *Violations.* It shall be unlawful for a permittee, his or her employees or agents to:

- (1) Conduct or operate an assembly without first obtaining a permit as herein provided;
- (2) Conduct or operate an assembly in such a manner as to create a public or private nuisance;

- (3) Conduct or permit, within the assembly, any obscene display, exhibition, show, plays, entertainment or amusement;
- (4) Permit any person on the premises to cause or create a disturbance by obscene or disorderly conduct;
- (5) Permit any person to unlawfully consume, sell or possess intoxicating liquor while on the premises; and

(6) Permit any person to unlawfully use, sell or possess any narcotics, narcotic drugs, drugs or other substances, as defined in Public Act 368 of 1978, being M.C.L.A. §§ 333.1101 *et seq.* while on the premises.

(B) *Civil infraction.* Any violation of this subchapter, violation of any condition of a permit issued pursuant to this subchapter or any of the above enumerated violations constitutes a municipal civil infraction subject to payment of a civil fine as set forth in Chapter 35.

(1) In the case of a continued violation, penalties shall accrue for each day during the period of the violation.

(2) In addition to the penalties provided in this subchapter, the village may recover costs incurred as a consequence of the violation, and reasonable attorneys' fees, court costs and other expenses associated with enforcement activities. The costs shall be recoverable from the person found to have violated this subchapter or the permits issued under this subchapter. A civil infraction shall not be a bar against, or a prerequisite for, taking any other action against a person.

(C) *Public nuisance.* Any violation of this subchapter, or a violation of any condition of a permit issued pursuant to this subchapter, is hereby declared to be a public nuisance per se.

(D) *Injunction issuance.* It is further provided that any violation is a sufficient basis for revocation of the permit and for immediately enjoining further conduct of the assembly.

(1) *Injunctive relief.* Whenever a person is in violation of the provisions of this subchapter, or of a permit issued pursuant to this subchapter, the village may cause a petition to be filed in the Circuit Court for the issuance of a preliminary or permanent injunction or both, as may be appropriate in restraining the continuance of the violation. The court may order any condition, nuisance or violation abated immediately and may order whatever further relief as is necessary to prevent reoccurrence of any condition, nuisance or violation.

(2) *Costs.* The village may recover its costs incurred as a consequence of the violation, including reasonable attorney fees. The costs shall be recoverable from the person found to have violated this subchapter or the permits issued under this subchapter.

(Ord. 02-02, passed 7-22-2002) Penalty, see § 111.99

RECREATION AND DANCE HALL

§ 111.30 PERMIT REQUIRED.

Any individual person, partnership or corporation who establishes and/or operates any dance hall, recreational center, pool or billiard room, bowling alley or any related activity or any combination of the activities, shall first obtain a permit to carry out the activities from the Clerk of the Village of Birch Run who shall issue the permits only upon authorization of the Council of the Village of Birch Run meeting in a regular or special session.

(1992 Code, § 131.001) (Ord. 1-65, passed - - 1965)

§ 111.31 PERSONS ELIGIBLE FOR PERMIT.

(A) The Council may authorize the issuance of permits, as described in this subchapter, only to persons of good moral character.

(B) Persons convicted of violations of the laws of the State of Michigan relating to the operation of establishments named in the title of this subchapter, or involved in litigation before the Courts in such cases, shall be deemed ineligible to receive permits under this subchapter.

(1992 Code, § 131.002) (Ord. 1-65, passed - - 1965)

§ 111.32 PERMITS; FEES.

Permits issued under the terms of § 111.30 shall cost \$10 initially and shall be renewed annually on January 1. Payment of the same fee and the permission of the Council of the Village of Birch Run shall be necessary for the renewal.

(1992 Code, § 131.003) (Ord. 1-65, passed - - 1965)

§ 111.33 SHORT TITLE.

The short title of this subchapter shall be The Village of Birch Run Recreation and Dance Hall Ordinance.

(1992 Code, § 131.005) (Ord. 1-65, passed - - 1965)

§ 111.99 PENALTY.

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

(B) Any person who shall violate any provision of §§ 111.30 through 111.33 shall be deemed guilty of a misdemeanor and shall be subject to the penalties as permitted under the laws of the State of Michigan for the offenses but not to exceed a fine of \$100 and/or 30-days' imprisonment in the county jail.

CHAPTER 112: OIL AND GAS WELL

Section

General Provisions

- 112.01 Definitions
- 112.02 Occupation deed hazardous
- 112.03 Compliance with state and federal laws
- 112.04 Right of entry
- 112.05 Location and spacing of wells
- 112.06 Equipment
- 112.07 Production and operation
- 112.08 Deepening; reworking
- 112.09 Restoration; abandonment
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Drilling Permits

- 112.25 Required
- 112.26 Application
- 112.27 Fees
- 112.28 Notice
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Seismic Survey Permit

- 112.50 Required
- 112.51 Application
- 112.52 Explosives permit
- 112.53 Granting or denial
- 112.99 Penalty

GENERAL PROVISIONS

§ 112.01 DEFINITIONS.

Words used in this chapter, unless otherwise defined, shall be the common meaning of the words as generally understood in the oil and gas industry, unless the content of this chapter clearly implies otherwise.

(1992 Code, § 18.001) (Ord. 9-88, passed - - 1988)

§ 112.02 OCCUPATION DEED HAZARDOUS.

(A) The business and occupation of drilling and exploring for, producing, obtaining, transporting, gathering and storing of oil, gas, petroleum and hydrocarbons within the village limits of the village is a hazardous and dangerous business and occupation, and it is necessary that the business and occupation be regulated, controlled and limited for the purpose of providing protection for the lives, health, welfare and safety of the citizens of the village and of the public generally and for the protection of property from the danger of

fire, explosion, gas, leaks, nuisances and other hazards, injurious to the public peace, health, welfare and safety.

(B) The provisions of this chapter shall be deemed to be the minimum requirements for the preservation of the public peace, health, safety and welfare, and compliance with all terms thereof shall not be deemed to relieve any person from any duty imposed by law to use all necessary care and take all necessary precautions for the safeguarding of the public peace, health and safety and the rights of any individual or group of individuals, and it shall be the duty of any person drilling, operating or maintaining any well to use all necessary care and take all precautions reasonably necessary under the circumstances to protect the public or the rights of any part thereof.

(1992 Code, § 18.002) (Ord. 9-88, passed - - 1988)

§ 112.03 COMPLIANCE WITH STATE AND FEDERAL LAWS.

All drilling operations for the discovery of oil, gas, petroleum or other hydrocarbons, equipping of wells, producing and marketing of oil, gas, petroleum and hydrocarbons, plugging of wells and all material used and work done in connection with the exploring for, producing and marketing petroleum products shall be in conformity with all state and federal laws and statutes and rules and regulations pertaining thereto and particularly with the statutes of the state and the regulations of the Supervisor of Wells of the State.

(1992 Code, § 18.003) (Ord. 9-88, passed - - 1988)

§ 112.04 RIGHT OF ENTRY.

The Fire Chief, Superintendent of Public Works or the other employee or designee of the village, as shall be designated for that purpose by the Council, shall have the right and privilege at any time to enter upon the premises covered by any permit issued pursuant to this chapter for the purpose of making inspections thereof to determine if the requirements of this chapter are complied with or the requirements of any other ordinance of the village are met.

(1992 Code, § 18.004) (Ord. 9-88, passed - - 1988)

§ 112.05 LOCATION AND SPACING OF WELLS.

(A) The minimum drilling unit for any permittee to drill any well for the discovery of oil or gas shall be a 20-acre tract and shall conform insofar as shall be practicable to measurements 660 feet by 1,320 feet north and, except where the stage of development of the drilling of oil and gas wells is such as to make a fixing of drilling units in the area above set forth impracticable, in which event application may be made to the Council for reasonable allowances therefrom, but in no event to be less than a 20-acre spacing tract.

(B) No permit shall be granted and no well shall be located unless the location is at least 330 feet from an adjoining property line, unless the adjoining property shall be communitized with the property so located, and unless the location be at least 660 feet from an adjacent or adjoining well.

(C) The drilling location of any well shall in no instance be nearer than 500 feet from any street line, alley line or railroad right-of-way line.

(D) The drilling location of any well shall in each instance be at least 500 feet from the location of any building existent at the time of commencement of actual drilling operations.

(E) If it appears from the application on file, and after notice and hearing thereon as in § 112.28 and § 112.29, that the limitation and restrictions established in this section will preclude drilling and operating in an area which should reasonably be drilled and operated, the Council shall be authorized and empowered to make exception from the limitations and restrictions set forth in divisions (B), (C) and (D) above except that no well shall be drilled within 300 feet from any street, alley or railroad right-of-way or any building of a value in excess of \$500 existent at the time of commencement of drilling.

(1992 Code, § 18.005) (Ord. 9-88, passed - - 1988) Penalty, see § 112.99

§ 112.06 EQUIPMENT.

(A) All equipment and materials used in the drilling of wells for the discovery of oil, gas, petroleum and hydrocarbons shall be modern and shall be kept in good working condition at all times. All equipment, materials and operations shall conform to the provisions of Public Act 61 of 1939 (M.C.L.A. §§ 319.101 *et seq.*, M.S.A. §§ 13.139(1) *et seq.*) and the regulations promulgated thereunder.

(B) No tanks or other facility for the storage of oil, gas, petroleum or hydrocarbons produced from any well within the village limits of the village shall be kept, erected or maintained within the village limits of the village except in areas zoned as an M-2 District and shall be connected to any well by pipes or pipelines by the nearest possible route.

(C) All tanks for the storage of oil permitted to be installed in M-2 Districts shall be located in a pit and encircled by an embankment and fire wall with a capacity of 1-1/2 times the capacity of the tank. No tank shall be located nearer than 300 feet from any building or industrial structure. There shall be no loading of oils or other fluids on the public right-of-way with the village, nor shall there be any loading sites within 300 feet from any building or structure.

(D) All pipes or pipelines leading to or from a well location shall be of welded steel construction and shall be buried underground to a minimum depth of 36 inches below the normal surface of the ground and before a pipeline is laid in, down or along a street, the person or company laying the line shall deposit with the Village Treasurer the sum of \$.30 per foot for the laying of the line, and in the construction of the lines, the permittee shall pay to the village all damages sustained by it by reason of the construction of the lines and the repair of any streets crossed by or extending along the pipelines in an amount sufficient to place the village property in the same condition as prior to the laying of the lines and shall pay to the village any and all damages incident to the taking up or repairing of the

lines thereafter. No concrete or asphalt paving shall be cut or disturbed unless absolutely necessary, and then only under supervision of the village. The permittee shall be required to replace and repair the paving at his or her own expense and under the supervision of the Superintendent of Public Works of the Village.

(E) No rigs or heavy machinery used in connection with the drilling or operation of wells in the village shall be moved over the village streets from one location to another without obtaining a permit therefore, which permit shall set forth the streets which may be used for that purpose, and the same shall be transported under the supervision of the Superintendent of Public Works.

(1992 Code, § 18.006) (Ord. 9-88, passed - - 1988) Penalty, see § 112.99

§ 112.07 PRODUCTION AND OPERATION.

(A) In the drilling for oil and gas, petroleum or other hydrocarbons and the production thereof, the permittee shall use every precaution, equipment and materials in accordance with approved methods of operation, drilling and production to stop and prevent waste of oil, gas, petroleum or hydrocarbons and to protect residents and properties of the village, and therein shall equip and operate the well and all allied equipment therewith of standard design and quality as are in common use in the petroleum industry, and all the equipment shall be installed and maintained in accordance with standard drilling, producing and operating practices.

(B) From the time of placing any equipment, derricks, riggings or other drilling equipment or supplies, until the time of removal thereof upon final completion of the well, each location of the well shall be completely surrounded by fencing in order to completely surround and enclose the drilling operation. The fence shall be supported by steel posts and shall be of woven wire of not less than 14-gauge wire mesh of not less than two inches nor more than four inches and be at least six feet high.

(C) All flares erected within the village limits of the village shall be at least 500 feet from any building or structure and shall extend at least 20 feet above the surface of the ground. Also the flares shall be of approved construction and shall be installed in a pit of sufficient depth and area to provide adequate drainage and safety precautions. The location of all the flares shall be completely enclosed by steel fencing of the same type and dimensions as herein provided for enclosing the drilling operation.

(D) No open top tanks or pits for the disposal of slush, brine or salt water shall be permitted at any time after the completion of the drilling operation in any area in the village.

(E) All brine or salt water produced in the drilling for or production of oil shall, under the supervision of the State Supervisor of Wells, be returned to some underground formation or otherwise disposed of in order that the brine, salt water or refuse shall not do damage to any fresh water, wells, lakes, ponds or rivers.

(F) The area around a drilling operation shall be cleared of brush, slush, weeds and other flammable material for a radius of 250 feet before commencement of drilling operations.

(G) The person in charge of the producing operations of a well shall keep the fenced enclosure around the well free of all trash and inflammable substances not necessary in the operation of the well and shall keep the weeds cut and otherwise keep the location in a clean and orderly condition. Machinery and equipment not used in the operation of the well shall not be stored or left in the enclosure. All oil tanks shall be painted to harmonize with surroundings.

(H) Except in an emergency, at least six hours before any mud or fluid in any well shall be removed, swabbed, baled or otherwise cleaned out, the Fire Chief or other officer in charge shall be served with written notice of the hour that the cleaning, swabbing or baling is done, and if in his or her opinion the cleaning, swabbing or baling shall be hazardous to the safety or life or property, he or she is hereby authorized to stop or prevent the cleaning, swabbing or baling until the time as conditions may become favorable to continue the same. It shall be unlawful to commence the testing of any well from sundown until sunrise, during a period when gas may settle on the ground and during any electrical storm. Before bringing in a well all of the control devices, including master gates and safety valves, shall be tested and shall be in good working order and shall comply with the provisions of this subchapter.

(I) Drilling operations and related activities shall comply with the provisions of Public Act 61 of 1939, being M.C.L.A. §§ 319.101 *et seq.* and M.S.A. §§ 3.139(1) *et seq.*, as amended and the regulations promulgated thereunder.

(1992 Code, § 18.007) (Ord. 9-88, passed - - 1988) Penalty, see § 112.99

§ 112.08 DEEPENING; REWORKING.

If any person, owner, producer or operator shall desire to deepen or extend a well below the depth of its original objective, he or she shall make application to the Council the same as if an original application for a permit was made. In the deepening and reworking, the same precautions shall be complied with as set forth in this subchapter. If the application for reworking or deepening shall be filed within 60 days from the date of the completion or abandonment of the original drilling operation, a fee as set by resolution of the Council, shall be required.

(1992 Code, § 18.008) (Ord. 9-88, passed - - 1988)

§ 112.09 RESTORATION; ABANDONMENT.

(A) Upon the discontinuance of the drilling operations or the production of any oil or gas from any working well, the well shall be abandoned and plugged under the supervision of the Supervisor of Wells of the State.

(B) All plugging operations on all dry or abandoned wells shall commence within 60 days after drilling production operations shall have ceased and shall be carried through forthwith to completion.

(C) The permittee shall fill all pits and cellars with dirt and level off the surface and restore the same as nearly as possible to its

condition prior to the commencement of the drilling operation. All equipment shall be removed from the location promptly and all machinery, tanks, pipes and tools shall be transported from the well site and embankments leveled and the surface of the land restored to its former condition.

(D) The permittee shall not permit any undue accumulation of slush, salt water or oil or any other offensive or dangerous substances to accumulate, and upon the completion of the well shall remove and eliminate all debris and eliminate all condition and circumstances contributing to the hazard of fire or pollution.

(1992 Code, § 18.009) (Ord. 9-88, passed - - 1988)

§ 112.10 VARIANCE.

The Council may authorize a variance from a provision of this chapter when the strict application would result in exceptional practical difficulty or exceptional undue hardship to the applicant; provided that no variance shall be granted absent a demonstration by the applicant that no serious consequences will result from the proposed operations.

(1992 Code, § 18.011) (Ord. 9-88, passed - - 1988)

DRILLING PERMITS

§ 112.25 REQUIRED.

It shall be unlawful for any person to drill, explore or commence to drill any well for oil, gas, petroleum or other hydrocarbons in any areas within the village limits of the village or for the secondary recovery thereof, or to extend to deepen one already drilled without first obtaining a permit therefore in accordance with this section.

(1992 Code, § 18.036) (Ord. 9-88, passed - - 1988) Penalty, see § 112.99

§ 112.26 APPLICATION.

(A) The producer or owner of any proposed well shall fill out, sign and file an application in writing therefore upon forms provided by the Village Clerk accompanied by a filing fee as set by resolution of the Council.

(B) The application shall contain the information as to the location where the proposed well is to be drilled, and attached thereto shall be a map, plat or survey of the area to be drilled and the location of the well, the spacing and the exact location of tanks, flowlines, fences and details incident to the proposed location. The location of the well shall be stated in relation to established street or plat lines or in lieu thereof, quarter section lines.

(C) The application shall show the names of the owners of the oil and gas in all of the area to be drilled and the leases thereon. The application shall also be accompanied by the consent in writing of the owner of the drill site to be drilled consenting to the drilling of the well on his or her property. Attached to the application shall be duly certified, sworn or photostatic copies of all leases for the discovery and removal of oil and gas and ratifications thereof, executed by the owners of the oil and gas in the area, owned or controlled by the application and also a statement of other leases insofar as known setting forth the names of the lessors and lessees of each respective lease. If the leases shall by express terms and provisions provide for and consent to the drilling, the consent therein provided shall qualify for and be deemed sufficient compliance with the requirements for consent of lessor as provided in this section.

(D) The bond as required by this division shall also accompany and be filed with the application.

(E) The application shall be accompanied by a copy of the environmental impact statement filed with the State Department of Natural Resources pursuant to Public Act 61 of 1939, being M.C.L.A. §§ 319.101 *et seq.* and M.S.A. §§ 13.139(1) *et seq.*, as amended.

(F) It shall be made to appear, either upon the face of the application or by other satisfactory proof, that the applicant for permission to drill a well for oil and gas is the owner of or has under his or her control, either as owner or lessee or both, all interests in the area to be drilled. The requirement of this section may be satisfied by a pooling order issued by the Supervisor of Wells of the State Department of Natural Resources.

(1992 Code, § 18.037) (Ord. 9-88, passed - - 1988)

§ 112.27 FEES.

(A) All applicants for a permit to drill a well for oil or gas shall, at the time of making the application, pay to the Village Clerk the sum of \$1,000 as an application fee to apply to the cost and expense of the administration of the application.

(B) At the time of issuance of a permit, the applicant shall pay to the Village Clerk the sum of \$5,000 as a permit deposit to cover the expenses of inspection and examination of the continued operation of the site and other engineering services required in enforcement of the terms of the permit. The deposit shall be drawn on by the village as the charges are incurred. To guarantee payment of the charges, the applicant shall deposit additional funds at the other times as demand is made upon him or her, in the amounts as is estimated by the Village Engineer as sufficient to reimburse the village for the engineering charges. If the applicant fails to make the deposits within five days of demand, the Council President shall notify the applicant to stop all work until the deposits have been made. Any sums of money remaining upon the completion of all restoration, after payment of all the engineering charges, shall be refunded to the permit holder.

(1992 Code, § 18.038) (Ord. 9-88, passed - - 1988)

§ 112.28 NOTICE.

(A) Upon receipt of an application of an oil and gas drilling permit, notice that a request for the permit has been received shall be published in a newspaper of general circulation in the village and shall be sent by mail or personal delivery to the owners of property for which approval is being considered, 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, except that the notice shall be given not less than five and not more than 15 days before the application will be considered.

(B) If the name of the occupant is not known, the term *OCCUPANT* may be used in making notification.

(C) 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, partnership, businesses or organizations, one occupant of each unit or spatial area shall receive notice.

(D) In the case of a single structure containing more than four dwelling units or other distinct spatial 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.

(E) The notice shall:

- (1) Describe the nature of the permit requested;
- (2) Indicate the property which is the subject of the request; and
- (3) State the time, date and place of the public hearing on the request.

(1992 Code, § 18.039) (Ord. 9-88, passed - - 1988)

§ 112.29 HEARING.

(A) The Council shall, at the time, set and place designated in the notice, or to some later date to which the hearing may be adjourned, conduct the hearing upon the application to drill the well for oil, gas, petroleum or other hydrocarbons. At the hearing, all persons interested may be heard. All witnesses shall be examined under oath and documentary evidences may be introduced.

(B) The Council shall keep a record of its proceedings and shall make any and all reasonable requirements necessary to protect and safeguard the health, safety and welfare of the people of the village.

(C) The Council shall deny a permit application where it has determined that the operations proposed will have any of the following consequences:

- (1) Have any detrimental impact upon adjacent or neighboring parcels of land by reason of noise, increased traffic, dust, vibration, the emission of smoke, odors or toxic, noxious or hazardous matter or as a result of any other objectionable influence;
- (2) Have any detrimental impact upon the property value of adjacent or neighboring parcels of land;
- (3) Have any detrimental impact upon the surface condition of adjacent or neighboring parcels of land or of the property upon which the operations are to take place;
- (4) Pollute, impair or destroy the air, water or any other natural resource within the village;
- (5) Violate any of the provisions of this chapter or any other ordinance of the village;
- (6) Be detrimental to the promotion of orderly growth and development of the village;
- (7) Be conducted on property zoned for residential uses; and
- (8) Otherwise be injurious to the health, safety and welfare of the inhabitants of the village.

(1992 Code, § 18.040) (Ord. 9-88, passed - - 1988)

§ 112.30 DEPOSIT.

The Council shall require as a condition to the granting of any permit applied for pursuant to this division, that the applicant deposit with the village cash, a certified check or irrevocable letter of credit in an amount determined by the consulting engineers sufficient to guarantee that the applicant will faithfully perform all of the conditions and requirements of the permit and this chapter.

(1992 Code, § 18.041) (Ord. 9-88, passed - - 1988)

§ 112.31 INSURANCE.

The Council shall also require, as a condition to the granting of any permit under this section, that the applicant purchase and maintain the insurance as set by resolution of the Council as protection against claims which may arise out of or result from the operations of the applicant in carrying on any work connected directly or indirectly with the issuance of the permit. A certificate of the insurance shall be provided to the village for approval prior to the commencement of any operations under the permit.

(1992 Code, § 18.042) (Ord. 9-88, passed - - 1988)

§ 112.32 COPY POSTED AT WELL.

A copy of each permit granted pursuant to this section shall be posted at the location of the well permitted to be drilled.

(1992 Code, § 18.043) (Ord. 9-88, passed - - 1988)

§ 112.33 COPY FORWARDED TO STATE SUPERVISOR OF WELLS.

A copy of each permit granted pursuant to this division shall be forwarded by the Village Clerk by certified mail to the Supervisor of Wells of the State.

(1992 Code, § 18.044) (Ord. 9-88, passed - - 1988)

§ 112.34 SUSPENSION.

(A) The Fire Chief, the Superintendent of Public Works or the other employee of the village who shall be designated the Supervisor of Wells, is hereby granted the authority to suspend the permit for the operation of any well where any of the provisions of this chapter or any amendments thereto are violated.

(B) The suspension of any permit shall be effective until the time as the permit holder shall comply with the provisions of this chapter.

(C) Before suspending any the permit, the Village Clerk shall cause written notice to be served upon the permittee advising the permittee that a hearing will be had at a time and place fixed in the notice to determine whether the permit held by the permittee shall be suspended. Five days notice of the time of the hearing shall be given.

(D) It shall be unlawful for any person to operate any well during any period in which the permit covering the operation of the well is so suspended.

(E) The provisions of this section shall in no way limit or interfere with the enforcement of the penalties for the violation of ordinances generally, but shall be cumulative and in addition to the penalties.

(1992 Code, § 18.045) (Ord. 9-88, passed - - 1988) Penalty, see § 112.99

§ 112.35 TERMINATION.

(A) When a permit required by this division has been issued, the same shall terminate and become inoperative without any action on the part of the Council unless within 60 days from the date of the issuance actual drilling of the well shall have been commenced, and after the drilling of a well shall be commenced the cessation of drilling for 60 days, or the cessation of production of oil or gas from the well after production of oil or gas from the well has commenced, shall operate to terminate and cancel the permit and the well shall be considered as abandoned for all purposes of this chapter. It shall be unlawful thereafter to continue the operation, reworking or drilling of the well without the issuance of another permit upon new application as above provided. For purposes of this section, production shall not be deemed to have ceased when halted temporarily to permit an initial customer to make connection to the well.

(B) Providing, however, there may be granted additional periods of 60 days each, but not to exceed three in number, upon application by the permittee to the Council requesting the extension and good and reasonable cause therein shown for the cessation of drilling or cessation of production as above provided beyond the reasonable control of the permittee or his or her operator.

(1992 Code, § 18.046) (Ord. 9-88, passed - - 1988) Penalty, see § 112.99

SEISMIC SURVEY PERMIT

§ 112.50 REQUIRED.

It shall be unlawful for any person to conduct seismic surveys within the village without first obtaining a permit from the Department of Public Works.

(1992 Code, § 18.056) (Ord. 9-88, passed - - 1988) Penalty, see § 112.99

§ 112.51 APPLICATION.

The applicant for a permit to conduct seismic testing shall fill out, sign and file with the Department of Public Works, a permit application accompanied by a filing fee as set by resolution of the Council. The application shall contain information as to the time and location of the seismic testing, and a full description of the techniques proposed to be utilized. It shall be made to appear, either upon the face of the application or by other satisfactory proof, that the applicant has the permission to conduct the testing from the owners of all property upon which the testing is to occur.

(1992 Code, § 18.057) (Ord. 9-88, passed - - 1988)

§ 112.52 EXPLOSIVES PERMIT.

If the proposed seismic survey is to include the use of any explosives, the applicant shall also obtain any permit or license required from the Fire Department.

(1992 Code, § 18.058) (Ord. 9-88, passed - - 1988)

§ 112.53 GRANTING OR DENIAL.

The Director of Public Services shall grant or deny the permit application based upon this determination as to whether the proposed testing will have a detrimental impact upon adjacent or neighboring property or otherwise be injurious to the health, safety or welfare of the inhabitants of the village.

(1992 Code, § 18.059) (Ord. 9-88, passed - - 1988)

§ 112.99 PENALTY.

(A) Each and every violation of this chapter whether denominated as unlawful or an offense or not, is hereby declared to be a public nuisance per se and may be abated by appropriate proceedings provided by law.

(B) Any violation of the terms of this chapter, whether denominated as unlawful or as an offense or not, shall likewise be deemed a misdemeanor and any person, either for himself or herself or by an agent, servant or employee who shall violate any provision of this chapter, or who shall be engaged in any work or the erection of any structure, derrick, drilling rig, tank, pipeline or other drilling apparatus which shall be in violation of any provision of this chapter, upon conviction thereof, shall be deemed guilty of a misdemeanor, and upon conviction of the violation shall be punished as provided in this section.

(C) Any person, firm or corporation violating any of the provisions of this chapter shall be guilty of a misdemeanor, and upon conviction therefore, shall be fined not more than \$100 for each conviction, or shall be punished by imprisonment for a period not to exceed 90 days for each offense, or by the fine and imprisonment in the discretion of the court, together with the cost of the prosecution.

(1992 Code, §§ 18.010, 18.060) (Ord. 9-88, passed - - 1988)

CHAPTER 113: COMMUNICATIONS

Section

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TELECOMMUNICATIONS; REGULATE ACCESS; PUBLIC RIGHTS-OF-WAY

§ 113.01 PURPOSE.

The purposes of this subchapter are to regulate access to and ongoing use of public rights-of-way by telecommunications providers for their telecommunications facilities while protecting the public health, safety and welfare and exercising reasonable control of the public rights-of-way in compliance with the Metropolitan Extension Telecommunications Rights-of-Way Oversight Act (Public Act 48 of 2002) (Act), being M.C.L.A. §§ 484.3101 through 484.3120, and other applicable law, and to ensure that the village qualifies for distributions under the Act by modifying the fees charged to providers and complying with the Act.

(Ord. 02-03, passed 1-27-2003)

§ 113.02 CONFLICT.

Nothing in this subchapter shall be construed in such a manner as to conflict with the Act or other applicable law.

(Ord. 02-03, passed 1-27-2003)

§ 113.03 TERMS DEFINED.

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

ACT. The Metropolitan Extension Telecommunications Rights-of-Way Oversight Act (Public Act 48 of 2002), being M.C.L.A. §§ 484.3101 through 484.3120, as amended from time to time.

PERMIT. A nonexclusive permit issued pursuant to the Act and this subchapter to a telecommunications provider to use the public rights-of-way in the village for its telecommunications facilities.

VILLAGE. The Village of Birch Run.

VILLAGE COUNCIL. The Village Council of the Village of Birch Run or its designee. This section does not authorize delegation of any decision or function that is required by law to be made by the Village Council.

VILLAGE MANAGER. The Village Manager or his or her designee.

(B) All other terms used in this subchapter shall have the same meaning as defined or as provided in the Act, including without limitation, the following:

AUTHORITY. The Metropolitan Extension Telecommunications Rights-of-Way Oversight Authority created pursuant to § 3 of the Act.

MPSC. The Michigan Public Service Commission in the Department of Consumer and Industry Services and shall have the same meaning as the term Commission in the Act.

PERSON. An individual, corporation, partnership, association, governmental entity or any other legal entity.

PUBLIC RIGHT-OF-WAY. The area on, below or above a public roadway, highway, street, alley, easement or waterway. **PUBLIC RIGHT-OF-WAY** does not include a federal, state or private right-of-way.

TELECOMMUNICATION FACILITIES or **FACILITIES.** The equipment or personal property, such as copper and fiber cables, lines, wires, switches, conduits, pipes and sheaths, which are used to or can generate, receive, transmit, carry, amplify or provide telecommunication services or signals. **TELECOMMUNICATION FACILITIES** or **FACILITIES** do not include antennas, supporting structures for antennas, equipment shelters or houses, and any ancillary equipment and miscellaneous hardware used to provide federally licensed commercial mobile service as defined in § 332(d) of part I of Title III of the Communications Act of 1934, Ch. 652, 48 Stat. 1064, 47 U.S.C. § 332 and further defined as commercial mobile radio service in 47 C.F.R. pt. 20.3, and service provided by any wireless, two-way communication device.

TELECOMMUNICATIONS PROVIDER, PROVIDER and **TELECOMMUNICATIONS SERVICES.** Those terms as defined in § 102 of the Michigan Telecommunications Act, Public Act 179 of 1991, M.C.L.A. § 484.2102 (as amended by P.A. 235 of 2005). **TELECOMMUNICATION PROVIDER** does not include a person or an affiliate of that person when providing a federally licensed commercial mobile radio service as defined in § 332(d) of part I of the Communications Act of 1934, Ch. 652, 48 Stat. 1064, 47 U.S.C. § 332 and further defined as commercial mobile radio service in 47 C.F.R. pt. 20.3, or service provided by any wireless, two-way communication device. For the purpose of the Act and this subchapter only, a **PROVIDER** also includes all of the following:

- (a) A cable television operator that provides a telecommunications service;
- (b) Except as otherwise provided by the Act, a person who owns telecommunication facilities located within a public right-of-way; and
- (c) A person providing broadband internet transport access service.

(Ord. 02-03, passed 1-27-2003)

§ 113.04 PERMIT REQUIRED.

(A) *Permit required.* Except as otherwise provided in the Act, a telecommunications provider using or seeking to use public rights-of-way in the village for its telecommunications facilities shall apply for and obtain a permit pursuant to this subchapter.

(B) *Application.* Telecommunications providers shall apply for a permit on an application form approved by the MPSC in accordance with § 6(1) of the Act. A telecommunications provider shall file one copy of the application with the Village Clerk, one copy with the Village Manager and one copy with the Village Attorney. Applications shall be complete and include all information required by the Act, including without limitation, a route map showing the location of the provider's existing and proposed facilities in accordance with § 6(5) of the Act 2.

(C) *Confidential information.* If a telecommunications provider claims that any portion of the route maps submitted by it as part of its application contain trade secret, proprietary or confidential information, which is exempt from the Freedom of Information Act, Public Act 442 of 1976, M.C.L.A. §§ 15.231 to 15.246, pursuant to § 6(5) of the Act, the telecommunications provider shall prominently so indicate on the face of each map.

(D) *Application fee.* Except as otherwise provided by the Act, the application shall be accompanied by a one time non-refundable application fee in the amount of \$500.

(E) *Additional information.* The Village Manager may request an applicant to submit the additional information which the Village Manager deems reasonably necessary or relevant. The applicant shall comply with all the requests in compliance with reasonable deadlines for the additional information established by the Village Manager. If the village and the applicant cannot agree on the requirement of additional information requested by the village, the village or the applicant shall notify the MPSC as provided in § 6(2) of the Act.

(F) *Previously issued permits.* Pursuant to § 5(1) of the Act, authorizations or permits previously issued by the village under § 251 of the Michigan Telecommunications Act, Public Act 179 of 1991, M.C.L.A. § 484.2251 (as amended by P.A. 235 of 2005) and authorizations or permits issued by the village to telecommunications providers prior to the 1995 enactment of § 251 of the Michigan Telecommunications Act but after 1985, shall satisfy the permit requirements of this subchapter.

(G) *Existing providers.* Pursuant to § 5(3) of the Act, 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 village as of the date, that has not previously obtained authorization or a permit under § 251 of the Michigan Telecommunications Act, Public Act 179 of 1991, M.C.L.A. § 484.2251 (as amended by P.A. 235 of 2005), shall submit to the village an application for a permit in accordance with the requirements of this subchapter. Pursuant to § 5(3) of the Act, a telecommunications provider submitting an application under this section is not required to pay the \$500 application fee required under division (D) above. A provider under this division shall be given up to an additional 180 days to submit the permit application if allowed by the Authority, as provided in § 5(4) of the Act.

(Ord. 02-03, passed 1-27-2003)

§ 113.05 ISSUANCE OF PERMIT.

(A) *Approval or denial.* The authority to approve or deny an application for a permit is hereby delegated to the Village Manager. Pursuant to § 15(3) of the Act, the Village 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 § 113.04(B) for access to a public right-of-way within the village. Pursuant to § 6(6) of the Act, the Village Manager shall notify the MPSC when the Village 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

Village Manager shall not unreasonably deny an application for a permit.

(B) *Form of permit.* If an application for a permit is approved, the Village Manager shall issue the permit in the form approved by the MPSC, with or without additional or different permit terms, in accordance with §§ 6(1), 6(2) and 15 of the Act 3.

(C) *Conditions.* Pursuant to § 15(4) of the Act, the Village 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 § 15(3) of the Act, and without limitation on division (C) above, the Village 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.

(Ord. 02-03, passed 1-27-2003)

§ 113.06 CONSTRUCTION AND/OR ENGINEERING PERMIT.

A telecommunications provider shall not commence construction upon, over, across or under the public rights-of-way in the village without first obtaining a construction or engineering permit as required by the village for construction within the public rights-of-way. No fee shall be charged for a construction or engineering permit.

(Ord. 02-03, passed 1-27-2003)

§ 113.07 CONDUIT OR UTILITY POLES.

Pursuant to § 4(3) of the Act, obtaining a permit or paying the fees required under the Act or under this subchapter does not give a telecommunications provider a right to use conduit or utility poles.

(Ord. 02-03, passed 1-27-2003)

§ 113.08 ROUTE MAPS.

Pursuant to § 6(7) of the Act, a telecommunications provider shall, within 90 days after the substantial completion of construction of new telecommunications facilities in the village, submit route maps showing the location of the telecommunications facilities to both the MPSC and to the village. The route maps should be in paper or electronic format unless and until the MPSC determines otherwise, in accordance with § 6(8) of the Act.

(Ord. 02-03, passed 1-27-2003)

§ 113.09 REPAIR OR DAMAGE.

Pursuant to § 15(5) of the Act, a telecommunications provider undertaking an excavation, construction or installing telecommunications facilities within a public right-of-way or temporarily obstructing a public right-of-way in the village, as authorized by a permit, shall promptly repair all damage done to the street surface and all installations under, over, below or within the public right-of-way and shall promptly restore the public right-of-way to its preexisting condition.

(Ord. 02-03, passed 1-27-2003)

§ 113.10 ESTABLISHMENT AND PAYMENT OF MAINTENANCE FEE.

In addition to the non-refundable application fee paid to the village set forth in § 113.04(D), a telecommunications provider with telecommunications facilities in the village's public rights-of-way shall pay an annual maintenance fee to the Authority pursuant to § 8 of the Act.

(Ord. 02-03, passed 1-27-2003)

§ 113.11 MODIFICATION OF EXISTING FEES.

In compliance with the requirements of § 13(1) of the Act, the village hereby modifies, to the extent necessary, any fees charged to telecommunications providers after November 1, 2002, the effective date of the Act, 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 § 13(4) of the Act, the village also hereby approves modification of the fees of providers with telecommunication facilities in public rights-of-way within the village's boundaries, so that those providers pay only those fees required under § 8 of the Act. The village shall provide each telecommunications provider affected by the fee with a copy of this subchapter, in compliance with the requirement of § 13(4) of the Act. 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, the imposition is hereby declared to be contrary to the village's policy and intent, and upon application by a provider or discovery by the village, shall be promptly refunded as having been charged in error.

(Ord. 02-03, passed 1-27-2003)

§ 113.12 USE OF FUNDS.

Pursuant to § 10(4) of the Act, all amounts received by the village from the Authority shall be used by the village solely for rights-of-way related purposes. In conformance with that requirement, all funds received by the village from the Authority shall be deposited into

the Major Street Fund and/or the Local Street Fund maintained by the village under Public Act 51 of 1951, being M.C.L.A. §§ 247.651 through 247.675.

(Ord. 02-03, passed 1-27-2003)

§ 113.13 ANNUAL REPORT.

Pursuant to § 10(5) of the Act, the Village Manager shall file an annual report with the Authority on the use and disposition of funds annually distributed by the Authority.

(Ord. 02-03, passed 1-27-2003)

§ 113.14 CABLE TELEVISION OPERATORS.

Pursuant to § 13(6) of the Act, the village shall not hold a cable television operator in default or seek any remedy for its failure to satisfy an obligation, if any, to pay after November 1, 2002, the effective date of this Act, a franchise fee or similar fee on that portion of gross revenues from charges the cable operator received for cable modem services provided through broadband internet transport access services.

(Ord. 02-03, passed 1-27-2003)

§ 113.15 EXISTING RIGHTS.

Pursuant to § 4(2) of the Act, except as expressly provided herein with respect to fees, this subchapter shall not affect any existing rights that a telecommunications provider or the village may have under a permit issued by the village or under a contract between the village and a telecommunications provider related to the use of the public rights-of-way.

(Ord. 02-03, passed 1-27-2003)

§ 113.16 COMPLIANCE.

The village hereby declares that its policy and intent in adopting this subchapter 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 village shall comply in all respects with the requirements of the Act, including but not limited to the following:

(A) Exempting certain route maps from the Freedom of Information Act, Public Act 442 of 1976, M.C.L.A. §§ 15.231 to 15.246, as provided in § 113.04(C);

(B) Allowing certain previously issued permits to satisfy the permit requirements hereof, in accordance with § 113.04(F);

(C) Allowing existing providers additional time in which to submit an application for a permit and excusing the providers from the \$500 application fee, in accordance with § 113.04(G);

(D) Approving or denying an application for a permit within 45 days from the date a telecommunications provider files an application for a permit for access to and usage of a public right-of-way within the village, in accordance with § 113.05(A);

(E) Notifying the MPSC when the village has granted or denied a permit, in accordance with § 113.05(A);

(F) Not unreasonably denying an application for a permit, in accordance with § 113.05(A);

(G) Issuing a permit in the form approved by the MPSC, with or without additional or different permit terms, as provided in § 113.05(B);

(H) 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 § 113.05(C);

(I) 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 § 113.05(D);

(J) Not charging any telecommunications providers any additional fees for construction or engineering permits, in accordance with § 113.06;

(K) Providing each telecommunications provider affected by the village's right-of-way fees with a copy of this subchapter, in accordance with § 113.11;

(L) Submitting an annual report to the Authority, in accordance with § 113.13; and

(M) Not holding a cable television operator in default for a failure to pay certain franchise fees, in accordance with § 113.14.

(Ord. 02-03, passed 1-27-2003)

§ 113.17 RESERVATION OF POLICE POWER.

Pursuant to § 15(2) of the Act, this subchapter shall not limit the village's right to review and approve a telecommunication provider's access to and ongoing use of a public right-of-way or limit the village's authority to ensure and protect the health, safety and welfare of the public.

(Ord. 02-03, passed 1-27-2003)

§ 113.18 AUTHORIZED VILLAGE OFFICIALS.

The Village Manager or his or her designee, is hereby designated as the authorized village official to issue municipal civil infraction citations (directing alleged violators to appear in court) or municipal civil infraction violation notices (directing alleged violators to appear at the Municipal Chapter Violations Bureau) for violations under this subchapter as provided by the village ordinance.

(Ord. 02-03, passed 1-27-2003)

§ 113.19 MUNICIPAL CIVIL INFRACTION.

(A) A person who violates any provision of this subchapter or the terms or conditions of a permit is responsible for a municipal civil infraction and shall be subject to penalties and remedies as outlined in Chapter 35.

(B) Nothing in this section shall be construed to limit the remedies available to the village in the event of a violation by a person of this subchapter or a permit.

(Ord. 02-03, passed 1-27-2003)

CABLE COMMUNICATIONS REGULATORY ORDINANCE

§ 113.35 TITLE.

This subchapter shall be known and may be cited as the Village of Birch Run Cable Communications Regulatory Ordinance.

(1992 Code, § 30.001) (Ord. 2-81, passed 9-24-1981)

§ 113.36 DEFINITIONS.

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

(B) For the purpose of this subchapter the following terms, phrases, words and derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number and words in the singular number include the plural number. The word **SHALL** is always mandatory and not nearly director.

COUNCIL. The Village Council of the Village of Birch Run.

FEDERAL COMMUNICATIONS COMMISSION or FCC. That Federal Agency constituted by the Communications Act of 1934, as amended.

PERMITTEE. The holder of a permit issued pursuant to this subchapter.

PERSON. Any person, firm, partnership, association, corporation, company or organization of any kind.

STREET. A street, alley or other public way within the Village of Birch Run.

SYSTEM, CABLE ANTENNA TELEVISION SYSTEM or CAW. The lines, fixtures, equipment, attachments and all appurtenances thereto which are used in the construction, operation and maintenance of the cable or community television system or systems herein authorized.

VILLAGE. The Village of Birch Run.

(1992 Code, § 30.002) (Ord. 2-81, passed 9-24-1981)

§ 113.37 PERMIT REQUIRED.

No person shall provide or operate a cable antenna television system within the limits of the Village of Birch Run without first obtaining a permit as hereinafter provided.

(1992 Code, § 30.003) (Ord. 2-81, passed 9-24-1981) Penalty, see § 113.99

§ 113.38 APPLICATION.

Permits to provide and operate a cable antenna television system hereunder will be granted by the Council as hereinafter provided and shall be applied for by written application on a form approved by the Council and filed with the Village Clerk, which application shall include, but not be limited to the following:

- (A) Name of applicant;
- (B) Local business address;
- (C) Principal officers or owners or principal stockholders, if a corporation;
- (D) Location of antenna tower or towers; and
- (E) General description of proposed distribution system in the village, showing area proposed to be served and indicating whether the

applicant will require poles in the streets within the village or whether cables and appliances to be utilized by it in the streets in the village will be located on existing poles of utility companies.

(1992 Code, § 30.004) (Ord. 2-81, passed 9-24-1981)

§ 113.39 GRANTING PERMIT.

The Council shall grant a Cable Antenna Television System Permit hereunder to each applicant who makes proper application, establishes his or her qualifications as herein set forth, furnishes the required insurance and assurances and establishes that his or her operations will not impose an unreasonable burden on village streets. No permit granted hereunder shall be exclusive. In accordance with the provisions of Art. 7, § 19 of the Constitution of 1963 of the State of Michigan, any permit granted hereunder shall be revokable at the will of the village unless the proposition shall first have been approved by a majority of the electors of the village voting thereon at a regular or special election.

(1992 Code, § 30.005) (Ord. 2-81, passed 9-24-1981)

§ 113.40 TERM OF PERMIT.

(A) Each permit granted hereunder shall be for a term of one year and from year to year thereafter for a total period of 15 years from the date of the issuance of the first permit or until terminated as herein provided if termination occurs sooner.

(B) The permit granted hereunder shall be deemed to constitute a contract between the village and the permittee.

(C) Nothing contained herein shall prohibit a permittee from seeking a renewal or extension of a permit for periods of reasonable duration on the same terms and conditions as contained herein or on the different or additional terms and conditions as may be lawfully specified by the village and which are consistent with the requirements of the Federal Communications Commission.

(1992 Code, § 30.006) (Ord. 2-81, passed 9-24-1981)

§ 113.41 COMPLIANCE WITH LAWS, REGULATIONS AND ORDINANCES.

The permittee shall, at all times during the life of this subchapter, be subject to all lawful exercise of the police power of the village and to the reasonable regulation as the village shall hereafter by resolution or ordinance provide. The construction operation and maintenance of the system by the permittee shall be in full compliance with the portions of the Uniform Building and National Electrical Codes as may be applicable and as the same may be amended and revised from time to time and in full compliance with all other applicable rules, regulations and ordinances now in effect or hereafter adopted by the Federal Communications Commission, the village or any other agency of the State of Michigan or the United States which may hereafter acquire jurisdiction of the operation of the permittee.

(1992 Code, § 30.007) (Ord. 2-81, passed 9-24-1981)

§ 113.42 LIABILITY, INDEMNIFICATION AND INSURANCE.

(A) The permittee shall indemnify the village for and hold it harmless from all liability, damage, cost or expense arising from claims of injury to persons or damage to property occasioned by reason of any conduct undertaken pursuant to this subchapter, including libel and slander actions.

(B) The village shall notify the permittee within 15 days after the presentation of any claim or demand to the village, either by suit or otherwise made against the village on account of any negligence or contract as aforesaid on the part of the permittee. The permittee further agrees as follows:

(1) Carry worker's compensation insurance with statutory limits and employer's liability insurance with limits of no less than \$100,000 which shall cover all operations to be performed by the permittee as a result of this subchapter;

(2) Carry comprehensive general liability and comprehensive automobile liability insurance with bodily injury limits of not less than \$500,000 per person and \$500,000 per occurrence;

(3) Provide worker's compensation, comprehensive general liability and comprehensive automobile liability insurance which shall be written by an insurance company with a capital and/or surplus of not less than \$3,000,000 and the permittee agrees to furnish the village with certified copies of certificates of the insurance which shall provide that the insurance shall not be cancelled unless ten-days' prior written notice shall first be given to the village;

(4) The permittee agrees and shall pay all reasonable expenses incurred by the village in defending itself with regard to all damages, penalties or other claims resulting from the acts of the permittee, his or her assigns, employees, agents, invitees or other persons. The expenses shall include all out of pocket expenses such as attorney fees and shall include the value of any services rendered by the Village Attorney or any other officers or employees of the village; and

(5) All insurance policies as required of the permittee hereunder shall be written by a company or companies authorized and qualified to do business in the State of Michigan.

(1992 Code, § 30.008) (Ord. 2-81, passed 9-24-1981)

§ 113.43 SYSTEM CONSTRUCTION, MAINTENANCE AND PROCEDURES.

(A) Upon the granting of a permit to construct and maintain a cable antenna television system within the village, and in furtherance of the permittee's execution of contracts with public utility companies or any other owner or lessee of any poles located within or without

the village to whatever extent the contract or contracts shall be expedient and of advantage to the permittee for use of poles and posts necessary for proper installation of the system, the permittee shall obtain right-of-way permits from appropriate state, county and federal officials necessary to cross highways or roads under their respective jurisdiction to supply main trunklines from the permittees receiving antennas, obtain permission from the Federal Aviation Authority to erect and maintain antennas suitable to the needs of the system and its subscribers and to obtain whatever other permits a village, county, state or federal agency may require. The permittee shall construct its cable system using material of good and durable quality and all work involved in the construction, installation, maintenance and repair of the cable antenna system shall be performed in a safe, thorough and reliable manner.

(B) Any village property damaged or destroyed shall be promptly repaired or replaced by the permittee and restored to serviceable condition. The permittee's system, poles, wires and appurtenances shall be located, erected and maintained so that none of its facilities shall endanger or interfere with the lives of persons or interfere with any improvements the village may deem proper to make or unnecessarily hinder or obstruct the free use of the streets, alleys, bridges, easements or public property.

(C) In case of any disturbance of pavement, sidewalk, driveway or other surfacing, the permittee shall, at his or her own cost and expense and in a manner approved by the village, replace and restore all paving sidewalk, driveway or surface of any street or alley disturbed, in as good condition as before the work was commenced.

(D) The permittee shall not place poles or other fixtures where the same will interfere with any gas, electric or telephone fixture, water hydrant or main, and all the poles or other fixtures placed in any street shall be placed at the outer edge of the sidewalk and inside the curb line, and those placed in alleys shall be placed close to the line of the lot abutting on the alley and then in such manner as to not interfere with the usual traffic on the streets, alleys and public ways.

(E) In the event that at any time during the existence of the permit granted hereunder, the village shall lawfully widen, realign or otherwise alter the street right-of-way or construct, re-construct, re-align or change the grade of or otherwise alter the pavement or any water main, fire hydrant, sewer or appurtenance, the permittee upon reasonable notice by the village, shall remove, re-lay, or re-locate its poles, wires, cables, underground conduits, manholes and other fixtures at his or her own expense.

(F) In areas of the village in which telephone lines and electrical utility lines are underground, all the permittee's lines, cables and wires shall be underground.

(G) The permittee shall have the right, so long as his or her permit is in force and effect, to utilize the streets of the village to the extent set forth in his or her application or as otherwise provided by the Council in its permit for the transmission of television and radio signals as herein authorized from its antenna location or locations to the premises of subscribers. The permittee may erect all the wires, cables and appurtenances in the streets subject to approval of the Village Engineer of the placement of any poles.

(1992 Code, § 30.009) (Ord. 2-81, passed 9-24-1981)

§ 113.44 PROVISION OF SERVICE; LINE EXTENSIONS.

(A) The permittee shall make his or her service available to all residents of the village who can be reached by its distribution system as mutually agreed between the Council and the permittee. In general, the permittee shall extend service to new subscribers at the normal installation charge and monthly rate for customers of that classification where there are an average of 50 homes per each linear mile of new cable construction. In the event that the requirements cannot be met, extensions of service shall be required only on a basis which is reasonable and compensatory.

(B) A permittee shall furnish, free, without monthly fees, installation or service charges, his or her standard community antenna television service and facilities to all public and parochial schools, fire and police stations and hospitals within the Village of Birch Run provided the building is within 400 feet of an existing line of the system and, provided further that the service shall mean only an energized cable to the building. The cost of any internal wiring shall be borne by the institution.

(C) In the case of any emergency or disaster, the permittee shall, upon request of the village, make available his or her facilities to the village or the other governmental agency as may be designated by the village, for emergency use during a emergency or disaster period.

(1992 Code, § 30.010) (Ord. 2-81, passed 9-24-1981)

§ 113.45 CHANNEL CAPACITY AND ACCESS.

(A) The cable antenna television system to be installed shall have a minimum of a 12-channel capacity with appropriate technology to upgrade the system to a 35-channel capacity along with technical capacity for return or two-way communication. The permittee will install and maintain a cable antenna television system in keeping with the latest state-of-the-art technology, including the capability for satellite reception.

(B) The permittee, and any and all of his or her officers, agents and employees are specifically prohibited from engaging in the sale, service, rental or leasing of television receivers, radio receivers or television or radio receiver related parts and accessories with any person, anywhere within the village whether for a fee or charge or not. The permittee shall prohibit any of his or her officers, agents and employees from violating the terms of this section at all times, whether in the performance of the duties of the permittee or otherwise.

(C) The company shall not allow its cable or other operations to interfere with television reception of persons not served by the permittee nor shall the system interfere with, obstruct or hinder in any manner, the operation of the various utilities serving the residents of the village.

(D) The permittee shall not permit the transmission of any signal, aural, visual or digital, including polling the channel selection from any subscriber's premises without first obtaining written permission of the subscriber. The permittee shall not permit the installation of any specific terminal equipment in any subscriber's premises that will permit transmission from the subscriber's premises of two-way

services utilizing aural, visual or digital signals without first obtaining written permission of the subscriber. It shall be prohibited for any person to attach or affix, or cause to be attached or affixed, any equipment or device which allows access or use of the cable television system without payment to the permittee for the same.

(1992 Code, § 30.011) (Ord. 2-81, passed 9-24-1981) Penalty, see § 113.99

§ 113.46 RATES.

By his or her acceptance of a permit issued under this subchapter, the permittee agrees that his or her rates and charges for television and radio signals through the cable antenna television system shall be fair and reasonable and no higher than necessary to meet all costs of service (assuming efficient and economical management) including a fair return on the cost, plus depreciation of the properties devoted to the service (without regard to any subsequent sale or transfer price or the cost of the properties). The permittee may, at his or her discretion, waive, reduce or suspend connection fees for specific or indeterminate periods and/or monthly service fees for a period not to exceed 30 days for promotional purposes.

(1992 Code, § 30.012) (Ord. 2-81, passed 9-24-1981)

§ 113.47 TRANSFER.

The permittee shall not sell, assign or transfer his or her system to another or transfer any rights under this subchapter to another except to a wholly owned subsidiary without prior written approval by the village, provided that the approval shall not be unreasonably withheld if the assignee has filed with the village an instrument duly executed, reciting the fact that the sale, assignment or lease accepts all the terms and conditions of this subchapter and provides for the performance of all the conditions thereof.

(1992 Code, § 30.013) (Ord. 2-81, passed 9-24-1981)

§ 113.48 LOCAL OFFICE; COMPLIANT PROCEDURES.

The permittee shall maintain a business office or agent for the purpose of receiving and resolving all complaints regarding the quality of service, equipment, malfunctions and similar matters. The office must be able to be reached by a local or toll-free telephone call and the permittee shall provide to the village a name, address and telephone number of a person who will act as the company's agent to receive complaints regarding the quality of service, equipment malfunctions and similar matters. The office shall be open to receive inquiries or complaints from subscribers during normal business hours. Any complaints from subscribers shall be investigated and acted upon as soon as possible, but at least within three business days of their receipt.

(1992 Code, § 30.014) (Ord. 2-81, passed 9-24-1981)

§ 113.49 TERMINATION.

(A) The permittee may surrender his or her permit at any time in which event he or she shall refund to subscribers all prepaid and unearned service and other charges collected from subscribers.

(B) In addition to all other rights and powers pertaining to the village by virtue of this subchapter, or otherwise, the village reserves the right to terminate and cancel the permit and all rights and privileges of the permittee hereunder in the event of any of the following:

(1) The permittee violates any provision of the permit issued hereunder or any rule, order or determination of the village, the Village Council or its agents made pursuant to the permit, except where the violation is without fault or through excusable neglect;

(2) The permittee become insolvent, unable or unwilling to pay his or her debts, or is adjudged bankrupt;

(3) The permittee attempts to evade any of the provisions of this franchise or terms and conditions of the permit issued hereunder or practices any fraud or deceit upon the village; and

(4) The permittee fails to begin the design of his or her system within 90 days after necessary governmental approval and necessary leasing agreements from utilities or fails to begin construction within six months thereafter, or fails to make reasonable efforts to complete construction within 18 months after commencement of the construction or fails to complete the construction substantially within two years from the effective date of the issuance of the permit. The permittee shall be entitled to a hearing before the Council to determine the findings of fact and the propriety of the determination of the permit. The determination of the Council and its decision shall be final.

(C) Upon termination of his or her permit, the permittee shall, at his or her own expense, remove from the street and the village all his or her facilities and equipment therein utilized by his or her's cable antenna television system operation, unless the Council shall specifically authorize him or her to leave all or a part of the facilities and equipment in place.

(1992 Code, § 30.015) (Ord. 2-81, passed 9-24-1981)

SATELLITE DISH ANTENNAS REGULATION

§ 113.65 DEFINITIONS.

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

PERSON. Individuals, groups, organizations, partnerships, voluntary associations and corporations.

SATELLITE DISH ANTENNA. An earth based station whose purpose is to receive communications or other signals from orbiting satellites or other extraterrestrial sources, together with other equipment related to the purposes.

SATELLITE DISH ANTENNA(S). Satellite antenna, satellite receiver, dish antennas, amateur radio antennas, ham radio antenna, earth stations, TVRO systems, television satellite antenna and other similar structures not otherwise regulated in the Village of Birch Run, which are to be located within the village limit, shall be and are included within the reach of the subchapter.

(1992 Code, § 62.001) (Ord. 1-86, passed - - 1986)

§ 113.66 HEIGHT AND LOCATION, RESTRICTIONS AND REQUIREMENTS.

(A) No satellite dish shall be constructed or installed in the Village of Birch Run in a size greater than 12 feet in diameter under any maximum dimension.

(B) No satellite dish shall rise from ground level in excess of 15 feet in height at its maximum point.

(C) No television antenna or ham radio antenna shall rise from ground level in excess of 40 feet in height at its maximum point.

(D) No satellite dish antenna shall be located in the front or side yard of any residential or commercial zone, as described in the Birch Run Village Zoning Ordinance, and the dish antenna must meet all set-back and yard requirements for both residential and commercial zones.

(E) Any satellite dish antennas which are installed on the roof of any structure, shall not exceed four feet in maximum diameter. A dish antenna installed on the roof of a structure shall not extend more than 36 inches above the peak of the roof of the structure.

(F) No advertising message or other graphic representation shall be allowed upon any satellite dish installed within the village limits of the Village of Birch Run.

(G) The dish antenna shall not be placed on a site in a manner that obstructs the view of any public right-of-way or intersection.

(1992 Code, § 62.002) (Ord. 1-86, passed - - 1986) Penalty, see § 113.99

§ 113.67 COMPLIANCE WITH CODE.

All satellite antennas are to be constructed in the open and not contained within buildings and shall be considered structures subject to terms of the Birch Run Village Zoning Ordinance and to all provisions relating to structures.

(1992 Code, § 62.003) (Ord. 1-86, passed - - 1986)

§ 113.68 PERMIT REQUIRED; APPLICATION FOR PERMIT.

(A) It is hereby determined that satellite dishes are of such a character that construction, installation and use thereof requires review and approval by the village prior to the installation thereof.

(B) The application shall include the following:

(1) A block plan showing the proposed location of the installation;

(2) A site plan, including the building(s) location(s) on the lot or premises on which the satellite dish antenna is to be installed and adjoining properties, including properties which abut the property on the other side of the street from the proposed location;

(3) Description of the proposed installation, including a picture or schedule of all elements thereof which would be exposed to view from adjacent properties;

(4) A visual impact of the installation on the abutting properties;

(5) Coloration of the antenna and detailed information as to the construction and stability of the antenna; and

(6) Other pertinent information as may be required.

(1992 Code, § 62.004) (Ord. 1-86, passed - - 1986)

§ 113.69 CONSIDERATION OF PERMIT.

The Ordinance Administrator of the Village of Birch Run may approve the application after reviewing all of the information contained in the permit application.

(1992 Code, § 62.005) (Ord. 1-86, passed - - 1986)

§ 113.70 APPROVAL.

(A) In the event that the Ordinance Administrator does not approve the application, then the applicant may appeal the rejection directly to the Village Council, at a special meeting or regular meeting scheduled by the Village Council. The hearing must be requested in writing within 20 days of the denial of a permit.

(B) In the event that an applicant is denied and requests a hearing, the Ordinance Administrator shall direct all pertinent information directly to the Council, along with a report and recommendation to the Village Council and shall notify the owners of all abutting properties of the application and the date on which the request for permit will be considered by the Village Council.

(C) At the hearing, the Village Council shall consider the application and shall give all interested property owners an opportunity to be heard on the matter. The Village Council may thereafter grant the request for permit, deny the request or approve the request with

conditions.

(D) A denial of a request which otherwise complies with the specific requirements of this subchapter and other applicable ordinances of the Village Council shall be based upon findings that the installation would have a substantial, detrimental effect upon one or more adjoining public or private properties or otherwise be contrary to public safety, health or welfare, specifying the basis for the findings.

(E) The conditions which may be attached or reasons for denial may relate to the following:

- (1) Location;
- (2) Size;
- (3) Elevation;
- (4) Color;
- (5) Screening;
- (6) Landscaping;
- (7) Fencing; or
- (8) Other matters having an impact on adjoining properties.

(1992 Code, § 62.006) (Ord. 1-86, passed - - 1986)

§ 113.71 SHORT TITLE.

This subchapter for brevity may be cited, repeated and referred to and may be amended by the short title of Satellite Dish Ordinance of the Village of Birch Run, Michigan.

(1992 Code, § 62.009) (Ord. 1-86, passed - - 1986)

§ 113.99 PENALTY.

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

(B) Any person who violates any provision of §§ 113.35 through 113.49 shall, upon conviction, be punished by a fine of not more than \$500 or by imprisonment for not more than 90 days, or both the fine and imprisonment in the discretion of the judge having jurisdiction. Each day's failure of compliance with any provision of §§ 113.35 through 113.49 shall constitute a separate offense. Legal proceedings to enjoin the violation of any of the provisions of §§ 113.35 through 113.49 may be brought in any court of competent jurisdiction in the name of the village. The action shall be taken only as authorized by the Council.

(C) Any person, group, organization, partnership, association or corporation who installs the satellite dish antenna without obtaining a permit or following the guidelines and process of this subchapter, and shall violate any provision(s) of §§ 113.65 through 113.71, shall upon conviction thereof, be subject to a fine of not more than \$100 or be imprisoned for a term not more than 90 days, or both the fine and imprisonment at the discretion of the court.

(1992 Code, §§ 30.017, 62.007) (Ord. 2-81, passed - - 1981; Ord. 1-86, passed - - 1986)

CHAPTER 114: GENERAL REGULATIONS

Section

Alarm Systems

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ALARM SYSTEMS

§ 114.01 PURPOSE.

To regulate residential and business security alarm systems, require State of Michigan licensing of those engaged in the business of installation and maintenance of alarm systems and/or combined monitoring sales facilities, require annual permits of those owning or occupying any premise equipped with an alarm system, require alarm system users to supply information on other person(s) who have access to the structure from which a system emits an audible and/or visible signal, define and stipulate a time limit on visible and/or audible external building alarm signals, prohibit the connection of automatic dialers to certain phone numbers, require separate system maintenance in multiple unit structures with separate entrances, provide for the assessment of specific fees and/or fines for responding to false alarms and appeals of those fees.

(Ord. 3-90, passed 6-11-1990)

§ 114.02 TITLE.

This subchapter shall be known and referred to as the Alarm System Ordinance.

(Ord. 3-90, passed 6-11-1990)

§ 114.03 DEFINITIONS.

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

ALARM SYSTEM. A detection device or an assemble of equipment or devices arranged to signal the presence of a hazard requiring urgent attention and to which police officers and/or Fire Department personnel are expected to respond. The term **ALARM SYSTEM** shall encompass burglar alarms and fire alarms. However, alarm systems on motor vehicles shall be excluded from the definition and operation of this subchapter unless the motor vehicle alarm is connected to an alarm system at the premises owned and/or leased by the user. Also excluded is internal alarm systems designed solely to alert or signal persons within the premises in which the alarm system is located of an unauthorized intrusion or presence of a hazard within the premises. If such an internal system, however, also employs an audible signal emitting sounds or a flashing light or beacon designed to signal persons outside the premises, such an alarm system is within the provisions of this subchapter.

ALARM USER. Any person, firm or corporation who is the owner and any person, firm or corporation who is a lessee of the owner of premises in which an alarm system, as defined in **ALARM SYSTEM**, is installed and maintained.

BURGLAR ALARM. An alarm within the definition of **ALARM SYSTEM** which is designed to detect an unwarranted intrusion into a premise or an attempted robbery or other violent act at a premise. The term **BURGLAR ALARM** includes the terms **AUTOMATIC HOLD-UP ALARM, INTRUSIONS ALARM, DISTURBANCE ALARM, PANIC ALARM, ROBBERY ALARM, HOLD-UP ALARM** and **LOCAL ALARM**.

FALSE ALARM. Activation of an alarm system through mistake, mechanical failure, malfunction, improper installation, lack of prudent maintenance or through the negligence of the occupant of the residence and/or building in which the alarm system is located, including their employees or agents. **FALSE ALARM** shall also mean any activation of an alarm system which indicates a crime or situation other than that which it was designed to indicate, or in the case of a fire alarm, any condition not resulting from a fire or potential fire hazard.

FIRE ALARM. An alarm system within the definition of **ALARM SYSTEM** which is designed to detect and provide warning of a fire emergency, including local alarms. Smoke detectors or other internal fire suppression equipment designed to monitor products of combustion and temperature rise and at a predetermined measurement discharge fire extinguishing substances are excluded from the definition and coverage of this subchapter. If, however, the smoke detectors or fire suppression devices are connected to or are a part of a system designed to signal persons outside the premises in which the detection equipment is located that a fire hazard exists on the premises, then the internal detection and suppression equipment is within this definition.

INTENTIONAL FALSE ALARM. Any intentional activation of an alarm system for the purposes of measuring response time of police and/or fire units.

LOCAL ALARM. An alarm system within the definition of **ALARM SYSTEM** which employs audible signals designed to alert persons outside the premises in which the alarm system is located.

(Ord. 3-90, passed 6-11-1990)

§ 114.04 ALARM PERMIT REQUIREMENTS.

(A) A permit is required for owning or occupying premises equipped with alarm system. Any person, firm or corporation who, after the effective date of this subchapter shall take ownership, lease or occupy a premise in which a burglar and/or fire alarm system is installed and/or maintained shall obtain a permit from the Village of Birch Run. Permits shall be obtained at the office of the Village Clerk. Annual renewal applications will be mailed to the local business address from the office of the Village Clerk.

(B) Any person maintaining or operating an alarm system at more than one premise within the Village of Birch Run shall obtain an alarm permit for each separate premise.

(C) Any alarm system user who maintains or operates an alarm system without first obtaining a permit, as required by this subchapter, shall be guilty of a municipal civil infraction.

(D) Any person who uses a permit for any premises other than those identified on the application for the permit shall be guilty of a municipal civil infraction.

(E) Any person who causes an alarm system permit to be bought, sold or leased for any value or consideration in any form whatever shall be guilty of a misdemeanor.

(F) A permit fee shall be charged for the permit required by this subchapter to help defray the costs incurred by the village in the administration, maintenance and supervision of the provisions of this subchapter. Alarm permits issued shall be charged a non-refundable fee, as determined from time to time by resolution of the Village Council, which shall be paid for at the time the application is filed.

(Ord. 3-90, passed 6-11-1990) Penalty, see § 114.99

§ 114.05 APPLICATION FOR PERMIT.

(A) The permit application must be completed and signed by both the owner and the lessee, if any, of the premises on which the alarm system is maintained.

(B) The application shall include the following information:

- (1) Address and telephone number of the premises on which the alarm system is maintained;
- (2) Name, address and telephone number of the owner of the premises;
- (3) Name, address and telephone number of the lessee, if any, of the premises;
- (4) Name, address and telephone number of the person, firm or corporation installing and/or servicing the alarm system;
- (5) Names, addresses and telephone numbers of all persons (maximum of four) responsible for extinguishing or resetting the alarm or device, checking the premises or responding to notice from the Police and/or Fire Department(s) of an activation of the alarm system;
- (6) Description of the alarm system; and
- (7) The additional information as the Police and/or Fire Department(s) may require.

(C) The application shall contain a statement, signed by all alarm users who are applying for a permit under this section, that the applicants have read the copy of the ordinance provided by the village and are signing the application with full knowledge and understanding of the provisions of this subchapter and their duties and liabilities under the ordinance, and that, if applicable, the consent to the Police and/or Fire Department(s) disabling or disconnecting a local alarm under circumstances described in § 114.08.

(D) Upon issuance of the permit, the holder(s) thereof shall notify the Village Clerk immediately of any change to the information provided in the application for the permit. Failure to so notify the Village Clerk may constitute grounds for revocation of the permit.

(Ord. 3-90, passed 6-11-1990)

§ 114.06 LICENSING REQUIRED.

No person, firm or corporation shall engage in the business of providing for the installation, operation and/or maintenance of a burglar and/or fire alarm system and/or a combined alarm monitoring sales facility unless properly licensed by the State of Michigan pursuant to Public Act of 1968, amended, being M.C.L.A. §§ 338.1051 *et seq.*

(Ord. 3-90, passed 6-11-1990) Penalty, see § 114.99

§ 114.07 TELEPHONE ALARM SYSTEM PROHIBITED.

No person, firm or corporation shall sell, install, operate, adjust, arrange for or contract to provide advice which upon activation, either mechanically, electronically or by any other means, initiates the automatic calling or dialing of, or makes a connection directly to a telephone assigned to a police or fire agency for the purpose of delivering a recorded message, except those financial institutions approved for direct connection to Central Dispatch or portable alarms installed by the Police Department.

(Ord. 3-90, passed 6-11-1990) Penalty, see § 114.99

§ 114.08 SHUT-OFF OF LOCAL ALARMS.

Local alarms shall be equipped with an automatic shut-off device, deactivating audible signals within a reasonable time. Whenever any local alarm continues to emit audible signals, whether continuously or on a regularly repeating basis, for over 20 minutes and persons listed on the permit application for the alarm system cannot be contacted by the Police Department, or do not respond within 30 minutes of being contacted, and the audible signal creates a nuisance or disturbance to the peace and tranquility of the surrounding area, the alarm user responsible for the alarm shall be guilty of a municipal civil infraction. In addition, the Police Department and/or Fire Department shall be authorized to disconnect or otherwise disable the local alarm by cutting the wires, disconnecting the speakers or disabling the other components of the alarm system as are located on the exterior of the premise.

(Ord. 3-90, passed 6-11-1990)

§ 114.09 SEPARATE SYSTEMS REQUIRED.

Buildings having more than one occupant who utilize separate entrances for access to their individual units shall have separate alarm systems for each unit. This section shall not be construed to require the installation of alarm systems, but only to require separate systems for separate units when installed.

(Ord. 3-90, passed 6-11-1990)

§ 114.10 FALSE ALARM FEES.

Notwithstanding any penalties provided for upon conviction for any violation of this subchapter, and notwithstanding the fact that prosecution for violation of this subchapter has or has not commenced, any person, firm or corporation operating an alarm system which signals more than two false alarms as defined in § 114.03 within one calendar year shall pay to the Village of Birch Run a false alarm fee in order to defray a portion of the cost of response to false alarms. False alarm fees shall be determined and may be changed from time to time by resolution of the Village Council.

(Ord. 3-90, passed 6-11-1990)

§ 114.11 EXCEPTIONS TO ALARM FEES.

Alarm conditions existing under the following circumstances shall not constitute a false alarm and no false alarm fee shall be assessed:

- (A) False alarms recorded in the first 30 days after installation are not counted for enforcement purposes;
- (B) False alarms recorded as a result of storms, earthquakes or other violent conditions beyond the control of owners and/or lessees;
- (C) Alarm conditions being activated by a person working on the alarm system with prior notification to the Village of Birch Run Police Department; and
- (D) Alarms which can be substantiated as being activated by disruption or disturbance of telephone company facilities or motor vehicle utility pole accidents.

(Ord. 3-90, passed 6-11-1990)

§ 114.12 NOTICE OF ALARM VIOLATION.

- (A) A notice of alarm violation shall be designed and used as required by this subchapter.
- (B) The Village of Birch Run Clerk's office shall forward a notice of an alarm violation to the alarm user following each false alarm occurrence.
- (C) The alarm user, upon receipt of the notice of alarm violation, shall complete any required information on the notice of alarm violation and return the notice as stipulated.

(Ord. 3-90, passed 6-11-1990)

§ 114.13 BILLING AND REPORTING.

- (A) The Village Clerk will be provided a notice of alarm violation by the Police Department and will then, by first class mail, notify the alarm user of the status of the violation and false alarm fee, if applicable.
- (B) The alarm user will have ten days to complete the notice of alarm violation form and return it, with payment, (if applicable), to the Clerk.

(C) If this notice of alarm violation is not returned within the prescribed time limit, the Clerk may cause the alarm user's permit to be revoked.

(Ord. 3-90, passed 6-11-1990)

§ 114.14 APPEAL OF ALARM VIOLATION.

(A) Within ten days of the date of receipt of a notice of alarm violation, an alarm user wishing to appeal a false alarm violation and the associated fee as a result of a condition described in § 114.12, may do so by a written appeal request.

(B) The appeal request, directed to the Village of Birch Run Police Department, shall contain documentation of the applicable condition as described in § 114.11(A), (B), (C) and (D).

(C) The Police Chief, Fire Chief or a designated representative, shall make a determination on the appeal request and shall notify the alarm user of the decision in writing.

(D) In the event the alarm user is not satisfied with the decision rendered by the Police Chief, Fire Chief or a designated representative, the alarm user, within ten days of the determination of the Police or Fire Chief, may file with the Village of Birch Run, a written request that the determination be reconsidered.

(E) The Village Council President or his or her designee shall decide whether to uphold or set aside in whole or in part, the decision reached by the Police or Fire Chief. The alarm user shall be notified of that decision in writing.

(Ord. 3-90, passed 6-11-1990)

§ 114.15 DEFECTIVE ALARMS.

(A) An alarm system signaling more than five false alarms within a calendar year is presumed to be defective.

(B) Upon written notice, the owner or occupant of the building or residence shall have the alarm system inspected, at the owner's or occupant's expense, by a licensed alarm system contractor within ten days of receipt of the fifth notice of alarm violation, and shall forward to the Village of Birch Run Police Department the contractor's report of the probable cause of the false alarms and the measures instituted to eliminate same.

(Ord. 3-90, passed 6-11-1990)

§ 114.16 REVOCATION OF PERMIT.

An alarm system permit issued by the Village Clerk may be revoked by Village of Birch Run upon the occurrence of any of the following conditions:

(A) Furnishing of false or misleading information on the application for permit, or failing to notify the village of any changes to the information provided in the application for permit;

(B) Failure of the alarm user or the person(s) responsible for extinguishing or resetting the alarm or device as identified on the alarm user's permit to respond within 30 minutes of notification by the Police or Fire Department of a response by the Department to an activation of the alarm system;

(C) Failure to repair or replace an alarm system that is defective as described in § 114.15 after notification by the Village Clerk's office;

(D) Failure or refusal of the alarm user, or the agent or employee of the alarm user, to reasonably cooperate with Police Department personnel or members of the Clerk's office in the administration of this subchapter;

(E) Intentionally activating an alarm system to test the response time of police and fire units. Any alarm user who shall intentionally activate an alarm system to test response time of police and fire units shall also be guilty of a misdemeanor; and

(F) Failure or refusal of the alarm user to pay all outstanding false alarm fees as required by this subchapter.

(Ord. 3-90, passed 6-11-1990)

§ 114.17 APPEAL OF REVOCATION.

(A) Within ten business days after notification of revocation by the Village Clerk's office, the alarm user may file, with the Village Clerk's office, a written request for a hearing before the Village Council to review the revocation.

(B) The alarm user shall be notified of the date and time set for the hearing by the Village Council. Following the hearing, the Council may confirm the notification or reinstate the permit.

(Ord. 3-90, passed 6-11-1990)

§ 114.18 OBLIGATION.

This subchapter does not constitute a contract for the Village of Birch Run or the Village of Birch Run Police or Birch Run Township Fire Department to answer any alarms, whether false or otherwise. Further, this subchapter does not guarantee that the Police or Fire Department will respond to any alarm from any source. This subchapter does not obligate the Village of Birch Run or its Police and/or Birch Run Township Fire Department in any manner to assist, respond or answer any alarm system subscribed to or owned by an

individual, organization or business.

(Ord. 3-90, passed 6-11-1990)

GARAGE SALES

§ 114.35 DEFINITIONS.

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

GARAGE SALE, YARD SALE, RUMMAGE SALE, BASEMENT SALE, ATTIC SALE, LAWN SALE, FLEA MARKET SALE, or any other similar **CASUAL SALE** and the like. Any sale of tangible personal property, whether used, second-handed, damaged or discarded, not otherwise regulated in the Village of Birch Run, advertised by any means whereby the public at-large is or can be made aware of the sale.

GOODS. Any goods, warehouse merchandise or other property capable of being the object of a sale regulating hereunder.

PERSON. Individuals, groups, organizations, partnerships, voluntary associations and corporations.

(1992 Code, § 20.001) (Ord. 1-85, passed - - 1985)

§ 114.36 SIGNS.

Under this subchapter, signs of the following nature are permitted:

(A) One sign advertising a garage sale may be erected or placed on the premises of the sale and shall be removed immediately at the end of the third day. No sign should be placed on any other property or street right-of-way.

(B) The sign shall not be in excess of six square feet and shall not be illuminated in any manner whatsoever except incidentally by street lights or house lights.

(1992 Code, § 20.002) (Ord. 1-85, passed - - 1985) Penalty, see § 114.99

§ 114.37 HOURS OF SALE.

No garage sale shall be held between the hours of 10:00 p.m. and 8:00 a.m.

(1992 Code, § 20.003) (Ord. 1-85, passed - - 1985)

§ 114.38 FREQUENCY AND DURATION OF SALES.

No more than two garage sales shall be conducted by any person within the period of any 12 calendar months, and the garage sales shall not be in excess of three consecutive days within that period, unless exempted by § 114.41.

(1992 Code, § 20.004) (Ord. 1-85, passed - - 1985) Penalty, see § 114.99

§ 114.39 DISPLAY OF ITEMS.

The items offered for sale at garage sales shall not be displayed in the front yard of the premises.

(1992 Code, § 20.005) (Ord. 1-85, passed - - 1985)

§ 114.40 SHORT TITLE.

This subchapter, for brevity, may be cited, pleaded and referred to and may be amended by the short title of Garage Sales Ordinance of the Village of Birch Run, Michigan.

(1992 Code, § 20.008) (Ord. 1-85, passed - - 1985)

§ 114.41 PERSONS AND SALES; EXEMPTED.

(A) Persons selling goods pursuant to an order or process of a court of competent jurisdiction.

(B) Persons acting in accordance with their powers and duties as public officials.

(C) Any persons selling or advertising for sale an item or items of personal property which are specifically named or described in the advertisement, and the items do not exceed five in number.

(D) Any publisher of a newspaper, magazine or other publication or other communication media who publishes or broadcasts in good faith without knowledge of its false, deceptive or misleading character and without knowledge that the provisions of the Village of Birch Run have not been complied with.

(E) Any sale regulated under any other provision of the ordinance of the Village of Birch Run.

(F) Any sale conducted by a merchant or other business establishment from or at his or her place of business.

(G) Any bonafide, charitable, religious, educational, cultural or governmental institution or organization, provided, however, that the burden of establishing the exemption under this section shall be on the organization or institution claiming the exemption.

(H) Auction by a legal, professional and registered auctioneer.

(I) A person in the process of moving into or out of the village within 60 days of the sale.

(1992 Code, § 20.009) (Ord. 1-85, passed - - 1985)

§ 114.99 PENALTY.

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

(B) Notwithstanding any other fees required by any other section of §§ 114.01 through 114.18, any person or persons violating any of the provisions of §§ 114.01 through 114.18 shall be guilty of a municipal civil infraction and shall be handled through the process outlined in Chapter 35.

(C) Any person, group, organization, partnership, association or corporation who conducts any sale in a manner which shall violate any of the provisions of §§ 114.35 through 114.41, shall upon conviction thereof, be subject to a fine of not more than \$100 or be imprisoned for a term not more than 90 days, or both the fine and imprisonment at the discretion of the court.

(1992 Code, § 20.006) (Ord. 1-85, passed - - 1985; Ord. 3-90, passed 6-11-1990)

TITLE XIII: GENERAL OFFENSES

Chapter

130. GENERAL OFFENSES

CHAPTER 130: GENERAL OFFENSES

Section

130.01 Drug paraphernalia

130.02 Firearms

130.03 Alcoholic beverages to minors

130.04 Curfew for minor residents

130.99 Penalty

§ 130.01 DRUG PARAPHERNALIA.

(A) *Title.* This section shall be known and may be cited as the Village of Birch Run's Drug Paraphernalia Ordinance.

(B) *Definitions.* For the purpose of this section, the following terms, phrases, words and their derivations shall have the meaning given herein. When not consistent with context, words used in the present tense include the future, words used in the plural number include the singular number and words in the singular number include the plural number.

CONTROLLED SUBSTANCE. Any drug, substance or immediate precursor in schedules 1 through 5 of Part 72 of Michigan's Public Health Code, Public Act 368 of 1978, being M.C.L.A. §§ 333.1101 *et seq.* amendments thereto and the corresponding provisions of any successor statute.

DRUG PARAPHERNALIA. All equipment, products and materials of any kind which are used, intended for use or designed for use, in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance. It includes, but is not limited to:

(a) Kits used, intended for use or designed for use in planting, propagating, cultivating, growing or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived;

(b) Kits used, intended for use or designed for use in manufacturing, compounding, converting, producing, processing or preparing controlled substances;

(c) Isomerization devices used, intended for use or designed for use in increasing the potency of any species of plant which is a controlled substance;

(d) Testing equipment used, intended for use or designed for use in identifying, or in analyzing the strength, effectiveness or purity of controlled substances;

(e) Scales and balances used, intended for use or designed for use in weighing or measuring controlled substances;

(f) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used, intended for use or designed for use in cutting controlled substances;

(g) Separation gins and sifters used, intended for use or designed for use in removing twigs and seed from or in otherwise cleaning or refining marijuana;

(h) Blenders, bowls, containers, spoons and mixing devices used, intended for use or designed for use in compounding controlled substances;

(i) Capsules, balloons, envelopes and other containers used, intended for use or designed for use in packaging small quantities of controlled substances;

(j) Containers and other objects used, intended for use or designed for use in storing or concealing controlled substances;

(k) Hypodermic syringes, needles and other objects used, intended for use in parenterally injecting controlled substances into the human body;

(l) Objects used, intended for use or designed for use in ingesting, inhaling or otherwise introducing marijuana, cocaine, hashish or hashish oil into the human body, such as:

1. Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads or punctured metal bowls;

2. Water pipes;

3. Carburetion tubes and devices;

4. Smoking and carburetion masks;

5. Roach clips: meaning objects used to hold burning material, such as a marijuana cigarette that has become too small or too short to be held in the hand;

6. Miniature cocaine spoons and cocaine vials;

7. Chamber pipes;

8. Carburetor pipes;

9. Electric pipes;

10. Air-driven pipes;

11. Chillums;

12. Bongs; and

13. Ice pipes or chillers.

(3) In determining whether an object is drug paraphernalia, a court or other authority may consider, in addition to all other logically relevant factors, the following:

(a) Statements by an owner or by anyone in control of the object concerning its use;

(b) The proximity of the object, in the time and space, to a direct violation of this section;

(c) The proximity of the object to controlled substances;

(d) The existence of any residue of controlled substances on the object;

(e) Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object to deliver it to persons whom he or she knows intend to use the object to facilitate a violation of this section; the innocence of an owner or of anyone in control of the object, as to a direct violation of this section shall not prevent a finding that the object is intended for use, or designed for use as drug paraphernalia;

(f) Instructions, oral or written provided with the object concerning its use;

(g) Descriptive materials accompanying the object which explain or depict its use;

(h) National and local advertising concerning its use;

(i) The manner in which the object is displayed for sale;

(j) Direct or circumstantial evidence of the ratio of sales of the object(s) to the total sales of the business enterprise;

(k) The existence and scope of legitimate uses for the object in the community; and

(l) Expert testimony concerning its use.

(C) *Possession, manufacture and sale of drug paraphernalia.*

(1) It is unlawful for any person to use, or to possess with intent to use, drug paraphernalia to plant, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, re-pack, store, contain, conceal, inject, ingest, inhale or otherwise introduce a controlled substance into the human body.

(2) It is unlawful for any person to deliver, sell, offer for sale, display, supply, possess with intent to deliver, sell or manufacture with intent to deliver or sell drug paraphernalia, knowing that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, conceal, inject, ingest, inhale or otherwise introduce a controlled substance into the human body.

(3) It is unlawful for any person to place in any newspaper, magazine, handbill or other publication any advertisement, knowing that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended for use as drug paraphernalia.

(4) Any person 18 years of age or over who violates division (C)(2) above by delivering drug paraphernalia to a person under 18 years of age is at least three years his or her junior, is guilty of a special offense.

(D) *Exceptions.* To the extent of the permitted conduct only, this section does not apply to any person or entity who is licensed, registered or otherwise permitted by law to manufacture, use, possess, prescribe, dispense, distribute, conduct research with respect to or administer a controlled substance; including persons suffering from asthma, diabetes or other medical conditions requiring introduction of a controlled substance into the human body.

(E) *Civil forfeiture.* Any drug paraphernalia used, sold, possessed with intent to use or sell or manufactured with intent to sell in violation of this section shall be seized and forfeited to the Village of Birch Run.

(1992 Code, §§ 54.001–54.005) (Ord. 1-95, passed - - 1995) Penalty, see § 130.99

§ 130.02 FIREARMS.

(A) *Discharging firearm; prohibited.* No person shall discharge or fire any firearm within the Village of Birch Run.

(B) *Persons exempt from ordinance.* The ordinance shall not apply to:

(1) A law enforcement officer or a member of a duly authorized military organization when acting in the discharge of his or her duties;

(2) A person lawfully defending his or her home, person or property;

(3) A person within his or her own habitation or within a building owned by him or her or person so acting within the habitation or building of another with the permission of the latter; and

(4) A person shooting at an educational or training program under adequate supervision.

(C) *Firearm defined.* For the purpose of this section, the word **FIREARM** shall mean any weapon or device from which is propelled any missile, projectile, bullet, shot, pellet or other mass by means of explosives, compressed air or gas or by means of springs, levers or other mechanical device.

(1992 Code, §§ 50.001 - 50.003) (Ord. 2-69, passed - - 1969) Penalty, see § 130.99

§ 130.03 ALCOHOLIC BEVERAGES TO MINORS.

(A) *Possession of alcoholic liquor by minors.* No person under the age of 21 years shall purchase or knowingly possess and/or transport any alcoholic liquor or knowingly possess, transport or have under his or her control in any motor vehicle any alcoholic liquor unless the person is employed by a licensee under and as defined by the Michigan Liquor Control Act (Public Act 8 of 1933 ex. sess., being M.C.L.A. §§ 436.1101 through 436.2303) (as amended by Public Act 219 of 1951), and is possessing, transporting or having the alcoholic liquor in a motor vehicle under his or her control during regular working hours and in the course of his or her employment.

(B) *Definitions.*

(1) As used in this section, **PERSON** shall mean any person, firm, partnership, association or corporation.

(2) As used in this section, alcoholic liquor shall include any spirituous, vinous, malt or fermented liquor, liquids and compounds, whether or not medicated, proprietary, patented and by whatever name called, containing 1/2 of 1% or more of alcohol by volume which are fit for use for beverage purposes.

(1992 Code, §§ 52.001, 52.002) (Ord. 1-67, passed - - 1967) Penalty, see § 130.99

§ 130.04 CURFEW FOR MINOR RESIDENTS.

(A) *Hour of curfew; presence of minors on streets; unlawful.* No minor under the age of 17 years shall loiter, idle, wander, stroll 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, between the hours of 10:00 p.m. and 7:00 a.m. of the following day, official city time.

(B) *Exemptions.* This section does not apply to a minor who is:

(1) Accompanied by the minor's parent or guardian;

(2) On an errand at the direction of the minor's parent or guardian, without any detour or stop;

(3) In a motor vehicle involved in interstate travel;

(4) Engaged in an employment activity, or going to or returning home from an employment activity, without any detour or stop;

(5) Involved in an emergency;

(6) On the sidewalk abutting the minor's residence or abutting the residence of a next-door neighbor if the neighbor did not complain to the police department about the minor's presence;

(7) Attending an official school, religious, or other recreational activity supervised by adults and sponsored by the city, a civic organization, or another similar entity that takes responsibility for the minor, or going to or returning home from, without any detour or stop, an official school, religious, or other recreational activity supervised by adults and sponsored by the city, a civic organization, or another similar entity that takes responsibility for the minor;

(8) Exercising First Amendment rights protected by the United States Constitution, such as the free exercise of religion, freedom of speech, and the right of assembly; or

(9) Married or had been married or had disabilities of minority removed in accordance with state law.

(C) *Responsibility of parent, guardian; penalty.* No parent, guardian or other adult person having the care and custody of a minor under the age of 17 years shall permit the minor to loiter, idle, wander, stroll or play in or upon the public streets, highways, roads, alleys, parks, playgrounds, wharves, docks or other public grounds, public places and public buildings, places of amusement and entertainment, vacant lots or other unsupervised places, between the hours of 10:00 p.m. and 7:00 a.m. of the following day, official city time; provided, however, that the provisions of this section do not apply when the minor is accompanied by his or her parent, guardian or other adult person having the care and custody of the minor, unless the minor is upon an emergency errand or legitimate business directed by his or her parent, guardian or other adult person having the care and custody of the minor. Every parent, guardian or adult who is convicted of a violation of this section shall be punished by imprisonment for not more than 90 days or by a fine of not less than \$5 nor more than \$500 or by both the fine and imprisonment in the discretion of the court. Each violation of the provisions of this section shall constitute a separate offense.

(D) *Short title.* This section shall hereafter be referred to by the short title, The Birch Run Curfew Ordinance.

(1992 Code, §§ 53.001 - 53.003) (Ord. 1-58, passed - - 1958) Penalty, see § 130.99

§ 130.99 PENALTY.

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

(B) (1) Any person who shall be convicted of any of the provisions of divisions (C)(1), (2) or (3) of § 130.01 is guilty of a misdemeanor and shall be punished by a fine not to exceed \$500, or by imprisonment not to exceed 90 days, or both, in the discretion of the court. Each day a violation continues shall be considered a separate offense and may be punished accordingly.

(2) Any person who shall be convicted of violating any of the provisions of division (C)(4) of § 130.01, or any person who has previously been convicted of a violation of divisions (C)(1), (2) or (3) of § 130.01 and is subsequently convicted of a violation of the same section is guilty of a misdemeanor and conviction shall be punished by imprisonment for not less than five days, but not more than 90 days and, in addition, a fine not to exceed \$500 may be imposed.

(C) Any person violating any of the provisions of § 130.02 shall be deemed guilty of a misdemeanor and shall be punished by a fine of not more than \$100 or by imprisonment in the county jail not to exceed 90 days or by both the fine and imprisonment.

(D) Any person who shall violate the provisions of § 130.03 shall, upon conviction, be punished by a fine not to exceed \$100 or by imprisonment for not to exceed 90 days, or by both fine and imprisonment, at the discretion of the court.

(1992 Code, §§ 50.004, 52.003, 54.006) (Ord. 1-67, passed - - 1967; Ord. 2-69, passed - - 1969; Ord. 1-95, passed - - 1995)

TITLE XV: LAND USAGE

Chapter

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CHAPTER 150: GENERAL REGULATIONS

Section

Land Division

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LAND DIVISION

§ 150.01 TITLE.

This subchapter shall be known and cited as the Village of Birch Run Land Division Ordinance.

(1992 Code, § 140.001) (Ord. 98-3, passed 5-18-1998)

§ 150.02 PURPOSE.

The purpose of this subchapter is to carry out the provisions of the State Land Division Act, Public Act 288 of 1967, being M.C.L.A. §§ 560.101 through 560.293, as amended, formerly known as the Subdivision Control Act, to prevent the creation of parcels of property which do not comply with applicable ordinances and the Act, to minimize potential boundary disputes, maintain orderly development of the community and otherwise provide for the health, safety and welfare of the residents and property owners of the municipality by establishing reasonable standards for prior review and approval of land divisions within the municipality.

(1992 Code, § 140.002) (Ord. 98-3, passed 5-18-1998)

§ 150.03 DEFINITIONS.

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

APPLICANT. A natural person, firm, association, partnership, corporation or combination of any of them that holds an ownership interest in land whether recorded or not.

DIVIDED or DIVISION. The partitioning or splitting of a parcel or tract of land by the proprietor thereof or by his or her heirs, executors, administrators, legal representatives, successors or assigns, for the purpose of sale or lease of more than one year, or of a building development that results in one or more parcels of less than 40 acres or the equivalent and that satisfies the requirements of §§ 108 and 109 of the State Land Division Act.

EXEMPT SPLIT or EXEMPT DIVISION. The partitioning or splitting of a parcel or tract of land by the proprietor thereof, or by his or her heirs, executors, administrators, legal representatives, successors or assigns, that does not result in one or more parcels of less than 40 acres or the equivalent; provided all resulting parcels are accessible for vehicular travel and utilities from existing public roads through existing adequate roads or easements.

FORTY ACRES OR THE EQUIVALENT. Either 40 acres, a quarter-quarter section containing not less than 30 acres, or a government lot containing not less than 30 acres.

GOVERNING BODY. The Birch Run Village Council.

VILLAGE CLERK. The Birch Run Village Clerk.

ZONING ADMINISTRATOR. The Village of Birch Run Zoning Administrator.

(1992 Code, § 140.003) (Ord. 98-3, passed 5-18-1998)

§ 150.04 PRIOR APPROVAL REQUIREMENT FOR LAND DIVISIONS.

Land in the Village of Birch Run shall not be divided without the prior review or approval of the Birch Run Village Zoning Administrator, in accordance with this subchapter and the State Land Division Act; provided that the following shall be exempted from this requirement:

- (A) A parcel proposed for subdivision through a recorded plat pursuant to the State Land Division Act and applicable ordinances;
- (B) A lot in a recorded plat proposed to be divided pursuant to the State Land Division Act and other applicable ordinances; and
- (C) An exempt split as defined in this subchapter.

(1992 Code, § 140.004) (Ord. 98-3, passed 5-18-1998)

§ 150.05 APPLICATION FOR LAND DIVISION APPROVAL.

An applicant shall file all of the following with the Village Clerk for review and approval of a proposed land division before making any division either by deed, land contract, lease for more than one year or for building development:

- (A) A completed application form on the form as may be provided by the Village of Birch Run;
- (B) Proof of fee ownership of the land proposed to be divided;
- (C) A tentative parcel map which includes an adequate and accurate legal description of the existing parcel and the parcels proposed to be created by the division(s) and shows area, parcel lines, public utility easements and accessibility of the parcels for vehicular traffic and public utilities from existing or proposed public roads. The tentative parcel map shall be a scale drawing showing the approximate dimensions of the parcels;
- (D) Proof that all standards of the State Land Division Act and this subchapter have been met;
- (E) The history and specifications of any previous divisions of land of which the proposed division was a part sufficient to establish the parcel to be divided was lawfully in existence as of March 31, 1997, the effective date of the State Land Division Act;
- (F) Proof that all due and payable taxes or installments of special assessments pertaining to the land proposed to be divided are paid in full;
- (G) If transfer of division rights are proposed in the land transfer, detailed information about the terms and availability of the proposed division rights transfer; and
- (H) The fee as may, from time to time be established by resolution of the Birch Run Village Council for land division, reviews pursuant to this subchapter to cover the costs of review of the application and administration of this subchapter and the State Land Division Act.

(1992 Code, § 140.005) (Ord. 98-3, passed 5-18-1998)

§ 150.06 PROCEDURES FOR REVIEW OR APPLICATIONS FOR LAND DIVISION APPROVAL.

(A) Upon receipt of a land division application package, the Village Clerk shall forthwith submit the same to the Zoning Administrator for a decision. The Zoning Administrator shall approve, approve with reasonable conditions to assure compliance with applicable ordinances and the protection of public health, safety and general welfare, or disapprove the land division applied for within 45 days after receipt of the application package conforming to this subchapter's requirements, and shall promptly notify the applicant of the decisions and the reasons for any denial. If the application package does not conform to this subchapter requirements and the State Land Division Act, the Zoning Administrator shall return the same to the applicant for completion and refile in accordance with this subchapter and the State Land Division Act.

(B) Any person or entity aggrieved by the decision of the Zoning Administrator may, within 30 days of the decision, appeal the decision to the Birch Run Village Council which shall consider and resolve the appeal by a majority vote of the Village Council at its next regular meeting affording sufficient time for a 20-day written notice to the applicant (and appellant where other than the applicant) of the time and date of the meeting and appellate hearing.

(C) A decision approving a land division is effective for 90 days, after which it shall be considered revoked unless, within the period, a document is recorded with the Saginaw County Register of Deeds office and filed with the Village Clerk accomplishing the approved land division or transfer. The Village Clerk shall provide a copy of the document to the Zoning Administrator and to the Birch Run Township Assessor.

(D) The Zoning Administrator shall maintain an official record of all approved and accomplished land division transfers.

(1992 Code, § 140.006) (Ord. 98-3, passed 5-18-1998)

§ 150.07 STANDARDS FOR APPROVAL OF LAND DIVISIONS.

A proposed land division shall be approved if the following criteria are met:

(A) All the parcels to be created by the proposed land division fully comply with the applicable lot, yard and area requirements of the Village of Birch Run Zoning Ordinance, including, but not limited to, minimum lot frontage and/or width, minimum lot area and minimum lot width to depth ratio;

(B) The proposed land division shall comply with all requirements of the State Land Division Act and this subchapter; and

(C) All parcels created and remaining shall have existing adequate accessibility or an area available therefore, to a public road for public utilities and emergency and other vehicles not less than the requirements of all applicable ordinances.

(1992 Code, § 140.007) (Ord. 98-3, passed 5-18-1998)

§ 150.08 ALLOWANCE FOR APPROVAL OF OTHER LAND DIVISIONS.

Notwithstanding disqualification from approval pursuant to this subchapter, a proposed land division which does not fully comply with the applicable lot, yard, accessibility and area requirements of the Village of Birch Run Zoning Ordinance may be approved in any of the following circumstances:

(A) Where the Village of Birch Run Zoning Board of Appeals has, previous to this subchapter, granted a variance from the lot, yard, ratio, frontage and/or area requirements with which the parcel failed to comply; and

(B) Where the proposed land division involves only the minor adjustment of a common boundary line or involves a conveyance between adjoining properties which does not result in either parcel violating this subchapter, the Village of Birch Run Zoning Ordinance or the State Land Division Act.

(1992 Code, § 140.008) (Ord. 98-3, passed 5-18-1998)

§ 150.09 CONSEQUENCES OF NONCOMPLIANCE WITH LAND DIVISION APPROVAL REQUIREMENT.

(A) Any parcel created in noncompliance with this subchapter shall not be eligible for any building permits or zoning approvals, such as special land use approval or site plan approval, and shall not be recognized as a separate parcel on the assessment roll.

(B) Pursuant to § 53(3) of the General Property Tax Act, the assessor shall not recognize the parcel split which violates the Land Division Act, until the assessor has first referred the suspected violation to the Village's prosecuting attorney and has given written notice of the violation(s) to the following:

- (1) The Subdivision Control Section of the Department of Consumer and Industry Services;
- (2) The person requesting the split; and
- (3) The person suspected of the violation or potential nonconformity.

(C) After the assessor has completed the referral and the written notices required by § 53(3), split shall be made on the following year's assessment roll.

(D) In addition, violation of this subchapter shall subject the violator to the penalties and enforcement actions set forth in § 150.99(B) and may otherwise be provided by law.

(1992 Code, § 140.009) (Ord. 98-3, passed 5-18-1998) Penalty, see § 150.99

PUBLIC IMPROVEMENTS; SPECIAL ASSESSMENTS

§ 150.25 PUBLIC IMPROVEMENTS; COST.

(A) Pursuant to the Authority conferred by Public Act 3 of 1895, being M.C.L.A. §§ 61.1 through 75.12, as amended, and the Village Charter, the cost of the following public improvements shall be paid for by special assessment against the abutting property and levied on a frontage foot basis in the percentages stated.

- (1) *Streets.* Up to 50% each side.
- (2) *Curbs, gutters and curb rails.* Up to 50% each side.
- (3) *Sidewalks.* Seventy-five percent.

(B) Provided, however, that where an improvement, because of sound engineering practice, grade, topography or previous construction, must be located at some point not abutting the property but nevertheless benefitting the property, the improvement shall be considered as though it were abutting the property and shall be assessed accordingly.

(C) Provided further, that the above-stated percentages may be varied by resolution of the Council with respect to specific improvements if, in the discretion of the Council, the stated percentages would result in inequities.

(1992 Code, § 123.001) (Ord. 1-57, passed - - 1957)

§ 150.26 IRREGULAR SHAPED LOTS; FRONTAGE.

In the case of irregular shaped lots, frontage shall be determined by adding the length of the front and back property lines and dividing the same by two.

(1992 Code, § 123.002) (Ord. 1-57, passed - - 1957)

§ 150.27 CORNER LOTS; ASSESSABLE FRONTAGE.

(A) In the case of corner lots where improvements are constructed on both the fronting and adjacent side at one time, the total assessable frontage shall be 60% of the combined frontage of both sides, otherwise the assessments shall be computed as provided in § 150.25.

(B) Where improvements are constructed on both front and adjacent sides in different years, the second assessment shall be adjusted so that in no case the total assessable frontage shall exceed 60% of the combined frontage.

(1992 Code, § 123.003) (Ord. 1-57, passed - - 1957)

§ 150.28 MAXIMUM STANDARDS; EXPENSES.

(A) The following maximum standards shall regulate improvements constructed wholly or partially by special assessment in accordance with this subchapter:

- (1) *Streets.* Twenty-eight feet wide.
- (2) *Sidewalks.* Five feet.

(B) Provided further, that the total expense of the street intersections and sidewalk intersections shall be paid from the village funds and any excess over the above prescribed standards which may be required because of engineering practices, shall also be paid from the village funds.

(1992 Code, § 123.004) (Ord. 1-57, passed - - 1957)

§ 150.29 IMPROVEMENT INITIATED.

Any improvement may be initiated by the Village Council on its own motion or by a petition signed by 51% of the property owners abutting the improvement, or to be benefitted thereby; provided, however, that the abutting property owners shall own at least 51% of the frontage to be affected by the improvement.

(1992 Code, § 123.005) (Ord. 1-57, passed - - 1957)

§ 150.30 PROCEDURE ADOPTED.

The procedure concerning the resolution of the Council, estimate of costs, notice of hearing, the making of the assessment roll, correction of errors, the collection of special assessments and any other matters concerning the construction of improvements by special assessment set forth in the Village Charter are adopted and incorporated herein.

(1992 Code, § 123.006) (Ord. 1-57, passed - - 1957)

§ 150.31 PAYMENT OF SPECIAL ASSESSMENTS.

(A) Special assessments may be paid to the Village Treasurer at any time prior to the due date set forth in the resolution establishing the assessment in the actual amount levied, without interest or collection fees.

(B) All special assessments remaining unpaid on the due date shall be placed on the tax roll and shall be collected by the Village Treasurer in the manner set forth in the Village Charter.

(C) All special assessments in excess of \$250 for any one project may, at the option of the property owner, be paid in five equal annual installments upon written notice being given to the Village Clerk prior to the due date of the year in which the assessment is levied. The first annual installment shall be due and payable on the due date of the year in which the assessment is levied and the remaining four installments, together with not less than 6% interest on all unpaid amounts, shall be due and payable on the due date of each year thereafter; provided, however, that the unpaid balance may be paid at any time upon the election of the property owner, in which case the interest shall be prorated thereon.

(1992 Code, § 123.007) (Ord. 1-57, passed - - 1957)

§ 150.32 WAIVERS.

The owner or Owners of Record of any premises may at any time execute, in writing, a waiver of notice and proceedings and file the same with the Council, waiving any and all notice of hearing and any other proceedings required hereunder and authorize the Council to make the special assessment as the Council may determine against the owner and his or her property without further notice. Any special assessment, so made, shall upon confirmation of the Council, be considered the same as any other special assessment formally made hereunder notwithstanding the omission of any notice of proceedings so waived.

(1992 Code, § 123.008) (Ord. 1-57, passed - - 1957)

§ 150.33 SHORT TITLE.

This subchapter shall hereafter be referred to by the short title An Ordinance Concerning Public Improvements and Special Assessments.

(1992 Code, § 123.009) (Ord. 1-57, passed - - 1957)

§ 150.99 PENALTY.

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

(B) (1) Any person who violates any of the provisions of §§ 150.01 through 150.09 shall be deemed guilty of a misdemeanor and shall be punished by a fine of not more than \$100 or by imprisonment in the county jail for not to exceed 90 days, or both the fine and imprisonment.

(2) Any person who violates any of the provisions of §§ 150.01 through 150.09 shall also be subjected to a civil action seeking invalidation of the land division and appropriate injunctive or other relief.

(1992 Code, § 140.010) (Ord. 1-57, passed - - 1957; Ord. 98-3, passed 5-18-1998)

CHAPTER 151: BUILDING CODES

Section

Drainage

151.01 Surface ground drainage

151.02 Regulation of sump pump discharge

151.03 Building or house down-spouts

Energy Code

151.15 Adoption

151.99 Penalty

DRAINAGE

§ 151.01 SURFACE GROUND DRAINAGE.

(A) (1) It shall be unlawful to build or permit the building of or enlargement of any existing, proposed future structure on land or any part thereof; or to provide for the building or construction of a driveway or parking lot until a building permit has been issued in accordance with the provisions of the Zoning Code and following sections thereto.

(2) Further, it shall be unlawful to change the drainage pattern of any platted lot until a permit shall be issued by the Village of Birch Run in accordance herewith.

(B) No building, nor shall any driveway nor shall any parking lot be constructed, built, enlarged or moved to any parcel of land within the Village of Birch Run until a permit as to drainage pattern has been issued by the Building Inspector of the Village of Birch Run.

(C) An application for permit shall be made to the Village Clerk and to the Building Inspector, and except for a single room or similar additions, shall be accompanied by a Block Plan in triplicate drawn to scale of not less than 1/100, and shall include proposed grade of building, or proposed grade of driveway, or proposed grade of parking lot whichever is applicable, and the point(s), area, ditches or enclosure(s) into which storm water is to drain.

(D) If in his or her judgment, the Building Inspector and the Department of Public Works of the Village of Birch Run deems it appropriate and they may require a contour plan prepared by a registered civil engineer and request view of the drainage plan and contour map by the civil engineer to determine that site drainage to and from abutting property are not obstructed and, that upstream and downstream property shall not be damaged.

(E) When a building permit has been approved and the structure, driveway and/or parking lot has been constructed, the lot and/or surrounding or abutting lands to the lot shall be filled, graded and maintained in conformity to the grading pattern established on the recorded plat.

(F) It shall be unlawful for any person to interfere with or obstruct the flow of surface water over easements for public utilities or to impede the flow of surface water across private property in a manner different from the approved grade plan, drainage pattern and customary normal drainage flow.

(G) Prior to the issuance of a certificate of occupancy, it will be necessary that a grading survey be done if necessary to insure that the site is graded in accordance with the drainage pattern approved at the time of the issuance of the building or land use permit as previously designated.

(H) In lieu of this land survey, a surety bond, letter of credit or cash deposit in an amount set by the Building Inspector and/or Department of Public Works may be required to insure grading and submission of the survey at a later date when a building, driveway, parking lot or other structure is otherwise completed and suitable for use and occupancy during that season of the year when weather conditions make finish grading unfeasible or impossible. In such case, a temporary certificate of occupancy may be issued and the date for completion of grading shall be indicated on the temporary certificate of occupancy, permit of occupancy or its related documents.

(I) It shall be unlawful for any person to permit the entry of any roof, ground or surface water into the sanitary sewer system or to

direct any roof, ground or surface waters in such a manner that it enters a sanitary sewer system.

(J) At the time application for a permit is submitted, there should be paid for the plan examination required in this section, a fee equal to 1/2 of 1% of the cost of construction for an on sight storm drainage, parking lot and driveway surfacing for nonresidential sites and \$25 per site for all residential sites requiring the examination of plan under this section.

(1992 Code, § 110.001) (Ord. 3-84, passed - - 1984) Penalty, see § 151.99

§ 151.02 REGULATION OF SUMP PUMP DISCHARGE.

(A) All footing drain discharge should be deposited in storm sewers or other storm water drainage facilities in accordance with the plumbing code of the Village of Birch Run or upon the surface of the ground in those instances when no storm drainage facility is available.

(B) (1) Where the footing drain discharge is deposited upon the surface of the ground, the place of deposit shall be in that yard area for drainage directly to a street, road or alley, or to the yard which contains a drainage easement, without crossing another parcel of land.

(2) Discharge of water upon the surface of the ground shall be carried not less than three feet from the foundation walls of building splash blocks which shall be installed at the time of construction and shall not discharge on the surface of the ground within the street right-of-way or within 20 feet thereof.

(C) When footing drain discharge is ejected or carried to the drainage system by means of a pump or lift, and where it is not deposited on the surface of the ground, there shall be a relief line installed wherever there is a possibility that the drainage system may become inoperative due to freezing of surge charging. The system shall be protected against back-flow as required by the applicable section of the Plumbing Code of the Village of Birch Run.

(1992 Code, § 110.002) (Ord. 3-84, passed - - 1984)

§ 151.03 BUILDING OR HOUSE DOWN-SPOUTS.

(A) Installed down-spouts are to be directed to a front or rear yard where adequate run-off is provided, but in no event shall run-off be directed to a private sanitary sewer disposal system. If no adequate run-off is provided, then the down-spouts should be discharged only in a manner approved by the Department of Building and Safety.

(B) Down-spout piping, when installed, shall be permanently affixed to the building wall and shall be discharged into a splash-back or other similar method approved by the Building Inspector or Director of Public Works for the Village of Birch Run.

(C) No approval shall be given by the Building Inspector or the Director of Public Works for the Village of Birch Run, unless the method of roof drainage being used shall provide a positive slope away from the building foundation walls.

(1992 Code, § 110.003) (Ord. 3-84, passed - - 1984) Penalty, see § 151.99

ENERGY CODE

§ 151.15 ADOPTION.

(A) This subchapter and the Michigan Energy Code shall be known and may be cited as the Village of Birch Run Energy Code.

(B) Pursuant to the provisions of the State Construction Code Act (Act 230 of 1972), the Michigan Energy Code as filed with the Secretary of State on December 22, 1976 is hereby adopted by reference by the village.

(C) All ordinances or parts of ordinances insofar as they conflict herewith are, to the extent of the conflict, hereby repealed.

(1992 Code, §§ 109.001 - 109.003) (Ord. 3-77, passed - - 1977) Penalty, see § 151.99

§ 151.99 PENALTY.

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

(B) Any person, firm or corporation violating any of the provisions of §§ 151.01 through 151.03 shall be guilty of a misdemeanor, and upon conviction therefore, shall be fined not more than \$500 for each conviction, or shall be punished by imprisonment for a period not to exceed 90 days for each offense, or by the fine and imprisonment in the discretion of the court, together with the cost of the prosecution.

(C) (1) Any person who violates any provision of § 151.15 shall, upon conviction, be punished by a fine of not more than \$200 or by imprisonment for not more than 90 days in jail, or both, each day's failure of compliance with any provision of § 151.15 shall constitute a separate offense.

(2) Legal proceedings to enjoin the violation of any of the provisions of § 151.15 may be brought in any court of competent jurisdiction in the name of the Village of Birch Run. The action for injunctive relief shall be brought when authorized by Village Council. The enforcement and administration of the provisions of § 151.15 shall otherwise be under and by the Village Building Inspector.

(1992 Code, §§ 109.004, 110.006) (Ord. 3-77, passed - - 1977; Ord. 3-84, passed- - 1984)

CHAPTER 152: DANGEROUS BUILDINGS

Section

- 152.01 Title
- 152.02 Dangerous buildings and structures as public nuisances
- 152.03 Definitions
- 152.04 Inspection
- 152.05 Notice and order
- 152.06 Reinspection, notice of hearing, Hearing Officer
- 152.07 Hearing, testimony, order, non-appearance or non-compliance, Village Council proceedings
- 152.08 Judicial review
- 152.09 Assessment and collection costs
- 152.10 Emergency cases
- 152.11 Waiver provision
- 152.12 Release of liability
- 152.99 Penalty

§ 152.01 TITLE.

This chapter shall be known and may be cited as The Village of Birch Run Dangerous Building and Structure Ordinance.

(Ord. 4-2007, passed 3-24-2008)

§ 152.02 DANGEROUS BUILDINGS AND STRUCTURES AS PUBLIC NUISANCES.

Dangerous buildings and structures are declared to be a public nuisance which shall be abated by alteration, repair or rehabilitation, or by demolition and removal in accordance with the procedure specified in this chapter. It shall be unlawful for any owner of real property located in the village, or agent thereof, to keep, maintain or permit a dangerous building or structure to exist.

(Ord. 4-2007, passed 3-24-2008) Penalty, see § 152.99

§ 152.03 DEFINITIONS.

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

BUILDING CODE. The Michigan Construction Code series promulgated by Michigan Public Act 230 of 1972 as amended.

DANGEROUS BUILDING. Any building or structure (including mobile home) which has any of the following defects or conditions:

(1) Any door, aisle, passageway, stairway or other means of ingress or egress does not conform to the approved Fire and Building Code of the village.

(2) The walking surface of any aisle, passageway, stairway, or other means of exit is so warped, worn, loose, torn or otherwise unsafe as to not provide safe and adequate means of exit in case of fire or panic.

(3) The stress, in any materials, member or portion thereof, due to all dead and live loads, is more than one and one half times the working stress or stresses allowed in the Building Code for new buildings of similar structure, purpose or location.

(4) Any portion has been damaged by fire, earthquake, wind, flood or by any other cause to the extent that the structural strength or stability is materially less than it was before such catastrophe and is less than the minimum requirements of the Building Code for a new building or similar structure, purpose or location.

(5) Any portion, member or appurtenance of a building is likely to fail, or to become detached or dislodged, or to collapse and thereby injure persons or damage property.

(6) Any portion of a building, or any member, appurtenance or ornamentation on its exterior is not of sufficient strength or stability, or is not so anchored, attached or fastened in place so as to be capable of resisting wind pressure of one half of that specified in the Building Code for new buildings of similar structure, purpose or location without exceeding the working stresses permitted in the Building Code for such buildings.

(7) Any portion of a building has wracked, warped, buckled or settled to such an extent that walls or other structural portions have materially less resistance to winds than is required in the case of similar new construction by the Building Code.

(8) The building or structure, or any portion thereof, because of:

- (a) Dilapidation, deterioration, or decay;
- (b) Faulty construction;
- (c) The removal, movement or instability of any portion of the ground necessary for the purpose of supporting such building;
- (d) The deterioration, decay or inadequacy of its foundation; or
- (e) Any other cause, is likely to partially or completely collapse.

(9) For any reason, the building or structure, or any portion thereof, is manifestly unsafe for the purpose for which it is used.

(10) The exterior walls or other vertical structural members list, lean or buckle to such an extent that a plumb line passing through the center of gravity does not fall inside the middle one third base.

(11) The building or structure, exclusive of the foundation shows 33% or more damage or deterioration of its supporting member or members, or 50% damage or deterioration of its non-supporting members, enclosing or outside walls or coverings.

(12) The building or structure has been so damaged by fire, wind, earthquake or flood, or has become so dilapidated or deteriorated as to become:

- (a) An attractive nuisance to children;
- (b) A harbor for vagrants, criminals or immoral persons; or
- (c) As to enable persons to resort thereto for the purpose of committing a nuisance or unlawful or immoral acts.

(13) Any building or structure has been constructed, exists or is maintained in violation of any specific requirement or prohibition applicable to such building or structure provided by the building regulations of the Building Code or Housing Code or of any law or ordinance of this state or jurisdiction relating to the condition, location or structure of buildings.

(14) Any building or structure which, whether or not erected in accordance with all applicable laws and ordinances, has in any non-supporting part, member or portion less than 50%, or in any supporting part, member or portion less than 66%, of the:

- (a) Strength;
- (b) Fire-resisting qualities or characteristics; or

(c) Weather-resisting qualities or characteristics required by law in case of a newly constructed building of like area, height and occupancy in the same location.

(15) A building or structure, used or intended to be used for dwelling purposes, because of inadequate maintenance, dilapidation, decay, damage, faulty construction or arrangement, inadequate light, air or sanitation facilities, or otherwise, is unsanitary or unfit for human habitation, or is in a condition that is likely to cause sickness or disease.

(16) Any building or structure, because of obsolescence, dilapidated condition, deterioration, damage, inadequate exits, lack of fire resistive construction, faulty electrical wiring, gas connections or heating apparatus, or other cause, is determined by the fire chief to be a hazard.

(17) Any building becomes vacant, dilapidated and open at door or window or any other opening, leaving the interior of the building exposed to the elements or accessible to entrance by trespassers.

(18) Any building or structure becomes harborage for rats, mice or other vermin and pests and is likely to be a source of infestation of such vermin and pests to the surrounding properties.

(19) Any building or structure is in such a condition as to constitute a public nuisance under common law or in equity.

(20) Any portion of a building or structure remains on site after the demolition or destruction of the building or structure, or a building or structure is abandoned for a period in excess of six months so as to constitute such building or portion thereof an attractive nuisance or hazard to the public.

(21) (a) In addition, the term **DANGEROUS BUILDING** shall also include any swimming pool or wading pool, as defined in the building code or zoning ordinance, if the swimming pool or wading pool is permitted:

1. To become stagnant;
2. To become a breeding ground for mosquitoes, or other insects;
3. To become algae ridden;
4. To become otherwise unsafe for the intended purposes; or

5. To have the required enclosure surrounding the swimming pool either not properly constructed or maintained in accordance with the requirements of the zoning ordinance or building code.

(b) Each of the foregoing defects or conditions is hereinafter referred to as a **DANGEROUS CONDITION**.

FIRE CODE. The current edition of the International Fire Code.

VILLAGE. The Village of Birch Run, Saginaw County, Michigan.

(Ord. 4-2007, passed 3-24-2008)

§ 152.04 INSPECTION.

(A) The Building Inspector may inspect, or cause to be inspected, semi-annually all public buildings, halls, churches, schools, theaters, hotels, tenements, commercial buildings, manufacturing or loft buildings, or any other building or structure used for public assembly, for the purpose of determining whether any conditions exist which render the building or structure a dangerous building. Additionally, the Building Inspector may inspect any building, structure or portion thereof if:

- (1) The building, structure or portion thereof is reported by any member of the Township Fire or Village Police Department, Building Inspector or the general public to be a dangerous building; or
- (2) The general appearance and reputation of the building, structure or portion thereof causes the Building Inspector to suspect that it may be a dangerous building.

(B) If the Building Inspector suspects that the condition or installation of the heating, cooling, plumbing, mechanical or electrical system of the building or structure violates the building code, fire code, electrical code, plumbing code, mechanical code, housing code, the Building Inspector may order a subsequent inspection of the specific system in question by an individual qualified to perform a detailed inspection of said heating, cooling, plumbing, mechanical or electrical systems.

(C) If upon the subsequent inspection, the heating, cooling plumbing, mechanical or electrical system is determined to be in violation of the codes listed in division (B) above, the building shall be declared to be a dangerous building.

(Ord. 4-2007, passed 3-24-2008)

§ 152.05 NOTICE AND ORDER.

(A) If the Building Inspector determines that any building, structure or portion thereof, is a dangerous building, the Building Inspector shall issue a written notice and order to the owner of the building and property whose name appears on the most recent tax assessment records of the village. The notice and order shall include:

- (1) The address or legal description of the property;
- (2) A statement of the dangerous condition or conditions that render the building a dangerous building; and
- (3) The period of time during which the owner shall commence and complete the required alteration, repair or rehabilitation, or the demolition and removal of the building, structure or portion thereof.

(B) (1) Service of the notice and order shall be made on the owner, or agent thereof, by personal service or in lieu of personal service, may be mailed by certified mail, return receipt requested, addressed to the owner at the address shown on the current tax assessment records for the village.

(2) If the owner is not personally served, in addition to mailing the notice, a copy of the notice shall be posted upon a conspicuous part of the building or structure.

(C) Alteration, repair or rehabilitation work or the demolition and removal of the building shall be completed within a reasonable period of time, in light of the threat or danger posed by the dangerous condition, as may be determined by the Building Inspector and specified in the written notice and order. However, in no event shall this period exceed 90 days from the date of the delivery, mailing or posting of the notice. If necessary to protect the health and safety of the occupants of the dangerous building or persons in the vicinity, the notice may also require that the building, structure or portion thereof be vacated and secured in such a way to prevent unauthorized entry. If the Building Inspector orders the dangerous building vacated, it shall not be re-occupied until the required alteration, repair or rehabilitation work is completed and inspected by the Building Inspector, the owner has paid the re-inspection fee, and a certificate of occupancy is issued.

(D) The Building Inspector may also order the building, structure or portion thereof to be boarded. In such event, the owner or agent thereof shall cause the building, structure or portion thereof to be boarded as directed. Such orders are deemed to be a temporary measure for use during the period of time specified in the notice and order for the alteration, repair or rehabilitation, or demolition and removal of the dangerous building. In no event shall the boarding of a building or structure, whether pursuant to an order of the Building Inspector or as a result of the unilateral action of the owner or occupant, be deemed to be a permanent abatement of the dangerous condition.

(E) If the Building Inspector determines that it is necessary to vacate the building, structure, or portion thereof to protect the health and safety of the occupants of the building, the Building Inspector may cause to be posted at each entrance of the building or structure the following notice: "Do not enter, unsafe to occupy." The notice shall remain posted until the required alterations, repairs or rehabilitation, or demolition and removal is completed. The notice shall not be removed without the written permission of the Building Inspector, and no person shall enter the building or structure except for the purpose of making the required alterations, repairs or rehabilitation, or demolishing and removing the building, or inspecting the alteration, repairs and rehabilitation work being performed.

(Ord. 4-2007, passed 3-24-2008)

§ 152.06 REINSPECTION, NOTICE OF HEARING, HEARING OFFICER.

(A) Upon the completion of the required alteration, repair or rehabilitation work, and the payment of the re-inspection fee, the Building Inspector shall reinspect the building, structure or portion thereof formerly determined to be a dangerous building. If the Building Inspector concludes that the dangerous conditions have been corrected and that the building is no longer a dangerous building,

the Building Inspector shall issue a certificate of occupancy. The re-inspection fee shall be an amount equal to 5% of the cost of the alteration, repair, or rehabilitation work performed to correct the condition or conditions that rendered the building a dangerous building.

(B) (1) If the owner fails to commence and complete the required alterations, repairs or rehabilitation, or demolition and removal of the building, structure or portion thereof within the period of time specified in the notice and order, the Building Inspector shall issue a notice and order to show cause to the owner of the building.

(2) The notice and order to show cause shall be directed to each owner of the building and property whose name appears on the current tax assessment records of the village.

(3) The notice and order to show cause shall specify the following:

- (a) The name of the owner of the property as it appears on the current tax assessment records of the village;
- (b) The address or legal description of the building and property, as it appears in the current tax assessment records of the village;
- (c) The date, time and place of the hearing;

(d) A summary of the condition or conditions of the building, structure or portion thereof which renders the building, structure or portion thereof a dangerous building; and

(e) Notice that failure to appear may result in an order to have the dangerous building repaired or demolished and removed, and that the costs of the repair, demolition and removal, as well as the village administrative costs, including, but not limited to, the cost of publication, the cost of holding the hearing and actual attorney fees, may become a lien upon the real property of the owner.

(C) The notice and order to show cause shall be in writing and shall be served upon the person to whom they are directed personally, or in lieu of personal service may be mailed by certified mail, return receipt requested, addressed to such owner or agent thereof at the address shown on the current tax record of the Village, at least ten days before the date of the hearing described in the notice and order to show cause. If any person to whom a notice and order to show cause is directed is not personally served, in addition to mailing the notice, a copy thereof shall be posted upon a conspicuous part of the building or structure. When service cannot be made by either of the above methods and after diligent efforts to locate the whereabouts of the owner, service shall be made by publishing in a newspaper with general circulation at least once a week for two consecutive weeks prior to the date of the hearing, and by mailing by first class mail, postage prepaid, at least ten days prior to the date of hearing, a copy of the notice and order to show cause to the owner or agent thereof at the address which appears on the current tax assessment records of the Village, and posting a copy of the notice and order to show cause on a conspicuous part of the building or structure.

(D) The Hearing Officer shall be appointed by the Village Manager to serve at his or her pleasure. The Building Inspector shall file a copy of the notice and order to show cause with the Hearing Officer.

(E) Notice shall be effective upon the earliest occurrence of any of the following:

- (1) Personal service upon the owner or the owner's agent thereof;
- (2) The date, the owner or the owner's agent or resident manager signed the return receipt for the certified mail; or
- (3) The date of the last newspaper publication.

(Ord. 4-2007, passed 3-24-2008)

§ 152.07 HEARING, TESTIMONY, ORDER, NON-APPEARANCE OR NON-COMPLIANCE, VILLAGE COUNCIL PROCEEDINGS.

(A) (1) The Hearing Officer shall take testimony of the Building Inspector, the owner of the property and any interested party. The Hearing Officer shall have the power to administer oaths and affirmations and to certify official acts. The hearing need not be conducted in accordance with the technical rules of evidence adopted for the courts of records in the State of Michigan. A record of the entire hearing shall be made by tape recording or by other means of permanent recording determined appropriate by the Hearing Officer. A transcript of the proceedings shall be made available to all parties upon request and payment of a fee prescribed therefore. The fee shall be the actual cost incurred by the village in making the transcript. Any relevant evidence may be admitted. As used herein, **RELEVANT EVIDENCE** shall be the type of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs. Such **RELEVANT EVIDENCE** shall be admitted regardless of whether or not it would be admissible in civil actions in courts of competent jurisdiction of this state. Irrelevant and unduly repetitious evidence shall be excluded.

(2) Each party shall have the following rights:

- (a) To call and examine witnesses on any matter relevant to the issues before the Hearing Officer;
- (b) To introduce documentary and physical evidence;
- (c) To cross examine opposing witnesses on any matter relevant to the issues before the Hearing Officer;
- (d) To impeach any witness regardless of which party first called the witness to testify;
- (e) To refute the evidence;

(f) To represent himself or herself or to be represented by anyone of his or her choice including, but not limited to, an individual licensed to practice law in the State of Michigan; and

(g) To make a closing statement at the conclusion of the evidentiary portion of the hearing.

(B) (1) The Hearing Officer shall render his or her decision at the close of the proceedings. In rendering his or her decision, the Hearing Officer may consider any one or all of the following:

(a) The evidence presented;

(b) The condition of the building or structure as a whole;

(c) The extent of the deterioration of the building or structure;

(d) The cost of demolishing the building or structure;

(e) The cost of making the building or structure safe;

(f) Whether a reasonable person exercising prudent business judgment would determine the cost of making the building or structure safe would exceed 50% of the market value of the structure after the repairs were completed;

(g) Whether the structure has significant historical, cultural or architectural value;

(h) The effect the completion of the demolition and removal or of making the building or structure safe would have upon the health, safety and welfare of the area immediately surrounding the building or structure in question; and

(i) Whether actual substantial progress has been made by the owner to make the building safe. In determining whether substantial progress has been made, the Hearing Officer shall consider such factors as whether a building permit has been obtained relative to the repairs, whether the owner has contracted for necessary materials or services, and the extent to which the repairs or demolition has progressed.

(2) At the conclusion of the hearing, the Hearing Officer shall make written findings of fact based upon the evidence and testimony presented at the hearing, and if the Hearing Officer shall deem it necessary or helpful in his or her consideration of the matter, an on-site inspection of the building, structure or part thereof alleged to be dangerous.

(C) If it is determined by the Hearing Officer that the building or structure should be demolished or otherwise made safe, he or she shall so order, fixing a time by which the owner of the building shall complete the required alterations, repairs or rehabilitation, or the demolition and removal of the building, structure or a part thereof. In no event shall the period established by the Hearing Officer for the completion of the alterations, repairs or rehabilitation, or the demolition and removal of the building, structure or part thereof exceed 90 days from the effective date of the Hearing Officer's decision. A copy of the Hearing Officer's decision shall be given to the owner in the manner set forth for notice in this section, except only one publication shall be required.

(D) If the owner fails to appear or neglects or refuses to comply with the order, the Hearing Officer shall file a report of his or her findings and a copy of his or her order with the Village Council and request that the necessary action be taken to demolish or otherwise make safe the building or structure.

(E) The Village Council shall fix a date for a hearing to review the findings of fact and order of the Hearing Officer and shall give notice to the owner, in the manner prescribed in § 152.06 of the time and place of the hearing. At the hearing the owner shall be given the opportunity to show cause why the building should not be demolished or otherwise made safe.

(F) At the conclusion of the hearing, the Village Council shall pass a resolution either approving, disapproving or modifying the order of the Hearing Officer, and fixing a time by which the owner shall complete the required alterations, repairs or rehabilitation, or demolition and removal of the building, structure or part thereof. A copy of the resolution of the Village Council shall be given to the owner in the manner set forth for notice in this chapter, except only one publication shall be required. The effective date of the Village Council's resolution shall be the date on which said resolution was adopted by the Village Council.

(Ord. 4-2007, passed 3-24-2008)

§ 152.08 JUDICIAL REVIEW.

An owner aggrieved by any final decision of the Village Council under § 152.07 may appeal the decision of the Village Council to the circuit court by filing a petition within 21 days from the date of the resolution of the Village Council.

(Ord. 4-2007, passed 3-24-2008)

§ 152.09 ASSESSMENT AND COLLECTION OF COSTS.

(A) If the owner fails to comply with the resolution of the Village Council by failing to complete the required alteration, repair or rehabilitation, or demolition and removal of the building, structure or portion thereof within the time specified in the resolution of the Village Council, the Village Council may instruct the Building Inspector to cause such dangerous building, structure or part thereof, to be demolished and removed, or otherwise made safe upon the expiration of the time ordered by the Village Council.

(B) The cost of demolition and removal, or making the building safe, plus the costs of mailing, recording, publication, and all the village's administrative costs associated with the demolition and removal, or making the building safe, shall be a lien against the real property and shall be reported to the Village Assessor who shall assess the costs against the property on which the building, structure or portion thereof is located. The owner shall be notified of the amount of the costs by first class mail at the address shown on the current village tax assessment records. If the owner fails to pay the same within 30 days after mailing by the assessor of the notice of the amount thereof, the assessor shall add the amount to the next tax roll of the village and it shall be collected in the manner as provided by law for the collection of taxes by the village.

(C) Notwithstanding the above, the village may collect the cost of the demolition or repairs from the owner or other party in interest, including a land contract purchaser. The village may bring a civil action for the recovery of such cost and shall be entitled to a judgment as in any other civil action, including costs and actual attorney fees.

(Ord. 4-2007, passed 3-24-2008)

§ 152.10 EMERGENCY CASES.

In cases where the Building Inspector determines that there is an immediate and serious danger to the public safety or health unless a dangerous building is immediately vacated and demolished or otherwise made safe, the Building Inspector shall report such facts to the Village Council. The Village Council may then order the building vacated or may obtain an order from a court of competent jurisdiction ordering the building vacated, and may cause the immediate repair or demolition of such dangerous building or structure. The costs of such emergency repair or demolition as well as the costs incurred by the Village in obtaining the court orders, including actual attorney fees, shall be collected in the manner as provided for in § 152.09

(Ord. 4-2007, passed 3-24-2008)

§ 152.11 WAIVER PROVISION.

The owner of any building or structure, or the owner's agent, may, at any time, admit in writing that such building or structure is a dangerous building within the meaning of this section, and waive any rights he, she, or it may have hereunder, or under state or federal law to notice, a hearing before the Hearing Officer or the Village Council, written findings of fact, or judicial review of the resolution of the Village Council. The owner or the owner's agent may consent that such building or structure be demolished and the cost charged against the property. In that event, the Building Inspector may have the building or structure demolished and the cost charged against said property shall be collected in the same manner as provided for in § 152.09.

(Ord. 4-2007, passed 3-24-2008)

§ 152.12 RELEASE OF LIABILITY.

(A) Any employee or official of the Village charged with the enforcement of this section, any Hearing Officer, or the Village Manager, acting in good faith and without malice in the discharge of their duties, shall not thereby render himself or herself personally liable for any damage that may occur to persons or property as a result of any act or omission of such individual in the discharge of their duties. A suit brought against an official or employee of the village, or any Hearing Officer acting under the provisions of this section, because of such act or omission performed by him or her in the enforcement of this section or the enforcement of any codes or other pertinent law or ordinances implemented through the enforcement of this section, or acting pursuant to his or her duties under this section, shall be defended by the village until final determination of such proceedings, and any judgment resulting there from shall be assumed by the village.

(B) This section shall not be construed to relieve or lessen the responsibility of any person owning, operating or controlling any building or structure located within the village for any damages to persons or property caused by any building defects. This section shall not be construed to create or impose any liability on the village for injury or damage to persons or property by reason of the inspections authorized by this section or any permits or certificates issued under this section.

(Ord. 4-2007, passed 3-24-2008)

§ 152.99 PENALTY.

(A) A person who violates any provision of this chapter is responsible for a municipal civil infraction, subject to payment of a civil fine as set forth in § 35.99, plus costs and other sanctions for each infraction. Repeat offenses shall be subject to increased fines as provided by § 35.99.

(B) Legal proceedings to enjoin the violation of any of the provisions of this chapter, or to order a dangerous building vacated, may be brought in any court of competent jurisdiction in the name of the Village of Birch Run.

(Ord. 4-2007, passed 3-24-2008)

CHAPTER 153: DOWNTOWN DEVELOPMENT AUTHORITY

Section

Development and Tax Increment Plan

153.01 Determination of public purpose of amended plan

153.02 Approval of plan

Downtown Development Authority Ordinance

153.20 Articles of incorporation and definitions

153.21 The Board

- 153.22 Meetings
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 - 153.30 Proposed boundary area of the Downtown District
 - 153.31 Historical facility, building of structure; preservation
 - 153.32 Budget
 - 153.33 Dissolution of authority upon completion of purposes; title of property
- Appendix A: District Boundaries

DEVELOPMENT AND TAX INCREMENT PLAN

§ 153.01 DETERMINATION OF PUBLIC PURPOSE OF AMENDED PLAN.

Following a duly noticed public hearing on September 29, 1992, on the Village of Birch Run Downtown Development Authority Development and Tax Increment Financing Plan (the Plan), held pursuant to the provisions of Public Act 197 of 1975, being M.C.L.A. §§ 125.1651 through 125.1680, as amended (the Act) and having made the findings set forth below, the Village Council has found and determined that the plan constitutes and seeks to accomplish a public purpose, and that the plan is consistent with and seeks to accomplish the intent and purpose declared by the Village Council for the establishment of the Village of Birch Run Downtown Development Authority (the Authority) pursuant to §§ 153.20 through 153.33.

- (A) The plan is consistent with §§ 14 and 15 of the Act.
- (B) The plan meets the requirements set forth in § 17(2) of the Act.
- (C) The proposed method of financing the development described in the plan is feasible and the Authority has the ability to arrange the financing.
- (D) The development described in the plan is reasonable and necessary to carry out the purposes of the Act.
- (E) The development plan is in reasonable accord with the master plan of the village.
- (F) Public services, such as fire and police protection and utilities, are or will be adequate to service the project area.
- (G) Changes in zoning, streets, street levels, intersections and utilities are reasonably necessary for the project and for the village.
- (H) The findings and recommendations of the Development Area Citizens Council on the plan have been considered.

(1992 Code, § 122.001) (Ord. 3-92, passed 10-26-1992)

§ 153.02 APPROVAL OF PLAN.

Premised upon the findings and determinations made in § 153.01, and upon the further finding that pursuit and execution of the plan appears to be in the best interest of the village, the Plan, in the form attached hereto as Appendix A and made a part of the Village Council minutes on the date this subchapter was adopted, is hereby approved and adopted.

(1992 Code, § 122.002) (Ord. 3-92, passed 10-26-1992)

DOWNTOWN DEVELOPMENT AUTHORITY ORDINANCE

§ 153.20 ARTICLES OF INCORPORATION AND DEFINITIONS.

(A) *Articles of Incorporation.* This amended subchapter shall serve as the permanent Articles of Incorporation of the Village of Birch Run Downtown Development Authority.

(B) *Downtown Development Authority established.* Pursuant to Public Act 197 of 1975, being M.C.L.A. §§ 125.1651 through 125.1680 as amended, (the Act), there is hereby established the Village of Birch Run Downtown Development Authority.

(C) *Boundaries.* The boundaries of the Downtown District shall be as set forth in Appendix A.

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

AUTHORITY. The Village of Birch Run Downtown Development Authority created by this subchapter.

BOARD. The Board of the Authority which is the governing body of the Authority.

BUSINESS DISTRICT. An area in the downtown of the Village of Birch Run zoned and used principally for business.

CHIEF EXECUTIVE OFFICER. The President of the Village.

DEVELOPMENT AREA. Area to which a Development Plan is applicable.

DEVELOPMENT PLAN. Information and those requirements for development as set forth in § 153.29.

DEVELOPMENT PROGRAM. The implementation of the Development Plan.

DOWNTOWN DISTRICT. The area in the Business District described in Appendix A.

GOVERNING BODY. The Village Council of the Village of Birch Run.

OPERATIONS. Office maintenance, including salaries and expenses of employees, office supplies, consultation fees, design costs and other expenses incurred in the daily management of the Authority and its activities.

PUBLIC FACILITY. A street, plaza, pedestrian mall and any improvements thereto including street furniture and beautification, parks, parking facilities, recreational facilities, right-of-way, structure, waterway, bridge, lake, pond, canal, utility line or pipe, building and access routes to any of the foregoing, designed and dedicated to use by the public generally or used by public agency.

(1992 Code, §§ 120.101 - 120.104) (Ord. 2-92, passed 2-10-1992)

§ 153.21 THE BOARD.

(A) *Composition of Board.* The Authority shall be under the supervision and control of a Board consisting of the Chief Executive Officer of the Village of Birch Run and eight other members.

(B) *Members appointed by the Chief Executive Officer.* All members shall be appointed by the Chief Executive Officer, subject to approval by the Village Council.

(C) *Majority of members required to have interest in the Downtown District.* A majority of the members appointed shall be persons having an interest in property located in the Downtown District.

(D) *One member to be resident.* At least one of the members shall be a resident of the Downtown District.

(E) *Terms of members.* Members shall be appointed on staggered terms with an equal number appointed for one year, two years, three years and four years. Members shall hold office until the member's successor is appointed. Thereafter, each member shall serve for a term of four years.

(F) *Vacancy in Board; compensation.* A vacancy shall be filled by an appointment made by the Chief Executive Officer for the unexpired term only. All members of the Board shall serve without compensation, but shall be reimbursed for actual and necessary expenses.

(G) *Election of Chairperson.* The Chairperson of the Board shall be elected by the Board.

(H) *Constitutional Oath of Office.* Before assuming the duties of office, a member shall qualify by taking and subscribing to the Constitutional Oath of Office.

(I) *Officers.* The Officers of the Authority shall be as follows:

- (1) A Chairperson;
- (2) A Vice-Chairperson;
- (3) A Secretary; and
- (4) A Treasurer.

(J) *Election and acceptance of members.* The Board, by resolution adopted by a majority of its members at a regular or special meeting, shall elect the officers to terms of office set forth in the resolution. The Board may elect one or more assistant secretaries and assistant treasurers of the Authority. Officers and members of the Board shall acknowledge their acceptance of the position by filing an acknowledgment thereof with the Secretary of the Authority.

(K) *Secretary/Treasurer.* The offices of Secretary and Treasurer may be vested in one person, if approved by the Board, in which event the person shall be the Secretary/Treasurer.

(1992 Code, §§ 120.201 - 120.211) (Ord. 2-92, passed 2-10-1992)

§ 153.22 MEETINGS.

(A) *Open Meeting Act.* The Board shall perform and conduct all business public meetings held in compliance with Public Act 267 of 1976, being M.C.L.A. §§ 15.261 to 15.275, which is also known as the Open Meeting Act.

(B) *Adoption of Board rules.* The Board shall adopt any rules necessary governing its procedure and the holding of regular meetings subject to the approval of the governing body.

(C) *Special meetings.* Special meetings may be held when called in the manner provided for in the Rules of the Board, as long as the meetings comply with the Open Meetings Act.

(1992 Code, §§ 120.301 - 120.303) (Ord. 2-92, passed 2-10-1992)

§ 153.23 FREEDOM OF INFORMATION ACT, EXPENSES AND FINANCIAL RECORDS.

(A) *Records available to public.* All writings, items of records prepared, owned or used, in the possession of or retained by the Board in the performance of official function shall be made available to the public. The Freedom of Information Act in order to comply with Public Act 442 of 1976, being M.C.L.A. §§ 15.231 and 15.246.

(B) *Financial records available to public.* All expense items of the Authority shall be publicized monthly and the financial records will always be open to the public.

(1992 Code, §§ 120.401, 120.402) (Ord. 2-92, passed 2-10-1992)

§ 153.24 POWERS OF THE BOARD.

The Board may:

(A) Prepare an analysis of economic changes taking place in the Downtown District;

(B) Study and analyze the impact of metropolitan growth upon the Downtown District;

(C) Plan and propose the construction, renovation, repair, remodeling, rehabilitation, restoration, preservation or reconstruction of a public facility, an existing building or a multiple-family dwelling unit which may be necessary or appropriate to the execution of a plan which, in the opinion of the Board, aids in the economic growth of the Downtown District;

(D) Plan, propose and implement an improvement to a public facility within the development area to comply with the barrier free design requirements of the state construction code promulgated under the State Construction Code Act of Public Act 230 of 1972, being M.C.L.A. §§ 125.1501 to 125.1531;

(E) Develop long-range plans, in cooperation with the agency which is chiefly responsible for planning in the municipality, designed to halt the deterioration of property values in the Downtown District and to promote the economic growth of the Downtown District, and take the steps as may be necessary to persuade property owners to implement the plans to the fullest extent possible;

(F) Implement any plan of development in the Downtown District necessary to achieve the purposes of this subchapter, in accordance with the powers of the Authority as granted by this subchapter;

(G) Make and enter into contracts necessary or incidental to the exercise of its powers and the performance of its duties;

(H) Acquire by purchase or otherwise, on terms and conditions and in a manner the Authority deems proper or own, convey or otherwise dispose of, or lease as lessor or lessee, land and other property, real or personal or rights of interests therein, which the Authority determines is reasonably necessary to achieve the purposes of this subchapter, and to grant or acquire licenses, easements and options with respect thereto;

(I) Improve land and construct, reconstruct, rehabilitate, restore and preserve, equip, improve, maintain, repair and operate any building, including multiple-family dwellings and any necessary or desirable appurtenances thereto, within the Downtown District for the use, in whole or in part, of any public or private person or corporation or a combination thereof;

(J) Fix, charge and collect fees, rent and charges for the use of any building or property under its control or any part thereof, or facility therein, and pledge the fees, rents and charges for the payment of revenue bonds issued by the Authority;

(K) Lease any building or property under its control or any part thereof;

(L) Accept grants and donations of property, labor or other things of value from a public or private source; and

(M) Acquire and construct public facilities.

(1992 Code, § 120.501) (Ord. 2-92, passed 2-10-1992)

§ 153.25 FINANCING AND DEPOSITS.

(A) *Finding sources.* The activities of the Authority shall be financed from one or more of the following sources:

(1) Donations to the Authority for the performance of its functions;

(2) Proceeds of a tax imposed pursuant to § 12 of Public Act 197 of 1975, being M.C.L.A. § 125.1662;

(3) Money borrowed and to be repaid as authorized by § 13 of Public Act 197 of 1975, being M.C.L.A. § 125.1663;

(4) Revenues from any property, building or facility owned, leased, licensed or operated by the Authority or under its control, subject to the limitations imposed upon the Authority by trusts or other agreements;

(5) Proceeds of a tax increment financing plan, established under §§ 14, 15 and 16 of Act 197;

(6) Proceeds from a special assessment district created as provided by law; and

(7) Money obtained from other sources approved by the governing body of the municipality.

(B) *Deposit of money not covered under division (A) above.* Money received by the Authority and not covered under division (A) above shall immediately be deposited to the credit of the Authority, subject to disbursement pursuant to this subchapter. Except as provided in this subchapter, the municipality shall not obligate itself, nor shall it ever be obligated to pay any sums from public funds, other than money received by the municipality pursuant to this section, for or on account of the activities of the Authority.

(1992 Code, §§ 120.601, 120.602) (Ord. 2-92, passed 2-10-1992)

§ 153.26 CONDEMNATION; TRANSFER OF PROPERTY.

The Village of Birch Run may take private property under Public Act 149 of 1911, as amended, being M.C.L.A. §§ 213.21 and 213.41, for the purpose of transferring, and use should be considered necessary for public purposes (purposes) for the benefit of the public.

(1992 Code, § 120.701) (Ord. 2-92, passed 2-10-1992)

§ 153.27 BONDS.

The Authority may issue any bonds or notes authorized by Act 197.

(1992 Code, § 120.801) (Ord. 2-92, passed 2-10-1992)

§ 153.28 POWERS.

No enumeration of the powers granted to the Authority in this chapter shall be interpreted as a limitation of the powers granted to the Authority, it being the intention of this chapter to grant to the Authority all powers granted to a Downtown Development Authority by Act 197.

(1992 Code, § 120.900) (Ord. 2-92, passed 2-10-1992)

§ 153.29 DEVELOPMENT PLAN; CONDITIONS.

When the Board decides to begin a project, the Development Plan shall contain whatever is required by Act 197.

(1992 Code, § 120.1000) (Ord. 2-92, passed 2-10-1992)

§ 153.30 PROPOSED BOUNDARY AREA OF THE DOWNTOWN DISTRICT.

The boundary of the Downtown District shall be as set forth in Appendix A.

(1992 Code, § 120.1100) (Ord. 2-92, passed 2-10-1992)

§ 153.31 HISTORICAL FACILITY, BUILDING OF STRUCTURE; PRESERVATION.

(A) *Restoration of appropriate structure.* The public facility, building or structure which is determined by the village to have significant historical interest shall be preserved in a manner as deemed necessary by the municipality in accordance with laws relative to the preservation of historical sites.

(B) *Proposed changes referred to applicable Historic District Commission.* The Authority shall refer all proposed changes to the exterior sites listed on the State Register of Historical Sites in the National Register of Historical Places to the applicable Historic District Commission created under Public Act 169 of 1970, being M.C.L.A. §§ 399.201 to 399.212 or the Secretary of State for review.

(1992 Code, §§ 120.1201, 120.1202) (Ord. 2-92, passed 2-10-1992)

§ 153.32 BUDGET.

(A) *Budget submitted by Authority.* The Director or Chairperson of the Authority shall prepare and submit for the approval of the Board a budget for the operation of the Authority for the ensuing fiscal year. The budget shall be prepared in the manner and contain information required by Act 197.

(B) *Budget to be approved by Village Council.* Before the Budget may be adopted by the Board, it shall be approved by the Village Council. Funds of the municipality shall not be included in the Budget of the Authority except those funds authorized by the Village Council.

(C) *Costs assessed by the Village Council.* The Village Council may assess a reasonable pro-rate share of funds for the costs of handling and auditing funds against the funds of the Authority, other than those committed, which costs shall be paid annually by the Board pursuant to an appropriate item in its budget.

(1992 Code, §§ 120.1301 - 120.1303) (Ord. 2-92, passed 2-10-1992)

§ 153.33 DISSOLUTION OF AUTHORITY UPON COMPLETION OF PURPOSES; TITLE OF PROPERTY.

(A) *Dissolution of Authority upon completion of purpose.* The Authority shall be dissolved by ordinance of the Village Council after it has completed the purposes for which it was organized.

(B) *Transfer of property.* The property and assets of Authority remain and after the satisfaction of the Authority shall belong to the

village.

(1992 Code, §§ 120.1401, 120.1402) (Ord. 2-92, passed 2-10-1992)

Appendix A: District Boundaries

(A) *Permanent parcel numbers of parcels comprising the expansion area.*

05-10-6-29-3002-700	05-10-6-20-2066-000	05-10-6-29-0101-000
05-10-6-20-2085-700	05-10-6-20-2065-000	05-10-6-29-0467-000
05-10-6-29-0570-700	05-10-6-20-2064-000	05-10-6-29-0524-000
05-10-6-29-2911-700	05-10-6-20-2063-000	05-10-6-29-0528-000
05-10-6-20-2032-000	05-10-6-20-2061-000	05-10-6-29-0574-000
05-10-6-20-2032-000	05-10-6-20-2060-000	05-10-6-29-0469-000
05-10-6-20-2032-000	05-10-6-20-2059-000	05-10-6-29-0522-000
05-10-6-20-2085-003	05-10-6-20-2058-000	05-10-6-29-0471-000
05-10-6-20-2034-000	05-10-6-20-2057-000	05-10-6-29-0520-000
05-10-6-20-2085-009	05-10-6-20-2056-000	05-10-6-29-0531-000
05-10-6-20-2085-006	05-10-6-20-2068-000	05-10-6-29-0570-000
05-10-6-20-2085-005	05-10-6-20-2054-000	05-10-6-29-2951-000
05-10-6-19-1996-001	05-10-6-20-2053-000	05-10-6-29-2911-006
05-10-6-20-2034-003	05-10-6-20-2085-001	05-10-6-29-0518-000
05-10-6-20-2085-007	05-10-6-20-2051-000	05-10-6-29-0534-000
05-10-6-20-0422-000	05-10-6-20-2052-000	05-10-6-29-0475-000
05-10-6-20-2086-000	05-10-6-20-2050-000	05-10-6-29-0516-000
05-10-6-20-0420-000	05-10-6-20-2049-000	05-10-6-29-0567-000
05-10-6-20-0424-000	05-10-6-29-0465-000	05-10-6-29-2911-005
05-10-6-20-0412-000	05-10-6-29-0463-000	05-10-6-29-0537-000
05-10-6-20-0438-000	05-10-6-29-0459-000	05-10-6-29-0544-000
05-10-6-20-0436-000	05-10-6-29-0457-000	05-10-6-29-0553-000
05-10-6-20-2085-008	05-10-6-29-0455-000	05-10-6-29-2911-003
05-10-6-20-2084-000	05-10-6-29-0451-000	05-10-6-29-0495-000
05-10-6-20-2087-000	05-10-6-29-0105-000	05-10-6-29-0504-000
05-10-6-20-2093-000	05-10-6-29-0563-000	05-10-6-29-0546-000
05-10-6-20-2098-000	05-10-6-29-0489-000	05-10-6-29-0550-000
05-10-6-20-2046-001	05-10-6-29-0512-000	05-10-6-29-0498-000
05-10-6-29-2951-005	05-10-6-29-0541-000	05-10-6-29-2911-002
05-10-6-29-2951-006	05-10-6-29-2911-004	05-10-6-29-2911-001
05-10-6-30-3032-000	05-10-6-29-0554-000	05-10-6-29-2998-000
05-10-6-20-0434-000	05-10-6-29-0492-000	05-10-6-29-2933-000
05-10-6-20-2045-000	05-10-6-29-0511-000	05-10-6-29-2929-000
05-10-6-20-2069-000	05-10-6-29-0103-000	05-10-6-29-2905-001
05-10-6-29-2921-000	05-10-6-29-2905-003	05-10-6-29-2915-001
05-10-6-29-2905-000	05-10-6-29-2940-000	
05-10-6-29-2905-002	05-10-6-29-2915-000	

(B) *Legal description of expansion area to be added to the District.*

Beginning at the southwest corner of § 21; thence north along west line of the section approximately 965 feet to the north right-of-way of Highway 1-75; thence southeasterly along the right-of-way approximately 484 feet to the north right-of-way of Birch Run Road; thence north approximately 136 feet; thence east approximately 129 feet; thence south approximately 186 feet to the centerline of Birch Run Road; thence west along the centerline of Birch Run Road approximately 207 feet; thence southeasterly along right-of-way of Highway 1-75 to a point measured at right angles approximately 722 feet from the centerline of Birch Run Road; thence east approximately 436 feet; thence north approximately 672 feet to the corporate limits of Birch Run; thence east approximately 280 feet along the corporate limits; thence northeasterly approximately 95 feet to the westerly right-of-way of Dixie Highway; thence northwesterly along the right-of-way approximately 683 feet; thence west approximately 990 feet to the west line of § 21; thence north approximately 950 feet along the section line; thence west approximately 1195 feet to the easterly right-of-way of Highway 1-75; thence

northwesterly along the right-of-way approximately 227 feet to the east 1/8 line of § 20; thence north along the east 1/8 line approximately 810 feet to the east-west 1/4 line of § 20; thence west along the 1/4 line approximately 2,627 feet to the west 1/8 line of § 20; thence south along the 1/8 line approximately 2,473 feet; thence west approximately 444 feet thence north approximately 366 feet to the north right-of-way of Racine Street; thence west approximately 430 feet along the north right-of-way of Racine Street; thence northerly along the east line of the former consumers right-of-way approximately 3,477 feet to the north 1/8th line of § 20; thence west approximately 99 feet to the west right-of-way of Maple Road; thence south approximately 2,655 feet to the Silver Creek Drain; thence westerly along the Silver Creek Drain approximately 108 feet; thence northwesterly along the Silver Creek Drain approximately 946 feet; thence westerly along the Silver Creek Drain approximately 351 feet to the east right-of-way of the CSX railroad; thence southwestwardly 101 feet at right angles to the southwestwardly right-of-way of the CSX Railroad; thence southeasterly along the west right-of-way approximately 1,644 feet; thence south approximately 259 feet; thence west approximately 239 feet; thence south approximately 228 feet to the north right-of-way of Birch Run Road; thence west along the right-of-way approximately 43 feet; thence south approximately 232 feet to the plat of Sheley Addition; thence east approximately 386 feet along the north line of Lots 49 through 57 of the plat; thence south approximately 176 feet to the south right-of-way of Maple Street; thence east along the right-of-way approximately 243 feet to the east right-of-way of Church Street; thence north along the right-of-way approximately 36 feet; thence east approximately 115 feet; thence south approximately 55 feet to the north line of Wolohan and Corlett's Plat; thence east approximately 232 feet to the westerly right-of-way of the CSX Railroad; thence southeasterly along the right-of-way approximately 2,819 feet; thence east across the east-west 1/4 line of § 29 (corporate limits) approximately 3,798 feet to the east line of the west 1/2 of the west 1/2 of the northwest 1/4 of § 28; thence North approximately 1,103 feet to the southwestwardly right-of-way of Highway 1-75; thence northwesterly along the right-of-way approximately 1,204 feet to the east line of § 29; thence north approximately 965 feet along the section line to the point of beginning.

(1992 Code, Part 120, App. A) (Ord. 2-84, passed 5-29-1984; Ord. 1-91, passed 3-31-1991; Ord. 1-2007, passed 8-27-2007)

CHAPTER 154: ZONING

Section

154.01 Zoning; adopted by reference

§ 154.01 ZONING; ADOPTED BY REFERENCE.

The Village of Birch Run's Zoning Code is hereby adopted by reference and incorporated herein as if set out in full.

CHAPTER 155: SIGN AND OUTDOOR ADVERTISING

Section

General Provisions

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GENERAL PROVISIONS

§ 155.001 PURPOSE.

The purpose of this chapter is to regulate signs and outdoor advertising within the Village of Birch Run so as to protect public safety, health, and welfare; minimize abundance and size of signs to reduce motorist distraction and loss of sight distance; promote public convenience; preserve property values; support and complement land use objectives as set forth in the Village's Growth Management Plan and this chapter; and enhance the aesthetic appearance and quality of life within the Village of Birch Run. This chapter shall not be deemed to be part of the Village of Birch Run Zoning Ordinance. The standards contained in this chapter are intended to be content neutral. These objectives are accomplished by establishing the minimum amount of regulations necessary concerning the size, placement, construction, illumination, and other aspects of signs in the Village of Birch Run so as to:

- (A) Realize that the proliferation of signs is unduly distracting to motorists and non-motorized travelers, reduces the effectiveness of signs directing and warning the public, causes confusion, reduces desired uniform traffic flow, and creates potential for accidents.
- (B) Prevent signs that are potentially dangerous to the public due to structural deficiencies or disrepair.
- (C) Reduce visual pollution and physical obstructions caused by a proliferation of signs which would diminish the Village of Birch Run's image, property values, and quality of life.
- (D) Recognize that the principal intent of commercial signs, to meet the purpose of these standards and serve the public interest should be for identification of an establishment on the premises, and not for advertising special events, brand names, or off-premises activities; alternative channels of advertising, communication and media are available for advertising which do not create visual blight and compromise traffic safety.
- (E) Enable the public to locate goods, services, and facilities without excessive difficulty and confusion by restricting the number and placement of signs.
- (F) Prevent placement of signs which will conceal or obscure signs of adjacent uses.
- (G) Protect the public right to receive messages, especially noncommercial messages such as religious, political, economic, social, philosophical and other types of information protected by the First Amendment of the United States Constitution.
- (H) The regulations and standard of this chapter are considered the minimum amount of regulation necessary to achieve a substantial government interest for public safety, aesthetics, protection of property values, and are intended to be content neutral.
- (I) Prevent off-premises signs from conflicting with land uses.
- (J) Maintain and improve the image of the Village of Birch Run by encouraging signs of consistent size, which are compatible with and complementary to related buildings and uses, and are harmonious with their surroundings.
- (K) Regulate portable commercial signs in recognition of their significant negative impact on traffic safety and aesthetics.

(Ord. 03-2006, passed 4-24-2006)

§ 155.002 DEFINITIONS.

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

AREA, OR SURFACE AREA OF A SIGN. That area per face enclosed by one outline, the sides of which make contact with the extreme points or edges of the sign, excluding the supporting structure which does not form part of the sign proper or of the display.

BALLOON SIGNAGE. Tethered gas balloon signage shall comply with the Village of Birch Run Ordinance # 98-4.

BANNER. A fabric, plastic, or other sign made of non-rigid material without enclosing structural framework. A **BANNER** is also defined not to exceed 45 square feet in area per sign.

BILLBOARD. A sign complying with the Village of Birch Run Billboard Ordinance # 97-8.

BUSINESS CENTER. A grouping of two or more business establishments on one or more parcels of property which may share parking and access and are linked architecturally or otherwise present the appearance of a unified grouping of businesses. A **BUSINESS CENTER** shall be considered one use for the purposes of determining the maximum number of pylon or ground signs. A vehicle dealership shall be considered a **BUSINESS CENTER** regardless of the number or type of models or makes available, however, used auto/truck sales shall be considered a separate use in determining the maximum number of pylon signs, provided that the used sales section of the lot includes at least 25% of the available sales area.

CANOPY SIGN. A non-rigid fabric marquee or awning-type structure which is attached to the building by supporting framework, which includes a business identification message, symbol, and/or logo. See **WALL SIGN**.

CHANGEABLE MESSAGE SIGN. A permanent reader board attached to a pylon or monument sign or to the exterior of a wall where

copy is changed mechanically, electronically or manually, including time/temperature sign.

CONSTRUCTION SIGN. A sign identifying the name(s) of project owners, contractors, developers, architects, designers, engineers, landscape architects, and financiers of a project being constructed or improved; and not including any advertising of any product or announcement of availability of leasing space.

DIRECTIONAL SIGN. A sign, which assists motorists in determining or confirming a correct route, specifically enter, exit, and parking signs. A business identification or logo on a sign is considered and calculated as part of the allowable square footage for a monument or ground sign.

ELECTRIC SIGN. Any sign containing electric wiring. This does not include signs illuminated by a separate exterior floodlight source.

FREESTANDING SIGN. A sign supported by one or more uprights, braces, pylons, or foundation elements located in or upon the ground and not attached to a building.

GROUND LEVEL SIGN. The elevation to be used for computing the height of signs. Defined as the roadway centerline grade elevation at its intersection with the centerline of the driveway serving the parcel which is located nearest to the sign location.

ILLUMINATED SIGN. A sign that provides artificial light directly or through any transparent or translucent material.

INSTITUTIONAL BULLETIN BOARD. A structure containing a surface area upon which is displayed the name of a religious institution, school, library, community center, or similar institution and the announcements of its services or activities.

INTEGRAL SIGN. Name of buildings or farm, date of erection, monumental citations, commemorative tablets and the like when made an integral part of the walls of the structure (or roof for farm buildings).

JOINT IDENTITY SIGN. A sign which gives direction and identification to a group of adjacent businesses whether or not under single management or ownership.

MONUMENT SIGN. A freestanding sign where the base of the sign structure is permanently in the ground or integrated into landscaping or other solid structural features.

NON-RESIDENTIAL OR COMMERCIAL PREMISES. Premises which are improved for the purpose other than single or multiple family residences, or in the case of a vacant parcel, which is classified in a district other than residential under the Village of Birch Run Zoning Ordinance.

OFF-PREMISES SIGN. A sign which identifies a use or advertises products and services not available on the site or parcel on which the sign is located; a sign which directs travelers or provides a message unrelated to the site on which the sign is located, such as, billboards.

OUTLET SHOPPING CENTER. A group of 25 or more business establishments on one or more parcels of property which may share parking and access and are linked architecturally or otherwise present the appearance of a unified grouping of businesses. An **OUTLET SHOPPING CENTER** shall be permitted sign approval by an overlay or typical sign schematic (Exhibit A attached to Ordinance 03-2006).

POLITICAL SIGN. A temporary sign used in connection with local, state, or national elections or ballot issues.

PORTABLE SIGN. A sign designed to be moved from place to place, whether or not it is permanently attached to the ground or structure. This includes hot-air and gas-filled balloons, banners, pennants, streamers, festoons, ribbons, tinsel, pinwheels, non-government flags, searchlights; but excludes political signs, real estate signs, construction signs, permanent changeable message signs, and regulatory/government signs.

PROJECTING SIGN. A sign, other than a wall sign, that is affixed to any building or wall and whose leading edge extends more than 12 inches beyond a building or wall.

PYLON (POLE) SIGN. A sign supported on the ground by a pole, braces, or monument, and not attached to any building or other structure.

REAL ESTATE OPEN HOUSE (TEMPORARY) SIGN. Temporary signs, which advertise and direct the public to an open house for a building, which is available for sale or lease, with the event, held on a specific day.

REAL ESTATE SIGN/RENTAL SIGN. An on-premises temporary sign advertising property or structure's availability for sale or lease.

REGULATORY SIGN. A sign installed by public agency to direct traffic flow, regulate traffic operation or provide any information deemed necessary for public safety, health and welfare. Any of these signs shall be in conformance with the Michigan Manual of Uniform Traffic Control Devices where applicable.

RESIDENTIAL PREMISES. Premises which are improved with a single or multiple residential unit(s), or, in the case of a vacant parcel, which is classified in a residential district under the Village of Birch Run Zoning Ordinance.

SETBACK SIGN. A distance measured from the outer boundary of a parcel in which erection of a sign is not permitted. A front setback is measured from the edge of the right of way of any abutting roadway. A rear setback is measured from the property line opposite the roadway. A side setback is measured from any other abutting property line. Corner lots shall require two front setbacks, but only one rear setback.

SIGN. Any device, structure, fixture, figure, symbol, banner, pennant, flag, balloon, logo, or placard consisting of written copy, symbols, logos and/or graphics, designed for the purpose of bringing attention to, identifying or advertising an establishment, product, goods, services, or other message to the general public. However, a **SIGN** shall not include a sign located completely within an enclosed building.

SPECIAL PURPOSE SIGNS. Any other temporary sign. See Table of Sign Standards.

STREET BANNER. Any sign complying with the Village of Birch Run Banner Ordinance # 97-5.

TEMPORARY LAND DEVELOPMENT PROJECT SIGN. Signs pertaining to the sale, lease, rent or development of a subdivision, planned shopping center, office building, industrial park or similar land parcel. See Table of Sign Standards.

THRU-LOT. A lot or parcel of land having frontage on two approved non-intersecting streets or roads, either public or private.

WALL SIGN. A sign placed flat, adjacent to the building, extending from the building as a canopy sign or projecting sign, or placed on a separate canopy such as over gasoline pumps.

(Ord. 03-2006, passed 4-24-2006)

REGULATIONS AND REQUIREMENTS

§ 155.015 EXEMPT SIGNS.

The following signs are specifically exempt from the provisions of this chapter:

(A) Nameplate: address, owner or occupant nameplate and other signs of up to two square feet in area attached to a mailbox, light fixture, or an exterior wall.

(B) Integral signs: names of buildings, dates of erection, monumental citations, commemorative tablets when carved into stone, concrete or similar material or made of bronze, aluminum or other non-combustible material and made an integral part of the structure and not exceeding 25 square feet in area.

(C) Home occupation identification signs, provided that it is a legal home occupation in a residential district, that there is only one sign per parcel, attached to an exterior building wall and does not exceed two square feet in area.

(4) Temporary signs of a religious institution, school, museum, library, community recreation facility/institutional bulletin boards, regardless of the location that are temporary signs which do not exceed 32 square feet in area, are a maximum of six feet in height, are set back a minimum of five feet from any property line or public street right-of-way, and meet the illumination standards of this chapter.

(E) Construction signs, provided that there shall be only one such sign per development project with a maximum height of six feet; not exceeding 16 square feet in area for residential projects, a maximum height of six feet and not exceeding 32 square feet in area for non-residential projects; set back a minimum of five feet from any property line or public street right-of-way; and that such signs shall be removed within 14 days of the date an occupancy permit is issued.

(F) Garage sale and estate sale signs, announcing the sale of household goods, provided that there is only one sign per premise; and two signs off-premises. Entirely on private property; that they are set back a minimum of five feet from any property line or public street right-of-way; that they do not exceed six square feet in area, that they are erected no earlier than one business day before and removed within one business day after the announced sale. Premises identification shall be provided on each sign. Shall comply with §§ 114.35 - 114.41.

(G) Historical marker: plaques or signs describing state or national designation as an historic site or structure and/or containing narrative, not exceeding 12 square feet in area.

(H) Signs not exceeding a total of two square feet per business indicating acceptance of credit cards or describing business affiliations and are attached to a permitted sign, exterior walls, building entrance or window.

(I) Signs on vending machines, gas pumps, and ice containers indicating the contents, provided that the sign on each device does not exceed two square feet in area.

(J) Signs atop gasoline service station pumps announcing on-premises sales, provided that signs not exceed two square feet in area.

(K) Signs on gas station pump islands or their structural supports identifying "self serve" and "full serve" operations; provided that there is no business identification or advertising copy on signs, that there are no more than two such signs per pump island and that such signs do not exceed four square feet in area.

(L) Parking lot signs indicating restrictions on parking, when placed within a permitted parking lot, are a maximum of ten feet in height, and do not exceed six square feet in area.

(M) Non-commercial signs: signs containing non-commercial messages, such as but not limited to those designating the location of public telephones, restrooms, restrictions on smoking and restrictions on building entrances provided that such signs do not exceed two square feet in area.

(N) Flags or insignia of any nation state city, community organization, educational institution, non-commercial enterprise, college or university.

(O) Identification of a residential community: one permanent sign per vehicular entrance identifying residential developments such as subdivisions, apartment complexes, condominium communities, senior housing complexes, mobile home parks and similar uses,

provided that the sign is set back from a minimum of 15 feet from any property line or public right-of-way, and do not exceed three square feet in area.

(P) Up to two signs identifying or directing motorists to a rental or management office in a multiple-family development, provided signs are a maximum of four feet in height, are set back a minimum of 15 feet from any property line or public right-of-way, and do not exceed three square feet in area.

(Q) Model signs: temporary signs directing the public to a model home or unit, provided that the signs are set back a minimum of five feet from any property line or public right-of-way and which do not exceed six square feet in area.

(R) Political signs, provided that the property contains a single or multiple residential structure; the signs are not placed within the public street right-of-way line (the Zoning Administrator shall be consulted regarding placement) at least ten feet apart, and do not exceed 32 square feet for each parcel, the signs are removed within one business day following the election for which they are erected.

(S) Street banners, advertising a public entertainment or event, provided that they receive a permit from the Village Council, are only used in a location designated by the Village Council, and are erected no more than 14 days before the event they advertised and removed within four hours following the event. Also shall comply with Ordinance # 97-5.

(T) Real estate signs, provided that there shall be only one real estate sign per parcel for each public street frontage, such signs are set back a minimum of five feet from any property line or public right-of-way, that the maximum height of any sign shall be four feet, six inches, and signs shall not exceed four square feet in size in all areas.

(U) Real estate open house signs (temporary), provided there shall be only two signs placed off-premises; the size of each sign shall be a maximum of six square feet in size and three feet in height above grade; signs shall not be affixed to other signs, utility poles, fire hydrants or trees; signs may be located in the public right-of-way but shall be placed at least five feet from the curb or 15 feet from the pavement edge where there is no curb, the person or firm placing signs on properties shall be allowed for a maximum of eight hours per day, and the signs shall be removed within one hour following the closing of the open house.

(V) Regulatory, directional and street signs erected by a public agency in compliance with Michigan Manual of Uniform Traffic Control Devices.

(W) Window signs within the building.

(X) Warning signs, such as no trespassing, warning of electrical currents or animal, provided that the signs do not exceed two square feet in area.

(Y) Flags identifying a business or organization provided the maximum size of the flagpole is 20 feet measured from the average surrounding grade, the maximum size of the corporate flag is 35 square feet, and there shall be no more than one corporate flag per lot.

(Z) Menu boards: a combined total, 100 square feet of exterior pre-view, menu boards and the associated speaker boards for an approved drive thru provided the total number of boards does not exceed four, and they are located between the drive thru lane and the building.

(Ord. 03-2006, passed 4-24-2006)

§ 155.016 PROHIBITED SIGNS.

The following signs shall be prohibited throughout the village:

(A) Signs which obstruct free access or egress from any building, including those that obstruct any fire escape, required exit way, window, door opening, or that prevent free access to the roof by firefighters.

(B) Signs having moving members or parts excluding barber poles and electronic message boards.

(C) Signs using high intensity or flashing lights, spinners or animated devices.

(D) Exterior string lights used in connection with a commercial enterprise other than holiday decorations, which are strung no more than 60 days before the holiday and removed within 30 days following the holiday for which they were erected.

(E) Signs which in any way simulate or could be confused with the lighting of emergency vehicles or traffic signals.

(F) Signs, which obstruct or impair the vision of motorists or non-motorized travelers at any intersection, driveway, within a parking lot or loading area.

(G) Non-regulatory signs placed in any public right-of-way, attached to a utility pole or affixed to a tree or other signs.

(H) Off-premise signs erected for the purpose of advertising a product, event, person, or subject, unless otherwise provided for in this ordinance or covered under the State Highway Act.

(I) Roof signs, any sign erected, constructed, and maintained upon and which projects beyond the roof of the building, unless specifically permitted elsewhere in this chapter.

(J) Portable signs, as defined, unless otherwise provided for in this chapter.

(K) Vehicles used as signs. No vehicle may be parked on any premises except for the intended purpose (as determined by the Code Enforcement Officer) of advertising a product or serving as a business sign.

(Ord. 03-2006, passed 4-24-2006) Penalty, see § 10.99

§ 155.017 GENERAL STANDARDS FOR PERMITTED SIGNS.

Signs on non-residential premises which serve a commercial or informational purpose may be permitted subject to the requirements of this section provided that no sign shall be erected or altered until approved by the Village Building Official and until a permit has been issued.

(A) All signs, unless otherwise provided for, shall be set back as stated in the Table of Sign Regulations. This distance shall be measured at a vertical line perpendicular to the ground and the right-of-way.

(B) Signs, as permitted in the various zoning districts, shall be designed to be compatible with the character of building materials and landscaping to promote an overall unified and aesthetic effect in accordance with the standards set forth herein. Signs shall not be constructed from materials that are remnants or manufactured for a different purpose.

(C) Illumination of signs shall be directed or shaded downward so that no direct ray from the illumination shall interfere with the vision of persons on the adjacent streets or of adjacent property owners. The use of colored lights, which maybe confused with traffic signals, will not be permitted.

(D) Underground wiring shall be required for all illuminated signs not attached to a building.

(E) Every sign shall be constructed and maintained in a manner consistent with the Building Code provisions and maintained in good structural condition at all times. All signs shall be kept neatly painted, stained, sealed or preserved including all metal parts and supports.

(F) All signs erected, constructed, reconstructed, altered or moved shall be constructed in a manner and of materials so that they shall be able to withstand wind load as determined in the current edition of the Michigan Building Code.

(G) All signs, including any cables, guy wires, or supports shall have a minimum clearance of four feet from any electrical fixture, streetlight or other utility pole or standard.

(Ord. 03-2006, passed 4-24-2006)

§ 155.018 MISCELLANEOUS SIGN REGULATIONS.

The following additional regulations shall be followed on non-residential sign premises.

(A) *Directional signs.* No more than two directional signs shall be permitted per approved driveway, with a maximum sign area of four square feet. A business name, symbol or logo shall not be calculated as part of the allowable sign square footage as specified in the Table of Sign Regulations.

(B) *Ground signs.* Ground signs are an alternative to pylon signs, with a minimum setback of five feet from the right-of-way, when located to ensure adequate sight distance for motorists.

(C) *Billboards.* Shall comply with the Village of Birch Run Ordinance # 97-8.

(D) *Wall, projecting and canopy signs.* Canopy signs and projecting signs may be used as an alternative to wall signs listed in the Table of Regulations, provided that they meet the standards below.

(1) Any sign area on a canopy shall be included in calculations of maximum wall sign square footage.

(2) Projecting or canopy signs in all districts shall have a minimum ground clearance of ten feet, shall be set back at least six feet from any adjacent public right-of-way, not project over an alley or private access lane. A projecting sign shall not extend for more than two feet from the building to which it is attached.

(3) No wall, canopy or projecting sign shall extend above the roof or parapet of the structure to which it is attached by more than one foot.

(4) Wood posts or supporting arms shall not be used in conjunction with any projecting sign.

(5) Projecting signs shall not exceed 32 square feet in area.

(6) Wall signs shall not project beyond or overhang the wall or any permanent architectural feature by more than one foot.

(E) *Signs for temporary uses/seasonal events.* Temporary uses meeting the standards of the Village of Birch Run Sign Permit and/or Special Event Ordinance shall be permitted to have on and off- premises signs provided the property contains a non-residential structure, and according to the following:

(1) A maximum of two on-premises signs with a combined maximum of 64 square feet;

(2) A maximum of 15 off- premises signs advertising the event, each no greater than four square feet in area, per side, and spaced at least 100 feet apart, the signs shall not be placed within the public street right-of-way line (the Zoning Administrator shall be consulted regarding sign placement). All off-premise signs shall be erected no earlier than three days prior to the event; and removed within one day following the event, for which they are erected. A map shall be provided illustrating locations for proposed off-premises signs.

(3) A nonrefundable fee shall be required for all signs to ensure all signs are removed within one business day following the termination of the temporary use or seasonal event.

(F) *Special purpose signs.* Any other temporary sign, subject to the restrictions outlined in the following Table of Special Purpose Sign Regulations and to the location restrictions for permanent sign setbacks. Each sign shall require a permit if it is to be posted more

than 24 hours.

Table of Special Purpose Sign Regulations			
Sign Areas	Maximum Size (Square Feet)	Duration of Permit	Permits for Parcel/Business
Residential** (commercial uses)	32*	14 days	2 per year
Residential (all others)	Not permitted		
Non-residential	32*	30 days	2 per year
Banners (permitted in non-residential areas only)	45*	Weekly	Unlimited
* Total area of special purpose signs may be in addition to the total sign area for the parcel as defined by the Table of Permanent Sign Regulations.			
** Illumination of special purpose signs in residential areas is prohibited.			

(G) *Temporary land development project signs.* Signs pertaining to the sale, lease, rent or development of a subdivision, planned shopping center, office building, industrial park or similar land parcel. Signs are allowed for a period of one year upon issuance of a permit. The permit may be extended for one additional year. Total number and size of signs allowed shall be controlled according to the following schedule:

Land Size	Total Number of Signs	Maximum Area Per Sign (Square Feet)
Less than 1 acre	1	50
Over 1 / less than 4 acres	1	100
Over 4 / less than 20 acres	2	150
Over 20 acres	3	150
Project signs shall comply with height and placement regulations for the Zoning District in which they are located.		

(H) *Temporary grand opening signs.*

(1) One on-premises temporary grand opening sign, a maximum of 32 feet in surface display area per side, a maximum of six feet in height and setback a minimum five feet from any public street right-of-way may be permitted for a period not to exceed 30 days for those businesses which meet the following conditions:

- (a) The business is new at the particular location;
- (b) The business is under new ownership;
- (c) The business has undergone a major expansion which has received a building permit; or
- (d) The business has reopened after being closed for at least one year.

(2) Conditions for a permitted temporary grand opening sign shall not include an addition or change in product line, new services, new management or other situations nor expressly provided for above.

Sign Locations³	Total Sign Area Per Parcel^{1, 5} (Square Feet)	Sign Type	Setbacks (Feet)	Number of Signs Per Parcel⁵	Maximum Sign Size Per Parcel^{1, 5} (Square Feet)	Height (Feet)
Sign Locations³	Total Sign Area Per Parcel^{1, 5} (Square Feet)	Sign Type	Setbacks (Feet)	Number of Signs Per Parcel⁵	Maximum Sign Size Per Parcel^{1, 5} (Square Feet)	Height (Feet)
Agricultural open space, R-1A ⁴ (parcels 5 acres or larger only)	107	Ground sign (freestanding)	Front: 5@	1	32	6
			Side: 5			
			Rear: 5			
		Wall	N/A	No limit	50	On wall
		Canopy	–	Not allowed	–	–
Projection	–	Not allowed	–	–		

		Roof	–	Not allowed	–	–
		Integral	N/A	1	25	On wall
		High profile:	–	Not allowed	–	–
Residential, R-1 ⁴	Non-residential use (64)	Ground sign (freestanding)	Front: 5 [@]	1	32	6
			Side: 5			
			Rear: 5			
		Wall:	N/A	No limit	32	On wall
	Residential (27)	Wall	N/A	1/dwelling	2	On wall
		Canopy	–	Not allowed	–	–
		Projection	–	Not allowed	–	–
		Roof	–	Not allowed	–	–
Integral		N/A	1 / dwelling/ non-residential	25	On wall	
	High profile:	–	Not allowed	–	–	

<i>Sign Locations</i> ³	Total Sign Area Per Parcel ^{1, 5} (Square Feet)	<i>Sign Type</i>	<i>Setbacks (Feet)</i>	Number of Signs Per Parcel ⁵	Maximum Sign Size Per Parcel ^{1, 5} (Square Feet)	<i>Height (Feet)</i>
<i>Sign Locations</i> ³	Total Sign Area Per Parcel ^{1, 5} (Square Feet)	<i>Sign Type</i>	<i>Setbacks (Feet)</i>	Number of Signs Per Parcel ⁵	Maximum Sign Size Per Parcel ^{1, 5} (Square Feet)	<i>Height (Feet)</i>
Residential, R-2A, R-2B, R-2C ⁴	89	Ground sign (freestanding)	Front: 5 [@]	1	32	6
			Side: 5			
			Rear: 5			
		Wall	N/A	1	32	On wall
		Canopy	–	Not allowed	–	–
		Projection	–	Not allowed	–	–
		Roof	–	Not allowed	–	–
		Integral	N/A	1	25	On wall
	High profile:	–	Not allowed	–	–	
Non-residential, C-1	240 (depends on number of businesses)	Ground sign (freestanding)	Front: 5 [@]	1	42	14
			Side: 5			
			Rear: 5			
		Ground sign joint identity ²	Front: 5 [@]	1 per business	65	14
			Side: 5	center		
			Rear: 5			
		Wall	N/A	1	150	On wall
		Canopy	#	1	–	On wall
Projection	#	1	32	On wall		
Roof	–	Not allowed	–	–		
Integral	N/A	1	25	On wall		

<i>Sign Locations</i> ³	Total Sign Area Per Parcel ^{1, 5} (Square Feet)	<i>Sign Type</i>	<i>Setbacks (Feet)</i>	Number of Signs Per Parcel ⁵	Maximum Sign Size Per Parcel ^{1, 5} (Square Feet)	<i>Height (Feet)</i>
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<i>Sign Locations</i> ³	Total Sign Area Per Parcel ^{1, 5} (Square Feet)	<i>Sign Type</i>	<i>Setbacks (Feet)</i>	Number of Signs Per Parcel ⁵	Maximum Sign Size Per Parcel ^{1, 5} (Square Feet)	<i>Height (Feet)</i>
Non-residential, C-2	240 (depends on number of businesses)	Ground sign (freestanding)	Front: 5 [@]	1	42	6
			Side: 5			
			Rear: 5			
		Ground sign joint identity ²	Front: 5 [@]	1 per business	65	6
			Side: 5	center		
			Rear: 5			
		Wall	N/A	No limit	150	On wall
		Canopy	#	1	–	On wall
		Projection	#	1	32	–
		Roof	–	Not allowed	–	–
Integral	N/A	1	25	On wall		
		High profile	N/A	Not allowed	–	–
Non-residential, C-3, C-4	2,440 (depends on number of businesses)	Ground sign (freestanding)	Front: 5 [@]	1	84	14
			Side: 5			
			Rear: 5			
		Ground sign joint identity ²	Front: 5 [@]	1 per business	195	21
			Side: 5	center		
			Rear: 5			
		Wall	N/A	No limit	#6	On wall
		Canopy	#	No limit	150	On wall
		Projection	#	1	32	–
		Roof	N/A	Not allowed	–	–
		Integral	N/A	1	25	On wall
High profile	Previous established location	Share existing sign	2 - 300	Existing pole height plus new sign face		
			3 - 350			
			4 - 400			

<i>Sign Locations</i> ³	Total Sign Area Per Parcel ^{1, 5} (Square Feet)	<i>Sign Type</i>	<i>Setbacks (Feet)</i>	Number of Signs Per Parcel ⁵	Maximum Sign Size Per Parcel ^{1, 5} (Square Feet)	<i>Height (Feet)</i>
<i>Sign Locations</i> ³	Total Sign Area Per Parcel ^{1, 5} (Square Feet)	<i>Sign Type</i>	<i>Setbacks (Feet)</i>	Number of Signs Per Parcel ⁵	Maximum Sign Size Per Parcel ^{1, 5} (Square Feet)	<i>Height (Feet)</i>
Outlet shopping center		<p>The typical sign schematics attached to Ordinance 03-2006 as Exhibit A shall become the overlay of signage for this use. The typical sign schematic is permitted and designed to afford the maximum esthetic compatibility and utilization of the signage to encourage the traveling public to utilize the facility, while informing the traveling public of particular locations, and maximizing the compatibility of the signage with the surrounding property and meeting the goals and Outlet Shopping objectives of this chapter.</p> <p>The typical sign schematics attached to Ordinance 03-2006 as Exhibit A may be modified from time to time, upon approval by the Village Council.</p>				
		Ground sign (freestanding)	Front: 5 [@]	1	42	6
			Side: 5			
			Rear: 5			

Non-residential, M-1, M-2	1,510	Ground sign joint identity ²	Front: 5 [@]	1 per business	130	18
			Side: 5	center		
			Rear: 5			
		Wall	N/A	No limit	#6	On wall
		Canopy	#	1	150	On wall
		Projection	#	1	32	On wall
		Roof	N/A	Not allowed	–	–
		Integral	N/A	1 per building	25	On wall
		High profile	–	Not allowed	2 - 300 3 - 350 4 - 400	Existing pole height plus new sign face
# Must be 10 feet above a sidewalk and 15 feet above a driveway; may be used as an alternate to wall signs. See § 155.002.						
@ May not obstruct vision of drivers.						
1 Doubled signage provision may not exceed the maximum sign size per ground sign.						
2 Advertising using this provision is limited to the C-2 regulations for any additional ground signs.						
3 References to property classifications within this ordinance are for reference purposes only.						
4 Illumination of signage in these areas is prohibited.						
5 Allowable signage doubled for thru lots in the commercial and industrial districts only (see § 155.002).						
6 20% of the building's road frontage area calculated by its length times its actual height. Not to exceed 600 square feet maximum for the building.						

(I) *Design of ground signs.* The following regulations shall be included in the design of all ground signs: A landscaped area shall be provided for each ground sign. The landscaped area must contain a minimum of two square feet for each square foot of the sign area. The area shall consist of a minimum of 50% perennial plantings. The landscape design must be approved by either the Planning Commission or the Building Department during their respective reviews.

(Ord. 03-2006, passed 4-24-2006)

§ 155.019 NON CONFORMING SIGNS.

Nonconforming signs are those signs that do not comply with the size, placement, construction or other standards or regulations of this chapter, but were lawfully established prior to its adoption. Signs for which the Zoning Board of Appeals has granted a variance prior to the effective date of this chapter and can be documented are exempt and shall not be defined as nonconforming. It is the intent of this chapter to encourage eventual elimination of nonconforming signs in a timely manner. This objective is considered as much as a subject of public health, safety and welfare as the prohibition of new signs in violation of this chapter. Therefore, the purpose of administering this chapter is to remove nonconforming signs while minimizing economic burden on the sign owner. A nonconforming sign may be continued and shall be maintained in good condition as described elsewhere in this chapter. However, the following alterations are regulated:

(A) A nonconforming sign shall not be structurally altered or repaired so as to prolong its life or so as to change its shape, size, type or design unless such change shall make the sign conforming.

(B) Another nonconforming sign shall not replace a nonconforming sign without further review.

(C) A nonconforming sign shall not be reestablished after the use to which it is related has been discontinued for 90 days or longer.

(D) A nonconforming sign shall not be reestablished after damage or destruction if the estimated expense of reconstruction exceeds 50% of the replacement cost as determined by the Administrator.

(Ord. 03-2006, passed 4-24-2006)

§ 155.020 SIGN PERMIT REQUIREMENTS.

(A) *Permit.* A permit is not required for exempt signs. A permit must first be obtained from the Building Department for all other signs.

(B) *Application.* Applications for sign permits shall be made upon a form provided by the Department for this purpose. The applicant shall provide the following information.

(1) Name, address, phone, fax and e-mail if possible, of the person(s) applying for the permit;

(2) Name, address, phone, fax and e-mail if possible, of the person(s) owning the parcel upon which the sign is proposed to be located.

(3) Name of business, address and parcel number of the property on which the sign is or will be located.

(4) Identification of the type of sign (monument, freestanding, wall and the like).

(5) Two copies of the plans and specifications. The method of construction and/or attachment to a building, or in the ground, shall be explained in the plans and specifications.

(6) Copy of stress sheets and calculations, if deemed necessary by the Building Department, showing the structure as designed for dead load and wind pressure as determined in the Building Code.

(7) Name, address, phone, fax and e-mail if possible of the company erecting the sign.

(8) Such other information as the Building Department may require to show compliance with this chapter, and any other applicable laws.

(9) The seal or certificate of a registered structural or civil engineer, when required by the Building Department.

(10) The residential or non-residential area where the sign is proposed to be located.

(C) *Site plan.* Two copies of a sketch illustrating where the sign will be on the site with setbacks accurately dimensioned. The sketch should also include the location of all existing buildings, roads, parking areas, signs, entrances and exits on the site.

(D) *Sign drawings.* Three copies of a drawing of the proposed sign(s) shall include all of the following detailed information.

(1) Height of the sign above finished grade.

(2) Surface of the sign (material, color and dimensions)

(3) Dimensions and display area of the proposed sign.

(4) Such other information as deemed necessary by the Building Department.

(E) *Temporary sign.* All information required for the submission of permanent signs shall be required for the submission of a temporary sign.

(F) *Review process.* The Building Inspector or his/her designee(s) shall have the sole authority to approve or deny applications for temporary or permanent signs. The Inspector or designee shall review the application for conformance with the requirements of this chapter. The Building Inspector or his/her designee may refer any application for sign approval to the Sign Board of Appeals for their review. The application shall be either approved or denied within a reasonable time frame as follows:

(1) Sign applications that conform to all applicable ordinance standards shall be approved.

(2) All applications for sign permits that are incomplete or do not meet the requirements of this chapter shall be denied.

(3) An approval of a sign permit may be conditioned upon compliance with reasonable conditions or limitations regarding the character of the sign, the surroundings in which it is to be displayed, and the purpose of this chapter.

(4) Approved applications for permanent signs shall be reviewed by the Village of Birch Run Building Department for conformity with all Building Codes in effect in the Village of Birch Run and if in compliance therewith, the Building Inspector shall issue the appropriate sign permit.

(5) Permit fees for signs shall be established by resolution of the Village Council. The permit fees must relate to the cost of issuing the permit and the inspections to achieve compliance with this chapter, and may vary based on the size, type, and height of the sign.

(6) A person providing false information under this chapter shall be guilty of a civil infraction.

(7) Applicants meeting the provisions of this chapter shall be issued a permit within 14 days of submitting a complete application.

(Ord. 03-2006, passed 4-24-2006)

ADMINISTRATION AND APPEALS

§ 155.035 ADMINISTRATOR.

The Village Manager shall constitute the Sign Administrator for the purpose of this chapter and appoint personnel to administer and enforce the terms and conditions of this chapter and all other provisions related to signs.

(Ord. 03-2006, passed 4-24-2006)

§ 155.036 ENFORCEMENT.

The Building Department shall issue permits as required by this chapter. The Department shall also ensure signs comply with this chapter and any other applicable law. The Department shall also enforce the requirements that all signs properly comply with this chapter by procuring a permit. The Department shall make inspections as may be necessary and shall initiate appropriate action to enforce compliance with this chapter and other applicable sign laws.

(Ord. 03-2006, passed 4-24-2006)

§ 155.037 BUILDING DEPARTMENT POWERS.

The Department shall have the power and authority to administer and enforce this chapter. Included among the powers are the

following specific powers:

(A) Every sign for which a permit is required shall be subject to the inspection and approval of the Department. When deemed advisable, a sign may be inspected at the point of manufacture.

(B) (1) Upon presentation of proper identification to the sign owner or owner's agent, the Department may enter the sign area for purposes of inspecting the sign, sign structure, and any fasteners securing the sign to a building or support.

(2) In cases of emergency, where imminent hazards to persons or property are known to exist, and where the sign owner, or owner's agent, is not readily available, the Department may enter the sign area for purposes of inspection and remediation. When on private property, the Department shall observe rules and regulations concerning safety, internal security, and fire protection.

(3) If the Department is denied admission to inspect any sign, inspection shall be made only under authority of a warrant issued by a court of proper jurisdiction. When applying for the warrant, the Department shall submit an affidavit setting forth a belief that a violation of this chapter exists with respect to a particular sign, and the reasons for forming this belief. The affidavit shall designate the place and name of the person believed to own or possess the sign. If the court finds probable cause exists for the search of the sign, and supporting structures, then a warrant authorizing the search shall be issued. The warrant shall describe the property with sufficient certainty to identify the same. This warrant shall constitute authority for the Department to enter the sign area and to inspect the property.

(C) Upon issuance of a stop order from the Department, work on any sign that is being conducted in any manner contrary to this chapter shall be immediately stopped. This notice and order shall be in writing and shall be given to the property owner of the parcel, the sign owner, or to the person performing the work. The stop order shall state the authority to enforce a stop order.

(D) The Department has the authority to revoke any permit authorized by this chapter if the sign violates this chapter or another law, provided that the Department shall offer the sign owner an opportunity to be heard. The person whose permit is under consideration shall be given at least ten days' written notice of the time, place, and reason for the hearing. The sign owner and/or person identified in the permit shall be permitted to present relevant facts and legal argument concerning the pending revocation. Following this hearing, the Department shall consider the merits of the case and shall present a written opinion prior to any action. If, however, the Department believes the health, safety, or welfare of the citizens are endangered by any violation of this chapter, the Department may immediately revoke any sign permit.

(E) A sign installed after the effective date of this chapter, and not conforming to this chapter, shall be removed immediately by the owner. The sign owner shall not be entitled to compensation for the sign removal and shall reimburse the Department for any costs incurred in connection with the removal.

(F) Any person violating any provisions of this chapter shall be guilty of a civil infraction. Each day on which a violation occurs shall constitute a separate offense. In addition, the Village Attorney is authorized to take all action, legal, injunctive and equitable, to assure compliance with this chapter.

(Ord. 03-2006, passed 4-24-2006)

§ 155.038 SIGN BOARD OF APPEALS.

The Village of Birch Run Zoning Board of Appeals shall constitute the Sign Board of Appeals for the purpose of this chapter and a quorum shall consist of three members.

(Ord. 03-2006, passed 4-24-2006)

§ 155.039 APPEALS AUTHORIZED.

(A) Any person allegedly aggrieved by a decision of the Building Inspector or Code Enforcement Officer relative to the placement, area, height and construction of a sign may appeal such decision to the Village Sign Board of Appeals. The appeal shall be taken to the Building Department.

(B) Whenever the strict application of requirements from this chapter may pose a demonstrable hardship or practical difficulty with regard to placement, area, height and construction of a sign, an appeal for variance from such requirements may be filed with the Building Department on a form provided for such purpose.

(C) The Administrator or his/her designee(s) shall then place the appeal on a special meeting of the Sign Board of Appeals within 45 days of filing

(D) Within 90 days of receipt, the Board of Appeals shall render a final decision in accordance with the provisions of this chapter.

(E) Any decision of the Sign Board of Appeals shall not become final until the expiration of five Village of Birch Run business days from the date of the decision, unless the board finds that immediate effect is necessary to preserve a substantial property right, and so certifies in the record of the decision.

(Ord. 03-2006, passed 4-24-2006)

§ 155.040 FEES.

Any person filing an appeal with the Village Sign Board of Appeals shall fill out the necessary appeal form provided by the Building Department and shall pay the appropriate fee, as established by resolution of the Village Council.

(Ord. 03-2006, passed 4-24-2006)

§ 155.041 APPEAL PROCEDURE.

(A) The Administrator or his/her designee shall give notice of all hearings to all owners of record of real property within 300 feet of the premises in question; the notice shall be delivered by first class mail addressed to the respective owners at the address given in the last assessment roll.

(B) All persons appealing shall be required to appear in person or to be represented by a duly authorized agent.

(C) The Sign Board of Appeals shall prepare an official record for each appeal and shall base its decision on this record. The official record shall include:

(1) The relevant administrative records and administrative orders issued herein relating to the appeal.

(2) The appeal form.

(3) The requisite written findings of fact, the conditions attached, the decisions and orders by the Sign Board of Appeals disposing the appeal, signed by the chairperson of the Board.

(D) The appellant shall be prepared to furnish a site drawing, photograph, and any other means of proof, to the Sign Board of Appeals to demonstrate that a hardship or practical difficulty exists.

(Ord. 03-2006, passed 4-24-2006)

§ 155.042 ACTION OF SIGN BOARD OF APPEALS.

(A) The Sign Board of Appeals shall have the power to modify or reverse, wholly or partly, the notice or order, and may grant an extension of time for the performance of any act required of not more than three additional months, where the Sign Board of Appeals finds that there is a practical difficulty or undue hardship resulting from the application of the provisions of this chapter, and that the extension is in harmony with the general purpose of this ordinance to secure the public health, safety and welfare.

(B) The Sign Board of Appeals shall return a decision upon each petition within 45 days after a request or appeal has been filed, unless a longer time is agreed upon by the parties concerned; however, the Sign Board of Appeals may not order action on a petition until the next scheduled meeting.

(C) The concurring vote of a majority of the members of the Sign Board of Appeals shall be necessary to reverse, wholly or partly, or modify any order, requirement, decision, or determination of the Building Official or Code Enforcement Officer; or to decide in favor of the applicant on any matter upon which the Sign Board of Appeals is required to consider or to effect any variation of the provisions of this chapter.

(D) After a variance has been denied in whole or on part by the Sign Board of Appeals, then the petition shall not be resubmitted for a period of one year from the date of the last denial, provided however, that a denied variance may be reconsidered by the Sign Board of Appeals within the one year period, when, in the opinion of the Building Official, or Code Enforcement Officer or Sign Board of Appeals, newly discovered evidence or changed conditions warrant the reconsideration.

(E) At the hearing, the petitioner shall be given an opportunity to show cause why the notice or order should be modified or withdrawn, or why the period of time permitted for compliance should be extended.

(Ord. 03-2006, passed 4-24-2006)

§ 155.043 STAY.

An appeal shall stay all proceedings in furtherance of the action appealed from unless the Building Inspector certifies to the Sign Board of Appeals, that by reasons of facts stated in the certificate, imminent harm to persons or property exists, in which case the proceedings shall not be stayed, except by an order of a court of competent jurisdiction.

(Ord. 03-2006, passed 4-24-2006)

§ 155.044 ADJUSTMENT IN SIZE AND LOCATION.

The Village of Birch Run Sign Board of Appeals may, upon application by the property owner, make reasonable adjustment in the size and location requirements for any sign, where such action meets all of the following standards:

(A) A variance is deemed in the public interest;

(B) The variance would not adversely affect properties in the immediate vicinity of the proposed sign;

(C) The alleged hardship or practical difficulties supporting the variance request results from conditions that do not generally exist throughout the Village of Birch run, and denial or a variance would preclude all reasonable use of the property;

(D) Granting a variance would result in substantial justice being done, considering the public interests protected by the standards of this chapter, the individual hardships that would be suffered by denial of the variance and the rights of others throughout the Village of Birch Run whose property may be affected by granting the variance; and

(E) The type of sign has been designed to make it compatible with the surrounding area.

(Ord. 03-2006, passed 4-24-2006)

§ 155.045 VIOLATIONS.

It shall be unlawful for any person to erect, construct, enlarge, alter, repair, move, use or maintain any sign in the Village of Birch Run, or cause or permit the same to be done, contrary to or in violation of any of the standards and regulations of this chapter. Any violation, including the failure to remove a sign when directed under the authority of this chapter, shall constitute a municipal civil infraction punishable in accordance with the Village of Birch Run Municipal Civil Infractions Ordinance.

(Ord. 03-2006, passed 4-24-2006) Penalty, see § 10.99

TABLE OF SPECIAL ORDINANCES

Table

I. FRANCHISES

TABLE I: FRANCHISES

<i>Ord. No.</i>	<i>Date Passed</i>	<i>Description</i>
3-96	6-17-1996	Consumers Power Company Gas and/or Electric Franchise Ordinance
2011-03	7-25-2011	Consumers Energy Company gas and/or electric franchise ordinance

PARALLEL REFERENCES

References To Michigan Compiled Laws Annotated

References to 1992 Code

References to Ordinances

REFERENCES TO MICHIGAN COMPILED LAWS ANNOTATED

<i>M.C.L.A. Cite</i>	<i>Code Section</i>
<i>M.C.L.A. Cite</i>	<i>Code Section</i>
15.231	153.23
15.231–15.246	113.04; 113.16
15.246	153.23
15.261–15.275	32.02; 153.22
15.321–15.330	34.04; 34.99
35.441 <i>et seq.</i>	110.010
61.16–75.12	150.25
67.1	Charter, 10.033
67.2	Charter, 10.033
67.3	Charter, 10.033
67.4	33.01
67.8	Charter, 10.033
67.9	Charter, 10.033
67.10	Charter, 10.033
67.48	Charter, 10.033
67.49	Charter, 10.033
67.50	Charter, 10.033
67.51	Charter, 10.033

123.731–123.786	51.01; 52.30; 52.31
125.1501–125.1531	32.02; 50.01; 153.24
125.1651–125.1680	153.01; 153.20
125.1662	153.25
125.1663	153.25
129.91–129.96	51.05; 52.33
141.101–141.138	51.01; 51.27; 51.30; 51.32; 51.38; 51.39; 51.42; 51.44; 52.30; 52.31
211.1 <i>et seq.</i>	93.29
211.1–211.157	33.01
213.21	153.26
213.41	153.26
247.64a	95.06
247.651–247.675	113.12
257.1d	91.24
257.8b	91.24
257.951 <i>et seq.</i>	31.17
319.101 <i>et seq.</i>	112.06; 112.07; 112.26
333.1101 <i>et seq.</i>	111.12; 130.01
338.1051 <i>et seq.</i>	114.06
399.201–399.212	153.31
436.1101–436.2303	130.03
484.2102	113.03
484.2251	113.04
484.3101–484.3120	113.01; 113.03
560.101–560.293	150.02
600.101–600.9911	10.99
600.101–600.9948	35.03; 35.99
600.8101 <i>et seq.</i>	32.01
600.8701–600.8735	10.02
750.552	110.008
764.9a–764.9e	10.10

REFERENCES TO 1992 CODE

<i>1992 Code</i>	<i>2008 Code</i>
<i>1992 Code</i>	<i>2008 Code</i>
1.001	31.01
1.002	31.01
2.001	31.15
2.002	31.15
2.003	31.16
2.004	31.17
3.001–3.004	33.01
4.001	34.01
4.002	34.02
4.003	34.03
4.004	34.04

4.005	34.05
4.006	34.06
4.007	34.07
4.008	34.08
4.009	34.09
4.010	34.10
4.011	34.99
4.013	34.11
18.001	112.01
18.002	112.02
18.003	112.03
18.004	112.04
18.005	112.05
18.006	112.06
18.007	112.07
18.008	112.08
18.009	112.09
18.010	112.99
18.011	112.10
18.036	112.25
18.037	112.26
18.038	112.27
18.039	112.28
18.040	112.29
18.041	112.30
18.042	112.31
18.043	112.32
18.044	112.33
18.045	112.34
18.046	112.35
18.056	112.50
18.057	112.51
18.058	112.52
18.059	112.53
18.060	112.99
20.001	114.35
20.002	114.36
20.003	114.37
20.004	114.38
20.005	114.39
20.006	114.99
20.008	114.40
20.009	114.41
30.001	113.35
30.002	113.36
30.003	113.37
30.004	113.38
30.005	113.39
30.006	113.40
30.007	113.41
30.008	113.42

30.009	113.43
30.010	113.44
30.011	113.45
30.012	113.46
30.013	113.47
30.014	113.48
30.015	113.49
30.017	113.99
40.001–40.009	70.01
42.001–42.005	70.03
42.006	70.99
46.004	70.02
46.006	70.99
50.001–50.003	130.02
50.004	130.99
52.001	130.03
52.002	130.03
52.003	130.99
53.001–53.003	130.04
54.001–54.005	130.01
54.006	130.99
60.001	90.01
60.002	90.02
60.004	90.04
60.005	90.05
60.006	90.06
60.007	90.07
60.008	90.08
60.009	90.09
60.010	90.10
60.011	90.99
61.001	90.25
61.002	90.26
61.003	90.99
61.005	90.27
62.001	113.65
62.002	113.66
62.003	113.67
62.004	113.68
62.005	113.69
62.006	113.70
62.007	113.99
62.009	113.71
74.002	96.01
74.003	96.02
74.004	96.03
74.005	96.04
74.006	96.05
76.007	96.06
74.008	96.07
80.001	51.25
80.002	51.26

80.003	51.27
80.004	51.28
80.005	51.29
80.006	51.30
80.007	51.31
80.008	51.32
80.009	51.33
80.010	51.34
80.011	51.35
80.012	51.36
80.013	51.37
80.014	51.38
80.015	51.39
80.016	51.40
80.017	51.41
80.018	51.42
80.019	51.43
80.020	51.44
81.001	52.01
81.002	52.02
81.003	52.03
81.004	52.04
81.005	52.05
81.006	52.06
81.007	52.07
81.008	52.08
81.009	52.09
81.010	52.10
81.011	52.11
81.012	52.12
81.013	52.99
81.014	52.13
82.001	53.01
82.002	53.02
82.003	53.03
82.004	53.04
82.005	53.05
82.006	53.99
83.001	53.40
83.002	53.41
83.003	53.42
83.004	53.43
83.005	53.44
83.006	53.45
83.007	53.46
83.008	53.99
85.001	52.30
85.002	52.31
85.003	52.32
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85.005–85.007	52.33
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85.009	52.34
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85.015	Ch. 51, App. A
84.001	53.20
84.002	53.21
84.003	53.22
84.004	53.23
84.005	53.99
85.010	52.99
86.001	92.01
86.002	92.02
86.003	92.03
86.004	92.04
86.005	92.05
86.006	92.99
87.001	51.01
87.002	51.02
87.003	51.03
87.004	51.04
87.005	51.05
87.006	51.06
87.007	51.07
87.008	51.08
87.009	51.99
109.001–109.003	151.15
109.004	151.99
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