

REPUBLICATION
April 2014

CODE OF ORDINANCES

City of

MT. MORRIS, MICHIGAN

Looseleaf Supplement

This copy of the Mt. Morris Code is issued as a "replacement" copy and contains all ordinances deemed advisable to be included at this time through Ordinance No. 12-06, enacted December 10, 2012. See the Code Comparative Table for further information.

This copy replaces all existing copies of the Code as published through Supplement No. 6. Future supplements will commence with "Supplement No. 1."



CODE OF ORDINANCES

CITY OF

MT. MORRIS, MICHIGAN

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municode

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of the
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MT. MORRIS, MICHIGAN
AT THE TIME OF THIS REPUBLICATION

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Mayor Pro Tem

Randolph Michaels
Mark Middleton
Ed Sullivan
Dennis Heidenfeldt
Tonya Davis
City Council

Thomas Darnell
City Manager

Charles A. Forrest, Jr.
City Attorney

TJ Lucero
City Clerk

PREFACE

This Code constitutes a complete republication of the general and permanent ordinances of the City of Mt. Morris, Michigan.

Source materials used in the preparation of the Code were the 1995 Code, as amended through May 2007, and ordinances subsequently adopted by the city council. The source of each section is included in the history note appearing in parentheses at the end thereof. The absence of such a note indicates that the section is new and was adopted for the first time with the adoption of the Code. By use of the comparative table appearing in the back of this Code, the reader can locate any ordinance included herein.

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

Chapter and Section Numbering System

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

Page Numbering System

The page numbering system used in this Code is a prefix system. The letters to the left of the colon are an abbreviation which represents a certain portion of the volume. The number to the right of the colon represents the number of the page in that portion. In the case of a chapter of the Code, the number to the

left of the colon indicates the number of the chapter. In the case of an appendix to the Code, the letter immediately to the left of the colon indicates the letter of the appendix. The following are typical parts of codes of ordinances, which may or may not appear in this Code at this time, and their corresponding prefixes:

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Indexes

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

Looseleaf Supplements

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

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

Acknowledgments

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

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

Copyright

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ADOPTING ORDINANCE

ORDINANCE 348

An Ordinance Adopting and Enacting a New Code for the City of Mt. Morris; Providing for the Repeal of Certain Ordinances Not Included Therein; Providing for the Manner of Amending Such Code; and Providing When Such Code and This Ordinance Shall Become Effective.

The City of Mt. Morris ordains:

Section 1. The Code entitled "Code of Ordinances, City of Mt. Morris," published by Municipal Code Corporation, consisting of Chapters 1 through 70, each inclusive, is adopted.

Section 2. All ordinances of a general and permanent nature enacted on or before June 26, 1995, and not included in the Code or recognized and continued in force by reference therein (except Ordinance 184, the Zoning Ordinance, and all of its amendments), are repealed.

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

Section 4. Additions or amendments to the Code, when passed in the form as to indicate the intention of the city council to make the same a part of the Code, shall be deemed to be incorporated in the Code, so that reference to the Code includes the additions and amendments.

Section 5. Ordinances adopted after June 26, 1995, that amend or refer to ordinances that have been codified in the Code shall be construed as if they amend or refer to like provisions of the Code.

Section 6. This ordinance shall become effective October 27, 1995.

Passed and Adopted by the city council this 23rd day of October, 1995.

/s/

Robert D. Slattery, Jr., Mayor

/s/

Lisa A. Baryo, Clerk

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PART I

CHARTER*

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***Editor's note**—Printed herein is the Charter of the City of Mt. Morris, as adopted by the electors on March 30, 1993, and effective on April 6, 1993. Amendments to the Charter are indicated by parenthetical history notes following amended provisions. The absence of a history note indicates that the provision remains unchanged from the original Charter. Obvious misspellings have been corrected without notation. For stylistic purposes, a uniform system of headings, catchlines and citations to state statutes has been used. Additions made for clarity are indicated by brackets.

State law references—Home rule cities generally, MCL 117.1 et seq.; power to adopt and amend Charter, Mich. Const. 1963, art. VII, § 22.

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Resolution of Adoption [1992]

Resolution of Adoption [1993]

Certificate of Vote

PREAMBLE

We, the people of the City of Mt. Morris, County of Genesee, State of Michigan, pursuant to the authority granted by the constitution and the statutes of the State of Michigan, in order to secure the benefits of self-government, and to provide for the public peace and health and for the safety of persons and property do hereby ordain and establish this Charter of the City of Mt. Morris, Michigan.

CHAPTER I. NAME AND BOUNDARIES***Sec. 1.1. Name.**

(a) The municipal corporation now existing and known as the City of Mt. Morris shall continue as a body corporate and shall include the territory constituting the City of Mt. Morris on the effective date of this charter, together with all territories that may be added in a manner prescribed by law.

(b) The Clerk shall maintain and keep available in the office of the Clerk for public inspection the official description and map of the current boundaries of the City.

Sec. 1.2. Wards.

The City shall consist of and constitute one single ward.

State law reference—Mandatory that Charter provide for one or more wards, MCL 117.3(e).

CHAPTER II. GENERAL MUNICIPAL POWERS**Sec. 2.1. General powers.**

The City of Mt. Morris and its officers shall be vested with any and all powers and immunities, expressed and implied, which cities and their officers are, or hereafter, may be permitted to exercise or to provide for in their charters under the constitution and laws of the State of Michigan, including all the powers and immunities which are granted to cities and officers of cities as fully and completely as though those powers and immunities were specifically enumerated in and provided for in this charter. In no case shall any enumeration of particular powers or immunities in this charter be held to be exclusive.

State law reference—Permissible that Charter provide that the city may exercise all municipal powers in the management and control of municipal property and in the administration of the municipal government, MCL 117.4j(3).

***State law reference**—Incorporation, consolidation of territory and alteration of boundaries of home rule cities, MCL 117.61 et seq.

Sec. 2.2. Intergovernmental cooperation.

The City may join with any municipal corporation or with any other unit or agency of government, whether local, state, or federal, or with any number or combination thereof, by contract or otherwise, as may be permitted by law, in the ownership, operation, or performance, jointly or by one or more on behalf of all, of any property, facility or service which each would have the power to own, operate, or perform separately.

State law reference—Authority to enter into intergovernmental contracts, MCL 124.1 et seq.

Sec. 2.3. Exercise of powers.

Where no procedure is set forth in this charter for the exercise of any power granted to or possessed by the City and its officers, resort may be had to any procedure set forth in any statute of the State of Michigan which was passed for the government of cities or in any other statute of the State of Michigan. If alternate procedures are to be found in different statutes, then the Council shall select that procedure which it deems to be most expeditious and to the best advantage of the City and its inhabitants. Where no procedure for the exercise of any power of the City is set forth, either in this charter or in any statute of the State of Michigan, the Council shall prescribe by ordinance a reasonable procedure for the exercise thereof.

CHAPTER III. ELECTIONS**Sec. 3.1. Qualifications of electors.**

The residents of the City having the qualifications of electors in the State of Michigan shall be eligible to vote in the City.

State law references—Qualifications for registration as elector, MCL 168.492; mandatory that Charter provide for registration of electors, MCL 117.3(c); registration of electors generally, MCL 168.491 et seq.

Sec. 3.2. Election procedure.

Except as herein provided, the general election laws shall apply to and control all procedures relating to City elections. The Clerk shall give public notice of each City election in the same manner as is required by law for the giving of public notice of general elections in the State.

State law references—Notice of election, MCL 168.653a; Michigan election laws, MCL 168.1 et seq.

Sec. 3.3. Precincts.

The election precincts of the City shall remain as they existed on the effective date of this charter unless altered in accordance with law.

State law reference—Election precincts, MCL 168.654 et seq.

Sec. 3.4. Regular elections.

A regular City election shall be held on the first Tuesday following the first Monday of November of each odd-numbered year.

Sec. 3.5. Special elections.

Special elections shall be held when called by resolution of the Council at least sixty (60) days in advance of such election or when required by law or this charter. Any resolution calling a special election shall set forth the purpose of such election. The City shall not conduct more than 2 special elections within each calendar year.

State law reference—Special election approval, MCL 168.631.

Sec. 3.6. Elective officers and terms of office.

At each regular City election there shall be elected three (3) Councilmembers and such additional number as may be required to fill vacancies pursuant to the provisions of this charter; and at every other regular City election, beginning with the first such election after adoption of this charter, the Mayor shall be elected. The term for the Mayor shall be four (4) years; the term of each Councilmember shall be four (4) years. The term of office of the Mayor and Councilmembers shall begin at the commencement of the first regularly scheduled Council meeting after the election.

Sec. 3.7. Nominations procedure.

The candidates for elective office shall be nominated on a nonpartisan basis from the City at large by petitions, blanks for which shall be furnished by the City Clerk. Each such petition shall be signed by not less than twenty-five (25) nor more than fifty (50) registered electors of the City and shall be filed at the Clerk's office before 4:00 p.m. on the first Monday of August of each odd-numbered year. Except as herein set forth, the form of petition, rules relative to signing, circulation, and related matters shall be governed by state statute.

State law reference—Nonpartisan nominating petitions, MCL 168.544a.

Sec. 3.8. Approval of petitions.

The Clerk shall accept only nomination petitions which conform substantially with the forms which have been furnished and which contain the required number of valid signatures for candidates having those qualifications required for the respective elective City offices as set forth in this charter. The Clerk shall forthwith, after the filing of the petitions, notify in writing any candidate whose petition is then known not to meet the requirements of this section; but the failure to so notify any candidate shall in no way prevent a final determination that the petition does not meet such requirements as it shall be the candidate's ultimate responsibility to confirm his/her eligibility. Withdrawal of a candidate's name from consideration on the ballot must be made in writing and in conformance with the time allowed by statute.

Sec. 3.9. Form of ballot.

The ballots for all elections under this charter shall conform to the printing and numbering of ballots as required by statute, except that no party designation or emblem shall appear on any City ballot.

State law reference—Arrangement of ballot, MCL 168.706.

Sec. 3.10. Canvass of votes.

The Board of Canvassers designated by statute shall canvass the votes of all City elections in accordance with statute. The Clerk shall notify the successful candidates in writing of their election upon receipt of the results from the Board of Canvassers.

State law reference—Canvass of returns, MCL 168.323.

Sec. 3.11. Tie vote.

If at any City election, there shall be no choice between candidates by reason of two (2) or more candidates having received an equal number of votes, then the determination of the election of such candidate, by lot, will be as provided by state statute.

State law reference—Determination of election by lot, MCL 168.851, 168.852.

Sec. 3.12. Recount.

A recount of the votes cast at any City election for any office, or upon any proposition, may be had in accordance with the general election laws of the state.

State law reference—Recounts, MCL 168.861 et seq.

Sec. 3.13. Recall.

Any elective official may be removed from office by the electors of the City in the manner provided by the general laws of the state. A vacancy created by the recall of any elective official shall be filled in the manner prescribed by state law.

State law references—Permissible that Charter provide for recall of its officers, MCL 117.4i(g); recall generally, MCL 168.951 et seq. See also Mich. Const. 1963, Art. II, § 8.

CHAPTER IV. THE ELECTIVE OFFICERS OF THE CITY: THE CITY COUNCIL**Sec. 4.1. Elective officers.**

The legislative power of the City shall be vested in a Council consisting of a Mayor and six (6) Councilmembers all elected at large on a nonpartisan basis. The Council shall have power and authority to adopt such ordinances and resolutions as it shall deem proper in the exercise of its powers.

State law reference—Mandatory that Charter provide for election of certain officers, MCL 117.3(a).

Sec. 4.2. Mayor.

The Mayor shall be the chief executive officer of the City. The Mayor shall make appointments to all Boards and Commissions with the advice and consent of the Council except as otherwise provided in this charter or by law. The Mayor shall preside at all Council meetings and shall speak and vote in such meetings as any other member of the Council. The Mayor shall be the official head of the City for ceremonial purposes and for the purpose of civil defense.

State law reference—Mandatory that Charter provide for election of mayor, MCL 117.3(a).

Sec. 4.3. Mayor pro tempore.

A Mayor pro tempore shall be elected by the Council from among its membership at the first meeting following each regular City election by an affirmative vote of at least four (4) members of the Council. The Mayor pro tempore shall serve until the next regular City election. In the event of a vacancy in the position of Mayor pro tempore, the Council shall elect a replacement in the manner above set forth. The Mayor pro tempore shall preside at Council meetings in the Mayor's absence and shall perform those duties of the Mayor which require action during the Mayor's absence.

Sec. 4.4. Qualifications.

Each elective City official must be a duly registered elector of the City and shall be a resident of the City at the time of circulating petitions for office.

State law reference—Mandatory that Charter provide for qualifications of officers, MCL 117.3(d).

Sec. 4.5. Notice of election.

Notice of the election of any officer of the City shall be given by the Clerk, in writing, within seven (7) days after the canvass of the vote. If within ten (10) days from the date of notice, such officer shall not take, subscribe, nor file with the Clerk an oath of office, such neglect shall be deemed a refusal to serve and the office shall thereupon be deemed vacant, unless the Council shall, for good cause, extend the time in which such officer may qualify as above set forth.

Sec. 4.6. Oath of office; elective and appointive officers.

Each elective or appointive officer of the City, before entering upon the duties of office and within the time specified in this charter, shall take and subscribe the oath of office prescribed by the state constitution for an officer of the state which shall be filed and kept in the office of the Clerk.

State law reference—Oath of public officers, Mich. Const. 1963, Art. XI, § 1.

Sec. 4.7. Vacancy defined.

In addition to other provisions of this charter, a vacancy shall be deemed to exist in any elective office on the day when the officer dies, files a resignation with the City Clerk, is

removed from office, is convicted of a felony or of misconduct in office, no longer meets the qualifications of an elector of the City or, in the case of the Mayor and Councilmembers, is absent from three (3) consecutive regular meetings of the Council, unless excused by the Council for cause to be stated in the record of Council proceedings.

Sec. 4.8. Vacancies.

Except as otherwise provided in this charter, any vacancy occurring in the office of Councilmember shall be filled within sixty (60) days after such vacancy shall have occurred by the Mayor with the concurrence of a majority of the Council. The Mayor pro tempore shall become Mayor in the event of a vacancy in the office of Mayor. The Mayor or Councilmember assuming office under this section shall serve until the next regular City election following appointment. If the Mayor makes no appointment to the office of Councilmember or if the Mayor's appointee to Council is not confirmed within the sixty (60) days following the occurrence of a vacancy, the Clerk shall call a special election to fill the vacancy to be held as soon as practicable, and not later than one hundred fifty (150) days following the occurrence of the vacancy, said election to be otherwise governed by the election provisions of this charter and state statutes. Petitioners for such vacancies shall have thirty (30) days after the date of calling the election within which to file their petitions.

State law reference—Filling vacancy in elective or appointive office, MCL 201.37.

Sec. 4.9. Restrictions concerning officers.

(a) Except where authorized by law, no Councilmember shall hold any other City office or City employment during the term for which elected to the Council, and no former Councilmember shall hold any compensated full-time appointive City office or full-time City employment until one (1) year from the date of leaving office. This shall not apply to appointed City boards or commissions.

(b) Neither the Council nor any of its members shall in any manner dictate the appointment or removal of any City administrative officers or employees whom the Manager is empowered to appoint.

(c) Except for the purpose of inquiries and investigations, the Council or its members shall deal with City officers and employees who are subject to the direction and supervision of the Manager solely through the Manager, and neither the Council nor its members shall give orders to any such officer or employee either publicly or privately.

Sec. 4.10. Compensation of members of the council.

(a) The local officers compensation commission previously established pursuant to law shall continue under this charter to determine salaries pursuant to law of all elected officials of the City. Anything in the law, the ordinances of the City of Mt. Morris or this charter to the contrary, no increase in compensation shall be effective without an affirmative vote of four (4) members of the City Council. In the event of changes in the provisions of state law as relate

to the method of determining officer compensation, the procedure under this charter shall be adjusted accordingly; but the requirement of Council concurrence in any increase in compensation shall remain unless prohibited by law.

(b) Upon authorization of the Council, reasonable expenses may be allowed when actually incurred on behalf of the City.

State law reference—Mandatory that Charter provide for compensation of officers, MCL 117.3(d).

Sec. 4.11. Council to judge qualification of members.

The Council shall be the judge of the election and qualifications of its members and of the grounds for forfeiture of their office and for that purpose shall have power to subpoena witnesses, administer oaths and require the production of evidence. A member charged with conduct constituting grounds for forfeiture of office shall be entitled to a public hearing, and notice of such hearing shall be published in one or more newspapers of general circulation.

Sec. 4.12. Regular council meetings.

Regular meetings of the Council shall be held at least once in each calendar month.

Sec. 4.13. Special meetings of the council.

Special meetings of the Council may be called by the Clerk on the written request of the Mayor or any two (2) members of the Council on twenty-four (24) hours written notice to each member of the Council, designating the purpose of such meeting. Said notice shall be given personally, or left at Councilmember's usual place of residence by the Clerk or someone designated by the Clerk.

Sec. 4.14. Business at special meetings.

No business shall be transacted at any special meeting of the Council unless the same has been stated in the notice of such meeting.

Sec. 4.15. Quorum.

Four (4) members of the Council shall be a quorum for the transaction of business.

Sec. 4.16. Rules of order.

The Council shall determine its own rules and order of business and shall keep a written or printed journal of all its proceedings in the English language which shall be signed by the Clerk. The vote upon the passage of all ordinances and upon the adoption of all resolutions shall be taken by "Yes" and "No" votes and entered upon the record. When the vote is unanimous, it shall only be necessary to so state in such record.

State law reference—Mandatory that Charter provide for keeping in the English language a written or printed journal of every session of the legislative body, MCL 117.3(m).

Sec. 4.17. Vote required.

(a) Except as otherwise provided in this charter, no ordinance or resolution shall be adopted or passed except by the affirmative vote of at least four (4) members of the Council. In the event Council action involving an ordinance or resolution fails to achieve four (4) votes on the prevailing side with less than all members of the Council voting or abstaining on the matter, the same matter shall be reintroduced at succeeding meetings until the action either (i) receives four (4) votes on the prevailing side, or (ii) fails to achieve four (4) votes on the prevailing side with all Councilmembers voting or abstaining on the matter.

(b) Each member of the Council shall vote yes or no on every matter coming before the Council at a meeting at which the member is present; provided, however, that an abstention from voting shall be permitted if the Councilmember states the reason for such abstention and the Council concurs in such abstention and permits it to be recorded as such. It is the intent of this provision that abstentions shall be permitted only for cause and the Council shall be the judge of whether cause exists.

(c) In the event a Councilmember wishes to vote on a matter and an issue arises as to whether he or she should do so, the question shall be resolved by the Council. A Councilmember shall be precluded from voting only upon an affirmative vote by a majority of the members elect of the Council. The Councilmember whose vote is at issue shall be precluded from voting on the matter.

Sec. 4.18. Require attendance at meetings.

The Council may require the attendance of any elective or appointive officer of the City for the purpose of securing any information upon the affairs of the City within their jurisdiction.

Sec. 4.19. Depository of city funds.

The Council shall select one or more depositories in which the funds of the City shall be deposited.

State law references—Designation of depositories, MCL 129.12; deposit of public moneys, MCL 211.43b.

Sec. 4.20. Public health and safety.

Through the established departments of the City government, the Council shall provide for the public peace and health and for the safety of persons and property.

State law reference—Mandatory that Charter provide for the public peace and health, and for the safety of persons and property, MCL 117.3(j).

Sec. 4.21. Streets and alleys.

The Council shall have power to establish and to use, and to control and regulate, as permitted by law, the use of its streets, alleys, bridges, and public places and property, whether such public places be located within or without the limits of the City, and the space above and beneath them. Such power shall include, but not be limited to, the proper policing and

supervision thereof and to the licensing and regulation of sidewalks. The Council shall have the authority to vacate the streets and alleys or change the names thereof upon the affirmative vote of five members. The procedure for vacation and name changes shall be established by ordinance.

Sec. 4.22. Emergency situations.

The Council shall have the authority to provide procedures for the treatment and alleviation of emergency situations and shall establish standards for remedial action in such circumstances and the imposition of costs and charges upon those responsible for such emergencies.

Sec. 4.23. Water and watercourses.

For the benefit of the public morals, peace, health, and welfare, the City shall have and possess the power to use and to control and regulate the use of all streams, waters, and watercourses within its limits, including subterranean water supplies, as permitted by law.

Sec. 4.24. Health.

The Council may enact such ordinances as may be deemed necessary for the preservation and protection of the health of the City's inhabitants, to the extent permitted by state law.

Sec. 4.25. Licenses.

The Council shall by ordinance prescribe the terms and conditions upon which licenses may be granted, suspended, or revoked, as permitted by law.

Sec. 4.26. Rights as to property.

The Council shall have the power to acquire for the City by purchase, gift, condemnation, lease, construction or otherwise, either within or without its corporate limits, private property, for any public use or purpose within the scope of its powers, whether herein specifically mentioned or not; and shall have the power to maintain and operate the same to promote the public health, safety and welfare.

Sec. 4.27. Cemeteries and parks.

The Council shall have power to enact all ordinances deemed necessary for the establishment, maintenance, operation and protection of all cemeteries and parks, together with the improvements thereon and appurtenances thereto, owned or hereafter acquired by the City either within or without its corporate limits.

State law reference—City cannot sell cemetery except with approval of electorate, MCL 117.5.

Sec. 4.28. Violations bureau.

The Council shall have the power and authority to establish by ordinance a Violations Bureau, as provided by law, for the handling of violations of ordinances and regulations of the City as prescribed in the ordinance establishing such bureau.

Sec. 4.29. Advisory committees.

The Mayor or City Manager may, from time to time, appoint such committees as are deemed appropriate to advise and consult with them and with appropriate departments, regarding municipal activity. Such committees shall serve temporarily and without compensation unless otherwise provided by the City Council.

Sec. 4.30. City council business, public meeting and records.

The business which the City Council may perform shall be conducted at a public meeting held in compliance with Act No. 267 of the Public Acts of Michigan of 1976 (MCL 15.261 et seq.), as amended. All records of the municipality shall be made available to the general public in compliance with Act No. 442 of the Public Acts of Michigan of 1976 (MCL 15.231 et seq.), as amended.

State law references—Mandatory that Charter provide that all sessions of the legislative body and all records of the municipality shall be public, MCL 117.3(l)); open meetings act, MCL 15.261 et seq.

CHAPTER V. LEGISLATION**Sec. 5.1. Ordinances and regulations.**

All bylaws, ordinances, resolutions, rules and regulations of the City of Mt. Morris, which are not inconsistent with this charter, and are in force at the time of the adoption of this charter shall continue in full force as bylaws, ordinances, resolutions, rules and regulations of the City until repealed or amended by action of the proper authorities.

Sec. 5.2. Ordinances.

The style of all ordinances shall be, "The City of Mt. Morris Ordains." No ordinance shall be revised, altered or amended by reference to its title only. The section or sections of the ordinance being revised, altered, or amended shall be acted upon and promulgated in full, except as otherwise provided in this charter. An ordinance may be repealed by reference to its number and title only. The effective date of any ordinance shall be the day after the day of publication unless the ordinance specifically provides a later effective date.

State law references—Mandatory that Charter provide for ordinances, MCL 117.3(k); general authority relative to adoption of ordinances, Mich. Const. 1963, Art. VII, § 22.

Sec. 5.3. Delay in passing.

No ordinance shall be finally passed on the date it is introduced, except in case of public emergency, and then only on request of the Mayor in writing.

Sec. 5.4. Ordinance record.

All ordinances when enacted shall be recorded by the Clerk in a book called, "The Ordinance Book," and it shall be the duty of the Mayor and the Clerk to authenticate such record by their official signatures.

Sec. 5.5. Publication of ordinances, notices, and proceedings.

(a) Notices or proceedings requiring publication, and all ordinances passed by the Council shall, unless otherwise provided by this charter, be published once in a newspaper of general circulation in the City. Immediately after such publication, the Clerk shall enter a certificate as to the manner and date of publication at the end of each ordinance, notice, or proceeding. Publication of an ordinance shall consist of a true copy or a summary thereof. If a summary is published, the publication shall include the designation of a location in the City where a true copy of the ordinance can be inspected or obtained. The Clerk's certificate shall be prima facie evidence of the date of publication of such notice, proceedings, or ordinance.

(b) Anything herein to the contrary notwithstanding, the Council may adopt a law, code or rule which has been promulgated and adopted by any authorized agency of the state pertaining to fire, fire hazards, fire prevention, or fire waste; a fire prevention code, plumbing code, heating code, electrical code, building code, refrigeration machinery code, piping code, boiler code, boiler operation code, elevator machinery code, or a code pertaining to flammable liquids and gases as well as to hazardous chemicals that has been promulgated by the State of Michigan or by a department, board or other agency of the State of Michigan or by an organization or association which is organized and conducted for the purpose of developing the code, by reference to the code in an adopting ordinance and without publishing the code in full. The code shall be clearly identified in the ordinance, and its purpose shall be published with the adopting ordinance. Printed copies of the code shall be kept in the office of the City Clerk, available for inspection by and distribution to the public during normal business hours. The publication shall contain a notice stating that a complete copy of the code is available to the public at the office of the City Clerk.

State law references—Mandatory that Charter provide for the publication of ordinances before they become operative, MCL 117.3(k); authority to adopt technical codes by reference, MCL 117.3(k).

Sec. 5.6. Compilation and revision.

The City shall have the power to codify, recodify and continue in code its municipal ordinances, in whole or in part, without the necessity of publishing the entire code in full. The ordinance adopting the code, as well as subsequent ordinances repealing, amending, continu-

ing or adding to the code, shall be published as required by this charter. The ordinance adopting the code may amend, repeal, revise and rearrange ordinances or parts of ordinances by reference by title only.

State law reference—Authority to codify, MCL 117.5b.

Sec. 5.7. Penalty.

All violations of City ordinances shall be punishable by a fine and or other penalties in an amount and in a form allowed by law to be specified from time to time by ordinances.

State law reference—Limitation on penalties, MCL 117.4i(k).

Sec. 5.8. Council may initiate referendum.

In addition to the mandatory requirements of this charter and the constitution and general laws, the Council may submit to the electors for an advisory vote only, any ordinance, resolution, proposed public improvement, or other contemplated public measure affecting the general health or welfare of the City, provided, that if two-thirds of the electors voting thereon shall vote either for or against the same, then such vote shall be controlling and not merely advisory.

State law reference—Permissible that Charter provide for initiative and referendum, MCL 117.4i(g).

Sec. 5.9. Steps taken while referendum pending.

Whenever any bond issue or other subject shall be submitted to the electors, all steps preliminary to such actual expenditure, actual issuance of bonds, or actual execution of a contract for such improvements or actual doing or contracting to do the thing proposed, may be taken prior to the election; but the measure shall not become effective until approved by the electorate.

CHAPTER VI. THE ADMINISTRATIVE SERVICE

Sec. 6.1. City manager.

(a) The City Manager shall be the chief administrative officer of the City. The Manager shall be selected by the Council on the basis of executive and administrative qualifications and training and ability.

(b) The Manager shall serve at the pleasure of, and be subject to removal by the Council, but shall not be removed from office during a period of ninety (90) days following any regular City election except for cause based upon written specifications of wrongdoing.

(c) The Manager shall be notified with written reasons for proposed termination by the City Attorney acting under the direction of a majority of the City Council at least ten (10) days prior to any consideration of removal. The Manager shall have the right to be heard publicly prior to any decision to terminate; however, the decision of the Council to terminate shall be final.

(d) The Manager's compensation shall be set by the Council and nothing herein shall preclude entering into an employment contract providing for wages, benefits and payment upon severance.

(e) (1) The Council shall appoint a City Manager as soon as practicable upon the existence of a permanent vacancy in the position and shall appoint an Acting Manager within fourteen (14) days of the existence of any such permanent vacancy. An Acting Manager shall have no tenure in the position of City Manager and may be relieved of duty at any time by the Council without cause; provided, however, that in the event a temporary appointee shall hold another position of City employment, removal from the position of Acting Manager shall have no effect upon any other position held by such person.

(e) (2) The Manager may designate an administrative officer or employee of the City to act as City Manager, on a temporary basis, for a period not to exceed fourteen (14) days if the Manager is temporarily absent from the City or is unable to perform the duties of the office. Any such temporary appointment shall be in writing.

(e) (3) In the event the Manager is temporarily absent or unable to perform his or her duties without having designated an Acting Manager or in the event the absence or inability to perform exceeds fourteen (14) days, the Mayor shall appoint an Acting City Manager and shall seek confirmation of such appointment at the next regular meeting of the City Council. No Acting Manager appointed by the Mayor on this basis shall serve beyond the next regular City Council meeting without Council confirmation.

(f) The Manager shall become and remain a resident of the City within one hundred twenty (120) days of commencement of the Manager's duties. This requirement may be waived by a majority vote of the Council for up to two (2) additional one hundred twenty (120) day periods.

Sec. 6.2. City manager: functions and duties.

(a) The City Manager shall be responsible to the Council for the proper administration of the affairs and operations of the City.

(b) The Manager shall make all appointments except such appointments as are to be made by the Mayor or as otherwise provided under this charter or by law and shall make removals pursuant to such procedures as are established by collective bargaining contracts, personnel policies and ordinances adopted by the Council not inconsistent with this chapter. City employment shall be governed by a merit system for employees and appointees which shall provide for future appointments based upon an examination or other process designed to determine fitness for the position to be filled and dismissal only for good and sufficient cause. A process of appeal to the City Council may be established in connection therewith. The Manager shall supervise and coordinate the work of the administrative officers and departments of the City.

(c) The City Manager shall see that all laws and ordinances are enforced, shall prepare and administer the annual budget under policies formulated by the Council, and shall keep the Council advised as to the financial condition and needs of the City. The Manager shall furnish the Council with information concerning City affairs and prepare and submit such reports as may be required or which the Council may request.

(d) Subject to any merit system for employees of the City, the Manager shall employ or be responsible for the employment of all City employees and supervise and coordinate the personnel policies and practices of the City. When hiring departmental employees, the Manager shall have the final approval after the appropriate department head has interviewed applicants and has made a recommendation to the Manager as to whom to hire.

(e) The City Manager shall be the purchasing and personnel officer for the City.

(f) The City Manager shall attend all meetings of the Council with the right to be heard in all Council proceedings but without the right to vote. The Manager shall possess such other powers and perform such additional duties as may be granted or required by the Council, so far as may be consistent with the provisions of law. The Manager shall establish any rules necessary to carry out any of the foregoing duties.

Sec. 6.3. City clerk.

(a) The City Manager shall appoint the City Clerk who shall be the Clerk and clerical officer of the Council and shall keep its journal. The Clerk shall keep a record of all actions of the Council at its regular and special meetings. The Clerk shall certify all ordinances and resolutions adopted by the Council.

(b) The Clerk shall have the power to administer all oaths required by law and by the ordinances of the City. The Clerk shall be the custodian of the City seal, and shall affix the same to documents required to be sealed. The Clerk shall be the custodian of all papers, documents, and records pertaining to the City, the custody of which is not otherwise provided by this charter. The Clerk shall give the proper officials ample notice of the expiration or termination of any official bonds, franchises, contracts or agreements to which the City is a party and shall notify the Council of the failure of any officer or employee required to take an oath of office or furnish any required bond.

(c) The Clerk shall report to the City Manager and shall perform such other duties in connection with the office as may be required of the Clerk by law, the ordinances or resolutions of the Council, or by the City Manager.

Sec. 6.4. City treasurer.

(a) The City Manager shall appoint the City Treasurer who shall have the custody of all moneys of the City, the Clerk's bond, and all evidences of value or indebtedness belonging to or held in trust by the City. The Treasurer shall keep and deposit all moneys or funds in such manner and only in such places as the Council may determine and shall report the same to the City Manager.

(b) The Treasurer shall have such powers, duties and prerogatives in regard to the collection and custody of state, county, school district, and City taxes and moneys as are provided by law.

(c) The Treasurer shall report to the City Manager and shall perform such other duties in connection with the office as may be required of the Treasurer by law, the ordinances and resolutions of the Council, or by the City Manager.

Sec. 6.5. City assessor.

(a) The City Manager shall appoint the Assessor with the consent of the Council; provided, however, that if the assessment function is to be performed by a firm or on a contract basis, the hiring shall be done by the Council with the recommendation from the City Manager. The Assessor shall possess all the power vested in and shall be charged with the duties imposed upon assessing officers by law.

(b) The Assessor shall perform such other duties as may be prescribed by law or the ordinances of the City or by the City Manager.

Sec. 6.6. City attorney.

(a) The City Manager shall appoint with the consent of the City Council the City Attorney who shall be legal advisor and counsel for the City and for all the officers and departments thereof in all matters relating to their official duties. The City Attorney shall prepare or review all ordinances, regulations, contracts, bonds, and other such instruments as may be required by this charter, the Council, or the City Manager, and shall give an opinion as to the legality thereof, as needed.

(b) The City Attorney shall prosecute ordinance violations and shall represent the City in cases before the courts and other tribunals.

(c) Upon consultation with the City Attorney, the City Manager or City Council may retain special legal counsel if deemed necessary or advisable.

(d) The City Attorney shall perform such other duties in connection with the office as may be prescribed by this charter, the Council, or the City Manager.

Sec. 6.7. Finance officer.

(a) The City Manager may designate a person to act as a Finance Officer from among the administrative officers of the City.

(b) The Finance Officer shall be the general accountant of the City, shall keep the books of account of the assets, receipts, and expenditures of the City, and shall keep the Council and City Manager informed as to the financial affairs of the City. The system of accounts of the City shall conform to a uniform system of accounts as may be required by law.

(c) The Finance Officer shall balance all the books of account of the City at the end of each calendar month, and the Finance Officer shall make a report thereon, as soon as practical, to the City Manager. The Finance Officer shall, upon direction of the City Manager, examine and audit all books of account kept by any official or department of the City.

State law reference—Uniform budgeting and accounting act, MCL 141.421 et seq.

Sec. 6.8. Additional administrative powers and duties.

The Council shall, by ordinance, establish departments of City government and determine and prescribe the functions and duties of each department. All such departments shall report to the City Manager and department heads shall be appointed by the City Manager. Upon recommendation of the City Manager, the Council may by ordinance prescribe additional powers and duties and diminish any powers and duties in a manner not inconsistent with this charter to be exercised and administered by appropriate officials and departments of the City.

Sec. 6.9. City planning.

The Council shall provide for and maintain a City Planning Commission which shall possess all of the powers and perform the functions of Planning Commissions as set forth by state statute. The citizen members of the Planning Commission shall be appointed by the Mayor and subject to confirmation by the Council.

Sec. 6.10. Compensation and employee benefits.

(a) Except as otherwise herein provided, all administrative officers of the City shall be appointed for an indefinite term.

(b) Except as otherwise provided in this charter, a person may occupy more than one administrative position; but the Manager shall occupy more than one position only with Council approval.

(c) The City Council shall have the power to make available to the administrative officers and employees of the City and its departments an actuarial pension plan by ordinance and any recognized group plan of life, hospital, health, or accident and income protection insurance or any one or more thereof.

(d) Upon the effective date of this charter, City employees and administrative officials shall continue to occupy the positions held under the prior charter. They shall perform the duties and have the responsibilities specified under this charter and shall be entitled to rights and benefits set forth herein.

CHAPTER VII. GENERAL FINANCE: BUDGET PROCEDURE

Sec. 7.1. Fiscal year.

The fiscal year of the City shall begin on the first day of July of each year.

State law reference—Uniform budgeting and accounting act, MCL 141.421 et seq.

Sec. 7.2. Budget procedure.

The City Manager shall compile and review budget requests from all the City departments and shall prepare budgetary recommendations and shall submit them to the Council by the first Monday in May of each year.

Sec. 7.3. Budget document.

The budget document shall present a complete financial plan for the ensuing fiscal year. It shall include, at least, the following information:

- (a) Detailed estimates of all proposed expenditures for each department and office of the City, showing the expenditures for corresponding items for the current and last preceding fiscal years.
- (b) Statements of the bonded and other indebtedness of the City, showing the debt redemption and interest requirements, the debt authorized and unissued and the condition of sinking funds, if any.
- (c) Detailed estimates of all anticipated income of the City from sources other than taxes and borrowing, with a comparative statement of the amounts received by the City from each of the same or similar sources for the last preceding and current fiscal years.
- (d) A statement of the estimated balance or deficit, as the case may be, 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 income from other sources, will be necessary to meet the proposed expenditure.
- (f) Such other supporting schedules as the Council may deem necessary or as the Council may require.

State law references—Mandatory that Charter provide for annually levying and collecting taxes, MCL 117.3(g); mandatory that Charter provide for an annual appropriation, MCL 117.3(h).

Sec. 7.4. Budget hearing.

A public hearing on the budget shall be held before its final adoption, at such time and place as the Council shall direct, and notice of such public hearing shall be published at least one week in advance by the Clerk. A copy of the proposed budget shall be on file and available to the public during office hours at the office of the City Clerk for a period of not less than one (1) week prior to such public hearing.

Sec. 7.5. Adoption of budget; tax limit.

Not later than the second Monday in June, the Council shall adopt the budget for the next fiscal year and shall provide, by resolution, for a levy of the amount necessary to be raised by taxation for municipal purposes which shall not exceed two percent (2%) of the assessed valuation of all real and personal property subject to taxation in the City.

Sec. 7.6. Transfer of appropriations.

After the budget has been adopted, no money shall be drawn from the treasury of the City nor shall any obligation for the expenditure of money be incurred except pursuant to the budget appropriation. The Council may transfer any unencumbered appropriation balance or any portion thereof from one department fund or agency to another. The balance in any appropriation which has not been encumbered at the end of the fiscal year shall revert to the general fund and be reappropriated during the next fiscal year.

Sec. 7.7. Budget control.

The City Manager shall submit to the Council a minimum of two (2) financial reports showing the relation between the estimated and actual income and expenses to date; and if it shall appear that the income is 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 cash income. If the revenues exceed the amounts estimated in the budget, the Council may make supplemental appropriations. If it shall appear that any fund of the city will be in, or attains, a deficit status, the City Council shall take appropriate actions to see that the deficit is avoided or eliminated.

Sec. 7.8. Independent audit.

An independent audit shall be made of all accounts of the City government annually and more frequently if deemed necessary by the Council. Such audit shall be made by qualified accountants experienced in municipal accounting. The results of such audit shall be made public in such manner as the Council may determine. An annual report of the City business shall be made available to the public in such form as will disclose pertinent facts concerning the activities and finances of the City government.

CHAPTER VIII. GENERAL FINANCE AND TAXATION**Sec. 8.1. Subjects of taxation.**

The subjects of taxation for municipal purposes shall be the same as for State, County, and school purposes under the general law of the State.

State law references—Mandatory that Charter provide that subjects of taxation for municipal purposes shall be the same as for state, county and school purposes under general law, MCL 117.3(f); property subject to taxation, MCL 211.1 et seq.

Sec. 8.2. Taxation procedure.

Except as otherwise provided by this charter, City taxes shall be levied, collected, and returned in the manner provided by state law.

Sec. 8.3. Assessment roll.

The Assessor shall, in accordance with state law, make and certify an assessment roll of all persons and property in the City liable to taxation.

Sec. 8.4. Board of review.

The Board of Review shall be composed of three (3) qualified and registered electors of the City but not officers or employees of the City nor candidates for any City office. One member of the board shall be appointed by the Mayor and confirmed by the City Council for a three (3) year term at the first Council meeting in January of each year. In the event of a vacancy in office, the appointment shall be for the remainder of the term of the board member whose office becomes vacant. The board shall constitute a Board of Review for all tax assessments. The City Treasurer shall be Clerk of the board and shall keep a record of its proceedings, but shall have no vote. The City Assessor has the right to be heard at board meetings but shall have no vote. The Council shall fix the compensation of the members of the Board of Review each year previous to the first meeting of the board. The board shall annually select its own chairperson for the ensuing year. A majority of the members of the board shall constitute a quorum.

State law reference—Mandatory that Charter provide for a board of review, MCL 117.3(a).

Sec. 8.5. Meeting of board of review.

The Board of Review will convene in accordance with statute to review and correct the assessment roll and shall remain in session for a minimum of two (2) days or as otherwise provided by law.

State law reference—Mandatory that Charter provide for meeting of board of review, MCL 117.3(i).

Sec. 8.6. Notice of meetings.

Notice of the time and place of the sessions of the Board of Review shall be published at least ten (10) days prior to the meeting or as otherwise provided for by law.

Sec. 8.7. Endorsement of assessment roll.

The Board of Review shall endorse the assessment roll as provided by general law. Such roll shall be the assessment roll of the City for all tax purposes.

Sec. 8.8. Certify tax levy to assessor.

After the adoption by the Council of the budget for the next fiscal year, the City Clerk shall certify to the Assessor the amount of the tax levy fixed by the Council which the Assessor shall proceed to assess according to the general laws of the State.

Sec. 8.9. Tax roll certified for collection.

After spreading the taxes the Assessor shall certify the tax roll and attach a warrant thereto directing and requiring the City Treasurer to collect the taxes according to law.

Sec. 8.10. Tax lien.

On July first, the taxes thus assessed shall become a debt due to the City from the persons to whom 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 law and shall continue until such taxes, interest, and charges are paid.

State law reference—Failure or refusal to pay tax, MCL 211.47.

Sec. 8.11. Taxes due; notification.

City taxes shall be due and payable on the first day of July of each year. The Treasurer shall not be required to call upon the persons named in the tax roll, nor to make personal demand for the payment of taxes, but shall publish notice of the time when said taxes will be due for collection and of the penalties and fees for the late payment thereof, and mail a tax bill to each person named in said roll. In cases of multiple ownership of property only one bill need be mailed. Failure on the part of the Treasurer to publish said notice or mail such bills shall not invalidate the taxes on said tax roll nor release the person or property assessed from the penalties and fees provided in this charter in case of late payment or nonpayment of the same.

State law reference—Mandatory that charter identify subjects of taxation, MCL 117.3(f).

Sec. 8.12. Collection charges on late payment of taxes.

No penalty shall be charged for City taxes paid on or before September 15. The Council shall provide, by ordinance, the tax payment schedule for City taxes paid after the 15th day of September and the amount of penalty, collection fee, or interest charges to be added, thereafter, in an amount not to exceed the limit allowed by State statute. Such charges shall belong to the City and shall be a lien against the property to which the taxes apply, collectible in the same manner as the taxes to which they are added.

Sec. 8.13. Collection of delinquent taxes.

All City taxes on real property remaining uncollected by the Treasurer on the first day of March following the date when said roll was received by the Treasurer, shall be returned to the County Treasurer in the same manner and with like effect as returns by Township Treasurers of township, school and county taxes. Such returns shall be made upon a delinquent tax roll to be prepared by the Treasurer and shall include all the additional charges and assessments hereinbefore provided, which charges shall, in such return, be added to the amount assessed in said tax roll against each description. The taxes thus returned shall be collected in the same

manner as other taxes returned to the County Treasurer are collected under provisions of the general laws of the state and shall be and remain a lien upon the property against which they are assessed, until paid.

State law reference—Return of delinquent taxes, MCL 211.55 et seq.

Sec. 8.14. State, county, and school taxes.

The levy, collection and return of State, County and school taxes shall be in conformity with the general laws of the State.

CHAPTER IX. BORROWING AUTHORITY

Sec. 9.1. General borrowing.

Subject to applicable provisions of law and this charter, as the same are now or may hereafter be enacted, the Council may, by ordinance or resolution, borrow money for any purpose within the scope of powers vested in the City and permitted by law and may issue bonds or other evidences of indebtedness therefor. 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 City for payment of such obligations.
- (b) Notes issued in anticipation of the collection of taxes.
- (c) Bonds for the relief of inhabitants of the City and for the preservation of municipal property, in the event of a fire, flood or other calamity, the repayment of which shall be due in not more than five (5) years.
- (d) Bonds issued in anticipation of the payment of special assessments made for the purpose of defraying the cost of any public improvement; which bonds may be an obligation of the special assessment district, or may be both an obligation of the special assessment district and a general obligation of the City.
- (e) Bonds for the City's cost of local public improvements in conjunction with or independently of any special assessment bonds.
- (f) Bonds issued to acquire, construct, and improve, a public utility secured only by a mortgage on the property or franchise of a public utility which the City is authorized by this charter or by law to acquire or operate.
- (g) Bonds for the refunding of the funded indebtedness of the City.
- (h) Revenue bonds, for public improvements, as authorized by statute, secured only by the revenues from such public improvements and do not constitute a general obligation of the City.
- (i) Bonds issued in anticipation of future payments from the Motor Vehicle Highway Fund or any other fund of the state which the City may be permitted by law to pledge for the payment of principal and interest thereon.

- (j) Budget bonds, which pledge the full faith, credit, and resources of the City, in an amount which, in any year together with the taxes levied for the same year, will not exceed the limit of taxation authorized by this charter.
- (k) Bonds which the City is, by any general law of the state, authorized to issue, now or hereafter, which shall pledge the full faith, credit, and resources of the City or be otherwise secured or payable as provided in said law.

State law reference—City authority to borrow money on the credit of the city and issue bonds therefor, MCL 117.4a(1).

Sec. 9.2. Limits of borrowing authority.

The net bonded indebtedness of the City incurred for all public purposes shall not, at any time exceed, the maximum amount permitted by law. No bonds shall be sold to obtain funds for any purpose other than that for which they were specifically authorized.

State law reference—Limitation of net bonded indebtedness incurred for all public purposes, MCL 117.4a(2).

Sec. 9.3. Preparation and record of bonds.

Each bond or other evidence of indebtedness shall contain on its face a statement specifying the purpose for which it is issued and it shall be unlawful to use the proceeds thereof for any other purpose. Any officer who shall violate this provision shall be deemed guilty of a violation of this charter, except that, whenever any proceeds of a bond issue shall remain unexpended and unencumbered for the purpose for which said bond issue was made, the Council may authorize the use of said funds for any purpose permitted by law. All bonds or other evidences of indebtedness of the City shall be signed by signature or facsimile signature of the Mayor and countersigned by signature or facsimile signature of the Clerk, or as provided by resolution of the City Council. A complete and detailed record of all bonds and other evidences of indebtedness issued by the City shall be kept by the Clerk or other designated officer. Upon the payment of any bond or other evidence of indebtedness, the same shall be cancelled.

Sec. 9.4. Deferred payment contracts.

The City may enter into installment contracts for the purchase of land, property, or equipment, as permitted by law. All such installment payments shall be included in the budget for the year in which the installment is payable.

CHAPTER X. SPECIAL ASSESSMENT*

Sec. 10.1. General powers.

The Council shall have the power to determine that the whole or any part of the cost of a public improvement shall be defrayed by special assessment upon property especially

***State law references**—Power re assessments, MCL 117.4a, 117.4b, 117.4d, 117.5; notices and hearings, MCL 211.741 et seq.; deferment for older persons, MCL 211.761 et seq.

benefitted. By resolution, the City Council shall state the estimated cost of the improvement, the proportion of the cost thereof which shall be paid by special assessment, what part, if any, shall be a general obligation of the City, the number of installments in which assessments shall be levied and the designated land and premises upon which special assessments shall be levied. The Council shall also have the power of reassessment with respect to any such public improvement.

State law reference—Power re special assessments, MCL 117.4a, 117.4b, 117.4d, 117.5.

Sec. 10.2. Procedure fixed by ordinance.

The Council shall prescribe by ordinance the complete special assessment or reassessment procedure governing the initiation of projects, preparation of plans and cost estimates, notice of hearings on necessity and on confirmation of the assessment rolls, and making and confirming of the assessments, and any other matter concerning the making and financing of improvements by special assessment.

Sec. 10.3. Objections to improvement.

If, at or prior to the public hearing on necessity, at which the City Council considers the necessity of the public improvement, the owners of more than one-half ($\frac{1}{2}$) of the property to be assessed shall object in writing to the improvement, the improvement shall not be made except with a five-sevenths ($\frac{5}{7}$) vote of the members of the Council.

Sec. 10.4. Contesting a special assessment.

No action of any kind shall be instituted or maintained for the purpose of contesting a special assessment except in accordance with law. If the legal counsel submits a written opinion finding an assessment roll illegal, in whole or in part, the Council may correct the illegality if possible, and reconfirm said roll as amended; provided that property not involved in the illegality shall not be assessed an amount greater than that which was imposed upon the original confirmation of the roll without further notice and hearing thereon.

CHAPTER XI. UTILITIES

Sec. 11.1. General powers respecting utilities.

The City shall possess and hereby reserves to itself all the powers granted to cities by law 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, transportation, and garbage and refuse disposal facilities, or any of them to the municipality and its inhabitants and also to sell and deliver water, light, heat, power, gas and other public utility services without its corporate limits as authorized by law.

State law references—Mandates relative to public utilities, Mich. Const. 1963, art. VII, §§ 24, 25; permissible that Charter provide for operation of utilities, MCL 117.4c, 117.4f.

Sec. 11.2. Acquisition of private property.

Private property may be taken and appropriated, either within or without the City for any public purpose in the manner prescribed by law.

Sec. 11.3. Control of utilities.

The Council may enact such ordinances and adopt such resolutions as may be necessary for the care, protection, preservation, control and operation of any public utilities and all fixtures, appurtenances, apparatus, building, and machinery connected therewith or belonging thereto which the City may in any manner acquire, own and operate and to carry into effect the powers conferred upon the City by the provisions of this charter and by statute.

Sec. 11.4. Management of utilities.

All municipally owned or operated utilities shall be administered as a regular department of the City government under the management and supervision of the City Manager.

Sec. 11.5. Rates.

The Council shall have the power to fix, from time to time, such just and equitable rates as may be deemed advisable for supplying the inhabitants of the City and others with water, electricity for light, heat, and power and such other utility services as the City may acquire or provide.

Sec. 11.6. Utility charges; collection.

The Council shall provide, by ordinance, for the collection of all public utility charges made by the City and, for such purpose, shall have all the power granted to cities by statute. When any person or persons or any firm or corporation shall fail or refuse to pay to the City any sum due on utility bills which are not covered by deposits, in addition to lien rights and other remedies, the utility service or services upon which such delinquency exists may be shut off or discontinued; and suit may be instituted by the City for the collection of the same in any court of competent jurisdiction.

State law reference—Collection of municipal water and sewer service rates and charges, creation of lien, MCL 123.161 et seq.

Sec. 11.7. Accounts.

Accounts shall be kept for each public utility owned or operated by the City, distinct from other City accounts, and in such manner as to show the true and complete financial result of such City ownership or operation, or both, including all assets, liabilities, revenues, and expenses.

CHAPTER XII. FRANCHISES, CONTRACTS, PERMITS AND PURCHASING**Sec. 12.1. Vote required.**

No franchise ordinance which is not revocable at the will of the Council shall be granted or become operative until the same shall have been referred to the people at a regular or special election and has received the approval of three-fifths ($\frac{3}{5}$) of the electors voting thereon at such election.

Sec. 12.2. Franchises.

All irrevocable public utility franchises and all renewals, extensions, transfers, assignments and amendments thereof shall be granted or allowed only by ordinance. No such ordinance shall be adopted before thirty (30) days after application therefor has been filed with the Council, nor until a full public hearing has been held thereon. No such ordinance shall be submitted to the electors at an election to be held less than sixty (60) days after the grantee named therein has filed its unconditional acceptance of all the terms of such franchise, and it shall not be submitted to a special election unless the expense of holding the election, as determined by the Council shall have been paid to the City Treasurer by the grantee. No exclusive franchises shall ever be granted and no franchise shall be granted for a longer term than thirty (30) years.

State law references—Franchises limited to thirty (30) years, Mich. Const. 1963, Art. VII, § 30; submittal to electors required if irrevocable, Mich. Const. 1963, Art. VII, § 25; expenses of special election to be paid by grantee, MCL 117.5(i).

Sec. 12.3. Right of regulation.

All public utility franchises, whether it be so provided in the granting ordinance or not, shall be subject to the right of the City:

- (a) to repeal the same for misuse or nonuse or for 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 make independent audit and examination of accounts at any time, and to require reports annually.
- (e) to require continuous and uninterrupted service to the public in accordance with the terms of the franchise throughout the entire period thereof.
- (f) to impose such other regulations as may be determined by the Council to be conducive to safety, welfare, and accommodation of the public.

Sec. 12.4. Rates of franchised utilities.

The rates charged by public utilities under the supervision of state or federal regulatory agencies shall be fixed by such agencies. The rates not preempted by the state or federal government for public utilities shall be set, after public hearing, by the City Council.

Sec. 12.5. Revocable permits.

Temporary permits for public utilities, revocable at any time at the will of the Council, may be granted by the Council by resolution on such terms and conditions as it shall determine, provided that such permits shall in no event be construed to be franchises or amendments to franchises.

Sec. 12.6. Use of streets by utility.

Every public utility franchise shall be subject to the right of the City to use, control, and regulate the use of its streets, alleys, bridges, and public places and the space above and beneath them. Every public utility 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 City harmless from all damages arising from said use and may be required by the City to permit joint use of its property and appurtenances located in the streets, alleys, and public places of the City by the City and other utilities insofar as such joint use may be reasonably practicable and upon payment of a reasonable rental therefor.

Sec. 12.7. Purchase procedure.

Before making any purchase or contract for supplies, materials, equipment, or services, opportunity shall be given for competition under such rules and regulations and with such exceptions as the Council may prescribe; and the Council shall provide for a purchasing procedure to be followed.

Sec. 12.8. Contracts with person in default.

The City shall not make a contract with or give an official position to one who is in default to the City.

State law reference—Restriction on making contracts with persons in default to city, MCL 117.5(f).

CHAPTER XIII. MUNICIPAL RIGHTS, LIABILITIES AND CHARTER ILLEGALITIES

Sec. 13.1. Rights, liabilities, remedies.

All rights and properties of any kind and description which were vested in the City at the time of the adoption of this charter shall continue; and no rights or liabilities, either in favor of or against the City at the time of the adoption of this charter, and no suit or prosecution of any kind pending at the time of adoption of this charter shall be in any manner affected by the

adoption of this charter but the same shall stand or progress as if no such change had been made; and all debts and liabilities of the City and all taxes levied and uncollected at the time of the adoption of this charter shall be collected the same as if such change had not been made. Provided, that when a different remedy is given in this charter which can be made applicable to any rights existing at the time of the adoption of this charter, the same shall be deemed cumulative to the remedies before provided, and may be used accordingly.

Sec. 13.2. Statements of city officers.

No officer of the City shall have power to make any commitment, representation, or recital of fact in any franchise, contract, document, or agreement which is contrary to law or any public record of the City. Any such commitment or representation shall be void and of no effect as against the City.

Sec. 13.3. Effect of illegality of any part of charter.

Should any provision or section, or portion of the charter be held by a court of competent jurisdiction to be invalid, illegal, or unconstitutional, such holding shall not be construed as affecting the validity of this charter as a whole or of any remaining portion of such provision or section.

CHAPTER XIV. SCHEDULE

Sec. 14.1. Purpose and status of schedule chapter.

The purpose of this schedule chapter is to provide the transition from the government of the City under the previous charter to that under this charter. It shall constitute a part of this charter only to the extent and for the time required to accomplish that end.

Sec. 14.2. Election to adopt charter.

The charter shall be submitted to a vote of the qualified electors of the territory comprising the City of Mt. Morris at a special election to be held on Tuesday, March 30, 1993 between the hours of 7:00 a.m. and 8:00 p.m. All provisions for the submission of the question of adopting this charter at such election shall be made in the manner provided by law. If, at said election, a majority of the electors voting thereon shall vote in favor of the adoption of this charter then the City Clerk shall perform all other acts required by law to carry this charter into effect.

Sec. 14.3. Form of ballot.

The form of the question of submission of this charter shall be as follows:

"Shall the proposed charter of the City of Mt. Morris drafted by the Charter Commission elected April 28, 1992 be adopted?"

Yes () No ()

Sec. 14.4. Officers of the city.

(a) The elected officers of the City, who hold office on the effective date of this charter, shall continue to hold the offices to which they were elected for the balance of the terms for which they were elected and shall conduct their several offices subject to the provisions of this charter. When the terms of the present elected officials expire, they shall be selected in accordance with the provisions of this charter.

(b) The Mayor shall appoint one (1) Board of Review member to fill the position held by the Mayor under the previous charter at the first Council meeting in January. The Mayor shall appoint the other members of the Board of Review at the first Council meeting in January after the term of office of the existing member expires. The initial appointments to the Board of Review under this charter shall be made for terms of such length so that only one Board of Review member's term will expire in January of each year; however, no appointment shall be for more than three (3) years.

(c) At the election upon the adoption of this charter, the City Clerk for the City of Mt. Morris shall perform the duties required by law respecting such elections. The Election Commission of the City as presently constituted will choose the Election Inspectors for said election.

(d) The Board of Canvassers of the County of Genesee, as established by law, shall canvass the votes cast at such election.

Sec. 14.5. Effective date of charter.

If the canvass of votes upon the adoption of this charter shows it to have been adopted, it shall take effect and become law as the charter of the City of Mt. Morris for all purposes on April 6, 1993 at 8:00 a.m. local time.

Sec. 14.6. Council action.

In all cases involving the transition of the City government from that under the previous charter to that under this charter, which are not covered by this schedule, the Council shall supply the necessary details and procedures and may adopt such rules, regulations, and ordinances as may be required therefor.

Sec. 14.7. Continuation of appointive officers.

Except as otherwise provided herein, after the effective date of this charter, all appointive officers and all employees of the City shall continue in the City office or employment which they held prior to the effective date of this charter and they shall be subject in all respects to the provisions of this charter.

Sec. 14.8. Boards and commissions.

The present boards and commissions now established shall continue under the terms of the ordinance or resolution establishing them. The terms of office of the members shall continue as established; and they shall continue in office until their successors are appointed in accordance with the terms of office established in the ordinance or resolution creating them.

MT. MORRIS CODE

RESOLUTION OF ADOPTION [1992]

At a meeting of the Charter Commission of the City of Mt. Morris held on Wednesday, October 28, 1992 in the City Council Chambers, 11649 N. Saginaw Street, Mt. Morris. The following members of the Charter Commission were present:

William Slattery	John Harrington	Ramona Murphy
Paul Cherwinski	Terry Daniel	Carley Pazz
Abel Guerrero	Robert McLean	

At such meeting, the following resolution was offered by Robert McLean and seconded by Paul Cherwinski.

Resolved, that the Charter Commission of the City of Mt. Morris does hereby adopt the foregoing instrument as the Charter of the City of Mt. Morris, and the Clerk of this Commission is hereby instructed to transmit the same to the Governor of the State of Michigan, in accordance with the provisions of Act No. 279 of the Public Acts of Michigan of 1909 (MCL 117.1 et seq.), as amended, for his approval.

The vote on the adoption of the resolution was as follows:

YES: W. Slattery, J. Harrington, R. Murphy, P. Cherwinski, T. Daniel, C. Pazz, A. Guerrero, R. McLean.

NO: None

ABSENT: William Lucas, II.

I Brian M. Bulthuis City Clerk of the City of Mt. Morris do hereby certify that the foregoing resolution is a true copy of the resolution, duly passed and adopted by the City of Mt. Morris Charter Commission at a Special Meeting held on the 28th of October, 1992 and that the annexed CHARTER OF THE CITY OF MT. MORRIS is a true copy of the instrument duly adopted as the charter of the City of Mt. Morris on said date.

Brian M. Bulthuis, City Clerk

CHARTER

RESOLUTION OF ADOPTION [1993]

At a meeting of the Charter Commission of the City of Mt. Morris held on Monday, January 25, 1993 at 7:00 p.m. in the City Council Chambers, 11649 N. Saginaw Street, Mt. Morris. The following members of the Charter Commission were present:

William Slattery	John Harrington	William Lucas
Paul Cherwinski	Terry Daniel	R. Murphy
Abel Guerrero	Robert McLean	

At such meeting, the following resolution was offered by William Lucas and seconded by Paul Cherwinski.

Resolved, that the Charter Commission of the City of Mt. Morris does hereby adopt the foregoing instrument which has been approved by the Attorney General's Office and recommended for approval to the Governor of the State of Michigan, in accordance with the provisions of Act No. 279 of the Public Acts of Michigan of 1909 (MCL 117.1 et seq.), as amended, as the Charter of the City of Mt. Morris.

The vote on the adoption of the resolution was as follows:

YES: W. Slattery, J. Harrington, R. Murphy, P. Cherwinski, T. Daniel, B. Lucas, A. Guerrero, R. McLean.

NO: None

ABSENT: C. Pazz

I Brian M. Bulthuis City Clerk of the City of Mt. Morris do hereby certify that the foregoing resolution is a true copy of the resolution, duly passed and adopted by the City of Mt. Morris Charter Commission at a Special Meeting held on the 25th of January, 1993 and that the annexed CHARTER OF THE CITY OF MT. MORRIS is a true copy of the instrument duly adopted as the charter of the City of Mt. Morris on said date.

Brian M. Bulthuis, City Clerk

MT. MORRIS CODE

CERTIFICATION OF VOTE

STATE OF MICHIGAN,

County of Genesee,

I, Brian M. Bulthuis, Clerk of the Charter Commission of the City of Mt. Morris, State of Michigan; and City Clerk of the City of Mt. Morris, State of Michigan, do hereby certify that this is the said Charter of the City of Mt. Morris as was drafted by the Charter Commission of the City of Mt. Morris, State of Michigan, elected April 28, 1992; and the same was, at a special Election held in said City of Mt. Morris on Tuesday, March 30, 1993 adopted by vote of the electors voting thereon. The vote of such electors being as follows:

Whole number of votes cast:	One Hundred Sixty-Four
For said Charter Adoption:	One Hundred Twenty-Four
Against said Charter Adoption:	Forty

Brian M. Bulthuis,
Clerk of the Charter Commission and
City Clerk of the City of Mt. Morris

CHARTER COMPARATIVE TABLE

This table shows the location of the sections of the basic Charter and any amendments thereto.

Date	Section	Section this Charter
3-30-93	Chs. I—VX	Chs. I—VX

PART II
CODE OF ORDINANCES

Chapter 1

GENERAL PROVISIONS

- | | |
|------------|--|
| Sec. 1-1. | Designation and citation of Code. |
| Sec. 1-2. | Definitions and rules of construction. |
| Sec. 1-3. | Interpretation of Code. |
| Sec. 1-4. | Catchlines. |
| Sec. 1-5. | References and notes. |
| Sec. 1-6. | Application to future legislation. |
| Sec. 1-7. | History notes. |
| Sec. 1-8. | Reference to other sections. |
| Sec. 1-9. | Reference to offices. |
| Sec. 1-10. | Certain provisions saved from repeal. |
| Sec. 1-11. | Amendment procedure. |
| Sec. 1-12. | Supplementation of Code. |
| Sec. 1-13. | Severability. |
| Sec. 1-14. | Municipal civil infractions. |
| Sec. 1-15. | General penalties. |
| Sec. 1-16. | Altering Code. |

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

This codification of ordinances shall be known and cited as the "Code of Ordinances, City of Mt. Morris, Michigan."

Charter reference—Authority to codify, § 5.b.

State law reference—Codification authority, MCL 117.5b.

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

In the construction of this Code and of all ordinances of the city, the following definitions and rules of construction shall be observed, unless they are inconsistent with the intent of the city council or the context clearly requires otherwise:

Charter. The word "Charter" means the Home Rule Charter of the City of Mt. Morris, Michigan, and includes any amendment to such Charter.

City. The word "city" means the City of Mt. Morris, Michigan.

City council. The words "city council" or "council" mean the city council of the City of Mt. Morris, Michigan.

City manager. The words "city manager" mean the city manager of the City of Mt. Morris, Michigan, or his designee.

Code. The words "Code" or "this Code" mean the Code of Ordinances, City of Mt. Morris, Michigan, as designated in section 1-1, and as modified by amendment, revision and by the adoption of new chapters, articles, divisions or sections.

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

County. The words "the county" mean the County of Genesee in the State of Michigan.

Gender. A word importing gender shall extend and be applied to both genders and to firms, partnerships and corporations as well.

Health officer or health department. The words "health officer" or "health department" mean the county health officer or the county health department.

MCL, MSA. The abbreviations "MCL" and "MSA" mean respectively the Michigan Compiled Laws and Michigan Statutes Annotated, as amended.

Number. A word importing the singular number only may extend and be applied to several persons and things as well as to one person and thing.

Officer, employee, department, board, commission or other agency. Whenever any officer, employee, department, board, commission or other agency is referred to by title only, such

reference shall be construed as if followed by the words "of the City of Mt. Morris, Michigan." Whenever, by the provisions of this Code, any officer, employee, department, board, commission or other agency of the city is assigned any duty or empowered to perform any act or duty, reference to such officer, employee, department, board, commission or agency shall mean and include such officer, employee, department, board, commission or agency or deputy or authorized subordinate.

Or, and. "Or" may be read "and," and "and" may be read "or" if the sense requires it.

Person. The word "person" and its derivatives and the word "whoever" shall include a natural person, partnership, association, legal entity or a corporate body or any body of persons corporate or incorporate. Whenever used in any clause prescribing and imposing a penalty, the term "person" or "whoever," as applied to any unincorporated entity, shall mean the partners or members thereof, and as applied to corporations, the officers thereof.

Shall/may. The word "shall" is always mandatory and not discretionary. The word "may" is permissive.

State. The words "the state" or "this state" mean the State of Michigan.

Tense. Except as otherwise specifically provided or indicated by the context, all words used in this Code indicating the present tense shall not be limited to the time of adoption of this Code but shall extend to and include the time of the happening of any act, event or requirement for which provision is made therein, either as a power, immunity, requirement or prohibition.

State law reference—Rules of construction, MCL 8.3 et seq.

Sec. 1-3. Interpretation of Code.

Unless otherwise provided in this Code, or by law or implication required, the same rules of construction, definition and application shall govern the interpretation of this Code as those governing the interpretation of the Public Acts of Michigan.

Sec. 1-4. Catchlines.

Headings and catchlines used in this Code following the chapter, article, division and section numbers, are employed for reference purposes only and shall not be deemed a part of the text of any section, except for the parentheticals (M), which designates violation of the section is a misdemeanor or (CI), which designates that violation of the section is a civil infraction.

Sec. 1-5. References and notes.

Charter references, cross references, state law references and editor's notes in this Code are explanatory only and should not be deemed a part of the text of any section.

Sec. 1-6. Application to future legislation.

All of the provisions of this chapter, not incompatible with future legislation, shall apply to ordinances hereafter adopted amending or supplementing this Code unless otherwise specifically provided.

Sec. 1-7. History notes.

The history notes appearing in parentheses after sections of this Code are not intended to have any legal effect but are merely intended to indicate the source of matter contained in the section.

Sec. 1-8. Reference to other sections.

Whenever in one section reference is made to another section of this Code, such reference shall extend and apply to the section referred to as subsequently amended, revised, recodified or renumbered unless the subject matter is changed or materially altered by the amendment or revision.

Sec. 1-9. Reference to offices.

Reference to a public office or officer shall be deemed to apply to any office, officer or employee of the city, exercising the powers, duties or functions contemplated in the provision, irrespective of any transfer of functions or change in the official title of the functionary.

Sec. 1-10. Certain provisions saved from repeal.

Nothing in this Code or in the ordinance adopting this Code, when not inconsistent with this Code, shall affect any ordinance:

- (1) Authorizing the issuance of bonds or borrowing money.
- (2) Establishing franchises or granting special rights to special persons.
- (3) Pertaining to cable communications or cable communications systems.
- (4) Prescribing traffic and parking restrictions pertaining to specific streets.
- (5) Pertaining to cemeteries.
- (6) Pertaining to zoning.
- (7) Which is not of a general or permanent nature.

All such ordinances are hereby recognized as continuing in full force and effect to the same extent as if set out at length in this Code. Such ordinances are on file in the city clerk's office. No offense committed or penalty incurred or any right established prior to the effective date of the Code shall be affected.

Sec. 1-11. Amendment procedure.

This Code shall be amended by ordinance. The title of each amendatory ordinance, adapted to the particular circumstances and purposes of the amendment, shall be substantially as follows, when to:

- (1) Amend any section:

An ordinance to amend section _____ (or sections _____ and _____) of the Code of Ordinances, City of Mt. Morris, Michigan.

- (2) Insert a new section or chapter:

An ordinance to amend the Code of Ordinances, City of Mt. Morris, Michigan, by adding a new section (_____ new sections or a new chapter, as the case may be) which new section (sections or chapter) shall be designated as section _____ (sections _____ and _____) (or proper designation if a chapter is added) of the Code.

- (3) Repeal a section or chapter:

An ordinance to repeal section _____ (sections _____ and _____, chapter _____, as the case may be) of the Code of Ordinances, City of Mt. Morris, Michigan.

Sec. 1-12. Supplementation of Code.

(a) By contract or by city personnel, supplements to this Code shall be prepared and printed whenever authorized or directed by the city 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 that 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 that have been repealed shall be excluded from the Code by the omission thereof from reprinted pages.

(c) When preparing a supplement to this Code, the codifier (meaning the person authorized to prepare the supplement) may make formal, nonsubstantive 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 such 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," etc., 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).
- (5) Make other nonsubstantive changes necessary to preserve the original meaning of ordinance sections inserted in 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.

Sec. 1-13. Severability.

(a) It is the legislative intent of the city council in adopting this Code, that all provisions and sections of this Code be liberally construed to protect and preserve the peace, health, safety and welfare of the inhabitants of the city. If any provision or section of this Code is held unconstitutional or invalid, such holding shall not be construed as affecting the validity of any of the remaining provisions or sections, it being the intent that this Code shall stand, notwithstanding the invalidity of any provision or section thereof.

(b) The provisions of this section shall apply to the amendment of any section of this Code whether or not the wording of this section is set forth in the amendatory ordinance.

Sec. 1-14. Municipal civil infractions.

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

Act means Act No. 236 of the Public Acts of Michigan of 1961 (MCL 600.101 et seq.), as amended.

Authorized city official means a city police officer, the city building inspector, the zoning administrator, the code enforcement official, the city manager or any other city employee specially designated in writing by the city manager to issue municipal civil infraction citations or municipal civil infraction violation notices.

Bureau means the city municipal ordinance violations bureau as established by this article.

Municipal civil infraction action means a civil action in which the defendant is alleged to be responsible for a municipal civil infraction.

Municipal civil infraction citation means a written complaint or notice prepared by an authorized city 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 means a written notice prepared by an authorized city official, directing a person to appear at the city municipal ordinance violations bureau and to pay the fine and costs, if any, prescribed for the violation by the schedule of civil fines adopted by the city, as authorized under section 8396 (MCL 600.8396), and section 8707(6) (MCL 600.8707(6)) of the Act.

(b) *Designation.* A municipal civil infraction shall be any chapter, article, section or division of this Code designated with a (CI) after the chapter, article, section, or division heading of this Code. If the (CI) immediately follows the chapter title then the entire chapter shall be a municipal civil infraction. If the (CI) immediately follows the article heading then the entire article shall be a municipal civil infraction. If the (CI) immediately follows a section heading then only that particular section shall be a municipal civil infraction. If the (CI) immediately follows a division heading then that entire division shall be a municipal civil infraction.

(c) *Commencement of action.* A municipal civil infraction action may be commenced upon the issuance by an authorized city official, with respect to an ordinance violation designated a civil infraction, of a municipal civil infraction citation directing the alleged violator to appear in court; or of a municipal civil infraction violation notice directing the alleged violator to appear at the city municipal ordinance violations bureau.

(d) *Issuance, service of citations.* Municipal civil infraction citations shall be issued and served by authorized city officials as follows:

- (1) The time for appearance specified in a citation shall be within a reasonable time after the citation is issued.
- (2) The place for appearance specified in a citation shall be the district court.
- (3) 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 city and issued to the alleged violator as provided by MCL 600.8705 of the Act.
- (4) A citation for a municipal civil infraction signed by an authorized city 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 statement above is true to the best of my information, knowledge, and belief."
- (5) An authorized city 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.
- (6) An authorized city official may issue a citation to a person if:
 - a. Based upon investigation, the official has reasonable cause to believe that the person is responsible for a municipal civil infraction; or

- b. 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 city attorney approves in writing the issuance of the citation.
- (7) Municipal civil infraction citations shall be served by an authorized city official as follows:
- a. Except as provided by subsection (d)(7)b of this section, an authorized city official shall personally serve a copy of the citation upon the alleged violator.
 - b. 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 the copy on the land or attaching the copy to the building or structure. In addition, a copy of the citation shall be sent by first-class mail to the owner of the land, building or structure at the owner's last known address.
- (e) *Contents of citations.*
- (1) 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.
- (2) Further, the citation shall inform the alleged violator that he may do one of the following:
- a. Admit responsibility for the municipal civil infraction by mail, in person or by representation, at or by the time specified for appearance.
 - b. Admit responsibility for the municipal civil infraction with explanation by mail by the time specified for appearance or, in person or by representation.
 - c. Deny responsibility for the municipal civil infraction by doing either of the following:
 - 1. 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 city.
 - 2. Appearing in court for a formal hearing before a judge, with the opportunity of being represented by an attorney.
- (3) The citation shall also inform the alleged violator of all of the following:
- a. 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.

- b. 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.
 - c. That a hearing shall be an informal hearing unless a formal hearing is requested by the alleged violator or the city.
 - d. 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.
 - e. That at a formal hearing the alleged violator must appear in person before a judge with the opportunity of being represented by an attorney.
- (4) The citation shall contain a notice in boldfaced 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 the municipal civil infraction.
- (f) *Municipal ordinance violations bureau.*
- (1) *Established.* The city hereby establishes a municipal ordinance violations bureau (bureau) as authorized under MCL 600.8396 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 city officials, and to collect and retain civil fines and costs as prescribed by this Code or any ordinance.
 - (2) *Location; supervision; employees; rules and regulations.* The bureau shall be located at city hall and shall be under the supervision and control of the city manager. The city manager subject to the approval of the city council shall adopt rules and regulations for the operation of the bureau and appoint any necessary qualified city employees to administer the bureau.
 - (3) *Disposition of violations.* The bureau may dispose only of municipal civil infraction violations for which a fine has been scheduled by this Code and for which a municipal civil infraction violation notice (as compared with a citation) has been issued. Nothing in this article shall prevent or restrict the city 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 the alleged violator may have the violation processed before a court of appropriate jurisdiction. The unwillingness of 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.
 - (4) *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.

- (5) *Municipal civil infraction violation notices.* Municipal civil infraction violation notices shall be issued and served by authorized city officials under the same circumstances and upon the same persons as provided for citations as provided in subsections (d)(6) and (d)(7) of this section. In addition to any other information required by this section, 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.
- (6) *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.
- (7) *Procedure where admission of responsibility not made or fine not paid.* If an authorized city 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 shall 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 particulars with the requirements for citations as provided by MCL 600.8705 and MCL 600.8709 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 of how to respond to the citation.

(g) Civil fines for municipal civil infractions whether paid at the municipal ordinance violations bureau upon an admission of responsibility or upon a formal or informal hearing before a judge or district court magistrate shall be as set forth in this Code. Failure of an alleged violator to appear within the time specified in the citation or at the time scheduled for hearing or appearance shall be a misdemeanor and the penalty shall be as provided in section 1-15.

(Ord. No. 340, §§ 1—6, 6-27-94)

Sec. 1-15. General penalties.

(a) Unless another penalty is expressly provided by this Code for any particular provision or section, or a particular chapter, article, section or division is designated as a municipal civil infraction, every person convicted of a violation of any provision of this Code or any rule, regulation or order adopted or issued in pursuance thereof, shall be punished by a fine of not

more than \$500.00 and costs of prosecution or by imprisonment for not more than 90 days, or by both such fine and imprisonment in the discretion of the court. Each act of violation and every day upon which any such violation shall occur shall constitute a separate offense.

(b) The penalty provided by this section, unless another penalty is expressly provided, shall apply to the amendment of any section of this Code whether or not such penalty is reenacted in the amendatory ordinance.

(c) The penalty shall be in addition to the abatement of the violating condition, any injunctive relief, or revocation of any permit or license.

(d) This section shall not apply to the failure of officers and employees of the city to perform municipal duties required by this Code.

(e) Any person who shall attempt to commit an offense or crime prohibited by any ordinance of the city and such crime or offense is a misdemeanor, and not a civil infraction, and in such attempt shall do any act toward the commission of such crime or offense, but shall fail in the perpetration, or shall be intercepted or prevented in the execution of the same shall be guilty of a misdemeanor.

(f) The penalty for any attempt to commit an offense or crime as defined in subsection (e) of this section shall be punishment by a fine of not more than \$250.00 or by imprisonment in the county jail for a period of time not to exceed 90 days or by both such fine and imprisonment in the discretion of the court. Each act of violation occurring shall constitute a separate offense.

(g) A person less than 21 years of age who violates section 42-227 shall be subject to the following civil fines:

- (1) For the first violation a fine of not more than \$25.00.
- (2) For a second violation a fine of not more than \$50.00, or participation in substance abuse prevention services as defined in section 6107 of the Public Health Code, Act No. 368 of the Public Acts of Michigan of 1978 (MCL 333.6107), as amended, and designated by the administrator of substance abuse services, or both.
- (3) For a third or subsequent violation a fine of not more than \$100.00 or participation in substance abuse prevention services as defined in section 6107 of the Public Health Code, Act No. 368 of the Public Acts of Michigan of 1978 (MCL 333.6107), as amended, and designated by the administrator of substance abuse services, or both.

(h) *Municipal civil infraction penalty clause.* An act or omission designated as a municipal civil infraction shall be subject to a civil fine in an amount not to exceed \$500.00, plus costs, which shall be paid by a defendant who is found responsible for each such civil infraction. Violators shall also be subject to sanctions, remedies and procedures as set forth in section 2-151 and Act No. 236 of the Public Acts of Michigan of 1961 (MCL 600.101 et seq.), as amended.

(i) *Fines paid at violations bureau.*

- (1) If the civil fine is paid at the municipal violations bureau, the initial fine shall be \$50.00.
- (2) In the case of another offense within one year of the date of the initial infraction, the civil fine shall be \$100.00. (This shall be known as the second offense.)
- (3) In the case of another offense within one year of the date of the second offense, the civil fine shall be \$250.00. (This shall be known as the third offense.)
- (4) In the case of another offense within one year of the third offense, the civil fine shall be \$500.00. (This shall be known as the fourth offense.) All subsequent offenses shall be \$500.00.

The municipal violations bureau is hereby authorized to accept civil fines in the amounts specified above. In case of payment at the violations bureau, no costs shall be imposed or collected.

(Ord. No. 323, §§ 1, 2, 8-12-91; Ord. No. 324, § 2, 8-12-91; Ord. No. 343, § 1, 6-27-94)

State law reference—Limitation on penalties, MCL 117.4i(k).

Sec. 1-16. Altering Code.

It shall be unlawful for any person in the city to change or amend by additions or deletions any part or portion of this Code, or to insert or delete pages, or portions thereof, or to alter or tamper with such Code in any manner whatsoever which will cause the law of the city to be misrepresented thereby.

Chapter 2

ADMINISTRATION*

Article I. In General

- Sec. 2-1. Merit principle, personnel issues and appeals to city council.
Sec. 2-2. Placement of unpaid charges upon the tax roll; collection of same in the same manner as real estate taxes.
Secs. 2-3—2-25. Reserved.

Article II. City Council

Secs. 2-26—2-45. Reserved.

Article III. Officers

- Sec. 2-46. Public servants authorized to issue appearance tickets.
Secs. 2-47—2-65. Reserved.

Article IV. Departments

Division 1. Generally

Secs. 2-66—2-75. Reserved.

Division 2. Police Department

- Sec. 2-76. Establishment; functions and duties.
Secs. 2-77—2-85. Reserved.

Division 3. Public Works

- Sec. 2-86. Establishment; duties and functions.
Secs. 2-87—2-95. Reserved.

Division 4. Fire Department

- Sec. 2-96. Establishment; duties and functions.
Secs. 2-97—2-115. Reserved.

***Charter references**—Elections, ch. 3; the elective officers, council, ch. 4; administrative service, ch. 6.

Cross references—Buildings and building regulations, ch. 14; cable communication, ch. 22; community development, ch. 30; fire prevention and protection, ch. 38; solid waste, ch. 50; special assessments, ch. 54; streets, sidewalks and other public places, ch. 58; utilities, ch. 66.

State law references—Standards of conduct and ethics, MCL 15.341 et seq.; open meetings act, MCL 15.261 et seq.; freedom of information act, MCL 15.231 et seq.

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Article V. Boards and Commissions

Division 1. Generally

Secs. 2-116—2-125. Reserved.

Division 2. Local Officers Compensation Commission

- Sec. 2-126. Created.
- Sec. 2-127. Composition; appointment of members.
- Sec. 2-128. Terms of office; vacancies.
- Sec. 2-129. Persons ineligible to serve.
- Sec. 2-130. Duties.

ARTICLE I. IN GENERAL**Sec. 2-1. Merit principle, personnel issues and appeals to city council.**

Pursuant to Chapter VI of the Charter of the City of Mt. Morris entitled, "The Administrative Service," specifically section 6.2(b), any city employee or appointee who shall be aggrieved by any action of the city manager or by action of any other city officer having final authority with respect to the disposition of any matter involving employment or the application of the merit principle including, but not limited to issues with respect to determinations as to the fitness for a position to be filled and dismissal for good and sufficient cause or any matters with respect to the application and interpretation of the personnel policy may appeal any such decision to the city council pursuant to the following process:

- (a) Said appeal shall be submitted, in writing, to the city clerk within five working days after the action of the city manager or other appropriate authority. The appeal shall set forth in such detail as is necessary, the nature of the grievance and/or the matter appealed and the relief sought.
- (b) The city clerk shall then transmit the said grievance or appeal to the city council at the next regular meeting. The city council shall then set a hearing with respect thereto as soon as practicable but no later than the second meeting held in the month subsequent to the month in which the appeal is filed. In the event only one meeting is scheduled in a month, the hearing shall be held no later than the month next following the month in which only one meeting is held.
- (c) The employee or appointee shall have the right to appear before the council either by attorney or in their own right to set forth, in such detail as they deem appropriate, their position. They may submit exhibits and present witnesses for examination under oath. The members of the council shall have the right to examine the grievant or any witnesses produced by them. The administration will have the authority to present its witnesses and exhibits.
- (d) After a full and complete hearing, the council shall as soon as practicable thereafter and no later than the following regular meeting issue a determination with respect to said appeal. The provisions of the Open Meetings Act of the State of Michigan shall apply to all such proceedings and decisions. Said decisions shall be final and binding upon the parties.
- (e) In the event no appeal is taken from the action of the city manager or other person authorized to make a final decision, any such action shall be deemed settled on the basis of the manager's action or other official's action.

(Ord. No. 03-06, § 1, 9-22-03)

Editor's note—Ord. No. 03-06, § 1, adopted Sept. 22, 2003, set out provisions intended for use as Ch. 2, Art. VI. In order to preserve the style of this Code, and at the editor's discretion, these provisions have been included as § 2-1.

Sec. 2-2. Placement of unpaid charges upon the tax roll; collection of same in the same manner as real estate taxes.

In the event charges for collection of excess solid waste and debris, snow plowing, sidewalk repair or replacement, when the flag(s) have become hazardous to persons using the sidewalk, weed abatement, and charges for code enforcement action necessary to protect the public safety or any other charges determined by the council to be subject to collection in the manner herein set forth, are not paid upon presentment of an itemized invoice, the following procedure shall apply:

- (a) Second invoice; late charge; advice of appeal rights. After the expiration of a period of 30 days after issuance of the initial invoice, a second invoice specifically identified as such (i.e., "second notice" or similar heading) and stating that the charges are delinquent shall be issued, giving the property owner as disclosed by the tax rolls, an additional period of 15 days within which to pay the same. Said second invoice will specifically state that upon failure to pay the same within the said 15-day period, a late charge equal to ten percent of the charge shall be applied and after a period of 30 days thereafter, without payment, the charge shall be certified to the treasurer for placement on the tax roll, for city taxes next due after expiration of the appeal rights hereinafter set forth. The notice, in a form approved by the city attorney, shall advise the property owner of appeal rights as hereinafter set forth. Thereafter, the said charges shall be payable in connection with real estate taxes in the normal course.
- (b) Appeal process; appeal to manager; appeal to council. In the event a property owner or the property owner's proper representative wishes to appeal the amount or propriety of the said charge, an appeal to the city manager may be issued upon a form to be provided by the city clerk. The manager shall issue his or her response, in writing, within ten days of the filing of the appeal with the city clerk. The property owner shall, thereafter, have a period of ten days within which to appeal the said determination to the city council. In the event of an appeal, the matter shall be placed upon the next city council agenda after the filing of said appeal, provided the council meeting is more than ten days after the date of the filing of said appeal. In the event a council meeting is less than ten days from the date of filing, the appeal shall be set on for hearing for the next meeting. The determination of the city council shall be appealable to court pursuant to applicable law.
- (c) This process shall apply with respect to statements issued pursuant to Code sections 54-24 (sidewalk repair), section 58-113 (snow removal) and 70-28 (weed removal) and any other Code sections which provide for the billing of charges for city services, with the exception of charges for delinquent water charges.

(Ord. No. 06-02, § 1, 5-8-06)

Editor's note—Ord. No. 06-02, § 1, adopted May 8, 2006, set out provisions intended for use as Ch. 2, Art. VI. In order to preserve the style of this Code, and at the editor's discretion, these provisions have been included as § 2-2.

Secs. 2-3—2-25. Reserved.

ARTICLE II. CITY COUNCIL

Secs. 2-26—2-45. Reserved.

ARTICLE III. OFFICERS

Sec. 2-46. Public servants authorized to issue appearance tickets.

The city does hereby authorize a duly designated public servant other than a police officer to issue and serve appearance tickets if the public servant has reasonable cause to believe that the person to whom the appearance ticket is issued has committed an offense. The city manager is hereby granted authority to designate, in writing, those public servants authorized to issue appearance tickets, the particular class of offenses for which the tickets may be issued and the general nature of such appearance tickets to be issued.

(Ord. of 11-10-97)

Secs. 2-47—2-65. Reserved.

ARTICLE IV. DEPARTMENTS**DIVISION 1. GENERALLY**

Secs. 2-66—2-75. Reserved.

DIVISION 2. POLICE DEPARTMENT

Sec. 2-76. Establishment; functions and duties.

(a) The city police department is hereby established. The department as hereby established pursuant to and as contemplated by the Charter shall continue to exercise those duties and functions heretofore promulgated, it being the intent of this division that there shall be continuity in the operations and functioning of the department and that the department hereby established is, accordingly, a continuation for all intents and purposes of the department currently in existence.

(b) The department shall perform police and public safety functions as prescribed by the manager and city council. The officers thereof shall be peace officers as the term is generally understood under the laws of the state, and they shall exercise those functions and duties incumbent upon a peace officer and shall possess those rights and immunities of a peace officer.

(c) The chief of the department shall be appointed by the city manager in accordance with Section 6.8 of the Charter. The chief shall be the commanding officer of the police department and shall report to the city manager.

(d) The chief shall promulgate, subject to city council approval, rules and regulations for the department and shall have the authority to establish and continue in force an auxiliary police function pursuant to rules and regulations approved by the city council.

(Ord. No. 339, § 1, 6-13-94)

Secs. 2-77—2-85. Reserved.

DIVISION 3. PUBLIC WORKS

Sec. 2-86. Establishment; duties and functions.

(a) The department of public works is hereby established. The department as hereby established pursuant to and as contemplated by the Charter shall continue to exercise those duties and functions heretofore performed by the department, it being the intent of this division that there shall be continuity in the operations of the department and that the department hereby established is, accordingly, a continuation of that department heretofore existing. The department shall perform public works functions as prescribed by the manager and city council. The superintendent of public works shall be appointed by the city manager in accordance with Section 6.8 of the Charter. The superintendent shall be the chief operations officer of the department and shall report to the city manager.

(b) The superintendent of the department of public works shall have supervisory control over the water and sewer systems of the city, city streets and other facilities. It shall be his duty and responsibility to approve construction methods and procedures pursuant to applicable ordinances and regulations including, but not limited to, the location and method of making cuts in public rights-of-way for the purpose of installation and repair of pipes and other apparatus. The superintendent of public works shall have the responsibility to approve connections to the water and sewer systems and shall make such other determinations as are necessary to ensure the safe and proper functioning of the systems and the purity of water furnished to city users.

(Ord. No. 339, § 3, 6-13-94)

Secs. 2-87—2-95. Reserved.

DIVISION 4. FIRE DEPARTMENT

Sec. 2-96. Establishment; duties and functions.

(a) The city fire department is hereby established. The department as hereby established pursuant to and as contemplated by the Charter shall continue to exercise those duties and functions heretofore promulgated, it being the intent of this division that there shall be continuity in the functions and operations of the department and that the department hereby established is, accordingly, a continuation of that department heretofore existing. The department shall perform firefighting and related functions as prescribed by the manager and city council. The chief of the department shall be appointed by the city manager in accordance

with Section 6.8 of the Charter. The chief shall be the commanding officer of the fire department and shall report to the city manager. The chief shall promulgate, subject to the city council approval, rules and regulations for the department.

(b) The chief of the fire department or the command officer shall be in charge of any fire scene within the city and the chief and any firefighter or person acting pursuant to his direction shall have the right to enter upon any ground or building to take any action necessary in the extinguishment or prevention of fire. No person shall obstruct, resist, impede or oppose the chief or any person acting pursuant to his lawful direction at the fire scene. The chief of the fire department or the command officer may order the arrest without process of any person who at a fire scene within the city shall obstruct, hinder or oppose the firefighters in the discharge of their duties or who shall fail or refuse to abandon a building at his express direction.

(c) The chief or the command officer shall have the authority, pursuant to custom and practice in such circumstances, to draft ablebodied citizens for the purpose of fighting or assisting in the fighting of fire and the protection of life and property. It shall be a violation of this section to fail or refuse to comply with the lawful orders of the fire chief or command officer in this regard.

(Ord. No. 339, § 2, 6-13-94)

Secs. 2-97—2-115. Reserved.

ARTICLE V. BOARDS AND COMMISSIONS

DIVISION 1. GENERALLY

Secs. 2-116—2-125. Reserved.

DIVISION 2. LOCAL OFFICERS COMPENSATION COMMISSION*

Sec. 2-126. Created.

There is hereby created a local officers compensation commission whose principal duty shall be to determine the salaries of all local elected officials.

(Ord. No. 161, § 1, 1-28-74)

***Charter reference**—Compensation of councilmembers, § 4.10.

State law reference—Authority to create local officers compensation commission, MCL 117.5c.

Sec. 2-127. Composition; appointment of members.

The local officers compensation commission shall consist of five members who are registered electors of the city and shall be appointed by the mayor subject to confirmation by a majority of the members elected to and serving on the city council.

(Ord. No. 161, § 2, 1-28-74)

Sec. 2-128. Terms of office; vacancies.

The terms of office of members of the local officers compensation commission shall be five years except the first members appointed shall be individually appointed to the following terms: one for one year, one for two years, one for three years, one for four years and one for five years. The first members shall be appointed within 30 days after the effective date of the ordinance from which this division is derived. Thereafter members shall be appointed before October 1 of the year in which the vacancy occurs. When vacancies occur during the term, the appointment shall be for the unexpired term.

(Ord. No. 161, § 3, 1-28-74)

Sec. 2-129. Persons ineligible to serve.

No member or employee of the legislative, judicial or executive branch of any level of government or members of the immediate family of such member or employee shall be eligible to be a member of the local officers compensation commission.

(Ord. No. 161, § 4, 1-28-74)

Sec. 2-130. Duties.

After the local officers compensation commission has been appointed and qualified according to law, it shall perform the duties imposed upon it by MCL 117.5c of Act No. 279 of the Public Acts of Michigan of 1909 (MCL 117.1 et seq.), as amended, which act is entitled An act to provide for the incorporation of cities and for revising and amending their charters.

(Ord. No. 161, § 5, 1-28-74)

Chapters 3—5

RESERVED

Chapter 6

**AMUSEMENTS AND ENTERTAINMENTS
(RESERVED)**

Chapters 7—9

RESERVED

Chapter 10

ANIMALS*

Article I. In General

- Sec. 10-1. Keeping certain animals prohibited.
- Sec. 10-2. Running at large.
- Sec. 10-3. Manure piles.
- Sec. 10-4. Sanitary nuisances.
- Secs. 10-5—10-25. Reserved.

Article II. Dogs

Division 1. Generally

- Sec. 10-26. Definitions.
- Sec. 10-27. Barking or dangerous dogs.
- Sec. 10-28. Impoundment.
- Sec. 10-29. Cruelty to dogs.
- Secs. 10-30—10-40. Reserved.

Division 2. Dog Licenses

- Sec. 10-41. License required.
- Sec. 10-42. Applicable county regulations.
- Secs. 10-43—10-55. Reserved.

Division 3. Kennels

Subdivision I. In General

- Sec. 10-56. Sanitation; inspections.
- Secs. 10-57—10-65. Reserved.

Subdivision II. License

- Sec. 10-66. Required.
- Sec. 10-67. Application.
- Sec. 10-68. Conditions, requirements for licensure.
- Secs. 10-69—10-80. Reserved.

Division 4. Vicious Dogs

- Sec. 10-81. Definitions.
- Sec. 10-82. Conditions, standards for keeping.
- Sec. 10-83. Reporting requirements.

***State law references**—Authority to adopt animal control ordinance, MCL 287.290; crimes relating to animals and birds, MCL 750.49 et seq.

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- Sec. 10-84. Failure to comply.
- Sec. 10-85. Violation; penalties.
- Sec. 10-86. Complaints; order to show cause against killing or confining of dog.
- Sec. 10-87. Judicial order; penalty for failure to follow; court costs.

ARTICLE I. IN GENERAL**Sec. 10-1. Keeping certain animals prohibited.**

It shall be unlawful to keep, harbor, own or in any way possess within the corporate limits of the city:

- (1) Any warmblooded, carnivorous or omnivorous, wild or exotic animals, dangerous or undomesticated animals which are not of a species customarily used as an ordinary household pet, but one which would ordinarily be confined in a zoo, or one which would ordinarily be found in the wilderness of this or any other country, or one which otherwise causes a reasonable person to be fearful of bodily harm or property damage (including, but not limited to nonhuman primates, raccoons, skunks, foxes, fowl, and wild and exotic cats; but excluding ferrets and small rodents of varieties used for laboratory purposes).
 - (2) Any animal having a poisonous bite.
- (Ord. No. 292, § 1, 10-12-87)

Sec. 10-2. Running at large.

It shall be unlawful for any person being the owner of or in possession of any dogs, domestic fowls, horses, cattle, swine, sheep or other animal to permit it to run at large within the city, upon any street, alley, lane or public place in the city or upon the lands or property of any person other than the owner or person in possession of the fowl or animal.

(Ord. No. 273, § 34, 8-12-85)

Sec. 10-3. Manure piles.

It shall be unlawful for any person to keep a manure pile in the city within 200 feet of any building or structure used as a place for human habitation, except the place used for human habitation by the owner or person in possession of the manure pile.

(Ord. No. 273, § 35, 8-12-85)

Sec. 10-4. Sanitary nuisances.

It shall be unlawful for any person within the city to collect or confine any horse, cattle, sheep, hogs, fowl or to confine other domestic animals in pens, stables, coops or otherwise so as to become offensive to his neighbor, or for any person to keep or use a hog pen, stable, hen coop or other enclosure used for confining any domestic animals adjoining to or abutting any lot or parcel of land on which any person resides, or so near to or in such a position that any of the contents of such pen, stable, hen coop or other enclosure, used for the purposes above specified, may be discharged on such lot or parcel of land. The accumulation of such stables, pens, coops or other similar enclosures not prohibited in this chapter, shall be removed therefrom and from the lot or parcel of land on which it is located at least once each week

during the months of March, April, May, June, July, August, September, October and November, and the contents of such places shall be placed in tightly covered boxes or pits or other suitable container or repository.

(Ord. No. 273, § 32, 8-12-85)

Secs. 10-5—10-25. Reserved.

ARTICLE II. DOGS

DIVISION 1. GENERALLY

Sec. 10-26. Definitions.

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

Owner, when applied to the proprietorship of a dog, means every person having a right of property in the dog, and every person who permits the dog to remain in or about the premises occupied by him.

Reasonable control means keeping a dog on a suitable leash, which leash shall be not more than eight feet in length, which leash shall be securely affixed to the dog and in the possession of the owner or custodian or some other person with the permission of the owner or custodian, in cases other than while upon private property (owned by the owner or custodian or, if the private property is not owned by the owner or custodian, with the express permission of the owner of the property), or unless the dog is confined in a closed automobile or shipping receptacle.

(Ord. No. 207, § 1, 4-3-78)

Cross reference—Definitions generally, § 1-2.

Sec. 10-27. Barking or dangerous dogs.

No person shall keep or harbor a dog which by loud or frequent or habitual barking, yelping or howling shall cause a serious annoyance to the neighborhood, or the people passing to and fro upon the street. Yards and/or exercise dog runs shall be kept free of dog droppings and uneaten food, and maintained in a sanitary manner so as not to be a nuisance because of odor or attraction of flies and vermin. No person shall own or harbor a dog that has been bitten by any animal known to be afflicted with rabies. Any person who shall have in his possession a dog which has contracted or is suspected of having contracted rabies or which has been bitten by any animal known to have been afflicted with rabies shall upon demand of the health officer, or any police officer of the city, produce and surrender the dog to the health department or police department of the city to be held for observation and/or treatment; provided, that with the approval of the health department any such dog may be surrendered to a registered veterinarian, or to any approved nonprofit corporation organized for the purpose of sheltering

dogs. It shall be the duty of any person owning or harboring a dog which has been attacked or bitten by another dog or animal showing symptoms of rabies to immediately notify the police department that such person has such dog in his possession.

(Ord. No. 156, § 4, 7-24-72)

Sec. 10-28. Impoundment.

The city may contract with the county dog department, the dog warden and/or any other duly authorized person for the purpose to properly seize, take up and place in the pound dogs running at large or being kept or harbored in any place in the city contrary to the provisions of this article.

(Ord. No. 156, § 5, 7-24-72)

Sec. 10-29. Cruelty to dogs.

No person owning or harboring any dog nor any other person shall treat a dog in a cruel or inhumane manner and/or negligently cause or permit any dog to suffer unnecessary pain.

(Ord. No. 156, § 6, 7-24-72)

Secs. 10-30—10-40. Reserved.

DIVISION 2. DOG LICENSES

Sec. 10-41. License required.

It shall be unlawful for any person to own, possess or harbor any dog six months of age or over in the city, unless the dog is licensed as provided in this division, or to own, harbor and possess any dog six months old or over that does not at all times wear a collar or harness with a metal tag attached as provided in this division; or for any owner to allow his dog to stray beyond the premises of the owner unless under reasonable control of some person.

(Ord. No. 156, § 2, 7-24-72)

Sec. 10-42. Applicable county regulations.

License applications, license fees, license tags and duplication of tags for the city are controlled by the county dog department regulations.

(Ord. No. 156, § 3, 7-24-72)

Secs. 10-43—10-55. Reserved.

DIVISION 3. KENNELS

Subdivision I. In General

Sec. 10-56. Sanitation; inspections.

Kennel premises shall be maintained in a clean, sanitary condition at all times and sanitary methods shall be used to obliterate or prevent any offensive odors. Any dogs which are habitual barkers shall be confined inside the enclosed buildings at all times. The police and health officers of the city shall have the right to inspect such kennels at all reasonable hours.
(Ord. No. 156, § 10, 7-24-72)

Secs. 10-57—10-65. Reserved.

Subdivision II. License

Sec. 10-66. Required.

Any person who shall own or keep upon his premises more than two dogs, other than dogs under four months of age, shall be deemed the operator of a dog kennel. It shall be unlawful to operate a dog kennel within the city without having first secured a license to operate the kennel.
(Ord. No. 156, § 7, 7-24-72)

Sec. 10-67. Application.

Any person desiring to operate a dog kennel shall file application therefor upon such form as may be prescribed by the city clerk. The application shall indicate whether or not the proposed kennel and its operation will violate any provisions of the laws of this state or this Code. If it appears that the kennel and the operation of the kennel will not violate such laws or this Code, the city clerk shall issue a kennel license to the applicant upon payment of the sum of \$100.00 for the license fee. The license shall permit the operation of the kennel for a period of one year from the date of its issuance, unless previously revoked. Any violation of the following sections of this division shall constitute sufficient cause for revocation of the license.
(Ord. No. 156, § 8, 7-24-72)

Sec. 10-68. Conditions, requirements for licensure.

No person shall be licensed to operate a kennel unless upon the following conditions and under the following requirements, limitations and regulations:

- (1) No kennel shall be operated with less than 2,000 square feet of open ground or enclosed building available and in use for the dogs.
- (2) All kennels which are located within 1,000 feet of any dwelling house, or within 1,000 feet of any property known as residential property shall also have provided a completely enclosed building within which the dogs shall be confined each day during

the time between sunset and 9:00 a.m. of the following day. Such enclosed building shall be constructed or maintained as nearly soundproof as may be through ordinary building construction.

- (3) All of the outdoor enclosure shall be enclosed behind wire fencing and heavy shrubbery, or behind solid fencing of at least eight feet in height so that there shall be a complete barricade to sight from the inside of the enclosure to the outside.
- (4) If more than four dogs are maintained or kept in the kennel the ground area required under subsection (1) of this section shall be increased by 400 square feet for each additional dog over four months of age.
- (5) All kennel dogs shall be fed, maintained and housed in separate compartments and separate outdoor runways so that each dog may not come in physical contact with or see other dogs except when breeding is taking place and, further, except in cases of mother and young.
- (6) All inside and outside spaces shall be completely and entirely cleaned of all refuse matter at least twice per day.
- (7) In case any dog kennel is located within 500 feet of one or more buildings used or occupied as residences, the kennel dogs shall be continuously confined within the kennel building and not allowed to run at large or to be in the outdoor enclosure of such a kennel.

(Ord. No. 156, § 9, 7-24-72)

Secs. 10-69—10-80. Reserved.

DIVISION 4. VICIOUS DOGS

Sec. 10-81. Definitions.

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

Vicious dog means:

- (1) Any dog with a propensity, tendency or disposition to attack, to cause injury or to otherwise endanger the safety of human beings or other domestic animals.
- (2) Any dog which has previously attacked or bitten a human being or other domestic animal other than under the type of circumstances that would be justifiable.

- (3) Any dog which has behaved in such a manner that the owner knows or should reasonably know that the dog is possessed of tendencies to attack or bite human beings or other domestic animals other than under the type of circumstances that would be justifiable.

(Ord. No. 292, § 2, 10-12-87)

Cross reference—Definitions generally, § 1-2.

Sec. 10-82. Conditions, standards for keeping.

The keeping of vicious dogs will be subject to the following standards.

- (1) *Leash and muzzle.* No person shall permit a vicious dog to go outside its kennel or pen unless the dog is securely leashed with a leash no longer than four feet in length. No person shall permit such a dog to be kept on a chain, rope or other type of leash outside its kennel or pen unless a person is in physical control of the leash. Such dogs may not be leashed to inanimate objects such as trees, posts, buildings, etc. In addition, all such dogs on a leash outside the animal's kennel must be muzzled by a muzzling device sufficient to prevent the dog from biting persons or other animals.
- (2) *Confinement; structure specifications.* All vicious dogs shall be securely confined indoors or in a securely enclosed and locked pen or kennel, except when leashed and muzzled as provided in subsection (1) of this section. Such pen, kennel or structure must have secure sides and a secure top attached to sides. All structures used to confine such dogs must be locked with a key or combination lock when the animals are within the structure. The structure must have a secure bottom or floor attached to the sides of the pen or the sides of the pen must be embedded in ground to a depth of no less than two feet. All structures erected to house such dogs must comply with all zoning and building regulations of the city. All such structures must be adequately lighted and ventilated and kept in a clean and sanitary condition.
- (3) *Confinement indoors.* No vicious dog may be kept on a porch, patio or in any part of a house or structure that would allow the dog to exit the building on its own volition. In addition, no such animal may be kept in a house or structure where window screens or screen doors are the only obstacle preventing the dog from exiting the structure.
- (4) *Signs.* All owners, keepers or harborers of vicious dogs within the city shall display in a prominent place on their premises a sign easily readable by the public using the words "beware of dog." In addition, a similar sign is required to be posted on the kennel or pen of the animal.
- (5) *Insurance.* All owners, keepers or harborers of vicious dogs must provide proof to the city of public liability insurance in a single incident amount of \$100,000.00 for bodily injury to or death of any person which may result from ownership, keeping or maintenance of such animal. The insurance policy shall provide that no cancellation of the policy will be made unless ten days' written notice is first given to the city clerk.

- (6) *Identification photographs.* All owners, keepers or harborers of vicious dogs must provide the city clerk two color photographs of the registered animal clearly showing the color and approximate size of the animal.

(Ord. No. 292, § 3, 10-12-87)

Sec. 10-83. Reporting requirements.

All owners, keepers or harborers of vicious dogs must, within one day of the incident, report the following information in writing to the city clerk:

- (1) The removal from the city or the death of a vicious dog.
- (2) The birth of offspring of a vicious dog.
- (3) The new address of a vicious dog should the owner move within the corporate city limits.
- (4) The dog is on the loose, has been stolen or has attacked a person.

(Ord. No. 292, § 4, 10-12-87)

Sec. 10-84. Failure to comply.

It shall be unlawful for the owner, keeper or harborer of a vicious dog within the city to fail to comply with the requirements and conditions set forth in this division. Any dog found to be the subject of a violation of this division shall be subject to immediate seizure and impoundment.

(Ord. No. 292, § 5, 10-12-87)

Sec. 10-85. Violation; penalties.

Any person violating or permitting the violation of any provision of this division shall upon conviction be fined as prescribed in section 1-15. In addition to the foregoing penalties, any person who violates this division shall pay all expenses, including shelter, food, handling, veterinary care and testimony necessitated by the enforcement of this division.

(Ord. No. 292, § 6, 10-12-87)

Sec. 10-86. Complaints; order to show cause against killing or confining of dog.

A district court magistrate or a judge of the district court shall issue a summons to show cause why a dog should not be killed, upon a sworn complaint that any of the following exist:

- (1) A dog, licensed or unlicensed, has destroyed property or habitually caused damage by trespassing on the property of a person who is not the owner.
- (2) A dog, licensed or unlicensed, has attacked or bitten a person.
- (3) A dog has shown vicious habits or has molested a person when lawfully on a public right-of-way or in a public place.
- (4) A dog, licensed or unlicensed, has run at large contrary to city ordinance.

(Ord. No. 292, § 7, 10-12-87)

Sec. 10-87. Judicial order; penalty for failure to follow; court costs.

After a hearing the district court judge may either order the dog killed or confined to the premises of the owner. Failure to comply with the order of a district court judge may result in the owner of the dog against which an order has been entered being punished by a fine of not more than \$500.00 or imprisonment in the county jail for not more than 90 days, or both such fine or imprisonment. Court costs for such actions taken shall be taxed against the owner of the dog against whom the complaint was issued.

(Ord. No. 292, § 8, 10-12-87)

Chapters 11—13

RESERVED

Chapter 14

BUILDINGS AND BUILDING REGULATIONS*

Article I. In General

Sec. 14-1. Administration, enforcement of electrical, mechanical, plumbing codes.
Secs. 14-2—14-25. Reserved.

Article II. Building Code

Sec. 14-26. Adoption; qualifications.
Sec. 14-27. Amendments and modifications.
Secs. 14-28—14-50. Reserved.

Article III. Portable or Nonpermanent Structures

Sec. 14-51. Definitions.
Sec. 14-52. Use restricted.
Sec. 14-53. Continued use as nonconforming structure.
Sec. 14-54. Inspection; notice of violation.
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Sec. 14-56. Basis for determinations.
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Article IV. Reserved

Secs. 14-81—14-110. Reserved.

Article V. Housing

Division 1. Generally

Sec. 14-111. Housing board of appeals.
Secs. 14-112—14-120. Reserved.

Division 2. Property Maintenance Code

Sec. 14-121. Adoption.
Sec. 14-122. Amendments and modifications.
Sec. 14-123. Publication; availability of code at city offices.
Secs. 14-124—14-155. Reserved.

***Cross references**—Administration, ch. 2; fire prevention and protection, ch. 38; planning, ch. 46; streets, sidewalks and other public places, ch. 58; utilities, ch. 66; schedule of fees, app. C.

State law reference—State Construction Code Act, MCL 125.1501 et seq.

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Division 3. Low or Moderate Income Housing Service Charge

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Secs. 14-156—14-165. Reserved.

Subdivision II. Tax Exemption Number One

Sec. 14-166. Preamble.
Sec. 14-167. Definitions.
Sec. 14-168. Class of housing developments.
Sec. 14-169. Establishment of annual service charge.
Sec. 14-170. Designation of eligible housing developments.
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Subdivision III. Tax Exemption Number Two

Sec. 14-181. Preamble.
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Sec. 14-183. Class of housing developments.
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Article V.5. Design Standards for Commercial Development

Sec. 14-200. Purpose.
Sec. 14-201. Design criteria.
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Sec. 14-203. Application.
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Article VI. Drive-Thru Windows

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Sec. 14-213. Drive-thru windows requiring permits.
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Sec. 14-216. Standards for approval.
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Article VII. Fences

Sec. 14-230. Definition.
Sec. 14-231. Fences; construction.
Sec. 14-232. Fee.
Sec. 14-233. Height and composition of fences within the required front yard set back.

BUILDINGS AND BUILDING REGULATIONS

- Sec. 14-234. Height and composition of fences in other than the required front yard set back.
- Sec. 14-235. Construction entirely upon owner's property; dispute; certified survey required.
- Sec. 14-236. Condition and repair.
- Sec. 14-237. General regulations relative to construction of fences.
- Sec. 14-238. Reserved.
- Secs. 14-239—14-300. Reserved.

Article VIII. Rental Unit Inspections

- Sec. 14-301. Inspections required; rental unit defined.
- Sec. 14-302. Inspections; when conducted; authorization; notices; warnings.
- Sec. 14-303. Inspection fees; certification.

ARTICLE I. IN GENERAL**Sec. 14-1. Administration, enforcement of electrical, mechanical, plumbing codes.**

(a) Pursuant to Section 9 of the State Construction Code of 1972, Act No. 230 of the Public Acts of Michigan of 1972, the city does hereby assume responsibility for administration and enforcement of the divisions of the said state construction code relating to electrical, mechanical, and plumbing work within its political boundaries.

(b) The enforcing agency shall be an agent of the city qualified by experience and training to perform the duties associated with construction code administration and enforcement, said agent to be appointed by the city manager for a term of three years. Said agent shall be responsible for the administration and enforcement of the divisions of the state construction code dealing with electrical, mechanical and plumbing.

(c) The administration of these divisions with respect to fees, penalties appeals and other matters shall be as in section 14-27.

(Ord. of 8-10-98(1))

Secs. 14-2—14-25. Reserved.**ARTICLE II. BUILDING CODE****Sec. 14-26. Adoption; qualifications.**

Pursuant to the provisions of Section 8 of the State Construction Code Act, Act No. 230 of the Public Acts of Michigan of 1972 (MCL 125.1501 et seq.), as amended, and pursuant to the general authority of the city the following code is adopted by reference: The BOCA National Building Code/1996 (13th Edition) as published by the Building Officials and Code Administrators International, Inc. In those portions of the code referring to the jurisdiction, the City of Mt. Morris, County of Genesee, State of Michigan shall apply, and reference therein to date of adoption shall mean the date the ordinance from which this article is derived or any portion or section thereof takes effect. The purpose of the code is to provide a comprehensive code relative to construction, alteration, addition, repair, removal, demolition, use, location, occupancy and maintenance of all buildings and structures within the city, having applicability to existing or proposed buildings and structures. Any reference to qualifications of employees or officials set forth in the code shall not be considered mandatory, but shall serve only as a guide to the city in making determinations as to such matters.

(Ord. No. 295, art. I, 6-13-88; Ord. of 8-9-99(1))

Sec. 14-27. Amendments and modifications.

The BOCA National Building Code/1996 is amended and modified by restating or replacing sections in it with like-numbered sections listed below, or by substituting, inserting or deleting language in the specified section, all as indicated below:

Section 104.4 is hereby amended to provide that the city manager of the city may designate an individual as deputy who shall exercise all of the powers of the building official during the temporary absence or disability of the building official.

Section 105.6 is omitted and the following language is hereby substituted in its stead: The council upon recommendation of the building official shall have the power as may be necessary in the interest of public health, safety and general welfare to adopt and promulgate rules and regulations, in ordinance form, to interpret and implement the provisions of this code, to secure the intent thereof and to designate requirements applicable because of local climatic or other conditions; but such rules shall not have the effect of waiving working stresses or fire resistive requirements specifically provided in this code or violating accepted engineering practices involving public safety; provided, however, that any such rule making shall be subject to the provisions of section 8 of Act No. 230 of the Public Acts of Michigan of 1972 (MCL 125.1501 et seq.), as amended, to the extent applicable.

Section 112.3.1 Fee Schedule. The following language is hereby added at the specified point in the section: The fee schedule shall be provided, from time to time, by resolution of the city council and shall be applicable to each plan examination, building permit and inspection hereunder.

Section 116.4 Penalty. This section is hereby completed and/or supplemented by providing that a violation of the provisions of the code shall be a misdemeanor and shall be punishable by a fine of not more than \$500.00 or by imprisonment not exceeding 90 days, or both such fine and imprisonment.

Section 121.2 is hereby amended as follows: The housing board of appeals specified in the housing code in article V of chapter 14 of the Code of Ordinances of the city, is hereby constituted the board of appeals under this code.

Section 121.2.1 is hereby omitted.

Section 121.2.2 is hereby restated as follows: The action of the board of appeals under this code shall be taken in accordance with the rules and regulations applicable to the board of appeals established pursuant to the housing code in article V of chapter 14 of the Code of Ordinances of the city. All procedures that apply with respect to the board of appeals shall apply with respect to appeals relative to this code.

Sections 121.2.3 through 121.7, inclusive, shall remain effective provided, however, that the section shall be read and interpreted in pari materia with the above provisions and such rules and regulations as are applicable to the functioning of the board of appeals existing by virtue of article V of chapter 14 of the Code of Ordinances of the city, as amended.
(Ord. No. 295, art. III, 6-13-88; Ord. of 8-9-99(1))

Secs. 14-28—14-50. Reserved.

ARTICLE III. PORTABLE OR NONPERMANENT STRUCTURES**Sec. 14-51. Definitions.**

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

Portable or nonpermanent structure means any structure which does not have a permanent foundation constructed in accordance with the ordinances of the city. This definition shall include, but is not limited to, house trailers, semitrailers and related equipment.

(Ord. No. 170, § 1, 11-25-74)

Cross reference—Definitions generally, § 1-2.

Sec. 14-52. Use restricted.

It shall be unlawful to use portable or nonpermanent structures for the purpose of displaying or storing goods and merchandise; provided, however, that portable or nonpermanent structures may be situated upon property zoned industrial for a period not to exceed 30 days, for storage purposes only, provided such equipment is certified by the building inspector as being safe from the standpoint of fire safety and if suitable, for the intended purposes from the standpoint of load limits, ventilation and other sound construction considerations.

(Ord. No. 170, § 2, 11-25-74)

Sec. 14-53. Continued use as nonconforming structure.

Portable or nonpermanent structures in use as of the date of the ordinance from which this article is derived may continue, as nonconforming structures; provided, however, that such structures shall be continued only in their present use and any attempted expansion or alteration thereof shall forthwith terminate the use. Such uses shall further terminate upon such structures becoming unsuitable for their current purposes from the standpoint of fire safety, loading, ventilation and other sound construction considerations.

(Ord. No. 170, § 3, 11-25-74)

Sec. 14-54. Inspection; notice of violation.

All portable or nonpermanent structures shall be inspected every six months by the building inspector for the purpose of making determinations under this article. A fee of \$10.00 shall be made therefor. All structures found to be hazardous from the standpoint of fire safety, loading and ventilation shall be removed within 15 days of proper notification by the building inspector. The notice shall specify, in detail, the violations and shall cite appropriate ordinance and BOCA code references.

(Ord. No. 170, § 4, 11-25-74)

Sec. 14-55. Correction of violations or removal.

In the alternative, portable or nonpermanent structures shall be made safe in respect to fire safety, loading and ventilation within 15 days of appropriate notification, personally delivered,

by the building inspector, during which period the structure shall not be used for the storage or display of goods and merchandise and shall not be entered, except for the purpose of making the necessary repairs and corrections. Upon failure to make such corrections within the 15-day period or within a 15-day extension thereof which shall be granted by the building inspector upon good cause shown, the structure shall be removed.

(Ord. No. 170, § 5, 11-25-74)

Sec. 14-56. Basis for determinations.

The building inspector shall make his determination as to fire safety, loading, ventilation and other sound construction considerations based upon such provisions of the BOCA code which are applicable under the circumstances. Loading limitations and construction standards shall be based upon such provisions in the BOCA code as relates to analogous structures and such shall also be the case with ventilation requirements.

(Ord. No. 170, § 6, 11-25-74)

Secs. 14-57—14-80. Reserved.

ARTICLE IV. RESERVED*

Secs. 14-81—14-110. Reserved.

ARTICLE V. HOUSING

DIVISION 1. GENERALLY

Sec. 14-111. Housing board of appeals.

(a) The housing board of appeals is hereby created for the city. It shall consist of three members who shall be qualified by experience or training and shall have evidence of interest and experience in building and housing. The members shall be appointed by the city council for a term of two years.

(b) Members of the board shall be compensated as provided by the council and shall meet at the instigation of the chairman.

(c) The board shall adopt its own rules of order and procedure not inconsistent with the provisions of this division.

(d) A copy of the minutes of all board meetings shall be filed with the city clerk for transmittal to the city council.

***Editor's note**—Ord. No. 09-02, § 1, adopted Oct. 26, 2009, repealed Art. IV, §§ 14-81—14-85, which pertained to smoke detectors and derived from Ord. No. 266, §§ 1—4, 6, adopted March 11, 1985; § 1 of an ordinance adopted June 23, 1997; and Ord. No. 00-09, adopted Dec. 4, 2000.

(e) Neither the board nor any member thereof may incur any expense or create any obligation or liability upon the city. If any expenditure of city funds may be required in connection with the functioning of the board, before the funds shall be expended, approval of the expenditure shall be first obtained from the city council.

(f) Three members of the board shall constitute a quorum and a lesser number may adjourn any meeting at which a quorum is not present.

(Ord. of 10-11-99)

Secs. 14-112—14-120. Reserved.

DIVISION 2. PROPERTY MAINTENANCE CODE*

Sec. 14-121. Adoption.

Pursuant to Section 3(k) of Act No. 279 of the Public Acts of Michigan of 1909 (MCL 117.1 et seq.), as amended, and the general authority of the city, the BOCA National Property Maintenance Code, 1996, as published by the Building Officials and Code Administrators International, is hereby adopted and shall be known as the city property maintenance code. References therein to jurisdiction shall be to the city and the references therein to the date of adoption shall mean the date the ordinance from which this section originated, or any portion or section thereof, takes effect (October 7, 1999). The purpose of the code is to provide comprehensive property maintenance regulations for the city.

(Ord. of 6-24-96; Ord. of 9-27-99(1))

Sec. 14-122. Amendments and modifications.

The BOCA National Property Maintenance Code is amended and revised in the following respects:

Section PM-101.1 (page 1, second line).

Insert: City of Mt. Morris.

Section PM-101.7 (page 1, fourth line).

Delete: NAPA 70. Insert: Electrical Code.

Section PM-106.2 (page 3) is amended to read:

Penalty. Any violation of this Code shall be deemed a Municipal Civil Infraction and the Penalty Clause of Chapter II, Sec. 1-15(h) shall apply.

Section PM-111.2 (page 5) is amended to read:

Board of appeals. The Board of Appeals shall be the City's Zoning Board of Appeals.

***Editor's note**—An ordinance adopted June 24, 1996, repealed the former div. 2, §§ 14-121—14-144, and enacted a new div. 2 as set out herein. The former div. 2 pertained to the housing code and derived from Ord. No. 144, §§ 1.2, 2, 3.1—3.13, 4—11, and 21.1.

Section PM-111.2.1 through PM-111.2.6 (page 5) is deleted.

Section PM-111.3 (page 5, second line)

Delete: ten days. Insert: twenty-one days.

Section PM-303.4 (page 10) is deleted.

Section PM-303.8 (page 10) is deleted.

Section PM-306.3.1 (page 11) is deleted.

Section PM-307.1 (page 11) is amended to read:

Infestation. All structures shall be kept free from infestation. All structures in which infestation is found to exist shall be promptly subject to extermination measures by approved processes that will not be injurious to human health. After extermination, proper precautions shall be taken to prevent re-infestation.

Section PM-602.2.1 (page 17, fifth line)

Insert: September 1 through June 1.

Section PM-602.3 (page 17, third line)

Insert: September 1 through June 1.

Section PM-604.2 (page 17, third line)

Delete: NFPA 70.

Insert: Electrical Code.

Chapter 8 (page 23, under CODES heading)

Delete: IMC-96 International Mechanical Code.

Insert: State of Michigan Mechanical Code.

Chapter 8 (page 23, under CODES heading)

Delete: ICC International Plumbing Code.

Insert: State of Michigan Plumbing Code.

Chapter 8 (page 23, under NAPA heading)

Delete: 70-96 National Electrical Code.

Insert: State of Michigan Electrical Code.

(Ord. of 6-24-96; Ord. of 9-27-99(1))

Sec. 14-123. Publication; availability of code at city offices.

Printed copies of the codes adopted in this article shall be kept in the office of the city clerk, available for inspection by, and distribution to, the public at all times. Copies of the codes shall be sold to the public at their cost to the city. The publication with respect to these codes shall

contain a notice stating that complete copies of the code are available to the public at the office of the city clerk in compliance with state law requiring that records of public bodies be made available to the general public.

(Ord. of 6-24-96)

Secs. 14-124—14-155. Reserved.

DIVISION 3. LOW OR MODERATE INCOME HOUSING SERVICE CHARGE

Subdivision I. In General

Secs. 14-156—14-165. Reserved.

Subdivision II. Tax Exemption Number One

Sec. 14-166. Preamble.

It is acknowledged that it is a proper public purpose of the state and its political subdivisions to provide housing for its citizens of low income or moderate income and to encourage the development of such housing by providing for a service charge in lieu of property taxes in accordance with the State Housing Development Act of 1966, Act No. 346 of the Public Acts of Michigan of 1966 (MCL 125.1401 et seq.), as amended. The city is authorized by this act to establish or change the service charge to be paid in lieu of taxes by any or all classes of housing exempt from taxation under this act at any amount it chooses, not to exceed the taxes that would be paid but for this act. It is further acknowledged that such housing for citizens of low income or moderate income is a public necessity, and as the city will be benefitted and improved by such housing, the encouragement of it by providing certain real estate tax exemption for such housing is a valid public purpose; further, that the continuance of the provisions of this subdivision for tax exemption and the service charge in lieu of taxes during the period contemplated in this subdivision are essential to the determination of economic feasibility of housing developments which are constructed and financed in reliance on such tax exemption.

(Ord. No. 280, § 2, 2-24-86)

Sec. 14-167. Definitions.

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

Act means the State Housing Development Authority Act, being Act No. 346 of the Public Acts of Michigan of 1966 (MCL 125.1401 et seq.), as amended.

Annual shelter rent means the total collections during a calendar year from all occupants of a housing development representing rent, exclusive of charges for gas, electricity, heat, water, sewer or other utilities furnished to the residents and exclusive of the previous year's annual service charge.

Authority means the state housing development authority.

Housing development means a development which contains a significant element of housing for citizens of low income or moderate income and such elements of commercial, recreational and community facilities as are related to housing for persons of low income or moderate income.

Low income or moderate income persons or families means persons or families who are eligible to occupy the housing development under the act.

Mortgage loan means a loan to be made by the authority to the sponsor for the construction and/or permanent financing of the housing development.

Sponsor means the entities which have applied to the authority for a mortgage loan to finance a housing development.

(Ord. No. 280, § 3, 2-24-86)

Cross reference—Definitions generally, § 1-2.

Sec. 14-168. Class of housing developments.

It is determined that the class of housing developments to which the tax exemption shall apply and for which a service charge shall be paid in lieu of such taxes shall be housing developments which are financed by a mortgage loan made by the authority pursuant to the act and which are assisted by a housing development grant received by the city from the United States Department of Housing and Urban Development pursuant to the provisions of section 17 of the U.S. Housing Act of 1937, as amended.

(Ord. No. 280, § 4, 2-24-86)

Sec. 14-169. Establishment of annual service charge.

Housing developments of the class set forth in section 14-168 and the land on which they shall be constructed shall be exempt from all taxes from and after the date of commencement of construction, provided that a notification of exemption as provided in Section 15a(1) (MCL 125.1415a) of the act is duly filed with the city assessor. The city, acknowledging that the sponsor and the authority have established the economic feasibility of the housing development in reliance upon the enactment and continuing effect of this subdivision and the qualification of the housing development for exemption from all taxes and a payment in lieu of taxes as established in this subdivision will accept payment of an annual service charge for public services in lieu of all taxes. The annual service charge shall be in an amount equal to

ten percent of annual shelter rents actually collected and so certified by the owner of the housing development. The annual service charge for each calendar year shall be due and payable on the March 31 following.

(Ord. No. 280, § 5, 2-24-86)

Sec. 14-170. Designation of eligible housing developments.

Housing developments eligible for exemption from real estate taxes and payment of a service charge in lieu thereof pursuant to this subdivision shall be so designated by resolution of the city council duly adopted.

(Ord. No. 280, § 6, 2-24-86)

Sec. 14-171. Duration.

The tax-exempt status of a housing development so designated in accordance with section 14-170 shall remain in effect and shall not terminate so long as the mortgage loan from the authority remains outstanding and unpaid, or for such period as the authority has any interest in the property.

(Ord. No. 280, § 7, 2-24-86)

Secs. 14-172—14-180. Reserved.

Subdivision III. Tax Exemption Number Two

Sec. 14-181. Preamble.

It is acknowledged that it is a proper public purpose of the state and its political subdivisions to provide housing for its citizens of low income or moderate income and to encourage the development of such housing by providing for a service charge in lieu of property taxes in accordance with the State Housing Development Act of 1966 (Act No. 346 of the Public Acts of Michigan of 1966 (MCL 125.1401 et seq.), as amended). The city is authorized by this act to establish or change the service charge to be paid in lieu of taxes by any or all classes of housing exempt from taxation under this act at any amount it chooses, not to exceed the taxes that would be paid but for this act. It is further acknowledged that such housing for citizens of low income or moderate income is a public necessity, and as the city will be benefitted and improved by such housing, the encouragement of it by providing certain real estate tax exemption for such housing is a valid public purpose; further, that the continuance of the provisions of this subdivision for tax exemption and the service charge in lieu of taxes during the period contemplated in this subdivision are essential to the determination of economic feasibility of housing developments which are constructed and financed in reliance on such tax exemption.

(Ord. No. 306, § 2, 9-25-89)

Sec. 14-182. Definitions.

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

Act means the state housing development authority act, being Act No. 346 of the Public Acts of Michigan of 1966 (MCL 125.1401 et seq.), as amended.

Annual shelter rent means the total collections during a calendar year from all occupants of a housing development representing rent, exclusive of charges for gas, electricity, heat, water, sewer, or other utilities furnished to the residents and exclusive of the previous year's annual service charge.

Authority means the state housing development authority.

Housing development means a development which contains a significant element of housing for citizens of low income or moderate income and such elements of commercial, recreational and community facilities as are related to housing for persons of low income or moderate income.

Low income or moderate income persons or families means persons or families who are eligible to occupy the housing development under the act and/or the Internal Revenue Code of 1986, as amended.

Sponsor means the entities which have applied to the authority for tax credit to benefit a housing development.

Tax credit means federal low income housing tax credits authorized by the Internal Revenue Code of 1986 and allocated by the authority to the sponsor for the housing development.
(Ord. No. 306, § 3, 9-25-89)

Cross reference—Definitions generally, § 1-2.

Sec. 14-183. Class of housing developments.

It is determined that the class of housing developments to which this tax exemption shall apply and for which a service charge shall be paid in lieu of such taxes shall be housing developments which have received an allocation of tax credit.

(Ord. No. 306, § 4, 9-25-89)

Sec. 14-184. Establishment of annual service charge.

Housing developments of the class set forth in section 14-183 and the land on which they shall be constructed shall be exempt from all taxes from and after the date of commencement of construction, provided that a notification of exemption as provided in Section 15a(1) (MCL 125.1415a) of the Act is duly filed with the city assessor. The city, acknowledging that the sponsor has established the economic feasibility of the housing development in reliance upon the enactment and continuing effect of this subdivision and the qualification of the housing development for exemption from all taxes and a payment in lieu of taxes as established in this

subdivision will accept payment of an annual service charge for public services in lieu of all taxes. The annual service charge shall be in an amount equal to the percentage of annual shelter rent actually collected and so certified by the owner of the housing development as set forth below. The annual service charge for each calendar year shall be due and payable on the March 31 following. The city shall have the right to conduct an appropriate audit to determine the accuracy of figures certified by the owner.

- (1) First year, four percent of annual shelter rent.
 - (2) Second year, five percent of annual shelter rent.
 - (3) Third year, six percent of annual shelter rent.
 - (4) Fourth year, seven percent of annual shelter rent.
 - (5) Fifth year, eight percent of annual shelter rent.
 - (6) Sixth year, nine percent of annual shelter rent.
 - (7) Seventh and all subsequent years, ten percent of annual shelter rent.
- (Ord. No. 306, § 5, 9-25-89)

Sec. 14-185. Designation of eligible housing developments.

Housing developments eligible for exemption from real estate taxes and payment of a service charge in lieu thereof pursuant to this subdivision shall be so designated by resolution of the city council duly adopted.

(Ord. No. 306, § 6, 9-25-89)

Sec. 14-186. Duration.

The tax-exempt status of a housing development so designated in accordance with section 14-185 shall remain in effect and shall not terminate so long as the housing development is occupied by low income or moderate income persons or families.

(Ord. No. 306, § 7, 9-25-89)

Secs. 14-187—14-199. Reserved.

ARTICLE V.5. DESIGN STANDARDS FOR COMMERCIAL DEVELOPMENT

Sec. 14-200. Purpose.

The purpose of these sections is to:

- (1) Enhance the community character and economic revitalization of the City of Mt. Morris;
- (2) Provide a consistent and equitable set of design standards, the intent of which is to create, enhance, and promote the qualitative visual environment of the city;

- (3) Encourage a form of future development that will exhibit the physical qualities necessary to maintain and enhance the aesthetic and economic vitality of the city and to achieve and maintain the desired character of the city;
- (4) Ensure that new buildings are compatible with their context and the desired character of the city so as to contribute to the stabilization and revitalization of the city;
- (5) Ensure that future development is designed and scaled for pedestrian use and activity and maintains and strengthens the pedestrian character of the city; and
- (6) Encourage developers and their architects to explore the design implications of their projects to the context of the site, surrounding area and the city.

These sections of the Code are not intended to regulate the quality, workmanship and requirements for materials relative to strength, durability and endurance, maintenance, performance, load capacity, or fire resistance characteristics.

(Ord. of 3-16-98)

Sec. 14-201. Design criteria.

(1) *Pedestrian circulation.* The proposed design shall be designed and scaled for pedestrian use and activity, shall ensure safe and efficient pedestrian circulation over the entire site, and shall provide appropriate connections to the city's pedestrian circulation system.

(2) *Exterior finish materials.* At least 90 percent of the exterior finish material on all facades that face a street or parking area shall be limited to the following: glass, brick, cut stone, cast stone, coarsely textured stucco or wood. The color and texture of the material shall be compatible with structures in the surrounding area.

(3) *Massing.* The proposed design shall show consideration of the context in which the building is to be placed with respect to the nearby visual environment. The proposed design shall show consideration of surrounding buildings with regard to the proportion, height, scale and placement of structures on the site.

(4) *Relation to the street.* Blank walls shall not face a public street. Walls facing a public street shall include windows and architectural features customarily found on the front facade of a building, such as awnings, cornice work, edge detailing or decorative finish materials.

Doorways shall be directly accessible from public sidewalks.

Each storefront must have windows, equal to 70 percent of its portion of the facade, between three and eight feet from the ground.

(5) *Windows.* Glass shall be clear or lightly tinted only. Windows facing a public street and parking area shall be functional as windows, to ensure pedestrian scale and character.

(6) *Parking.* Parking areas shall be located at the back or side of the proposed building. Parking areas will be designed to ensure safe and efficient pedestrian circulation over the entire site. Parking areas shall be landscaped in such a way as to minimize the aesthetic impact of the paved surface.

(Ord. of 3-16-98)

Sec. 14-202. Information required.

The following information shall be provided in order to determine compliance with the requirements of this article:

- (1) Architectural drawings not less than 24 inches × 36 inches in size, drawn at an appropriate scale, consisting of site layout, floor plans and building elevations (north, south, east and west), including the location and extent of all materials and colors.
- (2) A parking plan showing proposed parking space layout, pedestrian circulation within and without the site, landscaping, and the relationship between the parking area and the building and surrounding area.
- (3) Samples of exterior finish materials and colors. The samples shall be connected to the architectural drawings using a symbol system keyed to the samples.
- (4) Any other information needed to determine compliance with the requirements of this article, as determined by the city manager and administrative staff of the city designated by the city manager.

(Ord. of 3-16-98)

Sec. 14-203. Application.

Any time a new commercial development or addition to an existing commercial development is proposed in the city, the application shall be reviewed by the city manager and the designated administrative staff.

The city manager and the designated administrative staff shall review each application for compliance with the above standards. No building permit shall be granted until it has been determined that the application has met these requirements.

Decisions by the city manager and the designated administrative staff shall be appealable to the planning commission in accordance with the rules adopted by the planning commission. The decision of the planning commission as to matters which have been appealed to it shall be final.

(Ord. of 3-16-98)

Secs. 14-204—14-210. Reserved.

ARTICLE VI. DRIVE-THRU WINDOWS

Sec. 14-211. Name.

This article shall be known and cited as the "City of Mt. Morris Drive-thru Window Ordinance."

(Ord. of 8-10-98(2), § 1)

Sec. 14-212. Definitions.

As used in this article, the following words shall have the meaning set forth below:

Building inspector means that person or persons duly charged by the appropriate appointing authority with the responsibility for executing and administering the building code provisions adopted by the City of Mt. Morris, or authorized by the building inspector to act on their behalf.

Central business district (CBD) means the downtown central business district as delineated in the City of Mt. Morris comprehensive development plan.

City council means the City Council of the City of Mt. Morris, Genesee County, Michigan.

Drive-thru window means any portion of a building or structure from which business is transacted, or is capable of being transacted, directly with customers located in a motor vehicle during such business transactions.

Master plan means the comprehensive development plan for the City of Mt. Morris, Genesee County, Michigan.

Zoning administrator means that person or persons duly charged by the appropriate appointing authority with the responsibility for executing and administering the zoning provisions of the City of Mt. Morris Code of Ordinances, or authorized by the zoning administrator to act on their behalf.

Zoning district means each part, or parts, of the city for which specific zoning regulations are prescribed.

(Ord. of 8-10-98(2), § 2)

Sec. 14-213. Drive-thru windows requiring permits.

All drive-thru windows proposed as an accessory use for a principal use in the city's central business district shall require a drive-thru window permit in addition to a conditional use permit, for a drive-thru facility.

(Ord. of 8-10-98(2), § 3)

Sec. 14-214. Permits.

No person shall erect, place, structurally alter, add to, or change the orientation of any drive-thru window, without first obtaining a permit to do so in the manner hereinafter provided.

- (a) *Application for drive-thru window permits.* Application for a drive-thru window permit shall be made following approval of the conditional use permit and site plan for a drive-thru facility by the planning commission. Application for such drive-thru window permits shall be filed upon forms provided by the zoning administrator and shall contain the following information:
 - (1) Name, address, and telephone number of the applicant.
 - (2) A written statement explaining why the applicant feels that the application meets the standards for approval for a drive-thru window permit listed in section 14-216.
 - (3) Such other information as may be required to show full compliance with this and all other applicable laws of the city and the state.
- (b) *Permit fee.* The fee for permits shall be set by resolution of the city council.
- (c) *Review.* The zoning administrator shall attach a copy of the approved conditional use permit and site plan to the completed application and forward the information to the city council for their review if:
 - (1) The applicant has paid the required permit fees.
 - (2) The applicant has submitted a complete application.
 - (3) The application meets all of the requirements of this article.
- (d) *No permit required.* No permit shall be required for ordinary servicing, repainting or cleaning of an existing drive-thru window.

(Ord. of 8-10-98(2), § 4)

Sec. 14-215. City council approval required.

- (a) The drive-thru window permit shall be considered by the city council following approval of the conditional use permit and the site plan for a drive-thru facility in the central business district.
- (b) The city council shall apply the standards for approval prior to making their determination on the drive-thru window permit.
- (c) If the city council approves a drive-thru window permit, the city council shall direct the zoning administrator to issue a zoning permit and shall direct the building inspector to issue a building permit to permit construction of the facility.
- (d) The decision of the city council shall be final.

(Ord. of 8-10-98(2), § 5)

Sec. 14-216. Standards for approval.

In making its determination, the city council shall find that the application meets the following standards:

- (a) The drive-thru window shall not significantly impact pedestrian safety on or in the vicinity of the site.
- (b) The drive-thru window shall not significantly detract from the character of the commercial business district.
- (c) The drive-thru window shall not increase the number of intensity of potential traffic conflicts on or in the vicinity of the site.

(Ord. of 8-10-98(2), § 6)

Sec. 14-217. Maintenance.

- (a) All drive-thru windows for which a permit is required shall:

- (1) Be kept in compliance with the plans and specifications filed and approved for issuance of the drive-thru window permit.
- (2) Be kept and maintained in a safe condition.
- (3) At all times conform to all provisions of this article.

- (b) The zoning administrator has the authority to inspect any drive-thru window requiring a permit at any given time to ensure compliance with the requirements of this article.

- (c) The zoning administrator may require the repair or removal of a drive-thru window requiring a permit within seven days upon the finding that any of the following conditions exist:

- (1) The drive-thru window is found to be unsafe.
- (2) The drive-thru window is in a condition that does not comply with this article.
- (3) The drive-thru window was established as an accessory use for a principal use which has ceased to exist for a period of six months.

(Ord. of 8-10-98(2), § 7)

Sec. 14-218. Penalty.

Any person who violates any of the provisions of this chapter (building and building regulations) shall be deemed guilty of a misdemeanor as established by the Code of Ordinances of the City of Mt. Morris, specifically, but not limited to, section 1-15 of the Code.

(Ord. of 8-10-98(2), § 8; Ord. No. 08-03, § 1, 4-28-08)

Secs. 14-219—14-229. Reserved.

ARTICLE VII. FENCES**Sec. 14-230. Definition.**

For the purposes of this article, a fence is defined, unless the content indicates or requires a different meaning, any partition, structure, planting or gate erected as a dividing marker or barrier or enclosure.

(Ord. of 8-9-99(2))

Sec. 14-231. Fences; construction.

No fence, as hereinabove described, shall be erected, constructed or altered without first obtaining a building permit from the building inspector. Written application for this permit shall be made to the building inspector. The application shall contain, in addition to such other information as may be required by the building inspector, a drawing showing the location, type of fence to be constructed or altered, and a description of the property.

(Ord. of 8-9-99(2))

Sec. 14-232. Fee.

A fee shall be charged pursuant to the general fee ordinance and such resolution or resolutions as may be adopted pursuant thereto.

(Ord. of 8-9-99(2))

Sec. 14-233. Height and composition of fences within the required front yard set back.

Within the required front yard set back the fence shall not exceed four feet in height and at least 50 percent thereof shall be open or of open material. It is the intent hereof that the fence shall be constructed in such a manner as to permit sufficient visibility so as to not endanger the health and safety of persons using the public rights-of-way. The building inspector shall have the authority to require or alter design features to accomplish this objective.

(Ord. of 8-9-99(2))

Sec. 14-234. Height and composition of fences in other than the required front yard set back.

Fences within other than the required front yard set back shall not exceed six feet in height in residential zones. Higher fences are permitted in other zones but fences with heights in excess of six feet shall be deemed structures under the zoning ordinance and treated accordingly.

(Ord. of 8-9-99(2))

Sec. 14-235. Construction entirely upon owner's property; dispute; certified survey required.

All fences shall be constructed entirely upon the property of the party constructing the fence. In the event of a dispute as to the boundary line or the placement of the fence, the property owner wishing to construct the fence shall obtain a survey of the property line upon which the fence is to be constructed by a certified land surveyor and the fence shall be constructed in accordance with said survey.

(Ord. of 8-9-99(2); Ord. No. 09-03, § 1, 1-11-10)

Sec. 14-236. Condition and repair.

All fences shall be maintained in good condition and repair. The building inspector shall make determinations in this respect.

(Ord. of 8-9-99(2))

Sec. 14-237. General regulations relative to construction of fences.

The following regulations for the construction of fences shall apply:

- (a) No barbed wire or electrified fences shall be permitted in residential areas.
- (b) The most attractive or good side of the fence (in such case where, for example, structural members exist or where other conditions exist which make one side more aesthetically pleasing than the other), shall face away from the property on which the fence is being constructed.
- (c) No fence shall be designed or constructed in such a way as to pose a threat to public health and safety. Sharp edges, spikes, points, rough surfaces and ornamental configurations which pose a danger to persons passing by the fence or to children who may attempt to scale or pass under the fence shall not be permitted. The building inspector shall make determinations as to whether a fence violates this provision.
- (d) Fences erected on corner lots shall be constructed in such a way as not to pose a threat to or impair traffic sight distances. The building inspector shall impose such restrictions as are necessary to achieve this objective.

(Ord. of 8-9-99(2); Ord. No. 09-03, § 2, 1-11-10)

Sec. 14-238. Reserved.

Editor's note—Ord. No. 09-03, § 3, adopted Jan. 11, 2010, repealed § 14-238 which pertained to boundary line fences and derived from an ordinance adopted Aug. 9, 1999.

Secs. 14-239—14-300. Reserved.

ARTICLE VIII. RENTAL UNIT INSPECTIONS***Sec. 14-301. Inspections required; rental unit defined.**

All residential rental units within the city shall comply with applicable codes and shall be subject to periodic inspections, as herein set forth. A residential rental unit for the purposes of this article is defined as any of the following which is rented or leased to a person as a living and/or sleeping facility:

- (1) A single family residential structure, a unit in a duplex or a flat;
- (2) An apartment unit;
- (3) A hotel or motel room or unit, or room in a rooming house.

Accommodations in a single family residence for one boarder, roomer or occupant who is not a family member shall not be deemed a rental unit for the purposes hereof.

(Ord. No. 00-02, § 1, 3-13-00)

Sec. 14-302. Inspections; when conducted; authorization; notices; warnings.

(a) The enforcement official designated by the city manager shall inspect all residential rental units within the city on a periodic basis and at least once every two years or as otherwise provided in the resolution promulgated pursuant to subsection (d) hereof, or under any of the following circumstances:

- (1) Upon receipt of a complaint that the premises are in violation of a city ordinance or ordinances.
- (2) Upon receipt of a report or a referral from the police department fire department, public or private school, or other public agency.
- (3) Upon evidence of existing housing code violation observed by the designated enforcement official.

(b) The designated enforcement official shall make an appointment for an inspection of the rental dwelling(s) with the owner or agent. After the inspection the inspector shall issue a written inspection report noting any violations of this Code and shall provide a copy of the report to the owner or responsible local agent. The inspector shall direct the owner/agent to correct violations within the time set forth in the report. A reasonable time for correcting violations shall be determined by the inspecting officer in light of the nature of the violations and all relevant circumstances, which shall not exceed 60 days unless correction of the violation within the 60-day period is impossible due to seasonal considerations, provided, however, that necessary corrections disclosed by the initial inspection only need not be corrected for one year unless the enforcing official certifies that the condition(s) constitute a

***Editor's note**—Ord. No. 00-02, § 1, adopted March 13, 2000, set out provisions intended for use as ch. 14, art. VII. Inasmuch as there were already provisions so designated, said ordinance has been included herein as art. VIII at the discretion of the editor.

danger to the inhabitants in which case the above specified time limits shall apply. Upon request of the person responsible for correcting violations, the inspecting officer may extend the time for correcting violations not to exceed an additional 30 days.

- (c) (1) The designated enforcement official shall make suitable arrangements to conduct an inspection. The enforcement official shall contact the owner/agent and/or tenant as the case may be, by phone or by mail and set up a mutually convenient date for inspection. A follow-up written confirmation shall follow. In the event appropriate arrangements cannot be made voluntarily, the designated enforcement official shall issue notice by first class mail setting a date for inspection.
- (2) The owner/agent and/or tenant as the case may be, shall be advised that the inspection process is mandatory. This advice shall be given either orally or in writing prior to the conduct of the inspection. If appropriate, the designated enforcement official shall inform the owner/agent and/or tenant as the case may be, that if entry is refused a search warrant may be sought by the enforcement official. If the owner/agent and/or tenant refuses to permit a scheduled inspection, the designated enforcement official may, through the city attorney, seek an administrative search warrant to conduct the inspection.

(d) The inspection will be conducted pursuant to a rental inspection report which shall be on a form specified by the city council, by resolution. Said rental inspection report will set forth an appropriate criteria to govern the inspection process and will form the basis for determining whether a rental unit meets Code requirements and the period of time between inspections. (Ord. No. 00-02, § 1, 3-13-00; Ord. No. 05-01, § 1, 2-28-05; Ord. No. 05-04, 3-14-05)

Sec. 14-303. Inspection fees; certification.

The owner shall pay a fee for periodic inspection of each residential rental unit as established by resolution of the city council. The fee will cover the cost of the initial inspection and one follow-up inspection to ensure any deficiencies have been corrected. Should the deficiencies not be corrected, a charge for each subsequent re-inspection shall be made. Fees shall be paid prior to inspection. Any unpaid inspection fees shall become a lien on the property and collected as provided by law. An appropriate certification shall be issued if the rental unit is determined to meet applicable code requirements.

(Ord. No. 00-02, § 1, 3-13-00)

Chapters 15—17

RESERVED

Chapter 18

BUSINESSES

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Secs. 18-1—18-25. Reserved.

Article II. Peddlers, Hawkers, Vendors, Canvassers and Solicitors (CI)

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- Sec. 18-108. License issuance.
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ARTICLE I. IN GENERAL

Secs. 18-1—18-25. Reserved.

**ARTICLE II. PEDDLERS, HAWKERS, VENDORS, CANVASSERS
AND SOLICITORS (CI)***

Sec. 18-26. Definitions.

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

Canvasser or solicitor means any individual, whether a resident of the city or not, traveling either by foot, motor vehicle or any other type of conveyance from place to place, from house to house or from street to street, taking or attempting to take orders for sale of goods, wares, merchandise and personal property of any nature whatsoever for future delivery or for services to be furnished or performed in the future, whether or not such individual has carried or exposed for sale a sample of the subject of such sale or whether he is collecting advance payments for such sale or not, who, for himself, or for another person, hires, leases, uses or occupies any building, structure, tent, railroad car, hotel or motel room, lodginghouse, apartment, shop or any other place within the city for the sole purpose of exhibiting samples and taking orders for future delivery. This definition shall also include persons soliciting contributions of money or goods who do not attempt to make a sale in connection with such solicitations and shall include persons who distribute literature or other materials through door-to-door personal contacts, irrespective of whether a sale is made or sought to be made, or whether a contribution is sought.

Nonprofit group means an organization, irrespective of its organizational structure, which is established and conducted on a not-for-profit basis for the purpose of pursuing religious, political, charitable, eleemosynary, civic, educational or similar objectives. Nonprofit corporations and organizations possessing exemptions pursuant to sections 501(c)(3) and (4) of the Internal Revenue Code shall be conclusively deemed to be nonprofit groups for the purposes of this article. Other such organizations shall be required to present evidence of their status as such. A determination as to whether an applicant is a nonprofit group for the purposes of this article shall be made by the city manager. A denial of such status shall be appealable to the city council in the same manner as a denial of a license pursuant to section 18-29.

Peddler, hawker or vendor means any person, whether a resident of the city or not, who travels by foot, motor vehicle or any other type of conveyance, from place to place, from house to house or from street to street, carrying, conveying or transporting goods, wares and merchandise, including goods, souvenirs, books or magazines, offering and exposing them for

***Cross reference**—Schedule of fees, app. C.

sale, or making sales and delivering articles to purchasers, or who, without traveling from place to place, sells or offers to sell them from a motor vehicle, railroad car or other vehicle or conveyance.

Sale means transactions defined as such under the Uniform Commercial Code—Sales (MCL 440.2101 et seq.), as amended, or other applicable law, and shall also include the transfer of goods, wares, merchandise or services in exchange for contributions or donations. The fact that the amount of the contribution or donation is not specified by the peddler, hawker, vendor, canvasser or solicitor shall not affect the nature of the transaction and its character as a sale for the purpose of this article.

(Ord. No. 337, § 1, 4-21-94)

Cross reference—Definitions generally, § 1-2.

Sec. 18-27. License required; identification of political and religious canvassers and solicitors.

It shall be unlawful for any peddler, hawker, vendor, canvasser or solicitor including members of a nonprofit group to engage in such business or activity within the corporate limits of the city without first making an appropriate application as provided for in section 18-28 and being issued a license therefor in compliance with the provisions of this article. It shall be unlawful for a person to solicit or canvass for religious or political purposes without filing the application hereinafter set forth, which application shall be for the purpose of identification only, and securing evidence of such filing.

(Ord. No. 337, § 2, 4-21-94)

Sec. 18-28. License application.

Applicants for a license under this article or for evidence of identification as set forth in this article must file with the city clerk or designee a sworn application in writing, on such form as may be furnished by the city clerk, which shall set forth the following information:

- (1) With respect to peddlers, hawkers, vendors, canvassers and solicitors, except canvassers and solicitors for religious or political purposes and nonprofit groups, the following information shall be furnished:
 - a. Name and description of the applicant and his driver's license number, if any.
 - b. Permanent home address and full local address of the applicant.
 - c. A brief description of the nature of the business and the goods and/or services to be sold.
 - d. If employed, the name and address of the employer, together with credentials establishing the exact relationship.
 - e. The length of time for which the right to do business is desired.
 - f. The place where the goods or property proposed to be sold or orders taken for the sale thereof are manufactured or produced, where such goods or products are located at the time the application is filed and the proposed method of delivery.

- g. Applicant must provide an identification card (ex., driver's license) which has a photo on it. The identification will be copied and the copy kept with the application.
 - h. A statement as to whether or not the applicant has been convicted of any crime, misdemeanor or violation of any municipal ordinance, the nature of the offense and the punishment or penalty assessed therefor.
 - i. A description of the vehicle to be used by the applicant in the conduct of his or her business including the license number and ownership information.
- (2) With respect to an application of a nonprofit group or canvassers or solicitors for religious or political purposes the following information shall be furnished:
- a. The name of the person or organization.
 - b. A statement as to its nonprofit, religious or political character with supporting documentation.
 - c. The nature of the peddling, hawking, vending, canvassing or soliciting to be engaged in and the materials to be distributed, or the goods and services to be offered or sold if any.
 - d. The names, birth dates and addresses of each and every person who will engage in peddling, hawking, vending, canvassing or soliciting in question.
 - e. The period(s) of time the person or organization will engage in the activity.
 - f. A description of motor vehicles to be directly employed in the activities aforesaid.

The above information shall be for identification purposes. The chief of police shall review the application to determine whether the information furnished meets the requirements of this subsection. No further investigation will be conducted. If the applicant requests evidence of identification, identification cards may be issued at a cost to be prescribed by the city. In the event of inquiries, the information set forth on the application shall be made available to inquirers. Applicants will be contacted if the requested information is found to be incomplete or inaccurate and requested to resubmit the application. Based upon the information, as finally submitted, the chief of police shall make a finding as to the nature and character of the organization or the nature of an individual's solicitations, etc. to establish eligibility for treatment under this subsection and shall report to the city manager. The city manager shall make an appropriate written determination as to the eligibility of the organization to be identified on the indicated basis and this written determination shall be either mailed to the applicant to the address on the application or personally delivered to the applicant. The city manager's decision may be appealed to the city council within 21 days of the mailing or personal delivery. Such appeal shall be by filing a written notice of appeal, including the reasons therefor, with the office of the city clerk within such period.

(Ord. No. 337, § 3, 4-21-94; Ord. of 9-22-97, § 1)

Sec. 18-29. Investigation, license issuance or denial.

Upon receipt of an application under this article, the original shall be referred to the chief of police or his designee who shall, except as provided in section 18-28(2), cause such investigation of the applicant's business and moral character to be made as he deems necessary for the protection of the public good. If as a result of such investigation the applicant's character or business responsibility is found to be unsatisfactory, the chief of police or his designee shall endorse upon the application a recommendation for disapproval and specific reasons for the recommendation. The application shall be returned to the city clerk, within two working days if possible, and the city clerk shall notify the applicant that his or her application is not approved and no license will be issued. In the event of disapproval, the applicant shall have the right to appeal the determination to the city council within 21 days of mailing or personal delivery of notice of disapproval. Such appeal shall be by filing a written notice of appeal, including the reasons therefor, with the office of the city clerk within the period. If as the result of such investigation the character and business responsibility of the applicant are found to be satisfactory, the chief of police shall endorse on the application a recommendation for approval and thereupon the city clerk shall issue a license subject to the payment of the fee specified in section 18-31. The license shall show the name, address, class of license issued and a brief description of the kind of goods or services to be sold thereunder, the amount of the fee paid, the date of issuance and length of time that the license shall be operative, as well as the license number and other identifying description of any vehicle used in such activity.

(Ord. No. 337, § 4, 4-21-94; Ord. of 9-22-97, § 2)

Sec. 18-30. Exclusions.

The provisions of this article shall not apply to bona fide candidates for national, state or local office.

(Ord. No. 337, § 5, 4-21-94)

Sec. 18-31. License fee.

The license fee under this article shall be established by resolution of the city council.

(Ord. No. 337, § 6, 4-21-94)

Sec. 18-32. Revocation of license.

Licenses issued under the provisions of this article may be revoked by the city manager or police chief for any of the following causes:

- (1) Fraud, misrepresentation or false statement contained in the application for the license.
- (2) Fraud, misrepresentation or false statement in the course of carrying on the business as peddler, hawker, vendor, solicitor or canvasser.
- (3) Any violation of this article.

- (4) Conviction of any crime or misdemeanor involving moral turpitude.
- (5) Conducting the business in question in an unlawful manner or in such manner as to constitute disorderly conduct or to constitute a menace to the health, safety or general welfare to the public.

Revocation may be appealed to the city council with statement of why the revocation should not have occurred.

(Ord. No. 337, § 3, 4-21-94)

Sec. 18-33. Hours of peddling, hawking, vending, soliciting and canvassing.

No person shall peddle, hawk, vend, canvass or solicit, including canvassing or soliciting for religious or political purposes prior to 9:00 a.m. or after either 9:00 p.m. or the time of sunset, whichever is earlier; provided, however, that persons engaged in the foregoing activities may enter upon residential property if an appointment or other prearrangement to do so has been made. The prohibition contained in this section relative to such activities after the time of sunset shall relate to the time of initial entry upon the premises.

(Ord. No. 337, § 8, 4-21-94)

Sec. 18-34. Entering private property; failure to leave upon request.

Anyone in the process of peddling, hawking, vending, canvassing or soliciting shall use the public rights-of-way, driveways and sidewalks to move from private residence to private residence or business and shall not traverse across private yards and, if asked to leave a residence or business, the person shall immediately leave or shall be deemed in violation of this article.

(Ord. No. 337, § 9, 4-21-94)

Sec. 18-35. Limited license for civic events, celebrations or established public gatherings.

A license may be issued to a peddler, hawker, or vendor as defined in section 18-26 of this Code for a period not to exceed seven days in connection with a civic event, celebration or established public gathering subject to the terms and conditions herein set forth. A license granted pursuant to this section shall not exceed seven days and the hours thereof shall extend until the conclusion of the event. Persons holding regular licenses pursuant to this Article shall also be permitted to engage in permitted activities until the conclusion of the event. An applicant for the limited license herein provided shall submit an application pursuant to section 18-28 hereof entitled, "license application" and shall be subject to the investigation process and other applicable procedures set forth in this article. The fee for this special license shall be established by council resolution. It is the intent hereof that the license provided herein shall be permitted only in instances of the events hereinabove specified upon city council authorization and approval.

(Ord. No. 11-01, § 1, 3-14-11)

Secs. 18-36—18-55. Reserved.

ARTICLE III. PRECIOUS METAL AND GEM DEALERS

Sec. 18-56. Certificate of registration.

The police department is hereby authorized and required to issue a certificate of registration upon submission by a dealer as defined in Section 2(b) of Act No. 95 of the Public Acts of Michigan of 1981 (MCL 445.482b), as amended. The application shall contain the following information:

- (1) The name, address and thumbprint of the applicant.
 - (2) The name and address under which the applicant does business.
 - (3) The name, address and thumbprint of all agents or employees of the dealer. Within 24 hours after hiring a new employee, the dealer shall forward to the police department the name, address and thumbprint of the new employee.
 - (4) Such other information as may hereafter be required under the laws of the state.
- (Ord. No. 243, § 1, 9-28-81)

Sec. 18-57. Application fee.

The application under this article shall be accompanied by a fee of \$50.00 and the certificate of registration shall not be issued until payment of the fee.

(Ord. No. 243, § 2, 9-28-81)

Sec. 18-58. Enforcement.

No penalty provision is provided in this article inasmuch as penalties are set forth in the statute. This article is intended to implement the mandate of the statute to the effect that valid certificates of registration shall be secured from the city police agency.

(Ord. No. 243, § 3, 9-28-81)

Secs. 18-59—18-80. Reserved.

ARTICLE IV. RUMMAGE SALES (CI)

Sec. 18-81. Definitions.

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

Garage sale, yard sale and basement sale shall have the same meaning or definition as the term "rummage sale."

Rummage sale means a sale or offering for sale of more than five items of new or used merchandise, clothing, household goods or rummage on premises not zoned for such sale. (Ord. No. 199, § 2, 5-9-77)

Cross reference—Definitions generally, § 1-2.

Sec. 18-82. Prohibited except under certain conditions; signs; permit required.

It shall be unlawful for any person to conduct or operate a rummage sale, garage sale, yard sale or basement sale, unless all of the following conditions are met:

- (1) The sale shall be conducted only by the owners or occupants of the premises on which the sale is located, or by a church, charitable organization or service club with the written consent of the owner or occupant of the premises.
- (2) Such sale shall be discontinued at the end of the fifth calendar day following the date that the sale was commenced, regardless of whether or not the sale was operated continuously or on consecutive days.
- (3) Not more than two signs, each no more than four square feet in area, may be located on those lots where a sale is to be conducted. Additional signs, one per address, of the same size, may be located off-premises on private property with the property owner's or occupant's permission. No signs shall be located on vacant lots or on addresses where the residence is unoccupied. No signs may be placed on public property or within the public right-of-way. All signs intended to advertise such sale shall be removed the day the sale ends.
- (4) Not more than two such sales shall be conducted on any particular premises in any calendar year; provided, however, that no sale shall be held until the expiration of 90 days after the date that the previous sale was discontinued.
- (5) No person shall commence such sale until a permit for it has been obtained from the city clerk on forms provided by the city.

(Ord. No. 199, § 3, 5-9-77; Ord. No. 242, §§ 1, 2, 8-10-81; Ord. No. 10-03, § 1, 9-13-10)

Sec. 18-83. City-wide garage-yard-rummage sale.

In the event the city council shall declare a time for a city-wide garage-yard-rummage sale, any owner or occupant of premises within the City of Mt. Morris shall be authorized to conduct such a sale without the necessity of securing a permit as required by section 18-82(5). All regulations pertaining to garage-yard-rummage sales shall apply for the period of time designated by the city council resolution, which shall not exceed a period of four days. The council may, if it deems it appropriate, authorize appropriate publicity for the event.

(Ord. No. 08-06, 9-8-08)

Editor's note—Ord. No. 08-06, adopted Sept. 8, 2008, enacted provisions intended for use as § 18-82. Inasmuch as there were already provisions so designated, said ordinance has been included herein as § 18-83 at the discretion of the editor.

ARTICLE V. RESERVED*

Secs. 18-84—18-99. Reserved.

ARTICLE VI. ICE CREAM VENDING VEHICLES

Sec. 18-100. Definition.

An "ice cream vending vehicle," for the purposes of this article, is any vehicle used for the carrying and selling of ice cream, ice milk, frozen dairy products or ice flavored with syrup and similar confectionary products including, but not limited to, cotton candy, popcorn, caramel corn and peanuts upon public streets and public areas within the city.
(Ord. No. 04-02, 5-24-04)

Sec. 18-101. Special equipment.

(a) Every ice cream vending vehicle shall, in addition to any other equipment required by law, be equipped with signal lamps mounted as high and as widely spaced laterally as practicable, which shall be capable of displaying, to the front, two alternately flashing amber lights at the same level and to the rear, two alternately flashing amber lights located at the same level. The lights shall have sufficient intensity to be visible from a distance of at least 300 feet in normal sunlight and shall be actuated by the driver of the vehicle whenever, but only whenever, the vehicle is stopped on a residential street for the purpose of vending its products or is about to stop for that purpose.

(b) In addition the equipment requirements mentioned in subsection (a), each ice cream vending vehicle, when operating on a residential street, shall be required to display a sign attached to the vehicle (or lettering upon the vehicle itself) warning approaching motor vehicles to proceed with caution when the signal lamps are actuated. The warning required by this section shall be located both on the front and rear of the ice cream vending vehicle.
(Ord. No. 04-02, 5-24-04)

Sec. 18-102. Method of operation.

(a) It shall be unlawful to sell or offer for sale any food or other products from an ice cream vending vehicle unless the vehicle is legally parked upon any street or thoroughfare or properly and lawfully parked upon any other public area. All sales shall be made to customers only on the right, or curb, side of the vehicle.

(b) No ice cream vending vehicle shall proceed down the same street more than twice in any given 24-hour period.
(Ord. No. 04-02, 5-24-04)

***Editor's note**—Ord. No. 12-02, § 1, adopted June 11, 2012, repealed Art. V, §§ 18-83—18-90, which pertained to transient merchants and derived from Ord. No. 02-03, adopted Sept. 9, 2002.

Sec. 18-103. Hours of operation; vending not permitted on Sundays or in school zones.

(a) An ice cream vending vehicle shall not operate before the hour of 9:00 a.m. nor after the time of sunset; provided, however, that in no instance shall such a vehicle be operated upon the streets or public areas of the city after 6:00 p.m.

(b) Neither operation (i.e., the use of devices to attract customers) nor vending shall take place within a school zone which is properly designated as such pursuant to MCL 600.627a. (Ord. No. 04-02, 5-24-04)

Sec. 18-104. Sound devices.

(a) Any device used to attract customers, i.e., bells, music, or any other sound, shall comply with the city's noise ordinance and no such audible sound shall be emitted by the ice cream vending vehicle after 6:00 p.m., anything in this article to the contrary notwithstanding.

(b) No ice cream vending vehicle shall continue to emit or any audible sound, other than the sound of the motor, while it is legally parked or stopped as above set forth for the purpose of vending its product.

(Ord. No. 04-02, 5-24-04)

Sec. 18-105. Inspection.

Prior to the issuance of any license the ice cream vending vehicle shall be inspected by a representative of the police department to determine the compliance with the above stated special equipment requirements and to ascertain compliance with any other requirements of the Motor Vehicle Code with respect to equipment of commercial vehicles of the sort used.

(Ord. No. 04-02, 5-24-04)

Sec. 18-106. License required; license application; fees.

(a) *License.* The operator of an ice cream vending vehicle shall be licensed under the provisions of this article. No person shall operate such a vehicle upon the streets or public areas within the city without such a license. The license required hereunder shall be issued to the operator and to each driver. It is intended that licensing of operators and drivers of such vehicles shall be pursuant to this section of the Code and not pursuant to Article II of Chapter 18, sections 18-26 to 18-34, inclusive.

(b) *Application.* An applicant for licenses under this article shall file with the city clerk a written, sworn application signed by the applicant, if an individual, by all partners, if a partnership, and by the president, if a corporation. Such application shall provide:

- (1) The name or names of the person or persons having the management or supervision of the business at the time that the application is filed with the city; the address or addresses of such person or persons engaged in such corporation, under the laws of what state the same is incorporated; and the name and address of the driver of the vehicle proposed to be used;

- (2) A description of the vehicle or vehicles to be used together with the identification number and the current license number of each such vehicle;
- (3) A photograph of the driver of the ice cream vending vehicle taken within 60 days immediately prior to the date of the filing of the application, such photograph to be two inches by two inches showing the head and shoulders of the applicant in a clear distinguishing manner;
- (4) A statement as to whether or not the applicant or driver has been convicted of any crime, misdemeanor or violation of any municipal ordinance, the nature of such offense and the punishment or penalty assessed therefor;
- (5) A statement from a reputable physician licensed to practice medicine in the state, dated not more than ten days prior to filing of the application, certifying that the applicant is free of infectious, contagious or communicable diseases; and
- (6) The name of the manufacturer of the products to be sold and the license number of such manufacturer.

(c) *Fees.* At the time of filing the application, a fee for each vehicle and for each driver of such vehicle, as set forth in the fee resolution, to cover the cost of investigation, shall be paid. (Ord. No. 04-02, 5-24-04)

Sec. 18-107. Investigation of applicant and driver; endorsement by police department.

(a) Upon receipt of the license application, the original shall be referred to the chief of police, who shall cause an investigation to be made of the applicant's business and moral character and the character of the driver, as the chief deems necessary for the protection of the public good.

(b) If, as the result of such investigation, the applicant's business or moral character is found to be unsatisfactory, or the character of the driver is found to be unsatisfactory, the chief shall endorse such application and explain his or her reasons for not approving the application and return such application to the city clerk who shall notify the applicant that his or her application is disapproved and that no license will be issued.

(c) If, as the result of such investigation, the business and moral character of the applicant and driver are found to be satisfactory, the chief shall endorse on the application his or her approval and return such application to the city clerk who shall thereupon refer the same to the city manager.

(Ord. No. 04-02, 5-24-04)

Sec. 18-108. License issuance.

The city clerk shall submit to the city manager a recommendation based upon the reviews of the police department for the city manager's review. After the city manager has approved the issuance of a license for the vehicles, the city clerk shall thereupon issue said licenses. Such licenses shall at all times be in the licensed vehicle and in possession of the driver thereof.

(Ord. No. 04-02, 5-24-04)

Sec. 18-109. License term.

All licenses issued under this chapter shall be effective from January 1 to the following December 31.

(Ord. No. 04-02, 5-24-04)

Sec. 18-110. License transfer; prominent display on vehicle.

No license issued under this chapter shall be transferred to any other vehicle or to any other driver. All such licenses shall be prominently exhibited on the vehicle in such a manner as to be visible to customers.

(Ord. No. 04-02, 5-24-04)

Sec. 18-111. License revocation.

Licenses issued under this chapter may be revoked by the city manager for any of the following reasons:

- (a) Fraud, misrepresentation or a false statement contained in the application for the same;
- (b) Any violation of this chapter;
- (c) Conviction of any crime or misdemeanor involving moral turpitude; or
- (d) Upon proof of sale of any unwholesome or unsanitary product, or of possession of the same with intent to sell it.

The manager's action in revocation of a license shall be subject to appeal to the city council.

(Ord. No. 04-02, 5-24-04)

Sec. 18-112. Violations.

A violation of the Code sections [in this article] shall constitute a misdemeanor and shall be punishable as set forth in section 1-15 of this Code.

(Ord. No. 04-02, 5-24-04)

Chapters 19—21

RESERVED

Chapter 22

CABLE COMMUNICATIONS*

- Sec. 22-1. Definitions.
- Sec. 22-2. Purpose; interpretation.
- Sec. 22-3. Rate regulations promulgated by FCC.
- Sec. 22-4. Filing of rate schedule; additional information; burden of proof.
- Sec. 22-5. Proprietary information.
- Sec. 22-6. Initial review of rates.
- Sec. 22-7. Tolling order.
- Sec. 22-8. Public notice; hearing on basic cable service rates following tolling of 30-day deadline.
- Sec. 22-9. Staff or consultant report; written response.
- Sec. 22-10. Rate decisions and orders.
- Sec. 22-11. Refunds; notice.
- Sec. 22-12. Written decisions; public notice.
- Sec. 22-13. Rules and regulations.
- Sec. 22-14. Failure to give notice.
- Sec. 22-15. Additional hearings.
- Sec. 22-16. Additional powers.
- Sec. 22-17. Failure to comply; remedies.

***Cross reference**—Administration, ch. 2.

Sec. 22-1. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. All other words and phrases used in this chapter shall have the same meaning as defined in the act and FCC rules.

Act means the Communications Act of 1934, as amended (and specifically as amended by the Cable Television Consumer Protection and Competition Act of 1992, P.L. 102-385), and as may be amended from time to time.

Associated equipment means all equipment and services subject to regulation pursuant to 47 CFR 76.923.

Basic cable service means "basic service" as defined in the FCC Rules, and any other cable television service which is subject to rate regulation by the city pursuant to the act and the FCC rules.

FCC means the Federal Communications Commission.

FCC rules means all rules of the FCC promulgated from time to time pursuant to the act.

Increase in rates means an increase in rates or a decrease in programming or customer services.

(Ord. No. 335, § 1, 9-27-93)

Cross reference—Definitions generally, § 1-2.

Sec. 22-2. Purpose; interpretation.

The purpose of this chapter is to adopt regulations consistent with the act and the FCC rules with respect to basic cable service rate regulation, and to prescribe procedures to provide a reasonable opportunity for consideration of the views of interested parties in connection with the basic cable service rate regulation by the city. This chapter shall be implemented and interpreted consistent with the act and FCC rules.

(Ord. No. 335, § 2, 9-27-93)

Sec. 22-3. Rate regulations promulgated by FCC.

In connection with the regulation of rates for basic cable service and associated equipment, the city shall follow all FCC rules.

(Ord. No. 335, § 3, 9-27-93)

Sec. 22-4. Filing of rate schedule; additional information; burden of proof.

(a) A cable operator shall submit its schedule of rates for the basic service tier and associated equipment or a proposed increase in such rates in accordance with the act and the FCC rules. The cable operator shall include as part of its submission such information as is necessary to show that its schedule of rates or its proposed increase in rates complies with the act and the FCC rules. The cable operator shall file ten copies of the schedule or proposed

increase with the city clerk. For purposes of this section, the filing of the cable operator shall be deemed to have been made when at least ten copies have been received by the city clerk. The city council may, by resolution or otherwise, adopt rules and regulations prescribing the information, data and calculations which must be included as part of the cable operator's filing of the schedule of rates or a proposed increase.

(b) In addition to information and data required by rules and regulations of the city pursuant to subsection (a) of this section, a cable operator shall provide all information requested by the city manager in connection with the city's review and regulation of existing rates for the basic service tier and associated equipment or a proposed increase in these rates. The city manager may establish deadlines for submission of the requested information and the cable operator shall comply with such deadlines.

(c) A cable operator has the burden of proving that its schedule of rates for the basic service tier and associated equipment or a proposed increase in such rates complies with the act and the FCC rules including, without limitation, 47 USC 76.922 and 76.923.
(Ord. No. 335, § 4, 9-27-93)

Sec. 22-5. Proprietary information.

(a) If this chapter, any rules or regulations adopted by the city pursuant to section 22-4(b), or any request for information requires the production of proprietary information, the cable operator shall produce the information. However, at the time the allegedly proprietary information is submitted, a cable operator may request that specific, identified portions of its response be treated as confidential and withheld from public disclosure. The request must state the reason why the information should be treated as proprietary and the facts that support those reasons. The request for confidentiality will be granted if the city determines that the preponderance of the evidence shows that nondisclosure is consistent with the provisions of the Freedom of Information Act, 5 USC 552. The city shall place in a public file for inspection any decision that results in information being withheld. If the cable operator requests confidentiality and the request is denied, where the cable operator is proposing a rate increase it may withdraw the proposal, in which case the allegedly proprietary information will be returned to it, or the cable operator may seek review within five working days of the denial in any appropriate forum. Release of the information will be stayed pending review.

(b) Any interested party may file a request to inspect material withheld as proprietary with the city. The city shall weigh the policy considerations favoring nondisclosure against the reasons cited for permitting inspection in light of the facts of the particular case. It will then promptly notify the requesting entity and the cable operator that submitted the information as to the disposition of the request. It may grant, deny or condition a request. The requesting party or the cable operator may seek review of the decision by filing an appeal with any appropriate forum. Disclosure will be stayed pending resolution of any appeal.

(c) The procedures set forth in this section shall be construed as analogous to and consistent with the rules of the FCC regarding requests for confidentiality, including, without limitation, 47 CFR 0.459.
(Ord. No. 335, § 5, 9-27-93)

Sec. 22-6. Initial review of rates.

Upon the filing of ten copies of the schedule of rates or the proposed increase in rates pursuant to section 22-4(a), the city clerk shall publish a public notice in a newspaper of general circulation in the city which shall state that the filing has been received by the city clerk and (except those parts which may be withheld as proprietary) is available for public inspection and copying, and that interested parties are encouraged to submit written comments on the filing to the city clerk not later than seven days after the public notice is published. The city clerk shall give notice to the cable operator of the date, time and place of the meeting at which the city council shall first consider the schedule of rates or the proposed increase. This notice shall be mailed by first-class mail at least three days before the meeting. In addition, if a written staff or consultant's report on the schedule of rates or the proposed increase is prepared for consideration of the city council, then the city clerk shall mail a copy of the report by first-class mail to the cable operator at least three days before the meeting at which the city council shall first consider the schedule of rates or the proposed increase. (Ord. No. 335, § 6, 9-27-93)

Sec. 22-7. Tolling order.

After a cable operator has filed its existing schedule of rates or a proposed increase in these rates, the existing schedule of rates will remain in effect or the proposed increase in rates will become effective after 30 days from the date of filing under section 22-4(a) unless the city council (or other properly authorized body or official) tolls the 30-day deadline pursuant to 47 CFR 76.933 by issuing a brief written order, by resolution or otherwise, within 30 days of the date of filing. The city council may toll the 30-day deadline for an additional 90 days in cases not involving cost-of-service showings and for an additional 150 days in cases involving cost-of-service showings. (Ord. No. 335, § 7, 9-27-93)

Sec. 22-8. Public notice; hearing on basic cable service rates following tolling of 30-day deadline.

If a written order has been issued pursuant to section 22-7 and 47 CFR 76.933 to toll the effective date of existing rates for the basic service tier and associated equipment or a proposed increase in these rates, the cable operator shall submit to the city any additional information required or requested pursuant to section 22-4. In addition, the city council shall hold a public hearing to consider the comments of interested parties within the additional 90-day or 150-day period, as the case may be. The city clerk shall publish a public notice of the public hearing in a newspaper of general circulation within the city which shall state:

- (1) The date, time and place at which the hearing shall be held.
- (2) That interested parties may appear in person, by agent or by letter at the hearing to submit comments on or objections to the existing rates or the proposed increase in rates.

- (3) That copies of the schedule of rates or the proposed increase in rates and related information (except those parts which may be withheld as proprietary) are available for inspection or copying from the office of the clerk.

The public notice shall be published not less than 15 days before the hearing. In addition, the city clerk shall mail by first-class mail a copy of the public notice to the cable operator not less than 15 days before the hearing.

(Ord. No. 335, § 8, 9-27-93)

Sec. 22-9. Staff or consultant report; written response.

Following the public hearing, the city manager shall cause a report to be prepared for the city council which shall (based on the filing of the cable operator, the comments or objections of interested parties, information requested from the cable operator and its response, staff or consultant's review, and other appropriate information) include a recommendation for the decision of the city council pursuant to section 22-10. The city clerk shall mail a copy of the report to the cable operator by first-class mail not less than 20 days before the city council acts under section 22-10. The cable operator may file a written response to the report with the city clerk. If at least ten copies of the response are filed by the cable operator with the city clerk within ten days after the report is mailed to the cable operator, the city clerk shall forward it to the city council.

(Ord. No. 335, § 9, 9-27-93)

Sec. 22-10. Rate decisions and orders.

The city council shall issue a written order, by resolution or otherwise, which in whole or in part approves the existing rates for basic cable service and associated equipment or a proposed increase in such rates, denies the existing rates or proposed increase, orders a rate reduction, prescribes a reasonable rate, allows the existing rates or proposed increase to become effective subject to refund, or orders other appropriate relief, in accordance with the FCC rules. If the city council issues an order allowing the existing rates or proposed increase to become effective subject to refund, it shall also direct the cable operator to maintain an accounting pursuant to 47 CFR 76.933. The order specified in this section shall be issued within 90 days of the tolling order under section 22-7 in all cases not involving a cost-of-service showing. The order shall be issued within 150 days after the tolling order under section 22-7 in all cases involving a cost-of-service showing.

(Ord. No. 335, § 10, 9-27-93)

Sec. 22-11. Refunds; notice.

The city council may order a refund to subscribers as provided in 47 CFR 76.942. Before the city council orders any refund to subscribers, the city clerk shall give at least seven days' written notice to the cable operator by first-class mail of the date, time and place at which the

city council shall consider issuing a refund order and shall provide an opportunity for the cable operator to comment. The cable operator may appear in person, by agent, or by letter at such time for the purpose of submitting comments to the city council.

(Ord. No. 335, § 11, 9-27-93)

Sec. 22-12. Written decisions; public notice.

Any order of the city council pursuant to section 22-10 or 22-11 shall be in writing, shall be effective upon adoption by the city council, and shall be deemed released to the public upon adoption. The city clerk shall publish a public notice of any such written order in a newspaper of general circulation within the city which shall summarize the written decision and state that copies of the text of the written decision are available for inspection or copying from the office of the clerk. In addition, the city clerk shall mail a copy of the text of the written decision to the cable operator by first-class mail.

(Ord. No. 335, § 12, 9-27-93)

Sec. 22-13. Rules and regulations.

In addition to rules promulgated pursuant to section 22-4, the city council may, by resolution or otherwise, adopt rules and regulations for basic cable service rate regulation proceedings (including, without limitation, the conduct of hearings), consistent with the act and the FCC rules.

(Ord. No. 335, § 13, 9-27-93)

Sec. 22-14. Failure to give notice.

The failure of the city clerk to give the notices or to mail copies of reports as required by this chapter shall not invalidate the decisions or proceedings of the city council.

(Ord. No. 335, § 14, 9-27-93)

Sec. 22-15. Additional hearings.

In addition to the requirements of this chapter, the city council may hold additional public hearings upon such reasonable notice as the city council, in its sole discretion, shall prescribe.

(Ord. No. 335, § 15, 9-27-93)

Sec. 22-16. Additional powers.

The city shall possess all powers conferred by the act, the FCC rules, the cable operator's franchise and all other applicable law. The powers exercised pursuant to the act, the FCC rules and this chapter shall be in addition to powers conferred by law or otherwise. The city may take any action not prohibited by the act and the FCC rules to protect the public interest in connection with the basic cable service rate regulation.

(Ord. No. 335, § 16, 9-27-93)

Sec. 22-17. Failure to comply; remedies.

The city may pursue any and all legal and equitable remedies against the cable operator (including, without limitation, all remedies provided under a cable operator's consent agreement with the city) for failure to comply with the act, the FCC rules, any orders or determinations of the city pursuant to this chapter, any requirements of this chapter, or any rules or regulations promulgated under this chapter. Subject to applicable law, failure to comply with the act, the FCC rules, any orders or determinations of the city pursuant to this chapter, any requirements of this chapter, or any rules and regulations promulgated under this chapter, shall also be sufficient grounds for revocation or denial of renewal of a cable operator's consent agreement.

(Ord. No. 335, § 17, 9-27-93)

Chapters 23—25

RESERVED

Chapter 26

CEMETERY*

- Sec. 26-1. Definitions.
- Sec. 26-2. Management, regulation of Mt. Morris City Cemetery.
- Sec. 26-3. Rules and regulations.
- Sec. 26-4. Ownership, sales, charges.
- Sec. 26-5. Perpetual care.
- Sec. 26-6. Scope; rules generally.
- Sec. 26-7. Unlawful acts.

***Cross reference**—Schedule of fees, app. C.

State law reference—Control and perpetual care of cemetery lots, MCL 128.1 et seq.

Sec. 26-1. Definitions.

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

Cemetery means any cemetery owned and/or maintained by the city for the purpose of receiving the remains of deceased humans.

Lot includes partial lots or single graves in cemeteries covered in this chapter.

Lot or grave owner means the owner of burial rights, the owner of a burial privilege, or the collateral use of any burial lot, evidenced by a burial rights certificate or by proved and recognized descent or device from the original owner.

(Ord. No. 100, § 1, 2-12-64)

Cross reference—Definitions generally, § 1-2.

Sec. 26-2. Management, regulation of Mt. Morris City Cemetery.

The city council shall have the responsibility for the control, management and regulation of the Mt. Morris City Cemetery. The council shall, from time to time, by resolution, promulgate rules and regulations governing the Mt. Morris City Cemetery.

(Ord. No. 284, § 1, 4-28-86)

Sec. 26-3. Rules and regulations.

The following rules and regulations shall apply in regard to the cemetery, cemetery's use and enforcement of this chapter, unless otherwise and specifically stated:

- (1) *Trimming trees and shrubbery.* If any trees or shrubbery situated upon any lot, which by means of their roots, branches or otherwise, become detrimental to the adjacent lots or roadways of the cemeteries, or are unsightly or inconvenient to pedestrians or vehicles, it shall be the right and duty of the superintendent of the department of public works to enter the lot and remove, cut back or trim such trees and shrubbery.
- (2) *Interment permit required.* No interment shall be permitted without a permit as required by law.
- (3) *Children.* Children under the age of 12 years shall not be allowed in cemeteries unless accompanied by their parents or other adults, except for the purpose of placing flowers on the grave of a deceased relative or friend or performing any other customary evidence of respect in accordance with their religious principles.
- (4) *Animals.* No animals shall be allowed in any cemetery except in the confines of a vehicle and must at all times be retained within the confines of the vehicle while the vehicle remains in the cemetery.
- (5) *Decorum.* Cemetery ground being sacredly devoted to the interment and repose of the dead, strict observance of decorum due to such a place will be required of all persons.

- (6) *Disinterments.* The city holds that a lot or grave once used for burial thereby becomes sacred ground and the city shall refuse to allow the body buried therein to be disinterred except by order of husband, wife, father, mother, son or daughter of the deceased and the city reserves the right to refuse any such request.
- (7) *Grave mounds.* No grave mounds shall be permitted and all graves shall be sodded level with the lawn. Present grave mounds shall be removed and graves sodded over as rapidly as possible.
- (8) *Location of grave.* No grave shall be placed so as to have an irregular appearance with graves on the same or adjoining lots.
- (9) *Strangers in funeral zone.* Strangers shall not approach the grave at which a funeral is being conducted and when deemed necessary by the superintendent of the department of public works or upon request of the lot owner or his representative, a funeral zone may be established and properly marked and no one except persons attending the funeral will be permitted to trespass within its boundaries.
- (10) *Opening and closing of graves.* All graves will be opened and closed by city employees under the direction of the superintendent of the department of public works. The charge for opening a grave shall be as set by resolution of the city council. Interment in wood cases or boxes shall not be permitted.
- (11) *Two or more persons in one grave.* The burial of two or more persons in one grave is not permitted except by permission of the superintendent of the department of public works and the burial must occur at the same time. Approval of the superintendent shall be based upon lot size and maintenance considerations and any other justified reason from the superintendent.
- (12) *Temporary rules.* The superintendent of the department of public works shall have the right to establish temporary rules whenever in his judgment, the best interests and safety of the public and the cemetery demands, but must report such temporary rule to the council for action thereon at its next regular meeting.
- (13) *Visiting hours.* No person shall enter or remain within any cemetery for the period beginning from sunset to sunrise, except essential workers employed by the city.
- (14) *Sightseeing or heavy vehicles.* Sightseeing vehicles or other heavy or cumbersome vehicles shall not enter any cemetery without permission of the superintendent of the department of public works.
- (15) *Control of funerals.* All funerals, interments and disinterments in any cemetery shall be under the direction of the superintendent of the department of public works.
- (16) *Notice of funeral.* Notice of funeral, with identification of the grave, must be furnished the superintendent of the department of public works a reasonable time in advance of the interment.
- (17) *Unsightly objects.* Unsightly objects erected or placed upon lots or graves out of harmony with the general landscape design as adopted by the city or detrimental to

adjoining lots will not be permitted and whenever objects of such nature are placed on lots or graves and whenever flowers or emblems become withered or unsightly, the city reserves the right to remove them without notice and no responsibility for the return to the owner will be assumed.

- (18) *Fence, railing, enclosure.* No fence, railing, coping, curb, wall, hedge or enclosure of any kind shall be located around or on any lot or grave in any cemetery except any installations of such kind presently in any cemetery.
- (19) *Monuments or headstones.* A monument or headstone should be designed with reference to the location in which it is to be placed, consideration being given to the number, size and character of monuments standing near it. A good design need cost no more than a bad one. No mausoleum, vault, monument or marker shall be placed in the cemetery until the design thereof has been submitted to and approved by the superintendent of the department of public works. Such monuments or headstones shall be constructed out of cut stone or real bronze, and no limestone, sandstone or any artificial material will be permitted. All foundations shall be built by employees of the city and must be paid for in advance. Foundations must be built of solid masonry and shall be at least as wide and as long as the base stone resting upon it and must not project above the surface of the ground. Foundations for monuments and headstones shall be of a sufficient size to carry the load of the headstone or monument as determined by the superintendent of public works.
- (20) *Work suspended.* Workers must suspend their labors within the immediate vicinity of a funeral until the conclusion of such service.
- (21) *Mausoleums.* The construction or placing of mausoleums upon lots in the cemetery must be approved by the city council. The council at its sole discretion shall approve or deny the placing of mausoleums in the cemetery and may consider any and all facts the council deems necessary when making its decision including future maintenance cost and aesthetic looks of the mausoleum and the impact of the mausoleum on adjoining lots. The council shall also have the right to place any conditions it deems necessary on the construction of mausoleums.

(Ord. No. 100, § 3, 2-12-64)

Sec. 26-4. Ownership, sales, charges.

(a) *Sale of lots; right of purchaser.* Purchase of lots in cemeteries shall be made from the city clerk and the purchasers shall acquire only the privilege or right to make interments in the lot so purchased.

(b) *Certificate of ownership.* Original ownership shall be evidenced by a certificate which shall be surrendered and a new certificate issued in the event of any transfer.

(c) *Contents of certificate.* Ownership certificates shall bear the name of the owner or owners, lot number, number of graves, name of cemetery and such other information as may be necessary and shall be signed by the city clerk. Persons holding certificates evidencing

burial rights within the cemetery shall possess only such burial and other rights as are customarily held by the holder of such an interest and fee simple ownership, subject to such rights, shall remain in the city. All such rights shall be subject to the rules and regulations currently in existence and as hereafter amended; provided, however, that this provision shall not be construed as affecting vested rights of certificate holders or the rights of those interred prior to April 28, 1986. Certificates of burial rights shall be issued by the city clerk upon payment of such fee as may, from time to time, be established by the city council. The certificate shall be in a form to be prescribed by the city clerk, subject to approval by the city attorney. The city clerk shall keep such records as are necessary to properly identify the holders of burial rights. If a certificate is lost, misplaced or destroyed and a replacement therefor is requested, the party requesting it may be required to furnish a bond and/or hold harmless agreement protecting the city from the consequences of such reissuance. The replacement certificate shall be appropriately designated as such. Burial rights shall be transferrable and upon presentment of proper evidence of a lawful transfer the city clerk shall issue a new certificate upon payment of the applicable fee.

(d) *Approval of transfer.* The ownership of any lot or portion thereof shall not be transferred without the approval of the city clerk.

(e) *Transfers.* Transfers shall be made upon application only and shall be accompanied by a statement showing good and sufficient reasons for such transfer and in no instance will transfers be permitted where the purpose is speculative or for any other reason determined undesirable.

(f) *Transfer by court order.* In the absence of a written order to the contrary, the city will, after the owner's death, honor a transfer of ownership by court order when presented for record with the city clerk.

(g) *Other transfers.* In cases where the owner is deceased and there is no estate to be probated, the heirs of the deceased may make application for transfer to the city clerk, and upon submission of satisfactory evidence, approved by the city attorney, the clerk shall issue a new certificate to the heirs entitled thereto.

(h) *Lost or destroyed certificates.* In case of loss or destruction of a certificate of ownership, no new certificate shall be issued in lieu thereof, except upon the giving of satisfactory security by bond, hold harmless agreement, or otherwise, against loss to the city, as may be required by the city council. Any such new certificate shall be plainly marked "duplicate" upon its face.

(i) *Lot prices.* Payment for lots in city cemeteries shall be made to the city treasurer. Lot prices shall be as set by resolution of the city council.

(j) *Deposit of sales funds.* All money received by the city treasurer for the sale of lots in city cemeteries shall be deposited 75 percent in the cemetery maintenance fund, and 25 percent in the cemetery perpetual care trust fund.

(k) *Burial designations.* A lot owner or his legal representative, may at any time designate in writing whom he wishes buried in his lot or grave, forbid the burial of certain persons and have a record made of such desire with the city clerk.

(l) *Recording power to act.* Power to act for the owner of any lot must be filed for record with the city clerk to become operative.

(m) *Charges.* Rentals and charges for labor, services and materials furnished by the city shall be established by resolution of the council and payment made therefor to the city treasurer who shall deposit all money so received into the cemetery maintenance fund.

(n) *Foundations.* Foundations for all heavy materials, such as markers, monuments, stones, etc., shall be placed by cemetery employees in accordance with section 26-3(15) and a charge made therefor in accordance with resolution adopted by the council.
(Ord. No. 100, § 3, 2-12-64; Ord. No. 284, §§ 2, 3, 4-28-86)

Sec. 26-5. Perpetual care.

(a) *Fund established; deposits.* There is hereby created a perpetual care trust fund in which shall be deposited all trust funds previously established for the care of cemeteries and that portion of the sale price set aside for perpetual care of lots or graves hereafter sold, together with any other gifts, grants, devises or bequests made for the purpose of assisting in the maintenance of cemeteries.

(b) *Treasurer's duties.* It shall be the duty of the city treasurer to keep an accurate record of the perpetual care trust fund account, including investments and to see that the principal portion thereof is properly invested in accordance with the resolutions of the council and to advise the council when funds are available for investment in the amount of \$1,000.00 or more.

(c) *Council's duty.* It shall be the duty of the council when funds are available for investment to direct by resolution all purchases of securities for the perpetual care trust fund.

(d) *Income.* All income from investments held in the perpetual care trust fund may be deposited to the cemetery maintenance fund for use in providing the perpetual care as required in this chapter.

(e) *Sales without perpetual care.* The rates established for lots or fractions thereof shall include perpetual care and no sales shall be made hereafter without provision for perpetual care.

(f) *Care included.* The essential perpetual care that the city agrees to give shall consist of the mowing of all lots and graves at reasonable intervals, also resodding, seeding and filling in sunken graves, sodding of the surface of the graves to the lot level, removing dead flowers and trimming trees and shrubbery when necessary, raking and cleaning the lots and straightening of tilting stones or markers, but shall not include watering nor repairing or replacement of markers or memorial structures of any nature.

(Ord. No. 100, § 5, 2-12-64)

Sec. 26-6. Scope; rules generally.

(a) *Cemeteries covered.* All cemeteries owned and/or maintained by the city, or which may hereafter be acquired by the city, wheresoever situated, are hereby declared to be public burial grounds, subject to the provisions of this chapter.

(b) *Prohibited interments.* There shall be no interment of anything other than the remains of human bodies in cemeteries and no interment of any deceased humans shall be made in any other place than within cemeteries devoted to that purpose.

(c) *Sale subject to rules.* Every lot or single grave sold is subject to the rules and regulations now in force or that may be hereafter adopted and to such changes of the present rules as are found necessary for the protection of lot owners and the remains of the dead.

(d) *Care reserved.* The city reserves the right to enter upon any grave and to perform all work necessary for the care and upkeep of all lots and graves in the cemeteries.

(e) *Orders and responsibilities.* Under no circumstances will the city assume responsibility for errors in opening graves when orders are given by telephone, and orders by undertakers for the opening of graves will be considered as orders from the lot owners.

(Ord. No. 100, § 6, 2-12-64)

Sec. 26-7. Unlawful acts.

(a) *Remuneration prohibited.* It shall be unlawful for the owner of any lot to allow any interment to be made in any cemetery for remuneration.

(b) *Restricted use.* Lots shall not be used for any purpose other than a place for the remains of human bodies.

(c) *Protection to flowers, trees, shrubs.* No person, except the owner, shall cut, remove, injure or carry away any flowers, shrubs, trees, plants, vines or any growing thing in or from any cemetery without the approval of the director of the department of public works.

(d) *Protection to markers, monuments, headstones.* No person shall deface, injure, disturb, mark or write upon any marker, monument, headstone, fence or structure in any cemetery.

(e) *Protection of vases, flower pots, ornaments.* No person shall injure or destroy, take or carry away any vases, flower pots or other containers or ornaments that may have been placed in cemeteries, except such as were originally brought in by the party so removing them, provided this shall not apply to workers engaged therein.

(f) *Places of entrance.* No person shall enter nor shall any vehicle be propelled or driven into any cemetery except through the established gates and entrances thereof.

(g) *Vehicle speed.* No vehicle shall be driven in any cemetery at any time at a speed greater than is reasonable and proper under all circumstances, and in no event in excess of 15 miles per hour.

(h) *Noise or disorderly conduct.* No person shall make any improper noise or disturbance or use any profane or indecent language or conduct themselves in a disorderly manner within the limits of any cemetery.

(i) *Food and beverages prohibited.* No person shall take any refreshments, food or intoxicating beverages of any kind within the boundary of any cemetery, except such food and temperate beverages as may be required by workers engaged therein.

(j) *Firearms prohibited.* No person shall take any firearms or explosives within the boundary of any cemetery except that military or other organizations may carry arms therein for the purpose of firing a salute over the grave at the burial of a member of their organization or upon observance of memorial services.

(k) *Trespassing.* Walking or driving through cemetery grounds to property or land outside of any cemetery for the purpose of saving time or distance is strictly prohibited.

(l) *Rubbish.* It shall be unlawful for any person to leave or scatter rubbish within the confines of any cemetery.

(m) *Vehicle traffic.* No vehicle of any description shall be driven or propelled in any cemetery except upon the portions of the roadways set aside for vehicular traffic.

(Ord. No. 100, § 7, 2-12-64)

Chapters 27—29

RESERVED

Chapter 30

COMMUNITY DEVELOPMENT*

Article I. In General

Secs. 30-1—30-25. Reserved.

Article II. Downtown Development Authority

- Sec. 30-26. Establishment.
- Sec. 30-27. Boundaries of district.
- Sec. 30-28. Powers, duties; members.
- Sec. 30-29. Fiscal year and budget.
- Secs. 30-30—30-50. Reserved.

Article III. Development Plan and Tax Increment Financing Plan

- Sec. 30-51. Definitions.
- Sec. 30-52. Approval and adoption of downtown development authority development plan and tax increment financing plan.
- Sec. 30-53. Boundaries of development area.
- Sec. 30-54. Preparation of base year assessment roll.
- Sec. 30-55. Preparation of annual assessment roll.
- Sec. 30-56. Account status report.
- Sec. 30-57. Implementation.
- Sec. 30-58. Amendments, alterations to tax increment financing plan.
- Sec. 30-59. Duration of tax increment financing plan.

***Cross references**—Administration, ch. 2; planning, ch. 46; streets, sidewalks and other public places, ch. 58.

State law reference—Downtown development authority, MCL 125.1651 et seq.

ARTICLE I. IN GENERAL

Secs. 30-1—30-25. Reserved.

ARTICLE II. DOWNTOWN DEVELOPMENT AUTHORITY

Sec. 30-26. Establishment.

The city council has determined that it is necessary for the best interests of the public to halt property value deterioration and increase property tax valuation where possible in its business district, to eliminate the causes of that deterioration, and to promote economic growth. The city does hereby create a downtown development authority covering the district described in section 30-27 subject to the powers, duties and authorities set forth in section 30-28.

(Ord. No. 293, § 1, 4-11-88)

Sec. 30-27. Boundaries of district.

The downtown development authority shall exercise its authority within the following district situated in the city:

- (1) All lots or parcels of land fronting or abutting on the west side of North Saginaw Street between Roosevelt Avenue on the north and Beach Street on the south.
- (2) All lots or parcels of land fronting or abutting on the east side of North Saginaw Street between Shopping Center Drive (a private street) on the north and Maple Street on the south with the exception of lot 6 of Brays Addition. Also a parcel owned by Mt. Morris Development Company which is bounded on the north by Shopping Center Drive (a private street) and on the east by Walter Street, a parcel owned by Groves (parcel number 80-A) situated directly to the south of property owned by Mt. Morris Development Company, parcel 78B owned by Kaftan, and parcel 1397B owned by McCollum & Young.
- (3) All lots or parcels of land fronting or abutting on both sides of the C&O Railroad right-of-way between the northerly line of Dover Street on the north and the city limits on the south with the exception of those parcels situated on the east side of the right-of-way between Union Street and Church Street and also excluding parcels K-348 to K-354, inclusive, parcel 172A and parcel 398; parcel 184-A abutting upon property owned by the C&O Railroad and owned by Mitchell is also included.
- (4) All lots or parcels of land fronting on Morris Street/Genesee between Washington Avenue on the west and Church Street, and a line formed approximately by the easterly right-of-way line of Church Street extending north, on the east; except parcel numbers 1448, 1450 and 1451 it being the intent hereof to include all of lot 1 of Dover plat.
- (5) All lots or parcels of land fronting or abutting on both sides of Dover Street, including a parcel situated at the westerly end thereof with the exception of 4 lots on the south

side of Dover Street, to wit: lots 65, 66, 67 and 68 of the Village of Dover and also excluding parcel number 104 owned by Skaggs and including all interior lots or parcels between Morris Street and Dover Street.

- (6) All lots or parcels of land fronting or abutting on the west side of Union Street between the C&O Railroad right-of-way on the south and North Street on the north with the exception of a parcel of land situated on the southwest corner of Union Street and North Street.
- (7) All lots or parcels of land fronting or abutting on the east side of Union Street between South Street on the south and Genesee on the north.

A list setting forth parcel numbers, addresses, owners and other relevant information relative to all lots and parcels within the district shall be prepared by the city clerk's office in cooperation with the board of the authority and shall be kept on file with the city clerk's office. This list shall be deemed in pari materia with the above description. This list may be altered from time to time to reflect and update any changes in addresses, ownership, parcel numbers, etc., but such changes shall not alter the boundaries of the district. Any change in the boundaries of the district must be accomplished by an amendment to this article in full compliance with state enabling legislation.

(Ord. No. 293, § 2, 4-11-88)

Sec. 30-28. Powers, duties; members.

The downtown development authority hereby created shall possess and exercise the powers and duties set forth in Act No. 197 of the Public Acts of Michigan of 1975 (MCL 125.1651 et seq.), as amended. The governing board of the authority shall have not less than eight nor more than 12 members. The initial board shall consist of nine members. The size of the board may be increased by action of the city council in appointing further members within the limit above set forth. The board of the authority shall develop and approve bylaws for its operations which bylaws shall be strictly in accordance with applicable enabling legislation. A copy thereof shall be promptly filed with the city clerk.

(Ord. No. 293, § 3, 4-11-88)

Sec. 30-29. Fiscal year and budget.

The fiscal year of the authority shall be the same as that of the city. The board of the authority shall annually prepare a budget and submit it to the city council in such form and within such time limits as shall permit due consideration and approval pursuant to law and applicable regulations.

(Ord. No. 293, § 4, 4-11-88)

Secs. 30-30—30-50. Reserved.

ARTICLE III. DEVELOPMENT PLAN AND TAX INCREMENT FINANCING PLAN**Sec. 30-51. Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. All other undefined terms, unless the context of this article specifically requires otherwise, shall have the meanings attributed to them by current usage.

Act No. 197 means the Downtown Development Authority Act, Act No. 197 of the Public Acts of Michigan of 1975 (MCL 125.1651 et seq.), as amended.

Captured assessed value means the amount in any one year by which the current assessed value as finally equalized of all taxable property in the development area exceeds the initial assessed value, as more fully described in the development plan and tax increment financing plan.

Development area means the area within the boundaries of the Mt. Morris downtown development authority district, as described in exhibit A of the downtown development authority ordinance, Ordinance No. 293 and as illustrated in the downtown development authority development plan and tax increment financing plan.

Development plan means the development plan for the downtown development authority district, illustrated in the downtown development authority development plan and tax increment financing plan.

Downtown development authority means the city downtown development authority as established by Ordinance No. 293.

Initial assessed value means the most recently assessed value as finally equalized by the state board of equalization of all taxable property within the boundaries of the downtown development authority district at the time of adoption of the ordinance from which this article is derived, as more fully described in the downtown development authority development plan and tax increment financing plan.

Tax increment means that portion of the tax levy of all taxing jurisdictions paid each year on real and personal property in the downtown development authority district on the captured assessed value, as more fully described in the downtown development authority development plan and tax increment financing plan.

Tax increment financing plan means the tax increment financing plan for the downtown development authority district, including the development plan as transmitted to the city council by the downtown development authority for public hearing and as confirmed by this article, copies of which are on file in the office of the city clerk.

Taxing jurisdiction means each unit of government levying an ad valorem property tax on property in the downtown development authority district.

(Ord. No. 309, § 1, 5-24-90)

Cross reference—Definitions generally, § 1-2.

Sec. 30-52. Approval and adoption of downtown development authority development plan and tax increment financing plan.

Pursuant to Section 19(1) (MCL 125.1669) of Act No. 197, the city council hereby finds and determines as follows:

- (1) That the development plan and tax increment financing plan constitutes and embodies a public purpose of the city.
- (2) That the development plan and tax increment financing plan meets the requirements set forth in Section 14(2) (MCL 125.1664) and section 17(2) (MCL 125.1667 of Act No. 197.
- (3) That the proposed method of financing the development activities described in the development plan and tax increment financing plan is feasible, and that the downtown development authority has or will have the ability to arrange the financing if and when arrangements for financing other than receipt and expenditure of tax increments are proposed.
- (4) That the development activities described in the development plan and tax increment financing plan are reasonable and necessary to carry out the purposes of Act No. 197.
- (5) That the land to be acquired within the downtown development authority district is reasonably necessary to carry out the purposes of the development plan and tax increment financing plan and the purposes of Act No. 197.
- (6) That the development plan and tax increment financing plan is in reasonable accord with the approved master plan of the city.
- (7) That public services, such as fire and police protection and utilities are, or will be, adequate to service the downtown development authority district.
- (8) That no changes in zoning, streets, street levels and intersections are contemplated by the development plan and tax increment financing plan and the utility changes contemplated by the plan are reasonably necessary for the project and the city.

In accordance with the foregoing considerations, the downtown development authority development plan and tax increment financing plan are hereby approved and adopted for all purposes of Act No. 197 consistent with such plans. A copy of the development plan and tax increment financing plan, and all respective amendments thereto shall be maintained on file in the city clerk's office and cross-indexed to this article.

(Ord. No. 309, § 2, 5-24-90)

Sec. 30-53. Boundaries of development area.

The boundaries of the development area are hereby adopted and confirmed.
(Ord. No. 309, § 3, 5-24-90)

Sec. 30-54. Preparation of base year assessment roll.

(a) Within 90 days of the effective date of the ordinance from which this article is derived, the city assessor shall prepare the initial base year assessment roll. The base year assessment roll shall list each taxing jurisdiction in which the downtown development authority district is located, the initial assessed value of the development district on the effective date of this ordinance from which this article is derived, and the amount of tax revenue derived by each taxing jurisdiction from ad valorem taxes on the property in the development district.

(b) The city assessor shall transmit copies of the base year assessment roll to the city treasurer, the county treasurer, the downtown development authority and each taxing jurisdiction, together with a notice that the assessment roll has been prepared in accordance with this article and the development plan and tax increment financing plan approved by this article.

(Ord. No. 309, § 4, 5-24-90)

Sec. 30-55. Preparation of annual assessment roll.

Each year within 15 days following the final equalization of property in the development district, the city assessor shall prepare an updated annual assessment roll. The annual assessment roll shall show the information required in the base year assessment roll and, in addition, the captured assessed value for that year. Copies of the annual assessment roll shall be transmitted by the assessor to the same persons as the base year assessment roll, together with a notice that it has been prepared in accordance with this article and the development plan and tax increment financing plan.

(Ord. No. 309, § 5, 5-24-90)

Sec. 30-56. Account status report.

Annually, the authority shall submit to the city council and the state tax commission a report on the status of the tax increment financing account. The report shall include: the amount and source of revenue in the account; the amount and purpose of expenditures from the account; the amount of principal and interest on any outstanding bonded indebtedness; the initial assessed value of the project area; the captured assessed value retained by the authority; the tax increments received; and any additional information the city council or the state tax commission considers necessary. The report shall be published in a newspaper of general circulation in the city.

(Ord. No. 309, § 6, 5-24-90)

Sec. 30-57. Implementation.

All tax increments shall be transmitted by the city treasurer and the treasurer of the county to the city treasurer for the account of the downtown development authority at the earliest practicable date. All tax increments, so received by the downtown development authority shall be disbursed in accordance with the provisions of the development plan and tax increment financing plan and the requisitions of the downtown development authority. Surplus funds

shall revert proportionately to the respectful taxing bodies. For the purpose of segregation and transfer of such funds, the city treasurer shall maintain a separate fund which shall be kept in a depository bank account in a bank approved by the proper authority of the city, to be designated downtown development authority project fund. All amounts payable to the downtown development authority shall, subject to the foregoing, be deposited directly in the downtown development authority project fund.

(Ord. No. 309, § 7, 5-24-90)

Sec. 30-58. Amendments, alterations to tax increment financing plan.

Anything in the plans hereby adopted or in this article to the contrary notwithstanding any future modification of the tax increment financing plan may be initiated by action of the city council. This action shall be in the form of a resolution directing the board of the downtown development authority to consider and make its recommendations relative to any proposed amendment and to return it to the city council for approval or rejection. If a proposed amendment is submitted to the board of the downtown development authority by the city council, the board will promptly review the matter and return it to the council for action. City council action amending the plan may be taken any time after the expiration of 60 days following the issuance of the resolution directing the board of the downtown development authority to consider the amendment matter.

(Ord. No. 309, § 8, 5-24-90)

Sec. 30-59. Duration of tax increment financing plan.

The tax increment financing plan will continue in effect until all purposes of the development plan and tax increment financing plan have been fulfilled.

(Ord. No. 309, § 9, 5-24-90)

Chapters 31—33

RESERVED

Chapter 34

ENVIRONMENT*

Article I. In General

Secs. 34-1—34-10. Reserved.

Article II. Offensive Conditions (CI)

Sec. 34-11. Accumulation or existence of offensive conditions.
Sec. 34-12. Unlawful placement of waste for collection.
Secs. 34-13—34-25. Reserved.

Article III. Disabled Automobiles (CI)

Sec. 34-26. Definitions.
Sec. 34-27. Parking, storing restricted.
Sec. 34-28. Prohibited on streets.
Sec. 34-29. Storage in yard.
Secs. 34-30—34-50. Reserved.

Article IV. Noise

Division 1. Generally

Sec. 34-51. Definitions.
Sec. 34-52. Noise levels.
Secs. 34-53—34-65. Reserved.

Division 2. Disturbances

Sec. 34-66. Prohibited generally.
Sec. 34-67. Radios, television sets, musical instruments, similar devices.
Sec. 34-68. Loudspeakers/public address systems.
Sec. 34-69. Street sales.
Sec. 34-70. Animals and birds. (CI)
Sec. 34-71. Loading and unloading.
Sec. 34-72. Vehicle or motorboat repairs and testing.
Sec. 34-73. Places of public entertainment.
Sec. 34-74. Explosives, firearms, similar devices.
Sec. 34-75. Domestic power tools.
Sec. 34-76. Idling of motor vehicles.
Secs. 34-77—34-85. Reserved.

Division 3. Impulsive Noise

Sec. 34-86. Maximum permissible sound levels.

***Cross references**—Offenses and miscellaneous provisions, ch. 42; planning, ch. 46; traffic and vehicles, ch. 62; schedule of fees, app. C.

MT. MORRIS CODE

Secs. 34-87—34-95. Reserved.

Division 4. Intermittent Noise

Sec. 34-96. Maximum permissible sound levels.

Secs. 34-97—34-105. Reserved.

Division 5. Continuous Noise

Sec. 34-106. Maximum permissible sound levels.

Secs. 34-107—34-115. Reserved.

Division 6. Perpetual Noise

Sec. 34-116. Maximum permissible sound levels.

Secs. 34-117—34-125. Reserved.

Division 7. Exemptions

Sec. 34-126. Exemptions.

Secs. 34-127—34-129. Reserved.

Article V. Air Pollution

Sec. 34-130. Definition.

Sec. 34-131. Outdoor wood-fired boilers.

Sec. 34-132. Applicability.

Sec. 34-133. Violation.

Secs. 34-134—34-139. Reserved.

Article VI. Cost Recovery

Sec. 34-140. Definitions.

Sec. 34-141. Duty to remove or abate.

Sec. 34-142. Failure to remove.

Sec. 34-143. Liability for cost recovery; lien on real estate.

ARTICLE I. IN GENERAL

Secs. 34-1—34-10. Reserved.

ARTICLE II. OFFENSIVE CONDITIONS (CI)

Sec. 34-11. Accumulation or existence of offensive conditions.

It shall be unlawful for any person to accumulate or cause or permit the accumulation or existence, within the city, except in such areas properly zoned therefor, of weeds, vegetation, lumber (new or used), junk, dead organic matter, debris, garbage, offal, rat harborages, stagnant water, combustible materials and similar materials or conditions which constitute fire, health or safety hazards. A property owner who has leased the property to another shall be responsible for the infraction if he has possessory rights with respect to the portion of the premises upon which the offending conditions, substances or materials are located or has the right under the agreement between the parties to correct the condition. The subject property shall, however, be subject to the lien provisions set forth in Section 8731 (MCL 600.8731) of the revised Judicature Act (Act No. 236 of the Public Acts of Michigan of 1963 (MCL 600.113 et seq.)), as amended, irrespective of whether the landlord has possessory rights with respect to the premises or whether he has the right to enter upon the premises and correct the offending condition.

(Ord. No. 342, § 1, 6-27-92)

Sec. 34-12. Unlawful placement of waste for collection.

(a) It shall be unlawful for any person within the city without having made special arrangements with the city manager's office, to place solid waste, garbage, debris, yard waste, or materials for recycling upon his property or upon the city right-of-way for the purpose of collection by the city's waste collection contractor prior to the day preceding the day upon which waste collection operations commence.

(b) It shall be unlawful for any person within the city without having made special arrangements with the city manager's office to fail to remove any solid waste container, garbage can, recycling bin or any other container used for the holding of solid waste for collection by the city's waste collection contractor by the day after the scheduled waste pick-up day.

(Ord. No. 342, § 2, 6-27-92)

Secs. 34-13—34-25. Reserved.

ARTICLE III. DISABLED AUTOMOBILES (CI)**Sec. 34-26. Definitions.**

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

Disabled motor vehicle means a motor vehicle which is dismantled, in whole or in part, and/or which is mechanically unable to operate as the result of a mechanical defect or malfunction. The absence of minor and nonessential parts such as antennas, ornaments, hub caps, etc., shall not cause a vehicle to be deemed dismantled and thereby disabled. Any vehicle which is not currently licensed or is not capable of being licensed for operation on the rights-of-way of the streets, alleys or highways of the city shall be deemed disabled. A vehicle which is currently licensed and is not stored in an entirely enclosed garage or structure shall have its plate affixed to the vehicle or it shall be deemed a disabled motor vehicle. An unlicensed vehicle in operating order owned by a duly licensed new or used car dealer and located on the regular premises of the dealer for the purpose of its sale or delivery shall not be deemed to be a disabled motor vehicle for the purposes of this article. An unlicensed vehicle or vehicle which is mechanically unable to operate is permitted to be stored in the commercially zoned areas of the city where the property owner operates a licensed auto repair shop and the property has all zoning approvals necessary. All vehicles stored in accordance with this section regarding licensed auto repair shops must be stored in completely enclosed buildings or behind fences at least seven feet high so arranged as to keep the disabled vehicles from the view of persons on public streets on rights-of-way and from view by occupants of adjacent dwellings, if any.

(Ord. No. 341, § 2, 6-27-94; Ord. of 2-26-96)

Cross reference—Definitions generally, § 1-2.

Sec. 34-27. Parking, storing restricted.

No person shall permit any disabled motor vehicle to be parked, placed or allowed to remain within the city in violation of the provisions of this article.

(Ord. No. 341, § 1, 6-27-94)

Sec. 34-28. Prohibited on streets.

Disabled motor vehicles shall not be permitted on the rights-of-way of the streets, alleys or highways of the city; provided, however, that this prohibition shall not apply to the towing or similar transportation of such vehicles. Further, reasonable time (not to exceed 48 hours from the time of disability) shall be permitted for the removal or servicing of the disabled vehicle in an emergency caused by an accident or sudden breakdown of the vehicle.

(Ord. No. 341, § 3, 6-27-94)

Sec. 34-29. Storage in yard.

Disabled motor vehicles or any parts of a motor vehicle shall not be permitted in the front, side, or rear yards of all parcels of land in the city, unless exempt in section 34-26. Such

disabled motor vehicles or parts of motor vehicles may be kept in an entirely enclosed garage or other entirely enclosed structures; provided, however, that the tearing down, stripping or junking of a motor vehicle shall not be permitted.

(Ord. No. 341, § 4, 6-27-94)

Secs. 34-30—34-50. Reserved.

ARTICLE IV. NOISE

DIVISION 1. GENERALLY

Sec. 34-51. Definitions.

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

Commercial area means a parcel of land zoned for or legally used for commercial purposes. A parcel of land which is zoned commercial by the city's zoning ordinance, or is legally being devoted to a use which is a principal permitted use in such zoning districts is presumed to be such an area.

Construction means any site preparation, assembly, erection, substantial repair, alteration or similar action, but excluding demolition.

Continuous noise means any noise whose level varies less than five dB(A) during a period of at least five minutes.

Daytime, unless otherwise specifically noted, means the hours from 7:00 a.m. to 10:00 p.m.

dB(A) means decibels on the A-weighted network of a sound level meter as specified in American National Standards Institute Standards 5-1.4—1971.

Demolition means any dismantling, intentional destruction or removal of structures, utilities, public or private right-of-way surfaces or similar property.

Emergency means any occurrence or set of circumstances involving actual or imminent physical trauma, property damage which demands immediate action or necessary to protect public health, safety and welfare.

Impulsive noise means a short burst of sound not exceeding ten seconds in duration.

Industrial area means a parcel of land zoned for or used for industrial purposes. A parcel of land which is zoned industrial (I) or is legally being devoted to a use which is a principal permitted use in such zoning district is presumed to be such an area.

Intermittent noise means any noise whose level remains constant which goes on and off during a course of measurement of at least ten seconds, or goes on and off during a period of at least five minutes, but which exceeds ten seconds in duration each time it is on.

Nighttime, unless otherwise specifically noted, means the hours from 10:00 p.m. to 7:00 a.m.

Noise means any sound occurring on either a perpetual, continuous, intermittent or impulsive basis. It also means the intensity, frequency, duration and character of sound, including sound and vibration of subaudible frequencies.

Noise disturbance means any sound which:

- (1) Endangers or injures the safety or health of humans or animals.
- (2) Annoys or disturbs a reasonable person of normal sensibilities.
- (3) Endangers or injures personal or real property.

Perpetual noise means any noise whose level varies less than (3)dB(A) during a period of at least 30 minutes.

Real property boundary means an imaginary line along the ground surface, and its vertical extension, which separates the real property owned by one person from that owned by another person, but not including intrabuilding real property divisions.

Receiving land means the use (commercial, industrial or residential) of the land on or at which a noise is received.

Residential area means a parcel of land zoned for or legally used for residential purposes. A parcel of land which is zoned residential suburban, (RS), R-1, R-2, residential multiple (RB), residential mobile home park (RC) or is legally being devoted to a use which is a principal permitted use in such zoning districts is presumed to be such an area.

Weekday means any day Monday through Friday which is not a legal holiday.
(Ord. No. 331, § 1.02, 9-14-92)

Cross reference—Definitions generally, § 1-2.

Sec. 34-52. Noise levels.

Acceptable noise levels are as follows:

MAXIMUM LEVELS IN db(A)s

<i>Receiving Land Use</i>	<i>Impulsive noise (0—10 seconds)</i>		<i>Intermittent noise (10 seconds— 5 minutes)</i>		<i>Continuous noise (5 minutes— 30 minutes)</i>		<i>Perpetual noise (over 30 minutes)</i>	
	<i>Day</i>	<i>Night</i>	<i>Day</i>	<i>Night</i>	<i>Day</i>	<i>Night</i>	<i>Day</i>	<i>Night</i>
Residential	80	70	70	60	60	50	50	45
Commercial	90	80	75	65	65	60	55	50
Industrial	100	90	85	75	70	65	60	55

Act No. 73 of the Public Acts of Michigan of 1978 (MCL 257.707a et seq), as amended, establishes the following levels for motor vehicles:

<i>Speed limit</i>	<i>Vehicle Size</i>		
	<i>8,500 lbs. or more</i>	<i>Motorcycles or mopeds</i>	<i>All others</i>
35 mph or less	86dB(A)	82dB(A)	76dB(A)
More than 35 mph	90dB(A)	86dB(A)	82dB(A)

NOISE AROUND OUR HOMES

<i>Noise source</i>	<i>Sound level for operator (in dBA)</i>
Refrigerator	40
Floor fan	35 to 70
Clothes dryer	55
Washing machine	47 to 78
Dishwasher	54 to 85
Hair dryer	59 to 80
Vacuum cleaner	62 to 85
Sewing machine	64 to 74
Electric shaver	75
Food disposal (grinder)	67 to 93
Electric lawn edger	
Home shop tools	
Gasoline power mower	
Gasoline riding mower	
Chainsaw	
Stereo	

INTENSITY LEVELS AND HUMAN SPEECH/HEARING:

dB

140	Threshold of pain
130	Feeling of tickle
120	Average threshold of discomfort for pure tones
110	Loud shout at one foot distance
100	Discomfort for speech begins around this level
90	
80	Loud speech
70	
60	Average speech conversational level

dB

50

Faint speech at three foot distance

Whisper (average)

Very quiet speech (faint)

Threshold of hearing (young adult)

(Ord. No. 331, 9-14-92)

Secs. 34-53—34-65. Reserved.

DIVISION 2. DISTURBANCES

Sec. 34-66. Prohibited generally.

It shall be unlawful for any person to unreasonably make, continue or cause to be made or continued any noise disturbance. Noncommercial public speaking and public assembly activities conducted on any public space or public right-of-way shall be exempt from the operation of this section.

(Ord. No. 331, § 2.01, 9-14-92)

Sec. 34-67. Radios, television sets, musical instruments, similar devices.

Operating, playing or permitting the operation or playing of any radio, television, phonograph, drum, musical instrument, sound amplifier or similar device which produces, reproduces, or amplifies sound is prohibited as follows:

- (1) In such a manner as to create a noise disturbance across a real property boundary.
- (2) In such a manner as to create a noise disturbance at 50 feet (15 meters) from such device, when operated in or on a motor vehicle on a public right-of-way or public space.
- (3) In such a manner as to create a noise disturbance to any person other than the operator of the device, when operated by any passenger on a common carrier.

(Ord. No. 331, § 2.02, 9-14-92)

Sec. 34-68. Loudspeakers/public address systems.

It shall be unlawful to:

- (1) Use or operate for noncommercial purpose any loudspeaker, public address system or similar device during the nighttime, so that the sound therefrom creates a noise disturbance across a residential real property boundary.
- (2) Use or operate for any commercial purpose any loudspeaker, public address system, or similar device so that:
 - a. The sound therefrom creates a noise disturbance across a real property boundary.

b. During a nighttime or on a public right-of-way or public space.
(Ord. No. 331, § 2.03, 9-14-92)

Sec. 34-69. Street sales.

It shall be unlawful to offer for sale or sell anything by shouting or outcry within any residential or commercial area of the city except with a permit or license issued pursuant to any other provision of the ordinances of the city.
(Ord. No. 331, § 2.04, 9-14-92)

Sec. 34-70. Animals and birds. (CI)

It shall be unlawful to own, possess or harbor any animal or bird which frequently or for continued duration, howls, barks, meows, squawks or makes other sounds which create a noise disturbance across a residential real property boundary.
(Ord. No. 331, § 2.05, 9-14-92)

Sec. 34-71. Loading and unloading.

Loading, unloading, opening, closing or other handling of boxes, crates, containers, building materials, or similar objects during the nighttime in such a manner as to cause a noise disturbance across a residential real property boundary shall be unlawful.
(Ord. No. 331, § 2.06, 9-14-92)

Sec. 34-72. Vehicle or motorboat repairs and testing.

It shall be unlawful to repair, rebuild, modify or test any motor vehicle, motorcycle or motorboat in such a manner as to cause a noise disturbance across a residential area property boundary.
(Ord. No. 331, § 2.07, 9-14-92)

Sec. 34-73. Places of public entertainment.

It shall be unlawful to operate, play or permit the operation or playing of any radio, television, phonograph, drum, musical instrument, sound amplifier or similar device which produces, reproduces or amplifies sound in any place of public entertainment at a sound level greater than 100 dB(A) as read by the slow response of a sound level meter at any point that is normally occupied by a customer, unless a conspicuous and legible sign is located outside such place, near each public entrance, stating, "Warning: Sound Levels Within May Cause Permanent Hearing Impairment."
(Ord. No. 331, § 2.08, 9-14-92)

Sec. 34-74. Explosives, firearms, similar devices.

The use or firing of explosives, firearms or similar devices which create impulsive sound so as to cause a noise disturbance across a real property boundary or in a public space or right-of-way shall be unlawful.
(Ord. No. 331, § 2.09, 9-14-92)

Sec. 34-75. Domestic power tools.

It shall be unlawful to operate or permit the operation of any mechanically powered saw, drill, sander, grinder, lawn or garden tool, snowblower or similar device used outdoors in residential areas during the nighttime so as to cause a noise disturbance across a residential real property boundary, except in an emergency.

(Ord. No. 331, § 2.10, 9-14-92)

Sec. 34-76. Idling of motor vehicles.

(a) *Idling; defined; violation if in excess of five minutes.* It shall be unlawful for a motor vehicle, other than a police, fire or other vehicle providing a public or emergency service, to idle for a period in excess of five minutes. Idling is defined for the purposes hereof as the running of the engine of a motor vehicle while the vehicle is not in movement.

(b) *Enforcement; warning; consequence of previous warning.* In the event a motor vehicle has idled for a period of five or more minutes, the enforcement officer shall direct the operator of said vehicle to immediately turn off the engine (warning). If such direction is not obeyed, enforcement action shall take place; provided, however, that if the operator of a motor vehicle has been previously warned within the prior six-month period for causing a vehicle to idle for longer than five minutes, as disclosed by police department records (daily officer's report or other departmental record), enforcement action (issuance of a ticket) may take place forthwith.

(c) *Enforcement based upon complaint by private person.* Nothing herein shall preclude enforcement based upon a verifiable complaint from a person, other than an enforcement officer; having direct knowledge of a violation.

(d) *Violation.* Violation hereof shall constitute a misdemeanor and shall be punishable as provided in the Mt. Morris Code for misdemeanors.

(Ord. No. 12-06, §§ 1, 2, 12-10-12)

Secs. 34-77—34-85. Reserved.

DIVISION 3. IMPULSIVE NOISE

Sec. 34-86. Maximum permissible sound levels.

(a) Except as otherwise provided in this article it shall be unlawful for any person to operate, cause or permit to be operated any source of impulsive noise within the city which exceeds the maximum permissible sound levels established in this section, when measured at or within the real property boundary line of the receiving land use.

(b) Maximum permissible sound levels for receiving land uses are hereby established as follows:

	<i>Daytime</i>	<i>Nighttime</i>
(1) Residential area	80 dB(A)	70 dB(A)
(2) Commercial area	90 dB(A)	80 dB(A)
(3) Industrial area	100 dB(A)	90 dB(A)

(Ord. No. 331, § 3.01, 9-14-92)

Secs. 34-87—34-95. Reserved.

DIVISION 4. INTERMITTENT NOISE

Sec. 34-96. Maximum permissible sound levels.

(a) Except as otherwise provided in this article it shall be unlawful for any person to operate, cause or permit to be operated any source of intermittent noise within the city which exceeds the maximum permissible sound levels established in this section, when measured at or within the real property boundary line of the receiving land use.

(b) Maximum permissible sound levels for receiving land uses are hereby established as follows:

	<i>Daytime</i>	<i>Nighttime</i>
(1) Residential area	70 dB(A)	60 dB(A)
(2) Commercial area	75 dB(A)	65 dB(A)
(3) Industrial area	80 dB(A)	75 dB(A)

(Ord. No. 331, § 4.01, 9-14-92)

Secs. 34-97—34-105. Reserved.

DIVISION 5. CONTINUOUS NOISE

Sec. 34-106. Maximum permissible sound levels.

(a) Except as otherwise provided in this article it shall be unlawful for any person to operate, cause or permit to be operated any source of continuous noise within the city which exceeds the maximum permissible sound levels established in this section, when measured at or within the real property line of the receiving land use.

(b) Maximum permissible sound levels for receiving land uses are hereby established as follows:

	<i>Daytime</i>	<i>Nighttime</i>
(1) Residential area	60 dB(A)	50 dB(A)
(2) Commercial area	65 dB(A)	60 dB(A)
(3) Industrial area	70 dB(A)	65 dB(A)

(Ord. No. 331, § 5.01, 9-14-92)

Secs. 34-107—34-115. Reserved.

DIVISION 6. PERPETUAL NOISE

Sec. 34-116. Maximum permissible sound levels.

(a) Except as otherwise provided in this article it shall be unlawful for any person to operate, cause or permit to be operated any source of perpetual noise within the city which exceeds the maximum permissible sound levels established in this section, when measured at or within the real property boundary line of the receiving land use.

(b) Maximum permissible sound levels for receiving land uses are hereby established as follows:

	<i>Daytime</i>	<i>Nighttime</i>
(1) Residential area	50 dB(A)	45 dB(A)
(2) Commercial area	55 dB(A)	50 dB(A)
(3) Industrial area	60 dB(A)	55 dB(A)

(Ord. No. 331, § 6.01, 9-14-92)

Secs. 34-117—34-125. Reserved.

DIVISION 7. EXEMPTIONS

Sec. 34-126. Exemptions.

The provisions of this article shall not apply to the following:

- (1) The emission of sound for the purpose of alerting persons to the existence of an emergency.
- (2) The emission of sound in the performance of emergency work.

- (3) Motor vehicles and equipment for which noise levels are regulated by Act No. 73 of the Public Acts of Michigan of 1978 (MCL 257.707a et seq.), as amended, and/or the city traffic code.
- (4) Aircraft and trains.
- (5) The erection (including excavating), demolition, alteration or repair of any building:
 - a. Between the hours of 7:00 a.m. and 8:00 p.m. Monday through Saturday and 10:00 a.m. to 6:00 p.m. on Sunday; or
 - b. At any other time if a permit has been secured from the department of building and safety inspection. Such permit may be issued if the department of building and safety inspection finds the following facts to exist:
 - 1. Issuance of the permit is in the interest of public health or safety.
 - 2. The public health and safety will not be impaired.
 - 3. The permit is necessary to avoid substantial loss or inconvenience to an interested party.
- (6) The operation of domestic tools such as lawnmowers, snowblowers, edgers, etc., when such tools are operated in a manner and frequency that is normal and customary in the community.
- (7) Public functions which request and are given specific exemption by the city council.
(Ord. No. 331, § 7.01, 9-14-92)

Secs. 34-127—34-129. Reserved.

ARTICLE V. AIR POLLUTION*

Sec. 34-130. Definition.

For the purpose of this article, "outdoor wood-fired boilers" shall mean, but not necessarily be limited to, a wood-fired boiler, stove, furnace or wood-fired hydronic heater that is not located within a building intended for habitation by humans or domestic animals.

(Ord. No. 10-02, § 1, 2-8-10)

Sec. 34-131. Outdoor wood-fired boilers.

No outdoor wood-fired boilers shall be installed or used within the City of Mt. Morris.
(Ord. No. 10-02, § 1, 2-8-10)

***Editor's note**—Ord. No. 10-02, § 1, adopted Feb. 8, 2010, set out a new Art. V in Ch. 34. The existing Art. V, §§ 34-140—34-143, has been renumbered as Art. VI at the discretion of the editor.

Sec. 34-132. Applicability.

This article shall not apply to:

- (a) Grilling or cooking food using charcoal, wood, propane or natural gas in cooking, grilling appliances or portable fire pits.
 - (b) Burning for the purpose of generating heat in a stove, furnace, fireplace or other wood-fired heating device contained within a building used for human or animal habitation.
 - (c) The use of propane, acetylene, natural gas, gasoline or kerosene in a device intended for heating, construction or maintenance activities.
- (Ord. No. 10-02, § 1, 2-8-10)

Sec. 34-133. Violation.

Violation of the prohibition set forth in this article shall constitute a misdemeanor and shall subject the violator to the general penalties set forth in this Code.
(Ord. No. 10-02, § 1, 2-8-10)

Secs. 34-134—34-139. Reserved.

ARTICLE VI. COST RECOVERY*

Sec. 34-140. Definitions.

Hazardous materials and conditions mean (a) any materials which pose a substantial present or potential hazard to human life, health and safety, or the environment, including but not limited to hazardous substances as defined in Act No. 307 of Michigan Public Acts 1982 (being MCL 299.603), as amended, and any other substances that have been classified by the local, state or federal government or any of their departments or agencies to be hazardous or toxic, or (b) any condition, circumstances, or situation which poses a threat or danger to the health, safety and welfare of persons in the vicinity thereof. This definition includes, but is not limited to, conditions which may produce fire, electrocution, flooding and shifting of earth.

Release means any unpermitted spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, leaching, dumping or disposing into the environment, including release of hazardous materials from motor vehicle accidents and fires.

Responsible party means any individual, firm, corporation, association, partnership, commercial entity, consortium, joint venture, government entity or any other legal entity that is responsible for a release of a hazardous material, either actual or threatened, or is an owner, as defined in Act No. 307 of Michigan Public Act 1982 (being MCL 299.603), as amended, tenant, occupant or party in control of property onto which or from which hazardous materials

***Note**—See the editor's note to Art. V.

have been released or has created or is responsible for the correction, repair, removal or abatement of a hazardous condition. The owner of a motor vehicle involved in an accident or fire is included in this definition.

(Ord. of 9-27-99(2))

Sec. 34-141. Duty to remove or abate.

It shall be the duty of any responsible party to immediately remove hazardous materials released and undertake and complete a total cleanup of the area of the release in such a manner as to ensure that the hazardous materials are fully removed and the area is fully restored to its condition prior to the release of such hazardous materials, or to conditions or standards established by Michigan Department of Natural Resources pursuant to Act No. 307 of the Michigan Public Acts of 1982, as amended, or other applicable law or environmental law or regulation or to correct, repair or abate a hazardous condition and restore the area to a condition of safety.

(Ord. of 9-27-99(2))

Sec. 34-142. Failure to remove.

(1) Any responsible party who fails to comply with section 34-141 shall be liable to the city, its agents, contractors and employees for any costs incurred in the removal and cleanup of any and all hazardous materials and the restoration of the affected property and for costs incurred in correcting, abating, repairing and removing or assisting therein, of any hazardous condition.

(2) In the event any responsible party fails to remove immediately such hazardous material or to correct, repair, remove or abate a hazardous condition, the city shall have the right to enter on to the property involved with the release and remove and conduct a cleanup of all such hazardous materials or to correct, repair, remove or abate a hazardous condition, either by city employees or by contractors and agents of the city.

(3) In the event of a utility line failure which is defined as the disabling of any transmission or service line, cable, conduit, pipeline, wire or the like, used to provide, collect or transport electricity, natural gas, communication or electronic signals (including, but not limited to, telephone, computer, cable television and stereo signals or electronic impulses), water or sanitary or storm sewage if the owner or party responsible for the maintenance of said utility line does not respond within one hour to a request to repair or correct such failure. In the event of failure to correct such failure within the one-hour period, the city or its contractor may correct the same at its cost and the owner of such facility shall be responsible for costs incurred pursuant to section 34-143. Costs shall include costs actually incurred plus overhead charges as determined by the city manager.

(Ord. of 9-27-99(2); Ord. No. 06-05, 11-27-06)

Sec. 34-143. Liability for cost recovery; lien on real estate.

(a) All costs incurred by the city under section 34-142 shall be the responsibility of the responsible party. The responsible party shall be liable for costs actively incurred, including but not limited to charges by contractors, suppliers and other non-city parties, and shall include a reasonable overhead charge established by the city manager.

(b) In the event that said costs are not paid, the city may take whatever collection steps may be deemed appropriate, including, in cases where real estate is involved, the placement of all such charges on the tax roll for said property and to levy and collect such costs in the same manner as provided for the levy and collection of real property taxes against such property.

(c) The city may pursue any other remedy, or may institute any appropriate action or proceedings in a court of competent jurisdiction to collect costs for which liability is imposed under this section.

(d) The recovery of charges imposed under this section does not limit or modify liability of parties under local ordinance, state or federal law, rule or regulation.

(Ord. of 9-27-99(2))

Chapter 35

RESERVED

Chapter 36

FINANCE AND BUDGETING

- Sec. 36-1. Penalty for late payment of summer taxes; real and personal; interest; partial payments.
- Sec. 36-2. Reserved.

Sec. 36-1. Penalty for late payment of summer taxes; real and personal; interest; partial payments.

In addition to such other penalties as may be provided by law, after September 15 next following the issuance of the statement for summer taxes, real and personal, a penalty in the amount of six percent of the amount of the tax shall be added thereto. In the event of a partial payment, the amount paid shall be applied in the following order:

(1) Penalty;

(2) Delinquent tax.

(Ord. of 6-9-97(1), § 1; Ord. No. 01-03, § 1, 1-22-01)

Sec. 36-2. Reserved.

Editor's note—Ord. No. 01-02, § 1, adopted Jan. 22, 2001, repealed § 36-2 which pertained to withholding of certain municipal services in the event of delinquent personal property taxes and derived from § 2 of an ordinance adopted June 9, 1997.

Chapter 37

RESERVED

Chapter 38

FIRE PREVENTION AND PROTECTION*

Article I. In General

Secs. 38-1—38-25. Reserved.

Article II. Fire Prevention Code

Sec. 38-26. Adoption.

Sec. 38-27. Modifications.

Sec. 38-28. Publication, availability of code at city offices.

Secs. 38-29—38-50. Reserved.

Article III. Open Burning

Sec. 38-51. Applicability.

Sec. 38-52. Definitions.

Sec. 38-53. General prohibition on outdoor burning.

Sec. 38-54. Patio wood-burning units.

Sec. 38-55. Right of entry and inspection.

Sec. 38-56. Enforcement and penalties.

***Cross references**—Administration, ch. 2; buildings and building regulations, ch. 14.

State law references—State fire prevention act, MCL 29.1 et seq.; crimes related to explosives and bombs, MCL 750.200 et seq.; crimes related to fires, MCL 750.240 et seq.

ARTICLE I. IN GENERAL

Secs. 38-1—38-25. Reserved.

ARTICLE II. FIRE PREVENTION CODE

Sec. 38-26. Adoption.

Pursuant to Section 3(k) of Act No. 279 of the Public Acts of Michigan of 1909 (MCL 117.1 et seq.), as amended, and the general authority of the city, the BOCA National Fire Prevention Code/1993 (Ninth Edition), as published by the Building Officials and Code Administrators International, is hereby adopted and shall be known as the city fire prevention code. References therein to jurisdiction shall be to the city and the references therein to the date of adoption shall mean the date this ordinance or any portion or section thereof takes effect. The purpose of the code is to provide comprehensive fire prevention and fire safety regulations for the city.

(Ord. No. 295, art. II, 6-13-88)

Sec. 38-27. Modifications.

(a) Section F-113.0 of the BOCA National Fire Prevention Code adopted in this article is amended and modified as follows: The housing board of appeals established by virtue of the minimum housing code of the city, section 14-111 et seq. of the Code of Ordinances, is hereby constituted the board of appeals under this code. Those subsections of article III relative to amendments and modifications to building code as may pertain to appeal procedures shall be invoked to the extent applicable. Specifically, such procedural rules and regulations as apply to appeals under the BOCA National Building Code/1993, shall apply with respect to the BOCA National Fire Prevention Code/1993. Those subsections of Section F-113.0 not inconsistent with the above shall remain in full force and effect. In case of the absence of procedural or administrative matters from the fire prevention code, the procedures set forth in, or with respect to the building code shall apply.

(b) Penalty and procedures. The penalty clause set forth in Section 116.4 of the BOCA National Building Code/1993 shall apply to violations of the fire prevention code.

(Ord. No. 295, art. IV, 6-13-88)

Sec. 38-28. Publication, availability of code at city offices.

Printed copies of the codes adopted in this article shall be kept in the office of the city clerk, available for inspection by, and distribution to, the public at all times. Copies of the codes shall be sold to the public at their cost to the city. The publication with respect to these codes shall contain a notice stating that complete copies of the codes are available to the public at the office of the city clerk in compliance with state law requiring that records of public bodies be made available to the general public.

(Ord. No. 295, art. VI, 6-13-88)

Secs. 38-29—38-50. Reserved.

ARTICLE III. OPEN BURNING*

Sec. 38-51. Applicability.

This article applies to all outdoor burning within the City of Mt. Morris.

- (a) This article does not apply to grilling or cooking food using charcoal, propane or natural gas in cooking or grilling appliances.
- (b) This article does not apply to burning for the purpose of generating heat in a stove, furnace, fireplace or other heating device within a building used for human or animal habitation.
- (c) This article does not apply to the use of propane, acetylene, natural gas, gasoline or kerosene in a device intended for heating, construction or maintenance activities.
- (d) A permit must be obtained from the City of Mt. Morris to have an outdoor fire in a patio wood burning unit.
 - (1) The fee for this permit shall be set by resolution of the Mt. Morris City Council. The permit shall be valid for one year from date issued.
 - (2) Any outdoor fire must be attended by an adult at least 18 years of age.
 - (3) Any outdoor fire must be extinguished by midnight.
 - (4) It is the responsibility of the permit holder to have the permit on site and available to present to the fire department or the police department upon request.
 - (5) Site must be inspected by fire officer at the time the permit is issued before burning can begin.
 - (6) The permit shall be subject to revocation by the fire chief upon a finding of more than one event of noncompliance with this article. Appeal of such revocation may be taken, upon ten days notice, in writing, to the city manager whose determination shall be final.

(Ord. No. 08-02, 2-25-08)

Sec. 38-52. Definitions.

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

Clean wood means natural wood which has not been painted, varnished or coated with a similar material; has not been pressure treated with preservatives; and does not contain resins or glues as in plywood or other composite wood products.

***Editor's note**—Ord. No. 08-02, adopted Feb. 25, 2008, amended Art. III in its entirety to read as set out herein. The former Art. III, §§ 38-51—38-55, pertained to similar subject matter and derived from Ord. No. 311, §§ 1—5, adopted Feb. 11, 1991.

Habitable structure means any structure constructed for the purpose of a living space.

Non-habitable structure means any other structures including, but not limited to, sheds, barns, garages, carports, decks, or fences.

Outdoor burning means the burning of materials outside.

Patio wood-burning unit means a portable wood-burning device used for outdoor recreation that must be an enclosed or screened-in unit with a lid or cover and not larger than 36 inches high × 36 inches deep × 36 inches wide.

Refuse means any waste material including construction and demolition waste including but not limited to shingles, insulation, lumber, treated wood, wiring, packaging, plastics and rubble.

(Ord. No. 08-02, 2-25-08)

Sec. 38-53. General prohibition on outdoor burning.

All outdoor burning is prohibited in the City of Mt. Morris unless the burning is specifically permitted by this article.

(Ord. No. 08-02, 2-25-08)

Sec. 38-54. Patio wood-burning units.

A patio wood-burning unit may be installed and used in the City of Mt. Morris only in accordance with all of the following provisions and a permit therefore shall be obtained and is the only type of burning allowed:

- (a) The patio wood-burning unit shall not be used to burn refuse.
- (b) The patio wood-burning unit shall burn only clean wood which shall completely fit within the unit.
- (c) The patio wood-burning unit shall be located at least 15 feet from the nearest habitable structure on your property and at least 15 feet from your neighbor's non-habitable structures.
- (d) The patio wood-burning unit shall be located at least five feet from the nearest non-habitable structure.
- (e) A method of extinguishment shall be readily available. Attached garden hose or fire extinguisher is preferred.
- (f) The patio wood-burning unit shall not cause a nuisance to neighbors.

(Ord. No. 08-02, 2-25-08)

Sec. 38-55. Right of entry and inspection.

The fire chief or any authorized fire officer of the City of Mt. Morris Fire Department who presents credentials may inspect any property for the purpose of ascertaining compliance with the provisions of this article.

(Ord. No. 08-02, 2-25-08)

Sec. 38-56. Enforcement and penalties.

(a) The fire chief, all fire officers and the police department are authorized to enforce the provisions of this article.

(b) Any person, firm, association, partnership, corporation, who violates any of the provisions of this article or fails to comply with a duly authorized order issued pursuant to this article shall be deemed to be responsible for a municipal civil infraction as defined by Michigan statute and this Code of the City of Mt. Morris, and shall be punishable by civil fine determined in accordance with the civil infraction section of this Code. Each day that a violation of this article exists shall constitute a separate violation of this article. The court shall set the fine in accordance with the following schedule:

	<i>Minimum Fine</i>	<i>Maximum Fine</i>
1st offense within three-year period*	\$75.00	\$500.00
2nd offense within three-year period*	150.00	500.00
3rd offense within three-year period*	325.00	500.00
4th or more offense within three-year period*	500.00	500.00

*Determined on the basis of the date of commission of the offense(s)

(c) Cost of extinguishment; recovery of costs; lien upon real estate.

- (1) The person, firm, association, partnership or corporation found responsible for a civil infraction shall pay costs which may include all expenses, direct and indirect, which the City of Mt. Morris has incurred in connection with the municipal infraction including, but not limited to, the cost of the emergency response and fire fighting services, if needed. The city manager shall establish the charge based upon the actual cost of equipment utilization and personnel plus a reasonable overhead factor.
- (2) In any circumstance where prohibited burning, including burning without a permit in a patio wood burning unit, must be extinguished at city expense, the cost of extinguishing same as set forth in subsection (1) together with any other costs of emergency response, shall be borne by the owner of the real estate upon which the prohibited fire occurred.
- (3) After failure to respond to an appropriate demand, for the costs as set forth in subsections (1) and (2), upon the filing of an appropriate affidavit, said costs shall be placed as a lien upon the real estate upon which the burning took place and shall be collectible in the same manner as real estate taxes.

(d) In addition, the City of Mt. Morris shall have the right to proceed in any court of competent jurisdiction for the purpose of obtaining a restraining order, or other appropriate remedy to compel compliance with this article.

(Ord. No. 08-02, 2-25-08)

Chapters 39—41

RESERVED

Chapter 42

OFFENSES AND MISCELLANEOUS PROVISIONS*

Article I. In General

- Sec. 42-1. Establishment of child watch program; designation of police department as agency; violations, penalty.
- Sec. 42-2. Aiding or abetting.
- Sec. 42-3. Carnivals.
- Secs. 42-4—42-25. Reserved.

Article II. Offenses Affecting Governmental Functions

- Sec. 42-26. Making false reports to police or fire department.
- Sec. 42-27. Interfering with police officer making arrest.
- Sec. 42-28. Resisting police officer.
- Sec. 42-29. Assaulting police officer.
- Sec. 42-30. Hindering, assaulting city employee or person working on city property or projects; injury to city motor vehicles.
- Secs. 42-31—42-50. Reserved.

Article III. Offenses Against the Person

- Sec. 42-51. Unlawful telephone harassment.
- Sec. 42-52. Assault; assault and battery; domestic assault.
- Secs. 42-53—42-70. Reserved.

Article IV. Offenses Against Property

- Sec. 42-71. Malicious destroying or injuring personal property.
- Sec. 42-72. Malicious breaking down or injuring fences; opening gates.
- Sec. 42-73. Maliciously injuring or destroying fruit, shade or ornamental trees.
- Sec. 42-74. Maliciously injuring or destroying house, barn or building of another.
- Sec. 42-75. Throwing stone or missile at train, automobile.
- Sec. 42-76. Larceny.
- Sec. 42-77. Rioting, collecting crowd, breach of peace.
- Sec. 42-78. Prowling.
- Sec. 42-79. Damaging, destroying light fixtures or equipment in public place.
- Sec. 42-80. Breaking and entering coin box.
- Sec. 42-81. Fraudulent schemes.
- Sec. 42-82. Insufficient funds for checks, drafts.
- Sec. 42-83. Presumption as to insufficient funds for payment of checks, drafts.
- Sec. 42-84. Littering public and private property.
- Sec. 42-85. Litter defined.
- Sec. 42-86. Collection of litter.
- Sec. 42-87. Entrance upon lands or premises of another without authority or contrary to expressed wish of owner; failure to leave upon request.

***Cross references**—Environment, ch. 34; traffic and vehicles, ch. 62.

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Secs. 42-88—42-110. Reserved.

Article V. Offenses Against Public Peace

- Sec. 42-111. Disorderly conduct, disorderly person generally.
- Sec. 42-112. Disturbance at public function.
- Sec. 42-113. Use of coasters, roller skates or blades and similar devices.
- Secs. 42-114—42-135. Reserved.

Article VI. Offenses Against Public Morals

- Sec. 42-136. Window peeping.
- Sec. 42-137. Indecent exposure.
- Sec. 42-138. Frequenting disorderly house; what constitutes proof of character of house.
- Sec. 42-139. Keeping gambling house.
- Sec. 42-140. Permitting house to be used for gambling.
- Sec. 42-141. Frequenting gambling house.
- Sec. 42-142. Right of entry of police; seizure, disposition of gambling devices.
- Sec. 42-143. Possession of marijuana in public place.
- Sec. 42-144. Controlled substances paraphernalia.
- Sec. 42-145. Consumption of alcoholic liquor on a highway, street, alley or public or private property open to the public.
- Sec. 42-146. Delivery, possession, distribution or sale of controlled substances; prohibited generally.
- Sec. 42-147. Loitering.
- Secs. 42-148—42-165. Reserved.

Article VII. Offenses Against Public Safety

- Sec. 42-166. Reserved.
- Sec. 42-167. Handling, discharging firearms.
- Sec. 42-168. Dangerous weapons; possession restricted.
- Sec. 42-169. Smoking or carrying lighted tobacco in certain places.
- Sec. 42-170. Designation of areas where smoking prohibited; duty of owner.
- Sec. 42-171. Posting of signs prohibiting or permitting smoking.
- Secs. 42-172—42-190. Reserved.

Article VIII. Offenses on School Grounds

- Sec. 42-191. Damaging or defacing building.
- Sec. 42-192. Damaging or defacing fences, trees, other fixtures.
- Sec. 42-193. Disturbing class sessions.
- Sec. 42-194. Disturbing gatherings, functions.
- Sec. 42-195. Indecent language used in buildings.
- Sec. 42-196. Indecent language used on lands.
- Sec. 42-197. Unauthorized entry upon school grounds.
- Sec. 42-198. Refusal to leave upon request.
- Sec. 42-199. Unauthorized vehicles on school property.
- Secs. 42-200—42-220. Reserved.

OFFENSES AND MISCELLANEOUS PROVISIONS

Article IX. Offenses Involving Underaged Persons

- Sec. 42-221. Contributing to delinquency of minors.
- Sec. 42-222. Curfew for minors 12 and under.
- Sec. 42-223. Curfew for minors under 16.
- Sec. 42-224. Parental duties and responsibilities; supervision and control of unemancipated juvenile. (CI)
- Sec. 42-225. Failure of parent or guardian to collect minor in custody.
- Sec. 42-226. Persons 17 or over aiding or abetting violations.
- Sec. 42-227. Section 701 of the Michigan Liquor Control Code of 1998 adopted.
- Sec. 42-228. Section 703 of the Michigan Liquor Control Code of 1998 adopted.
- Sec. 42-229. Reserved.
- Sec. 42-230. Underage smoking or possession of tobacco materials (CI).

ARTICLE I. IN GENERAL**Sec. 42-1. Establishment of child watch program; designation of police department as agency; violations, penalty.**

(a) The police department is hereby designated the local law enforcement agency for the purpose of establishing and sponsoring a McGruff House/Child Watch Program. The police department shall take any necessary action pursuant to Act No. 127 of the Public Acts of Michigan of 1991 (MCL 722.1 et seq.), as amended and guidelines established pursuant thereto including the conduct of a background check, including a criminal history check on each person who applies to have his house designated as a McGruff House or Michigan Community Child Watch House and on each adult residing in the person's home. The department shall acquire and distribute appropriate symbols and signs for the purpose of administering the program.

(b) A person shall not display a sign bearing the standard McGruff House symbol or standard Michigan Community Child Watch symbol so that the sign is visible from the outside of the person's house unless the person's home has been approved as a McGruff House or Michigan Community Child Watch House by the police department and a person shall not refuse to return to the police department his sign or symbol if the police department determines that a person's home no longer qualifies as a McGruff House or Michigan Community Child Watch House.

(Ord. No. 333, §§ 1, 2, 1-25-93)

Sec. 42-2. Aiding or abetting.

Whenever any act is prohibited or declared unlawful by this chapter, or by any amendment to this chapter, the prohibition shall extend to and include the causing, securing, aiding or abetting of another person to do the act.

(Ord. No. 273, § 55, 8-12-85)

Sec. 42-3. Carnivals.

It shall be unlawful for any person to promote or conduct any collection or combination of shows and concessions, known as carnivals, within the city without a permit granted by the city council. No permit shall be granted prior to written application by the person desiring to conduct the carnival and an investigation by the police department.

(Ord. No. 273, § 28, 8-12-85)

Secs. 42-4—42-25. Reserved.**ARTICLE II. OFFENSES AFFECTING GOVERNMENTAL FUNCTIONS****Sec. 42-26. Making false reports to police or fire department.**

(a) It shall be unlawful for any person to report or cause to be reported any felony or misdemeanor, or give any information relating to any such felony or misdemeanor, to the department of police of the city, or to any member of such police department by telephone, in writing or by other means of communication, knowing that no such felony or misdemeanor had in fact been committed.

(b) It shall be unlawful for any person to give information or report to the department of police of the city, or to any member of such police department, relating to any felony or misdemeanor, which information or report is false and which information or report such person knows to be false.

(c) It shall be unlawful for any person to give any information, knowing it to be false, to any member of the department of police of the city, when such member of the police department of the city is in the performance of his official duties.

(d) It shall be unlawful for any person to knowingly give false or misleading information or make a false report of a fire or any other incident or matter within the jurisdiction or concern of the fire department to any member of the police or fire departments or any other city official charged with taking official action with respect thereto.

(Ord. No. 273, § 17, 8-12-85)

State law reference—False alarms, MCL 750.240.

Sec. 42-27. Interfering with police officer making arrest.

(a) It shall be unlawful for any person to interfere, by means of any threat or violence, to deter or prevent any police officer from effecting a lawful arrest or performing any duty imposed upon such police officer by law.

(b) It shall be unlawful for any person to attempt to interfere with a police officer while such officer is engaged in making a lawful arrest, or to attempt to resist arrest or attempt to assault a police officer while such officer is discharging, or attempting to discharge, a duty of his office, or is engaged in making a lawful arrest.

(Ord. No. 273, § 1, 8-12-85)

State law reference—Resisting officer in discharge of duty, MCL 750.479.

Sec. 42-28. Resisting police officer.

It shall be unlawful for any person to:

- (1) Knowingly and willfully obstruct, resist and oppose any police officer or other person duly authorized, in serving, attempting to serve or execute any process, rule or order made or issued by lawful authority.
- (2) Knowingly and willfully obstruct, resist or oppose any member of the police force or fire department in the discharge of his lawful duties or fail to obey the lawful order of the officer, when such person knows or should know him to be a member of the police force or fire department.

(Ord. No. 273, § 2, 8-12-85)

State law reference—Obstruction of police officer, MCL 750.479.

Sec. 42-29. Assaulting police officer.

It shall be unlawful for any person to assault, beat or otherwise threaten a police officer while making a lawful arrest, or while such officer is performing any duty imposed upon such police officer by law.

(Ord. No. 273, § 3, 8-12-85)

Sec. 42-30. Hindering, assaulting city employee or person working on city property or projects; injury to city motor vehicles.

(a) It shall be unlawful for any person to knowingly or willfully obstruct, resist, oppose, assault, beat or wound any employee of the city or any person working on city property or projects pursuant to a contract with the city or pursuant to official authorization by the city administration while the employee is engaged in the lawful performance of his official duties or while the person is engaged in work on city property or projects as above set forth.

(b) It shall be unlawful for any person to cut, mark, scratch, damage or destroy the body, sides, top or any of the accessories, equipment, appurtenances or attachments of any motor vehicle of the city being used by an employee of the city or city official who is engaged in lawful performance of his official duties.

(Ord. No. 273, § 12, 8-12-85)

Secs. 42-31—42-50. Reserved.**ARTICLE III. OFFENSES AGAINST THE PERSON****Sec. 42-51. Unlawful telephone harassment.**

It shall be unlawful for any person within the city to telephone any other person repeatedly or cause any person to be telephoned repeatedly for the sole purpose of harassing or molesting such person or his family whether or not conversation ensues, except for telephone calls made for legitimate business purposes.

(Ord. No. 273, § 36, 8-12-85)

Sec. 42-52. Assault; assault and battery; domestic assault.

(a) It shall be unlawful for a person to assault or assault and batter his or her spouse or former spouse, an individual with whom he or she has or has had a dating relationship, an individual with whom he or she has had a child in common, or a resident or former resident of his or her household.

(b) A person found guilty under this section shall be guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$500.00, or both, anything in this Code of Ordinance to the contrary notwithstanding.

(Ord. No. 02-01, § 1, 1-28-02; Ord. No. 08-04, § 1, 4-28-08)

Secs. 42-53—42-70. Reserved.

ARTICLE IV. OFFENSES AGAINST PROPERTY

Sec. 42-71. Malicious destroying or injuring personal property.

It shall be unlawful for any person within the city to willfully and maliciously destroy or injure the personal property of another.
(Ord. No. 273, § 39, 8-12-85)

Sec. 42-72. Malicious breaking down or injuring fences; opening gates.

It shall be unlawful for any person within the city to maliciously break down, injure or deface any fence belonging to or enclosing land not his own, or to maliciously throw down or open any gate, bars or fence to leave it down or open.
(Ord. No. 273, § 40, 8-12-85)

Sec. 42-73. Maliciously injuring or destroying fruit, shade or ornamental trees.

It shall be unlawful for any person within the city to willfully and maliciously, or wantonly or without cause, cut down or destroy or otherwise injure any tree or shrub not his own, standing or growing on the land of another.
(Ord. No. 273, § 41, 8-12-85)

Sec. 42-74. Maliciously injuring or destroying house, barn or building of another.

It shall be unlawful for any person within the city to willfully and maliciously destroy or injure any house, barn or other building of another or the appurtenances thereof.
(Ord. No. 273, § 42, 8-12-85)

Sec. 42-75. Throwing stone or missile at train, automobile.

It shall be unlawful for any person within the city to throw any stone, brick or other missile at any passenger coach, express car, mail car, baggage car, locomotive, caboose, freight train or at any motor vehicle.
(Ord. No. 273, § 43, 8-12-85)

Sec. 42-76. Larceny.

It shall be unlawful for any person to commit the offense of larceny by taking any property not his own and to which he has no claim or right with the intent of permanently depriving the owner of lawful possession, or to receive or possess any such property knowing it to be stolen.
(Ord. No. 273, § 13, 8-12-85)

State law reference—Similar provisions, MCL 750.356.

Sec. 42-77. Rioting, collecting crowd, breach of peace.

All persons who shall make, aid or assist in making any riot, disturbance or improper diversion, or who shall aid or assist in collecting a crowd for any unlawful purpose, or who shall commit any breach of the peace, shall be deemed to be disorderly persons.

(Ord. No. 273, § 14, 8-12-85)

State law reference—Disturbing public places, MCL 750.170.

Sec. 42-78. Prowling.

It shall be unlawful for any person to knowingly prowl about premises owned or leased by another in the nighttime, without the express or implied consent of that person. "Nighttime" for the purpose of this section is defined as the period from one-half hour after sunset to one-half hour before sunrise.

(Ord. No. 273, § 15, 8-12-85)

Sec. 42-79. Damaging, destroying light fixtures or equipment in public place.

It shall be unlawful for any person to damage or destroy any lighting fixture, bulb, cable, wire, insulator, transformer or any other equipment designed for the illumination of any public street, park, playground or other public place, or any equipment designed for the production or transmission of electrical current for such illumination.

(Ord. No. 273, § 19, 8-12-85)

State law reference—Malicious mischief, MCL 750.377a et seq.

Sec. 42-80. Breaking and entering coin box.

It shall be unlawful for any person within the city to maliciously and willfully, with or without the aid and use of any key, instrument, device or explosive, blow or attempt to blow, to force or attempt to force an entrance into any coin box, depository box, newspaper coin box, or other receptacle established and maintained for the convenience of the public, which person does not own or is not an agent of the owner, or for any person not making payment for article of merchandise or service, wherein is contained any money or thing of value, to extract or obtain, or attempt to extract or obtain, such money or thing of value so deposited or contained therein.

(Ord. No. 273, § 24, 8-12-85)

State law reference—Similar provisions, MCL 750.356b.

Sec. 42-81. Fraudulent schemes.

It shall be unlawful for any person within the city to engage in any fraudulent scheme, device or trick to obtain money or other valuable things.

(Ord. No. 273, § 26, 8-12-85)

State law reference—Frauds and cheats, MCL 750.271 et seq.

Sec. 42-82. Insufficient funds for checks, drafts.

It shall be unlawful for any person in the city to draw, utter or deliver any check, draft or order for payment of money, to apply on account or otherwise, upon any bank or other depository with the intent to defraud, knowing at the time of such making, drawing, uttering or delivering that the maker or drawer has not sufficient funds or credit with such bank or other depository, for the payment of such check, draft or order, in full, upon its presentation, if the amount payable in the check is \$500.00 or less.

(Ord. No. 273, § 27, 8-12-85; Ord. of 10-14-96)

Sec. 42-83. Presumption as to insufficient funds for payment of checks, drafts.

As against the maker or drawer thereof, the making, drawing, uttering or delivering of a check, draft or order, payment of which is refused by the drawee when presented in the usual course of business, shall be prima facie evidence of intent to defraud and of knowledge of the insufficient funds in or credit with such bank or other depository, provided such maker or drawer shall not have paid the drawee thereof the amount due thereon, together with all costs and protest fees, within five days after receiving notice that the check, draft or order has not been paid by the drawee.

(Ord. No. 273, § 28, 8-12-85)

State law reference—Bad checks, MCL 750.131.

Sec. 42-84. Littering public and private property.

It shall be unlawful for any person to dump, deposit, place, throw, leave or allow to exist or remain, any litter on any public or private property other than property designated and set aside for such purposes because of usage or in accordance with the zoning laws of the city. The phrase "public or private property" includes, but is not limited to, the right-of-way of any road, alley or highway, any park, playground, building, refuge or conservation or recreation area, and any residential or farm properties, timberlands, vacant properties, commercial properties or other properties.

(Ord. No. 273, § 30, 8-12-85)

Sec. 42-85. Litter defined.

The term "litter" as used in this article means all rubbish, refuse, waste material, garbage, offal, paper, glass, cans, bottles, trash, ashes, dead animals, solid material and industrial wastes, junk, scrap metal, scrap lumber, discarded building materials, dismantled, partially dismantled or inoperable vehicle or vehicles, abandoned vehicle parts, machinery or machinery parts, debris or other foreign substances of every kind and description.

(Ord. No. 273, § 31, 8-12-85)

Sec. 42-86. Collection of litter.

It shall be unlawful within the city to use any cart, wagon, truck or other vehicle for the purpose of conveying any swill, offal, litter or other garbage away, which is not perfectly tight

and covered so as to prevent the contents from leaking or spilling. It shall be unlawful for any such cart, wagon, truck or vehicle when not actually in use to be allowed to stand in any street, lane, alley or public place within the city limits.

(Ord. No. 273, § 33, 8-12-85)

Sec. 42-87. Entrance upon lands or premises of another without authority or contrary to expressed wish of owner; failure to leave upon request.

It shall be unlawful for any person to willfully enter upon the lands or premises of another without lawful authority or contrary to the expressed wish of the owner, lessee, managing agent or person in control or charge of the building or premises, or for any person being upon the land or premises of another upon being notified to depart therefrom by the owner, or occupant, the agent or servant of either, to, without lawful authority, neglect or refuse to depart therefrom. The time required in so doing shall be dependent upon the individual facts and circumstances.

(Ord. No. 273, § 51, 8-12-85)

Secs. 42-88—42-110. Reserved.

ARTICLE V. OFFENSES AGAINST PUBLIC PEACE

Sec. 42-111. Disorderly conduct, disorderly person generally.

- (a) It shall be unlawful for any person to:
 - (1) Commit an assault or an assault or battery upon any person.
 - (2) Engage in any fight in a public place except when doing so solely in self-defense.
 - (3) Remain in any public place after its regular closing hours after being told to leave by the owner, lessee or their agents or employees or by anyone authorized to give such an order.
 - (4) Conduct himself in any public place, or join with one or more other persons in a public place, if he knows or should know that, singly or together with others with whom he has joined, he is unreasonably obstructing the free and uninterrupted passage of the public along any street or sidewalk; provided, that this subsection is not to be interpreted to conflict with the laws of the United States, the state or the rules and regulations of the National Labor Relations Board regarding picketing in labor disputes.
 - (5) Persist in disturbing the public peace and quiet by loud or aggressive conduct, having once been clearly informed by persons affected that he is in fact unreasonably causing such a disturbance; provided, however, that notice need not be given when such persons affected reasonably believe that to do so would constitute a risk to their personal safety.

- (6) Persist in disturbing the peace and orderly conduct of any meeting or a public body or any meeting open to the general public by any conduct or communication which by its very existence inflicts injury or tends to incite an immediate breach of peace or which prevents the peaceful and orderly conduct of such meeting after having been clearly informed that he is in fact unreasonably causing such disturbances.
- (7) Knowingly transport any person, for consideration, or the offer of consideration, to a place where the business of prostitution, gambling or illegal sale of liquor is carried on, for the purpose of enabling such person to be a customer of any such business.
- (8) Knowingly harass any other person. "Harass" is defined as any repeated nonverbal conduct which is specifically intended to frighten, embarrass or anger the person who is the object of such conduct, or which the person accused has reason to know is likely to produce such reactions or any repeated verbal communication which by its very utterance inflicts injury or incites an immediate breach of peace.
- (9) Urinate or defecate on any public street, sidewalk, or on the floor of that part of any building open to the public or any other place in view of the public not specifically designated for that purpose.
- (10) Throw any object from any moving vehicle, or toward any person or moving vehicle if he knows or should know that damage to person or property, or alarm which may foreseeably produce damage to person or property, is likely to result.
- (11) Knowingly destroy, damage or deface or remove any public property or other property not his own.
- (12) Summon, without good reason therefor, by telephone or otherwise, the police or fire department, any public or private ambulance or any other service of any kind, to go to any address where the service call is not needed.
- (13) Knowingly take possession of and ride or take away any bicycle, without the express or implied permission of the owner.

(b) For the purposes of this section, "public place" means any street, alley, park, government-owned or government-controlled building, common hallway or public room of any dwelling greater than two units, or any other place to which the public has lawful access, as well as any motor vehicle used to provide public transportation.

(Ord. No. 273, § 11, 8-12-85)

Sec. 42-112. Disturbance at public function.

(a) It shall be unlawful for any person to violate any provision of this section during the period any public function is being conducted at any arena or meeting place.

(b) "Public function" is defined, for the purpose of this section, to include by way of specification but without limitation, any athletic contest, exhibition, meeting, convention or rally, to which the public is admitted, whether with or without a charge.

(c) The period of a public function is defined, for the purpose of this section, to extend from one hour before to one hour after the termination of the last activity comprising the public function.

(d) All persons attending events at any meeting place shall proceed directly to their seats, and upon leaving shall proceed directly from their seats to the nearest exit and depart from the vicinity of the stadium, arena, playing field or meeting place without unnecessary delay.

(e) During the period of any public function, all persons shall remain in their seats, except while arriving or departing and except for authorized purposes. Such purposes are visiting the restroom, and obtaining refreshments.

(f) No person during the period of a public function shall:

- (1) Collect or remain in a crowd loitering in the aisles, entryways of spaces of the stadium, arena, playing field or meeting place, or on the sidewalks, streets or parking areas in the immediate vicinity thereof.
- (2) Obstruct or hinder the lawful passage of any member of the public.
- (3) Jostle or roughly crowd another person unnecessarily, or by offensive or disorderly acts or language annoy or interfere with another person.
- (4) Commit a breach of peace, or engage in threatening, abusive or insulting behavior whereby a breach of peace may be occasioned.
- (5) Make, aid or assist in making any riot, disturbance or other improper diversion.
- (6) Climb upon the walls of any arena or meeting place for any purpose, or in or upon the trees in the immediate vicinity thereof.
- (7) Enter the playing field area of the stadium or any other arena, or meeting place, or within the immediate vicinity thereof, or commit any injury or damage to the stadium, arena or meeting place, its turf or equipment.
- (8) Throw any object within or about the stadium or arena, or meeting place, or within the immediate vicinity thereof, or commit any injury or damage to the stadium, arena or meeting place, its turf or equipment.
- (9) Transport into the stadium, arena or meeting place or consume or have in his possession or control within or in the immediate vicinity thereof, any alcoholic liquor, beer or intoxicating beverage except in those places where possession or consumption of alcoholic beverages is specifically permitted.

(Ord. No. 273, § 4, 8-12-85)

State law reference—Disturbing public places, MCL 750.170.

Sec. 42-113. Use of coasters, roller skates or blades and similar devices.

(a) A person who is on roller skates or blades, or who is riding in or by means of, any coasters, toy vehicle, or similar device shall not go on any street or roadway.

(b) The above identified devices may be used on city maintained sidewalks, except in the downtown business district; specifically, they shall not be used on Mt. Morris Street from Railroad Street to Church Street. In order to use these devices on any other walkway or parking lot, permission must be first obtained from the owner of the subject property. The owner of any private property, open to the public may, after placing appropriate written notices on the property, notify the police department in writing that no one may use one of these devices on their property and, thereafter, any person using such a device on said property shall be in violation of this section.

(c) When used on the sidewalk, the operator must use care when approaching pedestrians, only travel single file, and shall not obstruct pedestrian traffic in any way.

(d) When crossing the street at a crosswalk, a person using such a device shall be granted all of the rights, and shall be subject to all of the duties, applicable to pedestrians.
(Ord. No. 01-08, § 1, 7-9-01; Ord. No. 03-05, § 1, 7-14-03)

Secs. 42-114—42-135. Reserved.

ARTICLE VI. OFFENSES AGAINST PUBLIC MORALS

Sec. 42-136. Window peeping.

It shall be unlawful for any person to knowingly go upon the property owned or leased by another and peep through the window or other opening of a building or other structure, including a mobile home, without the consent of that person in such a manner as would be likely to interfere with the occupant's reasonable expectation of privacy.

(Ord. No. 273, § 16, 8-12-85)

State law reference—Such person defined as a disorderly person, MCL 750.167(1)(c).

Sec. 42-137. Indecent exposure.

It shall be unlawful for any person within the city to make any illegal exhibition or indecent exposure of his person or the person of another.

(Ord. No. 273, § 44, 8-12-85)

Sec. 42-138. Frequenting disorderly house; what constitutes proof of character of house.

(a) No person shall knowingly keep, attend or frequent a disorderly house, room or place as defined in this section.

(b) A disorderly house, room or place is one in which any or all of the following occurs:

- (1) One in which unlicensed gaming or gambling is suffered or permitted, or a common gaming or gambling house or room.
- (2) A house of prostitution or ill repute or a house, room or place in which prostitutes resort.

- (3) One in which intoxicating liquors are illegally sold, given or dispensed.
 - (4) One in which gaming devices, unlawful lottery, policy, pool or numbers slips, papers, memoranda, books of account, apparatus or material for gambling are unlawfully kept or used.
 - (5) One in which controlled substances are delivered, used, sold or maintained. "Controlled substances" for the purpose of this section shall have the same meaning as, and shall include the same substances as, the state controlled substances statute, Act No. 368 of the Public Acts of Michigan of 1978 (MCL 333.7101 et seq.), as amended.
- (Ord. No. 273, § 10, 8-12-85)

State law references—Keeping building for gambling, MCL 750.302; keeping house of prostitution, MCL 750.452.

Sec. 42-139. Keeping gambling house.

No person shall keep any house, building, room, shed, yard, garden or dependency thereof, to be used or occupied for gambling or gaming, and no person, being the owner of any such house, building, room, shed, yard or garden, shall rent or lease the same to be used or occupied for gambling or gaming.

(Ord. No. 273, § 20, 8-12-85)

Sec. 42-140. Permitting house to be used for gambling.

If any person being the owner, lessee or manager of any house, building, room, shed, yard or garden shall know that any gambling or gaming table, implement or apparatus for gambling or gaming are kept or used in such house, building, room, shed, yard or garden for winning or gaining money or other valuable thing, and shall not within a reasonable time after becoming aware of such use forthwith cause a complaint to be made against the persons so keeping or using the house, building, room, shed, yard or garden, such person shall be taken, held and considered to have knowingly permitted it to be used and occupied for gaming or gambling.

(Ord. No. 273, § 21, 8-12-85)

Sec. 42-141. Frequenting gambling house.

No person shall resort to any house, building, room, shed, yard, garden or other place within the city, for the purpose of gaming or gambling, or aiding or abetting therein, and no person shall, while in the saloon, or in or at any other place whatsoever in the city, engage in gaming or gambling, or aid or abet therein, by advising or assisting the principals, or by buying any check, slip, card or ticket to represent money to be used in betting on the result of any game.

(Ord. No. 273, § 22, 8-12-85)

Sec. 42-142. Right of entry of police; seizure, disposition of gambling devices.

The chief of police or any member of the police force of the city may to the extent and as otherwise permitted by law enter any house, building, room, shed, yard, garden or other place where they have good reason to believe and do believe any gaming or gambling is going on, or

any gaming instrument or device or thing used for the purpose of gaming on or with, by which money or other valuable thing may be lost or won is used, kept or concealed, and no person shall in any manner refuse to admit such officers, when admittance is demanded by them, or in any manner hinder or delay them from entering upon demand. Such officers may seize or direct to be seized any such instrument, device or thing used for the purpose of gaming on or with by which money or other valuable thing may be lost or won, and all such instruments, devices and things may be demolished or destroyed under the direction of the chief of police in case the person in whose possession they were found shall be convicted of gambling. If such articles are not found in the immediate possession of any person, they shall be kept for a claimant. Any person claiming to have been the owner thereof at the time of the taking of the same as aforesaid, upon giving sufficient surety to keep the peace, shall be entitled to a return of such articles, if not convicted.

(Ord. No. 273, § 23, 8-12-85)

Sec. 42-143. Possession of marijuana in public place.

It shall be unlawful for a person to possess a usable amount of marijuana in a public place and/or any place or building in which the public is invited either expressly or by implication within the city. The question of whether an amount of marijuana is a "usable amount" as hereinabove set forth shall be dependent upon the facts of the case. Marijuana is defined for the purpose of this section as all parts of the plant *Cannabis Sativa L.* whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cakes made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, except the resin extracted therefrom, fiber, oil or cake or the sterilized seed of the plant which is incapable of germination.

(Ord. No. 273, § 37, 8-12-85)

Sec. 42-144. Controlled substances paraphernalia.

(a) For the purposes of this section, the following definitions shall apply:

- (1) *Cocaine spoon* means a spoon with a bowl so small that the primary use for which it is reasonably adapted or designed is to hold or administer cocaine, and which is so small as to be unsuited for the typical, lawful use of a spoon. A cocaine spoon may or may not be merchandised on a chain and may or may not be labeled as a cocaine spoon or coke spoon.
- (2) *Controlled substance* means any drug, substance or immediate precursor enumerated in Act No. 368 of the Public Acts of Michigan of 1978 (MCL 333.7101 et seq.), as amended, commonly known as the public health code.
- (3) *Marijuana or hashish pipe* means a pipe characterized by a bowl which is so small that the primary use for which it is reasonably adapted or designed is smoking of marijuana or hashish, rather than lawful smoking tobacco, and which may or may not be equipped with a screen.

- (4) *Paraphernalia* means an empty gelatin capsule, hypodermic syringe or needle, cocaine spoon, marijuana pipe, hashish pipe, or any other instrument, implement or device which is primarily adapted or designed for the administration or use of any controlled substance.
- (5) *Person* means any individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association.

(b) It shall be unlawful for any person to sell, offer for sale, display, furnish, supply or give away any empty gelatin capsule, hypodermic syringe or needle, cocaine spoon, marijuana pipe, hashish pipe or other instrument, implement or device which is primarily adapted or designed for the administration or use of any controlled substance as enumerated in Act No. 368 of the Public Acts of Michigan of 1978 (MCL 333.7101 et seq.), as amended, commonly known as the public health code. The prohibition contained in this section shall not apply to manufacturers, wholesalers, jobbers, licensed medical technicians, technologists, nurses, hospitals, research teaching institutions, clinical laboratories, medical doctors, osteopathic physicians, dentists, chiropractists, veterinarians, pharmacists or embalmers in the normal, lawful course of their respective businesses or professions, nor to common carriers or warehousemen or their employees engaged in the lawful transportation of such paraphernalia, nor to public officers or employees while engaged in the performance of their official duties, nor to persons suffering from diabetes, asthma or any other medical condition requiring self injections.

(Ord. No. 287, §§ 1, 2, 10-12-86)

Sec. 42-145. Consumption of alcoholic liquor on a highway, street, alley or public or private property open to the public.

Alcoholic liquor shall not be consumed on a highway, street, alley, or any public or private property which is open to the general public, including, but not limited to, a parking lot and which is not licensed to sell alcoholic liquor for consumption on the premises.

(Ord. No. 01-09, § 1, 7-9-01)

Sec. 42-146. Delivery, possession, distribution or sale of controlled substances; prohibited generally.

It shall be unlawful for any person to deliver, possess, distribute or sell any controlled substance as defined in Act No. 368 of the Public Acts of Michigan of 1978 (MCL 333.7101 et seq.), as amended except as authorized by the public health code of the State of Michigan, or as otherwise permitted by law.

(Ord. No. 04-04, § 1, 9-13-04)

Sec. 42-147. Loitering.

(a) In this section the following words and phrases shall have the meanings respectively ascribed to them:

Loitering means remaining idle in essentially one location and shall include the concept of spending time idly; to be dilatory; to linger; to stay; to saunter; to delay; to stand around and also includes the colloquial expression "hanging around."

Public place means any place to which the general public has access and a right to resort for business, entertainment or for lawful purpose, but does not necessarily mean a place devoted solely to the uses of the public. It shall also include the front or immediate area of any store, shop, restaurant, tavern or other place of business and also public grounds, areas or parks.

(b) It shall be unlawful for any person within the city to loiter, loaf, wander, stand or remain idle either alone or in consort with others in a public place in such manner as to:

- (1) Obstruct any public street, public highway, public sidewalk or any other public place or building by hindering or impeding or tending to hinder or impede the free and uninterrupted passage of vehicles, traffic or pedestrians after having been told to move on by a police officer.
- (2) Commit in or upon any public street, public highway, public sidewalk or any other public place or building any act or thing which is an obstruction or interference to the free and uninterrupted use of property or with any business lawfully conducted by anyone in or upon or facing or fronting on any such public street, public highway, public sidewalk or any other public place or building, all of which prevents the free and uninterrupted ingress, egress and regress, therein, thereon and thereto after having been told to move on by a police officer.
- (3) Obstruct the entrance to any business establishment, without so doing for some lawful purpose, if contrary to the expressed wish of the owner, lessee, managing agent or person in control or charge of the building or premises.

(Ord. No. 04-05, 9-27-04)

Secs. 42-148—42-165. Reserved.

ARTICLE VII. OFFENSES AGAINST PUBLIC SAFETY

Sec. 42-166. Reserved.

Editor's note—Ord. No. 12-03, § 1, adopted June 11, 2012, repealed § 42-166 which pertained to sale and use of fireworks and derived from Ord. No. 273, § 25, adopted Aug. 12, 1985.

Sec. 42-167. Handling, discharging firearms.

(a) The word "firearms" except as otherwise specifically defined in this Code, shall be construed to include any weapon from which a dangerous projectile may be propelled by using explosives, gas or air as a means of propulsion including, but not limited to, slingshots and bows and arrows.

(b) It shall be unlawful for any person, except an officer in the discharge of his duties, to draw, flourish or fire any firearm in the city, except as authorized by law; provided, that nothing contained in this subsection shall prohibit the drawing, flourishing or firing of air guns or firearms in duly licensed firing ranges or shooting galleries.

(c) It shall be unlawful for any person to transport or to have in possession in or upon any vehicle a firearm unless it is unloaded in both barrel and magazine and carried in the luggage compartment of the vehicle. It shall be unlawful to carry a firearm on any public street or in any public place unless it is unloaded and in a case, except as authorized by law.

(d) Any person observed doing any of those things prohibited by this section shall be required to present to any peace officer, forthwith, evidence of authorization that the person is exempt from the provisions of this section.

(e) In the event of conviction under this section, the firearm shall be forfeited to the city and the city shall retain it or dispose of it by any lawful means and retain the proceeds.
(Ord. No. 273, § 18, 8-12-85)

Sec. 42-168. Dangerous weapons; possession restricted.

It shall be unlawful for any person to be in possession of a knife with a blade more than three inches in length, any blackjack, slingshot, billy, metallic knuckles, sand bag, karate sticks, nunchucks, shurikens (sharpened stars or discs used for throwing), bludgeon or any other dangerous or deadly weapon or instrument, in any of the streets, alleys, parks, boulevards or other public property or schools in the city, or in any dance hall, theater, amusement park, liquor establishment, store or other private property generally frequented by the public for purposes of education, recreation, amusement, entertainment, sport or shopping or in any motor vehicle within the city. The prohibition contained in this section shall not apply to any person in possession of any such weapon or instrument when it is used or carried in good faith as a tool of honest work, trade, business, sport or recreation, when the person in possession of the weapon or instrument is actively engaged therein or actively engaged in going to or returning from such honest work, trade, business, sport or recreation, or is transporting the weapon or instrument directly to that individual's residence or place of business immediately after purchase, or unless the person is licensed by the state to carry a concealed weapon and then only in accordance with any restrictions upon the license.
(Ord. No. 273, § 38, 8-12-85)

Sec. 42-169. Smoking or carrying lighted tobacco in certain places.

It shall be unlawful for any person to smoke or carry lighted tobacco in any form in any of the following areas:

- (1) Any portion of a retail establishment where dry goods, fabrics or clothing are sold.
- (2) Any retail establishment the primary business of which is the sale of food for consumption off the premises where sold, specifically excluding restaurants, except areas not open to members of the general public, such as enclosed offices and employees restrooms and lounges.
- (3) Any passenger elevator used by the public. The owner or person in control of any building in which such an elevator is situated shall post signs clearly visible to all persons entering such elevator.

- (4) Any area of a business establishment frequented by the public which has been designated as a no smoking area by the owner or person in charge of such establishment and clearly marked with a sign.

(Ord. No. 273, § 48, 8-12-85)

Sec. 42-170. Designation of areas where smoking prohibited; duty of owner.

The owner or person in charge of any area where 50 or more persons gather in an enclosed public space for religious, recreational, political or social purposes shall designate a reasonable portion of the seating area as an area wherein smoking is not permitted for the use of those persons present who desire to be separated from persons who are smoking. It shall be unlawful for any person to smoke in an area so designated.

(Ord. No. 273, § 49, 8-12-85)

Sec. 42-171. Posting of signs prohibiting or permitting smoking.

In all areas where smoking is prohibited or specifically permitted, the owner or person in charge of the area must so designate the area with a sign or signs. Such signs shall contain lettering not less than 1½ inches in height and state either, "Smoking Prohibited by City Ordinance" or "Smoking Permitted" and shall be so located as to be clearly visible to the public. No person shall be guilty of a violation of this article unless orally advised of the proscription on smoking and given a reasonable opportunity to dispose of the smoking materials.

(Ord. No. 273, § 50, 8-12-85)

Secs. 42-172—42-190. Reserved.

ARTICLE VIII. OFFENSES ON SCHOOL GROUNDS

Sec. 42-191. Damaging or defacing building.

No person shall mark with any substance, or in any other manner deface or do damage to any building owned, occupied or otherwise used as a school within the city.

(Ord. No. 174, § 1, 11-3-75)

Sec. 42-192. Damaging or defacing fences, trees, other fixtures.

No person shall mark with any substance, or in any other manner deface or do damage to any fence, tree, lawn, or other fixture situated on lands owned, occupied or otherwise used by a school within the city.

(Ord. No. 174, § 2, 11-3-75)

Sec. 42-193. Disturbing class sessions.

No person, while on public or private grounds adjacent to any building in which a school or any class thereof is in session, shall willfully make or assist in the making of any noise or diversion which disturbs or tends to disturb the peace, quiet or good order of such school session or class thereof.

(Ord. No. 174, § 3, 11-3-75)

Sec. 42-194. Disturbing gatherings, functions.

No person while on public or private land adjacent to any building or lands owned, occupied or otherwise used by a school within the city in or on which any gathering or function is in progress, whether in the day or nighttime, shall willfully make or assist in the making of any noise or diversion which disturbs or tends to disturb the peace, quiet or good order of such gathering or function.

(Ord. No. 174, § 4, 11-3-75)

Sec. 42-195. Indecent language used in buildings.

No person, while in any building owned, occupied or otherwise used by a school within the city, shall utter any profane, indecent, or immoral language towards any person or while within the hearing of any other person.

(Ord. No. 174, § 5, 11-3-75)

Sec. 42-196. Indecent language used on lands.

No person, while on any lands owned, occupied or otherwise used by a school within the city, shall utter any profane, indecent or immoral language towards any person or while within the hearing of any other person.

(Ord. No. 174, § 6, 11-3-75)

Sec. 42-197. Unauthorized entry upon school grounds.

No person who is not a student required to be in attendance at that school, a teacher, administrator, custodian or employee of the school, shall during school hours, remain within the school or upon school grounds without securing the permission of the principal or person in charge of the school.

(Ord. No. 174, § 7, 11-3-75)

Sec. 42-198. Refusal to leave upon request.

No person, student or otherwise, shall remain upon school grounds or within a school owned, occupied or used by any school within the city after being ordered to leave by any teacher or administrator of the school or other person given such authority by the board of education administering the school.

(Ord. No. 174, § 8, 11-3-75)

State law reference—Trespassing, MCL 750.546 et seq.

Sec. 42-199. Unauthorized vehicles on school property.

No person, student or otherwise, shall operate an unauthorized vehicle on school property within the city. An unauthorized vehicle is hereby defined as an automobile, snowmobile, motorcycle, truck and other self-propelled vehicle, which has not been specifically designated by the superintendent of schools as being eligible for operation upon property owned, occupied or otherwise used for school district purposes. No person shall be deemed to have violated this section unless he has been duly informed that his vehicle shall not be operated on school district property. Signs prominently displayed upon school district property advising persons that their vehicle shall not be thusly operated shall constitute such due warning. Other methods of notification reasonably designed to convey such information, such as but not limited to bulletins issued personally to students and others shall also constitute such due warning.

(Ord. No. 174, § 9, 11-3-75)

Secs. 42-200—42-220. Reserved.**ARTICLE IX. OFFENSES INVOLVING UNDERAGED PERSONS****Sec. 42-221. Contributing to delinquency of minors.**

No person shall by any act or by any word, encourage, contribute toward, cause or tend to cause any minor child under the age of 17 years to become neglected or delinquent as to come or tend to come under the jurisdiction of the juvenile division of the probate court, or cause or permit any minor child to engage in any occupation that would be likely to endanger the minor child's health or deprave the minor child's morals, or to habitually permit the child to frequent the company of or consort with reputed thieves or prostitutes, whether or not such child in fact is adjudicated a ward of the probate court.

(Ord. No. 273, § 5, 8-12-85)

State law reference—Similar provisions, MCL 750.145.

Sec. 42-222. Curfew for minors 12 and under.

No minor of the age of 12 years or under shall loiter, idle, congregate or be in or on any public street, highway, alley, park or public place between the hours of 10:00 p.m. and 6:00 a.m. unless the minor is accompanied by a parent or guardian or some adult delegated by the parent or guardian to accompany the child.

(Ord. No. 273, § 6, 8-12-85)

State law reference—Curfew for minors, MCL 722.751 et seq.

Sec. 42-223. Curfew for minors under 16.

No minor under the age of 16 years shall loiter, idle, congregate or be in or on any public street, highway, alley, park or public place between the hours of midnight and 6:00 a.m.

immediately following, except where the minor is accompanied by a parent or guardian or some adult delegated by the parent or guardian to accompany the minor child or where the minor is upon an errand or other legitimate business directed by his parent or guardian.

(Ord. No. 273, § 7, 8-12-85)

Sec. 42-224. Parental duties and responsibilities; supervision and control of unemancipated juvenile. (CI)

(a) *Duties and responsibilities of a parent, guardian or other person having legal responsibility for the actions of an unemancipated juvenile.* Every parent, guardian or other person having legal responsibility for an unemancipated juvenile under the age of 17 years of age shall exercise sufficient control and supervision over the activities and conduct of the juvenile as shall be necessary to prevent the juvenile from violating any ordinance of the city which contains a penalty clause or any criminal or penal law of the state within the city. A penalty clause for the purposes hereof shall include those provisions providing for fines and jail terms for misdemeanors and providing civil penalties for civil infractions.

(b) *Failure to exercise responsibility.* It shall be unlawful for any parent, guardian or other person having legal responsibility for an unemancipated juvenile under the age of 17 to fail to exercise sufficient control and supervision over the activities and conduct of the juvenile where such failure results in the violation of the terms of an ordinance of the city which contains a penalty clause or a criminal or penal law of the state within the city.

(c) *Definition of violation of city ordinance by unemancipated minor.* An unemancipated minor under the age of 17 years of age shall be deemed to have violated an ordinance of the city or any criminal or penal law of the state within the city if the facts so indicate, subject to the applicable burden of proof, irrespective of whether there has been a conviction or judicial determination to such effect.

(Ord. No. 347, §§ 1—3, 6-26-95)

Sec. 42-225. Failure of parent or guardian to collect minor in custody.

(a) For the purpose of this section the term "minor child" shall mean a person under the age of 17 years.

(b) Any parent or guardian of a minor child who is notified that his minor child has been taken into custody for a violation of a city ordinance and who thereafter refuses to collect the minor child from the authorities or make provisions therefor within a reasonable time after notification shall be guilty of a misdemeanor. Thirty minutes shall be deemed a reasonable time in the absence of extraordinary circumstances precluding such action by the parent or guardian. Authorities shall transport a juvenile to his home in those instances where the parent or guardian is unable to do so or to make provision therefor.

(Ord. No. 273, § 8, 8-12-85)

Sec. 42-226. Persons 17 or over aiding or abetting violations.

Any person of the age of 17 years or over assisting, aiding, abetting, allowing, permitting or encouraging any minor under the age of 17 years to violate the provisions of sections 42-223 and 42-225, is guilty of a misdemeanor.

(Ord. No. 273, § 9, 8-12-85)

Sec. 42-227. Section 701 of the Michigan Liquor Control Code of 1998 adopted.

(a) As authorized by Section 3(k) of Act No. 279 of the Public Acts of Michigan of 1909 (MCL 117.3(k)), there is hereby adopted by reference, Section 701 of the Michigan Liquor Control Code of 1998, Act No. 58 of the Public Acts of Michigan of 1998 (MCL 436.1701 et seq.), as amended or revised in the future, as if fully set out herein.

(b) The penalties provided by the Michigan Liquor Control Code of 1998, cited above, are adopted by reference, provided, however, that the city may not enforce any of such provisions for which the maximum period of imprisonment is greater than 93 days.

(Ord. No. 324, § 1, 8-12-91; Ord. No. 05-02, § 1, 3-14-05)

Sec. 42-228. Section 703 of the Michigan Liquor Control Code of 1998 adopted.

As authorized by Section 3(k) of Act No. 279 of the Public Acts of Michigan of 1909 (MCL 117.3(k)), there is hereby adopted by reference, Section 703 of the Michigan Liquor Control Code of 1998 (MCL 436.1703), as amended or revised in the future, as if fully set out herein.

(Ord. No. 273, § 46, 8-12-85; Ord. No. 05-02, § 2, 3-14-05)

Sec. 42-229. Reserved.

Editor's note—Ord. No. 05-02, § 3, adopted March 14, 2005, repealed § 42-229 which pertained to purchase of alcoholic beverages by persons under 21 years of age and derived from Ord. No. 273, § 47, adopted Aug. 12, 1985. See §§ 42-227 and 42-229 for similar provisions.

Sec. 42-230. Underage smoking or possession of tobacco materials (CI).

Use or possession of tobacco products by a minor in public or in a school or upon school grounds prohibited; civil fine.

- (1) A person under 18 years of age shall not possess or smoke cigarettes or cigars; or possess or chew, suck, or inhale chewing tobacco or tobacco snuff; or possess or use tobacco in any other form, on a public highway, street, alley, park, or other lands used for public purposes, or in a public place of business or amusement or in a school or on school grounds.
- (2) Municipal civil infraction penalty clause:
 - a. Violation of this section shall be subject to a civil fine in an amount not to exceed \$500.00, plus costs, which shall be paid by a defendant who is found responsible

for each such violation. Violators shall also be subject to sanctions, remedies and procedures as set forth in section 2-151 and Act No. 236 of the Public Acts of Michigan of 1961 (MCL 600.101 et seq.), as amended.

- b. A person who violates this section and pays their fine at the violations bureau shall be liable for a civil fine of \$25.00 for each offense.

(Ord. of 3-25-96)

Chapters 43—45

RESERVED

Chapter 46

PLANNING*

- Sec. 46-1. Definitions.
- Sec. 46-2. Planning commission members.
- Sec. 46-3. Chairman, meetings, rules, records of planning commission.
- Sec. 46-4. Planning commission employees, contracts for special services, source and limit on expenditures.
- Sec. 46-5. Adoption of master plan for physical development of city.
- Sec. 46-6. Surveys; basis, purpose of master plan.
- Sec. 46-7. Adoption of whole or parts of master plan by resolution of planning commission; hearing, notice, certificates to council and register of deeds.
- Sec. 46-8. Public works; approval by commission and council or body having jurisdiction; plans for future.
- Sec. 46-9. Rescission of action by legislative body; procedure.
- Sec. 46-10. Publicity and education, recommendations, gifts, cooperation from public officials.
- Sec. 46-11. Necessity for approval of plats, street system.
- Sec. 46-12. Regulations governing subdivision of land; bond to secure improvements; publication of regulations.
- Sec. 46-13. Approval or disapproval of plats; procedure, effect.

***Cross references**—Buildings and building regulations, ch. 14; community development, ch. 30; environment, ch. 34; solid waste, ch. 50; streets, sidewalks and other public places, ch. 58; utilities, ch. 66; schedule of fees, app. C.

State law references—Authority to regulate land use, MCL 125.3101 et seq.; municipal planning, MCL 125.3801 et seq.

Sec. 46-1. Definitions.

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

Planning commission means the commission empowered to make, adopt and apply a municipal plan.

Streets includes streets, avenues, boulevards, roads, lanes, alleys, viaducts and other ways. (Ord. No. 98, § 1, 11-27-61)

Cross reference—Definitions generally, § 1-2.

Sec. 46-2. Planning commission members.

The planning commission shall consist of nine members, six of whom shall be representative insofar as possible of different professions or occupations and shall be appointed by the mayor and three of whom shall be ex officio members, namely: the mayor, one of the administrative officials of the city selected by the mayor, and one member of the city council, to be selected by it. The appointments by the mayor shall always be subject to the approval of a majority vote of the city council. All members of the planning commission shall serve as such without compensation and the appointed members other than ex officio members shall hold no other municipal office except that one of such appointed members may be a member of the zoning board of appeals. The terms of ex officio members shall correspond to their respective official tenures, except that the term of the administrative official selected by the mayor shall terminate with the term of the mayor selecting him. The term of each appointed member shall be three years or until his successor takes office, except that the respective terms of two of the members first appointed shall be for one year, and two for two years. Members other than the members selected by the council may after public hearing be removed by the mayor for inefficiency, neglect of duty or malfeasance in office. The council may for like cause remove the members selected by it. Vacancies occurring otherwise than through the expiration of terms shall be filled for the unexpired term by the mayor in the case of members selected or appointed by him and by the council in the case of the councilmanic member.

(Ord. No. 98, § 2, 11-27-61)

State law reference—Authority to create a planning commission, MCL 125.3811.

Sec. 46-3. Chairman, meetings, rules, records of planning commission.

The planning commission shall elect its chairman from among the appointed members and create and fill such other of its offices as it may determine. The term of chairman shall be one year, with eligibility for reelection. The commission shall hold at least one regular meeting in each month. It shall adopt rules for transaction of business and shall keep a record of its resolutions, transactions, findings, and determinations, which record shall be a public record.

(Ord. No. 98, § 3, 11-27-61)

State law references—Similar provisions, MCL 125.3817, 125.3818; open meetings act, MCL 15.261 et seq.

Sec. 46-4. Planning commission employees, contracts for special services, source and limit on expenditures.

The planning commission may appoint such employees as it may deem necessary for its work, whose appointment, promotion, demotion and removal shall be subject to the same provisions of law as govern other corresponding civil employees of the city. The commission may also contract with city planners, engineers, architects and other consultants for such services as it may require. The expenditures of the commission, exclusive of gifts, shall be within the amounts appropriated for the purpose by the city council, which shall provide the funds, equipment and accommodations necessary for the commission's work.

(Ord. No. 98, § 4, 11-27-61)

State law reference—Similar provisions, MCL 125.3825.

Sec. 46-5. Adoption of master plan for physical development of city.

It shall be the function and duty of the planning commission to make and adopt a master plan for the physical development of the city, including any areas outside of its boundaries which in the commission's judgment bear relation to the planning of the city. Such plan, with the accompanying maps, plats, charts and descriptive matter, shall show the commission's recommendations for the development of the territory, including, among other things, the general location, character and extent of streets, viaducts, subways, bridges, waterways, waterfronts, boulevards, parkways, playgrounds and open spaces, the general location of public buildings and other public property, and the general location and extent of public utilities and terminals, whether publicly or privately owned or operated, for water, light, sanitation, transportation, communication, power and other purposes; also the removal, relocation, widening, narrowing, vacating, abandonment, change of use or extension of any of the foregoing ways, grounds, open spaces, buildings, property, utilities or terminals; the general location, character, layout and extent of community centers and neighborhood units; and the general character, extent and layout of the replanning and redevelopment of blighted districts and slum areas; as well as a zoning plan for the control of the height, area, bulk, location and use of buildings and premises. As the work of making the whole master plan progresses, the commission may from time to time adopt and publish a part or parts thereof, any such part to cover one or more major sections or divisions of the city or one or more of the aforesaid or other functional matters to be included in the plan. The commission may from time to time amend, extend or add to the plan.

(Ord. No. 98, § 5, 11-27-61)

State law reference—Similar provisions, MCL 125.3831.

Sec. 46-6. Surveys; basis, purpose of master plan.

In the preparation of the master plan the planning commission shall make careful and comprehensive surveys and studies of present conditions and future growth of the city and with due regard to its relation to the neighboring territory. The plan shall be made with the general purpose of guiding and accomplishing a coordinated, adjusted and harmonious development of the city and its environs which will, in accordance with present and future

needs, best promote health, safety, morals, order, convenience, prosperity and general welfare, as well as efficiency and economy in the process of development, including, among other things, adequate provision for traffic, the promotion of safety from fire and other dangers, adequate provision for light and air, the promotion of the healthful and convenient distribution of population, the promotion of good civic design and arrangement, wise and efficient expenditure of public funds, and the adequate provision of public utilities and other public requirements. (Ord. No. 98, § 6, 11-27-61)

State law reference—Similar provisions, MCL 125.3833.

Sec. 46-7. Adoption of whole or parts of master plan by resolution of planning commission; hearing, notice, certificates to council and register of deeds.

The planning commission may adopt the plan as a whole by a single resolution or may by successive resolutions adopt successive parts of the plan, such parts corresponding with major geographical sections or divisions of the city or with functional subdivisions of the subject matter of the plan, and may adopt any amendment or extension thereof or addition thereto. Before the adoption of the plan or any such part, amendment, extension or addition the commission shall hold at least one public hearing thereon, notice of the time and place of which shall be given not less than 15 days prior to the hearing, by one publication in a newspaper of general circulation in the city and in the official gazette, if any, of the city and by registered United States mail to each public utility or railroad within the geographical sections or divisions of the city affected. The adoption of the plan or of any such part or amendment or extension or addition shall be by resolution of the commission carried by the affirmative votes of not less than six members of the commission. The resolution shall refer expressly to the maps and descriptive and other matter intended by the commission to form the whole or part of the plan, and the action taken shall be recorded on the map and plan and descriptive matter by the identifying signature of the chairman and/or secretary of the commission. An attested copy of the plan or part thereof shall be certified to council and to the county register of deeds. (Ord. No. 98, § 7, 11-27-61)

State law reference—Similar provisions, MCL 125.3843.

Sec. 46-8. Public works; approval by commission and council or body having jurisdiction; plans for future.

Whenever the planning commission has adopted the master plan of the city or of one or more major sections or districts thereof no street, square, park or other public way, ground, or open space, or public building or structure, shall be constructed or authorized in the city or in such planned section and district until the location, character and extent thereof has been submitted to and approved by the commission; provided, that in case of disapproval the commission shall communicate its reasons to the council, which shall have the power to overrule such disapproval by a recorded vote of not less than two-thirds of its entire membership. However, if the public way, ground, space, building, structure or utility is one the authorization or financing of which does not under the law or charter provisions governing same, fall within the province of the city council, then the submission to the planning commission shall be by the board, commission or body having such jurisdiction, and the

planning commission's disapproval may be overruled by the board, commission, or body by a vote of not less than two-thirds of its membership. The failure of the commission to act within 60 days from and after the date of official submission to the commission shall be deemed approval. For the purpose of furthering the desirable future development of the city under the master plan the city planning commission, after the commission shall have adopted a master plan, shall prepare coordinated and comprehensive programs of public structures and improvements. The commission shall annually prepare such a program for the ensuing six years, which program shall show those public structures and improvements, in the general order of their priority, which in the commission's judgment will be needed or desirable and can be undertaken within the six-year period. The above comprehensive coordinated programs shall be based upon the requirements of the city for all types of public improvements and, to that end, each agency or department of the city concerned with such improvements shall upon request furnish the commission with lists, plan and estimates of time and cost of public structures and improvements within the purview of such department.

(Ord. No. 98, § 8, 11-27-61)

State law reference—Similar provisions, MCL 125.3861.

Sec. 46-9. Rescission of action by legislative body; procedure.

Whenever the city council has ordered the opening, widening or extension of any street, avenue or boulevard, or whenever the council has ordered that proceedings be instituted for the acquisition or enlargement of any park, playground, playfield or other public open space, such resolution shall not be rescinded until after the matter has been referred back to the city planning commission for a report and until after a public hearing has been held. The council shall have power to overrule the recommendation of the planning commission by a vote of not less than two-thirds of its entire membership.

(Ord. No. 98, § 9, 11-27-61)

State law reference—Similar provisions, MCL 125.3863.

Sec. 46-10. Publicity and education, recommendations, gifts, cooperation from public officials.

The planning commission shall have the power to promote public interest in and understanding of the plan and to that end may publish and distribute copies of the plan or of any report and may employ such other means of publicity and education as it may determine. Members of the commission, when duly authorized by the commission, may attend city planning conferences or meetings of city planning institutes, or hearings upon pending city planning legislation, and the commission may, by resolution spread upon its minutes, pay the reasonable traveling expenses incident to such attendance. The commission shall, from time to time, recommend to the appropriate public officials programs for public structures and improvements and for the financing thereof. It shall be part of its duties to consult and advise with public officials and agencies, public utility companies, civic, educational, professional, and other organizations, and with citizens with relation to the protecting or carrying out of the plan. The commission shall have the right to accept and use gifts for the exercise of its functions. All public officials shall, upon request, furnish to the commission, within a

reasonable time, such available information as it may require for its work. The commission, its members, officers and employees, in the performance of their functions, may enter upon any land and make examinations and surveys and place and maintain necessary monuments, and marks thereon. In general, the commission shall have such powers as may be necessary to enable it to fulfill its functions, promote city planning, or carry out the purposes of this chapter. (Ord. No. 98, § 10, 11-27-61)

State law reference—Similar provisions, MCL 125.3823.

Sec. 46-11. Necessity for approval of plats, street system.

Whenever the planning commission has adopted that sort of a master plan relating to the major street system of the territory within its subdivision, jurisdiction or part thereof, and has filed a certified copy of such plan in the office of the county register of deeds, then no plat of a subdivision of land within such territory or part shall be filed or recorded until it has been approved by such planning commission and such approval entered in writing on the plat by the chairman or secretary of the commission.

(Ord. No. 98, § 11, 11-27-61)

State law reference—Similar provisions, MCL 125.3871.

Sec. 46-12. Regulations governing subdivision of land; bond to secure improvements; publication of regulations.

Before exercising the powers referred to in section 46-11, the planning commission shall adopt regulations governing the subdivision of land within its jurisdiction. Such regulations may provide for the proper arrangement of streets in relation to other existing or planned streets and to the master plan, for adequate and convenient open spaces for traffic, utilities, access of firefighting apparatus, recreation, light and air, and for the avoidance of congestion of population, including minimum width and area of lots. Such regulations may include provisions as to the extent to which streets and other ways shall be graded and improved and to which water and sewer and other utility mains, piping, or other facilities shall be installed as a condition precedent to the approval of the plat. The regulations or practice of the commission may provide for a tentative approval of the plat previous to such installation; but any such tentative approval shall be revocable and shall not be entered on the plat. In lieu of the completion of such improvements and utilities prior to the final approval of the plat, the commission may accept a bond with surety to secure to the city the actual construction and installation of such improvements or utilities at a time and according to specifications fixed by or in accordance with the regulations of the commission. The city is hereby granted the power to enforce such bond by all appropriate legal and equitable remedies. All such regulations shall be published as provided by law for the publication of ordinances, and before adoption, a public hearing shall be held thereon. A copy thereof shall be certified by the commission to the register of deeds of the county.

(Ord. No. 98, § 12, 11-27-61)

State law reference—Similar provisions, MCL 125.3871.

Sec. 46-13. Approval or disapproval of plats; procedure, effect.

The planning commission shall approve, modify or disapprove a plat within 60 days after the submission of the plat to it; otherwise such plat shall be deemed to have been approved, and a certificate to that effect shall be issued by the commission on demand; provided, however, that the applicant for the commission's approval may waive this requirement and consent to an extension of such period. The ground of disapproval of any plat shall be stated upon the records of the commission. Any plat submitted to the commission shall contain the name and address of a person to whom notice of a hearing shall be sent; and no plat shall be acted on by the commission without affording a hearing thereon. Notice shall be sent to the address by registered mail of the time and place of such hearing not less than five days before the date fixed therefor. Similar notice shall be mailed to the owners of land immediately adjoining the platted land, as their names appear upon the plats in the official records of the city and the county and their addresses appear in the directory of the city or on the tax records of the city or county. Every plat approved by the commission shall, by virtue of such approval, be deemed to be an amendment of or an addition to or a detail of the city plan and a part thereof. Approval of a plat shall not be deemed to constitute or effect an acceptance by the public of any street or other open space shown upon the plat. The planning commission may, from time to time, recommend to the council amendments of the zoning ordinance or map or additions thereto to conform to the commission's recommendations for the zoning regulation of the territory comprised within approved subdivisions. The commission shall have the power to agree with the applicant upon use, height, area or bulk requirements or restrictions governing buildings and premises within the subdivision, provided such requirements or restrictions do not authorize the violation of the then effective zoning ordinance of the city. Such requirements or restrictions shall be stated upon the plat prior to the approval and recording thereof and shall have the same force of law and be enforceable in the same manner and with the same sanctions and penalties and subject to the same power of amendment or repeal as though set out as a part of the zoning ordinance or map of the city.

(Ord. No. 98, § 13, 11-27-61)

State law reference—Similar provisions, MCL 125.3871.

Chapter 47

RESERVED

Chapter 48

SIGNS

- Sec. 48-1. Title.
- Sec. 48-2. Definitions.
- Sec. 48-3. Permits.
- Sec. 48-4. Signs not requiring permits.
- Sec. 48-5. Signs requiring permits.
- Sec. 48-6. Signs not permitted; signs with flashing lights.
- Sec. 48-7. Signs announcing that a business is open.
- Sec. 48-8. Variances.
- Sec. 48-9. Maintenance.
- Sec. 48-10. Nonconforming signs.
- Sec. 48-11. Penalty.

Sec. 48-1. Title.

This chapter shall be known and cited as the City of Mt. Morris Sign Ordinance.
(Ord. of 12-8-97, § 1; Ord. of 11-13-00(1), § 1)

Sec. 48-2. Definitions.

As used in this chapter, the following words shall have the meaning set forth below:

City council means the City Council of the City of Mt. Morris, Genesee County, Michigan.

District means each part, or parts, of the city for which specific zoning regulations are prescribed.

Flag means a piece of cloth or bunting attached to a pole attached to and perpendicular to the ground, bearing the official design of any unit of government, education institution, fraternal benefit societies, order or organization, or any organization operated exclusively for religious, charitable, scientific, literary, or educational purposes, except when displayed in connection with commercial promotion.

Frontage means the lands and distance thereof of any lot fronting on one side of a street between intersecting or intercepting streets, or between a street and another right-of-way, waterway, end of a dead end street or city boundary measured along the street line.

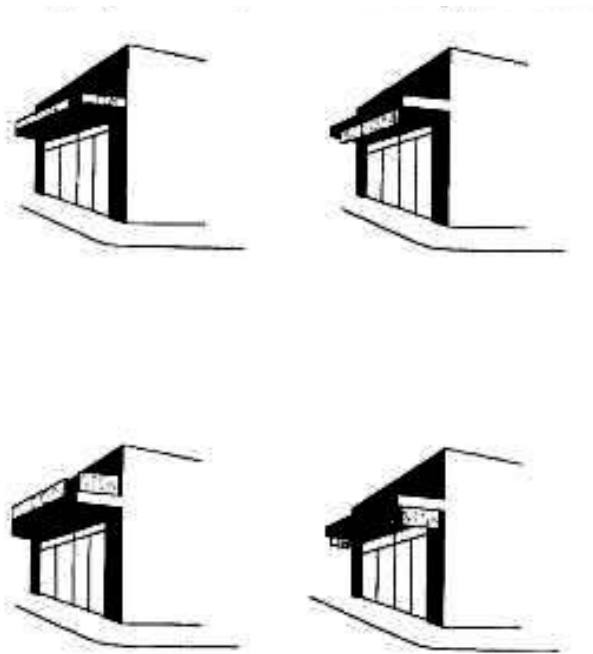
Height of a sign means the vertical distance measured from the ground immediately beneath the sign to the highest point of its structure.

Home occupation means an occupation conducted in a dwelling unit.

Lot means, for purposes of this chapter, a parcel of land of at least sufficient size to meet minimum zoning requirements for use, coverage, and area, and to provide such yards and other open spaces as herein required. Such lot shall have frontage on an improved public street, or on an approved private street, and may consist of:

- (1) A single lot of record;
- (2) A portion of a lot of record;
- (3) A combination of contiguous lots of record, or contiguous portions of lots of record;
- (4) A parcel of land described by metes and bounds.

Marquee sign means a display on a marquee or extending above or below a marquee, awning or canopy.



Master plan means the Comprehensive Development Plan for the City of Mt. Morris, Geneses County, Michigan.

Nonconforming sign means any sign which does not conform with the provisions of this chapter but which was lawfully existing and maintained within the city prior to and at the time this chapter became effective, or was lawfully in existence and in use on the property inside the township on the date this chapter went into effect.

Projecting sign means any sign attached to a building which extends more than 15 inches beyond any vertical surface of the building which supports it.

Roof sign means any sign which is attached to a building and any part of which extends above either the top of the building silhouette or any portion of the roof surface.

Setback means distance from the centerline or right-of-way lines of streets to the building line for the purpose of defining limits within which no building or structure; or any part thereof, shall be erected or permanently maintained.

Sign means any device designed to inform or attract the attention of persons not on the premises on which the sign is located; excepting, however, the following which shall not be included within this definition:

- (1) Signs not exceeding one square foot in area and bearing only property numbers, post box numbers, names of occupants of premises, or other identification of premises not having commercial connotations;

- (2) Legal notices; identification, informational, or directional signs erected or required by governmental bodies;
- (3) Integral decorative or architectural features of buildings, except letters, trademarks, moving parts, or moving lights;
- (4) Signs directing and guiding traffic and parking on private property, but bearing no advertising matter.

Sign area means the area of a sign consisting of the entire surface of any regular geometric form, including words, letters and symbols, or combinations of regular geometric forms, comprising all of the display area of the sign and including all of the elements of the matter displayed. Frames and structural members not bearing advertising matter shall not be included in computation of such area.

Sign, on-site means a sign relating in its subject matter to the premises on which it is located, or to products, accommodations, services, or activities on the premises.

Sign, off-site means a sign other than an on-site sign.

Wall sign means a sign which is attached directly to, or otherwise inscribed upon, a building wall or the exterior of a window.

Window sign means any sign which is permanently or temporarily applied, affixed, or attached to the interior or exterior of any building window.

Zoning administrator means that person or persons duly charged by the appropriate appointing authority with the responsibility for executing and administering the zoning provisions of the City of Mt Morris Code of Ordinances, or authorized by the zoning administrator to act on their behalf.

(Ord. of 12-8-97, § 2; Ord. of 11-13-00(1), § 2)

Sec. 48-3. Permits.

No person shall erect, place, structurally alter, paint, or add to any sign nor attach any sign to an existing sign, which shall either increase the area thereof or constitute a structural alteration thereof or an addition thereto, without first obtaining a permit to do so in the manner hereinafter provided.

- (1) *Application for sign erection permits.* Application for such permit shall be filed upon forms provided by the zoning administrator and shall contain the following information:
 - a. Name, address, and telephone number of the applicant.
 - b. Location of building, structure or lot to which the sign is to be attached or erected.
 - c. Position of the sign in relation to nearby buildings, structures, and property lines.
 - d. A drawing of the plans and specifications and method of construction and attachment to the building or in the ground.

- e. Copy of stress sheets and calculations, if deemed necessary, showing the structure as designed for dead load and wind pressure in accordance with regulations adopted by the building official.
 - f. Name and address of the person, firm, corporation, or association erecting the structure.
 - g. Such other information as may require to show full compliance with this and all other applicable laws of the City of Mt. Morris and the State of Michigan.
- (2) *Permit fee.* The fee for permits shall be set by resolution of the city council.
- (3) *Approval.* The zoning administrator shall approve the application and provide the applicant with a sign permit if:
- a. The applicant has paid the required sign permit fees.
 - b. The applicant has submitted a complete application.
 - c. The application meets all of the requirements of this chapter.
- (4) *Denial.* If the zoning administrator denies an application for a sign permit, the applicant may appeal the decision to the planning commission. Such appeal must be filed with the city within 30 days of the date of the notice of denial. The planning commission shall hear the appeal within 35 days of a complete application being filed. The planning commission shall decide the appeal within 14 calendar days of the meeting at which the appeal was reviewed.
- (5) *No permit required.* No permit shall be required for ordinary servicing, repainting of existing sign message, or cleaning of a sign. No permit is required for change of message of a sign without change of structure, including a bulletin board or billboard, but not including a sign to which a new permanent face may be attached.
- (Ord. of 12-8-97, § 3; Ord. of 11-13-00(1), § 3)

Sec. 48-4. Signs not requiring permits.

- (a) *Signs in residential districts.* On-site signs may be permitted in residential districts as follows:
- (1) One professional sign or name plate sign for a permitted home occupation not more than 144 square inches in area which shall be non-illuminated.
 - (2) One non-illuminated temporary sign pertaining to the lease or sale of the premises upon which it is placed, not exceeding eight square feet in total area, provided that it shall be removed within seven days after the consummation of a lease or sale transaction.
 - (3) Signs permitted in the residential districts shall not be erected closer to any adjacent street right-of-way line than one-half the setback required for the lot, provided that a nameplate sign not more than 72 square inches in area, as regulated above, may be placed anywhere within the front yard.

- (4) One non-illuminated temporary sign having a maximum area of 12 square feet indicating the name of the architect, developer, and/or construction company responsible for the construction of a building while construction is in progress.
- (5) One non-illuminated sign shall be allowed at a residential address. Such sign shall not be located on vacant lots or at addresses where the residence is unoccupied. No such sign may be placed on public property or within the public right-of-way. All such signs must meet the location requirement set forth in subsection (3) and shall not be more than three square feet in area and shall not contain obscenity or profanity. The period during which said signs shall be displayed shall not exceed the time frame of the event, activity or season.

(b) *Flags.* Flags shall be permitted in any district providing all of the following requirements are met:

- (1) The top of the flagpole shall be no higher than 35 feet above grade.
- (2) The height of the flagpole shall be at least eight feet higher than the length of the longest side of the flag, measured from the lowest point of the flag (at relaxed position) to grade.

(Ord. of 12-8-97, § 4; Ord. of 11-13-00(1), § 4; Ord. No. 11-02, 4-11-11)

Sec. 48-5. Signs requiring permits.

(a) *Permanent signs in commercial, office and manufacturing districts (C-R, C, O and I districts).* On-site signs may be permitted in the commercial, office and manufacturing districts as follows:

- (1) No on-site sign shall be permitted which is not accessory to the business conducted on the property.
- (2) No such sign shall be lighted by means of flashing or intermittent illumination. All lights used for the illumination of business structures or areas surrounding them, or for the illumination or display of merchandise or products of business establishments shall be completely shielded from the view of vehicular traffic using the road or roads abutting such business properties.

Floodlights used for the illumination of said premises, or any sign thereon, whether or not such floodlights are attached to or separate from the structure on which such sign is attached, shall not be directed in such a manner as to adversely affect adjoining or nearby properties, or traffic.

- (3) No on-site sign, as permitted, shall extend or project above the highest elevation of the wall to which it is attached, provided, however, signs may project above said wall when they are an integral part of such wall.

- (4) Wall signs may only be erected on an exterior wall providing all of the following requirements are met:
 - a. A business establishment may have up to 20 percent sign coverage on the face of any wall. The area of the face of the wall shall include the area of any windows located on the building face.
 - b. All such signs shall be flat signs, attached and parallel to the face of any building all complying with the following requirements:
 1. No such sign shall extend farther than 15 inches from the face of the building upon which it is attached, provided, however, that where a sign extends more than three inches from the face of said wall, the bottom of said sign shall not be closer than ten feet from the ground level below said sign.
 2. The maximum height of any single on-site sign shall not exceed five feet and the maximum width shall not exceed 90 percent of the width of the wall to which said sign is attached.
- (5) Awning/canopy signs.
 - a. Awning/canopy signs are permitted in that area defined in the City of Mt. Morris Master Plan as the (central business) district. Awning/canopy signs shall be subject to the approval of the zoning administrator, who shall insure that the location, size and type of such signs shall be uniform as related to other similar signs. The total area of signs permitted on canopies shall be included as part of the total number and area of wall signs permitted for each business establishment. Business owners are permitted to attach one marquee sign to the underside of the awning/canopy sign perpendicular to the building face provided that the area of such sign does not exceed one square foot in area.
 - b. Awning/canopy signs, including marquee signs attached to the underside of the awning/canopy signs, must be located at least nine feet above the sidewalk.
 - c. Awning/canopy signs are permitted in commercial or office districts that are not located in the central business district; however they shall not be permitted above the public domain.
- (6) Window signs. On-site window signs shall be permitted on any building face and shall be included in the calculation of approved wall signage.
- (7) Roof signs. Roof signs shall not be permitted.
- (8) Projecting signs. Signs projecting more than 15 inches from a wall shall not be permitted.
- (9) Freestanding signs.
 - a. All freestanding signs are to have a maximum of two sign faces.

One freestanding or pylon sign shall be permitted per business use or shopping center as hereinafter defined, advertising the name of said business use including any special company or brand name, insignia or emblem and special announce-

ment of services. Each freestanding sign shall have one square foot of area per sign face per lineal foot of frontage with a maximum size of 75 square feet per sign face, 32 square feet in the office district.

Business uses with more than 60 feet of street property frontage, the sign shall have a maximum overall height of 25 feet.

For business uses with less than 60 feet of street property frontage, the sign shall have a maximum overall height of not more than 20 feet.

- b. Public domain. In all cases such signs shall be located on the same property upon which said business use is located and shall be located in such a manner so that no part of said sign extends over the public domain (and shall not be located or constructed such as to obscure essential vision of motorists and contribute to hazardous conditions.)
- c. Traffic directional signs. Portions of the freestanding or pylon sign devoted to traffic-directional purposes including but not limited to those indicating "one way" shall not be included in the above specified area, it being the intent hereof that the limitation hereby imposed shall relate to advertising content. The nature, style and size of traffic directional signs shall be approved by the administrative official charged with enforcement of this chapter shall be as uniform in design and style as possible under the circumstances. Freestanding or pylon signs solely containing such traffic directional information shall not be included in the freestanding or pylon sign count provided that greater than 70 percent of each sign face is used for traffic directional purposes.
- d. Shared freestanding signs. "Business use" is hereby defined, for the purposes of this subsection, as a single parcel or piece of land (or a platted lot or combination of platted lots used as a single entity) which is zoned and used for a business purpose. In the event such parcel (or platted lot or combination or platted lots used as a single entity) shall be divided, by sale or lease, into distinct segments (each of which is individually capable, pursuant to this chapter of being used, separate and distinct from other business uses) each such business use thereby created shall be entitled to its own freestanding pylon sign. It is the intent of this definition to preclude the erection of separate freestanding pylon signs for each business use if a business use shares parking areas or driveways or building entrances or malls in common with at least one other business use, in which case such group or business uses which share common facilities shall be deemed a "shopping center" and only one such freestanding pylon sign shall be permitted for the entire shopping center. In the case of shopping centers, said freestanding pylon sign shall have one square foot of area per foot of frontage, with a maximum size of 180 square feet per sign face irrespective of frontage. With respect to the computation of the gross area of the sign for a shopping center, frontage need not be frontage upon a street but may be computed on the basis of the dimensions of the store front or building frontage irrespective of the length of street frontage.

- e. Gasoline pump signs. Customary lettering or other insignia which are a structural part of a gasoline pump, consisting only of the brand name of gasoline sold, lead warning sign, a price indicator, and any other sign required by law, and not exceeding a total of three square feet on each pump; and if illuminated, such signs shall not be the flashing or intermittent type and shall not in any manner constitute a traffic hazard with respect to adjacent streets or intersections.
- f. Off-site signs. Off-site signs, that are signs advertising any business or activity, except on the property where such business or activity is located, are not permitted.
- g. Signs associated with vacant business establishments. As of the effective date of the ordinance from which this chapter is derived, all sign messages associated with a business establishment which has been vacant for a period of 60 days shall be removed. This provision is not intended to require the removal of a permanent sign structure as long as the sign message can be removed by painting over the sign or by removing message boards.

(b) *Permanent signs in residential districts (R-1, R-2, RB, R-C districts).*

- (1) Uses permitted by conditional use permit in residential districts may be allowed a wall or freestanding sign, not to exceed 32 square feet per sign face. In approving the sign as part of the conditional use permit, the planning commission may limit the size, lighting and location to ensure its compatibility with surrounding residences. In determining its compatibility it will consider the following:
 - a. Setback of the sign from adjacent lots and from the nearest residence.
 - b. Surrounding land uses.
 - c. Type and intensity of light of sign.
 - d. Landscaping of sign.
- (2) In the RB and R-C districts a free standing or wall sign is permitted to identify a residential development such as a mobile home park or an apartment complex. Such signs are subject to the same review standards as signs for uses permitted by conditional use permit as noted above.

(c) *Permanent signs in PUDs.* The size and location of a sign within a PUD shall be determined by the planning commission as part of PUD approval. The maximum permitted sign size for commercial, office and industrial uses shall be the sizes permitted in section 48-5(a).

(d) *Temporary/portable signs.*

- (1) *Temporary/portable signs requiring a permit.*

- a. The zoning administrator may approve an application for erection of a temporary/portable sign in any district, other than the R-1 and R-2 Districts, and shall issue

a permit for erection of the temporary sign for a time period not to exceed 14 consecutive days and each business shall only be permitted one temporary sign per calendar year if all of the following conditions are met:

1. The sign shall not exceed 24 square feet in total area per face, shall have no more than two faces and shall not project higher than six feet above curb level.
 2. The sign shall contain no visible moving, revolving or mechanical parts or movement, or other apparent visible movement achieved by electrical, electronic or mechanical means, including intermittent electrical pulsations, or by action of normal wind current.
 3. The sign shall contain no self-illumination and will not be otherwise illuminated.
 4. The sign location, design, structure, materials and support will not constitute a hazard to safety, health or welfare of the general public during the period of its erection.
 5. The sign shall not be attached to a tree, fence, utility pole, standpipe, gutter, drain or fire escape or impair access to a roof or ingress or egress of any structure.
 6. The sign shall not be located on any public property, right-of-way or sidewalk, or near any parking area entrance where the sign would obstruct the vision of the vehicles.
 7. The applicant shall submit the permit fee for a temporary sign which shall be established by resolution of the council.
 8. The sign must be located on the property of the applicant.
 9. Churches and educational institutions located in the R-1 and R-2 districts shall be permitted to have a temporary/portable sign if said sign meets all the above conditions and said sign is located on its property. Churches and educational institutions shall be permitted up to six temporary signs per premises per year provided all of the above conditions are met.
- b. If the zoning administrator denies a request for a temporary sign permit, the applicant may appeal the decision to the planning commission.
 - c. A temporary sign erected in violation of any provision of this section shall be impounded by the department of public works and may be destroyed or disposed of if not claimed within five business days by the occupant of the property where the sign was erected.
 - d. Governmental institutions shall be exempt from all provisions of this chapter.
 - e. Banners, flags, pennants, ribbons, streamers, balloons and other temporary signs are permitted only as temporary signs as provided for in this section.

- (2) *Temporary signs in residential districts requiring temporary sign permit.* One temporary sign having a maximum area of 32 square feet is permitted in residential districts to announce the sale of lots or structures in any one subdivision, for a maximum period of one year.
- (3) *Temporary/portable signs not requiring a permit.* Election or political signs are permitted in residential districts provided they have a maximum area of four square feet per sign face, and are permitted in commercial and industrial districts provided they have a maximum area of 8 square feet per sign face. Such signs shall not be erected closer to any adjacent street right-of-way line than ½ the setback required for said lot, there shall be no more than two such signs per lot, and they must be removed within ten days following the balloting for the election or issue which the sign was referencing.

(Ord. of 12-8-97, § 5; Ord. of 11-13-00(1), § 5; Ord. No. 07-03, § 1, 4-9-07)

Sec. 48-6. Signs not permitted; signs with flashing lights.

(a) *Signs and devices which are not permitted.* Permanent signs with any visible, moving, revolving or mechanical parts or movements, or other apparent visible movement achieved by electrical, electronic or mechanical means, including intermittent electrical pulsations, or by action of normal wind current shall not be permitted.

(b) *Electronic message boards.* Electronic message boards or signs are permitted only as hereinafter set forth:

- (1) Monument message board signs shall be set back a minimum of 25 feet from the public right-of-way.
- (2) No such sign shall be higher than as otherwise permitted by this chapter or other provisions of the City Code.
- (3) No such sign shall exceed eight square feet in size.
- (4) The lighted portion of the sign shall not be red in color.
- (5) The programmed message shall remain on the screen for a minimum of two seconds; "scrolling" is not permitted.
- (6) The use of the "flash" option on electronic message board signs is prohibited.
- (7) All such signs shall be reduced in intensity to ½ of their daytime intensity at sunset and shall remain at this level of intensity until sunrise.

(Ord. of 12-8-97, § 6; Ord. of 11-13-00(1), § 6; Ord. No. 07-03, § 2, 4-9-07)

Sec. 48-7. Signs announcing that a business is open.

"Open" signs. Businesses shall be permitted to display one sign with the word "open" and the size of such sign shall not be included in computation of the percentage requirement set forth in section 48-5 hereof. Such signs shall not flash or vary in intensity unless they meet the requirements hereinabove set forth in section 48-6.

(Ord. No. 07-03, § 3, 4-9-07)

Editor's note—Ord. No. 07-03, § 3, adopted April 9, 2007, renumbered the former §§ 48-7—48-9 as §§ 48-8—48-10 and enacted a new § 48-7 as set out herein. The historical notation has been retained with the amended provisions for reference purposes.

Sec. 48-8. Variances.

(a) *Generally.* These variance procedures are instituted to provide an opportunity for the relaxation of the terms of this chapter where it would not be contrary to the public interest and where, owing to the conditions peculiar to the sign request and not the result of the action of the applicant, literal enforcement of this chapter would result in an unnecessary and undue hardship.

(b) *Procedures.*

- (1) An applicant for a variance shall file a written request, together with the applicable fee, with the city zoning administrator setting forth the specific variance requested and the reasons for the variance.
- (2) The city zoning administrator shall prepare a report on the request and have it placed on the agenda of the city council.
- (3) Notices of the hearing before the city council will be mailed out to all residents and property owners within 300 feet of the subject property and shall be published in a paper of general circulation at least 15 days before the city council meeting.
- (4) At the hearing the applicant and any members of the public shall be given an opportunity to comment on the request.
- (5) The city council shall grant the variance if they find that all of the following conditions have been met:
 - a. Strict enforcement of the Code would cause unnecessary hardship and deprive the applicant of rights enjoyed by similarly situated city residents or businesses.
 - b. The conditions and circumstances of the applicant are unique and not applicable to other city residents or businesses.
 - c. The conditions and circumstances were not created by the applicant.
 - d. The requested variance will not confer special privileges that are denied other similarly situated residents or businesses.

e. The requested variance is not contrary to the spirit and intent of this chapter.
(Ord. No. 08-01, § 1, 1-28-08)

Editor's note—Ord. No. 08-01, §§ 1 and 2, adopted Jan. 28, 2008, renumbered the former §§ 48-8—48-10 as 48-9—48-11 and enacted a new § 48-8 as set out herein. The historical notation has been retained with the amended provisions for reference purposes.

Sec. 48-9. Maintenance.

(a) All signs for which a permit is required and all supports thereof shall:

- (1) Be kept in compliance with the plans and specifications filed and approved for issuance of the sign permit.
- (2) Be kept and maintained in a safe condition.
- (3) At all times conform to all provisions of this chapter.

(b) The zoning administrator has the authority to inspect any sign requiring a permit at any given time to ensure compliance with the requirements of this chapter.

(c) The zoning administrator may require the repair or removal of a sign requiring a permit within seven days upon the finding that any of the following conditions exist:

- (1) The sign is found to be unsafe.
- (2) The sign is in a condition that does not comply with this chapter.
- (3) The sign was established as an accessory use for a principal use which has ceased to exist for a period of six months.

(Ord. of 12-8-97, § 7; Ord. of 11-13-00(1), § 7; Ord. No. 07-03, § 3, 4-9-07; Ord. No. 08-01, § 2, 1-28-08)

Note—See the editor's notes to §§ 48-7 and 48-8.

Sec. 48-10. Nonconforming signs.

(a) A nonconforming sign shall not be repaired, altered, reconstructed, relocated, or expanded in any manner unless or until the sign is made to conform with the provisions of this chapter. Ordinary maintenance and minor repairs which will not increase the normal life of the sign which are required for safety purposes will be permitted. Structural alterations to a nonconforming sign are prohibited.

(b) Notwithstanding any other provision contained in this chapter, in the event a change in the ownership or name of the business identified or advertised by a nonconforming sign necessitates the replacement of a sign face, the nonconforming sign may be altered by either repainting the sign face or replacing one or more removable panels on the sign without first making the entire sign conform with the provisions of this chapter. Nothing contained herein shall extend or alter the applicable period of time within which the nonconforming sign must be made to conform to the provisions of this chapter.

(c) If the use of a nonconforming sign is discontinued for more than six months, it shall be made to conform with the provisions of this chapter or shall be removed.

(d) All nonconforming signs shall be brought into conformance within a ten-year grace period from the effective date of the ordinance from which this chapter is derived.

(e) An inventory of nonconforming signs shall be prepared within six months of adoption of this chapter. Owners of property on which nonconforming signs are located shall be notified by certified mail within nine months of adoption of this chapter stating the time they shall have to bring their signs into conformance.

(Ord. of 12-8-97, § 8; Ord. of 11-13-00(1), § 8; Ord. No. 07-03, § 3, 4-9-07; Ord. No. 08-01, § 2, 1-28-08)

Note—See the editor's notes to §§ 48-7 and 48-8.

Sec. 48-11. Penalty.

Any person who violates any of the provisions of this chapter shall be deemed guilty of a municipal civil infraction, as established by the Code of Ordinances of the City of Mt. Morris, municipal civil infractions section 1-14. Each act of violation and every day upon which any such violation shall occur shall constitute a separate offense.

(Ord. of 12-8-97, § 9; Ord. of 11-13-00(1), § 9; Ord. No. 07-03, § 3, 4-9-07; Ord. No. 08-01, § 2, 1-28-08)

Note—See the editor's notes to §§ 48-7 and 48-8.

Chapter 49

RESERVED

Chapter 50

SOLID WASTE*

- Sec. 50-1. Collection fee.
- Sec. 50-2. Recycling fee.
- Sec. 50-3. Yard waste collection fee.
- Sec. 50-4. Billing.
- Sec. 50-5. Delinquent bills.
- Sec. 50-6. Charges become liens on property.
- Sec. 50-7. Security deposit.

***Cross references**—Administration, ch. 2; planning, ch. 46; schedule of fees, app. C.

Sec. 50-1. Collection fee.

(a) A solid waste collection fee is hereby established. The fee shall be for each residential dwelling unit. In the case of multiple dwelling units all buildings with three or less residential units shall be required to have service by the city. Those buildings with four or more units shall not be required to have service by the city if the building and units are serviced by a common dumpster.

(b) All properties in the city with a residential structure or that contain residential dwelling units shall pay for solid waste collection, regardless of whether the structure is occupied or vacant. The fee for solid waste collection shall be established by resolution by the city council. A public hearing shall be held prior to the enactment of such a resolution and at least ten days' notice of the public hearing shall be published in a paper of general circulation within the city indicating, in addition to such other information as the council deems appropriate, the schedule of the new rates contemplated. The charge set forth in this section shall be billed monthly on the statement for water and sewer services.

(Ord. No. 336, § 1, 12-13-93)

Sec. 50-2. Recycling fee.

(a) A recycling fee is hereby established. The fee shall be for each residential dwelling unit. In the case of multiple dwelling units all buildings with three or less residential units shall be required to have service by the city. Those buildings with four or more units shall not be required to have service by the city if the building and units are serviced by a common garbage dumpster.

(b) All properties in the city with a residential structure or that contain residential dwelling units shall pay for recycling collection, regardless of whether the structure is occupied or vacant. The fee for recycling collection shall be established by resolution by the city council. A public hearing shall be held prior to the enactment of such a resolution and at least ten days' notice of the public hearing shall be published in a paper of general circulation within the city indicating, in addition to such other information as the council deems appropriate, the schedule of the new rates contemplated. The charge set forth in this section shall be billed monthly on the statement for water and sewer services.

(Ord. No. 336, § 2, 12-13-93)

Sec. 50-3. Yard waste collection fee.

(a) A yard waste collection fee is hereby established. The fee shall be for each residential property in the city. If a parcel of property has a multiple dwelling unit on it then there shall only be one fee for yard waste pick-up. All properties which get solid waste collection by the city shall have yard waste pick-up.

(b) All properties in the city which get solid waste collection by the city shall also pay for yard waste pick-up. The fee and schedule for yard waste collection shall be established by resolution by the city council. A public hearing shall be held prior to the enactment of such a resolution and at least ten days' notice of the public hearing shall be published in a paper of

general circulation within the city indicating, in addition to such other information as the council deems appropriate, the schedule of the new rates contemplated. The charges set forth in this section shall be billed monthly on the statement for water and sewer services.

Sec. 50-4. Billing.

Bills will be dated and normally will be rendered on the tenth day of each month and will be for that month's service. Each bill shall be payable on or before the fifteenth day after the billing date.

(Ord. No. 336, § 3, 12-13-93)

Sec. 50-5. Delinquent bills.

If any waste disposal, recycling, or yard waste charges are not paid within 15 days after the billing date of the statement, a penalty of ten percent will be added thereto.

(Ord. No. 336, § 4, 12-13-93)

Sec. 50-6. Charges become liens on property.

Charges for waste disposal services furnished by the system to any premises as well as all interest and penalties shall be a lien thereon as of the due date thereof. On March 31 of each year the city clerk shall certify such charges which have been delinquent 30 days or more, plus penalties and interest accrued thereon to the city assessor who shall enter the same on the next tax roll against the premises to which such service has been rendered. The charges, penalties and interest shall be collected and the lien enforced in the same manner as the other taxes assessed on such tax roll; provided, however, that commercial premises which do not receive the service contemplated by this chapter due to the existence of separate contracts with a disposal firm shall not be subject to this charge and the provisions of this chapter shall not apply to such premises. Proper notice shall be given to the city of the fact that such other waste disposal arrangements are in effect.

(Ord. No. 336, § 5, 12-13-93)

Sec. 50-7. Security deposit.

Where no lien can be imposed on a property for the payment of the charge established in this chapter, a security deposit shall be required prior to furnishing the services contemplated in this chapter. The deposit shall be the estimated bill payable to the city for three months' service as determined by the city clerk.

(Ord. No. 336, § 6, 12-13-93)

Chapters 51—53

RESERVED

Chapter 54

SPECIAL ASSESSMENTS*

- Sec. 54-1. Scope, costs of public improvements.
- Sec. 54-2. Filing of petition requesting improvement.
- Sec. 54-3. Council declaration of intent, determination of proposed improvement and assessment district.
- Sec. 54-4. Filing of council resolution for public examination.
- Sec. 54-5. Hearing; public notice.
- Sec. 54-6. Adoption, contents of resolution approving improvement and assessment.
- Sec. 54-7. Preparation of special assessment roll.
- Sec. 54-8. Review of roll, hearing of objections.
- Sec. 54-9. Confirmation of roll.
- Sec. 54-10. Installment payments.
- Sec. 54-11. Delinquent payments.
- Sec. 54-12. Charges become lien on property.
- Sec. 54-13. Collection procedure.
- Sec. 54-14. Judicial remedy in collection of delinquent assessment.
- Sec. 54-15. Division of land after assessment confirmed; apportionment of amounts.
- Sec. 54-16. Additional pro rata assessments.
- Sec. 54-17. Invalid assessment roll; new assessment.
- Sec. 54-18. Excess moneys; deposit or refund procedure.
- Sec. 54-19. Unforeseen expenses for single premises; charge to owner (Repealed).
- Sec. 54-20. Payment for exempt lands.
- Sec. 54-21. Assessments made after improvement completed based on actual cost.
- Sec. 54-22. Intergovernmental improvements.
- Sec. 54-23. Sidewalk repair and replacement—Generally.
- Sec. 54-24. Same—Deferral of payment based upon hardship; mortgage; term; payment due upon sale of premises.
- Sec. 54-25. Contract; alternative procedure for assessment.

***Cross references**—Administration, ch. 2; streets, sidewalks and other public places, ch. 58.

State law references—Notice and hearings, MCL 211.741 et seq.; deferment for older persons, MCL 211.761 et seq.; powers re special assessments, MCL 117.4a, 117.4b, 117.4d, 117.5.

Sec. 54-1. Scope, costs of public improvements.

The term "public improvements" as used in this chapter shall include the reconstruction in whole or in part of any structure or work as well as the original construction thereof. The cost of surveys, maps, drawings, plans and specifications for a public improvement and all expenses incident to the proceedings for the making of such improvements, the making and collecting of the special assessments therefor, the issuance of bonds in anticipation of such special assessments, and not to exceed one year's interest on bonds to be issued to finance the improvements, shall be deemed a part of the cost of the improvements. Whenever any property is acquired by condemnation, or otherwise, for the purpose of any public improvement all or any part of the cost thereof may be included as a part of the cost of such improvement. Any assessment may be made upon the basis of the estimated cost of the improvement if the actual cost has not been definitely determined.

(Ord. No. 138, § 2, 10-12-70)

Sec. 54-2. Filing of petition requesting improvement.

Any person or persons having an interest in property in the city may file petitions requesting the council to make a public improvement therein described and to assess the cost to benefitted lands. Any such petition shall be advisory only, and in no event shall such petition be deemed jurisdictional.

(Ord. No. 138, § 3, 10-12-70)

Sec. 54-3. Council declaration of intent, determination of proposed improvement and assessment district.

The council, with or without petitions, may determine to make any public improvement and to defray the whole or any part of the cost thereof by special assessments against property especially benefitted thereby, and shall by resolution declare its intention to do so, stating therein the nature and the route or location of the proposed improvement and the lands and premises proposed to be included in the special assessment district and assessed therefor, and shall cause to be prepared and submitted to the city council a map or drawing showing the route or location of such proposed improvement and such proposed special assessment district, plans and specifications for such proposed improvement and an estimate of the cost thereof.

(Ord. No. 138, § 4, 10-12-70)

Sec. 54-4. Filing of council resolution for public examination.

Upon receipt of the map or drawing, plans, specifications and cost estimate, the council may proceed with the making of the improvements, and the special assessments therefor. If the council proceeds, the council shall order the map or drawing, plans, specifications and cost estimate to be filed in the office of the city clerk for public examination, shall tentatively determine the necessity of the improvement, shall state the estimated cost and what part or

proportion shall be paid by special assessment and what part or portion, if any, shall be a general obligation of the city, and shall designate the district or lands and premises upon which the special assessments shall be levied.

(Ord. No. 138, § 5, 10-12-70)

Sec. 54-5. Hearing; public notice.

Before finally determining to make the improvement and the special assessments therefor, the council shall hold a public hearing on necessity at a time and place to be fixed by the council, and at such hearing shall hear and consider any objections which may be submitted by any interested person with respect to the making of the improvement and the assessing to the designated special assessment district of all or part of the cost of the improvement which the council has proposed to so assess. The council shall cause notice of such hearing to be given by the city clerk not less than ten days prior to the date of the hearing, by publication thereof at least once in a newspaper having general circulation in the city, and by sending by first class United States mail, postage thereon fully prepaid, a copy of the notice addressed to each person in whose name any land in the special assessment district is assessed, as shown on the last preceding tax assessment roll of the city, at his last known address. Such notice shall specify the improvements, describe the district, state the estimated cost, state that appearance and protest at the hearing on the assessment roll is required in order to appeal to the state tax tribunal, and give notice that the map or drawing, plans, specifications and cost estimate of the improvement are on file with the city clerk for public examination. At the time of the hearing, or any adjournment thereof, which may be without further notice, the council shall hear and consider such objections as are submitted. The council without further notice may revise, correct, amend or change the map or drawing, plans, specifications, estimate and/or district; provided, that no property shall be added to the district until notice is given as above provided or by personal service upon the owners thereof and a hearing afforded such owners.

(Ord. No. 138, § 6, 10-12-70)

Sec. 54-6. Adoption, contents of resolution approving improvement and assessment.

After the hearing provided for in section 54-5, if the council desires to proceed with the making of the improvement and the special assessments therefor, it shall adopt a resolution approving the map or drawing, plans, specifications and cost estimate as originally presented or as revised, corrected, amended or changed, determining to make the improvement, designating the lands and premises constituting the special assessment district therefor, stating what part of the cost of the improvement, if any, shall be assumed and paid from the general funds of the city and directing that the remainder be assessed in accordance with benefits to the lands and premises constituting the special assessment district, and ordering the city assessor to prepare a special assessment roll for all or that part of the cost to be so assessed.

(Ord. No. 138, § 7, 10-12-70)

Sec. 54-7. Preparation of special assessment roll.

The city assessor shall, after the adoption of the resolution so directing, prepare the special assessment roll in which shall be entered and described all the lands and premises to be assessed, with the names of the respective owners thereof, if known, and the amount to be assessed against each such parcel of land or premises, which amount shall be such relative portion of the whole sum to be levied against all lands and premises in the special assessment district as the benefit to such parcel of land or premises bears to the total benefit to all lands and premises in the special assessment district. There shall also be entered upon the roll the amount which has been assumed by the city at large, if any. When the city assessor has completed the assessment roll, he shall file it in the office of the city clerk, after first having affixed thereto a certificate stating that it was made pursuant to a resolution of the council adopted on a specified date and that in making the assessment roll he has, according to his best judgment, conformed in all respects to such resolution, this chapter and the Charter of the city. (Ord. No. 138, § 8, 10-12-70)

Sec. 54-8. Review of roll, hearing of objections.

Before confirming any assessment roll, the council shall, by resolution, specify the number of installments in which the assessments may be paid, and shall appoint a time and place when it will meet and review the roll and hear any objections thereto, and shall cause notice of the hearing and of the filing of the assessment roll to be given by the city clerk not less than ten days prior to the date of the hearing, by publication thereof at least once in a newspaper having general circulation in the city, and by sending by first class United States mail, postage thereon fully prepaid, a copy of the notice addressed to each person in whose name any land is assessed on the roll, at his last known address, as shown on the tax assessment roll. The council shall meet at the appointed time and place and at such meeting or any adjourned meeting (which may be without further notice), shall review the special assessment roll and hear and consider any objections thereto. (Ord. No. 138, § 9, 10-12-70)

Sec. 54-9. Confirmation of roll.

After the hearing on the special assessment roll, the council by resolution may confirm the roll, or may correct it as to any matter appearing therein and confirm it as so corrected, or may refer it back to the city assessor for revision, or may annul it and direct a new roll to be made. No original special assessment roll shall be finally confirmed except by the affirmative vote of five members of the council if prior to such confirmation written objections to the proposed improvement have been filed by owners of property which will be required to bear more than 50 percent of the amount of such special assessment. The city clerk shall endorse the date of confirmation upon each special assessment roll. After confirmation the special assessment roll and all assessments therein shall be final and conclusive. (Ord. No. 138, § 10, 10-12-70)

Sec. 54-10. Installment payments.

Special assessments may be made payable in one or more installments, as determined by the council, but such installments may not exceed five in the case of sidewalk improvements, 15 in the case of paving or similar street improvements, and 20 in the case of water, storm sewer, sanitary sewer or other improvements. The first installment shall be due at such time after confirmation as the council shall provide and the several subsequent installments shall be due at intervals of 12 months from the due date of the first installment or from such other date as the council shall fix. The amount of each installment (if more than one) need not be extended upon the special assessment roll until after confirmation. The portion of the special assessment not paid by a date to be fixed by the council shall bear interest from such date at a rate to be determined by the council. Such accrued interest on all unpaid installments shall be due and payable annually on the due dates of the respective installments. Any one or more installments may be paid at any time before due, together with accrued interest on such installments.

(Ord. No. 138, § 11, 10-12-70)

Sec. 54-11. Delinquent payments.

If any installment is not paid when due, it shall be deemed to be delinquent, and there shall be collected thereon, in addition to interest as above provided, a penalty at the rate of one-half of one percent for each month or fraction thereof that it remains unpaid prior to its transfer to the city tax roll. In case any assessment or any installment thereof shall remain unpaid on the first Monday of May following the date when it became delinquent, it shall be reported unpaid by the city treasurer to the council, and such delinquent assessment, together with all accrued interest, shall be transferred and reassessed on the next annual city tax roll in a column headed "Special Assessments" with a penalty of four percent upon such total amount added thereto, and when so transferred and reassessed upon the tax roll shall be collected in all respects as provided for the collection of city taxes.

(Ord. No. 138, § 12, 10-12-70)

Sec. 54-12. Charges become lien on property.

Special assessments and all interest, charges and penalties thereon, from the date of confirmation of the roll and until paid, shall be and remain a lien upon the property assessed of the same character and effect as the lien created by the city Charter for city taxes. No judgment or decree, nor any act of the council vacating a special assessment shall destroy or impair the lien of the city upon the property assessed, for such amount of the assessment as may be equitably charged against the same, or as by a regular mode of proceeding might be lawfully assessed thereon.

(Ord. No. 138, § 13, 10-12-70)

Sec. 54-13. Collection procedure.

When any special assessment shall be confirmed, the council shall direct the assessments so made in the special assessment roll to be collected. The assessor shall thereupon deliver to the

city treasurer the special assessment roll to which the mayor shall attach his warrant commanding the city treasurer to collect from each of the persons assessed in the roll the amount of money assessed to and set opposite his name therein. Upon receiving the special assessment roll and warrant, the city treasurer shall proceed to collect the several amounts assessed therein.

(Ord. No. 138, § 14, 10-12-70)

Sec. 54-14. Judicial remedy in collection of delinquent assessment.

In addition to any other remedies and without impairing the lien therefor, any delinquent special assessment together with interest and penalties may be collected in an action of assumpsit in the name of the city against the person assessed, in any court having jurisdiction. If in any such action it shall appear that by reason of any irregularities or informalities the assessment has not been properly made against the defendant or upon the premises sought to be charged, the court may, nevertheless, on satisfactory proof that expense has been incurred by the city, which is a proper charge against the defendant or the premises in question, render judgment for the amount properly chargeable against the defendant or upon the premises.

(Ord. No. 138, § 15, 10-12-70)

Sec. 54-15. Division of land after assessment confirmed; apportionment of amounts.

Should any lot or parcel of land be divided after a special assessment thereon has been confirmed and before the collection thereof, the council may require the city assessor to apportion the uncollected amounts upon the several parts of such lot or parcel of land. The report of such apportionment when confirmed shall be provided to and shall be conclusive upon, all parties.

(Ord. No. 138, § 16, 10-12-70)

Sec. 54-16. Additional pro rata 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 incidental thereto, or insufficient to pay the principal and interest on bonds issued in anticipation of such assessment roll. The additional pro rata assessment shall not exceed 20 percent of the assessment as originally confirmed, unless a meeting of the council is 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.

(Ord. No. 138, § 17, 10-12-70)

Sec. 54-17. Invalid assessment roll; new assessment.

Whenever any special assessment roll 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 in the original assessment except as to corrections in the proceedings required to make the assessment legal. 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. If the payments exceed the amount of the assessment, refunds shall be made.
(Ord. No. 138, § 18, 10-12-70)

Sec. 54-18. Excess moneys; deposit or refund procedure.

Moneys raised by special assessments for any public improvement shall be credited to a special assessment account and shall be used to pay for the costs of the improvement for which the assessment was levied and of expenses incidental thereto, to repay any principal and interest on money borrowed therefor, and to refund excessive assessments. The excess by which any special assessment proves larger than the actual cost of the improvement and expense incidental thereto may be placed in the general fund of the city 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. Such refund shall be made by credit against future unpaid installments in the inverse order in which they are payable to the extent such installments then exist and the balance of such refund shall be in cash. No refunds may be made which contravene the provisions of any outstanding evidence of indebtedness secured in whole or in part by such special assessment.
(Ord. No. 138, § 19, 10-12-70)

Sec. 54-19. Unforeseen expenses for single premises; charge to owner (Repealed).
(Ord. No. 138, § 20, 10-12-70)

Sec. 54-20. Payment for exempt lands.

No lands in a special assessment district which are benefited by the improvement therein shall be exempt from assessment, but if they are owned by a public or other corporation exempt by law from the payment of special assessments, then the special assessments against such lands, or the installments thereof, may be paid by the city as they become due or may be paid in advance of their due dates or may be paid by the exempt unit by special agreement.
(Ord. No. 138, § 21, 10-12-70)

Sec. 54-21. Assessments made after improvement completed based on actual cost.

If funds are on hand or a revolving fund exists to defray the expense of any public improvement prior to the completion thereof, the special assessment roll therefor may be made within 60 days after the improvement is completed and shall be based upon the actual cost thereof.
(Ord. No. 138, § 22, 10-12-70)

Sec. 54-22. Intergovernmental improvements.

When the city may, by law, participate in intergovernmental improvements, the cost of which may be defrayed in whole or in part by special assessments, the procedure therefor shall be as provided by the law permitting the same. If such procedure is not so provided, the procedure established by this chapter and under authority of the Charter shall govern.

(Ord. No. 138, § 23, 10-12-70)

Sec. 54-23. Sidewalk repair and replacement—Generally.

In the event it shall be determined by the director of public works that a sidewalk has become hazardous pursuant to such standards and criteria as are adopted by the city council, by resolution, which standards shall comport, generally, with tests for liability as enunciated by the courts and legislature of the state, the owner of property abutting on the sidewalk determined to be dangerous shall be responsible for 50 percent of the cost of repair and replacement of same and the property shall be subject to special assessment for such charge. Repairs or installation of replacement sidewalks shall take place on such schedule as may be determined by the director of public works.

(Ord. of 6-9-97(2), § 1)

Sec. 54-24. Same—Deferral of payment based upon hardship; mortgage; term; payment due upon sale of premises.

The charges for sidewalk repair and replacement are subject to deferral as set forth in this section.

- (1) If a person obligated to pay for sidewalk repair or replacement deems himself or herself unable to afford the charges he or she may submit, on a form to be prescribed by the city manager and approved by the city council, information relative to his or her financial condition and request deferral of the payment of the charge. The information to be provided to the city manager shall include, but not be limited to:
 - a. Income information in a form acceptable to the city manager such as income tax returns;
 - b. Expense information; and
 - c. Any information deemed to be pertinent relative to special financial burdens rendering the payment of the charges onerous.

The city manager shall, if he or she deems the information sufficient to constitute a basis for deferral, cause the city to pay the charges from its general fund or such other fund as may be established for such purpose.

- (2) In the event the manager shall reject an application for deferral, his or her determination may be appealed to the city council and the decision of the council shall be final.
- (3) In the event deferral is approved the owner shall deliver to the city, a note and a mortgage on the subject property in a form to be specified by the city for the amount of the improvement plus a fee for document preparation as may be, from time to time,

established by the city, recording charges and any other charges in connection with the perfection of the city's lien. The obligation shall bear interest at the rate of six percent per annum. The obligation will come due upon transfer of ownership of the property but payment may be made any time prior to the due date without prepayment penalty. (Ord. of 6-9-97(2), § 2)

Sec. 54-25. Contract; alternative procedure for assessment.

(a) In the event that all persons or property owners to be affected by any proposed improvement or betterment to their lands agree that such improvement or such betterment be made and that a special assessment be levied in connection therewith, the city may, in lieu of the foregoing special assessment procedures otherwise required by this chapter, enter into a written contract with all of the persons or property owners affected thereby, which contract when properly approved and executed, shall operate as a complete special assessment procedure and the assessment shall be made in accordance with said contract.

(b) A special assessment approved by contract under this section and all interest, charges, and penalties thereon, from the date of execution of the contract or from such other date as the contract may provide and until paid, shall be and remain a lien upon the property assessed of the same character and effect as the lien created by the City Charter for city taxes. No judgment or decree, nor any act of the council vacating a special assessment, shall destroy or impair the lien of the city upon the property assessed.

(Ord. No. 01-12, § 1, 1-14-02)

Chapters 55—57

RESERVED

Chapter 58

STREETS, SIDEWALKS AND OTHER PUBLIC PLACES*

Article I. In General

- Sec. 58-1. Definitions.
- Sec. 58-2. Work, excavations require permit; timely restoration required.
- Sec. 58-3. Materials.
- Sec. 58-4. Sidewalks, crosswalks at street intersections.
- Sec. 58-5. Pedestrian crosswalkways.
- Sec. 58-6. Sidewalk widths.
- Sec. 58-7. Thickness.
- Sec. 58-8. Cross-slope.
- Sec. 58-9. Construction standards for sidewalks.
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- Sec. 58-11. Sidewalk installed by city; special assessment.
- Sec. 58-12. Assessment for sidewalks.
- Sec. 58-13. Confirmation of sidewalk special assessment roll.
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Article II. Right-of-Way Management and Control

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- Sec. 58-38. Disruption of right-of-way.
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Article III. Leaves in Right-of-Way (CI)

- Sec. 58-61. Definitions.
- Sec. 58-62. Placing or causing accumulation of leaves in public right-of-way prohibited.
- Sec. 58-63. Assessment of charges for removal of leaves by city forces; procedure; appeal.
- Secs. 58-64—58-85. Reserved.

***Charter reference**—Streets, alleys, sidewalks, § 4.21.

Cross references—Administration, ch. 2; buildings and building regulations, ch. 14; community development, ch. 30; planning, ch. 46; special assessments, ch. 54; traffic and vehicles, ch. 62; utilities, ch. 66; vegetation, ch. 70.

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Article IV. Obstructions

- Sec. 58-86. Conducting business, drawing crowds so as to impede passage or create disturbance.
- Sec. 58-87. Placement, storage or display on city property; license required; manager designated to issue; appeal to city council in case of denial; conditions; remedial action.
- Sec. 58-88. Placement of articles upon the public right-of-way or on front or rear yard of property.
- Secs. 58-89—58-110. Reserved.

Article V. Snow Removal

- Sec. 58-111. Definitions.
- Sec. 58-112. Unlawful acts.
- Sec. 58-113. Removal of snow and ice on sidewalks.
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Article VI. Parades

- Sec. 58-120. Parade event—Application; license required.
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- Sec. 58-123. Investigation; reports to manager.
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- Sec. 58-125. Special situations; permission to be granted by manager.
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Article VII. Utility Cabinets

- Sec. 58-141. Installation of poles and fixtures.
- Sec. 58-142. Installation of cables, wires and utility cabinets.
- Sec. 58-143. Utility poles and cabinets.
- Sec. 58-144. Utility cabinets; regulations; intent and purpose.

ARTICLE I. IN GENERAL**Sec. 58-1. Definitions.**

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

Street means all of the land lying between property lines on either side of all streets, alleys, and boulevards in the city, and includes lawn extensions and sidewalks and the area reserved therefor where they are not yet constructed.

(Ord. No. 159, § 1, 6-11-73)

Cross reference—Definitions generally, § 1-2.

Sec. 58-2. Work, excavations require permit; timely restoration required.

No person shall break, injure, tear up or remove any pavement, sidewalk, crosswalk, curbing, street, lane, alley or road surface, or make any excavation in or under any street, lane, alley or sidewalk within the city for any purpose whatever, without first having obtained permission of the department of public works superintendent. It shall be the duty of every person breaking, tearing up or removing any pavement, sidewalk, crosswalk, curbing, street, lane, alley or road surface, as speedily as practicable and under the supervision of the city's department of public works superintendent to replace, relay and make good and put in as good order and repair as before to the satisfaction of the department of public works superintendent, every such pavement, sidewalk, street, road or alley as the case may be.

(Ord. No. 44, § I, 10-27-47)

Sec. 58-3. Materials.

All sidewalks and pedestrian crosswalkways shall be of concrete. Driveway aprons shall be concrete or hot-mixed asphalt. All concrete shall develop a minimum test strength of 3,000 psi in compression in 28 days. The material shall be free of any vegetation or refuse. Aggregate used shall be composed of hard stones of inert chemical composition. Cement used shall be air entraining with an air content of five percent plus or minus one percent by volume. Slump shall be not less than one inch or more than four inches. When hot-mix asphalt is used the subgrade shall be fine graded and compacted to 95 percent of maximum density. A commercial soil sterilant containing sodium borate or chlorate shall be placed on the subgrade to prevent weed germination. The hot-mix asphalt shall conform to and be applied in accordance with department of state highways and transportation specification 4.09.

(Ord. No. 188, § 1, 6-28-76)

Sec. 58-4. Sidewalks, crosswalks at street intersections.

Sidewalks shall generally be placed one foot into the street right-of-way. Crosswalks shall be placed at all street intersections, shall extend to the curb in both directions, and shall be in alignment with and an extension of the adjoining sidewalks.

(Ord. No. 159, § 3, 6-11-73)

Sec. 58-5. Pedestrian crosswalkways.

Pedestrian crosswalkways shall be located centered in the crosswalkway right-of-way either between sidewalks on opposite sides of a block with an extension at each end between sidewalk and curb or between a sidewalk and a public land parcel with an extension between sidewalk and curb at the sidewalk end.

(Ord. No. 159, § 4, 6-11-73)

Sec. 58-6. Sidewalk widths.

(a) All sidewalks constructed within the corporate limits of the city in areas zoned other than commercial or industrial shall be four feet in width, except as may be provided for or specified elsewhere. Walks in areas zoned industrial or commercial shall be of a width determined on an individual basis by the city, but shall be at least four feet wide.

(b) The city manager may authorize the construction of walks of less or more than four feet in width where the existing walks on the street or adjacent streets are less than four feet in width, when the walk is to be constructed on a cross street are less than four feet in width and on streets where no walk exists in the block in which the new walk is to be constructed, and when in his opinion a walk less than four feet in width is ample to accommodate the pedestrian traffic.

(Ord. No. 159, § 5, 6-11-73; Ord. of 4-8-96)

Sec. 58-7. Thickness.

(a) Walks shall be of concrete rated at 3,500 PSI four inches thick except that at driveway approaches they shall be six inches thick.

(b) All new driveway approaches shall be paved with bituminous or concrete. Driveway approaches and alleys shall be six inches in total thickness and if of concrete shall be reinforced with six-inch by six-inch #10 wire mesh, or fiber treated concrete.

(Ord. No. 188, § 1, 6-28-76; Ord. of 4-8-96)

Sec. 58-8. Cross-slope.

All sidewalks shall be pitched downward toward the street at a slope of one-quarter inch per foot. Pedestrian crosswalkways shall be pitched with a cross-slope of one-quarter inch per foot in the direction to provide best drainage depending on individual conditions.

(Ord. No. 159, § 8, 6-11-73)

Sec. 58-9. Construction standards for sidewalks.

All sidewalks laid, constructed or repaired in any street, alley or other public place within the city shall be constructed in accordance with the standard rules of the department of public works as approved by the council and shall be in strict conformity with specifications appertaining thereto as specified by the city DPW superintendent and approved by the council.

(Ord. No. 159, § 10, 6-11-73; Ord. of 4-8-96)

Sec. 58-10. Sidewalks ordered repaired by council.

(a) Whenever the council shall by resolution declare the necessity for and direct the repair of sidewalks, crosswalks or driveways in any street, whether in front of or adjoining private property, it shall be the duty of the city manager to notify the owner, or party in interest as indicated in the most recent tax rolls of the city, where such sidewalks, crosswalks or driveways are required to be repaired, and to give notice by publication in the official newspaper of the city which notice, shall be published once, to rebuild or repair such sidewalks, crosswalks or driveways according to specifications prepared by the city DPW superintendent and approved by the council. This notice is to be in the following form:

CITY OF MT. MORRIS
SIDEWALK NOTICE

_____19_____

To Whom It May Concern:

Take notice that by order of the Council you are required to repair the _____ sidewalk, crosswalk, or driveway on the _____ side of _____ Street/Avenue, in front of or adjoining such lot, lots, or parts of lots numbered (insert description) as are owned by you or in which you have an interest, within thirty (30) days from the date hereto, or, in default thereof, the same will be repaired by the City and the expense thereof, together with the cost of advertising, will be assessed at 50 percent against such lot, lots or parts of lots.

City Manager

(b) Service of the notice shall also be made upon each owner, occupant or party in interest through the United States mail to the last known address of the owner, occupant or party in interest, according to the latest assessment roll of the city, with full first class postage prepaid thereon.

(c) It shall be the duty of every owner or party in interest of any lot or parcel of land, when notified by the city manager to rebuild sidewalks, crosswalks or driveways in accordance with this section, to promptly comply with the notice and construct or reconstruct the sidewalks, crosswalks or driveways as ordered.

(Ord. of 4-8-96)

Sec. 58-11. Sidewalk installed by city; special assessment.

If any person having been served notice shall not have repaired such sidewalk, crosswalk, or driveway within 30 days, it shall be the duty of the city to repair such sidewalk, crosswalk, or driveway in front of or adjoining the premises of the person so in default. The city manager shall then ascertain the cost and expense of the repair of the sidewalk, crosswalk or driveway and prepare for the city assessor a report of the form of a tentative assessment roll. This tentative roll shall be made as designated by the city assessor and shall show the exact amount according to cost and expense that should be assessed against each parcel of land for the sidewalk, crosswalk or driveway so repaired, such assessment shall not be more than 50

percent of the cost of the repair. The city shall proceed to the completion of the assessment roll from the facts contained in the tentative roll in legal and proper form and assess the amount so recorded against the owner or parties in interest upon the lot, lots or parts of lots fronting or adjoining the sidewalk, crosswalk or driveway so laid and in proportion to the number of square feet constructed.

(Ord. of 4-8-96)

Sec. 58-12. Assessment for sidewalks.

(a) Upon the completion of the roll referred to in section 58-11, the city assessor shall give notice by one publication in a newspaper published in the city and by United States mail to the last known address of the owner, occupant or party in interest according to the latest assessment roll of the city, with full first class postage prepaid thereon. Such roll is completed and will remain in the treasurer's office for at least seven days from the date of publication of the notice for the inspection of all concerned.

(b) The notice referred to in subsection (a) above shall be as follows:

CITY OF MT. MORRIS
SIDEWALK REPAIR ASSESSMENT
NOTICE
_____19____

To Whom It May Concern:

Take notice that sidewalk assessment roll No. _____ for defraying the cost and expense of sidewalk repair hereinafter described, has been prepared, and is now open for inspection, revision or correction in this office, and will be presented to the Council at a meeting thereof to be held on, the _____ day of _____, 19____.

The lot or lots described in each roll have been assessed for the cost and expense of repairing the walk in front of or adjoining the parcels named in such rolls.

Notice is hereby given that an assessment has been made upon all the lots and premises liable to be assessed for improvement; that a roll of assessments is now completed and will remain at the City Treasurer's office in the City of Mt. Morris for at least seven (7) days from the date of the publication of this notice, that is from the date hereof until the _____ day of _____, 19____ at 10:00 a.m. On _____, 19____ the Treasurer and/or City Manager/ and/or Assessor will be at the Council Chambers at City Hall to hear any person desiring to object to any assessments so made, and to review, and correct the same, if correction thereof be found necessary.

City Assessor

(Ord. of 4-8-96)

Sec. 58-13. Confirmation of sidewalk special assessment roll.

(a) The city assessor upon the date last mentioned in the notice, which shall be at least seven days after the publication of same, and after needful correction or revision of such roll shall transmit the roll to which shall be attached the affidavit of publication of the assessment notice, together with the report of the city manager, to the council for confirmation.

(b) Notice of the meeting of the council to consider each such special assessment roll shall be published in a newspaper published in the city not less than seven days prior to such meeting. Notice of hearings shall also be given to each owner of or party in interest in property to be assessed, whose name appears upon the last local tax assessment records, by mailing by first class mail addressed to such owner or party at the address shown on the tax records, at least ten days before the date of the hearing.

(c) Upon the confirmation of the roll and after opportunity for the person affected to be heard thereon, the same shall be transmitted to the city treasurer for collection.
(Ord. of 4-8-96)

Sec. 58-14. Collection of sidewalk special assessment roll.

The assessment roll shall contain a list of lots, parts of lots or parcels of land assessed thereon as provided for in this division and the total amount assessed thereon shall be due and payable 30 days after the assessment roll is confirmed by the council. However, if the assessment is not paid within the time stated, a penalty shall be attached thereto of five percent of the amount of such assessment in addition to interest at the rate of one-half of one percent for each month or fraction of a month from the date the assessment roll was confirmed by the council. Assessments so levied shall be a lien upon lots, parts of lots, or parcels of land until paid. In default of payment of the assessment, the lots, parts of lots, so assessed may be treated and sold thereafter in the manner and procedure provided by law for the sale of land for unpaid taxes.
(Ord. of 4-8-96)

Sec. 58-15. Liability of owner.

Any owner who shall refuse or neglect to comply with the provisions of any notice to repair, in addition to the penalties provided for in this division, shall be liable for and compelled to pay the city all damages to persons or property for which the city may be liable by reason of injury or damages resulting therefrom, which sum may be recovered by the city in proceeding brought for such purpose in any court of competent jurisdiction.
(Ord. of 4-8-96)

Secs. 58-16—58-35. Reserved.

ARTICLE II. RIGHT-OF-WAY MANAGEMENT AND CONTROL***Sec. 58-36. Purpose/legislative findings.**

(1) Pursuant to Section 29 of Article 7 of the Michigan Constitution of 1963, and other applicable state and federal legislation, including MCL 247.183, the city has the authority to exercise reasonable control over its highways, streets, alleys and public places. The city therefore finds that, in the furtherance of control and to ensure and protect the public health, safety and welfare, it is appropriate for the city to monitor, review and approve requests by persons and other entities seeking to disrupt the city's rights-of-way, easements and public places.

(2) This article is further intended to minimize the disruption, disturbance and/or damage to the city's rights-of-way, easements and public places, and also to exercise reasonable control over the same, as well as to maintain aesthetic, quality, and property values by requiring those parties or entities who seek to disrupt the city's rights-of-way, easements and public places, to obtain a disruption permit and/or a use permit and pay fair and reasonable permit fees.

(3) The city further finds that requiring the payment of the permit fees will assist in protecting the city's interests in its rights-of-way, easements and public places by allowing the city to cover the fixed and variable costs of maintaining, monitoring, and ensuring quality control with regard to its rights-of-way, easements and/or public places.

(Ord. No. 04-01, 1-26-04)

Sec. 58-37. Definitions.

The following words, terms and phrases when used in this article shall have the meanings ascribed to them as follows:

City right-of-way means any and all public rights-of-way, streets, highways, roads, sidewalks; alleys, thoroughfares, public easements and public places located within the city, including, but not limited to, rights-of-way, public easements and public places within and/or under the jurisdiction of the city, as well as the curbs, shoulders, landscaped areas and/or other areas incidental and/or appurtenant thereto.

Disruption means a physical change, modification, alteration, disturbance, injury and/or damage to the city right-of-way, which may be caused by, but not limited to, construction, installation, location, maintenance, modification, alteration, replacement, and/or repair of improvements in the city right-of-way, and/or the removal or alteration of a city right-of-way surface grade or material, tree, sign, marker, hydrant or other material or object preliminary to or in connection therewith.

***Editor's note**—Prior to the reenactment of Art. II by Ord. No. 04-01, adopted Jan. 26, 2004, Art. II, § 58-36 was deleted by the editor, inasmuch as it appeared to have been superseded by § 11 of an ordinance adopted Dec. 8, 1997, codified as §§ 48-1—48-9. Said article pertained to signs, and derived from Ord. No. 40, § 1, adopted May 27, 1946.

Disruption permit means a nonexclusive limited permit issued by the city to a person and/or entity pursuant to the terms and provisions of this article for the purpose of allowing a person and/or entity to undertake an activity which will result in disruption to the city right-of-way.

Public utility means a company providing electricity or natural gas services under the jurisdiction of the Michigan Public Service Commission, or a telecommunications company or CATV company authorized to use city right-of-way.

(Ord. No. 04-01, 1-26-04)

Sec. 58-38. Disruption of right-of-way.

(1) *Generally.* Except as otherwise provided herein, no person shall undertake and/or perform any activity which causes and/or results in any disruption to any city right-of-way unless a disruption permit is first obtained from the city and the activity is performed in accordance with the disruption permit and in the manner provided for in this article. No person shall place any obstruction in any city right-of-way, except under the conditions permitted in this article.

(2) *Exceptions.* This section shall not prohibit those temporary obstructions which are incidental to the expeditious movement of articles and things to and from abutting premises, the lawful operation and parking of vehicles within designated portions of the city right-of-way, nor the lawful and customary and non-disruptive use of property by adjoining homeowners for such things as landscaping. In the event of a disruption emergency, including, but not limited to, a natural disaster, war and/or severe weather condition a person and/or a permittee may disrupt the city right-of-way without first receiving a disruption permit from the city, provided that the superintendent of public works and/or the proper designee has approved the emergency disruption before the emergency disruption takes place. A public utility shall not be precluded from immediately disrupting or obstructing any city right-of-way, or commencing construction or repair work, when deemed necessary to prevent imminent danger to life or property, and in such case, the public utility shall notify the city of the disruption, obstruction, construction or repair work as soon as is reasonably practical.

(3) *Violation.* Failure to obtain a disruption permit under this section shall constitute a misdemeanor and shall subject the violating person to the penalties provided for in this Code. A person who violates this section shall pay the required disruption permit fee, as well as an additional charge to be established by resolution of the city council for that period of time that the person did not have a valid disruption permit pursuant to this article. Payment of such fee(s) and charges may be ordered by the court, upon a finding of guilt, in connection with other penalties and failure to pay said charges shall be grounds to deny any future application for a disruption permit.

(Ord. No. 04-01, 1-26-04)

Sec. 58-39. Permit application procedures.

(1) A person that wants to undertake and/or perform any activity, which causes and/or results in any disruption to the city right-of-way shall apply to the city for a disruption permit pursuant to this section. Every applicant must complete and file an application with the city clerk's office on forms that will be provided by the city clerk.

(2) At the time of filing an application, the applicant must pay to the city clerk a nonrefundable application fee, with the amount of the application fee to be established by resolution of the city council in an amount necessary to reimburse the city for the costs in reviewing, processing, investigating, granting and/or denying the disruption permit.

(3) The applicant's application for a disruption permit shall include, without limitation, the following information:

- (a) The name, age and address of the applicant in the case of a natural person, and if the applicant is not a natural person, and is not a publicly held corporation, the names and addresses of each of its officers, directors and partners, as well as the names and addresses of those stockholders holding more than a ten percent interest in the stock of the entity.
- (b) The name, phone number, and address of the person who will serve as the proposed contact person for the applicant, and, if different, the resident agent for accepting service of process if the applicant is a corporation or other person required to have a resident agent, and the address of the person's principal business office and headquarters.
- (c) The character of the business the applicant engages in and the length of time that the applicant has been engaged in the business of that character and where said business has been conducted.
- (d) A statement, description and plans showing and detailing the existing improvements located in the city right-of-way and the proposed disruption to the city right-of-way, including, but not limited to, a statement, description and plans of any construction, installation, location, maintenance and/or repairs of improvements in the city right-of-way, with a detailed description of the exact type, kind and amount of the construction, installation, location, maintenance and/or repair of improvements. The foregoing information will relate solely to the area of the proposed disruption.
- (e) Detailed map and plans showing the city right-of-way that the applicant proposes to disrupt, and the map and plans shall clearly designate the exact location of the proposed disruption and shall designate whether the disruption will be underground and/or aboveground.
- (f) A schedule and timetable for the disruption activities, including commencement and completion dates for the disruption activities. Prior to final action on an application, the manager in consultation with the superintendent of public works, may ask the applicant to respond to special concerns, including but not limited to, restoration of the right-of-way to its prior condition and the applicant's financial capacity to pay the costs involved.

(4) An application shall not be accepted for filing by the city clerk unless the application is complete, the disruption application and permit fee has been paid and the application contains all of the information required by this article.

(5) Except as otherwise provided in this article, the city manager shall approve, approve with conditions and requirements or deny a disruption permit within 30 days from the date the applicant files a completed application for disruption permit with the city clerk's office.

(6) If the city manager denies a disruption permit or imposes conditions, which an applicant wishes to contest, the applicant may appeal to the city council for the issuance of the permit on forms that will be provided by the city clerk.

- (a) No later than the second regular city council meeting subsequent to the submission of said appeal application, the city council shall hold a hearing on the application for appeal. At the hearing before the city council, the applicant and/or its designated agent or representative shall be entitled to present any information, evidence and/or make any comments in support of its application for appeal, and, further, any other interested parties will also be permitted to speak with respect to the applicant's request for a permit.
- (b) After the public hearing, the city council shall approve and/or deny the application, and the city council shall not unreasonably deny an application for a permit.
- (c) The city council or the manager, as the case may be, may impose conditions on any disruption permit it approves, which conditions shall be limited to the applicant's disruption activities and shall be necessary to ensure and protect the public health, safety and welfare. The city council may require as a condition of the permit that a bond be posted by the applicant, which bond shall not exceed the reasonable costs to ensure that the city right-of-way that is to be disrupted by the applicant is returned and restored to its original condition after the applicant's disruption of the city right-of-way.

(Ord. No. 04-01, 1-26-04)

Sec. 58-40. Disruption permit fee.

In addition to the nonrefundable application fee set forth in this article, and any other applicable fees for permits or approvals required by city ordinances and/or other applicable laws, the permittee shall pay a disruption permit fee in an amount which will cover all of the city's administrative costs, inspection costs, monitoring costs and all other costs incurred by the city in conjunction with the permittee's disruption of the city right-of-way. At the time the city issues the disruption permit to the permittee, the permittee shall immediately pay to the city an estimated disruption permit fee in an amount that the city has estimated that its administrative costs, inspection costs, plan review costs, monitoring costs and all other costs in conjunction with the disruption are likely to be, and upon completion of the disruption activities, the permittee shall pay to the city any actual costs incurred in conjunction with the disruption activities that are over and above the amount paid to the city by the permittee as estimated disruption permit costs. The city shall reimburse to the permittee any excess funds over the actual amount incurred.

(Ord. No. 04-01, 1-26-04)

Sec. 58-41. Disruption permit term and extension.

(1) The disruption permit granted to the permittee by the city shall be for a specified time period established by the city manager after taking into consideration the information in the permittee's disruption permit application.

(2) Prior to the expiration of the term of the disruption permit, a permittee may apply to the city manager for an extension of the permit, which shall be granted by the city manager if the permittee demonstrates a good cause for why the disruption activities could not be completed during the term initially established for the disruption permit by the city manager. For purposes of seeking an extension of its disruption permit, the applicant, instead of completing the application required by this article, may complete an abbreviated application entitled "disruption permit extension application" which shall be available from the city clerk, and shall pay an extension application fee to the clerk in an amount established by resolution of the city council. The city shall have the right to impose conditions on those disruption permit extensions.

(Ord. No. 04-01, 1-26-04)

Sec. 58-42. Permit terms and conditions.

(1) *Nonexclusive permit.* A disruption permit granted by the city to a permittee shall be nonexclusive and shall not restrict or prevent the city from at any time approving additional permits to other persons for the same city right-of-way, and the granting of a disruption permit does not establish any priority for the disruption or use of a city right-of-way and shall not be construed as the creation of any right or interest beyond that expressly set forth in the permit.

(2) *Compliance with permit/ordinances.* A permittee shall strictly comply with all of the terms and conditions of the disruption permit issued by the city to the permittee, as well as comply with all city ordinances, codes and applicable statutes, laws and other legal requirements.

(3) *Other permits and approvals.* In addition to the disruption permit required by this article, a permittee shall not commence construction on, across and/or under any city right-of-way without first obtaining all other permits and approvals and paying all other applicable fees that are required by ordinance, code and/or statute.

(4) *City future use.* The issuance of a disruption permit to a permittee does not prohibit the city from using the city right-of-way in a manner that may interfere with the permittee's disruption activities.

(Ord. No. 04-01, 1-26-04)

Sec. 58-43. Permittee's disruption of city right-of-way.

(1) *Disruption permit conformance—Costs.* The permittee's disruption of the city right-of-way shall conform to and be in compliance in all respects with the disruption plans submitted to and approved by the city, and all permits issued to the permittee by the city. All costs associated with the permittee's disruption of the city right-of-way shall be the sole responsi-

bility of the permittee and shall be borne entirely by the permittee. All disruption activities performed by the permittee and its contractors, including the construction and installation of any improvements, shall be promptly done by the permittee and its contractors in compliance with the schedule submitted to and approved by the city and in a good and workmanlike fashion in accordance with recognized construction industry standards and other applicable industry standards and subject to the required inspections of the city.

(2) *Restoration of property.* The permittee shall promptly restore, at permittee's sole cost and expense, any portion of the city right-of-way that is disrupted by the permittee. The disrupted tight-of-way shall be restored and returned to a condition that is as good as that which existed at the time the disruption occurred. The time period and the manner in which the restoration is to take place by the permittee shall be established by the city, and, in the event that the permittee does not complete the restoration in the time period specified by the city and/or does not undertake the restoration in the manner approved by the city, the city may, upon written notice to the permittee, complete the repair and restoration and apply any bond posted by the permittee with the city toward the city's cost of restoration and repair. In the event the bond does not cover all of the costs incurred by the city, or no bond was posted, the permittee shall immediately pay the outstanding balance of the costs to the city, and shall be liable to the city for the same until paid.

(Ord. No. 04-01, 1-26-04)

Sec. 58-44. Revocation of permit.

In addition to any other rights and/or remedies that the city may have pursuant to this article and any other applicable law, which rights and/or remedies the city may pursue in its sole discretion, the city manager, if the existence of an imminent threat to the public health, safety or welfare, or a clear and unremediated violation after notice of the terms of the permit is found, may order a stoppage of work pending a hearing before the city council, or, the city council may also revoke a permittee's disruption permit for any of the following reasons, subject to undertaking the revocation procedure in the next section:

- (1) Permittee's violation of and/or non-compliance with this article.
- (2) Permittee's failure to comply with any of the standards, conditions and/or requirements of its disruption permit, including, but not limited to, failure to perform its disruption activities in the city right-of-way in compliance with the permit, and any and all construction and other plans submitted to and approved by the city.
- (3) Permittee's failure to obtain permits and other approvals and to timely pay any fees required by this article and/or any other applicable ordinances, codes, statutes or laws.
- (4) The cessation of operation, termination, dissolution and/or disbanding of the permittee.

(Ord. No. 04-01, 1-26-04)

Sec. 58-45. Revocation procedure.

In the event that the city determines that the permittee's disruption permit is subject to revocation, the city shall do the following prior to the formal revocation of the permittee's permit:

- (1) Mail or deliver a written notice of hearing to the permittee at the last address furnished to the city by permittee at least ten days prior to the hearing, containing the following information:
 - (a) Notice of the city's proposed action.
 - (b) Reasons for the city's proposed action.
 - (c) Date, time and location of hearing.
 - (d) A statement that at the hearing the permittee may present witnesses, evidence, information and arguments on its behalf, and that the permittee has the right to be represented by counsel.
- (2) Hold a hearing as scheduled. The permittee shall be given an opportunity to be represented by counsel and to present witnesses, evidence, information and arguments. Other interested persons shall also be permitted to attend the hearing and may present information and comments on the matters addressed at the hearing.
- (3) Following the hearing, the city council shall make a decision as to whether or not to revoke the permittee's disruption permit, and, in the event that the city council decides to revoke the permittee's disruption permit, the city council shall state the reasons for its revocation on the record and shall mail or deliver a written copy of its action to the permittee.

(Ord. No. 04-01, 1-26-04)

Sec. 58-46. No waiver.

Nothing in this article shall be construed as a waiver of any of the rights, remedies and/or authority of the city pursuant to any laws, ordinances, codes or regulations of the city, and the city reserves the right to exercise all authority and take any and all action granted to it by any constitution, law, city ordinance, code and/or regulation. Nothing in this article shall be construed to limit and/or preclude the city from exercising its right of eminent domain. Furthermore, nothing herein, including the granting of a permit, shall be construed as a waiver by permittee of any of its existing or future rights under state or federal law.

(Ord. No. 04-01, 1-26-04)

Secs. 58-47—58-60. Reserved.

ARTICLE III. LEAVES IN RIGHT-OF-WAY (CI)**Sec. 58-61. Definitions.**

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

Public right-of-way means any street, road or highway including sidewalks and parkways adjacent thereto. Public rights-of-way shall include all streets under the jurisdiction and control of the city and the county road commission.

(Ord. No. 345, § 1, 11-28-94)

Cross reference—Definitions generally, § 1-2.

Sec. 58-62. Placing or causing accumulation of leaves in public right-of-way prohibited.

It shall be unlawful for any person within the city to place, cause to be placed or cause to accumulate leaves within a public right-of-way; provided, however, that it is not the intent of this section to place an affirmative obligation upon any person to remove leaves from public rights-of-way or to in any way hold persons responsible for the natural accumulation of leaves.

(Ord. No. 345, § 2, 11-28-94)

Sec. 58-63. Assessment of charges for removal of leaves by city forces; procedure; appeal.

(a) If a person who has caused leaves to be placed or to accumulate upon a public right-of-way fails and refuses upon written notice to remove the leaves from the public right-of-way, the city may, upon notice as set forth in subsection (b) of this section, cause the leaves to be removed and the cost thereof if not paid within 30 days of the issuance of a statement shall be assessed against the property owned by the person causing the accumulation and the charge shall be collected in the same manner as real estate taxes.

(b) The assessment shall be based upon a verified statement itemizing the work performed and the charges therefor. The charges shall be based upon the city's regular rate for labor and equipment with a 20-percent premium for overhead. City forces may proceed to remove an accumulation of leaves improperly placed upon the public right-of-way on the fifth day after the day of issuance of written notice. Notice shall be given either by regular or certified mail, personal delivery, or by placement upon a conspicuous location upon the premises owned by the person responsible for creating the accumulation.

(c) The amount of the assessment shall be appealable to the city manager within 30 days of issuance of a statement. Any decision of the city manager shall be appealable to the city council within 30 days after the manager's decision. Liability for removal charges shall be in addition to liability for penalties imposed by virtue of section 58-62.

(Ord. No. 345, § 4, 11-28-94)

Secs. 58-64—58-85. Reserved.

ARTICLE IV. OBSTRUCTIONS

Sec. 58-86. Conducting business, drawing crowds so as to impede passage or create disturbance.

No person shall in the city conduct any business, trade or occupation so as to impede, hinder, delay or obstruct the use of any street, alley, sidewalk, crosswalk or other public way or place, or cause them to become crowded or blocked in any manner. No person shall in the city conduct his business, trade or occupation in or upon any of the streets or public ways or places in the city in such a manner as to draw a crowd, or create a nuisance or make a disturbance, either by the ringing of bells, crying wares, or loud talking, or selling at auction. This section is not intended to apply to any person properly licensed to do any such act lawfully, pursuant to any other ordinance which is or may be enacted, nor is it intended to apply to persons conducting sales under legal proceedings.

(Ord. No. 14, § 1, 5-12-30)

Sec. 58-87. Placement, storage or display on city property; license required; manager designated to issue; appeal to city council in case of denial; conditions; remedial action.

(a) No person shall use any of the sidewalks, streets or alleys within the city for the storage, keeping or displaying thereon of any goods, wares, merchandise, produce, provisions, vegetables, boxes, barrels, showcases or furniture without first obtaining permission of the city to do so. The city manager, after review and consultation with the superintendent of public works, may, upon receipt of an application in a form to be specified by the city clerk, grant temporary permission to adjacent merchants to place articles such as outdoor furniture or display cases subject to, but not by way of limitation, the following:

- (1) The applicant shall submit, in connection with the application, as aforesaid, a plan, consisting of a diagram and general description of the proposed articles to be placed upon the sidewalk and said plan shall constitute the basis for permission if same is granted. Denial of an application may be appealed to the city council.
- (2) The use, in all cases, shall be such as to allow the passage of pedestrians upon the sidewalk, without impeding the free flow thereof, and providing sufficient room for the passage of wheelchairs.
- (3) In all cases the applicant shall, upon approval of the application and before commencing occupancy of the sidewalk, produce, in form acceptable to the city, a certificate of insurance in an amount no less than \$1,000,000.00, single limit, or such other amount as the city shall specify, naming the city as an additional named insured.
- (4) The articles shall, in all cases, be completely removed from the sidewalk each day at the close of business.
- (5) Suitable trash containers shall be provided and placement shall be as required by the superintendent of public works.

- (6) The license shall be for a specified period of time; shall set forth all terms and conditions specified by the city manager and superintendent of public works and shall be issued upon payment of the fee specified in the city's fee resolution.

(b) The storing, keeping or displaying of any of the articles hereinbefore mentioned on any public sidewalk, street or alley without a license is hereby declared to be and constitute a public nuisance and in addition to the penalties provided for in this article, proceedings may be instituted in the circuit court of the county for the abatement of such nuisance.

(Ord. No. 14, § 2, 5-12-30; Ord. No. 12-04, § 1, 9-24-12; Ord. No. 12-05, § 1, 11-26-12)

Sec. 58-88. Placement of articles upon the public right-of-way or on front or rear yard of property.

(a) *Placement of articles upon the public right-of-way.* No person including, but not limited to a court officer, sheriff's deputy or other properly authorized person, while in the course of conducting an eviction or the enforcement of civil process, of any sort, may place, store or dump any furniture or personal property or effects, of any sort, upon a public sidewalk, street or alley within the city without first obtaining the permission of the city council to do so; provided, however, that this provision shall not apply in the event a court order specifically allows the same.

(b) *Placement of articles on front or rear yard of property.* No person including, but not limited to a court officer, sheriff's deputy or other properly authorized person, while in the course of conducting an eviction or the enforcement of civil process, of any sort, may place, store or dump any furniture or personal property or effects, of any sort, upon the front yard or rear yard of property within the city so as to create a harborage for vermin, an attractive nuisance, or any unsightly conditions; provided, however, that materials removed from a building in the course of an eviction or in the enforcement of civil process, may remain upon the front or rear yard of the subject property for a period not to exceed 48 hours pending debris removal, recovery by the owner or arrangements for removal and storage thereof.

(Ord. No. 03-01, § 1, 1-27-03)

Secs. 58-89—58-110. Reserved.

ARTICLE V. SNOW REMOVAL

Sec. 58-111. Definitions.

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

Owner means the owner, tenant or lessee of property and agents or employees thereof.

(Ord. No. 131, § 1, 12-28-70)

Cross reference—Definitions generally, § 1-2.

Sec. 58-112. Unlawful acts.

It shall be unlawful for any person to:

- (1) Put or push snow from private property onto public streets or rights-of-way within the city or upon private property without proper authorization from the owners or lessee thereof.
- (2) Cause snow to accumulate upon public streets or rights-of-way.
- (3) Cause snow to accumulate in such a manner at intersections of public streets and rights-of-way within the city so as to obstruct the vision of motorists.

(Ord. No. 131, § 2, 12-28-70)

Sec. 58-113. Removal of snow and ice on sidewalks.

(1) *Requirement of snow removal within 24 hours of end of snowfall.* It shall be unlawful for any owner of property situated on streets or properties designated in the manner set forth in subsection (2) of this section, to fail to remove within 24 hours after the end of a snow fall, accumulations of snow and ice upon sidewalks adjacent to their property, if the accumulation exceeds three inches or if icing conditions exist.

(2) *Resolution setting forth affected streets; publication.* The city council shall, establish, by resolution, the streets and properties to be covered by the above specified requirement. A notice setting forth the requirement and the affected streets shall be published annually by the city clerk during the month of November in a paper of general circulation within the city. The city clerk shall also employ other means of dissemination of the list of affected streets, but the effectiveness of the requirement shall not depend upon dissemination of the information other than by the publication above specified.

(3) *Collection; lien; placement on tax rolls.* In the event an owner fails to remove snow and ice as hereinabove specified, the city may cause the removal thereof through its own forces or through a contractor or contractors and the charge for such service shall be \$25.00 plus the time and equipment charges for city forces, or \$25.00 plus the contractor's rate, as the case may be. If the work is performed by city forces, an appropriate overhead factor to be determined by the city manager will be applied. The said charge will be billed as soon as practicable and if not paid within the time period set forth in the collection procedures section of this Code, the treasurer shall take appropriate action to cause the said charge to be placed upon the tax rolls for collection pursuant to law and applicable procedures.

(Ord. No. 283, § 1, 4-28-86; Ord. of 8-9-99(3))

Sec. 58-114. Penalty for third or subsequent failure to comply with section 58-113.

The third or any subsequent event of failure to comply with the provisions of section 58-113, to wit: failure of any owner of property situated on streets or property designated in the manner set forth in subsection (2) of section 58-113, i.e., by failure to remove within 24 hours after the end of a snow fall, accumulations of snow and ice upon sidewalks adjacent to their property, if the accumulation exceeds three inches or if icing conditions exist, shall constitute

a civil infraction punishable pursuant to the provisions of sections 1-14 and 1-15. Said civil infraction penalty shall be in addition to any charges that may be assessed pursuant to the provisions of section 58-113 for removal of snow and ice; provided, however, that as a condition precedent to the imposition of responsibility for a civil infraction, the city shall issue annually in connection with the publication of the notice set forth in section 58-113(2), mailed notice to all of the affected properties, notifying owners as set forth on the tax rolls, of responsibility for a civil infraction in addition to responsibility for the charges for snow removal as set forth in said section. The progressions of fines as set forth in section 1-15 shall apply, but the third violation, as aforesaid, shall constitute the first offense for the purposes of section 1-15.

(Ord. No. 06-04, § 1, 11-13-06)

Secs. 58-115—58-119. Reserved.

ARTICLE VI. PARADES

Sec. 58-120. Parade event—Application; license required.

It shall be unlawful to conduct a parade event within the city, as hereinafter defined, without filing an application in the form hereinafter prescribed and receiving a license as herein provided.

(Ord. No. 05-05, 10-24-05)

Sec. 58-121. Same—Definition.

A parade event for the purpose hereof is defined as any procession or gathering of motor vehicles and/or persons, on foot, using the streets or public ways of the city in such a manner as to require a disruption or alteration of the normal flow of traffic or pedestrians or necessitate the making of special arrangements for security, traffic control or other special regulation. A parade event shall include, but not be limited to, a festival, celebration, exhibition, show or race, conducted upon the public right-of-way. Any procession or gathering which does not involve the disruption of the normal flow of traffic or require special arrangements or accommodations shall not be deemed a parade event for the purposes hereof.

(Ord. No. 05-05, 10-24-05)

Sec. 58-122. Application required.

A person or organization wishing to conduct or sponsor a parade event shall present an application, to the city clerk on a form to be prescribed by the clerk setting forth, at a minimum, the following information:

- (a) Date of proposed parade event;
- (b) A description of the proposed parade event including the duration of the event and a description of the length of requested street closures, special security or police arrangements;

- (c) Any special accommodation required such as the proposed placement of displays, props, or any other impediments to the free flow of traffic on any portion of the right-of-way;
 - (d) Name of the responsible person or persons, with the understanding that this person or persons shall assume responsibility for the proper conduct of the parade event and compliance with city ordinances or any special requirements as herein set forth.
- (Ord. No. 05-05, 10-24-05)

Sec. 58-123. Investigation; reports to manager.

Upon receipt of the application the police chief shall conduct an investigation as to the character and nature of the organization and relative to traffic and other police and public safety considerations. The police chief's report will cover, among other things, the necessity for extra police personnel. A report by the superintendent of public works may be required if deemed appropriate by the manager.

(Ord. No. 05-05, 10-24-05)

Sec. 58-124. Permission; license.

The city council shall at the next city council meeting following receipt of said application, except in the case where a city council meeting is less than 14 days after the submission of the application (in which case the issue shall be presented to the council at the next meeting after elapse of the 14-day period), grant or deny a license to conduct the parade event and, if granted, shall set forth such special conditions as may be deemed appropriate. The sponsoring organization shall unless waived for good cause provide a policy of insurance with the city as an additional named insured, providing PI and PD coverage in an amount not less than \$500,000.00. Said insurance policy shall be in a form acceptable to the city attorney and the manager.

(Ord. No. 05-05, 10-24-05)

Sec. 58-125. Special situations; permission to be granted by manager.

In the event it appears that there are exigent circumstances, the manager upon consultation with the chief of police shall have the authority to grant a license to proceed with the parade event subject to the terms and conditions set forth in section 58-124. It is the intent hereof that said authority shall be granted by the manager only in very limited cases and the manager's reasoning shall be set forth in writing.

(Ord. No. 05-05, 10-24-05)

Sec. 58-126. Fee or charge.

Any fee or charge with respect to the matters covered herein shall be established by resolution of the city council.

(Ord. No. 05-05, 10-24-05)

Sec. 58-127. Penalty.

Any person, firm or corporation violating the terms hereof and, specifically, if it is determined that the applicant has violated the terms of the license granted in this article or if a person or organization conducts, or attempts to conduct, a parade event without securing an appropriate license, same shall constitute a misdemeanor and be punishable pursuant to this Code.

(Ord. No. 05-05, 10-24-05)

Secs. 58-128—58-140. Reserved.**ARTICLE VII. UTILITY CABINETS*****Sec. 58-141. Installation of poles and fixtures.**

No person, firm or corporation shall place poles or other fixtures where the same will interfere with any gas, electric, or telephone fixture, water hydrant or main. Utility cabinets used to shelter cable communications equipment or hardware shall be located and installed in accordance with the regulations set forth in section 158-144.

(Ord. No. 07-05, § 1, 5-29-07)

Sec. 58-142. Installation of cables, wires and utility cabinets.

All cable and wires shall be installed, where possible, parallel with electric and telephone lines, and multiple cable configurations shall be arranged in parallel and bundled with due respect to engineering consideration. Utility cabinets used to shelter telecommunication equipment or hardware shall be located and installed in accordance with the regulations set forth in section 58-144.

(Ord. No. 07-05, § 1, 5-29-07)

Sec. 58-143. Utility poles and cabinets.

Utility poles may be placed in such streets as the superintendent of public works shall prescribe and shall be located thereon in accordance with the directions of the superintendent. Such poles shall be removed or relocated as the superintendent shall from time to time direct. Utility cabinets shall only be placed in a street in accordance with the regulations herein set forth.

(Ord. No. 07-05, § 1, 5-29-07)

***Editor's note**—Ord. No. 07-05, § 1, adopted May 29, 2007, set out provisions intended for use as Art. VI, §§ 58-120—58-123. Inasmuch as there were already provisions so designated, the ordinance has been included herein as Art. VII, §§ 58-141—58-144.

Sec. 58-144. Utility cabinets; regulations; intent and purpose.

(a) *Purpose.* This article is adopted to protect the health, safety and welfare of the residents and the traveling public by regulating the location, installation and design of utility cabinets on public property and in public rights-of-way. The city's public rights-of-way are used by all residents, visitors and people traveling in and through the community in vehicles and as pedestrians. They are used by every type of utility including water, sewer, electricity, gas and the newer communication services. Because public property and public rights-of-way occupy a finite space, it is imperative that they are properly managed to provide for safe travel, distribution of essential services and maximum efficiency. Furthermore, the beauty of the city is reflected in its tree lined streets whose integrity must be maintained. The following regulations have been found necessary to ensure that utility cabinets: (1) do not create an obstacle in the right-of-way, (2) do not block a driver's view of the street or sidewalk, (3) do not create an attractive nuisance to children, (4) do not interfere with essential services, (5) do not detract from the streetscape, and (6) protect property owners' rights to attractive, well-maintained public spaces and rights-of-way, while ensuring that the legitimate needs of utility companies are met.

(b) *Definitions.*

Lawn extension. The area between the sidewalk and the street or curb.

Right-of-way. The land lying between property lines on either side of a street, alley, or boulevard in the city, including lawn extensions, sidewalks and the area reserved therefor where the same are not yet constructed.

Utility. A service carried, transmitted, received or otherwise provided to the public through the use of pipes, cables, wires, lines, conduit or other means. Such services include but are not limited to, water, sewer, electricity, telephone, cable communications, and telecommunications.

Utility cabinet. An enclosure, shelter or cover for equipment used in conjunction with a utility.

(c) *Permit required.*

- (1) A permit is required for the installation of a utility cabinet. Such permit is in addition to the permission required for the utility system itself such as a franchise agreement for a cable communications system or a permit for a telecommunication service. An installation permit for the cabinet shall not be granted until permission for the utility itself has been granted.
- (2) The permit application shall be submitted to the department of public works along with a plan review fee as established by resolution of the city council and complete construction plans, including a boundary survey of all land within 100 feet of the proposed utility cabinet. The survey shall be prepared and sealed by a registered land surveyor, and contain the following:
 - a. Name, address and telephone number of the surveyor.
 - b. Date of the drawing, north arrow, and site location map.

- c. Scale of the drawing (no less than one inch = ten feet).
- d. Lot lines and right-of-way boundaries including the location of any benchmarks or property corners found or set.
- e. Location of the proposed equipment.
- f. Location of neighboring houses, garages or other buildings, driveways, sidewalks, fences, trees, telephone poles, fire hydrants, play equipment, etc.
- g. Location of all other utilities in the right-of-way; and
- h. For ground-mounted cabinets, the elevation of the land and the surrounding property, and any proposed change in elevation (based on U.S.G.S. datum).

The utility cabinet shall not be installed and preparation work shall not begin until the permit has been issued. All work performed under the permit shall be inspected and a street address shall not be assigned until such work has passed inspection.

(d) *Notification required.* At least 14 days prior to the installation of a utility cabinet, the applicant shall give notice of such installation by first-class mail to all property owners within 100 feet of the proposed utility cabinet.

(e) *Location.*

- (1) Utility cabinets shall only be installed at the locations designated on the utility cabinet location map approved by the city council and on file with the department of public works. The department of public works shall prepare such map, giving appropriate consideration to the factors listed in subsection (c)(2) above, and the requirements of this section, and submit it to the city council with the recommendation of the superintendent of public works.
- (2) Placement of the utility cabinet shall not be:
 - a. Within 15 feet of a fire hydrant;
 - b. Within 20 feet of a crosswalk;
 - c. Within 30 feet of the approach to a stop sign or traffic control signal located at the side of the road;
 - d. In a place or manner which blocks egress from an emergency exit;
 - e. Within ten feet of the intersection of a sidewalk or street and the edge of a driveway;
 - f. Within 75 feet of the center of the intersection of two streets;
 - g. Within ten feet of a tree;
 - h. Within ten feet of a mailbox owned by the United States Postal Service;
 - i. Within 30 feet of the approach to a bus stop;
 - j. Within ten feet of an underground utility (if the utility cabinet is ground-mounted);

- k. Within 850 feet of another utility cabinet; or
- l. In the right-of-way adjacent to the front lot line of a property.

(f) *Specifications.* Utility cabinets in public rights-of-way shall be pole-mounted. In public parks or on other public property, utility cabinets may be pole-mounted or ground-mounted with the permission of the department of public works and the governmental entity which owns the property. There shall be only one cabinet per location, however, co-location in the same cabinet may be permitted.

- (1) Pole-mounted utility cabinets shall not exceed 30 inches in width, 12 inches in depth and six feet in height, and shall be mounted 12 inches above grade.
- (2) Ground-mounted utility cabinets shall not exceed 80 cubic feet with a maximum height of five feet in height plus a meter box not to exceed 22 inches in width, nine inches in depth and 42 inches in height, both mounted on a concrete pad not to exceed 100 square feet.
- (3) Underground utility vaults may have a ground-mounted utility cabinet not to exceed 72 cubic feet with a maximum height of two feet plus a meter box not to exceed 22 inches in width, nine inches in depth and 42 inches in height.
- (4) Utility cabinets shall be dark brown and shall not display any advertising.
- (5) Utility cabinets in the public right-of-way shall be mounted with their width parallel to the street.
- (6) Ground-mounted utility cabinets in public parks shall be enclosed with a six-foot chain link type fence and a locked gate. Surrounding the fence shall be landscaped plant material of sufficient height and density to screen the cabinet. Said plant material shall be maintained and replaced as needed by the owner of the utility cabinet.
- (7) All utility cabinets shall clearly display on the front of the cabinet, the owner of the cabinet and the equipment inside, and an emergency telephone number on a plaque or sign no larger than four inches by six inches.
- (8) The utility cabinet number may be displayed on the cabinet provided that the numbers are no taller than 2½ inches.

(g) *Permit modified or denied.* The superintendent of the department of public works reserves right to modify or deny any permit which does not comply with the regulations set forth in this chapter or conform to the locations on the utility cabinet location map approved by the city council pursuant to subsection (e)(1).

(Ord. No. 07-05, § 1, 5-29-07)

Chapters 59—61

RESERVED

Chapter 62

TRAFFIC AND VEHICLES*

Article I. In General

- Sec. 62-1. Application; adoption of Michigan Motor Vehicle Code by reference.
- Sec. 62-2. Violation as misdemeanor.
- Sec. 62-3. Parking on lawn extension.
- Sec. 62-4. Overnight parking prohibited.
- Sec. 62-5. Operation on designated public and private property.
- Sec. 62-6. Operation of vehicle with unnecessary noise prohibited; violation as civil infraction.
- Sec. 62-7. Pedestrians; soliciting rides; employment; business or solicitation in roadway prohibited; violation as civil infraction.
- Sec. 62-8. Snow emergency; declaration; parking restriction; towing.
- Sec. 62-9. Michigan Motor Carrier Safety Act adopted.
- Sec. 62-10. Penalty.
- Secs. 62-11—62-25. Reserved.

Article II. Cost Recovery Program for Emergency Responses

- Sec. 62-26. Purpose.
- Sec. 62-27. Definitions.
- Sec. 62-28. Liability for expense of an emergency response.
- Sec. 62-29. Charge of emergency response.
- Sec. 62-30. Severability.
- Secs. 62-31—62-75. Reserved.

Article III. Impounded Vehicles

- Sec. 62-76. Definitions.
- Sec. 62-77. Fee.
- Sec. 62-78. Waiver of fee.

***Cross references**—Environment, ch. 34; offenses and miscellaneous provisions, ch. 42; streets, sidewalks and other public places, ch. 58; traffic control orders, app. B.

State law references—Michigan Vehicle Code, MCL 257.1 et seq.; regulation by local authorities, MCL 257.605, 257.606, 257.610.

ARTICLE I. IN GENERAL**Sec. 62-1. Application; adoption of Michigan Motor Vehicle Code by reference.**

(1) The operator of every motor vehicle shall operate the vehicle on that portion of the roadway set aside for vehicular use and shall conform to:

- a. The provisions of this chapter.
- b. The provisions of the Michigan Vehicle Code which are hereby, by virtue of this ordinance, incorporated herein by reference as if fully set out herein. For purposes of this section, the Michigan Vehicle Code is composed of MCL 257.1 through 257.923 (Act No. 300 of the Public Acts of Michigan of 1949, as amended and as it may, from time to time, be amended, specifically including, but not limited to, Public Act No. 211 of the Public Acts of Michigan of 1994 and Act Nos. 55—59 of the Public Acts of Michigan of 1999).
- c. The order or direction of a police officer, notwithstanding the provisions of existing traffic laws, when such officer is directing or regulating traffic in the interest of public safety.

Any violation of the Michigan Vehicle Code, as incorporated herein by reference, shall be a violation of this chapter except as otherwise provided in this Code.

(2) The provisions of this chapter relating to the operation of vehicles shall refer to the operation of vehicles upon the streets of the city and to places open to the general public or to a portion of the general public for the operation of vehicles.

(3) Any provision of this Code to the contrary notwithstanding, any provision of the Michigan Vehicle Code or of this chapter which describes an act, omission, or condition which is declared to be a civil infraction shall be processed as a civil infraction as provided for under this Code. Any person found to be responsible for a civil infraction may be ordered to pay a civil fine of not more than \$500.00 together with costs and the judge or magistrate may impose such additional penalties as are provided for by law. Section 1-15 of this Code entitled, "General Penalties" and the procedures set forth in section 1-14 entitled, "Municipal Civil Infractions" shall be applicable to the extent not inconsistent with the Michigan Motor Vehicle Code.

(Ord. of 9-27-99(3), § 1)

Sec. 62-2. Violation as misdemeanor.

Any provision of this Code to the contrary notwithstanding, a provision of the Michigan Vehicle Code or of this chapter which describes an act, omission or condition which is declared to be a misdemeanor shall be processed as a misdemeanor. Unless some other penalty is specifically provided for by this Code or by the Michigan Vehicle Code, any person found guilty of a misdemeanor under this chapter shall be punishable by a fine of not more than \$500.00, or by imprisonment for not more than 93 days or both such fine and such imprisonment. The

93-day maximum term of imprisonment may be imposed only with respect to those offenses for which it may be assessed pursuant to the said Michigan Motor Vehicle Code; in all other cases the \$500.00 maximum fine and 90-day term of imprisonment shall apply:

When any person is found guilty of a criminal violation or found responsible for a civil infraction pursuant to this chapter, the judge or magistrate may summarily determine and tax the costs of the action which costs may include all expenses, direct and indirect, to which the city has been put in connection with the violation or infraction up to the entry of judgment. (Ord. of 9-27-99(3), § 1)

Sec. 62-3. Parking on lawn extension.

No person shall drive upon, park or stand any vehicle between the curb or curb line and the lot line nearest the street, such area being commonly known as the parkway or lawn extension, whether or not any sidewalk or curb is actually in place on such street except on an improved driveway approach intended for providing access to and from the street to the abutting property. A person who violates this subsection is responsible for a civil infraction. (Ord. of 9-27-99(3), § 1; Ord. No. 00-01, § 2, 2-14-00)

Sec. 62-4. Overnight parking prohibited.

No person shall park on any street or highway within the city between the hours of 2:30 a.m. and 6:00 a.m. A person who violates this subsection is responsible for a civil infraction. (Ord. of 9-27-99(3), § 1; Ord. No. 00-01, § 2, 2-14-00)

Sec. 62-5. Operation on designated public and private property.

No snowmobile shall be operated on any streets, road or public right of way or municipally owned property within the city. A person who violates this subsection is responsible for a civil infraction. (Ord. of 9-27-99(3), § 1; Ord. No. 00-01, § 2, 2-14-00)

Sec. 62-6. Operation of vehicle with unnecessary noise prohibited; violation as civil infraction.

A person shall not operate a motor vehicle with unnecessary noise and shall not start, move, or turn a motor vehicle or apply the brakes or the power on a motor vehicle or in any manner operate the vehicle so as to cause the tires to squeal or the tires or vehicle to make any noise not usually connected with the operation of the motor vehicle, except in case of an emergency. A person who violates this subsection is responsible for a civil infraction. (Ord. No. 00-01, § 1, 2-14-00)

Sec. 62-7. Pedestrians; soliciting rides; employment; business or solicitation in roadway prohibited; violation as civil infraction.

(a) A person shall not stand in the traveled section of a roadway for the purpose of soliciting a ride, employment, business or donations from the occupant of any vehicle; nor shall any person go upon the traveled portion of the roadway for the purpose of contacting or

communicating with the occupants of vehicles for any purpose, whatsoever, except as shall be permitted by law; provided, however, that the city council may, upon proper application and upon requiring the applicant to provide appropriate safeguards, permit such activity if it deems same to be in the public interest.

(b) A person who violates this section is responsible for a civil infraction.
(Ord. No. 01-11, § 1, 11-12-01)

Sec. 62-8. Snow emergency; declaration; parking restriction; towing.

(a) Whenever the city manager or his duly designated representative finds, on the basis of falling snow, sleet or freezing rain, or on the basis of a weather service forecast, state police or county advisory, that weather conditions will make it necessary that parking on city streets be prohibited for snow plowing or other purposes, the city manager may cause to be put into effect a snow emergency. Such declaration made by him to be publicly announced by means available to him including broadcasts from radio and/or television stations with a normal operating range covering the city, and he may cause such declaration to be further announced in newspapers or general circulation, when feasible. Each announcement shall describe the action taken by the city manager, including the time it became or will become effective.

(b) Whenever a snow emergency is caused to be put into effect by the city manager or his duly designated representative, all vehicles shall be prohibited from parking on all city streets.

(c) Any vehicle parked contrary to the prohibition, or any vehicle abandoned on any city street may be towed away at the risk and expense of the owner by an authorized employee or agent of the city.

(d) Nothing in this section shall be construed to permit parking at any time or place where same is forbidden by any other provision of law.
(Ord. No. 01-01, 1-8-01)

Sec. 62-9. Michigan Motor Carrier Safety Act adopted.

(1) The provisions of the Michigan Motor Carrier Safety Act of 1963, Act 181 of 1963, MCL 480.11—480.22, inclusive, are hereby incorporated into the Code of Ordinances by reference as if fully set forth herein. For the purposes of this section, the Michigan Motor Carrier Safety Act composed of Sections 480.11—480.22, inclusive, are included in the Code of Ordinances in their current status and as may be amended from time to time pursuant to law. Any violation of the said sections of the Motor Carrier Safety Act shall be a violation of this chapter and punishable accordingly.

(2) The provisions of this chapter relating to the operation of those vehicles defined in the said Motor Carrier Safety Act shall refer to the operation of said vehicles upon the streets of the city and to places open to the general public or to a portion of the general public for the operation of vehicles.

(3) Any provision of this Code to the contrary notwithstanding, any provision of the Motor Carrier Safety Act of 1963, which describes an act or omission or condition which is declared to be a civil infraction shall be processed as a civil infraction, as provided for under this code. Any person found to be responsible for a civil infraction may be ordered to pay a civil fine of not more than \$500.00 together with costs and a judge or magistrate may impose such additional penalties as are provided by law. Section 1-15 and the procedures set forth in section 1-14 shall be applicable to the extent not inconsistent with the said Motor Carrier Safety Act of 1963.

(Ord. No. 07-01, § 1, 2-26-07)

Sec. 62-10. Penalty.

Any provision of this Code to the contrary notwithstanding, a provision of the Motor Carrier Safety Act of 1963 or this chapter which describes an act, omission or condition which is declared to be a misdemeanor shall be processed as a misdemeanor. Unless some other penalty is specifically provided for by this Code or by the Motor Carrier Safety Act of 1963, any person found guilty of a misdemeanor under this chapter shall be punishable by a fine of not more than \$500.00 or by imprisonment for not more than 93 days or both such fine and such imprisonment. The 93-day maximum term for imprisonment may be imposed only with respect to those offenses for which it may be assessed pursuant to the said Motor Carrier Safety Act of 1963; in all other cases the \$500.00 maximum fine and 90-day term of imprisonment shall apply.

When any person is found guilty of a criminal violation or found responsible for a civil infraction pursuant to this chapter, the judge or magistrate may summarily determine and tax the cost of the action which cost may include all expenses, direct and indirect, to which the city has been put in connection with the violation or infraction up to the entry of judgment.

(Ord. No. 07-01, § 2, 2-26-07)

Secs. 62-11—62-25. Reserved.

ARTICLE II. COST RECOVERY PROGRAM FOR EMERGENCY RESPONSES*

Sec. 62-26. Purpose.

The city has determined that a significant number of traffic arrests and traffic accidents in the city involve drivers who are operating a motor vehicle while impaired by or under the influence of alcoholic beverages and/or controlled substances. In addition, the city has

***Editor's note**—Prior to the reenactment of Art. II by Ord. No. 07-02, § 1, adopted Feb. 26, 2007, Art. II was repealed by § 2 of an ordinance adopted Sept. 27, 1999. The former Art. II, §§ 62-26—62-29, pertained to the Uniform Traffic Code and derived from Ord. No. 239, §§ I, II, VII, VIII, adopted June 22, 1981; Ord. No. 240, § 1, adopted July 27, 1981; Ord. No. 304, § 1, adopted June 12, 1989; Ord. No. 317, §§ 1—12, adopted July 8, 1991; Ord. No. 330, §§ 2, 3, adopted Aug. 24, 1992; Ord. No. 346, § 1, adopted April 10, 1995; and §§ 1—3 of an ordinance adopted Aug. 12, 1996.

determined that there is a greater likelihood of personal injury and property damage in traffic accidents involving drivers who were operating a motor vehicle while impaired by or under the influence of alcoholic beverages and/or controlled substances. As a result, an additional operational and financial burden is placed upon the city police, firefighting and rescue services by persons who are operating a motor vehicle while impaired by or under the influence of alcoholic beverages and/or controlled substances.

(Ord. No. 07-02, § 1, 2-26-07)

Sec. 62-27. Definitions.

[The following words, terms and phrases when used in this article shall have the meanings ascribed to them as follows:]

Emergency response means either:

- (1) The providing, sending and/or utilizing of police, firefighting, emergency medical and/or rescue services by the city, or by a private individual or corporation operating at the request or the direction of the city, to an incident resulting in an accident involving one or more motor vehicles operated by one or more drivers who were impaired by or under the influence of an alcoholic and/or a controlled substance; or
- (2) The providing, sending and/or utilizing of police, firefighting, emergency medical and/or rescue services by the city, or by a private individual or corporation operating at the request or direction of the city, or an incident resulting in a traffic stop and arrest of a driver who was operating a motor vehicle while impaired by or under the influence of an alcoholic beverage and/or a controlled substance by a police officer.

Expense of emergency response includes the direct and reasonable costs incurred by the city or by a private person or corporation operating at the request or direction of the city in the course of emergency response to an incident, including the cost of providing police, firefighting, emergency medical and/or rescue services at the scene of the incident. These costs also include all the salaries and wages of city personnel responding to the incident, all salaries and wages of city personnel engaged in investigation, supervision and report preparation, all costs connected with the administration and preparation of all chemical tests of the drivers blood, breath and/or urine, and all costs related to any prosecution of the person causing the incident.

(Ord. No. 07-02, § 1, 2-26-07)

Sec. 62-28. Liability for expense of an emergency response.

(a) Any person is liable for the expense of an emergency response if, while impaired by or under the influence of an alcoholic beverage or a controlled substance, or the combination of the two, such person's operation of a motor vehicle proximately causes any incident resulting in an emergency response.

(b) For the purpose of this article, a person is impaired by or under the influence of an alcoholic beverage or controlled substance, or a combination influence of an alcoholic beverage and controlled substance, when his or her physical or mental abilities are impaired to a degree

that he or she no longer has the ability to operate a motor vehicle with caution characteristic of a sober person of ordinary prudence. Further, it shall be presumed that a person was operating a motor vehicle while impaired by or under the influence of an alcoholic beverage if a chemical analysis of his or her blood, urine and/or breath indicates that the amount of alcohol in his or her blood was in excess of 0.07 percent.

(Ord. No. 07-02, § 1, 2-26-07)

Sec. 62-29. Charge of emergency response.

(a) The expense of an emergency response shall be a charge against the person liable for the expense under this article. The charge constitutes a debt of that person and is collectible by the city for incurring those costs in the same manner as in the case of an obligation under a contract expressed or implied.

(b) The city council shall, by resolution, adopt a schedule of the costs included within the expense of an emergency response. This schedule shall be available to the public from either the city clerk or the chief of police.

(c) The chief of police, or the designee of the chief of police, may, within ten calendar days of receiving an itemization of the expenses, or any part thereof, incurred for an emergency response, submit a bill for these expenses by first class mail, return receipt requested, or personal service to the person liable for the expense of the emergency response.

(d) Assessment of charge by court. In the event a person is found guilty by judge or by jury or enters a plea of guilty or enters a plea of no contest to a violation of any statute of the state or ordinance of the city which prohibits the operation of a motor vehicle under the influence of an alcoholic beverage or a controlled substance, or a combination thereof or to any lesser included offense, then at the time of imposition of a sentence by the court, the expense of the emergency response may be assessed by the court. The assessment of the expense of the emergency response shall be in addition to any other costs assessed by the court under the provisions of any other statute or ordinance. The amount to be assessed by the court for expense of emergency response shall be set forth in an affidavit filed with the court by the city prior to sentencing. The amount of any particular cost included within the expense of emergency shall not exceed the costs as adopted in the council resolution referred to in subsection (b) of this section. The assessment shall be paid to the treasurer of the city.

(e) A failure to pay an assessment for the expense of emergency response within 30 calendar days of service shall be considered a default. In cases of default the city shall have a lien upon the real and personal property owned by the person responsible for the expense of an emergency response. The lien shall not take effect until notice of the lien has been filed or recorded as provided by law. A lien provided for in this section does not have priority over any previously filed or recorded lien or encumbrance. The lien for the expense of emergency response shall be collected and treated in the same manner as provided for property tax liens under the General Property Tax Act of the State of Michigan. The city may also commence civil suit to recover the expense of emergency response and any other costs allowed by law.

(Ord. No. 07-02, § 1, 2-26-07)

Sec. 62-30. Severability.

Every section of this article shall be considered severable and in the event that any word, phrase, sentence or paragraph is declared invalid, unenforceable or unconstitutional, the declaration shall not affect the remainder of the article nor the validity of the article as a whole.

(Ord. No. 07-02, § 1, 2-26-07)

Secs. 62-31—62-75. Reserved.**ARTICLE III. IMPOUNDED VEHICLES****Sec. 62-76. Definitions.**

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

Registered owner means the person who holds the legal title and/or registration to a vehicle.

Vehicle means every device in, upon or by which any person or property is or may be transported or drawn up a highway.

(Ord. No. 326, § I, 4-27-92)

Cross reference—Definitions generally, § 1-2.

Sec. 62-77. Fee.

A fee, which shall be set by resolution of the city council, shall be paid to the city prior to the release of any vehicle taken into custody by the police department.

(Ord. No. 326, § II, 4-27-92)

Sec. 62-78. Waiver of fee.

The fee provided in section 62-77 may be waived at the discretion of the city in those instances where the vehicle was impounded by order of the police department under circumstances where no unlawful activity resulted in the vehicle being impounded.

(Ord. No. 326, § III, 4-27-92)

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Chapter 66

UTILITIES*

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***Charter reference**—Utilities, ch. 11.

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ARTICLE I. IN GENERAL

Secs. 66-1—66-25. Reserved.

ARTICLE II. WATER SUPPLY***DIVISION 1. GENERALLY****Sec. 66-26. Definitions.**

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

Charges for water means the amount charged to each customer for water services.

Connecting fee means the fee charged a customer connecting to the water system for the first time. It is charged, in part, as a partial reimbursement of the costs of establishing and maintaining the initial water system construction.

Multiple family (apartments) means a structure designed and arranged to provide living, cooking and sleeping accommodations for two or more families living independently of each other.

Water connection means that part of the water system connecting a water main with an individual premises at the curb box.

Water main means that part of the water distribution system located within public easements or rights-of-way and intended to supply more than one water connection.

Water services means the distribution and supply of potable water throughout the area served by the water system.

Water system means the system for distributing potable water and all appurtenances to it. (Ord. No. 318, § 1.02, 7-8-91)

Cross reference—Definitions generally, § 1-2.

Secs. 66-27—66-40. Reserved.

DIVISION 2. CONSTRUCTION**Sec. 66-41. Specifications for water mains.**

(a) The plans and specifications for any water main to be constructed at private expense shall be submitted to the city for approval prior to commencement of construction. All construction shall be subject to any inspection and testing the city may require and such inspection and testing shall be at the expense of the owner. No water main shall be connected to the water system until all required tests have been successfully completed.

***Cross reference**—Schedule of fees, app. C.

(b) All materials and construction practices shall conform to the standards of the American Water Works Association. In general, water mains shall be constructed of class 54 cement lined, ductile iron pipe with appropriate fittings and appurtenances and of at least nominal six-inch inside diameter. An approved water meter shall be provided for each privately owned water main at the point where such main leaves public property or easement unless otherwise approved by council.

(c) No water main will be accepted by the city unless the main is located in public property or in an acceptable easement providing adequate access from public property for the city to perform whatever repair, maintenance or construction may subsequently be required on it.

(d) The city may require mains to be sized and equipped with such appurtenances as may be needed to accommodate the future expansion or improvement of the water system. The council may, at its discretion, pay for the additional costs of such construction.

(Ord. No. 318, § 2.01, 7-8-91)

Sec. 66-42. Regulations for connections.

(a) Before any connection is made to any water main, application to the city must be made by the owner or tenant of the premises to be served, or by his authorized representative, and all required fees must be paid.

(b) The actual physical connection to the water main shall be made only by an employee or agent of the city. Attachment of the corporation stop, service line to the curb stop valve and curb box shall be made by the city and the person requesting connection shall be billed the actual costs of such attachment, line and valves. The service line to a single-family residential dwelling shall be three-fourths-inch unless larger is requested. The city shall determine the appropriate size of service line for all other uses. All portions of the water connection shall become the property of the city. The city will do necessary repairs to the water line on the portion that is located on city right-of-way. Any repairs needed on the portion located on private property shall be done by the owner of the property. The curb stop shall be located in public right-of-way and as near as possible to the property line of the premises requesting service.

(c) Each and every individual building shall have a separate water connection to a water main. No connection through which water may pass from one property to another shall be constructed even though both properties may be owned by the same person, except that water may be connected with the consumer's garage or other outbuildings on the same or adjoining lots.

(d) Where a building is divided into separate businesses and/or apartment units, water may be supplied through either individual water connections or through a manifold; provided, however, that manifolds shall be permitted only upon express written permission of the superintendent of public works. In cases where a manifold system is desired, the parties desiring same shall furnish to the superintendent of public works sufficient diagrams and plans as to enable him to determine whether such a system is feasible in the particular

circumstances. The council does hereby express its general intent that manifold connections should be generally avoided and should be permitted only in special circumstances where such a system will not hamper the city's enforcement functions. In case a manifold connection is allowed, there must be a master stop and a stop for each branch. Where each branch is individually metered, all branch stop valves must be readily accessible from the exterior of the building.

(e) All materials used for construction of service lines, up to and including the water meter fittings, shall be approved by the city. As a condition of receiving water service, the city may require repair or replacement of service lines as necessary to prevent loss of unmetered water. The minimum standard for a water service line is type K three-fourths-inch soft copper. (Ord. No. 318, § 2.02, 7-8-91)

Sec. 66-43. Meters.

(a) All premises using water shall be metered. The standard meter for a single-family residential dwelling shall be a five-eighths-inch meter. In all cases, the city shall prescribe the size, type and make of meter to be installed. Meters shall be installed by the city, shall be its property and at all times be under its control. Shutoff valves shall be required on each side of the meter, as near the meter as possible. All shutoff valves shall be an approved gate valve and shall be supplied, installed and maintained by the property owner.

(b) All meters installed shall be remote reading with the reading device readily accessible to the exterior of the building. Wherever possible, meters shall be set below grade line in a cellar or basement.

(c) Meters and any related bypass valves shall be sealed by the city and no one except an authorized employee of the city may break or injure such seals. No person other than an authorized employee of the city may change the location of, alter, or interfere in any way with any meter.

(d) Meters and their valves will not be allowed in closets or compartments that are kept locked, in coal bins, in or under toilet room floors, under buildings, porches, show windows, show boards, or where they are difficult to reach. All meters shall be set horizontally in dry, clean, sanitary places and be perfectly accessible.

(e) The expense of maintaining meters will be borne by the city. Where replacements, repairs or adjustments of a meter are made necessary by the act of negligence or carelessness of the owner or occupant of the premises, the expense to the city shall be charged and collected from the premises. In case the owner or occupant fails to pay these charges, they shall be added to and become a part of the water bill. In case of injury to the meter, or in case of its stoppage or imperfect operation, the owner or occupant of the property shall immediately notify the city.

(f) All water furnished by the city and used on any premises must pass through the meter. No bypass or connection around the meter shall be permitted for any meter less than two inches. If any meter gets out of order or fails to register, the consumer will be charged at the average monthly consumption rate as shown by the meter over the period of the preceding two months when the meter was accurately registering.

(g) The accuracy of the meter on any property will be tested by the city upon written request of the customer, who shall pay in advance a fee to cover the cost of the test. The charge for this test shall be set by resolution by the city council. If on the test, the meter shall be found to register over five percent more water than actually passes through it, another meter will be substituted for it, the test fee will be refunded to the customer and the water bill may be adjusted in such manner as may be fair and just.

(Ord. No. 318, § 2.03, 7-8-91)

Sec. 66-44. Construction financing.

In addition to accepting completely constructed water mains from private individuals, the city may use the following methods to construct or extend the water system but nothing in this section or division shall be construed as limiting the means by which the city may construct or extend water mains as it deems appropriate:

- (1) Water mains may be constructed, extended, enlarged or improved and the cost thereof borne by an appropriate special assessment district.
- (2) The water system may be extended, enlarged or improved in the anticipation of such public improvements or for any other good and sufficient reason, the costs of such construction or improvement apportioned to the benefiting properties and collected at such time as connection is made to the system. Payment for such construction shall be in addition to any other fees required for connection to the system and are payable in a lump sum or, upon execution of an appropriate document, may be spread over a period not to exceed ten years as jointly agreed to by the connecting party and the city.

(Ord. No. 318, § 2.04, 7-8-91)

Secs. 66-45—66-55. Reserved.

DIVISION 3. OPERATION

Sec. 66-56. Control of system.

The water system shall be under the exclusive control of the city and its employees and no person other than agents or employees of the city shall operate, tap, change, obstruct, interfere with or in any way disturb any portion of it. Fire hydrants may be opened and used only by agents and employees of the city which specifically includes members of the fire department. No person shall obstruct a fire hydrant by placing any object within 15 feet of one.

(Ord. No. 318, § 3.01, 7-8-91)

Sec. 66-57. Emergency operations.

If it becomes necessary to shut off the water from any section of the city because of an accident or for the purpose of making repairs or extensions, the city will try to give timely notice to the customers affected and, so far as practical, will use its best efforts to prevent

inconvenience and damage arising from any such causes. The failure to give such notice shall not render the city liable for damages for inconvenience, injury or loss. The city shall not be liable under any circumstances for a deficiency or failure in the supply of water.

(Ord. No. 318, § 3.02(A), 7-8-91)

Sec. 66-58. Inspection of system.

Any authorized agent of the city shall have free access at all reasonable hours to inspect any water connection. No person shall refuse to admit authorized agents of the city to any property for such purpose. In case the authorized employee is refused admittance or in any way hindered in making a necessary inspection or examination, the water may be turned off from such property after giving 24 hours' notice to the occupant thereof.

(Ord. No. 318, § 3.03, 7-8-91)

Sec. 66-59. Cross connections.

(a) The city adopts by reference the water supply cross connection rules of the state department of public health being R325.11401 to R325.11407 of the Michigan Administrative Code.

(b) Inspections shall be made of all properties served by the public water supply where cross connections with the public water supply is deemed possible. The frequency of inspections and reinspections shall be based on potential health hazards involved as established by the city.

(c) Water service will be discontinued after giving notice to any property where any connection in violation of this section exists, and to take such other precautionary measures deemed necessary to eliminate any danger of contamination of the public water system. Water service to such property shall not be restored until the cross connection has been eliminated in compliance with the provisions of this division.

(d) The potable water supply made available on properties served by the public water supply shall be protected from possible contamination as specified by this subsection and by the governing plumbing code. Any unprotected water outlet which could be used for potable water must be labeled in a conspicuous manner as: "Water Unsafe For Drinking."

(e) No high-pressure steam boiler shall be directly connected to the water system. The owner shall make such provisions as may be required by the city before water may be supplied to such installation.

(Ord. No. 318, § 3.04, 7-8-91)

Sec. 66-60. Wells.

No structure erected after the effective date of the ordinance from which this division is derived shall obtain its potable water supply from a well if city water mains are available to the property on which it is located; and once a connection to a water main has been made, irrespective of the time of the connection or the date of erection of the structure, the water main and/or the water system shall thereafter constitute the only source of potable water to

that structure and property and the structure shall not thereafter connect or reconnect to a well. No maintenance or repair to an existing potable water supply well may be performed except to the pump or pump motor if city water mains are available to the water on which the well is located. No new well may be drilled to supply potable water to property except where city water mains are not available.

(Ord. No. 318, § 3.05, 7-8-91)

Secs. 66-61—66-70. Reserved.

DIVISION 4. CHARGES

Sec. 66-71. Free service.

No free water service shall be furnished by the system to any person or to any public agency or instrumentality. The city shall pay for all water used at the rates set forth in this article. Water shall not be supplied at fixed or flat rates except by temporary specific approval of the city council.

(Ord. No. 318, § 4.01, 7-8-91)

Sec. 66-72. Connection fees.

(a) The fee for any connection to the system shall be set by resolution of the city council.

(b) In addition, the owner shall pay for the cost of time and materials, as estimated by the superintendent of public works, for the connection of the corporation stop, service line and curb stop to the main and for the cost of the water meter when such meter is larger than a nominal five-eighths-inch meter. The estimated cost shall be payable in advance of connection and the difference between the estimate and the actual cost shall be applied to the first utility bill.

(Ord. No. 318, § 4.02, 7-8-91; Ord. of 3-8-99)

Sec. 66-73. Charges for service.

(a) The charges for water service shall be set by resolution of the city council. A public hearing shall be held prior to the enactment of such a resolution and at least ten days' notice of the public hearing shall be published in a paper of general circulation within the city indicating, in addition to such other information as the council shall deem appropriate, the council's intention to increase or decrease rates and a schedule of the new rates contemplated.

(b) The council may, by resolution, grant to the city manager, authority to increase or decrease rates pursuant to a prescribed formula.

(Ord. No. 318, § 4.03, 7-8-91; Ord. No. 05-03, § 1, 3-14-05)

Sec. 66-74. Base rate charges.

All properties with water service connections shall pay the base rate established by resolution. The base rate shall be billed monthly to the customer even if water service has been shut off. The base rate charge for multiple-family (apartments) shall be the rate established by resolution times the number of apartment units.

(Ord. No. 318, § 4.04, 7-8-91)

Sec. 66-75. Bills; meter reading.

Bills will be dated, rendered and payable, and meters will be read on a basis, to be established by resolution of the city council.

(Ord. No. 318, § 4.05, 7-8-91; Ord. of 6-9-97(3), § 1)

Sec. 66-76. Estimated readings.

Bills may be issued on the basis of estimated readings in circumstances and on a basis to be established by resolution of the city council.

(Ord. No. 318, § 4.06, 7-8-91; Ord. of 6-9-97(3), § 2)

Sec. 66-77. Delinquent bills; procedures; special provision for water turn-on to accommodate an inspection of the plumbing.

(a) *Penalty.* If any charges are not paid within 15 days after the billing date of the statement, a penalty of ten percent will be added thereto. If the charges for services furnished to any premises are not paid within one month after the due date thereof, all services furnished by the system may be discontinued. Service discontinued shall not be restored until all sums due including all penalties, interest and charges for costs incurred, plus a nonpayment charge of \$32.50 shall have been paid; provided, however, a short term turn-on of service for plumbing inspection purposes shall be permitted pursuant to subsection (c) hereof.

(b) *Notice of shut-off.* Notice of shut off shall be given by regular mail addressed to the property address ten days prior to the date upon which service is to be discontinued. The date of shut-off shall be the eleventh day after the date of mailing the notice, not including the date of mailing.

- (1) *Appeal to water clerk; time for appeal.* The user shall have the right to appeal a shut-off notice to the city's water clerk provided the appeal is received by the water clerk no later than the fifth day after mailing of the notice, unless the fifth day falls upon a weekend or holiday, in which case the user shall have until the following regular business day to do so.
- (2) *Appeal on form to be furnished by city; financial hardship not a ground for appeal; installment arrangements available.* The appeal must be set forth on a form to be furnished by the city. It shall set forth reasons for the appeal. Financial hardship shall not be a reason for an appeal.

- (3) *Hearing; appellant's rights.* The water clerk shall hold a hearing as soon as practicable after receipt of the appeal and the appellant shall have the right to attend and present reasons, orally or in writing. Consultation with the city manager shall be had, to the extent necessary, at the request of the appellant or water clerk. The appellant shall have the right to be represented by an attorney or other advisor, if desired.
- (4) *Water clerk's determination; nonpayment fee.* The water clerk shall issue a determination as soon as possible after the hearing and shall notify the appellant in writing as to the results of the appeal. In the event the water clerk denies the appeal, the shut-off shall take place on the sixth day after mailing or personal delivery of the water clerk's determination. Payment at any time during the period prior to shut-off shall preclude discontinuance of service; provided, however, that payment on the original date for shut-off or thereafter, shall necessitate the payment of a nonpayment charge irrespective of whether shut-off has occurred. If the appeal is granted no nonpayment charge shall be made. If the appeal is denied, the nonpayment charge shall be assessed on the date subsequent to the initial date for shut-off.

(c) *Special provision for short-term turn-on of water service to accommodate inspection of plumbing system.* Notwithstanding the fact that the water account with respect to a particular premises is delinquent, a short-term turn-on of the water service shall be allowed by the city manager subject to the following terms and conditions:

- (1) A fee as established by city council shall be paid, in advance.
- (2) The turn-on of the water service shall be subject to availability of staff; shall be scheduled based on such availability and shall take place during regular business hours. Said turn-on shall, generally, be for a period of approximately three hours but under no circumstances shall the period exceed six hours. A representative of the owner shall be present upon the premises during the entire period of turn-on. Any water used during said operation shall be added to the charges currently due. The charge for this special service shall not be credited against the balance due on the water account.

(Ord. No. 318, § 4.07, 7-8-91; Ord. of 1-26-98(1), § 1; Ord. No. 08-05, § 1, 4-14-08)

Sec. 66-78. Charges become liens on property.

(a) Charges for services furnished by the system to any premises as well as all interest and penalties shall be a lien thereon as of the due date thereof. On March 31 of each year the water clerk shall certify such charges which have been delinquent 30 days or more, plus penalties and interest accrued thereon to the city treasurer who shall enter the same on the next tax roll against the premises to which such service has been rendered. The charges, penalties and interest shall be collected and the lien enforced in the same manner as the other taxes assessed on such tax roll.

(b) Where, in accordance with Section 5 of Act No. 178 of the Public Acts of Michigan of 1939 (MCL 123.161 et seq.), as amended, a lease has been legally executed providing that the lessor shall not be liable for payment of water bills, such bills will not be a lien on the property providing:

- (1) An affidavit stating that such a lease has been executed and containing the expiration date of the lease is filed with the water clerk.
 - (2) Twenty days' notice shall be given to the water clerk of any cancellation, change in or termination of the lease to the water clerk.
- (Ord. No. 318, § 4.08, 7-8-91)

Sec. 66-79. Security deposit.

Where no lien exists on a property for the payment of water bills as provided elsewhere in this division, a security deposit shall be required prior to turning on water at any premises. The deposit shall be the estimated bill payable to the city for three months' service as determined by the city clerk. In setting the amount of the deposit, the city clerk shall consider the premises, the nature of its proposed use and past history of water consumption there.

(Ord. No. 318, § 3.09, 7-8-91)

Secs. 66-80—66-83. Reserved.

Editor's note—Ord. No. 03-03, §§ 1, 2, adopted May 12, 2003, repealed §§ 66-80—66-83, which pertained to senior citizens rate, applying senior rate in case of multiple occupancy, application for senior rate, and appeals, respectively, and derived from Ord. No. 318, §§ 5.01—5.04, adopted July 8, 1991, and § 2 of an ordinance adopted Jan. 26, 1998.

Secs. 66-84—66-95. Reserved.

DIVISION 5. WATER EMERGENCY (CI)

Sec. 66-96. Declaration of emergency.

A water supply emergency shall be deemed to exist when the mayor finds, on the basis of drought conditions, depletion of water supply, reduction of water pressure or other reasons that there is a threat of loss of water supply to the community or a portion of the community and causes a declaration of such water supply emergency to be publicly announced by broadcast from radio or television stations with a normal operating range covering the city or by other means designed to disseminate information as to the existence of the water supply emergency. The mayor shall make or cause to be made a record of each time and date when any declaration of water supply emergency is announced to the public in accordance with this division and shall, in support of the declaration set forth a written summary of the reasons for such declaration with supporting documentation and the statement shall be available for public inspection and copying at the city hall during regular business hours.

(Ord. No. 318, § 6.01, 7-8-91)

Sec. 66-97. General prohibition on water use during emergency.

During a water supply emergency, it shall be unlawful for any person to utilize water from the city water supply system for any type of outside use other than responding to a fire emergency. The prohibition upon the outside use of water shall remain in effect 24 hours per day, seven days a week, until the water supply emergency is declared ended by the mayor. The outside use of water shall include, but not be limited to, garden and lawn watering, cleaning of walkways, sidewalks and streets, washing motor vehicles, filling of swimming pools and other recreational activities involving the use of water.

(Ord. No. 318, § 6.02, 7-8-91)

Sec. 66-98. Limited restriction upon usage; exceptions.

The declaration of water supply emergency may, if the mayor determines that a less comprehensive prohibition will serve the city's purposes, provide for limited use of water subject to terms and conditions as more fully set forth in the declaration of water emergency. The mayor may provide, for example, that the watering of lawns may take place during limited nighttime hours. Upon written application to the mayor, he may provide exceptions to the prohibition when necessary to prevent imminent and substantial financial loss to a water user.

(Ord. No. 318, § 6.03, 7-8-91)

Sec. 66-99. Penalties; prior notification.

Any person who violates a water emergency declaration shall be subject to a civil infraction penalty. However, no person shall be subject to a penalty unless he has been previously notified orally or in writing of the existence of the water emergency by an enforcement official and warned of the consequences of failure to abide by the terms of the water supply emergency.

(Ord. No. 318, § 6.04, 7-8-91)

Secs. 66-100—66-120. Reserved.**ARTICLE III. SEWAGE DISPOSAL*****DIVISION 1. GENERALLY****Sec. 66-121. Definitions.**

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

BOD (denoting biochemical oxygen demand) means the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five days at 20 degrees Celsius, expressed in milligrams per liter.

***Cross reference**—Schedule of fees, app. C.

Building drain means that part of the lowest horizontal piping of a drainage system which receives the discharge from soil and waste pipes inside the walls of the building and conveys it to the building sewer, beginning five feet outside of the inner face of the building wall.

Building sewer means the extension from the building drain to the public sewer or other place of disposal.

Charges for sewage disposal services or charges means the amount charged to each premises in the city for sewage disposal services.

County agent means the county drain commissioner.

Garbage means solid wastes from the domestic and commercial preparation, cooking and dispensing of food, and the handling, storage and sale of produce.

Industrial wastes means the liquid wastes from industrial, manufacturing processes, trade or business as distinct from sanitary sewage.

Inspection and approval fee means the amount charged (which amount shall be established from time to time by resolution of the council) to each applicant by the city at the time an application is made to the city to connect the premises to the system to cover the cost of inspecting and approving the physical connection to the system and the issuance of a connection permit.

Multiple-family (apartments) means a structure designed and arranged to provide living, cooking and sleeping accommodations for two or more families living independently of each other.

Natural outlet means any outlet into a watercourse, pond, ditch, lake, or other body of surface water or groundwater.

pH means the logarithm of the reciprocal of the weight of hydrogen ions in grams per liter of solution.

Properly shredded garbage means wastes from the preparation, cooking and dispensing of food that has been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in sewers and no particle greater than one-half inch in any dimension.

Public sewer or system of public sewers means sewers servicing separately owned premises where it is intended that maintenance of the sewers or system shall become the city's responsibility.

Sanitary sewer means a sewer which carries sewage and to which stormwaters, surface waters and groundwaters are not intentionally admitted.

Sewage means a combination of the water-carried waste from residences, business buildings, institutions and industrial establishments.

Sewage disposal services means the collection, transportation, treatment and disposal of sanitary sewage emanating from properties now or hereafter connected directly or indirectly to the system.

Sewage treatment plant means any arrangement of devices and structures used for treating sewage.

Sewage works means all facilities for collecting, pumping, treating and disposing of sewage.

Sewer means a pipe or conduit for carrying sewage.

Storm drain or storm sewer means a sewer which carries stormwater and surface water and drainage, but excludes sewage and industrial wastes, other than unpolluted cooling water.

Suspended solids means 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.

System means the sanitary sewer system of the city.

Unit, with respect to charges for a particular premises, shall be deemed to be the equivalent of a household of 3.5 persons, using 90 gallons of water per person per day (or 315 gallons per day). Unless otherwise provided, the number of units assigned to a particular premises shall be as provided in the ordinances governing the county interceptor and treatment facilities and where not provided for in such ordinances, as established by resolution of the council.

User means any premises connected to a public sewer and includes appurtenant land and improvement.

Watercourse means a channel in which a flow of water occurs, either continuously or intermittently.

(Ord. No. 319, § 1.02, 7-8-91)

Cross reference—Definitions generally, § 1-2.

Sec. 66-122. Connection required.

All premises in the city upon which there exists presently or at any time hereafter a building or structure in which water is used or is available for use, shall be connected to a public sewer if the public sewer is available to such premises. The connection shall be made, in the case of premises upon which such a building or structure presently exists, within six months after the date when the public sewer becomes available to such premises. Such connections shall be made, in the case of future improvement of the premises so as to require connection to a public sewer as above provided, prior to occupancy or use of the building or structure. No plat of a new subdivision shall hereafter be approved unless the developer or subdivision shall hereafter be approved unless the developer or subdivider shall agree to install in such subdivision, at his own expense, an approved system of lateral sewers and to connect it to a public sewer. A public sewer shall be deemed to be available to any premises if it is located in a right-of-way, easement, highway, street or public way which crosses, adjoins or abuts upon the premises and

which right-of-way, easement, highway, street or public way passes not more than 200 feet distant from the building or structure on such premises in which water is used or is available for use.

(Ord. No. 319, § 7.01, 7-8-91)

Sec. 66-123. Contractor license required.

No person shall perform the work of making house connections or building sewer connections unless licensed in accordance with state law. This requirement shall in no way limit an owner from doing his own sewer connection work.

(Ord. No. 319, § 7.02, 7-8-91)

Sec. 66-124. Penalties and enforcement.

The provisions of this article shall be enforceable through the bringing of an appropriate action for injunction, mandamus or otherwise in any court having jurisdiction. Any violation of this article is deemed to be a nuisance per se, and each day of violation is deemed to be a separate violation. Any person convicted of disposing of sewage in a manner contrary to the provisions of this article shall be guilty of a misdemeanor and subjected to a fine not to exceed \$500.00 or imprisonment for a period not exceeding 90 days or both such fine and imprisonment in the discretion of the court together with costs of the prosecution.

(Ord. No. 319, § 7.03, 7-8-91)

Secs. 66-125—66-135. Reserved.

DIVISION 2. PUBLIC SEWERS AND CONNECTIONS

Sec. 66-136. Permits.

Neither the city nor any other person shall connect any public sewer or system of public sewers to any county sewer, or to any city sewer which is connected directly or indirectly to any county sewer, without first obtaining a permit therefor from the county, and no person shall connect any public sewer or system of public sewers to any county sewer within the city or to any city sewer without first obtaining written approval therefor from the city. Each such connection permit shall show the location and extent of the work, information regarding the owner, the contractor and the engineer, and any other pertinent information as shall be determined to be necessary.

(Ord. No. 319, § 2.01, 7-8-91)

Sec. 66-137. Tests.

An air pressure test and a water infiltration test conducted in accordance with procedures established by the county agent shall be performed by the owner or contractor at the completion of construction. When such party has determined that the sewer or system meets the following requirements for maximum infiltration and air pressure testing, he shall arrange for the results of such tests to be verified by the county agency. Groundwater infiltration at any

time shall not exceed 250 U.S. gallons per inch of pipe diameter per mile of sewer per 24-hour period. It shall be the responsibility of the city or other party constructing the sewer or system to make whatever corrections may be necessary to the same to meet the infiltration requirements prior to using the county sewers or the city sewers to which connection is made. If, in the opinion of the county agent, groundwater conditions at the time of the test would not provide a conclusive test of the extent of infiltration, an exfiltration test shall be required. If an exfiltration test is determined to be necessary, the maximum exfiltration rate shall be the same as that permitted for infiltration.

(Ord. No. 319, § 2.02, 7-8-91)

Sec. 66-138. Conditions for connecting to existing system.

No public sewer or system of public sewers shall be connected to the existing system unless:

- (1) The tests required by section 66-137 are successfully completed.
- (2) The sewer or system of sewers is located in public rights-of-way or an easement granting adequate access for maintenance and future extension of it is given to and accepted by the city.

(Ord. No. 319, § 2.03, 7-8-91)

Secs. 66-139—66-150. Reserved.

DIVISION 3. BUILDING SEWERS AND CONNECTIONS

Sec. 66-151. Permit.

No building sewer shall be directly connected to any sanitary sewer by any person without first obtaining a permit therefor from the city. The party to whom such permits are issued shall be responsible for notifying the city at least 24 hours in advance of the date and time when such a connection is to be made so that proper inspection of it can be made.

(Ord. No. 319, § 3.01, 7-8-91)

Sec. 66-152. Workmanship.

All connections to sanitary sewers shall be made in a workmanlike manner in accordance with the procedures established by the city.

(Ord. No. 319, § 3.02, 7-8-91)

Sec. 66-153. Materials.

Building sewers from the lateral sewer in the street or easement to building connection shall be:

- (1) Six-inch diameter C-200 vitrified sewer pipe with tylox (type B) wedglock (types 1 and 3) or amvit joints or other city-approved joint.
- (2) Six-inch diameter class 2400 asbestos cement pipe with ringtite or city-approved joint.

- (3) Six-inch diameter, service strength, cast iron soil pipe with hot poured lead joint, or approved equal. All joints shall be tight and when tested for infiltration, shall not exceed 250 U.S. gallons per inch of diameter, per mile, per 24 hours. All sewer lines within 50 feet of a private well and 75 feet of a semipublic well shall be cast iron soil pipe with hot poured lead joints, or approved equal.
 - (4) Four-inch PVC (polyvinyl chloride), meeting the standards CS 272 and ASTM 2665, and listed with the National Sanitation Foundation with wall thickness not less than schedule 40. Only approved solvent cements, fittings and transitions shall be used. The pipe shall bear the hallmark nsf—DMV.
 - (5) The transition joint shall be sealed by an approved bituminous joint filler, encased in concrete to provide a watertight seal. The iron pipe inside the building shall be plugged and leaded and remain plugged and watertight until such time as the plumbing is carried on to the first floor, the basement back filled and roof is on the building, thereby providing that no water from the excavated basement will enter the sanitary sewer.
- (Ord. No. 319, § 3.03, 7-8-91)

Sec. 66-154. Separate connections.

A separate and independent building sewer shall be provided for every building.
(Ord. No. 319, § 3.05, 7-8-91)

Sec. 66-155. Installation specifications.

(a) The size, slope, alignment, material of construction of a building sewer, and the methods to be used in excavating, placing of pipe, jointing, testing and backfilling the trench shall all conform to the regulations and standard specifications of the county and other applicable rules and regulations of the state and the city.

(b) Whenever possible, the building sewer shall be brought to the building at an elevation below the basement floor. In all buildings in which any building drain is too low to permit gravity flow to the public sewer, sanitary sewage carried by such building drain shall be lifted by an approved means and discharged to the building sewer.

(c) All excavation for building sewer installation shall be adequately guarded with barricades and lights so as to protect the public from hazard. Streets, sidewalks and other public property disturbed in the course of the work shall be restored in a manner satisfactory to the county and the city.

(Ord. No. 319, § 3.06, 7-8-91)

Secs. 66-156—66-165. Reserved.

DIVISION 4. DISCHARGES

Sec. 66-166. Prohibited connections.

No person shall connect or cause to be connected any downspouts, foundation drains, yard drains, areaway drains, catchbasins, weep tile, perimeter drains or other sources of storm

surface runoff or groundwater to any public sewers or to any building sewer or drain which is connected to a public sewer nor shall any person discharge or cause to be discharged any stormwater, surface water, groundwater, roof runoff, subsurface drainage, uncontaminated cooling water or unpolluted industrial process water into any public sewer or into any building sewer or drain which is connected to a public sewer. Stormwater and all other unpolluted drainage shall be discharged to such sewers as are specifically designated as storm sewers, or to a natural outlet approved by the county agent and the city. Industrial cooling or unpolluted process waters may be discharged, upon approval of the county agent and the city, to a storm sewer or natural outlet.

(Ord. No. 319, § 4.01, 7-8-91)

Sec. 66-167. Prohibited discharges.

No person shall discharge or cause to be discharged any of the following described waters or wastes to any public sewers:

- (1) Any gasoline, benzene, naphtha, fuel oil or other flammable or explosive liquid, solid or gas.
- (2) Any waters or wastes containing toxic or poisonous solids, liquids, or gases in sufficient quantity (either singly or by interaction with other wastes) to injure or interfere with any sewage treatment process, constitute a hazard to humans or animals, create a public nuisance, or create any hazard in the receiving waters of the sewage treatment plant, including but not limited to cyanides in excess of two mg/l as CN in the wastes as discharged to the public sewer.
- (3) Any waters or wastes having a pH lower than 5.5 or having any other corrosive property capable of causing damage or hazard to structures, equipment and personnel of the sewage works.
- (4) Solid or viscous substances in quantities or of such size capable of causing obstruction to the flow in sewers, or other interference with the proper operation of the sewage works such as, but not limited to, ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, unground garbage, whole blood, paunch manure, hair, fleshings, entrails and paper dishes, cups, milk containers, etc., either whole or ground by garbage grinders.

(Ord. No. 319, § 4.02, 7-8-91)

Sec. 66-168. Limited discharges.

No person shall discharge or cause to be discharged the following described substances, materials, waters or wastes if it appears likely in the opinion of the county agent or the city that such wastes can harm either the sewers, sewage treatment process or equipment, have an adverse effect on the receiving stream, or can otherwise endanger life, limb, public property or constitute a nuisance:

- (1) Any liquid or vapor having a temperature higher than 150 degrees Fahrenheit (65 degrees Celsius).

- (2) Any water or waste containing fats, wax, grease, or oils, whether emulsified or not, in excess of 100 mg/l; or containing substances which may solidify or become viscous at air temperatures between 32 degrees Fahrenheit and 150 degrees Fahrenheit.
- (3) Any garbage that has not been properly shredded. The installation and operation of any garbage shredder equipped with a motor of one-fourth horsepower or greater shall be subject to the review and approval of the county agent and the city.
- (4) Any waters or wastes containing strong acid iron pickling wastes or concentrated plating solutions, whether neutralized or not.
- (5) Any waters or wastes containing iron, chromium, copper, zinc and similar objectionable or toxic substances; or wastes exerting excessive chlorine requirement, to such degree that any such material received in the composite sewage at the sewage treatment works exceeds the limits established by the county agent or the city for such materials.
- (6) Any waters or wastes, containing phenols or other taste- or odor-producing substances, in such concentrations exceeding limits which may be established by the county agent as necessary, after treatment of the composite sewage, to meet the requirements of the state, federal or other public agencies or jurisdiction for such discharge to the receiving waters.
- (7) Any radioactive wastes or isotopes of such half-life or concentration as may exceed limits established by the county agent in compliance with applicable state or federal regulations.
- (8) Any waste or waters having a pH in excess of 9.5.
- (9) Materials which exert or cause:
 - a. Unusual concentrations of inert suspended solids (such as but not limited to Fuller's earth, lime slurries, and lime residues) or of dissolved solids (such as but not limited to sodium chloride and sodium sulfate).
 - b. Excess discoloration (such as but not limited to dye wastes and vegetable tanning solutions).
 - c. Unusual BOD chemical oxygen demand or chlorine requirements in such quantities as to constitute a significant load on the sewage treatment works.
- (10) Waters or wastes containing substances which are not amenable to treatment or reduction by the sewage treatment only to such degree that the sewage treatment plant effluent cannot meet the requirement of other agencies having jurisdiction over discharge to the receiving waters.

(Ord. No. 319, § 4.03, 7-8-91)

Sec. 66-169. Control of discharges.

If any waters or wastes are discharged, or are proposed to be discharged to the public sewers, which contain the substances or possess the characteristics enumerated in this

division, and which in the judgment of the county agent or the city, have a deleterious effect upon the sewage works, processes, equipment or receiving waters, or which otherwise create a hazard to life or constitute a public nuisance, the county agent may:

- (1) Reject the wastes.
- (2) Require pretreatment to an acceptable condition for discharge to the public sewers.
- (3) Require control over the quantities and rates of discharge.
- (4) Require payment to cover the added cost of handling and treating the wastes not covered by existing taxes and sewer charges.

If the county agent permits the pretreatment or equalization of waste flows, the design and installation of the plants and equipment shall be subject to the review and approval of the county agent.

(Ord. No. 319, § 4.04, 7-8-91)

Sec. 66-170. Sampling manhole.

When required by the county agent or the city, the owner of any property serviced by building sewers carrying industrial wastes shall install a suitable control manhole together with such necessary meters and other appurtenances in the building sewer to facilitate observation, sampling, and measurement of the wastes. Such a manhole, when required, shall be accessible and safely located, and shall be constructed in accordance with plans approved by the county agent or the city. The manhole shall be installed by the owner at his expense, and shall be maintained by him, so as to be safe and accessible at all times.

(Ord. No. 319, § 4.05, 7-8-91)

Sec. 66-171. Testing method.

All measurements, tests and analyses of the characteristics of waters and wastes to which reference is made in these regulations shall be determined in accordance with Standard Methods for the Examination of Water and Sewage and shall be determined at the control manhole provided for, or upon suitable samples taken at the control manhole. If no special manhole has been required, the control manhole shall be considered to be the nearest downstream manhole in the public sewer to the point at which a building sewer is connected.

(Ord. No. 319, § 4.06, 7-8-91)

Sec. 66-172. Special agreements.

No statement contained in this article shall be construed as preventing any special agreement or arrangement between the county and/or the city and any industrial waste of unusual strength or character may be accepted by the county for treatment, subject to payment therefor, by the industrial concern.

(Ord. No. 319, § 4.07, 7-8-91)

Sec. 66-173. Access.

The county agent and other duly authorized employees of the county agent or the city bearing proper credentials and identification shall be permitted to enter upon all properties for the purpose of inspection, observation, measurement, sampling and testing.

(Ord. No. 319, § 5.01, 7-8-91)

Sec. 66-174. Responsibility of inspectors.

While performing the necessary work on private properties referred to in section 66-173, the duly authorized employee of the county or the city shall observe all safety rules applicable to the premises established by the owner or proprietor, who shall be held harmless for injury or death to such employees, and the county or the city shall indemnify such owner or proprietor against loss or damage to his property by such employees and against liability claims and demands for personal injury or property damage asserted against such owner or proprietor and growing out of the gauging and sampling operation, except as such as may be caused by negligence or failure of such owner or proprietor to maintain safe conditions as required in section 66-170.

(Ord. No. 319, § 5.02, 7-8-91)

Sec. 66-175. Damage to system.

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 county or the city system.

(Ord. No. 319, § 5.03, 7-8-91)

Secs. 66-176—66-185. Reserved.

DIVISION 5. CHARGES

Sec. 66-186. Connection inspection.

The city council shall establish by resolution a fee which shall be for the cost of inspecting the work for connecting an individual building or premises to the system.

(Ord. No. 319, § 6.01, 7-8-91)

Sec. 66-187. Engineering fees.

Where an engineering evaluation or approval may be required for a particular construction, the actual costs of such engineering work shall be borne by the owner or person requesting the connection.

(Ord. No. 319, § 6.02, 7-8-91)

Sec. 66-188. Tap-in fee.

(a) A tap-in fee for the privilege of connecting to the sewer system in an amount as set forth below shall be charged for each:

- (1) Single-family home.
- (2) Apartment unit.
- (3) Townhouse or similar residential facility including but not limited to each residential unit of a duplex, triplex, quadplex, etc.
- (4) Condominium unit including a so-called separate or detached condominium unit.
- (5) Commercial unit.

(b) Tap-in fees shall be set by resolution of the city council.
(Ord. No. 319, § 6.03, 7-8-91; Ord. of 3-8-99)

Sec. 66-189. Free service.

No free service shall be furnished by the system to any person or to any public agency or instrumentality.
(Ord. No. 319, § 6.04, 7-8-91)

Sec. 66-190. Establishment of charges for service.

The charges for each premises connected to the system shall be established by resolution of the city council. A public hearing shall be held prior to the enactment of such a resolution and at least ten days' notice of the public hearing shall be published in a paper of general circulation within the city indicating, in addition to such other information as the council deems appropriate, the council's intention to increase or decrease rates and a schedule of the new rates contemplated.
(Ord. No. 319, § 6.05, 7-8-91)

Sec. 66-191. Base rate charges.

All properties connected to the system shall pay the base rate as set by resolution for the minimum usage as set by resolution. The base rate charge shall be billed monthly to the customer even if the water service has been shut off. The base rate charge for multiple-family (apartments) shall be the residential base rate established by resolution, times the number of apartment units.
(Ord. No. 319, § 6.06, 7-8-91; Ord. No. 11-03, § 1, 6-13-11)

Sec. 66-192. Delinquent bills.

(a) *Charges.* If any charges are not paid within 15 days after the billing date of the statement, a penalty of ten percent will be added thereto. If the charges for services furnished to any premises are not paid within one month after the due date thereof, all services furnished by the system may be discontinued. Service discontinued shall not be restored until all sums

due, including all penalties, interest and charges for costs incurred shall have been paid. If the property is not serviced by water then a nonpayment charge shall be added to the bill if payment is not made by the shut-off day.

(b) *Notice of shut-off.* Notice of shut-off shall be given by regular mail addressed to the property address ten days prior to the date upon which service is to be discontinued. The date of shut-off shall be the 11th day after the date of mailing the notice, not including the date of mailing.

- (1) *Appeal to water clerk; time for appeal.* The user shall have the right to appeal a shut-off notice to the city's water clerk provided the appeal is received by the water clerk not later than the fifth day after mailing of the notice, unless the fifth day falls upon a weekend or holiday, in which case the user shall have until the following regular business day to do so.
- (2) *Appeal on form to be furnished by city; financial hardship not a ground for appeal; installment arrangements available.* The appeal must be set forth on a form to be furnished by the city. It shall set forth reasons for the appeal. Financial hardship shall not be a reason for an appeal.
- (3) *Hearing; appellant's rights.* The water clerk shall hold a hearing as soon as practicable after receipt of the appeal and the appellant shall have the right to attend and present reasons, orally or in writing. Consultation with the city manager shall be had, to the extent necessary, at the request of the appellant or water clerk. The appellant shall have the right to be represented by an attorney or other advisor, if desired.
- (4) *Water clerk's determination; nonpayment fee.* The water clerk shall issue a determination as soon as possible after the hearing and shall notify the appellant in writing as to the results of the appeal. In the event the water clerk denies the appeal, the shut-off shall take place on the sixth day after mailing or personal delivery of the water clerk's determination. Payment at any time during the period prior to shut-off shall preclude discontinuance of service; provided, however, that payment on the original date for shut-off or thereafter, shall necessitate the payment of a nonpayment charge irrespective of whether shut-off has occurred. If the appeal is granted no nonpayment charge shall be made. If the appeal is denied, the nonpayment charge shall be assessed on the date subsequent to the initial date for shut-off.

(Ord. No. 319, § 6.07, 7-8-91; Ord. of 1-26-98(1), § 3)

Sec. 66-193. Charges become liens on property.

(a) Charges for services furnished by the system to any premises as well as all interest and penalties shall be a lien thereon as of the due date thereof. On March 31 of each year the water clerk shall certify such charges which have been delinquent 30 days or more, plus penalties and interest accrued thereon to the city treasurer who shall enter the same on the next tax roll against the premises to which such service has been rendered. The charges, penalties and interest shall be collected and the lien enforced in the same manner as the other taxes assessed on such tax roll.

(b) Where, in accordance with Section 5 of Act No. 178 of the Public Acts of Michigan of 1939 (MCL 123.161), as amended, a lease has been legally executed providing that the lessor shall not be liable for payment of sewer bills, such bills will not be a lien on the property providing:

- (1) An affidavit stating that such a lease has been executed and containing the expiration date of the lease is filed with the water clerk.
- (2) Twenty days' notice shall be given to the water clerk of any cancellation, change in or termination of the lease.

(Ord. No. 319, § 6.08, 7-8-91)

Sec. 66-194. Security deposit.

Where no lien exists on a property for the payment of sewer bills as provided elsewhere in this article, a security deposit shall be required prior to turning on water at any premises. The deposit shall be the estimated bill payable to the city for three months' sewer service as determined by the water clerk. In setting the amount of the deposit, the water clerk shall consider the premises, the nature of its proposed use and past history of water consumption. (Ord. No. 319, § 6.09, 7-8-91)

Secs. 66-195—66-200. Reserved.

DIVISION 6. INDUSTRIAL PRETREATMENT

Sec. 66-201. General provisions.

(1) *Purpose and policy.* This division sets forth uniform requirements for all non-domestic discharges into all the wastewater collection and treatment systems under the control of the city. The division also enables the city to protect public health in conformity with all applicable local, state, federal laws relating thereto. The objectives of this division are:

- a. To prevent the introduction of pollutants into the city wastewater system which will interfere with the normal operation of the system or contaminate the resulting municipal sludge;
- b. To prevent the introduction of pollutants into the city wastewater system which do not receive adequate treatment in the POTW, and which will pass through the system into receiving waters or the atmosphere or otherwise be incompatible with the system;
- c. To improve the opportunity to recycle and reclaim wastewater and sludge from the system.

(2) *Objectives.* This division provides for the regulation of discharges into the city wastewater system through the issuance of permits. This division does not provide for the recovery of operations, maintenance or replacement costs of the POTW or the costs associated with the construction of collection and treatment systems used by the industrial dischargers, in proportion to their use of the POTW, which will be the subject of separate enactments.

(Ord. of 9-13-99, § 1)

Sec. 66-202. Definitions.

Act means the Clean Water Act (33 U.S.C. 1251 et seq.), as amended.

Categorical pretreatment standards means National Pretreatment Standards specifying quantities or concentrations of pollutants or pollutant properties which may be discharged or introduced into a POTW by specific industrial dischargers.

Discharger or industrial discharge means any non-residential user who discharges an effluent into a POTW by means of pipes, conduits, pumping stations, force mains, constructed drainage ditches, surface water intercepting ditches, and all constructed devices and appliances appurtenant thereto.

Indirect discharge means the discharge or the introduction of non-domestic pollutants from a source regulated under Section 307(b) or (c) of the Act into POTW.

Industrial waste means solid, liquid or gaseous waste resulting from any industrial, manufacturing, trade, or business process or from the development, recovery or processing of natural resources.

IPP means industrial pretreatment program as defined in 40 CFR part 403.

Interference means the inhibition or disruption of a POTW's sewer system, treatment processes or operations which may contribute to a violation of any requirement of its NPDES permit.

New source means any building, structure, facility or installation from which there is or may be a discharge of pollutants, the construction of which commenced after publication of proposed pretreatment standards under Section 307(c) of the Act.

NPDES means National Pollutant Discharge Eliminates System permit program as administered by the USEPA or the Michigan Department of Natural Resources.

O&M means operation and maintenance.

Other wastes means decayed wood, sawdust, shavings, bark, lime, refuse, ashes, garbage, oil, tar, chemicals and all other substances except sewage and industrial wastes.

POTW means any sewage treatment works and the sewers and conveyance appurtenances discharging thereto owned and operated by the city.

Pollutant means any substance discharged into a POTW or its collection system, listed in Appendices A and B to the ordinance adopted September 13, 1999 from which this division derives (on file in the office of the city clerk).

Pretreatment means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater to a less harmful state prior to or in lieu of discharging or otherwise introducing such pollutants into a POTW.

Sewage means water-carried human wastes or a combination of water-carried wastes from residence, business buildings, institutions and industrial establishments, together with such ground, surface, storm or other waters as may be present.

Sewer means any pipe, conduit, ditch or other device used to collect and transport sewage or stormwater from the generating source.

Shall means is mandatory.

Significant industrial user (SIU) means categorical and non-categorical users with a flow of more than 25,000 gallons per day or any industrial user with a reasonable potential to adversely affect the POTW's operation. POTWs may delete non-categorical if they have no potential for adversely affecting operations.

Slugload means any substance released in a discharge at a rate and/or concentration which causes interference to a POTW.

Toxic pollutants means those substances listed in Appendix A to the ordinance from which this division derives.

Upset means an exceptional incident in which a discharger unintentionally and temporarily is in a state of noncompliance with the standards set forth in Appendices A and B to the ordinance from which this division derives, due to factors beyond the reasonable control of the discharger, and excluding noncompliance to the extent caused by operational error, improperly designed treatment facilities, lack of preventative maintenance, or careless or improper operation thereof.

Wastewater means industrial waste, or sewage or any other waste including that which may be combined with any ground water, surface water or stormwater, that may be discharged to the POTW.

(Ord. of 9-13-99, § 1)

Sec. 66-203. Regulations.

(1) *General discharge prohibitions.* No industrial discharger shall contribute or cause to be discharged, directly or indirectly, any of the following described substances into the wastewater disposal system or otherwise to the facilities of the city:

- (a) Any liquids, solids or gases which by reason of their nature or quantity are, or may be, sufficient either alone or by interaction to cause fire or explosion or be injurious in any other way to the operation of the POTW. Specifically prohibiting all substances with a closed cup flash point of less than 140 degrees Fahrenheit;
- (b) Solid or viscous substances which will or may cause obstruction to the flow in a sewer or other interference with the operation of the wastewater system;
- (c) Any wastewater having a pH less than 5.0 or higher than 10, or having any other corrosive property capable of causing damage or hazard to structures, equipment, or personnel of the system;

- (d) Any wastewater containing toxic pollutants in sufficient quantity, either singly or by interaction to injure or interfere with any wastewater treatment process, constitute a hazard to humans or animals, or to exceed the limitation set forth in categorical pretreatment standards found in Appendix C;
 - (e) Toxic pollutants shall include but not be limited to any pollutants that result in toxic gases, vapors and fumes in quantities that may cause acute worker health and/or safety problems. Toxic pollutants shall also include but not be limited to those pollutants listed in Appendix A;
 - (f) Any substance which may cause the POTW's effluent or treatment residues, sludges, or scums, to be unsuitable for reclamation and reuse or to interfere with the reclamation process. Prohibited substances include, but are not limited to, petroleum oil, non-biodegradable cutting oil or mineral oil products in amounts that will interfere with the treatment or pass through the treatment plant. In no case, shall a substance discharged to the POTW cause the POTW to be in noncompliance with sludge use or disposal criteria, guidelines or regulations developed under Section 405 of the Act; any criteria, guidelines or regulations affecting sludge use or disposal developed pursuant to the Solid Waste Disposal Act, the Clean Air Act, the Toxic Substances Control Act, or state standards applicable to the sludge management method being used;
 - (g) Any substance which will cause the POTW to violate its NPDES and/or other disposal system permits;
 - (h) Any substance with objectionable color not removed in the treatment process, such as, but not limited to, dye wastes and vegetable tanning solutions;
 - (i) Any wastewater having a temperature which will inhibit biological activity to the POTW treatment plan resulting in interference; but in no case, wastewater with a temperature at the introduction into the POTW which exceeds 40°C (104°F);
 - (j) Any slugload, which shall mean any pollutant, including oxygen demanding pollutants (BOD, etc.), released in a single extraordinary discharge episode of such volume or strength as to cause interference to the POTW;
 - (k) Any unpolluted water including, but not limited to non-contact cooling water;
 - (l) Any wastewater containing any radioactive wastes or isotopes of such half-life or concentration as exceed limits established by the city in compliance with applicable state or federal regulations;
 - (m) Any wastewater which causes a hazard to human life or creates a public nuisance.
- (2) *Limitations of wastewater strength.*
1. *National categorical pretreatment standards.* National categorical pretreatment standards as promulgated by the U.S. Environmental Protection Agency (EPA) pursuant to the Act and as adopted in Appendix C shall be met by all dischargers of the regulated industrial categories. An application for modification of the National Categorical

Pretreatment Standards may be considered for submittal to the regional administrator by the city, when the city's wastewater treatment system achieves consistent removal of the pollutants as defined by 40 CFR 403.7.

2. *State requirements.* State requirements and limitations on discharges to the POTW shall be met by all dischargers which are subject to such standards in any instance in which they are more stringent than federal requirements and limitations or those in this division or any other applicable ordinance.
3. *Right of revision.* The city does reserve right to amend this division to provide for more stringent limitations or requirements on discharges to the POTW where deemed necessary to comply with the objectives set forth in section 66-201(2) of this division.
4. *Dilution.* No industrial discharger shall increase the use of potable or process water in any way, nor mix separate waste stream for the purpose of diluting a discharge as a partial or complete substitute for adequate treatment to achieve compliance with the standards set forth in this division.
5. *Supplementary limitations.* No industrial discharger shall discharge wastewater containing concentration of materials exceeding those listed in Appendix C. The city may impose mass limitations on discharges which are using dilution to meet the pretreatment standards or requirements of this division or in other cases where the imposition of mass limitations is deemed appropriate by the city.

(3) *Accidental discharges.* Each industrial discharger shall provide protection from accidental discharge of prohibited or regulated materials or substances established by the division. When necessary, facilities to prevent accidental discharge of prohibited materials shall be provided and maintained at the industrial discharger's cost and expense. Detailed plans showing facilities and operating procedures to provide this protection shall be submitted to the city for review, and shall be approved by the city before construction of the facility. Each existing industrial discharger shall complete its plan and submit same to the city by 60 days after adoption of this division and due notification. No industrial discharger who discharges to the POTW after the aforesaid date shall be permitted to introduce pollutants into the system until accidental discharge protection procedures have been approved by the city. Review and approval of such plans and operating procedures by the city shall not relieve the industrial discharger from the responsibility to modify its facility as necessary to meet the requirements of this division. Industrial dischargers shall notify the city immediately upon the occurrence of a "slugload," or accidental discharge of substances prohibited by this division. The notification shall include location of discharge, date and time thereof, type of waste, concentration and volume, and corrective actions. Any industrial discharger who discharges a slugload of prohibited materials shall be liable for any expenses, loss or damage to the POTW, in addition to the amount of fines imposed by the city on account thereof or penalties under state or federal law. Signs shall be permanently posted in conspicuous places on industrial discharger's premises, advising employees whom to call in the event of a slug or accidental discharge. Employers shall instruct all employees who may cause or discover such a discharge with respect to emergency notification procedure.

(Ord of 9-13-99, § 1)

Sec. 66-204. Fees.

(1) *Purpose.* It is the purpose of this chapter to provide for the payment of fees from industrial dischargers to the city's wastewater disposal system, to compensate the city for the cost of administration of the pretreatment program established herein.

(2) *Charges and fees.* The city shall adopt charges and fees which may include:

- (a) Fees for permit application.
- (b) Fees for filing appeals.
- (c) Fees for reviewing accidental discharge procedures and construction.
- (d) Fees for monitoring and administration of IPP program.

The fees shall be set to cover only the city's actual expenses for various procedures listed above. (Ord of 9-13-99, § 1)

Sec. 66-205. Administration.

(1) *Wastewater discharges.* It shall be unlawful to discharge sewage, industrial waste or other wastes without a permit issued by the city to any sewer within the jurisdiction of the city and/or to the POTW.

(2) *Wastewater discharge permits.*

1. *General permits.* All industrial dischargers proposing to connect to or to discharge sewage, industrial wastes and other wastes to the POTW shall obtain an industrial discharge permit and a building sewer connection permit before the issuance by the city of a building sewer connection permit. All existing industrial dischargers connected to or discharging to the POTW shall obtain an industrial discharge permit within 120 days after the effective date of the ordinance from which this division derives (September 23, 1999). (Existing connections should already have building sewer connection permits.)
2. *Permit application.* Industrial dischargers shall complete and file with the city a permit application in the form prescribed by the city. Existing industrial dischargers shall apply for an industrial discharge permit within 60 days after September 23, 1999, and proposed new industrial dischargers shall apply at least 90 days prior to connecting to the POTW. No dischargers permit shall be issued unless and until the following conditions have been met:
 - a. Disclosure of name, address and location of the industrial discharger;
 - b. Disclosure of Standard Industrial Classification (SIC) number according to the Standard Industrial Classification Manual, Bureau of Budget, 1972, as amended;
 - c. Disclosure of wastewater constituents and characteristics including but not limited to those mentioned in this division, including Appendices A and B, and C to the ordinance from which this division derives, as appropriate, as determined

by bonafide chemical and biological analysis. Sampling and analysis shall be performed in accordance with procedures established by the U.S. EPA and contained in 40 CFR, Part 136, as amended;

- d. Disclosure of time and duration of discharges;
- e. Disclosure of average daily wastewater flow rates, in gallons per day, including daily, monthly and seasonal variations, if any. All flows shall be measured unless other verifiable techniques are approved by the city due to cost or non-feasibility;
- f. Disclosure of site plans, floor plans, mechanical and plumbing plans and details to show all sewer, sewer connections, inspection manholes, sampling chambers and appurtenances by size, location and elevation;
- g. Description of activities, facilities and plan processes on the premises including all materials which are or may be discharged to the sewers or works of the city;
- h. Disclosure of the nature and concentration of any pollutants or materials prohibited by this division in the discharge, together with a statement regarding whether or not compliance is being achieved with this division on a consistent basis and if not, whether additional operation and maintenance activities and/or additional pretreatment is required for the industrial discharger to comply with this division;
- i. The industrial discharger when required by this division shall provide a declaration of the shortest schedule that will provide such additional pretreatment and/or implementation of additional operational and maintenance activities:
 - (1) The schedule shall contain milestone dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the industrial discharger to comply with the requirements of this division including, but not limited to dates relating to hiring an engineer, hiring other appropriate personnel, completing preliminary plans, completing final plans, executing contract for major components, commencing construction, completing construction, and other steps necessary to achieve compliance with this division;
 - (2) Under no circumstances shall the city permit a time increment for any single step directed toward compliance which exceeds nine months;
 - (3) Not later than 15 days following each milestone date in the schedule and the final date for compliance, the industrial discharger shall submit a progress report to the city including no less than a statement as to whether or not it complied with the increment of progress represented by the milestone date and, if not, the date on which it expects to comply with this increment of progress, the reason for delay, and the steps being taken by the industrial discharger to return to the construction to the approved schedule. In no event shall more than nine months elapse between such progress reports to the city.

- j. Disclosure of each product produced by type, amount, process, or processes and rate of production;
- k. Disclosure of the type and amount of raw materials utilized (average and maximum per day);
- l. All permit applications for new or modified permits shall be signed by a principal executive officer of the industrial discharger;
- m. All sewers shall have an inspection and sampling manhole or structure with an opening of no less than 24 inches diameter and an internal diameter of no less than 48 inches which may contain flow measuring, recording and sampling equipment as required by the city to assure compliance with this division.

The city will evaluate the complete application and data furnished by the industrial discharger and may require additional information. Within 30 days after full evaluation and acceptance of the data furnished, the city shall issue an industrial discharge permit subject to terms and conditions provided herein.

- 3. *Permit modification.* The city reserves the right to amend any industrial discharge permit issued in order to assure compliance by the city with applicable laws and regulations. Within nine months of the promulgation of a National Categorical Pretreatment Standard, the industrial discharge permits of each industrial discharger subject to such standards shall be revised to require compliance with such standards within the time frame prescribed by such standards. All National Categorical Pretreatment Standards adopted by the promulgation of this division shall be adopted by the city as part of this division. Where an industrial discharger, subject to a National Categorical Pretreatment Standard, has not previously submitted an application for an industrial discharge permit as required by subsection 2., the discharger shall apply for an industrial discharge permit from the city within 180 days after the promulgation of the applicable National Categorical Pretreatment Standard by the U.S. EPA. In addition, the discharger with an existing industrial discharge permit shall submit to the city within 180 days after the promulgation of an applicable National Categorical Pretreatment Standard, the information required by subsections h. and i. of subsection 2. above. The discharger shall be informed of any proposed changes in his permit at least 30 days prior to the effective date of change. Any changes or new conditions in the permit shall include a reasonable time schedule for compliance. The discharger shall notify the city 30 days in advance of any substantial changes in volume or character of discharge.
- 4. *Permit conditions.* Industrial discharge permits shall specify no less than the following:
 - a. Fees and charges to be paid upon initial permit issuance;
 - b. Limits on the average and maximum wastewater constituents and characteristics regulated thereby;

- c. Limits on average and maximum rate and time of discharge and/or requirements for flow regulations and equalization;
 - d. Requirements for installation and maintenance of inspection and sampling facilities;
 - e. Special conditions as the city may reasonably require under particular circumstances of a given discharge including sampling locations, frequency of sampling, number, types and standards for tests and reporting schedule;
 - f. Compliance schedules;
 - g. Requirements for submission of special technical reports or discharge reports where some differ from those prescribed by this division.
5. *Permit duration.* All industrial discharge permits shall be issued for a maximum of five years, subject to amendment or revocation as provided in this division. Under extra-ordinary circumstances, a permit may be issued for a stated period or may be stated to expire on a specific date.
6. *Limitations on permit transfer.* Industrial discharge permits are issued to a specific industrial discharger for a specific operation and are not assignable to another industrial discharger or transferrable to any other location.

(3) *Reporting requirements for permittee.*

1. *Compliance date report.* Within 90 days following the date for final compliance by the industrial discharger with applicable pretreatment standards set forth in this division or 90 days following commencement of the introduction of wastewater into the POTW by a new industrial discharger, any industrial discharger subject to this division shall submit to city a report indicating the nature and concentration of all prohibited or regulated substances contained in its discharge, and the average maximum daily flow in gallons. The report shall state whether the applicable pretreatment standards or requirements are being met on a consistent basis and, if not, what additional O&M and/or pretreatment is necessary to bring the industrial discharger into compliance with the applicable pretreatment standards or requirements. This statement shall be signed by an authorized representative of the industrial discharger.
2. *Periodic compliance reports.*
- a. Any discharger subject to a pretreatment standard set forth in this division, after the compliance date of such pretreatment standard, or, in the case of a new industrial discharger, after commencement of the discharge to the city, shall submit, to the city during the months of June and December, unless required more frequently by the city, a report indicating the nature and concentration of prohibited or regulated substances in the effluent. In addition, this report shall include a record of all measured or verified average and maximum daily flows during the reporting period. Flows shall be reported on the basis of actual measurement, provided however, where cost or feasibility considerations justify, the city may accept reports of average and maximum flows estimated by

verifiable techniques. The city, for good cause when considering such factors as local high or low flow rates, holidays, budget cycles, or other extenuating factors, may authorize the submission of said reports on months other than those specified above.

- b. Reports by the permittee shall contain all results of sampling and analysis of the discharge, including the flow and nature of concentration, or production and mass where required by the city. The frequency of monitoring by the industrial discharger shall be as prescribed in the applicable pretreatment standard of this division. All analysis shall be performed in accordance with 40 CFR, Part 136 and amendments thereto. Where 40 CFR, Part 136 does not include a sampling or analytical technique for the pollutant in question, sampling and analysis shall be performed in accordance with the procedures set forth in the EPA publication, Sampling and Analysis Procedures for Screening of Industrial Effluents for Priority Pollutants, April, 1977, and amendments thereto, or with any other sampling and analytical procedures approved by the administrator of the U.S. EPA.

(4) *Monitoring facilities.* Each industrial discharger shall provide and operate at the discharger's own expense, a monitoring facility to allow inspection, sampling and flow measurement of each sewer discharge to the city. Each monitoring facility shall be situated on the industrial discharger's premises, except where such a location would be impractical or cause undue hardship on the industrial discharger, the city may concur with the facility being constructed in the public street or sidewalk area providing that the facility is located so that it will not be obstructed by landscaping or parked vehicles. There shall be ample room in or near such sampling facility to allow accurate sampling and preparation of samples for analysis. The facility, sampling and measuring equipment shall be maintained at all times in a safe and proper operational condition. All monitoring facilities shall be constructed and maintained in accordance with all applicable local construction standards and specifications. Construction shall be completed within a reasonable and agreeable time.

(5) *Inspection and sampling.* The city may inspect the monitoring facilities of any industrial discharger to determine compliance with the requirements of this division. The discharger shall allow the city or its representatives, upon presentation of credentials of identification, to enter the premises of the industrial discharger at all reasonable hours, for the purpose of inspection, sampling or records examination and the photocopying thereof. The city shall have the right to set up on the industrial discharger's property such devices as are necessary to conduct sampling, inspection, compliance monitoring and/or metering operations.

(6) *Confidential information.* Information and data furnished to the city with respect to the nature and frequency of discharges shall be available to the public or other governmental agency without restriction unless the industrial discharger specifically requests and is able to demonstrate to the satisfaction of the city that the release of such information would divulge information, process or methods of production entitled to protection as trade secrets or proprietary information of the industrial discharger.

When requested by an industrial discharger furnishing a report, the portions of that report which may disclose trade secrets or secret processes shall not be made available for inspection by the public but shall be made available upon written request to governmental agencies for uses related to this division, the National Pollutant Discharge Elimination System (FPDES) Permit, state disposal system permit and/or the pretreatment programs; provided, however, that such portions of a report shall be available for use by the state or any state agency in judicial review or enforcement proceedings involving the discharger furnishing the report. Wastewater constituents and characteristics will not be recognized as confidential information.

Information accepted by the city as confidential, shall not be transmitted to any governmental agency or to the general public by the city until and unless adequate notification is given to the industrial discharger.

(Ord. of 9-13-99, § 1)

Sec. 66-206. Enforcement.

(1) *Emergency suspension of service and discharge permits.* The city may for good cause shown, suspend the wastewater treatment service and the industrial discharge permit of an industrial discharger when it appears to the city that an actual or threatened discharge presents or threatens an imminent or substantial danger to the health or welfare of persons, substantial danger to the environment, interfere with the operation of the POTW, violate any pretreatment limits imposed by this division or any industrial discharge permit issued pursuant to this division. Any industrial discharger notified of the suspension of the city's wastewater treatment service and/or the discharger's industrial discharge permit, shall within a reasonable period of time, as determined by the city, cease all discharges. In the event of failure of the industrial discharger to comply voluntarily with the suspension order within the specified time, the city shall commence judicial proceedings immediately thereafter to compel the industrial discharger's compliance with such order. The city shall reinstate the industrial discharge permit and/or the wastewater treatment service and terminate judicial proceedings pending proof of the industrial discharger of the elimination of the noncomplying discharge or conditions creating the threat of imminent or substantial danger as set forth above.

(2) *Revocation of permit.* The city may revoke the permit of any industrial discharger which fails to: (a) factually report the wastewater constituents and characteristics of its discharge; (b) report significant changes in wastewater constituents and characteristics; (c) refuses reasonable access to the industrial discharger's premises by representatives of the city for the purpose of inspection or monitoring; or (d) violates the conditions of its permit, or this division, or any final judicial order entered with respect thereto.

(3) *Notification of violation; administrative adjustment.* Whenever the city finds that any industrial discharger has engaged in conduct which justifies revocation of an industrial discharge permit, pursuant to subsection (2) of this section, the city shall serve or cause to be served upon such industrial discharger a written notice either personally or by certified or registered mail, return receipt requested, stating the nature of the alleged violation. Within 30

days of the date of the receipt of the notice, the discharger shall respond personally or in writing to the city, advising of its position with respect to the allegations. Thereafter, the parties shall meet to ascertain the veracity of the allegations and where necessary, establish a plan for the satisfactory correction thereof.

(4) *Show cause hearing.* Where the violation of subsection (2) of this section is not corrected by timely compliance by means of administrative adjustment, the city may order any industrial discharger which causes or allows conduct prohibited by subsection (2) hereof, to show cause before the city or its duly authorized representative, why the proposed permit revocation action should be taken. A written notice shall be served on the industrial discharger by personal service, certified or registered mail, return receipt requested, specifying the time and place of a hearing to be held by the city or its designee why the proposed enforcement action should not be taken. The notice of the hearing shall be served no less than ten days before the hearing. Service may be made on any agent, officer, or authorized representative of an industrial discharger. The proceedings at the hearing shall be considered by the city which shall then enter appropriate orders with respect to the alleged improper activities of the industrial discharger. Appeal of such orders may be taken by the industrial discharger in accordance with applicable local or state law.

(5) *Judicial proceedings.* Following the entry of any order by the city with respect to the conduct of an industrial discharger contrary to the provisions of subsection (2) hereof, the attorney for the city may, following the authorization of such action by the city, commence an action for appropriate legal and/or equitable relief in the appropriate local court.

(6) *Enforcement actions; annual publication.* A list of all significant industrial dischargers which were the subject of enforcement proceedings pursuant to Chapter 6 [section 66-206] of this division during the 12 previous months, shall be annually published by the city in the newspaper with the largest daily circulation published in the city in which the city is located, summarizing the enforcement actions taken against the industrial dischargers during the same 12 months whose violations remained uncorrected 45 or more days after notification of noncompliance; or which have exhibited a pattern of noncompliance over that 12-month period, or which involve failure to accurately report noncompliance. For the purpose of this provision, an industrial discharger is in significant noncompliance if its violation meets one or more of the following criteria:

- a. Chronic violations of wastewater discharge limits, defined here as those in which 66 percent or more of all of the measurements taken during a six-month period exceeded (by any magnitude) the daily maximum limit or the average limit for the same pollutant parameter;
- b. Technical review criteria (TRC) violations, defined here as those in which 33 percent or more of all of the measurements for each pollutant parameter taken during a six-month period equal or exceed the product of the daily maximum limited multiplied by the applicable TRC (TRC = 1.4 for BOD, TSS, fats, oil and grease, and 1.2 for all other pollutants except pH);

- c. Any other violation of a pretreatment effluent limit (daily maximum or longer-term average) that the city determines has caused, alone or in combination with other discharges, interferences or pass through;
- d. Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment or has resulted in the POTW's exercise of its emergency authority to halt or such discharge;
- e. Failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in a local control mechanism or enforcement order for starting construction, completing construction, or attaining final compliance;
- f. Failure to provide, within 30 days after the due date, required reports such as a baseline monitoring report, 90-day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedule;
- g. Failure to accurately report noncompliance;
- h. Any other violation or group of violations which the city determines will adversely affect the operation or implementation of the city pretreatment program.

(7) *Right of appeal.* Any industrial discharger or any interested party shall have the right to request in writing an interpretation of ruling by the city on any matter covered by the ordinance and shall be entitled to a prompt written reply. In the event that such inquiry is made by an industrial discharger and deals with matters of performance or compliance with this division or deals with an industrial discharge permit issued pursuant hereto for which enforcement activity relating to an alleged violation is the subject, receipt of an industrial discharger's request shall stay all enforcement proceedings pending receipt of the aforesaid written reply. Appeal of any final judicial order entered pursuant to this division may be taken in accordance with local and state law.

(8) *Operation upsets or bypasses.* Any discharger which experiences upsets or bypasses in operation which places the discharger in a temporary state of noncompliance with this division or an industrial discharge permit issued pursuant hereto shall inform the city thereof within 24 hours of first awareness of the commencement of the upset or bypass. Where such information is given orally, a written follow-up report shall be filed by the industrial discharger with the city within five days. The report shall specify:

- a. Description of the upset or bypass, the cause thereof and the upset or bypass' impact on a discharger's compliance status;
- b. Duration of noncompliance, including exact dates and times of noncompliance, and if the noncompliance continues, the time by which compliance is reasonably expected to occur;
- c. All steps taken or to be taken to reduce, eliminate and prevent recurrence of such an upset or other conditions of noncompliance.

A documented and verified operating upset shall be an affirmative defense to any enforcement action brought by the city against an industrial discharger for any noncompliance with the ordinance or any industrial discharge permit issued pursuant hereto, which arises out of violations alleged to have occurred during the period of the upset.
(Ord. of 9-13-99, § 1)

Sec. 66-207. Penalties.

(1) *Civil penalties.* Any industrial discharger who is found to have violated an order of the city or who has failed to comply with any provision of this division, and the regulation or rules of the city or orders of any court of competent jurisdiction or permits issued hereunder, may be subjected to the imposition of a civil penalty of not more than \$1,000.00.

(2) *Recovery of costs incurred by the city.* Any industrial discharger violating any of the provisions of this division, or who discharges or causes a discharge producing a deposit or obstruction, or causes damage to or impairs the city's wastewater disposal system shall be liable to the city for any expense, loss, or damage caused by such violation or discharge. The city shall bill the industrial discharger for the cost incurred by the city for any cleaning repair, or replacement work caused by the violation or discharge. Refusal to pay the assessed costs shall constitute a violation of this division enforceable under the provisions of section 66-206.

(3) *Falsifying information.* Any person who knowingly makes any false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained pursuant to this division, or industrial discharge permit, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required under this division, shall upon conviction be subject to the general penalties set forth in section 1-15(a)—(g) of this Code.
(Ord. of 9-13-99, § 1)

Sec. 66-208. Records retention.

All industrial dischargers subject to this division shall retain and preserve for no less than three years, any records, books, documents, memoranda, reports, correspondence and any and all summaries thereof, relating to monitoring, sampling and chemical analysis made by or on behalf of an industrial discharger in connection with its discharge. All records that pertain to matters which are the subject of administrative adjustment or any other enforcement or litigation activities brought by the city shall be retained and preserved by the industrial discharger until all enforcement activities have concluded and all periods of limitation with respect to any and all appeals have expired.
(Ord. of 9-13-99, § 1)

Sec. 66-209. Removal credits; net/gross calculations.

(1) *Removal credits.* Where applicable, the city may elect to initiate a program of removal credits as part of this division to reflect the POTW's ability to removed pollutants in accordance with 40 CFR Part 403.7.

(2) *Net/gross calculations.* The city may elect to adjust categorical pretreatment standards to reflect the presence of pollutants in the industrial discharger's intake water, in accordance with 40 CFR Part 403.15.

(Ord. of 9-13-99, § 1)

Secs. 66-210—66-215. Reserved.

DIVISION 7. COUNTY SEWER USE ORDINANCE*

Sec. 66-216. Adopted.

The City of Mt. Morris does hereby adopt by reference the Genesee County Sewer Use Ordinance designated by Genesee County as Ordinance No. 06-05, which is an ordinance to repeal an existing ordinance and to regulate the use of public and private sewers and drains, private sewage disposal, sewer installations and connections and discharges of waste water and pollutants into the Genesee County publicly owned treatment works ("POTW"); to require pretreatment of nondomestic wastes by users of the POTW, user permits and monitoring and reporting of users; and to provide for enforcement, penalties, and other relief for violations.

(Ord. No. 07-08, 10-8-07)

Sec. 66-217. Purpose.

The purpose of the adoption of this amendment to the Mt. Morris City Code as permitted by the above cited section of the Michigan Home Rule Cities Act shall be to provide a uniform and consistent code for regulation of the above identified subjects of regulation and to enforce and perform the required duties under the Federal Clean Water Act within the sewer system.

(Ord. No. 07-08, 10-8-07)

Sec. 66-218. Conflict.

The ordinance hereby adopted shall take precedence over any provision of the Mt. Morris City Code, including, but not limited to any provisions set forth in this chapter 66 and in case of conflicts between existing provisions of the Mt. Morris City Code and the Genesee County Sewer Use Ordinance hereby adopted, the latter shall prevail.

(Ord. No. 07-08, 10-8-07)

Sec. 66-219. Copies on file.

The Genesee County Sewer Use Ordinance hereby adopted by reference shall be designated as Appendix F of the Mt. Morris City Code and printed copies thereof shall be kept in the office of the Mt. Morris City Clerk, available for inspection by and distribution to the public at all times.

(Ord. No. 07-08, 10-8-07)

***Cross reference**—Genesee County sewer use ordinance, App. F.

Secs. 66-220—66-225. Reserved.

ARTICLE IV. TELECOMMUNICATIONS IN PUBLIC RIGHTS-OF-WAY*

Sec. 66-226. Purpose.

The purposes of these sections of the Code of Ordinances is 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 (Act No. 48 of the Public Acts of Michigan of 2002) ("Act") and other applicable law, and to ensure that the city qualifies for distributions under the Act by modifying the fees charged to providers and complying with the Act.
(Ord. No. 02-04, 10-14-02)

Sec. 66-227. Conflict.

Nothing in this chapter shall be construed in such a manner as to conflict with the Act or other applicable law.
(Ord. No. 02-04, 10-14-02)

Sec. 66-228. Terms defined.

(a) The terms used in this chapter shall have the following meanings:

Act means the Metropolitan Extension Telecommunications Rights-of-Way Oversight Act (Act No. 48 of the Public Acts of Michigan of 2002), as amended from time to time.¹

City means the City of Mt. Morris.

City council means the city council of the City of Mt. Morris. This section does not authorize delegation of any decision or function that is required by law to be made by the city council.

City manager means the city manager or his or her designee.

Permit means a non-exclusive permit issued pursuant to the Act and this chapter to a telecommunications provider to use the public rights-of-way in the City for its telecommunications facilities.

(b) All other terms used in this chapter shall have the same meaning as defined or as provided in the Act, including without limitation the following:

Authority means the metropolitan extension telecommunications rights-of-way oversight authority created pursuant to Section 3 of the Act.

***Editor's note**—Ord. No. 02-04, adopted Oct. 14, 2002, enacted provisions intended for uses as §§ 66-200—66-221. Inasmuch as there were already provisions so designated, the provisions of said ordinance have been included herein as art. IV, §§ 66-226—66-245 at the discretion of the editor.

MPSC means 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 means an individual, corporation, partnership, association, governmental entity, or any other legal entity.

Public right-of-way means 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 means 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 Section 332(d) of Part I of Title III of the Communications Act of 1934, Chapter 652, 48 Stat. 1064, 47 U.S.C. 332 and further defined as commercial mobile radio service in 47 CFR 20.3, and service provided by any wireless, two-way communication device.

Telecommunications provider, provider and telecommunications services mean those terms as defined in Section 102 of the Michigan Telecommunications Act, Act No. 179 of the Public Acts of Michigan of 1991, MCL 484.2102. Telecommunication provider does not include a person or an affiliate of that person when providing a federally licensed commercial mobile radio service as defined in Section 332(d) of Part I of the Communications Act of 1934, Chapter 652, 48 Stat. 1064, 47 U.S.C. 332 and further defined as commercial mobile radio service in 47 CFR 20.3, or service provided by any wireless, two-way communication device. For the purpose of the Act and this article only, a provider also includes all of the following:

- (1) A cable television operator that provides a telecommunications service.
 - (2) Except as otherwise provided by the Act, a person who owns telecommunication facilities located within a public right-of-way.
 - (3) A person providing broadband internet transport access service.
- (Ord. No. 02-04, 10-14-02)

¹ A copy of the Act can be obtained on the Internet at <http://www.cis.state.mi.us/mpsc/comm/rightofway/rightofway.htm>.

Sec. 66-229. 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 city for its telecommunications facilities shall apply for and obtain a permit pursuant to this chapter.

(b) *Application.* Telecommunications providers shall apply for a permit on an application form approved by the MPSC in accordance with Section 6(1) of the Act. A telecommunications provider shall file one copy of the application with the city clerk, one copy with the city manager and one copy with the city attorney. Upon receipt, the city clerk shall make sufficient

copies of the application and distribute a copy to the director of public works and the chief of police and the fire chief. Applications shall be complete and include all information required by the Act, including without limitation a route map showing the location of the provider's existing and proposed facilities in accordance with Section 6(5) of the Act.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, Act No. 442 of the Public Acts of Michigan of 1976, MCL 15.231 to 15.246, pursuant to Section 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 \$500.00.

(e) *Additional information.* The city manager may request an applicant to submit such additional information which the city manager deems reasonably necessary or relevant. The applicant shall comply with all such requests in compliance with reasonable deadlines for such additional information established by the city manager. If the city and the applicant cannot agree on the requirement of additional information requested by the city, the city or the applicant shall notify the MPSC as provided in Section 6(2) of the Act.

(f) *Previously issued permits.* Pursuant to Section 5(1) of the Act, authorizations or permits previously issued by the city under Section 251 of the Michigan Telecommunications Act, Act No. 179 of the Public Acts of Michigan of 1991, MCL 484.2251 and authorizations or permits issued by the City to telecommunications providers prior to the 1995 enactment of Section 251 of the Michigan Telecommunications Act but after 1985 shall satisfy the permit requirements of this chapter.

(g) *Existing providers.* Pursuant to Section 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 city as of such date, that has not previously obtained authorization or a permit under Section 251 of the Michigan Telecommunications Act, Act No. 179 of the Public Acts of Michigan of 1991, MCL 484.2251, shall submit to the city an application for a permit in accordance with the requirements of this chapter. Pursuant to Section 5(3) of the Act, a telecommunications provider submitting an application under this subsection is not required to pay the \$500.00 application fee required under subsection (c) above. A provider under this subsection shall be given up to an additional 180 days to submit the permit application if allowed by the authority, as provided in Section 5(4) of the Act.

(Ord. No. 02-04, 10-14-02)

² A copy of the application form as approved by the commission can be obtained on the Internet at <http://www.cis.state.mi.us/mpsc/comm/rightofway/rightofway.htm>.

Sec. 66-230. Issuance of permit.

(a) *Approval or denial.* The authority to approve or deny an application for a permit is hereby delegated to the city manager. Pursuant to Section 15(3) of the Act, the city manager shall approve or deny an application for a permit within 45 days from the date a telecommu-

nications provider files an application for a permit under section 66-229(b) for access to a public right-of-way within the city. Pursuant to Section 6(6) of the Act, the city manager shall notify the MPSC when the city manager has granted or denied a permit, including information regarding the date on which the application was filed and the date on which permit was granted or denied. The city manager shall not unreasonably deny an application for a permit.

(b) *Form of permit.* If an application for permit is approved, the city manager shall issue the permit in the form approved by the MPSC, with or without additional or different permit terms, in accordance with Sections 6(1), 6(2) and 15 of the Act.³

(c) *Conditions.* Pursuant to Section 15(4) of the Act, the city manager may impose conditions on the issuance of a permit, which conditions shall be limited to the telecommunications provider's access and usage of the public right-of-way.

(d) *Bond requirement.* Pursuant to Section 15(3) of the Act, and without limitation on subsection (c) above, the city manager may require that a bond be posted by the telecommunications provider as a condition of the permit. If a bond is required, it shall not exceed the reasonable cost to ensure that the public right-of-way is returned to its original condition during and after the telecommunications provider's access and use.

(Ord. No. 02-04, 10-14-02)

³ Copies of the permit forms currently approved by the MPSC can be obtained on the Internet at <http://www.cis.state.mi.us/mpsc/comm/rightofway/rightofway.htm>.

Sec. 66-231. Construction/engineering permit.

A telecommunications provider shall not commence construction upon, over, across, or under the public rights-of-way in the city without first obtaining a construction or engineering permit as required this Code, as amended, for construction within the public rights-of-way. No fee shall be charged for such a construction or engineering permit.

(Ord. No. 02-04, 10-14-02)

Sec. 66-232. Conduit or utility poles.

Pursuant to Section 4(3) of the Act, obtaining a permit or paying the fees required under the Act or under this chapter does not give a telecommunications provider a right to use conduit or utility poles.

(Ord. No. 02-04, 10-14-02)

Sec. 66-233. Route maps.

Pursuant to Section 6(7) of the Act, a telecommunications provider shall, within 90 days after the substantial completion of construction of new telecommunications facilities in the city, submit route maps showing the location of the telecommunications facilities to both the MPSC and to the city. The route maps should be in (paper or electronic) format unless and until the MPSC determines otherwise, in accordance with Section 6(8) of the Act.

(Ord. No. 02-04, 10-14-02)

Sec. 66-234. Repair of damage.

Pursuant to Section 15(5) of the Act, a telecommunications provider undertaking an excavation or construction or installing telecommunications facilities within a public right-of-way or temporarily obstructing a public right-of-way in the city, as authorized by a permit, shall promptly repair all damage done to the street surface and all installations under, over, below, or within the public right-of-way and shall promptly restore the public right-of-way to its preexisting condition.

(Ord. No. 02-04, 10-14-02)

Sec. 66-235. Establishment and payment of maintenance fee.

In addition to the non-refundable application fee paid to the city set forth in section 66-229(d), a telecommunications provider with telecommunications facilities in the city's public rights-of-way shall pay an annual maintenance fee to the authority pursuant to Section 8 of the Act.

(Ord. No. 02-04, 10-14-02)

Sec. 66-236. Modification of existing fees.

In compliance with the requirements of Section 13(1) of the Act, the city hereby modifies, to the extent necessary, any fees charged to telecommunications providers after November 1, 2002, the effective date of the Act, relating to access and usage of the public rights-of-way, to an amount not exceeding the amounts of fees and charges required under the Act, which shall be paid to the authority. In compliance with the requirements of Section 13(4) of the Act, the city also hereby approves modification of the fees of providers with telecommunication facilities in public rights-of-way within the city's boundaries, so that those providers pay only those fees required under Section 8 of the Act. The city shall provide each telecommunications provider affected by the fee with a copy of this article, in compliance with the requirement of Section 13(4) of the Act. To the extent any fees are charged telecommunications providers in excess of the amounts permitted under the Act, or which are otherwise inconsistent with the Act, such imposition is hereby declared to be contrary to the city's policy and intent, and upon application by a provider or discovery by the city, shall be promptly refunded as having been charged in error.

(Ord. No. 02-04, 10-14-02)

Sec. 66-237. Savings clause.

Pursuant to Section 13(5) of the Act, if Section 8 of the Act is found to be invalid or unconstitutional, the modification of fees under section 66-236 above shall be void from the date the modification was made.

(Ord. No. 02-04, 10-14-02)

Sec. 66-238. Use of funds.

Pursuant to Section 10(4) of the Act, all amounts received by the city from the authority shall be used by the city solely for rights-of-way related purposes. In conformance with that

requirement, all funds received by the city from the authority shall be deposited into the major street fund and/or the local street fund maintained by the city under Act No. 51 of the Public Acts of Michigan of 1951.

(Ord. No. 02-04, 10-14-02)

Sec. 66-239. Annual report.

Pursuant to Section 10(5) of the Act, the city manager shall file an annual report with the authority on the use and disposition of funds annually distributed by the authority.

(Ord. No. 02-04, 10-14-02)

Sec. 66-240. Cable television operators.

Pursuant to Section 13(6) of the Act, the city shall not hold a cable television operator in default or seek any remedy for its failure to satisfy an obligation, if any, to pay after November 1, 2002, the effective date of this act, a franchise fee or similar fee on that portion of gross revenues from charges the cable operator received for cable modem services provided through broadband internet transport access services.

(Ord. No. 02-04, 10-14-02)

Sec. 66-241. Existing rights.

Pursuant to Section 4(2) of the Act, except as expressly provided herein with respect to fees, this article shall not affect any existing rights that a telecommunications provider or the city may have under a permit issued by the city or under a contract between the city and a telecommunications provider related to the use of the public rights-of-way.

(Ord. No. 02-04, 10-14-02)

Sec. 66-242. Compliance.

The city hereby declares that its policy and intent in adopting this article is to fully comply with the requirements of the Act, and the provisions hereof should be construed in such a manner as to achieve that purpose. The city shall comply in all respects with the requirements of the Act, including but not limited to the following:

- (1) Exempting certain route maps from the Freedom of Information Act, Act No. 442 of the Public Acts of Michigan of 1976, MCL 15.231—15.246, as provided in section 66-229(d);
- (2) Allowing certain previously issued permits to satisfy the permit requirements of this chapter, in accordance with section 66-229(f);
- (3) Allowing existing providers additional time in which to submit an application for a permit, and excusing such providers from the \$500.00 application fee, in accordance with section 66-229(g);
- (4) Approving or denying an application for a permit within 45 days from the date a telecommunications provider files an application for a permit for access to and usage of a public right-of-way within the city, in accordance with section 66-230(a);

- (5) Notifying the MPSC when the city has granted or denied a permit, in accordance with section 66-230(a);
 - (6) Not unreasonably denying an application for a permit, in accordance with section 66-230(a);
 - (7) Issuing a permit in the form approved by the MPSC, with or without additional or different permit terms, as provided in section 66-230(b);
 - (8) Limiting the conditions imposed on the issuance of a permit to the telecommunications provider's access and usage of the public right-of-way, in accordance with section 66-230(c);
 - (9) Not requiring a bond of a telecommunications provider which exceeds the reasonable cost to ensure that the public right-of-way is returned to its original condition during and after the telecommunication provider's access and use, in accordance with section 66-230(d);
 - (10) Not charging any telecommunications providers any additional fees for construction or engineering permits, in accordance with section 66-231;
 - (11) Providing each telecommunications provider affected by the city's right-of-way fees with a copy of this article, in accordance with section 66-236;
 - (12) Submitting an annual report to the authority, in accordance with section 66-239; and
 - (13) Not holding a cable television operator in default for a failure to pay certain franchise fees, in accordance with section 66-240.
- (Ord. No. 02-04, 10-14-02)

Sec. 66-243. Reservation of police powers.

Pursuant to Section 15(2) of the Act, this article shall not limit the city's right to review and approve a telecommunication provider's access to and ongoing use of a public right-of-way or limit the city's authority to ensure and protect the health, safety, and welfare of the public.

(Ord. No. 02-04, 10-14-02)

Sec. 66-244. Authorized city officials.

The city manager or his or her designee is hereby designated as the authorized city official to issue municipal civil infraction citations (directing alleged violators to appear in court) or municipal civil infraction violation notices (directing alleged violators to appear at the municipal chapter violations bureau) for violations under this chapter as provided by the City Code.

(Ord. No. 02-04, 10-14-02)

Sec. 66-245. Municipal civil infraction.

A person who violates any provision of this chapter or the terms or conditions of a permit is responsible for a municipal civil infraction, and shall be subject to the municipal civil

infraction penalty provisions set forth in section 1-15(h) of this Code and the procedures set forth in code section 1-14 shall apply. Nothing in this section 66-245 shall be construed to limit the remedies available to the city in the event of a violation by a person of this chapter or a permit.

(Ord. No. 02-04, 10-14-02)

Chapters 67—69

RESERVED

Chapter 70

VEGETATION*

Article I. In General

Secs. 70-1—70-25. Reserved.

Article II. Weeds

Sec. 70-26. Enforcement.
Sec. 70-27. Procedure for removal.
Sec. 70-28. Payment of bills.
Sec. 70-29. Violation of article constitutes civil infraction.
Secs. 70-30—70-50. Reserved.

Article III. Trees

Sec. 70-51. Dutch Elm Disease declared public nuisance.
Sec. 70-52. Infected trees prohibited.
Sec. 70-53. Inspection of premises.
Sec. 70-54. Notice of disease.
Sec. 70-55. Service of notice.
Sec. 70-56. Duty of owner to remove diseased trees.
Sec. 70-57. Public trees.

***Cross references**—Streets, sidewalks and other public places, ch. 58; schedule of fees, app. C.

ARTICLE I. IN GENERAL

Secs. 70-1—70-25. Reserved.

ARTICLE II. WEEDS

Sec. 70-26. Enforcement.

The city manager shall be charged with responsibility for the enforcement of this article.
(Ord. No. 344, § 1, 9-12-94)

Sec. 70-27. Procedure for removal.

(a) When, in the opinion of the city manager or his proper designate a public nuisance or hazard which is dangerous to the health, safety or welfare of the citizens of the city exists by virtue of the uncontrolled growth of weeds, brush or other vegetation on private property or in the area between the center of public streets and the property line, a notice shall be promptly given to the person whose name appears on the tax rolls of the city in connection with the premises in question or whose property abuts the particular area between the center of the public street and property line, requiring the hazard or nuisance to be terminated at a time set by the city manager but in no event less than five days. The city manager or his proper designate shall make such determination upon the basis of personal inspection of the area in question and weeds, brush or other vegetation over five inches in height shall be deemed, prima facie, to be violative of this article. In cases where the weeds, brush or other vegetation do not exceed the above specified length, but are, for other reasons, deemed to be a public nuisance due to their noxious character, etc., the reasons for the city manager's determination shall be set forth on the notice prescribed in subsection (b) of this section.

(b) The notification issued pursuant to subsection (a) of this section shall comply with the following:

- (1) The notification shall be in writing addressed to the person whose name appears on the tax rolls and shall be mailed by regular mail.
- (2) The notice shall set forth the nature of the violation, the date of the city manager's inspection, the description of the property in location, legal description or tax roll designation.
- (3) The notice shall set forth the date upon which the conditions shall be corrected. The property owner shall have three working days from the date of notification to notify the city manager of his desire to appeal the determination of the city manager to the city council. The appeal shall be held at the next regularly scheduled city council meeting where the city council may upon good cause shown alter, amend or rescind the action of the city manager.

- (4) A statement as to the charges to be made by the city, on an hourly basis or otherwise, with reference to the correction of the nuisance shall be presented by the city manager at the hearing. Other information deemed appropriate relative to the method of computing the charges shall be set forth.

(Ord. No. 344, § 2, 9-12-94)

Sec. 70-28. Payment of bills.

If the property owner fails to abate the conditions as set forth in the notice of violation under this article and within the prescribed time limit, or fails to appeal the notice of violation to the city council, or the appeal is denied by the city council, the city shall forthwith proceed to have the condition removed. The property owner shall be billed for having the condition removed at a rate to be established by resolution of the city council. If payment is not tendered, the charge plus any late payment penalties established by council resolution shall be placed upon the tax roll of the city and collected in the same manner as property taxes duly assessed.

(Ord. No. 344, § 3, 9-12-94)

Sec. 70-29. Violation of article constitutes civil infraction.

Violation of the foregoing sections of the City Code, to wit: sections 70-27 and 70-28 by failure to abate the conditions set forth in the notice of violation, within the prescribed time limit resulting in removal of the condition by city forces shall constitute a civil infraction subject to sections 1-14 and 1-15; provided, however, that such responsibility for a civil infraction shall exist upon the third and all subsequent incidents of violation. The property owner as disclosed by the tax rolls shall be the party responsible for the civil infraction.

The progressions of fines as set forth in section 1-15 shall apply, but the third violation, as aforesaid, shall constitute the first offense for the purposes of section 1-15.

(Ord. No. 06-03, § 1, 11-13-06)

Secs. 70-30—70-50. Reserved.

ARTICLE III. TREES

Sec. 70-51. Dutch Elm Disease declared public nuisance.

Trees of all species and varieties of elm, zelkova and planera affected with the fungus *Ceratostomella ulmi*, as determined by laboratory analysis, are hereby declared to be a public nuisance, and shall be removed within ten days following notification of the discovery of such infection. It shall be unlawful for any person being the owner of property whereon such a tree is situated, to possess or keep such a tree after the expiration of ten days following notification of the discovery of the infection.

(Ord. No. 118, § 1, 8-14-67)

Sec. 70-52. Infected trees prohibited.

Trees or parts thereof of elm, zelkova or planera in a dead or dying condition that may serve as breeding places for the European Elm Bark Beetle, *Scolytus Multistriatus*, are hereby declared to be public nuisances, and it shall be unlawful for the person owning property whereon they are situated to possess or keep them.

(Ord. No. 118, § 2, 8-14-67)

Sec. 70-53. Inspection of premises.

The city director of public works is charged with enforcement of this article and to that end may enter upon private property at all reasonable hours for purposes of inspecting trees thereon, and may remove such specimens as are required for purposes of analysis to determine whether or not they are infected. It shall be unlawful for any person to prevent the director entering on private property for purposes of carrying out his duties under this article, or to interfere with the director in the lawful performance of his duties under the provisions of this article.

(Ord. No. 118, § 3, 8-14-67)

Sec. 70-54. Notice of disease.

If trees on private property are found to be infected, the city manager shall give to the owner of the premises where such trees are situated written notice of the existence of such disease, and requiring the removal of the trees within a period of ten days following the notice, such removal to be under the direction and supervision of the city manager. Such notice shall also notify the owner of the premises that unless the tree is removed in compliance with the terms of this article within such ten-day period, the city will proceed with the removal of the tree, and assess the cost thereof against the property in accordance with the provisions of chapter 54 of this Code. Removal of such trees is hereby deemed necessary for the benefit and protection of the public health, welfare and safety, and the assessment shall be and shall remain a lien upon such lot, block or premises until it is paid, the same as all assessments.

(Ord. No. 118, § 4, 8-14-67)

Sec. 70-55. Service of notice.

Service of the notice prescribed in section 70-54 shall be by personal service where the owner of the premises is a resident of the city, if such service can be conveniently and expeditiously made. In all other cases, the notice shall be given by mailing by certified mail, return receipt requested, addressed to the owner at the address shown on the tax records of the city and by posting a copy of the notice on the premises. The tax records of the city shall mean the last assessment roll for ad valorem tax purposes which has been reviewed by the board of review, as supplemented by any subsequent changes in the names and addresses of such owner listed thereon.

(Ord. No. 118, § 5, 8-14-67)

Sec. 70-56. Duty of owner to remove diseased trees.

It shall become the duty of the owner of the premises after receiving notice pursuant to this article to cause such tree to be removed, under the direction and supervision of the city manager, or his authorized designee. If the city shall remove any tree, all expenses incurred in connection therewith shall be reported to the city council, for assessment against the lands whereon the tree was situated, in accordance with the provisions of chapter 54 of this Code. (Ord. No. 118, § 6, 8-14-67)

Sec. 70-57. Public trees.

Diseased trees on public lands within the city shall be removed at the expense of the city. (Ord. No. 118, § 7, 8-14-67)

APPENDIX A

FRANCHISES

Article I. Consumers Energy Company Gas and Electric Franchise Ordinance

- Sec. 1. Grant of gas franchise and consent to laying of pipes, etc.
- Sec. 2. Gas service and extension of system.
- Sec. 3. Grant of electric franchise and consent to laying of wire, etc.
- Sec. 4. Electric service and extension of system.
- Sec. 5. Use of public ways.
- Sec. 6. City jurisdiction.
- Sec. 7. Standards and conditions of service; rules, regulations and rates.
- Sec. 8. Indemnification.
- Sec. 9. Insurance.
- Sec. 10. Successors and assigns.
- Sec. 11. Michigan public service commission jurisdiction.
- Sec. 12. Repealer.
- Sec. 13. Interpretation of ordinance.
- Sec. 14. Revocation.
- Sec. 15. Effective date: term of franchise ordinance; acceptance by company.

Article II. Comcast Cablevision of Flint, Inc., Cable Television Franchise

- Sec. 1. Definitions.
- Sec. 2. Grant of rights.
- Sec. 3. Public ways.
- Sec. 4. Customer service.
- Sec. 5. Access to the system.
- Sec. 6. Indemnity and insurance.
- Sec. 7. Fees and payments.
- Sec. 8. Rates and regulation.
- Sec. 9. Term.
- Sec. 10. Transfers, ownership and control.
- Sec. 11. Defaults.
- Sec. 12. Remedies.
- Sec. 13. Provision of information.
- Sec. 14. General.

Article III. DTE Energy Marketing Electric Franchise

- Sec. 1. Grant of franchise.
- Sec. 2. Conditions.
- Sec. 3. Rates.
- Sec. 4. Insurance.
- Sec. 5. Interpretation.
- Sec. 6. Limitations.
- Sec. 7. Assignment.
- Sec. 8. Franchise application fee.
- Sec. 9. Consideration.

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- Sec. 10. Revocation.
- Sec. 11. Public emergency.
- Sec. 12. Acceptance and effective date.

ARTICLE I. CONSUMERS ENERGY COMPANY GAS AND ELECTRIC FRANCHISE ORDINANCE*

An ordinance, granting to Consumers Energy Company, its successors and assigns, the right, power, and authority to lay, maintain, and operate gas mains, pipes and services, and to construct, maintain and commercially use electric lines consisting of towers, masts, poles, crossarms, guys, braces, feeders, transmission and distribution wires, transformers and other electrical appliances on, along, across and under the highways, streets, alleys, bridges, waterways and other public places, and to transact a local gas and/or electric business in the City of Mount Morris, Genesee County, Michigan for a period of thirty years.

The City of Mt. Morris ordains:

Sec. 1. Grant of gas franchise and consent to laying of pipes, etc.

Subject to all the terms and conditions mentioned in this ordinance, consent is hereby given to Consumers Energy Company, a Michigan municipal corporation, ("company"), and to its successors and assigns, to lay, maintain, operate, and use gas pipes, mains, service pipes, and other necessary equipment ("gas facilities") in the highways, streets, alleys, bridges, waterways and other public places ("public ways") in the City of Mount Morris, Genesee County, Michigan, ("city") and a non-exclusive franchise is hereby granted to the company, its successors and assigns, and to transact a local gas business in the city for a period of 30 years.

Sec. 2. Gas service and extension of system.

If the provisions and conditions herein contained are accepted by the company, as in section 15 hereof provided, then the company shall from time to time extend its gas facilities to and within the city, and shall furnish gas to applicants residing therein in accordance with applicable laws, rules and regulations.

Sec. 3. Grant of electric franchise and consent to laying of wire, etc.

Subject to all the terms and conditions mentioned in this ordinance, consent is hereby given to the company and to its successors and assigns, to construct, maintain and use electric lines consisting of towers, masts, poles, crossarms, guys, braces, feeders, transmission and distribution wires, transformers and other electrical appliances, (hereinafter "electric system") in the

***Editor's note**—Ord. No. 03-07, adopted Nov. 24, 2003, repealed the former art. II, §§ 1—9, and enacted a new article as set out herein. The former art. II pertained to similar subject matter and derived from Ord. No. 149, adopted Dec. 13, 1971, and extended by Ord. No. 03-02, § 1, adopted Feb. 24, 2003.

Amendments to the ordinance are indicated by parenthetical history notes following amended provisions. The absence of a history note indicates that the provision remains unchanged from the original ordinance. Obvious misspellings and punctuation errors have been corrected without notation. For stylistic purposes, headings and catchlines have been added and the same system of capitalization, citation to state statutes, and expression of numbers in text as appears in the Code of Ordinances has been used. Additions made for clarity are indicated by brackets.

public ways in the city and a non-exclusive franchise is hereby granted to the company, its successors and assigns, and to transact a local electric business in the city for a period of 30 years.

Sec. 4. Electric service and extension of system.

If the provisions and conditions herein contained are accepted by the company, as in section 15 hereof provided, then the company shall from time to time extend its electric system to and within the city, and shall furnish electricity to applicants residing therein in accordance with applicable laws, rules and regulations.

Sec. 5. Use of public ways.

(a) The company and its contractors and subcontractors shall not unnecessarily interfere with the present or future use of any of the public ways within the city. The company and its contractors and subcontractors shall at the company's sole cost and expense repair the same and leave it in as good condition as before the opening or excavation was made.

(b) Except in emergencies, no public way shall be opened for the laying or repair of any gas facilities or electric system unless an application is made to the city stating the nature of the proposed work and the route and upon obtaining a right-of-way permit. No permit shall be issued unless the location and depth of the gas facilities or underground portions of the electric system within the public ways are identified at the time of application.

(c) The company and its contractors and subcontractors shall at the company's sole cost and expense repair and leave the public ways in the same order and condition as before said work was commenced. In the event that the company or its contractors or subcontractors fail to make such repair within a reasonable time, the city shall be entitled to complete the repair and the company shall pay the costs for such repair.

Except in emergencies, no public way shall be opened for the laying or repair of any of the company's gas facilities or its electric system unless the company obtains all prior approvals and permits from applicable governmental agencies including, but not limited to, the Michigan Department of Transportation, or their successor, and the city.

(d) While construction activities are in progress on any portion of the public ways, the company shall maintain reasonable barriers, lights at night and other warnings to the users of the public ways in compliance with the Michigan Manual of Uniform Traffic Control Devices.

(e) For all work in the public ways which may disturb the normal flow of vehicular or pedestrian traffic, the company shall employ roadway closure or partial closure practices, as delineated in the Michigan Manual of Uniform Traffic Control.

(f) Upon the request of the city, the company shall attend pre-construction meetings conducted by the city in connection with public improvement projects in the public ways in the city, which may affect the company's gas facilities or electric system. Company shall cooperate by providing information regarding the company's gas facilities or electric system and take such actions as are reasonable to minimize or prevent company's gas facilities or electric

system from unnecessarily delaying or interfering with the project. Nothing herein shall be construed as altering the respective rights and obligations of any party under 1974 PA 53, commonly known as the Miss Dig Act.

(g) Any easements over or under property owned by the city other than the public ways shall be separately negotiated with the city. The city shall be under no obligation to grant such easements. Nothing herein shall be construed as affecting the rights of either the city or the company under the applicable condemnation or eminent domain statutes or laws.

(h) On or before March 1 each year, the city may request from the company a report of all planned work scheduled to be undertaken by the company within the next succeeding 12-month period and the company shall provide such report to the city no later than march 31. The city agrees to use said report only for the purpose of scheduling and coordinating its construction and repair of the public ways and the public improvements located thereon. The company shall, at the written request of the city, use its best efforts to reschedule any such scheduled work in order to coordinate with the city's construction and repair of public ways and the public improvements located thereon. Company shall reasonably attempt to provide updated reports when such are applicable.

On or before July 30 of each year, the city shall provide to the company a schedule of work to be undertaken by the city during the next succeeding one-year period involving the construction or substantial repair of the public ways. The company shall use its best efforts to coordinate any subsurface work, which is likely to be done by company in such one-year period such that the company shall advance any such work on its facilities prior to any such planned work on the public ways to be performed by the city.

(i) The company and its contractors and subcontractors shall be subject to all applicable laws, ordinances or regulations in the course of constructing, installing, operating and maintaining the gas facilities or electric system in the city. Without limitation, the company shall comply with rules, regulations and orders issued by the Michigan Public Service Commission, or its successor.

(j) The company shall endeavor to keep accurate, complete and current maps and records of its gas facilities and electric system. If the city or its contractors are working within the public ways in the vicinity of the company's gas facilities or electric system, the company agrees, if requested by the city, to furnish maps and/or records of the specific area requested. Nothing herein shall be construed as altering the respective rights and obligations of any party under 1974 PA 53, commonly known as the Miss Dig Act.

(k) The company may trim trees upon and overhanging the streets and public ways so as to prevent the branches of such trees from coming into contact with the electric system in accordance with the clearance standards set forth in the National Electric Safety Code, as adopted by the Michigan Public Service Commission. For all work, which is not performed as part of a storm emergency, the company shall dispose of all trimmed materials; provided that the property owner does not take possession such materials. No trimming shall be performed

in the streets or public ways without previously informing the city. Except in emergencies, all trimming of trees on public property shall have the advance approval of the city and all trimming of trees on private property shall require notice to the property owner.

(l) The company shall provide the city with a 24-hour emergency telephone number at which a named responsible adult representative of the company (not voice mail or a recording) can be accessed in the event of an emergency.

(m) The company and the city shall participate in and be a member of the "MISS-DIG" utility notification program provided for by MCL 460.707 or subsequent statute.

(n) Nothing set forth in this section shall preclude the company from immediately commencing construction or repair work when deemed necessary to prevent imminent danger to life or property, and in such case, the company shall notify the city of the construction or repair work as soon as is reasonably practical.

Sec. 6. City jurisdiction.

The company its contractors and subcontractors shall be and remain subject to all ordinances, rules and regulations of the city now in effect, or which might subsequently be adopted for the regulation of land uses or for the protection of the health, safety and general welfare of the public; provided however, that nothing herein shall be construed as a waiver by the company, its contractors and subcontractors of any of their existing or future rights under state or federal law.

Sec. 7. Standards and conditions of service; rules, regulations and rates.

The company is now under the jurisdiction of the Michigan Public Service Commission to the extent provided by statute; and the rates to be charged for gas and electricity, and the standards and conditions of service and operation hereunder, shall be the same as set forth in the company's schedule of rules, regulations, and rates as applicable in the several cities, villages, and townships in which the company is now rendering gas or electric service, or as shall hereafter be validly prescribed for the City of Mount Morris under the orders, rules, and regulations of the Michigan Public Service Commission or other authority having jurisdiction in the premises.

Sec. 8. Indemnification.

(a) *Indemnification.* The company shall, at its sole cost and expense, indemnify, defend and hold harmless the city and all associated, affiliated, allied and subsidiary entities of the city, now existing or hereinafter created, and their respective officers, boards, commissions, employees, agents, attorneys, and contractors (hereinafter referred to as "indemnitees"), from and against:

- (1) Any and all liability, obligation, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and consultants), which may be imposed upon, incurred by or

be asserted against the indemnitees by reason of any act or omission of the company, its personnel, employees, agents, contractors or subcontractors, resulting in personal injury, bodily injury, sickness, disease or death to any person or damage to, loss of or destruction of tangible or intangible property, of any person, firm or corporation, which may arise out of or be in any way connected with the construction, installation, operation, maintenance or condition of the gas facilities or electric system, the provision of services or the company's failure to comply with any federal, state or local statute, ordinance or regulation.

- (2) The company's obligation to indemnify indemnitees hereunder shall extend to claims, losses, and other matters covered hereunder that are caused or contributed to by the negligence of one or more indemnitees, except that the company's obligation to indemnify shall be reduced in proportion to the negligence of the indemnitees in question.

(b) *Defense of indemnitees.* In the event any action or proceeding shall be brought against the indemnitees by reason of any matter for which the indemnitees are indemnified hereunder, the company shall, upon notice from any of the indemnitees, at the company's sold cost and expense, resist and defend the same with legal counsel selected by the company and consented to by the city, such consent not to be unreasonably withheld; provided, however, that the company shall not admit liability in any such matter on behalf of the indemnitees without their written consent and, provided further, that indemnitees shall not admit liability for, not enter into any compromise or settlement of any claim for which they are indemnified hereunder, without the prior written consent of the company.

(c) *Notice, cooperation and expenses.* The indemnitees shall give the company prompt notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this section 7. Nothing herein shall be deemed to prevent the indemnitees from cooperating with the company and participating in the defense of any litigation by their own counsel. The company shall pay all expenses incurred by the indemnitees in defending themselves with regard to any such actions, suits or proceedings. These expenses shall include all out-of-pocket expenses such as attorney fees and shall also include the reasonable value of any services rendered by their counsel and the actual expenses of the indemnitees' agents, employees or expert witnesses, and disbursements and liabilities assumed by the indemnitees in connection with such suits, actions or proceedings but shall not include attorneys fees or other charges for services that are duplicative of services provided the indemnitees by the company.

Sec. 9. Insurance.

The company is authorized by the State of Michigan to be self insured as to worker's compensation and automobile no fault insurance. The company has an excess general liability insurance policy with a deductible of \$500,000.00. Consumers requires that its contractors carry insurance with the following minimum coverages:

- (a) Commercial general liability: \$2,000,000.00 general aggregate; \$2,000,000.00 products-completed operations aggregate; \$1,000,000.00 personal and advertising injury; \$1,000,000.00 each occurrence; XCU endorsement.

- (b) Automobile liability: \$500,000.00 each occurrence, combined single coverage.
- (c) Employer's liability insurance: \$100,000.00 each accident; \$100,000.00 each employee-disease; \$100,000.00 policy limit - disease.
- (d) Workers' compensation insurance: Statutory limits.

Sec. 10. Successors and assigns.

The words "Consumers Energy Company" and "the company," wherever used herein, are intended and shall be held and construed to mean and include both Consumers Energy Company and its successors and assigns, whether so expressed or not.

Sec. 11. Michigan public service commission jurisdiction.

The company shall, as to all other conditions and elements of service not herein fixed, be and remain subject to reasonable rules and regulations of the Michigan Public Service Commission or its successors, applicable to gas or electric service in the city.

Sec. 12. Repealer.

This Ordinance, when accepted and published as herein provided, shall repeal and supersede the provisions of a gas and/or electric ordinance adopted by the City Council on December 13, 1971, entitled:

AN ORDINANCE, granting to CONSUMERS POWER COMPANY, its successors, and assigns, the right, power, and authority to lay, maintain, and operate gas mains, pipes and services, and to construct, maintain and commercially use electric lines consisting of towers, masts, poles, crossarms, guys, braces, wires, transformers and other electrical appliances on, along, across, and under the highways, streets, alleys, bridges and other public places, and to do a local gas and/or electric business in the CITY OF MOUNT MORRIS, GENESEE COUNTY, MICHIGAN, for a period of 30 years.

Sec. 13. Interpretation of ordinance.

The catch line headings which precede each section of this ordinance are for convenience in reference only and shall not be taken into consideration or interpretation of any of the provisions of this ordinance.

Sec. 14. Revocation.

The franchise granted by this ordinance is subject to revocation at the will of the city at any time during said 30-year period upon 60 days written notice to the company.

Sec. 15. Effective date; term of franchise ordinance; acceptance by company.

This ordinance shall take effect ten days following the date of publication thereof, which publication shall be made within ten days after the date of its adoption, and shall continue in effect for a period of 30 years thereafter; provided, however, that this ordinance shall cease and

be of no effect unless the company shall, within 30 days after adoption of this ordinance, file with the city clerk its written unconditional acceptance of all of the conditions and provisions of this ordinance.

Moved by council member LaFurgey, seconded by council member Clark, that the foregoing ordinance be adopted.

Ayes: 6

Nays: 0

Absent: 1 (Leach

ORDINANCE DECLARED ADOPTED.

/s/

Robert Slattery, Jr., City Mayor

/s/

Lisa Baryo, Clerk

Certification

I hereby certify that this ordinance was adopted by the Mount Morris City Council in regular session held on November 24, 2003, and that it was published in Genesee County Herald on December 3, 2003.

/s/

Lisa Baryo, Clerk

**ARTICLE II. COMCAST CABLEVISION OF FLINT, INC., CABLE TELEVISION
FRANCHISE***

This franchise agreement is made and entered into as of September 1, 2001 by and between the City of Mount Morris, a municipal corporation duly organized under the laws of the State of Michigan (hereinafter called "municipality") and Comcast Cablevision of Flint, Inc. (hereinafter called "company"), a Michigan corporation with its principal place of business at 29,777 Telegraph Road, Southfield, Michigan.

WITNESSETH

Whereas, company wishes to provide cable service and cable modem service in Municipality and has requested a franchise agreement in order to do same, and

Whereas, municipality is authorized to grant one or more non-exclusive franchises for the provision of cable service and cable modem service within municipality by means of a cable system, and

Whereas, municipality has reviewed company's request and has considered the terms and conditions of municipality's current cable franchise with company, and

Whereas, municipality has determined that granting of a franchise on the terms set forth herein is in the public interest and in the interest of municipality and its residents and will assist in meeting the cable related needs and interests of the community.

Now, therefore, in consideration of the mutual covenants and promises herein contained, the parties hereto agree as follows:

Section 1. Definitions.

1.1 *Additional insureds* shall have the same meaning as "indemnitees" in section 6.2.

1.2 *Affiliate* (and its variants) shall mean any entity controlling, controlled by or under common control with the entity in question.

***Editor's note**—Ord. No. 01-10, § 1, adopted Aug. 13, 2001, repealed the former art. II, §§ 1—22 and enacted a new article as set out herein. The former art. II pertained to similar subject matter and derived from Ord. No. 275 adopted Sept. 9, 1985; Ord. No. 00-06, § 1, adopted Oct. 9, 2000; Ord. No. 01-04, § 1, adopted Feb. 26, 2001; and Ord. No. 01-07, § 1, adopted June 25, 2001.

Amendments to the ordinance are indicated by parenthetical history notes following amended provisions. The absence of a history note indicates that the provision remains unchanged from the original ordinance. Obvious misspellings and punctuation errors have been corrected without notation. For stylistic purposes, headings and catchlines have been added and the same system of capitalization, citation to state statutes, and expression of numbers in text as appears in the Code of Ordinances has been used. Additions made for clarity are indicated by brackets.

1.3 *Authorized area* shall mean the entire area from time to time within the corporate limits of municipality, excluding, however, all areas that are within such limits solely due to agreements executed under the authority of Michigan Act 425 of 1984 unless such agreements expressly reference cable services, cable systems or the cable television business.

1.4 *Cable gross revenues* or *gross revenues* shall mean all of the amounts earned or accrued by company, or an entity in any way affiliated with the company, in whatever form and from all sources derived from the operation of the cable system within the authorized area or company's provision of cable services within the authorized area; provided, however, that revenue derived from the provision of cable modem service shall be included in cable gross revenues only to the extent that such services continue to be considered "cable services" under governing federal law.

1.4.1 Cable gross revenues shall include without limitation all subscriber and customer revenues earned or accrued, including revenues for basic cable services; additional tiers; premium services; pay per view; program guides; installation, disconnection or service call fees; fees for the provision, sale, rental, or lease of converters, remote controls, additional outlets and other customer premises equipment; franchise fees paid by subscribers; and revenues and compensation from home shopping programming.

1.4.2 Advertising revenues and other revenues whose source cannot be identified with a specific subscriber shall be allocated to municipality based upon the percentage of subscribers residing in municipality compared to that served from the head-end serving municipality.

1.4.3 Cable gross revenues shall exclude: uncollected accounts during the period, computed on a fair basis consistently applied; revenues derived from services delivered to municipality, if any; taxes collected for direct pass-through on behalf of a government agency; and revenue received from an affiliate to lease portions of the cable system where that affiliate is separately authorized to occupy the right-of-way.

1.5 *Cable modem service* shall mean services such as the RoadRunner™ or @Home™ services which are provided over a cable system through means of a modem which converts the service from the electronic format necessary to transmit the service through the cable system wires into an electronic format that can be transmitted to a customer's computer.

1.6 *Cable services* shall mean:

1.6.1 The one-way transmission to subscribers of (i) video programming or (ii) other programming services, and

1.6.2 Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service (where "video programming" means programming provided by, or generally considered comparable to programming provided by, a television broadcast station).

1.7 *Cable television business* shall mean the provision by the company of cable services solely by means of the cable system.

1.8 *Cable system or system* shall mean a facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable services which is provided to multiple subscribers within the authorized area, but such term does not include (i) a facility that serves only to re-transmit the television signals of one or more television broadcast stations; (ii) a facility that serves subscribers without using any public right of way; (iii) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, as amended, except that such a facility shall be considered a cable system (other than for purposes of Section 621(c) of such Act) to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services; (iv) an open video system that complies with Section 653 of Title VI of the Communications Act of 1934, as amended; or (v) any facilities of any electric utility used solely for operating its electric utility system.

1.9 *Company* shall have the meaning set forth in the introduction to this franchise agreement.

1.10 *Drop* shall mean the cable or wire that connects the distribution portion of a cable system to a customer's premises.

1.11 *Effective date* shall have the meaning set forth in part 14.

1.12 *Event of default* shall have the meaning defined in part 11.

1.13 *FCC* shall mean Federal Communications Commission.

1.14 *Flint Metropolitan Area* shall mean the City of Burton, Grand Blanc Charter Township, the City of Mount Morris, the City of Grand Blanc, the City of Flushing, Flint Charter Township, Mount Morris Township, Genesee Charter Township, the City of Clio, Vienna Charter Township, Flushing Township, the City of Swartz Creek, Mundy Township, the Village of Holly, Holly Township, the City of Flint, Rose Township, Richfield Township, and Gaines Township.

1.15 *Franchise or franchise agreement* shall mean this document.

1.16 *Franchise fee* shall mean the fee set forth in part 7.

1.17 *Municipality* shall have the meaning set forth in the introduction to this franchise agreement.

1.18 *Normal business hours* shall have the meaning set forth in part 4.

1.19 *PEG channel operator* shall mean a person authorized by municipality to administer and operate a PEG channel and shall include municipality. If several persons share the administration and operation of a PEG channel each person shall be a separate PEG channel operator.

1.20 *PEG channels* shall have the meaning set forth in part 5.

1.21 *Public ways* shall mean all dedicated public rights-of-way, streets, highways, and alleys. "Public ways" shall not include property of municipality which is not a dedicated public right-of-way, street, highway, or alley.

1.22 *System* shall have the same meaning as cable system.

1.23 *Telecommunications service* shall mean the offering of telecommunications directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used, where the term "telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received. "Telecommunications services" shall not include cable services.

1.24 *Uncured event of default* shall have the meaning defined in part 11.

Section 2. Grant of rights.

2.1 *Permission/franchise.* Subject to all the terms and conditions contained in this franchise, the charter of municipality and applicable ordinances of municipality as from time to time in effect, municipality hereby grants company permission to erect, construct, install, and maintain a cable system to provide cable services (including cable modem service so long as it is considered a cable service under applicable law) in the authorized area and to transact a cable television business in such area. Company agrees, subject to its right to transfer the cable system set forth in part 10, throughout the term of this franchise agreement to (a) erect, construct, install and maintain such a cable system and (b) transact such a cable television business in the authorized area.

2.1.1 This franchise may be amended by mutual agreement to allow the provision of such additional services as may be agreed to by company and municipality, or permission for the provision of additional services may be granted by a separate document.

2.2 *Nonexclusive.* This franchise and all rights granted hereunder are nonexclusive municipality reserves the right to grant such other and future franchises as it deems appropriate. This franchise does not establish any priority for the use of the public rights of way by company or by any present or future franchisees or other permit holders. In the event of any dispute as to the priority of use of the public rights of way the first priority shall be to the public generally, the second priority to municipality in the performance of its various functions, and thereafter, as between franchisees and other permit holders, as determined by municipality in the exercise of its powers, including the police power and other powers reserved to and conferred on it by the State of Michigan.

2.3 *Universal service.* Company shall provide cable services to any and all persons requesting same at any location within the authorized area. Due to the density of population within municipality, company agrees not to impose on any subscriber located within municipality any line extension charge or comparable charge for extending company's cable system to the subscriber's location.

2.4 *Channels.* Company shall make a minimum of 75 activated and programmed channels available to subscribers in municipality, but not less than the minimum number of channels which company agrees in writing to provide to other municipalities in the Flint Metropolitan Area.

2.5 *Emergencies.* Municipality may remove or damage the cable system in the case of fire, disaster, or other emergencies threatening life or property. In such event neither municipality nor any agent, contractor or employee thereof shall be liable to company or its customers or third parties for any damages caused them or the cable system, such as for, or in connection with, protecting, breaking through, moving, removal, altering, tearing down, or relocating any part of the cable system.

2.6 *Alert system.* The cable system shall include an emergency alert system ("EAS") as prescribed by FCC and the Cable Television Consumer Protection and Competition Act of 1992, as amended. Company shall transmit on such system federal, state and local EAS messages. Municipality and company will agree on the procedures for municipality to follow to expeditiously use such system in the event of an emergency.

2.7 *Compliance with applicable law.* In constructing, maintaining, and operating the cable system, company will act in a good and workmanlike manner, observing high standards of engineering and workmanship and using materials which are of good and durable quality. Company shall comply in all respects with all applicable codes, including the National Electrical Safety Code (latest edition); National Electric Code; all standards, practices, procedures and the like of the National Cable Television Association; the requirements of utilities whose poles and conduits it uses; and all applicable federal, state, and local laws.

2.8 *Maintenance and repair.* Company shall keep and maintain a proper and adequate inventory of maintenance and repair parts for the cable system and a workforce of skilled technicians for its repair and maintenance.

2.9 *Easement usage.* To the extent allowed by applicable state and federal law, this franchise agreement authorizes the construction of the cable system over public ways, and through easements, within the authorized area and which have been dedicated for compatible uses, subject to the requirements in the balance of this section. In using all easements, company shall comply with all federal, state, and local laws and regulations governing the construction, installation, operation, and maintenance of a cable system. Without limitation, company shall ensure that:

- 2.9.1 The safety, functioning and appearance of the property and the convenience and the safety of other persons not be adversely affected by the installation or construction of facilities necessary for the cable system;
- 2.9.2 The cost of the installation, construction, operation, or removal of such facilities be borne by company; and
- 2.9.3 The owner of the property be justly compensated by company for any damages caused by the installation, construction, operation, or removal of such facilities by company.

2.10 *Other permits.* This franchise does not relieve company of the obligation to obtain permits, licenses and other approvals of general applicability from municipality necessary for the construction, repair or maintenance of the cable system or provision of cable services or compliance with other municipal codes, ordinances and permissions, such as compliance with right-of-way permits, building permits and the like.

2.10.1 Prior to performing any work in the public ways (or having such work done on its behalf) company will obtain any necessary permit for same from municipality.

2.10.2 This franchise does not constitute a municipal grant of the permit which may be required by Michigan law for access to and the ongoing use of rights-of-way, easements, and public places by certain providers of telecommunications services. Any permit which may be required by Act No. 216 of the Public Acts of 1995 or other Michigan law must be obtained separately from municipality.

2.11 *Street cut identification.* Company shall notify municipality in writing of the exact location of each cut made by it or on its behalf in the surface of any paved street.

Section 3. Public ways.

3.1 *[Reserved.]*

3.2 *No burden on public ways.* Company shall not erect, install, construct, repair, replace or maintain its cable system in such a fashion as to unduly burden the present or future use of the public ways. If municipality in its reasonable judgment determines that any portion of the cable system is an undue burden, company at its expense shall modify its system or take such other actions as municipality may determine are in the public interest to remove or alleviate the burden, and company shall do so within the time period reasonably established by municipality.

3.3 *Minimum interference.* The cable system shall be erected and maintained by company so as to cause the minimum interference with the use of the public ways and with the rights or reasonable convenience of property owners who adjoin any of the public ways.

3.4 *Restoration of property.* Company shall immediately restore at its sole cost and expense, in a manner approved by municipality, any private property or portion of the public ways that is in any way disturbed by the construction, operation, maintenance or removal of the cable system to as good or better condition than that which existed prior to the disturbance, and shall at its sole cost and expense immediately restore and replace any other property, real or personal, disturbed, damaged or in any way injured by or on account of company or by its acts or omissions, to as good or better condition as such property was in immediately prior to the disturbance, damage or injury. Such a restoration shall start promptly but no more than 15 days from company creation of the problem in question.

3.4.1 Company shall promptly reimburse municipality for the cost of municipality repairing any municipal property harmed by company (should municipality choose to conduct such repairs at its expense). In such event the amounts due and owing municipality shall increase by 1½ percent per month starting with the second month after company being invoiced for the cost of such repair.

3.5 *Relocation of facilities.* Company shall at its own cost and expense, protect, support, disconnect or remove from the public ways any portion of the cable system when required to do so by municipality due to street or other public excavation, construction, repair, grading, regarding or traffic conditions; the installation of sewers, drains, water pipes, or municipally-owned facilities of any kind; or the vacation, construction or relocation of streets or any other type of structure or improvement of a public agency or any other type of improvement necessary for the public health, safety or welfare.

3.6 *Emergency notification.* Company shall provide municipality with a 24-hour emergency telephone number at which a named responsible adult representative of company (not voicemail or a recording) can be accessed in the event of an emergency.

3.7 *Private property.* Company shall be subject to all laws and regulations regarding private property in the course of constructing, installing, operating or maintaining the cable system in municipality. Company shall comply with all zoning and land use restrictions as may hereafter exist or may hereafter be amended.

3.8 *Underground facilities.* Company's cable, wires and other equipment shall be placed at least two feet underground wherever existing utilities are underground. If municipality in the future requires that, in a specific area or areas of municipality, utilities shall place their cables, wires, or other equipment at least two feet underground, then company also shall place its existing and its future cables, wires, or other equipment underground within a reasonable period of time, not to exceed six months, of notification by municipality and without expense or liability therefor to municipality. In those developing areas where underground facilities are required and meet the standard of section 2.3.1, company shall install the necessary cables, wires or other equipment at the same time and utilize the same trenches as other utility companies, such as telephone or electric utilities. All underground cable plant shall maintain at least a six-foot separation from water mains or sewer mains unless a lesser separation is approved by municipality.

3.9 *New developments.* Company shall install its cable system (excluding only drops to individual dwelling units) in all new subdivisions and developments (which, when fully developed will meet the standard of section 2.3.1) on the date on which electric or telephone facilities are installed in such subdivision or development unless company is not notified of the subdivision or development. After cable system installation company shall be capable of providing cable service to any dwelling unit in such subdivision or development solely by the construction of a drop to the subscriber premises when such dwelling unit is constructed. Company shall be required to comply with the preceding provisions only if it either receives adequate prior notice of the availability of an open common trench or had an opportunity to attend the preconstruction meeting for the subdivision or development in question.

3.10 *Temporary relocation.* Upon 15 business days notice company shall temporarily raise or lower its wires or other equipment upon the request of any person including without limitation, a person holding a building moving permit issued by municipality. Company may charge a reasonable rate, paid in advance, for this service not to exceed its actual direct costs.

3.11 *Vacation.* If a street or public way where company has facilities is vacated, eliminated, discontinued or closed, company shall be notified of same and all rights of company under this franchise agreement to use same shall terminate and company shall immediately remove the cable system from such street or public way unless company obtains all necessary easements from the affected property owners to use the former street or public way or a court orders the provision of such easements. Where reasonably possible and to the extent consistent with the treatment of other utility facilities in the former street or public way, municipality shall reserve easements for company to continue to use the former street or public way. Company shall bear the cost of any removal or relocation of the cable system unless the vacation is primarily for the benefit of a private party, in which case the private party shall bear such costs. Company shall be provided 30 days notice of any proposed vacation proceedings involving its facilities.

3.12 *Discontinuance and removal of the cable system.* Upon the revocation, termination, or expiration of this franchise, unless an extension is granted, company shall immediately (subject to the notice provision of section 14.2) discontinue the provision of cable services and all rights of company to use the public ways shall cease. Company, at the direction of municipality, shall remove its cable system, including all supporting structures, poles, transmission and distribution system and other appurtenances, fixtures or property from the public ways, in, over, under, along, or through which they are installed within six months of the revocation, termination, or expiration of this franchise. Company shall also restore any property, public or private, to the condition in which it existed prior to the installation, erection or construction of its cable system, including any improvements made to such property subsequent to the construction of its cable system. Restoration of municipal property including but not limited to the public ways shall be in accordance with the directions and specifications of municipality, and all applicable laws, ordinances and regulations, at company's sole expense. If such removal and restoration is not completed within six months after the revocation, termination, or expiration of this franchise, all of company's property remaining in the affected public ways shall, at the option of municipality, be deemed abandoned and shall, at the option of municipality, become its property or municipality may obtain a court order compelling company to remove same. In the event company fails or refuses to remove its cable system or to satisfactorily restore all areas to the condition in which they existed prior to the original construction of the cable system, municipality, at its option, may perform such work and collect the costs thereof from company. No surety on any performance bond nor any letter of credit shall be discharged until municipality has certified to company in writing that the cable system has been dismantled, removed, and all other property restored, to the satisfaction of municipality.

3.13 *Underground street crossing.* Whenever company must place the cable system or other facilities beneath the traveled or paved portion of the streets or public ways, unless otherwise approved in advance by municipality, company shall do so by boring (directional or otherwise)

and not by excavation of a trench in which to place cable conduit. Boring (directional or otherwise) shall be done wherever possible so that the excavations necessary for it are not in the paved portion of the right-of-way.

3.13.1 If company does a bore (directional or otherwise) underneath a street or public way, then company will notify municipality at least two weeks in advance of same. If municipality so desires, company will then increase the size of the bore (directional or otherwise) with municipality to pay only the incremental cost of making the bore (directional or otherwise) larger. Municipality (but not third parties unless approved by company) may then use any additional space or capacity created by increasing the size of the bore (directional or otherwise) without additional charge or expense.

3.14 *Tree trimming.* Company may trim trees upon and overhanging the public ways so as to prevent the branches of such trees from coming into contact with the cable system. Company shall minimize the trimming of trees to trimming only those trees which are essential to maintain the integrity of the system. No trimming shall be performed in the public ways without previously informing municipality at least two weeks in advance. All trimming of trees, except in an emergency, on public property shall have the prior approval of municipality and except in an emergency all trimming of trees on private property shall require the consent of the property owner.

3.15 *As-builts/location of facilities.* Company shall keep accurate, complete and current maps and records of the cable system and its facilities and shall provide copies to municipality as set forth below.

3.15.1 Company shall furnish two complete sets of "as-built" maps and records to municipality and company shall provide municipality copies of any new or revised "as-built" or comparable drawings as and if they are generated for portions of company's facilities located within municipality (and in no event later than 90 days after construction (or reconstruction) and activation of any portion of the cable system). Upon request by municipality in an emergency, company as soon as possible (but no more than one business day from the request) shall inform municipality of any changes from such maps and records previously supplied and shall mark up any maps provided by municipality so as to show the location of the cable system.

3.15.2 The "as built" maps shall include at a minimum all system and facility routings and shall be drawn to a scale and upon such media as required by the manager.

3.15.3 Within two years of the effective date company shall develop a geographical information system (GIS) compatible layer, using a program and format which accurately displays its "as built" cable system. This layer shall be kept current continuously, updated at least quarterly. The GIS layer, including but not limited to, all databases, plots and computer discs shall be provided to municipality, upon request, in a standardized, non-proprietary format at no cost to municipality. In addition, company shall provide information and assistance on the GIS program it is using and its implementation so as to aid municipality in converting the layer into a form easily used by municipality and in using the layer.

3.15.4 On or before the effective date company shall deliver to municipality a current complete set of as-built maps and records.

3.16 *Engineering matters.*

3.16.1 Company shall provide municipality with a named responsible adult representative of company (not voicemail or a recording) to be contacted on engineering and right of way related matters.

3.16.2 Company shall attend all preconstruction meetings when notified of same by municipality.

Section 4. Customer service.

4.1 *Negative options.* Company will not engage in the practice of "negative option" marketing and will not charge a subscriber for any optional, a la carte or premium service or equipment which the subscriber has not affirmatively requested.

4.2 *Customer service standards.* Company will comply with the customer service rules of the FCC as in effect on the effective date with the following modifications:

4.2.1 "Normal business hours" therein shall mean 24 hours a day, seven days a week for telephone service availability, and at least 8:00 a.m. to 5:00 p.m., Monday through Friday, plus weekend or evening hours, for local office hours.

4.2.2 In 47 C.F.R § 76.309 subsection (c)(2)(ii) on service calls "promptly" is changed to "the same day service is requested (for requests made prior to 3:00 p.m.)" and in the second sentence "the same day service is requested (for requests made prior to 3:00 p.m.)" is added after "service problems" and "(for requests made after 3:00 p.m. on the previous day)" is added at the end.

4.2.3 A copy of the FCC customer service rules modified to reflect the preceding changes is attached [to the cable television franchise agreement] as Exhibit A.

4.3 *Reservation.* Municipality reserves the right by ordinance to alter or amend the customer service and consumer protection matters set forth in this part 4, including adopting ordinances stricter than or covering items not presently set forth in this part 4. Company reserves the right to object to any such ordinance and nothing contained herein shall be read as advance consent by company to such modifications. Municipality agrees to meet with company on the matters in question prior to taking such action, and to provide company with at least two months notice of such action.

4.4 *Free service.* During the term of this franchise company will provide the following free service:

4.4.1 Company will provide without any installation charge or monthly charge one free outlet at each municipal building, in each public library and each public school and college in the authorized area. If requested, company will add additional outlets at the preceding facilities (such as to some or all classrooms and auditoriums, but not to dormitories) and will do so at its standard hourly service charge. Such outlets shall be

used only for cable TV purposes. Except as set forth in section 4.4.3 none of the preceding entities receiving service shall be charged any fee during the term of this franchise for those channels comprising basic service or any expanded basic service. No channels may be resold.

4.4.2 In addition, one service outlet (which shall be at municipality's city/township hall) shall receive without charge all video programming provided by company whether of a premium, pay per view or other nature. Such service shall be provided in such a manner that municipality may monitor the programming and use of the cable system for compliance with this franchise agreement, FCC technical standards, and other applicable law. The services provided according to the preceding sentences shall be in an office location and not in a location conducive to public viewing.

4.4.3 For the preceding facilities, if the drop to the facility is more than 200 feet, the owner of the facility will be charged only the incremental cost for drops or line extensions beyond 200 feet. Drops or installations of less than 200 feet shall be free for the preceding facilities.

4.5 *Access to service.* Company shall not deny service, deny access, or otherwise discriminate on the availability or rates, terms or conditions of cable services provided to subscribers on the basis of race, color, creed, religion, ancestry, national origin, sex, disability, age, familial status, marital status, location within municipality, or status with regard to public assistance. Company shall comply at all times with all applicable federal, state and local laws and regulations relating to nondiscrimination. Company shall not deny or discriminate against any group of actual or potential subscribers in municipality on access to or the rates, terms and conditions of cable services because of the income level or other demographics of the local area in which such group may be located.

4.6 *Programming/lockout.* Company shall provide all subscribers with the option of obtaining a device by which the subscriber can prohibit the viewing of a particular cable service during periods selected by the subscriber.

4.7 *Pay per view.* Subscribers shall be given the option of not having pay per view or per program service available at all or only provided upon the subscriber providing a security number selected by an adult representative of the subscriber.

4.8 *Blocking.* Upon request by a subscriber, and within a reasonable period of time, for a fee company shall use a notch filter or equivalent to block such subscriber from receiving both the audio and video portions (even though this may create problems on adjacent channels) of a channel on which programming is provided on a per program or pay per view basis.

4.9 *Municipal contacts.* Company shall provide a separate phone number and management level person at company for municipality to contact. Such person and number shall be for the use of municipality and not for the general public. Any such calls shall be returned within one business day. On any complaints registered by Municipality to such person company shall within three business days provide municipality in writing its plan for resolution of such complaint.

4.10 *Credit.* If for any reason within company's control, service on all channels is interrupted for a period in excess of 24 hours then company shall upon request from a subscriber credit the subscriber's account for the period of interrupted service.

4.11 *Office/phone.* Company shall maintain an office to serve the purpose of paying bills; receiving and responding to requests for service; receiving and resolving customer complaints regarding cable service, equipment malfunctions, billing and collection disputes; and similar matters. Such office shall be located within ten miles of company's existing facility at 3008 Airpark Drive, Flint, or at such other location as municipality and company shall from time to time agree. Company shall have a local telephone number or toll-free telephone number for use by subscribers toll-free 24 hours per day, seven days per week. The office of company shall be open to receive inquiries or complaints in person or by telephone during normal business hours.

4.11.1 Upon request company shall provide reports to municipality quarterly showing on a consistent basis, fairly applied, the number of telephone calls received by company and in addition measuring company's compliance with the standards of FCC Rules 76.309(c)(1)(ii) and (iv), and 76.309(c)(2)(i), (ii), and (iv) (a copy of the current rules are attached to Ordinance No. 01-10 as Exhibit A). Such report shall show company's performance excluding periods of abnormal operating conditions, and if company contends any such conditions occurred during the period in question, it shall also describe the nature and extent of such conditions and show company's performance including the time periods such conditions were in effect.

4.12 *Continuity of service.* Company shall interrupt service only with prior notice to subscribers, good cause and for the shortest time possible except (a) in emergency situations, (b) as required by the FCC and (c) service may be interrupted between 1:00 a.m. and 5:00 a.m. for routine testing, maintenance and repair, without notification. In the event of a system upgrade, company shall both minimize any interruptions in service caused by the upgrade, and shall meet with municipality in advance to advise municipality of the nature, geographic extent and duration of any interruptions and obtain and where possible respond to municipality's comments on same. Company shall credit subscribers on a pro rata basis for services not received during an interruption.

4.13 *Log of complaints.* Company shall maintain a written log of all subscriber complaints or an equivalent stored in computer memory and capable of access and reproduction in printed form of all subscriber complaints. Such log shall list the date and time of such complaints, identifying (to the extent allowed by law) the subscribers and describing the nature of the complaints and when and what actions were taken by company in response thereto. Such log shall be kept at company's local office reflecting the operations to date for a period of at least three years, and shall be available for municipality's inspection during normal business hours. Upon request, company shall provide municipality with a copy of the log or summary of it.

4.14 *Reserved.*

4.15 *Identification.* All service personnel of company or its contractors or subcontractors who have as part of their normal duties contact with the general public shall wear on their clothing a clearly visible identification card bearing their name and photograph. Company shall account for all identification cards at all times. Every service vehicle of company, its contractors and subcontractors shall be clearly identified as working for company, such as by magnetic door signs.

4.16 *Disconnection.* Company may only disconnect a subscriber if at least 45 days have elapsed after the due date for payment of the subscriber's bill and company has provided at least ten days written notice (such as in a bill) to the subscriber prior to disconnection, specifying the effective date after which cable services are subject to disconnection; provided, however, notwithstanding the foregoing, company may disconnect a subscriber at any time if company in good faith and on reasonable grounds determines that the subscriber has tampered with or abused company's equipment; or is or may be engaged in the theft of cable services; or that the subscriber's premises wiring violates applicable FCC standards. Company may not disconnect a subscriber for failure to pay amounts due to a bona fide dispute as to the correct amount of the subscriber's bill.

4.16.1 Company shall promptly disconnect any subscriber who so requests disconnection. No period of notice prior to requested termination of service may be required to subscribers by company. No charge may be imposed upon the subscriber for any cable service delivered after the effective date of the disconnect request. Except for pay per view services, if the subscriber fails to specify an effective date for disconnection the effective date shall be deemed to be the day following the date the disconnect request is received by company.

4.17 *Late payment.*

4.17.1 Each bill shall specify on its face in a fashion emphasizing same (such as bold face type, underlined type or a larger font) the date after which a late payment charge (however denominated or described), if any, shall be added to the subscriber's bill.

4.17.2 No late payment charges, however denominated, shall be added to a subscriber's bill less than 21 calendar days after the mailing of the bill to the subscriber.

4.17.3 All cable payment charges shall be separately stated on the subscriber's bill and include the word "late" (or synonym denoting lack of timeliness in payment) in the description of them.

4.17.4 Late payment charges imposed by company upon subscribers shall be reasonably related to company's cost of administering and collecting delinquent accounts.

4.18 *Privacy and monitoring.* Neither company and its agents nor municipality and its agents shall tap or monitor, or arrange for the tapping or monitoring, or permit any other person to tap or monitor, any cable, line, signal, input device, or subscriber facility for any purpose, without the written authorization of the affected subscriber. Such authorization shall be revocable at any time by the subscriber without penalty by delivering a written notice of

revocation to company; provided, however, that company may conduct system-wide or individually addressed "sweeps" solely for the purpose of verifying system integrity, checking for illegal taps or billing.

4.19 *Subscriber information.* Company shall comply with the provisions of federal law regarding recording and retaining subscriber information.

4.20 *FCC technical standards.* Company shall meet or exceed the FCC's technical standards that may be adopted from time to time.

4.20.1 Upon request, company shall provide municipality with a report of such testing.

4.20.2 Company shall establish the following procedure for resolving complaints from subscribers about the quality of the television signal delivered to them: All complaints shall go initially to a customer service representative and then to the manager of company's local office for resolution within ten days. If not resolved at that level, they shall be referred to municipality and then to the FCC.

4.20.3 Municipality at its expense and with notice to company may test the cable system in cooperation with company for compliance with the FCC technical standards once per year and more often if there are a significant number of subscriber complaints. Company shall reimburse municipality for the expense of any test (not to exceed \$5,000.00 per calendar year for tests) which shows a material noncompliance with such standards (but not a non-compliance disclosed by company in the report it provides municipality).

4.21 *Backup power.* Company shall install an electric generator which starts automatically in the event of loss of conventional power to provide electric service to the cable system head-end and associated equipment in the event of a power failure. Company shall also provide battery backup power (or an electric generators) at all other locations on company's cable system where the loss of electric power might disrupt the provision of cable service within municipality such that the cable system and each portion of it shall operate for at least four hours even if electric service from conventional utility lines is interrupted.

4.21.1 Company or an affiliate may not use a permanent or semi-permanent internal combustion engine (such as a gasoline or natural gas powered electric generator) located in the streets or public ways to provide backup power at any point or points on the cable system without municipality's prior written approval. The preceding sentence does not apply to such engines located inside buildings or on land owned by company or an affiliate. Municipality's approval may be granted subject to conditions, such as relating to testing times (e.g., not in the middle of the night), screening, noise levels, and temperature and safe discharge of hot exhaust gases.

4.22 *Undergrounding.* If a subscriber requests underground cable service, company may in addition charge any subscriber the differential between the cost of aerial and underground installation of the drop to the subscriber. This provision shall not apply where undergrounding

is required by municipality's ordinance or policy. If municipality's ordinance or policy requires a new subscriber to have underground cable service, company may charge its normal installation fee.

4.23 *Bond.*

4.23.1 Company shall provide municipality no later than 30 days after the acceptance of this franchise, a performance bond from a security company meeting the standards of section 6.9 in the amount of \$20,000.00 in form reasonably acceptable to municipality as security for the faithful performance by company of the provisions of this agreement, and compliance with all orders, permits and directions of any agency of municipality having jurisdiction over its acts or defaults under this franchise, and the payment of company of any claims, liquidated damages, liens or taxes due municipality which arise by reason of the construction, operation, maintenance or repair of the cable system or provision of cable services.

4.23.2 The condition of such bond should be that if company fails to make timely payment to municipality or its designee of any amount or sum due under this franchise; or fails to make timely payment to municipality of any taxes due; or fails to repay to municipality within ten days of written notification that such repayment is due, any damages, costs or expenses which municipality shall be compelled to pay by reason of any act or default of company in connection with this franchise; or fails, after 30 days notice of such failure from municipality, to comply with any provisions of this franchise which municipality reasonably determines can be remedied by an expenditure of the money (including, without limitation, the assessment of liquidated damages), then municipality may demand and receive payment under such bond.

4.23.3 In lieu of providing a bond, company may provide a guarantee from an entity acceptable to municipality substantially in the form set forth in Exhibit B [to the cable television franchise agreement].

4.23.4 The rights reserved by municipality with respect to this section, are in addition to all other rights of municipality whether reserved by this franchise or authorized by law, and no action, proceeding or exercise of a right with respect to such articles shall affect any other rights municipality may have, except that municipality shall not be entitled to multiple remedies for the same violation.

4.24 *Notice.* If company or its affiliates contend that company (or an affiliate) is permitted to provide any telecommunications service or non-cable service in municipality on the basis of or as the result of this franchise agreement, in whole or in part, then company shall give written notice of same to municipality at least 60 days before offering any such services in municipality.

4.25 *Internet/cable modem service.*

4.25.1 Company will not prevent subscribers utilizing the cable system for internet or cable modem service from (a) communicating with persons of the subscriber's choice, (b) sending and receiving information of the subscriber's choice, and (c) accessing and

using web sites of the subscriber's choice. This section shall not extend to any communications, information or service which is not protected by the First Amendment to the U.S. Constitution.

4.25.2 Municipality and company have negotiated without reaching agreement with respect to so-called "open access" for Internet service providers and certain related issues. The parties reserve their claims and contentions with respect to these issues.

4.26 *Liquidated damages.* Company acknowledges that noncompliance with the customer service rules of the FCC (such rules as currently in effect set forth on Exhibit A [to the cable television franchise agreement]) will harm subscribers and municipality and the amounts of actual damages will be difficult or impossible to ascertain. Municipality may therefore assess the following liquidated damages against company for noncompliance with such customer service rules. Each day on which a violation of such FCC rules occurs constitutes a separate offense, except that a violation by company of a quarterly standard shall constitute a single offense for such quarter.

4.26.1 First noncompliance with a given standard: \$2,000.00.

4.26.2 Second noncompliance with a given standard within four consecutive calendar quarters: \$4,000.00.

4.26.3 Third and subsequent noncompliances with a given standard within six consecutive calendar quarters: \$6,000.00.

4.26.4 Liquidated damages shall be assessed in accordance with the procedures set forth in part 12.

Section 5. Access to the system.

5.1 *PEG channels—General.* When requested by municipality company shall provide on the cable system in the basic tier of service (and in the lowest tier of service if different) the following public, educational and government channels, collectively known as "PEG channels." Company shall not exercise any editorial control over the content provided on such PEG channels.

5.1.1 One public access channel for use by members of the general public, to be administered and operated by company until municipality (a) designates an institution or institutions to administer such channel and (b) notifies company either that each such institution has in full force and effect a contract between municipality and the institution administering the public access channel(s) or that there need not be such a contract. This public access channel shall be shared by all municipalities and residents served by company in the Flint Metropolitan Area.

5.1.2 One educational channel administered and operated by area K-12 public school districts or their designees, upon municipality having notified company either that each such institution has in full force and effect a contract between municipality and the institution administering the educational channel or that there need not be such a contract.

5.1.3 One government channel (which may be administered and operated by municipality) on which the programming shall be provided by municipality, municipality's designee, or such other units of state or local government as municipality may from time to time appoint.

5.1.4 A sample of a contract with a PEG channel operator referenced in sections 5.1.2 and 5.1.3 is attached [to the cable television franchise agreement] as Exhibit E.

5.2 Initial PEG channels; allocation.

5.2.1 Municipality initially requests (and company shall provide) (1) the public access channel described in section 5.1.1, (2) a combined education/government channel to be operated and administered by the Clio or Mount Morris public schools as the PEG channel operator and shared by several municipalities and school districts as set forth on Exhibit D [to the cable television franchise agreement] and (3) the City of Flint channel to be operated and administered by the City of Flint as the PEG channel operator.

5.2.2 Municipality on six months written notice to company may allocate or reallocate the administration and operation of the PEG channels among and between different uses and PEG channel operators. This expressly includes municipality requiring several different persons to share or jointly use a given PEG channel or conversely allowing one or more persons currently sharing such a channel to have a channel on which they are the sole user.

5.3 *Company use.* Municipality may from time to time adopt and revise rules and procedures as to when and how company may use the PEG channels for the provision of video programming when the PEG channels are not being used for their respective purposes. Company will use the PEG channels solely in accordance with such rules and procedures and otherwise shall have no responsibility or control with respect to the operation of such channels except as provided by law.

5.3.1 With municipality's agreement company may provide programming on any PEG channel which is underutilized, however the content of such programming shall be generally consistent with the nature of the PEG channel in question (for example, C-Span, C-Span 2, educational programming or the like to be provided on the shared PEG channel).

5.4 Lines and facilities.

5.4.1 Company shall provide and maintain at its expense the lines and facilities necessary for it to receive PEG channel programming for simultaneous distribution on the cable system. This shall include company providing the lines, modulators and facilities (such as two-way activated drops) necessary to provide live program origination capability from the studios (or other similar fixed signal origination point) for the PEG channels set forth in section I.C, II.C or III.C (whichever is applicable) of Exhibit D (but not video production or playback equipment).

5.4.2 Company shall provide and maintain at its expense remote signal input points (meaning signal input points for PEG programming from locations that are used intermittently but repeatedly such as from a community center, high school auditorium, football field or the like) at the locations set forth in section I.D, II.D or III.D (whichever is applicable) of Exhibit D.

5.4.3 Municipality may change the locations set forth on Exhibit D however, municipality (or third party, not company) shall bear the additional cost (if any) to company due to such change.

5.5 *Studio, van.* Company shall continue to make available to municipality and the PEG channel operators on a non-exclusive shared basis the existing studio and existing mobile production van for the production and presentation of programming on the PEG channels.

5.5.1 The studio may be either (a) company's current studio which is used both by company for its local origination programming and by the PEG channels (or persons creating programming for the PEG channels) throughout the Flint Metropolitan Area, or (b) a separate, stand-alone studio administered by a non-profit organization or local unit of government serving all or a portion of the Flint Metropolitan Area (including such a studio which is combined or associated with related non-profit or governmental activities and organizations, such as a theater, radio station or computer/Internet training/hosting/production site).

5.5.2 The studio shall be the former of the two options until otherwise elected by municipality and other municipalities in the Flint Metropolitan Area served by company who collectively have at least 50 percent of the cable subscribers in the Flint Metropolitan Area then being served by company.

5.6 *PEG access assistance.* Company shall provide to municipality grants for capital facilities for the PEG channels on the dates and in the amounts set forth below where "capital facilities" means those facilities that qualify as same under Federal Cable Act Section 622(g)(2)(c); 47 U.S.C. Section 542(g)(2)(c). Company will not directly or indirectly challenge any classification by municipality or a PEG channel operator of an item as a "capital facility" if such classification is arguably correct. However, company reserves its rights regarding any third party challenge to a "capital facilities" classification by municipality or a PEG channel operator. Municipality shall allocate such grants among the PEG channel operators as it determines is in the public interest, may place such grants in an interest bearing account for such allocation in a subsequent year, or may direct company to pay the grant directly to the PEG channel operators as municipality determines is in the public interest. The grants and their timing are as follows:

5.6.1 Within 30 days of the effective date, \$11,250.00. This grant is for a suitcase studio and related equipment.

5.6.2 Annual grants on September 1, 2001 and on September 1 of each successive year (until replaced by municipality's electing grants pursuant to section 5.6.3). The amount of the annual grant shall be the number of cable subscribers in municipality

served by company on July 1 preceding the September 1 in question times \$1.75 with the \$1.75 figure to be adjusted annually starting with the September 1, 2002 grant for inflation computed according to the Consumer Price Index for All Urban Consumers, Detroit 1982-1984 = 100, with January, 2000 as the base point.

5.6.3 If and when the separate stand alone studio described in section 5.5.1(b) is elected by municipality pursuant to section 5.5.2 or if municipality otherwise takes action with some or all municipalities in the Flint Metropolitan Area such that company no longer has to maintain a studio, van, personnel and their associated and related costs (for providing a public access channel) as generally described as section 5.5, then (instead of the sums set forth in section 5.6.2) company will pay municipality one-half of one percent of company's cable gross revenues computed and paid quarterly in the same manner as which company pays franchise fees under part 7 hereof. Because such payment in parts offset operational costs (salaries and the like) which company would otherwise incur, any payments under this section 5.6.3 may be used by municipality or PEG channel operators for operational costs associated with PEG channels as well as for "capital facilities."

5.6.4 For the purpose of computing the preceding grants, for multiple dwelling units or bulk service, the number of cable subscribers shall be the number of dwelling units (or other ultimate, individual customer) actually served.

5.7 *Separate checks.* To assist municipality in separating checks for capital facilities or PEG support from franchise fees all payments to company pursuant to section 5.6 shall be by separate checks and shall not be combined with checks representing payments of franchise fees under part 7 hereof.

5.8 *Encouragement of public access channel.* Company shall use reasonable efforts to publicize and promote the public access channel and to encourage members of the public to provide programming on the public access channel.

5.9 *Company publicity.* Company shall undertake the following publicity activities at its own expense:

5.9.1 Company shall make available at no charge to municipality or to PEG channel operators designated by municipality unsold advertising avails into which company inserts advertising, up to a maximum of three 30-second spots per channel, per day, for spots promoting public, educational, and government access programming.

5.9.2 Company shall list all public, educational, and governmental access channels on all print and cablecast electronic program guides, with individual, unique descriptions on each channel, such as "municipal channel," "schools channel," "schools/municipal channel," "public access channel" and so on.

5.9.3 Company shall include written information about public, educational and governmental access programming and activities in its customer handbook, and in materials given to new subscribers.

5.10 *Municipal publicity.* Municipality shall undertake the following publicity activities at its own expense:

- 5.10.1 Describing the public access channel, shared schools/municipal channel (and such other PEG channels as may from time to time exist) at least yearly in any newsletter which municipality provides its residents.
- 5.10.2 At least yearly similarly describing the contact person and procedures for persons to put programming on the public access channel, and the procedures for becoming qualified to use the studio, suitcase studios and mobile van.
- 5.10.3 Where appropriate, setting minimum programming (as opposed to bulletin board) and original programming requirements for PEG channel operators.

Section 6. Indemnity and insurance.

6.1 *Disclaimer of liability.* Municipality shall not at any time be liable for injury or damage occurring to any person or property from any cause whatsoever arising out of the construction, maintenance, repair, use, operation, condition or dismantling of company's cable system or company's provision of cable service.

6.2 *Indemnification.* Company shall at its sole cost and expense indemnify and hold harmless municipality and its affiliates, now existing or hereinafter created, and their respective officers, boards, commissions, attorneys, agents, and employees (hereinafter referred to as "indemnitees"), from and against:

- 6.2.1 Any and all liability, obligation, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys), whether legal or equitable, which may be imposed upon, incurred by or be asserted against the indemnitees by reason of any act or omission of company, its personnel, employees, agents, contractors, subcontractors or affiliates, which may arise out of or be in any way connected with the construction, installation, operation, maintenance or condition of the cable system or other company property (including those arising from any matter contained in or resulting from the transmission of signals over the system and including any claim or lien arising out of work, labor, materials or supplies provided or supplied to company, its contractors or subcontractors), the provision of cable services, other services or company's failure to comply with any federal, state or local statute, ordinance or regulation.
- 6.2.2 Any claim asserted or liability imposed upon the indemnitees for personal injury or property damage to any person arising out of the installation, operation, or maintenance or condition of the cable system or company's failure to comply with any federal, state or local statute, ordinance or regulation.

6.3 *Assumption of risk.* Company undertakes and assumes for its officers, agents, contractors and subcontractors and employees, all risk of dangerous conditions, if any, other than those created through or maintained as a result of gross negligence, on or about any municipality owned or controlled property, including public ways, and company hereby agrees

to indemnify and hold harmless the indemnitees against and from any claim asserted or liability imposed upon the indemnitees for personal injury or property damage to any person arising out of the installation, operation, maintenance or condition of the cable system or other property or company's failure to comply with any federal, state or local statute, ordinance or regulation.

6.4 *Defense of indemnitees.* In the event any action or proceeding shall be brought against the indemnitees by reason of any matter for which the indemnitees are or may be indemnified hereunder, company shall upon notice from any of the indemnitees, at company's sole cost and expense, resist and defend the same with legal counsel reasonably acceptable to municipality; provided, however, that company shall not admit liability in any matter on behalf of the indemnitees without the written consent of municipality.

6.5 *Notice, cooperation and expenses.* Municipality shall give company prompt notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this section. Nothing herein shall be deemed to prevent municipality from cooperating with company and participating in the defense of any litigation by municipality's own counsel at its' expense.

6.6 *Insurance.* At all times during the term of this franchise including any time for removal of facilities or restoration, company shall obtain, maintain, and pay all premiums for all insurance policies described in this section. Within 30 days from the effective date of this franchise, company shall file with municipality certificates of insurance evidencing coverage. Failure to obtain and maintain any insurance policy required by this section shall be deemed a material breach of this franchise and may be grounds for termination of this franchise.

6.6.1 *Property damage liability.* One million dollars per occurrence with a \$10,000,000.00 umbrella policy. The property damage insurance required by this section shall indemnify, defend and hold harmless company and municipality and the respective officers, boards, commissions, agents, and employees of each from and against all claims made by any person for property damage caused by the operations of company under the franchise herein granted or alleged to have been so caused or alleged to have occurred.

6.6.2 *Comprehensive public liability.* One million dollars per occurrence with a \$10,000,000.00 umbrella policy. The comprehensive public liability insurance required by this section shall include coverage for sudden and accidental environmental contamination and coverage for property damage from perils of explosion, collapse or damage to underground utilities, commonly known as XCU coverage, and shall indemnify, defend, and hold harmless company and municipality and the respective officers, boards, commissions, agents, and employees of each from any and all claims made by any person on account of injury to, or death of a person or persons caused by the operations of company under this franchise, alleged to have been so caused or alleged to have occurred.

6.6.3 *Comprehensive automobile liability.* One million dollars per occurrence with a \$10,000,000.00 umbrella policy. The comprehensive automobile liability insurance required by this section shall indemnify, defend and hold harmless company and municipality and the respective officers, boards, commissions, employees and agents of each from any and all claims made by any person on account of collision, personal injury or property damage caused by use of any owned, hired, or non-owned motor vehicles used in conjunction with the rights herein granted or alleged to have been so caused or alleged to have occurred.

6.6.4 *Workers' compensation.* Workers' compensation coverage which meets all requirements of any applicable state workers' compensation or comparable laws.

6.7 *Cancellation or change.* The insurance policies called for herein shall require 30 calendar days written notice to municipality and company of any cancellation or change in the amount of coverage. Company shall in the event of any cancellation notice, obtain, maintain, pay all premiums for, and file with municipality written evidence of payments of premiums for an appropriate replacement insurance policies so canceled within 30 calendar days following receipt by municipality or company of notice of cancellation.

6.8 *No limitation of liability.* No recovery by municipality of any sum by reason of any insurance policy required by this franchise shall be any limitation upon the liability of company to municipality or to other persons.

6.9 *Qualified carriers.* All insurance shall be effected under valid and enforceable policies insured by insurance carriers licensed to do business in the State of Michigan or by surplus line carriers on the state insurance commissioner's approved list of companies qualified to do business in the state. All insurance carriers and surplus line carriers shall be rated A+ or better by A.M. Best Company.

Section 7. Fees and payments.

7.1 *Franchise fee.* Company shall pay municipality throughout the term of this franchise an amount equal to five percent of company's cable gross revenues. Once per calendar year municipality by resolution may elect to reduce such percentage to a smaller percentage, and by resolution in a subsequent calendar year may change or revoke such election. Such payments shall be made quarterly, and are due within 45 days after the end of each calendar quarter.

7.1.1 Each payment shall be accompanied by a written report to municipality verified by an appropriate representative of company containing an accurate statement in summarized form of company's cable gross revenues and the computation of the payment amount.

7.1.2 Municipality may audit company to verify the accuracy of franchise fees paid municipality. Any additional amount due municipality shall be paid within 30 days of municipality's submitting an invoice for such sum, and if such sum shall exceed four

percent of the total franchise fee which the audit determines should have been paid for any calendar year, company shall pay municipality's cost of auditing that calendar year as well.

7.1.3 If company collects from subscribers that portion of the franchise fee attributable to non-subscriber revenues (examples being revenues from tower rentals, advertising or home shopping network commissions) then company shall annually monitor the amount of collections from subscribers during the prior year and promptly correct any material over collection or under collection. Company shall provide documentation of the preceding to municipality, upon request.

7.2 *Discounted rates.* Company intends to market services on a "bundled" basis and to fairly reflect an appropriate and reasonable division of revenue among the various services offered. Whether or not company separates services on a customer's bill, it will provide to municipality the amounts upon which it will pay a telecommunications services, and the amount upon which it will pay the franchise fee. Should company engage in a billing practice that, in the determination of the municipality, does not fairly reflect an appropriate split of revenue between cable service and telecommunications services, municipality will notify grantee in writing of its determination. If the parties do not resort to methods of dispute resolution, including litigation, the parties will meet and discuss in good faith whether the billing practices result in an unfair payment of fees to municipality. Notwithstanding the foregoing, if federal or state law establishes the method by which the division of revenues should occur or that jurisdiction to establish such guidelines appropriately rests with another body, such law shall supercede the requirements of this paragraph and be deemed by the parties to control.

7.3 *Other payments.* The preceding fees and payments are in addition to all sums which may be due municipality for property taxes (real and personal), income taxes, license fees, permit fees or other fees, taxes or charges of general applicability which municipality may from time to time impose.

7.3.1 Company shall pay municipality's cost of newspaper publication associated with adoption of this franchise. It is agreed such costs do not constitute a franchise fee or any part thereof.

7.4 *Interest.* All sums not paid when due shall bear interest at the rate of one percent per annum computed monthly, and if so paid with interest within 30 days of due date, shall not constitute an event of default under part 11.

7.5 *Prior fees.* Company shall pay all franchise fees due under any prior franchise between company and municipality when they would have been due under such prior franchise.

Section 8. Rates and regulation.

8.1 *Rates.* Company's rates and charges for the provision of cable service (and for related services, such as equipment rental, deposits, and downgrade fees) shall be subject to regulation by municipality as expressly permitted by law.

8.2 *Regulation.* Municipality reserves the right to regulate company, the cable system, and the provision of cable service as expressly permitted by federal, state, or local law.

8.3 *Notice of certain costs.* In order that municipality may consider whether to waive obligations of this franchise under section 14.5.1 company shall notify municipality in writing upon request at least annually of the identity of all costs which company claims are external costs potentially entitled to pass through to subscribers under the FCC rules or successor rules with a similar effect. Such notice shall state the approximate amount such costs may be on subscribers' monthly bills and set forth the computation of such amount. Such notice shall be provided on a date set by municipality, and unless changed by municipality, on each annual anniversary thereof.

8.4 *Senior discount.* Municipality encourages company to offer discounted rates to senior citizens, who are often on fixed incomes. Company acknowledges municipality's endorsement of such discounts, and has agreed to begin to offer a senior discount as set forth in separate correspondence to municipality. This provision is not intended to alter or modify either parties' rights or obligations as set forth in federal regulations relating to rate regulation.

Section 9. Term.

9.1 *Initial term.* The term of this franchise shall be until September 15, 2016.

9.2 *Termination.* This franchise and all rights of company thereunder shall automatically terminate on the expiration of the term of this franchise, unless an extension is granted. Municipality shall give company 60 days notice prior to taking action to enforce such termination.

Section 10. Transfers, ownership and control.

10.1 *Consent required.* Neither company nor any other person may transfer the cable system or the franchise without the prior written consent of municipality, which consent shall not be unreasonably withheld or delayed. Within 45 days of receiving a request for transfer, municipality shall, in accordance with FCC rules and regulations, notify company in writing of the information it requires to determine the legal, financial and technical qualifications of the transferee. If municipality has not taken action on company's request for transfer within 120 days after receiving such request, consent to the transfer shall be deemed given.

10.1.1 The preceding prohibition shall not apply to the replacement or sale of components of the cable system in the course of ordinary maintenance or day-to-day operation.

10.2 *Transfer or transferred.* "Transfer" or "transferred" shall mean (a) any form of sale, conveyance, assignment, lease, sublease, merger, pledge, deed, grant, mortgage, transfer in trust, encumbrance or hypothecation, in whole or in part, whether voluntary or involuntary of any right, title or interest of company in or to this franchise or to the cable system, (b) any change in actual working control (by whatever manner exercised) or in the effective control of company, such as that described in 47 C.F.R. § 76.501 and following, including the notes thereto (but excluding footnote 2f), as in effect on the date of this franchise (copy attached [to

the cable television franchise agreement] as Exhibit C), or (c) a change in limited partnership, limited liability corporation or similar interests representing ten percent or more of an equity interest in company, including the right to require voting control without substantial additional consideration (such as compared to consideration previously provided).

10.3 *Applications for consent.* If company seeks to obtain the consent of municipality to any transactions or matters otherwise prohibited by this part 10, company shall submit an application for such consent in the form required by municipality and shall thereafter submit or cause to be submitted to municipality all such documents and information as municipality may request.

10.3.1 Municipality shall not unreasonably withhold its consent to any proposed transfer, and may grant its consent outright, may grant such consent with conditions which it finds are in the public interest, or may deny consent.

10.3.2 Company shall pay on municipality's behalf or reimburse municipality for all costs incurred by municipality due to any proposed transfer.

Section 11. Defaults.

11.1 *Events of default.* The occurrence at any time during the term of the franchise, of any one or more of the following events, shall constitute an event of default by company under this franchise.

11.1.1 The failure of company to pay the franchise fee on or before the due dates specified herein unless such fees are being disputed by company in good faith.

11.1.2 Company's material breach or violation of any of the terms, covenants, representations or warranties contained herein or company's failure to perform any obligation contained herein.

11.1.3 The entry of any judgment against company in excess of \$500,000.00, which remains unpaid and is not stayed pending rehearing or appeal, for 45 or more days following entry thereof which may significantly impair company's provision of cable service in municipality.

11.1.4 The dissolution or termination, as a matter of law, of company or any general partner of company.

11.1.5 If company files a voluntary petition in bankruptcy; is adjudicated insolvent; obtains an order for relief under Section 301 of the Bankruptcy Code (11 U.S.C. § 301); files any petition or fails to contest any petition filed against it seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any laws relating to bankruptcy, insolvency or other relief for debtors; seeks or consents to or acquiesces in the appointment of any trustee, receiver, master, custodian or liquidator of company, or any of company's property and/or franchise and/or of any and all of the revenues, issues, earnings, profits or income thereof; makes an assignment for the benefit of creditors; or fails to pay company's debts generally as they become due.

11.2 *Uncured events of default.* Municipality shall give company written notice of any event of default and company shall have the following reasonable time period to cure same: for an event of default which can be cured by the immediate payment of money to municipality or a third party, company shall cure such default within 30 days of the date such sum of money was due and payable; for an event of default by company which cannot be cured by the immediate payment of money to municipality or a third party, company shall have the longer of (a) 60 days from written notice from municipality to company of an occurrence of such event of default, or (b) if more than 60 days is reasonably needed to cure the event of default, such additional time (not to exceed six months) from written notice from municipality to company which is reasonably needed.

11.2.1 If any event of default is not cured within the time period allowed for curing the event of default, as provided for herein, such event of default shall, without notice, become an uncured event of default, which shall entitle municipality to exercise the remedies provided for in part 12.

Section 12. Remedies.

12.1 *Remedies.* Upon the occurrence of any uncured event of default as described in part 11, municipality shall be entitled to exercise any and all of the following remedies:

12.1.1 The commencement of an action against company at law for monetary damages.

12.1.2 The assessment of liquidated damages as set forth herein except that municipality shall not recover both liquidated damages and actual damages for an uncured event of default either under part 12 or any other provision of this franchise.

12.1.3 The commencement of an action in equity seeking injunctive relief or the specific performance of any of the provisions which, as a matter of equity, are specifically enforceable.

12.1.4 Municipality shall have the right to forfeit and terminate the franchise and upon the forfeiture and termination thereof the franchise shall be automatically deemed null and void and have no force or effect, company shall remove the cable system from municipality as and when requested by municipality and municipality shall retain any portion of the franchise fee and other fees or payments paid to it, or which are due and payable to it, to the date of the forfeiture and termination. Municipality's right to forfeit and terminate the grant of the franchise pursuant to this section shall use the procedures of section 12.3 and is not a limitation on municipality's right of revocation.

12.2 *Liquidated damages.* Liquidated damages in the amounts set forth below may be awarded municipality (individually and on behalf of subscribers) from company. Company acknowledges that the amounts of actual damages for the violations and uncured events of default set forth below will be difficult or impossible to ascertain; that the liquidated damages set forth below are a reasonable approximation of actual damages; that the actual damages are often incurred by municipality and subscribers and, while cumulatively large, are too small to

be worth while for individual subscribers to pursue; and that this section 12.2 is intended to provide compensation to municipality and its subscribers and is not a penalty. The amount of the liquidated damages are as follows:

12.2.1 For violations of parts 6 and 10 hereof proven under section 12.3, liquidated damages not to exceed \$2,000.00 per day.

12.2.2 For uncured events of default other than violations of parts 6, 7, and 10 proven under section 12.3, liquidated damages not to exceed \$500.00 for each day that the uncured event of default continues.

12.3 *Procedure.* Liquidated damages may be awarded (and this cable franchise forfeited or terminated) in accordance with the following procedure.

12.3.1 Following notice from municipality, which notice, at municipality's election, may be combined with the notice described in section 12.3.2, company shall meet with municipality to attempt to resolve the issue of what liquidated damages, if any, shall be awarded (or forfeiture or termination of this cable franchise). If there is no resolution of such issue within 20 days of the mailing of the notice described in the first sentence then municipality's legislative body may assess liquidated damages (or forfeit or terminate this franchise) as described below.

12.3.2 Company shall be given notice of municipality's intent to assess liquidated damages (or forfeit or terminate this franchise) at least 20 days in advance of the meeting of the legislative body at which such damages are assessed (or cable franchise forfeiture or termination considered).

12.3.3 Company may appear at the meeting of the legislative body at which such damages are assessed (or cable franchise forfeiture or termination considered) either in person, by agent, or by letter (or other writing) to submit its views with respect to the proposed assessment (or the proposed forfeiture or termination) or company may request a hearing. The legislative body may conduct the hearing or, in its sole discretion, may by resolution appoint a committee or subcommittee of the legislative body or a hearing officer to conduct the hearing and submit a proposal for decision to it, pursuant to procedures established by resolution. The hearing shall afford company appropriate due process. The commission may by resolution establish other procedural matters in connection with the hearing.

12.3.4 The legislative body may then assess liquidated damages in amounts not exceeding those set forth above (or forfeit or terminate the cable franchise).

12.3.5 Any such assessment by municipality shall be a monetary obligation of company to municipality in the amount determined by the legislative body; and shall be paid in full by company within 15 business days of the date of assessment by the legislative body unless such payment is stayed by agreement or court order. Any forfeiture or termination shall be effective 15 days from the date of the legislative body decision to forfeit or terminate unless stayed by agreement or court order.

12.3.6 Only after assessment of liquidated damages (or forfeiture or termination) may company appeal such assessment (or forfeiture or termination) to an appropriate state or federal court or agency, but only if such assessment, forfeiture or termination is arbitrary, capricious or an abuse of discretion.

12.4 *Remedies not exclusive.* The rights and remedies of municipality set forth in this franchise shall be in addition to and not in limitation of, any other rights and remedies provided by law or in equity. Municipality and company understand and intend that such remedies shall be cumulative to the maximum extent permitted by law and the exercise by municipality of any one or more of such remedies shall not preclude the exercise by municipality, at the same or different times, of any other such remedies for the same uncured event of default.

Section 13. Provision of information.

13.1 *Filings.* Upon request company shall provide municipality with copies of all documents which company sends to the FCC and all records required by company to be maintained under Section 76 of the FCC regulations (47 C.F.R. § 76) or successor sections, upon request of municipality.

13.2 *Lawsuits.* Upon request company shall provide municipality with copies of all pleadings in all lawsuits pertaining to the granting of this franchise and the operation of the cable system to which it is a party within 30 days of company's receipt of same.

Section 14. General.

14.1 *Entire agreement.* This franchise agreement including the exhibits attached hereto, contains the entire agreement between the parties and all prior franchises, negotiations and agreements are merged herein and hereby superseded, except that any obligation of company to indemnify municipality under a prior franchise or agreement shall be continuing as to those matters (if any) occurring during the term of said prior franchise or agreement on which company was obligated to indemnify municipality.

14.2 *Notices.* Except as otherwise specified herein, all notices, consents, approvals, requests and other communications (herein collectively "notices") required or permitted under this franchise agreement shall be given in writing and mailed by registered or certified first-class mail, return receipt requested addressed as follows:

If to municipality:

Mr. Reid Charles
City Manager
City of Mount Morris
11649 N. Saginaw Street
Mount Morris, MI 48458

Mr. John W. Pestle
Attorney

Varnum, Riddering, Schmidt & Howlett
LLP
Box 352
Grand Rapids, MI 49501-0352

If to company:

Mr. Jon D. Kreucher
Vice President, Regulatory Affairs
Comcast Cable Communications, Inc.
29777 Telegraph Road
Suite 4400B
Southfield, MI 48034.

Mr. John Rawcliffe
Vice President and General Manager
Comcast Cable Communications
3008 Airpark Drive South
Flint, MI 48507

All notices shall be deemed given on the day of mailing. Either party to this franchise agreement may change its address for the receipt of notices at any time by giving notice thereof to the other as provided in this section. Any notice given by a party hereunder must be signed by an authorized representative of such party.

14.3 *Conferences.* The parties hereby agree to meet at reasonable times on reasonable notice to discuss any aspect of this franchise agreement, the provision of cable services or the cable system during the term of this franchise agreement.

14.4 *Governing law.* This franchise agreement shall be construed pursuant to the laws of the State of Michigan and the United States of America.

14.5 *Waiver of compliance.* No failure by either party to insist upon the strict performance of any covenant, agreement, term or condition of this franchise agreement, or to exercise any right, term or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or such covenant, agreement, term or condition. No waiver of any breach shall affect or alter this franchise agreement, but each and every covenant, agreement, term or condition of this franchise agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

14.5.1 Municipality may waive any obligation of company under this franchise agreement, in whole or in part, at any time. This includes, but is not limited to, instances of a claim or showing by company that the costs associated with the provision being waived would increase the rates company is legally allowed to charge subscribers, such as a claim that such costs are an "external cost" which allow company to increase its rates under the FCC rules.

14.5.2 Municipality grants this franchise solely for a cable system and for transaction of a cable television business. Company may assert claims to the effect that once its facilities have been placed in the streets and public ways it will be entitled under federal law to use them for other purposes without the consent or authorization of municipality and without necessarily paying compensation therefore. Municipality disputes any such claim. Municipality further asserts that if any such claims by company were to be sustained there would be, among other things, an unconstitutional taking of municipality's property in violation of the Fifth Amendment of the United States Constitution. Company disputes this claim. Neither the issuance nor the acceptance of this franchise constitutes or will be claimed to constitute a waiver or relinquishment of any rights or defenses of either municipality or company in connection with these disputed issues. Municipality and company acknowledge that this section is not intended to be a comprehensive statement of their respective claims and positions and that they intend to defer all disputes that may arise out of or relate to use by company of its facilities in the streets and public ways for purposes other than a cable system.

14.5.3 Company asserts that municipality's franchise fees are limited by federal statute to five percent of revenues from "cable services," all as defined in Section 622 of the Telecommunications Act of 1934, 47 U.S.C. Section 542. Municipality asserts that any such limit is unconstitutional, among other things an unconstitutional taking of municipality's property in violation of the Fifth Amendment of the United States Constitution. Company disputes this claim. Neither the issuance nor the acceptance of this franchise constitutes or will be claimed to constitute a waiver or relinquishment of any rights or defenses of either municipality or company in connection with these disputed issues. Municipality and company acknowledge that this section is not intended to be a comprehensive statement of their respective claims and positions and that they intend to defer all disputes that may arise out of or relate to statutory limits on franchise fees.

14.6 *Independent contractor relationship.* The relationship of company to municipality is and shall continue to be an independent contractual relationship, and no liability or benefits, such as worker's compensation, pension rights or liabilities, insurance rights or liabilities or other provisions or liabilities, arising out of or related to a contract for hire or employer/employee relationship, shall arise or accrue to either party or either party's agents or employees as a result of the performance of this franchise agreement, unless expressly stated in this franchise agreement.

14.7 *Severability.* If any section, paragraph, or provision of this franchise agreement shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph, or provision shall not affect any of the remaining provisions of this franchise agreement.

14.8 *Effective date.* This franchise agreement shall be effective as of September 1, 2001 ("effective date"). Any prior franchise shall terminate as of midnight of the day immediately preceding the effective date of this franchise agreement, except as provided in section 14.1.

14.9 *FCC rules.* A copy of the FCC customer service rules as modified above and in effect on the date of this franchise agreement is attached [to the cable television franchise agreement] as Exhibit A. A copy of FCC Rule 76.501 as in effect on the date of this franchise agreement is attached [to the cable television franchise agreement] as Exhibit C.

14.10 *Captions.* All captions are for convenience of use and have no substantive effect, except for those captions in the definitions section of this franchise agreement.

14.11 *Conflicts.* In the event of a conflict between this franchise agreement and the provisions of any prior franchise or any franchise, permit, consent agreement or other agreement with company, the provisions of this franchise agreement shall control.

14.12 *Force majeure.* In the event company's performance of any of the terms, conditions or obligations required by this franchise agreement is prevented by a cause or event, not within company's reasonable control, it shall be deemed excused for the period of such inability and no penalties or sanctions shall be imposed as a result thereof. Causes or events not within the control of company shall include acts of God, strikes, sabotage, riots or civil disturbances, failure or loss of utilities, explosions, acts of public enemies and natural disasters.

14.13 *Franchise agreement accepted.* Company further acknowledges by acceptance of this franchise agreement that it has carefully read the terms and conditions of this franchise agreement and accepts the lawful obligations imposed thereby. As of the effective date, and without waiving any rights company may have to challenge the lawfulness or enforceability of the franchise agreement in the future, company does not contend that any provision of the franchise agreement is unlawful or unenforceable.

14.14 *Waiver of compliance.* No failure by either party to insist upon the strict performance of any covenant, agreement, term or condition of this Franchise agreement, or to exercise any right, term or remedy upon a breach thereof shall constitute a waiver of any such breach or such covenant, agreement, term or condition. No waiver of any breach shall affect or alter this franchise agreement, but each and every covenant, agreement, term or condition of this franchise agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

14.15 *Reserved rights.* Municipality reserves all rights and powers under its police powers or conferred by federal, state or local law. In particular municipality reserves the right to amend its municipal code and cable ordinance as it determines shall be conducive to the health, safety, welfare and accommodation of the public. Municipality agrees that by accepting this franchise company has not waived its right to object to the application to it of actions by municipality pursuant to its reserved rights or police powers.

In witness whereof, the parties have hereto set their hands as of the day and year first above written.

Comcast Cablevision of Flint, Inc.

By: /s/ _____
Its Midwest Division President

City of Mount Morris

By: /s/ _____
Its Mayor

/s/ _____
Its Clerk

ARTICLE III. DTE ENERGY MARKETING ELECTRIC FRANCHISE*

An ordinance granting a limited, non-exclusive, revocable electric franchise to DTE Energy Marketing.

The City of Mount Morris ordains:

Section 1. Grant of franchise.

The City of Mount Morris with offices located at 11649 N. Saginaw Street, Mount Morris, Michigan 48458 ("city"), grants to DTE Energy Marketing, a Michigan corporation, with offices at 101 N. Main Street, Suite 300, Ann Arbor, Michigan 48104 ("grantee"), a limited, non-exclusive, revocable franchise to market electricity through and over existing and future electrical lines owned and operated by another authorized public utility and to conduct a local electric business as an electric power marketer and third-party supplier of electricity in "or a period of five years after this ordinance takes effect; provided that this grant of franchise excludes a franchise to construct, lay, maintain or operate electric utility facilities, including but not limited to electric lines, towers, masts, poles, crossarms, guys, braces, feeders, transmission and distribution wires, transformers and other electrical appliances in, along, over or under the highways, streets, alleys, and other public places in the City of Mount Morris, Michigan; and further provided that grantee shall transmit, supply, deliver and distribute electricity and electrical services solely through such electric utility facilities presently or hereafter owned and maintained by another authorized public utility, by agreement with such public utility or as otherwise provided by law. This grant of franchise includes a franchise for grantee to own, operate and maintain metering and telemetry equipment for the purpose of serving its customers, provided that such equipment will not be used to bill services provided by another public utility.

Section 2. Conditions.

(A) As an electric power marketer and third-party supplier of electricity, grantee will not directly transmit or generate electricity, nor impair, obstruct, or attempt to control or occupy any highway, street, alley, or any other public place, nor engage in any construction or installation in any highway, street, alley, or any other public place or right-of-way.

(B) The grantee shall hold harmless, defend and indemnify the city and its officers, boards, commissions, consultants, agents, and employees from and against all costs, claims, damages, liabilities, expenses, judgments and proceedings of whatever nature including, without

***Editor's note**—Printed herein is Ordinance No. 00-04, as adopted by the city council on June 26, 2000, and effective on July 6, 2000. Amendments to the ordinance are indicated by parenthetical history notes following amended provisions. The absence of a history note indicates that the provision remains unchanged from the original ordinance. Obvious misspellings and punctuation errors have been corrected without notation. For stylistic purposes, headings and catchlines have been added and the same system of capitalization, citation to state statutes, and expression of numbers in text as appears in the Code of Ordinances has been used. Additions made for clarity are indicated by brackets.

limitation, attorneys' fees and the fees of expert witnesses and consultants, arising from the grantee's exercise of its rights and obligations pursuant to this ordinance (whether by the grantee or the grantee's contractors or subcontractors).

(C) The city may establish reasonable standards of service, prevent unjust discrimination in service, and impose any other regulations as may be determined by the city to be conducive to the safety, welfare and accommodation of the public. Grantee shall be and remain subject to all charter provisions, ordinances, rules and regulations of the city now in effect, or which are adopted hereafter including, without limitation, such charter provisions, ordinances, rules and regulations which regulate the use of public rights-of-way in the city.

(D) Grantee shall reimburse the city for the city's costs associated with issuance of this franchise, including reasonable and documented attorney fees.

(E) The rights, power and authority granted by this ordinance are not exclusive.

Section 3. Rates.

Grantee may charge its customers within the city for electricity and electrical services at a rate as agreed upon by the grantee and its customers, subject to compliance with all applicable federal and state laws and Michigan Public Service Commission orders, rules and regulations.

Section 4. Insurance.

Grantee shall obtain and maintain in full force and effect the following insurance covering all insurable risks associated with its exercise of the rights granted by this ordinance: comprehensive general liability, including completed operations liability, independent contractors liability, contractual liability coverage and coverage for XCU hazards in an amount no less than \$2,000,000.00 and workers' compensation insurance with Michigan statutory limits, including employers' liability coverage. In addition, grantee shall maintain motor vehicle liability insurance covering all owned, hired, and non-owned vehicles in use by grantee, its employees and agents, with personal protection insurance and property protection insurance to comply with the provisions of the Michigan no fault insurance law, including residual liability insurance with minimum limits of \$2,000,000.00 as the combined single limit for each occurrence of bodily injury and property damage.

The city shall be named as an additional insured in all applicable policies. All insurance policies shall provide that they shall not be canceled or modified unless 30 days prior written notice is given to the city. If so requested by the city, grantee shall provide the city with a certificate of insurance evidencing such coverage and maintain a current certificate on file with the city. All insurance shall be issued by insurance carriers licensed to do business by the State of Michigan or by surplus line carriers on the Michigan Insurance Commission approved list of companies qualified to do business in Michigan. All insurance and surplus line carriers shall be rated A+ or better by A.M. Best Company. Grantee shall require that each and every one of its contractors and their subcontractors carry such insurance in the same type and amounts as grantee is required to obtain under this section.

Section 5. Interpretation.

Nothing in this franchise shall be construed to alienate the title of the public in and to any highway, street, alley or public place. Nothing in this franchise shall be construed in any manner as a surrender by the city of its legislative power with respect to the subject matter of this franchise or with respect to any other matter or in any manner limiting the right of the city to lawfully regulate the use of any highway, street, alley or public place in the city.

Section 6. Limitations.

Nothing in this ordinance shall be construed as a waiver by grantee of any rights under state or federal law. Grantee shall, as to all other conditions and elements of electrical service, not herein addressed or fixed, be and remain subject to the orders, rules and regulations applicable to electric service in the city as prescribed by the Michigan Public Service Commission or its successors and by any federal agency with authority and jurisdiction to issue such orders, rules and regulations. If so requested by the city, grantee shall provide the city with copies of all documents which grantee sends to the Michigan Public Service Commission and copies of all orders, decisions, or correspondence grantee receives from the Michigan Public Service Commission that relate to this franchise. Grantee shall permit city inspection and examination of all records that relate to this franchise that grantee is required to maintain or file under Michigan Public Service Commission rules and regulations.

Section 7. Assignment.

This franchise may not be sold, leased, assigned, transferred or used by any party other than the grantee without the consent of the city.

Section 8. Franchise application fee.

Grantee shall pay to the city a franchise application fee in the amount of \$1,000.00. This fee is in addition to the cost incurred by the city council in reviewing this franchise. This fee shall be paid to the city within 30 days from the adoption of this ordinance.

Section 9. Consideration.

In consideration of the rights, power and authority hereby granted, said grantee shall faithfully perform all things required by the terms hereof.

Section 10. Revocation.

The franchise granted by this ordinance is subject to revocation at will and without cause upon 60 days written notice by the party desiring such revocation.

Section 11. Public emergency.

The city shall have the right to sever, disrupt, dig up or otherwise destroy electrical facilities owned or used by grantee, without any prior notice, if such action is deemed necessary by the city manager or the mayor because of a public emergency. Public emergency shall be any

condition which, in the opinion of either of the officials named, possesses an immediate threat to the lives or property of the residents of the city, caused by any natural or man-made disaster, including but not limited to storms, floods, fire, accidents, explosions, major sewer or water main breaks, hazardous material spills, and similar events. Grantee or the owner of the electric facilities shall be responsible for repair, at its sole expense, of the electric facilities damaged pursuant to any such action taken by the city.

Section 12. Acceptance and effective date.

This ordinance shall take effect 20 days after adoption and upon the publication thereof, provided, however, it shall cease and be of no effect after 30 days from its adoption unless within said period the Grantee shall accept the same in writing filed with the city clerk. Upon acceptance and publication hereof, this ordinance shall constitute a contract between the city and said grantee.

ADOPTED: June 26, 2000

PUBLISHED: July 5, 2000

EFFECTIVE: July 6, 2000

/s/

Robert D. Slattery, Jr., Mayor

/s/

Lisa A. Baryo, Clerk

APPENDIX B

TRAFFIC CONTROL ORDERS*

Article I. Traffic Control Orders

- Sec. 1. Purpose.
- Sec. 2. Definitions.
- Sec. 3. Parking prohibited.
- Sec. 4. Parking exceptions.
- Sec. 5. Intersection requirements.
- Sec. 6. Speed.
- Sec. 7. Cancellation.

***Editor's note**—Printed herein are the Traffic Control Orders of the City of Mt. Morris.
Cross reference—Traffic and vehicles, ch. 62.

ARTICLE I. TRAFFIC CONTROL ORDERS***Sec. 1. Purpose.**

The purpose of this traffic control order is to establish one order which controls all parking and speed regulation in the city, for safety purposes or to allow the free flow of traffic.

Sec. 2. Definitions.

1. The width of a street which has curbs is the distance from the edge of the curb closest to the right-of-way line on one side of the street to the edge of the curb closest to the right-of-way line on the opposite side of the street measured perpendicular to the centerline of the street.

2. The width of a street without curb is the width of the portion of the right-of-way normally maintained for the operation of motor vehicles.

3. Major and local streets are those streets designated as major or local on the Street Systems map currently approved and in effect pursuant to Act No. 51 of the Public Acts of Michigan of 1951 (MCL 247.651 et seq., MSA 9.1097(1) et seq.), as amended.

Sec. 3. Parking prohibited.

Unless otherwise specified, parking is prohibited:

1. Either side of a major street whose width is less than 32 feet.
2. The east side of a major street whose width is 32 feet or more but less than 40 feet.
3. The north side of a major street whose width is 32 feet or more but less than 40 feet.
4. The east side of a local street.
5. The north side of a local street.
6. In front of 11972 N. Saginaw, a commercial building, in a parking lot open to the public, posted as a "Fire Lane." No Parking at any time.
7. At 1000 Mt. Morris Street, a Mt. Morris Community School Building, in the parking lot open to the public, where signs are posted "No Parking at any Time."
8. At 12356 Walter Street, a Mt. Morris Community School Building, in the circular driveway, where signs are posted "No Parking at any Time."

(Ord. of 5-26-98)

***Editor's note**—Printed herein are the Traffic Control Orders of the City of Mt. Morris effective on February 12, 1996. Amendments to the order are indicated by parenthetical history notes following amended provisions. The absence of a history note indicates that the provision remains unchanged from the original order. Obvious misspellings and punctuation errors have been corrected without notation. For stylistic purposes, headings and catchlines have been made uniform and the same system of capitalization, citation to state statutes, and expression of numbers in text as appears in the Code of Ordinances has been used. Additions made for clarity are indicated by brackets. (App. B previously contained Traffic Control Order 95-2, now superseded.)

Sec. 4. Parking exceptions.

Parking is:

1. Prohibited on either side of Mt. Morris St.:
 - a. Pertaining to Westbound Mt. Morris St., on the north side, beginning 75 feet west of N. Saginaw St. and for a distance of 44 feet, parking will be allowed for one-hour time limits. No parking will be allowed for the next 30 feet and parking will be allowed for the next 44 feet. No parking from there to the city limits.
 - b. Pertaining to the southside, eastbound Mt. Morris St., parking is allowed for a one hour time limit, 138 feet west of N. Saginaw St. for a distance of 66 feet. No parking resumes to the city limits.
 - c. Pertaining to eastbound Mt. Morris St., southside, east of N. Saginaw St., parking will be allowed for one hour, beginning 134 feet east of N. Saginaw St. for a distance of 88 feet. No parking resumes to the city limits.
 - d. Pertaining to westbound Mt. Morris St., east of N. Saginaw St., parking is not allowed. However, the inside westbound traffic lane is a "Left Turn Only" lane onto southbound N. Saginaw St.
2. Prohibited on either side of Wilcox St.
3. Authorized on the north side of Monroe Ave., except 30 feet from N. Saginaw St. which will be marked "No Parking to Corner."
4. Prohibited on the south side of Monroe Ave.
5. Prohibited for a distance of 50 feet from the northwest corner of Oakland Ave. and Morris St. on the west side of Oakland Ave.
6. Prohibited on the west side of Washington Ave. between Beach St. and Morris St.
7. Prohibited on the south side of Maginn Ct. and authorized on the north side.
8. Prohibited on either side of N. Saginaw St.
9. Authorized on east side of Walter St. from north City limits to 100 feet south of Louisa St.
10. Prohibited on west side of Walter St. for a distance of 50 feet from Mt. Morris St.
11. Prohibited on west side of Walter St., 100 yards south of Louisa St. to north city limits, except on Sunday, when parking will be allowed, from 100 feet south of Louisa St. to Louisa St.
12. Prohibited on all streets, highways or alleys between the hours of 2:30 a.m. and 6:00 a.m., except when authorized by the traffic engineer for a period not to exceed 48 hours.
13. Prohibited on east bound Van Buren St. on the south side beginning at 50 feet west of N. Saginaw St. and continuing to and will be posted "No Parking Here to Corner."

14. Prohibited on eastbound Maple St. from North Saginaw St. east 100 feet and will be posted "No Parking Here to Corner."
15. Prohibited on eastbound Helen Street from North Saginaw Street west 258 feet and will be posted "No Parking At Any Time."
16. Pertaining to the parking lot located at the southwest corner of the intersection of Saginaw and Mt. Morris Streets, and partially or in full owned by the downtown development authority of the city. As it is already a violation, of the Uniform Traffic Code as amended and adopted by the city, to avoid a traffic control device by driving through a parking lot (section 5.53), this particular lot will be posted prohibiting drive through traffic.
17. Pertaining to the parking lot located at the southwest corner of the intersection of Saginaw and Mt. Morris Streets, and partially or in full owned by the downtown development authority of the city. It has been deemed undesirable to have large commercial vehicles driving and parking in this lot, all commercial vehicles over one ton capacity will be prohibited from driving, parking or turning around in this parking lot. The parking lot will be posted with signs indicating this prohibition. Vehicles owned by, or under contract with the city, are excluded from this provision.
18. Pertaining to eastbound Mt. Morris St., south side, beginning 138 feet west of North Saginaw St. for a distance of 66 feet, parking is allowed except from 7:00 a.m. to 4:00 p.m., Monday through Friday when this area will be used as a freight loading zone. This area will be posted as such and will indicate the time periods when parking is not allowed.

(Ord. of 9-23-96; Ord. of 1-26-98(2))

Sec. 5. Intersection requirements.

1. Eastbound and westbound Helen Street at Washington Street shall be made a "stop" intersection and be posted as such.
2. Eastbound and westbound Walker Street at Washington Street shall be a "stop" intersection. Northbound and southbound Washington Street at Washington Street shall be a "stop" street and create a "four way stop" intersection.
3. Northbound and southbound Temperance Street at South Street shall be a "stop" intersection. Eastbound and westbound South Street at Temperance Street shall be a "stop" street and will create a "four-way stop" intersection.
4. The right lane of eastbound Mt. Morris Street at Saginaw Street shall be a Right Turn Only Lane. The left lane of eastbound Mt. Morris Street at Saginaw Street shall be a Straight Through and Left Turn Lane.
5. The right lane of westbound Mt. Morris Street at Saginaw Street shall be a Straight Through and Right Turn Lane. The left lane of westbound Mt. Morris Street at Saginaw Street shall be a Left Turn Only Lane.

6. Northbound N. Saginaw St. at Mt. Morris St., Southbound N. Saginaw St. at Mt. Morris St., Westbound Mt. Morris St. at N. Saginaw St. shall allow "Right Turn on Red" in accordance with State Law. The current signage prohibiting right turns on red shall be removed. Eastbound Mt. Morris St. at N. Saginaw shall remain "No Turn on Red."
7. Regarding the parking lot located South of Mt. Morris St. and West of N. Saginaw St. and owned by the downtown development authority: The exit onto N. Saginaw St. will allow "Right Turns Only" and signs will be posted accordingly.

(Ord. of 1-26-98(2))

Sec. 6. Speed.

1. Northbound and southbound N. Saginaw Street from City Limit to City Limit, shall be a 35 mph speed zone and will be posted as such.
2. Westbound and eastbound Mt. Morris Street from City Limit to City Limit, shall be a 35 mph speed zone and will be posted as such. Except, for an area 500 feet west, and 900 feet east of Oakland Avenue and 500 feet either direction from Walter Street. These two schools zones will be 25 mph speed from 8 am-9 am and from 3 pm-4 pm, during school days and will be posted as such.

(Ord. of 5-26-98)

Sec. 7. Cancellation.

This order amends and supersedes Traffic Control Order 95-2 dated July 28, 1995, 95-1 dated June 12, 1995; 94-1 dated March 15, 1994; 93-1 dated March 8, 1993; 92-1 dated Jan. 1, 1992; 91-1 dated May 3, 1991; 91-2 dated August 16, 1991 as approved by the city council.

Effective date: February 12, 1996

/s/ _____
 Fred Thorsby
 Chief of Police/Traffic Engineer

/s/ _____
 Lisa Baryo
 City Clerk

APPENDIX D

ZONING*

Article 1. Purpose

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- Sec. 1.02. Interpretation.
- Sec. 1.03. Conflicting laws, ordinances, regulations, or restrictions.
- Sec. 1.04. Citation.

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- Sec. 2.22. Condominium.
- Sec. 2.23. Cul-de-sac.
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- Sec. 2.25. Dwelling, one family.

***Editor's note**—An ordinance adopted Nov. 13, 2000, repealed the former zoning ordinance of the city and enacted a new ordinance as set out herein. The former zoning ordinance was adopted by the city council on May 12, 1997. Amendments to the ordinance are indicated by parenthetical history notes following amended provisions. The absence of a history note indicates that the provision remains unchanged from the original ordinance. Obvious misspellings and punctuation errors have been corrected without notation. For stylistic purposes, headings and catchlines have been added and the same system of capitalization, citation to state statutes, and expression of numbers in text as appears in the Code of Ordinances has been used. Additions made for clarity are indicated by brackets. For further information, see the Code Comparative Table.

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Sec. 2.26.	Dwelling unit.
Sec. 2.27.	Employee load factor.
Sec. 2.28.	Essential services.
Sec. 2.29.	Family.
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Sec. 2.43.	Lot, interior.
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- Sec. 5.02. Off-street parking and off-street loading space requirement.
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Article 8. Conditional Use Permit Review

- Sec. 8.01. Intent.
- Sec. 8.02. Procedures.
- Sec. 8.03. Basis of determination.

Article 9. Design Standards

- [Sec. 9.00. Generally.]
- Sec. 9.01. Adult foster care family and small group homes site design standards.
- Sec. 9.02. Adult foster care medium and large group homes site design standards.
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- Sec. 9.06. Family day care home and group day care home site design standards.
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- Sec. 12.02. Penalties for violation.
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- Sec. 13.02. Compensation.
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- Sec. 13.07. Variance.
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Article 15. Reserved

MT. MORRIS CODE

Article 16. Severability Clause

Sec. 16.01. Severability.

Article 17. Effective Date

Sec. 17.01. Effective date.

ARTICLE 1. PURPOSE**Sec. 1.01. Purpose.**

The intent of this Zoning Ordinance shall be to regulate and restrict the use of land and structures; to meet the needs of the city residents for food, fiber, energy, and other natural resources, places of residence, recreation, industry, trade, service, and other uses of land; to insure that uses of the land shall be situated in appropriate locations and relationships; to limit the inappropriate overcrowding or [of] land and congestion of population and transportation systems and other public facilities; to facilitate adequate and efficient provision for transportation systems, sewage disposal, water, energy, education, recreation, and other public service and facility needs; and to promote public health, safety, and welfare, and for those purposes may divide the city into districts of the number, shape and area considered best suited to carry out this section. For each of those districts, regulations may be imposed designating the uses for which buildings or structures shall or shall not be erected of [or] altered, and designating the trades, industries, and other land uses or activities that shall be permitted or excluded or subjected to special regulations. The land development regulation and districts authorized by this appendix shall be made in accordance with a plan designated to promote and accomplish the objectives of this appendix.

Sec. 1.02. Interpretation.

The provisions of this appendix shall be considered as minimum standards and requirements within each respective zoning district and shall not preclude the establishment of higher, or more restrictive standards, or requirements for the authorization of any conditional use permit, where such higher or more restrictive standards or requirements are found necessary by the city planning commission to attain the intent of this appendix.

Sec. 1.03. Conflicting laws, ordinances, regulations, or restrictions.

Conflicting laws of a more restrictive nature are not affected or repealed by this appendix. The provisions of this appendix shall be considered as minimum, and such conflicting laws of a more restrictive nature shall supersede any provisions of this appendix. Conflicting laws of a less restrictive nature, or those conflicting in other ways than degrees of restrictiveness, are hereby repealed. Specifically, the Zoning Ordinance adopted by the city of Mt. Morris on May 12, 1997, and all amendments thereto, are repealed.

Sec. 1.04. Citation.

This appendix shall be known as and be cited as "The City of Mt. Morris Zoning Ordinance."

ARTICLE 2. Definitions.

[Sec. 2.00. Generally.]

For the purposes of this appendix, certain terms or words used herein shall be interpreted as follows:

The word "person" includes a firm, association, organization, partnership, trust, company, or corporation, as well as an individual.

The present tense includes the future tense, the singular number includes the plural, and the plural number includes the singular.

The word "shall" is mandatory; the word "may" is permissive.

The words "used or occupied" include the words "intended, designed, or arranged to be used or occupied."

Sec. 2.01. Accessory structure.

A detached structure on the same lot with, and of a nature customarily incidental and subordinate to, the principal structure.

Sec. 2.02. Accessory use.

A use on the same lot with, and of a nature customarily incidental and subordinate to, the principal use.

Sec. 2.03. Adult foster care family home.

A private residence licensed under Act No. 218 of the Public Acts of Michigan of 1979 for six or fewer adults to be provided with foster care for five or more days a week for two or more consecutive weeks. The adult foster care family home licensee is a member of the household and an occupant of the residence.

Sec. 2.04. Adult foster care large group home.

A facility licensed under Act No. 218 of the Public Acts of Michigan of 1979 to provide foster care for at least 13 but not more than 20 adults.

Sec. 2.05. Adult foster care medium group home.

A facility licensed under Act No. 218 of the Public Acts of Michigan of 1979 to provide foster care for at least seven but no more than 12 adults.

Sec. 2.06. Adult foster care small group home.

A facility licensed under Act No. 218 of the Public Acts of Michigan of 1979 to provide foster care for six or fewer adults.

Sec. 2.07. Adult uses.

Any use of land, whether vacant or combined with structures or vehicles thereon by which said property is devoted to displaying or exhibiting material for entertainment, a significant portion of which includes matter or actions depicting, describing or presenting "specified sexual activities" or "specified anatomical areas."

1. Adult entertainment use shall include, but not be limited to the following:
 - a. An adult motion picture theater is an enclosed building with a capacity of 50 or more persons used for presenting material which has a significant portion of any motion picture or other display depicting or relating to "specified sexual activities" or "specified anatomical areas" for observation by patrons therein.
 - b. An adult mini-motion picture theater is an enclosed building with a capacity for less than 50 persons used for presenting material which has as a significant portion of any motion picture or other display depicting, describing or presenting "specified sexual activities" or "specified anatomical areas" for observation by patrons therein.
 - c. An adult motion picture arcade is any place to which the public is permitted or invited wherein coin or slug operated or electronically or mechanically controlled still or motion picture machines, projectors, or other image producing devices are maintained to show images to five or fewer persons per machine at any one time, and where a significant portion of images so displayed depict, describe or relate to "specified sexual activities" or "specified anatomical areas."
 - d. An adult book store is a use which has a display containing books, magazines, periodicals, slides, pictures, cassettes, or other printed or recorded material which has as a significant portion of its content or exhibit matter or actions depicting, describing or relating to "specified sexual activities" or "specified anatomical areas" or an establishment with a substantial segment or section devoted to the sale or display of such material.
 - e. An adult cabaret is a nightclub, theater or other establishment which features live performances by topless and/or bottomless dancers, "go-go" dancers, exotic dancers, strippers, or similar entertainers, where a significant portion of such performances show, depict or describe "specified sexual activities" or "specified anatomical areas."
 - f. An adult motel is a motel wherein matter, actions or other displays are presented which contain a significant portion depicting, describing, or relating to "specified sexual activities" or "specified anatomical areas."
 - g. An adult massage parlor is any place where for any form of consideration or gratuity, massage, alcohol rub, administration of fomentations, electric or magnetic treatment or any other treatment or manipulation of the human body occurs

3. Female breast below a point immediately above the top of the areola;
- b. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

Sec. 2.08. Area, floor.

Floor area shall constitute the total floor area occupied by a use and measured to include all space used primarily or incidentally for such use.

Sec. 2.09. Area, sales.

Sales area shall only include that area customarily open and accessible to the public.

Sec. 2.10. Block face.

A block face is defined as and consists of those properties fronting along an existing right-of-way and located between the intersections of existing streets, or between intersections and dividers such as rivers, railroads, and other similar natural or manmade features.

Sec. 2.11. Board of zoning appeals.

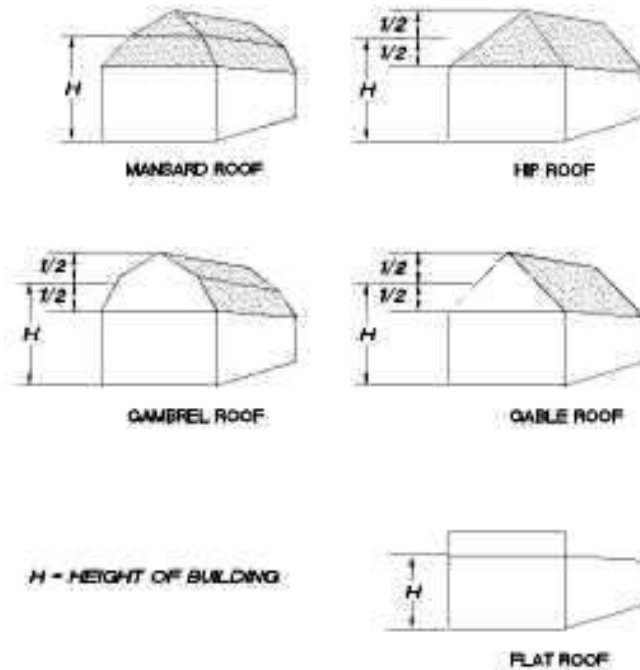
The board of appeals as provided under provisions of the city and Village Zoning Act, being Act No. 207 of the Public Acts of Michigan of 1921, as amended, with powers and duties as defined in those statutes, except as modified herein.

Sec. 2.12. Building.

Any structure (excluding fences) having a roof or walls and built for, or capable of, the shelter or enclosure of persons, animals, chattels, or property of any kind.

Sec. 2.13. Building, height of.

The vertical distance from the grade at the center of the front of the building to the highest point of the roof surface in a flat roof, to the deck line for mansard roofs, and to the mean height level between eaves and ridge for gable, hip and gambrel roofs.



BUILDING HEIGHT

Sec. 2.14. Building permit.

An authorization showing compliance with the building code that is issued by the City of Mt. Morris for any structure moved, erected or altered within the city.

Sec. 2.15. Cellar or basement.

A cellar or basement is that portion of a structure with not less than three walls thereof, partly below grade and so located that the vertical distance from the grade to the floor is greater than the vertical distance from the grade to the ceiling.

Sec. 2.16. City.

The City of Mt. Morris, Genesee County, Michigan.

Sec. 2.17. City council.

The city council of the city of Mt. Morris, Genesee County, Michigan.

Sec. 2.18. City planning commission.

The Mt. Morris city planning commission as established by the Mt. Morris city council under provisions of the Municipal Planning Commission Act, being Act No. 285, of the Public Acts of Michigan of 1931, as amended.

Sec. 2.19. Comprehensive development plan or general plan.

Comprehensive development plan is the city of Mt. Morris Community Master Plan adopted on March 13, 1995 by the planning commission of the City of Mt. Morris, Genesee County, Michigan.

Sec. 2.20. Conditional use.

A conditional use is a use of land for an activity which, under usual circumstances, would be detrimental to other land uses permitted within the same district, but which is permitted because of circumstances unique to the location of the particular use and which use can be conditionally permitted without jeopardy to uses permitted within such district.

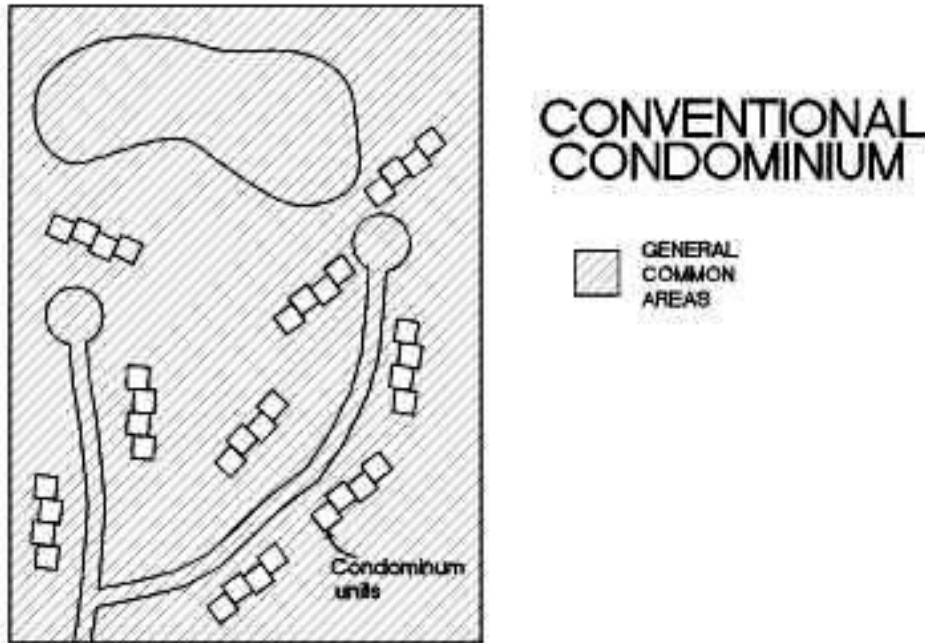
Sec. 2.21. Conditional use permit.

An authorization approved by the city planning commission to use a parcel of land and/or structure for a conditional use.

Sec. 2.22. Condominium.

The following definitions shall apply to all condominium developments:

- A. *Conventional condominium project.* A development in which ownership interest is divided under the authority of the Condominium Act (Act No. 59 of the Public Acts of Michigan of 1978) and in which the condominium unit consists primarily of the dwelling or other principal structure and most of the land in the development is part of the general common area.



- B. *Site condominium project.* A development in which ownership interest is divided under the authority of the Condominium Act (Act No. 59 of the Public Acts of Michigan of 1978) and in which the condominium unit consists of a building site, with or without structures, which along with associated limited common area, constitutes the equivalent of a lot.



- C. *General common areas.* Portions of the condominium development owned and maintained by the condominium association.
- D. *Limited common areas.* Portions of the condominium development other than the condominium unit itself reserved for the exclusive use of less than all of the co-owners of the condominium development.
- E. *Condominium subdivision plan.* Means drawings and information prepared pursuant to section 66 of the Condominium Act, Act No. 59 of the Public Acts of Michigan of 1978.
- F. *Master deed.* The condominium document recording the condominium project to which are attached as exhibits and incorporated by reference the bylaws for the project and including those items required in Section 8 of the Condominium Act, Act No. 59 of the Public Acts of Michigan of 1978.
- G. *Contractible condominium:* A condominium project from which any portion of the submitted land or building may be withdrawn in accordance with this act.
- H. *Conversion condominium:* A condominium project containing condominium units, some or all of which were occupied before the filing of a notice of taking reservations under Section 71 of the Condominium Act, Act No. 59 of the Public Acts of Michigan of 1978.
- I. *Expandable condominium:* A condominium project to which additional land may be added in accordance with the condominium Act, Act No. 59 of the Public Acts of Michigan of 1978.

Sec. 2.23. Cul-de-sac.

A street terminated at one end, with a turning radius.

Sec. 2.24. District.

Each part, or parts, of the city for which specific zoning regulations are prescribed.

Sec. 2.25. Dwelling, one family.

A detached residential dwelling unit designed for and occupied by one family only.

Sec. 2.26. Dwelling unit.

One room, or rooms connected together, constituting a separate, independent house-keeping establishment for owner occupancy, or rental or lease on a weekly, monthly, or longer basis, and physically independent of any other group of rooms or dwelling units which may be in the same structure, and containing independent cooking, sleeping, bathing and toilet facilities.

Sec. 2.27. Employee load factor.

That number equal to the maximum number of employees that can be employed at any one time in a particular structure or parcel of land, and refers to the basis upon which the number of parking spaces required is determined.

Sec. 2.28. Essential services.

The phrase "essential services" means the erection, construction, alteration, or maintenance by public utilities or any governmental department or commission of underground or overhead gas, electrical, steam, or water transmission or communication, supply or disposal systems, including poles, wires, drains, sewers, pipes, conduits, cables, towers, fire alarm boxes, police call boxes, traffic signals, hydrants, and other similar equipment and accessories in connection with, but not including, buildings. Wireless telecommunication antennas and towers shall not be considered essential services.

(Ord. No. 04-03, § 3, 6-14-04)

Sec. 2.29. Family.

A family shall be deemed to be one of the following when living in a single dwelling unit:

- A. A single individual.
- B. A group of two or more persons related by blood, marriage or adoption.
- C. A group of not more than six unrelated individuals operating as a single housekeeping unit.

Sec. 2.30. Family day care home.

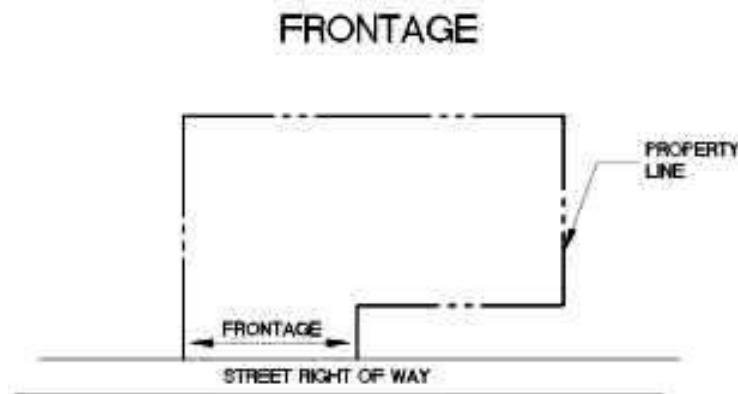
A private home in which not more than six children are received for care and supervision for a period of less than 24 hours per day. The six child limitation includes children under seven years old in the resident family and shall not include more than two children under one year old.

Sec. 2.31. Floodplain.

Lands which are subject to periodic flooding and have been delineated as a floodplain by an official map prepared by the National Flood Insurance Program.

Sec. 2.32. Frontage.

The lands and distance thereof of any lot fronting on one side of a street between intersecting or intercepting streets, or between a street and another right-of-way, waterway, end of a dead end street or city boundary measured along the street line.

**Sec. 2.33. Garage, service.**

Buildings, or premises which would include major internal combustion engine or automobile body repair work, straightening of auto body parts, painting, welding, storage of automobiles not in operating condition, or other works involving noise, glare, fumes, smoke, or other characteristics to an extent greater than normally found in the service station.

Sec. 2.34. Garden apartments.

A residential structure or group of structures, each of which contain five or more attached one family dwelling units and share common front and/or rear yards.

Sec. 2.35. Gasoline service station.

Buildings and premises where gasoline, oil, grease, batteries, tires, and automobile accessories may be supplied and dispensed at retail, and where, in addition, the following services may be rendered and sales made, and no other:

- A. Sale and servicing of spark plugs, batteries, and distributors and distributor parts;
- B. Tire servicing and repair, but not recapping or regrooving;
- C. Replacement of mufflers and tail pipes, water hose, fan belts, brake fluid, light bulbs, fuses, floor mats, seat covers, windshield wipers and wiper blades, grease retainers, wheel bearings, mirrors, and the like;
- D. Radiator cleaning and flushing;
- E. Washing and polishing, and sale of automotive washing and polishing materials;
- F. Greasing and lubrication;
- G. Replacing or repairing of carburetors, fuel pumps, oil pumps, and lines;
- H. Emergency wiring repairs;
- I. Minor motor adjustments not involving removal of the head or crankcase or racing the motor;
- J. Adjusting and repairing brakes;
- K. Sale of cold drinks, packaged foods, tobacco, and similar convenience goods for service station customers, as accessory and incidental to principal operation;
- L. Provision of road maps and other informational material to customers; provision of rest room facilities.

Uses permissible at a service station do not include major technical and body work, straightening of body parts, painting, welding, storage of automobiles not in operating condition, or other works involving noise, glare, fumes, smoke, or other characteristics to an extent greater than normally found in service stations. A service station is not an automobile repair shop.

Sec. 2.36. Group day care home.

A private home in which not less than seven or more than 12 children are received for care and supervision for a period of less than 24 hours per day, and shall not include more than two children under two years old.

Sec. 2.37. Home occupation.

An occupation conducted in a dwelling unit.

Sec. 2.37A. Keeping of dogs.

The housing or keeping of up to two dogs, over four months of age, as an accessory use to a residential use.

(Ord. No. 03-04, § 1, 8-11-03)

Sec. 2.38. Kennel, commercial.

(Ord. of May 2001; Ord. No. 03-04, § 1, 8-11-03)

Sec. 2.39. Reserved.

(Ord. of May 2001)

Sec. 2.40. Loading space, off-street.

Space logically and conveniently located for bulk pickups and deliveries, scaled to delivery vehicles expected to be used, and accessible to such vehicles when required off-street parking spaces are filled. Required off-street loading space is not to be included as off-street parking space in the computation of required off-street parking space.

Sec. 2.41. Lot.

For purposes of this appendix, a lot is a parcel of land of at least sufficient size to meet minimum zoning requirements for use, coverage, and area, and to provide such yards and other open spaces as herein required. Such lot shall have frontage on an improved public street, or on an approved private street, and may consist of:

- A. A single lot of record;
- B. A portion of a lot of record;
- C. A combination of contiguous lots of record, or contiguous portions of lots of record;
- D. A parcel of land described by metes and bounds.

Sec. 2.42. Lot, corner.

A lot of which at least two adjacent sides abut for their full length upon a street or highway.

Sec. 2.43. Lot, interior.

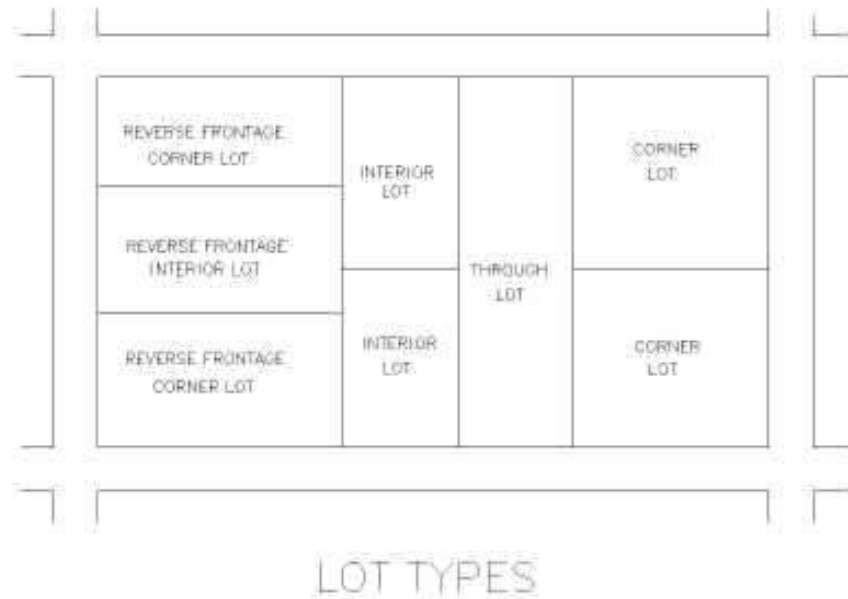
An interior lot is a lot other than a corner lot.

Sec. 2.44. Lot, reverse frontage.

A lot, the rear of which abuts the side of another lot.

Sec. 2.45. Lot, through.

A lot abutting on two parallel or approximately parallel streets.



Sec. 2.46. Lot of record.

A lot which is part of a subdivision recorded in the office of the county register of deeds, or a lot or parcel described by metes and bounds, the description of which has been so recorded.

Sec. 2.47. Mobile home.

A structure, transportable in one or more sections, which is built on a chassis and designed to be used as a dwelling with or without permanent foundation, when connected to the required utilities, and including the plumbing, heating, air-conditioning, and electrical systems contained in the structure.

Sec. 2.48. Mobile home park.

A parcel or tract of land under the control of a person upon which 3 or more mobile homes are located on a continual, non-recreational basis and which is offered to the public for that purpose regardless of whether a charge is made therefor, together with any building, structure, enclosure, street, equipment or facility used or intended for use incident to the occupancy of a mobile home.

Sec. 2.49. Motels.

Groups of furnished rooms or separate structures providing sleeping and parking accommodations for transient tourist trade, commonly known as tourist cabins or motor courts, and as distinguished from a lodging house.

Sec. 2.50. Nonconforming lot.

A lot with dimensions which conflict with the provisions of this appendix.

Sec. 2.51. Nonconforming structure.

A structure conflicting with the regulations of the district in which it is located.

Sec. 2.52. Nonconforming use.

A use of land or a structure for purposes which conflict with the provisions of this appendix.

Sec. 2.53. Parking space, off-street.

For the purposes of this appendix, an off-street parking space shall consist of a space adequate for parking an automobile, with room for opening doors on both sides, together with properly related access to a public street or alley and maneuvering room, and located on a lot with the land use to which it is related.

Sec. 2.54. Planned unit development.

An integrated and coordinated development of various residential land uses, with or without retail stores, service stations, drugstores, personal service offices, and restaurants, but excluding any manufacturing or wholesale activity, and developed in accordance with the conditions as prescribed under provisions of this appendix.

Sec. 2.55. Sanitary landfills.

Any parcel of land used for the dumping of refuse for the purpose of disposing of such refuse, and operated in accordance with the Solid Waste Management Act, Act No. 641 of the Public Acts of Michigan of 1978.

Sec. 2.56. Setback.

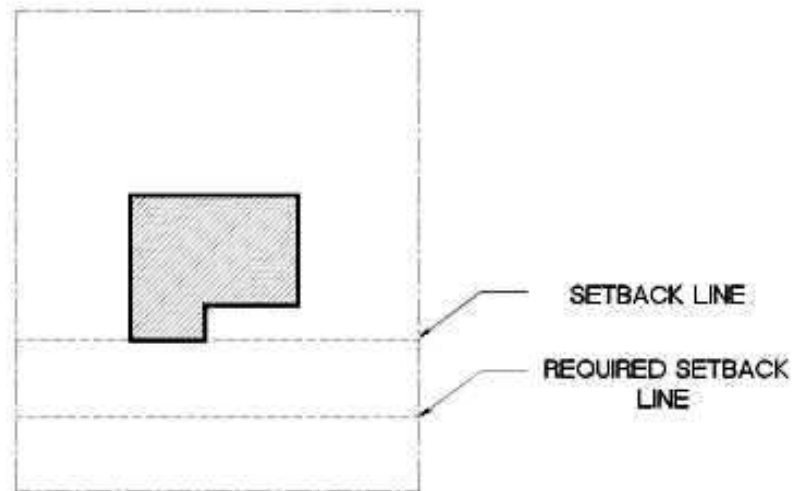
Distance from the right-of-way lines of streets to the building line for the purpose of defining limits within which no building or structure; or any part thereof, shall be erected or permanently maintained.

Sec. 2.57. Setback line.

A line formed by the face of the building.

Sec. 2.58. Setback line, required.

A required setback line is established by the minimum setback requirements of this appendix.

SETBACK LINE VS. REQUIRED SETBACK LINE**Sec. 2.59. Shopping center.**

A group or groups of three or more commercial establishments developed in accordance to an overall plan and designed and built as an interrelated project.

Sec. 2.60. Sign.

Any device designed to inform or attract the attention of persons not on the premises on which the sign is located; excepting, however, the following which shall not be included within this definition:

- A. Signs not exceeding one square foot in area and bearing only property numbers, post box numbers, names of occupants of premises, or other identification of premises not having commercial connotations;
- B. Flags and insignia of any government, except when displayed in connection with commercial promotion;
- C. Legal notices; identification, informational, or directional signs erected or required by governmental bodies;
- D. Integral decorative or architectural features of buildings, except letters, trademarks, moving parts, or moving lights;
- E. Signs directing and guiding traffic and parking on private property, but bearing no advertising matter.

Sec. 2.61. Sign area.

The area of a sign consisting of the entire surface of any regular geometric form, or combinations of regular geometric forms, comprising all of the display area of the sign and including all of the elements of the matter displayed. Frames and structural members not bearing advertising matter shall not be included in computation of such area.

Sec. 2.62. Sign, on-site.

A sign relating in its subject matter to the premises on which it is located, or to products, accommodations, services, or activities on the premises.

Sec. 2.63. Sign, off-site.

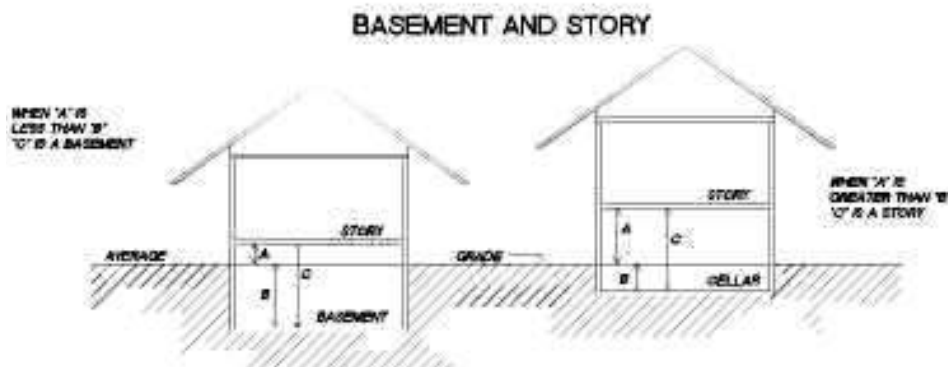
A sign other than an on-site sign.

Sec. 2.64. Standard sheet.

A sheet which measures 8½ inches by 11 inches or consists of multiples of such dimensions such that a larger sheet can be folded into such dimensions.

Sec. 2.65. Story.

That part of a building included between the surface of any floor and the surface of the floor or roof, next above. When the distance from the average established grade to the ceiling of a portion of a structure partly below such grade is greater than the distance from the average established grade to the floor, such portion shall constitute a story. When the distance from the average established grade to the ceiling of a portion of a structure partly below such grade is less than the distance from the average established grade to the floor, such portion shall constitute a basement.

**Sec. 2.66. Street.**

A public thoroughfare which affords a principal means or access to abutting property, and with a right of way of at least 60 feet or a street designated as such on the official street systems map of the city.

Sec. 2.67. Structure.

Anything constructed or erected with a fixed location on the ground, or attached to something having a fixed location on the ground. Among other things, structures include buildings, mobile homes, walls, fences, billboards, and poster panels.

Sec. 2.68. Structure, two family residential.

A dwelling occupied by two families and so designed and arranged as to provide living, cooking and sleeping accommodations for two families only.

Sec. 2.69. Structure, three family residential.

A dwelling occupied by three families and so designed and arranged as to provide living, cooking and sleeping accommodations for three families only.

Sec. 2.70. Structure, four family residential.

A dwelling occupied by four families and so designed and arranged as to provide living, cooking and sleeping accommodations for four families only.

Sec. 2.71. Townhouse.

A residential structure, or group of structures, each of which contains five or more attached one family dwelling units with individual rear yards and/or front yards designed as an integral part of each one family dwelling unit.

Sec. 2.72. Travel trailer.

A vehicular, portable structure built on a chassis, designed to be used as temporary dwelling for travel and recreational purposes, having a body width not exceeding eight feet and a length not to exceed 35 feet.

Sec. 2.73. Travel trailer park.

A park licensed under the provisions of the Trailer Coach Park Act of 1959, being Act No. 243 of the Public Acts of Michigan of 1959, as amended, and being designed specifically to permit the parking of travel trailers.

Sec. 2.74. Variance.

An authorization permitting change in the requirements of this appendix by the zoning board of appeals in cases where the general requirements of this appendix and the literal enforcement of such would result in an unnecessary and undue hardship upon the variance applicant.

Sec. 2.74A. Wireless telecommunication definitions.

The following are definitions of terms dealing with wireless telecommunication towers and antennas.

- A. "Alternative tower structure" means manmade trees, clock towers, bell steeples, light poles and similar alternative-design mounting structures that camouflage or conceal the presence of antennas or towers.
- B. "Antenna" means any exterior transmitting or receiving device mounted on a tower, building or structure and used in communications that radiate or capture electromagnetic waves, digital signals, analog signals, radio frequencies (excluding radar signals), wireless telecommunications signals or other communication signals.
- C. "Backhaul network" means the lines that connect a provider's towers/cell sites to one or more cellular telephone switching offices, and/or long distance providers, or the public switched telephone network.
- D. "FAA" means the Federal Aviation Administration.
- E. "FCC" means the Federal Communications Commission.
- F. "Height" means, when referring to a tower or other structure, the distance measured from the finished grade of the parcel to the highest point on the tower or other structure, including the base pad and any antenna.
- G. "Preexisting towers and preexisting antennas" means any tower or antenna for which a building permit or special use permit has been properly issued prior to the effective date of the ordinance from which this appendix is derived, including permitted towers or antennas that have not yet been constructed so long as such approval is current and not expired.
- H. "Tower" means any structure that is designed and constructed primarily for the purpose of supporting one or more antennas for telephone, radio and similar communication purposes, including self-supporting lattice towers, guyed towers, or monopole towers. The term includes radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers, alternative tower structures, and the like. The term includes the structure and any support thereto.

(Ord. No. 04-03, § 4, 6-14-04)

Sec. 2.75. Yard.

A required open space, other than a court, unoccupied and unobstructed by any structure or portion of a structure from 30 inches above the general ground level of the graded lot upward; provided, however, that fences, walls, poles, posts, and other customary yard accessories, ornaments, and furniture may be permitted in any yard, subject to height limitations and requirements limiting obstruction of visibility.

Sec. 2.76. Yard, front.

A yard extending between side lot lines across the front of a lot and adjoining a public street. On a corner lot or a through lot, both yards adjacent to a street are front yards.

**Sec. 2.77. Yard, side.**

A yard extending from the rear line of the required front yard and being between the principal structure and the side lot lines, to the rear lot line or, in the absence of any clearly defined rear lot line, to the point on the lot farthest from the intersection of the lot line involved with the public street. On a corner lot or a through lot, any yard that is not a front yard is a side yard.

Sec. 2.78. Yard, rear.

A yard extending across the rear of the lot between inner side yard lines. In the case of through lots and corner lots, there will be no rear yards, but only front and side yards.

Sec. 2.79. Zoning administrator.

That person or persons duly charged by the appropriate appointing authority with the responsibility for executing and administering this appendix.

ARTICLE 3. GENERAL PROVISIONS**Sec. 3.01. Scope.**

Except as elsewhere provided in this appendix, no structure, or part thereof, shall hereafter be erected, constructed, reconstructed or altered in any manner; and no structure, land,

premises, or part thereof, shall be used for a purpose, no open space surrounding any structure shall be reduced or encroached upon, and no lots or yards shall be reduced in size, other than as permitted by the provisions of this appendix, for the district in which such structure, land or premises is located.

Sec. 3.02. Building regulations.

A. No structure shall be erected, altered, or moved into this city except in conformity with all of the regulations pertaining to such structure and pertaining to the district within which such structure is located, or to be located.

B. Nor shall any such structure be erected, altered, or moved into this city without having been issued previously a zoning permit authorizing such erection, alteration or movement.

Sec. 3.03. Construction or contracts under permits issued prior to this appendix.

Any structure for which a zoning permit has been issued and construction of the whole, or part of which has been started, or for which a contract or contract have been entered into pursuant to a zoning permit issued prior to the effective date of the ordinance from which this appendix is derived, may be completed and used in accordance with the plans and applications on which said zoning permit was granted, provided the construction permitted by such permit shall have been prosecuted and completed within one year from the date of issue of such zoning permit, or signing of such contract. The zoning board of appeals may extend this authorization for up to one additional year, if enforcement of the new ordinance provisions at the end of the year would result in undo hardship.

Sec. 3.04. Single-family dwelling regulations.

A one-family dwelling and any additions or alterations, thereto, erected or placed in the city, other than mobile home park, shall conform to the following regulations in addition to all other regulations of this appendix:

- A. It shall comply with all pertinent building, construction and fire codes for single-family dwellings.
- B. The plan outline of the dwelling, including only heated living area, shall be large enough to contain within it a square of 20 feet on a side. This size requirement shall not make any houses existing at the date of amendment nonconforming so that they cannot be enlarged or improved.
- C. It shall be firmly attached to a permanent foundation constructed on the site in accordance with the city building code and shall have a wall of the same permitted dimensions of the dwelling and constructed of such materials and type as required in the applicable building code for single-family dwellings. In the event that the dwelling is a mobile home, as defined herein, such dwelling shall be installed pursuant to the manufacturer's setup instructions and shall be secured to the premises by an anchoring system or device complying with the rules and regulations of the Michigan Mobile Home Commission and shall have a perimeter wall as required above.

- D. In the event that a dwelling is a mobile home as defined herein, each mobile home shall be installed with the wheels removed. Additionally, no dwelling shall have any exposed towing mechanism, undercarriage, or chassis.
- E. It shall be connected to a public sewer and water supply, if available or if connection is required by the city sewer or water ordinances, otherwise they may be connected to private facilities approved by the Genesee County Health Department.
- F. It shall comply with all pertinent zoning, subdivision, and other ordinances regulating use, floor area, lot size, setback, yards, etc., in the zoning district in which it is located.
- G. It shall comply with all pertinent building and fire codes. In the case of a mobile home, all construction and all plumbing, electrical apparatus and insulation within and connected to said mobile home shall be of a type and quality conforming to the "Mobile Home Construction and Safety Standards" as promulgated by the United States Department of Housing and Urban Development. Additionally, all dwellings shall meet or exceed all applicable roof snow load and strength requirements.
- H. It shall be aesthetically compatible in design and appearance to homes in the neighborhood in which it is located. In the first instance, it shall be the responsibility of the zoning administrator to determine whether this standard is met. The City of Mt. Morris zoning administrator may at his/her discretion, refer the matter to the board of appeals for the determination. Any party aggrieved by an adverse decision by the city zoning administrator may appeal to the board of appeals, which board shall make the determination, with findings, based upon its independent judgment, without reference to the standards for the granting of variances. The determination of compatibility shall be based upon the character, design and appearance of residential dwellings located outside of mobile home parks within 300 feet of the subject dwelling where such area is developed with dwellings to the extent of not less than 20 percent of the lots situated within said area; or where said area is not so developed, by the character, design, and appearance of the residential dwellings generally found throughout the city. The determination of compatibility shall also be based upon compliance with the following standards:
 - 1. The dwelling shall have a combination of roof overhang and pitch comparable to the overhang and pitch of homes typically found in the neighborhood in which it is to be located.
 - 2. The dwelling shall have a chimney that is constructed of a material and style similar to those of other dwellings typically found in the neighborhood in which it is to be located.
 - 3. The dwelling shall have steps and/or porches which provide access to exterior doors, which are permanently attached to the ground and to the structure, and which are comparable to steps and/or porches of homes typically found in the neighborhood in which it is located.

4. The dwelling and roof shall be covered with a material which is in composition, color, texture, malleability, direction of joints, and method of fastening to the structure comparable to those typically found in the neighborhood in which it is to be located.
5. The dwelling shall have windows located on the front sides, and exterior doors either on the front and rear or front and side as generally found in homes in the neighborhood in which it is to be located.
6. The dwelling shall not have a detached garage, if attached garages are typically found in homes in the neighborhood in which it is to be located.
7. The orientation of the dwelling's front entrance shall be similar to the orientation of homes in the neighborhood in which it is located.
8. A dwelling may be approved as aesthetically compatible in design and appearance to homes in the neighborhood in which it is to be located, even if all of the above conditions do not exist, provided it is determined that the dwelling and/or its site has other design features which make it aesthetically compatible to homes in the district. The foregoing shall not be construed to prohibit innovative design concepts involving such matters as energy conscious devices such as solar energy, view, unique land contour or relief from the common or standard designed home.

Sec. 3.05. On-site sewage disposal systems.

Before any zoning permit shall be issued under the terms of this appendix for a development which generates additional sewer usage the applicant shall document either connection with the city sewer service if connection is required by the city sewer ordinance or Genesee County Health Department approval for continued use of a private septic system.

Sec. 3.06. Water supply.

Before any zoning permit shall be issued under the terms of this appendix for a development which generates additional water demand, the applicant shall document either connection with the city water supply system if connection is required by the city water ordinance or Genesee County Health Department approval for continued use of a private well.

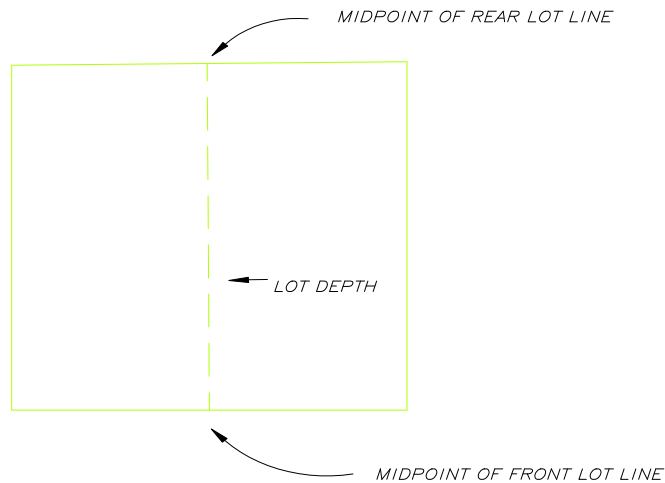
Sec. 3.07. Yard and lot area requirements.

A. *Lot measurements.* No area shall be counted as accessory to more than one principal structure or use, and no area necessary for compliance with the open space requirements for one principal structure or use shall be included or counted in the calculation of the open space accessory to any other principal structure or use shall be included or counted in the calculation of the open space accessory to any other principal structure or use. In the determination of a land area where a structure is to be erected, altered, or used, no road right-of-way shall be included in the computation of the required minimum land area.

1. Depth of a lot shall be considered to be the distance between the midpoints of straight lines connecting the foremost points to the side lot lines in front and the rearmost points of the side lot lines in front and the rearmost points of the side lot lines in the rear.

2. Width of a lot shall be the distance along a straight line connecting side lot lines and measured across the lot between side lot lines at their foremost points (where they intersect with the front lot line). Lots shall not be less than 80 percent of the required lot width at the front lot line, provided they meet the minimum lot width requirements at the front setback line.

LOT DEPTH



3. The front of a lot shall be the portion nearest the street and, for the purposes of determining yard requirements on corner lots and through lots, all frontage, and setbacks shall be provided as required in this appendix.

B. Dimension criteria.

1. *Height limitations.* The limitations affecting the height of structures may be modified in the case of appurtenant appendages and structures such as chimneys, smokestacks, church spires, flagpoles, radio or TV towers, masts and aerials, penthouse for mechanical equipment, and water tanks in any district by issuance of a conditional use permit provided.
2. *Yards.* All front, side and rear yard setbacks shall be the minimum perpendicular distance measured from the rear, side and front lot lines.
 - a. In order to provide clear vision for driveways, structures or vegetation including fences and hedges over two feet in height are prohibited within 20 feet of any street lot line, provided that shade trees with branches not less than eight feet high are permitted.
 - b. On corner lots, the front lot line shall be the shorter of the two street lines. The setback from the side street line on a reverse frontage lot shall be equal to the side yard setback. On all other corner lots the setback from the side street line shall be equal to half of the front yard setback.

- c. In any district where a lot runs through a block from street to street and where a front yard is required, such front yard shall be provided along each street lot line.
- d. In the case of through lots, side yards shall extend from the setback lines of required front yards.
- e. Width of a required side yard shall be measured in such a manner that the yard established is a strip of at least the minimum width required by district regulations.
- f. Depth of a required rear yard shall be measured in such a manner that the yard established is a strip of at least the minimum width required by district regulations.

C. Projections into required yards.

- 1. Uncovered terraces, patios, and porches will be permitted in required front and rear yards providing that any paved area which is without a roof or without walls or other form of solid enclosure, shall be subject to the following restrictions:
 - a. The highest finished elevation of the paved area shall not be over three feet above the average surrounding finished grade.
 - b. No portion of the paved area shall be closer than four feet from any lot line.
- 2. Fire escapes, outside stairways, and balconies of open construction may project into a required yard, up to a maximum of five feet.
- 3. Architectural features such as roof overhangs and bay windows, not including vertical projections, may extend or project into a required side yard not more than two inches for each one foot of width of such side yard; and may extend or project into required front yard or rear yard not more than three feet.
- 4. Enclosed porches and sun rooms may extend up to ten feet into a required rear yard.

Sec. 3.08. Exception to yard and lot area requirements.

Lot area and yard requirements normally required within this appendix may be changed upon the granting of an administrative waiver by the planning commission, in accordance with the provision of section 4.03, or upon the approval of a variance by the board of zoning appeals, in accordance with the provision of Article 13.

Sec. 3.09. Accessory buildings.

A. Nonresidential districts.

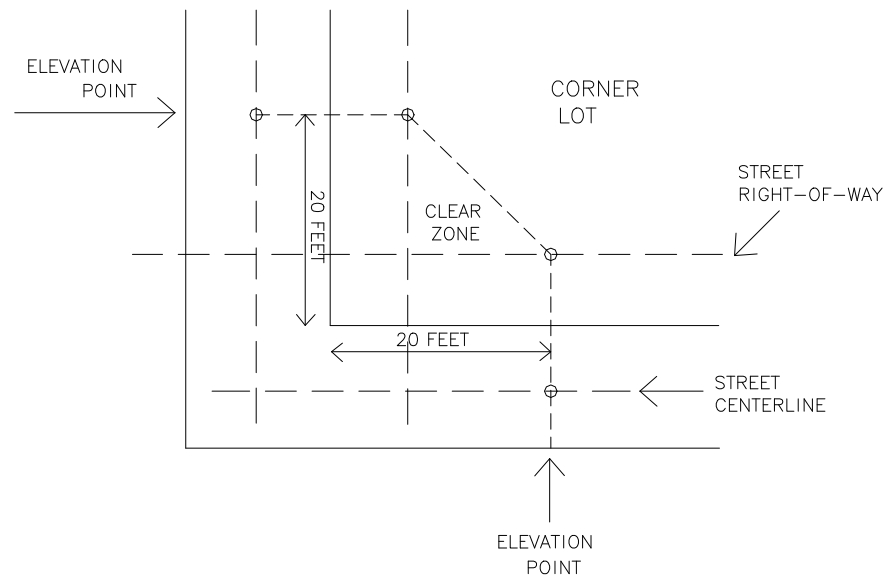
- 1. Any part of a detached accessory building shall be at least 55 feet from any front lot line when the adjoining lot is located in a residential district.

2. Accessory buildings may be erected as a part of or connected to the principal building but in either case shall be considered a part of the principal building, provided all yard requirements for a principal building are complied with.

B. Residential district.

1. No accessory building shall be erected in other than a side or rear yard.
2. The garage or similar accessory building may be built up to within five feet of the side and/or rear lot line; provided that such structure adjacent to such side or rear lot line is constructed to achieve the proper fire rating in compliance with the local building code.
3. When the rear line of a corner lot abuts the side line of an adjoining lot in a residential district, no accessory building shall be within five feet of such abutting lot line nor closer to the side street lot line than the setback of the principal building on the same adjoining lot.

CLEAR VISION TRIANGLE



4. When the rear line of a corner lot abuts the rear line of any other lot or is directly across an alley therefrom, no accessory building shall be closer to the side street lot line than the setback of the principal building on the same lot.
5. Accessory buildings may be erected as a part of the principal building or may be connected thereto by a breezeway or similar structure, and in either case shall be considered a part of the principal building, provided all yard requirements of the ordinance for a principal building are complied with.

Sec. 3.10. Sight distance.

No obstruction to vision shall be permitted at the intersection of any street or road with another street or road or street or road junction between the heights of two feet and eight feet above centerline elevation of said streets or roads within the triangular area formed by the intersection of the street right-of-way lines and a line connecting two points which are located on those intersection right-of-way lines 25 feet from the point of intersection of the right-of-way lines.

Sec. 3.11. Lot grades.

A. All structures shall be constructed or located with a ground elevation such as to provide a sloping grade to cause the surface drainage to flow away from the walls of such structures.

B. Grades on any lot upon which new construction or earth movement is to be carried out shall be related to existing grades and drainage systems such as to provide adequate drainage and not jeopardize such existing drainage systems, and shall be approved by the zoning administrator and such other authorities having jurisdiction over such system.

Sec. 3.12. Curb cuts and driveways.

Curb cuts and driveways may be located only upon approval by the zoning administrator and such other county and state authorities as required by law; provided, however, such approval shall not be given where such curb cuts and driveways shall cause unreasonable increase in traffic hazards.

Sec. 3.13. Essential services.

Nothing in this appendix shall prohibit the provision of essential services, provided that the installation of such service does not violate any other applicable provisions of this appendix or state law. All essential service facilities not otherwise subject to site plan and condition use permit review procedures as provided within this appendix, shall be subject to the review and approval of the planning commission prior to the issuance of a building permit. This provision shall not apply to facilities designed to provide service to an individual single-family unit from a distribution or collection line. Review under the provisions of the SDCA of 1967 shall suffice as review for new subdivisions.

Sec. 3.14. Temporary living quarters.

Nothing in this appendix shall prohibit the use of a mobile home upon a lot while construction is diligently pursued upon a residence meeting all requirements of this appendix; provided, however, all health requirements affecting the provisions of water and sanitary sewer services are complied with and approved by the zoning administrator and provided further, that all such construction shall have been completed within one year from the issuance of the building permit; and further provided that nothing in this section or this appendix shall permit the occupancy of a cellar without a complete occupancy permit, except as otherwise specifically provided.

Sec. 3.15. Storage in front yard.

Nothing in this appendix shall permit the storage or parking of any vehicle or non-permanent structure within the required front yard or any lot within a residential district except that the parking of a licensed operable passenger vehicle on a driveway located on private property shall not be prohibited.

Sec. 3.16. Private roads.

A. A private road is a road that provides direct access to a parcel and which is not dedicated to and accepted by an authorized governmental road agency. A common driveway as used in this appendix does not constitute a private road.

B. Application, review, and approval of a proposed, private road shall follow the same procedures, as conditional use permits with regards to notice and timing.

C. Application for approval of a private road shall include a site plan sealed by a professional engineer showing:

1. Existing and proposed lot lines.
2. The location of existing and proposed structures.
3. The width and location of the private road easement.
4. A cross section of the proposed road, showing the types of material the road base and surface will consist.
5. Utility plans including the location and size/capacity of storm water drainage systems, sewer or septic systems, water lines or private wells, and private utilities such as telephone, electrical or cable service.
6. Proposed locations of driveways off the private road.
7. Any existing or proposed structures, trees or other obstructions within the proposed right-of-way.
8. All division of land shall be in compliance with the Subdivision Control Act.

D. The proposed private road shall meet the following standards:

1. The minimum right-of-way width shall be 66 feet, provided that an applicant can request a reduction in right-of-way width in order to protect natural features provided that in no case may the right-of-way be less than 50 feet or as a result of space saving features such as curb and gutter.
2. The minimum grade for roadways shall be 0.5 percent. The maximum grade shall be six percent. The maximum grade within 100 feet of an intersection shall be three percent.
3. No fence, wall, sign, screen or any planting shall be erected or maintained in such a way as to obstruct vision between a height of three and ten feet within the triangular

area formed by the intersection of a road right-of-way line and a private road right-of-way line and a line connecting two points which are located on those intersecting right-of-way lines, 30 feet from the point of intersection.

4. The maximum number of residences permitted on a cul-de-sac is 20, but in no instances may a cul-de-sac be over 1,000 feet in length.
5. Any driveways off of a private road shall be at least 40 feet from the intersection of the private road right-of-way and a public road right-of-way.
6. Intersections of private roads with public roads shall be at an angle as close to 90 degrees as possible, but in no case shall it be less than 80 degrees or more than 100 degrees.
7. The width of the roadway shall be a minimum of 18 feet with three feet shoulders provided for bicycle and pedestrian traffic for roads servicing lots over 100 feet in width. Roads serving lots 100 feet wide or less shall provide a 24-foot-wide roadway with three-foot-wide shoulders.
8. The minimum radius for circular cul-de-sacs roadway is 40 feet. An interior island is permitted in the center of the cul-de-sac, provided that the roadway within the cul-de-sac is no less than 25 feet wide.
9. Private roads shall meet the recording and maintenance requirements outlined for common drives in section 20-304(b).
10. Private roads shall be paved with bituminous asphalt or concrete if any of the following occur:
 - a. The road serves more than ten residential dwelling units.
 - b. The lots are an average of 100 feet or less in width.
 - c. The road provides access to multiple family developments.
11. Sight distances on horizontal and vertical curves shall be a minimum of 200 feet measured at a point ten feet from the edge of the traveled road-way at a height of 42 inches to an object height of 42 inches.
12. Parcels fronting on private roads shall meet the required front yard setback and lot width for their district.
13. The private road shall be constructed with a minimum ten inches of 22-A aggregate.

E. Any road that provides connection to any other two public roads or provides access to industrial or commercial property shall be constructed to standards established by the city council from time to time, and inspected and approved by the city of Mt. Morris DPW.

Sec. 3.17. Structure completion.

All structures shall be completed on the outside in conformance with the building code and with finish materials; such as wood, brick, or brick veneer, shingle, concrete or similar performance tested within one year after construction is started unless an extension for not

more than one additional year is granted by the zoning administrator as provided elsewhere in this appendix. When a part of the building is ready for occupancy, a temporary occupancy permit may be issued, provided that the premises comply with health and fire standards, required under this appendix or any other ordinance, regulations, or statutes.

Sec. 3.18. Personal construction authority.

Nothing in this appendix shall be construed as prohibiting an owner, tenant, occupant, or land contract vendee from doing his or her own building, erecting, altering, plumbing, electrical installation, etc., provided the minimum requirements of city ordinance, the state electrical and plumbing codes of the State of Michigan, and the applicable Genesee County Health Department regulations are complied with.

Sec. 3.19. Temporary uses.

Nothing in this appendix shall prevent the use of a travel trailer, a mobile home, or other similar structure, in any district as a temporary construction field office for a period not to exceed one month; provided, however, such structure is not used for overnight sleeping accommodations and adequate arrangements for sanitary facilities are made; and provided further, that the temporary field office has been certified as such and conforming to this appendix by the building inspector.

Sec. 3.20. Commercial vehicles in residential districts.

In all residential zoning districts, the parking or storage of any commercial vehicle with a rated capacity exceeding one ton is prohibited; provided, however, that one such vehicle may be parked or stored within a building. The provisions of this section shall not prohibit the parking or storage of commercial vehicles in agricultural districts.

Recreational vehicles, except those licensed as commercial vehicles, may be parked or kept on any lot or parcel in any residential zoning district, subject to the following requirements:

- A. Recreational equipment parked or stored shall not have fixed connections to electricity, water, gas, or a sanitary sewer, and at no time shall such equipment be used for living, sleeping, or housekeeping purposes.
- B. Any recreational vehicle not parked or stored in a garage shall be parked or stored in the rear yard, side yard, or unrequired front yard provided that a minimum of three feet of side or rear yard shall be maintained between the vehicle and the side or rear lot line, and except that such vehicles may occupy a front yard for loading and unloading purposes, so long as such location does not obstruct the view of driveways or vehicular and pedestrian traffic of adjoining properties.
- C. The storage of recreational vehicles on a residential lot or parcel shall be limited to only those vehicles owned by, and licensed or registered to, the occupant of the residential lot or parcel on which the vehicle is stored.

ARTICLE 4. NONCONFORMING USES, STRUCTURES AND LOTS**Sec. 4.01. Nonconforming uses.**

Any use of land or structure which use was lawful at the time of the effective date of the ordinance from which this appendix is derived may be continued; provided, however, such use shall have continued in operation, does not constitute a nuisance, and shall not be enlarged, altered, or changed in area, activity, or content during its continuance, except as provided otherwise by proper authority, as defined herein.

A. Class A and Class B nonconforming uses.

1. *[Types established.]* There are hereby established two types of nonconforming uses: Class A and Class B.
 - a. Class A nonconforming uses are those which have been so designated by the planning commission, after application for such designation by the owner of the property. Where Class A nonconforming uses are identified, it is the intent of this appendix to provide for their continuance so long as they fulfill the requirements in this section.
 - b. Class B nonconforming uses are all nonconforming uses not designated as Class A. All nonconforming uses in existence as of the effective date of the ordinance from which this appendix is derived or which become nonconforming as a result of subsequent amendments to the ordinance shall be Class B nonconforming uses until such time as they are designated Class A nonconforming uses. It is the intent of this appendix not to encourage the survival of Class B nonconforming uses. Class B nonconforming uses may not be expanded upon, and structures housing nonconforming uses may not be enlarged.
2. *Procedures for obtaining Class A designation.* Any application for a Class A designation of a nonconforming use under this section shall be submitted and processed under the following procedures:
 - a. A written application shall be filed with the planning commission by the property owner, identifying the property the Class A designation is being requested for and how the request conforms to the standards for approval of a Class A designation outlined in this chapter.
 - b. The planning commission may require additional information it considers necessary to reach a decision.
 - c. A public hearing shall be held to review the request. The notice requirements for this hearing shall be the same as required for review of a conditional use permit as outlined in section 8.02.

3. *Standards for approval of Class A designation.* Before an application of Class A designation for a nonconforming use can be approved, the planning commission shall review the application to ensure that the following standards are met:
 - a. The continuance of the use would not be contrary to the public health, safety or welfare, or the spirit of this appendix.
 - b. That the use or structure does not, and is not likely to, significantly decrease the value of nearby properties.
 - c. That the use was lawful at the time of its inception and that no useful purpose would be served by strict application of the provisions or requirements of this appendix with which the use or structure does not conform.
4. *Approval of Class A designation.* The planning commission shall approve Class A designation for nonconforming uses that comply with the standards and procedures of this section. The decision of the planning commission shall be in writing and shall set forth the findings and reasoning on which it is based. The planning commission shall attach conditions, where necessary, to assure that the use or structure does not become contrary to the public health, safety or welfare, or the spirit and purpose of this appendix. In addition, no vested interest shall arise out of a Class A designation, which may be revoked based on requirements in subsection 5. of this section.
5. *Revocation of Class A designation.* Any Class A designation shall be revoked following the same procedure required for designation upon a finding that as a result of any violation of the conditions established by the planning commission, or due to changes in the use that cause it to no longer meet the requirements for approval of Class A designation.
6. *Regulations pertaining to Class A nonconforming uses.*
 - a. This appendix shall not prohibit the repair, improvement or modernization of a structure housing a Class A nonconforming use
 - b. Any Class A nonconforming use damaged by fire, explosion, flood, Act of God or a public enemy or other means may be restored, rebuilt, or repaired.
 - c. Any Class A nonconforming use may be re-established in its present location if the use is abandoned as defined in section 4.01.B of this chapter, provided the operator continues to comply with any conditions placed on the Class A designation.
 - d. Structural changes, including enlargement or extension of a Class A nonconforming use may be permitted by the planning commission, either as a condition of Class A designation, or by subsequent application to the commission by the owner of the Class A nonconforming use. The planning commission must document that the enlargement or extension will not be incompatible with surrounding land uses or inconsistent with the public health, safety or welfare or the spirit of the ordinance, or violate the setback requirements of the district in which it is located.

- e. A Class A nonconforming use may be substituted for another nonconforming use when the planning commission determines that the change would not increase the nonconformity of the structure or use.
7. *Regulations pertaining to Class B nonconforming uses.*
- a. This appendix shall not prohibit the repair of a structure housing a Class B nonconforming use necessary to keep it structurally safe and sound. Any other improvements including remodeling or modernization shall not be approved when such improvement is greater than 25 percent of the value of the structure as determined by calculating twice the building's assessed value.
 - b. Any Class B nonconforming use damaged by fire, explosion, flood, Act of God or a public enemy or by other means must be rebuilt so as to comply with this appendix if the cost of repairs or reconstruction is greater than 65 percent of the value of the structure as determined by calculating twice the building's assessed value.
 - c. Any Class B nonconforming use abandoned as defined in section 4.01.B of this chapter may not be reestablished.
 - d. Structural changes to a structure housing a Class B nonconforming use shall not be permitted except through a variance granted by the zoning board of appeals.
 - e. A Class B nonconforming use may not be substituted for another nonconforming use. If a nonconforming use is changed to a conforming use, the nonconforming use may not be reestablished.
- B. *Abandonment of nonconforming uses.* Any nonconforming use which has been discontinued for a period of 12 consecutive months shall be considered conclusive evidence of an intention to abandon, and the use shall not be reestablished unless authorized as a Class A nonconforming use.
- C. *Acquisition of nonconforming uses.* The city may acquire by purchase, condemnation or otherwise, private property or an interest in private property for the removal of nonconforming uses and structures, except that the property shall not be used for public housing. The legislative body may provide that the cost and expense of acquiring private property be paid from general funds, or the cost and expense of a portion thereof be assessed to a special district. The elimination of nonconforming uses and structures in a zoned district as provided in this appendix is declared to be for a public purpose and for a public use. The legislative body may institute and prosecute proceedings for the condemnation of nonconforming uses and structures under the power of eminent domain in accordance with the provisions of the City Charter relative to condemnation or in accordance with Act No. 149 of the Public Acts of Michigan of 1911, as amended, being MCL §§ 213.21 to 213.41, or any other applicable statute.

D. *Nonconforming wireless telecommunication towers.*

1. Wireless telecommunication towers that are constructed, and antennas that are installed, in accordance with the provisions of section 9.19 of this appendix shall not be deemed to constitute the expansion of a nonconforming use or structure.
2. Preexisting towers shall be allowed to continue their usage as they presently exist. Routine maintenance (including replacement with a new tower of like construction and height) shall be permitted on such preexisting towers. New construction other than routine maintenance on a preexisting tower shall comply with the requirements of this appendix.
3. Notwithstanding section 4.01, bona fide nonconforming towers or antennas that are damaged or destroyed may be rebuilt without having to first obtain administrative approval or a conditional use permit and without having to meet the separation requirements specified in sections 9.19.C.2.d. and C.D.2.e. The type, height, and location of the tower onsite shall be of the same type and intensity as the original facility approval. Building permits to rebuild the facility shall comply with the then applicable building codes and shall be obtained within 180 days from the date the facility is damaged or destroyed. If no permit is obtained or if said permit expires, the tower or antenna shall be deemed abandoned as specified in sections 9.19.E. and F.

(Ord. No. 04-03, § 2, 6-14-04)

Sec. 4.02. Nonconforming structures.

Legal nonconforming structures housing conforming uses cannot be expanded or extended unless such expansion or extension brings the structure into conformance with the provisions of this appendix. Legal nonconforming structures may be expanded or extended only by the granting of a dimensional variance by the zoning board of appeals.

- A. Nothing in this appendix shall be deemed to prevent the strengthening or restoring to a safe condition of any structure, or part thereof, declared to be unsafe by the building official.
 1. *Destruction of nonconforming structures.* A nonconforming structure or a structure housing a nonconforming use which has been damaged by fire, acts of God, or any act of a public enemy, in an amount more than 65 percent of the value of the structure as determined by calculating twice the building's assessed value must be rebuilt so as to comply with this appendix. For any structure damaged in an amount up to and including 65 percent of the value of the structure as determined by calculating twice the building's assessed value, the structure can be rebuilt to its original state of nonconformity, provided the restoration or repairing shall have commenced within one year after the date of occurrence.
 2. *Maintenance of nonconforming structures.* Nothing in this appendix shall prevent the renovation, repair, or maintenance of a nonconforming structure made

necessary by ordinary wear and tear, provided the cost per year of such repair or maintenance does not exceed 25 percent of the value of the structure as determined by calculating twice the building's assessed value.

Sec. 4.03. Nonconforming lots of record.

A. A single-family dwelling may be constructed on any existing lot of record which has an area, lot width or lot depth which is less than the width or area required by this appendix, provided that all other requirements of this appendix are complied with.

1. An existing lot of record in the R-2 or R-3 districts that does not meet the lot width or lot depth requirements and does not meet a minimum setback requirement may request an administrative waiver from the planning commission. The setback requirement may be reduced by a proportion equal to the proportion that the actual lot width is less than the required lot width in the case of a side yard setback or lot depth in the case of front or rear yard setbacks. For example, a lot that is 45 feet wide is ten percent narrower than the required 50 foot lot width. The setbacks could therefore be reduced by ten percent. In no case shall setbacks be reduced to distances less than the following: five feet for side yards, 25 feet for rear yards and 20 feet for front yards.
2. An existing lot of record in the R-2 or R-3 districts that does not meet the lot area requirements may exceed the maximum lot coverage requirements for their district provided an administrative waiver is granted by the planning commission. The maximum lot coverage requirement may be increased by the same proportion that the actual lot area is less than the required lot area. For example, a lot that is 4,500 square feet in area is ten percent smaller than the required 5,000 square foot minimum lot area. The maximum lot coverage could therefore be increased by ten percent. In no case shall the lot coverage exceed 40 percent.
3. The planning commission shall grant an administrative waiver if the following requirements have been met:
 - a. The applicant has submitted the required fee, a complete application form and a complete plot plan.
 - b. The application for an administrative waiver meets the standards of section 4.03.1.a or 4.03.1.b.

B. Any change in use or modification of any structures on a legal nonconforming lot may only be approved through the granting of a dimensional variance by the zoning board of appeals, and subject to such conditions as the board may find necessary to provide for the public health, safety, morals, and general welfare, unless granted an administrative waiver by the planning commission under the provisions of section 4.03.1.c of this appendix.

1. No zoning permit shall be issued for the construction of any structure upon any lot within any zoning district, which cannot meet the dimensional requirements of such

district and which was created after the effective date of the ordinance from which this appendix is derived, or after the effective date of any amendment which affects such requirements, except as provided herein.

ARTICLE 5. OFF-STREET PARKING

Sec. 5.01. General off-street parking provisions.

A. All future development of land or expansion of existing uses shall meet these parking requirements.

B. Off-street parking spaces for nonresidential uses in residential districts shall be located within a rear yard or within a side yard.

C. Off-street parking for other than residential uses shall be either on the same lot or within 300 feet of the building it is intended to serve (or a distance approved by the planning commission), measured from the nearest point of the building to the nearest point of the off-street parking lot. Parking may not be located across Saginaw or Mt. Morris streets from the business it serves.

D. The storage, maintenance or repair of merchandise, motor vehicles or other equipment on required off-street parking spaces is prohibited.

E. For those uses not specifically mentioned, the requirements for off-street parking facilities shall be in accord with a use which the planning commission considers is similar in type.

F. When units of measurements determining the number of required parking spaces result in the requirement of a fractional space, all fractions over one-half shall be rounded up.

Sec. 5.02. Off-street parking and off-street loading space requirement.

A. Off-street parking spaces shall be provided for each land use activity in accordance with the following minimum schedule:

1. *Residential uses.*

Dwelling unit	2 spaces per unit
Motels	1 space per rooming unit
Hotels	1 space per room
Rooming houses, fraternity houses, dormitories, etc.	1 space per bed or each 300 square feet, whichever will require the larger number of parking spaces
Mobile home parks	2 spaces per site
Travel trailer parks	1 space per site

Elderly housing	1 (parking space) per dwelling unit provided that sufficient land area be reserved in the site plan for conversion to 2 (parking spaces) per dwelling unit.
Multi-family dwellings	1.5 spaces per efficiency apartment 2.0 spaces per 1+ bedroom apartment
2. <i>Institutional and public assembly uses.</i>	
Nursery, elementary and junior high schools	1 space per classroom plus 1 space per 200 sq. ft. of office area
High schools	7 spaces per classroom plus 1 space per 200 sq. ft. of office area
Colleges	10 spaces per classroom, plus 1 space per 200 sq. ft. office area
Stadia and sport areas	1 space per 4 seats
Swimming pools	1 space per 3 seats, or per 40 square feet of pool surface, whichever will require the largest number of parking spaces
Child care center	1 space for each employee and 1 space for each four children of approved capacity
Family day care homes and group day care homes	2 spaces for [each] residence and 1 space for each four children of approved capacity
Assembly halls, churches, mortuaries, theaters	1 space per 3 seats or per 21 square feet of assembly space, whichever will require the largest number of parking spaces
Hospitals	2.25 spaces per bed
Convalescent homes, homes for the aged	1.0 space per 3 beds
3. <i>Commercial uses.</i>	
Business offices, except as otherwise specified herein	1 space per 200 square feet of floor area
Professional offices of architects, attorneys, accountants, engineers, real estate brokers, etc.	1 space per 200 square feet of floor area but not less than 3 spaces
Medical and dental clinics	1 space per 100 square feet of floor area, but not less than 10 spaces
Retail stores, except as otherwise specified herein	1 space per 100 square feet of sales area, with a minimum of 5 spaces

Retail stores of appliances, furniture, motor vehicles, hardware, lumber, and building materials	1 space per 300 square feet of sales area, but not less than 10 spaces
Restaurants and bars	1 space per 30 square feet of dining and drinking area
Beauty or barber shops	1 space per 100 square feet of floor area
Service shops	1 space per 200 square feet of sales area, with a minimum of 3 spaces
Bowling alleys	7 spaces per alley
Pool rooms, bow and arrow, and other recreation facilities	1 space per 50 square feet of activity area
Service stations	1 space per gas pump plus 2 spaces per hoist, but a minimum of 5 spaces
Convenience store	1 space per 200 square feet of sales area, but not less than 5 spaces
Mini storage facility	1 space per 100 square feet of floor area in sales office but not less than 3 spaces
Video rental	1 space per 75 square feet of sales area, but not less than 5 spaces
Restaurants-carry out only	4 spaces plus 1 space per employee of peak shift

4. *Industrial uses.* Parking space requirements for all industrial uses shall equal at least the employee load factor, as proposed in the application for a building permit, or at a rate of at least one space per 50 square feet, whichever appears reasonable and accurate to the city planning commission; provided, however, parking requirements for administrative office shall be in addition to any such industrial use requirement.
5. *Exception.* The parking requirements for all uses proposed on a lot shall be cumulative, unless the commission shall find that the parking requirements of a particular land use occur at different hours from those of other contiguous land uses, such that such particular land use parking requirements can be advantageously used during other non-conflicting hours by the other contiguous land uses, in which event the required parking spaces for such particular land uses may be reduced by the commission to a minimum of the greatest number of spaces required for any of such contiguous land uses.
6. *Reduction.* The planning commission may reduce the total number of parking spaces required for a site during its approval of the development's site plan by up to 40 percent if it determines that compliance with the requirement is not necessary or inappropriate for one of the following reasons:
 - a. Existing on-street parking will meet a portion of the site's needs.
 - b. Joint use of parking with another use not on the same lot will meet a portion of the site's needs, provided a written agreement provides the off-site user permanent access to the parking spaces.

- c. Constraints based on the site's shape, location or other unique characteristics make provision of the required number of parking spaces impractical.
- d. Other proposed site improvements are provided that are expected to reduce parking demand such as improved pedestrian orientation or incorporation of a mass transit stop on the site, or which provide some other public benefit.

Sec. 5.03. Off-street parking regulations within a residential district.

Intent: These off-street parking regulations have been adopted to improve safety, traffic circulation and aesthetics within residential districts in the city of Mt. Morris. They are intended to regulate parking patterns and the location and quality of parking areas in residential areas over the long term. It is not the intent of these regulations to regulate temporary, infrequent and irregular occurrences.

A. All residential buildings or nonresidential buildings in a residential district shall be provided with required parking areas on the same lot with the building or on a lot immediately adjacent to the lot with the building intended to be served, but not more than 100 feet from the building it is servicing.

B. There shall be no parking of a motor vehicle on the front, side, or rear yard of a lot except that a motor vehicle shall be allowed to be parked only on a parking area or driveway. A parking area is defined as that portion of a lot used for the exclusive purpose of parking an automobile. A driveway is defined as the maneuvering lane needed to allow vehicles to move from the street to a garage or to a parking area at the far end of the maneuvering lane. The driveway and parking area shall not be located in front of the residential structure.

Every property shall be allowed to have a driveway no wider than 20 feet or the width of the curb-cut (whichever is less) extending in straight lines perpendicular from each side of the curb-cut at the front of the property extending to the rear lot line of the property or up to a nonresidential structure on the property. Properties shall be allowed to have a larger paved or concrete driveway or parking areas as long as the total area of the paved or concrete driveways and parking areas take up no more than 20 percent of all the yard area on a property. Any existing paved driveway or parking area that exceeds 20 percent of all the yard area at the time of adoption of this appendix may continue in existence and may be replaced but may not be expanded upon. Parking shall be permitted on both the driveway and parking provided the driveway is perpendicular to the street and not located in front of the residence.

As of May 22, 1997 (the effective date of the original adoption of this requirement), all new driveways or parking areas or any extensions of existing driveways or parking areas shall be paved with a bituminous or concrete surface. (Note: if an existing driveway or parking area is extended, then the original driveway and extensions must be paved.)

Existing driveways which are not paved may continue in use, however for the purpose of determining parking on the lawn the driveway shall be the maneuvering lane needed to allow vehicles to move from the street to a parking area on said property. Said parking area and maneuvering lane shall be no wider than 20 feet or the width of the curb-cut (whichever is less)

extending in straight lines perpendicular from each side of the curb-cut at the front of the property extending to the rear lot line of the property or up to a structure on the property. Any vehicle parked outside of this area shall be deemed to be parked on a front, side or rear yard. (Note: If a property has an unpaved driveway and a garage that is not in alignment with the curb-cuts then the driveway should be the area in the most direct path to the garage from the curb-cut.)

C. Circular driveways which are not perpendicular to the street shall be permitted by the zoning administrator, provided it meets the following three standards:

1. The driveway leads to a parking area which is not located in front of the residential structure.

The driveway shall not be used as a parking area.

The residential lot fronts Mt. Morris Street or Saginaw Street.

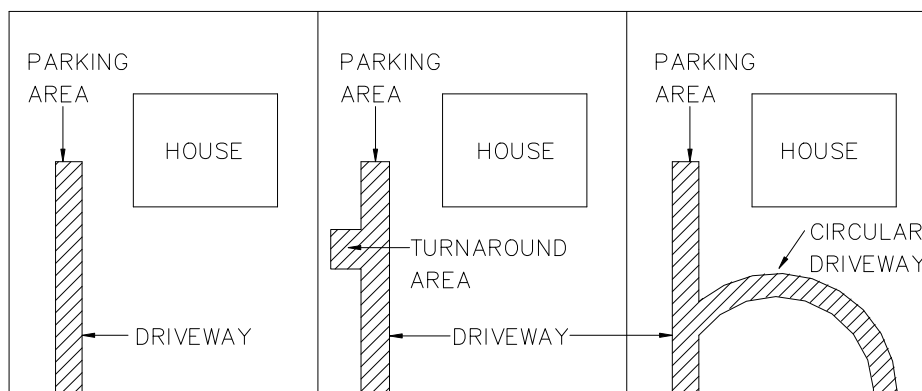
A "turnaround area" is defined as a perpendicular extension to the driveway which allows automobiles to change direction on the property. Turnaround areas allow a driver to safely leave the property without having to back out onto a busy street. Turnaround areas are allowed on residential lots, provided:

The residential lot fronts Mt. Morris Street or Saginaw Street.

The turnaround area shall be constructed of the same paved surface as the driveway.

The turnaround area shall not be located in front of the residential structure.

D. An illustration of parking area, driveway, circular driveway and turnaround area:



All parking areas, except for one- and two-family dwellings, shall be screened on all sides abutting a residential district or a street. Such metal fence, or planting hedge not less than three feet or more than six feet high of a type which will obscure visions at all seasons from adjoining property. In the event that a hedge is used, the above minimum height shall be achieved no more than three years after planting.

E. No parking area shall be used for parking or storing of any commercial vehicle exceeding one ton capacity in a residential district.

Sec. 5.04. Design requirements for off-street parking and loading spaces.

A. Off-street parking lots spaces shall be laid out, constructed and maintained in accordance with the following requirements:

1. No parking lot shall be construed without a zoning permit issued by the zoning administrator. Parking lots that are part of site plan approved by the Planning Commission do not require a separate zoning permit.
2. Adequate ingress and egress to the parking lot shall be provided for vehicles by means of clearly limited and defined drives.
3. Parking spaces shall be set back from abutting residential districts as follows:
 - a. Where the parking lot abuts on side lot lines, the required setback shall be ten feet from the side lot lines.
 - b. Where the parking lot abuts on a contiguous common frontage in the same block, the required setback from the street right-of-way shall be equal to the residential required setback, or average of existing setbacks in the common block frontage, whichever is greater.
 - c. Where the parking lot is across the street and opposite, with residential lots fronting on such streets, the required setback from the street right-of-way shall be equivalent to the opposite residential required setback.
 - d. Where the parking lot abuts the rear lot line, the required setback shall be ten feet from the street lot line.
4. Where the parking lot boundary adjoins property zoned for residential use, a suitable screening wall shall be provided. Suitable ornamental fencing may be substituted for the screening wall with the approval of the planning commission. Said wall or fence shall not extend into the required front open space of abutting residential lots. The height of the wall or fence shall be at least four feet but no higher than six feet.
5. All lighting for parking areas shall be limited to 20 feet in height and shall be directed away from and shielded from adjacent property and rights-of-way, especially residential areas, and shall be arranged to not adversely affect driver visibility on adjacent roads.
6. The parking lot shall be drained to eliminate surface water in such a way as to preclude drainage onto adjacent property or toward buildings.
7. The surface of the parking lot, including drives and aisles, except for the buffer strips, shall be constructed of concrete, bituminous asphalt or similar dustless and durable all-weather surface material.
8. The parking facilities design and layout shall meet the following minimum requirements:

<i>Parking Pattern</i>	<i>Maneuvering Lane Width</i>	<i>Parking Space Width</i>	<i>Parking Space Length</i>	<i>Total Width of One Tier of Spaces Plus Maneuvering Lane</i>	<i>Total Width of Two Tiers of Spaces Plus Maneuvering Lane</i>
0 degrees (parallel parking)	12 ft.	8 ft.	23 ft.	20 ft.	28 ft.
30 to 53 degrees	12 ft.	10 ft.	20 ft.	32 ft.	52 ft.
54 to 74 degrees	15 ft.	10 ft.	20 ft.	36 ft. 6 in.	58 ft.
75 to 90 degrees	20 ft.	10 ft.	20 ft.	40 ft.	60 ft.

9. All parking lots shall meet Michigan Barrier Free parking space requirements.
10. All parking areas (including loading and unloading areas) must provide for sufficient access for fire fighting and access by other emergency vehicles.

B. Off-street loading spaces for specified land uses shall be provided in accordance with the following requirements:

1. Retail uses. All retail sales facilities exceeding 10,000 square feet in floor area shall provide two loading spaces plus one loading space for each additional 30,000 square feet of floor area over 10,000 feet.
2. Industrial uses. All industrial land uses shall provide one loading space for each 10,000 square feet of floor area, with a minimum of not less than two loading spaces.
3. All loading spaces shall be located and designed to avoid creating traffic hazard to public use of all public rights-of-way.

Sec. 5.05. Off-street loading requirements.

An off-street parking and/or loading area for uses other than single-family residences or duplexes and dimensional requirements showing compliance with this appendix shall be submitted to the zoning administrator for approval before the issuance of a building permit for the structure for which the parking facility and/or loading area is required.

- A. Each parking space shall consist of an area not less than ten feet wide by 20 feet deep; provided, however such dimensions shall be increased, when necessary, to permit safe ingress and egress thereto.
- B. Required off-street parking areas for three or more automobiles shall have individual spaces marked, and shall be so designed, maintained, and regulated that no parking or maneuvering incidental to parking shall be on any public street, walk, or alley, and so that any automobile may be parked and maneuvered without moving or damaging another.

- C. For purposes of rough computation, an off-street parking space and necessary access and maneuvering room may be estimated at 300 square feet, but off-street parking requirements will be considered to be met only when actual spaces meeting the requirements above are provided and maintained, or improved in a manner appropriate to the circumstances of the case, and in accordance with all ordinance and regulations of the city.
- D. Any lighting used to illuminate any off-street parking and loading area shall be so arranged so as to direct light away from adjoining property and streets.
- E. Off-street parking and loading areas shall be surfaced with asphalt, bituminous or concrete pavement, and shall be graded and drained to dispose of all surface water into the storm sewer system.
- F. Any construction or rearrangement of existing drives which involve the ingress and/or egress of vehicular traffic to or from a public street shall be so arranged so as to insure the maximum of safety and the least interference with traffic upon said streets and shall be approved by the zoning administrator, in writing.

ARTICLE 6. DISTRICT REGULATIONS

Sec. 6.01. Requirements.

A. All uses must comply with all requirements for the zoning district in which it is located, including but not limited to off-street parking and loading/unloading, site plan review, conditional use review and applicable provisions of Article 3, General Provisions.

B. All uses must meet the requirements listed in section 6.06, schedule of regulations.

C. Signs shall be permitted only in accordance with the provisions of the city of Mt. Morris Sign Ordinance.

Sec. 6.02. Zoning district map.

The land areas and sizes of dwelling assigned to these districts, the designation of same, and the boundaries of said districts are shown on the map hereto attached and made part of this appendix, said map being designated as the zoning district map showing use districts and building districts in the City of Mt. Morris and said map and the proper notations, references and other information shown thereon shall be as much a part of this appendix as if the matters and information set forth by said map were all fully described herein.

Sec. 6.03. District boundaries.

The boundaries of these districts are hereby established as shown on a map entitled Zoning Map, City of Mt. Morris, Genesee County, Michigan, dated May 22, 1997, which accompanies and is hereby made a part of this appendix. Except where specifically designated on said map, the district boundary lines are intended to follow lot lines, the center lines of streets or alleys projected, railroad right-of-way lines, section lines, one-quarter section lines, one-eighth

section lines or the corporate limit line, except as otherwise specifically described; but, where a district boundary line does not coincide with lot lines, said boundary lines shall be dimensioned on the zoning map.

Sec. 6.04. Zoning districts.

For the purpose of this appendix the city is divided into the following zoning districts:

Residential "R-1" district.

Residential "R-2" district.

Residential "R-3" district.

Residential "RB" (multiple family) district.

Residential "RC" (mobile home park) district.

Office "O" (office) district.

Commercial "C-R" (commercial-retail) district.

Commercial "C" (general business) district.

Industrial "I" (industrial) district.

Sec. 6.05. Residential "R-1" district.

1. *Uses permitted.* No structure or part thereof shall be erected, altered, or used and no land may be used except for one or more of the following purposes:

- a. One detached single-family dwelling per lot.
- b. Adult foster care family homes and small group homes subject to the provisions of section 9.01.
- c. Family day care and group day care homes, subject to the provisions of section 9.06.
- d. Accessory structures.

2. *Conditional uses permitted.* Structures and parts thereof may be erected, altered, or used and land may be used for one or more of the following purposes subject to the approval of the city planning commission and subject to the conditional use provisions of Article 8.

- a. Churches, synagogues, temples, public, parochial, private and trade schools and colleges, public libraries, museums and art galleries.
- b. Municipal, county, state and federal administration buildings and community center buildings.
- c. Fire stations and water towers subject to the provisions of section 9.07.
- d. Municipal, denominational and private cemeteries subject to the provisions of section 9.04.

- e. Public parks, golf courses, country clubs, tennis courts, and similar recreational uses, including restaurants when accessory to the principal use, subject to the provisions of section 9.15.
 - f. Cluster subdivision subject to the provisions of section 9.05.
 - g. Hospitals, sanitariums, clinics, nursing and rest homes and charitable institutions for human care, subject to the provisions of section 9.10.
 - h. Planned unit developments subject to the provisions of section 9.14
 - i. Reserved.
 - j. Home occupations subject to the provisions of section 9.09.
 - k. Telecommunication towers and antennas subject to the provisions of section 9.19.
- (Ord. of May 2001; Ord. No. 04-03, § 5, 6-14-04)

Sec. 6.06. Residential "R-2" district.

The following regulations shall apply to all residential "R-2" districts:

1. *Uses permitted.* No structure or part thereof shall be erected, altered, or used and no land may be used except for one or more of the following purposes:
 - a. One detached single-family dwelling per lot.
 - b. Adult foster care family homes and small group homes, subject to the provisions of section 9.01.
 - c. Family day care and group day care homes, subject to the provisions of section 9.06.
 - d. Accessory structures.
2. *Conditional uses permitted.* Structures and parts thereof may be erected, altered, or used and land may be used for one or more of the following purposes subject to the approval of the city planning commission and subject to the conditional use provisions of Article 8.
 - a. Churches, public and parochial schools and colleges, public libraries, museums and art galleries.
 - b. Municipal, county, state and federal administration buildings and community center buildings.
 - c. Fire stations and water towers subject to the provisions of section 9.07.
 - d. Municipal, denominational and private cemeteries subject to the provisions of section 9.04.
 - e. Public parks, golf courses, country clubs, tennis courts, and similar recreational uses, including restaurants when accessory to the principal structure, subject to the provisions of section 9.15.
 - f. Cluster subdivision subject to the provisions of section 9.05.

- g. Hospitals, sanitariums, clinics, nursing and rest homes and charitable institutions for human care, subject to the provisions of section 9.10.
 - h. Home occupations subject to the provisions of section 9.09.
 - i. Planned unit developments subject to the provisions of section 9.14.
 - j. Reserved.
 - k. Telecommunication towers and antennas subject to the provisions of section 9.19.
- (Ord. of May 2001; Ord. No. 04-03, § 6, 6-14-04)

Sec. 6.07. Residential "R-3" district.

The following regulations shall apply to all Residential "R-3" Districts:

1. *Uses permitted.* No structure or part thereof shall be erected, altered, or used and no land may be used except for one or more of the following purposes:
 - a. One detached single-family dwelling per lot.
 - b. Adult foster care family homes and small group homes, subject to the provisions of section 9.01.
 - c. Family day care and group day care homes, subject to the provisions of section 9.06.
 - d. Accessory structures.
2. *Conditional uses permitted.* Structures and parts thereof may be erected, altered, or used and land may be used for one or more of the following purposes subject to the approval of the city planning commission and subject to the conditional use provisions of Article 8.
 - a. Churches, public and parochial schools and colleges, public libraries, museums and art galleries.
 - b. Municipal, county, state and federal administration buildings and community center buildings.
 - c. Fire stations and water towers subject to the provisions of section 9.07.
 - d. Municipal, denominational and private cemeteries subject to the provisions of section 9.04.
 - e. Public parks, golf courses, country clubs, tennis courts, and similar recreational uses, including restaurants when accessory to the principal structure, subject to the provisions of section 9.15.
 - f. Cluster subdivision subject to the provisions of section 9.05.
 - g. Hospitals, sanitariums, clinics, nursing and rest homes and charitable institutions for human care, subject to the provisions of section 9.10.
 - h. Home occupations subject to the provisions of section 9.09.
 - i. Planned unit developments subject to the provisions of section 9.14.

- j. Reserved.
- k. Telecommunication towers and antennas subject to the provisions of section 9.19. (Ord. of May 2001; Ord. No. 04-03, § 7, 6-14-04)

Sec. 6.08. Residential multiple (RB) district.

The following regulations shall apply to all residential "RB" districts:

1. *Uses permitted.* No structure or part thereof shall be erected, altered, or used, and no land may be used except for one or more of the following purposes:
 - a. One detached single-family dwelling per lot.
 - b. Adult foster care family homes and small group homes, subject to the provisions of section 9.01.
 - c. Family day care and group day care homes, subject to the provisions of section 9.06.
 - d. Accessory structures.
 - e. Two-, three- and four-family residential structures.
 - f. Garden apartment and/or townhouse structures, subject to the provisions of section 9.08.
2. *Conditional uses permitted.* Structures and parts thereof may be erected, altered, or used, and land may be used for one or more of the following purposes subject to the approval of the city planning commission and subject to the conditional use provisions of Article 8.
 - a. Churches, synagogues, temples, public, parochial, private and trade schools and colleges, public libraries, museums and art galleries.
 - b. Municipal, county, state and federal administration buildings and community center buildings.
 - c. Fire stations and water towers, subject to the provisions of section 9.07.
 - d. Municipal, denominational and private cemeteries subject to the provisions of section 9.04.
 - e. Public parks, golf courses, country clubs, tennis courts, and similar recreational uses including restaurants when accessory to the principal use, subject to the provisions of section 9.15.
 - f. Cluster subdivision subject to the provisions of section 9.05.
 - g. Hospitals, sanitariums, clinics, nursing and rest homes and charitable institutions for human care, subject to the provisions of section 9.10.
 - h. Planned unit developments subject to the provisions of section 9.14.
 - i. Medical or dental clinics.
 - j. Business and professional offices.

- k. Adult foster care medium and large group homes, subject to the provisions of section 9.02.
- l. Telecommunication towers and antennas subject to the provisions of section 9.19.
(Ord. No. 04-03, § 8, 6-14-04)

Sec. 6.09. Residential mobile home park (R-C) district.

The following regulations shall apply to all residential "RC" (mobile home park) districts:

- 1. *Uses permitted.* No structure or parts thereof shall be erected, altered, or used, and no land may be used except for one or more of the following purposes:
 - a. Mobile home parks subject to the provisions of section 9.13.
- 2. *Conditional uses permitted.*
 - a. Telecommunication towers and antennas subject to the provisions of section 9.19.
(Ord. No. 04-03, § 9, 6-14-04)

Sec. 6.10. Office "O" district.

The following regulations shall apply to all office "O" districts:

- 1. *Uses permitted.* No structure or part thereof shall be erected, altered, or used, and no land shall be used except for one or more of the following purposes:
 - a. One detached single-family dwelling per lot.
 - b. Accessory structures.
 - c. Churches, synagogues, temples, public, parochial, private and trade schools, and colleges, public libraries, museums and art galleries.
 - d. Municipal, county, state and federal administration buildings and community center buildings.
 - e. Fire stations and water towers subject to the provisions of section 9.07.
 - f. Medical and dental clinics.
 - g. Public utility buildings, telephone exchange buildings, electric transformer stations and substations and gas regulator stations with service yards, but without storage yards.
 - h. Offices, professional and business.
- 2. *Conditional uses permitted.*
 - a. Telecommunication towers and antennas subject to the provisions of section 9.19.
(Ord. No. 04-03, § 10, 6-14-04)

Sec. 6.11. Commercial "C-R" (commercial-retail) district.

The following regulations shall apply to all commercial "C-R" (retail) districts:

1. *Uses permitted.* No structure or part thereof shall be erected, altered, or used, and no land shall be used except for one or more of the following purposes:
 - a. One detached single-family dwelling per lot.
 - b. Accessory structures.
 - c. Two-, three- and four-family residential structures.
 - d. Garden apartment and/or townhouse structures, subject to the provisions of section 9.08.
 - e. Other uses:
 - Antique shops
 - Bakeries, retail sales
 - Banking and loan institutions
 - Barber and beauty shops
 - Beer, wine and liquor, retail sales
 - Bicycle shops, sales and service
 - Book and stationery stores
 - Carpeting and rugs, retail sales
 - Clothing and accessories, retail sales
 - Confectionery and delicatessen stores
 - Department stores
 - Drugstores
 - Dry cleaning and laundry pick-up stations
 - Dry goods stores
 - Electric and electronic appliances, retail sales and service
 - Elevator maintenance and repair shops
 - Fruit and vegetable stores, retail sales (when enclosed within a building)
 - Florist, retail sales
 - Food markets and supermarkets
 - Furniture stores, retail sales, repair and reupholstering
 - Hardware stores
 - Laundromats and self-service dry cleaning
 - Meat markets (no slaughtering)
 - Musical instruments, sales and service
 - Novelty shops

- Nursery stock, retail sales
 - Offices, professional and business (including sample rooms but no warehouse)
 - Optical goods, retail sales
 - Paint stores, retail sales
 - Photographic supplies, retail sales
 - Plumbing shops, retail sales and service
 - Radio and television, retail sales and service
 - Restaurants, without drive through or drive-in service (service entirely within building)
 - Shoe repair shops
 - Sporting goods stores, retail sales
 - Sports cards and collectibles shops
 - Tailor shops
 - Tanning centers
 - Tattoo parlors
 - Theaters (indoor)
 - Video rental stores
 - Wall paper stores, retail sales
2. *Conditional uses permitted.* Structures and parts thereof may be erected, altered, or used, and land may be used for one or more of the following purposes subject to the conditional use provisions of Article 8.
- a. Any use of the same general character as permitted in section 6.04.F.1 provided that no trade or business which in the judgment of the planning commission would be harmful to the health, safety or welfare of the city shall be permitted.
 - b. Other uses:
 - Bars, cocktail lounges and taverns
 - Churches, synagogues, temples, public, parochial, private and trade schools, and colleges, public libraries, museums and art galleries.
 - Clubs
 - Cluster subdivisions, subject to the provisions of section 9.05.
 - Dance studios
 - Day nurseries
 - Fire stations and water towers subject to the provisions of section 9.07.
 - Funeral homes and mortuaries
 - Hospitals, sanitariums, clinics, nursing and rest homes and charitable institutions for human care, subject to the provisions of section 9.10.

- Hotels
 - Medical and dental clinics
 - Motels and motor courts
 - Municipal, county, state and federal administration buildings and community center buildings.
 - Municipal, denominational and private cemeteries subject to the provisions of section 9.04.
 - Music studios
 - Open air fruit and vegetable markets
 - Pet shops, retail sales (when enclosed within a building)
 - Planned unit developments, subject to the provisions of section 9.14.
 - Public parks, golf courses, country clubs, tennis courts, and similar recreational uses including restaurants when accessory to the principal use, subject to the provisions of section 9.15.
 - Public utility buildings, telephone exchange buildings, electric, transformer stations and substations and gas regulator stations with service yards, but without storage yards.
 - Radio and television stations (including transmitters, aerials and masts), subject to the provisions of section 9.16.
- c. Mixed uses, subject to the provisions of section 9.12.
- d. Drive-thru facilities, provided they are accessory to a permitted use and subject to the provisions of section 9.18.
- e. Telecommunication towers and antennas subject to the provisions of section 9.19.
- (Ord. No. 03-04, § 3, 8-11-03; Ord. No. 04-03, § 11, 6-14-04)

Sec. 6.12. Commercial "C" (general business) district.

The following regulations shall apply to all commercial "C" (general business) districts:

1. *Uses permitted.* No structure or part thereof shall be erected, altered, or used, and no land shall be used except for one or more of the following purposes:
 - a. One detached single-family dwelling per lot.
 - b. Accessory structures.
 - c. Two-, three- and four-family residential structures.
 - d. Garden apartment and/or townhouse structures subject to the provisions of section 9.08.
 - e. Other uses:
 - Agricultural implements, retail sales, service rentals

- Amusements, commercial: including dance halls, bowling alleys, billiard or pool halls, skating rinks, shooting galleries, games of skill and science, and miniature golf courses
- Animal hospitals
- Antique shops
- Automotive parts sales
- Awning sales and service
- Bakeries, retail sales
- Banking and loan institutions
- Barber and beauty shops
- Beer, wine and liquor, retail sales
- Blueprinting shops
- Bicycle shops, sales and service
- Book and stationery stores
- Carpeting and rugs, retail sales
- Clothing and accessories, retail sales
- Confectionery and delicatessen stores
- Department stores
- Drugstores
- Dry cleaning and dyeing establishments
- Dry cleaning and laundry pick-up stations
- Dry goods stores
- Egg candling and grading, incidental to a permitted use
- Electric and electronic appliances, retail sales and service
- Electrical contractors
- Elevator maintenance and repair
- Fruit and vegetable stores, retail sales (when enclosed within a building)
- Florist, retail sales
- Food markets and supermarkets
- Frozen food lockers, incidental to a permitted use
- Funeral homes and mortuaries
- Furniture and household wares stores, used furniture stores, retail sales, repair and reupholstering
- Gasoline service stations
- Greenhouses
- Hardware stores

- Heating and air conditioning, sales and service
- Hotels
- Ice pick-up stations
- Laundries
- Lawnmower sharpening
- Machine shops, incidental to a permitted use
- Laundromats and self-service dry cleaning
- Meat markets (no slaughtering)
- Medical and dental clinics
- Mirror and glass shops
- Monument sales
- Motels and motor courts
- Motorcycle sales, service, rentals
- Municipal, county, state and federal administrative buildings and community center buildings
- Music studios
- Musical instruments, sales and service
- Newspaper publishing
- Novelty shops
- Nursery stock, retail sales
- Offices, professional and business (including sample rooms but not warehouses)
- Open air fruit and vegetable markets
- Optical goods, retail sales
- Paint stores, retail sales
- Painting and enameling shops, incidental to a permitted use
- Photographic supplies, retail sales
- Plumbing contractors
- Plumbing shops, retail sales and service
- Printing shops
- Public utility buildings, telephone exchange buildings, electric transformer stations and substations, and gas regulation stations with service yards, but without storage yards
- Radio and television, retail sales and service
- Restaurants, without curb or drive-in service (service entirely within building)

- Shoe repair shops
 - Sporting goods stores, retail sales
 - Sports cards and collectibles shops
 - Tailor shops
 - Tanning centers
 - Tattoo parlors
 - Taxi cab stations
 - Theaters (indoor)
 - Video rental stores
 - Wall paper stores, retail sales
 - Water treatment implements, sales and service
2. *Conditional uses permitted.* Structures and parts thereof may be erected, altered, or used, and land may be used for one or more of the following purposes subject to the approval of the city planning commission and subject to the conditional use provisions of Article 8.
- a. Any use of the same general character as those permitted in section 6.04.G.1 provided that no trade or business which in the judgment of the planning commission would be harmful to the health, safety, and general welfare of the residents of the city shall be permitted.
 - b. Adult uses, subject to the provisions of section 9.03.
 - c. Cemeteries, municipal, denominational and private, subject to the provisions of section 9.04.
 - d. Churches, synagogues, temples, public, parochial, private and trade schools, and colleges, public libraries, museums and art galleries.
 - e. Cluster subdivisions, subject to the provisions of section 9.05.
 - f. Fire stations and water towers, subject to the provisions of section 9.07.
 - g. Hospitals, sanitariums, clinics, nursing and rest homes and charitable institutions for human care, subject to the provisions of section 9.10.
 - h. Reserved.
 - i. Municipal, county, state and federal administration buildings, community center buildings
 - j. Planned unit developments, subject to the provisions of section 9.14.
 - k. Public parks, golf courses, country clubs, tennis courts, and similar recreational uses, subject to the provisions of section 9.15.
 - l. Other uses:
 - Bars, cocktail lounges and taverns
 - Bus stations

- Car washes
 - Clubs
 - Day nurseries
 - Garages, service
 - Golf driving ranges
 - Radio and television stations (including transmitters, aerials and masts), subject to the provisions of section 9.16.
 - Railroad rights-of-way, including switching, storage, freight yards and sidings
- m. Shopping centers, subject to the provisions of section 9.17.
- n. Mixed uses, subject to the standards of section 9.12.
- o. Drive-thru and drive-in facilities for uses permitted in this district such as restaurants, banks and dry cleaners.
- p. Telecommunication towers and antennas subject to the provisions of section 9.19.
- q. Automobile, truck and tractor sales, service and rentals; trailer sales, service, rentals; used car lots.

(Ord. No. 03-04, § 4, 8-11-03; Ord. No. 04-03, § 12, 6-14-04; Ord. No. 06-08, § 1, 1-8-07)

Sec. 6.13. Industrial ("I") district.

The following regulations shall apply to all industrial districts:

1. *Uses permitted.* No structure or part thereof shall be erected, altered, or used and no land shall be used except for one or more of the following purposes:
 - a. One single-family dwelling per lot.
 - b. Accessory structures.
 - c. Two-, three- and four-family residential structures.
 - d. Garden apartment and/or townhouse structures subject to the provisions of section 9.08.
 - e. Other uses:
 - Agricultural implements, retail sales, service rentals
 - Amusements, commercial: including dance halls, bowling alleys, billiard or pool halls, skating rinks, shooting galleries, games of skill and science, and miniature golf courses
 - Animal hospitals
 - Antique shops
 - Automobile, truck and tractor sales, service, and rentals
 - Automotive parts sales
 - Awning sales and service

- Bakeries, retail sales
- Banking and loan institutions
- Barber and beauty shops
- Beer, wine and liquor, retail sales
- Bicycle shops, sales and service
- Blueprinting shops
- Book and stationery stores
- Carpeting and rugs, retail sales
- Clothing and accessories, retail sales
- Confectionery and delicatessen stores
- Department stores
- Drugstores
- Dry cleaning and dyeing establishments
- Dry cleaning and laundry pick-up stations
- Dry goods stores
- Egg candling and grading, incidental to a permitted use
- Electric and electronic appliances, retail sales and service
- Electrical contractors
- Elevator maintenance and repair
- Fruit and vegetable stores, retail sales (when enclosed within a building)
- Florist, retail sales
- Food markets and supermarkets
- Frozen food lockers, incidental to a permitted use
- Funeral homes and mortuaries
- Furniture and household wares stores, used
- Furniture stores, retail sales, repair and reupholstering
- Gasoline service stations
- Greenhouses
- Hardware stores
- Laundromats and self-service dry cleaning
- Heating and air conditioning, sales and service
- Hotels
- Ice pick-up stations
- Laundries
- Lawnmower sharpening

- Machine shops, incidental to a permitted use
- Meat markets (no butchering)
- Medical and dental clinics
- Mirror and glass shops
- Monument sales
- Motels and motor courts
- Motorcycle sales, service, rentals
- Municipal, county, state and federal administrative buildings
- Music studios
- Musical instruments, sales and service
- Newspaper publishing
- Novelty shops
- Nursery stock, retail sales
- Offices, professional and business (including sample rooms but no warehouse)
- Open air fruit and vegetable markets
- Optical goods, retail sales
- Paint stores, retail sales
- Painting and enameling shops, incidental to a permitted use
- Photographic supplies, retail sales
- Plumbing contractors
- Plumbing shops, retail sales and service
- Printing shops
- Public utility buildings, telephone exchange buildings, electric transformer stations and substations, and gas regulation stations with service yards, but without storage yards
- Radio and television, retail sales and service
- Restaurants, without curb or drive-in service (service entirely within building)
- Shoe repair shops
- Sporting goods stores, retail sales
- Sports cards and collectibles shops
- Tailor shops
- Tanning centers
- Tattoo parlors
- Taxi cab stations

- Trailer sales, service, rentals
 - Used car lots
 - Theaters (indoor)
 - Video rental stores
 - Wall paper stores, retail sales
 - Water treatment implements, sales and service
- h. Baseball or football stadiums.
- i. Veterinary hospitals.
- j. The following uses which must be conducted wholly within an enclosed structure except for on-site delivery vehicles:
1. The manufacturing, compounding, processing and packaging or treatment of bakery goods, candy, cosmetics, dairy products, drugs, perfumes, pharmaceuticals, toiletries, condiments, (except fish, sauerkraut, vinegar and yeast).
 2. The manufacturing, compounding, assembling or treatment of articles or merchandise from the following previously prepared materials: bone, cellophane, fur, glass, hair, horn, leather, paper, plastics, precious or semi-precious-precious metals or stones, shell, textiles, tobacco, wood (excluding planing mill), yarns and paint not requiring a boiling process.
 3. The manufacturing of musical instruments, toys, novelties, rubber or metal stamps.
 4. The manufacturing of pottery, figurines or similar ceramic products, using previously pulverized clay.
 5. The manufacturing of and maintenance of electric neon signs, billboards, commercial advertising structures, sheet (light) metal products, including heating and ventilating ducts and equipment, cornices, eaves and the like.
 6. Laundry, cleaning and dyeing works and carpet or rug cleaning.
 7. Distribution plants, parcel delivery service, storage plants.
 8. Assembly of electrical appliances, electronic instruments and devices, radios and phonographs, including the manufacture of small parts, such as condensers, transformers, crystal holders and the like.
 9. Laboratories, experimental or testing.
 10. Poultry or rabbit killing incidental to retail business on same property.
 11. Public utility service yard including but not limited to rock, sand, gravel and the like (excluding concrete mixing).
- k. Building material sales yard, including but not limited to rock, sand, gravel and the like (excluding concrete mixing).
- l. Contractors equipment storage yard or plant or centers.

- m. Retail lumber yard including incidental millwork.
 - n. Coal yard.
 - o. Draying, freighting or trucking terminals.
 - p. Plumbing or sheet metal shop.
 - q. Freight yards.
 - r. Industrial parks, subject to the provisions of section 9.11.
2. *Conditional uses permitted.* Structures and parts thereof may be erected, altered, or used, and land may be used for one or more of the following purposes subject to the approval of the city planning commission and subject to the conditional use provisions of Article 8.
- a. Any use of the same general character as permitted in section 6.04.H.1 provided that no use which at the discretion of the planning commission would be harmful to the health, safety and welfare of the city shall be permitted.
 - b. Restaurants, with drive through and drive-in services.
 - c. Reserved.
 - d. Vehicle assembly, painting, upholstering, rebuilding, conditioning, body and fender work, repairing tire recapping or retreading, battery manufacture.
 - e. Reserved.
 - f. Radio and television stations (including transmitters, aerials and masts), subject to the provisions of section 9.16.
 - g. Business and professional offices.
 - h. Cemeteries, municipal, denominational and private, subject to the provisions of section 9.04.
 - i. Churches, synagogues, temples, public, parochial, private and trade schools, and colleges, public libraries, museums and art galleries.
 - j. Cluster subdivisions, subject to the provisions of section 9.05.
 - k. Fire stations and water towers, subject to the provisions of section 9.07.
 - l. Hospitals, sanitariums, clinics, nursing and rest homes and charitable institutions for human care, subject to the provisions of section 9.10.
 - m. Municipal, county, state and federal administration buildings, community center buildings.
 - n. Planned unit developments, subject to the provisions of section 9.14.
 - o. Public parks, golf courses, country clubs, tennis courts, and similar recreational uses, subject to the provisions of section 9.15.
 - p. Car washes.

q. The following activities involving the manufacturing, assembly, processing, storage, packaging and/or treatment of raw materials or previously processed material.

- Acetylene gas manufacture
- Acid manufacture
- Alcoholic manufacture
- Boiler works
- Brick, tile or terra cotta manufacture
- Cement, lime, gypsum, or plaster of Paris manufacture
- Cement products manufacture
- Fat rendering, except as incidental use
- Food processing, smoking, curing, or canning
- Freight classification yards
- Gas manufacture
- Oil drilling and production of oil, gas, or hydrocarbons
- Paint oil (including linseed), shellac, turpentine, lacquer, or varnish manufacture
- Plastic manufacture
- Quarry and stone mill
- Railroad repair shop
- Rock, sand, gravel, distributions, excavation or crushing
- Rolling mills
- Rubber manufacture
- Salt works
- Stove or shoe polish manufacture
- Wool pulling or scouring

r. Telecommunication towers and antennas subject to the provisions of section 9.19.
(Ord. No. 04-03, § 12, 6-14-04)

Sec. 6.14. Table of district regulations.

	Minimum Lot Area	Required Front Yard	Required Side Yard	Required Rear Yard	Maximum Structure Height	Minimum Lot Width	Minimum Lot Depth	Maximum Lot Coverage	Maximum Number of Accessory Structures*	Maximum Height of Accessory Structures	Minimum Floor Area for Single-Family Dwellings
Residential (R-1)	10,000 sq. ft.	35 ft.	a.	50 ft.	2½ stories or 25 ft.	90 ft.	100 ft.	25%	2	o.	1000 sq. ft. first floor area
Residential (R-2)	7,200 sq. ft.	25 ft.	n.	35 ft.	2½ stories or 25 ft.	60 ft.	100 ft.	25%	2	o.	"
Residential (R-3)	5,000 sq. ft.	25 ft.	s.	35 ft.	2½ stories or 25 ft.	50 ft.	100 ft.	35%	2	p.	"
Residential Multiple (RB)	b.	c.	d.	35 ft.	e.	f.	f.	N/A	N/A	o.	"
Residential Mobile Home (RC)	50 acres	100 ft. from street ROW	50 ft.	50 ft.	2½ stories or 25 ft.	N/A	N/A	N/A	N/A	o.	N/A
Office (O)	N/A	g.	h.	i.	j.	N/A	N/A	N/A	N/A	p.	"
Commercial Retail (CR)	N/A	r.	h.	i.	j.	N/A	N/A	N/A	N/A	p.	"
General Business (C)	N/A	s.	m.	i.	j.	N/A	N/A	N/A	N/A	p.	"
Industrial (I)	N/A	25 ft.	k.	k.	L.	N/A	N/A	N/A	N/A	p.	"

* Maximum lot coverage shall be calculated with the following formula:

$$\frac{(\text{area of principal structure} + \text{area of accessory structures})}{(\text{total lot area})} \times 100$$

For the purposes of calculating maximum lot coverage, accessory structures shall include any structure permanently or non-permanently attached to the face of the earth and above the surface of the earth.

(Ord. No. 04-03, § 13, 8-11-03)

Sec. 6.15. Footnotes to table of district regulations.

- a. Thirty-five feet or existing front setback adjacent to ROW.
Ten feet interior.
- b. For townhouses and apartments:
Two acres minimum;
5,500 square feet per three bedroom.
3,600 square feet per two bedroom.
2,400 square feet for one bedroom.
For all others:
7,200 square feet.
- c. Forty feet for townhouses and apartments
Twenty-five feet for all others.
- d. For townhouses and apartments:
Forty feet adjacent to ROW.
Twenty-five feet interior.
For all others:
Ten feet adjacent to ROW.
Five feet interior for all others.
- e. Thirty-five feet; higher if setback is greater than height and approved fire fighting capabilities.
- f. Two hundred feet for townhouses and apartments.
sixty feet for all others.
- g. Twenty-five feet or the average of the setbacks of existing buildings on block face, whichever is less.
- h. Fifteen feet.
Twenty feet if adjacent to a single-family residential district.
- i. Twenty-five feet.
Fifty feet when adjacent to road or residential district.
- j. Within approved fire fighting capabilities.
- k. Twenty-five feet.
Seventy-five feet when adjacent to a residential district.
- l. Height shall be no greater than setback and approved firefighting capabilities.

- m. Zero feet.
Fifty feet when adjacent to road or residential district.
- n. Ten feet adjacent to ROW.
Five feet interior.
- o. Fourteen feet or height of principal structure, whichever is greater.
- p. Height of principal structure.
- q. No building shall be located closer to the street right of way than the mean number of feet of other buildings located in the same block on the same side of the street.
- r. Five feet adjacent to ROW.
Five feet interior.
- s. The minimum front yard setback in the C district is the lesser of these:
 - i Fifty feet.
 - ii The average setback of structures within 300 feet of the center of the lot front, along the same side of the street (see illustration on file with the city).
 - iii The existing buildings setback. In the event there is new construction (including additions to existing buildings on the same lot) such new construction may have the same setback. An expansion onto another lot may use the existing setback of the currently existing building, if the increase in building frontage does not exceed 50 percent of the width of the front of the building and the expansion in the front yard of the property in question is designed to permit development of parking in the rear.

ARTICLE 7. SITE PLAN REVIEW

Sec. 7.01. Intent.

The site plan review procedures are instituted to provide an opportunity for the city planning commission or zoning administrator, in the special circumstances hereinafter set forth, to review the proposed use of a site in relation to drainage, pedestrian and vehicle circulation, off street parking, structural relationship, public utilities, landscaping, accessibility and other site design elements which may have an adverse effect upon the public health, safety, morals and general welfare as well as to provide the best interest of the property owner.

Sec. 7.02. When site plans are required.

All development and changes in use requires review of some type. Under this appendix most "simple" development such as construction of single-family homes require only review of plot

plans as outlined in the administration article. Site plan are required for developments of a more complex nature. Site plans are required to be submitted under any of the following circumstances:

- A. As part of an application for a conditional use permit
- B. Prior to construction of any principal structure other than a single-family or duplex residence.
- C. Prior to construction of an addition of 1,000 square feet or more in size to any principal structure other than a single-family or duplex residence.
- D. Prior to construction of any accessory structure 1,000 square feet or more in size other than accessory structures related to a single-family or duplex residence.
- E. As part of an application to change a nonconforming use to another nonconforming use.
- F. Any remodeling of an existing structure other than a single-family or duplex residence that requires construction of ten or more additional parking spaces.
- G. As part of an application for approval of a condominium development.

Sec. 7.03. Required information.

Before any building permit shall be issued, 14 copies of a site plan to a scale of one inch equals twenty feet and a completed application for site plan approval shall be submitted to the city zoning administrator, for review and approval. Said site plan shall contain the following information:

- A. Statistical data including: Number of dwelling units, size of dwelling units (e.g., one-bedroom, two-bedrooms, three-bedrooms), if any, and total gross acreage involved. In the case of mobile home parks, the size and location of each mobile home site shall be shown. In all other cases, the location, type, horsepower, fuel, dimensions, and other data of all machinery to be used on the proposed site (to determine compliance with minimum lot size, maximum lot coverage and density requirements and parking requirements).
- B. The location of principal and accessory buildings on the lot and the relationship of each structure to another (to determine compliance with setback requirements).
- C. Vehicular traffic and pedestrian circulation features within and without the site (to determine compliance with traffic access standards including adequacy of access, conflicts between vehicles and pedestrians, turning movement conflicts between the site and other nearby driveways).
- D. The location and dimensions of all off-street parking areas including maneuvering lanes, service lanes, off-street loading spaces, and other service areas within the development (to determine compliance with parking requirements).
- E. The location, dimensions, and proposed use of all recreation areas, if any (to determine compliance with standards related to compatibility with adjacent areas).

- F. The location of all proposed landscaping, fences or walls (to determine compliance with screening and landscaping requirements).
- G. The height and dimensions of all structures (to determine compliance with maximum height and lot coverage requirements as well as minimum building size requirements (residential) where applicable).
- H. Front, rear, and side elevation of any typical structure proposed for development.
- I. The location and capacity of private or public water, sanitary services and solid waste disposal facilities servicing the site (to ensure compliance with the standard requiring adequate water and sewer service, and to prevent overloading the city's water or sewer system).
- J. The location, dimensions, type and lighting of all signs (to ensure compliance with sign requirements).
- K. The location, intensity and orientation of all lights (to determine compliance with requirements regarding lighting being directed off adjacent premises).
- L. Buildings within 50 feet of the boundary of the site (to determine compliance with any setback standards linked to structures on adjacent lots, or in the case of a conditional use permit, to determine suitability of the site for the proposed use based on proximity of incompatible uses).
- M. Location of any identified wetlands (to comply with standards relating to protection of natural features and/or compliance with local, state and federal laws).
- N. Outdoor storage or activity areas (to comply with standards relating to outdoor storage of material or outdoor activities).
- O. Existing and proposed grades at two-foot intervals (to determine any minimum or maximum grade requirements, clear vision requirements and height requirements).
- P. Cross section showing construction of drives and parking area (to comply with requirements regarding pavement surface and adequacy of base material).
- Q. Floor plan showing existing and proposed uses (to verify gross vs. usable floor area and principal vs. accessory uses).
- R. Location of trash receptacles (to determine compliance with ordinance requirements regarding location and screening).
- S. Designation of fire lanes (to determine compliance with fire code requirements).
- T. The individual or body responsible for reviewing and approving a site plan may waive any of the requirements above either on an individual basis or by establishment of an administrative rule when the information is not needed to determine compliance of the site with the requirements of this appendix.

Sec. 7.04. Who reviews site plans.

A. Besides having the authority to review and approve plot plans as outlined in the Administration article, the zoning administrator is authorized to review and approve site plans under the following circumstances:

1. Prior to construction of an addition of 1,000 square feet or more in size to any principal structure other than a single-family or duplex residence unless the addition increases the size of the principal structure by 50 percent or more, additional parking is required, or the addition substantially changes the character of the site.
2. Prior to construction of any accessory structure 1,000 square feet or more in size other than accessory structures related to a single-family or duplex residence.

B. The zoning board of appeals is authorized to approve a site plan submitted as part of an application to change a nonconforming use to another nonconforming use, following review and recommendation by the planning commission.

C. The planning commission is authorized to review and approve all other site plans.

Sec. 7.05. Site plan review process.

The site plan review process is intended to allow the city the opportunity to review a proposed development prior to its construction to determine compliance with the requirements of this appendix. The city's intention is to handle each application as expeditiously as possible while conducting an appropriately thorough review.

A. *Preliminary review (optional).* The option of preliminary site plan review is provided in order to allow an applicant for site plan review the opportunity to investigate with city officials the viability of a proposed development prior to preparing a complete site plan. An applicant for site plan review may request a preliminary review of a site plan to obtain information on potential site development issues including setbacks, drainage, access, signage and potential buffering requirements, and in order to request the waiving of particular site plan information requirements. At a minimum, this preliminary site plan should show:

1. Lot dimensions.
2. Building dimensions and setbacks.
3. Proposed parking areas.
4. Proposed driveways.
5. Proposed drainage patterns and water and sewer connections.

The preliminary review should be conducted by the person or body responsible for final review and approval. The review is advisory only and subject to change based on changes to ordinance requirements, changes in conditions or as a result of additional information.

- B. *zoning administrator site plan review.* In those instances where the zoning administrator is authorized to review and approve a site plan, he/she shall have ten working days following receipt of a complete site plan to review, and approve or deny it. Prior to making a determination on a site plan, the zoning administrator shall submit copies to the city police department, fire department and DPW who shall have five working days to review and submit their comments to the zoning administrator.
- C. *planning commission site plan review.* In those instances where the planning commission is authorized to review and approve a site plan, the applicant shall submit the site plan to the zoning administrator at least ten working days prior to the planning commission meeting at which it is to be reviewed for approval. Prior to the planning commission making a determination on a site plan, the zoning administrator shall submit copies to the city police department, fire department and DPW, who shall have five working days to review and submit their comments to the planning commission. Following their review of the site plan, the commission shall do one of following:
1. Approve the site plan.
 2. Approve the site plan with conditions.
 3. Table the site plan pending required additional information.
 4. Disapprove the site plan.
- D. *Consultant review.* In those instances where the planning commission and/or zoning administrator determine it necessary, the city may submit a site plan for review by a professional consultant. The cost of this consultant review shall be paid by the applicant, provided an estimate of the review cost is obtained from the consultant and provided to the applicant in advance. Upon receiving an estimate of the consultant review cost, the applicant may withdraw the application if he/she wishes.
- E. *Record of review.* Following a determination of approval or denial of a site plan, the applicant shall be notified by regular mail of the decision of the planning commission or zoning administrator. The notice shall identify any conditions attached to approval, and in the case of denial, it shall identify the basis for denial. A record of the decision shall be filed with the city clerk, including:
1. A copy of the submitted site plan.
 2. A copy of the planning commission's determination mailed to the applicant.
 3. A copy of any meeting minutes related to the site plan.
 4. A copy of any other relevant records related to the site plan.
- F. *Appeal of site plan decision.* Any person aggrieved by the decision of the zoning administrator or planning commission in granting or denying a site plan may appeal the decision to the zoning board of appeals. The appeal must be filed within 21 days of the decision and state the basis for the appeal.

Sec. 7.06. Standards for site plan approval.

All approved site plans shall comply with the appropriate district regulations, parking requirements, general provisions and other requirements of this appendix as they apply to the proposed site plan. In addition, each site plan shall comply with the following requirements:

- A. Sidewalks and other walkways, driveways, parking areas, loading areas and maneuvering lanes will be designed to promote traffic safety, minimize turning movement conflicts, eliminate the stacking of cars within the public right-of-way, minimize vehicle/pedestrian conflicts, provide adequate access for fire, police, ambulance and other emergency services personnel, minimize the number of driveways with access onto major streets, promote adequate spacing between driveways, ensure adequate geometric design of streets and promote shared access.
- B. Adequate transition areas or buffers will be provided between land uses to minimize off-site conflicts due to noise, light, smoke, odor or other nuisances and to maintain physical attractiveness.
- C. Utility service is adequate to serve the needs of the development. Water pressure and capacity are adequate to meet usage and fire fighting needs. Sewer lines are adequate to handle the increased flow projected by the land use, and the city has adequate treatment capacity at the county wastewater treatment plant. Storm water facilities are adequate to handle any increased water run-off, which will be minimized through the use of storm water retention and detention facilities when appropriate. The site shall be designed to ensure that there is no increase in runoff onto adjacent sites or that existing drainage patterns are harmed.
- D. Physical improvements including sidewalks, drives and parking areas shall be built to adequate standards to minimize premature deterioration.
- E. Sites at which hazardous substances are stored, used or generated shall be designed to prevent spill or discharges to the air, surface of the ground, groundwater, streams, drains or wetlands. Secondary containment for above ground storage of hazardous material shall be provided.

Sec. 7.07. Conditions.

A. The planning commission or zoning administrator may condition approval of a site plan on conformance with the standards of another local, county or state agency, such as but not limited to the county drain commission, county health department and the department of environmental quality. They may do so when such conditions:

- 1. Would ensure that public services and facilities affected by a proposed land use or activity will be capable of accommodating increased service and facility loads caused by the land use or activity.
- 2. Would protect the natural environment and conserve natural resources and energy.
- 3. Would ensure compatibility with adjacent uses of land, and

4. Would promote the use of land in a socially and economically desirable manner.

B. The planning commission or zoning administrator may conditionally approve a site plan conforming with all fencing, screening, buffering or landscaping requirements of this appendix and may collect a performance guarantee consistent with the requirements of section 7.08, to ensure conformance. When so doing, the following finding shall be made and documented as part of the review process:

1. That such fencing, screening, buffering or landscaping would mitigate negative effects of noise, dust, lighting, vehicular or pedestrian traffic, loading or unloading, parking or other similar impact on adjoining parcels;
2. That absent such conditions, the development would adversely affect the reasonable use, enjoyment and value of adjoining lands in light of similar benefits enjoyed by other properties in the area.

Sec. 7.08. Performance guarantees.

In the interest of insuring compliance with the zoning ordinance provisions, protecting the natural resources and the health, safety and welfare of the residents of the City of Mt. Morris and future users or inhabitants of an area for which a site plan for a proposed use has been submitted, the planning commission or zoning administrator may require the applicant to deposit a performance guarantee as set forth herein. Performance guarantees shall be required in instances where an occupancy permit is requested prior to completion of all improvements on an approved site plan. The purpose of the performance guarantee is to ensure completion of improvements connected with the proposed use as required by this appendix, including but not limited to roadways, lighting, utilities, sidewalks, drainage, fences, screens, walls, landscaping, and widening strips.

- A. Performance guarantee as used herein shall mean a cash deposit, certified check, irrevocable bank letter of credit or corporate surety bond in the amount of the estimated cost of the improvements to be made as determined by the applicant and verified by the zoning administrator.
- B. Where the planning commission or zoning administrator requires a performance guarantee, said performance guarantee shall be deposited with the city treasurer prior to the issuance of a building permit. The City of Mt. Morris shall deposit the performance guarantee, if in the form of a cash deposit or certified check, in an interest-bearing account.
- C. An approved site plan shall also prescribe the period of time within which the improvements for which the performance guarantee has been required are to be completed. The period will begin from the date of the issuance of the building permit.
- D. In the event the performance guarantee deposited is a cash deposit or certified check, the City of Mt. Morris shall rebate to the applicant 50 percent of the deposited funds when 60 percent of the required improvements are completed as confirmed by the zoning administrator, and the remaining 50 percent of the deposit funds when 100

percent of the required improvements are completed as confirmed by the zoning administrator. If a request is made by the applicant for a temporary certificate of occupancy without completion of required exterior improvements, the performance guarantee may be applied by said applicant to assure compliance with zoning ordinance standards and the specifications of the approved site plan.

- E. Upon the satisfactory completion of the improvements for which the performance guarantee was required, as determined by the zoning administrator, the treasurer shall return to the applicant the performance guarantee deposited and any interest earned thereon.
- F. In the event the applicant defaults in making the improvements for which the performance guarantee was required within the time period established by the city, the city shall have the right to use the performance guarantee deposited and any interest earned thereon to complete the improvements through contract or otherwise, including specifically the right to enter upon the subject property to make the improvements. If the performance guarantee is not sufficient to allow the city to complete the improvements for which it was posted, the applicant shall be required to pay the city the amount by which the costs of completing the improvements exceeds the amount of the performance guarantee. Should the city use the performance guarantee or a portion thereof, to complete the required improvements, any amount remaining after said completion shall be applied first to the city's administrative costs in completing the improvement with any balance remaining being refunded to the applicant. If the applicant has been required to post a performance guarantee or bond with another governmental agency other than the City of Mt. Morris to ensure completion of an improvement associated with the proposed project prior to the city's conditional approval, the applicant shall not be required to deposit with the City of Mt. Morris a performance guarantee for that specific improvement. At the time the performance guarantee is deposited with the city and prior to the issuance of a building permit, the applicant shall enter an agreement incorporating the provisions hereof with the City of Mt. Morris regarding the performance guarantee.

Sec. 7.09. Changes to approved site plans.

A. All work conducted related to a project with an approved site plan shall be in conformance to that site plan. Minor changes to the site plan may be approved by the zoning administrator, as long as the change does not result in:

- 1. A significant change in the use, intensity or character of the development.
- 2. A significant increase in lot coverage.
- 3. A reduction in required open space, off-street parking or loading areas or drainage retention or detention capacity.
- 4. Reduction in pavement widths or utility pipe size.

B. Major changes to a site plan require review and approval as required if the plan were new.

Sec. 7.10. Information required for zoning permit.

All uses which require site plan approval also require a zoning permit. The zoning administrator shall provide a form to be filled out by an applicant for a zoning permit and a list of information required for a plot plan of the site that the zoning permit is being requested for. The plot plan shall show:

- A. Dimensions of the parcel of land.
- B. Frontages on public or private streets or roads.
- C. Location and size (exterior "footprint" and height) of all existing and proposed buildings and parking areas and their distance from each other and the lot lines.
- D. Proposed parking spaces.

Sec. 7.11. Expiration of site plan approval.

Site plan approval shall expire two years after the vote or decision approving it unless construction has been completed on improvements authorized by the site plan, or in the case of a use that does not require new construction, the applicant has begun to use the property as authorized by the permit.

The zoning administrator may extend the time limit by an additional one year provided the applicant requests the extension in writing prior to the end of the initial two-year expiration period, identifying the reasons for the request, and has demonstrated substantial and continuous progress towards completing the construction.

ARTICLE 8. CONDITIONAL USE PERMIT REVIEW

Sec. 8.01. Intent.

These conditional use permit review procedures are instituted to provide an opportunity to use a lot for an activity which under usual circumstances, would be detrimental to other permitted land uses and cannot be permitted within the same district, but which use can be permitted under circumstances unique to the proposed location and subject to conditions acceptable to the community and providing protection to adjacent land uses. These procedures are adopted to provide guidelines for the city planning commission to follow in arriving at any decision over which such commission has jurisdiction, and to provide for the public health, safety, morals, and general welfare, as well as to provide for the interest of the property owner.

Sec. 8.02. Procedures.

A. An application for the approval of a conditional use shall be made by an owner of an interest in the land on which the conditional use is to be located, to the city clerk accompanied by the necessary fees and documents as provided herein.

B. The application shall be accompanied by a site plan prepared according to the requirements of Article 7 of this appendix.

C. The conditional use permit application may be accompanied by an application for a zone change, where such a zone change is necessary to the consideration of the application, provided all applicable provisions for a zone change application have been complied with.

D. The application and conditional use application, if any, shall be submitted by the applicant at least 11 working days prior to the next planning commission meeting. The commission shall review and communicate its recommendation on the conditional use application within two weeks after its regular meeting at which such application was considered in accordance with procedures prescribed by applicable statute, and shall advise the zoning administrator and the city clerk of its findings.

E. Upon receipt of an application for a conditional use, a public hearing shall be scheduled for a planning commission meeting at which the conditional use permit will be reviewed. One notice of the public hearing shall be published in a newspaper of general circulation in the city and shall be sent by mail or personal delivery to the owners of property for which approval is being considered, all persons to whom real property is assessed within 300 feet of the property and to the occupants of all structures within 300 feet of the property regardless of whether the property or occupant is located in the zoning jurisdiction not less than 15 days before the application will be considered. If the name of the occupant is not known, the term "occupant" may be used in making notification. The notice shall:

1. Describe the nature of the conditional use request.
2. Indicate the property which is the subject of the conditional use request.
3. State when and where the public hearing on the conditional use request will be held.
4. Indicate when and where written comments will be received concerning the request.

F. The planning commission shall deny, approve, or approve with conditions, requests for conditional use approval. The decision on a conditional use shall be incorporated in a statement of conclusions relative to the conditional use under consideration. The decision shall specify the basis for the decision, and any conditions imposed.

G. The review of an application and site plan requesting a conditional use permit shall be made by the planning commission in accordance with the procedures and standards specified in this appendix. If a submitted application and site plan do not meet the requirements of this appendix, they may not be approved. However, if the applicant agrees to make changes to the site plan and application in order to bring them into compliance with the appendix, such changes shall be allowed and shall be either noted on the application or site plan itself, or

attached to it, or these documents shall be resubmitted, incorporating said changes. A site plan and application for a conditional use permit shall be approved if they comply in all respects with the requirements of this appendix and other applicable county, state or federal laws, rules or regulations. Approval of the conditional use must be granted before approval of the site plan. The site plan, as approved, and any statements of conditions and modifications shall become part of the conditional use permit and shall be enforceable as such. The decision to approve or deny a request for a conditional use permit shall be retained as a part of the record of action on the request and shall incorporate a statement on conclusions which specify: the basis for the decision, any changes to the originally submitted application and site plan necessary to insure compliance with the appendix, and any conditions imposed with approval. Once a conditional use permit is issued, all site development and use of land on the property affected shall be consistent with the approved conditional use permit, unless a change conforming to ordinance requirements receives the mutual agreement of the landowner and the planning commission and is documented as such. Any change of a site plan originally approved by the planning commission which involves changes in the conditions of the permit must be reviewed and approved by the planning commission following a public hearing with public notice as required for conditional use permit review by this appendix.

H. Appeals of decisions on a conditional use permit by the applicant or an aggrieved party may be filed in circuit court.

I. The zoning administrator shall, upon receipt of notice of approval and upon application by the applicant, accompanied by a receipt duly executed by the city treasurer attesting to the payment of all required fees, issue a zoning permit for the approved conditional use, provided he has found satisfactory compliance with all conditional precedents imposed by such approval.

J. Upon issuance of the zoning permit and further upon application by the applicant including all required fees, the building official shall issue a building permit for the approved conditional use, provided he has found satisfactory compliance with all conditional precedents imposed by such approval.

K. A conditional use permit shall expire two years after the vote approving the permit unless construction has begun on improvements authorized by the conditional use permit, or in the case of a use that does not require new construction, the applicant has begun to use the property as authorized by the permit.

The zoning administrator may extend the time limit by an additional one year provided the applicant requests the extension in writing prior to the end of the initial two-year expiration period, identifying the reasons for the request, and has demonstrated substantial and continuous progress towards completing the construction.

(Ord. No. 06-09, § 1, 1-8-07)

Sec. 8.03. Basis of determination.

Prior to approval of a conditional use application and required site plan, the planning commission shall insure that the standards specified in this sub-section, as well as applicable standards established elsewhere in this appendix, shall be satisfied by the completion and operation of the conditional use under consideration.

A. *General standards.* The planning commission shall review the particular circumstances of the conditional use request under consideration in terms of the following standards, and shall approve a conditional use request only upon a finding of compliance with each of the standards, and shall approve a conditional use request only upon a finding of compliance with each of the following standards, as well as applicable standards established elsewhere in this appendix:

1. The proposed conditional use shall be of such location, size and character that it will be in harmony with the appropriate and orderly development of the surrounding neighborhood and/or vicinity and applicable regulations of the zoning district in which it is to be located.
2. The proposed use shall be of a nature that will make vehicular and pedestrian traffic no more hazardous than is normal for the district involved, taking into consideration vehicular turning movements in relation to routes of traffic flow, proximity and relationship to intersections, adequacy of sight distances, location and access of off-street parking and provisions for pedestrian traffic, with particular attention to minimizing child-vehicle interfacing.
3. The proposed use shall be designed as to the location, size intensity, site layout and periods of operation of any such proposed use to eliminate any possible nuisance emanating there from which might be noxious to the occupants of any other nearby permitted uses, whether by reason of dust, noise, fumes, vibration, smoke or lights.
4. The proposed use shall be such that the proposed location and height of buildings or structures and location, nature and height of walls, fences and landscaping will not interfere with or discourage the appropriate development and use of adjacent land and buildings or unreasonably affect their value.
5. The conditional use shall not place demands on public services and facilities in excess of current capacity.
6. The proposed use shall be so designed, located, planned and operated that the public health, safety and welfare will be protected.
7. The proposed use shall not cause substantial injury to the value of other property in the neighborhood in which it is to be located and will not be detrimental to existing and/or permitted land uses in the zoning district.

ARTICLE 9. DESIGN STANDARDS**[Sec. 9.00. Generally.]**

Many uses permitted by right or conditional use permit, because of particular characteristics require compliance with specific performance or design standards. The following are

standards for these uses. In addition to these specific standards, these uses must also meet all other requirements included in the zoning ordinance as well as any conditions required for conditional use approval, if applicable.

Sec. 9.01. Adult foster care family and small group homes site design standards.

The following site design standards are required for all adult foster care family and small group homes:

The operation must be licensed by the state governing agency.

Sec. 9.02. Adult foster care medium and large group homes site design standards.

The following site design standards are required for all adult foster care medium and large group homes:

The operation must be licensed by the state governing agency.

Sec. 9.03. Adult uses site design standards.

The following site design standards are required for all adult uses:

- A. The adult use shall be located at least 500 feet from any residential district, a school or a church, as measured from the boundary of the district or parcel to the structure housing the adult entertainment.
- B. The use shall be located at least 1,000 feet from another adult use.

Sec. 9.04. Cemeteries, municipal, denominational and private cemeteries site design standards.

The following site design standards are required for all municipal, denominational and private cemeteries:

- A. The minimum site area shall be at least 20 acres.
- B. All buildings must be at least 100 feet from all property.

Sec. 9.05. Cluster subdivision site design standards.

The following site design standards are required for all cluster subdivisions:

- A. The proposed subdivision shall consist of a tract of land at least 20 acres in area.
- B. The application shall be endorsed unequivocally for such development by all the owners of the tract, and procedures and documents shall be provided to assure development under a single applicant and as approved by the city planning commission.
- C. Residential densities may be not less than the minimum lot size per dwelling unit permitted in that zoning district, based upon the total land area.

- D. The developer shall dedicate not less than 20 percent of the total land area for parks, woodlands, conservation district, playgrounds, golf courses, tennis courts or other open space areas, such as to encourage the preservation of natural features or public or semi-public use. Such land may be dedicated to the city or may be reserved for private use, in which case satisfactory arrangements shall be made, acceptable to the city, for the development, operation, and maintenance of all such areas.
 - 1. The location, extent, and purpose of areas dedicated for open space or recreational use within any subdivision shall be approved by the planning commission and the city council.
 - 2. The development, operation, and maintenance of dedicated land for private open space or recreational use shall be guaranteed by a trust indenture approved by the city and shall be filed with the Register of Deeds of Genesee county simultaneously with the recording of the final plat of the subdivision.

Sec. 9.06. Family day care home and group day care home site design standards.

The following site design standards are required for all family and group day care homes:

The operation must be licensed by the state governing agency.

Sec. 9.07. Fire station and water tower site design standards.

The following site design standards are required for all fire stations and water towers:

The minimum distance from all property lines shall be at least 50 feet.

Sec. 9.08. Garden apartment and townhouse site design standards.

The following site design standards will be required for all garden apartment and/or townhouse developments:

- A. Maximum building coverage shall not exceed 30 percent of the lot area.
- B. The distance between any two buildings within a garden apartment or townhouse development shall be not less than 20 feet or the height of the tallest building, whichever is greater.
- C. Any garden apartment or townhouse development adjoining any single-family residential district or any developed nonresidential district shall be provided with a buffer of at least ten feet which buffer shall be provided adjacent to the property line. Such buffer shall be planted with evergreen and other suitable plantings and used for no other purpose. A landscaped planting area shall also be provided along all street frontage which shall not be less than ten feet in width.
- D. All garden apartment and townhouse developments shall be served with public sewer and water facilities.
- E. A minimum of ten percent of the total lot area shall be developed for recreation and park purposes.

- F. Provision shall be made for safe and efficient egress and ingress to public streets and highways serving any garden apartment or townhouse development which shall be designed to minimize congestion and interference with normal traffic flow.
- G. The site shall be developed and facilities shall be provided in such a manner so as to insure adequate drainage.
- H. Lighting facilities shall be required where deemed necessary for the safety and convenience of residents and visitors. These facilities shall be arranged in such a manner so as to protect abutting streets and adjacent properties from unreasonable glare or hazardous interference of any kind.
- I. Provisions for serving garden apartments and townhouses by refuse collection vehicles shall be made.

Sec. 9.09. Home occupations site design standards.

A home occupation may be permitted within a single-family residential dwelling subject to the following conditions:

- A. No person other than members of the family residing on the premises shall be engaged in such occupation.
- B. The use of the dwelling unit for the home occupation shall be clearly incidental and subordinate to its use for residential purposes by its occupants, and not more than 15 percent of the floor area of the dwelling unit shall be used for the purposes of the home occupation, and shall be carried out completely within such dwelling.
- C. There shall be no change in the outside appearance of the structure or premises, or other visible evidence of the conduct of such home occupation.
- D. No home occupation shall be conducted in any accessory structure.
- E. There shall be no retail, over-the counter sale of any goods manufactured elsewhere in connection with such home occupation.
- F. No traffic shall be generated by such home occupation in greater volumes than would normally be expected in a residential neighborhood, and any need for parking generated by the conduct of such home occupation shall be provided by an off street area, located other than in a required front yard or side yard.
- G. No equipment or process shall be used in such home occupation which creates noise, vibration, glare, fumes, odors, or electrical interference detectable to the normal senses of persons off the lot. In the case of electrical interference, no equipment or process shall be used which creates visual or process shall be used which creates visual or audible interference with any radio or television receivers off the premises, or causes fluctuations in line voltage off the premises.

Sec. 9.10. Hospitals, sanitariums, clinics, nursing and rest homes and charitable institutions for human care site design standards.

The following site design standards are required for all hospitals, sanitariums, clinics, nursing and rest homes and charitable institutions for human care:

- A. The area accommodating any one of these uses shall not be less than one acre in area.
- B. The building including accessory buildings must be located not less than 50 feet from all property lines.
- C. The height of any structure shall be related to the location of the structure so as to equal the distance to any adjacent property line; provided, however, the height limitation shall be related to the fire fighting capability of the city.
- D. The area must be completely surrounded with screen planting and landscape development, the ultimate height of which shall not be less than six feet. Said planting may be within the above specified setbacks.
- E. Ingress and egress to the area must be located in such a manner so as to provide maximum safety to the public utilizing this facility and the public streets. Said ingress and egress shall be hard-surfaced and properly drained.

Sec. 9.11. Industrial park site design standards.

The following site design standards are required for all Industrial Parks:

- A. The minimum required land area for an industrial park shall be five contiguous acres.
- B. The development of an industrial park shall be in accordance to an overall plan for development of the park, which plan shall be approved by the city planning commission.
- C. The developer shall provide within the industrial park, a sanitary sewage system which shall be of sufficient size and design to collect all sewage from structures within the industrial park, which system shall connect with the city's system. If public sewers are not available, the, park's sanitary sewer system shall be designed so as to dispose of all sewage and shall be otherwise constructed and maintained in conformity with the statutes, ordinances and regulations of the State of Michigan, the Genesee County Health Department, the Genesee County Drain Commissioner's Office and the city.

Sec. 9.12. Mixed use site design standards.

One or more residential dwelling units may be incorporated within a commercial structure as a conditional use providing the following requirements are met:

- A. The dwelling unit is occupied only by an owner of a use contained within the structure in question. No space may be converted from commercial to residential use. A minimum of 60 percent of the grade level (ground) floor of the structure must be dedicated to nonresidential use.

- B. The required parking standards for residential dwelling units must be satisfied with private parking located no more than 300 feet from the principal entrance to the dwelling unit in addition to the other parking and loading areas required for the commercial use of the building. Residential dwelling space will not be included in calculating the gross leasable commercial area of the structure.
- C. Each dwelling unit must be physically independent of the remainder of the structure. No aspect of the dwelling unit(s) shall infringe upon the intended commercial character of the district.

Sec. 9.13. Mobile home park site design standards.

The following site design standards are required for all mobile home parks:

Mobile home parks shall be developed to the standards established by the mobile home park commission.

Sec. 9.14. Planned unit development site design standards.

The following site design standards are required for all planned unit developments:

- A. Such development is found not detrimental to the public health, safety and general welfare of the occupants and the community.
- B. Requirements regarding tract.
 - 1. The minimum required land area for a planned unit development shall be 60 contiguous acres.
 - 2. The developer shall provide within the planned unit development, a sanitary sewage system which shall be of sufficient size and design to collect all sewage from all present and proposed structures in the planned unit, shall connect with the city's system, and shall be otherwise constructed and maintained in conformity with the statutes, ordinances, and regulations of the State of Michigan, the Genesee County Health Department, the Genesee County Drain Commissioner's Office and the city.
 - 3. The developer shall provide within the planned unit development a storm drainage system which shall be of sufficient size and design as will in the opinion of the city's Engineer collect, carry off and dispose of all predictable surface water run-off within the development and any adjoining tributary area and shall be so constructed as to conform with the statutes, ordinances and regulations of the State of Michigan, the Genesee County Health Department, the Genesee County Drain Commissioner's Office, and the city.
 - 4. If a public water system is not available, the developer shall provide within the planned unit development a potable water system which shall be of sufficient size and design to supply potable water to each of the structures to be erected in the

development. Water systems shall conform to the statutes, ordinances, and regulations of the State of Michigan, the Genesee County Health Department, the Genesee County Drain Commissioner's Office, and the city.

C. Permitted uses.

1. Single-family attached or detached dwelling.
2. Apartment building or townhouse.
3. Accessory private garage.
4. Public or private park or recreation area which may include a golf course, swimming pool, tennis court, ski slope, toboggan run, ice skating rink, and other similar recreational uses, but which may not include any use or activity which produces noise, glare, odor, air pollution, fire, or other safety hazards, smoke, fumes or other pollutants detrimental to existing or prospective adjacent structures or to existing or prospective occupants or the general public.
5. Municipal building.
6. School.
7. Church, temple, synagogue, parsonage or parish house, convent.
8. Art gallery or professional office.
9. Theater for stage productions or films, but not a drive-in theater.
10. Studio of artist, sculptor, musician or photographer, but no goods or objects shall be sold or publicly displayed on the premises.
11. Restaurant.
12. Business activities of a local or neighborhood character, conducted within an enclosed building only, providing necessary services for the day-to-day operation of a household, and which can be supported economically by a small neighborhood area, including business of the type included in, although not limited to, the following:
 - a. Barber and beauty shop
 - b. Cigar store.
 - c. Cleaning and dyeing distribution shop (no processing).
 - d. Dairy products, retail sales.
 - e. Delicatessen.
 - f. Drugstore.
 - g. Laundry collecting shop, self-service laundry, self-service dry cleaner, and hand laundry.

- h. Local store selling at retail, fish, fruit, food, hardware, meats (no slaughtering) and vegetables, and beer and wine under SDM license and gasoline from not more than three gasoline pumps; provided further, that such store may not exceed 12,000 square feet of sales floor area.
- i. Newsstand.

D. *Density and design standards.*

- 1. Area limitations for various uses: Within a planned unit development the following percentages of the total land area shall be devoted to the specified uses:
 - a. A maximum of 80 percent for residential use; land devoted to residential use shall be deemed to include those streets, alleys, parking areas, private open spaces and courts which abut and service primarily residences or groups of residences, but it shall not include useable open space which is available for use by the general public or by persons who do not live in the residences or groups of residences immediately adjacent to it unless otherwise provided herein.
 - b. A maximum of 20 percent for nonresidential uses and required parking, provided however that open air recreational uses, other open space uses and land devoted to streets shall not be included in determining nonresidential use.
 - c. A minimum of 20 percent for open air recreational uses and other useable open space.
 - 1. Useable open space shall be defined as an open area designed and developed for common use by the occupants of the development or by others for recreation (whether commercial, private or public) courts, gardens or household service activities such as clothes drying, which space is effectively separated from automobile traffic and parking and is readily accessible; the term shall not include space devoted to streets and parking.
 - 2. Residential density. The density of residences shall not exceed six units per acre of the land within the development which is devoted to residential use and useable open space.
 - 3. Lot size. There shall be no minimum lot size, no minimum setbacks, no minimum percentage of lot coverage and no minimum lot width for any unit; provided, however, that in areas of single-family and/or town-house structures which are to be sold and for which the care and maintenance of the grounds and exteriors associated with such structures will be the responsibility of the purchaser of such structure or parts of such structures, such areas shall be platted with applicable and recordable provisions of the Subdivision Regulations. For purposes of determining overall densities within the planned unit development, the number of units located in such platted areas shall be included.

4. Height. The height of any structure within a planned unit development shall be related to the location of the structure such as to equal the distance to any adjacent property line; provided, however, the height limitation shall be related to the firefighting capability of the city and provided further, that this provision shall not affect any structure of less than 35 feet.
5. Location of structures. The proposed location and arrangement of structures shall not be detrimental to existing or prospective adjacent structures or to existing or prospective development of the neighborhood. Every single-family dwelling shall have access to a public street, court, walkway or other area dedicated to public use. No apartments or townhouse structures consisting of five or more dwelling units shall be erected within 24 feet of any other structure.
6. Protection of open spaces. Open spaces between structures, including those spaces being used as public or private recreational areas, shall be protected by adequate covenants running with the land or by conveyances or dedications, as the planning commission shall specify.
7. Roads and parking areas. The dimensions and construction of roads, alleys, and parking areas within the development, whether or not dedication of them to the city is contemplated, shall conform with all applicable state, county and City ordinances.

E. *Procedure.*

1. Before any conditional use permit or building permit is issued for land or a building in a PUD, the developer shall obtain approval by the city planning commission of an overall plan for development of the land. For this purpose, he shall submit to the planning commission a plan prepared by a registered community planner, or a registered architect which:
 - a. Shall state the acreage to be devoted to specific uses;
 - b. Shall set forth the proposed density of dwelling units;
 - c. Shall include a major thoroughfare plan and a public utility plan;
 - d. And shall include a separate plan showing the location of parks, open recreation areas and other open spaces, schools and other public or community uses.
2. The criteria for approval of any planned unit development shall be those which are included within the conditional use permit review procedures section of this appendix in Article III. These criteria shall include the desirability of the planned unit development's design in terms of traffic safety, health, drainage, densities, land use relationships of proposed uses to each other and uses adjacent to the site and its overall relation to a community development plan if such a plan exists.

3. If the plan is approved by the planning commission, the developer shall thereafter submit a detailed plan, containing all the information required of this appendix.
 - a. The planning commission shall review the detailed plan to determine that it complies with this appendix and with the overall plan originally submitted by the developer.
 - b. Approval of any detailed plan shall lapse unless construction is started in that section within two years.
 - c. No conveyance of land within the development may be made until the developer has complied with all city regulations.

Sec. 9.15. Public parks, golf courses, country clubs, tennis courts, and similar recreational uses site design standards.

The following site design standards are required for all public parks, golf courses, country clubs, tennis courts, and similar recreational uses (including restaurants when such use is accessory to the principal use):

All buildings must be at least 100 feet from any property line.

Sec. 9.16. Radio and television station site design standards.

The following site design standards are required for all radio and television stations:

- A. All buildings shall be at least 100 feet from all property lines.
- B. All masts, towers, aerials and transmitters shall be at least a distance equal to the height of such structures, from all property lines.
- C. All buildings shall conform with the character of the neighborhood in which they are located.

Sec. 9.17. Shopping center site design standards.

The following site design standards are required for all shopping centers:

- A. Minimum lot area shall be two acres.
- B. The proposed development shall be constructed in accordance with an overall plan, shall be designed as a complete project covering the total area, with appropriate landscaping, and shall provide initially for the construction of a minimum of 7,500 square feet of floor area.
- C. All structures shall be arranged in an integral development.

- D. Provision shall be for safe and efficient ingress and egress to and from public streets and highways serving the center without undue congestion to or interference with normal traffic flow.
 - 1. All points of vehicular access to and from public streets shall be located not less than 200 feet from the intersection of any public street lines with each other.
 - [2. Reserved.]
- E. No part of any parking access and/or service area may be located closer than 25 feet of [to] any property line adjacent to a residential district.
- F. Parking, loading, or service areas used by motor vehicles shall be located entirely within the lot lines of the shopping center and shall be physically separated from public streets.
- G. Any shopping center development adjoining any residential district shall be provided with a buffer of at least 15 feet which buffer shall be provided adjacent to the property line. Such buffer shall be planted with evergreen and other suitable plantings and used for no other purposes. A landscaped planting area shall also be provided along all street frontage which shall not be less than ten feet in width. All plantings shall be approved by the Mt. Morris city planning commission.
- H. All shopping center developments shall have direct access to a primary road as determined by the city planning commission. No regular public access shall be made through a residential local street.
- I. The site shall be developed and facilities shall be provided in such a manner so as to insure adequate drainage.
- J. Lighting facilities shall be required where deemed necessary for the safety and convenience of shoppers and employees. These facilities will be arranged in such a manner so as to protect abutting streets and adjacent properties from unreasonable glare or hazardous interference of any kind.

Sec. 9.18. Drive-thru facilities in central business district.

Drive thru facilities are permitted as accessory to permitted uses within the CBD provided they comply with the following standards:

- A. The drive-thru facility will not result in additional driveways.
- B. The drive-thru will be designed to minimize conflict with pedestrians, internal vehicle circulation patterns and street traffic.
- C. The drive-thru will not be located in a front yard. For the purposes of this requirement, a front yard is defined as any side of the building fronting a street. In the case of a site that fronts on more than two streets, the front yards shall be defined as those yards adjacent to the two streets with the greatest average daily traffic in front of the parcel.

- D. The drive-thru shall be designed to meet the aesthetic compatibility requirements of the city's design standards for nonresidential structures.
- E. The applicant shall demonstrate adequate stacking spaces for vehicles waiting to use the drive-thru based on nationally recognized standards for the use proposed.

The applicant shall apply for and be granted a drive-thru window permit from city council.

Sec. 9.19. Wireless telecommunications towers and antennas.

Wireless telecommunication towers are permitted as accessory or principle uses by conditional use permit within all zoning districts, provided they comply with the following standards:

A. *Applicability.*

- 1. *New towers and antennas.* All new towers or antennas in the city shall be subject to these regulations, except as provided in sections 9.19 A.2. through 4. inclusive.
- 2. *Amateur radio station operators/receive only antennas.* This appendix shall not govern any tower, or the installation of any antenna, that is under 70 feet in height and is owned and operated by a federally-licensed amateur radio station operator or is used exclusively for receive only antennas.
- 3. *Preexisting towers or antennas.* Preexisting towers and preexisting antennas shall not be required to meet the requirements of this appendix, other than the requirements of sections 9.19 B.5. and 6.
- 4. *AM array.* For purposes of implementing this appendix, an AM array, consisting of one or more tower units and supporting ground system which functions as one AM broadcasting antenna, shall be considered one tower. Measurements for setbacks and separation distances shall be measured from the outer perimeter of the towers included in the AM array. Additional tower units may be added within the perimeter of the AM array by right.

B. *General requirements.* Principal or accessory use. Antennas and towers may be considered either principal or accessory uses. A different existing use of an existing structure on the same lot shall not preclude the installation of an antenna or tower on such lot.

- 1. *Lot size.* For purposes of determining whether the installation of a tower or antenna complies with district development regulations, including but not limited to setback requirements, lot-coverage requirements, and other such requirements, the dimensions of the entire lot shall control, even though the antennas or towers may be located on leased parcels within such lot.
- 2. *Inventory of existing sites.* Each applicant for an antenna and/or tower shall provide to the zoning administrator an inventory of its existing towers, antennas, or sites approved for towers or antennas, that are either within the jurisdiction of the city or within one mile of the border thereof, including specific information

about the location, height, and design of each tower. The zoning administrator may share such information with other applicants applying for a zoning permit administrative approvals or conditional use permits under this appendix or other organizations seeking to locate antennas within the jurisdiction of the city, provided, however that the zoning administrator is not, by sharing such information, in any way representing or warranting that such sites are available or suitable.

3. *Aesthetics.* Towers and antennas shall meet the following requirements:
 - a. Towers shall either maintain a galvanized steel finish or, subject to any applicable standards of the FAA, be painted a neutral color so as to reduce visual obtrusiveness.
 - b. At a tower site, the design of the buildings and related structures shall, to the extent possible, use materials, colors, textures, screening, and landscaping that will blend them into the natural setting and surrounding buildings.
 - c. If an antenna is installed on a structure other than a tower, the antenna and supporting electrical and mechanical equipment must be of a neutral color that is identical to, or closely compatible with, the color of the supporting structure so as to make the antenna and related equipment as visually unobtrusive as possible.
 - d. *Lighting.* Towers shall not be artificially lighted, unless required by the FAA or other applicable authority. If lighting is required, the lighting alternatives and design chosen must cause the least disturbance to the surrounding views.
4. *State or federal requirements.* All towers must meet or exceed current standards and regulations of the FAA, the FCC, and any other agency of the state or federal government with the authority to regulate towers and antennas. If such standards and regulations are changed, then the owners of the towers and antennas governed by this appendix shall bring such towers and antennas into compliance with such revised standards and regulations within six months of the effective date of such standards and regulations, unless a different compliance schedule is mandated by the controlling state or federal agency. Failure to bring towers and antennas into compliance with such revised standards and regulations shall constitute grounds for the removal of the tower or antenna at the owner's expense.
5. *Building codes; safety standards.* To ensure the structural integrity of towers, the owner of a tower shall ensure that it is maintained in compliance with standards contained in applicable state or local building codes and the applicable standards for towers that are published by the Electronic Industries Association, as amended from time to time. If, upon inspection, the city concludes that a tower fails to comply with such codes and standards and constitutes a danger to persons or property, then upon notice being provided to the owner of the tower, the owner

shall have 30 days to bring such tower into compliance with such standards. Failure to bring such tower into compliance within said 30 days shall constitute grounds for the removal of the tower or antenna at the [owner's] expense.

6. *Measurement.* For purposes of measurement, tower setbacks and separation distances shall be calculated and applied to facilities located in the city irrespective of municipal and county jurisdictional boundaries.
7. *Not essential services.* Towers and antennas shall be regulated and permitted pursuant to this appendix and shall not be regulated or permitted as essential services, public utilities, or private utilities.
8. *Franchises.* Owners and/or operators of towers or antennas shall certify that all franchises required by law for the construction and/or operation of a wireless communication system in the city have been obtained and shall file a copy of all required franchises with the zoning administrator.
9. *Signs.* No signs shall be allowed on an antenna or tower.
10. *Buildings and support equipment.* Buildings and support equipment associated with antennas or towers shall comply with the requirements of subsection D.
11. *Multiple antenna/tower plan.* The city encourages the users of towers and antennas to submit a single application for approval of multiple towers and/or antenna sites. Applications for approval of multiple sites shall be given priority in the review process.

C. *Conditional use permits.*

1. *General.* The following provisions shall govern the issuance of conditional use permits for towers or antennas by the planning commission:
 - a. All wireless communication towers or antennas require a conditional use permit.
 - b. Applications for conditional use permits under this section shall be subject to the procedures and requirements of Article 8 of this appendix, except as modified in this section.
 - c. In granting a conditional use permit, the planning commission may impose conditions to the extent the planning commission concludes such conditions are necessary to minimize any adverse effect of the proposed tower on adjoining properties.
 - d. Any information of an engineering nature that the applicant submits, whether civil, mechanical, or electrical, shall be certified by a licensed professional engineer.
 - e. An applicant for a conditional use permit shall submit the information described in this section and Article 8 of this appendix.

2. Locating antennas on existing structures or towers consistent with the terms of subsections (a) and (b) below.
 - a. Antennas on existing structures. Any antenna which is not attached to a tower may be approved by the planning commission as an accessory use to any commercial, industrial, professional, institutional, or multi-family structure of eight or more dwelling units, provided:
 - (1) The antenna complies with all applicable FCC and FAA regulations; and
 - (2) The antenna complies with all applicable building codes.
 - (3) The request complies with the applicable standards found in this section and Article 8 of this appendix.
 - b. Antennas on existing towers. An antenna which is attached to an existing tower may be approved by the planning commission and, to minimize adverse visual impacts associated with the proliferation and clustering of towers, collocation of antennas by more than one carrier on existing towers shall take precedence over the construction of new towers, provided such collocation is accomplished in a manner consistent with the following:
 - (1) A tower which is modified or reconstructed to accommodate the collocation of an additional antenna shall be of the same tower type as the existing tower, unless the planning commission allows reconstruction as a monopole.
 - (2) Height.
 - (i) An existing tower may be modified or rebuilt to a taller height, not to exceed the maximum height allowed under this appendix, to accommodate the collocation of an additional antenna.
 - (ii) The additional height referred to in subsection (2)(i) shall not require an additional distance separation as set forth in section 9.19 C. The tower's pre-modification height shall be used to calculate such distance separations.
 - (3) Onsite location.
 - (i) A tower which is being rebuilt to accommodate the collocation of an additional antenna may be moved onsite within 50 feet of its existing location.
 - (ii) After the tower is rebuilt to accommodate collocation, only one tower may remain on the site.
 - (iii) A relocated onsite tower shall continue to be measured from the original tower location for purposes of calculating separation distances between towers pursuant to section 9.19C2e. The relocation of a tower hereunder shall in no way be deemed to cause a violation of section 9.19 C2e.

- (iv) The onsite relocation of a tower which comes within the separation distances to residential units or residentially zoned lands as established in section 9.19C2e shall only be permitted when approved by the planning commission.

3. Towers.

- a. Information required. In addition to any information required for applications for conditional use permits pursuant to Article 8, applicants for a conditional use permit for a tower shall submit the following information:
 - (1) A scaled site plan clearly indicating the location, type and height of the proposed tower, on-site land uses and zoning, adjacent land uses and zoning (including when adjacent to other municipalities), master plan classification of the site and all properties within the applicable separation distances set forth in section 9.19 C2e, adjacent roadways, proposed means of access, setbacks from property lines, elevation drawings of the proposed tower and any other structures, topography, parking, and other information deemed by the zoning administrator to be necessary to assess compliance with this appendix.
 - (2) Legal description of the parent tract and leased parcel (if applicable).
 - (3) The setback distance between the proposed tower and the nearest residential unit, platted residentially zoned properties, and unplatted residentially zoned properties.
 - (4) The separation distance from other towers described in the inventory of existing sites submitted pursuant to section 9.19 B2 shall be shown on an updated site plan or map. The applicant shall also identify the type of construction of the existing tower(s) and the owner/operator of the existing tower(s), if known.
 - (5) A landscape plan showing specific landscape materials.
 - (6) Method of fencing, and finished color and, if applicable, the method of camouflage and illumination.
 - (7) A description of compliance with sections 9.19 B2, B3, B4, B5, B8, B9 and B10; C2d, C2e and all applicable federal, state or local laws.
 - (8) A notarized statement by the applicant as to whether construction of the tower will accommodate collocation of additional antennas for future users.
 - (9) Identification of the entities providing the backhaul network for the tower(s) described in the application and other cellular sites owned or operated by the applicant in the municipality.
 - (10) A description of the suitability of the use of existing towers, other structures or alternative technology not requiring the use of towers or structures to provide the services to be provided through the use of the proposed new tower.

- (11) A description of the feasible location(s) of future towers or antennas within the city based upon existing physical, engineering, technological or geographical limitations in the event the proposed tower is erected.
- b. Factors considered in granting conditional use permits for towers. In addition to any standards for consideration of conditional use permit applications pursuant to Article 8 of this appendix, the planning commission shall consider the following factors in determining whether to issue a conditional use permit, although the planning commission may waive or reduce the burden on the applicant of one or more of these criteria if the planning commission concludes that the goals of this appendix are better served thereby:
 - (1) Height of the proposed tower;
 - (2) Proximity of the tower to residential structures and residential district boundaries;
 - (3) Nature of uses on adjacent and nearby properties;
 - (4) Surrounding topography;
 - (5) Surrounding tree coverage and foliage;
 - (6) Design of the tower, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness;
 - (7) Proposed ingress and egress; and
 - (8) Availability of suitable existing towers, other structures, or alternative technologies not requiring the use of towers or structures, as discussed in section 9.19.C.2.c of this appendix.
 - c. Availability of suitable existing towers, other structures, or alternative technology. No new tower shall be permitted unless the applicant demonstrates to the reasonable satisfaction of the planning commission that no existing tower, structure or alternative technology that does not require the use of towers or structures can accommodate the applicant's proposed antenna. An applicant shall submit information requested by the planning commission related to the availability of suitable existing towers, other structures or alternative technology. Evidence submitted to demonstrate that no existing tower, structure or alternative technology can accommodate the applicant's proposed antenna may consist of any of the following:
 - (1) No existing towers or structures are located within the geographic area which meets applicant's engineering requirements.
 - (2) Existing towers or structures are not of sufficient height to meet applicant's engineering requirements.
 - (3) Existing towers or structures do not have sufficient structural strength to support applicant's proposed antenna and related equipment.

- (4) The applicant's proposed antenna would cause electromagnetic interference with the antenna on the existing towers or structures, or the antenna on the existing towers or structures would cause interference with the applicant's proposed antenna.
 - (5) The fees, costs, or contractual provisions required by the owner in order to share an existing tower or structure or to adapt an existing tower or structure for sharing are unreasonable. Costs exceeding new tower development are presumed to be unreasonable.
 - (6) The applicant demonstrates that there are other limiting factors that render existing towers and structures unsuitable.
 - (7) The applicant demonstrates that an alternative technology that does not require the use of towers or structures, such as a cable microcell network using multiple low-powered transmitters/receivers attached to a wireline system, is unsuitable. Costs of alternative technology that exceed new tower or antenna development shall not be presumed to render the technology unsuitable.
- d. Setbacks. The following setback requirements shall apply to all towers for which a conditional use permit is required; provided, however, that the planning commission may reduce the standard setback requirements if the goals of this appendix would be better served thereby:
- (1) Towers must be set back a distance equal to at least 75 percent of the height of the tower from any adjoining lot line.
 - (2) Guys and accessory buildings must satisfy the minimum zoning district setback requirements.
- e. Separation. The following separation requirements shall apply to all towers and antennas for which a conditional use permit is required; provided, however, that the planning commission may reduce the standard separation requirements if the goals of this appendix would be better served thereby.
- (1) Separation from off-site uses/designated areas.
 - (i) Tower separation shall be measured from the base of the tower to the lot line of the off-site uses and/or designated areas as specified in Table 1, except as otherwise provided in Table 1.
 - (ii) Separation requirements for towers shall comply with the minimum standards established in Table 1.

Table 1

<i>Off-site Use / Designated Area</i>	<i>Separation Distance</i>
Single-family or duplex residential units ¹	200 feet or 300% height of tower whichever is greater
Vacant single-family or duplex residentially zoned land which is either platted or has preliminary subdivision plan approval which is not expired	200 feet or 300% height of tower ² whichever is greater
Vacant unplatted residentially zoned lands ³	100 feet or 100% height of tower whichever is greater
Existing multi-family residential units greater than duplex units	100 feet or 100% height of tower whichever is greater
Nonresidentially zoned lands or nonresidential uses	None; only setbacks apply

¹Includes modular homes and mobile homes used for living purposes.

²Separation measured from base of tower to closest building setback line.

³Includes any unplatted residential use properties without a valid preliminary subdivision plan or valid development plan approval and any multi-family residentially zoned land greater than duplex.

(2) Separation distances between towers.

- (i) Separation distances between towers shall be applicable for and measured between the proposed tower and preexisting towers. The separation distances shall be measured by drawing or following a straight line between the base of the existing tower and the proposed base, pursuant to a site plan, of the proposed tower. The separation distances (listed in linear feet) shall be as shown in Table 2.

Table 2

	<i>Existing Tower - Types</i>			
	<i>Lattice</i>	<i>Guyed</i>	<i>Monopole 75 ft. in Height or Greater</i>	<i>Monopole Less Than 75 ft. in Height</i>
Lattice	5,000	5,000	1,500	750
Guyed	5,000	5,000	1,500	750
Monopole 75 ft. in height or greater	1,500	1,500	1,500	750
Monopole less than 75 ft. in height	750	750	750	750

- f. Security fencing. Towers shall be enclosed by security fencing not less than six feet in height and shall also be equipped with an appropriate anti-climbing device; provided however, that the planning commission may waive such requirements, as it deems appropriate.
- g. Landscaping. The following requirements shall govern the landscaping surrounding towers for which a conditional use permit is required; provided, however, that the planning commission may waive such requirements if the goals of this appendix would be better served thereby.
 - (1) Tower facilities shall be landscaped with a buffer of plant materials that effectively screens the view of the tower compound from property used for residences. The standard buffer shall consist of a landscaped strip at least four feet wide outside the perimeter of the compound.
 - (2) In locations where the visual impact of the tower would be minimal, the landscaping requirement may be reduced or waived.
 - (3) Existing mature tree growth and natural land forms on the site shall be preserved to the maximum extent possible. In some cases, such as towers sited on large, wooded lots, natural growth around the property perimeter may be sufficient buffer.

D. Buildings or other equipment storage.

- 1. The location, height and size of the equipment cabinet or structure used in association with towers and antennas shall be reviewed and approved by the planning commission.

E. Removal of abandoned antennas and towers. Any antenna or tower that is not operated for a continuous period of 12 months shall be considered abandoned, and the owner of such antenna or tower shall remove the same within 90 days of receipt of notice from the city notifying the owner of such abandonment. Failure to remove an abandoned antenna or tower within said 90 days shall be grounds to remove the tower or antenna at the owner's expense. If there are two or more users of a single tower, then this provision shall not become effective until all users cease using the tower.

(Ord. No. 04-03, § 1, 6-14-04)

ARTICLE 10. CONDOMINIUMS

Sec. 10.01. Intent.

The intent of this article is to regulate the division and development of land under the Condominium Act (Act No. 59 of the Public Acts of Michigan of 1978) so that the development is comparable in quality of design to property divided and developed by other methods.

Sec. 10.02. Review requirements.

In order to ensure compliance with this appendix, all condominium developments shall go through the site plan review process, including developments consisting solely of single-family or duplex residences, that may otherwise not be required to prepare a site plan. In addition to the information required in Article VII, all applicants for condominium site plan review shall submit the following information.

- A. A copy of the proposed condominium master deed.
- B. A copy of the proposed condominium subdivision plan (this may replace the site plan normally required for site plan review).
- C. A copy of the proposed condominium by-laws.

Sec. 10.03. Zoning ordinance standards.

A. *Lot size.* In conventional condominium development the entire site must meet the minimum lot size requirements for the zoning district the parcel is located in. For site condominium developments, each condominium unit and its associated limited common area are considered equivalent to a "lot" and must meet the minimum lot size requirements for the zoning district the parcel is located in.

B. *Setbacks.* In conventional condominium development the buildings must be setback from the site's boundaries as required in the zoning district the parcel is located in while the setback from other buildings must meet the building setback requirements of the multiple family district. For site condominium developments the setbacks shall be from the outer edge of the "lot" consisting of condominium units and their associated limited common area, and shall be consistent with the setbacks for principal structures in the zoning district in which it is located.

Sec. 10.04. Condominium design requirements.

Conventional and site condominium developments shall comply with the site plan review design requirements in Article VII. In addition, site condominiums shall comply with the design standards contained in the City of Mt. Morris Subdivision Control Ordinance.

Sec. 10.05. Survey requirements.

Conventional condominiums shall comply with the monumenting requirements contained in the Condominium Act, Act No. 59 of the Public Acts of Michigan of 1978. Site condominium shall comply with the following requirements:

- A. Monuments shall be located in the ground and made according to the following requirements, but it is not intended or required that monuments be placed within their traveled portion of a street to mark angles in the boundary of the subdivision if the angles' points can be readily reestablished by reference to monuments along the sidelines of the streets.

- B. All monuments used shall be made of solid iron or steel at least ½ inch in diameter and 36 inches long and completely encased in concrete at least four inches in diameter.
- C. Monuments shall be located in the ground at all angles in the boundaries of the site condominium; at the intersection lines of streets and at the intersection of the lines of streets with the boundaries of the site condominium and at the intersection of alleys with the boundaries of the site condominium; at the points of curvature, points of reverse curvature and angle points in the side lines of streets and alleys; and at all angles of an intermediate traverse line.
- D. If the required location of a monument is in an inaccessible place, or where the locating of a monument would be clearly impractical, it is sufficient to place a reference monument nearby and the precise location thereof be clearly indicated on the plat and referenced to the true point.
- E. If a point required to be monumented is on a bedrock outcropping, a steel rod, at least ½ inch in diameter shall be drilled and grouted into solid rock to a depth of at least eight inches.
- F. All required monuments shall be placed flush with the ground where practicable.
- G. The corner of each area consisting of a unit and the associated limited common area reserved for that unit, and treated as a "lot" under this appendix shall be monumented in the field by iron or steel bars or iron pipes at least 18 inches long and ½ inch diameter, or other approved markers.
- H. The city council may waive the placing of any of the required monuments and markers for a reasonable time, not to exceed one year, on condition that the proprietor deposits with the city cash or a certified check, or irrevocable bank letter of credit running to the city, whichever the proprietor selects, in an amount not less than \$100.00 per monument and not less than \$400.00 in total, except that lot corner markers shall be at the rate of not less than \$25.00 per markers. Such cash, certified check or irrevocable bank letter of credit shall be returned to the proprietor upon receipt of a certificate by a surveyor that the monuments and markers have been placed as required within the time specified. If the proprietor defaults the city shall promptly require a surveyor to locate the monuments and markers in the grounds as certified on the plat, at a cost not to exceed the amount of the security deposited and shall pay the surveyor.

ARTICLE 11. ZONING ORDINANCE AMENDMENTS

Sec. 11.01. Initiation of amendments.

A. Any proposal for an amendment to the zoning ordinance text or map may be initiated by any qualified voter resident in the city upon the filing with the city zoning administrator of a petition containing the proposed text or map change and endorsed by city electors numbering

not less than five percent of the number of city electors voting for the office of the governor at the last election at which a governor was elected, and accompanied by any necessary documents.

B. Any proposal for an amendment to the zoning ordinance map may be initiated by any owner of an interest in the parcel as to the rezoning of such parcel upon the filing with the city zoning administrator of a petition proposing the zone change, accompanied by a map at a scale of not less than 1"=50' showing the subject parcel in relation to adjoining parcels of land, and the necessary fees for such zone change.

C. Any proposal for an amendment to the Zoning Ordinance text or map may be initiated by the city council or the city planning commission, upon filing with the city zoning administrator a resolution duly adopted and proposing an amendment.

Sec. 11.02. Procedures.

A. The city clerk shall give notice of the time and place of the city planning commission meeting at which the amendment will be heard by a publication in a newspaper of general circulation in the city.

1. The notice shall be published not less than 15 days from the date of such hearing.
2. The notice shall include the places and times at which the tentative text and any maps of the zoning ordinance may be examined.

B. The city clerk shall give similar notice by mail of the time and place of such hearing to the owner or owners of the property or properties in question as well as all persons to whom real property is assessed within 300 feet of the property and to the occupants of all structures within 300 feet of the property regardless of whether the property or occupant is located in the zoning jurisdiction at least 15 days before the hearing. Notice to the surrounding property owners or residents does not apply if the rezoning applies to 11 or more adjacent parcels. Notice shall also be given in similar fashion to each electric, gas, and pipeline public utility company, each telecommunication service provider, to each railroad company owning or operating any public utility or railroad and the airport manager of each airport, within districts affected that registers its name and mailing address with the city clerk for the purpose of receiving the notice. Notice shall also be sent to the township planning commission and township board of Genesee or Mt. Morris Townships if the property in question is within 500 feet of the township line. An affidavit of mailing shall be maintained. The notice shall:

1. Describe the nature of the conditional use request.
2. Indicate the property which is the subject of the conditional use request.
3. State when and where the public hearing on the conditional use request will be held.
4. Indicate when and where written comments will be received concerning the request.

C. At the meeting where an application for a zoning ordinance amendment is considered, the city planning commission shall consider the request in accordance with the following standards:

1. The use requested shall be consistent with and promote the intent and purpose of this ordinance.
2. The proposed use will ensure that the land use or activity authorized shall be compatible with adjacent land uses, the natural environment, and the capabilities of public services affected by the proposed land use.
3. The land use sought is consistent with the public health, safety, and welfare of the City of Mt. Morris.
4. The proposed use is consistent with the city master plan or a determination that the plan is not applicable due to a mistake in the plan, changes in relevant conditions or changes in relevant plan policies.

D. Following such hearing, the commission shall submit their recommendation, along with a summary of the comments submitted at the public hearing in a report to the city council.

E. Following the receipt of the report, the ordinance shall be presented to the city council for introduction. If the ordinance is passed, the council shall:

1. Schedule a second reading of the ordinance; or
2. Schedule a public hearing on the proposed ordinance, if desired, prior to scheduling a second reading. Notice of such a public hearing shall comply with the requirements of subsection B. of this section.

F. If the ordinance fails to be approved upon introduction, the council may send the request back to the planning commission for further study. The city council shall give a hearing to any property owners who request one by sending a letter certified mail to the city clerk.

G. A zoning ordinance amendment shall be approved by a majority of the members of the city council. If prior to voting on a rezoning, the city council is presented with a protest petition signed by one of the following:

1. The owners of at least 20 percent of land, excluding publicly owned land, proposed to be rezoned;
2. The owners of at least 20 percent of the area of land included within an area extending outward 100 feet from any point on the boundary of the land included in the rezoning, excluding publicly owned land;

Then a zoning text or map amendment shall require a two-thirds majority vote of the members elected to be approved.

H. Following adoption of the zoning amendment, one notice of adoption shall be published in a newspaper of general circulation in the city within 15 days of adoption. The notice shall include:

1. A summary of the regulatory effect of the amendment or the actual text of the amendment.
 2. The effective date of the ordinance, which will be seven days from the date of publication.
 3. The place and time where a copy of the ordinance may be purchased or inspected.
- (Ord. No. 06-09, § 2, 1-8-07)

ARTICLE 12. ADMINISTRATION AND ENFORCEMENT

Sec. 12.01. Administration.

A. *Administrative official.* The zoning administrator designated by the city council shall administer and enforce this appendix. He/she may be provided with the assistance of such other persons as the city council may direct. He/she may delegate his/her power with the approval of the city council and notice to the planning commission.

1. If the zoning administrator shall find that any of the provisions of this appendix are being violated, he/she shall notify, in writing, the person responsible for such violation, or the owner of record of the lot upon which such violation is taking place, indicating the nature of the violation and ordering the action necessary to correct it. He/she shall order discontinuance of the illegal use of any lot or structures; removal of illegal structures; or of illegal additions, alterations, or structural changes; discontinuance of any illegal work being done; or shall take any other action authorized by this appendix to ensure compliance with or to prevent violation of its provisions.
2. The zoning administrator shall submit an annual report on his/her activity to the planning commission and city council. The zoning administrator shall report to the planning commission, zoning board of appeals and city council as requested by them.
3. The zoning administrator shall be responsible for following up on zoning related complaints, accepting applications for zoning permits, zoning amendments, requests for variances and other matters for the zoning board of appeals, and conditional use permits.

B. *Zoning permits required.* A zoning permit shall be required before any of the following activities are undertaken, or a building permit is issued for them:

1. Construction of a building or moving a building onto a lot.
2. Additions to an existing building, including porches and decks.
3. Changes in the use of a building or parcel of land.

4. Changes to a nonconforming use or a structure housing a nonconforming use including interior remodeling.
5. Construction of a parking lot.
6. A zoning permit shall also be required with the issuance of a conditional use permit.

C. Information required for zoning permit. The zoning administrator shall provide a form to be filled out by an applicant for a zoning permit and a list of information required for a plot plan of the site for which the zoning permit is being requested. The plot plan shall show:

1. Dimensions of the parcel of land.
2. Frontages on public or private streets or roads.
3. Location and size (exterior "footprint" and height) of all existing and proposed buildings and parking areas and their distance from each other and the lot lines.
4. Proposed parking spaces.

D. Expiration of zoning permit. A zoning permit shall expire two years after issuance unless construction has been completed on improvements authorized by the site plan, or in the case of a use that does not require new construction, the applicant has begun to use the property as authorized by the permit.

The zoning administrator may extend the time limit by an additional one year provided the applicant requests the extension in writing prior to the end of the initial two-year expiration period, identifying the reasons for the request, and has demonstrated substantial and continuous progress towards completing the construction.

Sec. 12.02. Penalties for violation.

Violations of the provisions of this appendix (Appendix D, Zoning) or failure to comply with any of its requirements, including violations of conditions and safeguards required as conditions for the granting of variances or appeals or conditional use permits, shall constitute misdemeanors punishable pursuant to Section 1-15 of this Code of Ordinances.

(Ord. No. 08-03, § 2, 4-28-08)

Sec. 12.03. Schedule of application fees, and expenses.

A. The city council shall establish a schedule of application fees for conditional use permits, variances, appeals, zoning permits, and amendments, and establish a procedure for their collection.

B. The city may also establish procedures either separately or through the provisions of this appendix to levy other charges related to the review of applications.

C. No action shall be taken on any application or appeal until all applicable fees, charges, and expenses have been paid in full.

ARTICLE 13. ZONING BOARD OF APPEALS**Sec. 13.01. Creation, membership, term of office.**

The duties of the zoning board of appeals may be performed by the city council or may be performed by a separate body, as determined by city council. If city council determines that the duties of the zoning board of appeals shall be performed by a separate body, the standards for membership for that body shall be as follows:

- A. Zoning board of appeals, members; terms. The zoning board of appeals shall consist of five members, who shall be electors of the city; members shall be appointed by the city council, to serve for a period of three years except as hereinafter set forth. A successor shall be appointed not more than one month after the term of the preceding member has expired. Vacancies for unexpired terms shall be filled for the remainder of the term. Members currently serving shall complete the terms to which they were appointed. The two new members authorized hereby shall be appointed to and serve terms as follows: one shall be for a term of two years and one shall be for a term of three years. Thereafter, all appointments shall be for three-year terms.
- B. Alternate members. Henceforth, there shall be no alternate members. Alternate members currently serving (if not appointed to a regular position as set forth in subsection A) shall vacate their office as of the effective date hereof.
- C. Qualifications shall be as herein specified and as prescribed by State law.
- D. Other.
 - 1. A member of the zoning board of appeals may be removed by the legislative body for misfeasance, malfeasance, or nonfeasance in office upon written charges and after public hearing. A member shall disqualify himself or herself from a vote in which the member has a conflict of interest. Failure of a member to disqualify himself or herself from a vote in which the member has a conflict of interest constitutes malfeasance in office.
 - 2. Meetings of the zoning board of appeals shall be held at the call of the chairperson and at other times as the zoning board of appeals in its rules of procedure may specify. The chairperson or, in his or her absence, the acting chairperson may administer oaths and compel the attendance of witnesses.
 - 3. The zoning board of appeals shall maintain a record of its proceedings which shall be filed in the office of the clerk of the legislative body.

(Ord. No. 06-09, § 3, 1-8-07; Ord. No. 07-04, § 1, 5-14-07; Ord. No. 09-01, § 1, 7-13-09)

Sec. 13.02. Compensation.

Each member shall receive a reasonable sum as determined by the city council for their services in attending each regular or special meeting of said board; sums to pay said compensation and the expenses of the board shall be provided annually in advance by the city council.

Sec. 13.03. Meetings, records.

Meetings of the zoning board of appeals shall be held at the call of the chairman and at such other times as the board may specify in rules of procedure. All meetings must comply with the "Open Meetings Act," Act No. 267 of the Public Acts of Michigan of 1976, as amended. The board shall maintain a record of its proceedings, which shall be filed in the office of the city clerk and which shall be a public record.

Sec. 13.04. Procedure.

A. The concurring vote of a majority of the members of the zoning board of appeals shall be necessary to reverse any order, requirement, decision or determination of any administrative official or to decide in favor of the applicant in any matter upon which it is required to pass under this ordinance or to effect any variation in such ordinance.

B. Notice. When an application for a variance, appeal, interpretation, or other review by the ZBA has been filed in proper form and with the required date, the zoning administrator shall place that application or appeal on the calendar for a public hearing at the next meeting of the board and cause notices stating the time, place, and object of the hearing to be served. Such notices shall be served personally or by mail not less than 15 days prior to such hearing upon the applicant or appellant. The zoning administrator shall also publish notice of the meeting in a newspaper in general circulation in the City of Mt. Morris, not less than 15 days prior to such hearing.

When an application deals with a specific parcel of land such as a variance, all persons to whom real property is assessed within 300 feet of the property and to the occupants of all structures within 300 feet of the property regardless of whether the property or occupant is located in the zoning jurisdiction shall receive notice not less than 15 days before the meeting.

The notice shall:

1. Describe the nature of the conditional use request.
2. Indicate the property which is the subject of the conditional use request.
3. State when and where the public hearing on the conditional use request will be held.
4. Indicate when and where written comments will be received concerning the request.

Notices of all meetings of the ZBA shall be posted at least five days prior to the meeting at the city hall.

C. At the hearing, any party may be heard in person or by agent or attorney.

D. Each appeal or application for variance or interpretation shall be accompanied by a filing fee to be determined by the city council which shall be deposited by the zoning administrator with the city treasurer.

E. The ZBA shall state the requirements for their decisions.
(Ord. No. 06-09, § 4, 1-8-07)

Sec. 13.05. Conditions.

Reasonable conditions may be imposed with any affirmative decision by the zoning board of appeals. The conditions may include, but are not limited to, conditions necessary to insure that public services and facilities affected by a proposed land use or activity will be capable of accommodating increased service and facility loads caused by the land use or activity, to protect the natural environment and conserve natural resources and energy, to insure compatibility with adjacent uses of land, and to promote the use of land in a socially and economically desirable manner. Conditions imposed shall meet all of the following requirements:

- A. Be designed to protect natural resources, the health, safety, and welfare and the social and economic well being of those who will use the land or activity under consideration, residents and landowners immediately adjacent to the proposed land use or activity, and the community as a whole.
- B. Be related to the valid exercise of the police power, and purposes which are affected by the proposed use or activity.
- C. Be necessary to meet the intent and purpose of the zoning ordinance, be related to the standards established in the ordinance for the land use or activity under consideration, and be necessary to insure compliance with those standards.

Sec. 13.06. Powers and duties.

The zoning board of appeals shall act upon the following questions as they arise in the administration of this appendix:

- A. The interpretation of the zoning map and zoning ordinance text.
- B. Appeals from a requirement, decision or determination made by an administrative official charged with the enforcement of this appendix.
- C. Requests for variance in the nonuse requirements of this appendix including height, setback building size, lot coverage, lot width and lot size as well as street parking and loading requirements.

Sec. 13.07. Variance.

A. A variance from the provisions of this appendix may be granted by the board of zoning appeals, subject to the provisions of section 13.03 of this appendix and upon finding by such board of all of the following that:

- 1. The strict enforcement of the provisions of this appendix would cause any unnecessary hardship and deprive the owner of rights enjoyed by all other property owners owning property within the same zoning district;
- 2. There are conditions and circumstances unique to the property which are not similarly applicable to other properties in the same zoning district;

3. The conditions and circumstances unique to the property were not created by the owner, or his predecessor in title, within the time following the effective date of the provisions alleged to adversely affect such property;
4. The requested variance will not confer special privileges that are denied other properties similarly situated and in the same zoning district; and
5. The requested variance will not be contrary to the spirit and intent of this zoning ordinance.

B. A variance granted under this appendix shall not permit a use not otherwise permitted within the zoning district, upon the property for which a variance is being requested.

Sec. 13.08. Variance review procedures.

A. *Intent.* These variance review procedures are instituted to provide an opportunity for the relaxation of the terms of the zoning ordinance through a nonuse variance, where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the actions of the applicant, or his predecessors in title, a literal enforcement of the ordinance would result in practical difficulty. As used in this appendix, a variance is authorized only for height, area, and size of structure, or size of yards and open spaces; establishment or expansion of a use otherwise prohibited shall not be allowed by use variance, nor shall a use variance be granted because of the presence of nonconformities in the zoning district or uses in an adjoining zoning district.

B. *Procedures.*

1. An application for the approval of a nonuse variance shall be made, by an owner of an interest in the parcel, to the city clerk accompanied by the necessary fees and documents as provided in this appendix.
2. The application shall be accompanied by a plot plan drawn to the scale of one inch equals 20 feet and placed on a standard sheet and containing the following information:
 - a. Dimensional elements for which a variance is requested.
 - b. Dimensional relationships of the subject parcel to the structures on all adjacent parcels.
3. The application shall be accompanied by an affidavit by the applicant explaining:
 - a. How the strict enforcement of the provisions of the city zoning ordinance would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity unnecessarily burdensome.
 - b. The conditions and circumstances unique to the property which are not similarly applicable to other properties in the same zoning district.
 - c. The conditions and circumstances unique to the property were not created by the owner, or his predecessor in title, within the time following the effective date of the provisions alleged to adversely affect such property.

- d. Why the requested variance if granted would not confer special privileges that are denied other properties similarly situated and in the same zoning district.
 - e. Why the requested variance if granted would not be contrary to the spirit and intent of this zoning ordinance.
4. The board shall consider the application for a variance at its next regular meeting, which provides sufficient time for notice, as required heretofore, or within not more than 35 days after receipt of the application by the city clerk, and hear and question any witness appearing before the board.
5. The board shall approve with or without conditions, or disapprove the application and shall communicate its action in writing to the applicant, the city council, the building official, and the city planning commission within one week from the time of the meeting at which it considered the application.
 - a. The board shall not approve an application for a nonuse variance unless it has found positively that all of the following facts and conditions exist:
 - i. The standard for which the variance is being granted would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity unnecessarily burdensome.
 - ii. The variance would do substantial justice to the applicant as well as to other property owners in the district and a lesser relaxation of the standard would not provide substantial relief and be more consistent with justice to others.
 - iii. The problem is due to circumstances unique to the property and not to general conditions in the area.
 - iv. The problem is not self created.
 - v. Issuance of the variance would still ensure that the spirit of the ordinance is observed, public safety secured and substantial justice done.
6. The zoning administrator shall, upon receipt of the notice of approval and upon application by the applicant, accompanied by a receipt duly executed by the city treasurer attesting to the payment of all required fees, issue a zoning permit or such other approval permitting the nonuse variance, subject to all conditions imposed by such approval.
7. An applicant may not resubmit a variance request that the zoning board of appeals has denied for a period of at least six months following their decision, except on the grounds of a substantial change in conditions of the application or the surrounding environs. An applicant wishing to resubmit a variance request in less than six months shall submit a letter to the zoning administrator identifying what they consider to be the changes in conditions. The zoning administrator shall be responsible for determining if they constitute a substantial change.
8. A variance shall expire two years after the vote approving the permit unless construction has begun on improvements authorized by the variance.

The zoning administrator may extend the time limit by an additional one year provided the applicant requests the extension in writing prior to the end of the initial two-year expiration period, identifying the reasons for the request, and has demonstrated substantial and continuous progress towards completing the construction.

Sec. 13.09. Appeals procedures.

A. *Intent.* These appeals procedures are instituted to hear and decide appeals from and review any order, requirement, decision, or determination made by an administrative official charged with the enforcement of the city zoning ordinance, except the issuance of this appendix.

B. *Procedures.* An appeal shall be filed with the officer from whom the appeal is taken and with the zoning board of appeals specifying the grounds for the appeal.

1. Appeals of administrative actions shall be taken to the zoning board of appeals within 21 days of the date of such actions by the filing of a notice of appeal with the zoning administrator.
2. The officer from whom the appeal is taken shall forthwith transmit to the board all papers constituting the record upon which the appeal is taken.
3. An appeal stays all proceedings in furtherance of action appealed from, unless the officer from whom the appeal is taken certifies to the board after the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate, a stay would in his opinion cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order, which may be granted by the board, or by the circuit court, on application, on notice to the officer from whom the appeal is taken, and on due cause shown.
4. Such appeal may be taken by any person aggrieved or by any officer, department, board, or bureau of the city, county, or state.
5. The board of appeals shall hear the appeal within 35 days of the application being filed in its proper form. The board of appeals shall decide the appeal within 14 days of the public hearing for which the appeal was held. The board of appeals may reverse or affirm wholly or partly, or may modify the order, requirement, decision, or determination appealed from and shall make an order, requirement, decision, or determination as in its opinion ought to be made in the premises, and to the end shall have all the powers of the officer or body from whom the appeal is taken. Where there are practical difficulties in the way of carrying out the strict letter of the ordinance, the board of appeals may in passing upon appeals vary or modify any of its rules, regulations, or provisions relating to the construction, or structural changes in equipment, or alteration of buildings or structures, or the use of land, buildings or structures, so that the spirit of the ordinance shall be observed, public safety secured, and substantial

justice done. The decision of such board shall not be final, and any person having an interest affected by this appendix shall have the right to appeal to the circuit court on questions of law and fact.

6. Any action by the board shall be stated in writing.

C. Interpretation of zoning ordinance and map.

1. The ZBA shall have the authority to interpret the provisions of this appendix when a requirement, standard, or other text is unclear. When determining if a particular use is included in the definition of a type or group of uses permitted in a district, it shall not interpret a use specifically listed in one district as being inferred as permitted in another district.
2. In interpreting the boundaries of zoning district boundaries, the ZBA shall assume, unless there is information indicating otherwise, that zoning district boundaries follow lot lines, the centerline of creeks, streets, or alleys, railroad right-of-ways, section lines one-quarter or one-eighth section lines, or corporate boundary lines as they existed when the zoning boundary line was established.

ARTICLE 14. RESERVED

ARTICLE 15. RESERVED

ARTICLE 16. SEVERABILITY CLAUSE

Sec. 16.01. Severability.

This appendix and the various parts, sections, subsections, provisions, sentences, and clauses therefore are hereby declared to be severable. If any part, section, subsection, provision, sentence, or clause is adjudged unconstitutional or invalid, it is hereby declared that the remainder of this appendix shall not be affected thereby.

ARTICLE 17. EFFECTIVE DATE

Sec. 17.01. Effective date.

The ordinance codified in this appendix shall become effective on December 23, 2000.

We, the undersigned, mayor and clerk of the City of Mt. Morris, do hereby certify that the above ordinance was adopted by the Mt. Morris City Council at a regular meeting on November 13, 2000.

APPENDIX E

SUBDIVISION CONTROL*

Article I. General Provisions

- Sec. 1.1. Short title.
- Sec. 1.2. Purpose.
- Sec. 1.3. Legal basis.
- Sec. 1.4. Scope.
- Sec. 1.5. Administration.
- Sec. 1.6. Schedule of fees.

Article II. Definitions

Article III. Variances

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- Sec. 4.4. Reserved.
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- Sec. 4.6. Street lights.
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- Sec. 5.2. Preliminary plats.
- Sec. 5.3. Determination; preliminary plat.
- Sec. 5.4. Conditions and duration of approval.
- Sec. 5.5. Final plat.
- Sec. 5.6. Final plats data requirement.
- Sec. 5.7. Procedures.

***Editor's note**—Printed herein is Ord. No. 00-03, the Subdivision Control Ordinance of Mt. Morris, Michigan, as adopted by the city council on March 13, 2000. Amendments to the ordinance are indicated by parenthetical history notes following amended provisions. The absence of a history note indicates that the provision remains unchanged from the original ordinance. Obvious misspellings and punctuation errors have been corrected without notation. For stylistic purposes, headings and catchlines have been added and the same system of capitalization, citation to state statutes, and expression of numbers in text as appears in the Code of Ordinances has been used. Additions made for clarity are indicated by brackets.

MT. MORRIS CODE

Article VI. Subdivision Improvements

- Sec. 6.1. Notice of commencement.
- Sec. 6.2. Monuments.
- Sec. 6.3. Guarantee of completion of improvements required by the city.

Article VII. Enforcement and Penalties for Failure to Comply with This Appendix

- Sec. 7.1. Enforcement.
- Sec. 7.2. Penalties.

Article VIII. Amendments

- Sec. 8.1. Procedures.

Article IX. Miscellaneous Provisions

- Sec. 9.1. Validity.
- Sec. 9.2. Effective date.

ARTICLE I. GENERAL PROVISIONS**Section 1.1. Short title.**

This appendix shall be known and may be cited as the "City of Mt. Morris Subdivision Ordinance."

Section 1.2. Purpose.

The purpose of this appendix is to regulate and control the subdivision of land within the City of Mt. Morris, in an effort to insure proper legal description, identification, monumentation and recordation of real estate boundaries; to promote public health, safety and welfare by:

1. Promoting the orderly layout and appropriate use of land by discouraging haphazard, premature, uneconomical and scattered land development.
2. Providing safe, convenient and economical circulation of vehicular traffic.
3. Providing adequate building sites which are readily accessible by emergency vehicles.
4. Assuring the proper installation of streets and utilities.
5. Preventing unsafe or unsanitary conditions because of undue concentrations of population.
6. Protecting the environment and conserving the natural and cultural resources of the City of Mt. Morris.
7. Preventing excessive and untimely consumption of land resources.
8. Providing an efficient process for the review of proposed subdivisions.
9. Assuring that new development in the city meets the goals and conforms to the policies of the city's community master plan.
10. Minimizing the impacts of new subdivisions on neighboring properties and on the city.
11. Planning for the provision of adequate recreational areas, school sites, and other public facilities.
12. Providing for installation of necessary improvements by the land developer which ought not to become a charge on the citizens and taxpayers of the city overall.

Section 1.3. Legal basis.

This appendix is enacted pursuant to the statutory authority granted by the Land Division Act, Act No. 288 of the Public Acts of Michigan of 1967, as amended.

Section 1.4. Scope.

This appendix shall not apply to any lot or lots forming a part of a subdivision created and recorded prior to the effective date of the ordinance from which this appendix derives except for the further dividing of lots. Nor is it intended by this appendix to repeal, abrogate, annul,

or in any way impair or interfere with existing provisions of other laws, ordinances or regulations, or with private restrictions placed upon property by deed, covenant, or other private agreements, or with restrictive covenants running with the land to which the city is a party.

Where this appendix imposes a greater restriction upon land than is imposed or required by existing provisions of any other ordinance of this city, the provisions of this appendix shall control.

1. These regulations shall govern all new and expanding subdivisions of land within the limits of the City of Mt. Morris, Genesee County, Michigan.
2. No subdivider shall clear or disturb land before obtaining approval of the preliminary plat from the city council of the City of Mt. Morris.
3. No subdivider shall grade, scrape, or otherwise open or extend a street in a proposed subdivision, or stake out, or lay out lots in such subdivision, or in any other manner cause construction to begin, before obtaining approval of the preliminary plat from the City of Mt. Morris Council.
4. No subdivider shall transfer or sell any lot contained within a subdivision lying within City of Mt. Morris nor shall a building permit be issued until such subdivision and plat have been granted final approval by the City of Mt. Morris Council, in accordance with the procedures set forth in these regulations. The plat shall first be duly recorded by the Register of Deeds of Genesee County.

Section 1.5. Administration.

The approval provisions of this appendix shall be administered by the city council in accordance with Act No. 288 of the Public Acts of Michigan of 1967, as amended.

The city council shall refuse to approve what it considers to be scattered or premature subdivision of land that would involve danger or injury to the public health, safety, welfare, or prosperity by reason of lack of adequate water supply, schools, proper drainage, adequate streets or other public services; or which would necessitate an excessive expenditure of public funds for the supply of such services (such as undue maintenance costs for adequate streets).

Section 1.6. Schedule of fees.

The schedule of fees for review and establishment of plats shall be adopted by the city council.

ARTICLE II. DEFINITIONS

In general, words and terms used in these regulations shall have their customary dictionary meanings. Words in the singular include the plural and words in the plural include the singular. The masculine gender shall include the feminine and the feminine gender shall include the masculine. The word "shall" is always mandatory. The word "may" is permissive.

More specifically, any word or term defined in the zoning ordinance shall have the definition contained in that ordinance, unless defined differently below; other words and terms used herein are defined as follows:

Access point: An access point is:

- a. A driveway, a local street, a collector street, or minor street, intersecting an arterial street;
- b. A driveway or a local street intersecting a collector street or minor street; or
- c. A driveway or a local street intersecting a local or minor street.

Alley: A public or private right-of-way shown on a plat which provides secondary access to a lot, block or parcel of land.

As-built plans: Revised construction plans in accordance with all approved field changes.

Average daily traffic (ADT): The average number of vehicles per day that enter and exit the premises or travel over a specific section of street.

Berm: A mound of earth graded, shaped and improved with landscaping in such a fashion as to be used for visual and/or audible screening purposes to provide a transition between uses of differing intensity.

Block: An area of land within a subdivision that is entirely bounded by streets or highways, except alleys, and the exterior boundary or boundaries of the subdivision.

Block length: The distance between intersections of through streets, such distance being measured parallel to the longest street bounding the block and from right-of-way line to right-of-way line of the two intersecting streets.

Boundary adjustment: A minor shift or rotation of an existing lot line where no additional parcels are created, nor deleted, as approved by the city engineer or planner.

Buffer zone: A strip of land reserved for plant material, berms, walls, or fencing to serve as a visual screening and/or sound barrier between properties, often between abutting properties and properties in different zoning districts. Landscaping, berms, fencing or open space can also be used to buffer noise, light and related impacts from abutting properties even if not in a separately established buffer zone and may be so required by this appendix.

Building line or setback line: A line parallel to a street right-of-way line, shore of a lake or pond, edge of a stream or river bank, established on a parcel of land or on a lot for the purpose of prohibiting construction of a building between such line and a right-of-way, other public area or the shore of a lake or pond, or the edge of a stream or river bank.

Caliper: The diameter of a tree trunk four feet from the ground.

City: The City of Mt. Morris, Michigan.

City attorney: An attorney retained by the city planning commission and/or the city council of City of Mt. Morris.

City council: Elected members of the governing city council.

City engineer: The engineer retained by the city planning commission and/or the city council of City of Mt. Morris to make recommendations on public improvements in the city.

City planner: The planner retained by the city planning commission and/or the city council of City of Mt. Morris to make recommendations on methods to provide for the orderly future development of the city.

Clearing (land): The removal of vegetation from any site, parcel or lot except when land is cleared and cultivated for bona fide agricultural or garden use in a district permitting such use. Mowing, trimming or pruning of vegetation to maintain it in a healthy, viable condition is not considered clearing.

Complete application: An application shall be considered complete upon submission of the required fee and all information required by these regulations. The city engineer or planner shall issue a written statement to the applicant upon his determination that an application is complete.

Conservation easement: A non-possessory interest in real property imposing limitations or affirmative obligations, the purposes of which include retaining or protecting natural, scenic or open space values of real property; assuring its availability for agricultural, forest, recreational or open space use; protecting natural resources; or maintaining air or water quality.

Community impact statement: An assessment of the developmental, ecological, social, economic, and physical impacts of the project on the natural environment and physical improvements on and surrounding the development site. Information required for compliance with other ordinances shall not be required to be duplicated in the community impact statement.

Covenant: A registered, written agreement or promise between two or more parties.

County drain commissioner: The Genesee County Drain Commissioner.

County health department: The Genesee County Health Department.

County plat board: The Genesee County Plat Board.

County road commission: The Genesee County Road Commission.

Crosswalk (pedestrian walkway): Right-of-way, dedicated to public use, which crosses a block to facilitate pedestrian access to adjacent streets and properties.

Dedication: The intentional appropriation of land by the owner to public use.

Deed restriction: A restriction on the use of a lot or parcel of land that is set forth in the deed and recorded with the Genesee County Register of Deeds. It is binding on subsequent owners and is sometimes also known as a restrictive covenant. Unless the city has an ownership interest in the property, a deed restriction is enforced by the parties to the agreement, not by the city. However, nothing in this appendix prohibits the creation of a deed restriction that makes the city a third party beneficiary. Such deed restriction is otherwise enforceable.

Density: The number of dwelling units situated on or to be developed on a net acre (or smaller unit) of land.

Driveway: A private path of travel over which a vehicle may be driven which provides access from one parcel of land to a public or private street.

Easement: see right-of-way.

Engineer: A qualified registered professional engineer in good standing with the Michigan Board of Licensure for Professional Engineers.

Floodplain: that area of land adjoining a watercourse or lake which will be inundated by a 100-year flood. A 100-year flood is a flood with a magnitude which has a one percent chance of occurring or being exceeded in any given year.

Governing body (or city council): The city council of City of Mt. Morris.

Improvements: Manmade changes to natural features or any structure incident to servicing or furnishing facilities for a subdivision such as grading, street surfacing, curb and gutter, driveway approaches, sidewalks, crosswalks, water mains and lines, sanitary sewers, storm sewers, culverts, bridges, utilities, lagoons, slips, waterways, lakes, bays, canals and other appropriate items, with appurtenant construction.

Industrial development: A planned industrial area designed specifically for industrial use providing screened buffers, wide streets and turning movement; safety lanes, and street improvements, where necessary.

Land Division Act: Act No. 288 of the Public Acts of Michigan of 1967, as amended.

Landmark or specimen tree: A tree of 24 inches or more in diameter four feet from the ground.

Land use plan (or master plan): A plan adopted by the city for the physical development of the city.

Lot owner's association: An organization of homeowners within a particular development, provided for in covenants incorporated into each deed, which runs with the land to bind each and every owner of it, requiring the levy by the association of an annual assessment against each parcel of land within the development for the purpose of maintaining and providing community facilities and services for the common enjoyment of the residents.

Lot: A measured portion of a parcel or tract of land, which is described and fixed in a recorded plat. Lot-related terminology for the purposes of determining compliance with the zoning ordinance can be found in the zoning ordinance.

Monument: A column or shaft of stone, concrete, or concrete and metal, employed to designate a fixed point, buried vertically in the earth and designed for maximum permanency, employed by a surveyor to mark corners, and of a design and composition approved by the state board of licensure for professional surveyors.

Natural features: Natural features shall include soils, wetlands, woodlots, landmark and specimen trees, fence rows, floodplains, water bodies, topography, vegetative cover, and geologic formations.

Open space, public: Land dedicated or reserved for use by the general public. It includes parks, parkways, recreation areas, school sites, community or public building sites, streets and highways and public parking spaces.

Open space, private: Land dedicated or reserved for use by the residents of the subdivision.

Parcel or tract: A continuous area or acreage of land which can be described as provided for in the Land Division Act.

Phasing: A proposed plan for the completion of a development in increments or stages.

Planning commission: The planning commission of the City of Mt. Morris as established under Act No. 207 of the Public Acts of Michigan of 1921, as amended.

Planned unit development: A land area which has both individual building sites and common property, such as a park, and which is designated and developed under one owner or organized group as a separate neighborhood or community unit.

Plat: A map or chart of a subdivision of land.

- a. *Sketch plat (pre-planning):* An informal plan or sketch drawn to scale and in pencil, if desired, showing the existing features of a site and its surroundings and the general layout of a proposed subdivision.
- b. *Preliminary plat (stage 1):* A map showing the salient features of a proposed subdivision of land submitted to an approving authority for purposes of preliminary consideration and meeting the requirements of this appendix and Act No. 288 of the Public Acts of Michigan of 1967, as amended.
- c. *Final plat (stage 2):* A map of a subdivision of land made up in final form ready for approval and recording in compliance with this appendix and Act No. 288 of the Public Acts of Michigan of 1967, as amended.

Proprietor, subdivider or developer: A natural person, firm, association, partnership, corporation or combination of any of them which may hold any recorded or unrecorded ownership interest in land. The proprietor is also commonly referred to as the owner.

Public utility: All persons, firms, corporations, co-partnerships, or municipal or other public authority providing gas, electricity, water, steam, telephone, telegraph, storm sewers, sanitary sewers, transportation, or other services of a similar nature.

Right-of-way: A right, distinct from the ownership of the land, to cross property with facilities such as, but not limited to, sewer lines, water lines, and transmission lines, or the right, distinct from the ownership of the land, to reserve and hold an area for drainage or access purposes. It is permanent and appurtenant to the land, and is recorded in the office of the Genesee County Register of Deeds.

Street: A right-of-way which provides for vehicular and pedestrian access to abutting properties (see Figure 1).

- a. *Expressway:* Those streets designed for high speed, high volume traffic, with full or partially controlled access, some grade crossings but no driveway connections (I-69).
- b. *Arterial street:* Those streets of considerable continuity which are used or primarily for fast or heavy traffic.
- c. *Major street:* Those streets classified as primary hard-surfaced roads.
- d. *Collector street:* Those streets used to carry traffic from minor streets to arterial streets classified as local hard-surfaced or primary gravel roads.
- e. *Minor street:* A street, which is intended primarily for access, for abutting properties classified by the City of Mt. Morris as local gravel or unimproved roads. Minor streets include:
 - i. *Cul-de-sacs:* A minor street of short length having one end terminated by a vehicular turn-around.
 - ii. *Dead end streets:* Local streets similar to cul-de-sacs except that they provide no turn-around circle at their closed end and are not permitted in any proposed subdivision.
 - iii. *Loop streets:* A street having two open ends, each end generally connecting with the same street. Lots front on both sides of the street. No other streets intersect between its ends.
 - iv. *Stub, knuckle, or eyebrow streets:* Smaller in scale than a loop street in that lots may only front on one side of the street. Stub, knuckle or eyebrows may or may not have a boulevard.
 - v. *Marginal access street (frontage):* A minor street which is parallel and adjacent to arterial streets and which provides access to abutting properties and protection from through traffic and not carrying through traffic.
- f. *Street width:* The shortest distance between the lines delineating the right- of-way of streets.
- g. *Street, private:* An access way which affords access to abutting property for private users of such property. For the purposes of density calculations, a private street shall constitute the areas of its paved surface and sidewalks or the private right-of-way if designated on the recorded plat. Private streets are minor streets.

Graphics provided for example purposes.

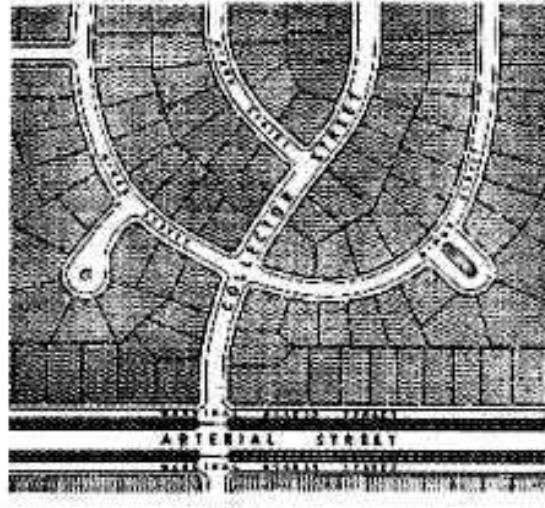


Figure 1

Source: Michigan State University holdings

Subdivide or subdivision: The partitioning or dividing of a parcel or tract of land by the proprietor thereof or by his heirs, executors, administrators, legal representatives, successors or assigns for the purpose of sale, or lease of more than one year, or of building developments, where the act of division creates five or more parcels of land each of which is ten acres or less in area; or five or more parcels of land each of which is ten acres or less in area are created by successive divisions within a period of ten years.

Surveyor: Either a land surveyor who is licensed in this state as a professional surveyor or a civil engineer who is registered in the state as a licensed professional engineer.

ARTICLE III. VARIANCES

Section 3.1. General.

The city planning commission may recommend to the city council a variance from the provisions of this appendix on a finding that practical difficulty may result from strict compliance with specific provisions or requirements of this appendix or that the application of such provision or requirement is impracticable. The planning commission shall only recommend variances that it deems necessary to or desirable for the public interest. In making its findings, as required below, the planning commission shall take into account the nature of the proposed use of land and the existing use of land in the vicinity, the number of persons to reside

or work in the proposed subdivision, and the probable effect of the proposed subdivision upon traffic conditions in the vicinity. No variance shall be recommended unless the planning commission finds after a public hearing that:

1. There are such special circumstances or conditions affecting said property that the strict application of the provisions of this appendix would clearly be impracticable or unreasonable. In such cases the subdivider shall first state his reasons in writing as to the specific provision or requirement involved and submit them to the planning commission.
2. The granting of the specified variance will not be detrimental to the public welfare or injurious to other property in the area in which said property is situated.
3. Such variance will not violate the provisions of the state land division act.
4. Such variance will not have the effect of nullifying the interest and purpose of this appendix and the community master plan of the city.
5. Following such review and public hearing the planning commission shall include its findings and the specific reasons in its report of recommendations to the city council and shall also record its reasons and actions in its minutes.

Section 3.2. Topographical-physical limitation variance.

Where in the case of a particular proposed subdivision, it can be shown that strict compliance with the requirements of this appendix would result in extraordinary practical difficulty to the subdivider because of unusual topography, other physical conditions, or other such conditions which are not self-inflicted, or that these conditions would result in inhibiting the achievement of the objectives of this appendix, the planning commission may recommend to the city council that variance modification or a waiver of these requirements be granted.

Section 3.3. Cluster development variance.

The developer may request a variance from specified portions of this appendix in the case of a planned unit development/cluster option. If in the judgment of the planning commission such a plan provides adequate public spaces which includes provisions for efficient circulation, light and air and other needs, it shall make findings as required below, in addition to those of section 3.1. The planning commission shall take into account the nature of the proposed use of land and existing use of land in the vicinity, the number of persons to reside or work in the proposed subdivision, and the probable effect of the proposed subdivision upon traffic conditions in the vicinity. The planning commission shall report to the city council whether:

1. The proposed project will constitute a desirable and stable community development.
2. The proposed project will be in harmony with adjacent areas.

ARTICLE IV. SUBDIVISION DESIGN STANDARDS

Section 4.0. General standards.

1. All improvements shall be designed and installed to provide for a logical system of utilities, drainage and streets, and to create continuity of improvements for the development of adjacent properties.

2. Wherever practical, subdivisions shall be planned to take advantage of the natural topography of the land, to economize in the construction of drainage facilities, to reduce the amount of danger associated with safety hazards, to minimize destruction of trees and topsoil, and to preserve such natural features as watercourses, landmark or specimen trees, sites of historical significance, and other assets which, if preserved, will add attractiveness and value to the subdivision and the community.

3. The system of streets and sidewalks and the lot layout shall be designed to take advantage of the visual qualities of the area.

4. The size of lots, blocks and other areas for residential, commercial, industrial, public and all other land uses shall be designed to provide adequate light, air circulation, open space, landscaping, off-street parking and loading facilities.

Section 4.1. Pedestrian ways.

1. *Crosswalks:* Right-of-way for pedestrian crosswalks in the middle of blocks longer than 900 feet shall be required where necessary to obtain convenient pedestrian circulation to schools, bus stops, parks or shopping areas (see Figure 2).

The right-of-way for a mid-block crosswalk shall be at least 20 feet wide and extend entirely through the block.

2. *Sidewalks:* Walkways may be required along both sides of the streets, however, the city council may permit the development of walkways on only one side of the street when the nature of the development and terrain make it an economical and logical approach to sidewalk development (see Figure 3).

3. *Surfacing:* Alternative materials like woodchips or bituminous surface may be considered as an alternative to traditional cement sidewalks.

4. *Easement:* Sidewalks and walkways shall have easements at least ten feet in width and shall be properly marked. Easements for walkways (sidewalks) shall be outside of the road right-of-way.

Graphics provided for example purposes.

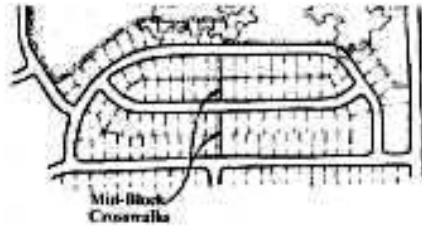


Figure 2

Source: State of Michigan

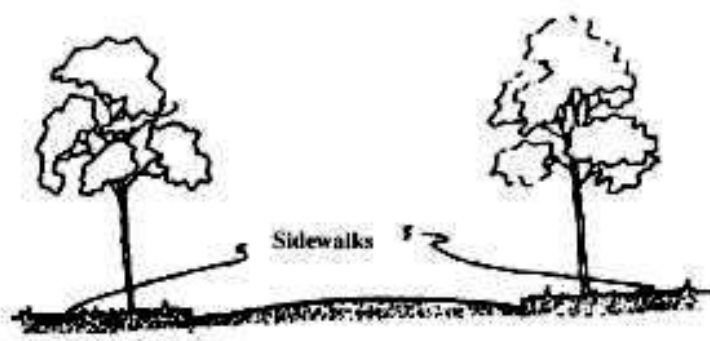


Figure 3

Source: State of Michigan

Section 4.3. Blocks. (See Figures 4 and 5.)

1. Arrangements: A block shall be so designed as to provide two tiers of lots, except where lots back onto an arterial, major or collector street; natural feature, or subdivision boundary.
2. Minimum length: Blocks shall not be less than 500 feet long.
3. Maximum length: The maximum length allowed for residential blocks shall be 1,320 feet long from right-of-way to right-of-way.

Graphics are provided for example purposes.



Figure 4

Source: State of Michigan

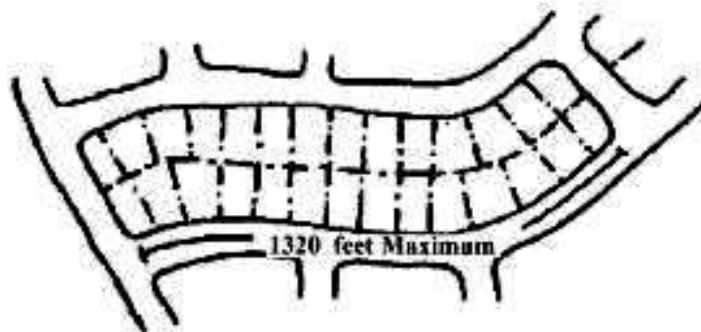


Figure 5

Source: State of Michigan

Section 4.4. Reserved.

Section 4.5. Public utilities.

1. Installation (see Figures 6 and 7): The subdivider, as a condition of approval of the preliminary plat, shall provide for underground utility distribution or transmission facilities (e.g. cable television, electric, gas, telephone and water), within the subdivision and along peripheral streets, in compliance with the following standards:

- a. Utility lines, including, but not limited to, electric, communications, street lighting and cable television shall be required to be placed underground in compliance with the specifications of the public utility providing such services. The subdivider is responsible for complying with the requirements of this section, and shall make the necessary arrangements with the utility companies for the granting of easements and installation of such facilities. Exceptions to the underground requirements are as follows:
 - i. Transformers, pedestal-mounted terminal boxes, meter cabinets and concealed ducts may be placed above ground if within the subdivision and are used solely in connection with the underground transmission or distribution lines;

- ii. Poles supporting streetlights, and the electrical lines within the poles, may be situated above the surface of the ground.

Graphics are provided for example purposes.

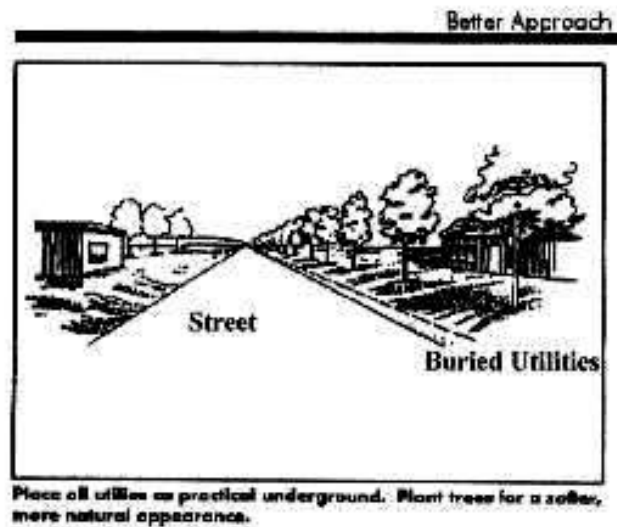


Figure 6

Source: Grand Traverse Bay Region Development Guidebook

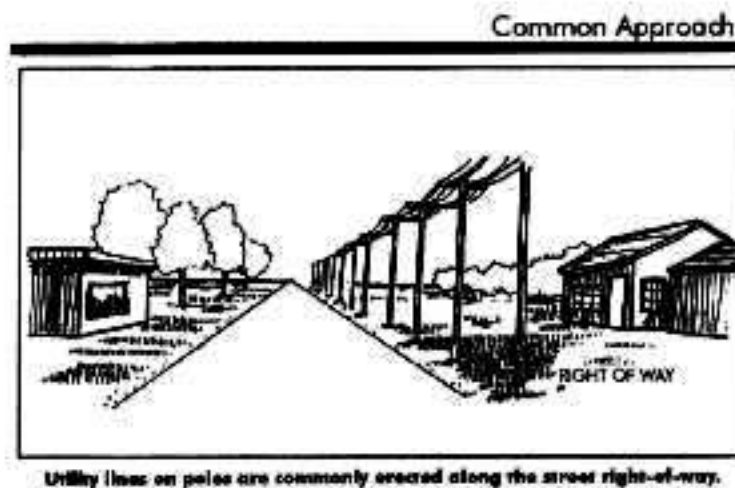


Figure 7

Source: Grand Traverse Bay Region Development Guidebook

Section 4.6. Street lights.

1. *Provision:* Streetlights may be required to be installed only at intersections throughout the subdivision. In these cases, a subdivider shall conform to the requirements of the city and the public utility providing such lighting.

2. *Night sky (see Figures 8 and 9):* Fixtures shall be designed and placed so as not to inhibit view of the night sky.

- a. Unless otherwise recommended by the planning commission, light sources shall be high pressure sodium. Approved exceptions shall use warm white or natural lamp colors.
- b. Outdoor lighting shall be a down type, which are 100 percent shielded with no protruding lenses. The applicant shall submit the specifications for the lights, poles, fixtures and light sources to the city engineer for approval prior to installation.
- c. Lighting shall be designed and constructed in such a manner to; insure that direct or directly reflected light is confined to the development site and that any light sources or light lenses are not directly visible from beyond the boundary of the site.

3. *Easement:* An easement for streetlights shall be provided regardless of whether or not streetlights are required at the time of preliminary plat approval. Streetlight easements shall be outside the road right-of-way and a minimum of three feet in width. The street lighting easement may be wholly contained within the walkway easement.

4. *Ownership:* After final approval of the street lighting systems, it shall become the property of lot owner's association unless a special assessment district is employed.

Graphics are provided for example purposes.



Figure 8

Source: Grand Traverse Bay Region Development Guidebook



Figure 9

Source: Grand Traverse Bay Region Development Guidebook

Section 4.7. Commercial and industrial developments.

If a proposed subdivision includes land designated for commercial, industrial or other nonresidential uses, such subdivision shall be subject to the requirements of this appendix and all other applicable city and county ordinances; and standards of the county road commission, drain commission and environmental health. In addition, the applicant shall demonstrate to the satisfaction of the planning commission, that the proposed patterns of streets, lots and blocks recognize the anticipated uses, and account for other uses in the vicinity. The following principles and standards shall apply:

1. *Parcels:* Proposed industrial parcels shall be suitable in area and dimensions for the types of industrial development anticipated, or platted into lots that allow combinations in area and dimensions for future types of industrial development.
2. *Rights-of-way:* Street rights-of-way and pavement shall meet City of Mt. Morris standards to accommodate the type and volume of anticipated traffic. At a minimum, streets in nonresidential subdivisions shall conform to the standards for collector streets.
3. *Control of nuisance:* The applicant shall protect adjacent residential areas from potential nuisances that could be caused by a proposed commercial or industrial development. Nonresidential lots lying adjacent to existing or proposed residential land uses shall meet the screening and buffer requirements of the City of Mt. Morris Zoning Ordinance.

4. *Segregation from residential areas:* The applicant shall develop a street system which will minimize use of non-residential traffic, especially truck traffic, from residential areas. Streets carrying nonresidential traffic, especially truck traffic, should not extend to the boundaries of adjacent existing or potential residential areas.
5. *Non-residential blocks:* Blocks intended for purposes other than residential use shall be specially designed for such purposes, shall have adequate provision for off-street parking and loading in accordance with the requirements of the zoning ordinance.
6. *Business or commercial lots:* Business or commercial lots, when platted, shall bear a reasonable relation proportionally to the number of people constituting the purchasing power of the surrounding tributary area. The planning commission shall recommend the location of business and commercial lots in accordance with the community master plan and the zoning ordinance.
7. *Commercial or industrial modification:* These subdivision design standards may be modified in accordance with article 3 (variances) in the case of a subdivision specifically for commercial or industrial development, including shopping districts, wholesaling areas, and planned industrial districts. Adequate provisions shall be made for off-street parking, loading or delivery areas and traffic circulation.
8. *Parking:* Parking areas shall be divided into sections and shall be landscaped by planting islands or boxes with trees and shrubs. Wheel stops and other devices shall be used to channel traffic movements within the parking bays.

ARTICLE V. PLATTING PROCEDURE AND DATA REQUIRED

Section 5.1. Pre-preliminary plats.

Purpose: The purpose of the pre-preliminary plat is to provide informal consultation meeting and on-site inspection is for the applicant to present general information regarding the proposed subdivision to the planning commission and city officials and receive comments prior to the expenditure of substantial effort and/or funds by the applicant. Submission of the pre-preliminary plat is at the discretion of the applicant.

1. *Information required:* The consultation sketch plan shall show, in simple sketch form, the proposed layout of streets, lots, buildings and other features in relation to existing conditions. The sketch plan, which does not have to be engineered and may be a free-hand penciled sketch, should be supplemented with general information to describe or outline the existing conditions of the site and the proposed development. Site conditions such as steep slopes, wet areas and vegetative cover should be identified in a general manner. It is recommended that the sketch plan be superimposed on or accompanied by a copy of parcel and aerial maps on which the land is located.
2. *Presentation:* The applicant shall present the sketch plan and make a verbal presentation regarding the site and the proposed subdivision.

3. *Planning commission input:* Following the applicant's presentation, the planning commission may ask questions and provide their perspective on the development.
4. *Site inspection:* An on-site inspection shall be made with the applicant. The date of the on-site inspection shall be arranged at the initial consultation meeting.
5. *Processing information:* The applicant shall obtain a copy of the subdivision control ordinance and application packet.
6. *Rights not vested:* The pre-application meeting, the submittal or review of the sketch plan, or the on-site inspection shall not be considered the initiation of the review process.
7. *Establishment of File:* Following the pre-application meeting the planning commission shall establish a file for the proposed subdivision. All correspondence and submissions regarding the pre-application meeting and application shall be maintained in the file.

Section 5.2. Preliminary plats.

For approval under Sections 112 to 120 of the Land Division Act.

1. *Application:* A complete application for preliminary plat review shall be submitted to the city manager and planning commission on a special form designed for that purpose as adopted by the city council. Ten copies of the application packet and accompanying data shall be provided by the developer for the city planning commission members, council members, city planner, engineer, and attorney and city staff.

Each application shall be accompanied by the payment of a fee in accordance with a "schedule of fees" adopted by resolution of the city council. A dated receipt shall be provided to the applicant. No part of the fee shall be refundable after the review process has begun.

2. *Professional review fees:* Any additional expense to the city on preliminary plat review for expert professional specialists review, additional meetings, establishment of special assessment districts and legal review will be passed on to the applicant. Upon receipt of an application, the city shall confer with its attorney, engineer and planner to help make a determination of cost to require that an escrow account be established by the applicant based on the best estimate of cost for their services. All review fees will be withdrawn from the escrow as needed. Money not expended will be returned promptly to the applicant after action on the proposal.
3. *Submittal:* The subdivider shall submit a sufficient number of copies of the preliminary plat, which is based on a survey, recorded in compliance with Act No. 132 of the Public Acts of Michigan of 1970 to the city manager and city clerk at least 60 days before a meeting of the planning commission.
4. *Size and scale:* The preliminary plat may be on paper and shall be not less than 18 inches by 24 inches at a scale of at least one inch to 100 feet showing the date and north arrow.

5. *Information required:* The following shall be shown on the preliminary plat or submitted with it.
 - a. The name of the proposed subdivision.
 - b. Names, addresses and telephone numbers of the subdivider and the surveyor or engineer preparing the plat.
 - c. Location of the subdivision, giving the numbers of section, township and range, and the name of the city and county.
 - d. The names of abutting subdivisions or property owners.
 - e. Statement of intended use of the proposed plat, such as, residential single family, two-family and multiple housing; commercial; industrial; recreational; or agricultural. Also proposed sites, if any, for multi-family dwellings, shopping centers, churches, industry, any sites proposed for parks, playgrounds, public uses and nonpublic uses exclusive of single-family dwellings.
 - f. A phasing plan and map of the entire area scheduled for development, including future street rights-of-way, if the proposed plat is a portion of a larger holding intended for subsequent development.
 - g. The land use and existing zoning of the proposed subdivision and the adjacent tracts.
 - h. Lot lines, lot sizes and the total number of lots by block.
 - i. Contours shall be shown on the preliminary plat at five-foot intervals where slope is greater than ten percent, and two-foot intervals where slope is ten percent or less.
 - j. Existing and proposed utility layouts including sanitary sewers, fire suppression well, water distribution lines, natural gas, telephone, and electric service, as appropriate, illustrating connections to existing systems.
 - k. Right-of-way and street easements, showing location, width, and purpose. All easements shown by a fine dashed line and clearly labeled and identified on the plat. If an easement shown on the plat is already of record, its recorded reference must be given.
 - l. Proposed and existing storm water management system including drainage patterns to be graphically displayed with the following information provided:
 - i. River, stream or open (ditch) drainage ways and the direction of their flow.
 - ii. The direction of surface drainage over the site.
 - iii. Soil drainage characteristics; e.g., well drained; subject to ponding; susceptible to flooding.
 - m. Existing and proposed property lines and minimum building setback lines.

- n. Total site data including acreage, number of lots, size of lots, total number of parcels created, linear feet of the proposed streets, and approximate number of square feet or acres in open space.
 - o. Open space and buffers, an accurate outline of all property which is to be reserved by deed restriction or protective covenant and/or conservation easement for the common use of the property owners in the subdivision.
 - p. The location of all significant natural features and landscaping as appropriate.
 - q. An inventory of significant vegetation with an indication of which will be retained or removed.
 - r. Subsurface conditions or any known conditions that are not typical, or which may cause problems, such as: soils and geological formations, old mine shafts, wells, known mineral deposits, etc.
 - s. Proposed lighting.
 - t. Proposed walkways.
 - u. Certificates from state agencies for areas in the plat subject to their respective jurisdictions (e.g., Michigan Department of Environmental Quality, flood plains and wetlands determinations, etc.).
6. *Preliminary engineering plans:* The subdivider shall submit two sets of preliminary engineering plans for streets, sewers, fire suppression wells, sidewalks and other required public improvements. The engineering plans shall contain enough information and detail to enable the planning commission and city engineer to make preliminary determination as to conformance of the proposed improvements to applicable city regulations and standards.

Section 5.3. Determination; preliminary plat.

1. *Planning commission:*
- a. The planning commission with the city planner, engineer, attorney and city staff as appropriate, shall examine the preliminary plat within 60 days of receipt thereof, for conformance with:
 - i. The community master plan;
 - ii. The provisions of the land division act;
 - iii. The provisions of this appendix; specifically, outlined design criteria.
 - iv. The zoning ordinance.
 - b. The time for review and recommendations by the planning commission may be extended by agreement with the subdivider.
 - c. If the planning commission recommends disapproval of the plat by the city council, it shall state its reasons in its official minutes and forward same to the city council, and

recommend that the city council disapprove the final plat until the objections causing disapproval have been resolved and meet with the approval of the planning commission.

- d. The planning commission shall review and provide recommendations on tentative approval at a public meeting. Minutes and any appropriate reports with respect to the preliminary plat shall be forwarded to the city council.

2. *City council:*

- a. The city council shall review the preliminary plat and the report from the planning commission at its next regular meeting, or at a meeting to be called within 20 days of receipt of materials from the planning commission.
- b. If the city council finds that land proposed to be subdivided is unsuitable for subdivision development due to flooding, poor drainage, steep slopes, and other such conditions as may increase the danger to health, life, or property or aggravate erosion or flood hazards; and, if from adequate investigations, conducted by all the public agencies concerned, it has been determined that in the best interest of the public the land should not be platted and developed for the purpose proposed, the city council shall not approve the land for subdivision unless adequate methods are formulated by the subdivider for resolving the unsuitable/unacceptable conditions that will be created by the subdivision and development of the land.
- c. The city council shall tentatively approve the preliminary plat, tentatively approve with conditions, or disapprove the preliminary plat. If disapproved, the city council shall give the subdivider its reasons in writing.
- d. The city council shall instruct the clerk to; record all proceedings in the minutes of the meeting, which shall be open for inspection.

3. *Improvements and facilities required by the city:*

- a. The city council may require all improvements and facilities be completed before it approves the final plat.
- b. If improvement and facilities are not required to be completed by city council before plat approval, the final plat shall be accompanied by an improvement agreement between the subdivider and the city council for completion of all required improvements and facilities.
- c. Performance of the contract shall be guaranteed by a cash deposit, certified check, surety bond, or irrevocable bank letter of credit.
- d. The city council shall not require a bond duplicating any bond required by another governmental agency.
- e. The surety shall be rebated or credited to the account of the proprietor as the work progresses, as included in a written agreement between the city and the subdivider.

4. *Special assessment districts:* Prior to the sale or conveyance of any lot, the subdivider shall petition for the creation of appropriate special assessment district(s) under Act No. 180 of the Public Acts of Michigan of 1986, as amended. The council, during its preliminary plat review, shall determine which, if any, of the following, separate special assessment districts shall be created for improvements which are not required as part of the tentative plat approval, but may be requested by future property owners. Establishment of the special assessment districts are intended to provide an expeditious funding mechanism should future public demand arise.

- a. Maintenance or development of private streets.
- b. Maintenance or development of sidewalks.
- c. Maintenance or development of drainage storm water control facilities.
- d. Maintenance or development of sanitary sewer facilities.
- e. Maintenance or development of a potable water supply system.
- f. Maintenance of park land or open space.
- g. Provision of rubbish or garbage service.
- h. Maintenance or development of bike paths.
- i. Maintenance or development of erosion control.
- j. Tree planting.
- k. Aquatic weed control.

When property owners within the subdivision desire upgraded public services, the council shall exercise each established special assessment district as necessary to provide such services.

5. *Distribution to authorities:* After tentative recommendations from the Council the subdivider shall submit to the various approving authorities the number of validated copies of the preliminary plat required by Sections 112 through 119 of the land division act, and the:

- a. County emergency services coordinator: One copy of preliminary plat for verification that the street names do not duplicate or conflict with existing street names.
- b. School board: One copy of preliminary plat only to the Mt. Morris School Board.

6. *List of authorities (filing):* The subdivider shall then file with the city clerk a list of all authorities to whom validated copies of the preliminary plat have been distributed.

Section 5.4. Conditions and duration of approval.

1. *Conditions:* Approval of a preliminary plat shall not constitute approval of the final plat, but rather that final plat approval shall be conditioned on all requirements being met.

2. *Duration:*

- a. Approval of a preliminary plat by the city council shall be valid for a period of two years from the date of its approval after approval by the other required authorities.
- b. The city council may extend the two year period if applied for and granted in writing but only concerning its own requirements.

Section 5.5. Final plat.

1. *Letters of conditional approval or rejection:* When the subdivider has secured the approvals of the various approving authorities as required by Section 113 to 119 of the land division act, copies shall be delivered to the city clerk who shall promptly transmit them to the planning commission.

2. *Planning commission:*

- a. The planning commission shall review the final plat and shall:
 - i. Provide for an adequate public hearing, giving due notice to all parties in interest, in accordance with the provisions of the act under which the planning commission has been established.
- b. If the final plat does not meet all requirements, the planning commission shall notify the subdivider by letter, giving the earliest date for resubmission of the plat and additional information required.
- c. The planning commission shall give its report to the city council not more than 30 days after receipt of necessary approved copies of the final plat are returned by the review agencies.
- d. The 30-day period may be extended if the applicant consents. If no action is taken within 30 days, the final plat shall be deemed to have been approved by the planning commission.

3. *City council:*

- a. The city council shall not review, approve or reject the final plat until it has received from the planning commission its report and recommendations, unless the 30-day default period has expired.
- b. The city council shall consider the final plat at its next meeting, but not later than 20 days after receipt from the planning commission.
- c. The city council shall within 20 days either reject the preliminary plat and give its reasons, or set forth in writing the conditions for granting approval.

4. *Lot line or boundary adjustments:* Lot line or boundary adjustments may be made prior to final approval to adjust the boundaries between two or more adjacent parcels, where the land taken from one parcel is added to an adjacent parcel, and where a greater or lesser number of parcels than originally existed is not created, provided that the planning commission determines that the proposed adjustment does not:

- a. Create any additional or fewer parcels;
- b. Include any parcels which are not legal as defined in the zoning ordinance;
- c. Impair any existing access or create a need for new access to any adjacent parcels;
- d. Impair any existing easements or create a need for any new easements serving any adjacent parcels;
- e. Increase or decrease the gross area of any property involved by more than 20%;
- f. Require substantial alteration of any existing improvements or create a need for any new improvements; and
- g. Adjust the boundary between parcels for which a covenant of improvement requirements has been recorded and all required improvements stated therein have not been completed.

Section 5.6. Final plats data requirement.

1. The final plat shall show the following:
 - a. All property lines with accurate bearing or required curve data.
 - b. Lot numbers suitably arranged by simple system.
 - c. Purposes for which any sites are reserved or dedicated.
 - d. Location and description of existing and proposed easements.
2. The following shall be submitted with the final plat:
 - a. All information required on the preliminary plat, multiple sheets may be necessary.
 - b. Proposed street names; designated as "public" or "private". The street address of each lot, as obtained from the county addressing system.
 - c. Landscape plans where required by the council. The landscape plan shall be drawn to the same scale as the final site plan and shall include the following:
 - i. Accurate location and species of plants used.
 - ii. Type of root stock to be planted—balled and burlapped (B&B), bareroot, container.
 - iii. Size of trees planted (caliper).
 - d. As-built versions of street plans, cross-sections and utility plans, if different from those presented with the preliminary plat.

- e. Storm water management: A plan of the storm water management system, drawn on sheets 24 by 36 inches, to a horizontal scale of one inch to 100 feet, except that the scale may vary on special projects. The drawing shall include:
 - i. Paved surfaces (existing and proposed).
 - ii. The locations, sizes, types, and flow lines of all mains, inlets, culverts, manholes, channels and related structures.
 - iii. Computations to support all drainage designs shall accompany the plan. The computations, which shall be made a part of the permanent record of the subdivision and accompanied by the seal of a registered engineer.
 - iv. The minimum permissible floor elevations for lots within any floodplain areas and adjacent to open drainage features.
- f. Surveyor's certificate as to accuracy of survey and plat.
- g. Statement of dedication of streets, easements and any sites for public use by the land owner.
- h. Certificate of approval by the city engineer, with signature of the city engineer.
- i. Signature of registered engineer or surveyor preparing the final plat.
- j. Covenants: for mandatory membership in the lot owners association setting forth the owners' rights, interests, and privileges in the association and the common property and facilities, to be included in the deed for each lot or dwelling.
- k. Articles of incorporation: of the proposed lot owners association as a not-for-profit corporation.
- l. By-laws: of the proposed lot owners association specifying the responsibilities and authority of the association, the operating procedures of the association and providing for proper capitalization of the association to cover the costs of major repairs, maintenance and replacement of common facilities.
- m. In combination, the documents referenced above shall provide for the following:
 - i. The lot owners association shall have the responsibility of maintaining the common property or facilities.
 - ii. The association shall levy annual charges against all owners of lots or dwelling units to defray the expenses connected with the maintenance, repair and replacement of common property and facilities and tax assessments.
 - iii. The association shall have the power to place a lien on the property of members who fail to pay dues or assessments.
- n. The developer or subdivider shall maintain control of the common property, and be responsible for its maintenance until development sufficient to support the association has taken place. Such determination shall be made by the city council upon request of the lot owners association or the developer.

- o. Appropriate deed of conveyance for streets, public and other similar areas, approved by the city attorney before execution.

Note: The city does not enforce items listed in subsections j.—o. above. The intent is to require these documents for the protection of future property owners and to provide for the perpetual maintenance of common open areas, private roads, etc. It is further the intent of requiring these documents to protect the city from inappropriate demands on public funds.

- p. Payment of taxes; a certificate signed by the county treasurer evidencing payment of all applicable taxes.
- q. Water, drainage and sewer plans: Plans for water supply and/or sewerage disposal must be accompanied by letters of preliminary approval by water and waste services division of the county drain commission. Plans must show line sizes; the location of fire hydrants, blow-offs, manholes, pumps, force mains and gate valves, and shall included profiles of sanitary sewers and storm drains. A certificate signed by an authorized official of the governing body providing access to the respective water, drainage, and/or sewer system of the applicable service shall also be submitted.
- r. Infrastructure improvement agreements that may have been executed between the applicant and city.
- s. Performance guarantee(s) as applicable for improvements and amenities.
- t. Engineer's certificate, pursuant to City of Mt. Morris standards, as needed.

3. Copies: The final plat shall meet state recording requirements and be drawn in ink on tracing cloth, mylar or other material acceptable for permanent recording on sheets. Where necessary the plat may be on several sheets accompanied by an index sheet or key map insert showing the entire subdivision.

Section 5.7. Procedures.

1. Submittal to Approving Authorities: The subdivider shall submit the final plat in accordance with section 131-173 of P.A. 288 of 1967, as amended (see flow chart in appendix A).

ARTICLE VI. SUBDIVISION IMPROVEMENTS

Section 6.1. Notice of commencement.

1. *Notice:* At least two weeks prior to commencing construction of required improvements, the subdivider or builder shall arrange to:

- a. Notify the city, city engineer, public utility companies, and/or county drain commissioner as appropriate, in writing of the time when (s)he proposes to commence construction of such improvements, so that the officials can attend inspection(s) to be

made to assure that all development specifications, requirements, and conditions of approval are met during the construction of required improvements, and to assure the satisfactory completion of improvements and utilities required by the city council.

- b. Deposit with the city manager a check for the estimated costs of the required inspections. If, upon satisfactory completion of construction and cleanup, there are funds remaining, the surplus shall be refunded to the subdivider or builder as appropriate. Interest earned on the amount shall be returned to the applicant.

2. *Performance:* If the inspecting official finds upon inspection of the improvements that any of the required improvements have not been constructed in accordance with the plans and specifications filed by the subdivider, he shall so report in writing to the council, the subdivider and/or builder. The city council shall take any steps necessary to preserve the city's rights.

3. *Modification of improvements:* If at any time before or during the construction of the required improvements, it appears to be necessary or desirable to modify the required improvements, the inspecting official is authorized to approve minor modifications due to unforeseen circumstances such as encountering natural limitations (e.g., natural springs, etc.) The inspecting official shall issue any approval under this section in writing and shall transmit a copy of the approval to the council. Revised plans shall be filed with the council. For major modifications, such as relocation of rights-of-way, property boundaries, changes of grade by more than five percent, etc., the subdivider shall obtain permission to modify the plans from the city council via the city engineer, or drain commissioner, as appropriate.

Section 6.2. Monuments.

Monuments shall be set in accordance with the State Land Division Act of 1967, Act No. 288 of the Public Acts of Michigan of 1967, as amended, and the rules of the state department of treasury.

Section 6.3. Guarantee of completion of improvements required by the city.

1. *Financial guarantee arrangements, exceptions:* In lieu of the actual installation of required public improvements, the city council upon recommendation of the planning commission, city planner, city engineer and/or city attorney, may permit the subdivider to provide a financial guarantee of performance in one or a combination of the following arrangements for those requirements which are over and beyond the requirements of the county road commission, county drain commissioner or any other agency responsible for the administration, operation and maintenance of the applicable public improvement.

The planning commission may recommend, and the city council may waive, financial guarantees of performance under this appendix for sidewalks, fire suppression measures, streetlights, monuments, or landscaping. In case these improvements are specified, completion shall be required prior to the issuance of occupancy permits.

2. *Condition of city approval of final plat; financial guarantees:* With respect to financial guarantees, the approval of all final subdivision plats shall be conditioned on the accomplishment of one of the following:

- a. The construction of improvements required by this appendix shall have been completed by the subdivider and approved by the city council.
- b. Surety acceptable to the city shall have been filed in the form of a cash deposit, certified check, negotiable bond, irrevocable bank letter of credit or surety bond.

The city council shall not require a bond duplicating any bond required by another governmental agency.

3. *Performance or surety bond:*

- a. *Accrual:* The bond shall accrue to the city, covering construction, operation and maintenance of the specific public improvement.
- b. *Amount:* The bond shall be in an amount equal to the total estimated cost for completing construction of the specific public improvement, including contingencies, as estimated by the city council.
- c. *Term length:* The term length in which the bond is in force shall be for a period to be specified by the City Council for the specific public improvement.
- d. *Bonding or surety company:* The bond shall be with a surety company authorized to do business in the State of Michigan, acceptable to the city council.
- e. *The escrow agreement:* Shall be drawn and furnished by the city council.

4. *Cash deposit, certified check, negotiable bond, or irrevocable bank letter of credit:*

- a. *Treasurer, escrow agent or trust company:* A cash deposit, certified check, negotiable bond, or an irrevocable bank letter of credit, such surety acceptable by the city council and city attorney, shall accrue to the city. These deposits shall be made with the city treasurer, or deposited with a responsible escrow agent, or trust company, subject to the approval of the city council and city attorney.
- b. *Dollar Value:* The dollar value of the cash deposit, certified check, negotiable bond, or an irrevocable bank letter of credit, shall be equal to the total estimated cost of construction of the specific public improvement including contingencies, as estimated by the city engineer.
- c. *Escrow time:* The escrow time for the cash deposit, certified check, negotiable bond, or irrevocable bank letter of credit, shall be for a period to be specified by the city council.
- d. *Progressive payment:* In the case of cash deposits or certified checks, an agreement between the city and the subdivider may provide for progressive payment out of the cash deposit or reduction of the certified check, negotiable bond or irrevocable bank letter of credit, to the extent of the cost of the completed portion of the public improvement, in accordance with a previously entered into agreement. Interest earned on any accounts shall be returned to the applicant.

5. *Special agreements:* A special agreement shall be entered into between the subdivider and the city council where improvements such as; fire suppression well, monuments, sidewalks, landscaping and/or streetlights have been required by the city council. The subdivider shall enter into a subdivision improvement agreement with the city.

- a. The improvement agreement shall be prepared by the city attorney and signed by the developer and a representative of the city. The agreement shall provide for the following:
 - i. Construction of all improvements according to approved plans and specifications on file with the city engineer;
 - ii. Schedule of completion of improvements;
 - iii. Right by city to modify plans and specifications;
 - iv. Warranty by subdivider that construction will not adversely affect any portion of adjacent properties;
 - v. Payment of fees in compliance with the city's "schedule of fees";
 - vi. Performance guarantee;
 - vii. Maintenance and repair of any defects or failures and causes thereof;
 - viii. Release of the city from all liability incurred by the subdivision and payment of all reasonable attorney's fees that the city may incur because of any legal action resulting from the subdivision; and

6. *Extension:* The completion date may be extended by the council upon written request by the subdivider and submittal of adequate evidence to justify the extension. The request shall be made not less than 30 days prior to expiration of the subdivision improvement agreement.

7. *Penalty in case of failure to complete the construction of a public improvement:* In the event the subdivider shall, in any case, fail to complete such work within such period of time as required by the conditions of the guarantee for the completion of public improvements, it shall be the responsibility of the city council to proceed to have such work completed. In order to accomplish this, the city council shall reimburse itself for the cost and expense thereof by appropriating the cash deposit, certified check, irrevocable bank letter of credit, or negotiable bond which the subdivider may have deposited in lieu of a surety bond, or may take such steps as may be necessary to require performance by the bonding or surety company, and as included in a written agreement between the city council and the subdivider.

ARTICLE VII. ENFORCEMENT AND PENALTIES FOR FAILURE TO COMPLY WITH THIS APPENDIX

Section 7.1. Enforcement.

1. *Approval required:* Development of a subdivision without council approval shall be a violation of law. Development includes grading or construction of streets, clearing of land or lots, or construction of buildings which require plan approval as provided in these regulations.

2. *Nuisance*: Violations of the provisions of this appendix are a nuisance.

3. *Conveyance*: A person shall not sell, lease or otherwise convey any land in an approved subdivision which is not shown on the plan as a separate lot.

4. *Access*: No lot in a subdivision may be sold, leased, or otherwise conveyed before the street upon which the lot fronts is completed in accordance with these regulations up to and including the entire frontage of the lot.

5. *Utilities*: No public utility, water district, sanitary district or any utility company of any kind shall serve any lot in a subdivision for which a preliminary plat has not been approved by the city council.

6. *False statement*: No person shall knowingly and intentionally make any false statement relating to a material fact for the purpose of complying with the requirements of this appendix.

Section 7.2. Penalties.

Penalties for failure to comply with the provisions of this appendix shall be as follows: Violation of any of the provisions of this appendix or failure to comply with any of its requirements shall constitute a misdemeanor. Any person who violates this appendix or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than \$500.00 or imprisoned for more than 90 days, or both. Each day such violation continues shall be considered a separate offense. The land owner, tenant, subdivider, builder, public official or any other person who commits, participates in, assists in, or maintains such violation may each be found guilty of a separate offense and suffer the penalties herein provided. Nothing herein contained shall prevent the city council or any other public official or private citizen from taking such lawful action as is necessary to restrain or prevent any violation of this appendix or of the land division act.

ARTICLE VIII. AMENDMENTS

Section 8.1. Procedures.

The city council may, from time to time, amend, supplement, or repeal the regulations and provisions of this appendix in the manner prescribed by Act No. 288 of the Public Acts of Michigan of 1967, as amended. A proposed amendment, supplement, or repeal may be originated by the city council, city planning commission, or by petition. All proposals not originating with the planning commission shall be referred to the planning commission for a report thereon before any action is taken on the proposal by the city council.

ARTICLE IX. MISCELLANEOUS PROVISIONS

Section 9.1. Validity.

Should any section, clause, or provision of this appendix be declared by the courts to be invalid, the same shall not affect the validity of the appendix as a whole or any part thereof, other than the part so declared to be invalid.

Section 9.2. Effective date.

This appendix shall take effect in the city after recommendation of the planning commission, adoption by the city council, publication within ten days after adoption, entry in the city ordinance book and certification by the clerk as to the date of adoption, vote and publication within seven days of publication. The effective date shall be 30 days after date of publication.

APPENDIX F.
GENESEE COUNTY SEWER USE ORDINANCE*

***Editor's note**—Ord. No. 07-08, adopted Oct. 8, 2007, adopted the Genesee County Sewer Use Ordinance by reference and designated it as App. E. Inasmuch as there were already provisions so designated, the Genesee County Sewer Use Ordinance has been designated as App. F at the discretion of the editor. Printed copies of the ordinance shall be kept in the office of the Mt. Morris City Clerk, available for inspection by and distribution to the public at all times.

Cross reference—County sewer use ordinance, § 66-216 et seq.

State law reference—Authority to adopt laws by reference, MCL 117.3(k).

CODE COMPARATIVE TABLE

ORDINANCES

This is a numerical listing of the ordinances of the city used in this Code. Repealed or superseded laws at the time of the codification and any omitted materials are not reflected in this table.

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		2	14-81

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***Note**—The adoption, amendment, repeal, omissions, effective date, explanation of numbering system and other matters pertaining to the use, construction and interpretation of this Code are contained in the adopting ordinance and preface which are to be found in the preliminary pages of this volume.

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