CODE OF ORDINANCES
City of
ITHACA, MICHIGAN

Codified through
Resolution No. 2008-01, effective Jan. 29, 2008.
(Supplement No. 1)

Preliminaries

CODE OF ORDINANCES
CITY OF
ITHACA, MICHIGAN

Published by Order of the City Council

Adopted: March 18, 2002

Effective: April 8, 2002

Published by Municipal Code Corporation

Tallahassee, Florida 2002

OFFICIALS

of the

CITY OF

ITHACA, MICHIGAN

AT THE TIME OF THIS CODIFICATION

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James H. Gruesbeck

Robert N. Monroe

Timothy S. Palmer

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John C. Thomas

City Council

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Bradley S. Heffner

City Manager

_____

Jefferson T. Arnold

City Attorney

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Gayla J. Foster

City Clerk

PREFACE

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

Source materials used in the preparation of the Code were the 1968 Code, as supplemented. The source of each section is included in the history note appearing in parentheses at the end thereof. The absence of such a note indicates that the section is new and was adopted for the first time with the adoption of the Code. By use of the comparative tables appearing in the back of this Code, the reader can locate any section of the 1968 Code, as supplemented, and any subsequent ordinance included herein.

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

Chapter and Section Numbering System

The chapter and section numbering system used in this Code is the same system used in many state and local government codes. Each section number consists of two parts separated by a dash. The figure before the dash refers to the chapter number, and the figure after the dash refers to the position of the section within the chapter. Thus, the second section of chapter 1 is numbered 1-2, and the first section of chapter 6 is 6-1. Under this system, each section is identified with its chapter, and at the same time new sections can be inserted in their proper place by using the decimal system for amendments. For example, if new material consisting of one section that would logically come between sections 6-1 and 6-2 is desired to

be added, such new section would be numbered 6-1.5. New articles and new divisions may be included in the same way or, in the case of articles, may be placed at the end of the chapter embracing the subject, and, in the case of divisions, may be placed at the end of the article embracing the subject. The next successive number shall be assigned to the new article or division. New chapters may be included by using one of the reserved chapter numbers. Care should be taken that the alphabetical arrangement of chapters is maintained when including new chapters.

Page Numbering System

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

TABLE INSET:

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

Index

The index has 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 index itself 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 Bill Carroll, Senior Code Attorney, and Leesa Hampton, Editor, of the Municipal Code Corporation, Tallahassee, Florida. Credit is gratefully given to the other members of the publisher's staff for their sincere interest and able assistance throughout the project.

The publisher is most grateful to Mr. Brad Heffner, City Manager, Mr. Jeff Arnold, City Attorney, and Ms. Gayla Foster, City Clerk, for their cooperation and assistance during the progress of the work on this publication. It is hoped that their 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

ORDINANCE NO. 100

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

THE CITY OF ITHACA ORDAINS:

Section 1. The Code entitled "Code of Ordinances, City of Ithaca, Michigan," published by Municipal Code Corporation, consisting of chapters 1 through 40, each inclusive, is adopted.

Section 2. All ordinances of a general and permanent nature enacted on or before June 20, 2001, and not included in the Code or recognized and continued in force by reference therein, are repealed.

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

Section 4. Unless another penalty is expressly provided, every person convicted of a violation of any provision of the Code or any ordinance, rule or regulation adopted or issued in pursuance thereof shall be punished by a fine not to exceed $500.00, and costs of prosecution or by imprisonment for a period of not more than 90 days, or by both such fine and

imprisonment. However, unless otherwise provided by law, a person convicted of a violation of this Code which substantially corresponds to a violation of state law that is a misdemeanor for which the maximum period of imprisonment is 93 days, is punishable by a fine not to exceed $500.00 and costs of prosecution, or by imprisonment for a period of not more than 93 days, or by both such fine and imprisonment. Each act of violation and each day upon which any such violation shall occur shall constitute a separate offense. The penalty provided by this section, unless another penalty is expressly provided, shall apply to the amendment of any Code section, whether or not such penalty is reenacted in the amendatory ordinance. In addition to the penalty prescribed above, the city council may pursue other remedies such as abatement of nuisances, injunctive relief and revocation of licenses or permits.

Section 5. Additions or amendments to the Code when passed in such form as to indicate 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 6. Ordinances adopted after June 20, 2001, 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 7. This ordinance shall become effective April 8, 2002.

PASSED AND ADOPTED by the City Council this 18th day of March, 2002.

By:

George Bailey

_____

Mayor - George H. Bailey

ATTEST:

Gayla J. Foster

_____

City Clerk - Gayla J. Foster

First Reading: March 5, 2002

Second Reading: March 18, 2002

CODE OF ORDINANCES

Chapter 1 GENERAL PROVISIONS

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

The ordinances embraced in this and the following chapters shall constitute and be designated as the "Code of Ordinances, City of Ithaca, Michigan," and may be so cited. Such ordinances may also be cited as the "Ithaca City Code."

State law references: Authority to codify ordinances, MCL 117.5b.

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

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

Generally. When provisions conflict, the specific shall prevail over the general. All provisions shall be liberally construed so that the intent of the city council may be effectuated. Words and phrases shall be construed according to the common and approved usage of the language, but technical words, technical phrases and words and phrases that have acquired peculiar and appropriate meanings in law shall be construed according to such meanings.

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

City. The term "city" means the City of Ithaca, Michigan.

City council, council. The terms "city council" and "council" mean the city council of the city.

Civil infraction. The term "civil infraction" means an act or omission prohibited by law which is not a crime and for which civil sanctions may be ordered.

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

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

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

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

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

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

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

Crime. The term "crime" means an act or omission forbidden by law that is not designated as a civil infraction and that is punishable upon conviction by any one or more of the following:

(1) Imprisonment.

(2) Fine not designated as a civil fine.

(3) Other penal discipline.

Delegation of authority. A provision that authorizes or requires a city officer or city employee to perform an act or make a decision authorizes such officer or employee to act or make a decision through subordinates.

Gender. Words of one gender include the other genders.

Health department. The terms "health department" and "department of public health" mean the county health department.

Health officer. The term "health officer" means the director of the county health department.

Highway. The term "highway" includes any street, alley, highway, avenue or public place or square, bridge, viaduct, tunnel, underpass, overpass or causeway, dedicated or devoted to public use.

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

Joint authority. A grant of authority to three or more persons as a public body confers the authority on a majority of the number of members as fixed by statute or ordinance.

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

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

MCL. The abbreviation "MCL" means the Michigan Compiled Laws, as amended.

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

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

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

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

Officers, departments, etc. References to officers, departments, boards, commissions or employees are to city officers, city departments, city boards, city commissions and city employees.

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

Person. The term "person" means any individual, partnership, corporation, association, club, joint venture, estate, trust, limited liability company, governmental unit and any other group

or combination acting as a unit, and the individuals constituting such group or unit.

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

Preceding, following. The terms "preceding" and "following" mean next before and next after, respectively.

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

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

Public acts. References to public acts are references to the Public Acts of Michigan. (For example, a reference to Public Act No. 279 of 1909 is a reference to Act No. 279 of the Public Acts of Michigan of 1909.) Any reference to a public act, whether by act number or by short title, is a reference to the act, as amended.

Real property, real estate, land, lands. The terms "real property," "real estate," "land" and "lands" include lands, tenements and hereditaments.

Roadway. The term "roadway" means that portion of a street improved, designed or ordinarily used for vehicular traffic.

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

Sidewalk. The term "sidewalk" means any portion of the street between the curb, or the lateral line of the roadway, and the adjacent property line, intended for the use of pedestrians.

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

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

Street. The term "street" means any street, alley, highway, avenue, or public place or square, bridge, viaduct, tunnel, underpass, overpass or causeway, dedicated or devoted to public use.

Swear. The term "swear" includes affirm.

Tenses. The present tense includes the past and future tenses. The future tense includes the present tense.

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

Written. The term "written" includes any representation of words, letters, symbols or figures.

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

(Code 1968, §§ 1-102--1-104)

State law references: Definitions and rules of construction applicable to state statutes, MCL 8.3 et seq.

Sec. 1-3. Catchlines of sections; history notes; references.

(a) The catchlines of the several sections of this Code printed in boldface type are intended as mere catchwords to indicate the contents of the section and are not titles of such

sections, or of any part of the section, nor unless expressly so provided shall they be so deemed when any such section, including the catchline, is amended or reenacted.

(b) The history or source notes appearing in parentheses after sections in this Code have no legal effect and only indicate legislative history. Charter references, cross references and state law references that appear in this Code after sections or subsections, or that otherwise appear in footnote form, are provided for the convenience of the user of the Code and have no legal effect.

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

(Code 1968, § 1-102(21))

State law references: Catchlines in state statutes, MCL 8.4b.

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

(a) Unless specifically provided otherwise, the repeal of a repealing ordinance does not revive the ordinance originally repealed, nor impair the effect of any saving provision in it.

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

(Code 1968, § 1-106)

State law references: Effect of repeal of state statutes, MCL 8.4.

Sec. 1-5. Amendments to Code; effect of new ordinances; amendatory language.

(a) All ordinances adopted subsequent to this Code that amend, repeal or in any way affect this Code may be numbered in accordance with the numbering system of the Code and printed for inclusion in the Code. Portions of this Code repealed by subsequent ordinances may be excluded from this Code by omission from reprinted pages affected thereby.

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

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

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

Sec. 1-6. Supplementation of Code.

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

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

(c) When preparing a supplement to this Code, the person authorized to prepare the supplement may make formal, nonsubstantive changes in ordinances included in the supplement, insofar as necessary to do so in order to embody them into a unified code. For example, the person may:

(1) Arrange the material into appropriate organizational units.

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

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

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

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

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

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

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

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

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

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

(b) Any provision of this Code that is made or declared to be a misdemeanor, civil infraction or municipal civil infraction is a violation of this Code.

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

(d) Except as specifically provided otherwise by state law or city ordinance, all violations of this Code are misdemeanors. Except as otherwise provided by law or ordinance, a person convicted of a violation of this Code that is a misdemeanor shall be punished by a fine not to exceed $500.00, and costs of prosecution or by imprisonment for a period of not more than 90 days, or by both such fine and imprisonment. However, unless otherwise provided by law, a person convicted of a violation of this Code which substantially corresponds to a violation of state law that is a misdemeanor for which the maximum period of imprisonment is 93 days, is punishable by a fine not to exceed $500.00 and costs of prosecution, or by imprisonment for a period of not more than 93 days, or by both such fine and imprisonment.

(e) Except as otherwise provided by law or ordinance, with respect to violations of this Code that are continuous with respect to time, each day that the violation continues is a separate offense. As to other violations, each violation constitutes a separate offense.

(f) The imposition of a penalty does not prevent suspension or revocation of a license, permit or franchise or other administrative sanctions.

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

(Code 1968, §§ 1-109, 1-110)

Charter references: Penalties for violation of ordinances, ch. V(F).

State law references: Penalty for ordinance violations, MCL 117.4i(10), 117.4l.

Sec. 1-8. Severability.

If any provision of this Code or its application to any person or circumstance is held invalid or unconstitutional, the invalidity or unconstitutionality does not affect other provisions or application of this Code that can be given effect without the invalid or unconstitutional provision or application, and to this end, the provisions of this Code are severable.

(Code 1968, § 1-108)

State law references: Severability of state statutes, MCL 8.5.

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

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

State law references: Similar provisions as to state statutes, MCL 8.3u.

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

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

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

(Code 1968, § 1-107)

Sec. 1-11. Altering Code.

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

Sec. 1-12. Certain ordinances not affected by Code.

(a) Nothing in this Code or the ordinance adopting this Code affects the validity of any ordinance or portion of any ordinance:

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

(2) Deannexing property or excluding property from the city.

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

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

(5) Granting any specific right or franchise, or establishing the procedure for granting a right of franchise.

(6) Making or approving any appropriation or budget.

(7) Providing for the duties of city officers or employees not codified in this Code.

(8) Providing for salaries or other employee benefits.

(9) Adopting or amending a comprehensive plan.

(10) Levying or imposing any special assessments.

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

(12) Establishing the grade of any street or sidewalk.

(13) Dedicating, accepting or vacating any plat or subdivision.

(14) Not codified in this Code that levies, imposes or otherwise relates to taxes, exemptions from taxes and fees in lieu of taxes.

(15) Pertaining to zoning.

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

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

(18) The purpose of which has been accomplished.

(b) The ordinances or portions of ordinances designated in subsection (a) of this section continue in full force and effect to the same extent as if published at length in this Code.

Chapter 2 ADMINISTRATION*

***Charter references:** Municipal powers and liabilities, ch. II; administrative service, ch. VI.

Cross references: Any ordinance authorizing or approving any contract, deed, or agreement saved from repeal, § 1-12(4); community development, ch. 12; administration and enforcement of subdivision regulations, § 18-56 et seq.; special assessments, ch. 30; utilities, ch. 38; administration of water, § 38-31; sewer inspectors, § 38-115.

State law references: Home rule cities, MCL 117.1 et seq.

ARTICLE I. IN GENERAL

Secs. 2-1--2-30. Reserved.

ARTICLE II. CITY COUNCIL*

***Charter references:** City council, ch. IV; city legislation, ch. V; elections, ch. XII.

DIVISION 1. GENERALLY

Secs. 2-31--2-50. Reserved.

DIVISION 2. MEETINGS*

***State law references:** Open meetings act, MCL 15.261 et seq.

Sec. 2-51. Place and time.

The city council shall meet regularly in the city hall at 7:00 p.m. on the first and third Tuesdays in every month.

(Code 1968, § 2-101; Ord. of 8-15-1995; Ord. of 1-6-1997)

Sec. 2-52. Agenda, preparation.

The clerk shall prepare an agenda of business to be considered at each regular city council meeting. No business shall be considered by the city council unless it is placed upon the agenda for the meeting not later than 12:00 noon on the Friday preceding the meeting, except upon the approval of five or more members of the city council.

(Code 1968, § 2-201)

Charter references: Similar provision, ch. IV (F.13).

Sec. 2-53. Mayor, presiding officer; authority.

The presiding officer of the city council shall be the mayor. The presiding officer shall

preserve strict order and decorum at all regular and special meetings of the city council. He shall state every question coming before the city council, announce the decision of the city council on all subjects and decide all questions of order, subject, however, to an appeal to the city council, in which event a majority vote of the city council shall govern and conclusively determine such question of order. He shall vote last on all questions. He shall sign all ordinances adopted by the city council during his presence. In the event of the absence of the mayor, the presiding officer shall sign ordinances as they are adopted.

(Code 1968, § 2-202)

Sec. 2-54. Call to order; temporary chairman.

The mayor, or in his absence, the mayor pro tempore, shall take the chair precisely at the hour appointed for the meeting, and shall immediately call the city council to order. In the absence of the mayor or mayor pro tempore, the city clerk or his assistant shall call the city council to order, whereupon a temporary chairman shall be elected by the members of the city council present. Upon the arrival of the mayor or mayor pro tempore, the temporary chairman shall relinquish the chair upon the conclusion of the business immediately before the city council.

(Code 1968, § 2-203)

Sec. 2-55. Minutes; reading, approval.

Unless a reading of the minutes of the city council meeting is requested by a member of the city council, such minutes may be approved without reading if the city clerk has previously furnished each councilmember with a copy of such minutes.

(Code 1968, § 2-206)

Sec. 2-56. Presiding officer; participation in proceedings.

The presiding officer may debate and vote. The mayor, or such other councilmember as may be presiding, may move, second and debate from the chair, subject only to such limitations of debate as are imposed by this division on all councilmembers, and shall not be deprived of any of the rights or privileges of a councilmember by reason of his acting as the presiding officer.

(Code 1968, § 2-207)

Sec. 2-57. Addressing the chair; conduct, prohibitions.

Every councilmember desiring to speak shall address the chair, and, upon recognition by the presiding officer, shall confinehimself to the question under debate, avoiding all personalities and indecorous language.

(Code 1968, § 2-208)

Sec. 2-58. Interrupting recognized councilmember prohibited; exception.

Once recognized, a councilmember shall not be interrupted when speaking unless such

interruption is made to call him to order, or as otherwise provided in this division. While speaking, if a councilmember is called to order, he shall cease speaking until the question of order is determined, and, if in order, he shall be permitted to proceed.

(Code 1968, § 2-209)

Sec. 2-59. Privilege of closing debate.

The councilmember moving the adoption of an ordinance or resolution shall have the privilege of closing the debate.

(Code 1968, § 2-210)

Sec. 2-60. Motion to reconsider.

A motion to reconsider any action taken by the city council may be made only on the date such action was taken. Such motion may be made either immediately during the same session, or at a recessed or adjourned session thereof. Such motion must be made by one of the prevailing side, but may be seconded by any councilmember, and may be made at any time and have precedence over all other motions or while a councilmember has the floor, it shall be debated. Nothing in this section shall be construed to prevent any councilmember from making or remaking the same or any other motion at a subsequent meeting of the city council.

(Code 1968, § 2-211)

Sec. 2-61. Entry of remarks of councilmember into minutes.

A councilmember may request, through the presiding officer, the privilege of having an abstract of his statement on any subject under consideration by the city council entered in the minutes. If the city council consents to such entry, such statement shall by entered in the minutes.

(Code 1968, § 2-212)

Sec. 2-62. Synopsis of discussion; entry into minutes.

The city clerk may be directed by the presiding officer, with the consent of the city council, to enter in the minutes a synopsis of the discussion on any question coming regularly before the city council.

(Code 1968, § 2-213)

Sec. 2-63. Addressing the city council.

Any person desiring to address the city council shall first secure the permission of the presiding officer to do so; provided, however, that under the following headings of business, unless the presiding officer rules otherwise, any qualified person may address the city council without securing such prior permission:

(1) *Written communications.* Interested parties or their authorized representatives may address the city council by written communications in regard to matters then under discussion.

(2) *Oral communications.* Taxpayers or residents of the city, or their authorized legal representatives, may address the city council by oral communication on any matter concerning the city business, or any matter over which the city council has control; provided, however, that preference shall be given to those persons who may have notified the city clerk in advance of their desire to speak in order that such desire to speak may appear on the agenda of the city council.

(3) *Reading of protests, petitions or communications.* Interested persons or their authorized representatives may address the city council by the reading of protests, petitions or communications relating to zoning, sewer and street proceedings, hearings on protests, appeals and petitions, or similar matters, in regard to matters then under consideration.

(Code 1968, § 2-214)

Sec. 2-64. Permission required to address the city council after motion.

After a motion is made by the city council, no person shall address the city council without first securing the permission of the city council to do so.

(Code 1968, § 2-215)

Sec. 2-65. Address procedure; time limit.

Each person addressing the city council shall give his name and address, in an audible tone of voice, for the record, and unless further time is granted by the city council, such person shall limit his address to five minutes. All remarks shall be addressed to the city council as a body, and not to any councilmember. No person, other than the city council and the person having the floor, shall be permitted to enter into any discussion, either directly or through a councilmember, without the permission of the presiding officer. No question shall be asked a councilmember, except through the presiding officer.

(Code 1968, § 2-216)

Sec. 2-66. Silence construed as affirmative vote.

The silence of a councilmember upon a vote shall be recorded as an affirmative vote.

(Code 1968, § 2-217)

Sec. 2-67. Preservation of order, decorum.

(a) *Councilmembers.* Whenever the city council is in session, the councilmembers must preserve order and decorum, and a councilmember shall neither, by conversation or otherwise, delay or interrupt the proceedings of the peace of the city council, nor disturb any councilmember while he is speaking, except as otherwise provided in this division.

(b) *Other persons.* Any person making personal, impertinent or slanderous remarks, or who shall become boisterous while addressing the city council, shall be barred by the presiding officer from further audience before the city council unless permission to continue is granted by a majority vote of the city council.

(Code 1968, § 2-218)

Sec. 2-68. Violation; procedure; penalty.

Upon instructions of the presiding officer, it shall be the duty of the chief of police, or such members of the police department as he may designate, to place any person under arrest who violates the order and decorum of a city council meeting, and cause such person to be prosecuted under the provisions set forth in section 1-7, and the complaint shall be signed by the presiding officer.

(Code 1968, § 2-219)

Sec. 2-69. Special committees; appointment.

All special committees shall be appointed by the presiding officer, unless otherwise directed by the city council.

(Code 1968, § 2-220)

Sec. 2-70. Dissents, protests; entry into minutes.

Any councilmember shall have the right to have the reasons for his dissent from, or protest against, any action of the city council entered on the minutes.

(Code 1968, § 2-221)

Sec. 2-71. Ordinances, resolutions, contracts--Approval prerequisite.

Before presentation to the city council, all ordinances, resolutions and contract documents shall be approved as to form and legality by the city attorney, or city manager, or his authorized representative.

(Code 1968, § 2-223)

Sec. 2-72. Same--Introduction for passage or approval.

Ordinances, resolutions, contract documents and other matters or subjects requiring action by the city council must be introduced and sponsored by a councilmember, except that the city manager or city attorney may present ordinances, resolutions, contract documents and other matters or subjects to the city council, and any councilmember may assume sponsorship thereof by moving that such ordinances, resolutions, contract documents, matters or subjects by adopted, or they shall otherwise not be considered.

(Code 1968, § 2-224)

Sec. 2-73. Filing and entry into minutes of reports and resolutions.

All reports and resolutions shall be filed with the city clerk and entered on the minutes.

(Code 1968, § 2-225)

Sec. 2-74. Motion to adjourn.

The motion to adjourn shall always be in order and decided without debate.

(Code 1968, § 2-226)

Secs. 2-75--2-110. Reserved.

ARTICLE III. OFFICERS AND EMPLOYEES*

***Charter references:** Officers, ch. III.

Cross references: Any ordinance providing for the duties of city officers or employees not codified in the Code saved from repeal, § 1-12(7); any ordinance providing for salaries or other employee benefits saved from repeal, § 1-12(8); administrator of subdivision regulations, § 18-56.

State law references: Freedom of information act, MCL 15.231 et seq.; standards of conduct and ethics, MCL 15.341 et seq.; conflicts of interest as to contracts, MCL 15.321 et seq.; political activities by public employees, MCL 15.401 et seq.; legal defense of public employees, MCL 691.1408; incompatible offices, MCL 15.181 et seq.; nondiscrimination in employment, MCL 37.2102.

Secs. 2-111--2-140. Reserved.

ARTICLE IV. BOARDS AND COMMISSIONS*

***Cross references:** Construction board of appeals, § 8-32; tree advisory board, § 14-115.

State law references: Open meetings act, MCL 15.261 et seq.; freedom of information act, MCL 15.231 et seq.

DIVISION 1. GENERALLY

Secs. 2-141--2-160. Reserved.

DIVISION 2. PLANNING COMMISSION*

***Charter references:** Planning department, ch. VI (M).

State law references: City planning, MCL 125.31 et seq.

Sec. 2-161. Established.

There is established a planning commission in and for the city.

(Code 1968, § 2-701)

Sec. 2-162. Powers and duties.

The planning commission shall have the powers and duties prescribed in Public Act No. 285 of 1931 (MCL 125.31 et seq.), as amended, including the preparation and presentation to the city council of a proposed new zoning ordinance in conformity with the power of cities to adopt such ordinances as provided by Public Act. No. 207 of 1921 (MCL 125.581 et seq.), as amended.

(Code 1968, § 2-702)

Sec. 2-163. Composition; compensation.

The planning commission shall be composed of the mayor and eight electors of the city. The eight electors shall each be appointed by the mayor, subject to confirmation by the city council. The terms of members who are electors shall be for three years. As provided by law, members of the planning commission shall serve without compensation for such service.

(Code 1968, § 2-703)

Secs. 2-164--2-190. Reserved.

ARTICLE V. FINANCE*

***Charter references:** General finance, ch. VII; taxation, ch. VIII; special assessments, ch. IX; borrowing power, ch. X; contracts, ch. XI.

Cross references: Any ordinance promising or guaranteeing the payment of money or authorizing the issuance of bonds or other instruments of indebtedness saved from repeal, § 1-12(3); any ordinance making or approving any appropriation or budget saved from repeal, § 1-12(6).

State law references: Municipal finance act, MCL 131.1 et seq.; uniform budgeting and accounting act, MCL 141.421 et seq.; deposit of public moneys, MCL 211.43b.

Secs. 2-191--2-220. Reserved.

Chapter 3 RESERVED

Chapter 4 ALCOHOLIC LIQUOR*

***Cross references:** Disorderly intoxication, § 22-128.

State law references: Michigan liquor control code of 1968, MCL 436.1101 et seq.

ARTICLE I. IN GENERAL

Sec. 4-1. Definitions.

The words and terms used in this chapter shall be as defined in Public Act No. 58 of 1998 (MCL 436.1101 et seq.).

(Code 1968, § 7-201)

Cross references: Definitions generally, § 1-2.

Sec. 4-2. Consumption in public places; prohibitions.

No alcoholic liquor shall be consumed on public streets, parks or in any other public place, including any store or establishment doing business with the public, not licensed to sell alcoholic liquor for consumption on the premises; nor shall anyone who owns, operates or controls any such establishment or store permit the consumption of alcoholic liquors in such establishment or store.

(Code 1968, § 7-203)

Cross references: Streets, sidewalks and other public places, ch. 32.

State law references: Possessing or consuming alcoholic liquor on public highway or park, place of amusement or publicly owned area, MCL 436.1915.

Sec. 4-3. Hours of sale.

All cafes, clubs, taverns and other places selling any alcoholic liquor shall cease selling such alcoholic liquor at 2:00 a.m., except the period commonly known as New Years Eve, at which time such establishments shall conform to the hours established by the Michigan Liquor Control Commission. It is unlawful for any person to sell at retail, give away or furnish for

consumption on the premises any alcoholic liquor after 2:00 a.m. on Sunday, or until after the polls are closed on any election day, general election day or municipal election day, provided, that this section does not apply to alcoholic liquor served to occupants or guests in any residence, nor to alcoholic liquor sold or furnished for medical purposes.

(Code 1968, § 7-204)

State law references: Authority for this section, MCL 436.2113.

Sec. 4-4. Conduct prohibited on licensed premises.

Any indecent, obscene or lascivious amusements, entertainments or conduct, solo or professional dancing, floor shows, playing cards for gain, dice or games of a similar nature, gambling device of any kind, slot machines, raffleboards, pin games or other games or devices of a similar nature, and any disorderly conduct or frequenting by disorderly characters is prohibited in any building where alcoholic liquors are sold for consumption on the premises.

(Code 1968, § 7-206)

Sec. 4-5. Intoxicated persons.

It is unlawful to sell, give or offer any alcoholic liquor to any intoxicated person in a place where alcoholic liquors are sold. No intoxicated person shall be permitted to be or remain in a place where alcoholic liquors are sold for consumption on the premises, and the licensee and person in charge of such establishment shall exclude all intoxicated persons from his place of business.

(Code 1968, § 7-208)

State law references: Sales to intoxicated persons prohibited, MCL 436.1707.

Sec. 4-6. Minors.

It is unlawful for any person under the age of 21 years to purchase or offer to purchase any alcoholic liquor, to falsely represent himself to be over the age of 21 years or to make any false statement or give false information regarding his age to any police officer or person in charge of any place of business where alcoholic liquor is sold. It is unlawful for any person to make any false representation in order to procure the sale of or furnishing of alcoholic liquor to persons under the age of 21 years.

(Code 1968, § 7-209)

State law references: Similar provisions, MCL 436.1703.

Sec. 4-7. Inspections.

The police department shall have full and free access at any time to any place where alcoholic liquors are sold while such place is open for business or while customers or prospective customers are in or on the premises. The health officer shall have full and free access at any time to any place where the sale of alcoholic liquors by the glass for consumption on the premises is conducted while such place is open for business for the purpose of inspection of such place in the interest of public health.

(Code 1968, § 7-210)

Sec. 4-8. Compliance.

It is the duty of the police department and of any individual member thereof, as occasion may require or as opportunity may offer, to enter into and inspect places where alcoholic liquors are sold to ensure that the provisions of this chapter are complied with.

(Code 1968, § 7-211)

Secs. 4-9--4-40. Reserved.

ARTICLE II. LICENSING*

***State law references:** Local approval of licenses, MCL 436.1501.

Sec. 4-41. Required.

It shall be unlawful to sell alcoholic liquor by the glass, or in any other form, for consumption on the premises without first having obtained a license as provided by statute, rule or regulation of the state or any authorized agency of the state and the provisions of this Code.

(Code 1968, § 7-202)

Sec. 4-42. Refusal to issue license; causes.

No application for a license to sell alcoholic liquor within the city shall be approved:

(1) For any person owing any personal taxes to the city or who makes use of, or contemplates using, any personal property upon which any personal property taxes are owed.

(2) For any person owing any delinquent water rates to the city or for any location that is impressed with a lien for delinquent water rates.

(3) For any location where the proposed use will constitute a traffic hazard.

(4) For any premises located below the ground level or above the first floor level of any building, provided that this prohibition does not apply to any club operating wherein the premises are located above the ground level or first floor level.

(5) Except upon certification of the police chief that the provisions of this chapter are being complied with, and the certification of the health officer that the provisions of this chapter, with respect to restaurants which are applicable to the proposed establishment, will be complied with.

(Code 1968, § 7-205)

Sec. 4-43. Violations; revocation of license.

In addition to any other penalties prescribed by this Code, the violation of any of the provisions of this chapter is sufficient cause for revocation of any license for the sale of any alcoholic liquor.

(Code 1968, § 7-212)

Chapter 5 RESERVED

Chapter 6 ANIMALS*

***Cross references:** Environment, ch. 14.

State law references: Wildlife conservation, MCL 324.40101 et seq.; endangered species protection, MCL 324.36501 et seq.; crimes relating to animals and birds, MCL 750.49 et seq.; local authority to adopt animal control ordinance, MCL 287.290.

ARTICLE I. IN GENERAL

Secs. 6-1--6-30. Reserved.

ARTICLE II. DOGS*

***State law references:** Dog law, MCL 287.261 et seq.

Sec. 6-31. Purpose.

The purpose of this article is to control and prohibit dogs running at large, and to provide a penalty to the dog owner for the violation of this article.

(Code 1968, § 8-101)

Sec. 6-32. License.

It shall be unlawful for any person to own or harbor any dog within the city limits unless the dog has been licensed in accordance with the laws of the state.

(Code 1968, § 8-102)

State law references: Dog licensing, MCL 287.266 et seq.

Sec. 6-33. Control of dogs.

Every dog within the city limits shall, at all times, be confined upon the premises of his owner or custodian, except when the dog is otherwise under the reasonable control of a person.

(Code 1968, § 8-103)

Sec. 6-34. Nuisance.

Any dog that shall cause serious annoyance to the public by loud, frequent or habitual barking, yelping or howling, or any female dog that is in heat that is allowed to remain where copulation can take place within the view of the general public rather than on the owner's premises or otherwise, is deemed to be and shall constitute a public nuisance.

(Code 1968, § 8-104)

Sec. 6-35. Quarantine.

A dog that has bitten a person shall be confined under quarantine by the owner or custodian of such dog under the supervision of the police department for a period of ten days, unless the place of confinement is not satisfactory, then the dog shall be held by the county animal control. If at the end of such ten-day period it is determined the dog is in good health, and there has been no symptoms of rabies, the dog may be released to the owner.

(Code 1968, § 8-105)

State law references: Dogs attacking or biting persons, MCL 287.286a, 287.288, 287.351; rules for control of rabies, MCL 333.5111.

Sec. 6-36. Impoundment.

Any dog found running at large shall be picked up by a police officer in the city or by the county animal control. A reasonable attempt will be made by the officer to ascertain the ownership of the dog, and if the owner can be notified, either by recognition of the dog or by a name tag or license tag, such owner can redeem the dog by the payment of a fee as adopted by resolution of the city council from time to time to the city clerk. If the ownership of such dog cannot be determined, the dog will be taken to the pound where the dog will be held for three days. A fee as adopted by resolution of the city council from time to time will be charged for the redemption of a dog from the pound. A description shall be kept of every dog impounded, together with the date and hour of such impoundment.

(Code 1968, § 8-106)

Sec. 6-37. Disposition of dog.

If the owner or custodian of an impounded dog fails or refuses to pay the fee as referenced in section 6-36, or to reclaim the dog within a three-day period, the county animal control shall dispose of the dog in a humane manner, or at its option, may sell the dog to a person who is deemed responsible, and who will properly care for and confine the dog, giving a bill of sale which shall be prima facie evidence of the regularity of the proceedings. For the disposal of any dog pursuant to this section, or pursuant to a request for extermination by the owner, the officer is directed to assess the sum as adopted by resolution of the city council from time to time which is to be collectable as costs in any conviction or collected by the officer to go to the officer whose duty it is to dispose of such dog.

(Code 1968, § 8-107)

Chapter 7 RESERVED

Chapter 8 BUILDINGS AND BUILDING REGULATIONS*

***Cross references:** Community development, ch. 12; environment, ch. 14; fire prevention and protection, ch. 16; permitted burning within building, § 16-32; land divisions and subdivisions, ch. 18; manufactured homes and trailers, ch. 20; solid waste, ch. 28; streets, sidewalks and other public places, ch. 32; utilities, ch. 38; zoning, ch. 40.

ARTICLE I. IN GENERAL

Secs. 8-1--8-30. Reserved.

ARTICLE II. SINGLE STATE CONSTRUCTION CODE

Sec. 8-31. Enforcing agent designated.

Pursuant to the provisions of the single state construction code, in accordance with Public Act No. 230 of 1972 (MCL 125.1501 et seq.), the city building official is designated as the enforcing agency to discharge the responsibilities of the city under such act. The city assumes responsibility for the administration and enforcement of the building, energy and residential

portions of the state code throughout its corporate limits.

(Code 1968, § 2-801)

Sec. 8-32. Construction board of appeals.

A construction board of appeals is created and shall consist of three members appointed by the city council for two-year terms. The construction board of appeals is granted those powers and duties as set forth in Public Act No. 230 of 1972 (MCL 125.1501 et seq.).

(Code 1968, § 14-31)

Cross references: Boards and commissions, § 2-141 et seq.

State law references: State construction board of appeals, MCL 125.1514.

Sec. 8-33. Permit fees.

Permit fees for the enforcement of the single state construction code shall be adopted by resolution of the city council from time to time.

Secs. 8-34--8-60. Reserved.

ARTICLE III. PROPERTY MAINTENANCE CODE

Sec. 8-61. Adopted.

A certain document, a copy of which is on file in the office of the city clerk, being marked and designated as "The International Property Maintenance Code, 2000 edition," as published by the International Code Council, is adopted as the property maintenance code of the city for the control of buildings and structures as provided in this article; and all of the regulations, provisions, penalties, conditions and terms of such code are referred to, adopted and made a part of this article as if fully set out in this section, with the additions, insertions, deletions and changes, if any, prescribed in section 8-63.

(Code 1968, § 8-501)

State law references: Authority to adopt technical code by reference, MCL 117.3(k).

Sec. 8-62. Reference and code.

Reference in the International Property Maintenance Code to the term "state" shall mean the State of Michigan; reference to the term "municipality" shall mean the City of Ithaca; reference to the term "municipal chapter" shall mean the Charter of the City of Ithaca; and reference to the term "local ordinances" shall mean the Ithaca City Code and its ordinances.

(Code 1968, § 8-502)

Sec. 8-63. Additions, insertions and changes.

The International Property Maintenance Code is amended and revised as follows:

Section 101.1 (page 1, second line) insert: City of Ithaca.

Section 103.6 (page 2, fourth line) insert: To be adopted by resolution of the city council from time to time.

Section 303.14 (page 10, first line) insert: May 1, October 1.

Section 602.3 (page 17, fifth line) insert: October 1, April 30.

Section 602.4 (page 17, third line) insert: October 1, April 30.

(Code 1968, § 8-504)

Chapter 9 RESERVED

Chapter 10 CEMETERIES*

***Cross references:** Streets, sidewalks and other public places, ch. 32.

State law references: Authority to acquire and maintain cemeteries, MCL 128.1 et seq.; cemetery regulations act, MCL 456.521 et seq.

Sec. 10-1. Rules of conduct.

The following general rules of conduct shall apply to the city cemetery:

(1) Rubbish or debris shall be deposited in specified receptacles located within the cemetery.

(2) It is prohibited to pick or mutilate any flowers, either wild or domestic, or disturb any tree, shrub or other plant material.

(3) No person shall write upon or injure any monument, fence or structure within the cemetery.

(4) Consumption of alcoholic liquors in the cemetery, or carrying alcoholic liquors upon the premises, is strictly forbidden.

(5) No person shall disturb the quiet or good order within the cemetery by profane or boisterous language or other noise and/or improper conduct in any manner.

(6) Domestic animals are not allowed on the cemetery grounds.

(7) All forms of advertising are prohibited on the cemetery property.

(8) Purchase of any ground or lot within the cemetery for the purpose of speculation is prohibited.

(9) Persons entering the cemetery will be held fully responsible for any damage to the cemetery properties.

(10) The cemetery, although under city jurisdiction, will not be considered as public land in the sense that it is common property and subject to the whims of the public, but is to be considered as holy ground dedicated to the peace and repose of the departed and subject to the consideration and respect of all persons who visit or own lots in the cemetery.

(11) No person shall discharge a firearm in or adjacent to the cemetery. This prohibition shall not apply to authorized volleys at burial or Memorial Day services. Liability for approved firearm discharges shall rest with the authorized party.

(12) Children must be under adult supervision at all times.

(13) Glass containers of all types are prohibited.

(14) Rose bushes and/or other thorny vegetation are prohibited plantings in the cemetery.

(15) Cemetery hours will be from dawn to dusk, and shall be enforced by the city police department.

(16) The city reserves the right to abate, remove and maintain any planting or structure, either natural or manmade, that is deemed unsightly, a nuisance or poses a hazardous situation.

Sec. 10-2. Financial responsibility for property damage.

The city shall not be financially responsible for any damage to lots and structures, or markers or objects within the cemetery, or for flowers or articles removed from any lot or grave.

Sec. 10-3. Supervision of contracted labor.

Masons, stone cutters and other workmen shall be under the supervision of the cemetery sexton or his designee, at all times, and must carry off all rubbish and restore the avenues and paths injured by their operations as he shall direct. Any workman failing to conform to the requirement of this section may forthwith be excluded from the grounds, and the person employing such person shall be responsible for the injuries sustained through such neglect.

Sec. 10-4. Lot boundaries.

All landmarks or corner stones shall be set by the sexton or under his supervision, and shall not be altered or removed. No landmarks or corner stones indicating boundaries of lots shall be set above the surface of the ground.

Sec. 10-5. Grades established.

The city manager or his designee shall establish the grade of all lots, lawns and avenues, and shall have general supervision of improvements within the cemetery upon all lots, before and after interments are made, and no lot shall be filled or raised above the established grade.

Sec. 10-6. Traffic regulations.

Cars and other vehicles driven in the cemetery shall not exceed a speed of five miles per hour. No person in charge of a vehicle shall pass, or attempt to pass, another vehicle going in the same direction, or turn around, or attempt to turn around on any of the roads, alleys or avenues in the cemetery, or drive upon or across any lot or ornamental ground, or through any alley within the cemetery. No person in charge of a vehicle may enter or leave the cemetery except by roads established for such purpose.

Cross references: Traffic and vehicles, ch. 36.

Sec. 10-7. Parking restrictions.

No vehicles shall be parked or permitted to stand so as to infringe upon any lots or graves, nor to obstruct free passage along any roads or drives within the cemetery.

Sec. 10-8. Conditions of lot purchase.

All lots within the cemetery shall be sold subject to the provisions of this chapter, as amended, and the muniment of title shall so state. No lot shall be used for any purpose other than the burial of human remains and the placing of appropriate memorials. Interment of the remains of any person other than the owner of a lot or any member of his immediate family will be permitted only after written consent by the owner or authorized agent has been filed with the city clerk. In the case of a minor, the guardian or authorized agent shall give such consent upon proof of authority to act. Burial lots are exempt from ordinary taxes and cannot be seized on execution. The city may impose specific charges against lots. No mortgage or other encumbrance shall be given on any lot.

Sec. 10-9. Purchase procedure.

The purchase of a cemetery lot shall be evidenced by execution of a purchase contract, upon forms furnished by the city, describing the lot and stating the purchase price, amount paid and terms for payment of the balance, if any. Such purchase contracts are subject to approval of the city clerk as to price and credit terms. Any amount in excess of $25.00 may be accepted as down payment, except that before a permit for burial shall be issued, the full purchase price must have been paid. When a lot is purchased by more than one person, each person's interest

in the lot shall be specifically stated. When a lot is paid for in full, a muniment of title for cemetery purposes only shall be issued to the purchaser by the city and executed by the city clerk.

Sec. 10-10. Transfer of lots.

The transfer of a cemetery lot, or part of a lot, to another party shall be recorded in the office of the city clerk. No person shall be recognized as owner or part owner of a lot unless it is recorded in the office of the city clerk. A letter releasing interest of a lot from the owner shall be required.

Sec. 10-11. Lot care and maintenance.

The various arrangements for cemetery lot care and maintenance shall be as follows:

(1) General maintenance of the cemetery, which is designed to improve the overall appearance and condition of the cemetery, shall be the responsibility of the city. Maintenance shall include such items as the upkeep of the drives, buildings, water lines, drainage and fences of the cemetery.

(2) Perpetual care shall include the following items of basic lot care: annual spring cleanup, periodic cutting of grass, sowing grass, raking leaves and refilling sunken graves.

(3) Watering flower urns, trimming of shrubs and sodding are services not included in perpetual care. Maintenance of markers and/or monuments are the responsibility of the lot owner.

Sec. 10-12. Decoration of lots.

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

Lot decorations shall be deemed to include all structures, ornaments, plantings or other embellishments, with the exception of monuments and markers or mausoleums, which are placed on cemetery lots with the intention of improving their appearance. Because certain types of individual lot decorations are not in harmony with the development of the cemetery, as a whole, or because they may intensify maintenance problems, the city shall enforce certain rules regarding the decoration of cemetery lots.

(b) *Rules.* The following rules shall be observed with regard to decoration of cemetery lots:

(1) Copings, fences, curbs, benches, steps and structures of vinyl, steel, wood or other equally perishable material are prohibited. These structures or enclosures established on a lot prior to the adoption of the ordinance from which this chapter is derived, which have, in the judgement of the cemetery management, become unsightly by reason of neglect or age, shall be removed.

(2) No elevated mounds shall be built over graves, and no lot shall be filled above the grade established by the city.

(3) Grave decorations must be within 12 inches of the gravestone, and all glass

containers are strictly prohibited.

(4) Winter decorations or artificial flowers may be maintained on graves until April 1, and any decorations which are not removed by April 1 shall be considered abandoned and may be disposed of by the cemetery management.

(5) Urns must be placed on a foundation and maintained, and there shall be a limit of one urn per grave site. Any urns not in use by June 10 will be removed.

(6) Arches for hanging baskets and urns are permitted only when they are in use, and such arches must be anchored.

(7) Toys or other unsightly objects will not be permitted as grave decorations, and when used, they will be removed without notice.

(8) Plantings shall be permitted only under the supervision of the cemetery sexton. Plantings placed on a lot without permission will be removed without notice.

(9) The planting of hedges is strictly prohibited. Hedges existing on the effective date of the ordinance from which this chapter is derived will be removed whenever they become unsightly or encroach upon an adjoining lot or path.

(10) The city will remove all flowers, trees or shrubs which have become unsightly, dangerous or within a walkway or alley.

(11) No deciduous tree or conifer shall be removed or pruned, except under the direction and with the consent of the city council and the public works supervisor.

(12) Cement covered graves or ledger monuments above the ground will not be permitted.

(13) One flag holder will be permitted for the grave of each veteran whose last service was honorable and is interred in a city-owned cemetery.

(14) The city reserves the right to remove any flag that has become damaged or unsightly without making a replacement. Replacement of flags may be made by individuals from time to time.

(15) An edging is required for any ground cover decoration which has been preapproved by the cemetery sexton, and must be within 12 inches of the stone over the grave site.

Sec. 10-13. Interment.

(a) No interment shall take place without a burial permit, nor until the person making arrangements for the interment has complied with all laws, ordinances and rules and regulations relative to burials. Funeral directors making arrangements for burials shall be responsible for all interment charges if such charges are not paid by the owner or his agent within 24 hours prior to such interment.

(b) The interment of cremains will require a copy of the burial transit permit before any cremains will be interned in the cemetery.

(c) Fall burials are required to be in a concrete or metal vault or a concrete box.

Sec. 10-14. Funerals.

All funerals within the cemetery shall be under the direction of the cemetery sexton or his appointed agent. All applications for burial shall be made to the cemetery sexton in time to allow at least eight working hours to prepare the grave. An additional charge as adopted by resolution of the city council from time to time shall be made for a service on all nonscheduled work days. The cemetery management reserves the right to remove funeral designs and floral pieces as soon as they become unsightly.

Sec. 10-15. Interment restrictions.

Only one interment shall be permitted in a grave, except in the case of a mother and infant, or two children, space permitting. Two cremains may be buried in one grave site, or one cremain may be buried above a single grave. The cemetery sexton or public works supervisor of the cemetery shall not be held responsible for errors in location of graves on lots arising from improper instructions of lot owners or funeral directors. Orders from funeral directors shall be construed as orders from the lot owners. Under no circumstances shall the city assume responsibility for errors in opening graves when orders are given by telephone. No graves shall be opened except by workmen employed by the cemetery management. Funeral directors should arrange the time of a funeral so that cemetery workmen can complete interment by 4:30 p.m.

Sec. 10-16. Disinterments.

No disinterment will be allowed except by authority of the person owning the lot in which the interment is made, and except by order of the court, when a proper receipt for the remains must be given. Graves shall not be opened for inspection except for official investigations. Interment and disinterment may be made only by the regular employees of the cemetery. The city shall exercise the utmost care in making the removal, but it shall assume no liability for any damage to any casket or burial case or urn incurred in making the removal. Any markers or monuments designating the location of an interment shall be removed at the time disinterment is made at the expense of lot owners or heirs. All disinterments are at the discretion of the city.

Sec. 10-17. Monuments and markers.

(a) Approval of the location of a monument or marker must be obtained from the city clerk's office or cemetery sexton before a monument or marker is set. No monument or marker shall be placed upon a lot unless such lot has been paid in full. There are no restrictions as to the styles of monuments and markers that may be placed in the old plat and the first and second additions of the cemetery; however, the following restrictions will apply in the new sections L, M, N and O:

(1) A monument or any upright style memorial structure, such as slant face stones, memorial seats, double markers or permanent urns, must be set in the monument row, and placed 1 1/2 feet from the rear lot line. Any of such styles, monuments or markers may bear just the family name, or two or more inscriptions, as long as there is an equal number of graves for the monument to be centered on. This shall not prevent a monument on a single grave. Single markers are not allowed in the monument row, except section M and any future

additions. All monumental work must face the abutting pathway, except in section M and any future additions, where all monumental work must face to the east.

(2) The term "marker" shall mean a stone used to indicate the location of a particular single grave and must be set in the marker row, except for section M and any future additions, and must face the abutting pathway. In sections L, N and O, no marker shall extend more than six inches above the lawn at its highest elevation,and shall be 24 inches in length and 12 inches in width. In section M and any future additions all markers at the foot of the grave, including military markers, shall not extend above ground level.

(b) No material, except granite or a good grade of white marble from recognized monument quarries, shall be used for monuments or upright markers. Bronze may be used for monuments or upright markers if it is firmly attached to a granite base. No materials, except granite or standard bronze, shall be used for flush markers, unless preapproval is obtained from the city clerk's office or the cemetery sexton.

(c) All monuments and markers shall be placed on a foundation of a depth and size and material deemed adequate by the cemetery sexton. All foundations shall be installed by cemetery personnel. Foundation fees will be assessed on a square inch of surface area basis with a minimum fee set.

(d) Persons engaged in placing monuments and markers shall provide adequate planking to protect turf, and shall remove materials and equipment immediately upon completion of such work. The site shall be left in a clean, orderly condition. Markers and monuments will not be permitted to be delivered to lots until a proper order for a foundation installation has been placed with the cemetery sexton.

Sec. 10-18. Mausoleums or vaults.

A mausoleum or vault may not occupy more than one-fifth of the ground area, and must be on road frontage lots. Detailed specifications must accompany any request for the building of a vault or mausoleum, and such permit will be subject to the approval of the city.

Chapter 11 RESERVED

Chapter 12 COMMUNITY DEVELOPMENT*

***Cross references:** Administration, ch. 2; buildings and building regulations, ch. 8; environment, ch. 14; land divisions and subdivisions, ch. 18; special assessments, ch. 30; streets, sidewalks and other public places, ch. 32; utilities, ch. 38; zoning, ch. 40.

State law references: Housing and slums clearance projects, MCL 125.651 et seq.; housing corporation law, MCL 125.601 et seq.; urban development corporations, MCL 125.901 et seq.; rehabilitation of blighted areas, MCL 125.71 et seq.; state development authority act, MCL 125.1401 et seq.; economic development corporations, MCL 125.1601 et seq.

ARTICLE I. IN GENERAL

Secs. 12-1--12-30. Reserved.

ARTICLE II. DOWNTOWN DEVELOPMENT AUTHORITY*

***State law references:** Authority for this article, MCL 125.1651 et seq.

Sec. 12-31. Establishment.

The city council, having determined that it is necessary in the best interest of the public to halt property value deterioration and increase property tax valuation, where possible, in its business district, and to eliminate the causes of that deterioration and to promote economic growth, creates and provides for the operation of the downtown development authority.

(Code 1968, § 2-901)

Sec. 12-32. Powers, duties and boundaries.

The downtown development authority, established pursuant to Public Act No. 197 of 1975 (MCL 125.1651 et seq.), shall have all of the powers, duties and authority prescribed in such act, as amended, and the downtown development authority's boundaries within the city shall be as follows:

> Commencing at the northwest corner of lot 1, block 5 of the original plat of the city, extending south to the southeast corner of block 9 of the original plat of the city, thence west to the southwest corner of lot 5, block 16 of Jeffery's Addition of the city, thence north to the northwest corner of lot 12, block 7 of Upper Ithaca of the city, thence east to the place of beginning, including lots 1--12 of block 5, lots 1--12 of block 4, lots 1--10 of block 10, all in the original plat of the city, and lots 1--12 of block 7 of Upper Ithaca, and lots 1--8, block 16 of Jeffery's Addition.

(Code 1968, § 2-902)

Sec. 12-33. Downtown development authority board.

(a) The downtown development authority shall be under the supervision and control of a board which shall consist of the mayor and ten members appointed by the mayor, subject to approval by the city council. Not less than a majority of the board members shall be persons having an interest in property located in the downtown district. No less than one of the board members shall be a resident of the downtown district if the downtown district has 100 or more persons residing within it. Of the board members first appointed, an equal number of the board members, as near as practical, shall be appointed for terms of one year, two years, three years and four years. An appointment to fill a vacancy on the board shall be made by the mayor for the unexpired term only. Members of the board shall serve without compensation, but shall be reimbursed for actual and necessary expenses. The officers of the board shall be elected by the board.

(b) Before assuming the duties of office, a board member shall qualify by taking and subscribing to the constitutional oath of office.

(c) The board shall adopt rules governing its procedure and the holding of regular meetings, subject to the approval of the city council. Special meetings may be held when called in the manner provided in the rules of the board. Meetings of the board shall be open to the public as required by the Open Meetings Act, Public Act No. 267 of 1976 (MCL 15.261 et seq.).

(d) Pursuant to notice, and after having been given an opportunity to be heard, a member of the board may be removed for cause by the city council. Removal of a board member is subject to review by the circuit court.

(e) All expense items of the board shall be publicized monthly, and financial records shall be open to the public.

(f) In addition to the items and records prescribed in subsection (e) of this section, a writing prepared, owned, used, in the possession of or retained by the board in the performance of an official function shall be made available to the public in compliance with the Freedom of Information Act, Public Act No. 442 of 1976 (MCL 15.231 et seq.).

(Code 1968, § 2-903)

State law references: Similar provisions, MCL 125.1654.

Secs. 12-34--12-59. Reserved.

ARTICLE III. PILOT ORDINANCE

Sec. 12-60. Purpose.

It is acknowledged that it is a proper public purpose of the State of Michigan and its political subdivision to provide housing for its citizens of low and 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 Authority Act of 1966 (1966 PA 346, as amended, MCLA 125.1401 et seq.). The city is authorized by said 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 the act at any amount it chooses, not to exceed the taxes that would be paid but for the act. It is further acknowledged that such housing for persons of low and moderate

income is a public necessity; and as the city will be benefited and improved by such housing, the encouragement of the same by providing certain real estate tax exemption therefore is a valid public purpose; further, that the continuance of the provisions of this article for the tax exemption and the service charge in lieu of taxes during the periods hereinafter contemplated are essential to the determination of economic feasibility of housing developments which are constructed and financed in reliance thereon.

(Ord. of 5-11-2004)

Sec. 12-61. Ithaca Senior Apartments.

The city acknowledges that Ithaca Senior Housing Partners Limited Dividend Housing Association Limited Partnership (a sponsor as defined herein) has offered, subject to allocation of tax credit financing from the authority, under Section 42 of the Internal Revenue Code, as amended, to erect or operate and maintain a housing development identified as Ithaca Senior Apartments, located on the property described on attached "Exhibit A". [A copy of Exhibit A can be found in the city's offices.]

(Ord. of 5-11-2004)

Sec. 12-62. Definitions.

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

Act means the State Housing Development Authority Act, being Public Act 346 of 1966, of the State of Michigan, as amended.

Annual shelter rent means the total collections during an agreed annual period from all occupants of a housing development representing rent or occupancy charges, exclusive of charges for gas, electricity, heat, or other utilities furnished to the occupants.

Authority means the Michigan State Housing Development Authority.

Contract rents are as defined by the U.S. Department of Housing and Urban Development in regulated promulgated pursuant to the U.S. Housing Act of 1947, as amended by the Housing and Community Development Act of 1947. It is understood that such rents are meant to be the tenants' rental contribution plus any federal subsidies.

Elderly shall mean a family wherein the head of the household is 55 years of age or older or a single person who is 55 years of age or older.

Housing development means a development which contains a significant element of housing for low income persons or elderly persons of low income and such elements of other housing, commercial, recreational, industrial, communal, and educational facilities as the authority determines improve the quality of the development as it relates to housing for persons of low income or elderly persons of low income.

Low income persons means persons and families eligible to move into a housing development financed by the authority.

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

Sponsor means persons or entities which have applied to the authority for, or previously received from the authority, a mortgage loan to finance a housing development.

Utilities mean fuel, water, sanitary sewer and/or electrical service, which are paid by the development.

(Ord. of 5-11-2004)

Sec. 12-63. 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 that portion of a development which is for elderly persons or low-income persons and which is financed or assisted pursuant to the Act. It is further determined that Ithaca Senior Housing Partners Limited Dividend Housing Association Limited Partnership is of this class.

(Ord. of 5-11-2004)

Sec. 12-64. Establishment of annual service charge for Ithaca Senior Apartments.

The housing development identified as Ithaca Senior Apartments and the property on which it shall be constructed shall be exempt from all property taxes from and after the commencement of construction. 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 the ordinance from which this section derives and the qualification of the housing development for exemption from all property taxes and a payment in lieu of taxes as established in the ordinance from which this section derives, and in consideration of the sponsor's offer, subject to receipt of an allocation of low-income housing tax credits under Section 42 of the Internal Revenue Code of 1986, as amended, to construct, own, and operate the housing development, agrees to accept payment of an annual service charge for public services in lieu of all property taxes. The annual service charge shall be equal to six percent of the annual shelter rents less utilities.

(Ord. of 5-11-2004)

Sec. 12-65. Contractual effect of article.

Notwithstanding the provision of Section 15(a)(5) of the Act, to the contrary, a contract between the city and the sponsors, with the authority as third party beneficiary thereunder, to provide tax exemption and accept payments in lieu thereof as previously described is effected by enactment of this article.

(Ord. of 5-11-2004)

Sec. 12-66. Determination and payment of service charge.

The amount of the service charge in lieu of taxes for the immediately proceeding year shall be determined by the City of Ithaca. The sponsor shall furnish to said department by March 15, of the calendar year following the calendar year for which the service charge in lieu of taxes is to be determined, all documentation required to make said determination, which shall include but not be limited to the documentation required under section 12-64.

The service charge in lieu of taxes for the immediately preceding calendar shall be payable to the city except that the annual payment shall be paid on or before April 15 of the calendar year following the calendar year for which the service charge in lieu of taxes to be determined

(Ord. of 5-11-2004)

Sec. 12-67. Duration.

This article shall remain in effect and shall not terminate so long as a mortgage loan made to the sponsor for a development subject to this article remains outstanding and unpaid or the authority has any interest in property subject to a service charge under this article, and so long as the project remains compliant with Section 42 of the Internal Revenue Code of 1986, as amended, if applicable; provided that construction of any housing development subject to this article commences within one year from the effective date of this article establishing the annual service charge for said development.

(Ord. of 5-11-2004)

Chapter 13 RESERVED

Chapter 14 ENVIRONMENT*

***Cross references:** Animals, ch. 6; buildings and building regulations, ch. 8; community development, ch. 12; land divisions and subdivisions, ch. 18; manufactured homes and trailers, ch. 20; environmental, open space and access requirements, § 20-36; parks and recreation, ch. 24; solid waste, ch. 28; streets, sidewalks and other public places, ch. 32; utilities, ch. 38; zoning, ch. 40.

State law references: Natural resources and environmental protection act, MCL 324.101 et seq.

ARTICLE I. IN GENERAL

Secs. 14-1--14-30. Reserved.

ARTICLE II. INOPERABLE OR DISMANTLED VEHICLES

Sec. 14-31. Accumulation prohibited.

Unless otherwise permitted, no person, whether such person is the owner, tenant or manager of private property, or whether he is the last registered owner of the vehicle or transferee on a bill of sale covering the vehicle, shall permit the accumulation on private property of one or more motor vehicles which do not meet the following conditions:

(1) All motor vehicles must be in an operating condition and eligible for use in accordance with the requirements of the state vehicle code, Public Act No. 300 of 1949 (MCL 257.1 et seq.), provided that any such vehicle may not comply with this section for a period not to exceed 15 days.

(2) The requirements of this section include, but are not limited to, an engine that runs, four wheels and four pneumatic tires capable of holding air, current license plates and a working battery.

(Code 1968, § 4-201; Ord. No. 20-A, 2-19-1974)

Sec. 14-32. Exclusions.

(a) Any person enumerated in this section who, under special conditions of hardship, or for valid reasons, such as preservation of a historic or classic vehicle, may request an extension of the 15-day time limitation set forth in section 14-31(1) by filing a timely request with the city council. The city council, at its discretion, after review of all of the circumstances, and after holding any hearings which it deems necessary, may grant the applicant a reasonable extension of time.

(b) The provisions of this article shall apply in all areas, except where the storage of such vehicles is in a completely enclosed building, or is by a licensed car dealer or junk dealer.

(Code 1968, § 4-202; Ord. No. 20-A, 2-19-1974))

Secs. 14-33--14-60. Reserved.

ARTICLE III. SOIL EROSION AND SEDIMENTATION CONTROL*

***State law references:** Soil erosion and sedimentation control, MCL 324.9101 et seq.; soil conservation districts law, MCL 324.9301 et seq.

Sec. 14-61. Local enforcing agency.

(a) It is the intent of the city to become the local enforcing agency in regard to implementing the Soil Erosion and Sedimentation Control Act, part 91 of Public Act No. 451 of 1994 (MCL 324.9101 et seq.) within the municipal limits of the city.

(b) The city may elect, by resolution, for the county to become the local enforcing agency in regard to implementing the Soil Erosion and Sedimentation Control Act, and follow rules promulgated by the county.

(Code 1968, § 5-402)

Sec. 14-62. Rules adopted.

The city, by reference, adopts the latest rules promulgated by the state department of natural resources relative to the Soil Erosion and Sedimentation Control Act, part 91 of Public Act No. 451 of 1994 (MCL 324.9101 et seq.), and such rules shall be available for public distribution, at a reasonable charge, with not less than ten copies to be available for public inspection at the city clerk's office.

(Code 1968, § 5-403)

Sec. 14-63. Submission of plans.

Before groundbreaking of any construction project in the city involving one or more acres of land, an erosion and sedimentation control plan shall be submitted to the city in accordance with the department of natural resource rules as set forth in section14-62.

(Code 1968, § 5-404)

Sec. 14-64. Permits and fees.

Upon payment of the necessary fees to the city in accordance with a fee schedule to be determined by the city council, and amended from time to time by simple resolution, the submitted erosion and sedimentation plans, as set forth in section 14-63, shall be reviewed and approved, and a permit shall be issued, provided, such plans meet the department of natural resource standards, which have been adopted by reference, to prevent soil erosion at all major construction sites in the city in excess of one acre, except isolated single-family dwellings.

(Code 1968, § 5-405)

Sec. 14-65. Site inspection.

The local enforcing agency shall inspect the construction site at least at the beginning, during construction and at the end of the project, and shall issue cease and desist orders upon violation of the rules set forth in part 91 of Public Act No. 451 of 1994 (MCL 324.9101 et seq.).

(Code 1968, § 5-406)

Secs. 14-66--14-100. Reserved.

ARTICLE IV. TREE REGULATIONS*

***State law references:** Planting of trees along highways, MCL 247.231 et seq.; care of trees and shrubs along highways, MCL 247.241 et seq.; obnoxious plants and trees, MCL 124.151 et seq.; municipal forests, MCL 324.52701 et seq.

Sec. 14-101. Definitions.

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

Park means and includes all public parks having individual names, and all areas owned by the city, or to which the public has free access as a park.

Prohibited species means populus or poplar, box elder, willow, tree of heaven, catalpa, soft maple, wild chestnut, black locust, elm and cottonwood.

Public utility means any person owning or operating any pole, line, pipe or conduit located in any public street or over or along any public easement or right-of-way of the transmission of electricity, gas, telephone service or telegraph service.

Street means all of the land lying between property lines on either side of all streets, highways and boulevards in the city.

Tree means trees, shrubs, bushes and all other woody vegetation.

(Code 1968, § 8-701(1--6))

Cross references: Definitions generally, § 1-2.

Sec. 14-102. Applicability.

The provisions of this article, except as otherwise specifically stated in this article, shall apply only to public streets, parkways, parks and other land publicly owned or controlled by the city.

(Code 1968, § 8-701(7))

Sec. 14-103. Responsibility for enforcement.

The city manager shall be charged with the duty of enforcing the provisions of this article, under the supervision of the city council.

(Code 1968, § 8-702)

Sec. 14-104. Permits for tree planting, care and removal.

The city manager shall have control over all trees located within the street rights-of-way and parks in the city, and the planting, care and removal of such trees, subject to the regulations contained in this article. The owner of land abutting on any street, upon obtaining prior written permission of the city manager, may prune, spray, plant or remove trees in that part of the street abutting such person's land not used for public travel, but no person shall otherwise prune, spray, plant or remove any tree in any street or park. Every such permit shall specify the extent of the authorization and the conditions of such permit. Where an owner of abutting property requests the removal of a tree, the city manager is authorized, in his discretion, to require, as a condition to granting approval for such removal, that such property owner make the removal in accordance with regulations established by the department of public works, assume all or any part of the costs of removing such tree and require that the tree which is removed be replaced by planting another tree, not necessarily of the same type, at some other nearby location.

(Code 1968, § 8-703)

Sec. 14-105. Removal of dead, diseased and prohibited trees.

All dead trees and trees afflicted with any fatal or communicable disease shall be removed by the department of public works with the approval of the city council. The city manager is authorized to direct the department of public works to remove any tree of a prohibited species, provided notice to the owner is given, and if such owner shall file written objection to such removal with the city clerk within 48 hours after service of such notice, a public hearing on such removal shall be held before the city council as to whether or not the city manager shall remove such tree.

(Code 1968, § 8-704)

Sec. 14-106. Removal of other trees.

Trees may be removed which are not dead or infected with any disease when such trees are of an undesirable, though not prohibited, species, but only upon notice to the owner of the abutting property, and if such owner shall file written objection to such removal with the city clerk within 48 hours after service of such notice, a public hearing on such removal shall be held before the city council, and the abutting owner shall be notified of the time and place of such hearing. The city manager is authorized to direct the department of public works to remove any tree growing within any street, park or public place, when such tree interferes with fire hydrants, sewers and water mains, visibility of street intersections, traffic control devices or construction within street rights-of-way.

(Code 1968, § 8-705)

Sec. 14-107. Planting regulations.

No tree of any prohibited species shall be planted in any street or park, nor shall any such tree be planted on any private property within 50 feet of any street or sidewalk right-of-way or any sewer or sewer extension. Shade trees planted in any street right-of-way shall be spaced not less than 40 feet apart, except that trees may be planted less than 40 feet from an existing tree in the right-of-way, provided, the existing tree has been approved for removal within a period of two years from the date of planting of the new tree. The owner of a single lot may, in order to provide a shade or ornamental tree in front of his lot, secure special permission from the department of public works to have a tree planted closer than 40 feet from an existing tree, but in no case shall such planting be within 30 feet of any existing tree within the right-of-way. No tree shall be planted in any planting strip between the street proper and the sidewalk where the distance between the back of the curb and the sidewalk is less than three feet in width. No tree shall be planted nearer to the intersection of any streets than 25 feet from the corner of such intersection.

(Code 1968, § 8-706)

Sec. 14-108. Protection.

No person shall break, injure, mutilate, kill or destroy any tree or shrub, or set any fire, or permit any fire, or the heat from such fire, to injure any portion of a tree. No toxic chemicals or other injurious materials shall be allowed to seep, drain or be emptied on, near or about any tree. No electric wires, or any other lines or wires, shall be permitted to come in contact with any tree or shrub in any manner that shall cause damage to such tree or shrub, and no person shall attach any electric insulation to a tree. No person shall use a tree as an anchor, and no material shall be fastened to or hung on a tree. All persons having facilities which may interfere with the trimming or removal of any tree under their care, custody or control shall, after notice by the department of public works, promptly abate such interference in such a manner as shall permit the trimming or removal of such tree by the department of public works.

(Code 1968, § 8-707)

Sec. 14-109. Excavations near trees.

Excavations and driveways shall not be placed within six feet of any tree without a written permit from the city manager. Any person making such excavation or construction shall guard any tree within six feet of such excavation or construction with a good substantial frame box which shall be approved by the department of public works. All building material or other debris shall be kept at least 40 feet from any tree. All persons desiring to make such excavation or construction shall deposit with the city a sum as adopted by resolution of the city council from time to time which shall be sufficient to cover the cost of inspection and any damage which may result from such excavation or construction.

(Code 1968, § 8-708)

Sec. 14-110. Covering surface near trees.

No person shall place within the street right-of-way any stone, brick, sand, concrete or other material which will in any way impede the full and free passage of water, air or fertilizer to the roots of any tree, except a sidewalk of an authorized width and location.

(Code 1968, § 8-709)

Sec. 14-111. Gas main leakage.

Gas pipes or mains within any public rights-of-way or on any public property shall be maintained so as to avoid any leakage from such pipes or mains. If a leak exists or occurs, it shall be reported to the owner of such pipe or main, and the leak shall be repaired within 24 hours. Any damage of trees, shrubbery or grass resulting from the escape of gas from a pipe or main shall be repaired, and the cost of the work, including the cost of removal and the replacement of any trees, shall be levied against the owner of the pipe or main causing the damage.

(Code 1968, § 8-710)

Sec. 14-112. Private trees.

(a) *Clearance.* Every owner of any tree on private property overhanging any street or right-of-way within the city shall trim the branches of such tree so that the branches shall not obstruct the light from any streetlamp, or obstruct the view of any street intersection, and so that there shall be a clear space of eight feet above the surface of the street or right-of-way. Such owners shall remove all dead, diseased or dangerous trees, or broken or decayed limbs which constitute a menace to the safety of the public. The city shall have the right to trim any tree or shrub on private property when it interferes with the proper spread of light along the street from a streetlight, or interferes with visibility of any traffic control device or sign, and such trimming shall be confined to the area immediately above the right-of-way. All shrubs and bushes located on the triangle formed by two right-of-way lines and a line drawn 20 feet from their point of intersection on any corner lot within the city shall not be permitted to grow to a height of more than three feet above the surface of the roadway, in order that the view of the driver of a vehicle approaching a street intersection shall not be obstructed. Trees may be planted and maintained in such area, provided that all branches are trimmed to maintain a clear vision for a vertical height of eight feet above the roadway surface.

(b) *Disease and infestation.* When the city manager shall discover that any tree growing on private property within the city is afflicted with any dangerous and infectious insect infestation or tree disease, he shall forthwith serve a written notice upon the owner of such tree or his agent or occupant of the property on which the afflicted tree is located to take such measures as may be reasonably necessary to cure such infestation or disease and to prevent the spreading of such infestation or disease, specifying the measures required to be taken. Such order may require the pruning, spraying or destruction of trees, as reasonably necessary. Every such notice shall be complied with within ten days after service of such notice upon the owner, agent or occupant of the property on which the afflicted tree is located, or within such additional time as may be stipulated in such notice.

(c) *Appeal.* If the owner, agent or occupant of the property shall feel himself aggrieved by an order of the city manager requiring the treatment or destruction of a tree, such person may, within 48 hours, make an appeal to the city council by communication filed with the city clerk. The city council shall hear such appeal at its next regular meeting, unless another time shall be set for such hearing, and shall determine the matter under such expert advice as may be necessary.

(d) *Failure to comply.* If the owner, agent and occupant of the property refuses to carry out the order of the city manager within the limited time, or in case of an appeal, within five days after the city council shall have affirmed such order, the city manager shall carry out the pruning, spraying or destruction of the tree as deemed necessary by him, and shall bill the owner, agent or occupant of the property for the cost of such pruning, spraying or destruction. The city manager may, without serving the notice, when the owner or occupant of any private property shall consent thereto and pay the reasonable cost thereof, cause trees growing on private property to be sprayed when he deems it necessary on account of any infestation or disease, or threat thereof.

(e) *Inspection.* The city manager and his assistants and employees shall have authority to enter upon private premises for the purpose of examining any tree, shrub, plant or vine for the presence of destructive insects or plant diseases. No damages shall be awarded for the destruction of any tree, shrub, plant or fruit, or injury thereto, if such destruction is done by the city manager, or under his discretion, in accordance with this article.

(Code 1968, §§ 8-711--8-715)

Sec. 14-113. Overhead lines; trimming permits.

The city manager shall annually issue permits granting permission to public utilities to trim and keep trimmed all trees within the streets, alleys, parks and public places of the city, in such a manner to keep the overhead lines of such public utilities safe and accessible. Such trimming shall be done in accordance with approved practices and under the general direction of the city manager or the department of public works. Such permit shall require reasonable prior notice to the city before any work is commenced under the permit; provided, however, that in the event of an emergency requiring immediate maintenance work on the overhead lines of the public utilities, prior notice of commencing work under such permit shall not be required. As used in this section, the term "emergency" means the occurrence or happening of an event which could not be foreseen by the exercise of reasonable care and foresight, which might cause damage to the overhead lines of the public utilities.

(Code 1968, § 8-716)

Sec. 14-114. Rules and regulations.

Subject to the approval of the city council, the city manager shall make such rules and regulations supplementary to this article, and not in conflict with this article, as he may deem necessary from time to time. The rules and regulations of this article which are in effect at the adoption of this Code shall continue in effect until they are changed pursuant to this section. No person shall fail to obey any rule or regulation effective under this article.

(Code 1968, § 8-717)

Sec. 14-115. Tree advisory board.

There is established a tree advisory board which shall consist of five members. Such board members shall be appointed by the mayor, by and with the consent of the city council. The original board shall be appointed for the following terms: two members shall be appointed for three years, two members shall be appointed for two years and one member shall be appointed for one year. Thereafter, each member shall be appointed for a three-year term. The

board shall meet at least quarterly, but may meet more often if it is deemed necessary. The board shall organize itself and elect from its membership a chairperson and a secretary. Meetings of the board may be called by the chairperson or any two of the remaining board members. The board will act in an advisory capacity to the mayor, city manager and city council, upon request, and may also offer recommendations to them at regular city council meetings.

(Code 1968, § 8-719)

Cross references: Boards and commissions, § 2-141 et seq.

Chapter 15 RESERVED

Chapter 16 FIRE PREVENTION AND PROTECTION*

***Cross references:** Buildings and building regulations, ch. 8; fire prevention in parks, § 24-42; water for fire hydrants, § 38-45.

State law references: State fire prevention code, MCL 29.1 et seq.; crimes related to fires, MCL 750.240 et seq.; crimes related to explosives and bombs, MCL 750.200 et seq.; explosives act, MCL 29.41 et seq.

ARTICLE I. IN GENERAL

Secs. 16-1--16-30. Reserved.

ARTICLE II. BURNING

Sec. 16-31. Where permitted.

No person shall burn any trash upon any premises within the city unless such burning shall take place in a furnace, fireplace, stove or incinerator within a dwelling or other building.

(Code 1968, § 8-401)

Sec. 16-32. Permitted burning within building.

Trash or garbage may be burned in an incinerator within a building, provided the combustion chamber is completely enclosed and vented through an approved chimney or stack, and the incinerator is designed and constructed to prevent emission of noxious odors and will not emit smoke, fly ash or other air contaminants in unreasonable quantity or to such an extent as to be detrimental to the health or welfare of the city.

(Code 1968, § 8-404)

Cross references: Buildings and building regulations, ch. 8.

Sec. 16-33. Leaves.

It shall be lawful to burn leaves during the months of October, November, April and May, and other special times as determined by the city council, if such burning is done on the premises and not on a hard surfaced street, alley or public sidewalk, and such burning shall be under the control of a responsible person and shall not in any way endanger surrounding property, trees, shrubs, etc.

(Code 1968, § 8-405)

Sec. 16-34. Exceptions; application.

This article shall not apply to the burning of any material which, for certain reasons, should be burned instead of disposed of by the means provided by the city for disposal of waste material; provided, however, that any person who believes he has waste material of such a type which should be burned shall first make application to the city council for approval to burn such waste material. The application shall specify the circumstances or reasons for the need to burn, the type of materials to be burned, the location of the spot that the burning shall take place, the approximate distance in feet of the nearest building and the approximate distance in feet of the nearest city fire hydrant. Such applicant shall also cause the location that the burning is intended to take place to be inspected by a member of the fire department, and a written inspection report shall be submitted to the city council. The report shall include matters concerning safety and possible pollution of the air or ground.

(Code 1968, § 8-406)

Secs. 16-35--16-60. Reserved.

ARTICLE III. FIRE CODE

Secs. 16-61--16-90. Reserved.

ARTICLE IV. HAZARDOUS SUBSTANCES OR CONDITIONS

Sec. 16-91. Recovery of costs.

The City of Ithaca shall be entitled to recover the cost/expenditures incurred by the City of Ithaca in responding to, recovering from, safeguarding, isolating, and/or cleaning up of hazardous substances and dangerous or hazardous conditions.

The City of Ithaca shall be entitled to recovery of the costs/expenditures incurred by the City of Ithaca in responding to, recovering from, safeguarding, isolating, and/or cleaning up technological/man-made emergencies and/or disasters.

(Ord. of 10-7-2003)

Sec. 16-92. Hazardous substances defined.

Hazardous substances shall include all substances as defined in MCLA 324.20101(t).

(Ord. of 10-7-2003)

Sec. 16-93. Parties responsible to reimburse city for costs.

Any person, company, organization or entity that owns or controls a hazardous substance within the City of Ithaca which is released shall reimburse the City of Ithaca the costs incurred by the City of Ithaca in responding to, recovering from, safeguarding, isolating, and/or cleaning up the hazardous substance.

Any person, company, organization or entity that causes the release of any hazardous substance or the creation of a situation resulting in the release or possible release of a hazardous substance within the City of Ithaca shall reimburse the City of Ithaca the cost incurred by the City of Ithaca in responding to, recovering from, safeguarding, isolating, and/or cleaning up the hazardous substance.

Any person, company, organization or entity that causes a technological/man-made emergency or disaster within the City of Ithaca shall reimburse the City of Ithaca the costs incurred by the City of Ithaca in responding to, recovering from or cleaning up said technological/man-made emergency and/or disaster.

Any person, company, organization or entity that causes or contributes to a dangerous or hazardous condition within the City of Ithaca shall reimburse the City of Ithaca the costs incurred by the City of Ithaca in responding to, recovering from, safeguarding, isolating, and/or cleaning up said dangerous or hazardous condition.

(Ord. of 10-7-2003)

Sec. 16-94. Reimbursable costs of city.

The treasurer shall determine the costs/expenditures of the City of Ithaca in responding to, recovering from, safeguarding, isolating, and/or cleaning up a hazardous substance, dangerous or hazardous condition, or a technological/man-made emergency or disaster.

The total costs/expenditures shall include, but not be limited to, the following:

a. Salaries of all employees, including overtime and benefits.

b. All long distance, cellular and fax telephone calls within any period.

c. Replacement/repair of all equipment owned or leased by the City of Ithaca which is deemed unserviceable due to exposure to the hazardous substance(s), or dangerous or hazardous condition.

d. Expenses of vehicle operation/use of emergency command trailer.

e. On scene rehab of emergency personnel including, but not limited to, beverage and food for long-term events.

f. All other related expenses caused by the event.

Once the costs/expenditures of the City of Ithaca have been determined by the treasurer, the fire chief shall submit the bill to the party/parties named by the fire chief as being responsible pursuant to section 16-93, above.

(Ord. of 10-7-2003)

Sec. 16-95. Appeal of reimbursable costs by responsible party.

The responsible individual/company may request a detailed explanation of costs/expenditures. If dissatisfied, the responsible party may request to review the costs/expenditures with the City of Ithaca or its designated representative.

If after review the responsible party is still dissatisfied, the party may make a final appeal directly to the city manager. The decision of the city manager shall be final.

(Ord. of 10-7-2003)

Sec. 16-96. Rights of responsible party to seek contribution and/or indemnity from another party.

Neither this article nor the determination by the fire chief or the city manager shall increase or diminish the right of a party (who has reimbursed the City of Ithaca pursuant to this article) to seek contribution and/or indemnity from another party.

(Ord. of 10-7-2003)

Chapter 17 RESERVED

Chapter 18 LAND DIVISIONS AND SUBDIVISIONS*

***Cross references:** Any ordinance dedicating, accepting or vacating any plat or subdivision saved from repeal, § 1-12(13); buildings and building regulations, ch. 8; community development, ch. 12; environment, ch. 14; manufactured homes and trailers, ch. 20; streets, sidewalks and other public places, ch. 32; utilities, ch. 38; zoning, ch. 40.

State law references: Land division act, MCL 560.101 et seq.

Article I. In General

ARTICLE I. IN GENERAL

Secs. 18-1--18-30. Reserved.

ARTICLE II. SUBDIVISION REGULATIONS

DIVISION 1. GENERALLY

Sec. 18-31. Interpretation.

In the interpretation and application of the provisions of this article, they shall be held to be minimum requirements adopted for the promotion of public health, safety, convenience and general welfare. The provisions of this article shall be administered to ensure orderly growth and development, to protect and conserve and adequately provide for circulation, utilities and services, all with a view to conserving the value of property and encouraging the most appropriate use of land in the city and its surrounding urbanizing area.

(Code 1968, § 5-2502)

Sec. 18-32. Purpose.

It is the purpose of this article to utilize the city's ability to provide utilities to encourage orderly and economical development in accordance with the long range plan. To this end, the city plans to provide public water and sewer services to present and future development which meets the service area and zoning requirements of the master plan.

(Code 1968, § 5-2503)

Sec. 18-33. Intent; service areas and subdivisions.

(a) It is the intent of this article to ensure that the density of all future subdivision development shall be directly related to carefully selected service areas shown on the service area map as primary, secondary, private and industrial service areas. The service area map is incorporated into, and made a part of, this article. Primary service areas are those areas in the city and the surrounding area which are provided with, or where the city has agreed it will provide, public sewer and water services. Secondary service areas are those areas in the city and surrounding area which are now provided with, or where the city has agreed it will provide, public water services but not public sewer services. Private service areas are those areas where neither public water nor public sewer are provided, and where there are no agreements or plans to provide such services. The nonresidential service area is reserved for industrial use.

(b) For the purpose of this article, subdivisions shall be classified as complete utility, partial utility, potential utility or private service subdivisions. For reasons of health and sanitation, the minimum required area of each lot shall vary according to the type of subdivision, the minimum requirements increasing as the availability of the various public services decreases. In this way it is hoped that, with the future development of the logical urbanizing area and increasing concentration of population, serious dangers to health and the economy of the city will be avoided.

(Code 1968, § 5-2504)

Sec. 18-34. 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:

Complete utility subdivision means a subdivision located in the primary service area in which arrangements have been made for both public water service and sewage disposal by a public utility system and for the other improvements required by this article.

Final plat means the final map, drawing or chart which the applicant submits pursuant to the Land Division Act for the approval of the city.

Land Division Act means Public Act No. 288 of 1967 (MCL 560.101 et seq.).

Local street means a street intended primarily to serve adjacent neighborhood properties.

Major street means a street designated as such in the major street plan, which is contained within the master plan, or by subsequent action of the planning commission, which is intended to serve a relatively large volume of traffic not originating or terminating in the particular neighborhood.

Partial utility subdivision means a subdivision in which arrangements have been made for either public water service or sewage disposal by a public utility system, but not both, and for the other improvements required by this article.

Potential utility subdivision means a subdivision in which neither public water nor sewage disposal by a public utility systemcan be obtained at the time of platting, but where the other improvements required by this article are provided.

Private service subdivision means a subdivision located in an area in which neither public water nor sewage disposal by a public utility system is furnished or contemplated.

Public utility system means a water or sewer system owned and operated by the city, or a community utility system approved by the planning commission.

Cross references: Definitions generally, § 1-2.

Secs. 18-35--18-55. Reserved.

DIVISION 2. ADMINISTRATION AND ENFORCEMENT*

***Cross references:** Administration, ch. 2.

Sec. 18-56. Administrator.

This article shall be administered by the city council. The rules, regulations and standards imposed by this article shall be considered to be the minimum requirements for the

protection of the public health, safety and welfare of the citizens of the city, and in interpreting and applying the rules, regulations and standards of this article, the city council shall give primary consideration to these factors.

(Code 1968, § 5-3401)

Cross references: Officers and employees, § 2-111 et seq.

Sec. 18-57. Variances.

(a) If a subdivider can clearly demonstrate that literal enforcement of this article is impractical, or will impose undue hardship in the use of his land because of peculiar conditions pertaining to his land, the city council may permit a variance as, in its sound discretion, it believes to be reasonable and within the general purpose and policy of this article.

(b) In making the following findings, the city council shall consider the location and condition of the proposed subdivision, the nature of the proposed variance as compared with 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 subdivisions and variances on traffic conditions in the vicinity. A variance shall not be granted unless the city council finds that:

(1) There are special circumstances or conditions affecting the property so that the strict application of the provisions of this article would deprive the applicant of the reasonable use of his land.

(2) The variance is necessary for the preservation and enjoyment of a substantial property right of the applicant.

(3) The granting of the variance will not be detrimental to the public welfare, or be injurious to property in the area in which the property is situated.

(Code 1968, § 5-3501)

Sec. 18-58. Petition.

A petition for a variance shall be submitted in writing by the subdivider at the time when the preliminary plat is filed for the consideration of the planning commission. The petition shall fully state the grounds for the variance, and all of the facts relied upon by the petitioner.

(Code 1968, § 5-3502)

Sec. 18-59. Violation; penalty.

If a person transfers or sells, or agrees to sell as owner or agent, any land or property not meeting the requirements of this article, such person shall be subject to the penalties of section 1-7, and each parcel, plot or lot so disposed of shall be deemed a separate violation.

(Code 1968, § 5-3701)

Secs. 18-60--18-80. Reserved.

DIVISION 3. PLATTING PROCEDURE

Sec. 18-81. Sketch plat.

A sketch plat of all subdivisions may be submitted for preliminary plat discussion before a preliminary plat is prepared, and such step is recommended. As its name indicates, the sketch plat is designed to enable the planning commission and the applicant to discuss principles involved before the applicant has gone to the expense of completing detailed engineering drawings. The planning commission will act on such sketch plat, and if it is satisfactory, the planning commission shall give approval of such sketch plat. Such approval will not be binding and will be subject to change, but will enable the applicant to proceed on a reasonable, sound basis. It should be emphasized that sketch plat approval does not carry the authority to proceed with construction.

(Code 1968, § 5-2801)

Sec. 18-82. Preliminary plat.

(a) A preliminary plat shall be designed in compliance with the provisions of division 5 of this article, and shall be accurately drawn to a scale of preferably not more than 200 feet to the inch and shall show or be accompanied by the following information:

(1) A key map showing the platted area in relation to the surrounding areas.

(2) Plans of proposed utility layouts (sewers, storm drains and water) showing connections to any existing or proposed utility systems.

(3) Results of percolation tests or test holes, made as directed by the city engineer, if no public sewage disposal system is available.

(4) The proposed use of the individual lots in the platted area.

(5) The dimensions and area of the individual lots, and their average frontage and area.

(b) At least four black on white prints of a preliminary plat shall be submitted to the city clerk two weeks before the regular planning commission meeting at which the plat's consideration is desired. The preliminary plat shall show the details and contain the information required in section 18-83.

(c) The planning commission shall consider the preliminary plat and shall require any changes or modifications of the plat which are necessary to make such plat comply with the provisions of this article and shall return the plat to the subdivider for compliance. If the preliminary plat, as originally submitted, or as changed or modified as required by the planning commission, meets the requirements of this article, the planning commission shall give such plat tentative approval, and such plat shall then be referred to the city council for tentative approval, and upon tentative approval of the plat by the city council, the city clerk shall affix his signature to the plat with the notation that the plat has received city council tentative approval, and the plat shall then be returned to the subdivider for compliance with final approval requirements.

(d) Tentative approval of a preliminary plat by the city council shall give the applicant the

following rights for a two-year period from the date of approval:

(1) The general terms and conditions under which the tentative approval was granted will not be changed by the city.

(2) The applicant may submit the tentatively approved plat, or parts thereof, for final approval on or before the expiration date.

(Code 1968, §§ 5-2802, 5-2901)

Sec. 18-83. Final plat.

(a) The final plat shall be prepared as required by the Land Division Act.

(b) Within one year from the date of tentative approval, five copies of the final plat shall be submitted to the city clerk at least 20 days prior to a regular meeting of the city council. Before receiving final approval, the subdivider shall show that he has made agreements for the installation of the services and improvements required by division 6 of this article.

(c) A fee as adopted by resolution of the city council from time to time shall be paid to the city at the time of filing the final plat for final approval.

(d) If, in the opinion of the city council, the final plat meets the requirements of the Land Division Act and this article, the city council shall give the plat final approval, and a notation to that effect shall be made on each plat and shall be signed by the city clerk.

(Code 1968, §§ 5-2803, 5-2902)

Secs. 18-84--18-105. Reserved.

DIVISION 4. PROCEDURE FOR UTILITY SERVICE

Sec. 18-106. Existing developed property.

All requests for utility service to existing buildings within and adjacent to the service area shall be submitted to the city manager. If the city manager finds that the property is within the city boundaries and meets the requirements of zoning, chapter 40 of this Code, and that satisfactory arrangements for financing the utility service can be arranged, such utility service may be authorized by the city.

(Code 1968, § 5-2601)

Cross references: Utilities, ch. 38.

Sec. 18-107. Existing platted lots.

All requests for utility service to two or more platted lots shall be submitted to the planning commission for study and report. In making its report, the planning commission shall apply the standards and requirements for new subdivisions, as applicable, and recommend appropriate action by the city manager.

(Code 1968, § 5-2602)

Sec. 18-108. New subdivisions.

All subdivision plats shall meet the requirements of this article. Utility service to any new lot created after the adoption of the ordinance from which this article is derived will be provided only for lots platted in conformity with the provisions in this article. A copy of this section shall be attached to all future metes and bounds lot descriptions recorded with the county register of deeds.

(Code 1968, § 5-2603)

Sec. 18-109. Charges.

When a utility service is recommended, and the city, in its judgment, can afford to provide such service, such utility will be provided when satisfactory arrangements have been made for financing the full cost of service installation. If the service request is outside of the present city boundaries, operation charges shall be at the rate of 150 percent of such service charges within the city.

(Code 1968, § 5-2604)

Secs. 18-110--18-130. Reserved.

DIVISION 5. LOT SIZES IN RELATION TO IMPROVEMENTS

Sec. 18-131. Classifications.

For the purpose of this article, subdivisions shall be classified as complete utility, partial utility, potential utility or private service. For reasons of health and sanitation, the minimum required area of each lot shall vary according to the type of subdivision, and the minimum requirements shall increase as the availability of the various public services decreases. It is hoped, that with the future development of the city and the township and the increasing concentration of population, serious dangers to health will be avoided.

(Code 1968, § 5-3001(intro ¶))

Sec. 18-132. Complete utility subdivision in primary service area.

A complete utility subdivision is a subdivision in the primary service area in which arrangements have been made for both public water service and sewage disposal by a public utility system and for the other city services required by this article. The minimum frontage of lots in such subdivision at the building line shall be 66 feet, and the minimum lot area shall be 7,800 square feet.

(Code 1968, § 5-3001(1))

Sec. 18-133. Partial utility subdivision in primary service area.

A partial utility subdivision is a subdivision in which arrangements have been made for either public water service or sewage disposal by a public utility system, but not for both, and for

the other city services required by this article in primary service areas. The minimum lot frontage of all lots in such subdivision at the building line shall be 80 feet, and the minimum lot area shall be 10,000 square feet.

(Code 1968, § 5-3001(2))

Sec. 18-134. Potential utility subdivision in primary service area.

A potential utility subdivision is a subdivision in which, at the time of platting, neither public water nor sewage disposal by a public utility system can be immediately obtained, but where other city services required by this article for partial utility subdivisions are located in a primary service area so that it is known that both public water and sewage disposal by a public utility system will eventually become available. The minimum frontage of all lots in such subdivision at the building line shall be 90 feet, and the minimum lot area shall be 13,500 square feet.

(Code 1968, § 5-3001(3))

Sec. 18-135. Partial or potential utility subdivision in secondary service area.

If a partial or potential utility subdivision is located in a secondary service area where it is or can be served with public water but not with sewage disposal by a public utility system, the minimum frontage of all lots at the building line shall be 125 feet, and the minimum lot area shall be 27,500 square feet.

(Code 1968, § 5-3001(4))

Sec. 18-136. Private service subdivision.

A private service subdivision is one located outside of either the established primary or secondary service areas so that neither public water nor sewage disposal by a public utility system is furnished or contemplated and there are no plans or agreements by any utilities to serve them with water or sewers. The minimum frontage of lots at the building line in such subdivision shall be 200 feet, and the minimum lot area shall be 60,000 square feet.

(Code 1968, § 5-3001(5))

Secs. 18-137--18-160. Reserved.

DIVISION 6. REQUIRED IMPROVEMENTS

Sec. 18-161. Complete utility subdivisions in primary service area.

Prior to the granting of final approval for a complete utility subdivision, the subdivider and the city shall have agreements for the installation of the following improvements:

(1) *Pavement and curbs.* A 36-foot graded street, surfaced according to city specifications with asphalt or an equally satisfactory surfacing, with concrete curbs and gutters, as approved by the city engineer.

(2) *Water.* A public water supply of sufficient size, approved by the city engineer,

available to each lot within the subdivision, together with a contract for the installation, maintenance and operation of approved fire hydrants in locations approved by the city.

(3) *Sewers and drainage.* Adequate provisions for culverts, catchbasins, storm sewers and sanitary sewers properly connected to, or with provisions made for connection to, an approved system, as approved by the city engineer.

(4) *Sidewalks.* Four-foot sidewalks, which shall be installed by the developer in accordance with the specifications of the city, subject to inspection and approval by the city engineer.

(5) *Shade trees.* Shade trees, at least one to a lot, but not closer than 40 feet from trunk to trunk, of a type, size and location to be approved by the city engineer.

(6) *Topsoil.* No topsoil shall be removed from the site or used as spoil. Topsoil moved during the course of construction shall be redistributed and stabilized by seeding or planting, as specified by the city engineer.

(7) *Street names.* Signs shall be placed at all intersections within or abutting the subdivision, and the type and location to of such signs shall be approved by the city engineer.

(Code 1968, § 5-3101)

Sec. 18-162. Partial utility subdivisions in primary service area.

The required improvements for a partial utility subdivision shall be the same as for a complete utility subdivision as set forth in section 18-161, except that:

(1) If a public utility water system is not available, individual wells may be used in lieu of the requirements of section 18-161(2), provided samples are submitted and approved by the health department and all other requirements of section 18-161 are met; or

(2) If the services of a public utility sanitary sewer system are not available, individual septic tanks may be used in lieu of the requirements of section 18-161(3), provided they are approved by the city engineer and all other requirements of section 18-161 are met.

(Code 1968, § 5-3102)

Sec. 18-163. Potential utility subdivisions in primary service area.

The required improvements for a potential utility subdivision shall be the same as for a partial utility subdivision as set forth in section 18-162. At the time the plat receives final approval arrangements shall be made for the future installation of both public water and sewage disposal by a public utility system in the primary service area and the future installation of public water by a public utility system in the secondary service area. Installation of fire hydrants, adequate storm sewers and topsoil protection, as required in section 18-161, is required. Performance or cash bonds may be required to ensure compliance.

(Code 1968, § 5-3103)

Sec. 18-164. Subdivisions in primary service area.

If the average width of all lots in a complete or partial subdivision in the primary service area exceeds 90 feet, improvement standards may vary with the density of development in order to encourage larger lot sizes, provided that all requirements of section 18-161 are met, except that a four-foot sidewalk on one side of the street may be permitted instead of two sidewalks.

(Code 1968, § 5-3104)

Sec. 18-165. Partial or potential utility subdivision in secondary service area.

The required improvements in a partial or potential utility subdivision shall be as set forth in section 18-162, except:

(1) Pavement and curb requirements are reduced to a 30-foot street with valley curb and gutters, and surfacing shall be approved by the city engineer.

(2) Sidewalk requirements are reduced.

(Code 1968, § 5-3105)

Sec. 18-166. Variations in secondary service area.

If the average width of all lots in a potential utility subdivision in the secondary service area exceeds 150 feet and the average lot area exceeds 30,000 square feet, the planning commission may vary the standards of this division in proportion to increased lot sizes. Sidewalk provisions may be waived unless they are needed to provide access to schools or to continue a sidewalk on an existing street.

(Code 1968, § 5-3106)

Sec. 18-167. Private service subdivisions.

The city engineer shall approve a properly graded, drained and seal coated road, which has a minimum width of 24 feet and valley gutters, with concrete curbs and gutters provided at its intersection.

(Code 1968, § 5-3107)

Secs. 18-168--18-190. Reserved.

DIVISION 7. DESIGN STANDARDS

Sec. 18-191. Master plan.

All subdivisions shall conform, whenever possible, to the provisions and conditions of the master plan for future development of the city and shall be related to the area zoning plan.

(Code 1968, § 5-3201)

Sec. 18-192. Streets.

All subdivision streets shall conform in width, direction and alignment with the service area map, and shall connect with existing streets shown on such map, with a minimum of jogs or sharp angles. Curving streets shall have a minimum 200-foot radius, and the minimum width of street easements shall be 60 feet. A greater width easement may be required by the city council for streets which may be required for arterial use.

(Code 1968, § 5-3202)

Cross references: Streets, sidewalks and other public places, ch. 32.

Sec. 18-193. Dead-end streets.

Dead-end streets within a subdivision shall not exceed 800 feet in length unless an outlet with a minimum of 60 feet width is provided, when required. There shall be a turnaround roadway with a minimum outside curb radius of 50 feet at the closed end.

(Code 1968, § 5-3203)

Sec. 18-194. Block lengths.

No block within a subdivision shall exceed 1,000 feet in length. Outlets may be required at a length less than 1,000 feet, if deemed necessary by the planning commission, and ten-foot or more pedestrian crosswalks or utility easements may be required.

(Code 1968, § 5-3204)

Sec. 18-195. Reserve strips.

No subdivision showing reserve strips controlling access to streets shall be approved, except where the control and disposal of land comprising such strips is placed with the city, or the county road commission under conditions approved by the city.

(Code 1968, § 5-3205)

Sec. 18-196. Street grades.

No street grade within a subdivision shall be less than one-half of one percent, nor greater than seven percent, except in special instances where the topography of the land to be subdivided is such that makes it impossible to otherwise develop such land. Nonpassing sight distance shall be at least 300 feet.

(Code 1968, § 5-3206)

Cross references: Streets, sidewalks and other public places, ch. 32.

Sec. 18-197. Suitability.

If there is a question as to the suitability of a lot for its intended use due to factors such as rock formations, flood conditions or similar circumstances, the planning commission may,

after adequate investigation, withhold approval of such lot.

(Code 1968, § 5-3207)

Sec. 18-198. Easements.

If a subdivision is traversed by a watercourse, drain or stream, there shall be provided a stormwater easement or drainage right-of-way conforming substantially with lines of the watercourse, and such further width for construction as deemed adequate by the planning commission.

(Code 1968, § 5-3208)

Sec. 18-199. Public sites and open spaces.

When a proposed park, playground, school or other public use shown in the master plan is located, in whole or in part, in a subdivision, the planning commission shall bring it to the attention of the platter and discuss the question of acquiring such areas by dedication or reservation.

(Code 1968, § 5-3209)

Sec. 18-200. Monuments.

Monuments shall be placed at all block corners, angle points, points of curves in streets and at intermediate points, as may be required by the city engineer. All monuments shall be of such material, size and length, as approved by the city engineer.

(Code 1968, § 5-3210)

Sec. 18-201. Business and industrial subdivisions.

When land is subdivided for business or industrial purposes permitted by zoning, chapter 40 of this Code, the required services and improvements shall be fixed by the planning commission with reference to the use and density of the subdivided area and the type of business or industrial activity to be carried on in the subdivided area in accordance with the provisions of section 18-161. The city engineer shall establish specifications as to size, location, etc., for complete utility subdivisions.

(Code 1968, § 5-3211)

Sec. 18-202. Street names.

All subdivision street names will be subject to approval of the city engineer and may be required to conform with the county numbering system.

(Code 1968, § 5-3212)

Chapter 19 RESERVED

Chapter 20 MANUFACTURED HOMES AND TRAILERS*

***Cross references:** Buildings and building regulations, ch. 8; environment, ch. 14; land divisions and subdivisions, ch. 18; solid waste, ch. 28; streets, sidewalks and other public places, ch. 32; utilities, ch. 38; zoning, ch. 40.

State law references: Mobile home commission act, MCL 125.2301 et seq.; motor coach parks, MCL 125.1035 et seq.; campground licensing and registration, MCL 333.12501 et seq.

ARTICLE I. IN GENERAL

Secs. 20-1--20-30. Reserved.

ARTICLE II. MOBILE HOME PARKS

Sec. 20-31. Purpose.

The purpose of this article is to provide minimum standards for the construction, licensing, inspection, maintenance and such other general requirements, as deemed necessary, for a mobile home park; to ensure a healthful, safe and sanitary condition; to provide for the elimination of overcrowding; to provide a basis of enforcement of such conditions in and around the park; to provide justified relief from the strict application of the regulations of this article; and to protect the health, safety and property of the citizens.

(Code 1968, § 5-302)

Sec. 20-32. 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:

License means a written license issued by the mobile home code commission, allowing a person to operate and maintain a mobile home park under the provisions of the Mobile Home Commission Act and this article and regulations issued under this article.

Mobile home means a structure which is transportable in one or more sections, which is built on a chassis and designed to be used as a dwelling, with or without a permanent foundation, when connected to the required utilities, and includes the plumbing, heating, air conditioning and electrical systems contained in the structure.

Mobile Home Commission Act means Public Act No. 96 of 1987 (MCL 125.2301 et seq.) and the rules promulgated under such act.

Mobile home lot or site means a parcel of land for the placement of a single mobile home and the exclusive use of its occupants within a licensed mobile home park.

Mobile home park means a parcel or tract of land under the control of a person upon which three or more mobile homes are located on a continual, nonrecreational basis, and which is offered to the public for such purpose regardless of whether a charge is made therefor, together with any building, structure, enclosure, street, equipment or facility used or intended for use incidental to the occupancy of a mobile home.

Mobile home stand means that part of an individual lot which has been reserved for the placement of a mobile home, appurtenant structures or additions.

Permit means a written permit issued by the mobile home code commission, permitting the construction, alteration or extension of a mobile home park under the provisions of the Mobile Home Commission Act.

Service building means a structure housing administrative, recreational and such other facilities, as may be desired.

Sewer connection means the connection consisting of all pipes, fittings and appurtenances from the sanitary drain outlet of a mobile home to the inlet of the corresponding sewer riser pipe of the sewerage system serving the mobile home park.

Sewer riser pipe means that portion of the sewer lateral which extends vertically to the ground elevation and terminates at the mobile home lot.

Water connection means the connection consisting of all pipes, fittings and appurtenances from the water riser pipe to the water inlet pipe of the mobile home.

Water riser pipe means that portion of the water supply system serving a mobile home park, which extends vertically to the ground elevation and terminates at a designated point at each mobile home lot.

(Code 1968, § 5-303)

Cross references: Definitions generally, § 1-2.

Sec. 20-33. Permits.

(a) It shall be unlawful for any person to construct, alter or extend any mobile home park within the limits of the city unless such person holds a valid construction permit issued by the mobile home code commission in accordance with the provisions of the Mobile

Home Commission Act.

(b) Applications for zoning for mobile home park use shall conform to the provisions of the city zoning ordinance, chapter 40 of this Code, regarding such applications, and containing a minimum of the full name and address of the applicant, a complete description of the property for which zoning is requested and design drawings indicating how the property will be used for a mobile home park. The applications for zoning shall not require the submission of a complete and detailed engineering drawing in order to obtain zoning.

(Code 1968, § 5-304)

Sec. 20-34. Licenses.

No person shall maintain, conduct or operate a mobile home park without an annual license from the mobile home code commission, as required by the Mobile Home Commission Act.

(Code 1968, § 5-305)

Sec. 20-35. Inspection of mobile home parks; notification of violation.

(a) Mobile home parks shall be inspected in accordance with the Mobile Home Commission Act.

(b) The county health officer, the commissioner of state police or any peace officer having jurisdiction in the area in which a mobile home park is located, shall notify the county health department of any known violation of the Mobile Home Commission Act.

(Code 1968, § 5-306)

Sec. 20-36. Environmental, open space and access requirements.

(a) *Generally.* The condition of the soil, groundwater level, drainage and topography of a mobile home park shall not, in the opinion of the county health department, create a hazard to the property or the health or safety of the occupants.

(b) *Soil and ground cover.* Exposed ground surfaces in all parts of a mobile home park shall be maintained in a reasonably dustproof condition.

(c) *Site drainage.* The ground surface in all parts of a mobile home park shall be equipped to drain all surface water in an adequate manner. No surface water may be drained into the sewage system.

(d) *Park areas for nonresident uses.*

(1) No part of a mobile home park shall be used for nonresidential purposes, except such uses that are required for the direct servicing and well being of park residents and for the management and maintenance of the park.

(2) Nothing in this section shall be deemed as prohibiting the sale of mobile homes located in a mobile home park.

(e) *Separation between mobile homes.* Separation between mobile homes shall comply with

the Mobile Home Commission Act.

(f) *Street system.*

(1) All mobile home parks shall be provided with two means of safe and convenient vehicular access from abutting public streets, one of which must be a through street.

(2) Road requirements and access to each individual mobile home site shall comply with the Mobile Home Commission Act.

(3) All mobile home park streets shall be provided with a smooth, hard and dense surface which shall be durable and well drained under normal use and weather conditions, and shall have a width in conformance with the Mobile Home Commission Act. Street surfaces shall be maintained free of holes and other hazards. Curbs and gutters shall be provided for each mobile home lot within the park.

(g) *Parking areas.* Parking shall be provided in all mobile home parks at the rate of at least two off-street hard surface auto spaces for each mobile home lot within the park.

(h) *Walks.* All mobile home parks shall be provided with safe, convenient, all-season pedestrian access of at least three feet in width.

(i) *Stands and skirts.* The area of a mobile home stand shall be improved to provide an adequate foundation for the placement of the mobile home. The concrete pad beneath each mobile home, if provided, shall be a minimum of four-inch thick concrete. Uniform skirts shall be installed on all mobile homes. Mobile home sites shall be a minimum of 4,000 square feet in area, with at least 50-foot frontage. All mobile homes must be set back 50 feet from all streets.

(Code 1968, § 5-307)

Cross references: Environment, ch. 14.

Sec. 20-37. Water supply.

The water supply serving a mobile home park shall be obtained from the municipal supply.

(Code 1968, § 5-308)

Cross references: Water, § 38-31 et seq.

Sec. 20-38. Sewage disposal.

An adequate and safe sewage system for conveying and disposing of all sewage shall be connected to the city sewage system in all mobile home parks.

(Code 1968, § 5-309)

Sec. 20-39. Electrical distribution and telephone systems.

(a) Each mobile home park shall contain an electrical system which shall be installed and maintained in accordance with applicable codes and regulations governing such

systems. The electrical distribution system shall be installed underground, with an electrical meter being placed on a uniform type of panel at each mobile home site throughout the park in accordance with the Mobile Home Commission Act.

(b) A telephone system shall be installed underground within the mobile home park.

(Code 1968, § 5-310)

Cross references: Utilities, ch. 38.

Sec. 20-40. Community service facilities.

Cooking shelters, barbecue pits, fireplaces and incinerators, where used, shall be located, constructed, maintained and used in a manner that minimizes fire hazards and smoke nuisance both on the property on which they are used and on neighboring property. No open fire shall be left unattended. No fuel shall be used and no material shall be burned which emits dense smoke or objectionable odors.

(Code 1968, § 5-311)

Sec. 20-41. Refuse handling.

(a) Garbage and rubbish shall be disposed of in a manner approved by the county health department, and in a manner so as not to create a nuisance or menace to health as provided by the Mobile Home Commission Act. Collection of such garbage and rubbish should be weekly. In-home garbage disposal would be desirable.

(b) Refuse incinerators, if provided, shall be constructed in accordance with engineering plans and specifications which shall be reviewed and approved by the county health department.

(Code 1968, § 5-312)

Sec. 20-42. Insect and rodent control.

(a) Mobile home parks shall be maintained free of accumulation of debris which may provide rodent harborage or breeding places for flies, mosquitoes and other pests.

(b) Construction material storage areas for a park shall be maintained so as to prevent rodent harborage. Lumber, pipe and other building materials shall be stored at least six inches from the ground surface.

(c) The growth of brush, weeds and grass shall be controlled.

(Code 1968, § 5-313)

Sec. 20-43. Fuel supply and storage.

(a) *Gas systems.* Gas piping systems shall be installed and maintained in accordance with applicable codes and regulations governing such systems.

(b) *Fuel oil supply systems.* All fuel oil lines shall be installed underground, and shall be installed and maintained in accordance with applicable codes and regulations governing such systems. When individual fuel oil storage tanks are used, they shall be placed on

an adequate base and braced, and shall not be located inside or beneath any mobile home or less than five feet from any mobile home exit.

(Code 1968, § 5-314)

Sec. 20-44. Fire protection.

All mobile home parks shall be subject to the rules and regulations of the state fire marshal. Fire hydrants shall be installed to conform with regulations of the state fire marshal.

(Code 1968, § 5-315)

Sec. 20-45. Miscellaneous requirements.

(a) *Park management responsibilities.*

(1) Each mobile home park shall be provided with a manager and office where each mobile home entering the park shall be assigned a lot location and the owner given a copy of the mobile home park rules.

(2) The park management shall direct the placement of each mobile home on its mobile home site.

(b) *Park occupant responsibilities.*

(1) A mobile home park occupant shall comply with all applicable requirements of this article and regulations issued under this article and shall maintain his mobile home lot, its facilities and equipment in good repair and in a clean and sanitary condition.

(2) The park occupant shall be responsible for proper placement of his mobile home on its mobile home stand and proper installation of all utility connections in accordance with the instructions of the park management.

(c) *Occupancy restrictions.* A mobile home shall not be occupied for dwelling purposes unless it is properly placed on a mobile home site and connected to water, sewerage, electrical and other utilities.

(d) *Additional requirements.* Any person owning, operating or maintaining a mobile home park in the city shall comply with all provisions of the Mobile Home Commission Act, in addition to the provisions of this article.

(Code 1968, § 5-316)

Sec. 20-46. Miscellaneous facilities.

(a) Patios may be constructed adjacent to mobile homes connected to common sidewalks by a three-foot sidewalk. Any cabanas or auxiliary structures must be of a uniform construction.

(b) Clotheslines must not be more than one revolving clothes dryer per mobile home.

(c) Recreation areas and facilities shall be provided.

(Code 1968, § 5-317)

Sec. 20-47. Buffer zone.

A ten-foot buffer zone shall be established between mobile home lots and adjacent private property, which must be improved, maintained and planted with evergreens.

(Code 1968, § 5-318)

Sec. 20-48. Violation; penalties.

(a) Any person convicted of violating any provision of this article shall be guilty of a misdemeanor.

(b) The zoning board of appeals is authorized to waive requirements of this article as they deem necessary and advisable in particular cases.

(Code 1968, § 5-319)

Chapter 21 RESERVED

Chapter 22 OFFENSES*

***Cross references:** Traffic and vehicles, ch. 36.

State law references: Michigan penal code, MCL 750.1 et seq.

ARTICLE I. IN GENERAL

Secs. 22-1--22-30. Reserved.

ARTICLE II. OFFENSES AFFECTING GOVERNMENT FUNCTIONS

Sec. 22-31. False alarms.

It shall be unlawful for any person to intentionally turn in or give a false fire alarm, or intentionally call for the police or an ambulance when no real or apparent need exists, or aid or abet in the commission of any such act.

(Code 1968, § 7-101(H))

State law references: False alarms, MCL 750.240.

Secs. 22-32--22-60. Reserved.

ARTICLE III. OFFENSES AGAINST THE PERSON

Sec. 22-61. Assaults.

It shall be unlawful for any person to beat, strike, wound, imprison or inflict violence upon another person where the circumstances show malice, or assault another person with a lethal weapon, instrument or thing with the intent to commit bodily injury upon such person where no considerable provocation appears or where the circumstances of the assault show malice.

(Code 1968, § 7-101(B))

State law references: Assaults, MCL 750.81 et seq.

Sec. 22-62. Window peeping.

It shall be unlawful for any person to be found looking into the windows or doors of any house, apartment or other residence in the city in such a manner that would interfere with the occupant's reasonable expectation of privacy and without the occupant's express or implied consent.

(Code 1968, § 7-101(K))

State law references: Person window peeping deemed a disorderly person, MCL 750.167(1)(c).

Secs. 22-63--22-90. Reserved.

ARTICLE IV. OFFENSES AGAINST PROPERTY

Sec. 22-91. Littering.

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

Litter means all rubbish, refuse, waste material, garbage, offal, paper, glass, cans, bottles, trash, debris or other foreign substances.

Public or private property or water includes, but is not limited to, any of the following:

(1) The right-of-way of a road or highway, a body of water or watercourse, or the shore or beach of the body of water or watercourse, including the ice above the water.

(2) A park, playground, building, refuge or conservation or recreation area, residential or farm properties or timberlands.

(b) *Littering of property or water; injurious substances dropped on highway as a result of an accident.*

(1) A person shall not knowingly, without the consent of the public authority having supervision of public property or the owner of private property, dump, deposit, place, throw or leave, or cause or permit the dumping, depositing, placing, throwing or leaving of litter on public or private property or water, other than property designated and set aside for such purposes.

(2) A person who removes a vehicle that is wrecked or damaged in an accident on a highway, road, or street shall remove all glass and other injurious substances dropped on the highway, road or street as a result of such accident.

(c) *Causing litter in path of or to hit vehicle.* No person shall knowingly cause litter or any object to fall or be thrown into the path of or to hit a vehicle traveling upon a highway within the city.

(Code 1968, § 7-101(G))

State law references: Similar provisions, MCL 324.8901 et seq.

Sec. 22-92. Posting of handbills, posters, etc.

It shall be unlawful for any person to paste, nail or otherwise fasten to any tree, telephone pole, telegraph pole, electric light pole or other structure within or upon any public highway, park or other public place any written, painted or printed bill, poster, advertisement or notice, or to throw any such matter in or upon any public place. Nothing in this section shall prevent the posting of legal notices required by law, ordinance or order or decree of any court.

(Code 1968, § 7-106)

Sec. 22-93. Spitting.

It shall be unlawful for any person to spitefully spit on any street or sidewalk, or on the floor or wall of any place of public assemblage.

(Code 1968, § 7-101(N))

Sec. 22-94. Property damage or destruction.

It shall be unlawful for any person to willfully destroy or damage property which is not his own.

(Code 1968, § 7-101(P))

State law references: Malicious mischief generally, MCL 750.377 et seq.

Secs. 22-95--22-125. Reserved.

ARTICLE V. OFFENSES AGAINST PUBLIC PEACE

Sec. 22-126. Disorderly conduct.

It shall be unlawful for any person to disturb or aid in disturbing the peace of others by violence, or by loud, offensive, vulgar or boisterous conduct. No person shall knowingly permit such conduct on any premises occupied or controlled by him.

(Code 1968, § 7-101(A))

State law references: Disturbing public places, MCL 750.170.

Sec. 22-127. Disturbing place of religious worship.

It shall be unlawful for any person to disturb a congregation or assembly for religious worship by making noise or by rude or indecent behavior, or by using profane language within such place of worship or so near to such place of worship as to disturb the order or solemnity of such meeting, congregation or assembly.

(Code 1968, § 7-101(C))

State law references: Similar provisions, MCL 750.169, 752.525.

Sec. 22-128. Disorderly intoxication.

It shall be unlawful for any person to be intoxicated by alcoholic liquor or a controlled substance in a public place and to either directly endanger the safety of another person or property or act in a manner which causes a public disturbance.

(Code 1968, § 7-101(l))

Cross references: Alcoholic liquor, ch. 4.

State law references: Similar provisions, MCL 750.167(1)(e).

Sec. 22-129. Language or gestures causing public disorder.

It shall be unlawful for any person, with the purpose of causing public danger, alarm, disorder or nuisance, or in a manner which is likely to cause public danger, alarm, disorder or nuisance, to willfully use abusive or obscene language or make an obscene gesture to another person when such words, by their very utterance, inflict injury or tend to incite an immediate breach of the peace and invade the right of others to pursue their lawful activities.

(Code 1968, § 7-101(T))

State law references: Indecent language, MCL 750.103, 750.337.

Sec. 22-130. Begging and soliciting alms by accosting or forcing oneself upon the company of another.

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

Accosting means approaching or speaking to someone in such a manner which cause a reasonable person to fear imminent bodily harm or the commission of a criminal act upon the person, or upon property in his immediate possession.

Ask, beg and *solicit* mean and include the spoken, written or printed word, or such other acts as are conducted in furtherance of the purpose of obtaining alms.

Forcing oneself upon the company of another means continuing to request, beg or solicit alms from a person after that person has made a negative response, blocking the passage of the individual addressed, or otherwise engaging in conduct which could reasonably be construed as being intended to compel or force a person to accede to demands.

(b) *Exceptions.* Except when performed in the manner and locations set forth in subsections (c) and (d) of this section, it shall not be unlawful to ask, beg or solicit money or other things of value.

(c) *Location.* It shall be unlawful for any person to solicit money or other things of value:

(1) On private property if the owner, tenant or lawful occupant of such property has asked the person not to solicit on the property or has posted a sign clearly indicating that solicitations are not welcome on the property;

(2) Within 15 feet of the entrance to or exit from any public toilet facility;

(3) Within 15 feet of an automatic teller machine, provided that when an automated teller machine is located within an automated teller machine facility, such distance shall be measured from the entrance or exit of the automated teller machine facility;

(4) Within 15 feet of any pay telephone, provided that when a pay telephone is located within a telephone booth or other facility, such distance shall be measured from the entrance or exit of the telephone booth or facility;

(5) In any public transportation vehicle, bus or subway station, or within 15 feet of any bus stop or taxistand;

(6) From any operator of a motor vehicle that is in traffic on a public street; provided, however, that this subsection shall not apply to services rendered in connection with emergency repairs requested by the owner or passengers of such vehicle;

(7) From any person who is waiting in line for entry to a building, public or private, including any residence, business or athletic facility; or

(8) Within 15 feet of the entrance or exit of a building, public or private, including any residence, business or athletic facility.

(d) *Manner.* It shall be unlawful for any person to solicit money or other things of value by:

(1) Accosting another; or

(2) Forcing oneself upon the company of another.

(Code 1968, § 7-101(M))

Cross references: Peddlers and solicitors, ch. 26.

State law references: Begging, MCL 750.167(1)(h).

Sec. 22-131. Loitering.

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

Loitering means remaining idle in essentially one location, and includes 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 of resort for business, entertainment or for another lawful purpose, but does not necessarily mean a place devoted solely to the use of the public. Such term also includes the front or immediate area of any store, shop, restaurant, tavern or other place of business, and public grounds, areas or parks.

(b) *Manner.* 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 a manner as to:

(1) Obstruct a public street, highway, sidewalk or 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 a public street, highway, sidewalk or other public place or building any act or thing which is an obstruction or interference to the free and uninterrupted use of such property, or with any business lawfully conducted by a person in or upon or facing or fronting on such public street, highway, sidewalk or other public place or building, all of which prevents free and uninterrupted ingress, egress and regress to such places, after having been told to move on by a police officer.

(3) Obstruct the entrance to a business establishment, other than for a lawful purpose, if such obstruction is contrary to the expressed wish of the owner, lessee, managing agent or person in control or charge of the building or premises.

(Code 1968, § 7-101(S))

State law references: Certain loiterers deemed disorderly persons, MCL 750.167.

Secs. 22-132--22-160. Reserved.

ARTICLE VI. OFFENSES AGAINST PUBLIC SAFETY

Sec. 22-161. Possession of firearms or weapons.

It shall be unlawful for any person to possess a firearm, air rifle, slingshot, crossbow or other dangerous weapon in any public street, park or other place open to the general public unless such weapon is licensed as required by law, and securely wrapped or encased, and such person

is licensed as required by law if the weapon is concealed.

(Code 1968, § 7-101(D))

Cross references: Firearms, air guns, slingshots, etc. in parks, § 24-37.

State law references: License required to purchase, carry or transport a pistol, MCL 750.224 et seq.; carrying concealed weapons without a license, MCL 750.227.

Sec. 22-162. Switchblades.

It shall be unlawful for any person to sell, offer for sale or have in his possession any knife which has the appearance of a pocket knife, the blade of which can be opened by the flick of a button, pressure on the handle or other mechanical contrivance.

(Code 1968, § 7-101(E))

State law references: Similar provisions, MCL § 750.226a.

Sec. 22-163. Hunting and discharge of firearms.

It shall be unlawful for any person to carry, draw, handle or flourish a gun, including BB guns, pneumatic air rifles or slingshots, unless such firearms are unloaded and in a case. It shall be unlawful to discharge a firearm within the corporate boundaries of the city, except as follows:

(1) The discharge of any firearm is strictly prohibited on property owned by the city, unless such discharge is duly authorized in writing by the city manager and/or city council. Hunting, in any form, is prohibited on city owned property.

(2) The discharge of rifles, handguns, blackpowder guns, shotguns with slugs or buckshot, BB guns, pneumatic air rifles and slingshots is prohibited within the corporate boundaries of the city, except as otherwise designated in this section. Permission may be granted by the city council to develop a rifle, handgun, black powder gun or shotgun target range in a designated area which would allow for target practice with rimfire rifles and handguns.

(3) The discharge of shotguns with bird shot is permitted on private property in the R-1 rural residential district with the permission of the property owner, as well as shotguns containing slugs and/or buckshot. By and through the chief of police, the city may issue hunting permits to property owners on the following basis:

a. One permit may be issued for each ten acres, with a maximum of five permits being issued to one property owner.

b. Parcels that are at least five acres but less than ten acres will qualify for only one permit.

c. This subsection (3) applies to the R-1 district and anyother area where hunting has the permission of the chief of police.

d. Owners of property that is in excess of five acres, but which is not located in the R-1 zoning district, can apply to the chief of police for a hunting permit. The chief of police will consider each request on a case-by-case basis, and notify the applicant of his findings within five working days.

e. Nothing contained in this section shall prevent the extermination, under police department supervision, of any bird, animal or reptile which has become a nuisance.

f. The provisions of this section do not apply to any peace officer of the state or any subdivisions thereof who is on duty, or to any member of the U.S. Army, Navy or Marine Corps, or organizations authorized by law to purchase or receive weapons from the United States or the state, nor to the National Guard or other duly authorized military organization when on duty or drill, nor to a person licensed by the state to carry a pistol concealed upon his person when the person is employed for the purposes for which the license was granted, nor to the regular and ordinary transportation of firearms as merchandise.

(Code 1968, § 7-103)

State law references: Hunting area control, MCL 324.41902.

Sec. 22-164. Throwing objects.

It shall be unlawful for any person to throw a snowball, stick, stone or other object at a moving vehicle or at any other public or private property.

(Code 1968, § 7-101(F))

Sec. 22-165. Fireworks.

It shall be unlawful for any person to sell, expose for sale, offer for sale, have in his possession, give, furnish, transport, use, explode or cause to explode any fireworks, except toy paper caps which contain one-fourth grain or less of explosive mixture and sparklers containing not more than 0.0125 pound of burning mixture per sparkler, and except as otherwise provided in this article.

(Code 1968, § 7-102(A))

Sec. 22-166. Fireworks permit.

The city council, upon application in writing, may grant a permit for the use of fireworks manufactured for outdoor pest control, agricultural purposes or for public display of fireworks by the city, fair associations, amusement parks or other organizations or groups of individuals, when handled by a competent operator. When such permit has been issued, sales, possession, transportation and use of fireworks for such purposes may be made. The city council shall not grant a permit for the use of fireworks until the applicant has furnished evidence that he has obtained a public liability insurance policy in an amount as adopted by resolution of the city council from time to time.

(Code 1968, § 7-102(B))

State law references: Fireworks, MCL 750.243a et seq.

Sec. 22-167. Refrigerators, ice boxes, etc.; abandoning prohibited, exception.

It shall be unlawful for any person to leave or permit to remain outside of any dwelling, building or other structure, or within any unoccupied or abandoned building, dwelling or other structure under his control, in a place accessible to children, any abandoned, unattended or discarded ice box, refrigerator or other container which has an airtight door or lid, snap lock or other locking device which may not be released from the inside, without first removing the door or lid, snap lock or other locking device from the ice box, refrigerator or container.

(Code 1968, § 7-105)

State law references: Similar provisions, MCL 750.493d.

Secs. 22-168--22-200. Reserved.

ARTICLE VII. OFFENSES AGAINST PUBLIC MORALS

Sec. 22-201. Indecent or obscene conduct.

It shall be unlawful for any person to engage in any indecent or obscene conduct in any public place.

(Code 1968, § 7-101(J))

State law references: Similar provisions, MCL 750.167(1)(f).

Sec. 22-202. Nude swimming or bathing.

It shall be unlawful for any person to swim or bathe in the nude in any public place.

(Code 1968, § 7-101(L))

Sec. 22-203. Indecent exposure.

It shall be unlawful for any person to make any indecent exposure of his body.

(Code 1968, § 7-101(O))

State law references: Similar provisions, MCL 750.355a.

Sec. 22-204. Attendance of illegal business or occupation.

It shall be unlawful for any person to attend, frequent, operate, be employed in or an occupant or inmate of any place where prostitution, gambling, the illegal sale of alcoholic liquor or any other illegal business or occupation is permitted or conducted.

(Code 1968, § 7-101(Q))

State law references: Prostitution generally, MCL 750.448 et seq.; gambling generally, MCL 750.301 et seq.; loitering in house of ill fame, MCL 750.167(1)(i); loitering in place of illegal occupation, MCL 750.167(1)(j); Michigan liquor control code of 1998, MCL 436.1101 et seq.

Sec. 22-205. Soliciting or accosting.

It shall be unlawful for any person to solicit or accost any person for the purpose of inducing the commission of any illegal act.

(Code 1968, § 7-101(R))

State law references: Soliciting or accosting, MCL 750.449.

Secs. 22-206--22-235. Reserved.

ARTICLE VIII. OFFENSES ON SCHOOL PREMISES

Sec. 22-236. Purpose.

The purpose of this article is to provide for the protection of the buildings and lands of

the public schools of the city; to provide for the peace, quiet and good order in and around the public schools of the city; and to provide for the removal of persons not having legitimate business in and around the public schools of the city.

(Code 1968, § 7-302)

Sec. 22-237. Building, fences, trees.

It shall be unlawful for any person to damage, destroy or deface any public school building, or any building occupied by a public school, or the grounds, outbuildings, fences, trees or other appurtenances or fixtures belonging to such public school.

(Code 1968, § 7-303)

Sec. 22-238. Disturbances.

(a) It shall be unlawful for any person to willfully or maliciously make, or assist in making, any noise, disturbance or improper diversion, by which the peace, quietude or good order of any public school is disturbed.

(b) Any person found to be creating a disturbance in any public school or on the surrounding schoolgrounds shall leave immediately when directed to do so by the superintendent of schools or his designee.

(Code 1968, § 7-304)

Sec. 22-239. Loitering.

It shall be unlawful for any person who is not a regularly enrolled student, or the parent or guardian of a regularly enrolled student, or a teacher or other school employee, to enter and remain in any public school building in the city, and such person shall leave immediately when directed to do so by the superintendent of schools or his designee.

(Code 1968, § 7-306)

Sec. 22-240. Borrowing, superintendent approval.

It shall be unlawful for any person to borrow, or attempt to borrow, any money or thing of value from any student in a public school or on public school property in the city without first obtaining the written approval of the superintendent of schools or his designee, provided this section shall not apply to any regularly enrolled student.

(Code 1968, § 7-307)

Chapter 23 RESERVED

Chapter 24 PARKS AND RECREATION*

***Cross references:** Environment, ch. 14; streets, sidewalks and other public places, ch. 32.

State law references: Authority to operate recreation and playgrounds, MCL 123.51 et seq.;

playground equipment safety act, MCL 408.681 et seq.

ARTICLE I. IN GENERAL

Secs. 24-1--24-30. Reserved.

ARTICLE II. PARK REGULATIONS

Sec. 24-31. 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 park means a park, reservation, playground, beach, recreation center or other area owned or used by the city which is devoted to public recreation.

(Code 1968, § 3-301)

Cross references: Definitions generally, § 1-2.

Sec. 24-32. Prohibited acts.

No person in a public park shall:

(1) Willfully mark, deface, disfigure, injure, tamper with or displace or remove any buildings, tables, benches, bridges, fireplaces, railings, paving or paving material, water lines or other public utilities or parts or appurtenances, signs, notices or placards, whether temporary or permanent, monuments, stakes, posts or other boundary markers, or other structures or equipment or park property or appurtenances, either real or personal.

(2) Construct or erect any building or structure, whether permanent or temporary in character, or run or string any public service utility into or upon or across such

lands, except by special permit.

(3) Damage, cut, carve, transplant or remove any tree or plant, or injure the bark or pick the flowers or seeds of any tree or plant, or in any way injure or impair the natural beauty or usefulness of the park.

(4) Climb any tree, or walk, stand or sit upon any monuments, fountains, railings, fences or any other property not designated or customarily used for such purpose.

(5) Hunt, molest, harm, frighten, kill, trap, chase, tease, shoot or throw missiles at any animal or bird, nor remove or have possession of the young of any wild animal or the eggs or nest or young of any bird.

(6) Give or attempt to give any animal or bird any noxious substances.

(7) Permit or allow any domestic animal to be in a park, except when fastened or led by a cord, chain or string not exceeding six feet in length.

(Code 1968, § 3-302)

Sec. 24-33. Sanitary regulations.

No person in a public park shall:

(1) Discharge or cause to be placed in any body of water in or adjacent to such park any substance that may result in pollution of the water.

(2) Bring in or dump, deposit or leave bottles, broken glass, ashes, paper, boxes, cans, dirt, rubbish, waste, garbage or refuse or any other trash. Such rubbish and waste shall be placed in proper receptacles, and when receptacles are not provided, such rubbish and waste shall be carried away from the park by the person responsible for the presence of such rubbish and waste.

(Code 1968, § 3-303)

Cross references: Utilities, ch. 38.

Sec. 24-34. Vehicles.

No person in a public park shall:

(1) Drive any vehicle on any area, except roads designated for vehicular traffic or parking areas.

(2) Ride or drive a vehicle at a rate of speed exceeding 15 miles per hour.

(Code 1968, § 3-304)

Sec. 24-35. Parking vehicles.

No person in a public park shall:

(1) Park a vehicle other than in a place established or designated as a parking area.

(2) Leave any vehicle in the park with one or more wheels of such vehicle chained,

or the motor set or locked, etc., so that the vehicle cannot be readily moved.

(Code 1968, § 3-305)

Cross references: Traffic and vehicles, ch. 36.

Sec. 24-36. Bicycles.

No person in a public park shall:

(1) Ride a bicycle, except on a road or path designated for such purpose.

(2) Leave a bicycle in any place where other persons may trip over or be injured by such bicycle.

(Code 1968, § 3-306)

Sec. 24-37. Firearms, air guns, slingshots, etc.

No person in a public park shall use, carry or possess firearms of any description, including BB guns, bows and arrows and slingshots, except as a part of a planned and supervised recreational activity approved by the city manager.

(Code 1968, § 3-307)

Cross references: Possession of firearms or weapons, § 22-161.

Sec. 24-38. Picnic areas; fires.

No person in a public park shall:

(1) Picnic or lunch in a place other than those designated for such purpose.

(2) Leave a picnic area before the fire is completely extinguished and all trash is placed in disposal receptacles.

(Code 1968, § 3-308)

Sec. 24-39. Overnight camping.

It shall be unlawful for any person to camp or set up shacks, or any other temporary shelter, for the purpose of overnight camping in a public park without the prior approval of the city manager.

(Code 1968, § 3-309)

Sec. 24-40. Games; restricted areas.

No person in a public park shall take part in games involving thrown objects, such as balls, stones, javelins and model airplanes, except in areas set aside for such forms of recreation.

(Code 1968, § 3-310)

Sec. 24-41. Charitable solicitations.

No person in a public park shall solicit alms or contributions for any purpose, whether public or private.

(Code 1968, § 3-311)

Sec. 24-42. Fire prevention.

No person in a public park shall:

(1) Build or attempt to build a fire, except in areas designated for such purpose.

(2) Drop, throw or otherwise scatter live matches or burning cigarettes, cigars, tobacco or paper.

(Code 1968, § 3-312)

Cross references: Fire prevention and protection, ch. 16.

Sec. 24-43. Public meetings, lectures, speeches, etc.

No person in a public park shall deliver any oration, address, speech, sermon or lecture at an organized event, unless such person has first received permission from the city manager; nor shall any public meeting be held in a public park until permission has been obtained from the city manager.

(Code 1968, § 3-313)

Sec. 24-44. Sales, advertising.

No person in a public park shall:

(1) Expose or offer for sale any article or thing.

(2) Announce, advertise or call the public attention in any way to any article or service for sale or hire.

(Code 1968, § 3-315)

Chapter 25 RESERVED

Chapter 26 PEDDLERS AND SOLICITORS*

***Cross references:** Begging and soliciting alms by accosting or forcing oneself upon the company of another, § 22-130; streets, sidewalks and other public places, ch. 32.

State law references: Public safety solicitation act, MCL 14.301 et seq.; veteran's license for peddlers, MCL 35.441 et seq.; charitable organizations and solicitations act, MCL 400.271 et seq.; transient merchants, MCL 445.371 et seq.

ARTICLE I. IN GENERAL

Sec. 26-1. Business hours.

The hours of operation for peddlers, hawkers, solicitors and itinerant vendors shall be between 8:00 a.m. and 9:00 p.m.

(Code 1968, § 6-107)

Secs. 26-2--26-30. Reserved.

ARTICLE II. LICENSE

Sec. 26-31. Required.

It shall be unlawful for any person to travel from place to place for the purpose of exposing any goods, wares or merchandise for sale, or to take orders for goods, wares or merchandise by sample lists without first obtaining a license as provided in this article; provided, however, that nothing contained in this article shall prevent any manufacturer, farmer, mechanic or nurseryman from selling his work or produce by sample, nor shall any wholesale merchant be prohibited by anything contained in this article from selling to dealers, by samples, without a license, nor shall any person be prevented from selling or delivering newspapers without a license.

(Code 1968, § 6-101)

Sec. 26-32. Application.

Applicants for a license under this article shall file with the city clerk a sworn application containing the following information:

(1) The name of the person having the management or supervision of business during the time it is proposed to be carried on in the city; the local address of such person while such person is engaged in such business; the permanent address of such person; the capacity in which such person will act; the name and address of the person for whose account the business will be carried on, if any; and if a corporation, the laws of the state in which such business is incorporated.

(2) The places in the city wherein such business is proposed to be carried on; the

length of time during which it will be conducted; the places, other than the permanent place of business of the applicant, where the applicant, within six months preceding the date of the application, has conducted a transient business, stating the nature of such business, and giving the post office and street address of any building or office in which the business was conducted.

(3) A statement of the nature, character and quality of the goods, wares or merchandise to be sold or offered for sale; the invoice value of the goods, wares and merchandise; whether such goods, wares and merchandise are to be sold from stock in possession, by sample, at auction, by direct sale or by taking orders for future delivery; where the goods or products proposed to be sold are manufactured or produced; and where such goods or products are located at the time the application is filed.

(4) A brief statement as to the nature and character of the advertising done, or proposed to be done, in order to attract customers.

(5) Whether or not the person having the management of the applicant's business has been convicted of a crime or misdemeanor, or the violation of any municipal ordinance, except traffic violations and the nature of the offense and the punishment assessed.

(6) Credentials from the person for which the applicant proposes to do business.

(7) Such other reasonable information as to the identity or character of the person having the management or supervision of the business, or the method or plan of doing the business, as the city clerk may deem proper for the protection of the public good.

(Code 1968, § 6-102)

Sec. 26-33. Bond.

Before a license is issued under this article, the applicant shall file with the city clerk, a bond running to the city in the sum as adopted by resolution of the city council from time to time, executed by the applicant's principal and two sureties upon which service of process may be made in the state. The bond is conditional upon the applicant's full compliance with all of the provisions of the ordinances of the city and the laws of the state regulating and concerning the sale of goods, wares and merchandise, and upon the applicant's payment of all judgments rendered against him for any violation of such ordinances or statutes, including all judgments and costs that may be recovered against him by any person for damage growing out of any misrepresentation or deception practiced on any person transacting business with the applicant, whether the misrepresentation or deception was made or practiced by the owners or by their servants, agents or employees, either at the time of making the sale or through any advertisement of any character whatsoever. Action on the bond may be brought in the name of the city for the use of the aggrieved person. The bond shall be approved by the city attorney, both as to form and the responsibility of the sureties on such bond.

(Code 1968, § 6-103)

Sec. 26-34. Service of process.

Before any license is issued under this article, the applicant shall file with the city clerk an instrument nominating and appointing the city clerk as his true and lawful agent with full power and authority to acknowledge service or notice of process for and on behalf of the applicant in respect to any matters connected with or arising out of business transacted under the license.

(Code 1968, § 6-104)

Sec. 26-35. Display.

A license issued under this article shall be carried on the person of the licensee, and shall be displayed upon request to any person.

(Code 1968, § 6-105)

Sec. 26-36. Fees; exemptions.

Each applicant for a license under this article, before being granted such license, shall pay the fee as adopted by resolution of the city council from time to time. No license fee is required from a person who is exempt from the payment of such fee by a provision of state or federal law, or from religious organizations, fraternal organizations, girl scouts, boy scouts, service organizations and other nonprofit organizations.

(Code 1968, § 6-106)

Chapter 27 RESERVED

Chapter 28 SOLID WASTE*

***Cross references:** Buildings and building regulations, ch. 8; environment, ch. 14; manufactured homes and trailers, ch. 20; utilities, ch. 38.

State law references: Garbage disposal act, MCL 123.361 et seq.; solid waste facilities, MCL 324.4301 et seq.; hazardous waste management act, MCL 324.1101 et seq.; hazardous materials transportation act, MCL 29.417 et seq.; solid waste management act, MCL 324.11501 et seq.; waste reduction assistance act, MCL 324.14501 et seq.; clean Michigan fund act, MCL 324.19101 et seq.; low-level radioactive waste authority act, MCL 333.26201 et seq.

ARTICLE I. IN GENERAL

Secs. 28-1--28-30. Reserved.

ARTICLE II. COLLECTION AND DISPOSAL

Sec. 28-31. Purpose and intent.

It is the intent of the city council that this article be liberally construed for the purpose of providing a sanitary and satisfactory method of preparation, collection and disposal of solid waste and recyclable materials, as well as the maintenance of public and private property in a clean, orderly and sanitary condition, for the health, safety and welfare of the city, and to provide for a reasonable system of user fees to defray the cost incurred by the city in collecting and administering waste removal. The city council recognizes that in order to conserve our natural resources, as well as to control the ever increasing cost of solid waste disposal, that the separation, collection and/or sale of recyclable materials, yard waste and household hazardous waste will reduce the amount of solid waste to be disposed of, reduce the cost of landfilling solid waste, extend the life of the existing and future landfills and protect and conserve our limited natural resources. All citizens are encouraged to voluntarily recycle and to make use of the facilities therefor provided by the city and/or contracted services. Upon approval of the city council, the city manager and his agents are authorized to make such rules and regulations as appear to be necessary from time to time to carry out the intent of this article; provided, however, that such rules are not in direct conflict with this Code or the laws of the state.

(Code 1968, § 8-603)

Sec. 28-32. 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:

Aluminum means all products made of aluminum, including aluminum cans, foil, wrappers, containers for prepared dinners or other foods, screen frames and lawn chairs, excluding redeemable aluminum cans.

Brush means small trees and shrubs.

Building means a structure used, in whole or in part, for human habitation, manufacturing, sales or another purpose.

Bulk rubbish means rubbish, such as cardboard containers, wooden crates and similar rubbish, which cannot readily be placed in an approved container or bag.

City designated waste or recyclable collection and transfer facility means a facility which the city has identified from time to time as an approved location for the collection and transfer of all or some of the following: solid waste, yard waste, household hazardous waste and recycling.

City solid waste tag means a tag sold by the city or its designees which may be attached to an acceptable solid waste container for the purpose of solid waste collection. Solid waste tags shall be of a distinctive color or material, and printed with a city seal or other appropriate words which indicate the acceptable containers contain solid waste.

City yard waste bag means a bag which has been specifically identified by the city and/or waste hauler as a suitable container for the purpose of yard waste collection.

Commercial establishment means property classified by the city's zoning ordinance, chapter 40 of this Code, and/or the state as a nonindustrial business. Residential income property which has more than three units is considered a commercial establishment for the purpose of this article.

Commercial solid waste means the miscellaneous waste material resulting from the operation of mercantile enterprises, including garbage and rubbish and excluding all hazardous waste.

Commercial solid waste collection means solid waste pickup from all commercial, business, institutional, condominium development and multiunit residential establishments which consist of three or more dwelling units.

Construction material means waste from buildings, streets or other construction, alteration or repair, including dirt from excavations.

Demolition debris means refuse which is incidental to the demolition of buildings, other structures or appurtenances on a premise.

Designated collector means a permitted collector who has been issued a contract from the city to collect and dispose of solid waste, yard waste, recycling and household hazardous waste.

Domestic solid waste means the waste materials resulting from the usual routine of housekeeping, including garbage and rubbish and excluding all hazardous waste.

Dwelling unit means the same as *Residential unit.*

Garbage means all animal, fish, fowl, fruit or vegetable waste incidental to the use, preparation and storage of food for human consumption. This term does not include food processing wastes from canneries, slaughterhouses and packinghouses, or hazardous waste.

Hazardous waste means any material that has been identified by state or federal regulation to be unsuitable for disposal in a type II sanitary landfill or its state certified equivalent. (See *Household hazardous waste* for a clear definition of those items included in this category).

Household hazardous waste means those items and/or materials that have been designated by state and federal authorities as typical household usage byproducts, and which can be disposed of through the city's household hazardous waste collection system.

Industrial solid waste means all waste materials resulting from industrial or manufacturing operations or processes of every nature, including organic wastes from

canneries, slaughterhouses, packinghouses and other industrial food processing operations. This term includes refuse material resulting from cleaning up in connection with such industrial or manufacturing operations, and refuse material resulting from offices, stores, lunchrooms, warehouses or other operations established in conjunction with such industrial or manufacturing operations, as well as garbage and rubbish, and excludes hazardous waste.

Leaf collection season means a period during the fall of each year as scheduled by the city manager during which a leaf collection service is provided in specified areas of the city.

Leaves means the foliage from plants, shrubs and trees.

Material collection permit means a permit issued by the city to a collection agent, which allows the collection agent the privilege to provide a specific type of solid waste, yard waste, household hazardous waste and/or recyclable material collection service.

Medical waste means any material that has been identified by state or federal regulation to be medical, biohazardous or pathological waste and is subject to special handling and disposal regulations.

Multiple residential means residential establishments consisting of three or more dwelling units.

Municipal solid waste means rubbish and garbage consisting of certain discarded products incidental to housekeeping and mercantile enterprises that are not recyclable. Such waste shall be classified as either domestic, commercial or industrial solid waste as further defined in this section, and excludes hazardous waste.

Permitted collector means a collection agent who has received a material collection permit from the city.

Person in charge means the owner, proprietor, occupant or agent in charge of any premise, whether an individual, partnership or corporation.

Premises means a parcel of land, including any buildings, structures or appurtenances within the city, which includes the adjoining street, right-of-way or legal easement, separated from adjacent parcels of land by legal description.

Recyclable material means materials specifically designated in accordance with the provisions of this article to be separated from solid waste for the express purpose of preparation for and delivery to a secondary market or other use.

Refuse means the same as *Solid waste.*

Residential solid waste means the same as *Domestic solid waste.*

Residential solid waste collection means weekly solid waste pickup from residential buildings with no more than two dwelling units.

Residential unit means a building, or portion thereof, designed for occupancy exclusively by one family for residential purposes and having cooking facilities and separate sanitary facilities.

Rubbish means the miscellaneous waste materials resulting from housekeeping and ordinary mercantile enterprises, including material such as packing boxes, cartons, excelsior, paper, ashes, cinders, glass, metal, plastic and rubber, and excluding hazardous waste.

Solid waste means garbage and rubbish. This term does not include human body waste,

liquid waste, materials that have been separated either at the source or a processing site for the purpose of reuse, recycling or composting, or any material that has been identified by state or federal regulation to be unsuitable for disposal in a type II sanitary landfill or its state designated equivalent.

Special refuse means furniture, washing machines, clothes dryers, refrigerators and other household appliances, brush, large tree limbs and other bulky refuse items, excluding construction and demolition debris, that are unsuitable for regular solid waste collection services.

Special refuse tag means a tag sold by the city and/or its designee which shall be attached to special refuse for the purpose of collection, except not on large item days. Special refuse tags shall be of a distinctive color or material and printed with the city seal or other appropriate words which indicate the use of the tag.

Type II sanitary landfill means as defined in part 115 of Public Act No. 451 of 1994 (MCL 324.11501 et seq.), or a state equivalent designation.

Yard waste means grass clippings, leaves, weeds, hedge clippings, garden waste and twigs.

Yard waste collection means collection service provided by a contracted permitted collector or the city as determined by the city council and/or city manager.

(Code 1968, § 8-604)

Cross references: Definitions generally, § 1-2.

Sec. 28-33. Generally.

A person shall dispose of his solid waste and segregate items as provided in this article, or as specified by subsequent resolution of the city council, from all other solid waste produced and shall separately bundle or contain such items for proper disposal, collection and/or recycling, in accordance with the provisions set forth in this article.

(Code 1968, § 8-605)

Sec. 28-34. Accumulation of solid waste.

(a) No owner and/or manager of a residential dwelling unit, commercial establishment or industrial facility shall permit the accumulation of refuse, rubbish or garbage upon his premises for a period that would pose a health hazard, subject adjacent property occupants to unreasonably offensive odors or become a public nuisance. The accumulation of refuse, rubbish or garbage for a period in excess of seven days shall be prima facie evidence of posing a health hazard and creating a public nuisance.

(b) Leaves, yard waste and vegetable waste may be stored for composting purposes in a manner which will not harbor rodents, subject adjacent property owners to an unreasonably offensive odor or become a public nuisance.

(c) In the case of an alley or lawn extension, which consists of the area between the sidewalk and the street, where refuse, rubbish, garbage or yard waste are or have been deposited, it shall be the duty of each owner or occupant of such lot or premises to remove from the half of such alley adjoining the lot or premises, or the entire lawn

extension adjoining such lot, all such substances.

(Code 1968, § 8-606)

Sec. 28-35. Unauthorized dumping and littering.

It shall be unlawful for any person to throw or deposit any refuse upon or into any street, right-of-way, alley, portable or nonportable container or upon any other property or premises, public or private, without the permission of the owner, proprietor, occupant or agent in charge of such premises.

(Code 1968, § 8-607)

Sec. 28-36. Precollection requirements; separation; containers.

(a) All persons within the city who place the following items for disposal, removal or collection shall do so in strict conformity with the following regulations:

(1) *Solid waste.* Solid waste shall be separated and contained in an approved bag, or in another acceptable solid waste container which is clearly marked with a city solid waste tag.

(2) *Yard waste.* Yard waste shall be separated and contained in an approved compostable bag or container, and clearly marked as yard waste, provided that during the leaf collection season, leaves may also be placed at the curb for the city leaf collection services.

(3) *Special refuse.* All special refuse shall be separated and must be removed using an approved method. Approved methods of removal shall be limited to:

a. Arrangements with a permitted collector;

b. Transport to a city designated collector and transfer site; or

c. By tagging the debris with a city special refuse tag for collection by the city.

(4) *Bulk rubbish.* All bulk rubbish, such as cardboard containers, wooden crates and similar rubbish, shall be separated, flattened and tied in bundles or packed in suitable containers of a size that may be readily handled by one collector, and in no case shall such bundle or container be larger than that which is approved by the city or a permitted contractor.

(5) *Brush.* All brush shall be separated and may be taken to the city brush pile or placed at the curb in bundles not to exceed three feet in length, nor 50 pounds in weight.

(6) *Industrial solid waste.* All industrial solid waste shall be collected by permitted collectors privately contracted for by the industrial user, and shall otherwise comply with the provisions of this article.

(7) *Construction and demolition debris.* All construction and demolition debris shall be separated and collected by permitted contractors privately contracted for by the person who produced the waste, and shall otherwise comply with the provisions of this article.

(8) *Hazardous waste.* All hazardous waste, except household hazardous waste, shall be separated and collected by permitted collectors privately contracted for by the person who produced the waste, and shall otherwise comply with the provisions of this article.

(9) *Household hazardous waste.* All waste classified as household hazardous waste by local, state and federal regulations shall be separated and disposed of through the collection system of the city.

(10) *Medical waste.* All medical waste shall be separated and disposed of in accordance with all applicable state and federal regulations, and shall be collected by permitted contractors privately contracted for by the person who produced the waste, and shall otherwise comply with the provisions of this article.

(b) Items not placed in an approved bag/container and tagged with a prepaid city tag will not be picked up, unless otherwise provided in this article. The collection of municipal solid waste or recyclables is conditioned upon the observance of all provisions of this article. Collection is subject to weather and other conditions beyond the city's control.

(Code 1968, § 8-608)

Sec. 28-37. City bags and tags.

(a) The specifications for city bags and/or tags and their use shall be promulgated by the city manager.

(b) The prices for city bags and tags shall be determined by resolution of the city council.

(c) The city or its authorized representatives may sell city solid waste or yard waste bags and/or tags to individuals and/or participating sales establishments. Participating sales establishments shall sell such bags and/or tags for not more than the price specified by the city council.

(d) The gross weight of the city solid waste or yard waste bags, when filled with waste, shall not exceed 50 pounds.

(Code 1968, § 8-609)

Sec. 28-38. Receptacles.

(a) *Provision.* The owner, manager or occupant of a building, house or structure where refuse accumulates shall provide and maintain proper refuse receptacles as defined in subsections (d) and (e) of this section, and shall place, or cause to be placed, in such receptacles all refuse accumulating on the premises, provided that bulk rubbish may be stored in a condition properly prepared for collection as specified in this article.

(b) *Residential and small commercial.* The person in charge of every single-family or two-family building or small commercial establishment where refuse accumulates shall provide and keep clean and in place proper receptacles to house their bagged waste.

(c) *Commercial, industrial and multiple residential.* The person in charge of a building consisting of three or more dwelling units, and every building used for a commercial or industrial business, shall provide and keep clean and in place proper receptacles of a

portable type as defined in subsection (d) of this section, provided that where the city manager determines that portable receptacles are not practical for multiple dwellings, commercial or industrial businesses, he may authorize the use of nonportable receptacles of a type that can be mechanically hoisted by a refuse collection vehicle, and with specifications established and approved by the city and as defined in subsection (e) of this section.

(d) *Portable receptacles.* Portable receptacles for municipal refuse shall be of metal, fiberglass, plastic or other substantial construction approved by the city manager. Such receptacles shall have handles or bails and tightfitting covers and shall not exceed 33 gallons each in capacity; provided that receptacles used exclusively for yard waste need not have covers, and the city manager may approve the use of plastic bags of a capacity and quality specified by him for the storage and disposal of solid and/or yard waste. In no event shall the gross weight of receptacles, and the waste they contain, exceed 50 pounds.

(e) *Nonportable receptacles.* Nonportable receptacles for solid waste shall be of substantial construction, with a capacity of not more than eight cubic yards, and shall meet all specifications established by the city manager on the basis of the requirements of the solid waste collection equipment being used by the city or a permitted collector, and the necessities of health and safety. All garbage shall be properly wrapped or placed within a closed plastic bag before it is placed in a nonportable receptacle.

(f) *Nonconforming receptacles.* Receptacles that are badly broken or otherwise fail to meet the requirements of this article may be classified as rubbish and, after due notice to the owner, may be collected as rubbish by the collection contractor.

(g) *Location.* All nonportable receptacles shall be placed and collected in the location designated by the city. Such receptacles shall be located so that the permitted collectors will not have to trespass on private property in order to pick up such receptacles. In no event shall nonportable receptacles be placed in or upon public property, or public right-of-ways, without first obtaining the city's approval in writing. All portable receptacles shall be stored within the side or rear yards of the premises, and shall not be set out for collection prior to 12:00 noon preceding the day of collection, and after the receptacles are emptied they shall be returned to their place of storage on the same day collections are made. Points of collection shall be determined by the city.

(Code 1968, § 8-610)

Sec. 28-39. Materials property of city.

After their placement at the curb for collection, any leaves, yard waste or recyclable material required to be separated from the residents' solid waste in accordance with this article, shall be the property of the city or its authorized agent. No person shall take, collect or transport any leaves, yard waste or recyclable material from any street, right-of-way, alley or dumpster of the city without authorization by the city.

(Code 1968, § 8-611)

Sec. 28-40. Sale of recyclable materials.

Notwithstanding any provision of this article, any person may donate or sell recyclables

to any another person, whether that person operates for profit or not for profit. Under nocircumstances, however, may the transferred recyclables be picked up from the curbside, whether or not such recyclables are placed at the curbside on or immediately preceding the regularcurbside collection.

(Code 1968, § 8-612)

Sec. 28-41. Material collection permits.

(a) It shall be unlawful for any person to engage in the business or practice of collecting or disposing of solidwaste, leaves, yard waste or recyclable materials without first obtaining a material collection permit in the manner outlined in this section.

(b) No material collection permit shall be issued, except upon application to the city clerk. At a minimum, the application must include the following information:

(1) A description of the methods and equipment which the applicant proposes to use for collecting solid waste, leaves, yard waste, household hazardous waste and/or recyclable material in the city;

(2) A description of the type of collection to be provided, and the part of the city which such collection will affect;

(3) A plan for meeting the precollection requirements set forth in section 28-36;

(4) Proof of liability insurance as required by city policy;

(5) A plan for meeting all collection and disposal requirements set forth in other relevant city, county, state and federal regulations, as appropriate;

(6) The name and address of the sites to be used to dispose of each material collected;

(7) Proof of access to and use of an adequate and approvable materials recovery facility, composting facility or permitted disposal area;

(8) Such other facts as the city manager may from time to time require for the purposes of determining whether the applicant complies with all laws, rules or regulations established by the city, county, state or federal government in regards to waste handling and/or disposal.

(c) The city clerk shall submit all permit applications to the city manager who may approve such applications as deemed to be in the best interests of the city and its inhabitants.

(d) The city council may establish by resolution a permit fee to be paid by the applicant upon receipt of the material collection permit.

(e) Whenever an application made under this section has been approved by the city manager, the city clerk shall, upon payment of any established fee by the applicant, issue a material collection permit.

(f) Unless revoked under circumstances provided in this article, every material collection permit shall expire on the next succeeding January 1 following its issuance.

(g) The city may restrict the number of material collection permits issued and the scope of service of such permits based on the:

(1) Geographic area to be served;

(2) Population sector to be served, such as single-family residential, multiple residential or commercial;

(3) Type of material to be collected;

(4) Points of collection, such as the curb, alley or other location; and/or

(5) Schedule of such collections.

A material collection permit may be used only for the scope of services expressly stated in the permit.

(h) A material collection permit issued under this section may be revoked if:

(1) Any part of this article, or other relevant city, county, state or federal regulation is violated; or

(2) The terms of the permit are violated.

(i) No permitted collector shall dispose of solid waste, leaves, yard waste, household hazardous waste and/or recyclable materials at sites other than those specified in the terms of the collector's material collection permit.

(j) Permitted collectors shall provide a bond in the amount as adopted by resolution of the city council from time to time for damage to public or private property while collecting, transporting or disposing of the solid waste or recyclable material.

(k) Each unit of transportation and each permitted collector-provided receptacle may be inspected in accordance with a procedure established by the city manager to determine that the permitted contractor has in operation only units and receptacles which are proper, hygienic and not contributory to litter.

(Code 1968, § 8-613)

Sec. 28-42. Transportation.

(a) The transportation of all garbage, offal, rubbish or other waste materials through the streets, alleys or thoroughfares of the city shall be conducted in a manner which does not create a nuisance. It shall be unlawful for any person to transport, cart, carry or convey through or over any of the streets, alleys or public places of the city any garbage, unwashed refuse or unwashed food containers without the written consent of the city manager. Whenever such permission is granted, the vehicle used for such purposes shall be watertight and provided with suitable covering. It shall be unlawful for any person to transport or otherwise convey through or over any of the streets or public places of the city any rubbish or other waste material, except under written regulations or with the written consent of the city manager, except rubbish or waste material accumulating on property owned or controlled by him, and then only by approved methods of conveyance.

(b) Vehicles conveying waste must be of such construction and operated in such a manner that the contents shall not spill upon the public streets or alleys, into the air, or otherwise create a nuisance.

(Code 1968, § 8-614)

Sec. 28-43. Authority, costs, notice to remove.

(a) The city manager is authorized and empowered to notify in writing the owner, proprietor, occupant, agent and/or tenant of any premises to remove solid waste, yard waste, special waste, household hazardous waste and/or recyclable material accumulated on such premises and not disposed of in compliance with this article, unless such items are on the abutting public property or public right-of-way, in which case no notice is required. Such notice shall be made by hand delivery or certified mail, addressed to the owner and/or tenant at the last known address.

(b) If solid waste is not removed from the premises within six days after the date of the mailing of such notice, or if the waste or recyclable material is on abutting public property or a public right-of-way, the owner, proprietor, occupant, agent and/or tenant of the premises shall be subject to penalties as set forth in section 1-7. The city manager is authorized and empowered to contract and pay for the removal of the waste or recyclable material, or to order such removal by the city.

(c) When the city has effected the removal of such waste or recyclable material, or has paid for its removal, the actual cost of such removal, plus a ten percent penalty of a minimum of $10.00, plus accrued interest at the rate of one percent per month from the date of removal, shall be charged to the owner of the premises and forwarded by the city to the owner, and the charge shall be due and payable upon receipt.

(d) Where the cost of removal is not paid by the property owner within 60 days after the removal of such waste or recyclable as set forth in subsections (b) and (c) this section, the city manager shall cause to be recorded in the treasurer's office a statement of the date and premises on which such removal was done. The recording of such statement shall constitute a lien on the property and shall remain in full force and effect for the amount due in principal and interest until final payment has been made and shall be collected in the manner provided by law for collection of taxes; further, the total amount shall be subject to a delinquent penalty of one percent per month if such amount is not paid in full on or before the delinquent date of the tax bill upon which the charge appears. The sworn statements recorded in accordance with the provisions of this subsection shall be notice to every person concerned that the amount of the statement, plus interest, constitutes a charge against the premises described in the statement that such charge is due.

(Code 1968, § 8-615)

Sec. 28-44. Prohibited waste.

(a) It shall be unlawful for any person to place any material in a container or receptacle which might endanger the collection personnel, or to deposit or deliver to a disposal site any hazardous material, waste or recyclable material which would be detrimental to the normal operation of collection, incineration, recycling or disposal, such as gaseous, solid or liquid poison, dead animals, ammunition, explosives, inflammable liquid, undrained garbage of a liquid or semiliquid nature, whether in containers or not, concrete, dirt, automobile or equipment parts, or any material that possesses heat sufficient to ignite any other collected materials. No motor vehicle shall be dumped or abandoned at any

disposal site.

(b) It shall be unlawful for any person to place leaves, yard waste, household hazardous waste or recyclablespecifically required to be separated from solid waste by this article or city council resolution, in a refuse container for the purpose of refuse collection, removal or disposal, nor otherwise dispose of such item, except in conformance with the provisions of this article.

(c) The city solid waste disposal and resource recovery program is designed to accommodate the needs of residents of the city. Nonresidents are strictly prohibited from disposing of solid waste through the program. All violators will be prosecuted to the fullest extent allowed by law and/or provisions of this article.

(Code 1968, § 8-616)

Sec. 28-45. Private collection and transfer site; unauthorized dumping.

(a) The city manager, with the approval of the city council, is authorized to permit the use of private property within the city as a private collection and transfer site subject to such reasonable terms and regulations as deemed necessary for the protection of the public, which rules and regulations shall at all times be subject to revision, cancellation, alteration or amendment by the city council; provided, however, that any such permit shall be revocable at any time without cause and without previous notice by the city manager or the city council.

(b) It shall be unlawful for any person to dump or deposit any waste or recyclable material in the city, except in a collection and transfer site duly designated as such by the city manager and/or city council.

(Code 1968, § 8-617)

Sec. 28-46. Enforcement.

Enforcement of this article shall be the responsibility of the city manager and/or designee. The city manager is authorized and directed to establish and promulgate reasonable regulations as to the manner, days and times for the collection of waste or recyclable material with a permitted collector. The city council may, by majority vote, change, modify, repeal or amend any portion of this article. City officials charged with the enforcement of this article may be authorized to issue tickets for violations relative to any part of this article.

(Code 1968, § 8-618)

Sec. 28-47. Rules and regulations.

The city manager shall promulgate rules and regulations to carry out the provisions of this article.

(Code 1968, § 8-620)

Chapter 29 RESERVED

Chapter 30 SPECIAL ASSESSMENTS*

***Charter references:** Special assessments, ch. IX.

Cross references: Any ordinance levying or imposing any special assessments saved from repeal, § 1-12(10); administration, ch. 2; community development, ch. 12; streets, sidewalks and other public places, ch. 32.

State law references: Special assessments for public improvements, MCL 68.31 et seq.; higher interest rates permitted when there are obligations in anticipation of special assessments, MCL 133.9; public improvement or public building, MCL 141.261 et seq.; notices and hearings, MCL 211.741 et seq.; deferment of special assessment for homesteads, MCL 211.761 et seq.

Sec. 30-1. Initiation of projects.

(a) A special assessment project may be commenced by resolution of the city council on its own initiative, or by initiatory petitions signed by owners of not less than 65 percent of the frontage of property to be assessed for the projects; provided, however, that any petition bearing less than 65 percent of the assessable frontage shall not prevent the city council from declaring any project a public necessity.

(b) Such initiatory petitions shall be signed by the property owners, and shall state the petitioner's address, lot number and name of the subdivision.

(c) The circulator of each petition shall verify that the signers of the petition are the owners of the property described on the petition, and that each signature on the petition is the genuine signature of each respective petitioner.

(d) Initiatory petitions shall be filed in the office of the city clerk prior to February 1 of any calendar year in order to receive consideration on the construction program of that year. Petitions shall not be mandatory upon the city council.

(e) All petitions shall be circulated and signed on printed forms furnished by the city clerk.

(f) The city clerk shall check all petitions to determine whether they conform to the requirements of this section and shall make such investigations as he and the city council shall deem fit and shall report his findings to the city council, which shall accept, defer or reject such petitions.

(Code 1968, § 3-101)

Sec. 30-2. Request for report.

Upon the adoption of a resolution commencing a special assessment project or the acceptance of a special assessment project petition, the city council shall, by resolution, refer such proposed improvements to the city manager, directing him to prepare a report which shall include necessary and pertinent information in order to permit the city council to ascertain the cost, extent and necessity of the proposed improvements, together with what proportion of the proposed improvements should be paid by special assessment upon the property especially benefited, and what proportion, if any, should be paid by the city at-large. The city council shall not order the making of any special assessment improvement prior to the filing after a public hearing has been held for the hearing of objections to the making of such special assessment improvements.

(Code 1968, § 3-102)

Sec. 30-3. Determination of project; public notice.

After the city manager has presented the report required in section 30-2 to the city council, and the city council has reviewed the report, a resolution may be passed determining the necessity of the improvement; setting forth the nature and expected life of such improvement; determining the benefits received by affected properties and what proportion, if any, shall be paid by the city at-large; designating the limits of the special assessment district to be affected; prescribing what proportion of such improvement shall be paid by special assessment upon the property especially benefited; designating whether it is to be assessed by frontage or other benefits; placing the complete information on file in the office of the city clerk where it may be found for examination; and directing the city clerk to give a notice of public hearing to the proposed improvement at which opportunity will be given interested persons to be heard. Such notice shall be made by one publication in a newspaper published or circulated within the city, and by first class mail to each owner of property or party in interest in the special assessment district, according to the current assessment roll of the city, at least seven days prior to the holding of the hearing and designating the time and place of such hearing. The hearing may be held at any regular, adjourned or special meeting of the city council. No such hearing shall be required, or notice of such hearing given, if a petition for such improvements is signed by all of the property owners to be assessed for the improvement.

(Code 1968, § 3-103)

Sec. 30-4. Hearing on objection.

At the public hearing on the proposed improvement, all persons interested shall be given an opportunity to be heard, after which the city council may proceed in such a manner as they shall deem to be in the best interests of the city as a whole. If after such hearing the city council determines to proceed with the special assessment project, a resolution shall be passed ordering the proposed improvement, directing the city manager to proceed with the work and directing the assessor to prepare a special assessment roll for such improvement. Unless the city has available in a revolving fund, or otherwise, the moneys required for defraying the cost of a public improvement, or at least that part which will accrue before the special assessments therefor will be paid or moneys available from the sale of bonds issued in anticipation of the collection of such special assessments, no contract or expenditure, except for the cost of necessary legal procedures and engineering plans and estimates, shall be made for the improvement until the special assessment roll to defray costs of such improvement has been confirmed.

(Code 1968, § 3-104)

Sec. 30-5. Objections to improvements.

If, at or prior to the adoption of the resolution required by section 30-4, written objections to such improvement have been filed by the owners of property in the special assessment district, which according to estimates will be required to bear more than 50 percent of the cost of such improvement, or by a majority of the owners of property to be assessed, no resolution to proceed with the improvement shall be adopted, except by the affirmative vote of five or more members of the city council.

(Code 1968, § 3-105)

Sec. 30-6. Cost of condemned property added.

Whenever property is acquired by condemnation, or otherwise, for the purpose of public improvement, the cost of such acquisition, exclusive of that part of such cost representing damages for or injury to improvements to such property and the cost of the proceedings to acquire such property may be added to the cost of such improvement.

(Code 1968, § 3-106)

Sec. 30-7. Deviation from plans and specifications.

No substantial deviation from the plans and specifications for any public improvement, as adopted by the city council or included in the contract therefor, shall be permitted by any officer or employee of the city without authority of the city council by resolution. A copy of the resolution authorizing such changes or deviation shall be certified by the city clerk and attached to the approved plans and specifications or the contract on file in the office of the city clerk.

(Code 1968, § 3-107)

Sec. 30-8. Special assessment roll.

The assessor shall make a special assessment roll of all lots or parcels of land within the special assessment district benefited by the proposed improvement, as finally determined by the

city council, and assess to each lot or parcel of land the amount benefited by such improvement. The amount spread in each case shall be based upon the estimated cost of the project or the actual final cost as reported to and approved by the city council.

(Code 1968, § 3-108)

Sec. 30-9. Basis.

Special assessments shall be based upon or in proportion to the benefits derived or to be derived, as determined by the city council. The assessment for sanitary sewers or water mains may be made on a benefit basis by dividing the cost into the number of lots to be served or benefited by the improvement. Multiple use or potential multiple use of property may be assigned multiple units of cost in proportion to such use. Any part of the cost of sewer or water mains not chargeable as a benefit to the property served shall be assessed to the city.

(Code 1968, § 3-109)

Sec. 30-10. Filing of special assessment roll; notice of hearing.

When the assessor shall have completed the assessment roll, he shall file it with the city clerk for presentation to the city council for review and certification. The city council, by resolution, shall order the special assessment roll to be filed in the office of the city clerk for public examination, and shall fix the time and place to review the roll and direct the city clerk to give notice of a public hearing on such special assessment roll in the manner set forth in section 30-3 for giving notice of hearings on the necessity of public improvements. Such notice shall be made by one publication at least seven days prior to the holding of the hearing. The hearing may be held at any regular, adjourned or special meeting of the city council.

(Code 1968, § 3-110)

Sec. 30-11. Hearing on special assessment roll, revision and approval.

The city council shall review the special assessment roll and consider all objections to the roll. The city council may correct or amend the assessment roll as to any assessment or description of property or any other matters appearing in such roll. The city council may reject such assessment roll and the same proceedings shall be had in making a new roll as in the making of an original roll. If, after hearing all objections, the city council determines that assessments are in proportion to benefits derived or to be derived, it shall pass a resolution reciting such determinations, confirming such roll and directing the assessor to attach his warrant to such roll authorizing and directing the treasurer to collect the various amounts on the roll in accordance with such resolution. Such assessment roll shall have the date of confirmation endorsed thereon by the city clerk and shall be final and conclusive for the purpose of the improvement to which it pertains.

(Code 1968, § 3-111)

Sec. 30-12. When due.

All special assessments shall be due and payable upon confirmation of the special assessment roll, except such installments as the city council shall make payable at a future time under the provisions of this chapter. After the city council has confirmed the special assessment

roll, the treasurer shall notify by mail each property owner on the roll that the roll has been filed, stating the amount assessed. Failure to receive notice shall not invalidate any special assessment roll of the city, nor excuse the payment of interest and/or the collection of fees. Unless the city council orders the first installment of a special assessment roll to be collected on the next tax roll of the city, each property owner shall have 30 days from the date of notification to pay the assessment in full, or any part thereof, in a sum of not less than the first installment thereof as set by the city council, without interest or penalty. Following such 30-day period, the property owner may pay all of his assessment at any time, but he shall be required to pay any interest on such assessment as fixed by the city council. Installments of special assessments which are to be paid after the first installment may be ordered by the city council to be spread upon the city tax roll for the year in which they became due and payable, in which case such installments shall be collected at the same time, in the same manner and subject to the same conditions as city taxes upon such roll.

(Code 1968, § 3-112)

Sec. 30-13. Collection and creation of lien.

Whenever a special assessment roll shall have been confirmed, and it is payable as provided in this chapter, the city council shall direct the assessment made in such roll to be collected directly therefrom or from the general tax rolls, and the city clerk shall attach his warrant to the roll, commanding the treasurer to collect the several amounts stated in such roll, and shall file the roll with the treasurer within five days after the roll has been confirmed by the city council. Special assessments and all interest and charges on such special assessments from the date of confirmation of the roll shall be and remain a lien upon the property assessed of the same character and effect as the lien created by the general law for state and county taxes, and by the city Charter for city taxes, until such charges have been paid.

(Code 1968, § 3-113)

Sec. 30-14. Installments; past due.

Installments on a special assessment roll shall be collected in the following manner:

(1) When special assessments are not spread upon the city tax roll, the amount due on the first installment on a special assessment roll, if unpaid at the end of the 30-day period, shall have a ten percent collection fee added on the first installment only, and shall be spread upon the next tax roll for the collection of taxes in the city. When such amounts are spread upon the next tax roll, such special assessment shall be collected in like manner and subject to the same conditions as taxes spread on such roll.

(2) Remaining installments becoming due upon any special assessment roll may be spread and collected upon each subsequent city tax roll until all installments have been so spread, if the city council shall order such action.

(Code 1968, § 3-114)

Sec. 30-15. Assessment for abating hazards and nuisances.

If it shall become necessary to abate a hazard or nuisance as described in chapter IX (N). of the Charter, the city council shall determine what amount, or part of each such expense,

shall be charged, and the property upon which such amounts shall be levied as a special assessment. The city council shall require determination of the charges and the lot or premises affected and cause the person chargeable to be notified by the city clerk either by first class mail, or if either the owner or his address is unknown, by posting notice upon the premises affected. Such notice shall state the basis for the assessment, the cost thereof and shall give a reasonable time, which shall not be less than 30 days, in which payment of such amount shall be made. In all cases where payment is not made within the time limit, such failure to pay shall be reported by the city clerk to the city council, which shall direct the assessor to spread such amounts against the descriptions of property chargeable with such amounts on the next general tax roll for the collection of taxes in the city.

(Code 1968, § 3-115)

Sec. 30-16. Provision of additional steps or procedures.

Where the provisions of this chapter may prove to be insufficient to carry into full effect the making of any special assessment, the city council shall provide, in the resolution authorizing the improvement, the additional steps or procedures required.

(Code 1968, § 3-116)

Sec. 30-17. Accounts.

Moneys raised by special assessment to pay the cost of any improvement shall be placed in a special fund to pay such cost or to repay the money borrowed for such assessment. Such fund may be an accounting entry in the bookkeeping or accounting system of the city, and need not be a separate bank account. Each special assessment account must be used only for the improvement project for which the assessment was levied.

(Code 1968, § 3-117)

Sec. 30-18. Contested assessments.

Unless written notice of an intention to contest or enjoin the collection of any special assessment for the construction of any public improvement or the removal or abatement of any public hazard or nuisance is given to the city council, within 30 days after the date of the resolution of the city council confirming the assessment roll for an improvement, and unless such notice shall state the grounds on which the proceedings are to be contested, no suit or action of any kind shall be instituted or maintained for the purpose of contesting or enjoining the collection of such special assessment. Each suit or action to contest the collection of a special assessment shall be commenced within 90 days after confirmation of the special assessment roll therefor.

(Code 1968, § 3-118)

Sec. 30-19. Reassessment for benefits.

Whenever the city council shall deem any special assessment invalid or defective for any reason, or if a court of competent jurisdiction shall have adjudged such assessment to be illegal for any reason, in whole or in part, the city council shall have the power to cause a new assessment to be used for the same purpose for which the former assessment was made. All

proceedings on such reassessment and for the collection of such assessment shall be made in the same manner as provided for in the original assessment. If any portion of the original assessment shall have been collected and not refunded, it shall be applied upon the reassessment, and the reassessment shall to that extent be deemed satisfied. If more than the amount reassessed shall have been collected, the balance shall be refunded to the person making such payment.

(Code 1968, § 3-119)

Sec. 30-20. Combination of projects.

The city council may combine several districts into one project for the purpose of effecting savings in the cost of a special assessment.

(Code 1968, § 3-120)

Sec. 30-21. Additional special assessments.

Additional pro rata assessments may be made when a special assessment roll proves insufficient to pay for the improvement for which it was levied and the expenses incidental to such improvement, or to pay the principal and interest on bonds issued in anticipation of such assessment rolls, provided that any additional pro rata assessment shall not exceed 25 percent of the assessment as originally confirmed, unless a meeting of the city council is held to renew such additional assessment, for which meeting notices shall be published as provided in the case of review of the original special assessment roll.

(Code 1968, § 3-121)

Sec. 30-22. Charter provisions.

The provisions of chapter IX of the Charter which are not set forth or made effective by this chapter are adopted and made a part of this chapter as though fully set forth in this section.

(Code 1968, § 3-122)

Chapter 31 RESERVED

Chapter 32 STREETS, SIDEWALKS AND OTHER PUBLIC PLACES*

***Cross references:** Any ordinance dedicating, establishing, naming, locating, relocating, opening, paving, widening, repairing or vacating any street, sidewalk or alley saved from repeal, § 1-12(11); any ordinance establishing the grade of any street or sidewalk saved from repeal, § 1-12(12); consumption of alcoholic liquor in public places, prohibitions, § 4-2; buildings and building regulations, ch. 8; cemeteries, ch. 10; community development, ch. 12; environment, ch. 14; land divisions and subdivisions, ch. 18; design standards for streets in subdivisions, § 18-192; street grades in subdivisions, § 18-196; manufactured homes and trailers, ch. 20; parks and recreation, ch. 24; peddlers and solicitors, ch. 26; special assessments, ch. 30; telecommunications, ch. 34; traffic and vehicles, ch. 36; utilities, ch. 38; zoning, ch. 40.

State law references: City control of highways, Mich. Const. art. VII, § 29; city authority to

acquire, own, establish and maintain boulevards, Mich. Const. art VII, § 23; obstructions and encroachments on public highways, MCL 247.171 et seq.; closing of highway for repairs, MCL 247.291 et seq.; driveways, banners, events and parades, MCL 247.321 et seq.; liability of local government for injury the result of not keeping highway in reasonable repair, MCL 691.1402.

ARTICLE I. IN GENERAL

Secs. 32-1--32-30. Reserved.

ARTICLE II. SIDEWALKS

Sec. 32-31. Construction, repair, etc.; permit required.

It is unlawful for any person to construct, repair, rebuild or remove any curb or sidewalk, except in accordance with the line, grade, slope and specifications established by the city manager, and without first obtaining a written permit from the city manager.

(Code 1968, § 3-201)

Sec. 32-32. Barricades, safeguards, notices required.

Any person or his agent who constructs, repairs, rebuilds or removes any curb or sidewalk shall post a notice of the area under construction, and such other warnings and barricades as will protect the general public.

(Code 1968, § 3-202)

Sec. 32-33. Duty of abutting owners.

It shall be the duty of the owner of property abutting any public sidewalk in the city to

keep the sidewalk in good repair and in such condition at all times that it will not constitute a hazard to pedestrians and others lawfully using such sidewalk.

(Code 1968, § 3-203)

Sec. 32-34. Defective, unsafe sidewalks--Notice to repair.

If the city manager determines that a sidewalk is defective or unsafe for use, he shall give notice to the owner of the abutting premises, specifying the repairs required.

(Code 1968, § 3-204)

Sec. 32-35. Same--Failure to make repairs; remedy.

If the owner of property abutting a defective or unsafe public sidewalk fails to repair or rebuild the sidewalk or curb within ten days after service of notice to make such repair, the city manager shall report such failure to repair the sidewalk to the city council, with the request that the city manager be authorized to repair or rebuild the sidewalk. Upon receipt of such report, the city council may determine the necessity to repair or rebuild such sidewalk, and may order the city manager to do all work required to accomplish the repair of such sidewalk. The cost of such work, or such portion thereof as the city council determines shall be paid by the owner of the abutting premises, together with a penalty of ten percent in addition thereto, shall be charged against the premises abutting such sidewalk or curb and the owner thereof in the manner provided for the making of special assessments in chapter IX of the Charter, and the provisions of this Code relating thereto.

(Code 1968, § 3-205)

Sec. 32-36. Building, repairing; costs borne by city.

The city council, by resolution, may pay from the general funds of the city such portion of the expense of building, rebuilding or repairing any sidewalk or curb as it deems proper.

(Code 1968, § 3-206)

Secs. 32-37--32-70. Reserved.

ARTICLE III. EXCAVATIONS

Sec. 32-71. Permit required.

It shall be unlawful for any person to make, or cause to be made, any excavation or opening in or under any public street, alley or other public place within the city without first obtaining a written permit from the city manager.

(Code 1968, § 3-207)

Sec. 32-72. Issuance of permit; prerequisites.

The issuance of an excavation permit is contingent upon the fulfillment of the following conditions:

(1) The applicant shall agree to keep the operations carefully barricaded, lighted at night and otherwise protected as required by the city manager to secure the safety of the public and property.

(2) The application shall be accompanied by the fee established in section 32-76, which fee is for the purpose of reimbursing the city for the cost of inspection, supervision and resurfacing of the excavation or opening.

(3) The applicant shall agree to complete operations within the time specified in the permit.

(Code 1968, § 3-208)

Sec. 32-73. Inspections; violations; suspension of permit authorized.

The city manager shall inspect, or cause to be inspected, all work done under an excavation permit issued pursuant to the provisions of this article, and he shall suspend an excavation permit when the terms of such permit, or any provisions of this article, are violated. No person shall perform any work authorized by an excavation permit while the permit is suspended.

(Code 1968, § 3-209)

Sec. 32-74. Streets, alleys, etc.; obstructions, restriction.

It shall be unlawful for any person, in doing any work authorized by an excavation permit, to obstruct more than one-half of the traveled portion of any street or alley within the city. If a sidewalk is obstructed by any such work, a temporary sidewalk shall be constructed or provided which shall be safe for travel and convenient for users.

(Code 1968, § 3-210)

Sec. 32-75. Backfilling and resurfacing.

All backfilling of excavations shall be done under the supervision of the city manager, and the applicant shall do all things required by the city manager to ensure proper compaction. All resurfacing shall be done by the city under the direction of the city manager; provided, however, that any public utility which deposits with the city clerk a bond in the form approved by the city attorney, and in the amount as adopted by resolution of the city council from time to time, conditioned upon compliance with such specifications for backfilling and resurfacing as are issued by the city manager, may be permitted to resurface at its own expense all excavations under the supervision of the city manager.

(Code 1968, § 3-211)

Sec. 32-76. Permit fees.

The fee for each excavation permit shall be the city's costs of labor and materials plus ten percent.

(Code 1968, § 3-212)

Sec. 32-77. Refund, limitation.

The entire fee as set forth in section 32-76 shall be returned to the excavation permit applicant upon completion of the work authorized, and approval thereof by the city manager; provided, however, that if such permit has been suspended as provided in section 32-73, and the city manager determines that the excavation or opening will endanger the safety or welfare of the public or property, the city manager may immediately order the excavation or opening to be backfilled or closed by the city, and the cost thereof shall be deducted from the sum deposited with the city. The balance remaining, if any, shall be returned to the applicant, as soon as practicable, following completion of the work. If the fee is insufficient to reimburse the city for the cost of the completion of such work, the city may collect the difference from the applicant in an action at law.

(Code 1968, § 3-213)

Secs. 32-78--32-110. Reserved.

ARTICLE IV. OBSTRUCTIONS

Sec. 32-111. Prohibited obstructions.

It shall be unlawful for any person without authority of law to obstruct:

(1) Any public street, sidewalk or other public place.

(2) The ordinary and usual means of approach to and departure from any entrance of any building, storeroom or factory.

(Code 1968, § 3-214)

Chapter 33 RESERVED

Chapter 34 TELECOMMUNICATIONS*

***Cross references:** Streets, sidewalks and other public places, ch. 32; utilities, ch. 38; zoning, ch. 40.

State law references: Michigan telecommunications act, MCL 484.2101 et seq.

ARTICLE I. IN GENERAL

Secs. 34-1--34-30. Reserved.

ARTICLE II. CABLE COMMUNICATIONS SYSTEMS

Sec. 34-31. 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:

Access channel means a program or signal channel available for nonprofit use by government agencies, educational institutions,community groups and individual members of the public under terms established by the franchise agreement.

Administrator means the chief administrative officer of the grantor, or the person designated or provided with the authority to execute this article.

Application means any proposal seeking authority from the grantor to construct, develop, reconstruct or redevelop and operate a cable system within the jurisdiction of the grantor pursuant to this article. Such term shall include any initial proposal, as well as all amendments and informal correspondence related thereto, all subsequent renewal proposals, and in each and every instance, it shall mean the inclusion of all information requested in this article.

Basic service means, at a minimum, all of the following:

(1) The retransmission to all subscribers of all broadcast television channel signals authorized by the Federal Communications Commission and provided for in the franchise agreement;

(2) The cablecasting to all subscribers of programming on the local origination channel, and all public, educational, government and community access channels.

Broadcast signal means a television or radio signal that is transmitted over the air, and is received by a cable communications system off the air through a microwave or satellite link, and retransmitted to cable system subscribers.

Cable communications system and *system* mean a system of antennas, cables, amplifiers, towers, microwave links, cablecasting studios and any other conductors, converters, equipment or facilities designed and constructed for the purpose of distributing video programming to home subscribers and for producing, receiving, amplifying, storing, processing or distributing audio, video, digital or other forms of electronic or electric signals.

Cable facility means a nonbroadcast signal that originates within the facilities of the cable communications system.

Cablecast means to distribute programs originating locally to subscribers to the cable system.

Channel means a frequency band, which is capable of carrying one standard video signal, a number of audio, digital or other nonvideo signals, or a combination of such signals.

Community access group means a nonprofit group or organization designated as eligible to utilize access channels and facilities.

Converter means an electronic device which converts signals transmitted as cable service to a frequency which permits their reception on subscriber's television receivers.

Drop means the cable and related hardware, including grounding materials, which

connect a subscriber's premises to the cable system.

Easement means the right to occupy and use public rights-of-way, including public utility easements, for the operation of a cable system.

Education access channel means a channel where local educational institutions are the primary designated programmers.

FCC means the Federal Communications Commission, and any legally appointed designee, agent or successor.

Franchise means the rights granted pursuant to this article to construct, own, operate and maintain a system as defined by this article, within the jurisdiction of the grantor. Any such authorization, in whatever form granted, shall not mean nor include a license or permit required for the privilege of transacting and carrying on a business within the jurisdiction of the grantor as required by other ordinances and laws of the grantor.

Franchise agreement means a written agreement between the grantor and grantee, including the specifications, franchise applications and other related material establishing the grantee's rights and responsibilities relating to construction, operation and maintenance of a cable communications system.

Government access channel means a channel where local governmental agencies are the designated programmer.

Grantee means the franchisee, its successors or delegates acting within the scope of its franchise.

Grantor means the city or its designee.

Gross receipts mean all revenues derived directly or indirectly by a grantee, its affiliates, subsidiaries, parents and any person in which a grantee owns any interest from or in connection with the operation of the cable system for the delivery of cable service including, but not limited to, all monthly and subscriber fees for basic service and any premium services, installation and reconnection charges, equipment rental charges for converters, videocassette recorders, video production equipment and videotape programming, advertising revenue and leased channel revenue; provided, however, that this term does not include revenues generated from the sale or lease of capital assets unrelated to the operation of the cable system within the city, or to the delivery of cable service outside of the city.

Headend means a location which houses the electronic equipment that transmits the necessary signal and services for the cable system, and includes subheadends and similar facilities.

Installation means the complete process of constructing a subscriber drop which connects a television receiver to the cable system.

Leased access and *leased access channel* mean a channel, or portion of a channel, available for lease and programming by persons or entities other than the grantee.

Local origination channel means a channel where the grantee is the primary designated programmer and provides local programs to subscribers.

Parental control lockout device means a special electronic circuit or other appropriate device designed to permit a subscriber to temporarily scramble, block or trap any signal that cannot be viewed without the use of a code or physical key apparatus.

Pay cable and *pay television* mean the delivery of television signals over the cable communications system for a fee or charge to subscribers, over and above the charge for basic service on a per program, per channel or other subscription basis.

Public access channel, community access channel and *community channel* mean a channel where any member of the general public or any noncommercial organization may be a programmer, without charge, on a nondiscriminatory basis.

Street means the surface of and the space above and below a public street, road, highway, freeway, lane, path, public way or place, alley, court, sidewalk, boulevard, parkway, drive or any easement or extension, now or later held by the grantor for any public purpose, and shall include any other easement or right-of-way or extension as may be later held by the grantor which shall, within its proper use and meaning, entitle the grantor and its grantee to its use.

Theft of service means the unauthorized reception of cable service and shall include the action of any person who shall intercept or receive, or assist in intercepting or receiving, any cable service offered over a cable system, unless such actions are specifically or otherwise authorized by a grantee or by law.

(Code 1968, § 3-1002)

Cross references: Definitions generally, § 1-2.

Sec. 34-32. Purpose.

The grantor finds that the development of the cable communications system has the potential of having great benefit and impact upon its citizens. Because of the complex and rapidly changing technology associated with cable television, the grantor further finds that the public convenience, safety and general welfare can best be served by establishing regulatory powers which should be vested in the grantor or such persons as the grantor shall designate. It is the purpose of this article and subsequent amendments to provide for and specify the means to attain the best possible public interest and public purpose in these matters, and any franchise issued pursuant to this article shall be deemed to include this finding as an internal part. Further, it is recognized that cable communications systems have the capacity to provide not only entertainment and information services to the city residents, but also a variety of interactive communication services to institutions and individuals. Many of these services involve municipal agencies and other public institutions by providing governmental, educational or health care communications. For these purposes, to the extent practicable, the following goals underlie the regulations contained in this article:

(1) The cable communications system should be capable of accommodating both the present and reasonably foreseeable future communication needs of the community.

(2) The cable communications system should be improved and upgraded, if necessary, during the franchise term so that the new facilities necessary for the operation of the system shall be integrated to the maximum extent possible with existing facilities.

(3) The cable communications system authorized by this article shall be responsive to the needs and interests of the community and shall provide a wide diversity of

information sources and services to the public.

(4) That the public, educational and governmental needs for access to the cable communications system are met.

(Code 1968, § 3-1003)

Sec. 34-33. Franchise required.

No person shall own or operate a cable communications system in the jurisdiction without first making application and receiving approval for a franchise in the form of a franchise agreement between the grantor and the grantee which shall comply with all of the terms and specifications contained in this article. Franchise agreements shall authorize the use of public easements for the construction and operation of cable communication systems, but they shall not convey any property rights to a grantee. No franchise agreement shall, either expressly or implicitly, be deemed to restrict the granting of subsequent agreements, nor shall any franchise agreement create any right to renewal. The failure to obtain a franchise agreement as required by this article shall constitute a misdemeanor.

(Code 1968, § 3-1004)

Sec. 34-34. Application process.

Applications for a franchise shall be reviewed in accordance with the procedures of this section. Persons seeking to obtain a franchise may at any time file a written application with the grantor's administrator or designee in conformity with the minimum requirements of this section. The grantor reserves the right to issue more specific requests for proposals (RFP) from time to time as circumstances may require, in which case, all information specified must be supplied.

(1) *Basic information.* In order to be reviewed in accordance with this section, all applications must include an application fee as set by the grantor or the grantor's designee and present the following detailed information:

a. The applicant's legal name and principal business address.

b. A listing of the applicant's officers, directors and/or other principals, with sufficient biographical information to permit the grantor to evaluate the expertise of the applicant.

c. A listing of stockholders, or other equity investors or owners having a minimum of two percent interest at the time of the application, and an indication of the person having control of the application, together with conformed copies of any articles of incorporation and bylaws.

d. A complete set of financial statements prepared by an independent firm of certified public accountants with certification by a financial officer of the applicant which includes a profit and loss statement and balance sheet covering the operation of the current system for the past two years in the case of a renewal application or covering any other cable communication system which the applicant has owned for the past two fiscal years of operation in the case of an initial application.

e. A consolidated statement of net worth containing sufficiently detailed

information such that, when reviewed together with the required financial statements, the grantor would be able to readily determine the financial responsibility of the applicant.

f. A general description of the status of the current system or proposed design for any planned new system, with detailed maps for construction or reconstruction showing where the applicant has used or will use public rights-of-way, antenna/tower locations, trunk and feeder design, channel capacity, extent of two-way capability, addressability and microwave facilities.

g. A detailed description of currently existing or proposed video production capability together with the proposed plans for developing the usage of such capability.

h. A description of the cable services to be provided over the system and, where service is to be offered in packages or tiers, some designation of the services available on each tier as well as any technical devices required to receive such services.

i. A detailed discussion of the specific plans which the applicant intends to pursue in order to meet the future cable-related needs and interests of the city.

j. In the case of renewal applications, a detailed statement of the activities of the grantee which meet or exceed the requirements of any current franchise.

k. A sworn statement by the chief executive officer of the applicant, certifying the truth of all information contained in the application.

(2) *Review procedure.*

a. Upon receipt, the application shall be reviewed. If the application does not appear to be complete, it shall be returned to the applicant with an indication of what additional information is required.

b. The application review shall consider the relevant strengths and weaknesses of every applicant on its own merits. The service record of the applicant in other communities, as well as the past service record within the jurisdiction in the case of a renewal application, shall be relevant criteria among others. In particular, the review may focus upon the demonstrated ability of an applicant to develop new and advanced uses of its technology, its plans to develop community interest and usage of the technology, the price/value relationship between current or proposed services and the satisfaction of the subscribers or probable subscribers, the strength of on-site management, as well as any other criteria which the grantor deems relevant.

(3) *Public hearings.* The grantor shall not execute a franchise agreement for a term of years in compliance with this article unless legal, financial, technical and operational qualifications of the grantee are established, as well as the adequacy and feasibility of the proposed contractual arrangements. Where an applicant demonstrates that it can provide cable services deemed to be in the best interest

of the city, the application may be approved. Following a preliminary determination that an application appears to be in the best interest of the city, the grantor shall notify the applicant of the date and time set for a public hearing on the proposed contractual arrangements and the findings of the grantor to date. The hearing shall be preceded by public notice published at least ten days prior to the hearing in a newspaper of general circulation within the city. If the grantor approves the findings made at the public hearing, it may grant a franchise to the applicant in the form of a franchise agreement, which shall constitute a contract between the grantor and the grantee.

(4) *Negotiated provisions of the franchise agreement.* The franchise agreement shall contain such further conditions or provisions as may be negotiated between the grantor and the grantee.

(5) *Grantee acknowledgement.* A grantee shall acknowledge its acceptance of a franchise agreement by written affidavit in a form approved by the grantor wherein it shall be recited that the grantee has reviewed in detail the terms and conditions contained in the franchise agreement with legal counsel of its choice, and that the grantee is satisfied and accepts such terms as its negotiated agreement to provide cable service and that it knowingly accepts all business risks.

(Code 1968, § 3-1005)

Sec. 34-35. Franchise requirements.

A franchise agreement executed pursuant to this article shall incorporate the terms and conditions set forth in this article, whether or not such terms and conditions are fully reproduced in such franchise agreement, which incorporation shall commit a grantee to be bound by the rules and regulations established in accordance with the provisions of this section, and all other sections of this article.

(1) *Franchise term.* The maximum term for a franchise agreement between the grantor and a grantee shall be 15 years, and the minimum term shall be one year. The grantor shall approve the term which it deems to be in the best interest of the city and in furtherance of the public health, safety and convenience according to all of the facts and circumstances of each application.

(2) *Service area.* Each applicant for a franchise to provide cable service shall, in its application, define the initial service area and provide a line extension and drop policy for extending areas outside of the initial service area. Upon execution of a franchise agreement, the grantee shall proceed as soon as may be practical to construct or reconstruct the cable system so as to be in compliance with this article and any franchise agreement. The failure or neglect to complete construction, reconstruction or maintenance within the allotted time or any extension shall render any franchise agreement voidable upon written notice from the grantor of its intention to cancel the contract.

(3) *Franchise fee.* As compensation for the use of the streets, public ways and places, and other facilities; for the construction, operation, maintenance, modification or reconstruction of a cable system; and for the grantor's costs of maintenance, improvement and supervision thereof; and for the grantor's costs of

establishing and conducting the regulatory activities required by virtue of the granting of a franchise pursuant to this article, the grantee shall pay to the grantor five percent of its annual gross receipts for the term of its franchise agreement, or any portion thereof, while it is operating a cable system in accordance with this article.

a. The grantor expressly reserves the right to negotiate a lower percentage fee in any franchise agreement if it determines that such a lower percentage is in the best interest of the city.

b. The franchise fee set forth in a franchise agreement shall be due and payable on a monthly basis. The grantee shall prepare a monthly report stating its gross receipts by revenue category for the immediately preceding month. This gross receipts report shall be submitted to the administrator or the grantor's designee, with the franchise fee percentage payment no later than the close of business on the 30th day of the month following the reporting period.

c. At the end of a calendar year the franchise fees paid by a grantee shall be adjusted to account for any under or over payments. In no event shall the franchise fees paid to the grantor exceed five percent of the gross receipts derived from any 12-month period of operation of the cable system, including the time value of money which would have lawfully been collected if such fees had been paid per annum in arrears. The grantee shall be solely responsible for determining the amount of its monthly payments in this regard. To the extent that overpayments occur, any amounts paid in excess of that which was due shall be deemed to be credited to the following month's payment. The failure to remit the full balance due in any month shall be cured at year end by a complete audit. The grantee shall submit to the grantor no later than April 15 of each year of operation complete financial statements, which shall be prepared by an independent certified public accountant, detailing its monthly operation for the preceding calendar year. Interest on any underpaid amounts shall accrue from the date such payments were due until they are paid at the maximum allowable rate under state law.

d. Nothing in this section shall restrict or nullify any liquidated damage provisions relating to nonpayment of franchise fees on a timely basis contained elsewhere in this article or in a franchise agreement, and nothing in this section shall restrict the authority of the grantor to tax the grantee in the ordinary course of its operations solely because of its status as a franchisee.

(4) *Indemnification.* Each applicant for a franchise to own and operate a cable system in the city shall agree in the application to indemnify the grantor against liability for any and all claims arising out of the application process, renewal process, installation, operation, maintenance, construction or reconstruction, extension or removal of the cable system. The agreement to indemnify the grantor shall be stated in every franchise agreement executed and shall expressly include a reference to the reimbursement of all expenses incurred by the grantor in defending itself if any claims are made against it by way of lawsuit or otherwise. The grantor shall notify the grantee or applicant within 30 days

following the receipt of any claim of demand for which the grantee or applicant would be liable according to its indemnification responsibilities. Any such notice will be given in writing to the person, and at the place named in the franchise agreement or application for a franchise.

(5) *Insurance.* In order to provide for the general welfare and convenience of the public and to protect the interests of the grantor, every applicant for a franchise shall indicate the ability to obtain insurance in a form and amount which satisfies the requirements of this subsection. The grantor shall not execute a franchise agreement in accordance with this article unless and until an approved grantee provides adequate proof of insurance, together with written proof of payment of all such premiums as may be required to put the coverage described in full force and effect. It shall be the duty of every grantee to file annually with the grantor proof of insurance coverage including copies of the insurance policies.

a. Each grantee shall obtain and keep in full force and effect at all times during the term of any franchise agreement or extension thereof a policy of broad form comprehensive general liability insurance which includes personal injury liability and blanket contractual liability. Such policy shall provide the minimum coverages for the benefit of the grantor as adopted by resolution of the city council from time to time.

b. Each grantee shall obtain and keep in full force and effect at all times during the term of any franchise agreement or extension of such agreement all risk liability damage insurance (excluding flood and earthquake coverage only) covering losses arising with respect to the following real and personal property incidental to the operation of its cable system: all buildings, offices, studios and other realty or personalty ordinarily contained therein; headend electronics or any subheadends; earth stations, antenna towers, microwave transmission towers; and vehicles. No physical damage insurance shall be required for the distribution system (neither trunk, feeder or drop lines), amplifiers or passive hardware, or converters. It shall be the sole responsibility of the grantee to pay for all premiums due from the coverage outlined in this section.

c. Each policy of insurance required by this section shall contain a 90-day cancellation or nonrenewal provision which shall expressly require the carrier to give written notice to the grantor administrator 90 days prior to cancellation, nonrenewal or material alteration of such coverage.

d. A policy of insurance issued pursuant to the requirements of this section shall only satisfy this article if it is issued by a responsible and nonassessable insurance carrier duly authorized to do business in the state, which company must have been rated at least B+ by Best's during each of the preceding five years.

e. Nothing in this section shall be construed to excuse a grantee from the faithful performance of its obligations under any franchise agreement or to limit its liability under any provision of this article.

(6) *Security fund.* Prior to the execution of a franchise agreement, the grantee shall provide and maintain a security fund for the period and in the sum specified in

the franchise agreement as security for the faithful performance by the grantee of all of the provisions of this franchise and compliance with all orders,permits and directions of any agency of the grantor having jurisdiction over its acts or defaults under the franchise, and for the payment by the grantor of any claims, liens and taxes due the grantor which arise by reason of the construction, operation or maintenance of the system. The security fund may be assessed by the grantor for purposes including, but not limited to, the following:

a. Failure of the grantee to pay the grantor sums due under the terms of the franchise;

b. Reimbursement of costs borne by the grantor to correct franchise violations not corrected by the grantee, after due notice;

c. Liquidated damages assessed against the grantee due to default or violation of franchise requirements which result in financial damage to the grantor;

d. Liquidated damages assessed against the grantee due to revocation pursuant to subsection (10) of this section.

1. *Endorsements.* The letter of credit shall contain both of the following unrestricted endorsements:

"The drawee acknowledges that this letter of credit may not be cancelled by the surety under any circumstances without written authorization from the _____."

The statement of the clerk of the grantor, in the following form, shall be sufficient to draw against the letter of credit upon presentment:

I (We) certify that _____ now holds a franchise to operate a cable television system within the _____, and _____ is now in material breach of its agreements with the grantor.

2. *Use of the performance bond and letter of credit.* Prior to drawing upon the letter of credit or performance bond for the purpose set forth in this subsection (6), the grantor shall notify the grantee in writing that payment is due, and the grantee shall have ten days from the receipt of the written notice to make a full and complete payment. If the grantee does not make the payment within ten days, the grantor may withdraw the amount due, with interest and penalties, from the letter of credit or the performance bond.

3. *Notification of withdrawal.* Within three days of a withdrawal from the letter of credit or performance bond, the grantor shall send to the grantee, by certified mail, return receipt requested, written notification of the amount, date and purpose of such withdrawal.

4. *Replenishment of letter of credit and performance bond.* No later than 30 days after mailing to the grantee by certified mail notification of a withdrawal pursuant to subsection (6)d.2 of this

section, the grantee shall replenish the letter of credit or performance bond in an amount equal to the amount withdrawn unless the grantee has challenged such withdrawal and/or the basis of such withdrawal. Failure to make timely replenishment of such amount to the letter of credit and/or performance bond shall constitute a violation of this article.

(7) *Liquidated damages.* In order to facilitate an orderly regulatory framework, and to provide for the common interests of the grantor and the grantee, any franchise agreement executed pursuant to this article shall contain negotiated dollar amounts to serve as fixed and liquidated damages for the violation of this article or the franchise agreement. The violations of this article which are to be specified in detail in the franchise agreement shall be those for which ongoing monitoring and enforcement are unduly burdensome for the grantor and which would make impossible to determine the actual dollar value of damage to the grantor or the public. Similarly, the franchise agreement violations which are to be specified for purposes of liquidated damages shall be those which are not ordinarily capable of being cured by compensatory or punitive damages at law. It is the express purpose of this section to identify the common interests of the grantor and the grantee in such a way as to forestall resort to termination of the contract as a remedy for material breaches of the contract or this article, and to thereby protect the investment of the grantee and to ensure continuity of service for the city. The liquidated damages specified in a franchise agreement shall serve as the primary pecuniary remedy for the specified violations. However, nothing in this section shall prevent or bar the grantor from pursuing any remedies at law or in equity where a material breach of a franchise agreement persists notwithstanding the payment of liquidated damages.

(8) *Regulatory authority.*

a. *Governing requirements.* At all times during the term of a franchise, the grantee shall comply with all laws, rules or regulations of the grantor, state or federal government and their regulatory agencies or commissions which are applicable to the construction and operation of the cable communications system, including, but not limited to, all laws, ordinances or regulations now in force or hereafter enacted; provided that any law, regulation or ordinance hereafter enacted shall not materially affect the rights under the franchise. Nothing in this subsection shall be deemed a waiver of grantee's right to challenge the validity of any such law, rule or regulation. The grantee shall comply with new laws and regulations, such as the Americans With Disabilities Act.

b. *Change in law or regulation.* Notwithstanding any other provisions of this article to the contrary, the grantee shall at all times comply with all laws and regulations of the local, state and federal government. If any actions of the state or federal government or any agency thereof, or of any court of competent jurisdiction upon final adjudication, substantially reduce in any way the power or authority of the grantor under this article or franchise, or if in compliance with any local, state or federal law or regulation, the grantee finds conflict with the terms of this article, the franchise, or any law or regulation of the grantor, as soon as possible

following such conflict, the grantee shall notify the grantor of the point of conflict believed to exist between such law or regulation and the law or regulations of the grantor, this article and the franchise. The grantor, at its option, may notify the grantee that it wishes to negotiate those provisions which are affected in any way by such modification in regulations or statutory authority. Thereafter, the grantee shall negotiate in good faith with the city in the development of alternative provisions which shall, to the extent permitted by law, materially maintain the rights of the city as established under the terms of this article and the franchise. The city shall have the duty, based upon the results of such negotiations, to modify any of the provisions to such reasonable extent as may be necessary to carry out the full intent and purpose of this article, the franchise and the agreement reached in negotiations.

c. *Reservation of rights for regulation.* The grantor reserves the right to exercise the maximum plenary authority, as may be lawfully permissible, to regulate the cable communications system, the franchisee and the grantee. Should applicable legislative, judicial or regulatory authorities at any time permit regulation not presently permitted to the grantor, the grantor may, without approval of the grantee, engage in any such regulation as may then be permissible, whether or not contemplated by this article or the franchise, including, but not limited to, regulations regarding franchise fees, taxes, programming, rates charged to subscribers and users, consumer protection or any other similar or dissimilar matter.

d. *Right of inspection of records.* The grantor shall have the right to inspect all books, records, reports, maps, plans and financial statements of the grantee and any parent company to the extent such materials are relevant to the grantee's performance of its obligations under this article and the franchise, and other similar materials of the grantee, at any time during normal business hours upon 24 hours prior notice to the grantee.

e. *Right of inspection of cable facilities.* The grantor shall have the right to inspect all cable facilities or installation work performed subject to the provisions of the franchise and to make such tests as it shall find necessary to ensure compliance with the terms of this article and other pertinent provisions of the law.

f. *Nonexclusivity.* Any franchise granted pursuant to this article shall be nonexclusive. The grantor specifically reserves the right to:

    1. Grant at any time such additional franchises for a cable communications system as it deems appropriate; and/or

    2. Build, operate and own such cable communications systems as it deems appropriate.

g. *Expense reimbursement to grantor.* The grantee shall pay the grantor a sum of money which will, when added to any application fees received, reimburse all reasonable costs and expenses incurred by it in connection with the granting of an initial franchise, including, but not limited to, consultant fees, attorney fees, publication fees, travel expenses and all

other direct costs. To the extent allowed by law, the grantee shall pay the grantor a sum of money which will reimburse all reasonable costs and expenses incurred by the grantor in connection with the extending or renewing of a franchise, including, but not limited to, consultant fees, attorney's fees, publication fees, travel expenses and all other direct costs. The grantor shall submit a detailed schedule of all such costs. Such payment shall be made within 30 days after the grantor furnishes the grantee with a written statement of such expenses.

(9) *Reports required.*

a. *Annual reports.* The grantee shall file with the grantor administrator the following reports, which shall be submitted 90 days after the end of the grantee's fiscal year:

1. *Facilities report.* An annual report setting forth the physical miles of cable plant construction, reconstruction and cable plant in operation. The report shall also indicate modifications to the headend and other areas of system operations, such as billing, converters, equipment for new services.

2. *Financial reports.* The following financial reports for the franchise area shall be submitted annually to the grantor 90 days after the end of the grantee's fiscal year:

i. An ownership report, indicating all persons who at any time during the preceding year controlled or benefited from an interest in the franchise of one percent or more.

ii. An annual, fully audited and certified financial statement from the previous calendar year, including subscriber revenue from each category of service and every source of nonsubscriber revenue.

iii. An annual list of officers and members of the board of the grantee and any parent corporation.

3. *Operational reports.* The following system and operational reports shall be submitted annually to the grantor 90 days after the end of the grantee's fiscal year:

i. A report on the system's technical tests and measurements as set forth in this article and in the franchise.

ii. A report of new services added and a projection for services planned for the future.

iii. A report on support provided by the grantee for public, educational and governmental channels, and other public benefit projects.

iv. A compilation of the monthly reports to provide a year-end analysis.

b. *Monthly reports.* The grantee shall provide a monthly operational report which will provide a concise overview of the following system activity:

1. A subscriber report indicating end of the month subscriber numbers for all levels of service, an analysis of disconnections and a review of revenues from all other services.

2. A gross receipt report, which shall state the gross receipts by revenue category for the immediately preceding month.

3. A technical summary of the cable system service log, indicating the types of service problems, the length of time between detection and resolution of such problems and the action taken to correct the problems.

4. A statement of the current status of video production equipment provided by the grantee. The report shall also indicate maintenance issues and any equipment in need of replacement.

c. *Additional reports.* The grantee shall prepare and furnish to the grantor, at the times and in the form prescribed, such additional reports with respect to the operation, affairs, transactions or property, as may be reasonably necessary and appropriate to the performance of any of the rights, functions or duties of the grantor in connection with this article or the franchise.

(10) *Termination.* If a grantee causes or creates a material breach of a franchise agreement executed pursuant to this article, or violates the provisions of this article in a significant and material manner, the grantor may elect to terminate any franchise granted under this article. Any termination for cause shall be made by resolution of the grantor, stating that such cancellation is for cause, and the specific reasons alleged to constitute such cause, and the grantee shall have the right to appear before the grantor at a duly noticed and scheduled public meeting to present its position with regard to the finding made under this section. A material breach shall include, but shall not be limited to, the following:

a. Any uncured violation of a material provision of a franchise agreement or this article which is not cured within a period of 30 days following receipt of written notice of such violation by the grantee.

b. Any attempt to sell, transfer or dispose of the capital assets related to the cable system without giving written notice of such attempt 90 days prior to such attempt to the grantor administrator.

c. Any attempt to evade the provisions of this article by deceit, fraud or misrepresentation.

The actions set forth in this subsection shall only be mitigated by circumstances beyond the control of the grantee. Simple negligence, mistake or neglect shall not excuse such actions. A grantee shall at all times be solely responsible for proving the existence of circumstances beyond its control.

(11) *Rate regulation.*

a. The city shall comply with rules of the Federal Communications Commission set forth in Subpart N (Cable Rate Regulation) of Part 76 (Cable Television Service) of Ordinance I of Title 47 of the Code of Federal Regulations regarding the regulation of cable television rates for basic service and associated equipment, as amended.

b. After a cable operator has submitted for review its existing rate for the basic service tier and associated equipment costs of a proposed increase in these rates, the city clerk or the grantor designee shall post a public notice of the rates and costs, giving interested parties, including the cable operator, a reasonable opportunity to file written comments which shall be available in the office of the city clerk for public inspection and copying during normal business hours.

c. The city shall comply with procedures set forth in 47 CFR 0.459 regarding confidential business information submitted by the cable operator in a rate regulation proceeding.

d. A cable operator which willfully or repeatedly fails to comply with a rate decision or refund order directed specifically at the cable operator shall be subject to a monetary forfeiture as determined by the city following the procedures set forth in 47 USC 503.

(Code 1968, § 3-1006)

Sec. 34-36. Programming.

Concurrently with the activation of the cable communications system in the city, the grantee shall provide all services to subscribers as described in this section.

(1) *Programs; change.* The system shall carry programming specified in the franchise. Any change in programs or services offered shall comply with the conditions and procedures contained in the franchise, and shall be reported to the clerk of the grantor or other designee of the grantor at least 30 days prior to the proposed implementation. The grantee shall use its best effort to ensure diversity of programming.

(2) *Basic service tier.* A basic service tier shall be offered to subscribers throughout the term of this article and the franchise, to the extent required by law.

(3) *Access.* The grantee shall provide the number of access and community channels specified in the franchise agreement executed pursuant to this article. All residential subscribers who receive all or any part of the total services offered on the system shall also receive all access channels at no additional charge. These channels shall be activated upon system activation and thereafter maintained, as needed. The grantee shall establish rules and regulations for the use of city access channels which shall be approved by the grantor before implementation and thereafter shall not be altered or amended without the approval of the grantor. In preparing such rules and regulations, the grantee shall:

a. Provide an equal opportunity for community use of access service.

b. Present a needs assessment of the community to be served, and provide a plan to meet those needs.

c. Develop a plan to allocate to the grantor a reasonable use and fair schedule of channel time and use of equipment and facilities so that the grantor can send and receive programming fitted to its needs. Such plan shall be approved by the grantor before implementation and thereafter shall not be altered or amended without approval of the grantor.

d. Describe all equipment and facilities and any charges for their use.

e. Comply, at a minimum, with the requirements of the grantor regarding access channels.

(4) *Program guide.* The grantee shall provide a program guide which shall be delivered in electronic form.

(5) *Institutional network.* The grantee shall provide an institutional network as set forth in the franchise.

(6) *Emergency override.* The grantee shall, without charge, provide, service and maintain public emergency transmission facilities in the city as described in the franchise.

(Code 1968, § 3-1007)

Sec. 34-37. Minimum design requirements.

In order to provide for a technologically advanced cable system which will satisfy the communication needs of the community, all franchise applicants shall agree to provide certain minimum design features in their applications. Nothing in this section shall be construed to limit or discourage the development of more extensive systems or better facilities and equipment. The grantor is expressly authorized to negotiate any state of the art improvements with applicants which will serve to ensure that the grantor maintains a modern cable system.

(1) *Channel capacity.* All franchise applicants shall agree to construct and maintain the following minimum channel capacities:

a. A cable system constructed to provide sufficient bandwidth capacity so that when it is used with an appropriate converter device at a subscriber's receiver it shall enable the reception of a minimum of 54 downstream video channels and 400 megahertz on a single cable.

b. A cable system having at least 36 activated video channels at all times.

(2) *Allocation of public benefit channel capacity.* All applicants for a franchise shall provide a percentage of system channel capacity to support the cablecasting of public, educational and governmental access programming.

(3) *Public building installations.* Cable service shall be provided to every school building, fire station, city hall, community center, library, police station and other public building with not less than one outlet on each floor at no cost to the user.

(4) *Parental control devices.* All franchise applicants shall make available, upon request of any subscriber, a converter or other device capable of removing from

a subscriber's service both the video and audio of any channel which the subscriber considers offensive. The grantee shall inform subscribers of such capability in writing, and the appropriate device shall be installed and maintained at no additional cost to the subscriber; however, the grantee may charge a deposit for such service.

(5) *Video production capability.* All franchise applicants shall purchase and maintain video production capability within the cable system for the production of local programming. Ownership of such equipment shall remain with the grantee, and the maintenance of such facilities and equipment shall be the responsibility of the grantee. Whenever it is necessary to replace equipment, the grantee shall replace such equipment with new equipment reflecting advances in the state of the art, provided that such equipment is compatible with the balance of the system. The franchise agreement shall specify the type, quality and quantity of equipment, with a cash value of the proposed equipment package. This package shall provide character generated services. The grantor reserves the right to specify the equipment which best suits the needs of the community. All grantees shall purchase and maintain such video production capability so as to be able to produce both live and videotaped programming from remote points in the cable system, including all necessary equipment to transmit upstream signals to the headend for immediate processing and retransmission downstream to subscribers. The grantor shall designate remote points for live cablecasting in the franchise agreement, which points may be changed by the grantor from time to time upon 30 days prior written notice to the grantee.

(6) *Leased access channels.* Each grantee shall at all times comply with the provisions of the Cable Act of 1984 pertaining to the availability and use of leased channel space.

(Code 1968, § 3-1008)

Sec. 34-38. Guidelines for providing cable service.

In addition to the minimum design requirements established in section 34-37, it is the intention of the grantor to provide minimum procedures for the delivery of cable service to subscribers as a matter of the general welfare and convenience; therefore, each applicant for a franchise shall maintain certain records, and administer certain procedures as follows:

(1) *Business office.* A grantee shall maintain a reasonably convenient business office with established office hours for responding to billing or service related problems. The grantor maintains the right to vary this requirement if it is deemed advisable.

(2) *Policy statement.* A grantee shall adopt and maintain awritten set of rules and regulations for the conduct of itsbusiness so that, upon request, any member of the general publicmay receive such rules prior to subscribing for cable service. Ata minimum, a grantee shall address each of the items set forth inthis section in a way which satisfies all requirements statedin this section. A written notice of the availability of such polices shall be given to each subscriber at the time of initial installation.

a. In case of any disturbance of pavement, sidewalk, driveway or other

surfacing, the grantee shall, at its own expense and in a manner approved by the grantor engineer, replace and restore all paving, sidewalk, driveway or surfacing of any street or alley disturbed, in as good of a condition as before the work was commenced, and shall maintain the restoration in an approved condition for a period of five years.

b. If at any time during the existence of a franchise, the grantor shall lawfully widen, realign or otherwise alter pavement, change the grade of any water main, fire hydrant, sewer or appurtenances, the grantee and anyone acting for the grantee in connection with the use of the streets, upon reasonable notice by the grantor, shall remove, relay and relocate its poles, wires, cables, underground conduits, manholes and other fixtures, at its own expense.

c. In conduit districts, and other areas of the grantor in which telephone lines and electric utility lines are underground, all of the grantee's lines, cable and wires shall be underground.

(3) *Service disconnection.* Upon receipt of a written or oral notice of a request to disconnect service, a grantee shall proceed to close the subscriber's account and remove all equipment from the subscriber's premises. Subscribers shall have the right to have cable service disconnected without charge unless otherwise specified in the FCC rules. A refund of unused service charges shall be paid to the customer within 60 days from the date of termination of service. All service disconnection requests shall be completed within ten days of the receipt of such request, absent circumstances beyond the control of the grantee. In the case of a disconnect for nonpayment of service charges, a grantee shall not disconnect cable service for delinquent payment without first sending written notice of such pending disconnection to the delinquent subscriber at least ten days prior to the physical disconnection of such service.

(4) *Protection of subscriber privacy.* The grantee shall protect the privacy of subscribers at all times, as provided in this article and other applicable federal, state and local laws.

(5) *Theft of service.* Nothing in this section shall prohibit a grantee from immediately disconnecting the service of any person who shall illegally attempt to receive cable service; however, in the event of a theft of service, a grantee shall make all reasonable efforts to ascertain that the occurrence is not the result of a prior billing problem prior to disconnection.

(6) *Prohibition against providing television services.* A grantee shall not sell television or radio receiving sets or parts to its CATV subscribers, except the grantee may make repairs and service to the extent necessary to establish the validity of its CATV signal. As converters or other parts become necessary for the reception of channels, or for additional outlets of FM service, the grantee shall provide converters to all subscribers on a deposit basis, sale or rental.

(7) *Customer service standards.*

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

1. *Normal business hours* means the hours during which similar businesses in the city are open to serve customers. Normal business hours must include some evening hours at least one night per week and/or some weekend hours.

2. *Normal operating conditions* means those service conditions which are within the control of the cable operator. Those conditions which are not within the control of the cable operator include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the cable operator include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods and maintenance or upgrade of the cable system.

3. *Service interruption* means the loss of the picture or sound on one or more cable channels.

b. *Exceptions.* Nothing in this section is intended to prevent or prohibit:

1. The grantor and a cable operator from agreeing to customer service requirements that exceed the standards set forth in this section.

2. The grantor from enforcing throughout the franchise term preexisting customer service requirements that exceed the standards set forth in this section and which are contained in the current franchise agreements.

3. The grantor from enacting or enforcing any consumer protection law.

4. The establishment or enforcement of any section or regulation concerning customer service that imposes customer service requirements that exceed or address matters not addressed by the standards set forth in this section.

c. *Customer service standards.* A cable operator is subject to the following customer service standards, certified quarterly by the cable operator:

1. The cable operator will maintain a local toll-free or collect call telephone access line which will be available to subscribers 24 hours a day, seven days a week. Trained company representatives shall be available to respond to customer telephone inquiries during normal business hours.

2. After normal business hours, the telephone access line may be answered by a service or an automated response system, including an answering machine. Inquires received through the telephone access line after normal business hours must be responded to by a trained company representative on the next business day.

3. Under normal operating conditions, telephone answer time by a company representative, including wait time, shall not exceed 30 seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed 30 seconds. These standards shall be met no less than 90 percent of the time, under normal operating conditions, measured on a quarterly basis.

4. Under normal operating conditions, the customers may receive a busy signal less than three percent of the time, measured on a quarterly basis.

5. The customer service center and bill payment locations will be open at least during normal business hours, and will be conveniently located.

6. Under normal operating conditions, each of the following five standards will be set no less than 95 percent of the time, measured on a quarterly basis:

    i. Standard installations will be performed seven business days after an order has been placed. Standard installations are installations which are located not more than 125 feet from the existing distribution system.

    ii. Excluding conditions beyond the control of the operator, a cable operator shall begin working on service interruptions promptly, and in no event later than 24 hours after the interruption becomes known. The cable operator must begin actions to correct other service problems the next business day after notification of the service problem.

    iii. The appointment window for installations, service calls and other installation activities will be either a specific time or, at maximum a-four-hour block during normal business hours. The operator may schedule service calls and other installation activities outside of normal business hours for the express convenience of the customer.

    iv. A cable operator may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.

    v. If a cable operator representative is running late for an appointment and will not be able to keep the appointment as scheduled, the customer will be contacted and the appointment rescheduled, as necessary, at a time which is convenient for the customer.

7. The cable operator shall provide written information on each of the following areas at the time of installation of service, at least annually to all subscribers, and at any time upon request:

    i. Products and services offered;

ii. Prices and options for programming services and the conditions of a subscription to programming and other services;

iii. Installation and service maintenance policies;

iv. Instructions on how to use the cable service;

v. Channel positions of programming carried on the system; and

vi. Billing and complaint procedures, including the address and telephone number of the cable operator and of the municipal building.

8. All subscribers shall receive a monthly bill. Bills shall be clear, concise and understandable. Bills must be fully itemized including, but not limited to, basic and premium service and equipment charges. Bills shall clearly delineate all activity during the billing period, including operational charges, rebates and credits. In case of a billing dispute, the cable operator must respond to a written complaint from a subscriber within 30 days.

9. Refund checks shall be issued promptly, but not later than:

i. The customer's next billing cycle following resolution of the request, or 30 days, whichever is earlier; or

ii. The return of the equipment supplied by the cable operator if service is terminated.

10. Credits will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.

d. *Enforcement.* The grantor may pursue any and all legal and equitable remedies against the cable operator including, but not limited to, all remedies provided under a cable operator's consent agreement with the city, for failure to comply with the act, FCC rules, any orders or determinations of the city pursuant to this section, any requirements of this section or any rules or regulations promulgated under this section. Subject to applicable law, failure to comply with the act, FCC rules, any orders or determinations of the city pursuant to this section, any requirements of this section or any rules and regulations promulgated under this section shall also be sufficient grounds for revocation or denial of renewal of a cable operator's consent agreement.

(Code 1968, § 3-1009)

Sec. 34-39. Franchise renewal.

Upon completion of the term of a franchise granted under this article, the grantor may, in its discretion, grant or deny renewal of the franchise of the grantee in accordance with the provisions of the cable act.

(Code 1968, § 3-1010)

Sec. 34-40. Transfer of ownership.

A grantee of a franchise executed pursuant to this article shall not transfer any rights granted in such franchise, or engage in a transfer of 50 percent or more of ownership or control without first receiving the prior written approval of the grantor. Any transfer, encumbrance or other disposition of any controlling interest in the grantee shall constitute an immediate material breach and violation of this article subjecting the franchise to termination unless written notice of such an attempt is given to the grantor at least 120 days prior to such attempted action.

(Code 1968, § 3-1011)

Sec. 34-41. Purchase of cable system by grantor.

If a franchise under this article is not renewed or is terminated for cause, the grantor shall have the absolute right, which right shall be made a part of each franchise agreement by reference to this section, to buy the cable system if it chooses to do so. If the grantor elects to buy the system, the price shall be determined at fair market value with no value attributed to the franchise per se but with the system valued as a going concern, not at depreciated book value. The grantor and the grantee shall each appoint an appraiser, and they shall appoint a third appraiser, or if they cannot agree on a third appraiser, a circuit judge from the appropriate jurisdiction, acting in an administrative capacity, shall appoint a third appraiser. The three appraisers shall independently evaluate the value of the system. The average of the three appraisals shall be deemed the purchase price. Each party shall pay the costs of its appraiser and one-half of the cost of the third appraiser.

(Code 1968, § 3-1012)

Sec. 34-42. Removal of cable system.

If a franchise terminates for any reason and the grantee has not sold or otherwise transferred ownership of the cable system to the grantor or a third party, the grantee shall forthwith remove its facilities from all public easements. If the grantee fails to take prompt action in this regard, the grantor may proceed to remove the system and charge the security fund or the grantee directly for such removal.

(Code 1968, § 3-1013)

Sec. 34-43. Delegation of authority of grantor.

The grantor reserves the right to delegate from time to time any of its rights or obligations under the franchise to any body or organization. Any such delegation shall be effective upon written notice to the grantee. Upon receipt of such notice, the grantee shall be bound by all terms and conditions of the delegation which are not in conflict with the franchise. Any such delegation or revocation, no matter how often made, shall not be deemed to be an amendment to the franchise or require the grantee's consent.

(Code 1968, § 3-1014)

Sec. 34-44. Regional interconnect.

The grantor shall retain the right to require a grantee to interconnect its cable system with any other communications facilities in the service area.

(Code 1968, § 3-1015)

Sec. 34-45. Separability.

(a) Notwithstanding any other provisions of this article to the contrary, a grantee shall at all times comply with all laws and regulations of the federal, state, county and grantor governments and all administrative agencies thereof; provided, however, that if any law or regulation shall expressly prohibit a grantee from performing a service required under this article so that it would be in conflict with the terms of this article or the provisions of this Code, then as soon as such a conflict becomes known to the grantee, the grantee shall notify the grantor in writing of what it believes the conflict to consist of, and in particular, what law or regulation it believes to be in conflict with this article or this Code, and the grantee shall be excused from performance under this article, provided that it acts in good faith reliance thereon, pending an authoritative resolution of such conflict.

(b) If any provision of this article or any related ordinance is held by any court or by any federal, state or county agency of competent jurisdiction to be invalid as conflicting with any federal, state or county law, rule or regulation, such provision shall be considered a separate, distinct and independent part of this article, and such holding shall not affect the validity and enforceability of any other provisions of this article. If such law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changes, so that the provision which had been held invalid or modified is no longer in conflict with the laws, rules and regulations then in effect, such provision shall then return to full force and effect and shall be binding on the parties, provided that the grantor shall give the grantee 30 days written notice of such change before requiring compliance with such provision.

(c) If the grantor determines that a material provision of this article or any related ordinance is affected by such action of a court or the federal, state or county government, the grantor shall have the right to modify any of the provisions in this article or in such related ordinances to a reasonable extent as may be necessary to carry out the full intent and purpose of this article.

(Code 1968, § 3-1016)

Secs. 34-46--34-75. Reserved.

ARTICLE III. ACCESS AND USE OF PUBLIC RIGHTS-OF-WAY

Sec. 34-76. Purpose.

The purpose of this article is to regulate the access to and ongoing use of public rights-of-way by telecommunications providers to ensure and protect the public health, safety and welfare, and to exercise reasonable control of the public rights-of-way pursuant to the city

Charter, the Michigan Telecommunications Act (Public Act No. 179 of 1991 (MCL 484.2101 et seq.) and other state statutes, including, but not limited to, MCL 247.183 and Mich. Const. art. VII, § 29 by:

(1) Minimizing disruption of the public rights-of-way by regulating the access to and ongoing use of the public rights-of-way by telecommunications providers, and the construction and installation of facilities in the public rights-of-way to provide telecommunication services;

(2) Ensuring that the city and the public are protected from liability for use of the public rights-of-way by telecommunications providers;

(3) Providing for the payment of nondiscriminatory permit fees which do not exceed the fixed and variable costs of granting permits and maintaining the rights-of-way used by telecommunications providers; and

(4) Assisting telecommunications providers in understanding the city's requirements for use of the public rights-of-way, and providing a fair and nondiscriminatory policy for permitting the use of the public rights-of-way by such providers.

(Ord. of 11-17-1998, § 1)

Sec. 34-77. Reservation of rights.

The issuance of a permit under this article and the access to and use of the public rights-of-way by a telecommunications provider shall not constitute a waiver of or otherwise adversely affect the following reserved rights:

(1) *Right to require a franchise.* Mich. Const. art. VII, § 29 and the city Charter require that all public utilities obtain a franchise to conduct a local business within the city. The applicability of this requirement to telecommunications providers may be challenged under Section 102(dd) of the Michigan Telecommunications Act (MCL 484.2102(dd)) which purports todefine telecommunications services as not constituting public utility services. Due to this and other legal and regulatory issues, and to avoid the expense and delay of litigation that may be unnecessary, the city determines that telecommunications providers shall not be required at this time to obtain franchises for the transaction of local business within the city. Telecommunications providers shall be required to obtain and maintain a permit for access to and ongoing use of the public rights-of-way, and to otherwise comply with the terms of this article. Such permit shall not constitute a franchise. The city reserves the right to require telecommunications providers to obtain a franchise in the future to transact local business within the city.

(2) *Rights regarding takings claim.* Certain cable or telecommunications providers have initiated or supported legal proceedings in which they contend that federal law grants them the right to physically occupy the rights-of-way and other property of a municipality for the purpose of providing telecommunications service without compensating the municipality for the use or value of the property so occupied or the cost of acquiring and maintaining such property. Municipalities dispute such claim. The city believes that if such a claim were sustained it would, among other things, constitute an unlawful taking by the United States in violation of the Fifth Amendment to the United States Constitution. The legal issues involved in such disputes have not been finally decided. The city desires to act

on applications for permits granting access to its public rights-of-way at this time rather than wait for determination of these issues, provided this can be done without waiver or loss of any rights of the city or a permittee. Therefore, notwithstanding any other provision of this article, a permittee is not precluded by this article from seeking relief from the fee provisions of section 34-81 from any court or agency of competent jurisdiction. If a permittee seeks such relief, the city reserves the right to assert a takings claim, and to take all action it deems necessary in support of such action. Neither this article, nor the issuance or acceptance of a permit under this article, constitutes or will be claimed to constitute, a waiver or relinquishment of any rights or defenses of either the city or the permittee in connection with the disputed issues, and the acceptance of a permit constitutes an acknowledgment and agreement thereto by the permittee.

(3) *Option to obtain consent agreement.* The city finds that legislative, legal and regulatory issues in connection with use of the public rights-of-way by telecommunications providers and the resulting potential for litigation and delay are likely to have an adverse affect on the development of a healthy, competitive telecommunications infrastructure in the city. This would be detrimental to the city and its residents, as well as to the telecommunications providers. The issues affect, among other things, both the cost to telecommunications providers and compensation to the city for the maintenance and use of its public rights-of-way. In order to promote certainty, encourage competition and avoid litigation, the city will, at the request and sole option of an applicant or permittee, consider entering into a consent agreement for use of the public rights-of-way for the provision of telecommunications services on terms and conditions mutually acceptable to the city and the telecommunications provider. It is the city's intent that such an agreement would satisfy the requirement for a permit under this article, and would include, among other things, the permit fee; an extended term of up to 15 years; authorization to conduct a local business in the city pursuant to Mich. Const. art. VII, § 29; and a covenant to abide by the terms of the agreement as a compromise of disputed issues and uncertain outcomes, notwithstanding the resolution of these legislative, regulatory and legal requirements in the future. A permittee may request a consent agreement at any time.

(Ord. of 11-17-1998, § 2)

Sec. 34-78. 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:

Affiliate, affiliated means any entity controlling, controlled by or under common control with a permittee.

City council means the city council of the City of Ithaca or its designee. This article does not authorize delegation of any decision or function that is required by law to be made by the city council. In any case in which a hearing is held pursuant to this article, the city council may conduct the hearing or, in its sole discretion, may by resolution appoint a committee or subcommittee of the city council or a hearing officer to conduct the hearing and submit a proposal for a decision to it pursuant to procedures established by resolution.

Control, controlling and *controlled* mean effective control, by whatever means exercised, such as those described in the Report and Order and Further Notice of Proposed Rule Making in MM Docket 92-264, 8 FCC Rcd 6828 (1993) at paragraphs 22--28 (adopting broadcast transfer of control standards as then in effect).

Local exchange service means the provision of an access line and usage within a local calling area for the transmission of high quality two-way interactive switched voice or data communication.

Permit means a nonexclusive permit issued pursuant to this article for access to and ongoing use of public rights-of-way by telecommunications providers for wires, poles, pipes, conduits or other facilities designed or used to provide telecommunications services. This term does not include any other permits, licenses or approvals required by the city or other governmental entities.

Permittee means a telecommunications provider which has been issued a permit pursuant to this article.

Public rights-of-way means the public rights-of-way, easements, highways, streets and alleys within the city.

Telecommunications Act means Public Act No. 179 of 1991 (MCL 484.2101 et seq.).

Telecommunications provider means a person who provides one or more telecommunications services for compensation.

Telecommunications services means regulated and unregulated services offered to customers for the transmission of two-way interactive communication and associated usage. This term does not include one-way transmission to subscribers of video programming or other programming services and subscriber interaction for the selection of video programming or other programming services. A telecommunications service is not a public utility service.

Telecommunications system means facilities designed or used to provide telecommunications services.

Video programming means programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

(Ord. of 11-17-1998, § 3)

Cross references: Definitions generally, § 1-2.

Sec. 34-79. Permit.

(a) *Required.* No person shall use the public rights-of-way to provide telecommunications services without a permit issued pursuant to this article. For purposes of this article, use of the public rights-of-way includes the installation, construction, maintenance or repair of a telecommunications system within the public rights-of-way. Failure to comply with the permit requirements set forth in this section shall constitute a violation of this article. A person who violates the requirements of this section shall comply with all requirements of this article applicable to a permittee and shall pay the annual fee, plus late payment charges, as provided in section 34-81 for the time period in which the violator did not have a permit, plus the actual costs incurred by the city in enforcing this article against such person. Receipt of a permit under this article does not supersede a permittee's

obligation to obtain all other necessary permits or authorizations under any applicable city ordinance, resolution, regulation or policy.

(b) *Consent agreement.* If a telecommunications provider negotiates a consent agreement with the city under the provisions of section 34-77(3), and the city determines that the consent agreement substantially satisfies the obligations of a telecommunications provider under this article, giving due regard to any special circumstances involving the telecommunications provider, the consent agreement will be deemed to satisfy the requirement of a permit under this article and under the Telecommunications Act. When a consent agreement is no longer in effect, the telecommunications provider shall be required to comply with all terms and conditions of this article as amended from time to time.

(Ord. of 11-17-1998, § 4)

Sec. 34-80. Permit application procedures.

(a) *Form.* A telecommunications provider shall apply for a permit pursuant to this article. The application shall be made on an application form provided by the city. Three copies of the application shall be filed with the city clerk, and two additional copies each shall simultaneously be filed with the city manager and city attorney.

(b) *Required information.* In addition to other information required by the application form, or otherwise required by the city or this article, the permit application shall include, but not be limited to, the following information:

(1) The name and address of the applicant and each person exercising control over the applicant, and if the applicant or any person exercising control is not a natural person, each of its officers, directors and stockholders beneficially holding more than 25 percent of the outstanding voting shares, or the managers, general partners, limited partners and/or members holding an equity interest of more than 25 percent.

(2) Copies of the most recent financial statements of the applicant.

(3) A description of the applicant's existing and proposed telecommunications system and telecommunications services in the city, the types of existing and proposed wires and other facilities in the public rights-of-way, a general description of the applicant's existing and proposed telecommunications system and telecommunications services in the city and the type of existing and proposed wires and other facilities proposed to be placed in the public rights-of-way.

(4) A map setting forth the specific location of the facilities in the public rights-of-way. The map shall completely and accurately identify the location and dimensions of aboveground and underground facilities in sufficient detail to the satisfaction of the city manager or his designee.

(5) Proof of applicable federal and state authority, if needed, to operate a telecommunications system in the city.

(c) *Application fee.* The permit application shall be accompanied by a nonrefundable application fee in an amount established by ordinance or resolution of the city council.

The nonrefundable application fee shall be designed to reimburse the city for the costs of reviewing a permit application and issuance of a permit in accordance with the procedures set forth in this article.

(d) *Administrative completeness.* An permit application shall not be deemed to be filed for purposes of the 90-day permit application review period in section 251(3) of the Telecommunications Act (MCL 484.2251(3)) unless and until the application is determined by the city manager to be administratively complete. A determination whether the application is administratively complete shall be made by the city manager within 15 business days after the application is received by the city. If the city manager determines that the application is not administratively complete, he shall advise the applicant in writing of such determination and shall identify the items which must be furnished by the applicant for an administratively complete application.

(e) *Additional information.*

(1) The city manager may request an applicant for a permit under this article to submit such additional information which the city manager deems reasonably necessary or relevant to review the application. The applicant shall comply with all such requests in compliance with reasonable deadlines for such additional information established by the city manager. If the applicant fails to provide the additional information requested by the deadline established by the city manager, the 90-day period for acting on the application as set forth in subsection (f) of this section shall be extended by the number of days after the deadline that the information was provided to the city manager.

(2) A person who provides information to the city in connection with a permit application or any other matters under this subsection which contains an untrue statement of a material fact or omits a material fact necessary to make the information not misleading shall be in violation of this article, and shall be subject to all remedies for violation of this article including, but not limited to, denial of the requested action and permit revocation pursuant to section 34-88. Each day that a person fails to correct an untrue statement of a material fact or the omission of a material fact necessary to make the information not misleading shall constitute a separate violation of this article.

(f) *Approval or denial.* Within 75 days after the city managerdetermines that the application is administratively complete, subject to any adjustments for delays in providing additional information as provided for in subsection (e) of this section, the city council shall hold a public hearing on the application. Notice of the public hearing shall be published in a newspaper in general circulation not less than ten days before the public hearing. Notice of the public hearing shall also be mailed to the applicant not less than ten days before the public hearing. Any report or recommendation on the application obtained or prepared by the city manager shall be mailed to the applicant not less than ten days before the public hearing. The applicant and any other interested parties may appear in person, by agent or by letter at such hearing to submit comments on the application. Following the public hearing, the city council shall approve, approve with conditions or deny the application within 90 days after the city manager has determined that the application is administratively complete pursuant to subsection (d) of this section, subject to any adjustments for delays in providing additional information as provided in subsection (e) of this section. The city council shall not unreasonably deny an application for a permit. The failure of the city to strictly comply with the procedural

requirements of this section for the review of permit applications shall not invalidate the decision or proceedings of the city.

(g) *Conditions.* The city council may impose conditions on a permit to protect the public health, safety and welfare. Without limitation, such conditions may include the posting of a bond by the telecommunications provider in an amount which shall not exceed the reasonable cost to ensure that the public rights-of-way are returned to their original condition during and after the telecommunications provider's access and use. The city council may require a telecommunications provider to maintain a letter of credit, cash bond or other financial guarantee with a local financial institution in an amount proportionate to the size of such telecommunications provider's system, including approved expansions, if any, but not in excess of the reasonable cost to ensure that the public rights-of-way are returned to their original condition, which can be drawn upon by the city due to the telecommunications provider's failure to cure, to the reasonable satisfaction of the city manager or his designee, any violation of this article, or breach or default under a permit, after 30 days' notice.

(h) *Modification.* The city council may, in its discretion, grant a modification to a specific requirement set forth in sections 34-82, 34-83, 34-84 or 34-86 if the applicant requests such modification in its application for a permit, and if the applicant demonstrates that:

(1) There are circumstances which warrant a modification;

(2) The modification will not be detrimental to the public health, safety and welfare; and

(3) The modification will not impair the intent and purposes of this article and its several sections.

The application shall describe the applicant's request for a modification and the reasons for the request with specificity. A modification granted by the city council pursuant to this section shall expire upon the expiration of the permit or earlier, as determined by the city council. A modification shall modify only those requirements expressly set forth in the approval of the city council, and shall not modify any other provisions of this article. If a request for a modification is denied by the city council, the telecommunications provider shall comply with all requirements of this article without exception.

(i) *Waiver.* The city council shall grant a waiver of any requirement of this article, except section 34-83(a), (c), (f)--(h), if an applicant or permittee requests a waiver and the city council finds that:

(1) Unless waived, the requirement will prohibit or have the effect of prohibiting the ability of the applicant or permittee to provide a telecommunications service within the meaning of Section 253(a) of the Federal Telecommunications Act, 47 USC 253(a);

(2) The requirement is not within the scope of any state or local authority referenced in Section 253(c) of the Federal Telecommunications Act, 47 USC 253(c); and

(3) The requirement is not necessary to protect the public safety and welfare or safeguard the rights of consumers.

A request for a waiver may be included in an application for a permit. A request for a waiver shall include a detailed statement of the facts and circumstances forming the basis for the

request. If the request is made in connection with an application for a permit, the provisions of subsection (d)--(g) of this section shall apply to the request, except that submission of a request for a waiver shall constitute consent that the time periods provided in subsection (f) of this section for holding a public hearing and acting on an application are extended by 90 days. Subsections (a), (c) and (g) of this section shall apply to a waiver request that is not made in connection with a permit application, and the request may be denied for violation of or failure to comply with any of those provisions. Subsection (f) of this section shall also apply to such a request, with the exception of the 75- and 90-day time periods set forth in such section, but the city council may, by resolution, establish different or additional procedures for conducting the public hearing and acting on the request.

(Ord. of 11-17-1998, § 5)

Sec. 34-81. Annual permit fees.

(a) *Establishment.* In addition to the nonrefundable application fee as set forth in section 34-80(c), and any other fees for other permits or authorizations required by the city, a permittee under this article shall pay an annual fee in an amount established and modified from time to time by ordinance or resolution of the city council. The amount of the annual fee shall not exceed the fixed and variable costs to the city in maintaining the public rights-of-way used by a telecommunications provider, unless otherwise permitted by law. The annual fee shall be payable quarterly, as follows:

TABLE INSET:

First quarter (January 1--March 31)	-- April 30
Second quarter (April 1--June 30)	-- July 31
Third quarter (July 1--September 30)	-- October 31
Fourth quarter (October 1--December 31)	-- January 31

When a permit is issued during a calendar year, the annual fee shall be prorated for the balance of the calendar year. If a quarterly payment is not paid when due, the permittee shall pay a late payment charge of the greater of $100.00 or interest at the rate of one percent over the prime rate then charged by FirstBank, and computed monthly. A person who violates this article by failing to obtain a permit shall pay the annual fee, plus late payment charges, as required by this section, for the time period in which the violator did not have a permit, plus the actual costs of the city in enforcing this article against such person.

(b) *Records.* All records, including those of affiliates, which are reasonably necessary to verify the accuracy of annual fees paid by the permittee under subsection (a) of this section shall be made available by a permittee at a location within the city or within 20 miles of the city's boundaries. The city, by itself or in combination with other municipalities, reserves the right to audit a permittee or its affiliate to verify the accuracy of annual fees paid or to be paid to the city. Any additional amount due the city shall be paid within 30 days of submission of an invoice. If the additional amount due exceeds two percent of the total annual fee which the audit determines should have been paid for a calendar year, the permittee shall pay the city's costs in connection with the audit within 30 days of submission of an invoice.

(c) *Other payments.*

(1) The nonrefundable application fees and annual fees established pursuant to this

article shall be in addition to any tax, charge, fee or payment due, or to become due, to the city by a permittee under any city ordinance or the laws of the state.

(2) A person who provides information to the city in connection with any matter under this section which contains an untrue statement of a material fact, or omits a material fact necessary to make the information not misleading, shall be in violation of this article, and shall be subject to all remedies for violation of this article including, but not limited to, permit revocation pursuant to section 34-88. Each day that a person fails to correct an untrue statement of a material fact, or the omission of a material fact necessary to make the information not misleading, shall constitute a separate violation of this article.

(Ord. of 11-17-1998, § 6)

Sec. 34-82. Duration of permit; renewal.

A permit issued under this article shall remain in effect until June 30 following the ten-year anniversary from the date of the issuance of the permit, unless the permit expires pursuant to section 34-83(j), or the permit is revoked earlier pursuant to section 34-88. Applications for renewal of permits shall be filed in the same manner as original applications as set forth in section 34-81, and shall be filed with the city not less than 120 days before the expiration of the permit. The city expressly reserves all rights to approve, approve with conditions or deny applications for permit renewals pursuant to this article and to impose additional conditions on renewed permits.

(Ord. of 11-17-1998, § 7)

Sec. 34-83. Permit terms and requirements.

(a) *Nonexclusive; additional permits.* A permit under this article shall be nonexclusive. The city expressly reserves the right to approve, at any time, additional permits for access to and ongoing use of the public rights-of-way by telecommunications providers, and to enter into agreements and grant franchises for such access and use. The issuance of additional permits, entry into agreements or the grant of franchises shall not be deemed to amend, modify, revoke or terminate the terms and conditions of any permits previously issued to telecommunication providers.

(b) *Expansion requests.* A permit under this article approved by the city council shall authorize access to and ongoing use of the public rights-of-way described in the permit, subject to compliance with the conditions of the permit, the requirements of this article and any other applicable requirements of a city ordinance or applicable state and federal law. The permittee shall not use any public rights-of-way not expressly authorized by the permit. Any use of the public rights-of-way, including any installation, construction, maintenance or repair of a telecommunication system within the public rights-of-way, to provide telecommunications services shall be performed only as authorized by the permit. A permittee may, however, expand or modify its telecommunications system to public rights-of-ways not described in its permit by obtaining approval of an amended permit from the city. Such approval may be granted in writing by the city manager in response to a written request from the permittee for expansion or modification to specific portions of named public rights-of-way. The city council may establish, by resolution, a nonrefundable application fee for such a request. Within one week, the city manager

may grant, grant with conditions or deny such request. The city manager shall not unreasonably deny any request for an amended permit. A denial of any request may be appealed to the city council, which shall make the final decision on such request. Any expansion or modification into additional public rights-of-way shall be subject to all terms and conditions of the original permit and this article including, but not limited to, the application of the annual fee to the expanded or modified public rights-of-way used by the permittee.

(c) *Construction permit.* A permittee under this article shall not commence construction, excavation, street opening, tree trimming or maintenance of, upon, over, across or under the public rights-of-way in the city without first obtaining all necessary construction, excavation, street opening, tree trimming or other applicable permits as required under applicable city ordinances for construction, excavation, street opening, tree trimming or maintenance within the public rights-of-way.

(d) *Lease or use of facilities; overlashing.* A permittee under this article shall not lease, sublease, license or otherwise allow the use of wires, conduits, poles or facilities in the public rights-of-way by a person without securing from such person a representation that he has secured all necessary governmental approvals required to occupy space in the public right-of-way. A permittee shall not allow the property of a third party or nontelecommunications system wires or any other facilities to be overlashed, affixed or attached to any portion of a permittee's telecommunications system located in the public right-of-way, or allow other actions with a similar result without securing from such person a representation that all governmental approvals have been secured in order to occupy space in the public right-of-way.

(e) *As-built maps.*

(1) Without expense to the city, a permittee under this article shall provide the city with as-built maps, records and plans showing its telecommunications system, or portions thereof within the city, including those of affiliates used by the permittee, and maps and descriptive information of facilities of other persons used by the permittee. The city manager may waive part or all of this requirement if satisfactory records of the location of the telecommunications system were previously provided to the city. The as-built maps, records and plans shall be provided within 30 days of the completion of the telecommunications system and any extensions, additions or modifications to the telecommunications system. In addition, a permittee, without expense to the city, shall, upon 48 hours notice, give the city access to all as-built maps, records, plans and specifications showing its telecommunications system, or portions thereof, within the city. Upon request by the city, a permittee shall inform the city, as soon as possible, but no more than one business day after the request, of any changes from previously supplied maps, records or plans, and shall mark up maps provided by the city to show the location of its telecommunications system.

(2) A permittee shall have no recourse against the city for any loss, cost, expense or damage arising out of the failure of the city to have the authority to grant all, or any part of a permit or the authority to grant permission to use all or part of, the public rights-of-way. A permittee expressly acknowledges that upon accepting a permit, it did so relying on its own investigation and understanding of the power and authority of the city.

(f) *No inducement.* By acceptance of a permit under this article, a permittee acknowledges that it has not been induced to obtain the permit by any understanding, promise or other statement, whether verbal or written, by or on behalf of the city or a third person concerning any term or condition of a permit not expressed in this article.

(g) *Acceptance of terms and conditions.* A permittee under this article acknowledges by the acceptance of a permit that it has carefully read the terms and conditions of the permit, and does accept all of such terms and conditions.

(h) *No priority.* A permit under this article does not establish any priority of use of the public rights-of-way by a permittee over any present or future permittees or parties having agreements with the city or franchises for such use. In the event of any dispute as to the priority of use of the public rights-of-way, the first priority shall generally be to the public, the second priority shall be to the city, the third priority shall be to the state and its political subdivisions in the performance of their various functions, and thereafter as between permittees, other permit holders, parties having agreements with the city and franchisees, as determined by the city in the exercise of its powers, including the police power and other powers reserved to and conferred on it by the state.

(i) *Future use by city.* A permittee under this article acknowledges, by accepting a permit, that it obtains no rights to, or further use of, the public rights-of-way, other than those expressly granted in this article. Each permittee acknowledges and accepts as its own risk that the city may make use in the future of the public rights-of-way which a permittee is using or in which a permittee's telecommunications system is located in a manner inconsistent with the permittee's use of such public rights-of-way, and that in such event the permittee will not be entitled to compensation from the city.

(j) *Expiration of permit.* Unless the city grants an extension of a permit under this article, such permit shall expire one year from the date of issuance, unless prior to such time the permittee either:

(1) Commences construction, installation or operation of its telecommunications system within the public rights-of-way authorized by the permit and diligently pursues completion of construction or installation; or

(2) Commences use of the public rights-of-way to provide telecommunications services as authorized by the permit.

(Ord. of 11-17-1998, § 8)

Sec. 34-84. Use of public rights-of-way by permittee.

(a) *No burden on public rights-of-way.* A permittee under this article and its contractors, subcontractors and telecommunications system shall not unduly burden or interfere with the present or future use of any of the public rights-of-way within the city. A permittee shall erect and maintain its telecommunications system so as to cause minimum interference with the use of the public rights-of-way, and with the rights and reasonable convenience of property owners. The permittee's cables and wires shall be suspended or buried so as not to endanger or injure persons or property in the public rights-of-way. If the city, in its reasonable judgment, determines that any portion of the telecommunications system located in the public right-of-way constitutes an undue burden or interference, the permittee, at its sole cost and expense, shall modify its

telecommunications facilities or take such other actions as the city may determine are in the public interest to remove or alleviate the burden, and the permittee shall do so within a reasonable time period established by the city.

(b) *Restoration of property.* A permittee under this article, its contractors and subcontractors shall immediately restore, at the permittee's sole cost and expense, and in a manner approved by the city, any portion of the public rights-of-way that is in any way disturbed, damaged or injured by the construction, operation, maintenance or removal of the telecommunications system to as good or better condition than existed prior to the disturbance. If the permittee, its contractors or subcontractors fail to make such restoration within the time specified by the city, the city shall be entitled to complete the work and the permittee shall reimburse the city for the costs of such work, or the city may draw upon the letter of credit or bond posted by the permittee, at the city's sole option.

(c) *Easements.* Upon the request of the city, a telecommunications provider shall submit evidence of any easement or authorization to use private property for the construction or operation of its telecommunications system. Any easements over or under private property which necessary for the construction or operation of a telecommunications system shall be arranged for and obtained by the permittee. Any use or intrusion on private property without an easement or other instrument evidencing permission of the property owner to use such property shall constitute a trespass by the permittee and a violation of this article. Any easements over or under property owned by the city, other than the public rights-of-way, shall be separately negotiated with the city.

(d) *Tree trimming.* Subject to all applicable city ordinances, if any, a permittee under this article may trim trees upon and overhanging the public rights-of-way to prevent the branches of such trees from coming into contact with its telecommunications system. The permittee shall minimize the trimming of trees to trimming only those trees that are essential to maintain the integrity of its telecommunications system. No trimming shall be done in the public rights-of-way without previously informing the city. The permittee will use reasonable efforts to notify all affected property owners in advance of trimming trees on or adjacent to their properties.

(e) *Pavement cut coordination; additional fees.*

(1) A permittee under this article shall coordinate all construction work in the public rights-of-way with the city's program for street construction, rebuilding, resurfacing and repair, which shall be collectively known as "street resurfacing." A permittee shall meet with the official of the city primarily responsible for the public rights-of-way at least twice per year in order to comply with the requirement of this subsection.

(2) The goals of such coordination shall be to require a permittee to conduct all work in the public rights-of-way in conjunction with, or immediately prior to, any street resurfacing planned by the city, and to prevent the public rights-of-way from being disturbed by a permittee for a period of years after such street resurfacing.

(3) In addition to any other fees or payments required by this article, a permittee shall pay to the city the sum set from time to time by city council resolution or ordinance for each foot cut into or excavation of any public rights-of-way, or portion thereof, which was subject to street resurfacing within 18 months prior to such cut or excavation. This fee is in addition to, and not in lieu of, the obligation

to restore the public rights-of-way, and is in addition to all other fees required by this article.

(f) *Marking.* A permittee under this article shall mark any installations of its telecommunications system which occur after the effective date of the ordinance from which this article is derived, as follows:

(1) Aerial portions of its telecommunications system shall be marked with a marker on its lines on alternate poles which shall state the permittee's name and provide a toll-free telephone number to call for assistance.

(2) Direct buried underground portions of its telecommunications system shall have:

a. A conducting wire placed in the ground at least several inches above the permittee's cable, if such cable is nonconductive;

b. At least several inches above the conducting wire, a continuous colored tape with the permittee's name and toll-free telephone number and a statement that there is buried cable beneath; and

c. Stakes or other appropriate aboveground markers with the permittee's name and toll-free telephone number indicating that there is buried telephone cable below.

(3) Portions of its telecommunications system located in conduit, including facilities of others used by a permittee, shall be marked at each manhole with the permittee's name and toll-free telephone number to call for assistance.

(g) *Compliance with laws.* A permittee under this article shall comply with all laws, statutes, ordinances, rules and regulations regarding the installation, construction, ownership and use of its telecommunications system, whether federal, state or local, now in force or which may be promulgated, including, but not limited to, any ordinance requiring the installation of additional conduit when a permittee installs underground conduit for its telecommunications system. Before any installation is commenced, the permittee shall secure all necessary permits, licenses and approvals from all appropriate departments, agencies, boards or councils of the city, or other governmental entities as may be required by law, including, but not limited to, all utility line and highway permits. A permittee shall comply in all respects with applicable codes and industry standards, including, but not limited to, the latest edition of the National Electrical Safety Code and the latest edition of the National Electrical Code. A permittee shall comply with all zoning and land use ordinances and historic preservation ordinances.

(h) *Street vacating.* If the city vacates or consents to the vacating of public rights-of-way within its jurisdiction, and such vacating necessitates the removal and relocation of a permittee's facilities in the vacated right-of-way, the permittee shall, as a condition of the permit, consent to the vacating and move its facilities, at its sole cost and expense, when ordered to do so by the city or a court of competent jurisdiction. The permittee shall relocate its facilities to such alternate route as the city, acting reasonably and in good faith, shall designate.

(i) *Relocation.* A permittee under this article may request to relocate its facilities above, below or within a public way. The city manager may grant, grant with conditions or deny such request. If the city requests a permittee to relocate, protect, support, disconnect, place underground or remove its facilities because of street or utility work, or other public

projects, the permittee shall relocate, protect, support, disconnect, place underground or remove its facilities, at its sole cost and expense, to such alternate route as the city, acting reasonably and in good faith, shall designate. The work shall be completed within the time period designated by the city.

(j) *Public emergency.* The city shall have the right to sever, disrupt, dig up or otherwise destroy facilities of a permittee under this article, without any prior notice, if such action is deemed necessary by the mayor, city manager, police chief, fire chief or their designees because of a public emergency. "Public emergency" means any condition which, in the opinion of an officer named in this subsection, poses an immediate threat to life, health or property, caused by any natural or manmade disaster, including, but not limited to, storms, floods, fires, accidents, explosions, major water main breaks, hazardous material spills, etc. The permittee shall be responsible for repair, at its sole cost and expense, of any of its facilities damaged pursuant to any such action taken by the city.

(k) *MISS DIG system.* If eligible to join, a permittee under this article shall subscribe to and be a member of MISS DIG, the association of utilities formed pursuant to Public Act No. 53 of 1974 (MCL 460.701 et seq.), and shall conduct its business in conformance with the statutory provisions and regulations promulgated under such act.

(l) *Use of existing facilities; undergrounding.* A permittee under this article shall utilize existing poles, conduits and other facilities, whenever practicable, and shall not construct or install any new, different or additional poles or other facilities unless expressly authorized by the permit. Where utility wiring is located underground, either at the time of initial construction or subsequent thereto, a permittee's telecommunications system shall also be located underground, unless otherwise expressly authorized by the permit. All undergrounding shall be at the sole cost and expense of the permittee.

(m) *Underground relocation.* If a permittee under this article has its facilities on poles of a municipal electric utility or any other public utility company, and such utility relocates its facilities underground, the permittee shall relocate its facilities underground in the same location at the permittee's sole cost and expense.

(n) *Pole/conduit/trench license agreement; notification.* If a permittee under this article forfeits or otherwise loses its rights under a pole/conduit/trench license agreement with any entity, the permittee shall notify the city manager of such agreement in writing within 30 days.

(o) *Identification.* All personnel of a permittee under this article and 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. A permittee shall account for all identification cards at all times. Every service vehicle of a permittee and its contractors or subcontractors shall be clearly identified as such to the public with the permittee's name.

(p) *9-1-1 emergency service.* As a condition of a permit under this article, a permittee providing local exchange service shall arrange to have 9-1-1 service provided within the city in accordance with the provisions of the applicable 9-1-1 service plan and the rules and orders of the state public service council.

(Ord. of 11-17-1998, § 9)

Sec. 34-85. Liability; indemnification.

(a) The city and its officers, agents, elected or appointed officials,employees, departments, boards and councils shall not be liable to a permittee under this article or its affiliates or customers for any interference with or disruption in the operation of a permittee's telecommunications system or the provision of telecommunications services, or for any damages arising out of a permittee's use of the public rights-of-way.

(b) As a condition of a permit under this article, a permittee shall defend, indemnify, protect and hold harmless the city, its officers, agents, employees, elected and appointed officials, departments, boards and councils from any and all claims, losses, liabilities, causes of action, demands, judgments, decrees, proceedings and expenses of any nature, including, but not limited to, attorneys' fees, arising out of or resulting from the acts or omissions of the permittee, its officers, agents, employees, contractors, successors or assigns, but only to the extent of the fault of the permittee, its officers, agents, employees, contractors, successors or assigns.

(Ord. of 11-17-1998, § 10)

Sec. 34-86. Insurance.

(a) A permittee under this article shall obtain and maintain in full force and effect for the duration of its permit the following insurance covering all insurable risks associated with its ownership or use of its telecommunications system:

(1) A comprehensive general liability insurance policy, including completed operations liability, independent contractors' liability, contractual liability coverage and coverage for property damage from perils of explosion, collapse or damage to underground utilities, commonly known as XCU coverage, in an amount as adopted by resolution of the city council from time to time.

(2) An automobile liability insurance policy covering vehicles used in connection with its activities under its permit in an amount as adopted by resolution of the city council from time to time.

(3) Workers' compensation and employer's liability insurance with statutory limits.

(b) The city shall be named as an additional insured in all applicable insurance policies under this section. All insurance policies shall provide that such policies shall not be canceled or modified unless 30 days prior written notice is given to the city. A permittee under this article shall provide the city with a certificate of insurance evidencing such coverage as a condition of issuance of the permit and shall maintain on file with the city a current certificate of insurance. All insurance shall be issued by insurance carriers licensed to do business by the state, or by surplus line carriers on the state insurance bureau's approved list of companies qualified to do business in the state. All insurance and surplus line carriers shall be rated A+ or better by A.M. Best Company or another rating agency approved by the city.

(c) If the insurance policies required by this section are written with deductibles in excess of $50,000.00, the deductibles shall be approved in advance by the city. A permittee under this article shall agree to indemnify and save harmless the city from and against the

payment of any deductible and any premium on an insurance policy required to be furnished by this section.

(d) A permittee under this article shall require that its contractors and subcontractors working in public rights-of-way carry in full force and effect workers' compensation and employer liability, comprehensive general liability and automobile liability insurance coverages of the types which the permittee is required to obtain under subsection (a) of this section, with the appropriate limits of coverage.

(e) The permittee's insurance coverage shall be primary insurance with respect to the city, its officers, agents, employees, elected and appointed officials, departments, boards and councils. Any insurance or self-insurance maintained by the city, its officers, agents, employees, elected and appointed officials, departments, boards and councils shall be in excess of the permittee's insurance, and shall not contribute to it.

(Ord. of 11-17-1998, § 11)

Sec. 34-87. No assignment or transfer of control without city consent.

A permittee under this article shall not assign or transfer a permit, or any of its rights under a permit, in whole or in part, voluntarily, involuntarily or by operation of law, including by merger or consolidation or by other means, without the prior written consent of the city, which consent shall not be unreasonably withheld. The permittee shall reimburse the city for reasonable, actual costs, including attorneys fees, incurred in the review of a request by the permittee for consent to an assignment or transfer of the permit, or a transfer of control of a permittee or its business. Notwithstanding anything in this section to the contrary, the permittee may grant a security interest in its rights under a permit in favor of a third party without first obtaining the consent of the city. If a permit, or any rights under a permit, is assigned or transferred, in whole or in part, with the approval of the city, the terms and conditions of the permit and this article shall be binding upon the successors and assigns of the permittee. Notwithstanding the provisions of this section, if the transfer of a permit is to an affiliate owned or controlled by the permittee, then no such approval shall be required, but the permittee shall provide written notice of such transfer to the city.

(Ord. of 11-17-1998, § 12)

Sec. 34-88. Revocation.

(a) In addition to all other rights and powers reserved or pertaining to the city, the city reserves, as an additional separate and distinct remedy, the right to revoke a permit under this article and all rights and privileges of a permittee in any of the following events or for any of the following reasons:

(1) A permittee fails, after 30 days' prior written notice, to comply with any of the provisions of the permit or this article, except section 34-80(f);

(2) A permittee becomes insolvent, unable or unwilling to pay its debts, or is adjudged bankrupt;

(3) All or part of a permittee's facilities are sold under an instrument to secure a debt and are not redeemed by the permittee within 90 days from such sale;

(4) A permittee violates section 34-80(e), or otherwise attempts to or does practice

any fraud or deceit in its conduct or relations with the city;

(5) The city condemns all of the property of a permittee within the city by the lawful exercise of eminent domain;

(6) A permittee abandons its telecommunications system or fails to seek renewal of its permit;

(7) A permittee fails to pay any fines due for violations of this article; or

(8) A permittee fails to pay any civil fines imposed by a court of competent jurisdiction, such as pursuant to an ordinance providing for civil infractions.

(b) No revocation of a permit under this article, except for reason of condemnation, shall be effective unless the city council shall have adopted a resolution setting forth the reason for the revocation and the effective date, which resolution shall not be adopted without 30 days prior notice to the permittee and a hearing at which the permittee shall receive rudimentary due process.

(Ord. of 11-17-1998, § 13)

Sec. 34-89. Removal.

(a) *Underground.* Upon revocation of a permit under this article, or upon expiration of a permit if the permit is not renewed, the permittee may remove any underground cable from the public rights-of-way which has been installed in such a manner that it can be removed without trenching or other opening of the streets along the extension of cable to be removed. Except as otherwise provided, the permittee shall not remove any underground cable or conduit which requires trenching or other opening of the public rights-of-way along the extension of the cable to be removed. The permittee shall remove, at its sole cost and expense, any underground cable or conduit which is ordered to be removed by the city based upon a determination, in the sole discretion of the city, that removal is required in order to eliminate or prevent a hazardous condition or promote future utilization of the streets for public purposes. Any order by the city to remove any cable or conduit shall be mailed to the permittee not later than 30 calendar days following the date of revocation or expiration of the permit. A permittee shall file written notice with the city clerk not later than 30 calendar days following the date of expiration or termination of the permit of its intention to remove any cable and a schedule for removal by location. The schedule and timing of removal shall be subject to approval and regulation by the city. Removal shall be completed no later than 12 months following the date of revocation or expiration of the permit. Underground cable and conduit in the public rights-of-way which is not removed within such 12-month period shall be deemed abandoned and, at the option of the city, title shall be vested in the city. For purposes of this subsection, the term "cable" means any wire, coaxial cable, fiber optic cable, feed wire or pull wire.

(b) *Aboveground.* Upon revocation of a permit under this article, or upon expiration of a permit if the permit is not renewed, a permittee, at its sole cost and expense, shall, unless relieved of the obligation by the city, remove from the public rights-of-way, all aboveground elements of its telecommunications system, including, but not limited to, poles, pedestal mounted terminal boxes and lines attached to or suspended from poles.

(c) *Permits; restoration; completion.* A permittee under this article shall apply for and obtain

such encroachment permits, licenses, authorizations or other approvals and pay such fees and deposit such security as required by applicable laws or ordinances of the city. The permittee shall conduct and complete the work of removal of the elements of its telecommunications system in compliance with all such applicable laws or ordinances, and shall restore the public rights-of-way to the same condition they were in before the work of removal commenced.

(Ord. of 11-17-1998, § 14)

Sec. 34-90. Other provisions not waived.

(a) Nothing in this article shall be construed as a waiver of any ordinances, Charter provisions, codes or regulations of the city, or the city's right to require a permittee under this article or persons utilizing the telecommunications system or telecommunications services to secure appropriate permits or authorization for such use.

(b) The city fully reserves its police powers to ensure and protect the public health, safety and welfare and its authority and power to amend this article at any time. The terms and conditions of any permit under this article shall be subject to compliance with any future amendments of this article. The city fully reserves its right to exercise the reasonable control of the public rights-of-way pursuant to Mich. Const. art. VII, § 29.

(c) Nothing in this article or any permit under this article shall limit any right the city may have to acquire, by eminent domain, any property of a telecommunications provider.

(d) Nothing in this article or any permit under this article shall limit the authority of the city to impose a tax, fee or other assessment of any kind on any person. A telecommunications provider shall pay all fees necessary to obtain all federal, state and local licenses, permits and authorizations required for the construction, installation, maintenance or operation of its telecommunications system within the public rights-of-way.

(Ord. of 11-17-1998, § 15)

Sec. 34-91. Severability.

The various parts, sections and clauses of this article are declared to be severable. If any part, sentence, paragraph, section or clause of this article is adjudged to be unconstitutional or invalid by a court or administrative agency of competent jurisdiction, the remainder of the article shall not be affected by such judgment, except as otherwise provided in this section. If a court or administrative agency of competent jurisdiction determines, by a final, nonappealable order or an order from which no appeal has been taken within the time allowed, that any right or obligation of a permittee under this article is invalid, unconstitutional or unenforceable, then the permit shall become revocable and subject to termination without cause by either the city or the permittee upon 60 days' written notice. In the event of termination of a permit under this section by the city, the procedures for revocation set forth in section 34-88 shall be followed. In the event of termination of a permit under this section by either the city or the permittee, the provisions of section 34-89 for cable removal shall apply.

(Ord. of 11-17-1998, § 16)

Secs. 34-92--34-120. Reserved.

ARTICLE IV. PUBLIC RIGHTS-OF-WAY*

***Note:** This article shall take effect on December 22, 2003.

Sec. 34-121. Purpose.

The purposes of this article are to regulate access to and ongoing use of public rights-of-way by telecommunications providers for their telecommunications facilities while protecting the public health, safety, and welfare and exercising reasonable control of the public rights-of-way in compliance with the Metropolitan Extension Telecommunications Rights-of-Way Oversight Act (Act No. 48 of the Public Acts 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. of 12-2-2003)

Sec. 34-122. Conflict.

Nothing in this article shall be construed in such a manner as to conflict with the Act or other applicable law.

(Ord. of 12-2-2003)

Sec. 34-123. Terms defined.

The terms used in this article shall have the following meanings:

Act means the Metropolitan Extension Telecommunications Rights-of-Way Oversight Act (Act No. 48 of the Public Acts of 2002), as amended from time to time.

City means the City of Ithaca.

City council means the City Council of the City of Ithaca or its designee. This section does not authorize delegation of any decision or function that is required by law to be made by the city council.

City manager means the city manager or his or her designee.

Permit means a non-exclusive permit issued pursuant to the Act and this article to a telecommunications provider to use the public rights-of-way in the city for its telecommunications facilities.

All other terms used in this article 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.

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, 1991 PA 179, 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:

(a) A cable television operator that provides a telecommunications service.

(b) Except as otherwise provided by the Act, a person who owns telecommunication facilities located within a public right-of-way.

(c) A person providing broadband internet transport access service.

(Ord. of 12-2-2003)

Sec. 34-124. 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 article.

(b) *Application.* Telecommunications providers shall apply for a permit on an application form approved by the MPSC in accordance with Section 6(1) of the Act. 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 copies of the application and distribute a copy to city council. 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, 1976 PA

442, 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, 1991 PA 179, MCL 484.2251 and authorizations or permits issued by the city to telecommunications providers prior to the 1995 enactment of Section 251 of the Michigan Telecommunications Act but after 1985 shall satisfy the permit requirements of this article.

(g) *Existing providers.* Pursuant to Section 5(3) of the Act, 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, 1991 PA 179, MCL 484.2251, shall submit to the city an application for a permit in accordance with the requirements of this ordinance. 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 (d) 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. of 12-2-2003)

Sec. 34-125. 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 telecommunications provider files an application for a permit under section 34-124(b) of this article 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.

(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. of 12-2-2003)

Sec. 34-126. 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 under chapter 34 of 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. of 12-2-2003)

Sec. 34-127. 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 article does not give a telecommunications provider a right to use conduit or utility poles.

(Ord. of 12-2-2003)

Sec. 34-128. 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. of 12-2-2003)

Sec. 34-129. 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. of 12-2-2003)

Sec. 34-130. Establishment and payment of maintenance fee.

In addition to the non-refundable application fee paid to the city set forth in subsection 34-124(d) above, 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. of 12-2-2003)

Sec. 34-131. 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. of 12-2-2003)

Sec. 34-132. 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 34-131 above shall be void from the date the modification was made.

(Ord. of 12-2-2003)

Sec. 34-133. 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. Depositing the amounts received into the major street fund and/or local street fund, maintained by the city under Act No. 51 of the Public Acts of 1951, would help ensure compliance with this requirement of the Act.

(Ord. of 12-2-2003)

Sec. 34-134. 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. of 12-2-2003)

Sec. 34-135. 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. of 12-2-2003)

Sec. 34-136. Existing rights.

Pursuant to Section 4(2) of the Act, except as expressly provided herein with respect to fees, this ordinance 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. of 12-2-2003)

Sec. 34-137. 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 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:

(a) Exempting certain route maps from the Freedom of Information Act, 1976 PA 442, MCL 15.231 to 15.246, as provided in section 34-124(c) of this article;

(b) Allowing certain previously issued permits to satisfy the permit requirements hereof, in accordance with section 34-124(f) of this article;

(c) 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 34-124(g) of this article;

(d) Approving or denying an application for a permit within 45 days from the date a telecommunications provider files an application for a permit for access to and usage of a public right-of-way within the city, in accordance with section 34-125(a) of this article;

(e) Notifying the MPSC when the city has granted or denied a permit, in accordance with section 34-125(a) of this article;

(f) Not unreasonably denying an application for a permit, in accordance with section 34-125(a) of this article;

(g) Issuing a permit in the form approved by the MPSC, with or without additional or different permit terms, as provided in section 34-125(b) of this article;

(h) Limiting the conditions imposed on the issuance of a permit to the telecommunications provider's access and usage of the public right-of-way, in accordance with section 34-125(c) of this article;

(i) Not requiring a bond of a telecommunications provider which exceeds the reasonable cost to ensure that the public right-of-way is returned to its original condition during and after the telecommunication provider's access and use, in accordance with section 34-125(d) of this article;

(j) Not charging any telecommunications providers any additional fees for construction or engineering permits, in accordance with section 34-126 of this article;

(k) Providing each telecommunications provider affected by the city's right-of-way fees with a copy of this article, in accordance with section 34-131 of this article;

(l) Submitting an annual report to the authority, in accordance with section 34-134 of this article; and

(m) Not holding a cable television operator in default for a failure to pay certain franchise fees, in accordance with section 34-135 of this article.

(Ord. of 12-2-2003)

Sec. 34-138. 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. of 12-2-2003)

Sec. 34-139. Severability.

The various parts, sentences, paragraphs, sections, and clauses of this article are hereby declared to be severable. If any part, sentence, paragraph, section, or clause of this article is adjudged unconstitutional or invalid by a court or administrative agency of competent jurisdiction, the unconstitutionality or invalidity shall not affect the constitutionality or validity of any remaining provisions of this article.

(Ord. of 12-2-2003)

Sec. 34-140. 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 article as provided by the City Code.

(Ord. of 12-2-2003)

Sec. 34-141. Municipal civil infraction.

A person who violates any provision of this article or the terms or conditions of a permit is responsible for a municipal civil infraction, and shall be subject to the Code of Ordinances. Nothing in this section shall be construed to limit the remedies available to the city in the event of a violation by a person of this article or a permit.

(Ord. of 12-2-2003)

Chapter 35 RESERVED

Chapter 36 TRAFFIC AND VEHICLES*

***Cross references:** Traffic regulations in cemeteries, § 10-6; offenses, ch. 22; parking vehicles in parks, § 24-35; streets, sidewalks and other public places, ch. 32.

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. 36-1. Michigan Vehicle Code adopted.

The Michigan Vehicle Code, Public Act No. 300 of 1949 (MCL 257.1 et seq.) is adopted by reference.

Sec. 36-2. Uniform Traffic Code adopted.

The Uniform Traffic Code for cities, townships and villages promulgated by the commissioner of state police, and published in accordance with Public Act No. 62 of 1956 (MCL 257.951 et seq.) is adopted by reference.

Sec. 36-3. Resolution of conflicts.

(a) In the event of a conflict between the Michigan Vehicle Code as adopted in section 36-1 and the Uniform Traffic Code as adopted in section 36-2, the Michigan Vehicle Code shall prevail.

(b) In the event of a conflict between the Michigan Vehicle Code adopted in section 36-1 and this Code or any ordinance, the Michigan Vehicle Code shall prevail.

(c) In the event of a conflict between the Uniform Traffic Code as adopted in section 36-2

and this Code or any ordinance, this Code or the ordinance shall prevail.

Sec. 36-4. Excessive noise, smoke, obnoxious gases and vapors.

No person in charge or control of any vehicle shall make with such vehicle or any device connected therewith any noise so excessive as to annoy the public or unnecessarily race the motor while running idle or open the muffler of any vehicle or permit such vehicle or any device thereon to emit an unnecessary quantity of smoke, obnoxious gases, or vapors.

Secs. 36-5--36-35. Reserved.

ARTICLE II. STOPPING, STANDING AND PARKING

DIVISION 1. GENERALLY

Sec. 36-36. Hours parking prohibited.

No person shall park a vehicle upon any street in the city between the hours of 2:00 a.m. and 5:00 a.m.

(Code 1968, § 4-806)

Secs. 36-37--36-55. Reserved.

DIVISION 2. PARKING VIOLATIONS BUREAU

Sec. 36-56. Established.

Pursuant to the provisions of Public Act No. 154 of 1968 (MCL 600.8395), a parking violations bureau, for the purpose of handling alleged parking violations within the city, is established. The parking violations bureau shall be under the supervision and control of the city clerk.

(Code 1968, § 4-401)

Sec. 36-57. Location; administrator; rules and regulations.

Subject to the approval of the city council, the city clerk shall establish a convenient location for the parking violations bureau, appoint a qualified city employee to administer the bureau and adopt rules and regulations for its operation.

(Code 1968, § 4-402)

Sec. 36-58. Disposition of violations.

(a) A violation not scheduled in section 36-59 shall not be disposed of by the parking violations bureau. The fact that a particular violation is scheduled shall not entitle the alleged violator to disposition of the violation at the bureau, and the person in charge of

the bureau may refuse to dispose of any such violation.

(b) No violation may be disposed of at the parking violations bureau, except at the specific request of the alleged violator. No penalty for any violation shall be accepted from any person who denies having committed the offense, and in no case shall the person in charge of the bureau make any determination, or attempt to make any determination, of the truth or falsity of any fact or matter relating to such violation. No person shall be required to dispose of a parking violation at the bureau, and all persons shall be entitled to have any such violation processed before a court having jurisdiction, if they so desire, and shall not be prejudiced thereby.

(Code 1968, §§ 4-403, 4-404)

Sec. 36-59. Violations; penalties.

The penalties set forth in this section shall be paid for the following offenses within the city:

TABLE INSET:

Offense	Penalty

(1) Parking where official signs prohibit stopping and parking . . . $5.00

(2) Parking too far from the curb . . . 2.00

(3) Parking on the wrong side of a one-way street . . . 2.00

(4) Disobeying an angle parking sign . . . 2.00

(5) Obstructing traffic . . . 5.00

TABLE INSET:

Offense	Penalty

(6) Parking overnight during a prohibited period . . . 3.00

(7) Prohibited parking:

a. On a sidewalk . . . 5.00

b. In front of a public or private driveway . . . 5.00

c. Within an intersection . . . 5.00

d. Within 15 feet of a fire hydrant . . . 5.00

e. On a crosswalk . . . 5.00

f. Within 20 feet of a crosswalk . . . 5.00

g. Within 30 feet upon approach to a flashing beacon, stop sign, yield sign or traffic control signal on the side of a street . . . 5.00

h. Between a safety zone and the adjacent curb . . . 3.00

i. Within 50 feet of the nearest rail of a railroad crossing . . . 2.00

j. Within 20 feet of the driveway entrance to a fire station . . . 5.00

k. Upon any bridge . . . 5.00

l. Within 200 feet of an accident in which a police officer is in attendance . . . 3.00

m. In an alley, except where authorized . . . 5.00

n. On private property without the owner's consent . . . 5.00

o. Parking in a loading zone . . . 5.00

(Code 1968, § 4-405)

Chapter 37 RESERVED

Chapter 38 UTILITIES*

***Charter references:** Utility franchises and municipal ownership, ch. XIII.

Cross references: Administration, ch. 2; buildings and building regulations, ch. 8; community development, ch. 12; environment, ch. 14; land divisions and subdivisions, ch. 18; procedure for utility service, § 18-106; manufactured homes and trailers, ch. 20; electrical distribution and telephone systems, § 20-39; sanitary regulations in parks, § 24-33; solid waste, ch. 28; streets, sidewalks and other public places, ch. 32; telecommunications, ch. 34.

State law references: Ownership and operation of water supply or sewage disposal facility by city, Mich. Const. art. 7, § 24; local authority to provide and regulate sewer and water service, MCL 324.4301 et seq.; water and sewer authorities, MCL 124.281 et seq.

ARTICLE I. IN GENERAL

Secs. 38-1--38-30. Reserved.

ARTICLE II. WATER*

***Cross references:** Water supply in mobile home parks, § 20-37.

Sec. 38-31. Administration.

The city manager shall act as supervisor of the operations of the city water department.

He or his designee shall have charge of the maintenance and operation of the water supply, pumping equipment and meters. The city treasurer shall be responsible for the accounting and billing of water bills. The amount of revenue shall be accounted for in a manner satisfactory to the city council and shall be collected by the city treasurer. The city treasurer shall prepare and present a monthly financial statement of the receipt and expenditures of the water department to the city council. The city treasurer shall deposit water revenues in the manner approved for other city deposits, but shall keep water revenues in a separate and distinct account.

(Code 1968, § 3-501)

Cross references: Administration, ch. 2.

Sec. 38-32. Water mains.

The water mains of the city shall be under the exclusive control of the city council, and no person other than the agents or employees of the water department shall tap, change, obstruct, interfere or in any way disturb the system of water mains without prior approval from the city.

(Code 1968, § 3-502)

Sec. 38-33. Water main extensions.

Water main extensions shall be made in accordance with one of the following plans:

(1) *Payment of entire cost in advance.* Any one or more property owners may request the city council to determine the feasibility and the estimated cost of the construction of a proposed water main extension to serve such person's premises. If the city council shall approve the proposed extension and determine the estimated construction costs, such property owners may deposit with the city treasurer a sum equal to such estimated cost, and the city council shall then proceed with the construction of the water main. Any surplus in the deposit amount over and above the construction costs shall be refunded to the owner or his agent. Should the construction cost exceed the deposit amount, the owner shall pay the excess amount, and no water taps shall be installed or water service rendered from the extension until the cost is paid in full.

(2) *Construction by owner.* In undedicated streets and new subdivisions, the city council may permit the owner to arrange for the laying of water main extensions by private construction; however, the work shall be under the supervision of the city manager or his designee. In such case, the city council shall require a deposit in the sum deemed adequate by the city council as a guarantee against defective workmanship or materials. Each deposit, less any sums expended by the water department for repair or replacement of defective work or materials, shall be refunded one year after the water main extension has been placed in service. No other refund of a payment shall be made. In the construction of any such extension, the contractor shall use only duly inspected pipes, specials, valves, etc., which are obtained from the water department upon payment of the cost of such supplies. The city may approve supplies to be purchased by a contractor performing work for the city.

(3) *Fifty percent petition.* In the case of existing dedicated streets, the city council

shall be authorized to construct water main extensions, where practical, upon application of the owners of 50 percent of the abutting foot frontage to be served by the proposed extension, accompanied by the payment of a charge per lineal abutting front foot of the property owned by the petitioners. When a water main extension has been constructed in accordance with this plan, which shall be known as Plan 3, water tap connections to such extension shall be permitted only to serve premises for which the front foot charge was collected at the time of filing the petition, provided that the owners of other property may be permitted to make connections upon payment of sums per foot for the abutting premises owned by them. No part of the payment made in accordance with this plan shall be refunded in any case.

(4) *Construction without petition.* Whenever the city council shall determine that it would be to the best interests of the water distribution system to construct a water main extension connecting two or more existing water mains, it shall construct such extension without the filing of a petition therefor or the making of any advance payment or deposit. After the completion of any such connecting water main extension, the city council shall cause all premises abutting the street right-of-way in which such connecting extension is laid to be billed at a rate per front foot of their abutting property. No connecting tap shall be permitted to be made in any such extension until and unless the abutting front foot charge as provided in this subsection shall have been paid in full.

(5) *Construction outside the city.* The entire cost of all mains constructed outside the city limits shall be defrayed by the property owners. The size, location and methods of construction shall be determined by the city manager. If constructed by the city, advance payment must be made before the work will begin. If the construction is done by the owners or their agents, plans and specifications will be furnished by the water department. All construction not performed by the city shall be under the city's supervision and inspection, and the cost of supervision and inspection shall be defrayed by the property owners.

In addition to the financing alternatives set forth in this section, the city is willing to consider other mechanisms on a case-by-case basis.

(Code 1968, § 3-503)

Sec. 38-34. Property owners not to be relieved from payment.

No water connections to a water main extension shall be undertaken by the city under plan 3 until the advance payments or deposits required by such section shall have been paid in full to the city treasurer. If, in any case, by reason of inadvertence or oversight, construction shall have been initiated or completed without compliance with advance payment requirements, such inadvertence or oversight shall not relieve the benefited property owner from the obligation to pay the amount due. In such cases, no water tap connection shall be made or water service rendered, unless and until the required payment or deposits are made in full.

(Code 1968, § 3-504)

Sec. 38-35. Size of water main.

The city shall determine the size and location of any proposed water main, which size

shall not be less than six inches, and shall bear all costs exceeding the front foot charge made against the abutting property benefited by the construction of such water main.

(Code 1968, § 3-505)

Sec. 38-36. Service pipe specifications.

(a) Service pipes on public or private property shall be laid on solid ground not less than four feet below the established grade of the street. Service pipe laid in the same trench with a sewer shall be at least 18 inches distant from the sewer horizontally, and if the sewer is laid at a greater depth, the service pipe shall be shelved into a solid bottom.

(b) From the water mains to the water meter all service pipes shall be of copper, or other materials of a like nature approved by the AWWA, not less than three-fourths-inch inside diameter, approved by the city manager. Service cocks shall be a three-fourths-inch, extra heavy type, placed 12 inches from the street side of the sidewalk. The stop box shall be set so that the cover is flush with the grade, and shall be set on a brick or concrete foundation to prevent settlement.

(c) A separate stop and cock shall be placed on the service pipe just inside the building wall on the influent side of the water meter. In addition, a stop and cock shall be placed on the effluent side of the water meter. Such stops shall be equal in working quality to the service cock and function in the same nature as a gate valve.

(d) The corporation cock, the service pipe from the main to and including the service cock, and the stop box will be provided in place and maintained by the water department under the fee for a water permit as provided in this article. The service pipe from the service cock to the building on private property shall be installed and maintained by the owner. The owner shall keep the stop box free from dirt, stones or other substances that will prevent access to the service cock.

(e) Property owners or contractors shall not interfere in any way with service pipes installed by the water department, and shall not be permitted to turn water on or off at the service cock, except for testing purposes, in which case the service cock shall be left in the same condition and position as it was found. Any contractor or owner called upon to shut off water and drain pipes in any premises shall do so inside the building only.

(Code 1968, § 3-506)

Sec. 38-37. Permit required.

Before any connection shall be made to a water main, application for a service connection permit must be made in writing by the owner of the premises to be served or his authorized representative at the office of the city clerk. Such application shall be made on forms provided by the city clerk's office, which shall contain such information as the city council may require.

(Code 1968, § 3-507)

Sec. 38-38. Permit fee.

Upon granting of a permit for a service connection and before the connection is made,

the owner shall pay a permit fee for tapping the main, the installation of the service pipe from the main to the service cock, the service cock, stop box, outside meter box and any other water service pertaining to the installation. Fees shall continue in force as on the effective date of the ordinance from which this article is derived, and may be changed by resolution of the city council.

(Code 1968, § 3-508)

Sec. 38-39. Water meters.

(a) All premises within the city using water shall be metered, with the exclusion of municipal buildings. Meters up to three-fourths inch will be furnished by the water department, and shall remain the property of the water department, and will at all times be under the control of the water department. The additional cost of a larger meter installed for a customer shall be paid by the customer.

(b) For ordinary domestic consumption of water, a three-fourths-inch or three-fourths-inch by three-fourths-inch meter will be furnished. Where application is made for a meter larger than five-eighths-inch or five-eighths-inch by three-fourths-inch, the city manager shall determine whether a meter of such size is required. The water department will furnish meters in sizes up to and including 1 1/2 inches. Where a meter larger than 1 1/2 inches is required, special arrangements must be made between the water department and the customer for such meter.

(c) Meters shall be set in an accessible location and in a manner satisfactory to the city manager.

(d) All new installations of service shall include a remote meter reader. It shall be the duty of the water department to install the remote meter. The cost of the remote meter shall be included in the connection fee.

(e) Meters will be sealed by the water department, and no one, except an authorized employee of the water department, shall break or injure the seals. No person other than an authorized employee of the water department shall change the location of, alter or interfere in any way with any meter. Meters that have been tampered with are subject to replacement. Owners/occupants of the property shall pay labor and equipment charges, and may face penalties as prescribed by city ordinance.

(f) The expense of installing and maintaining meters up to 1 1/2 inches will be borne by the city; provided, however, that where replacements, repairs or adjustments of a meter are made necessary by the acts, negligence or carelessness of the owner/occupant of the premises, the expenses of the city caused by such replacements, repairs or adjustments shall be charged and collected from the owner of the premises. Such charges shall be collected in the manner provided for the collection of water rates as set forth in section 38-42.

(g) The owner or occupant of any premises where a meter is installed will be held responsible for its care and protection from freezing or hot water, and injury from interference by any person. In case of injury to a meter, or in case of its stoppage or imperfect work, the owner/occupant shall immediately notify the water department upon such occurrence. All water furnished by the city and used on any premises must pass through the meter. No bypass or connection around the meter will be permitted. If any meters become out of order or fail to register, the consumer will be charged at the

average quarterly consumption rate as shown by the meter over the period of the preceding four quarters when such meter was accurately registering. The accuracy of the meter on any premises will be tested by the water department upon written request of the owner, and the owner shall pay a fee in advance to cover the cost of the test. If upon such test, the meter shall be found to register over five percent more water than that which actually passes through it, another meter will be substituted and the fee will be refunded to the owner, and the water bill may be adjusted in such manner as may be fair and just.

Sec. 38-40. Use of water.

(a) When a new service pipe is put into any premises, the service cock shall be left closed, and shall be opened only by an authorized employee of the city upon the request of the owner or his agent; provided, however, that a contractor may open and close a service cock to test his work, as provided in this article.

(b) When a building originally built as a single unit and fitted with one service pipe shall be subdivided by sale, the separate division made by such subdivision must be separately metered within 30 days of such subdivision.

(c) When the water has been turned off by the water department for any reason, no person, except authorized employees or agents of the city, may turn the water on again.

(Code 1968, § 3-510)

Sec. 38-41. Rates, charges and fees.

(a) All rates, fees and charges required by this article shall be amended through city council resolution, and shall be considered due as of the date billed and delinquent one month after the billing date.

(b) Charges for service connections on streets shall be based on a flat fee relative to the service size required. Charges for a service connection may be revised when deemed necessary by the city manager, subject to approval by the city council.

(c) A penalty established by city council resolution shall be applied one month following the billing date. Services with unpaid balances two months following the billing date will be subject to discontinuance; except, where a utility service changes name due to a user moving, all rates, fees and charges accumulated to date shall be considered due immediately, and discontinuance of services to the such unit will remain until all fees are paid.

(d) The city council may make such rules and regulations governing the operation of such water system, rates, etc. as it shall deem necessary. Such rules and regulations shall have the same force and effect as ordinances.

(Code 1968, § 3-511)

Sec. 38-42. Collection.

(a) In addition to other remedies possessed by the city for the collection of water rates, assessments, charges or rentals for the use or consumption of water supplied to any

house, building, premises, lot or parcel of land, the city shall have as security for the collection of such amounts, a lien upon such house, building, premises, lot or parcel of land to which such water has been supplied. Such lien shall become effective immediately upon the distribution of water to the premises or property to which water is supplied, and the official record of the city clerk's office shall constitute notice of the pendency of such lien. The lien shall have priority over all other liens, except taxes and special assessments, whether or not such liens accrued or were recorded prior to the lien created pursuant to this subsection.

(b) (1) All unpaid water charges which, upon April 1 of each year, have remained unpaid for three months or more shall be reported by the city clerk to the city council at the first meeting of the city council in the month of April. The city council shall order the publication in a newspaper published in the city of notice to all owners of property within the city that all unpaid water rates, charges or fees which have remained unpaid for a period of three months or more as of April 1 which have not been paid by the following April 30 will be transferred to the tax roll and assessed upon the city's tax roll against the property upon which the water was used, to be collected in the same manner as the lien created by city taxes on such tax roll.

(2) All unpaid water rates or charges which are reported by the city clerk to the city council as having been unpaid for a period of three months or more on April 1 of each year and which remain unpaid on the following April 30 may be transferred to the city's tax roll and assessed against the property to which the water was supplied or furnished, and such unpaid rates or charges accrued shall be collected with and in the same manner as city taxes are collected, and if such rates or charges shall remain delinquent and unpaid after the expiration of the time limit in the warrant for the collection of taxes levied in such roll, such charges shall be returned to the county treasurer to be collected in the same manner as the lien created by the city taxes on the delinquent tax roll of the city.

(c) The provisions of this section shall not apply where a lease has been legally executed containing a provision that the lessor shall not be liable for payment of water bills accruing subsequent to the filing of such lease with the city clerk's office, and 20 days notice shall be given by the lessor of any cancellation, change in or termination of the lease.

(d) In addition to other remedies provided in this section, the city shall have the right to shut off and discontinue the supply of water to any premises for the nonpayment of water and sewer rates when due, in accordance with the steps and procedures outlined in section 38-41. This right to shut off a water supply shall extend to entire multifamily dwellings if each family unit within the multifamily dwelling does not have a separate water meter, or if the shut off valves for individual units are not readily accessible to city employees.

(Code 1968, § 3-512)

Sec. 38-43. Access to buildings.

The city manager or the city's designated agent shall have free access at all reasonable hours to inspect any premises supplied with water by the city. No person shall refuse to admit authorized agents of the city to any premises for the purpose of such inspection. If an

authorized employee of the city is refused admittance, or is in any way hindered in making the necessary inspection or examination, the water may be turned off to such premises after 24 hours notice to the owner or occupant of such premises.

(Code 1968, § 3-513)

Sec. 38-44. Standpipes.

Where pipes are provided for fire protection on any premises, or where hose connections for fire apparatus are provided, each such connection or opening of the service pipes shall have not less than 25 feet of fire hose constantly attached to such connection or opening. Water will not be drawn from this system except for the purpose of extinguishing fires or testing equipment. Any such testing of fire equipment must be conducted under a special permit issued by the city clerk's office. Such installations shall comply with state health department regulations.

(Code 1968, § 3-514)

Sec. 38-45. Fire hydrants.

(a) Fire hydrants shall be opened and used only by the water and fire departments of the city, or by such persons as may be specifically authorized by the city manager or his designee. No person shall in any manner obstruct or prevent free access to any fire hydrant by placing or storing, temporarily or otherwise, any objects or materials of any kind within 20 feet of the fire hydrant.

(b) Permits to use fire hydrants shall be granted by the city manager only for specific fire hydrants, at specific times.

(c) Any person desiring service from a fire hydrant shall place on deposit such a sum of money as the city manager shall designate, which sum shall be held until all charges incurred have been fully paid and all water department equipment returned in good condition. The water department shall have the right to use any portion of such sum to repair or replace any equipment damaged through negligence of the consumer or by reason of the use of such equipment.

(d) Before use of water from a fire hydrant is allowed, the discharge portion of the fire hydrant shall first be fitted with a valve and meter under the direction of the water department.

(Code 1968, § 3-515)

Cross references: Fire prevention and protection, ch. 16.

Sec. 38-46. Separate meters.

Each single-family unit converted to a two-family house or multiple dwelling unit shall be deemed separate premises to be metered separately and subject to the same regulations and rates as for a single-family dwelling. It shall be a violation of this article for any customer to furnish water service to any unmetered premises.

(Code 1968, § 3-516)

Sec. 38-47. Service interruption.

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 water department will endeavor to give timely notice to the consumers affected by such service interruption and will, so far as practicable, use its best efforts to prevent inconveniences and damage arising from any such causes, but the failure to give such notice shall not render the city responsible or liable for damages which may result from such service interruption.

(Code 1968, § 3-517)

Sec. 38-48. Service abandonment determination.

The city reserves the right to take appropriate measures to abandon services to an existing property which is left vacant for over a period of 12 months, unless there is written communication between the city and the interested party of such person's intentions on such premises.

(Code 1968, § 3-518)

Sec. 38-49. Emergencies.

During an emergency pertaining to the water department, the city council may make such rules and regulations, as it shall deem necessary, governing the use of water by the consumer. Such rules and regulations shall have the same force and effect as ordinances.

(Code 1968, § 3-519)

Sec. 38-50. Protection of city wells.

It shall be unlawful for any person to construct or maintain, or permit to be constructed or maintained, within a radius of 100 feet from any of the municipal water wells of the city from which the city draws its water supplies, any source of possible contamination or pollution to such wells.

(Code 1968, § 3-520)

Sec. 38-51. Cross connections.

(a) *Rules adopted.* The city adopts, by reference, the water supply cross connection rules of the state department of environmental quality, being 1977 AACS 325.11401 to R 325.11407, of the Michigan Administrative Code.

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

Backflow means water of questionable quality, wastes or other contaminants entering a public water supply system due to a reversal of flow.

Cross connection means a connection or arrangement of piping or appurtenances

through which a backflow could occur.

Safe air gap means the minimum distance of a water inlet or opening above the maximum high water level or overflow rim in a fixture, device or container to which public water is furnished, which shall be at least two times the inside diameter of the water inlet pipe, but shall not be less than one inch and need not be more than 12 inches.

Secondary water supply means a water supply system maintained in addition to a public water supply, including, but not limited to, water systems from ground or surface sources which do not meeting the requirements of part 41 of Public Act No. 451 of 1994 (MCL 324.4101 et seq.), or water from a public water supply which in any way has been treated, processed or exposed to any possible contaminant or stored in other than an approved storage facility.

Submerged inlet means a water pipe or extension of a water pipe from a public water supply terminating in a tank, vessel, fixture or appliance which may contain water of questionable quality, waste or other contaminants and which is unprotected against backflow.

Water utility means a governmental unit, municipal or private corporation, association, partnership or individual engaged in furnishing water to the public for commercial, industrial, household or drinking purposes.

(c) *Prohibited connections.* The following connections will not be permitted unless approved backflow protection is provided for in their design:

(1) A cross connection between a public water supply system and a secondary water supply.

(2) A cross connection by a submerged inlet.

(3) A cross connection between a public water supply system and piping which may contain sanitary waste or a chemical contaminant.

(4) A cross connection between a public water supply system and piping immersed in a tank or vessel which may contain a contaminant.

(d) *Inspections.* It shall be the duty of the city water department to cause inspections to be made of all properties served by the public water supply where cross connections with the public water supply is deemed possible. The frequency of inspections and reinspections, based on potential health hazards involved, shall be as established by the city water department and as approved by the state department of environmental quality.

(e) *Access to property; refusal.* Representatives of the city water department shall have the right to enter, at any reasonable time, any property served by a connection to the public water supply system of the city for the purpose of inspecting the piping systems of such property for cross connections. Upon request, the owner, lessees or occupants of any property served by a connection to the public water supply system of the city shall furnish to the inspecting agency any pertinent information regarding the piping systems on such property. The refusal of such information or refusal of access, when requested, shall be deemed evidence of the presence of cross connections.

(f) *Discontinuance of service.* The city water department is authorized and directed to discontinue water service after 24 hours notice to any property where a 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 supply system. Water service to such property shall not be restored until the cross connection has been

eliminated in compliance with the provisions of this section.

(g) *Protection from contamination; labeling.* The potable water supply made available on the properties served by the public water supply shall be protected from possible contamination as specified by this section and by the state. Any water outlet which could be used for potable or domestic purposes and which is not supplied by the potable water system must be labeled in a conspicuous manner as: WATER UNSAFE FOR DRINKING.

(h) *Greater restrictions.* If any provision of a city or county ordinance or state statute imposes greater restrictions than those set forth in this section, such ordinance or statute shall control.

(i) *Enforcement.* The enforcement of this section shall be conducted by the city manager or such other city employee as the city manager may designate from time to time.

(Code 1968, § 3-521)

Sec. 38-52. Fluoride.

(a) *Purpose.* The purpose of this section is to reject the addition of fluoride to water supplied by or under the control of the city, as prescribed by section 12721 of Public Act No. 368 of 1978 (MCL 333.12721).

(b) *Addition to water.* Water supplied to the public by the city or a governmental agency under the direction and control of the city shall not be treated by the addition of fluoride.

(Code 1968, §§ 8-302, 8-303)

Sec. 38-53. Notice to cease violation.

Any person found to be in violation of any provision of this article shall be served with a written notice stating the nature of such violation, and such person shall be provided a 15-day time limit for the satisfactory correction of such violation. The violator shall, within such 15-day time period, take such corrective action as may be necessary.

(Code 1968, § 3-522)

Sec. 38-54. Civil liability.

Any person found to be in violation of any provision of this article shall be liable to the city for any expense, loss or damage occasioned to the city by reason of such violation, and recovery therefor may be had in an appropriate action in a court of competent jurisdiction.

(Code 1968, § 3-524)

Sec. 38-55. Abatement.

Any continued violation of this article, after due notice as provided in section 38-53, shall be deemed a public nuisance, and may be abated by the city upon complaint in a court of competent jurisdiction. Such remedy shall be in addition to those remedies otherwise provided in this article.

(Code 1968, § 3-525)

Secs. 38-56--38-85. Reserved.

ARTICLE III. SEWERS*

***Editor's note:** Res. No. 2008-01, effective January 29, 2008, amended Article III in its entirety to read as herein set out. Former Article III, §§ 38-86--38-119, pertained to similar subject matter, and derived from §§ 3-601--3-632, 3-634, 3-635 of the 1968 Code; Res. No. 2002-16, 7-23-02.

Sec. 38-86. General provisions.

(a) *Purpose and policy.* This article sets forth requirements for users of the city's sewers and treatment system that enable the city to protect its sewers and treatment system, and to comply with applicable state and federal laws including the Clean Water Act and the general pretreatment regulations. The objectives of this article are to:

(1) Establish conditions for connecting and using the city's sewer system;

(2) Control the introduction of critical materials or excess compatible pollutants into the city sewers that may not receive adequate treatment and thereby pass through into receiving waters, may interfere with the normal operation of the treatment system, may contaminate and limit recycling options for the treatment system sludge, or may otherwise cause an adverse impact on the collection or treatment systems;

(3) Protect city personnel who may be affected by pollutants in the wastewater or sludge in the course of their employment; and

(4) Protect the general public.

(b) *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:

Applicable local health agency means the county health department, or its successor agency.

Authorized representative of the industrial user means one of the following: (1) if the user is a corporation, a principal executive officer of at least the level of vice president; (2) if the user is a partnership or proprietorship, a general partner or proprietor respectively; (3) if the user is a government facility, then the director or highest official appointed to oversee the operation of the facility; or (4) a designee provided the designation is in writing, specifies the individual position or person as being responsible for the facility operation or for environmental matters of the facility, and is submitted in writing to the city by the individuals described above.

BOD, or *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 parts per million by weight.

Building drain means that part of a drainage system which carries the wastewater inside the walls of the building and conveys it to the building sewer, beginning five feet outside the inner face of the building wall.

Building sewer means the extension from the building drain to the public sewer or other place of disposal.

Bypass means the intentional diversion of waste streams from any portion of an industrial user's pretreatment facility.

Chlorine demand means the difference between the amount of chlorine added to water or wastewater and the amount of residual chlorine remaining at the end of a specified contact period.

City means the City Council of City of Ithaca, Michigan, the city manager, or other officials duly authorized to act on the city council's behalf.

Clean Water Act, or *the Act,* means the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251, et. seq.

COD {denoting chemical oxygen demand} means the quantity of oxygen consumed from a chemical oxidant in a specific test.

Combination sewer and *combined sewer* mean a sewer receiving both surface runoff and sewage.

Compatible pollutant means a substance amendable to treatment in the wastewater treatment facility, such as BOD, suspended solids, pH and fecal coliform bacteria, plus additional pollutants identified in the NPDES permit of the wastewater treatment facility which was designed to treat such pollutants, and in fact does remove such pollutants to an acceptable degree. These additional pollutants may include COD, total organic carbon, phosphorus and phosphorus compounds, nitrogen and nitrogen compounds and fats, oils and grease of animal or vegetable origin.

Composite sample means, for continuous discharges, a sample collected via automatic sampler over the period of discharge contained within a 24-hour period and consisting of a series of 96 aliquots taken at equal time periods or at a rate proportional to waste stream flow; or, for batch discharges, a series of aliquots collected from each batch at a volume approximately equal to the relative batch size and combined prior to laboratory analysis.

Cooling water is the water discharged from any use such as air conditioning, cooling or refrigeration, or to which the only pollutant added is heat.

Critical materials means the organic and inorganic substances, elements or compounds listed by the Michigan Department of Environmental Quality or listed in the federal register compiled by the Environmental Protection Agency.

Daily maximum means the highest allowed concentration or nature of a given pollutant measured in a composite sample or a grab sample, as applicable for that pollutant. Compliance with a daily maximum condition of discharge for a grab sample will apply to analytical test results of a single grab sample if it is the only grab sample that has been collected during the period of discharge contained in a 24-hour period. Compliance with a daily maximum condition of discharge for a grab sample may alternatively apply to the analytical test result of an

equal-volume mixture of up to four grab samples or to the numerical average of analytical test results for up to four grab samples, provided such grab samples are collected at approximately equal time increments over the period of discharge contained in a 24-hour period.

Dilution means any thinning or weakening of a wastewater discharge by mixing it with water or other liquid, including any process of mixing or diluting as a partial or complete substitute for adequate treatment necessary to achieve compliance with applicable standards and limitations.

Domestic sewage means sewage that is coming from households and not from businesses or industries.

Environmental Protection Agency, or *EPA*, means the U.S. Environmental Protection Agency, its Regional Water Management Division Director, or other officials duly authorized to act on the agency's behalf.

Existing source means any building, structure, facility, or installation from which there is a discharge to the city's sewer system, and for which construction or operation commenced prior to EPA's publication of proposed categorical pretreatment standards applicable to such a source.

Garbage means solid wastes from the preparation, cooking and dispensing of food, and from the handling, storage, processing and sale of produce.

General pretreatment regulations mean the federal rules contained in 40 CFR Part 403, as amended, that establish responsibilities of government and industry to control pollutants of nondomestic origin which may pass-through, interfere, or contaminate sludge at POTWs.

Grab sample generally means a single sample which is collected over a period of time not exceeding fifteen minutes from a wastestream without regard to time or flow.

Holding tank waste means any waste from holding tanks such as vessels, chemical toilets, campers, trailers, septic tanks, and vacuum-pump tank trucks.

Incompatible pollutant means a pollutant which is not a compatible pollutant as defined in this section.

Industrial cost recovery means a charge imposed on an industrial user to reflect its share of the amount of grant funds received to construct wastewater treatment works as provided under P.L. 92-500, and the regulations promulgated under such law.

Industrial pretreatment program, or *pretreatment program,* means the city's set of MDEQ-approved policies and procedures to control pollutants in nondomestic sewage that may pass through or interfere with the POTW, may contaminate the POTW sludge, may otherwise cause an adverse impact on the POTW, or may threaten the health and safety of POTW workers or the general public.

Industrial wastes means the liquid wastes, solids or semisolids from nondomestic processes which are distinct from domestic sewage.

Infiltration mean any waters entering the POTW from the ground by means including, but not limited to, defective pipes, pipe joints, connections, or manhole walls. Infiltration does not include, and is distinguished from, inflow.

Inflow means any waters entering the POTW from sources including, but not limited to, building downspouts, footing drains, yard drains, cooling water systems, seepage lines from

springs and swampy areas, and storm drain cross connections. Inflow does not include, and is distinguished from, infiltration.

Instantaneous maximum means the highest allowed concentration or nature of a given pollutant measured in any sample, grab or composite.

Instantaneous minimum means the lowest allowed concentration or nature of a given pollutant measured in any sample, grab or composite.

Interference means a discharge that alone or in conjunction with other discharges disrupts the POTW to the extent that a provision of the city's NPDES permit is violated, the POTW sewage sludge operations are negatively impacted, an applicable water quality standard of the state is exceeded, or a provision of the Act is violated. This includes but is not limited to inhibition of the POTW treatment process efficiency below normal levels, and contamination of the POTW sludge to where the city is limited or prevented from utilizing land application as a disposal practice.

Local limits means the city's numerical and non-numerical discharge standards that are established herein to promote the objectives of the pretreatment program by protecting against pass-through or interference at the POTW, contamination of the POTW sludge, other adverse impacts on the POTW, as well as health and safety threats to POTW workers and the general public.

MDEQ means the Michigan Department of Environmental Quality.

MDNR means the Michigan Department of Natural Resources.

National Categorical Pretreatment Standards, or *categorical standards* mean any regulation containing pollutant discharge limits promulgated by EPA that applies to specific categories of industrial users and has been promulgated into 40 CFR Parts 405 through 471, as amended.

NPDES permit {denoting National Pollutant Discharge Elimination System Permit} means a permit issued by MDEQ, under authority granted by EPA pursuant to section 402 of the Act (33 U.S.C. 1342), that allows the city to discharge wastewater to surface waters of the state subject to specific terms and conditions.

Natural outlet means any outlet into a watercourse, pond, ditch, lake or other body of water, either surface water or groundwater.

New source means any building, structure, facility, or installation from which there is or may be a discharge, and for which construction commenced after EPA's publication of proposed categorical pretreatment standards applicable to such a source, provided any of the following provisions apply: (1) the building structure, facility, or installation is constructed at a site at which no existing source is located; (2) the building, structure, facility, or installation totally replaces the production equipment or processes that causes the discharge of pollutants at an existing source; or (3) the wastewater-generating production equipment or processes of the building, structure, facility, or installation are substantially independent of an existing source at the same site, where factors used to determine substantial independence include the extent to which the new facility is integrated with the existing plant and the extent to which the new facility is engaged in the same general type of activity as the existing source. Construction of a new source is considered to have commenced when the owner/operator has begun significant site preparation, begun assembly of equipment or facilities, or has entered into a binding contractual obligation for the purchase of equipment or facilities intended for use in the operation within a

reasonable time. Construction on a site at which an existing source is located is considered a modification rather than a new source if the construction does not create a new building, structure, facility, or installation meeting the criteria of item (2) herein but otherwise alters, replaces, or adds to the wastewater-generating production equipment or processes.

Noncontact cooling water means water used for cooling that does not come into direct contact with any raw material, intermediate product, waste product, or finished product.

Nondomestic user, industrial user, or *user* means any source of nondomestic sewage into the POTW.

Nondomestic wastes means any wastewaters that are coming from offices, businesses or industries and not from households.

Obstruction means any substance of whatever nature that causes a substantial impediment to flow in the city's sewer including but not be limited to garbage, particles greater than one-half inch in any dimension, animal guts or tissues, paunch, manure, bones, hair, hides or fleshings, entrails, feathers, ashes, cinders, rocks, sand, spent lime, stone or marble dust, metal, glass, straw, shavings, grass clippings, rags, spent grains, spent hops, waste paper, wood, plastics, tar, asphalt, refining residues, fuel or lubricating oil processing residues, mud, glass grinding or polishing wastes, or other type of such debris.

Operation and maintenance costs, or *O & M costs* mean the expenditures required for operating, maintaining and replacement of the treatment works.

Owner, or *owners* means holders of record for freehold of a premises or lesser estate therein, mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, or other person, firm or corporation in control of a building, structure, facility, or installation.

Pass-through means a discharge that exits the POTW into the receiving water in quantities or concentrations which, alone or in conjunction with other discharges, is a cause of a violation of any requirement of the city's NPDES permit, any applicable water quality standard of the state, or any provision of the Act, including an increase in the magnitude or duration of a violation

Person means any individual, partnership, copartnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity, or any other legal entity, or its legal representatives, agents or assigns. The masculine gender shall include the feminine, and the singular shall include the plural where indicated by the context.

pH means the logarithm of the reciprocal of the weight of hydrogen ions in grams per liter of solution. A neutral pH is 7.0; below 7.0 is acidic; above 7.0 is alkaline.

Pollutant means any chemical, substance, or property that impair the purity of air, water, and soil and that makes such air, water, and soil potentially harmful to animals, plants, or human life.

Pollution means the introduction of pollutants into air, water, and soil from sources including but not limited to refuse material, industrial waste, agricultural waste, and municipal waste.

Pretreatment means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutants or pollutant properties to a less harmful state prior to discharge to the POTW. This reduction, elimination, or alteration can be obtained

by physical, chemical or biological processes, by process changes, or by any other means except dilution.

Pretreatment standards or requirements mean any substantive or procedural requirements relating to pretreatment, including but not limited to federal categorical standards and requirements of this article, that apply to a user of the POTW.

Process wastestream means any water which, during manufacturing or processing, comes into direct contact with, or results from the production or use of any raw material, intermediate product, finished product, by-product or waste product. This does not include domestic wastewater, noncontact cooling water, infiltration, and inflow.

Properly shredded garbage means the wastes from the cooking, preparation and dispensing of food that has been cut or shredded to such a degree that all particles will be carried freely under flow conditions normally prevailing in public sewers, with no particle greater than one-half inch in any dimension.

Property owner means the owner of the property that is serviced by the POTW.

Publicly owned treatment works, or *POTW* means the city-owned equipment and processes used in collection, pumping, storage, treatment, recycling, and reclamation of wastewater or sludge. Use of the term "POTW treatment plant" means that portion of the POTW that is designed to provide wastewater treatment and sludge recycling or reclamation.

Public sewer means a sewer in which all owners of abutting property have equal rights, and is controlled by public authority.

Replacement means the replacement in whole or in part of any equipment, appurtenances, and accessories in the POTW to ensure continuous compliance with the NPDES permit and other applicable state and federal regulations.

Replacement costs means the expenditures for obtaining and installing equipment, accessories or appurtenances during the useful life of the treatment works necessary to maintain the capacity and performance for which such works are designed and constructed.

Sanitary sewage means any liquid wastes discharged from residences, business buildings and institutions, as distinct from industrial wastes, with strengths not exceeding the limits set forth by the city.

Sanitary sewer means a sewer which carries domestic and nondomestic sewage and to which stormwaters and surface waters are not intentionally admitted.

Septic tank waste means any sewage from holding tanks such as vessels, chemical toilets, campers, trailers, and septic tanks.

Sewage means any combination of water-carried wastes from residences, business and commercial buildings, institutions and industrial establishments.

Sewage works means all facilities for collecting, pumping, treating and disposing of sewage. Sewer means any pipe, tile, tube or conduit for carrying sewage.

Sewer means a pipe or conduit for carrying sewage.

Shall is mandatory; *may* is permissive.

Significant industrial user (SIU) means any user of the city's POTW who: (1) is subject to national categorical pretreatment standards; (2) discharges 25,000 gallons or more per average

work day of process water to the POTW, excluding sanitary, non-contact cooling water and boiler blow-down wastewater; (3) contributes a process wastestream that makes up five percent or more of the average dry weather hydraulic or organic capacity of the POTW; or (4) is designated as such by the city on the basis of reasonable potential to discharge nondomestic wastes deleterious to the public health and safety pursuant to section 38-102(a) herein.

Slug, or *slug load,* means any discharge of water or wastewater which, in concentration of any given constituent or in quantity of flow, exceeds for any period of duration longer than 15 minutes more than five times the average 24-hour concentration or quantity of flow during normal operation, or could cause a violation of pretreatment standards and requirements.

Standard industrial classification, or SIC, means a classification pursuant to the Standard Industrial Classification Manual of the United States Office of Management and Budget, 1972 or later.

State means State of Michigan.

Storm sewer and *storm drain* mean a sewer which carries stormwaters and surface waters and drainage, but which excludes sewage and polluted industrial wastes.

Stormwater means any flow occurring during or following any form of natural precipitation and resulting from such precipitation, including snowmelt.

Surcharge means the additional treatment charges made by the city for the treatment of wastewater containing pollutants in excess of normal domestic wastewater.

Suspended solids means the solids that either float on the surface of, or are suspended in, water, sewage or other liquids, and which are removable by laboratory filtering.

Toxic pollutant means any pollutant or combination of pollutants which have been identified as directly harmful to animals, plants, or human life, including but not limited to those listed as toxic in regulations promulgated by the EPA under the provisions of the Act.

Upset means an exceptional incident in which there is unintentional and temporary noncompliance with categorical pretreatment standards because of factors beyond the reasonable control of the user.

Wastewater means liquid and water-carried industrial wastes and sewage from residential dwellings, commercial buildings, industrial/manufacturing facilities, and institutions, whether treated or untreated, which are contributed to the POTW.

Watercourse means a channel in which a flow of water occurs, either continuously or intermittently.

(c) *Abbreviations.* The following abbreviations shall have the meanings as indicated:

TABLE INSET:

BOD	Biochemical oxygen demand
CFR	Code of Federal Regulations
EPA	Environmental Protection Agency
L or l	Liter
mg	Milligrams
mg/L or mg/l	Milligrams per liter
NPDES	National Pollutant Discharge Elimination System
P	Phosphorus

POTW	Publicly owned treatment works
PPM	Parts per million
SIC	Standard industrial classification
SIU	Significant Industrial User
SS	Suspended solids
s.u.	Standard units for pH
O&M	Operation and maintenance

(Res. No. 2008-01, 1-29-2008)

Sec. 38-87. Waste deposits.

It shall be unlawful for any person to place or deposit, or permit to be deposited, in an unsanitary manner upon any public or private property within the city, any human or animal excrement, garbage or other objectionable waste.

(Res. No. 2008-01, 1-29-2008)

Sec. 38-88. Water pollution.

It shall be unlawful for any person to discharge into any natural watercourse or any storm sewer within the city any sanitary sewage, industrial waste or other polluted waters, except where suitable treatment has been provided in accordance with the standards established by the MDEQ.

(Res. No. 2008-01, 1-29-2008)

Sec. 38-89. Privies and septic tanks.

Except as otherwise provided in this article, it shall be unlawful for any person to construct or maintain a privy, privy vault, septic tank, cesspool or other facility intended or used for the disposal of sewage within the city.

(Res. No. 2008-01, 1-29-2008)

Sec. 38-90. Sewer connection required.

The owner of a house, building or property used for human occupancy, employment, recreation or other purpose, situated within the city and abutting on a street, alley, right-of-way or public utility easement in which there is located a public sanitary or combined sewer of the city is required, at his own expense, to install suitable toilet facilities therein and to connect such facilities directly to the public sewer in accordance with the provisions of this article within 90 days of the date the official notice to do so is issued by the city manager, provided that the public sewer is located within a public easement contiguous to, and not further than 200 feet from, any such house, building, structure or property.

(Res. No. 2008-01, 1-29-2008)

Sec. 38-91. Private sewer systems.

Where a public sanitary sewer is not available under the provisions of section 38-90, the building sewer shall be connected with a private disposal system complying with the regulations and orders of the state department of public health and the city manager.

(Res. No. 2008-01, 1-29-2008)

Sec. 38-92. Discontinuance of private sewer systems; abandonment and filling.

When a public sewer becomes available to a property served by a private sewage disposal system as provided in section 38-91, a direct connection shall be. made to the public sewer in compliance with the provisions of this article, and any septic tank, privy, privy vault, cesspool or similar private sewage disposal facilities shall be abandoned and filled with suitable material.

(Res. No. 2008-01, 1-29-2008)

Sec. 38-93. Maintenance of private sewer systems.

The owner shall operate and maintain a private sewage disposal facility in a sanitary manner at all times and at no expense to the city.

(Res. No. 2008-01, 1-29-2008)

Sec. 38-94. Requirements of regulatory agency.

Nothing in this article shall be construed to interfere with any additional requirements that may be imposed by the regulatory agency with respect to private sewage disposal.

(Res. No. 2008-01, 1-29-2008)

Sec. 38-95. Permit required.

(a) No unauthorized person within the city shall uncover, make a connection with or opening into, use, alter or disturb any public sewer or any appurtenance of a public sewer without first obtaining a written permit from the building and zoning department.

(b) *Wastewater discharge permit.*

(1) No significant industrial user shall discharge into the POTW without first obtaining a wastewater discharge permit from the city. The city may require other users to obtain wastewater discharge permits as necessary to carry out the purpose of this article.

(2) Any violation of the terms and conditions of a wastewater discharge permit shall be deemed a violation of this article, and subject the permitted user to enforcement remedies included in this article. Obtaining a wastewater discharge permit does not relieve the permitted user's obligation to comply with all federal and state pretreatment standards and requirements, or with any other requirements of federal, state, and local law.

(3) To obtain a wastewater discharge permit, the following information shall be submitted on an application form furnished by the city:

a. Name, mailing address, facility location, name of operator, and name of owners.

b. A list of any environmental control permits held by or for the facility.

c. Description of activities and plant processes at the facility, including a list of all raw materials and chemicals used or stored that are, or could, be discharged.

d. Number and type of employees, hours of operation, and proposed or actual hours of operation.

e. Time and duration of wastewater discharges, including average and maximum per day, as well as any seasonal variations.

f. Site plans, floor plans, mechanical and plumbing plans, and details to show all sewers, floor drains, and appurtenances by the size, location and elevation, and all points of discharge.

g. A brief description of the nature, average rate of production, and SIC number for operations carried out at the location. The description should include a facility drawing/schematic that indicates the processes generating discharge and the points of discharge to the POTW.

h. Measured average daily and maximum daily total flow to the POTW including information on flow from any regulated process streams and, where use of the combined wastestream formula is necessary, from any unregulated other streams. Flow estimates are acceptable where necessary, provided the estimating procedure is pre-approved by the city.

i. Categorical pretreatment standards applicable to any process.

j. Results of sampling and analysis identifying the nature/concentration, or mass where required by the standard or by the city, of regulated pollutants in the discharge from each regulated process. Both daily maximum and average concentrations, or mass where required, shall be reported. Sampling and analysis shall be performed in accordance with procedures established in this article, and the sample shall be representative of daily operations.

k. A statement whether pretreatment standards and requirements are being met on a consistent basis, and, if not, whether additional O&M and/or additional pretreatment is required to meet the pretreatment standards and requirements. If additional pretreatment and/or O&M will be required, a proposed compliance schedule containing increments of progress for activities to be completed. The schedule shall be the shortest deemed feasible, and the completion date shall not be later than the compliance date established for any applicable pretreatment standard. Such compliance schedules shall be in accordance with the requirements of 40 CFR Part 403.12(c).

l. Any other information as may be deemed necessary by the city to evaluate the wastewater discharge permit application.

m. Signature and certification in accordance with section 38-107(e)(7).

(4) Incomplete or inaccurate applications will not be processed by the city, and will be returned to the user for revision.

(5) The city will evaluate the data furnished by the user and may require additional information. The city will then determine whether or not to issue a wastewater discharge permit and notify the user of this decision. The city may deny a wastewater discharge permit for any reason deemed appropriate.

(6) A wastewater discharge permit will be issued for a specified time period, but not more than five years from the effective date of the permit. A wastewater discharge permit will include conditions that the city deems necessary to prevent pass through or interference, prevent sewage sludge contamination, protect worker health and safety, and protect the general public. All wastewater discharge permits will contain the following at a minimum:

a. Date after which the permit is effective, and date when the permit will expire;

b. Sampling location, sampling frequency, sample type;

c. Applicable discharge limits;

d. Reporting, notification, and record keeping requirements;

e. A statement that the wastewater discharge permit is nontransferable without prior notification to the city, and provisions for furnishing the new owner or operator with a copy of the existing wastewater discharge permit;

f. A statement that compliance with the wastewater discharge permit does not relieve the permitted user of responsibility for compliance with all applicable federal and state pretreatment standards, including those which become effective during the term of the wastewater discharge permit;

g. A statement of applicable civil and criminal penalties for violation of pretreatment standards and requirements; and

(7) A wastewater discharge permit may also contain the following if deemed appropriate by the city:

a. Limits on the average and/or maximum discharge flow, time of discharge, and requirements for flow regulation or equalization;

b. Requirements for pretreatment, pollution control, and/or containment devices to reduce, eliminate, or prevent the introduction of pollutants into the treatment works;

c. Compliance schedules;

d. Requirements for spill control plans, special conditions, and/or management practices to prevent accidental, unanticipated, or nonroutine discharges;

e. Requirements for waste minimization plans to reduce the amount of pollutants discharged;

f. Requirements for installation and maintenance of inspection and sampling facilities and equipment; and

h. Any other conditions deemed appropriate by the city to promote the objectives of the industrial pretreatment program, ensure compliance with this article, or meet state and federal regulations.

(8) The city may revise a wastewater discharge permit for good cause including, but not limited to, the following reasons:

a. To incorporate any new or revised federal, state, or local pretreatment standards or requirements;

b. To address significant alterations or additions to the permitted user's operation, processes, wastewater volume, or wastewater character in the time since issuance of the wastewater discharge permit;

c. A change in the POTW that requires either a temporary or permanent reduction or elimination of the authorized discharge;

d. New information indicating that the permitted discharge poses a threat to the POTW, city personnel, or the receiving waters;

e. Violation of any terms or conditions of the wastewater discharge permit;

f. Misrepresentations or failure to fully disclose all relevant facts in the wastewater discharge permit application or in any required reporting;

g. Revision of or a grant of variance from categorical pretreatment standards pursuant to 40 CFR 403.13;

h. To correct typographical or other errors in the wastewater discharge permit; or

i. To reflect a transfer of the facility ownership or operation to a new owner or operator.

(9) The city may re-issue a wastewater discharge permit if the permitted user submits a complete and updated permit application at least 90 days prior to the existing permit's expiration date. A wastewater discharge permit issued to a particular user becomes void upon re-issuance to that user.

(10) The city may revoke a wastewater discharge permit for good cause including, but not limited to, the following:

a. Misrepresentation or failure to fully disclose all relevant facts in the wastewater discharge permit application;

b. Failure to meet effluent limitations;

c. Failure to meet compliance schedules;

d. Failure to pay sewer charges, fees, or fines;

e. Refusing to allow the city timely access to the facility premises and records;

f. Failure to provide prior notification to the city of changed conditions or potential problems pursuant to section 38-107(e)(4) and (5);

g. Falsifying self-monitoring reports;

h. Tampering with monitoring equipment;

i. Failure to provide advance notice of the transfer of business ownership of a permitted facility; or

j. Violation of terms of the wastewater discharge permit, this article, or any pretreatment standard or requirement.

(11) Wastewater discharge permits shall be voidable upon cessation of operations or transfer of business ownership. The city may, but is not obligated to, approve a wastewater discharge permit transfer to a new owner or operator if the existing permitted user provides a notice at least 90 days prior to the business ownership transfer. This notice of pending transfer shall include a written certification by the new owner/operator that states it has no immediate intent to change the facility's operations and processes, identifies the specific date on which the business ownership transfer is to occur, and acknowledges full responsibility for complying with the existing wastewater discharge permit. Failure to provide a timely notice of pending transfer will render the existing wastewater discharge permit void as of the date of business ownership transfer.

(12) Within 30 days of any action by the city on a wastewater discharge permit, the permitted user or any other person may petition for reconsideration. Failure to submit a timely petition for reconsideration shall be deemed to be a waiver of this administrative appeal. In its petition, the appealing party must indicate the specific permit provisions objected to, the reasons for this objection, and any alternative condition it seeks to place in the permit. The wastewater discharge permit, including the provisions objected to, shall not be stayed pending resolution of the petition for reconsideration. If the city fails to act within 90 days, the petition for reconsideration shall be considered denied. A decision by the city not to issue a wastewater discharge permit, not to reconsider conditions of a wastewater discharge permit, or not to modify a wastewater discharge permit shall be considered final administrative actions for purposes of judicial review. Aggrieved parties seeking judicial review of the city's final administrative actions shall do so by filing a complaint with the Circuit Court of Gratiot County in accordance with applicable laws.

(Res. No. 2008-01, 1-29-2008)

Sec. 38-96. Permit fee.

All connections with the sanitary or combined sewers of the city shall be made only on written authorization and permits issued by the city on such forms and upon payment of such fees as shall be established by resolution of the city council from time to time.

(Res. No. 2008-01, 1-29-2008)

Sec. 38-97. Installation costs.

All costs and expenses incidental to the installation and connection of a building sewer shall be borne by the owner of the property. The owner shall indemnify the city from all loss or damage that may directly or indirectly be occasioned by the installation of the building sewer.

(Res. No. 2008-01, 1-29-2008)

Sec. 38-98. Plans and specifications.

All applicants for sewer connection permits within the city shall first submit plans and specifications of all plumbing construction within such building or premises, and such plans and specifications shall meet the requirements of the state plumbing code. When such plans and specifications have been approved by the building inspector and water/sewer department, a construction permit shall be issued, subject to final inspection and approval when construction is completed and the plumbing is ready for connection with the city sewer system.

(Res. No. 2008-01, 1-29-2008)

Sec. 38-99. Inspection.

(a) An applicant for a building sewer permit shall notify the city when the building sewer is ready for inspection and connection to the public sewer. The building inspector shall then inspect the building and plumbing construction, and if such construction meets the previous requirements as approved in the construction permit, a sewer connection permit shall be issued, subject to the applicable provisions of this article.

(b) The city will carry out all inspection, surveillance, and monitoring procedures that it considers necessary to determine, independent of information supplied by users, whether applicable pretreatment standards and requirements are being met.

(Res. No. 2008-01, 1-29-2008)

Sec. 38-100. Repairs.

The cost of all repairs, maintenance and replacements of existing building sewers and their connection to public sewers to the main will be borne by the property owner. Such owner shall make application to the city manager to perform such work.

(Res. No. 2008-01, 1-29-2008)

Sec. 38-101. Unpolluted water.

No person shall discharge or cause to be discharged any stormwater, surface water, groundwater, roof runoff, subsurface drainage, noncontact cooling water or unpolluted industrial process waters into any sanitary sewer without approval of the city manager. Stormwater and all other unpolluted drainage may be discharged into such sewers as are specifically designated as combined sewers or storm sewers, or to a natural outlet approved by the city manager and/or the MDEQ. Industrial cooling water or unpolluted process waters may be discharged, upon approval of the city manager and the MDEQ, into a storm sewer or natural outlet.

(Res. No. 2008-01, 1-29-2008)

Sec. 38-102. Prohibited uses.

(a) Except as approved and permitted by the city pursuant to this article, no person shall discharge any nondomestic wastes into the city sewer system which are deleterious to the public health and safety. Any waste will be considered deleterious if it may cause damaging effects as set forth in subsection (a)(1), and/or does not conform to the limitations set forth in subsections (a)(2) through (a)(4).

(1) *General conditions.* A waste will be considered deleterious if it may cause any of the following conditions:

a. Chemical reaction, either directly or indirectly, with the materials of construction that impairs the strength or durability of the sewer or sewage treatment process structures.

b. Mechanical action that will destroy or damage the sewer or sewage treatment process structures.

c. Restriction of the hydraulic capacity of sewer or sewage treatment process structures.

d. Restriction of the normal inspection or maintenance of the sewer or sewage treatment process structures.

e. Placing of unusual demands on the sewage treatment process.

f. Limitation of the effectiveness of the sewage treatment process.

g. Danger to public health and safety.

h. Obnoxious conditions inimical to the public interest.

i. Exceeding of the hydraulic capacity of any downstream conveyance or treatment works.

j. Pass-though or interference at the POTW.

(2) *Specific conditions.* A waste will be considered deleterious if it does not conform to the following limitations:

a. Must have acidity or alkalinity neutralized to a pH of more than 6.0 s.u. as an instantaneous minimum and less than 9.5 s.u. as an instantaneous maximum, and does not otherwise cause corrosive structural damage to the POTW.

b. Must not contain hydrogen sulphide, sulphur dioxide, oxides of nitrogen or any of the halogens in amounts that cause interference with the sewer or sewage treatment process operation, or pass-through the sewage treatment process.

c. Does not contain pollutants which create a fire or explosive hazard in the POTW including, but not limited to, wastestreams with a closed-cup flashpoint of less than 140 degrees Fahrenheit (60 degrees Centigrade) as an instantaneous maximum using the test methods specified in 40

CFR 261.21.

d. Must not contain any explosive substance. In the case of gas or vapors, the concentrations shall not exceed 20 percent of the lower explosive limit as an instantaneous maximum.

e. Must not have heat in amounts which will inhibit biological activity in the sewage treatment process resulting in interference, or cause the influent to the sewage treatment process to have a temperature above 104 degrees Fahrenheit (40 degrees Centigrade).

f. Must not contain grease, oil, or another substance in amounts that will cause obstruction in the sewer or otherwise interfere with operation of the sewer or sewage treatment process.

g. Must not contain insoluble substances in amounts that will cause obstruction in the sewer or otherwise interfere with operation of the sewer or sewage treatment process.

h. Must not contain total solids (soluble and insoluble substances) in amounts that will cause interference with the operation of the sewage treatment process.

i. Must not contain a soluble substance in concentrations that would increase the viscosity to a value that causes obstruction in the sewer or otherwise interferes with operation of the sewer or sewage treatment process.

j. Must not contain an insoluble substance having a specific gravity value that causes an obstruction in the sewer or otherwise interferes with operation of the sewer or sewage treatment process.

k. Must not contain any insoluble substance that will fail to pass a No. 8 standard sieve or that has any dimension greater than one-half inch, or lower if either of these values cause an obstruction in the sewer or otherwise interfere with operation of the sewer or sewage treatment process.

l. Must not contain any gases, vapors or fumes, either free or excluded, in concentrations which are toxic or dangerous to humans or animals or to the city sewer system. This includes toxic gases, vapors, or fumes within the POTW in quantities that may cause acute worker health and safety problems.

m. Must not have a chlorine demand that will cause interference with the operation of the wastewater treatment facilities.

n. Must not contain an antiseptic substance in amounts that will interfere with or pass-through the sewage treatment process.

o. Must not contain phenols in amounts that will interfere with or pass-through the sewage treatment process.

p. Must not contain any toxic or irritating substance which will create conditions hazardous to the public health and safety. This includes

noxious or malodorous liquids, gases, solids, or other wastewater which, ether singly or by interaction with other wastes, are sufficient to create a public nuisance or a hazard to life, or to prevent entry into the sewers for maintenance or repair.

q. Shall not contain oily substances in amounts causing interference or pass-through of the sewage treatment process.

r. Shall not contain a substance which, if otherwise disposed of, would be a hazardous waste under 40 CFR Part 261.

s. Shall not contain BOD, suspended solids, phosphorus, ammonia-nitrogen, or oil and grease in excess of the local limits contained in subsection (3)a herein; or arsenic, cadmium, total chromium, copper, cyanides, lead, mercury, molybdenum, nickel, selenium, silver, or zinc in excess of the local limitations contained in subsection (3)b. herein.

t. Shall not contain any trucked or hauled pollutants, including holding tank waste, except with specific permission of the city and only at discharge points designated by the city.

u. Shall not contain residue (total on evaporation) in excess of values that cause an obstruction in the sewer or otherwise interferes with operation of the sewer or sewage treatment process.

v. Shall not contain a substance with a viscosity in excess of values that cause an obstruction in the sewer or otherwise interferes with operation of the sewer or sewage treatment process.

w. Shall not contain a material causing coloration or light absorbency which will interfere with plant processes or analytical determinations, including, but not limited to, dye wastes and vegetable tanning solutions.

x. Shall not contain radioactive wastes or isotopes of such half-life or concentration as may exceed limits established by applicable state or federal regulations.

y. May contain sludge which results from a treatment process, either potable water, municipal or industrial wastes, but only if it is completely amendable to conventional wastewater treatment without application of unusual means or expense and does not cause an obstruction in the sewer or other interference with operation of the sewer or the sewage treatment process. Trucked or hauled wastewater, and septic tank sludge will be accepted from licensed operators only when authorized and delivered to a designated disposal site upon compliance with the conditions imposed by the city manager, and after payment to the city treasurer of a fee assessed by the city manager.

z. Shall not contain unusual volume of flow or concentration of wastes constituting slugs, or causing an obstruction in the sewer or other interference with the sewer or sewage treatment process operation, or causing pass-through the sewage treatment process.

aa. Shall not contain concentrations of other wastewater constituents in

amounts causing an obstruction in the sewer or other interference with the sewer or sewage treatment process operation, or causing pass-through the sewage treatment process, or greater than limits set forth by the city.

(3) *Local limits.* Unless specifically authorized by the city, no discharge shall contain daily maximum concentrations in excess of the following:

a. Interim local limits for compatible pollutants:

TABLE INSET:

1.	5-day BOD	in composite sample	1,700 mg/L
2.	Total suspended solids	in composite sample	2,300 mg/L
3.	Ammonia nitrogen	in composite sample	64 mg/L
4.	Total phosphorus	in composite sample	17 mg/L
5.	Polar (food-based) oil and grease	in grab sample	250 mg/L

b. Interim local limits for toxic pollutants:

TABLE INSET:

1.	Arsenic, total	in composite sample	0.13 mg/L
2.	Cadmium, total	in composite sample	0.18 mg/L
3.	Chromium, total	in composite sample	4.5 mg/L
4.	Copper, total	in composite sample	2.2 mg/L
5.	Cyanides, amenable	in grab sample	0.41 mg/L
6.	Lead, total	in composite sample	0.6 mg/L
7.	Mercury, total	in composite sample	*see special condition of subsection c. herein
8.	Molybdenum, total	in composite sample	0.059 mg/L
9.	Nickel, total	in composite sample	1.2 mg/L
10.	Selenium, total	in composite sample	0.26 mg/L
11.	Silver, total	in composite sample	1.4 mg/L
12.	Zinc, total	in composite sample	3.3 mg/L
13.	Nonpolar (petroleum-based) oil and grease	in grab sample	50 mg/L

c. Special condition for mercury. Unless otherwise allowed by this section, the discharge of mercury above the quantification level shall represent an exceedence of the local limit. Mercury sampling procedures, preservation and handling, and analytical protocol for compliance monitoring shall be in accordance with U.S. EPA and Method 245.1, unless Method 1631 is required by the city. The quantification level shall be 0.0002 mg/L for Method 245.1, or 0.0000005 mg/L for Method 1631, unless higher levels are appropriate due to sample matrix interference. Discharge of detectable mercury is allowed only where specifically approved and permitted by the city subject to the following conditions:

1. Each discharger of detectable mercury shall have a city-accessible point for monitoring the net non-domestic effluent. Costs for installing this monitoring point shall be the discharger's

responsibility.

2. Each discharger of detectable mercury shall routinely self-monitor its effluent for mercury using a composite sample collected over the period of normal discharge, tests conducted in accordance with U.S. EPA Method 245.1 or approved equivalent method, and a frequency to be established by the city. While the discharger may contract with the city or an outside consultant/laboratory to conduct this sampling and analytical testing, all associated costs shall be the discharger's responsibility.

3. At its discretion, the city may collect additional samples from each discharger of detectable mercury.

4. Each discharger of detectable mercury shall develop and implement a program to establish actions and schedule commitments for minimizing mercury entering the collection system. A program plan, which shall submitted to the city for review and concurrence, shall address the following: treatment system for removal of mercury from the discharged wastewater; written procedures for disposal of mercury-contaminated wastes; new employee training; refresher training for current employees; review, and elimination where feasible, of purchased materials containing mercury; and other activities as deemed appropriate by the city or the discharger.

5. Failure to comply with these conditions may result in escalated enforcement response including fines, legal action, and termination of sewer service.

If the city determines that all reasonable and cost-effective actions based on economic, technical, and treatability considerations have been implemented, a discharge containing detectable mercury may be accepted on the condition that the mercury minimization program continue to be actively administrated. However, the city reserves the right to reject any detectable mercury discharge for any reason it deems appropriate.

d. Should the interim local limits established herein, either individually or in combination with another, cause interference or pass-through at the POTW, the allowable concentrations of these substances may be reduced by the city council. Should it be determined that these limits can be raised without causing interference or pass-through at the POTW, the allowable concentrations of these substances may be raised by the city council subject to MDEQ review and approval.

(4) *National Categorical Pretreatment Standards.*

a. National Categorical Pretreatment Standards of 40 CFR Parts 405-471, which specify quantities and/or concentrations or properties of pollutants that may be discharged to a POTW by nondomestic users in specific industrial subcategories, are hereby incorporated by reference as an integral part of this article. These standards, unless specifically noted

otherwise, shall be in addition to all pretreatment standards and requirements set forth in these rules.

b. Upon the promulgation of National Categorical Pretreatment Standards for a particular subcategory, any associated standards that are more stringent than the city's local limits established herein shall supersede said limits for sources in that subcategory, and shall be considered part of this article. The city will notify affected users of the applicable limits and reporting requirements.

c. When applicable National Categorical Pretreatment Standards are expressed only in terms of mass of pollutant per unit of production, the city may impose equivalent concentration or mass limits in accordance with 40 CFR Part 403.6(c).

d. When wastewater subject to a National Categorical Pretreatment Standard is mixed with wastewater not regulated by the same standard, the city may impose alternative limits using the combined wastestream formula of 40 CFR Part 403.6(e).

e. A user may obtain a variance from a National Categorical Pretreatment Standard if the user can prove, pursuant to the procedural and substantive provisions of 40 CFR Part 403.13, that factors relating to its discharge are fundamentally different from the factors considered by EPA when developing that standard.

f. At its discretion, a user may seek to obtain a net gross adjustment to a national categorical pretreatment standard in accordance with 40 CFR Part 403.15.

g. Existing users subject to new National Categorical Pretreatment Standards shall achieve compliance within three years of the date the standard is promulgated, unless a shorter compliance schedule is specified in the standard.

h. New sources subject to National Categorical Pretreatment Standards shall install, have in operating condition, and have started up all pretreatment equipment required to achieve compliance before beginning to discharge. All applicable pretreatment standards shall be met within the shortest feasible time, but not to exceed 90 days after beginning to discharge.

(b) Except for categorical pretreatment standards, all of the standards and regulations set forth in subsection (a) of this section shall apply at the point where industrial or commercial type wastes are discharged into the public sewer system, and all chemical and/or mechanical corrective treatment must be accomplished to practical completion before such discharge point is reached. In the case of categorical pretreatment standards, corresponding limitations shall apply at the point of discharge from the categorical process unless alternative limits for the point of discharge to the POTW are determined by the city using the combined wastestream formula of 40 CFR Part 403.6(e).

(c) All measurements, tests and analyses of the characteristics of wastes, and wastes to which reference is made in this section, shall be determined in accordance with the

current edition of Standard Methods of the Examination of Water and Wastewater, published by the American Public Health Association and in accordance with 40 CFR 136, entitled Guidelines Establishing Test Procedures for Analysis of Pollutants, or as specified by the city.

(d) Sampling shall be carried out by customarily accepted methods to obtain a sample which is representative of conditions occurring during the periods of discharge. Whether the collected samples should be 24-hour composites, grabs, or both is dependent on the particular analysis tests being completed, as indicated in subsection (a)(3) of this section.

(e) Sewage discharges shall conform in all respects to the criteria set forth in this section, unless specifically excepted by the city manager. Future conditions imposed on the city manager by federal or state agencies may require subsequent reappraisal and modifications to such criteria by the city manager. Where federal or state regulations, including, but not limited to, the city's NPDES permit, require limits on parameters not covered in this article, or limits more stringent than those specified in this article, the federal or state limits shall take precedence.

(Res. No. 2008-01, 1-29-2008)

Sec. 38-103. Repairs and maintenance to service lines.

Any building, lot or parcel utilizing municipal sewer services will be responsible for maintaining and repairing the service line from their building to the sewer main. Notification should be given to the city immediately upon the discovery of a problem with the service lines. A determination will be made by the city sewer department whether the problem is not in the main. Work that is performed by non-city employees must be inspected and approved by the city prior to completion of the project. Routine cleaning of the service line to the main shall be the responsibility of the property owner.

(Res. No. 2008-01, 1-29-2008)

Sec. 38-104. Cleanouts.

All buildings, lots or parcels being serviced by the municipal sewer services shall be required to provide a cleanout located not more than 90 feet from the main. If the structure utilizing the municipal sewer service is more than 90 feet from the main, additional cleanouts shall be required. The structure should have a cleanout located within or immediately outside the wall nearest to the city main.

(Res. No. 2008-01, 1-29-2008)

Sec. 38-105. Interceptors.

(a) Grease, oil and sand interceptors shall be provided when, in the opinion of the city manager and/or the MDEQ, such interceptors are necessary for the proper handling of liquid wastes containing grease in excessive amounts or any inflammable wastes, sand or other harmful ingredients, except that such interceptors shall not be required for private living quarters or dwelling units.

(b) All interceptors shall be of a type and capacity approved by the city manager and/or the

MDEQ, and shall be located so as to be readily accessible for cleaning and inspection. Grease and oil interceptors shall be constructed of impervious materials capable of withstanding abrupt and extreme changes in temperature. They shall be substantially constructed, watertight and equipped with easily removable covers which, when bolted in place, shall be gastight and watertight.

(Res. No. 2008-01, 1-29-2008)

Sec. 38-106. Maintenance of interceptors.

All installed grease, oil and sand interceptors shall be maintained by the owner, at his expense, and shall be in a continuously efficient operation at all times.

(Res. No. 2008-01, 1-29-2008)

Sec. 38-107. Restrictions.

(a) If any wastes are discharged, or are proposed to be discharged, to the public sewers which wastes contain the substances, possess the characteristics or exceed the limitations enumerated in section 38-102, or which, in the judgment of the city manager, may have a deleterious effect on the city's facilities, including all piping, pumps, lagoon and other appurtenances, the city manager may:

(1) Prohibit the discharge of the wastes to the public sewer;

(2) Temporarily permit the discharge of the wastes to the public sewer, subject to conditions that the city manager may recommend based on his review of such factors as quantity of the waste in relation to flows and velocities in the sewers, materials of construction of the sewers, nature of the sewage treatment process, capacity of the sewage treatment works, degrees of treatability of the wastes, NPDES permit limitations and any other pertinent factors;

(3) Require pretreatment of such wastes to an acceptable condition for discharge to the public sewer, including, but not limited to, the general conditions, specific conditions, local limits, and national categorical pretreatment standards in subsections (a)(1), (a)(2), (a)(3), and (a)(4) of section 38-102;

(4) Control through permit, order, or similar means, the contribution to the POTW by each user to ensure compliance with applicable pretreatment standards or requirements;

(5) Limit the average and maximum wastewater constituents and characteristics, the average and maximum rate of discharge, the time of discharge, or make requirements for flow regulations and equalization;

(6) Require the installation and maintenance of inspection and sampling facilities;

(7) Establish specifications for monitoring programs which may include sampling locations, frequency of sampling, number, types and standards for analytical tests, and reporting schedule;

(8) Establish compliance schedules;

(9) Require submission of discharge monitoring reports, compliance reports,

schedule status reports, and other technical reports in accordance with pretreatment standards and requirements or deemed appropriate to meet the objectives of this article;

(10) Require the maintaining, retaining, furnishing, affording city access to, and allowing copying plant records relating to wastewater discharge to the POTW;

(11) Require prompt notification of the city in advance of any new introduction of wastewater constituents or any substantial change in the volume or character of the wastewater constituents being introduced into the wastewater treatment system;

(12) Require immediate notification of all discharges that could cause problems to the POTW, including slug discharges;

(13) Require waste treatment facilities, process facilities, waste streams, or other potential waste problems to be placed under the specific supervision and control of persons who have been certified by an appropriate state agency as properly qualified to supervise such facilities;

(14) Require the maintaining, retaining, furnishing, affording city access to, and allowing copying plant records relating to the final disposal of specific liquids, solids, sludges, oils, radioactive materials, solvents, or other wastes;

(15) Convert concentration-based national categorical pretreatment standards to equivalent mass-based or production-based pretreatment requirements;

(16) Adjust categorical pretreatment standards to reflect the presence of pollutants in a user's intake water pursuant to 40 CFR 403.15; or

(17) Require other conditions as deemed appropriate by the city to ensure compliance with this article and the objectives of the industrial pretreatment program.

(b) The city manager, in all cases, shall require payment to cover any additional cost it may incur in connection with the inspecting, sampling, testing, handling and treating of the wastes not covered by the existing sewer charges.

(c) No user shall ever increase the use of process water, or in any way attempt to purposely dilute a discharge, as a partial or complete substitute for adequate treatment to achieve compliance with a concentration limit unless expressly authorized by the corresponding pretreatment standard or requirement. The city may impose mass limits on any user who is using dilution to meet a concentration limit, or in any other case where the imposition of mass limitations is deemed appropriate.

(d) *Recordkeeping.*

(1) All users subject to this article shall retain and preserve for no less than three years all documents including records, books, memoranda, reports, correspondence, and any and all summaries thereto relating to monitoring, sampling and chemical analyses made by or in behalf of the user in connection with its discharge. These records shall include the following for all samples:

a. Date, location, method, and time of sampling as well as names of persons taking the samples;

b. Dates analyses were performed;

c. Identification of analyst or commercial laboratory who performed the analyses;

d. Analytical techniques and/or methods used; and

e. Results of such analyses.

(2) All documents which pertain to matters which are the subject of an administrative order or any other enforcement activities of the city shall be retained and preserved by the user until all associated activities have concluded and all associated appeal periods have expired.

(e) *Reporting.*

(1) *Baseline monitoring report--Categorical.*

a. Within 180 days after promulgation or revision of a national categorical pretreatment standard, all existing affected industrial users must submit to the city a baseline monitoring report containing the information specified by this subsection for each process regulated by such pretreatment standard.

b. At least 90 days prior to commencement of discharge, new sources and existing sources that become affected industrial users subsequent to the promulgation of an applicable national categorical pretreatment standard, shall submit to the city a baseline monitoring report containing the information specified by this subsection for each process regulated by such pretreatment standard. For new sources, this submittal shall also include estimates of the anticipated flow, estimates of the quality and quantity of pollutants to be discharged, and information on the method of pretreatment intended to be used to meet the applicable pretreatment standard.

c. All baseline monitoring reports shall include the following information:

1. Identifying information including name and address of the facility, and name of the owner or operator.

2. A list of any environmental control permits held by or for the facility.

3. A brief description of the nature, average rate of production, and SIC classifications of operations carried out at the facility. This description should include a schematic process diagram that indicates points of discharge to the POTW from the regulated processes.

4. Information on measured average daily and maximum daily flows to the POTW from regulated process streams, and other streams as necessary to enable use of the combined wastestream formula of 40 CFR Part 403.6(e).

5. All pretreatment standards and requirements applicable to regulated processes and/or to the discharge to the POTW.

6. Results of sampling and analysis identifying the nature of associated pollutants in the discharge from regulated processes and/or the discharge to the POTW. Samples shall be representative of daily operations, and shall be collected and analyzed in accordance with procedures of this article and 40 CFR Part 403.12(b)(5)(iii) and (iv).

7. A statement indicating whether applicable pretreatment standards and requirements are being met on a consistent basis and, if not, what additional O&M and/or additional pretreatment will be provided to achieve compliance. If additional pretreatment and/or O&M are required, the report shall also include a compliance schedule in accordance with 40 CFR Part 403.12(c) by which the user will complete such actions in the shortest time possible. The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard.

8. Signed certification statement pursuant to subsection (7).

d. Any changes in information submitted pursuant to this subsection shall be reported to the city within 60 days of becoming aware of the change.

(2) *90-day compliance status report--Categorical.*

a. Within 90 days following the required date for final compliance for an existing user, or following commencement of the introduction of wastewater into the POTW for a new source, any user subject to a national categorical pretreatment standard shall submit to the city a report on the compliance status of each process regulated by such pretreatment standard. This 90-day compliance status report shall indicate the average and maximum daily flow, as well as nature and concentration of all pollutants that are limited by all applicable pretreatment standards and requirements.

b. For users subject to categorical pretreatment standards expressed in units per rate of production, the 90-day compliance status report shall include the actual production rate of the regulated process during the sampling period and a reasonable estimate of the expected long-term average production rate.

c. The 90-day compliance status report shall clearly state whether all applicable pretreatment standards and requirements are being met on a consistent basis.

d. All 90-day compliance status reports shall include a signed certification statement pursuant to subsection (7) herein.

(3) *Periodic self-monitoring report.*

a. During the months of June and December, or at other times if so directed by the city, all significant industrial users shall submit periodic self-monitoring reports to the city. This report shall indicate the nature and

concentration of pollutants in the discharge which are limited by pretreatment standards and requirements, as well as the measured or estimated average and maximum daily flows for the reporting period.

b. All wastewater sample results included in the periodic self-monitoring report must be representative of the user's discharge. It shall be the users responsibility to properly operate, keep clean, and maintain in good working order all wastewater monitoring and flow measurement facilities at all times. The failure of a user to keep its monitoring facility in good working order will not be acceptable grounds for claims that sample results are unrepresentative of its discharge.

c. A user shall include in the periodic self-monitoring report results of any pollutant that is monitored more frequently than required by the city, provided the procedures prescribed in the user's wastewater discharge permit or this article have been used.

d. All periodic self-monitoring reports shall include a signed certification statement pursuant to subsection (7) herein.

(4) *Notification of changed discharge.* Each user must notify the city of any planned significant changes to the user's operations or system which might alter the nature, quality, or volume of its wastewater at least 90 days before the change if possible; if not possible, the notification shall be made to the city as soon as the planned change becomes known. The city may require the user to submit such information as may be deemed necessary to evaluate the changed condition, including submission of a wastewater discharge permit application in accordance with subsection (b) of section 38-95. The city may issue a new wastewater discharge permit or modify an existing wastewater discharge permit in response to changed or anticipated changed conditions. For purposes of this requirement, significant changes include but are not limited to flow increases of 20 percent or greater and discharge of any previously unreported pollutants. All notification of changed discharge reports shall include a signed certification statement pursuant to subsection (7) herein.

(5) *Notification of potential problems.* In the case of any nonroutine discharge that exceed applicable pretreatment standards and requirements including but not limited to slug loadings, accidental discharges, discharges resulting from upsets or unanticipated bypasses, discharges of a episodic nature, and noncustomary batch discharges, the user shall submit the following information to the city verbally within 24 hours of becoming aware of an upset or unintentional bypass, and provide a written submission within five days thereafter:

a. A description of the discharge including the location of discharge, type of waste, concentration and volume if known;

b. The period of discharge including exact dates and times or, if not corrected, the anticipated time the discharge is expected to continue; and

c. Corrective actions being taken reduce, eliminate, and prevent recurrence of the discharge.

All notification of potential problem shall include a signed certification statement pursuant to subsection (7) herein. The city may waive the written report on a

case-by-case basis if the verbal report has been received within the required time period.

(6) *Limit exceedence notification/repeat sampling report.* If sampling performed by any user indicates noncompliance with any pretreatment standard or requirement, the user shall notify the city verbally within 24 hours of becoming aware of the violation. A user shall then repeat the sampling and analysis, except if the city conducts monitoring at the facility between the user's initial sampling and when results of this sampling are received. The user shall submit results of the repeat analysis in writing to the city within 30 days of becoming aware of the violation. All repeat sampling reports shall include a signed certification statement pursuant to subsection (7) herein.

(7) *Signatory requirements.*

a. All written reports submitted pursuant to this section shall be signed by an authorized representative of industrial user, and include the following certification statement:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

b. If an authorized representative of industrial user changes because a different individual has responsibility for the overall operation of the facility or for environmental matters of the company, a new authorization satisfying the requirements of subsection 38-86(b) must be submitted to the city prior to or together with any reports signed by that representative.

(f) *Upsets.*

(1) Users shall control production of all discharges to the extent necessary to maintain compliance with pretreatment standards and requirements upon reduction, loss, or failure of its treatment facility until such facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost, or fails.

(2) An upset shall not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

(3) An upset shall constitute an affirmative defense to an action brought for noncompliance with pretreatment standards and requirements only if the requirements of paragraph (4) of this subsection have been met.

(4) A user who desires to establish the affirmative defense of upset shall demonstrate through operating logs or other relevant evidence that:

a. An upset occurred, and the cause(s) of the upset can be identified;

b. The facility was at the time being operated in a prudent and workman-like manner, and in compliance with applicable O & M procedures; and

c. The user provided the city with a report of potential problems pursuant to subsection (e)(5).

(5) In any enforcement proceeding, the user seeking to establish the occurrence of an upset shall have the burden of proof.

(6) Users will have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with categorical pretreatment standards.

(g) *Bypasses.*

(1) A user may allow a bypass to occur if it does not cause pretreatment standards or requirements to be violated, but only if it is for essential maintenance to assure efficient operation. Such bypasses are not subject to the requirements of paragraphs (2) and (3) of this subsection.

(2) Except as provided in paragraph (3) of this subsection, bypass is prohibited and the city may take an enforcement action against a user for a bypass unless:

a. Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage. For the purposes of this section, severe property damage means substantial physical damage to property, damage to the user's treatment facilities that causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in absence of a bypass. Severe property damage does not mean economic loss caused by delays in production;

b. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

c. The user provided the city with a report of potential problems pursuant to subsection (e)(5).

(3) If a user knows in advance of the need for a bypass, it shall submit prior notice to the city at least ten days before the date of the bypass if possible; if not possible, the prior notification shall be made to the city as soon as the need for a bypass becomes known. The city may approve an anticipated bypass, after considering its adverse effects, if it is determined that the three conditions listed in paragraph (2) of this subsection will be met.

(Res. No. 2008-01, 1-29-2008)

Sec. 38-108. Maintenance of facilities.

(a) When the pretreatment or equalization of sewage flows is permitted, the design and installation of the plants and equipment shall be subject to the review and approval of the city manager, and subject to the requirements of all applicable codes, ordinances and laws. The review of such plans and operating procedures by the city shall in no way relieve the user from the responsibility of modifying such facilities as necessary to produce a discharge acceptable to the city under the provisions of this article.

(b) Where treatment or flow equalizing facilities are provided for waters or wastes, they shall be maintained continuously in a satisfactory and effective operation by the owner at his expense.

(Res. No. 2008-01, 1-29-2008)

Sec. 38-109. Control manholes.

When required by the city or the MDEQ, the owner of property served by a building sewer carrying industrial wastes shall install a suitable control manhole together with any necessary meters, samplers, and other appurtenances in the building sewer to facilitate observation, sampling and measurement of wastes. Such manhole, when required, shall be accessibly and safely located, and shall be constructed in accordance with all applicable local construction standards and with plans approved by 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. The review of control manhole construction plans by the city shall in no way relieve the user from the responsibility of maintaining and/or improving such facilities as necessary to properly observe, sample, and measure discharged wastes.

(Res. No. 2008-01, 1-29-2008)

Sec. 38-110. Measurements and tests.

All measurements, tests and analyses of the characteristics of waters and wastes as set forth in this article shall be determined in accordance with the Standard Methods for Examination of Water and Sewage and shall be determined at the control manhole as provided in section 38-109, 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 the building sewer is connected.

(Res. No. 2008-01, 1-29-2008)

Sec. 38-111. Agreements.

(a) Nothing in this article shall be construed as preventing any special agreement or arrangement between the city and any industrial concern whereby an industrial waste of unusual strength or character may be accepted by the city for treatment. Any such special agreement or arrangement is subject to payment by the industrial concern of the estimated cost of such treatment, and may require review and approval by MDEQ.

(b) *Confidential information.* Information and data on a user obtained from reports, questionnaires, permit applications, permits, monitoring programs, and inspections shall be available to the public or other governmental agency without restriction unless the user specifically requests and is able to demonstrate to the satisfaction of the city that

the release of such information would divulge information, processes, or methods of production entitled to protection as trade secrets of the user. When requested by the person furnishing a report, the portion of a report which might disclose confidential information shall not be made available for inspection by the public. Wastewater constituents and characteristics will not be recognized as confidential information. Confidential information will be made available to the MDEQ or EPA upon written request for evaluations related to the city's NPDES permit and industrial pretreatment program, and also to the state or state agency for judicial review or enforcement proceedings involving the person furnishing the report. Information accepted by the city as confidential will not be transmitted to any governmental agency by the city until and unless a ten-day notification is given to the user.

(c) *Wastes from other jurisdictions.*

(1) If another municipality, or a user located within another municipality, contributes wastewater to the POTW, the city will enter into an interjurisdictional agreement with the contributing municipality. Prior to entering into this agreement, the city will request the following information from the contributing municipality:

a. Description of the quality and volume of wastewater discharged to the POTW by the contributing municipality;

b. Inventory of all users located within the contributing municipality that are discharging to the POTW; and

c. Other information as the city may deem necessary.

(2) The interjurisdictional agreement pursuant to subsection (1) herein will include but not be limited to following conditions:

a. Requirement that the contributing municipality adopt a sewer use ordinance which is at least as stringent as this article, including local limits which are at least as stringent as those set out in section 38-102(a)(3) herein, and that such ordinance and limits must be revised as necessary to reflect any changes made by the city to this article;

b. Requirement that the contributing municipality submit a revised user inventory on at least an annual basis;

c. Provision specifying which pretreatment implementation activities including wastewater discharge permit issuance, inspection and sampling, and enforcement will be conducted by the contributing municipality; which of these activities will be conducted by the city, and which of these activities will be conducted jointly by the contributing municipality and the city;

d. Requirement that the contributing municipality provide the city with access to all information that the contributing municipality obtains as part of its pretreatment activities;

e. Limits on the nature, quality, and volume of the contributing municipality's wastewater at the point where it discharges to the POTW;

f. Requirements for monitoring the contributing municipality's discharge;

g. Provision ensuring the city's access to the facilities of users located within the contributing municipality's jurisdictional boundaries for the purpose of inspection, sampling, and any other duties deemed necessary by the city;

h. In cases where the contributing municipality has primary responsibility for permitting, compliance monitoring, or enforcement, provision that the city has the right to take legal action to enforce the terms of the contributing municipality's ordinance or to impose and enforce pretreatment standards and requirements directly against a noncompliant user in the event the contributing municipality is unable or unwilling to take such action; and

i. A provision specifying remedies available for breach of the terms of the interjurisdictional agreement.

(Res. No. 2008-01, 1-29-2008)

Sec. 38-112. Protection from damage.

No unauthorized person shall maliciously, willfully or negligently break, damage, destroy, uncover, deface or tamper with any structure, appurtenance or equipment which is a part of the municipal sewage system or treatment plant.

(Res. No. 2008-01, 1-29-2008)

Sec. 38-113. Rates, charges and fees.

(a) All rates, fees and charges required by this article shall be amended through resolution of the city council, and shall be considered due as of the date billed and delinquent one month after the billing date.

(b) Charges for service connections on streets shall be based on a flat fee relative to the service size required. Charges for service connections may be revised when deemed necessary by the city manager, subject to approval by the city council.

(c) A penalty, as established by resolution of the city council, shall be applied to delinquent bills one month following the billing date. Services with unpaid balances two months following the billing date will be subject to discontinuance; except, where a utility service changes name due to a user moving, all rates, fees and charges accumulated to date shall be considered due immediately, and discontinuance of service to the unit will remain until all fees are paid.

(d) The city council may make such rules and regulations governing the operation of the sewer system, rates, etc., as it shall deem necessary. Such rules and regulations shall have the same force and effect as ordinances.

(e) The city council may adopt fees for significant industrial users of the POTW to administrate the industrial pretreatment program. Such fees shall be considered separate from all other fees, fines, and penalties chargeable by the city. The basis for these fees may include, but not limited to, the following:

(1) Reimbursement of expenses for developing the pretreatment program;

(2) Reviewing wastewater discharge permit applications, issuing permits, and

transferring permits;

(3) Conducting inspection and surveillance activities, including incurred costs of sampling/analyzing a user's discharge and reviewing monitoring reports submitted by users;

(4) Reviewing and responding to accidental discharges;

(5) Reviewing construction documents;

(6) Responding to appeals; and

(7) Other fees as the city may deem necessary to carry out the requirements contained in this article.

(f) The city council may adopt extra-strength surcharges applicable to users who discharge compatible pollutants in excess of normal domestic sewage quality. Such discharges shall still be subject to the local limits of subsection 38-102(a)(3). For purposes of this article, normal domestic sewage quality will mean the following daily average concentrations:

TABLE INSET:

(1)	5-day BOD	in composite sample	200 mg/L
(2)	Total suspended solids	in composite sample	200 mg/L
(3)	Ammonia nitrogen	in composite sample	24 mg/L
(4)	Total phosphorus	in composite sample	3.0 mg/L
(5)	Polar (food-grade) oil and grease	in grab sample	36 mg/L

(Res. No. 2008-01, 1-29-2008)

Sec. 38-114. Collections.

(a) In addition to other remedies possessed by the city for the collection of sewer rates, assessments, charges or rentals for the use of the sewer by any house, building, premises, lot or parcel of land, the city shall have, as security for the collection of such rates, a lien upon such house, building, premises, lot or parcel of land to which such service has been supplied. Such lien shall become effective immediately upon the connection of sewer services to the premises or property, and the official record of the city clerk's office shall constitute notice of the pendency of such lien. The lien shall have priority over all other liens, except taxes and special assessments, whether or not such liens accrued or were recorded prior to the lien created by this section.

(b) (1) All unpaid sewer charges which, upon April 1 of each year, have remained unpaid for three months or more shall be reported by the city clerk to the city council at the first meeting of the city council in the month of April. The city council shall order the publication in a newspaper published in the city of notice to all owners of property within the city that all unpaid sewer charges, rates or fees which have remained unpaid for a period of three months or more, as of April 1, which have not been paid by the following April 30, will be transferred to the tax roll and assessed upon the city's tax roll against the property upon which the sewer service was used, to be collected in the same manner as the lien created by city taxes on the tax roll.

(2) All unpaid sewer rates, charges or fees which are reported by the city clerk to the city council as having been unpaid for a period of three months or more on April 1 of each year and which remain unpaid on the following April 30 may be transferred to the city's tax roll and assessed against the property to which the sewer service was supplied or furnished, and such unpaid rates, charges or fees accrued shall be collected with and in the same manner as city taxes are collected, and if such unpaid rates, charges or fees shall remain delinquent and unpaid after the expiration of the time limit in the warrant for the collection of taxes levied in such roll, such charges shall be returned to the county treasurer to be collected in the same manner as the lien created by the city taxes on the delinquent tax roll of the city.

(c) The provisions of this section shall not apply where a lease has been legally executed containing a provision that the lessor shall not be liable for payment of sewer bills accruing subsequent to the filing of such lease with the city clerk's office, and 20 days' notice shall be given by the lessor of any cancellation, change in or termination of the lease.

(d) In addition to other remedies provided in this section, the city shall have the right to discontinue sewer services to any premises for the nonpayment of sewer rates when due, in accordance with the steps and procedures outlined in section 38-114(c). This right to discontinue sewer services shall extend to entire multifamily dwellings if each family unit within the multifamily dwelling does not have a separate sewer connection, or if the separate connections for individual units are not readily accessible to city employees.

(Res. No. 2008-01, 1-29-2008)

Sec. 38-115. Inspectors.

(a) The city manager and other duly authorized officials or employees of the city and agents of the local health agency, the MDEQ, and the EPA, bearing proper credentials and identification, shall be permitted to enter upon all properties within the city for the purpose of inspection, observation, measurement, sampling and testing, and copying applicable records in accordance with the provisions of this article, at any time during reasonable or usual business hours. Any person found guilty of refusing or obstructing such entry shall be guilty of a violation of this article.

(b) If the city manager, other duly authorized officials or employees of the city, or agents of the local health agency, the MDEQ, and the EPA, have been refused access to any property within the city, and are able to demonstrate probable cause to believe that there may be a violation of this article, that there is a need to inspect or sample as part of the city's inspection and sampling program to verify compliance with this article or any permit or order issued hereunder, or that there is a threat to overall public health, safety and welfare of the community, then the city manager may seek issuance of a search warrant from the Circuit Court of Gratiot County.

(Res. No. 2008-01, 1-29-2008)

Sec. 38-116. Service abandonment determination.

The city reserves the right to take appropriate measures to abandon services to an existing property if such property is left vacant for over a period of 12 months, unless there is written communication between the city and the interested party of the party's intentions on such premises.

(Res. No. 2008-01, 1-29-2008)

Sec. 38-117. Enforcement provisions.

(a) *Administrative remedies.*

(1) The city may suspend wastewater treatment services to any user when such suspension is necessary, in the opinion of the city, in order to stop an actual or threatened discharge that presents or may present an imminent or substantial endangerment to the health or welfare of persons or the environment, causes or may cause pass through or interference to the POTW, or causes or may cause the POTW to violate any condition of its NPDES permit. The city may also suspend, revoke, or terminate the wastewater discharge permit of any user that:

a. Fails to accurately report the wastewater constituents and characteristics of its discharge;

b. Fails to report significant changes in wastewater constituents or characteristics;

c. Refuses reasonable access to the user's premises by representatives of the city for the purpose of inspection or surveillance; or

d. Violates any conditions of its wastewater discharge permit, this article, or administrative order issued hereunder.

(2) In addition to affirmative defenses associated with upsets pursuant to subsection 38-107(f) and with bypasses pursuant to subsection 38-107(g), a user shall have an affirmative defense in any action alleging that it discharged a pollutant to the POTW causing interference, pass-through, or a violation of this article if it can be demonstrated that both of the following occurred:

a. It did not know or have reason to know that its discharge, alone or in conjunction with a discharge or discharges from other sources, would cause pass-through, interference, or a violation this article; and

b. A local limit was in effect for the pollutant that caused pass-through or interference, and the user was in compliance with this local limit directly before and during the pass-through or interference; or a local limit was not in effect for the pollutant that caused the pass-through or interference, and the user's discharge directly before and during the pass-through or interference did not change substantially in nature or constituents from the prior discharge activity.

Users shall not have an affirmative defense for trucked or hauled pollutants; pollutants that create a fire or explosion hazard in the POTW; pollutants that cause corrosive structural damage to the POTW; or pollutants that result in toxic gases, vapors, or fumes within the POTW in a quantity that cause acute worker

health or safety problems.

(3) Administrative notices and orders.

a. *Notice of violation.* When it is determined that a user has violated any provision of its wastewater discharge permit, this article, administrative order issued hereunder, or other pretreatment standard or requirement, the city may issue a notice of violation to formally document the noncompliance. This document will specify the nature of the violation, establish a date by which the violation shall be corrected, and notify the affected user that failure to correct the violation would constitute a further violation that may result in additional enforcement action. The notice of violation will be sent via first-class mail or personally served on an authorized representative of the industrial user. Receipt, or non-receipt, of a notice of violation shall in no way relieve the affected user of any and all liability associated with the violation. Issuance of a notice of violation will not be a bar against, or a prerequisite for, any other enforcement actions by the city against the affected user.

b. *Order to show cause.* When it is determined that a user has violated any provision of its wastewater discharge permit, this article, administrative order issued hereunder, or other pretreatment standard or requirement, the city may issue an administrative order to show cause to require the affected user to appear at a hearing to demonstrate why escalated enforcement action should not be pursued. This document will specify the nature of the violation, establish the time and place for the hearing, and notify the affected user that failure to comply would constitute a further violation of this article that may result in additional enforcement action. The order to show cause will be issued at least ten days prior to the hearing, and will be sent via certified mail/return receipt requested or personally served on an authorized representative of the industrial user. Receipt, or non-receipt, of an order to show cause shall in no way relieve the affected user of any liability associated with the violation. Issuance of an order to show cause or conducting of the show cause hearing will not be a bar against, or a prerequisite for, any other enforcement actions by the city against the affected user.

c. *Order of consent.* When the city and an affected user agree to a violation and to the remedial solution, the city may issue an order of consent to formally establish such agreement. The order of consent will specify the nature of the violation and required actions such as compliance schedules, stipulated fines, additional self-monitoring, and improvements to treatment facilities or management practices designed to control the user's discharge to the sewer. The order of consent will be sent via certified mail/return receipt requested or personally served on an authorized representative of the industrial user, and will require signatures of representatives from both the city and the affected user. The order of consent shall have the same force and effect as other administrative orders issued by the city pursuant to this article, shall be judicially enforceable, and shall not modify the requirements or extend the deadline for compliance established by a pretreatment standard or

requirement. Receipt, or non-receipt, of an order of consent shall in no way relieve the affected user of any liability associated with the violation. Issuance of an order of consent will not be a bar against, or a prerequisite for, any other enforcement actions by the city against the affected user.

d. *Order to achieve compliance.* When the city and affected user do not agree to the violation or to the remedial solution, the city may issue an order to achieve compliance. The order to achieve compliance will specify the nature of the violation and establish required actions such as compliance schedules, stipulated fines, additional self-monitoring, and improvements to treatment facilities or management practices designed to control the user's discharge to the sewer. The order to achieve compliance will be issued unilaterally in that terms need not be agreed to by the affected user, and will be sent via certified mail/return receipt requested or personally served on an authorized representative of the industrial user. The order to achieve compliance shall have the same force and effect as other administrative orders issued by the city pursuant to this article, shall be judicially enforceable, and shall not modify the requirements or extend the deadline for compliance established by a pretreatment standard or requirement. Receipt, or non-receipt, of an order to achieve compliance shall in no way relieve the affected user of any liability associated with the violation. Issuance of an order to achieve compliance will not be a bar against, or a prerequisite for, any other enforcement actions by the city against the affected user.

e. *Cease and desist order.* When it is determined that a user has violated and continues to violate any provision of its wastewater discharge permit, this article, administrative order issued hereunder, or other pretreatment standard or requirement, the city may issue a cease and desist order requiring the affected user to eliminate the violation within 24 hours or face suspension of sewer service. This document will specify the nature of the violation and require that the violation cease. If the violation has not been corrected within the ordered time period, the city may suspend sewer service without further notice until such time as the affected user is able to demonstrate that it can comply with discharge standards and requirements. The cease and desist order will be personally served on an authorized representative of the industrial user. Receipt, or non-receipt, of a cease and desist order shall in no way relieve the affected user of any liability associated with the violation. Issuance of a cease and desist order will not be a bar against, or a prerequisite for, any other enforcement actions by the city against the affected user.

f. *Emergency cease and desist order/suspension of service.* Whenever it is determined that a user has violated any provision of its wastewater discharge permit, this article, administrative order issued hereunder, or other pretreatment standard or requirement, and that the violation creates or threatens to create an emergency situation including but not limited to pass-through or interference at the POTW, damage to the POTW, hazard to the environment, endangerment to the public health and safety, or violation of any condition of the city's NPDES permit, the city may issue an emergency cease and desist order. The emergency cease and desist

order will specify the nature of the violation, notify the affected user to eliminate the violating discharge immediately or face service severance via a temporary plug in its sewer connection at any time and without further warning, require that the discharge not recommence until such time as the affected user is able to demonstrate that it can comply with the discharge requirements, and notify the affected user of its liability for any costs incurred by the city to conduct this enforcement action. This document will also establish the time and place for a hearing where the affected user shall present a written statement regarding the causes of the violation and measures taken to prevent future occurrences. The emergency cease and desist order will be personally served to an authorized representative of the industrial user, or may be delivered verbally via telephone to an authorized representative of the industrial user and then served personally. Receipt, or non-receipt, of an emergency cease and desist order shall in no way relieve the affected user of any liability associated with the violation. Issuance of an emergency cease and desist order will not be a bar against, or a prerequisite for, any other enforcement actions by the city against the affected user.

g. *Notice of termination.* Except for emergency situations covered under subsection (a)(3)f. of this section, whenever it is determined that a user's continuing violation of any provision of its wastewater discharge permit, this article, administrative order issued hereunder, or other pretreatment standard or requirement warrants revocation of its privilege to discharge to the POTW, the city may issue a notice of termination to warn of the impending suspension of the sewer service up to and including severance via temporary plug in the affected user's sewer connection. The notice of termination will specify the date and the time of scheduled service suspension in order to allow the affected user to either voluntarily cease the violating discharge or arrange appropriate actions such as production shut-down or alternative means of wastewater disposal, and notify the affected user of its liability for any costs incurred by the city to conduct this enforcement action. This document will also establish the time and place for a hearing where the affected user shall present a written statement regarding the causes of the violation and measures taken to prevent future occurrences. The notice of termination will be personally served on an authorized representative of the industrial user at least ten days before the scheduled service suspension. Receipt, or non-receipt, of a notice of termination shall in no way relieve the affected user of any liability associated with the violation. Issuance of a notice of termination will not be a bar against, or a prerequisite for, any other enforcement actions by the city against the affected user.

h. *[Liable for fines, penalties, costs.]* In addition to the prescribed herein, the affected user shall be liable for all fines, penalties, and associated legal and other costs incurred by the city as the result of a violation of its NPDES discharge permit that is attributable, in whole or in part, to the user's violation of any provision of its wastewater discharge permit, this article, administrative order issued hereunder, or other pretreatment

standard or requirement.

(4) When the city finds that a user has violated or continues to violate any provision of its wastewater discharge permit, this article, administrative order issued hereunder, or other pretreatment standard or requirement, an administrative fine may be assessed against the affected user in an amount up to $500.00 per violation. Each day during which the violation occurred or continues to occur may be deemed a separate violation and, in the case of a violation of monthly or other long-term average discharge limit, each day during the period of averaging may be deemed a separate violation. Receipt, or non-receipt, of an administrative fine shall in no way relieve the affected user of any liability associated with the violation. Issuance of an administrative fine shall not be a bar against, or a prerequisite for, any other enforcement actions by the city against the affected user.

(5) Except for emergency situations covered under subsection (a)(3)f., any user desiring to dispute a city-issued notice of violation or order, including but not limited to fines, may present a formal request for reconsideration. Such a request shall be submitted in writing to the city council within ten days of first being notified of the corresponding order for all but a notice of termination, where such a request shall be submitted within five days of notification. If this request has merit in the opinion of the city council, the city manager will convene a hearing on the matter as soon as possible to collect testimony of appropriate persons, take evidence, and render a final determination. In the event the affected user's request for reconsideration is unsuccessful, any original fine will become immediately due and additional costs may be added to recover expenses incurred by the city to administer this request. Further appeal of the city manager's final determination shall be governed by applicable state law. Submittal of a request for reconsideration shall in no way relieve the affected user of any and all liability associated with the violation. Submittal of a request for reconsideration will not stay the corresponding limit, notice of violation, order, fine, or any other enforcement proceedings by the city against the affected user.

(b) *Judicial remedies.*

(1) *Injunctive relief.*

a. When it is determined that a user has violated or continues to violate any provision of its wastewater discharge permit, this article, administrative order issued hereunder, or other pretreatment standard or requirement, the city may petition the Circuit Court of Gratiot County for appropriate legal and/or equitable relief.

b. A user who has violated or continues to violate any provision of its wastewater discharge permit, this article, administrative order issued hereunder, or other pretreatment standard or requirement, will be liable to issuance of a preliminary injunction or a permanent injunction or both as may be appropriate. This action will be sought to restrain or compel activities on the part of the affected user. A petition for injunctive relief shall in no way relieve the affected user of any liability associated with the violation. A petition for injunctive relief will not be a bar against, or a prerequisite for, any other actions by the city against the affected user.

(2) *Civil penalties.*

a. A user who has violated or continues to violate any provision of its wastewater discharge permit, this article, administrative order issued hereunder, or other pretreatment standard or requirement, will be liable for a civil penalty of up to $1,000.00 per violation. Each day during which the violation occurred or continues to occur may be deemed a separate distinct violation and, in the case of a violation of monthly or other long-term average discharge limit, each day during the period of averaging may be deemed a separate violation. The affected user will also be liable for any and all costs incurred by the city for associated enforcement action such as reasonable attorney's fees, court costs, additional sampling and monitoring expenses, costs of any environmental damage, any fines imposed upon the city for NPDES permit violations that result in whole or in part from the user's violation, as well as expenses associated with remediation of sites thereby contaminated. The city may petition the court to impose, assess, and recover sums up to this limit of liability.

b. In determining the appropriate amount of civil penalty to seek, the city may take into account all relevant circumstances including but not limited to, the extent of harm caused by the violation, the magnitude and duration of the violation, any economic benefit gained by the affected user as a result of the violation, corrective actions implemented or proposed to be implemented by the affected user, and history of compliance or noncompliance by the affected user.

c. A suit for civil penalties will not be a bar against, or a prerequisite for, any other actions by the city against the affected user.

(3) *Criminal prosecution.*

a. A user who has willfully or negligently violated or continues to willfully or negligently violate any provision of its wastewater discharge permit, this article, administrative order issued hereunder, or other pretreatment standard or requirement, will be liable to criminal prosecution. If convicted, the affected user will be guilty of a misdemeanor and may be punished by a monetary penalty of up to $500.00 per violation, imprisonment for up to six months, or both. Each day during which the violation occurred or continues to occur may be deemed a separate distinct violation and, in the case of a violation of monthly or other long-term average discharge limit, each day during the period of averaging may be deemed a separate violation. Criminal prosecution will not be a bar against, or a prerequisite for, any other actions by the city against the affected user.

b. *Falsifying information.* A user who knowingly makes any false statements, representations, or certifications in any application, report, record, plan, or other document filed or required to be maintained pursuant to its wastewater discharge permit, this article, administrative order issued hereunder, or other pretreatment standard or requirement will be liable to criminal prosecution. If convicted, the affected user will be guilty of a

misdemeanor and may be punished by a monetary penalty of up to $500.00 per violation, imprisonment for up to six months, or both. Each day during which the violation occurred or continues to occur may be deemed a separate distinct violation and, in the case of a violation of monthly or other long-term average discharge limit, each day during the period of averaging may be deemed a separate violation.

c. *Tampering.* A user who falsifies, tampers with, or knowingly renders inaccurate any data device or test method used to monitor a discharge pursuant to this its wastewater discharge permit, this article, administrative order issued hereunder, or other pretreatment standard or requirement will be liable to criminal prosecution. If convicted, the affected user will be guilty of a misdemeanor and may be punished by a monetary penalty of up to $500.00 per violation, imprisonment for up to six months, or both. Each day during which the violation occurred or continues to occur may be deemed a separate distinct violation and, in the case of a violation of monthly or other long-term average discharge limit, each day during the period of averaging may be deemed a separate violation.

(Res. No. 2008-01, 1-29-2008)

Sec. 38-118. Annual publication of significant violators.

The city will annually publish in a local newspaper a list of all categorical users that were in significant noncompliance with any condition of its wastewater discharge permit, this article, administrative order issued hereunder, or other pretreatment standard or requirement at least once during the previous 12 months. The notification will identify the nature of the violation and summarize any enforcement actions taken against such users during the same 12-month period. The term significant noncompliance shall mean the following:

(a) Chronic violation of wastewater discharge limit, defined here as when 66 percent or more of all the measurements for a pollutant parameter taken during a six-month period exceed by any magnitude the corresponding daily maximum limit or the corresponding average limit;

(b) Technical review criteria violation of wastewater discharge limit, defined here as when 33 percent or more of all of the measurements for a pollutant parameter taken during a six-month period equal or exceed the product of the corresponding daily maximum limit multiplied by the applicable TRC factor, or the product of the corresponding average limit multiplied by the applicable TRC factor (TRC Factor = 1.4 for BOD, TSS, fats, oil and grease, and 1.2 for all other pollutants except pH);

(c) Any other violation of a daily maximum limit or an average limit that the city determines has alone or in combination with other discharges caused interference or pass through, including endangering the health of POTW personnel or the general public;

(d) Any discharge of a pollutant that has caused imminent endangerment to human health, public welfare, or the environment, or has resulted in the POTW exercising its emergency authority to halt or prevent such a discharge;

(e) Failure to meet, within 90 days after the schedule date, a compliance schedule

milestone contained in a city-issued discharge permit 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 baseline monitoring reports, compliance status reports, self-monitoring reports, limit exceedence notification/repeat sampling reports, and/or other required reports such as status of compliance schedules;

(g) Failure to accurately report noncompliance;

(h) Any other violation or group of violations that the city determines as adversely affecting the objectives of this article or operation of the industrial pretreatment program.

(Res. No. 2008-01, 1-29-2008)

Sec. 38-119. Validity, severability, conflict.

(a) The provisions of this article are severable, and if any of the provisions, words, phrases, clauses, or terms, or the application thereof to any person, firm, or corporation, or to any circumstances, shall be held invalid, illegal, or unconstitutional by any court of legal jurisdiction, such decisions or findings shall not in any way affect the validity, legality or constitutionality of any other provision, word, phrase, clause, or term, and they shall continue in full force and effect.

(b) All laws, parts of laws, articles, codes, and regulations that are inconsistent with, in conflict with, or repugnant to any provisions of this article, shall be deemed not to apply; provided that nothing herein contained shall be construed to prevent the adoption and enforcement of a law, ordinance, code, or regulation which is more restrictive or establishes a higher standard than those provided in this article.

(Res. No. 2008-01, 1-29-2008)

Chapter 39 RESERVED

Chapter 40 ZONING* (RESERVED)

***Cross references:** Any ordinance pertaining to zoning saved from repeal, § 1-12(15); buildings and building regulations, ch. 8; community development, ch. 12; environment, ch. 14; land divisions and subdivisions, ch. 18; manufactured homes and trailers, ch. 20; streets, sidewalks and other public places, ch. 32; telecommunications, ch. 34.

State law references: Authority to regulate land use, MCL 125.581 et seq.; municipal planning, MCL 125.31 et seq.

APPENDIX A FRANCHISES*

***Cross references:** Any ordinance granting any specific right or franchise or establishing the

procedure for granting a right of franchise saved from repeal, § 1-12(5).

The following are the franchises granted by the city which are currently in full force and effect:

TABLE INSET:

Franchise	Ordinance No.	Adoption Date	Term
Consumers Power Company (gas and/or electric)	39	12-7-1976	30
Consumers Energy Company (gas and/or electric)	39A	1-22-2007	30

CODE COMPARATIVE TABLE 1968 CODE

This table gives the location within this Code of those sections of the 1968 Code, as supplemented, which are included herein. Sections of the 1968 Code, as supplemented, not listed herein have been omitted as repealed, superseded, obsolete or not of a general and permanent nature. For the location of ordinances adopted subsequent thereto, see the table immediately following this table.

TABLE INSET:

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2-901--2-903	12-31--12-33
3-101--3-122	30-1--30-22
3-201--3-206	32-31--32-36
3-207--3-213	32-71--32-77
3-214	32-111
3-301--3-313	24-31--24-43
3-315	24-44
3-501--3-508	38-31--38-38
3-510--3-521	38-40--38-51
3-522	38-53

1968 Code Section	Section this Code
3-524, 3-525	38-54, 38-55
3-601--3-632	38-86--38-117
3-634, 3-635	38-118, 38-119
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4-201, 4-202	14-31, 14-32
4-401--4-403	36-56--36-58
4-404, 4-405	36-58, 36-59
4-806	36-36
5-302--5-319	20-31--20-48
5-402--5-406	14-61--14-65
5-2502--5-2504	18-31--18-33
5-2601--5-2604	18-106--18-109
5-2801--5-2803	18-81--18-83
5-2901, 5-2902	18-82, 18-83
5-3001(1)--5-3001(5)	18-132--18-136
5-3001(intro ¶)	18-131
5-3101--5-3107	18-161--18-167
5-3201--5-3212	18-191--18-202
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5-3501, 5-3502	18-57, 18-58
5-3701	18-59
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6-107	26-1
7-101(A)	22-126
7-101(B)	22-61
7-101(C)	22-127
7-101(D), 7-101(E)	22-161, 22-162
7-101(F)	22-164
7-101(G)	22-91
7-101(H)	22-31
7-101(I)	22-128
7-101(J)	22-201
7-101(K)	22-62
7-101(L)	22-202
7-101(M)	22-130
7-101(N)	22-93
7-101(O)	22-203
7-101(P)	22-94
7-101(Q), 7-101(R)	22-204, 22-205
7-101(S)	22-131
7-101(T)	22-129
7-102(A), 7-102(B)	22-165, 22-166
7-103	22-163
7-105	22-167
7-106	22-92
7-201	4-1
7-202	4-41

1968 Code Section	Section this Code
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7-208--7-211	4-5--4-8
7-212	4-43
7-302--7-304	22-236--22-238
7-306, 7-307	22-239, 22-240
8-101--8-107	6-31--6-37
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8-401	16-31
8-404--8-406	16-32--16-34
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8-603--8-618	28-31--28-46
8-620	28-47
8-701(1)--(6)	14-101
8-701(7)	14-102
8-702--8-710	14-103--14-111
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8-716, 8-717	14-113, 14-114
8-719	14-115
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CODE COMPARATIVE TABLE ORDINANCES

This table gives the location within this Code of those ordinances adopted since the 1968 Code, as supplemented, which are included herein. This table contains some ordinances which were never included in the 1968 Code, as supplemented, for various reasons.

TABLE INSET:

Ordinance Number	Date	Section	Section this Code
20-A	2-19-1974		14-31, 14-32
	8-15-1995(Ord.)		2-51
	1- 6-1997(Ord.)		2-51
	11-17-1998(Ord.)	1--16	34-76--34-91
100	3-18-2002	1--7 Added	Adopting ord., p.xi
2002-16(Res.)	7-23-2002		38-100
			38-103
	10- 7-2003(Ord.)	Added	16-91--16-96
	12- 2-2003(Ord.)	Added	34-121--34-141
	5-11-2004(Ord.)	Added	12-60--12-67
2008-01(Res.)	1-29-2008		38-86--38-119

STATE LAW REFERENCE TABLE

This table shows the location within this Code, either in the text or notes following the text, of references to Michigan Compiled Laws.

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15.181 et seq.	Ch. 2, Art. III
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	34-137
15.261 et seq.	Ch. 2, Art. II, Div. 2
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15.321 et seq.	Ch. 2, Art. III
15.341 et seq.	Ch. 2, Art. III
15.401 et seq.	Ch. 2, Art. III
29.1 et seq.	Ch. 16
29.41 et seq.	Ch. 16
29.417 et seq.	Ch. 28
35.441 et seq.	Ch. 26
37.2102	Ch. 2, Art. III
68.31 et seq.	Ch. 30
117.1 et seq.	Ch. 2
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123.361 et seq.	Ch. 28
124.151 et seq.	Ch. 14, Art. IV
124.281 et seq.	Ch. 38
125.31 et seq.	Ch. 2, Art. IV, Div. 2
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125.71 et seq.	Ch. 12
125.581 et seq.	2-162
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125.601 et seq.	Ch. 12

MCL	Section this Code
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125.901 et seq.	Ch. 12
125.1035 et seq.	Ch. 20
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125.1601 et seq.	Ch. 12
125.1651 et seq.	Ch. 12, Art. II
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125.2301 et seq.	Ch. 20
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128.1 et seq.	Ch. 10
131.1 et seq.	Ch. 2, Art. V
133.9	Ch. 30
141.261 et seq.	Ch. 30
141.421 et seq.	Ch. 2, Art. V
211.43b	Ch. 2, Art. V
211.741 et seq.	Ch. 30
211.761 et seq.	Ch. 30
247.171 et seq.	Ch. 32
247.183	34-76
247.231 et seq.	Ch. 14, Art. IV
247.241 et seq.	Ch. 14, Art. IV
247.291 et seq.	Ch. 32
247.321 et seq.	Ch. 32
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257.605, 257.606	Ch. 36
257.610	Ch. 36
257.951 et seq.	36-2
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287.266 et seq.	6-32
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287.288	6-35
287.290	Ch. 6
287.351	6-35
324.101 et seq.	Ch. 14
324.1101 et seq.	Ch. 28
324.4101 et seq.	38-51
324.4301 et seq.	Ch. 28
	Ch. 38
324.8901 et seq.	22-91
324.9101 et seq.	Ch. 14, Art. III
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MCL	Section this Code
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324.19101 et seq.	Ch. 28
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324.40101 et seq.	Ch. 6
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