CODE OF ORDINANCES

Sec. 1-1. How code designated and cited.

This codification of ordinances shall be known and cited as the "Code of Ordinances, City of Fennville, Michigan."
State law references: Codification authority, MCL 117.5b, MSA 5.2084(2).

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

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

Charter. The word "Charter" shall mean the Charter of the City of Fennville, Michigan, adopted February 7, 1961, and shall include any amendment to such Charter.

City. The word "city" shall denote the City of Fennville, Michigan.

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

Commission. The word "commission" shall mean the commission of the City of Fennville.

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

County. The term "the county" or "this county" shall mean the County of Allegan in the State of Michigan.

Gender. Words denoting the masculine gender shall be deemed to include the feminine and neuter genders.

General terms. A general term following specific enumeration of terms is not to be limited to the class enumerated unless expressly so limited.

Joint authority. All words purporting to give joint authority to three or more public officers or other persons, shall be construed as giving such authority to a majority of such officers or other persons unless it is otherwise expressly declared in the ordinance granting the authority.

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

Month. The word "month" shall mean a calendar month.

Number. Words in the singular shall include the plural, and words in the plural shall include the singular.

Officer, employee, department, board, commission or other agency. Whenever any office, employee, department, board, commission, or other agency is referred to by title only, such reference shall be construed as if followed by the words "of the City of Fennville, Michigan." Whenever, by the provisions of this code, any officer, employee, department, board, commission or other city agency of the city is assigned any duty or empowered to perform any act or duty, reference to such officer, employee,

department, board, commission or agency shall mean and include such officer, employee, department, board, commission or agency, or any deputy or authorized subordinate.

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

Shall/may. Whenever the word "shall" appears in this Code it shall be considered mandatory and not directory, except as otherwise provided. "May" is permissive.

State. The term "the state" or "this state" appears in this Code it shall be construed to mean the State of Michigan.

Tense. Words used in the present or past tense include the future as well as the present and past.

State law references: Rules of construction, MCL 8.3 et seq., MSA 2.212 et seq.

Sec. 1-3. Interpretation per state acts.

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

Sec. 1-4. Application to territorial boundaries only.

All provision of this Code is limited in application to the territorial boundaries of the municipal corporation although such provision may not be so limited specifically.

Sec. 1-5. Captions.

Headings and captions used in the Code such as the chapter, article, division and section numbers, are employed for reference purposes only and shall not be deemed a part of the text of any section.

Sec. 1-6. References and notes.

Charter references, cross references, state law references and editor's notes are by way of explanation only and should not be deemed a part of the text of any section.

Sec. 1-7. Application to future legislation.

All of the provisions of this chapter, not incompatible with future legislation, shall apply to ordinances adopted after the adoption of this Code that amend or supplement this Code unless otherwise specifically provided.

Sec. 1-8. Rules of separability.

Each chapter, article, division or section or, whenever divisible, subsection of this Code is hereby declared to be separable, and the invalidity of any chapter, article, division, section or divisible subsection, shall not be construed to affect the validity of any other chapter, article, division, section or subsection of this Code.

Sec. 1-9. Reference to other sections.

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

Sec. 1-10. Reference to offices.

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

Sec. 1-11. Certain provisions saved from repeal.

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

(1) Any offense committed or penalty incurred or any right established prior to the effective date of the Code.
(2) Any ordinance levying annual taxes.
(3) Any ordinance appropriating money.
(4) Any ordinance authorizing the issuance of bonds or borrowing of money.
(5) Any ordinance establishing utility rates.
(6) Any ordinance establishing franchises or granting special rights to certain person.
(7) Any ordinance authorizing public improvements.
(8) Any ordinance authorizing the purchase or sale of real or personal property.
(9) Any ordinance annexing or detaching territory.
(10) Any ordinance concerning elections.
(11) Any ordinance granting or accepting easements, plats or dedication of land to public use.
(12) Any ordinance dedicating, naming, establishing, locating, relocating, opening, paving, widening, vacating, etc., any street or public way in the city.
(13) Any ordinance establishing or prescribing grade in the city.
(14) Any ordinance prescribing the number, classification or compensation of any city officers or employees.
(15) Any ordinance prescribing traffic and parking restrictions pertaining to specific streets.
(16) Any ordinance pertaining to zoning.
(17) Any other ordinance, or part thereof, which is not a general and permanent nature.

And all such ordinances are hereby recognized as continuing in full force and effect to the same extent as if set out at length in this Code. Such ordinances are on file in the city clerk's office.

Sec. 1-12. Supplementation of Code.

(a) By contract or by city personnel, supplements to this Code shall be prepared and printed whenever authorized or directed by the commission. A supplement to the Code shall include all substantive permanent and general parts of ordinances adopted during the period covered by the supplement and all changes made thereby in the Code. The pages of a supplement shall be so numbered that they will fit properly into the Code and will, where necessary, replace pages which have become obsolete or partially obsolete, and the new pages shall be so prepared that, when they have been inserted, the Code will be current through the date of the adoption of the latest ordinance included in the supplement.
(b) In preparing a supplement to this Code, all portions of the Code which have been repealed shall be excluded from the Code by the omission thereof from reprinted pages.
(c) When preparing a supplement to this Code, the codifier (meaning the persons, agency or organization authorized to prepare the supplement) may make formal, nonsubstantive changes in ordinances and parts of ordinances included in the supplement, insofar as it is necessary to do so to embody them into a unified code. For example, the codifier may:
    (1) Organize the ordinance material into appropriation subdivisions;
    (2) Provide appropriate catchlines headings and titles for sections and other subdivisions of the Code printed in the supplement, and make changes in such catchlines, headings and titles.

(3) Assign appropriate numbers to sections and other subdivisions to be inserted in the Code and, where necessary to accommodate new material, change existing section or other subdivision numbers.
(4) Change the words "this ordinance" or words of the same meaning to "this chapter", "this article," "this division," etc., as the case may be, or to "sections _____through_____" (inserting section numbers to indicate the sections of the Code which embody the substantive sections of the ordinance incorporated into the Code); and
(5) Make other nonsubstantive changes necessary to preserve the original meaning of ordinance sections inserted into the Code; but in no case shall the codifier make any change in the meaning or effect or ordinance material included in the supplement or already embodied in the Code.

Sec. 1-13. General penalties and sanctions for violations of Code and City ordinances; continuing violations; injunctive relief.

(a). Unless a violation of this Code or any ordinance of the City is specifically designated in the Code or ordinance as a municipal civil infraction, the violation shall be deemed to be a misdemeanor.
(b) The penalty of a misdemeanor violation shall be a fine not exceeding $500.00 (plus costs or prosecution), or imprisonment not exceeding 90 days, or both, unless a specific penalty is otherwise provided for the violation by this Code or any ordinance.
(c) The sanction for a violation which is a municipal civil infraction shall be as set forth in section 1-15, below, or any provision of this Code or of any ordinance adopted by the city, declaring a violation to be a municipal civil infraction and prescribing sanctions, plus any costs, damages, expenses and other sanctions, as authorized under Chapter 87 of Act no. 236 of Public Acts of 1961, as amended, and other applicable laws.
(d) A "violation" includes any act which is prohibited or made or declared to be unlawful or an offense by this Code or any ordinance, and any omission or failure to act where the act is required by this Code or any ordinance.
(e) Each day on which any violation of this Code or any ordinance continues constitutes a separate offense/violation and shall be subject to penalties or sanctions as a separate offense.
(f) In addition to any remedies available at law, the city may bring an action for an injunction or other process against a person, fir or corporation to restrain, prevent or abate any violation of this Code or any city ordinance.
(g) This section shall not apply to the failure of officers and employees of the city to perform municipal duties required by this Code or by any ordinance.

Sec. 1-14. Administrative liability.

No officer, agent, or employee of the city shall render himself personally liable for any injury or damage that may accrue to any person, corporation or other legal entity as a result of any act required or permitted in the discharge of his duties in the enforcement of this Code.

Sec. 1-15. Municipal civil infractions.

(a) *Definitions.* For purposes of their use in this section, the following words and terms are herein defined. Any word or term not herein defined shall be considered to be defined in accordance with its common or standard definitions.
(1) *"Act"* means Act no. 236 of the Public Acts of 1961, as amended.
(2) *"Authorized city official"* means a police officer or other personnel of the City authorized by ordinance to issue municipal civil infraction citations or municipal civil infraction violation notices.
(3) *"Bureau"* Means the City of Fennville Municipal Ordinance Violations Bureau as established by this section.

(4) *"City ordinance"* Means the City of Fennville Code of Ordinances and all other ordinances adopted by the City of Fennville.

(5) *"Municipal civil infraction"* means an act or omission that is prohibited by ordinance of the City, but which is not a crime under this section or other ordinances of the City, and for which civil sanctions, including without limitation, fines, damages, expenses and costs, may be ordered, as authorized by Chapter 87 of the Act when designated as a municipal civil infraction by City ordinance. A municipal civil infraction is not a lesser included offense of a violation of the ordinances of the City which is a criminal offense.

(6) *"Municipal civil infraction action"* means a civil action in which the defendant is alleged to be responsible for a municipal civil infraction.

(7) *"Municipal civil infraction citation"* means a written complaint or notice prepared by an authorized City official, directing a person to appear in a court of law regarding the occurrence or existence of a municipal civil infraction violation by the person cited.

(8) *"Municipal civil infraction determination"* means a determination that a defendant is responsible for a municipal civil infraction by on of the following: (i) An admission of responsibility for the municipal civil infraction, (ii) An admission of responsibility for the municipal civil infraction "with explanation," (iii) A preponderance of the evidence at an informal hearing or formal hearing, (iv) A default judgment for failing to appear as directed by citation or other notice.

(9) *"municipal civil infraction violation notice"* means a written notice prepared by an authorized City official, directing a person to appear at the City of Fennville Municipal Ordinance Violations Bureau and to pay the fine and costs, if any, prescribed for the violation by the schedule of civil fines adopted by the City, as authorized under Sections 8396 and 8707(6) of the Act.

(b) *Municipal civil infraction; commencement.* A municipal civil infraction may be commenced upon the issuance by an authorized City official of (1) a municipal civil infraction citation directing the alleged violator to appear in court; or (2) a municipal civil infraction violation notice directing the alleged violator to appear at the City of Fennville Municipal Ordinance Violations Bureau.

(c) *Municipal Civil Infraction Citations; Issuance and Service.* Municipal civil infraction citation shall be issued and served by authorized City officials as follows:

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

(2) The place for appearance specified on a citation shall be the District Court unless the person cited for a municipal civil infraction is under the age of 17 at the time of the occurrence of the violation, in which case the matter shall be referred to the Probate Court.

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

(i) The original, which is a complaint and notice to appear, shall be filed with the District Court.

(ii) The first copy shall be retained by the City and/or the ordinance enforcing agency;

(iii) The second copy shall be issued to the alleged violator if the violation is a municipal civil infraction; and

(iv) The third copy shall be issued to the alleged violator if the violation is a misdemeanor.

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

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

(6) An authorized City official may issue a citation to a person if:

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

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

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

(i) Except as provided in subsection (ii) immediately below, an authorized City official shall personally serve a copy of the citation upon the alleged violator.

(ii) If the municipal civil infraction action involves the use or occupancy of land, a building or other structure, a copy of the municipal civil infraction citation does not need to be personally served upon the alleged violator. Instead, a copy may be served upon an owner or occupant of the land, building or structure by posting the copy on the land or attaching the copy to the building or structure. In addition, a copy of the citation shall be sent by first-class mail to the owner of the land, building, or structure at the owner's last known address. A citation served in accordance with this subsection for a violation involving the use or occupancy of land or a building or other structure shall be processed in the same manner as a citation served as personally upon a defendant.

(d) *Municipal civil infraction citations: contents.*

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

(2) A municipal civil infraction citation shall inform the alleged violator that the alleged violator may do one of the following.

(i) The alleged violator may admit responsibility for the municipal civil infraction by mail, in person, or by representation, at or by the time specified for appearance.

(ii) The alleged violator may admit responsibility for the municipal civil infraction "with explanation" by mail, in person, or by representation, by the time specified for appearance.

(iii) The alleged violator may deny responsibility for the municipal civil infraction by doing either of the following:

(1) The alleged violator may appear in person for an informal hearing before a judge or district court magistrate, without the opportunity of being represented by an attorney, unless a formal hearing before a judge is requested by the City.

(2) The alleged violator may appear in court for a formal hearing before a judge, with the opportunity of being represented by an attorney. A party requesting a formal hearing shall notify the court, the City and any other named party or parties of the request at least ten days before the hearing date, which request may be made in person, by representation, by mail or by telephone.

(3) The citation shall also inform the alleged violator of all of the following.

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

(ii) If the alleged violator desires to deny responsibility, the alleged violator must apply to the court in person, by mail, by telephone, or by representation within the time specified to appear for a hearing, unless a hearing date is specified on the citation.

(iii) A hearing shall be an informal hearing unless a formal hearing is requested by the alleged violator or the City.

(iv) At an informal hearing the alleged violator must appear in person before a judge or district court magistrate, without the opportunity of being represented by an attorney.

(v) At a formal hearing the alleged violator must appear in person before a judge with the opportunity of being represented by an attorney.

(4) The citation shall contain a notice in boldfaced type that the failure of the alleged violator to appear within the time specified in the citation or at the time scheduled for a hearing or appearance is a misdemeanor and will result in entry of a default judgment against the alleged violator on the municipal civil infraction. Return of the citation with an admission of responsibility and with full payment of applicable civil fines and costs, return of citation with an admission of responsibility with explanation and with fully payment of applicable civil fines and costs, or timely application to the court for a scheduled date and time for an appearance to admit responsibility "with explanation" or to deny responsibility, constitutes a timely appearance.

(5) If an authorized city official issues a citation as set forth in this section, the court may accept an admission "with explanation" or an admission or denial of responsibility without the necessity of a sworn complaint. If the defendant denies responsibility for the municipal civil infraction, further proceedings shall not be held until a sworn complaint is filed with the court. A warrant for arrest for failure to appear on the municipal civil infraction citation shall not be issued until a sworn complain relative to the municipal civil infraction is filed with the court.

(e) Municipal Ordinance Violations Bureau.

(1) The City hereby establishes a Municipal Ordinance Violations Bureau (the "Bureau") as authorized under Section 8396 of the Act to accept admissions of responsibility for municipal civil infractions in response to municipal civil infraction violation notices issued and served by authorized City officials, and to collect and retain civil fines and costs as prescribed by ordinance. The expenses of operating the Bureau shall be borne by the City, and the personnel of the Bureau shall be City employees.

(2) The Bureau shall be located at Fennville City Hall, and shall be under the supervision and control of the City Treasurer. The City Treasurer, subject to the approval of the City Commission, shall adopt rules and regulations for the operation of the Bureau and appoint any necessary qualified City employees to administer the Bureau.

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

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

(f) Municipal Civil Infraction Notices; Content, Issuance and Service.

(1) An authorized City official may issue and serve a municipal civil infraction violation notice instead of a citation under the same circumstances and upon the same persons as provided for service of municipal civil infraction citations. In addition to any other information required by this section or other ordinances, the violation shall indicate the time by which the alleged violator must appear at the Bureau, the methods by which an appearance may be made, the address and telephone of the Bureau, the hours during which the Bureau is open, the amount of the fine scheduled for the alleged violation, and the consequences for failure to appear and pay the required fine within the required time.

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

(3) If an authorized City official issues and serves a municipal ordinance violation notice and if an admission of responsibility is not made and the civil fine and costs, in any, prescribed by the schedule of fines for the violation are not paid at the Bureau, a municipal civil infraction citation may be served by firs-class mail upon the alleged violator at the alleged violator's last known address. The citation filed with the court does not need to comply in all particulars with the requirements for citations as provided by Sections 8705 and 8709 of the Act, but shall consist of a sworn complaint containing the allegations stated in the municipal ordinance violation notice and shall fairly inform the alleged violator how to respond to the citation.

(g) Municipal Civil Infraction; Sanctions, Continuing Violations, Injunctive Relief.

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

(i) Unless otherwise specifically provided for a particular municipal civil infraction violation, the civil fine for a violation shall be $50.00, plus costs and other sanctions, for each infraction.

(iii) Increased civil fines may be imposed for repeated violations by a person of any requirement or provision of a City ordinance. As used in this section, "repeat offense" means a second (or any subsequent) municipal civil infraction violation of the same requirement or provision committed by a person within any 12 month period (unless some other period is specifically provided by ordinance), and for which the person admits responsibility or is determined to be responsible. Unless otherwise specifically provided for a particular municipal civil infraction violation, the increased fine for a repeat offense shall be as follows:

(1) The fine for any offense which is a first repeat offense shall be $250.00, plus costs; and

(2) The fine for any offense which is a second repeat offense or any subsequent repeat offense shall be $500.00, plus costs.

2. Each day on which any violation of a City ordinance continues constitutes a separate violation and shall be subject to penalties and/or sanctions as a separate violation. Where a particular city ordinance requires notice of a violation or order by a City official to be given, each day on which any violation continues after such notice or order is given constitutes a separate violation and will be subject to penalties and/or sanctions as a separate violation.

3. In addition to any remedies available at law, the City may bring an action for an injunction or other process against a person to restrain, prevent or abate any violation of City ordinance.

(h) *Authorized City Official.* The chief of police and all other sworn police officers employed by or assigned by contract to the City, the chief or assistant chief of the fire department with jurisdiction

over the City, the building inspector, the code enforcement official, the zoning administrator, the public works director and any other individuals who may from time to time be appointed by resolution of the City Commission are hereby designated as the authorized City officials to issue municipal civil infraction citations (directing alleged violators to appear in court) or municipal civil infraction notices (directing alleged violators to appear the City of Fennville Municipal Ordinance Violations Bureau), for violations which fall within respective jurisdictions, as provided by this section.

Chapter 2: ADMINISTRATION

ARTICLE 1. IN GENERAL
Secs. 2-1—2-25. Reserved

ARTICLE 2. CITY COMMISSION
Secs. 2-26—2-45 Reserved

ARTICLE III. OFFICERS AND EMPLOYEES
Secs. 2-46—2-65 Reserved

ARTICLE IV. BOARDS AND COMMISSION*
*State law references.

DIVISION 1. GENERALLY
Secs. 2-66—2-75 Reserved

DIVISON 2. PLANNING COMMISSION

Sec. 2-76. Created; members; powers and authority.

Pursuant to Act 285 of the Public Acts of 1931, as amended, the City Commission hereby establishes the City of Fennville Planning Commission to consist of five individuals, which is a reduction from its initial size of nine individuals as originally created. One individual shall be a member of the City Commission and appointed by the City Commission to serve as a member ex officio with full voting rights. The remaining four members shall be appointed by the Mayor and approved by the City Commission. The Planning Commission shall have all the powers and authority prescribed by Act 285 of 1931 as amended.

Secs. 2-77—2-95 Reserved

ARTICLE FINANCE*
*State law references.
Secs 2-96—2-12 Reserved

CHAPTERS 3-5 RESERVED

Chapter 6 AMUSEMENTS AND ENTERTAINMENTS*
*State law reference

ARTICLE 1. IN GENERAL
Secs. 6-1—6-25 Reserved

ARTICLE II. COIN-OPERATED AMUSEMENT DEVICES
DIVISION1. GENERALLY

Sec. 6-26. Definitions

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

Accessory amusement area means the accessory use of a portion of an establishment situated in a fully enclosed building or other structure, for one or more coin-operated amusement devices, where such use is incidental to a permitted and lawful principal use of an establishment.

Amusement center means any establishment situated in a fully enclosed building or other structure, with one or more coin-operated amusement devices, where such use is the sole or principal use of the establishment.

Coin-operated amusement device or amusement device means any amusement machine or device whether mechanically, electrically, hydraulically, pneumatically, or otherwise activated or operated by means of the insertion of a coin, token, or similar object involving amusement and/or competition with or between one person and the device or between two or more persons. This definition shall also include all devices and machines which may, by mechanical adjustment, be set in motion or operated by any means other than the insertion of a coin, where a fee is otherwise charged. This term does not include vending machines in which there are not incorporated gaming, amusement or competitive features and such devices for young children such as merry-go-rounds and mechanical horses. Further, this definition does not include the machines designed solely for the purpose of playing music or taking photographs.

Sec. 6-27. Prohibitions and restrictions – amusement centers.

Amusement centers shall be subject to the following prohibitions and restrictions in addition to those terms specified in the license required by this article by the commission:

(1) The permissible hours for an amusement center shall be during the hours of 9:00 a.m. and 11:00 p.m., Monday through Saturday, and during the hours of 12:00 noon and 11:00 p.m. on Sunday
(2) It shall be unlawful to transfer any license from the designated licensee to any other person or premises.
(3) No intoxicating liquors shall be consumed or sold on the premises, or persons visibly intoxicated permitted to frequent, be in, or remain on the premises, provided that this subsection shall not apply to establishment authorized by the state to sell and allow consumption of alcohol on their premises.
(4) No controlled substances, as defined by Act No. 368 of the Public Acts of Michigan of 1978 (MCL333.1101 et seq., MSA 14.15(1101) et seq.), as amended, shall be sold, used or found on the premises or on the person of anyone on the premises.
(5) No gambling in any form shall be permitted on the premises.
(6) No amusement center shall be open for business unless the licensee shall have one or more agents on the premises who are 21 years of age or older in the ratio of one such person to each 20 patrons. If only one such person is on the premises, no more than 20 patrons shall be permitted on the premises at a time.
(7) No amusement device shall display, expose, produce, or emit any picture, photographs, printed matter, writing, song, music, speech, or other matter which depicts or describes sexually explicit acts or functions in a patently offensive manner and when viewed as a whole appeals predominantly to prurient interest of the average adult resident of the city, and are without serious social, artistic, or scientific value.

Sec. 6-28. Same- Accessory amusement areas.

Accessory amusement areas shall be subject to the following prohibitions and restrictions in addition to those terms specified in the license required by this article by the commission:

(1) Coin-operated amusement devices shall not be operated at any time the principal use is not open to the public for business.

(2) All prohibitions and restrictions set forth in section 6-27 shall apply to accessory amusement areas, excepting subsection (1) of this section. This section shall not be deemed to prohibit the sale or consumption of intoxicating liquors in such areas as are license by the state.

Sec. 6-29. Density of amusement devices.

(a) The maximum number of coin-operated amusement devices permitted on any premises shall be computed as follows: There shall be no more than one device per 25 square feet of floor space open to regular public use on the total premises, up to a maximum 20 devices.

(b) The commission may for good cause shown, modify the requirements of subsection of this section at the time the license is granted.

Sec. 6-30. Penalties for violation of article.

(a) Any person who shall violate any of the terms of this article shall, upon conviction in a court of competent jurisdiction, be subject to punishment as prescribed in section 1-13 of this Code.

(b) Each business day an amusement center or accessory amusement area is operated or open for operation contrary to any provision of this article shall be adjudicated as a separate and distinct violation, and each such violation shall be triable and punishable separately. A business day is defined as the period commencing with the opening for business and concluding with the next following closing of business.

DIVISION 2. LICENSE

Sec. 6-41. Required.

No person shall operate or maintain a coin-operated amusement device except in an accessory amusement area or amusement center which has been licensed for such operation by the commission in accordance with the provisions of this article.

Sec. 6-42. Procedure for obtaining license.

All applications for a license under the provisions of this article shall be in writing, verified by the applicant, on a form furnished by the city clerk, and shall be filed with the city clerk, accompanied by an annual license fee per device located on the licensed premises. The initial annual fee shall be utilized for processing the application and shall be refundable only if the application is not approved. The amount of all fees shall be established by the commission by resolution.

(1) All applications for a license under this article shall provide the following information:

(a) The names in full including all assumed, trade and firm names, dates of birth, current addresses, motor vehicle operator's license numbers and type of legal interest of all persons having an ownership or possessory interest in the amusement center or accessory amusement area, as well as the names and addresses of all lessors of such amusement center or accessory amusement area; if the applicant is a corporation, the names, motor vehicle operator's license numbers, and addresses of all the directors, officers, and shareholders owning a five percent interest or more therein; if the applicant is a partnership, the name and address of each partner.

(b) The business address, legal description and telephone number of the amusement center or accessory amusement area.

(c) A plan specifying the use and operation of such amusement center or accessory amusement area.

(d) The number, serial number, type and location of the amusement devices to be installed on the premises of the amusement center or accessory amusement area.

(e) Such other information as the commission shall reasonably require.

(2) The commission may, upon receipt of the application, request the following:

a. A written report from the city fire department that the proposed location of the amusement devices on the premises of the amusement center or accessory

amusement area shall not create a fire hazard, and that all fire prevention regulations are being satisfied.

b. A written report from the city building inspector that all electrical connections to each amusement device will comply with the building code, and that all building and zoning regulations will be satisfied.

c. A written report from the city's designated law enforcement officer, specifying whether any of such applicants and persons named in the application have been convicted of a felony or other crime involving moral turpitude.

(3) All applications for licenses under this article, together with the reports received pursuant to this section, shall be presented to the city commission at a regular or special meeting. The commission may, if it deems advisable, adjourn the consideration of any application for the purpose of holding public hearings or securing additional information regarding the application

(4) If any of the reports received pursuant to this section, and/or review of the application, establish that unsatisfactory conditions endangering the public health, safety or welfare will be created, the commission shall refuse to issue the license to the applicant and state the reason therefore. The applicant may request a public hearing on such denial. The failure to provide any of the required information for the license shall constitute sufficient reason to refuse issuance of the license.

(5) If the application and subsequent reports reflect that the application should be approved, and that issuance of the license would not be detrimental to the public health, safety or welfare of the citizens of the city, the commission shall grant the license. The commission shall have the authority to issue licenses conditioned upon terms specified in the license.

(6) A license shall be granted for a period of one year, ending December 31 of the year granted, except in the first year or when an amended license is granted, the license shall be for that portion of the year ending December 31.

Sec. 6-43. Display.

The license and a list of the restrictions set forth in section 6-27 shall be prominently displayed at all times within the licensed accessory amusement area or amusement center.

Sec. 6-44. Inspection of licensed premises.

Any premises containing licensed amusement devices pursuant to the provisions of this article shall be open to inspection at any reasonable time by the commission members, any law enforcement officer of the state, county or of the city, and/or by the city building inspector or his designated agent.

Sec. 6-45. License renewal and amendments.

Prior to January 2 of each year, the commission may renew the license for another year upon receipt of an application for such renewal, which application shall set forth any changes made from the most recent prior application submitted by the licensee. A licensee shall not deviate from the terms and information supplied by the licensee's most recent prior application without first securing an amended license from the commission.

Sec. 6-46. Revocation and suspension.

(a) Any license issued under the terms of this article may be revoked or suspended by the commission for any violation by the licensee of the laws of the state or the ordinances of the city, or the provisions of this article, or the conditions set forth by the commission in accordance with this article.

(b) Upon receiving information of any violation, the commission shall fix a date for hearing thereon, and the clerk shall give the licensee written notice thereof at least five days in advance of the hearing date. Notice of the hearing may be made by personal service or, in lieu of personal service, by certified mail to the last known address of the licensee as the address shall appear in the records of the city clerk.

(c) Upon the date of hearing, or any adjourned date thereof, the commission shall hear the evidence produced concerning the alleged violations, and if the evidence produced at the hearing is sufficient to support a finding by the commission that the licensed premises is being conducted in a manner contrary to the laws of the state, ordinances of the city, including this article, or the conditions set forth by the commission in accordance with this article, the commission shall suspend or revoke the license, in the commission's discretion.

Sec. 6-47. Exempt organizations.

Nothing contained in this article as to the making of application for a license and the payment of a license fee shall be construed to apply to a private club, fraternal lodge, private or public school, or church organization organized exclusively for fraternal, religious or charitable purposes, and conducting its affairs in a room or auditorium occupied by and under the control of such club, lodge, church, or school; provided, however, that the exemption contained in this section shall not exempt such club, lodge, church or school organization from the prosecution for violation of any provision of this article whether licensed under this article or not. This article, or any of its provisions, shall not be construed to regulate or prohibit the ownership, use or operation of a coin-operated amusement device by an individual in his private residence or home not open to public use or access.

ARTICLE 888. ENTERTAINMENTS

DIVISION 1. GENERALLY

Secs, 6-71—6-80 Reserved

DIVISION 2. LICENSE

Sec. 6-81. Definitions.

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

Carnival means an aggregation of riding devices, sideshows, games of chance and other types of amusement for which separate admission fees are charged.

Circus means a group of several traveling acts performing under one or more tents, either with or without sideshows and menagerie, and giving not more than two performances and these on the same day, and making a charge for entrance admission.

Concerts means vocal or instrumental music, or a combination of both, given by a group of people for the entertainment of an audience who have been charged an admission fee to hear such music.

Menagerie means a group of animals which, if not in captivity and confined in cages, would customarily be referred to as dangerous, and for the viewing of which admission is charger.

Theater means a building, or hall, chiefly used for portraying motion picture or live plays and for which an admission is charged.

Sec. 6-82. Required.

No person shall exhibit within the corporation limits of the city any circus, menagerie, carnival, court, theatrical production or other public entertainment or exhibition without first having obtained a license to do so from the city commission and paying the license fee therefore in advance, as set forth in section 6-83, to the city clerk. The city commission may refuse to grant a license if, in its opinion, the entertainment for a license is sought may constitute a fire hazard or endanger the lives of patrons in attendance thereat.

Sec. 6-83. Amount of fees.

(a) The license fees to be paid to the city clerk for each day or part thereof for which the license is granted shall be as follows:
   (1) For each circus or menagerie, or circus and menagerie, $50.00.
   (2) For each sideshow in connection with a circus $5.00.
   (3) For each carnival, $25.00.
   (4) For each concert, minstrel show, or theatrical performance held in a theater or hall $5.00.

(b). Theaters or music halls may obtain an annual license, if approved by the city commission, by payments to the city clerk of the sum of $5.00.

Sec. 6-84. Exemptions from fee.

All forms of entertainment or exhibitions given under the auspices of any public school, benevolent or charitable organization, including veterans' organizations, and where the proceeds from such events are to be used wholly for the benefit and purposes of such organizations, shall be exempt from the payment of any license fee.

Chapters 7-9 RESERVED

Chapter 10 ANIMALS

ARTICLE I. IN GENERAL
Secs. 10-1—10-25 Reserved

ARTICLE II. DOGS

Sec. 10-26 License required; display of tag.

(a) No person shall own, keep or harbor any dog within the city, unless such person shall have complied with the laws of the state providing for the licensing and registration of such dog.
(b) No person shall own, harbor or possess any dog four months old or older that does not, at all times, when such dog is off the premises of the owner, wear a collar or harness with license tag issued pursuant to the laws of the state.

Sec. 10-27. Dog bites

Any person who owns, keeps, harbors or has charge of a dog which has bitten a person shall report such incident forthwith to the local police authority and he shall not destroy such dog until he has kept it confined for at least two weeks following the date on which the dog bit the person. If observation shows the dog to be ill during that period of confinement, the owner shall forthwith notify the county sheriff and the doge shall then be checked for rabies. If the examination proves the dog to be rabid the owner shall immediately notify the person who was bitten.

Sec. 10-28 Nuisances.

No person shall own, keep or have charge of any dog, licensed or unlicensed, which by the destruction of property or trespassing upon the property of others becomes a nuisance in the vicinity where kept.

Sec. 10-29. Vicious dogs to be kept confined; exception.

Any person who owns, keeps, harbors or has charge of any dog, either licensed or unlicensed, which has been deemed vicious because of unprovoked attacks upon or biting of persons or animals, shall keep such dog confined at all times except that such dog may be taken out of confinement if muzzled and led on a leash by a responsible person.

Sec. 10-30. Confinement of dogs in heat.

No person who is the owner, possessor, keeper, or harborer of any female dog, licensed or unlicensed, shall keep or confine such dog in the city, while in heat, except when confined within the limits of the city.

Sec. 10-31. Kennels prohibited.

No person shall establish or maintain any boarding kennel, or any breeding kennel, or permit any such kennel to be maintained on any premises owned, leased or occupied by him within the limits of the city.

Sec. 10-32. Person in possession deemed owner.

Every person in possession of any dog who shall suffer such dog to remain about and on his premises for a period of five days shall be deemed to be the owner thereof for the purposes of this article.

Sec. 10-33. Violations of article.

Each violation of the provisions contained in this article shall constitute a separate offense and shall be deemed to be a municipal civil infraction.

Secs. 10-34—10-55. Reserved.

ARTICLE III. LIVESTOCK

Sec. 10-56. 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:

Dwelling means the abode of a person or family and shall also include apartments, hotels, motels and retail business establishments.

Farm means the premises upon which farming in its ordinary meaning is the principal business or occupation and shall include orchards.

Occupant means the tenant in possession of or the person occupying or having custody of a dwelling.

Owner shall be given its ordinary meaning and shall include any trustee, board or organization having a freehold interest in the property.

Sec. 10-57. Keeping of certain animals restricted; exception.

(a) It shall be unlawful for any person to keep, house, or maintain any horse, colt, mule, cow, goat, sheep or swine in the city. This section shall not apply to a farm within the corporation limits of the city.

Sec. 10-58. Keeping of fowl.

It shall be unlawful for any person to keep, house or maintain any fowl in any district other than the Agricultural district.

Sec. 10-59. Barns, pens, etc., to be maintained in a sanitary condition.

All barns, pens, coops and the grounds upon which such barns, pens and coops are situated shall be kept in a clean and sanitary conditions are maintained.

Sec. 10-60. Running at large prohibited.

No person shall permit any dog or other domestic animal excepting a cat, including chickens and other fowl, to run or be at large in the public streets, lanes, alleys, courts, or other open public places; nor upon any private premises other than the premises of the owner of the dog, other domestic animal or fowl, without the consent of the owner or occupant of such private premises; provided, however, that any such domestic animal may be lead about outside the premises of the owner thereof on a suitable leash, in the immediate control of a competent person.

Sec. 10-61. Penalty for violations.

Each violation of the provisions contained in this article shall constitute a separate offense and shall be deemed to be a municipal civil infraction.

Chapter 11-13 RESERVED.

Chapter 14. BUILDINGS AND BUILDING REGULATIONS.

ARTICLE I. IN GENERAL
Secs. 14-1—14-25. Reserved.

ARTICLE II. BUILDING CODE*

Editor's Note: Ord. No. 189 1, adopted April 21, 1997, amended 14-26—14-31 in their entirety to read as herein set out. Prior to inclusion of said ordinance said sections pertained to similar subject matter. See the Code Comparative Table.

Sec. 14-26. Adoption by reference.

Pursuant to the provisions of Michigan Act 230 of 1972, as amended, the BOCA National Building Code, 1996 Edition, as published by the Building Officials and Code Administrators International, Inc., is hereby adopted by reference and made a part of this article as if fully set forth herein, subject to the modifications contained in this article and subject to such further modifications as the city shall make by ordinance from time to time.

Sec. 14-27. Definitions.

Whenever the words "city," "jurisdiction" or "governmental unit" are used in the BOCA National Building Code, they shall mean the City of Fennville. Whenever the word "state" is used in the BOCA National Building Code, it shall mean the State of Michigan.

Sec. 14-28. Amendments.

The following sections of the BOCA National Building Code are amended as follows.

Section 101.1 shall be amended to state in its entirety as follows.
Title. These regulations shall be known as the Building Code of the City of Fennville, and shall hereinafter be referred to as "this code."

Section 104.2 shall be amended to state in its entirety as follows.
Appointment. The code official shall be appointed by the city commission, according to its pleasure, and shall be subject to removal from office at the will of the city commission.

Section 112.3.1 Shall be amended to state in its entirety as follows.
Fee Schedule. The fee required to be paid under this section shall be paid in accordance with a fee schedule adopted from time to time by resolution of the city commission.

Section 116.4 shall be amended to state in its entirety as follows.
Violation penalties. Any person who shall violate any provision of this code or who shall fail to comply with any of the requirements hereof or who shall erect, construct, alter or repair a building or structure in violation of an approved plan or directive of the code official, or of a permit or certificate issued under the provisions of this code, shall be responsible for a municipal civil infraction. Each day that a violation continues shall be a separate offense.

Section 117.2 shall be amended to state in its entirety as follows.
Unlawful continuance. Any person who shall continue any work in or about the structure after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be liable to a penalty or penalties as set forth in section 116.4.

Section 121.2, including its subsections numbered 121.2.1, 121.2.2, 121.2.3, 121.2.4, 121.2.5 and 121.2.6, shall be amended to state in its entirety as follows.
Membership of board of appeals. The board of appeals under this code shall consist of the three members appointed by and serving at the pleasure of the city commission. Their appointments shall be for indefinite terms, subject to their ability to resign individually or collectively at any time and subject to the city commission's ability to remove any or all of them and appoint successors at any time. Any such resignation or removal may be with or without notice and with or without cause.

Section 3408.2 shall be amended to state in its entirety as follows.
Applicability. Structures existing prior to the effective date of the city's adoption of the 1996 edition of this code, in which there is work involving repairs, alterations, additions or changes of use or occupancy, shall be made to conform to this code by applying the requirements of this section or the provisions of sections 3403.0 through 3407.0.

Sec. 14-29. Administrative liability.

No city officer, agent or employee, or member of the city commission or board of appeals, shall be personally liable for any damage that may accrue to any person as a result of any act, decision or other consequence or occurrence arising out of the discharge of duties and responsibilities pursuant to this article.

Sec. 14-30. Saving clause.

This article shall not affect any suit or proceeding pending in any court, or any rights acquired or liability incurred, or any cause of action acquired or existing, under any portion of the code or ordinances superseded by this article; neither shall any just or legal right or remedy be lost, impaired or affected by this article.

Sec. 14-31. Enforcement procedures.

The city commission shall designate by resolution the person whose duty it shall be to administer and enforce the provisions of the BOCA National Building Code within the city. In addition, the city commission, the duly authorized attorney for the city, the prosecuting attorney for Allegan County, or any owner or occupant of any real estate within the city may institute injunction, mandamus, abatement or other appropriate action or proceeding to prevent, enjoin, abate or remove any violation of the BOCA National Building Code, or any amendment thereto, or any permit issued thereunder. The rights and remedies provided herein are cumulative in addition to all other remedies provided by law.

ARTICLE III. MECHANICAL CODE

Sec. 14-51. Enforcing agency designated.

(a) Pursuant to the provisions of the state mechanical code, being the BOCA Basic Mechanical Code with amendments (the mechanical code), as published by the Building Officials and Code Administrators International, Inc., promulgated pursuant to Act No. 230 of the Public Acts of Michigan of 1972 (MCL 125.1501 et seq., MSA 5.2949(1) et seq.) as amended (the act) the enforcing agency and/or the mechanical official obligated to discharge the mechanical code responsibilities of the city under the mechanical code and under the act shall be designated from time to time by resolution of the city commission.
(b) The city hereby assumes responsibility for the administration and enforcement of the mechanical code pursuant to the act throughout the city's corporate limits.
(c) The fee for mechanical permits and the required inspections shall be established by the city commission from time to time by resolution.

Secs. 14-52—14-70 Reserved.

ARTICLE 8V. ELECTRICAL CODE

Sec. 14-71. Enforcing agency designated.

(a) Pursuant to the provisions of the state electrical code, being the National Electrical Code with amendments (the electrical code), promulgated pursuant to Act No. 230 of the Public Acts of Michigan of 1972 (MCL 125.1501 et seq., MSA 5.2949 (1) et seq.), as amended (the act), the enforcing agency and/or the electrical official obligated to discharge the electrical code responsibilities of the city under the electrical code and under the act shall be designated from time to time by resolution of the city commission.
(b) The city hereby assumes responsibility for the administration and enforcement of the electrical code pursuant to the act throughout the city's corporate limits.

(c) The fees for electrical permits and the required inspections shall be established by the city commission from time to time by resolution.

Secs. 14-72—14-90. Reserved.

ARTICLE V. PLUMBING CODE

Sec. 14-91. Enforcing agency designated.

(a) Pursuant to the provisions of the state plumbing code, being the BOCA National Plumbing Code with amendments (the plumbing code), as published by the Building Officials and Code Administrators International, Inc., promulgated pursuant to Act No. 230 of the Public Acts of Michigan of 1972 (MCL 125.1501 et seq., MSA 5.2949 (1) et seq.), as amended (the act), the enforcing agency and/or the plumbing official obligated to discharge the plumbing code responsibilities of the city under the plumbing code and under the act shall be designated from time to time by resolution of the city commission.
(b) The city hereby assumes responsibility for the administration and enforcement of the plumbing code pursuant to the act throughout the city's corporate limits.
(c) The fees for plumbing permits and the required inspections shall be established by the city commission from time to time by resolution.

ARTICLE VI. PROPERTY MAINTENANCE CODE*

Editor's note: Ord. No. 190-1, adopted April 21, 1997, amended 14-111—14-116 in their entirety to read as herein set out. Prior to inclusion of said ordinance said sections pertained to similar subject matter. See the Code Comparative Table.

Sec. 14-111. Adoption by reference.

The BOCA National Property Maintenance Code, 1996 Edition, as published by the Building Officials and Code Administrators International, Inc., is hereby adopted by reference and made a part of this article as if fully set forth herein, subject to the modifications contained in this article and subject to such further modifications as the city shall make by ordinance from time to time.

Sec. 14-112. Definitions.

Whenever the words "city," "jurisdiction" or "governmental unit" are used in the BOCA National Property Maintenance Code, they shall mean the City of Fennville. Whenever the word "state" is used in the BOCA National Property Maintenance Code, it shall mean the State of Michigan.

Sec. 14-113. Amendments.

The following sections of the BOCA National Property Maintenance Code are amended as follows.

Section PM-101.1 shall be amended to state in its entirety as follows.
Title. These regulations shall be know as the Property Maintenance Code of the city, and shall hereinafter be referred to as the "code".

Section PM-106.2 shall be amended to state in its entirety as follows.
Penalty. Any person who shall violate any provision of this code shall be responsible for a municipal civil infraction. Each day that a violation continues shall be a separate offense.

Section PM 111.2.1 shall be amended to state in its entirety as follows.
Membership. The membership of the code appeals board shall be the same as the then current membership of the board of appeals for the building code under Article II of this code.

Section PM 112.0 Registration and inspection of rental dwellings, shall be added to state in its entirety as follows.

SECTION PM-112.0 REGISTRATION AND
INSPECTION OF RENTAL UNITS

PM 112.1. Registration of rental units. Each rental unit shall be registered with the city by the owners(s) of such rental unit.

PM 112.2 Period for registration of rental units. Rental units required to be registered pursuant to this section shall comply with the following requirements, to the extent applicable.

1. Each newly constructed or newly converted rental unit shall be registered within 30 days after the city issues a certificate of occupancy or an occupancy permit.
2. Each rental unit which is sold, transferred or otherwise conveyed in whole or in part shall be re-registered within 30 days after the date of the deed, land contract or other instrument of conveyance.
3. Each newly converted rental unit which is so converted without the issuance of a certificate of occupancy or an occupancy permit shall be registered within 30 days after the date the rental unit is first occupied for rental purposes.
4. Each rental unit shall be re-registered within 30 days before or 30 days after the expiration of its then current registration. Each registration shall be for three years, unless terminated prior thereto as provided in PM 112.12.

PM 112.3. Required *inspection.* No rental unit may be registered or re-registered unless it is first inspected by the code official. If the rental unit does not comply with the requirements of this code, the code official may refuse to register or re-register the rental unit, or may register or re-register the rental unit subject to certain specified conditions which must be met in order for the registration on re-registration to remain valid.

PM 112.4. Required registration information. The owner(s) of each rental unit shall submit the following accurate information for each rental unit to the code official.

1. The address of the rental unit;
2. The number of rental units within the rental dwelling; and
3. The name, residence address, business address, residence telephone and business telephone of each owner of the rental unit, as well as of each responsible agent designated by the owner(s) of the rental unit.

PM 112.5. Supplemental inspections. In addition to the inspection required by Section PM 112.e above when a rental unit is registered or re-registered, the code official shall also inspect a rental unit upon the occurrence of any of the following events:

1. Upon receipt of a complaint from an owner or an occupant of the rental unit that it is in violation of this code;
2. Upon receipt of a complaint from any law enforcement department or other public agency or any other individual having person knowledge that the rental unit is in violation of this code;
3. Upon the code official's reviewing the exterior of the rental unit and determining that there is probable cause to believe that the rental unit is in violation of this code;
4. Upon receipt of information that the rental unit is not currently registered as required by this code;
5. Upon being directed by resolution of the city commission to initiate a city-wide rental unit inspection program; and
6. Upon receipt of a request from an owner of a rental unit for an advisory inspection.

PM 112.6. Inspection procedure. During an inspection of a rental unit, the code official shall note any violations of this or any other code adopted by the city and shall provide notice of any such violations as provided in Section PM 106.0 of this code. The code official shall direct the owner(s) to correct major violations within the time specified in the notice. The code official shall specify a reasonable time for correcting major violations; such a reasonable time shall not exceed 30 days unless extended by the code official upon request of the owner(s) in light of the relevant circumstances. The code official shall require minor violations to be corrected within three years from the date of the inspection or by the date of the next re-registration inspection for the rental unit, whichever comes first. Failure to comply with any specified deadline shall be deemed a violation of this code.

PM 112.7. Establishing registration and inspection fees. The city commission shall establish by resolution any fee or fees to be charged for the registration and/or inspection of each rental unit. Any such fee may be collected by the city clerk or by the code official.

PM 112.8. Payment of registration fees. Any registration fee shall be paid by the owner(s) of each rental unit to the city. In the event a rental unit has more than one owner, each owner shall be jointly and severally liable for the registration fee. A late payment charge may be established by the city commission if the registration fee is not paid within 30 days after its billing date.

PM 112.9 Payment of inspection fees. Any inspection fee shall be paid by the owner(s) of each rental unit unless:

1. The inspection is based upon a complaint filed by an owner of the rental unit, and the inspection reveals a major violation caused by the occupant(s) of the rental unit, in which case the occupant(s) shall be liable for the inspection fee (if the code official cannot definitely determine that the major violation was caused by the occupant(s) of the rental unit, then the owner(s) shall be liable for the inspection fee);
2. The inspection is based upon a complaint and the inspection reveals no major or minor violation of this code, in which case the complainant(s) shall be liable for the inspection fee; or
3. The inspection is part of a city-wide rental unit inspection program initiated by the city commission, in which case the city shall be responsible for the inspection fee.

"In the event a rental unit has more than one owner and the owners are liable for the inspection fee, or in the event a rental unit has more than one occupant and the occupants are liable for the inspection fee, or in the event more than one complainant files a complaint and the complainants are liable for the inspection fee, each owner or each occupant or each complainant (as the case may be) shall be jointly and severally liable for the inspection fee. A late payment charge may be established by the city commission if the inspection fee is not paid within 30 days after its billing date.

PM 112.10. Lack of valid registration. No owner shall lease, rent or otherwise allow a rental unit to be occupied unless the rental unit is properly and currently registered as required by this section PM 112.0.

PM 112.11 Order to vacate. No person shall occupy a rental unit if the code official orders that it be vacated due to one or more major violations of this code.

PM 112.12. Termination of registration. If the owner(s) of a rental unit fail to comply (or to force the occupants(s) of such rental unit to comply) with a notice received from the code official pursuant to Section PM 112.6, or if the owner(s) or occupant(s) (as the case may be) of a rental unit fail to pay within 30 days a billed and outstanding registration fee and/or inspection fee assessed pursuant to this Section PM 112.0, the code official may suspend the registration for such rental unit. In such event, the code official may post the rental unit and order that it be vacated. Also in the event the code official suspends the registration for a rental unit, the code official shall notify the occupant(s) thereof that the occupant(s) may pay rent into a self-established escrow account until vacating the rental unit or until the registration of the rental unit is either reinstated or renewed. A terminated but not yet expired registration shall be reinstated for a rental unit once the requirements of the code official's notice sent pursuant to Section PM112.6 are met and all outstanding registration fees and inspection fees and lat payment charges thereon have been paid in full.

Section PM 113.0 Inspection upon sale of dwelling units, shall be added to state in its entirety as follows.

SECTION PM 113. INSPECTION UPON SALE OF DWELLING UNITS

PM 113.1. Inspection upon sale of dwelling units. Each dwelling unit sold or otherwise transferred, in whole or in part, whether by warranty deed or land contract or any other method, shall be inspected by the code official prior to such sale or transfer, or as soon as practically possible after such sale or transfer if the code official is not given a reasonable opportunity to inspect before such sale or transfer.

*PM 113.*2 *Inspection procedure.* During an inspection of a dwelling unit required by this Section PM113.0, the code official shall note any violations of this or any other code adopted by the city and shall provide notice of

any such violations (either major or minor violations) as provided in Section PM 106.0 of this code. The code official shall direct the then current owner(s) to correct the violations within such reasonable time as is specified in the notice. The reasonable time shall not exceed 30 days unless extended by the code official upon request of the then current owners(s) in light of the relevant circumstances. If the dwelling unit is sold or transferred prior to the correction of the violations, the code official may require the purchaser(s) of the dwelling unit to make such corrections.

PM 113.3 Inspection fees. The city commission shall establish by resolution any fee or fees to be charged for the inspection of each dwelling unit to be sold or otherwise transferred. Any such fee may be collected by the city clerk or by the code official. Any such fee shall be paid by the owner(s) of the dwelling unit at the time of the inspection. However, if the dwelling unit is thereafter sold without the fee being paid, the seller(s) and the buyer(s) of the dwelling unit shall be jointly and severally liable for the fee. Likewise, if a dwelling unit has more than one owner and the owners are liable for the fee, or if a dwelling unit has more than one seller and the sellers are liable for the fee, or if a dwelling unit has more than one buyer and buyers are liable for the fee, each owner or each seller or each buyer (as the case may be) shall be jointly and severally liable for the fee. A late payment charge may be established by the city commission if the fee is not paid within 30 days after its billing date.

PM 113.4. Sale without inspection. No individual may sell or otherwise transfer and no individual may buy or otherwise acquire, any dwelling unit which has not been inspected as required by this Section PM 113.0.

Section PM 202.0, General Definitions, shall be expanded by the addition of the following definitions (the current balance of Section PM202.0 shall remain unchanged).

Major violation. A violation of the provisions of this or any other code adopted by the city, if such violation poses a serious hazard or risk to the health and safety of the occupants of any dwelling unit, including any violation which substantially affects the habitability of the dwelling unit. A non-exclusive list of major violation examples includes the following:

1. Structural damage caused by deterioration, water damage, insects or other reasons, if such damage is significant enough to threaten structural collapse or structural failure;
2. Mechanical equipment or systems which are damaged by deterioration, improper installation, alteration or other reasons, if such damage is significant enough to create an existing or potential safety hazard;
3. Electrical hazards created by over-loading of wiring, fuses or circuits; improper splices or connections; frayed or damaged wiring; improper grounding; or improper use of extension cords;
4. Plumbing hazards created by broken or leaking sewer or waste lines; improper venting or trapping of fixtures which causes a non-functioning or poorly-functioning system; or cross connections or systems which create a potential for back siphonage;
5. Significant insect or rodent infestation;
6. Improper or inadequate means of ingress and egress;
7. Unsafe stairway conditions;
8. Improper or inadequate lighting or ventilation;
9. Overcrowding;
10. Excessively worn floors, walls or ceilings which create conditions which preclude adequate cleaning or which cause rapid deterioration;
11. Missing or inoperable smoke detectors which are required;
12. Lead-base paint accessible to children;
13. Roof, exterior wall or foundation deterioration which is causing, or which is likely to cause in the near future, leaks or seepage; or
14. Exterior hazards created by accessory structures, open holes in the ground, standing water, or other conditions creating similar types of hazards.

Minor violations. Any violation of this or any other code which is not a major violation.

Rental Unit. Any dwelling or dwelling unit which is leased, made available for rental purposes, or occupied exclusively by persons other than the owner(s) (with or without rental payments or other consideration), except:

1. A dwelling or dwelling unit owned by an individual as such person's principal residence, even if it is temporarily occupied by other persons for not more than one year;
2. Any dwelling or dwelling unit which is subject to the exclusive regulation of the State of Michigan; and
3. Places of public accommodation (e.g. hotels, motels, inns, etc.) which are subject to regulation by the State of Michigan.

Section PM 304.12 shall be amended to state in its entirety as follows.

Insect screens. During the period from April 1 to November 1, every door, window and other outside opening used or required for ventilation purposes serving any building containing habitable rooms, food preparation areas, food service areas, or any areas where products used in food for human consumption are processed, manufactured, packaged or stored, shall be supplied with approved tightly fitting screens of not less than 16 mesh per inch, and every swinging door shall have a self-closing device in good working condition.

Exception. Screen doors shall not be required for out-swinging doors or other types of openings which make screening impractical, provided other approved means, such as air curtains or insect repellent fans are employed.

Section PM 602.2.1 shall be amended to state in its entirety as follows.

Heat supply. Every owner and operator of any building who rents, leases or lets one or more dwelling unit, rooming unit, dormitory or guest room on terms, either express or implied, to furnish heat to the occupants thereof shall supply sufficient heat during the period from September 1 to April 30 to maintain a room temperature of not less than 65 degrees F. (18degrees C.) in all habitable rooms, bathrooms and toilet rooms during the hours of 6:30 a.m. and 10:30 p.m. of each day and not less than 60 degrees F. (16 degrees C.) during other hours.

Section PM 602.3 shall be amended to state in its entirety as follows.

Nonresidential Structures. Every enclosed occupied work space shall be supplied with sufficient heat during the period from September 1 to April 30 to maintain a temperature of not less than 65 degrees F. (18 degrees C.) during all working hours.

Exceptions:
1. Processing, storage and operation areas that require cooling or special temperature conditions; and
2. Areas in which person are primarily engaged in vigorous physical activities.

Sec. 14-114. Administrative liability.

No officer, agent, employee or member of the city commission shall be personally liable for any damage that may accrue to any person as a result of any act, decision or other consequence or occurrence arising out of the discharge of his or her duties and responsibilities pursuant to this article.

Sec. 14-115. Savings Clause.

This article shall not affect any suit or proceeding pending in any court, or any rights acquired or liability incurred, or any cause of action acquired or existing, under any portion of the code of ordinances superseded by this article; neither shall any just or legal right or remedy be lost, impaired or affected by this article.

Sec. 14-116. Enforcement.

The city commission shall designate by resolution the person whose duty it shall be to administer and enforce the provisions of the BOCA National Property Maintenance Code within the city. In addition, the city commission, the duly authorized attorney for the city, the prosecuting attorney for Allegan County, or any

owner or occupant of any real estate within the city may institute injunction, mandamus, abatement or other appropriate action or proceeding to prevent, enjoin, abate or remove any violation of the BOCA National Property Maintenance Code or any amendment thereto, or any permit issued thereunder. The rights and remedies provided herein are cumulative in addition to all other remedies provided by law.

Chapters 15 -17 RESERVED

Chapter 18 BUSINESSES

ARTICLE I. IN GENERAL
Secs. 18-1 – 18-25. Reserved.

ARTICLE II. TRANSIENT MERCHANTS*
State law references: Transient Merchants, MCL 445.371 et seq.

DIVISION 1. GENERALLY

Sec. 18-26. Definitions.

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

Transient merchant, itinerant merchant or itinerant vendor means any person, firm or corporation, whether as owner, agent, consignee or employee, whether a resident of the city or not, who engages in a temporary business of selling and delivering goods, wares, and merchandise within the city, and who, in furtherance of such purpose, hires, leases, uses or occupies any building, structure, motor vehicle, tent, railroad boxcar, or boat, public room in a hotel, lodginghouse, apartment, shop, or other place within the city, for the exhibition and sale of such goods, wares and merchandise either privately or at public auction, or any person, firm or corporation who hires, leases or uses any of the aforesaid places or structures for the purpose of display and sale of such goods, wares, or merchandise on a permanent basis and maintains an inventory there, but who remains open for business display and sale of such goods, ware and merchandise to the public on less than 180 days of the calendar year. This definition shall not be construed to include any farmer selling in the usual manner the products of the farm, any salesman representing a firm selling at wholesale to a local tradesman, any church or nonprofit organization having a benefit sale, or any person selling baked goods or handicraft made in his own home.

Secs. 18-27 – 18-35. Reserved.

DIVISION 2. LICENSE

Sec. 18-36. Required.

It shall be unlawful for a transient merchant, itinerant merchant or itinerant vendor, as defined in this article, to engage in such business within the city without first obtaining a license therefore in compliance with the provisions of this division.

Sec. 18-37. Application.

An applicant for a license under this division, whether a person, firm, or corporation, shall file with the city clerk a written sworn application signed by the applicant if an individual, by all the partners if a partnership, and by the president if a corporation, showing:

(1) The names of the persons having the management or supervision of applicant's business during the time that it is proposed that it will be carried on in the city; the local addresses of such persons while engaged in such business; the permanent addresses of such person; the capacity in which such persons will act, that is, as proprietor, agent, or otherwise; the name and address of the person for whose account the business will be carried on, if any; and if a corporation, under the laws of what state the corporation is incorporated;
(2) The driver license of the person applying for a transient merchant permit or for the manager or supervisor of the applicant's business.
(3) The place in the city where it is proposed to carry on applicant's business, and the length of time during which it is proposed that such business shall be conducted;
(4) The place, other than there permanent place of business of the applicant, where applicant within the six months next preceding the date of such application conducted a transient business, stating the nature thereof and giving the post office and street address of any building or office in which such business was conducted.
(5) A statement of the nature, character and quality of the goods, wares, or merchandise to be sold or offered for sale by applicant in the city, the invoice value and quality of such goods, wares and

merchandise, whether the goods, ware and merchandise are to be sold from stock in possession or by sample or by both; at auction, by direct sale or by taking orders for future delivery or by both; where the goods or property proposed to be sold are manufactured or produced and where such goods or products are located at the time such application is filed;

(6) A brief statement of the nature and character of the advertising done or proposed to be done in order to attract customers, and, if required by the city clerk, copies of all such advertising whether by handbills, circular, newspaper advertising, or otherwise, shall be attached to the application as exhibits thereto;

(7) Whether or not the persons having the management or supervision of the applicant's business have been convicted of a crime, misdemeanor or the violation of any municipal ordinance, the nature of such offense and the punishment assessed therefore;

(8) Credentials from the person for which the applicant proposed to do business authorizing the applicant to act as such representative; and

(9) Such other reasonable information as to the identity or character of the persons having the management or supervision of applicant's business or the method or plan of doing such business as the city clerk may deem proper to fulfill the purpose of this division in the protection of the public good.

Sec. 18-38. Investigation of application; issuance.

(a) Upon receipt of an application the chief of police shall cause such investigation of the person's business responsibility or moral character to be made as section 18-39 of this Code states. If, as a result of such investigation, the applicant's character and business responsibility are found to be unsatisfactory, the application shall be denied. If, as a result of the investigation, the character and business responsibility appears to be satisfactory, the chief of police shall so certify in writing, and a license shall be issued by the city clerk.

(a) The city clerk shall keep a full record in his office of all licenses issued.

(b) The license shall contain the number of the license, the date the license is issued, the nature of the business authorized to be carried on, the amount of the license fee paid, the expiration date of the license, and the name of the person authorized to carry on such business.

(c) An application fee of $59.00 shall be paid to the city clerk at the time of filing to defray the cost of making the investigation.

Sec. 18-39. Police chief's certification; investigation of applicant's character.

(a) In all cases where the certification of the police chief is required prior to the issuance of any license by the city clerk, such certification shall be based upon a finding that the person making application for such license of good moral character.

(b) The phrase "good moral character," when used in this division for the purpose of licensing, shall be construed to mean the propensity on the part of the person to serve the public in the licensed area in a fair, honest and open manner.

(c) A judgment of guilt in a criminal prosecution or a judgment in a civil action shall not be used, in and of itself, as proof of a person's lack of good moral character. It may be used as evidence in the determination, and when so used the person shall be notified and shall be permitted to rebut the evidence by showing that at the current time he has the ability and is likely to serve the public in a fair, honest and open manner, that he is rehabilitated, or that the substance of the former offense is not reasonably related to the occupation or profession for which he seeks to be licensed.

(d) The following criminal records shall not be used, examined or requested by the city in a determination of good moral character:

(1) Records of an arrest not followed by a conviction.

(2) Records of a conviction which has been reversed or vacated, including the arrest records relevant to that conviction.

(3) Records of an arrest or conviction for a misdemeanor or a felony unrelated to the person's likelihood to serve the public in a fair, honest and open manner.

(4) Records of an arrest or conviction for a misdemeanor for the conviction of which a person may not be incarcerated in jail or prison.

(e) When a person is found to be unqualified for a license because of a lack of good moral character, or similar criteria, the person shall be furnished by the city clerk with a statement to that effect. The statement shall contain a complete record of the evidence upon which the determination was based. The person shall be entitled, as of right, to a rehearing on the issue before the commission if he has relevant evidence not previously considered regarding his qualifications.

Sec. 18-40. Bond required.

When licenses are issued a $1,000.00 bond to the city may be required at the clerk's discretion prior to the issuing of the license. The applicant shall comply with all provisions of the ordinances of the city and the statutes of the state regulating and concerning the sale of goods, wares and merchandise and the applicant will pay all judgments rendered against the applicant for any violation of such ordinances or statutes. The bond may be kept by the city for damages growing out of any misrepresentation or deception practiced by the owners, their agents or employee, either at the time of making the sale or through advertisement. Action on the bond may be brought in the name of the city to the use of the aggrieved person.

Sec. 18-41. Service of process.

Before any license as provided in this division shall be issued for engaging in business as an itinerant merchant in the city, the applicant shall file with the city clerk an instrument nominating and appointing the city clerk or the person performing the duties of such position, 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 the business transacted under such license and the bond given as required by section 18-40 or for the performance of the conditions of such bond or for any breach thereof, which instrument shall also contain recitals to the effect that the applicant for such license consents and agrees that service of any notice or process may be made upon such agent, and when so made shall be taken and held to be as valid as if personally served upon the person applying for the license under this division, according to the law of this or any other state, and waiving all claim or right of error by reason of such acknowledgment of service or manner of service. Immediately upon service of process upon the city clerk, as provided in this section, the city clerk shall send to the licensee at his last known address, by registered mail, a copy of such process.

Sec. 18-42. Exhibition of license.

The license issued under this division shall be posted conspicuously in the place of business named therein. If such person applying for the license shall desire to do business in more than one place within the city, separate licenses may be issued for each place of business, and shall be posted conspicuously in each place of business.

Sec. 18-43. Fees.

(a) For each license issued under the provisions of this division, the applicant shall pay to the city treasurer the appropriate fee according to the following schedule:

For each day less than one week - $5.00
For each week less than one month - $10.00
For each month less than three months - $25.00
For three months - $50.00
For six months - $100.00
For one year - $200.00

(b) Any fee paid prior to the statutory tax day or in a year in which no assessment for personal taxes was made upon the goods, wares and merchandise of such business, shall become the property of the city. Any fee paid after such tax day and in a year for which as assessment for personal taxes has been or will be made upon such stock, shall constitute a credit upon the city and county and school taxes payable, in such tax year. These fees may be changed by resolution of the city commission, from time to time. Copies shall be on file in the city clerk's office.

Sec. 18-44. Transfer.

No license shall be transferred without written consent from the mayor of the commission as evidenced by an endorsement on the face of the license by the city clerk showing to whom the license is transferred and the date of the transfer.

Sec. 18-45. Duty of police to enforce this division.

It shall be the duty of the police officers of the city to examine the places of business and persons in their respective territories subject to the provisions of this division, to determine if this division has been complied with and to enforce the provisions of this division against any person found to be violating such provision.

Sec. 18-46. Revocation.

(a) The permits and licenses issued pursuant to this division may be revoked by the mayor of the city commission, after notice and hearing, for any of the following causes:
    (1) Any fraud, misrepresentation or false statement contained in the application for license;
    (2) Any fraud, misrepresentation or false statement made in connection with the selling of goods, wares, and merchandise;
    (3) Any violation of this division;
    (4) Conviction of the licensee of any felony or of a misdemeanor involving moral turpitude; or
    (5) Conducting the business licensed under this division in an unlawful manner or in such a manner as to constitute a menace to the health, safety or general welfare of the public.

(b) Notice of hearing for revocation of a license shall be given in writing, setting forth specifically the grounds of the complaint and the time and place of the hearing. Such notice shall be mailed, postage prepaid, to the licensee, at his last known address at least five days prior to the date for the hearing.

Sec. 18-47. Appeals.

Any person aggrieved by the decision of the city clerk in regard to the denial of application for license as provided in section 18-38 or in connection with the revocation of a license as provided in section 18-46, shall have the right to appeal to the city commission. Such appeal shall be taken by filing with the commission within 14 days after notice of the decision by the city clerk has been mailed to such person's last known address, a written statement setting forth the grounds for the appeal. The commission shall set the time and place for a hearing on such appeal and notice of such hearing shall be given to such person in the same manner as provided in section 18-46 for notice of hearing on revocation. The order of the commission on such appeal shall be final.

Sec. 18-48. Expiration.

All annual licenses issued under the provisions of this division shall expire on December 31 in the year when issued. Other than annual licenses shall expire on the date specified in the license.

Sec. 18-49. Records.

The city clerk shall deposit the record of fingerprints of the licensee, together with the license number, with the chief of police. The chief of police shall report to the city clerk any complaints against any person licensed under the provisions of this division and any conviction for violation of this division. The city clerk shall keep a record of all such licenses and such complaints and violations.

Sec. 18-50. Penalty for violations of division.

Any person violating any of the provisions of this division shall be responsible for a municipal civil infraction.

ARTICLE III. CABLE TELEVISION

DIVISION 1. GENERALLY

DIVISION 2. CABLE COMMUNICATIONS ORDINANCE.

Sec. 18-91. In general.

(a) *Title.* This ordinance shall be known as the "City of Fennville Cable Communications Ordinance."

(b) *Purpose.* The purposes of this ordinance are to:
    (1) Provide for the franchising and regulation of cable television within the City of Fennville;

(2) Provide for a cable communications system that will meet the current needs of the city and that can be improved and upgraded to meet future needs;
(3) Provide for the payment of fees and other valuable consideration to the city of the use of the public ways and for the privilege to construct and operate cable communications systems;
(4) Provide for the regulation by the city of certain rates to be charged to subscribers for certain cable communications services to the extent such regulation is not lawfully preempted by applicable state or federal statutes, rule or regulations;
(5) Provide for the development of cable communications as a means to improve communication between and among the members of the public and public institutions of the city; and to
(6) Provide remedies and prescribe penalties for violation of this ordinance and any franchise granted hereunder.

(c) A*pplicability.* This ordinance is applicable to any application for a cable franchise filed on or after June 19, 1993 and to any such franchise granted thereafter.

(d) *Definitions.* For the purpose of this ordinance the following terms, phrases, words, and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is mandatory and the word "may" is permissive. Words not defined shall be given their common and ordinary meanings.

Access channel shall mean any channel set aside for public use, educational use, or governmental use without a channel usage charge.

Access user shall mean any person or entity entitled to make use of an access channel consistent with the intended purpose of the channel.

Application shall mean a proposal seeking authority to construct and operate a cable television system within the city pursuant to this ordinance. It shall include the initial proposal plus all related subsequent amendments and correspondence with the city.

Basic service shall mean subscriber cable television services which includes the delivery of local television broadcast signals as required by the FCC, access channels, leased channels and local origination channels, as covered by the regular monthly charge paid by all subscribers to any service tier, excluding premium services, two-way services and FM radio services.

Cable communications system or system shall mean a non-broadcast facility consisting of a set of transmission paths and associated signal generation, reception, and control equipment, under common ownership and control, that distributes or is designed to distribute to public subscribers cable television services, or other communications services, but such term shall not include (1) a facility or combination of facilities that serves only to retransmit the television signals of one or more television broadcast stations; (2) a facility or combination of facilities that serves only subscribers in one or more multiple unit dwellings under common ownership, control, or management, unless such facility or facilities use any public right-of-way; (3) a facility of a common carrier which is subject, in whole or in part, to the provision of Title II of the Communications Act of 1934, as amended, except that such facility shall be considered a cable system to the extent such facility is used in the transmission of video programming directly to subscribers; or (4) any facilities of any electric utility used solely for operating its electric utility system.

Cable television services shall mean the one-way transmission of video programming and associated non-video signals to subscribers together with subscriber interaction, if any, which is provided in connection with the video programming.

City shall mean the City of Fennville, Allegan County, Michigan.

City commission shall mean the City Commission of the City of Fennville.

Commission shall mean the City of Fennville Cable Communications Commission provided for in this ordinance.

Connection shall mean the attachment of the drop to the radio or television set or other communications device of the subscriber.

Converter shall mean an electronic tuning device which converts transmitted signals to a frequency which permits their reception on an ordinary television receiver.

Dedication shall mean those dedications and easements for public roadways and public utilities and other rights-of-way maintained for the benefit of the public and controlled by the city, the terms, conditions, or

limitations of which are not inconsistent with the erection, construction, or maintenance of a cable television system, its structures, or equipment.

Drop shall mean the cable that connects a subscriber's premises to the nearest feeder line of the cable communication system.

Easement shall mean a right to use all public rights-of-way, including public utility easements.

FCC shall mean the Federal Communications Commission or any legally appointed or designated agent or successor.

Feeder line shall mean the coaxial or fiber optic cable running from the trunk line to line-extenders and taps for the purpose of interconnection to individual subscribers.

File shall mean the delivery, by mail or otherwise, to the appropriate office, officer or agent of the city of any document or other thing which this ordinance or the franchise requires the franchisee to file with the city. The date of receipt by the city shall be considered the filing date. Unless specified to the contrary, the filing shall be with the city clerk.

Franchise shall mean the nonexclusive right and authority to construct, maintain, and operate a cable communications system through use of the public streets, dedications, public utility easements, other public rights-of-way, or public places in the city pursuant to a contractual agreement executed by the city and a franchisee.

Franchisee or grantee shall mean an entity authorized to construct and/or operate a cable communications system within the city pursuant to this ordinance, including any lawful successor, transferee or assignee of the original grantee.

Gross revenues shall mean all operating revenue actually received from the cable television system derived directly or indirectly by a franchisee, its affiliates, subsidiaries, parent, and any person in which the franchisee has a financial interest in association with the provision of cable television services within the city, including, but not limited to, basic service monthly fees, premium service fees, institutional service fees, installation and reconnection fees, leased channel fees, converter rentals, studio rental, production equipment and personnel fees, advertising revenues, copyright fees; provided, however, that this shall not include any taxes on services furnished by the franchisee payable to the State of Michigan or any other governmental unit and collected by the franchisee on behalf of said governmental unit, or any revenues from the provision of cable television services outside the City or any revenues from sale of capital assets or lease of property for purposes unrelated to cable television.

Installation shall mean the connection of the system at the subscriber's premises.

Leased channel or leased access channel shall mean any channel, or part of a channel, available for commercial use on a fee basis by persons or entities other than a franchisee.

Person shall mean an individual or legal entity, such as a corporate or partnership.

Premium service shall mean pay television offered on a per channel or per program basis.

Service tier shall mean a specific set of cable subscriber services which are made available as, and only as, a group for purchase by subscribers at a separate rate for the group.

Street or public way shall mean the surface of and the space above and below any public street, road, highway, path, sidewalk, alley, court, or easement now or hereafter held by the city for the purpose of public travel or public utilities and shall include public easements or rights-of-way.

Subscriber shall mean a recipient of cable television service or other services provided over a cable television system.

Two-way capability shall mean a system designed and constructed to have technical capacity for non-voice return communications.

User shall mean a party utilizing a cable television system's facilities for purposes of production or transmission of material or information to subscribers.

Sec. 18-92. Authority.

(a) Requirement of a franchise. It shall be unlawful to construct, install, maintain or operate a cable communications system or part of a cable communications system within the city without a valid franchise obtained pursuant to the provisions of this ordinance.

(b) General franchise characteristics. Any franchise issued pursuant to the provisions of this ordinance shall be deemed to:

1. Authorize use of the public ways for installing cables, wires, lines, and other facilities in order to operate a cable communications system, but shall neither expressly or impliedly be deemed to authorize the grantee to provide service to, or install cables, wires, lines, or

any other equipment or facilities upon private property without owner consent, or to utilize publicly or privately owned utility poles or conduits without a separate agreement with the owners therefore;

2. Be nonexclusive, and shall neither expressly nor impliedly be deemed to preclude the issuance of subsequent franchises to operate one or more other cable communications systems within the city or the ownership or operation of a cable communications system by the city; and
3. Convey no property right to the franchisee or right to renewal, except as may be otherwise provided by applicable law.

(c) Franchise as a contract. A franchise issued pursuant to the provisions of this ordinance shall be deemed to constitute a contract between the franchisee and the city. The franchisee shall be deemed to have contractually committed itself to comply with the terms, conditions and provisions of the franchise documents, and with all rules, orders, regulations, and determinations applicable to the franchise which are issued, promulgated or made pursuant to the provisions of this ordinance.

(d) Conflicts.

1. All terms, conditions and provisions of this ordinance and the application for a franchise shall be embodied in a franchise, and conflicts in terms, conditions or provisions between these documents shall be resolved as follows:

(a) The express terms of this ordinance shall prevail over conflicting or inconsistent provisions of the franchise;

(b) The express terms of the franchise shall prevail over conflicting or inconsistent provisions in the application, except the express terms of this ordinance; and

(c) The express terms of any request for proposals shall prevail over conflicting or inconsistent provisions in the application for the franchise.

2. That provisions of the franchise shall be liberally construed in order to effectuate its purposes and objectives consistent with this ordinance and the public interest. In the event one or more substantive provisions of the franchise or this ordinance are subsequently found to be unlawful, null and void or unenforceable, the city commission shall, at its sole option, have the right to consider said provision(s) severed from the franchise so as to continue the franchise's effectiveness, or , in the event the franchisee fails to continue its performance of the obligations imposed by such unlawful, null and void or unenforceable provision(s) and such failure is not the result of the legal impermissibility of such performance, the city commission may declare the franchise a nullity and terminate it forthwith; provided, however, that such termination shall take place only (i)after a public hearing of which the franchisee has been given at least 15 days prior written notice and at which the franchisee has been given an opportunity to appear and make arguments before the city commission, and (ii) if, after the public hearing, the city commission determines that severance of the unlawful, null and void or unenforceable provisions constitutes a substantial failure of consideration for the franchise agreement. A franchise agreement will be construed under the laws of the State of Michigan, except to the extent such laws are lawfully preempted by applicable federal statutes, rules or regulations.

(e) Subject authority. A franchisee shall, at all times during the life of a franchise, be subject to all lawful exercise of the police power by the city and to such lawful regulations as the city shall hereafter enact; provided, however, that such regulations by ordinance or otherwise shall be reasonable and not in conflict with any rights herein granted, nor in conflict with the applicable laws or regulations of the State of Michigan or of the United States or their respective regulatory bodies having jurisdictions. The construction, operation and maintenance of the system shall also be in full compliance with all other applicable rules and regulations now in effect or hereafter adopted by the United States, the State of Michigan, or any agency of said governments.

Sec. 18-93. Franchise applications.

(a) *Filing of applications.* Applications for a cable television franchise will be considered pursuant to the following procedures:

(1) An application may be filed at any time or pursuant to a request for proposals (RFP) issued by the city.
(2) The city may request additional information from an application for a franchise at any time.
(3) All applications to be acceptable for filing must be accompanied by a filing fee of $1,000.00. The city shall apply all filing fees received against all costs associated with its evaluation of any pending applications(s) pursuant to 18-93(d) of this ordinance. In the event that total costs are less than total filing fees, the city shall refund a portion of the filing fee on a pro rata basis to each applicant.

(b) *Content of applications.* To be acceptable for filing, an application must conform to any applicable RFP and all the information specified therein. Where an application is not filed pursuant to an RFP, it shall contain, at minimum, the following information:

(1) Identification of the ownership of the applicant, if not a natural person, including the names and addresses of all persons with one percent or more ownership interest and the ultimate controlling natural persons and identification of all officers and directors and any other primary business affiliation of each; provided, however, that when any parent corporation has in excess of 1,000 shareholders and its shares are publicly traded on a national stock exchange, then a list of all holders of five percent or more of the voting stock of such corporation shall be disclosed.
(2) An indication of whether the applicant, or any entity controlling the applicant, including any officer of a corporation or major stockholder thereof, has been adjudged bankrupt, has had a cable franchise revoked or has been found guilty by any court or administrative agency in the United States of: (a) a violation of a security or antitrust law; or (2) a felony or any other crime involving moral turpitude. The application shall further identify any such person or entity and fully explain the circumstances.
(3) A demonstration of the applicant's technical, legal and financial ability to construct and operate the proposed cable facility.
(4) A description of the physical facility proposed, including channel capacity (one-way and two-way if any), the area to be served, a summary of technical characteristics, and head end and access facilities.
(5) A description of how any construction will be implemented, identification of areas having above ground or below ground cable facilities, the proposed construction schedule, and a description (where appropriate) of how service will be converted from any existing facility to a new facility.
(6) A description of the services to be provided over the system, including identification of television signals (both broadcast and nonbroadcast) to be carried and all non-television services to be provided initially. Where service will be offered by tiers, identify the signals and/or services to be included on each tier.
(7) The proposed rates to be charged, including rates for each service tier, as appropriate, and charges for installation, converters, and other services.
(8) Information as necessary to demonstrate compliance with all relevant requirements contained in this ordinance.
(9) A demonstration of how the proposal is reasonable to meet the future cable-related community needs and interests. In particular, the application should describe how the proposal will satisfy the needs as analyzed in any recent community needs assessment commissioned by the city.
(10) A demonstration that the proposal is designed to be consistent with all federal and state requirements.
(11) If requested by the city, pro forma financial projections for each year of the franchise term. The projections shall include a statement of, income, balance sheet, statement of sources and uses of funds, and schedule of capital additions. All significant assumptions shall be explained in notes or supporting schedules that accompany the projections.
(12) A complete list of all cable communications systems in which the applicant, or a principal or affiliate thereof, holds an equity interest.

(13) An affidavit of the applicant or duly authorized officer thereof, certifying, in a form acceptable to the city, the truth and accuracy of the information contained in the application and acknowledging the enforceability of application commitments.

(14) In the case of an application by an existing franchisee for a renewed franchise, a demonstration that said franchisee has substantially complied with the material terms of the existing franchise and with the applicable law.

(15) Other information that the city, or its agents, may request of the applicant.

(c) *Applicant representatives.* Any person who files an application with the city for a cable television franchise shall forthwith, at all times, disclose to the city, in writing, the names, addresses and occupations of all persons who are authorized to represent or act on behalf of the applicant in those matters pertaining to the application. The requirement to make such disclosure shall continue until the city shall have rejected an applicant's application or until an applicant withdraws it application.

(d) *Consideration of applications:*

(1) The city will consider each application for a franchise where the application is found to be acceptable for filing and in substantial compliance with the requirements of this ordinance and any applicable RFP. In evaluating an application the city will consider, among other things, the applicant's past service record in other communities, the nature of the proposed facilities and services, proposed rates, and whether the proposal would adequately serve the public needs and the overall interests of the citizens of the city. Where the application is for a renewed franchise, the city shall consider whether: (1) the cable operator has substantially complied with the material terms of the existing franchise and with applicable law; (2) the quality of the operator's service, including signal quality, response to consumer complaints, and billing practices (but without regard to the mix, quality, or level of cable services or other services provided over the system) has been reasonable in light of community needs; (3) the operator has the financial, legal and technical ability to provide the services, facilities, and equipment as set forth in the operator's proposal; and (4) the operator's proposal is reasonable to meet the future cable-related community needs and interest, taking into account the cost of meeting such needs and interest.

(2) Where the city determines that an applicant's proposal, including the proposed service area, would serve the public interest, it may grant, by ordinance, a franchise to the applicant. The franchise agreement will constitute a contract, freely entered into, between the city and the grantee. Said franchise agreement shall incorporate by reference the relevant provisions of this ordinance. Any such franchise must be approved by ordinance of the city commission.

(3) In the course of considering an application for a renewed franchise, the city commission shall hold a public hearing, in which the public and the franchisee seeking renewal shall be offered an opportunity to speak, offer evidence and question witnesses. Notice of any such public hearing shall, at least ten day before the date of the hearing, be published in a local newspaper of general circulation in the city and be sent by certified mail to each applicant to be considered. A transcript or recording shall be made of such hearing. Based on the record of such hearing and the application (including any negotiations relative thereto), the city commission shall determine whether to grant a renewed franchise and shall issue a written opinion stating the reasons for its decision.

(4) A franchise granted pursuant to this ordinance shall not take effect until the applicant pays a grant fee to the city. The grant fee shall be equal to the city's direct costs in the franchising process less the application filing fee received. The city shall provide to the grantee a statement summarizing such cost prior to the execution of the franchise.

(e) *Acceptance.* A franchise and its terms and conditions shall be accepted by a grantee by written instrument, in a form acceptable to the city attorney, and filed with the city within 30 days after the granting of the franchise by the city. In its acceptance, the grantee shall declare that it has carefully read the terms and conditions of this ordinance and the franchise and accepts all of the terms and conditions of this ordinance and the franchise and agrees to abide by same. In accepting a franchise a grantee shall indicate that it has relied upon its own investigation of all relevant facts,

that it was not induced to accept the franchise, and that it accepts all reasonable risks related to the interpretation of the franchise.

Sec. 18-94. Franchise conditions.

(a) *Franchise term.* The term of a franchise shall be as specified in the franchise agreement, but it shall not exceed 15 years. If a franchisee seeks authority to operate a cable system in the city beyond the term of its franchise, it shall file an application for a new franchise not later than 30 months prior to the expiration of its franchise. Notwithstanding the foregoing, subject to any rights a franchisee may have under federal law, the city shall have the right to terminate at will any franchise until such time as the same has been approved by a majority of the electors of the city voting thereon. A franchisee whose franchise has not been so terminated may, at any time before such termination, request (in writing to the city clerk) that the question of the issuance of the franchise to the franchisee be submitted to the electors of the city at the next regular election or at a special election; and a franchisee whose franchise is so terminated at will by the city may, within 30 days after written notice of such termination, request (in writing to the city clerk) that the question of the issuance of the franchise to the franchisee be submitted to the electors of the city at the next regular election or at a special election; provided, however, that nothing contained in the franchise election provisions of this section shall prevent or reverse any termination of a franchise for cause, as otherwise permitted pursuant to this ordinance. In the event of any franchise election held pursuant to the provisions of this section, the franchisee shall pay all of the election costs and expenses if the franchise is the only matter submitted to the electors at the regular or special election or, if there are other propositions or matters considered in the same election, then it shall pay its proportionate share of said election costs and expenses. The city may, in its discretion, require that the franchisee deposit with the city a reasonable sum to defray the election costs and expenses prior to commencement of the procedures necessary to conduct the election at which the franchise question is to be submitted to the electors of the city. In the event a franchise is terminated pursuant to this section, within a reasonable time thereafter the city shall, directly or through an intermediary, purchase the franchisee's system at the price and upon the terms specified in section 18-94 (i)(2) of this ordinance.

(b) *Franchise Fee.*

(1) A franchisee, in consideration of the privilege granted under a franchise for the use of public ways and the privilege to construct and operate a television system, shall, as specific by the city commission, pay to the city a sum of money up to or equal to five percent of its annual gross revenues during the period of its operation under the franchise.

(2) A franchise shall file with the city, on an annual basis, a financial statement certified by the chief financial officer and/or treasurer of the franchisee, showing the gross revenues received by franchise during the preceding year. Such financial statements shall be prepared at the close of each fiscal year and shall be filed on or before the thirtieth calendar day from and including the end of the applicable period. A franchisee shall pay the franchise fee to the City on or before the time such financial statement is due to be filed. Subsequent to receiving such financial statements, the city in its sole discretion may require the franchisee to submit financial statement for such year, audited by an independent public accountant, certified in the State of Michigan. The franchisee shall bear the cost of such audit. Any franchise fee payment in adjustment for any shortfall of the total monthly payments for the year shall be made at that time. Adjustments for any overpayment shall be by credit to subsequent monthly payments.

(3) The city shall have the right, consistent with the provisions of section 18-94(B) of this article, to inspect a franchisee's income records, to audit any and all relevant records, and to recompute any amounts determined to by payable under the franchise and this article.

(4) In the event that any franchise payment is not received by the city on or before the applicable dates, interest shall be charged from such due date at an annual interest rate then chargeable for unpaid federal income taxes or the maximum rate allowable under Michigan law, whichever is less. In addition to the foregoing, the franchisee shall pay a late charge not to exceed five percent of the amount of such payment as determined by the city commission. Interest and late charges will not be chargeable to the franchisee

for additional payment required under the yearly adjustment provided that such payment does not exceed ten percent of the total monthly payments made during the year. In the event such payment exceeds ten percent, the franchisee shall be liable for interest and late charges for the entire amount.

(5) In the event a franchise is revoked or otherwise terminated prior to its expiration date, the franchisee shall file with the city, within 90 days of the date of revocation or termination, an audited financial statement showing the gross revenues received by the franchisee since the end of the previous year and shall make adjustments at that time for the franchise fees due up to the date of revocation or termination.

(6) Nothing in this ordinance shall limit the city's authority to tax a franchisee as permitted by law.

(c) Insurance, bonds, indemnity.

1. Upon the granting of a franchise and following simultaneously with the filing of the acceptance of the franchise and at all times during the term of the franchise, including the time for removal of facilities or management as a trustee as provided for herein, the franchisee shall obtain, pay all premiums for, and deliver to the city, written evidence of payment of premiums for and duplicate originals of the following.
    a. A general comprehensive public liability policy or policies indemnifying, defending and saving harmless the city, its officers, boards, commissions, agents or employees from any and all claims by any person whatsoever (including the costs, defenses, attorney fees and interest arising therefrom) on account of injury to or death of a person or persons occasioned by the operations of the franchisee under the franchise herein granted, or alleged to have been so caused or occurred, with a minimum liability of $500,000.00 per personal injury or death of any one person and $2,000,000.00 for personal injury or death of any two or more persons in any one occurrence. The policy shall be endorsed adding coverage against all claims for personal injury liability offenses.
    b. A property damage insurance policy or policies indemnifying, defending, and saving harmless the city, its officers, boards, commissions, agents and employee from and against all claims by any person whatsoever (including the costs, defenses, attorney fees and interest arising therefrom) for property damage occasioned by the operations of the franchisee under the franchise herein granted, or alleged to have been so caused or occurred, with a minimum liability of $250,000.00 for property damage to the property of any one person and $1,000,000.00 for property damage to the property of two or more persons in any one occurrence.
    c. A performance bond or bonds in favor of the city with good and sufficient surety approved by the city in the sum of $25,00.00 in the franchise agreement conditioned upon the faithful performance and discharge of the obligations imposed by this article and the franchise awarded hereunder from the date thereof. The amount of the bond may be reduced as any construction that is required is completed, consistent with the franchise agreement.
2. All bonds and insurance policies called for herein shall be in a form satisfactory to the city attorney. The city may at any time, if it deems itself insecure, require a franchisee to provide additional sureties to any and all bonds or to replace existing bonds with new bonds with good and sufficient surety approved by the city. No bond or insurance policy shall be cancelable during its term unless the franchisee, not less than 30 days prior to cancellation, has delivered to the city a substitute or replacement bond or policy in conformance with the provisions of this ordinance.
3. A franchisee shall, at its sole cost and expense, indemnify and hold harmless the city, its officials, boards, commissions, agents and employees against any and all claims, suits, causes of action, proceedings, and judgments for damage arising out of the operation of the cable television system under the franchise; except, that no such requirement shall apply when such claims, suits, causes of actions, proceedings, and judgments for damage are occasioned by the negligence, gross negligence or intentional acts of the city or its officials, boards, commissions, agents and employees while acting on behalf of the city. These damages shall include, but not

be limited to, penalties arising out of copyright infringements and damages arising out of any failure by a franchisee to secure consents from the owners, authorized distributors or licensees of programs to be delivered by the franchisee's television system whether or not any act or omission complained of is authorized, allowed, or prohibited by the franchise. Further, a franchisee shall, at its sole cost and expense, indemnify and hold harmless the city, its officials, boards, commissions, agents and employees for damage arising out of any misrepresentation, negligence, gross negligence or intentional act of the franchisee, its agents or employees in connection with the grant or transfer of a franchise to such franchisee, or the renewal of a franchise, under this ordinance. Indemnified expenses shall include, but not be limited to, all out-of-pocket expenses, such as costs and attorney fees, and shall also include the reasonable value of any services reasonably rendered by the city attorney or his or her assistants or any employees of the city. The city shall notify the franchisee in the event any person shall in any way notify the city of any claim or demand in connection with the cable communications systems or this ordinance for which the franchisee may be subject to liability under this section or otherwise, and provide to the franchisee the opportunity to defend, settle or otherwise resolve such claim in its discretion, after consulting with the city.

4. No franchise shall permit any policy or bond to expire and a franchisee, not less than 30 days prior to it expiration, shall deliver to the city a substitute, renewal or replacement policy or bond in conformance with the provisions of this ordinance.

(d) *Letter of credit.*

1. The city may at its discretion require that a franchisee obtain a letter of credit. When and if the city should so require, the franchisee shall deposit with the city a letter of credit from a financial institution approved by the city in the amount set by the city, but not to exceed $10,000.00. The letter of credit may not be revoked or terminated during the term of the franchise except with written approval of the city. The form and content of such letter of credit shall be approved by the city attorney. The letter of credit shall be used to insure the faithful performance by the franchisee of all provisions of the franchise and this ordinance, compliance with all orders, permits, and directions of any agency, commission, board, department, division, or office of the city having jurisdiction over its acts or defaults under the license, and the payment by the franchisee of any claims liens, and taxes due the city or other municipalities which arise by reason of the construction, operation, or maintenance of the system.
2. The letter of credit shall be maintained by the franchisee at $10,000.00 or such lesser amount as the city shall determine during the entire term of the franchise, as the city may require, even if funds are drawn against it pursuant to this ordinance.
3. The letter of credit shall contain the following endorsement: "It is hereby understood and agreed that this letter of credit may not be canceled by the surety nor the intention not to renew be stated by the surety until 30 days after receipt by the city Attorney, by certified mail, of a written notice of such intention to cancel or not to renew."
4. At the city's option, it may draw against the letter of credit for any unpaid liquidated damages, franchise fees or other amounts owing to it under the franchise which are 30 days or more past due. The city shall notify the franchisee in writing at least ten days in advance of drawing upon the letter of credit.

(e) *Liquidated damages.*

1. Because a franchisee's failure to comply with the provisions of this ordinance and its franchise will result in damage to the city and because it will be impractical to determine the actual amount of such damages, the city and any franchisee shall agree upon and specify in the franchise certain amounts which represent both parties' best estimate of the damages.
2. The city attorney shall calculate the amount of any damages and mail notice thereof to the franchisee. Such a notice may provide for damages sustained prior to the notice and subsequent thereto pending compliance by the franchisee.
3. The liquidated damages provided in a franchise shall be the exclusive monetary remedy for the named breaches. Neither the right to liquidated damages nor the payment of liquidated damages shall bar or otherwise limit the right of the city in a proper case to: (1) obtain judicial enforcement of the franchisee's obligations by means of specific performance, injunctive relief, mandate or other remedies at law or in equity; (2) consider any violation as grounds for

forfeiture and termination of the franchise pursuant to this ordinance; and (3) consider any violation as grounds for nonrenewal or nonextension of the franchise or issuance of a new franchise. The franchisee shall pay all fees and costs of public hearings or meetings called for under this franchise.

(f) *Forfeiture and termination.*

1. In addition to all other rights and powers retained by the city under this ordinance and any franchise issued pursuant thereto, the city commission reserves the right to forfeit and terminate the franchise and all rights and privileges of the franchisee in the event of a substantial breach of its terms and conditions. Substantial breach by the franchisee shall include, but shall not be limited to, the following:

(a) An uncured violation of any material provision of this ordinance or franchise issued thereunder, or any material rule, order, regulation, or determination of the city made pursuant thereto;

(b) An attempt to evade any material provision of the franchise or practice of any fraud or deceit upon the cable television system customers and subscribers or upon the city;

(c) Failure to begin or substantially complete any system construction or system extension as set forth in the franchise;

(d) Failure to provide the services promised in the application or specified in the franchise, or a reasonable substitute therefore;

(e) Failure to restore service after five consecutive days of interrupted service, except when approve of such interruption is obtained from the city; or

(f) Material misrepresentation of fact in the application for, or during negotiation relating to, the franchise.

(g) Failure to provide surety and indemnity as required by the franchise or this ordinance.

2. None of the foregoing shall constitute a substantial breach if a violation occurs which is without fault of the franchisee or occurs as a result of circumstances beyond the franchisee's control. The franchisee shall not be excused by mere economic hardship nor by nonfeasance or malfeasance of its directors, officers, agents or employees; provided, however, that damage to equipment causing service interruption shall be deemed to be the result of circumstances beyond the franchisee's control if it is caused by any negligent act or unintended omission of its employees (assuming proper training) or agents (assuming reasonable diligence in their selection), or sabotage or vandalism or malicious mischief by its employees or agents. The franchisee shall bear the burden of proof in establishing the existence of such conditions.

3. The city may make a written demand by certified mail that the franchisee comply with any such provision, rule, order, or determination under or pursuant to the franchise. If the violation by the franchisee continues for a period of five days following such written demand without written proof that the corrective action has been taken or is being actively and expeditiously pursued, the city commission may consider terminating the franchise; provided, however, a written notice thereof shall be given to the franchisee at least five days in advance and the franchisee must be given an opportunity to appear before the city commission in a public hearing to present its arguments, including the opportunity to offer evidence and question witnesses. A transcript or recording shall be made of such hearing. Based on the evidence of such hearing, the city commission shall determine whether to terminate the franchise and shall issue a written opinion stating the reasons for its decision.

4. Should the city commission determine, following the public hearing, that the violation by the franchisee was the fault of the franchisee and within the franchisee's control, the city commission may, by resolution, declare that the franchise be forfeited and terminated' provided, however, the city commission may, in its discretion, provide an opportunity for the franchisee to remedy the violation and come into compliance with the franchise and this Ordinance so as to avoid the termination.

(g) *Foreclosure.* Upon the foreclosure or other judicial sale of all or a substantial part of the cable communications system facilities, or upon the termination of any lease covering all or substantial part of the cable communications system, or upon the occasion of additional events which effectively cause termination of the system's operation, the franchisee shall notify the city of such fact, and such notification of the occurrence of such terminating events shall be treated as a notification that a change

in control of the franchisee has taken place, and the provisions of this ordinance governing the consent of the city to such change in control of the franchisee shall apply.

(h) *Receivership.* The city shall have the right to cancel a franchise issued 120 days after the appointment of a receiver, or trustee, and to take over and conduct the business of the franchisee, whether in receivership, reorganization, bankruptcy, or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said 120 days, or unless:

(1) Within 120 days after the election or appointment, such receiver or trustee shall have fully complied with all of the provisions of this ordinance and remedied any defaults thereunder; and

(2) Within said 120 days, such receiver or trustee shall have executed an agreement, duly approved by the court having jurisdiction whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this ordinance and the franchise granted to the franchisee.

(i) *Purchase of cable system by city.*

(1) At the normal expiration of a franchise term (preceded by at least six month's notice) or upon receiving a request for transfer under section 18-94(k), the city shall have the right, directly or through an intermediary, to purchase the franchised cable system.

(2) In the event the city decides to deny renewal of a franchise, or upon receiving a request for transfer under section 18-94(k), the city shall have the right to purchase the system at its fair market value. Fair market value shall be determined on the basis of the going concern value of the system, taking into account such factors as the replacement cost, system cash flow, existing and potential goodwill, existing arrangements with programmers and subscribers; except no value shall be assigned to the franchise itself. The fair market value shall be reduced by the amount of any lien, encumbrance or financial obligation which the city will assume.

(3) In the event the city revokes, forfeits or terminates the franchise for cause, it shall have the right to purchase the cable system for an equitable price. An equitable price shall take into account such matters as the harm to the community resulting from the franchisee's breach, and shall be determined without reference to section 18-94(i)(2) of this article.

(4) Upon exercise of the option to purchase and the payment of the purchase price by the city and its service of official notice of such action upon the franchisee, the franchisee shall immediately transfer to the city possession and title to all facilities and property, real and personal, of the cable television system, free from any and all liens and encumbrances not agreed to be assumed by the city, and the franchisee shall execute such warranty deeds or other instruments of conveyance to the city as shall be necessary for this purpose.

(j) *Removal of cable communications systems.* At the expiration of the term for which a franchise issued hereunder is granted, or upon its termination as provided herein, the franchisee shall forthwith, upon notice by the city, remove at its own expense all designated portions of the cable communications system from all streets and public ways within the city and shall restore said streets and public ways to their former condition; provided, however, the franchisee shall have the right to sell its physical plant to be subsequent franchisee, subject to city approval, in which case said plant need not be removed. If the franchisee fails to remove its facilities upon request, the city may perform the work at the franchisee's expense.

(k) *Transfer of ownership or control.*

(1) A franchise issued pursuant to this ordinance shall not be sold, assigned, transferred, leased, or disposed of, either in whole or in part, either by involuntary sale or by voluntary sale, merger, consolidation, or otherwise hypothecated in any manner, nor shall title thereto, either legal or equitable, or any right, interest, or property therein pass to or vest in any person or entity, or the controlling interest in any corporation holding a franchise hereunder be change without the prior consent of the city commission (which consent shall not be withheld unreasonably), and then only under such conditions as may be required by the city commission. Such a transfer of control is not limited to major interest holders but includes actual working or de facto control by minor interest holders in whatever manner exercised. Every change, transfer, or acquisition of control of the franchisee shall make the franchise subject to cancellation unless and until the city shall have consented. Nothing in this section shall be deemed to prohibit the mortgage or pledge of the cable communications system or

any part thereof; provided, however, that any such mortgage or pledge shall require the city's consent under this section.

(2) The franchisee shall promptly notify the city of any proposed change in control of the franchisee. A formal application for approval of a proposed transfer of control shall be filed within 30 days of such notification. The application shall include the full particulars relating to the sale or transfer. An original and three copies of the text of the application shall be filed and additional copies as the city may request.

(3) The proposed purchaser, transferee, or assignee must show financial responsibility as determined by the city and must agree to comply with all provisions of the franchise, including any provisions which the city may amend or add prior to approval of the transfer.

(4) For the purpose of determining whether it shall consent to such change, transfer, or acquisition of control, the city may inquire into all qualifications of the prospective controlling party, and the franchisee shall assist the city in any such inquiry. The city may require any reasonable conditions which it deems necessary at the time of review to ensure that the cable communications system will satisfy the public interest of the city and its citizens for the balance of the term of the franchise. The city commission shall have 90 days within which to approve or disapprove a transfer under this section, except that in the case of a transfer from a subsidiary to a parent corporation or other controlling or related entity, or vice versa, the city commission shall have 30 days within which to approve or disapprove such transfer; and if no action is taken within the applicable period, approval shall be deemed to have been given; provided, however, that nothing contained in this section shall alter or interfere with the right of the city to purchase the cable communications system pursuant to section 18-94(i) of this ordinance.

(5) Section 18-93(d) of this ordinance shall apply to any transfer as if the transferee were an applicant for a new franchise.

(l) *Resident agent.* A franchisee shall maintain a force of one or more resident agents or employees in the City of Fennville at all times and have sufficient employees to provide safe, adequate and prompt service for its facilities.

(m) *Nondiscrimination in employment.* Grantee shall comply fully with the requirements of 634 of P.L. 98-549 concerning equal employment opportunity.

Sec. 18-95. Subscriber fees and records.

(a) *Subscriber fees and rates.*

(1) The initial fees to be charged to subscribers for all services, including installation fees and other one time charges, shall be specified in any franchise agreement issued pursuant hereto.

(2) Those fees and charges subject to regulation by the city pursuant to state and federal law shall not be increased without prior approval of the city. The city reserves the right to regulate rates for any service pursuant to changes in federal or state law which would authorize such regulation. The city reserves the right to establish procedures for any lawful regulation of rates.

(3) Rates shall be just and reasonable, considering the franchisee's costs, including a reasonable return on investment over the remaining term of the franchise, and shall not give any undue or unreasonable preference or advantage to any subscriber of class of subscribers.

(4) Rates and charges may be reduced at any time without prior city approval provided that the reductions do not result in rates which are unreasonably discriminatory to any subscriber or class of subscribers. Where temporary reductions are put into effect for promotional purposes for a specified time period, the return to the permanent rates shall not be considered a rate increase for purpose of this ordinance. The city shall be formally notified in writing and in advance of all reductions in rates, other than temporary reductions as described above.

(5) Rates and charges not subject to regulation by the city under state or federal law or regulation may be changed by the licensee following a minimum 30 days' prior written notice to the city and each subscriber.

(b) *Reports.* To facilitate timely and effective enforcement of this ordinance and any cable television franchises and to develop a record for purposes of determining whether to renew any cable television franchises, the city requires reports as specified in this section.

(1) *Annual report.* No later than March 31 of each year, the franchisee shall file a written report with the city which shall include:

(a) A summary of the previous calendar year's activities in development of its system, including but not limited to services begun or dropped, number of subscribers (including gains and losses), homes passed and miles of cable distribution plants in service (including different classes if applicable).

(b) A financial statement reviewed (or audited, if requested in writing by the city) by an independent public accountant certified in the State of Michigan, who is acceptable to the city. The financial statement shall include a statement of income, a balance sheet, and a statement of sources and applications of funds. The statement shall include notes that specify all significant accounting policies and practices upon which it is based (including, but not limited to, depreciation rates and methodology, overhead and intrasystem cost allocation methods, and basis for interest expense). A summary shall be provided comparing the current year with previous years since the beginning of the franchise. The statement shall contain a summary of franchise fee payments and any adjustment thereto as specified in 18.94(b) of this ordinance.

(c) A current statement of cost for any construction by component category.

(d) If requested by the city, a projected income statement, balance sheet, statement of sources and applications of funds and statement of any construction for the next two years. All significant assumptions upon which projections are made shall be noted.

(e) If requested by the city, a reconciliation between previously projected estimates and actual results.

(f) A summary of complaints, identifying the number and nature of complains and their disposition.

(g) If the franchisee is a corporation, a list of officers and members of the board and the officers and board members of any parent corporation(s), including all tiers of a controlled group of corporations.

(h) A list of all partners or stockholders holding one percent or more ownership interest in the franchisee and any parent corporation(s), including all tiers of a controlled group of partnerships and/or corporations, shall be disclosed; provided, however, that when any parent corporation has in excess of 1,000 shareholders and its shares are publicly traded on a national stock exchange, then a list of all holders of five percent or more of the voting stock of such corporation shall be disclosed.

(i) A copy of all the franchisee's rules and regulations applicable to subscribers and users of the cable system.

2. The city may specify the form and details of all reports, with franchisee given an opportunity to comment in advance upon such forms and details. The city may change the filing dates for reports upon reasonable request of the franchisee.

(c) *Records.* The franchisee shall maintain a complete set of books and records at an office within the State of Michigan. Unless otherwise prohibited by law, upon 48 hours notice to the franchisee, the city will have the right to inspect all records relating to the system operations at any time during normal business hours at the franchisee's office in the City of Fennville.

(d) *Filings.* Upon request of the city commission from time to time, the franchisee shall mail or deliver to the city clerk a copy of any petitions, applications and communications submitted by the franchisee to the FCC, federal securities and exchange commission, or any other federal or state regulatory commission or agency having jurisdiction with respect to any matters affecting the cable communications system operations authorized pursuant to the grant of the franchise. Said copies shall be mailed or delivered on the filing date.

Sec. 18-96. Minimum system standards.

(a) *System technical standards.* The cable communications system to be installed by a franchisee shall comply in all respects with the technical performance requirements set forth in the application, Part 76 of the FCC's Rules and regulations or any other FCC guidelines, including any published in an Office of Science and Technology bulletin, and reserves the right to amend the franchise or this ordinance to incorporate comparable technical standards. At a minimum, the cable television system shall be designed to provide picture quality of TASO grade 2 or better and superior reliability and shall be a three hundred megahertz (300 MHZ) system with 36 channel capacity.

(b) *Access and local programming.*

1. The city believes that local programming can play a distinctive, valuable, and essential role as part of a cable television system. A successful community programming operation requires the cooperation and support of a franchisee, the city, and the public over an extended period of time. Applications for a franchise shall include proposals for the provision for public, education, and local government access channels, including facilities and support services sufficient to meet community needs. Applicants are encouraged to include proposal for local origination programming by the franchisee. All local programming equipment, facilities, and support services—whether supplied directly by a franchisee or through grant funds provided by the grantee—shall be available to all users in the community, including the franchisee. All proposals shall conform to the following minimum requirements:
    a. A franchisee shall provide access to equipment for local program production by all cable users and live and video-taped presentation over the cable television system in addition to automated services.
    b. The franchisee shall have no control over the content of access programs. The city may require a franchisee or a non-profit corporation or other entity selected to manage the access program to establish reasonable rules for the use of access channels consistent with the requirements of this ordinance, the franchise, other applicable law and the intended purpose of such channels. Such rules shall be subject to review and approval by the city.
    c. Any public access channel shall be made available to any member of the public on a nondiscriminatory basis at no charge for channel or equipment use, except as otherwise provided in access rules developed by the franchise and approved by the city. Use of personnel for production of public access programming shall be made available consistent with the goal of affording users a low-cost means of television access and the requirements of the franchise.
    d. Any education access channel shall be made available free of charge for the transmission of local educational programming.
    e. Any local government access channels shall be made available free of charge for the transmission of government related programming.
    f. The franchisee shall provide for a training program for access users sufficient to meet the demand for such a program.
2. The city shall promulgate rules under which channel capacity dedicated to access use may be used by the franchisee when it is not being used for access purposes.

(c) *Leased access.* A franchisee shall make channels available for leased or commercial use as specified in the franchise consistent with federal requirements. The franchisee shall facilitate leased access use by assuring that lessees will have full use of the system's technical capabilities, including but not limited to addressability and code formats for data transmission. The franchisee shall also make available for lease narrow band channels. Leased access shall be made available on a first-come, nondiscriminatory basis and at reasonable rates. A channel designated for leased access may be utilized by the franchisee until such time as there is demand for commercial leased use of the channel.

(d) *Public drops.* A franchisee shall provide without charge within the franchise area one drop activated for basic subscriber cable television service to each fire station, public school, police station, public library, and other such buildings used for public purposes as may from time to time be designated by the City. A franchisee shall be permitted to recover, at the franchisee's actual cost, for any additional converters required and the franchisee's direct cost of installing, when requested to do so, more than one outlet, or concealed inside wiring, or a service outlet requiring more than 250 feet of drop cable.

(e) *Parental control.*
1. A franchisee shall provide subscriber controlled "lock-out" devices (audio and visual) at a reasonable charge to subscribers upon their request. These devices should provide the greatest degree of parental discretion and control. The franchisee shall consult with the city concerning the parental control device to be used in the system. A franchisee shall notify all subscribers in writing of the availability of these devices at least annually.
2. As to any program which is transmitted on a channel offered on a per channel or per program basis, a franchisee shall block entirely the audio and video portion of such program from reception by any subscriber who does not subscribe to that particular channel Scrambling of the signal shall not be sufficient to comply with this provision.

(f) *Emergency audio alert system.* The cable system shall be engineered, constructed and maintained to provide for an audio alert system. This audio alert system shall allow authorized officials of the city or its designated representatives to override automatically the "audio" signal on all channels and to transmit and report emergency information. The franchisee shall, in the case of any emergency or disaster, make its entire system available without charge to the city or any other governmental or civil defense agency that the city shall designate for the duration of such emergency or disaster. In the event of any such use by the city, the city shall hold harmless and indemnify the franchisee for any damages or penalties resulting from such use of this service.

Sec. 18-97. System construction and installation.

(a) *Construction standards.*

(1) Any cable system constructed within the city shall meet or exceed all technical standards consistent with this ordinance, the franchise agreement, and the franchisee's application.

(2) The franchisee shall submit a copy, of the final report on each proof of performance test required by Part 76, Subpart K of the rules and regulations of the FCC to the city within five working days of completion of such report. If the FCC shall cease to require such tests, a franchisee shall continue to conduct such tests at least once each calendar year (at intervals not to exceed 14 months), shall provide a copy of each final report to the city within five working days of completion of such reports, and shall maintain the resulting test data on file at its local office for at least five years. The city subsequently may require a full report on any deficiencies as disclosed by the proof of performance test within such reasonable period of time as it may designate.

(3) The city may require any other reasonable proof of performance test annually and within 90 days of the completion of the construction of a new system or the upgrading or reconstruction of an existing system. The tests and verification shall be at the expense of the franchise.

(4) The franchisee shall submit to the city, as the city may request, a copy of all maps and charts of cable locations prepared by or for the franchisee during the duration of this franchise.

(b) *Construction and installation work.*

(1) The city shall have the right to inspect all construction and installation work performed by the franchisee subject to this ordinance as it shall find necessary to insure compliance with governing ordinances and the franchise.

(2) All construction, installation and maintenance must comply with the National electrical Safety Code, the National Electrical Code as adapted by the city, the Bell System Code of Pole Line Construction, all state and local regulations, and good and accepted industry practice.

(c) Location of structures, lines and equipment.

(1) A franchise shall utilize existing poles, conduits and other facilities whenever possible, and shall not construct or install any new different, or additional poles, conduits, or other facilities whether on public property or on privately owned property until approval of the property owner or appropriate governmental authority is obtained. Such approval shall not be unreasonably withheld. However, the location of any pole or wire-holding structure by a franchisee shall not constitute a vested interest, and such poles, structures, or facilities shall be removed, replaced or modified by the franchisee at its own expense whenever the Commission or other governmental authority determines that the public interest so necessitates.

(2) All transmission and distribution structures, lines and equipment installed by the franchisee within the city shall be located so as to cause minimum interference with the proper use of streets, alleys and other public ways and places to cause minimum interference with the rights or reasonable convenience of property owners who adjoin any of the streets, alleys or other public ways or places and where they will not interfere with any gas, electric, telephone, water or other pre-existing utility facility.

(3) All such poles and other fixtures in any street or public way shall be placed in accordance with all ordinances of the city.

(4) In those areas of the city where electric and telephone utility lines have been placed underground, a franchisee shall place its lines and installations underground. In areas where either telephone or electric facilities are above ground at the time of installation, the franchisee may install its service above ground provided that at such time as both of those

other facilities are placed underground, the franchisee shall forthwith place its facilities underground, and the cost of such shall be borne by the franchisee, with no special charge being imposed upon any subscriber for such change. In new housing developments a franchisee shall install distribution cables at the same time the utility facilities are being installed if reasonably possible.

(5) The franchisee shall locate the system head end within the city of Fennville.

(d) *Replacement of paving.* The franchisee at its own cost and expense and in the manner approved by the city shall replace and restore all paving, sidewalks, driveways, or surface of any street or alley disturbed, in as good condition as before the work was commenced and shall maintain the restoration in an improved condition for a period of one year. Failure of the franchisee to replace or restore such paving sidewalk, driveway or street surface within 48 hours after completion of work shall authorize the city to cause the proper restoration to be made at the franchisee's expense.

(e) *Alternation of streets by city.* If the city shall lawfully decide to alter or change the grade or any street, alley, or other public way, the franchisee, upon reasonable notice by the city, shall, in a timely manner as requested by the city, remove and relocate its poles, wires, cables, underground conduits, and other facilities at its own expense**.**

(f) *Moving of building*. A franchisee shall, on the request of any person holding a valid house-moving permit, temporarily raise or lower its wires or cables to permit the moving of buildings or other large objects. The expense of such temporary rising or lowering of wires shall be paid by the person making the request, and the franchisee shall have the authority to require such payment in advance. The franchisee shall be given not less than 48 hours advance to arrange for such temporary wire changes.

(g) *Trimming trees*. A franchisee shall have the authority to trim trees on public property or which overhang streets, alleys, sidewalks and public places of the city so as to prevent the branches of such trees from coming in contact with wires and cables and other television conductors and fixtures of the franchisee. The city may require all trimming to be done at the franchisee's expense and under the city's supervision and direction.

Sec. 18-98. System operation.

(a) *Provision of service.* A franchisee shall provide subscriber service on the following basis:

(1) A franchisee shall not deny service, access, or otherwise discriminate against any person, including subscribers and users, on the basis of race, color, religion, national origin, age, or sex. A franchisee shall comply at all times with all other applicable federal, state, and local laws and regulations.

(2) In providing service a franchisee shall:

(a) Provide a local toll-free telephone service capable of receiving subscriber service complaints, on a seven days-a-week, 24 hours-a-day basis.

(b) Establish a maintenance service capable of promptly locating and correcting system malfunctions. Service trucks shall be equipped for voice communication with the franchisee's dispatcher. In order to permit a rapid response to any system-wide outage the franchisee shall have service trucks available for emergency duty to repair system outages during nonbusiness hours.

(c) Make every attempt to respond to customer complaints upon receipt, but in no case later than the next working day. The franchisee, whenever reasonably practicable, shall make system repairs and testing (which would result in any interruption of service to subscribers) at times which will least affect typical subscriber television viewing habits; provided, however, a franchisee shall not be required to conduct such system repairs and testing during nonbusiness hours.

(d) In those cases where service is not restored within 24-hours due to unusual circumstances, the reasons for the delay shall be fully documented in a complain log. If after 24 hours, service is not restored to a subscriber, a franchisee shall, upon subscriber request, provide a refund or credit to such subscriber as hereinafter set forth for such full 24-hour period and subsequent fractions thereof. The refund or credit shall be in the amount of one-thirtieth the monthly charge for each tier of service and each premium service which is unavailable to the subscriber.

(e) A log of such complaints shall be maintained for inspection by the City. A franchisee shall respond to written complaints within seven days of receipt.

(3) As subscribers are connected or reconnected to the system, a franchisee shall, by appropriate means such as a card or brochure, furnish general subscriber information (including, but not limited to, terms of service, procedures for making inquires or complaints, including the name, address and local telephone number of the employee or employees or agent to whom such inquiries or complaints are to be addressed) and furnish information concerning the city office responsible for the administration of the franchise, including the address and telephone number of said office.

(4) When similar complaints have been made by a number of subscribers, or where other evidence exists which, in the judgment of the city, casts doubt on the reliability or quality of the cable service, the city shall have the right and authority to require that the franchisee test, analyze, and report on the performance of the system. The franchisee shall fully cooperate with the city in performing such testing and shall prepare a written report of the results, if requested, within 30 days after notice. Costs of such testing shall be borne by the franchisee.

(5) Where the franchisee provides service which is not subject to rate regulation by the city, it shall give at least 30 days prior written notice to the city and all subscribers before implementing any rate increases.

(b) *Refunds and service terminations.*

(1) A franchisee shall establish and conform to the following policy regarding refunds to subscribers and users:

(a) If the franchisee collects a deposit or advance charge on any service or equipment requested by a subscriber or user, the franchisee shall provide such service or equipment within 30 days of the collection of the deposit or charge or it shall refund such deposit or charge within 30 days thereafter. Nothing in this section shall be construed: (a) to relieve a franchisee of any responsibility it may have under separately executed contacts or agreements with subscribers or users: (b) as limiting a franchisee's liability for liquidated damages, if any, which may be imposed under the franchise for the violation or breach of any provisions thereof; or (c) to limit the franchisee's liability for damages, if any, because of its failure to provide the service for which the deposit or charge was made.

(b) In the event that a subscriber terminates service during the first 12 month of service because of the failure of the franchisee to render service substantially in accordance with the requirements set forth in this ordinance and the franchisee, the franchisee shall, upon written request, refund to such subscriber an amount equal to the initial installation or reconnection charge paid deemed to entitle subscriber to a refund of any other charges due the franchisee for its cable television service. The subscriber shall bear the burden of proof in establishing that he is entitled to a refund of initial installation or reconnection charges hereunder.

(c) In the event that such subscriber has made any additional advance payment, the amount so advanced shall be refunded to such subscriber within 30 days after service termination. Nothing in this provision shall be construed to relieve the franchisee of any liability established under any other provisions of this ordinance or a franchise issued pursuant thereto.

(2) The following requirements shall apply to subscriber disconnection:

(a) There shall be no charge for disconnection of any installation service or outlet. All cable communications equipment shall be removed within a reasonable time from a subscriber's property upon the subscriber's request, such time not to exceed 30 days from the date of request.

(b) If any subscriber fails to pay a properly due monthly subscriber's fee, or any other properly due fee or charge, the franchisee may disconnect the subscriber's service; provided, however, that such disconnection shall not be effected until 30 days after the due date of the monthly subscriber fee or charges and shall include a minimum ten days written notice to the subscriber of the intent to disconnect. After disconnection, upon payment in full of all proper fees or charges, including the payment of any reconnection charge (which shall not

exceed the fee for a new installation,) the franchisee shall promptly reinstate the service. This provision shall not apply to subscribers who have been previously disconnected for nonpayment in accordance with the provisions of this ordinance.

(c) *Service Area.* A franchisee shall offer full cable television service to all areas of the city which are specifically set forth in the franchise agreement. A franchise issued pursuant hereto shall require that all dwelling units within the franchise territory shall be offered service on the same terms and conditions; provided, however, that multiple-family dwelling complexes, apartments or condominiums may be served on a master-billed basis and, further, service to motels, hotels, hospitals and similar businesses or institutions may be offered on terms and conditions different from single resident subscribers. In the event that subsequent to the issuance of a franchise the city annexes additional territory, a franchisee shall extend its cable television services into the annexed area upon reasonable request of the city.

(d) *Protection of privacy.* Protection of subscriber privacy shall be assured consistent with the provisions of 47 U.S.C. 631.

(e) *Tampering or unauthorized connections.*

(1) It shall be unlawful for any person to make any unauthorized connection, whether physically, electrically, acoustically, inductively, or otherwise, with any part of a franchise cable television system within the city for the purpose of enabling anyone to receive any television signal or other information transmitted over the cable television system without proper authorization to do so.

(2) It shall be unlawful for any person, without the consent of the cable system operator, to willfully tamper with, remove or injure any cables, wires or other cable television system equipment except, however, a subscriber may disconnect a television receiver from the cable system upon termination of service if the operator has not responded within the 30 days to a request for disconnection.

(f) *Continuity of service.*

(1) Where a franchisee rebuilds, modifies or sells its system, it shall ensure that all subscribers receive continuous, uninterrupted service regardless of the circumstances.

(2) As long as it is entitled to revenues from the operation of the cable system, a franchisee shall maintain continuity of service during any temporary transition in the franchise, including but not limited to the following circumstances:

(a) Revocation of the franchise;

(b) Non-renewal of the franchise; or

(c) Transfer of the cable system to the city or another entity.

(g) *Transitional operation.* In the event a franchisee continues to operate the system in a transitional period, with city acquiescence, following the expiration, revocation or other termination of the franchise, it shall be bound by all the terms, conditions and obligations of the franchise as if it were in full force and effect. The terminating franchisee shall cooperate with the city and any subsequent franchisee in maintaining and transferring service responsibility.

(h) *Equal opportunity employment.* Equal opportunity in employment shall be afforded by a franchisee to all qualified person, and no person shall be discriminated against in employment because of race, color, religion, national origin or sex. A franchisee shall establish, maintain, and carry out a positive, continuing program of specific practices designed to assure equal opportunity in every aspect of company employment policy and practice. A franchisee shall immediately comply with all federal, state, and local equal opportunity employment requirements and practices and shall forthwith comply with the equal employment opportunity program of the city.

(i) *Additional consumer protection.* The city reserves the authority to take any reasonable action, including amendments to this article, to protect consumers of cable television services.

Sec. 18-99. Interconnection and cooperation.

(a) *Interconnection.*

(1) A franchisee's system shall be designed and constructed so as to be capable of interconnection with any systems existing in areas contiguous to the city and insofar as technically and economically feasible, with any such systems anticipated for future construction.

(2) The city commission shall have the right to require the franchisee to interconnect its system with any other broadband communications facility; provided, however, that such interconnection shall not be required if, after negotiating in good faith, the franchisee is unable to reach an equitable cost-sharing agreement with the operator of such other facility. Such interconnection shall be made within a reasonable time limit established by the city commission. The interconnection shall be accomplished according to the method and technical standards determined by the city commission in a manner consistent with FCC standards.

(b) *Cooperation.* A franchisee shall cooperate with any interconnection corporation, regional interconnection authority, or county or state regulatory agency which may be hereafter established for the purpose of regulating, facilitating, financing, or otherwise providing for the interconnection of cable communications system beyond the boundaries of individual political jurisdictions.

Sec. 18-100. Cable communications commission.

(a) *Established.* Before any franchise is granted or franchise agreement is executed, there shall be a commission, to be known as the Fennville City Cable Communications Commission.

(b) *Composition.* The commission shall consist of four resident of the city appointed by the city commission and the chairman of the city ordinance committee. Each member shall serve a term of five years; provided, however, that appointments to the first commission shall be for one, two, three and four-year terms respectively. Any vacancy on the commission shall be filled by the city commission for the remainder of the term. No employee or person with ownership interest in a cable television franchise granted pursuant to this ordinance shall be eligible for membership on the commission. No person shall serve on the commission for an aggregate period in excess of ten years.

(c) *Functions.* The commission, in addition to functions provided elsewhere in this article, shall have the following functions:

1. *Advise the city commission on applications for franchise;*
2. Advise the city commission on matters which might constitute ground for suspension or revocation of the franchise in accordance with this article;
3. Resolve disagreements among franchisee, subscribers and public and private users of the system; such decisions of the commission shall be appealable to the city commission;
4. Advise the city commission on the regulation of rates in accordance with this article; and advise the city commission on other matters pertaining to this ordinance, the franchisee and/or the franchise agreement;
5. Coordinate the franchisee's consultant services to facilitate government, educational, community group and individual use of the public channels;
6. Monitor the services provided subscribers and the operation and use of public channels, with a view towards maximizing the diversity of programs and services to subscribers;
7. Encourage use of public channels among the widest range of institutions, groups and individuals within the city;
8. Submit an annual report to the city commission, including, but not limited to, the total number of hours of utilization of public channels, a review of any plans submitted during the year by franchisees for development of new services, and hourly subtotals for various programming categories. The annual report shall include the following programming categories:
    a. Local educational uses including library, public, and private schools;
    b. Public access for local programming under public control;
    c. Public agency access (including fire, police, burglar alarms, and public announcements);
    d. Availability of channel time for lease for pay TV;
    e. Availability of channel time for lease for business uses, including telemetry of information;
    f. Information retrieval and professional communication;
9. Cooperate with other systems, and supervise interconnection of systems.
10. Maintain a knowledge of current developments in cable communications;
11. Submit a budget request to the city commission to cover expenses incurred with respect to the performance of commission functions provided by this article. This request may include funds to be used for the development of the use of public access channels, including production grants to users and the purchase and maintenance of equipment not required to be

provided by the franchisee, and funds to be used for reasonable expenses of commission members;

12. Audit all franchisee records required by this article and, in the commission's discretion, require the preparation and filing of information additional to that required herein;
13. Conduct evaluations of the system at least every three years with the franchisee and, pursuant thereto, make recommendations to the city commission for amendment to this article or the franchise agreement;
14. Employ, as necessary but within budgetary allocations, the services of a technical consultant, to assist in the analysis of any matter relative to any franchise under this ordinance;
15. Act on behalf of or as the designee of the city commission for the purpose of proposing regulations deemed necessary by the city commission, and/or to provide any other service to the city commission that may be reasonably required by the city commission under the authority of this article; and
16. Develop, publish and amend, all subject to city commission adoption and approval, reasonable rules and regulations governing the commission's functions and procedures pursuant to this article.

(d) *Action by majority.* Any actions of the commission shall require the concurrence of four members.

Sec. 18-101. Penalties and miscellaneous provisions.

(a) *Penalties.* Violation of section 18-98(e) of this article or failure to comply with any of its requirements shall constitute a misdemeanor. Any person who violates section 18-98(e) of this article or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than $500.00 or imprisoned for not more than 90 days, or both. Each day a violation continues shall be considered a separate offense. The city commission, its authorized representative or any other public official or private citizen may take such lawful action as is necessary to restrain or prevent any violation of section 18-98(e) of this article. Any person violating any of the provisions of section 18-98(e) of this article shall be liable to the city for any expense, loss or damage occasioned the city by reason of such violation.

(b) *Administrative liability.* No officer, agent or employee of the city or its authorized representative or member of the city commission shall render himself or herself personally liable for any damage that may accrue to any person as a result of any acts, decisions or other consequence or occurrence arising out of the discharge of their duties and responsibilities pursuant to this article.

(c) *Effective date.* This article is ordered to take effect on June 19, 1993, said date being 30 or more days after publication in the Fennville Herald, a newspaper having general circulation in the city, pursuant to Act 191 of the Public Acts of 1939, as amended.

Sec. 18-102—18-120. Reserved.

DIVISION 3. RATE REGULATION

Sec. 18-121. Definitions.

For purposes of this ordinance, "Act" shall mean the Communications Act of 1934, as amended (and specifically as amended by the Cable Television Consumer Protection and Competition Act of 1992, Pub. L 102-385), and as may be amended from time to time; "FCC" shall mean the Federal Communications Commission; "FCC rules" shall mean all rules of the FCC promulgated from time to time pursuant to the act; "basic cable service" shall mean "basic service" as defined in the FCC rules, and any other cable television service which is subject to rate regulation by the city pursuant to the act and the FCC rules; "associated equipment" shall mean all equipment and services subject to regulation pursuant to 47 CFR 76.923; and an "increase" in rates shall mean an increase in rates or a decrease in programming or customer services as provide in the FCC rules. All other words and phrases used in this ordinance shall have the same meaning as defined in the act and FCC rules.

Sec. 18-122. Purpose; interpretation.

The purpose of this division is to 1) adopt regulations consistent with the act and the FCC rules with respect to basic cable service rate regulation, and 2) prescribe procedures to provide a reasonable opportunity

for consideration of the views of interested parties in connections with basic cable service rate regulation by the city. This division shall be implemented and interpreted consistent with the act and FCC rules.

Sec. 18-123. Rate regulations promulgated by FCC.

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

Sec. 18-124. Filing; additional information; burden of proof.

(a) A cable operator shall submit its schedule of rates for the basic service tier and associated equipment or a proposed increase in such rates in accordance with the act and the FCC rules. The cable operator shall include as part of its submission such information as is necessary to show that its schedule of rates or its proposed increase in rates complies with the act and the FCC rules. The cable operator shall file ten copies of the schedule or proposed increase with the city clerk. For purposes of this ordinance, the filing of the cable operator shall be deemed to have been made when at least ten copies have been received by the city clerk. The city commission may, by resolution or otherwise, adopt rules and regulations as allowed by law prescribing the information, data and calculations which must be included as part of the cable operator's filing of the schedule of rates or a proposed increase

(b) In addition to information and data required by rules and regulations of the city pursuant to section 18-124(a) above, a cable operator shall provide all information requested by the city that is related and helpful in connection with the city's review and regulation of existing rates for the basic service tier and associated equipment or a proposed increase in these rates. The city may establish reasonable deadlines for submission of the requested information and the cable operator shall comply with such deadlines.

(c) A cable operator has the burden of proving that its schedule of rates for the basic service tier and associated equipment or a proposed increase in such rates complies with the act and the FCC rules including, without limitation, 47 USC 543 and 47 CFR 76.922 and 76.923.

Sec. 18-125. Proprietary information.

(a) If this ordinance, any rules regulations adopted by the city pursuant to section 18-124(a), or any request for information pursuant to section 18-124(b) requires the production of proprietary information, the cable operator shall produce the information. However, at the time the allegedly proprietary information is submitted, a cable operator may request that specific, identified portions of its response be treated as confidential and withheld from public disclosure. The request must state the reason why the information should be treated as proprietary and the facts that support those reasons. The request for confidentiality will be granted if the city determines that the preponderance of the evidence shows that non-disclosure is consistent with the provisions of the Freedom of Information Act, 5 U.S.C. 552. The city shall place in a public file for inspection any decision that results in information being withheld. If the cable operator requests confidentiality and the request is denied, (1) where the cable operator is proposing a rate increase, it may withdraw the proposal, in which case the allegedly proprietary information will be returned to it; or (2) the cable operator may seek review within five working days of the denial in any appropriate forum. Release of the information will be stayed pending review.

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

(c) The procedures set forth in this section shall be construed as analogous to and consistent with the rules of the FCC regarding requests for confidentiality including, without limitation, 47 CFR 0.459.

Sec. 18-126. Public notice; initial review of rates.

Upon the filing of ten copies of the schedule of rates or the proposed increase in rates pursuant to section 180124(a) above, the city clerk shall publish a public notice In a newspaper of general circulation in the city which shall state that: 1) the filing has been received by the city clerk and (except those parts which may be

withheld as proprietary) is available for public inspection and copying, and 2) interested parties are encouraged to submit written comments on the filing to the city clerk not later than seven days after the public notice is published. The city clerk shall give notice to the cable operator of the date, time, and place of the meeting at which they city commission shall first consider the schedule of rates or the proposed increase. This notice shall be mailed by first-class mail at least three days before the meeting. In addition, if a written staff or consultant's report on the schedule of rates or the proposed increase is prepared for consideration of the city commission, then the city clerk shall mail a copy of the report by first-class mail to the cable operator at least three days before the meeting at which the city commission shall first consider the schedule of rates or the proposed increase.

Sec. 18-127. Tolling order.

After a cable operator has filed its existing schedule of rates or a proposed increase in these rates, the existing schedule of rates will remain in effect or the proposed increase in rates will become effective after 30 days from the date of filing under section 18-124(a) above unless the city commission (or other properly authorized body or official) tolls the 30-day deadline pursuant to 47 CFR 76.933 by issuing a brief written order, by resolution or otherwise, within 30 days of the date of filing. The city commission may toll the 30 days deadline for an additional 90 days in cases not involving cost-of-service showing and for an additional 150 days in cases involving cost of service showings.

Sec. 18-128. Public notice; hearing on basic cable service rates following tolling of 30 days deadline.

If a written order has been issued pursuant to section 18-127 and 47 CFR 76.933 to toll the effective date of existing rates for the basic service tier and associated equipment or a proposed increase in these rates, the cable operator shall submit to the city any additional information required or requested pursuant to section 18-124 of this ordinance. In addition, the city commission shall hold a public hearing to consider the comments of interested parties within the additional 90 day or 150 day period, as the case may be. The city clerk shall publish a public notice of the public hearing in a newspaper of general circulation within the city which shall state: 1) the date, time, and place at which the hearing shall be held, 2) interested parties may appear in person, by agent, or by letter at such hearing to submit comments on or objections to the existing rates or the proposed increase in rates, and 3) copies of the schedule of rates or the proposed increase in rates and related information (except those parts which may be withheld as proprietary) are available for inspection or copying from the office of the city clerk. The public notice shall be published not less than 15 days before the hearing. In addition, the city clerk shall mail by first-class mail a copy of the public notice to the cable operator not less than 15 days before the hearing.

Sec. 18-129. Staff or consultant report; written response.

Following the public hearing, the mayor or city staff shall prepare a report for the city commission which shall (based on the filing of the cable operator, the comments or objections of interested parties, information requested from the cable operator and its response, staff or consultant's review, and other appropriate information) include a recommendation for the decision of the city commission pursuant to section 18-130. The city clerk shall mail a copy of the report to the cable operator by first-class mail not less than 20 days before the city commission acts under section 18-130. The cable operator may file a written response to the report with the city clerk. If at least ten copies of the response are filed by the cable operator, the city clerk shall forward it to the city commission.

Sec. 18-130. Rate decisions and orders.

The city commission shall issue a written order, by resolution or otherwise, which in whole or in part, approves the existing rates for basic cable service and associated equipment or a proposed increase in such rates, denies the existing rates or proposed increase, orders a rate reduction, prescribes a reasonable rate, allows the existing rates or proposed increase to become effective subject to refund, or orders other appropriate relief, in accordance with the FCC rules. If the city commission issues an order allowing the existing rates or proposed increase to become effective subject to refund, it shall also direct the cable operator to maintain an accounting pursuant to 47 CFR 76.933. The order specified in this section shall be issued within 90 days of the tolling order under section 18-127 in all cases not involving a cost-of-services showing. The order shall be issued within 150 days after the tolling order under section 18-127 in all cases involving a cost-of-service showing.

Sec. 18-131. Refunds; notice.

The city commission may order a refund to subscribers as provided in 47 CFR 76.942. Before the city commission orders any refund to subscribers, the city clerk shall give at least seven days written notice to the cable operator by first class mail of the date, time and place at which the city commission shall consider issuing a refund order and shall provide an opportunity for the cable operator to comment. The cable operator may appear in person, by agent, or by letter at such time for the purpose of submitting comments to the city commission.

Sec. 18-132. Written Decisions; public notice.

Any order of the city commission pursuant to section 18-130 or section 18-131 shall be in writing, shall be effective upon adoption by the city commission, and shall be deemed released to the public upon adoption. The city clerk shall publish a public notice of any such written order in a newspaper of general circulation within the city which shall: 1) summarize the written decision, and 2) state that copies of the text of the written decision are available for inspection or copying from the office of the city clerk. In addition, the city clerk shall mail a copy of the text of the written decision to the cable operator by first class mail.

Sec. 18-133. Rules and regulations.

In addition to rules promulgated pursuant to section 18-134, the city commission may, by resolution or otherwise, adopt rules and regulations for basic cable service rate regulation proceedings (including, without limitation, the conduct of hearings), consistent with the act and the FCC rules.

Sec. 18-134. Failure to give notice.

The failure of the city clerk to give the notices or to mail copies of reports as required by this division shall not invalidate the decisions or proceedings of the city commission, so long as there is substantial compliance with this article.

Sec. 18-135. Additional hearings.

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

Sec. 18-136. Addition powers.

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

Sec. 18-137. Failure to comply; remedies.

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

Sec. 18-138. Effective date.

This article shall take effect immediately upon it publication in a newspaper of general circulation in the city following its passage on September 20, 1993, which passage followed the introduction and first reading given the ordinance on September 16, 1993, as required by Section 5.9 of the City Charter.

Chapters 19-21 RESERVED

Chapter 22 CEMETERIES*

ARTICLE 1. RESERVED.

ARTICLE 22. BOARD OF CEMETERY TRUSTEES

Sec. 22-31. Appointments, term; qualifications; vacancies; removal.

Prior to the second Monday in April in each year, the city commission shall appoint a trustee in the board of cemetery trustees for a term of three years. Every such trustee shall be a resident and a qualified elector of the city, and termination of either qualification shall constitute a vacation of the office. The city commission shall appoint trustees to fill vacancies for the unexpired term. The commission may remove any trustee for causes set forth in the statue.

Sec. 22-32. Chairman, treasurer and clerk.

The board of cemetery trustees shall annually appoint from among their members a chairman and a treasurer. The city clerk shall be the clerk of the board and report monthly to the city commission.

Sec. 22-33. Powers and duties generally.

a. The board of cemetery trustees shall have power to receive in trust, or otherwise as expressed and governed by the city commissioners, money or property by way of gifts, grants, devises or bequests for cemetery purposes; to invest such gifts, grants, devises or bequests as provided by law; and to expend the interest earned thereon, after fulfillment of conditions express in such gifts, grants, devises or bequests, for the improvement of the cemetery
b. The board of cemetery trustees shall receive the proceeds of all payments into the perpetual care fund, shall invest such proceeds in accordance with the law and shall expend the interest therefrom from the maintenance, care, and improvement of the cemetery.

Sec. 22-34. Duties re-sales of lots.

The board of cemetery trustees shall fix the price of cemetery lots, but shall abide by resolutions of the city commission recommending the prices to be received. The board of cemetery trustees shall make the sale of all lots, acting through the clerk of the board or sexton. The schedule of prices for lots may take into account a difference in location within the cemetery. The schedule shall contain a difference in prices to purchasers who reside within the corporate limits of the city or those who pay property taxes therein, and all other purchasers.

Sec. 22-35. Bylaws authorized.

The board of cemetery trustees may make bylaws for the assessment of cemetery lots heretofore sold for which no payment for perpetual care is made, and other bylaws relative to the management and care of the cemetery grounds, and of markers and monuments and embellishments thereto, not inconsistent with this chapter or the laws of the state, which bylaws hereafter made shall not be effective until they are published in one issue of the Fennville Herald and filed in the office of the city clerk.

ARTICLE III. PURCHASE AND INHERITANCE OF BURIAL RIGHTS.

Sec. 22-51. Applicability of chapter.

All persons and lots within the city cemetery shall be subject to the provisions of this chapter, to all other provisions of this Code, and to all applicable rules and regulations.

Sec. 22-52. Sale of lots.

a. All sales of cemetery lots shall be for cash. Except in cases of a death covered by insurance and the next of kin requests such insurance cover the cost of the grave and perpetual care, the city has full power to levy such cost against the policy.

b. The city commission shall fix the price of cemetery lots; the city clerk shall make the sale of all lots. The schedule of prices for lots may take into account a difference in location within the cemetery. The schedule shall contain a difference in prices to purchasers who reside within the corporate limits of the city or those who pay property taxes therein, and all other purchasers.

Sec. 22-53. Perpetual care contributions.

No sale of lots or burial spaces shall be made, except to purchasers who, at the same time, pay the amount required as a contribution into the perpetual care fund. The amount of payment so required shall be established from time to time by the city commission. No burial will be allowed on any lot, the full purchase price for which has not been paid, nor shall any burial be allowed on any lot against which there is any charge for care or improvements until such charges are paid.

Sec. 22-54. Deeds.

All deeds for lots shall be issued in behalf of the City of Fennville by the city clerk, signed by the clerk and countersigned by the mayor. Sealed with the City of Fennville seal, numbered in the order of issue and shall be in such form as the commission may prescribe.

Sec. 22-55. Purchasing of cemetery lots.

For every lot purchased a cemetery deed Is issued which shall be serially numbered; shall particularly describe the lot, or lots or portion thereof, conveyed; shall convey only the rights of burial of human bodies therein; shall prohibit the sale, gift or other assignment thereof except of the City of Fennville or it successors, who shall be obligated to pay for such lot the sum originally paid for it; shall provide for inheritance of such rights by heirs at law asserting any rights of burials by reason of inheritance satisfactorily prove their rights of inheritance and record same with the clerk; shall be executed on behalf of the city by the clerk. Said purchaser, shall receive a written list of by-laws pertinent to the cemetery regulations.

Sec. 22-56. Authority of commission.

The city commission is authorized to promulgate such rules and regulations which it deems appropriate concerning marker, decoration of lots and such other matters which the city commission deems pertinent to the care and good order of a city cemetery. The city commission may amend, revise, repeal, add to, delete from or repromulgate its own rules and regulations.

Sec. 22-57. Duties of city superintendent.

The city superintendent shall see that the provisions of this chapter, as well as all applicable rules and regulations, are compiled with, that order is maintained, and that the best interests of a city cemetery are preserved and protected. To that end, the city superintendent is authorized to make such exceptions to the rules and regulations which he deems necessary to meet emergencies not covered by the provisions of this chapter or the rules and regulations promulgated pursuant to this chapter. The city superintendent shall report all such exceptions to the city commission.

Sec. 22-58. Preservation of landscaping.

a. No fences or posts marking lot lines shall be erected, no change in ground level shall be made, nor shall any plantings be made on any lot in order that the landscaping scheme of the cemetery shall be preserved.
b. The city superintendent shall empower the workmen he supervises to take the responsibility for the removal of any and all floral arrangements he deems necessary, in order to preserve the landscaping schemes of the cemetery.
c. No glass containers or artificial flowers or decorations held together with wire or metal, excluding those floral arrangements left temporarily after a burial, shall be used at or placed on a graveside in the city cemetery.

Sec. 22-59. Restrictions on placement of monuments.

(a) No monument or marker of any type, other than a tablet lying not above ground level, shall be erected in any lot lying north of the most northerly drive of the cemetery.
(b) No marker may be placed on any lot if there are any charges due or outstanding on the purchase of such lot or the grave opening performed by the city.

Sec. 22-60. Cement vault or liner required.

No burial shall be allowed on any lot unless such burial shall be made with the use of a cement vault or cement liner of the type and make to be approved by the city commission.

Sec. 22-61. Cemetery records.

The city clerk shall keep a register and record of all interments made in the cemetery, which record shall disclose the name of the deceased at the time of his or her death, place of birth if known, occupation, the cause of death, the name of the undertaker officiating and the type of vault of coffin used, which records shall be public records.

Sec. 22-62. Powers of city commission.

The city commission shall have the power to receive in trust, money or property by way of gifts, grants, devises or bequests for cemetery purposes; to invest the same as provided by law, and to expend the interest earned thereon, after fulfillment of conditions express in said gifts, grants, devises or bequests, for the improvement of the cemetery.

Sec. 22-63. Liability of city and cemetery.

(a) The city and/or a city cemetery shall not be held responsible for damages by the elements, acts of God, common enemies, thieves, vandals, strikers, malicious mischief makers, explosions, unavoidable accidents, invasions, insurrections, riots or the order of any military or civil authority, whether the damages be direct or collateral.
(b) All non-city employees working in a city cemetery shall be fully responsible for any damage done by them or their agents. Upon completing their work, such non-city workers must immediately remove all tools, equipment and debris from a city cemetery, and must repair any damage done to the cemetery grounds.

Sec. 22-64. Conduct of business prohibited on Sundays and holidays.

Interments, disinterment's, removals or cremation interment services are prohibited on Sundays or any of the following holidays: New year's Day, Memorial Day, Independence Day, Labor day, Thanksgiving Day, day after Thanksgiving, Christmas Eve, Christmas Day and New Year's Eve. Should any such holiday fall or be legally observed on a Saturday or Monday, funerals shall be conducted on the last business day preceding or first business day following such observance; provided however, if an interment must be made on Sunday or a holiday because of health department requirements religious tenets, or if for any other reason, prior approval shall be obtained by the city superintendent, and an additional fee recommended by the city commission shall be added to the regular interment charge.

Sec. 22-65. Interments-Time and fees.

Notice of an interment, including the exact location of the grave, must be given to the city superintendent by 3:00 p.m. the day prior to a schedule interment, and by noon on the day prior to a Saturday interment. Saturday interment, an additional fee has been approved by the city commission and will be added to the regular charge.

Sec. 22-66. Penalty for violations of articles.

Any person violating any of the provisions of this article shall be responsible for a municipal civil infraction.

Sec. 22-67. Exemptions to chapter.

Special cases may arise in which the literal enforcement of a provision or a rule or regulation promulgated pursuant to these articles may impose an undue and unnecessary hardship. Notwithstanding any such provision to the contrary, the city commission, after due consideration, may make such exceptions, suspensions, or modifications of any applicable provisions as they deem appropriate. Any such exception, suspension or modification shall not be construed as affecting the general application or the intent of these provisions and/or any rules and regulations promulgated pursuant to these articles.

Chapter 23 COMMUNITY DEVELEOPMENT

ARTICLE I. IN GENERAL

ARTICLE II. DOWNTOWN DELVEOPMENT AUTHORITY

DIVISON 1. GENERALLY

Sec. 23-26. Creation.

Pursuant to Act 197 of the Michigan Public Acts of 1975, as amended, the City of Fennville does hereby establish a "Fennville Downtown Development Authority".

Sec. 23-27. Designation of downtown district boundaries.

The boundaries of the downtown district within which the downtown development authority shall exercise its powers are determined to be as delineated and set forth on Exhibit "A" attached herein.

Sec. 23-28. Powers and duties.

The downtown development authority shall have and exercise such powers and duties as are provided in Act 197 of the Michigan Public Acts of 1975, as amended.

Sec. 23- 29 -- 23-50 Reserved.

DIVISION 2. TAX INCREMENT FINANCING AND DEVELOPMENT PLAN

Sec. 23-51. Approval and adoption of amended tax increment financing and development plan.

It is hereby determined that the City of Fennville Downtown Development Authority Amended Tax Increment Financing and Development Plan, as recommended by the downtown development authority by resolution adopted on February 17, 2003 (referred to as the "amended plan") constitutes a public purpose. The amended plan is hereby approved and adopted. A copy of the amended plan shall be maintained on file in the city clerk's office and shall be cross-indexed to this division.

Sec. 23-52. Considerations.

The division, the approval of the amended plan, and the determination of a public purpose are all based on the following considerations.

(a) There are no findings and recommendations of a development area citizen's council, because none was statutorily required and none was formed.
(b) The amended plan meets the requirements set forth in Section 17(2) of Act 197.
(c) The proposed method of financing the development described in the amended plan is feasible and the Fennville Downtown Development Authority has the ability to arrange the financing.
(d) The development described in the amended plan is reasonable and necessary to carry out the purposes of Act 197.
(e) The land included within the development area to be acquired, as described in the amended plan, is reasonably necessary to carry out the purposes of the amended plan and Act 197 in an efficient and economically satisfactory manner.
(f) The amended plan is in reasonable accord with the City of Fennville master Plan.
(g) Public services, such as fire and police protection and utilities, are or will be adequate to serve all the projects described in the amended plan and the development area generally.
(h) All changes in zoning, street levels, intersections and utilities, if any, as described in the amended plan are reasonably necessary for the projects described in the amended plan and for the City of Fennville.

Sec. 23-53. Conflicts.

All other ordinances or parts of ordinances in conflict with this division are expressly repealed.

Chapters 24, 25 RESERVED

Chapter 26 FIRE PREVENTION AND PROTECTION.

Sec. 26-1. Definitions.

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

Building means any structure, framework or housing, public or private, and shall include tanks, reservoirs, silos or other receptacles for storage.

Fire Hazard means any building, premises, place or material of any kind which, by reason of its nature, location, occupancy, condition or use may cause loss, damage or injury to persons or property by reason of fire, explosion or action of the elements.

Inspector means the chief of the city fire department, any member of the fire department as shall from time to time have been designated or authorized by the chief of the fire department to make inspections under this chapter and any representative of the state fire marshal division.

Occupant means the tenant in possession of, or other persons occupying or having charge of buildings or other premises.

Owner shall be given its ordinary meaning and be held to include any trustee, board of trustees of such property or any person having a freehold interest in property.

Premises means any lot or parcel of land exclusive of buildings thereon, used or occupied.

Sec. 26-2. Authority to enter premises for inspection.

The chief of the fire department or his duly authorized representative may, at all reasonable hours, enter any building or premises within his jurisdiction for the purpose of making any inspection or investigation which under the provisions of this chapter he may deem necessary.

Sec. 26-3. Duties of the fire chief or inspector.

(a) *Inspections.* The chief of the fire department, or his duly authorized agent, shall inspect or cause to be inspected as often as may be deemed necessary, all buildings or premises, except the interiors of private dwellings, for the purpose of ascertaining and causing to be corrected, any conditions liable to cause fires or any violations of the provisions or intent of this chapter or laws relating to fire hazards.

(b) *Removal of combustible material, obstruction etc.*

(1) Whenever any inspector shall find in any building or upon any premises, combustible or explosive matter or dangerous accumulation of rubbish or any unnecessary accumulation of wastepaper, boxes, shavings, debris, or any inflammable materials, and which is so situated as to endanger life or property, or shall find obstruction to or on fire escapes, stairs, passageways, doors or windows, liable to interfere with the operation of the fire department or egress of occupants in case of fire, he shall order such wastepaper, boxes, shavings, debris or inflammable materials to be removed or remedied.

(2) Whenever the inspector shall find any building or other structure which, for want of repairs, lack of sufficient fire escapes, automatic or other fire alarm apparatus or fire extinguishing equipment, or by reason of age or dilapidated condition, or from any cause, is especially liable to fire and which is so situated as to endanger other property or buildings or the occupants thereof, and whenever such inspector shall find in any building combustible or explosive matter or inflammable conditions dangerous to the safety of such buildings or the occupants thereof, he shall order such dangerous conditions or material to be removed or remedied.

Sec. 26-4. Service of order to abate dangerous conditions; time period.

(a) The service of an order to remove or remedy dangerous conditions as prescribed in section 26-3 may be made upon the owner or occupant of the premises to whom such order is directed, by delivering such order and leaving it with any person in charge of the premises, or by affixing a copy thereof in a conspicuous place at the entrance to such premises.

(b) Any inspector upon giving an order for the removal or abatement of any hazardous condition shall order the hazardous condition to be removed or remedied within the stated time which shall be no less than 24 hours, nor longer than ten days, unless conditions at the time such order is given warrant an extension of this time, in which case the chief of the fire department may make a further extension.

Sec. 26-5. Orders to raze or repair dangerous structures.

(a) Whenever any inspector shall find a building or structure or any part of such building or structure, which by reason of age or dilapidated condition or from any other cause, is especially liable to fire, or which by reason of any structural defects, is dangerous to persons or property, the chief of the fire department shall order such buildings or structures razed or placed in a proper state of repair, satisfactory to meet the requirements of this chapter or any building code which the city may adopt.

(b) Whenever any orders are issued for the razing or repairing of any building or structure or any part thereof, the chief of the fire department or his duly appointed representative shall specify in such order the number of days within which compliance shall be made. Provided, however, the chief of the fire department may, at this discretion, grant further time for the compliance with such order, if such extension of time is deemed necessary.

Sec. 26-6. Storage of inflammable liquids.

(a) All aboveground storage of gasoline, benzene, kerosene, or other highly inflammable petroleum products in excess of 50 gallons is hereby prohibited. Storage of gasoline or kerosene, aboveground in amounts not in excess of 50 gallons is permitted when stored in a separate building at least ten feet from any other building. Such building when used for such storage purposes shall be adequately ventilated at the floor ground level and locked at all times when no custodian is on the premises.

(b) Underground storage of gasoline and kerosene and other inflammable liquids shall be in strict conformity to the regulations as established by the fire marshal division of the state police.

(c) Existing aboveground storage of inflammable petroleum products shall be permitted, provided such storage is maintained in strict conformity to all regulations as established by the fire marshal division of the state police.

(d) The use of any facilities for the handling of gasoline or other inflammable liquids or the filing of any containers of any such inflammable liquids in any basement or any subbasement is hereby prohibited.

(e) No person shall place, or cause to be placed, any gasoline or other inflammable liquids in any sewer or drain leading into or attached to any such sewer, nor shall any person permit the flow of gasoline or inflammable liquids into a public or private drain or sewer.

Sec. 26-7. Use of combustible materials in public places.

(a) The use of crepe paper or other combustible or inflammable decorations in any tavern, auditorium, church, dancehall or place of public assembly, unless such decorations are of a standard flameproof variety, is hereby prohibited; provided, however, the chief of the fire department or his duly authorized representative may, at his discretion, permit such decorations which, in his opinion are so arranged or placed as to eliminate any fire hazards. The use of any flammable decorative materials in direct contact with electric light bulbs is hereby prohibited.

(b) The use of candles or tapers or other open lights on Christmas trees or when used for decorative purposes under hazardous condition is hereby prohibited; provided, however, the use of candles in the customary rites of the church are permitted.

Sec. 26-8. Placement of ashes, coal, and other household debris in proper containers.

(a) No person shall place or cause to be placed any ashes, clinkers, smoldering coal or embers or similar residue from any heating appliance in any container other than metal or noninflammable containers, nor shall such ashes, clinkers, etc., be piled against any combustible floor; provided, however, such ashes may be placed in paper cartons or boxes when placed out-of-doors to await the pickup of such ashes, clinkers, etc., with other household debris. When such ashes and clinkers are placed out-of-

doors in containers as provided in this section, such containers must be placed at least three feet from any wood wall, fence, building or combustible material.

(b) No person shall deposit leaves, brush, hedge, or lawn trimmings, or other household debris upon the traveled portion of any public street, alley sidewalk or public place.

Sec. 26-9. Open burning regulations.

(a) *Purpose.* The City of Fennville finds that persons in the city have historically engaged in a practice of open burning, which practice, when conducted within certain areas of the city, has negatively affected the health and welfare of some city residents and other persons. In addition, the city has found that unregulated open burning increases the risk of property damage caused by uncontrolled fires, and threatens the safety and wellbeing of the city's residents and other persons. As a result of these determinations, the city has adopted this section to regulate open burning throughout the city and to prohibit open burning in those areas of the city where open burning negatively affects the health and welfare of the city's residents and other persons.

(b) *Definitions.* For the purpose of their use in this section, the following words and terms are hereinafter defined. Any word or term not defined herein shall be considered to be defined in accordance with its common or standard definition.

City: The City of Fennville, Allegan County, Michigan, unless otherwise indicated herein.

Flammable material: Any substance that will burn, including but not limited to refuse, debris, waste, brush, stumps, logs, rubbish, fallen timber, grass, stubble, leaves, fallow land, slash, crops or crop residue, garbage, animal carcasses, or trash.

Open burning: A fire from which the emissions from the combustion are emitted directly into the open air without first passing through a stack or chimney.

Person: An individual, cooperative, public or private corporation, partnership, joint venture, association, personal representative, receiver, trustee, any unit or agency of government, any equivalent entity, any combination of entities, or any officer, employee or agent of any of the foregoing.

Roadway, sidewalk, street, vehicle and motor vehicle: They shall have the definitions given to them in the Michigan Vehicle Code, being Michigan Act 300 of 1949, as amended.

(c) *Regulation of burning:*

(1) No person shall cause or permit any open burning within the city, except as otherwise specifically provided below.

(2) No person shall conduct open burning as part of a salvage operation within the city.

(3) The prohibition contained in this section shall not apply to the following types of open burning.

(a) Open fires for recreation purposes, such as campfires, provided: fires are contained or otherwise separated by at least 20 feet from other ignitable or flammable material; the individual who ignites the fire provides fire extinguishing equipment at the site of the fire prior to ignition; no nuisance is created, and there is no violation of any other city ordinance, state or federal law or administration rule (e.g. the Clean Air Act, as amended);

(b) Open burning for waste disposal from one or two-family dwellings, including yard clippings and leaves, provided: fires are contained or otherwise separated by at least 20 feet from other ignitable or flammable material; the individual who ignited the fire provides fire extinguishing equipment at the site of the fire prior to ignition, no nuisance is created, the home owner or resident who will ignite the fire obtains a permit from the Allegan County Sheriff's Department pursuant to subsection (e) of the section and there is no violation of any other city ordinance, state or federal law or administrative rule (e.g. the Clean Air Act of 1990, as amended).

(c) Recognized trade devices used for heating by construction workers, provided no nuisance is created, and provided there is no violation of any other city ordinance, state or federal law or administrative rule: and

(d) Open charcoal or wood fires used for cooking of food, provided no nuisance is created, and provided there is no violation of any other city ordinance, state or federal law or administrative rule; and

(e) Fires set for the instruction of public fire fighters if the purpose of the fire is for firefighting training.

(d) *Prohibited acts.* No person shall:

(1) Set on fire or cause to be set on fire any flammable material located on a roadway, sidewalk, bicycle path, or any improved portion of a street.

(2) Dispose of a lighted match, cigarette, cigar, ashes or other flaming or glowing substance, or any other substance or thing that is likely to ignite a forest, brush, or grass fire, or throw or drop from a moving vehicle or any such objects or substance;

(3) Set on fire or cause to be set on fire any flammable material without taking reasonable precautions, both before and at all times after lighting the fire, to prevent the fire from spreading;

(4) Leave a fire before it is extinguished;

(5) Set a backfire or cause or backfire to be set, except under the direct supervision of the city fire chief or his/her designee;

(6) Use or operate a welding torch, tar pot, or any other device which may cause a fire outside of a building, without clearing flammable material surrounding the operation and without taking such other reasonable precautions necessary to insure against the starting and spreading of fire;

(7) Operate or cause to be operated any engine, machinery, or motor vehicle not equipped with spark arresters or other suitable devices to prevent the escape of fire or sparks; or

(8) Discharge or cause to be discharged a gun firing flares, incendiary or tracer bullets or tracer charge onto or across any forest or grassland.

(e) *Permits.* Individuals desiring to set an open fire pursuant to subsection (c)(3)b. above shall first apply for a permit from the Allegan County Sheriff's Department for such fire on forms required by the sheriff's department. The applicant of the permit shall provide the city with a copy of the approved permit prior to ignition of the open burning. All issued permits shall be deemed revoked and void if, the Michigan Department of Natural Resources or another state or county agency or the city issues a fire advisory or similar statement of fire hazard conditions whereby an open fire could cause a safety or fire hazard. For purposes of this section "city" shall indicate the Fennville Area Fire Department.

(f) *Coordination with state and federal law.* Nothing in this section shall be construed to authorize any burning where such burning is prohibited by state or federal law or regulation, including without limitation any burning which causes:

(1) Injurious affects to human health or safety, animal life, plant life of significant economic value, or property; or

(2) Unreasonable interference with comfortable enjoyment of life and property.

(g) *Penalties.*

(1) In addition to any other charges, fines or penalties for which a person may be liable under other applicable law or local ordinance, any violation of this section constitutes a misdemeanor, and shall be punishable by a fine not in excess of $500.00, plus costs or prosecution, or imprisonment not in excess of 90 days or both such fine and imprisonment at the discretion of the court. Each day during which any violation of this section continues shall be deemed a separate and distinct offense.

(2) All costs incurred by the city of by the Fennville Area Fire Department to extinguish any fire caused by open burning set or caused by violation of this section shall be paid by the person or persons who violated the section to the city or the Fennville Area Department, as the case may be.

(h) *Severability and captions.* This section and the various parts, sections, subsections, sentences, phrases and clauses thereof are hereby declared to be severable. If any part, section, subsection, sentence, phrase, or clause is adjudged unconstitutional or invalid, the remainder of this section shall

not be affected thereby. The captions included at the beginning of each section are for convenience only and shall not be considered part of this section.

(i) *Administrative liability.* No officer, agent, employee or member of the city commission shall render himself/herself personally liable for any damage that may accrue to any person as a result of any act or decision performed in the discharge of his/her duties and responsibilities pursuant to this section.

Sec. 26-10. Adoption of state regulations re fire escapes, exits, etc.

All of the rules and regulations established by the state police commissioner and such other regulations as may be established by him, as provided for by Act no. 207 of Public Acts of Michigan of 941 (MCL 29.1 et seq., MSA 4.559 (1) et seq.) pertaining to and regulating fire escapes, exits, exit lights and aisles in all places of public assembly are hereby made a part of this chapter, the same as though each were separately enumerated in this chapter.

Sec. 26-11. Removal of unsold Christmas trees.

Any person engaged in selling Christmas trees within the limits of the city shall on or prior to January 10 of each year, remove from the premises where such tress were offered for sale, all of the unsold trees, together with tree trimmings and other debris incidental to such sales.

Sec. 26-12. Penalty for violations of chapter.

Any person who shall violate any of the provisions of this chapter, or who shall fail to comply with any order or regulation made under this chapter, or who shall act in violation of any permit issued under this chapter, or who shall prevent or interfere with the inspector in the discharge of duties under this chapter shall be responsible for a municipal civil infraction. When not otherwise specified, each ten day period that conditions prohibited by this chapter are maintained shall be deemed a separate offense.

Chapter 27. LAND DIVISION REGULATIONS.

Sec. 27-1. Purpose.

The purpose of this chapter is to regulate the splitting of parcels in the city which are not subject to the platting process of Act No. 288 of the Public Acts of 1967, as amended (the "Land Division Act"). The reasons for this chapter include the following, without limitation:

(1) Monitoring the creation of new parcels;
(2) Preventing illegal splits of parcels;
(3) Informing and educating property owners about the types of parcels which may be created under this chapter and applicable state law;
(4) Protecting innocent third parties from purchasing substandard parcels;
(5) Preventing the creation of parcels without adequate access;
(6) Preventing the creation of parcels not in compliance with the zoning ordinance; and
(7) Implementing an orderly procedure for splitting parcels.

Sec. 27-2. Definitions.

Accessible, in reference to a parcel, means that the parcel meets one or both of the following requirements.

(1) The parcel has an area where a driveway provides vehicular access to an existing road or street and meets all applicable location standards of the state transportation department or Allegan County Road Commission under Act No. 200 of the Public Acts of 1969, being sections 247.321 to 247.329 of the Michigan Complied Laws, or has an area where a driveway can provide vehicular access to an existing road or street and meet all such applicable location standards.
(2) The parcel is served by an existing easement that provides vehicular access to an existing road or street and that meets all applicable location standards of the state transportation department or Allegan County Road Commission under Act No. 200 of the Public Acts of 1969; or the parcel can be served by a proposed easement that will provide a vehicular access to an existing road or street and that will meet all such applicable location standards.

Development site means any parcel on which building development exists or which is intended for building development, other than agricultural or forestry uses as those uses are defined in section 102(K) of the Land Division Act.

DEQ means the Michigan Department of Environmental Quality or any successor agency having similar jurisdiction.

Division means the partitioning or splitting of a parcel or tract of land by the proprietor thereof or by the proprietor's heirs, executors, administrators, legal representatives, successors, or assigns for the purpose of sale, or lease of more than one year, or of building development that results in one or more parcels of less than 40 acres or the equivalent, and that satisfies the requirements of sections 108 and 109 of the Land Division Act. Division does not include a property transfer between two or more adjacent parcels, if the property taken from one parcel is added to an adjacent parcel; and any resulting parcel shall not be considered a building site unless the parcel conforms to the requirements of the Land Division Act and the requirements of all applicable city ordinances.

Exempt split means the partitioning or splitting of a parcel or tract of land by the proprietor thereof or by the proprietor's heirs, executors, administrators, legal representatives, successors, or assigns that does not result in one or more parcels of less than 40 acres or the equivalent. For a property transfer between two or more adjacent parcels, if the property taken from one parcel is added to an adjacent parcel, any resulting parcel shall not be considered a building site unless the parcel conforms to the requirements of the Land Division Act and the requirements of all applicable city ordinances.

Forty acres or the equivalent of 40 acres or the equivalent means 40 acres or quarter-quarter section containing not less than 30 acres, or a government lot containing not less than 30 acres.

Health Department means the Allegan County Health Department, or any successor agency having similar jurisdiction.

Parcel means a continuous area or acreage of land which can be described as provided for in the Land Division Act.

Parcel depth means the average distance between the front lot line and the rear lot line, on a line perpendicular to the street and parallel to the side lot lines, as such terms are defined in the zoning ordinance.

Parcel width means the average distance between side lot liens measured at the building line, on a line parallel to the street, and measured at right angles to the side lot lines as such terms are defined in the zoning ordinance.

Parent parcel or parent tract means a parcel or tract, respectively, lawfully in existence on March 31, 1997.

Tract means two or more parcels that share a common property line and are under the same ownership.

Zoning ordinance means the City of Fennville Zoning Ordinance, as amended.

Sec. 27-3. Approval of land divisions.

(a) Divisions of land must be reviewed by and receive the prior written approval from the zoning administrator. The following are not subject to the requirements of this chapter:
   (1) A parcel proposed to be subdivided though a recorded plat pursuant to the Land Division Act and the chapter of this code of ordinances dealing with subdivision of plat regulations.
   (2) A lot in a recorded plat proposed to be partitioned or divided pursuant to the Land Division Act and the chapter of this code or ordinances dealing with subdivision or plat regulations.
   (3) An exempt split as defined in this chapter.

(b) No new parcel shall be created nor shall any new parcel be sold or in any way be developed or improved unless there has been prior written approval pursuant to subsection (1). Unless prior written approval has been granted pursuant to subsection (1), no building, zoning or other permit or approval shall be granted with respect to a new parcel and any such new parcel shall be recognized as a separate parcel on the tax assessment roll or assigned a tax parcel identification number.

(c) To obtain approval of a division, an application shall be filed with the zoning administrator. The application shall include all of the components specified in section 27-5 of this chapter.

(d) The zoning administrator shall approve a proposed division within the time period required by the Land Division Act if the criteria and requirements of the Land Division Act and this chapter are met. The time period for approval shall not commence until a complete signed application accompanied by all required supporting documents has been filed with the zoning administrator. However, the city may begin to consider an application which is complete in all respects except for a certified survey, but only if the applicant agrees in writing that the 30-day consideration period in the Land Division Act will not begin until the certified survey is submitted to the city.

(e) The city shall maintain a record of all approved and accomplished divisions and transfer.

Sec. 27-4. Criteria for land divisions.

(a) No division shall be approved which is contrary to, or in violation of, the Land Division Act or this chapter.

(b) Each resulting parcel which is not larger than ten acres shall have a ratio of parcel depth to parcel width which does not exceed four to one. This requirement shall not apply to the remainder of the parent parcel. Further, the requirement may be relaxed and a greater ratio allowed by the city based upon a consideration of the following factors:
   1. The topographical conditions of the parcel;
   2. The physical conditions of the parcel; and
   3. The compatibility of the parcel with surrounding land.

(c) Each resulting parcel shall meet the minimum width and area requirements of the zoning ordinance, except where resultant abutting parcels under the same ownership are combined to meet or exceed the zoning ordinance requirements.

(d) Each resulting parcel shall satisfy all other requirements of the zoning ordinance.

(e) Each resulting parcel shall be accessible.

(f) Each resulting parcel that is a development site shall have all of the following:
   (1) Public water or health department approval for an on-site water supply under the applicable rules of the DEQ;

(2) Public sewer or health department approval for on-site sewage disposal under the applicable rules of the DEQ; and
(3) Adequate easements for public utilities from the parcel to the existing public utility facilities.

(g) Each resulting parcel shall also be in compliance with all other applicable ordinances and regulations of the city.

Sec. 27-5. Application requirements.

Each application for a division must contain the following information.

(1) Name, address, telephone number and signature of the applicant and identification of the application's interest in the parcel.
(2) Name, address telephone number of all fee owners of the parcel proposed to be divided.
(3) Proof of all fee ownership interest.
(4) Application fee.
(5) A legal description of the original and the proposed parcels. Area shall be described to the square foot for parcels of less than one acre and in acres to the one-hundredth of an acre for parcels larger than one acre. In the event of a conflict between the legal description and the survey map, the legal description shall control.
(6) A legal description of existing and proposed deed restrictions for the parcel(s) and any required easements for drainage, roads, or utilities.
(7) The proposed use of the parcel(s).
(8) Information regarding the terms of transfer of division rights.
(9) The number, size and date of prior land divisions sufficient to establish the parcel to be divided was lawfully in existence on March 31, 1997.
10) The number, size and date of divisions after March 31, 1997.
11) Evidence of health department approval of the on-site supply and on-site sewage disposal, if the parcel is not served by public water and/or sewer.
12) Evidence that the parcel is accessible.
13) A survey prepared pursuant to the survey requirements of Act No. 132 of the Public Acts of 1970, as amended (MCL 54.211), by a land surveyor licensed by the state. The survey map shall contain the following:

(a) Date, north arrow and scale;
(b) Existing and proposed parcel lines and dimensions;
(c) Existing utilities and county drainage course within 50 feet of the parcel to be split;
(d) Location and dimensions of existing and proposed easements, parcel numbers and roadways;
(e) Existing structure, with dimensions, on the proposed parcel and all structure within 50 feet of the proposed parcel lines;
(f) Zoning classification of the parcel to be split and all abutting parcels;
(g) All required front, rear and side yard setbacks resulting from the requested division, as such terms are defined and/or used in the zoning ordinance; and
(h) Method of storm water drainage.

14) Any other information required by the application form used by the city for the implementation of this chapter.

Sec. 27-6. Appeal of denial.

If the zoning administrator denies the requested division, the applicant may appeal that denial to the city commission. Any such appeal must be filed in writing with the city clerk within 30 days of the denial. The city commission shall consider and decide the appeal within 30 days after the filing of the appeal with the city.

Sec. 27-7. Lapse of approval.

After a division is approved by the city, a document accomplishing the division and/or transfer must be recorded with the Allegan County Register of Deeds and filed with the city within 90 of such approval, or the approval will lapse.

Sec. 27-8. Fees.

The city commission may, from time to time, adopt by resolution a fee schedule for land division applications.

Sec. 27-9. Penalty for violations of chapter.

(a) Any person violating any of the provisions of this chapter shall be responsible for a municipal civil infraction.

(b) Pursuant to MCL 211.53(3); MSA 7.97, the city assessor shall notify the owner of any parcel which violates or is suspected of violating the Land Division Act. The city assessor shall also notify the Allegan County Prosecuting Attorney and the Michigan Department of Commerce.

Chapter 28 – Reserved

Chapter 29 – Fireworks

SECTION 1. That Chapter 29, Offenses and Miscellaneous Provisions, Offenses against Public Safety Division 1, Generally, Section 29, Fireworks is hereby amended to read as follows in its entirety:

Sec. 29-1: Definitions.

The following words and phrases have the meanings set forth herein:

1. *Act* means the Michigan Fireworks Safety Act, Public Act No. 256 of 2011, MCL 28.451 *et seq.,* as amended.
2. *Articles pyrotechnic* means pyrotechnic devices for professional use that are similar to consumer *fireworks* in chemical composition and construction but not intended for consumer use, that meet the weight limits for consumer *fireworks* but are not labeled as such, and that are classified as UN0431 or UN0432 under 49 CFR 172.101.
3. *Consumers fireworks* means *fireworks* devices that are designed to produce visible effects by combustion, that are required to comply with the construction, chemical composition, and labeling regulations promulgated by the United States consumer product safety commission under 16 CFR parts 1500 and 1507, and that are listed in APA standard 87-1, 3.1.2, 3.1.3, or 3.5. *consumer fireworks* do not include low-impact *fireworks*.
4. *Display fireworks* means large *fireworks* devices that are explosive materials intended for use in *fireworks* displays and designed to produce visible or audible effects by combustion, deflagration, or detonation, as provided in 27 CFR 555.11, 49 CFR 172, and APA standard 87-1, 4.1.
5. *Firework or fireworks* means any composition or device, except for a starting pistol, a flare gun, or a flare, designed for the purpose of producing a visible or audible effect by combustion, deflagration, or detonation. *Fireworks* consist of consumer *fireworks* low-impact *fireworks*, articles pyrotechnic, display *fireworks* and special effects.
6. *Low-impact fireworks* means ground and handheld sparkling devices as that phrase is defined under APA standard 87-1, 3.1, 3.1.1.1 to 3.1.1.8 and 3.5.
7. *National holiday* means New Year's Day (January 1); Birthday of Martin Luther King, Jr. (third Monday in January); Washington's Birthday (third Monday in February); Memorial Day (last Monday in May)' Independence Day (July 4); Labor Day (first Monday in September); Columbus Day (second Monday in October); Veterans Day (November 11); Thanksgiving Day (fourth Thursday in November); and Christmas Day (December 25).
8. *Novelties* means term as defined under APA standard 87-1, 3.2, 3.2.1, 3.2.2, 3.2.3, 3.2.4, and 3.2.5 and all of the following.:
    a. Toy plastic or paper caps for toy pistols in sheets, strips, rolls, or individual caps containing not more than .25 of a grain of explosive content per cap, in packages labeled to indicate the maximum explosive content per cap.
    b. Toy pistols, toy cannons, toy canes, toy trick noisemakers, and toy guns in which toy caps as described in subparagraph (a) are used, that are constructed so that the hand cannot come in contact with the cap when in place for the explosion, and that are not designed to break apart or be separated so as to form a missile by the explosion.
    c. Flitter sparklers in paper tubes not exceeding 1/8 inch in diameter.
    d. Toy snakes not containing mercury, if packed in cardboard boxes with not more than 12 pieces per box for retail sale and if the manufacturer's name and the quantity in each box are printed on the box; and toy smoke devices.

Section 29-2: General prohibition on ignition, discharge, and use of consumer fireworks; exception.

1. No person shall ignite, discharge, or use fireworks within the City at any time except that:
    a. Fireworks may be discharged in strict compliance with any permit issued by the City in accordance with the Act.

b. Consumer fireworks may be discharged only on the day before, the day of, and the day after a national holiday.
c. This section, (29-2) shall not apply to low impact fireworks.

Section 29-3: Additional prohibitions

1. Consumer fireworks shall not be ignited, discharged, or used on public property, including streets and rights-of-way, or on school, church, or private property of another, without the express written permission from the person or entity legally in possession and control of that property to undertake such action.
2. Consumer fireworks shall not be ignited, discharged, or used by a person under the influence of alcoholic liquor or a controlled substance or a combination of both.
3. Low impact fireworks shall not be ignited, discharged, or used by a person under the influence of alcoholic liquor or a controlled substance or a combination of both.

Section 29-4: Novelties not regulated

This section does not apply to novelties.

Section 29-5: Enforcement

This section may be enforced by the Director of Public Safety and the Fire Chief, their designees, and any sworn law enforcement officers.

Section 29-6: Determination of Violations; seizure of fireworks

If an enforcing official determines that a violation of this Section has occurred, the official may seize the fireworks as evidence of such violation.

Section 29-7: Penalty

1. A violation of this Section is a municipal civil infraction, punishable by a civil fine of not more than $500.00, plus any costs, damages, and expenses.
2. Upon a finding of responsibility for violation of this Section, the City may dispose of or destroy any consumer fireworks or low impact fireworks retained as evidence for prosecution of the violation.
3. In addition to any other penalty provided herein, a person found responsible for violation of this Section shall reimburse the City for the costs of storing, disposing of, or destroying any consumer or low impact fireworks seized as provided for herein.

Section 29-8: Repealer

Any and all Ordinances and resolutions heretofore adopted inconsistent herewith are hereby repealed to the extent that the provisions thereof are inconsistent with the provisions hereof, including the prior ordinance provisions of the City adopting the 2003 Edition of the International Fire Code and appendices thereto.

Section 29-9: Severability

If any one (1) or more provisions of this Ordinance shall ever be held by any Court of competent jurisdiction to be invalid or unenforceable for any reason, the remaining provisions hereof shall nevertheless be continued in full force and effect, it being expressly recited and declared that such remaining provisions would have been enacted despite the invalidity of such provision or provisions so held to be invalid.

Section – 29-10: Savings.

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

Chapters 30. NUISANCES

Sec. 30-1. Definitions.

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

Building material. Means material or remnants of materials used in the construction, improvement or renovation of buildings or structures, including but not limited to lumber, plywood, stone or brick, wiring or other electrical materials or equipment, heating or air conditioning components or equipment, plumbing fixtures or equipment, shingles or other roofing materials, mortar, concrete, cement or plastics.

Garbage. Means organic refuse or rejected food wastes in the form of animal, poultry, fish, fruit or vegetable wastes resulting from the handling, preparation, cooking or consumption of foods.

Junk. (including any similar terms such as rubbish, and/or trash) means discarded materials of any kind, whether or not the materials could be put to any reasonable use, or materials which are incapable of performing the function for which they were manufactured or intended, including but not limited to parts of vehicles, machinery, or parts of machines, broken or unusable furniture, furnishings etc.

Public nuisance. Means whatever annoys, injures, or endangers the safety, health, comfort or repose of the public, offends public decency, interferes with or obstructs or renders dangerous any street, alley, highway, river or stream, or in any way renders the public insecure in life or property, and such acts are hereby declared to be public nuisances. Public nuisances shall include, but not be limited to, whatever is forbidden by any provision of this chapter.

Yard sale. Including any similar terms such as garage sale basement sale, rummage sale, attic sales, lawn sale, flea market sale, or estate sale, etc., means any sale of tangible personal property, whether used, secondhand, damaged or discarded and is advertised by any means whereby the public at large is or can be aware of such sale.

Sec. 30-2. Prohibited.

No person shall created, maintain, or permit to be maintained a public nuisance in the city.

Sec. 30-3. Obnoxious or excessive odors.

No person shall cause or allow obnoxious or excessive odors to be emitted into the open air in such manner as to annoy offend, or endanger the public. This prohibition shall apply, but not be limited to, the burning of garbage and debris.

Sec. 30-4. Loud noise or disturbances.

No person shall make or cause to be made an excessive, unnecessary or unreasonably loud noise or disturbance which disrupts, disturbs, destroys, or endangers the comfort, quiet, repose, health, peace, or safety of persons in the immediate vicinity of the noise or disturbance. No person shall engage in the following noise-creating activities:

(1) *Horns and signal devices.* The sounding of any horn or signal device on any vehicle while not in motion, except as a danger signal or as a warning of any intent to enter a lane of traffic. If the vehicle is in motion, the driver may use the horn when reasonably necessary to ensure safe operation, but not otherwise. This subsection shall not apply to an authorized emergency vehicle used for police, ambulance, or fire protection purposes when the vehicle is operated in response to an emergency call or in the immediate pursuit of an actual or suspected violator of the law. A vehicle may be equipped with a whistle, bell or horn which may be used when participating in an authorized parade, exhibition, tour or similar event.

(2) *Electrical sound producing devices.* The playing or use of any electronic sound-producing device in an unreasonable or unnecessary manner or at an excessive volume at any time and place so as to disturb, destroy or endanger the comfort, quiet, repose, or peace of persons in the immediate vicinity of the electronic sound producing device. For purposes of this subsection, the term “electronic sound producing device” shall include any radio, phonograph, stereo, television set, amplified musical

instrument, tape or cassette recorder, or similar device. This subsection shall not be construed to prohibit the use of sound amplification and public address systems properly licensed under this chapter. No person operating, or in control of, a parked or moving motor vehicle, including motorcycles and mopeds, shall operate or permit the operation of an electronic sound producing device in or about the vehicle so as to produce sound that is clearly audible at a distance of 50 feet from the motor vehicle between the hours of 7:00 a.m. and 11:00 p.m. or clearly audible at a distance of 25 feet from the motor vehicle between the hours of 11:00 p.m. and 7:00 a.m.

(3) *Vocal disturbances.* Loud, excessive, or unnecessary yelling, shouting, whistling, or singing that disturbs, disrupts, destroys, or endangers the comfort, quiet or repose of peace of persons in the immediate vicinity. This subsection shall not be construed to prohibit vocal noises, whether or not electronically amplified, by participants or spectators in an athletic event sponsored by a school church or fraternal organization.

(4) *Devices to attract attention.* The use of any drum, musical instrument, loudspeaker, amplifier, or other instrument or device for the primary intended purpose of attracting attention. This subsection shall not be construed to prohibit the use of buzzers or bells by a church or school, or the use of sound amplification systems and public address systems properly licensed under this chapter. This subsection shall not be construed to prohibit the playing of musical instruments by students practicing or performing in a school bank or orchestra or other persons participating in school athletic events, musical banks, orchestras or organizations in an authorized parade in a public place.

(5) *Dogs, cats and other animals.* The keeping of any dog, cat or other animal which shall become a nuisance to another person in the vicinity where such dog cat or other animal is kept, by frequent or continued barking, howling, yelping or screaming.

(6) *Construction noises.* The excavation, erection, demolition, alteration, tree cutting or repair of or upon any residential property, building, or residential street between the hours of 9:00 p.m. and 7:00 a.m., except for necessary emergency repair to protect property or persons, when such activities utilize motorized or powered tools or equipment.

Sec. 30-5. License required for use of sound amplification or public address system.

No person shall operate or use a sound amplification or public address system outside of buildings or upon sound trucks or cars for the purpose of broadcasting words, music, or other sounds without obtaining a license for such operation and use from the city commission. For purposes of this section a sound simplification system and public address system shall be defined as an electronically powered device or set of devices designed or primarily used for broadcasting music, words, or other sounds to a general or specific area by means of microphones, loudspeakers, amplifiers and similar equipment.

(1) *Procedure for obtaining license.* All applications for a license under the provisions of this section shall be in writing, verified by the applicant, on a form furnished by the city clerk, and shall be filed with the city clerk, and accompanied by a license fee established by resolution by the city commission. The fee shall be utilized for processing the application and shall be refundable only if the application is not approved.

(a) An application for a license under this section shall provide the following information:

1. The names in full, including all assumed, trade and firm names, dates of birth, current addresses, and motor vehicle operator's license numbers of all persons intending to use or operate the sound amplification or public address system. If the applicant is a corporation, the names, motor vehicle operator's license numbers, and addresses of all the directors, officers, and shareholders owning a five percent interest or more therein shall be given. If the applicant is a partnership, the name and address of each partner shall be given.
2. The address, legal description and telephone number of the premises where the sound amplification or public address system shall be located.
3. The number, type, description, and location of the sound amplification devices to be used.
4. The days, hours and location or operation and use of the sound amplification or public address system.

5. Such other information as the city commission shall reasonably require.

(b) The city commission may, upon receipt of the application, requires written reports from the city police chief, or other law enforcement agencies, specifying whether any of such applicants have been convicted of a felony or other crime involving moral turpitude.

(c) All applications for licenses under this section, together with the reports received pursuant to this section, shall be presented to the city commission at a regular or special meeting. The city commission may, if it deems advisable, adjourn the consideration of any application for the purpose of holding public hearings or securing additional information regarding the application.

(d) If any of the reports received pursuant to this section, and/or a review of the application establish that unsatisfactory conditions endangering the public health, safety and welfare exist, or will be created, the city commission shall refuse to issue the license to the applicant and state the reason therefor. The applicant may request a public hearing on such denial. The city commission shall have the authority to issue conditional licenses for specified reasons. The failure to provide all of the required information for the license shall constitute sufficient reason to refuse issuance of the license, or to issue a conditional license.

(e) If the application and subsequent reports reflect that the application should be approved, and that issuance of the license would not be detrimental to the public health, safety and welfare of the citizens of the city, the city commission shall grant the license.

(2) *Display of license.* The license and a list of the restrictions set forth in subsection (4) of this section shall be prominently displayed at all times upon the premises of vehicles containing the sound amplification or public address system.

(3) *Revocation and suspension of license.*

a. Any license issued under this section may be revoked or suspended by the city commission for any violation by the licensee of the laws of the state, the ordinances of the city, or the provisions of this section.

b. Upon receiving information of any violation, the city commission shall fix a date for hearing thereon, and the city clerk shall give the licensee written notice thereof at least five days in advance of the hearing date. Notice of the hearing may be made by personal service or, in lieu of personal service, by certified mail.

c. Upon the date of the hearing, or any adjourned date thereof, the city commission shall hear the evidence produced concerning the alleged violations, and if the evidence produced at the hearing is sufficient to support a finding by the city commission that the licensed sound amplification or public address system is being operated in a manner contrary to the laws of the state of ordinances of the city, including this section, the city commission shall suspend or revoke the license for a period of time or permanently, in the city commission's discretion.

(4) *Prohibitions and restrictions.*

a. Broadcasting shall be prohibited between the hours of 10:00 p.m. and 9:00 a.m. Monday through Saturday and before 12:00 noon on Sundays, provided that broadcasting shall be completely prohibited on the following holidays: Christmas Day, Easter Day and Thanksgiving Day. This prohibition shall not be construed to preclude the reasonable use of religious music by churches and schools during holiday seasons.

b. Broadcasting shall not be conducted in a manner resulting in the violation of other provisions of this chapter.

c. Broadcasting of obscene music, noises, utterances, or material shall be prohibited. For the purposes of this section, obscene shall be defined as music, noises, utterances or materials which depict or describe sexually explicit acts or functions in a patently offensive manner and when viewed as a whole appeal predominantly to the prurient interest of the average adult resident of the city, and are without serious social, artistic or scientific value.

d. Broadcasting of music, noises, words or other sounds which are intended to incite lawlessness or violence in the listener and which are likely to result in such lawlessness or violence shall be prohibited

e. Broadcasting shall not originate or emanate from amplification devices or loudspeakers located within 600 feet of a hospital, nursing home, church during regular hours of worship, or a school during regular school hours.
f. Other terms and prohibitions as specified by the city commission.

(5) *Other licenses.* Licenses required by this section are in addition to and not in lieu of licenses required by other applicable city ordinances, state laws or regulations.

(6) *Exempt organizations.* The requirements set forth in this section with respect to the application and approval of a license shall not apply to events and functions authorized or sanctioned by a private or public school or church.

Sec. 30-6. Obstructing streets, sidewalks etc.

(a) No person shall place, deposit, throw, scatter, or leave in any street, highway, lane, alley, public place, public square, or on any private property any tree trimmings, bush trimmings, grass, clippings, leaves, refuse, waste or other such materials; provided however, that such materials may be deposited on city streets at such times as directed by the city during designated citywide cleanup period or leaf pickup by the city.

(b) No person shall transport or dump any refuse or other waste materials in such a manner as to cause the littering of any stream or public place or on private property, or to cause the obstruction of any public ditch, drain, culvert, or gutter

(c) No person, in removing snow from private property, shall deposit the snow on any sidewalk or on the roadway portion of any street or in any area between the sidewalk and the curb line, or between the sidewalk and the roadway, except in such area between the sidewalk and the curb line as is adjacent to the property from which the snow is removed, and then only in such quantity as will not create a traffic hazard.

(d) No person shall plant any bush, shrub, or hedge which by its size and location in the area between sidewalk and curb or sidewalk and roadway, creates a traffic hazard or blind corner, no shall any person maintain any such plantings.

Sec. 30-7. Box elder trees.

Every box elder tree wherever situated within the city, unless such tree is treated so as to effectively prevent its serving as a breeding, feeding or clustering place for box elder bugs is hereby declared to be a public nuisance and the city commission shall order such tree removed and destroyed after ten days written notice to the owner of the property upon which such tree is growing.

Sec. 30-8. Yard sales.

It is the intent of this section to regulate the term and frequency of personal property sales in residential areas so that the residential environment of such areas is not disturbed or disrupted, and to prohibit the infringement of any business into such established areas. It is not the intent to seek control of sales by individuals selling five or less of their household or personal items. This section does not regulate the sale of seasonal items to include but not limited to firewood, garden produce, and flowers. Such sales are exempt from this section.

(1) No person shall conduct a yard sale in the city more than twice within a 12 month period, and no yard sale shall be conducted for a period exceeding three consecutive calendar days.

(2) An owner, tenant, or lessee of a residence or charitable institution, including but not limited to churches, schools, and hospital, may conduct a yard sale upon the premises of his or her residence or upon the premises of such charitable institutions.

(3) Signs advertising a yard sale may be erected or placed on the premises of the yard sale beginning on the first day of the yard sale and shall be removed immediately at the end of the third day.

Sec. 30-9. Accumulation of building materials, garbage, junk and similar materials.

It is determined that the unregulated storage or accumulation of junk, rubbish, trash, garbage, building materials, abandoned or inoperable vehicles on private property is detrimental to the general welfare of the public in that such practices cause or contribute to the deterioration of neighborhoods and promote neighborhood blight. Such practices can be hazardous to the public health and safety in that they create harborage for vermin

and other pests, cause or contribute to the spread of diseases, and constitute fire hazards. For the public good, it is required that such practices be prohibited.

No person shall store or accumulate on private property any garbage, junk, rubbish, trash, or building materials except in a completely enclosed building or contained in metal or plastic containers manufactured for the temporary storage of such waste materials for reasonable periods of time as such waste materials await regular, systematic removal and disposal in accordance with law.

Sec. 30-10. Penalty for violations of chapter.

Each such violation of the provisions contained in this chapter shall constitute a separate offense. Any person violating any of the provisions of this chapter shall be responsible for a municipal civil infraction.

Chapters 31 through 33 RESERVED

Chapter 34 OFFENSES.

Sec. 34-1. Statutory definitions.

Whenever any words and phrases as used in this chapter are not defined, but are defined in the state penal code, any such definition therein shall be deemed to apply to such words and phrases used in the chapter.

Sec. 34-2. Consumption and possession of alcoholic beverages in public places.

(a) No person shall consume any alcoholic beverage or possess any open receptacle or container containing any alcoholic beverage on or in any public highway, street, road, alley, sidewalk, waterway, park, cemetery, parking lot, public school ground, place of amusement or recreation, or any other public or private property which is open to the general public and which is not licensed to sell alcoholic beverage for consumption on the premises.

(b) No person shall transport or possess any alcoholic beverages in any receptacle or container which is open, uncapped, or upon which the seal is broken, within the passenger compartment of a vehicle on any public highway, street, road, alley sidewalk, park, cemetery, parking lot, public school ground, or any other public or private property which is open to the general public. If the vehicle does not have a trunk or compartment separate from the passenger compartment, a receptacle or container which is open, uncapped, or upon which the seal is broken shall be encased or enclosed.

(c) For purposes of this section, "alcoholic beverage" means any liquid or compound containing one-half of one percent or more of alcohol by volume which is fit for use for beverage purposes.

Sec. 34-3. Begging.

It shall be unlawful for any person within the city to beg in a public place from passersby, either by words, or gestures or by the exhibiting of a sign.

Sec. 34-4. Loitering near place of illegal occupation or business.

It shall be unlawful for any person within the city to knowingly loiter in or about any place where an illegal occupation or business is being conducted.

Sec. 34-5. Loitering near public buildings to seek employment of legal services or services of sureties.

It shall be unlawful for any person within the city to loiter in or about any police station, police headquarters building, jail, hospital, court building or any other public building or place for the purpose of soliciting employment of legal services or the services of sureties upon criminal recognizance.

Sec. 34-6. Window peeping.

It shall be unlawful for any person to look, peer, or peep into, or be found loitering around or within view of any window not on his own property, with the intent of looking through such window in such a manner as would be likely to interfere with the occupant's reasonable expectation of privacy without the occupant's express or implied consent.

Sec. 34-7. Cruelty to animals.

It shall be unlawful for any owner, possessor or person having the charge or custody of any animal within the city to cruelly drive or work such animal within the city; to cruelly drive or work such animal when unfit for labor; or to carry or cause to be carried on or upon any vehicle or otherwise any living animal, having the feet and legs tied together; or in any other cruel and inhumane manner to carry or cause to be carried any living animal, in or upon any vehicle or otherwise, without providing suitable racks, cars, crates or cages in which such animal may stand or lie down during transportation and while awaiting slaughter; or to abandon any diseased, maimed, hopelessly sick, infirm or disable animal in any place within the city; or to willfully or negligently permit and allow any aged, diseased, maimed hopelessly sick or disabled animal to suffer unnecessary torture or pain.

Secs. 34-8 through 34-30. Reserved.

Sec. 34-31. Hindering officers and employees.

No person shall hinder, resist or oppose any city officer or employee, including police officers and firefighter, in the performance of their duties.

Sec. 34-32. Resisting officer.

It shall be unlawful for any person to resist any police officer or other law enforcement agent while in the discharge or apparent discharge of his duty, or in any way interfere with or hinder him in the discharge of his duty.

Sec. 34-33. Taking city property for personal use.

It shall be unlawful for any person, including employees of the city, to take or put to their own use any city equipment including ladders, hoses, or any apparatus used by the fire department, or any property or equipment used in, or by, any other department of the city without first having received permission to do so by resolution of the city commission.

Sec. 34-34. False report of a crime.

If any person willfully, wantonly and maliciously makes a fictitious report of a crime knowing that no crime does then and there exist of the nature reported by such person, and such report is made to a police officer, the person shall be guilty of a misdemeanor.

Secs. 34-35 through 34-55. Reserved.

Sec. 34-56. Assault and battery.

It shall be unlawful for any person within the city to attempt or offer, with force and violence, to do a corporal hurt to another, or assault and/or batter any other person.

Sec. 34-57. Nonsupport of family.

It shall be unlawful for any person of sufficient ability within the city to refuse or neglect to support his family.

Secs. 34-58 through 34-80. Reserved.

Sec. 34-81. Littering.

Any person who litters or causes to litter or permits another person to litter in any street, sidewalk, or tree lawn, by depositing, throwing, dropping, or otherwise placing any paper, trash, rubbish, fruit skins or peels, or other matter that is unsightly and unpleasant to observe, whether such litter is thrown or dropped from a vehicle, parked or moving, or thrown or dropped by a pedestrian, shall be deemed guilty of a misdemeanor.

Sec. 34-82. Penalty for violations of division.

Any person violating any of the provisions of this division shall be responsible for a municipal civil infraction.

Secs. 34-83 through 34-90 Reserved.

Sec. 34-91. Larceny of goods valued up to $100.00.

It shall be unlawful for any person within the city to steal or unlawfully take any money, goods, chattels or property of any other person, of the value of $100.00 or less.

Sec. 34-92. Larceny by conversion.

Any person to whom any money, goods or other property, which may be the subject of larceny, shall have been delivered, who shall embezzle or fraudulently convert to his own use, or shall secrete with the intent to embezzle or fraudulently convert to his own use, property, or any part thereof, shall, if the value of the goods or other property is of the value of $100.00 or less, be guilty of a misdemeanor.

Sec. 34-93. Larceny from vacant buildings.

It shall be unlawful for any person within the city to steal or unlawfully remove or in any manner damage any fixture, attachment, or other property belonging to, connected with, or used in the construction of any vacant structure or building, whether built or in the process of removing, taking therefrom, or in any manner damaging any fixture, attachment or other property belonging to, connected with, or used in the construction of such vacant structure or building, whether built or in the process of construction.

Sec. 34-94. Embezzlement.

Any person who, as the agent, servant or employee of another or as the trustee, bailee or custodian of the property of another or of any partnership, voluntary association, public or private corporation or of this state or of any county, city, village, township or school district within this state, shall fraudulently dispose or convert to his own use or take or secrete with intent to convert to his own use without the consent of his principal any money or other personal property of his principal which shall have come to his possession or shall be under his charge or control by virtue of his being such agent, servant, employee, trustee, bailee, or custodian as set out in this section, shall be guilty of the crime of embezzlement, and upon conviction thereof, if the money or personal property so embezzled shall be of the value of $100.00 or less, shall be guilty of a misdemeanor. The failure, neglect or refusal of such agent, servant, employee, trustee, bailee, or custodian to pay, deliver or refund to his principal such money or property entrusted to his care upon demand shall be prima facie proof of intent to embezzle.

Sec. 34-95. Breaking and entering coinbox.

It shall be unlawful for any person within the city to maliciously and willfully, by and with the aid and use of any key, instrument, device or explosive, blow or attempt to blow, or force or attempt to force an entrance into any coinbox, depository box, newspaper coinbox, or other receptacle established and maintained for the convenience of the public, or of any person not making payment for any article of merchandise or service, or for any person to extract or obtain or attempt to extract or obtain therefrom any such money or thing of value so deposited or contained therein.

34-96. Breaking and entering outside showcases.

It shall be unlawful for any person in the city to break and enter, or to attempt to break and enter, or enter without breaking, at any time, any outside showcase or other outside enclosed counter used for the display of goods, wares or merchandise, with intent to steal, or to commit the crime of larceny therein.

34-97. Bad checks.

Any person who, with intent to defraud, shall make or draw or utter or deliver within the city any check, draft or order for the payment of money, to apply on account or otherwise, upon any bank or other depository, knowing at the time of such making, drawing, uttering or delivering, that the maker or drawer, has not sufficient funds in or credit with such bank or other depository, for the payment of such check, draft or order, in full, upon its presentation, or any person who, with the intent to defraud, shall make, draw utter or deliver within the city any check, draft or order for the payment of money to apply on account or otherwise upon any bank or other depository and who shall not have sufficient funds for the payment for such check, draft or money order when presentation for payment is made to the drawee, except where such lack of funds is due to garnishment, attachment, levy or other lawful cause, and such fact was not known to the person who made, drew, uttered or delivered the instrument at the time of so doing, shall, if the amount payable in the check is $50.00 or less, be guilty of a misdemeanor.

34-98. Receiving, concealing stolen property.

(a) A person who buys, receives, possesses, conceals, or aids in the concealment of stolen, embezzled, or converted money, goods, or property knowing the money, goods, or property to be stolen, embezzled or converted is guilty of a misdemeanor, if the value of the stolen, embezzled, or converted money, goods, or property is $100.00 or less.

(b) A person who is a dealer in or collector of merchandise or personal property, or the agent, employee, or representative of a dealer or collector; who fails to make reasonable inquiry that the person selling or delivering the stolen, embezzled, or converted property to the dealer or collector has a legal right to do so

or who buys or receives stolen, embezzled, or converted property which has a registration, serial, or other identifying number altered or obliterated on an external surface of the property, shall be presumed to have bought or received the property knowing the property to be stolen, embezzled, or converted. This presumption may be rebutted by proof.

Secs. 34-99 through 34-110. Reserved.

Sec. 34-111. Malicious destruction of property generally.

It shall be unlawful for any person within the city to willfully and maliciously destroy or injure the real or personal property of another, or the appurtenances thereof, and where the damage done shall be $100.00 or less.

Sec. 34-112. Malicious destruction of public property.

It shall be unlawful for any person within the city to maliciously destroy, damage, injure, mar or deface any building, monument, sign or structure or fence, tree, shrub, plant, park or public property of any kind which is owned, controlled, or managed by the state, county, city any school district within the city, or by any other unit or agency of government whose operating budget is raised in whole or in part by public taxation, or to commit any act of vandalism on or in any such property.

Sec. 34-113. Tampering with utility appurtenances.

It shall be unlawful to tamper with, injure, deface, destroy, or remove any sign, notice, marker, fire-alarm box, fire hydrant, topographical survey instrument, water meter, water stop box, or any other personal property erected or placed by the city or to make unauthorized taps into the water lines or any unauthorized use of fire hydrants.

Sec. 34-114. Taking or injuring gardens, trees, shrubs and vines.

It shall be unlawful for any person within the city to wrongfully take and carry away from any place within the city any fruit tree, ornamental tree, shade tree, ornamental shrub, or any plant, vine, bush or vegetable there growing, standing or being, with intent to deprive the owner thereof, or without right and with wrongful intent to detach from the ground or injure any fruit tree, ornamental tree, shady tree, ornamental shrub, or any plant, vine, bush, vegetable or garden produce.

Sec. 34-115. Responsibility of smokers.

It shall be unlawful for any person in smoking or attempting to light or to smoke a cigarette, cigar, pipe or tobacco in any form for which lighters or matches are used, or in the use of inflammable liquids, to set fire to any bedding, furniture, curtain, drape, house or household furnishings in any licensed establishment.

Secs. 34-116 through 34-125. Reserved.

Sec. 34-126. Upon lands or premises of another. – Trespass

Any person who shall willfully enter upon the lands or premises of another without lawful authority, after having been forbidden to do so, or after such lands or premises have been previously posted with a conspicuous notice forbidding any trespass thereon by the owner or occupant, or agent or servant of the owner or occupant, or any person being upon the land or premises of another, upon being notified to depart therefrom by the owner or occupant or agent or servant of either, who, without lawful authority neglects or refuses to depart therefrom, shall be guilty of a misdemeanor.

Secs. 34-127 through 34-145. Reserved.

Sec. 34-146. Disorderly intoxication.

It shall be unlawful for any person within the city to be intoxicated in a public place and to either endanger directly the safety of another person or of property or act in a manner that causes a public disturbance.

34-147. Gatherings and meetings.

It shall be unlawful for any person within the city to willfully interrupt or disturb on any day of the week any assembly of people met for the worship of God within the place of such meeting or out of it, or to make or excite any disturbance or contention in any tavern, dance hall, beer garden, store or grocery, manufacturing establishment or any other business place or in any street, lane, alley, highway, public building, ground or park or at any election or other public meeting in the city where any persons are peaceably and lawfully assembled.

Sec. 34-148. Loitering.

(a) In this section the following words and phrases shall have the meanings respectively ascribed to them:

Loitering. Means to remaining idle in essentially one location and shall include the concept of spending time idly; to be dilatory; to linger; to stay; to saunter; to delay; to stand around and also includes the colloquial expression hanging around.

Public Place. Means any place to which the general public has access and a right to resort for business, entertainment or for lawful purpose, but does not necessarily mean a place devoted solely to the uses of the public. It shall also include the front or immediate area of any store, shop, restaurant, tavern or other place of business and also public grounds, areas or parks.

(b) It shall be unlawful for any person within the city to loiter, loaf, wander, stand or remain idle either alone or in consort with others in a public place in such manner so as to:
   (1) Obstruct any public street, public highway, public sidewalk or any other public place or building by hindering or impeding or tending to hinder or impede the free and uninterrupted passage of vehicles, traffic or pedestrians after having been told to move on by a police officer.
   (2) Commit in or upon any public street, public highway, public sidewalk or any other public place or building any act or thing which is an obstruction or interference to the free and uninterrupted use of property or with any business lawfully conducted by anyone in or upon or facing or fronting on any such public street, public highway, public sidewalk or any other public place or building, all of which prevents the free and uninterrupted ingress, egress and regress, therein, thereon and thereto after having been told to move on by a police officer.
   (3) Obstruct the entrance to any business establishment, without so doing for some lawful purpose, if contrary to the expressed wish of the owner, lessee, managing agent or person in control or charge of the building or premises.

Sec. 34-149. Breach of peace.

Any person who shall make or assist in making any noise, disturbance, trouble or improper diversion, or any rout or riot, by which the peace and good order of the city are disturbed, shall be guilty of a breach of the peace, and disorderly conduct.

Sec. 34-150. Permitting gathering of disorderly persons.

It shall be unlawful for any person within the city to permit or suffer any place occupied or controlled by him to be a resort of noisy, boisterous, or disorderly persons.

Sec. 34-151. Jostling.

It shall be unlawful for any person within the city to be found jostling or roughly crowding people unnecessarily in a public place.

Secs. 34-152 through 34-170. Reserved.

Sec. 34-171. Indecent exposure.

It shall be unlawful for any person within the city to knowingly make any open or indecent exposure of his person or of the person of another.

Sec. 34-172. Indecent or obscene conduct.

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

Secs. 34-173 through 34-185. Reserved.

Sec. 34-186. Prostitution generally.

(a) It shall be unlawful for any person within the city to commit or offer or agree to commit a lewd act or an act of prostitution or moral perversion.
(b) It shall be unlawful for any person within the city to secure or offer another for the purpose of committing a lewd act or an act of prostitution or moral perversion.
(c) It shall be unlawful for any person within the city to be in or near any place frequented by the public or any public place for the purpose of inducing, enticing or procuring another to commit a lewd act or an act of prostitution or moral perversion.
(d) It shall be unlawful for any person within the city to knowingly transport any person to any place for the purpose of committing a lewd act or an act or prostitution or moral perversion.
(e) It shall be unlawful for any person within the city to knowingly receive or offer to or agree to receive any person into any place or building for the purpose of performing a lewd act or an act or prostitution or moral perversion or to knowingly permit any person to remain in any place or building for any such purpose.
(f) It shall be unlawful for any person within the city to direct or offer to direct any person to any place or building for the purpose of committing any lewd act or act of prostitution or moral perversion.

Sec. 34-187. Houses of ill fame – keeping, maintaining.

It shall be unlawful for any person within the city to keep or maintain a house of ill fame or assignation or place for the practice of prostitution or lewdness.

Sec. 34-188. Same – Patronizing.

(a) It shall be unlawful for any person within the city to patronize, frequent, be found in or be an inmate of any house of ill fame or assignation or place for the practice of prostitution or lewdness.
(b) It shall be unlawful for any person to accept the solicitation of or solicit a prostitute for the practice of fornication, prostitution or lewdness.

Sec. 34-189. Same leasing premises.

It shall be unlawful for any person within the city to lease to another any house, room or other premises, in whole or in part, for any of the uses or purposes set forth in sections 34-187 and 34-188 or to knowingly permit any house, room or other premises to be used or occupied for such purposes.

Sec. 34-190. Soliciting and accosting.

It shall be unlawful for any person within the city, male or female, 17 years of age or older to accost, solicit or invite another in any public place or in or from any building or vehicle by word, gesture or any other means to commit prostitution or to do any other lewd or immoral act. This section shall not apply to a law enforcement officer while in the performance of his duties as an enforcement officer.

Secs. 34-191 through 34-200. Reserved.

Sec. 34-201. Gambling and frequenting prohibited.

It shall be unlawful for any person to deal in, play or engage in gaming such as faro, roulette, dice, cards, or other device or game of chance, hazard of skill, either as bookmaker, dealer, keeper, player or otherwise for the purpose of gambling for money or other valuable thing or to knowingly attend or be found frequenting any place where gambling is permitted or allowed or is taking place.

Sec. 34-202. Cappers, steerers, loiterers.

It shall be unlawful for any person to engage in the work or occupation of a roper, steerer, doorman, or capper so-called for any gambling room, gaming house, or place where gaming is carried on, or for any gambling, game of chance, trick or device, or for any place where gambling or games of chance may be permitted or allowed

or are being carried on. It shall be unlawful for persons to knowingly frequent, attend, or be found present in any of such places.

Secs. 34-203 through 34-215. Reserved.

Sec. 34-216. CONTROLLED SUBSTANCES – DEFINITIONS.

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

Cocaine spoon. Means a spoon with a bowl so small that the primary use for which it is reasonably adapted or designed is to hold or administer cocaine, and which is so small as to be unsuited for the typical, lawful uses of a spoon. A cocaine spoon may or may not be mechanized on a chain and may or may not be labeled as a cocaine spoon or coke spoon.

Controlled substance. Means any drug, substance, or immediate precursor enumerated in schedule 1-5 of MCL 333.7210 35 seq.,

Marijuana pipe or hashish pipe. Means a pipe characterized by a bowl which is so small that the primary use for which it is reasonably adapted or designed is the smoking of marijuana or hashish, rather than the lawful smoking of tobacco, and which may or may not be equipped with a screen.

Paraphernalia. Means an empty gelatin capsule, hypodermic syringe or needle, cocaine spoon, marijuana pipe, hashish pipe, or any other instrument, implement, or device which is primarily adapted, or designed for the administration or use of any controlled substance.

Sec. 34-217. Possession of hypodermic syringes, needles, etc.

No person shall at any time have or possess a hypodermic syringe or needle or any other instrument or implement adapted for the use of controlled substances by subcutaneous injection or intracutaneous injection or any other manner or method of introduction and which is possessed for that purpose, unless such possession is authorized by the certificate of a licensed medical doctor or osteopathic physician issued within the period of one year; provided that the prohibition contained in this section shall not apply to manufacturers, wholesalers, jobbers, licensed medical technicians, technologists, nurses, hospitals, research teaching institutions, clinical laboratories, medical doctors, osteopathic physicians, dentists, chiropodists, veterinarians, pharmacists and embalmers in the normal legal course of their respective businesses or professions, nor to persons suffering from diabetes, asthma or any other medical condition requiring self-injections.

Sec. 34-218. Sale, display of paraphernalia prohibited; exceptions.

It shall be unlawful for any person to sell, or offer for sale, display, furnish, supply, or give away any empty gelatin capsule, hypodermic syringe or needle, cocaine spoon, marijuana pipe, hashish pipe, or any other instrument, implement, or device which is primarily adapted, or designed for the administration or use of any controlled substance as enumerated in schedules 1-5 of MCL 333.7210 et seq.,

Sec. 34-219. Penalties.

A person who violates any provision of this division, upon conviction, shall be punished with a fine not exceeding $500.00, or imprisonment in the county jail for a period not to exceed 90 days, or both, in the discretion of the court. Each day of the violation shall be considered a separate offense.

Secs. 34-220 through 34-235. Reserved.

Sec. 34-236. Abandonment of appliances or containers with airtight doors.

It shall be unlawful for any person to leave outside of any building or dwelling, or in a place accessible to children, any abandoned, unattended or discarded icebox, refrigerator, trunk, or any other container of any kind which has an airtight door to lock which may not be released for opening from the inside of the icebox, refrigerator, trunk or other container, without first removing the locks or doors therefrom.

Sec. 34-237. Throwing stones or missiles.

It shall be unlawful for any person within the city to throw any stone, brick or any other missile at any motorbus, automobile or other motor vehicle.

Sec. 34-238. Sale or use of fireworks prohibited.

It shall be unlawful for any person to offer for sale, expose for sale or sell at retail, give, furnish, use, possess, explode or cause to explode any blank cartridge, toy pistol, toy cannon, toy cane or toy gun in which explosives are used except a toy pistol, toy cannon, toy cane or toy gun of a type in which paper caps containing one-quarter grain or less, or explosive compound are used and which are so constructed that the hand cannot come in contact with the cap when in place for the explosion or any production of combustion resulting therefrom; a type of balloon which requires fire underneath to propel it, firecrackers, torpedoes, skyrockets, roman candles, sparklers, except sparklers containing no more than 1.235 lb. of burning portion per sparklers, or other fireworks containing any explosive or inflammable compound, or any tablets or other devices commonly used and sold as fireworks, provided, however, that the commission may, upon application in writing, grant a permit for the public display for fireworks by any organization or group of individuals approve by the commission.

Secs. 34-239 through 34-250. Reserved.

Sec. 34-251. WEAPONS – Defintions.

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

Airgun. Means any gun, rifle or pistol, by whatever name known, which is designed to expel a projectile by the action of compressed air or gas, or by the action of a spring or elastic, but does not mean a firearm.

Dealer. Means any person engaged in the business of selling at retail or renting any of the articles designated in this division.

Firearm. Except as otherwise specifically defined in this divisions, shall be construed to include any weapon from which a dangerous projectile may be propelled by using explosives, gas or air as a means or propulsion.

Slingshot. Means any instrument of wood or other material and rubber, metal spring or other elastic material, designed, intended to, or capable of propelling shot, stone, or other missiles or any substance whatsoever.

Sec. 34-252. Persons exempt from division.

Police officers, peace officers and persons in the military service, in pursuit of official duty, and persons duly authorized by federal or state law to carry firearms are exempt from the provisions of this division.

Sec. 34-253. Hunting within city prohibited.

It shall be unlawful for any person within the city to hunt wild game, or in any manner carry any gun, weapon or firearm within the city for the purposes of hunting any wild game or fowl at any time.

Sec. 34-254. Selling, etc., to person under 16 years of age.

(a) It shall be unlawful for any dealer to sell, lend, rent, give or otherwise transfer any airgun, slingshot, or bow and arrow to any person under the age of 16 years, where the dealer knows or has reasonable cause to believe the person could be under 16 years of age, or where such dealer has failed to make reasonable inquiry relative to the age of such person and such person is under 16 years of age.

(b) It shall be unlawful for any person to give, lend, or otherwise transfer any airgun, slingshot or bow and arrow to any person under 16 years of age, except where the relationship of parent and child, guardian and ward, or adult instructor and pupil exists between such person and the person under 16 years of age.

Sec. 34-255. Possession and use by person under 16 years of age.

Notwithstanding any inconsistent provision of this section or any other provisions of this division, it shall be lawful for any person under 16 years of age to have in his possession an airgun, slingshot or bow and arrow if such article is:

(1) Kept within this domicile.
(2) Used by the person under 16 years of age and he is a duly enrolled member of any club, team or society organized for the educational purposes and maintaining as part of its facilities or having written permission to use an indoor or outdoor rifle range or other safe area, to possess, load and fire in such a place under the supervision, guidance and instruction of a responsible adult.
(3) Used in or on any private grounds or residence under circumstances when such article as designated in section 34-251 can be fired, discharged or operated in such manner as not to endanger persons or property and also in such manner as to prevent the projectile from transversing any grounds or space outside the limits of such grounds or residence.

Sec. 34-256. Minors prohibited from carrying in public; exception.

It shall be unlawful for any minor to carry any article designated in section 34-251 on the streets, alleys, public roads, or public lands within the city, unless accompanied by an adult; provided, however, that such person under 16 years of age may carry such article as designated in section 34-251 if unloaded an in a suitable case or securely wrapped.

Sec. 34-257. Discharging in public.

It shall be unlawful for any person to discharge any of the articles designated in section 34-251 from or across any street, alley, sidewalk or public road within the limits of the city; or on or across any public land except on a properly constructed and supervised target range.

Sec. 34-258. Penalties for violation of division.

Any person violating any provision of this division, or who falsely represents himself or any other person as being over 16 years of age in order to purchase or otherwise obtain any article designated in section 34-251, shall be guilty of a misdemeanor and upon conviction thereof shall be punished as prescribed in section 1-13.

Secs. 34-259 through 34-280. Reserved.

Sec. 34-281. Liquor. - OFFENSES INVOLVING MINORS.

(a) *Furnishing to a minor.* Any person who willfully gives or furnishes alcoholic beverages to a minor except when upon authority of and pursuant to a prescription of a duly licensed physician, shall be deemed guilty of a misdemeanor.
(b) *Falsely representing age to purchase.* Any person under the age of 21 years who shall be documentary evidence falsely represent himself to be 21 years of age or over, for the purpose of purchasing or attempting to purchase any alcoholic liquor, or who shall give any such false information regarding his age to any person selling alcoholic liquor, for the purpose of securing the sale thereof to himself or to any other person under the age of 21 years, shall be guilty of a misdemeanor.
(c) *Minor in possession of liquor.* Any person being under the age of 21 who has in his possession or under his control, any alcoholic beverage, not upon the authority or pursuant to the prescription of a duly licensed physician, shall be deemed guilty of a misdemeanor.
(d) *Possession or transportation of liquor in a vehicle by a minor.* Any person under the age of 21 years who shall purchase or knowingly possess or transport any alcoholic liquor or knowingly possess, transport, or have under his control in any motor vehicle any alcoholic beverage shall be deemed guilty of a misdemeanor, unless such person is employed by a licensee under the liquor control commission act, and is possessing transporting or having such alcoholic liquor in a motor vehicle under his control during regular working hours and in the course of his employment.

Sec. 34-282. Contributing to neglect or delinquency of children.

Any person who shall by any act, or by any word, encourage, contribute toward, cause or tend to cause any minor child under the age of 17 years to become neglected or delinquent so as to come or tend to come under the jurisdiction of the juvenile division of the probate court, whether or not such child shall in fact be adjudicated a ward of the probate court, shall be guilty of a violation of this code.

Secs. 34-283 through 34-295. Reserved.

Sec. 34-296. CURFEW. Purpose.

The purpose of this division is to reduce the offenses committed by the problems associated with minors by regulating the hours during which they may remain in public places, and by imposing certain duties upon adults relative to minors.

Sec. 34-297. Definitions.

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

Adult means any person age 18 years or older.

Curfew hours means:

(1) For Sunday night through Thursday night, the 7 ½ hours between 10:30 p.m. and 6:00 a.m. the following morning and;

(2) For Friday and Saturday nights, the six hours between 12:00 midnight and 6:00 a.m. the following morning.

Minor means any person under the age of 18 years, unless otherwise provided in this division.

Public place means any public street, highway, road, alley, park, parking lot, playground, cemetery, dock, public building, vacant lot, place of assembly, place of business, or any premises open to the public or frequented by the public.

Remain means to loiter; idle; congregate; wander; stroll; sit; play in or upon; or drive, ride in or upon, sit in or upon, or otherwise operate a motor vehicle.

Sec. 34-298. Unlawful conduct of minors.

(a) It shall be unlawful for any minor to remain in or upon any public place in the city during the curfew hours.

(b) The prohibition of this section shall not apply to any minor accompanied by a parent, guardian, or adult delegated by the parent or guardian to accompany the minor; or to a minor performing an errand or doing other legitimate business directed by such minor's parent or guardian, if the minor has in his possession a written and signed explanation from the minor's parent or guardian, setting forth the purpose of the errand or other business, the date, and the expected time of completion of such errand or other business; or to any minor who is engaged in gainful, lawful employment during the curfew hours.

(c) Each violation of the provisions of this section shall constitute a separate offense.

Sec. 34-299. Unlawful conduct of adults.

(a) It shall be unlawful for any adult to assist, aid, abet, allow, permit or encourage any minor to violate the provisions of section 34-298.

(b) Each violation of the provisions of this section shall constitute a separate offense.

Sec. 34-399. Enforcement and penalties.

(a) If a minor violates the provisions of this division, and if the minor is under the age of 17 years, the violation shall be reported to the county probate court for such action as the probate court deems advisable.

(b) If a minor who is 17 years of age or an adult violates the provisions of this division, such individual shall be deemed guilty of a misdemeanor. Upon conviction thereof, such individual shall be punished for each violation by a fine as prescribed in section 1-13.

Chapters 35-37 RESERVED.

Chapter 38 PARKS & RECRETION

Sec. 38-1 Definitions.

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

City park includes all parks as established by the city commission.

Sec. 38-2. Control

No person shall interfere with any city park employee in the discharge of his duties, or refuse to obey any lawful command of a city law officer.

Sec. 38-3. Park hours.

No person shall be in any city park between the hours of 10:00 p.m. and 7:00 a.m. except upon special order of the city commission.

Sec. 38-4. Drugs.

No person shall sell, use, or have in his possession in any city park any controlled substance, the sale, use, or possession of which is prohibited by state law.

Sec. 38-5. Alcoholic beverages.

No person shall consume any alcoholic beverage on or in any portion of any city park at any time. No person shall possess any open receptacle or container containing any alcoholic beverage on or in any portion of any city park at any time. For the purposes of this section, “alcoholic beverage” means any liquid or compound containing one-half of one percent or more of alcohol by volume which is fit for use for beverage purposes.

Sec. 38-6. Personal conduct.

It shall be unlawful for any person in any city park to engage in any violent, abusive, foul, vulgar, lewd, wanton, obscene, or otherwise disorderly conduct; or to lounge, sit or lie upon walks, roads, or paths to obstruct the free passage of other persons. It shall be unlawful for any person in any city park to be intoxicated and to directly endanger the safety of another or of property, or to act in a manner that causes a public disturbance.

Sec. 38-7. Fireworks.

No person shall possess, use, explode, expose for sale, offer for sale, or sell fireworks or any device or container containing gunpowder in any city park.

Sec. 38-8. Firearms.

No firearms or any weapons which discharge projectiles are allowed in any city park unless carried by a law enforcement officer.

Sec. 38-9. Penalty for violations of chapter.

Any person violating any of the provision of this chapter shall be responsible for a municipal civil infraction.

Chapters 39-41 RESERVED.

Chapter 42. SOLID WASTE.

Secs. 42-1 through 42-25. Reserved.

Sec. 42-26. Definitions.

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

Collector means the collector of garbage and refuse duly licensed by the city as such.

Garbage means the discarded or rejected solid wastes from the processing, preparation, cooking and dispensing of any and all foodstuffs, and from the handling, storing and sale of such produce.

Garbage receptacle means the metal or plastic can or container or plastic bag, into which is placed, for removal from the premises, all garbage.

Refuse means paper cartons, wooden boxes, barrel, tin cans, crockery, glass or glassware, and other household debris resulting from the handling, storing, processing, preparation, cooking and dispensing and all foodstuffs. It shall also include the foregoing from stores, restaurants, hotels, and other commercial establishments engaged in the sale of foodstuffs or the preparation, processing, cooking or serving of same. Discarded newspapers shall also be construed as refuse.

Sec. 42-27. Regulations for depositing, collecting, and disposing of garbage and refuse.

(a) It shall be unlawful for any person to keep in, on, or about any dwelling or other building or premises in the city any garbage unless the garbage shall be kept in a garbage receptacle. A sufficient number of garbage receptacles shall be provided at all times.
(b) Garbage receptacles shall be adequate in size and number to hold at least one week's accumulation of garbage. Such receptacle shall have a capacity of not less than ten gallons, and not more than twenty gallons. It shall be of substantial metal or plastic construction, provided with handles or bales, or both, and with a tight, flyproof metal cover. It shall not, when filled, exceed 150 pounds in weight.
(c) The garbage receptacle shall be kept on the premises, in the rear thereof and within 25 feet of the rear of dwellings in residential districts.

Sec. 42-28. Transporting garbage.

It shall be unlawful for any person to carry, cart, convey or transport along or through any streets, alleys, courts, or other public ways, or places in the city, any garbage unless such garbage shall be carried, carted, conveyed or transported in some type of watertight and covered conveyance approval by an official designated by the city commission.

Sec. 42-29. Disposal required.

Every householder, restaurant operator, hotel operator where food Is prepared or served, store owner or operator where foodstuffs are handled, and sold, and each and every person engaged in the storage, processing, preparation, cooking and vending of foodstuffs, shall subscribe to garbage and refuse collection by a licensed collector, unless they choose to remove and dispose of their own refuse, or incinerate such refuse within their own premises. If they choose to haul their own refuse to the location designated by the city commission as the city disposal dump, it shall be transported in covered containers, or protected in such a manner as to prevent it from being dropped or scattered upon the public streets or alleys.

Sec. 42-30. Disposal sites.

The city commission may, from time to time, designate locations within the corporation limits as refuse disposal sites or dumps, and these sites shall be the only locations within the city where refuse may be disposed of by the collector. The city commission may, from time to time, make reasonable rules and regulations pertaining to the use of such dump sites and the manner in which refuse shall be disposed therein.

Sec. 42-31. Collection schedule; complaints.

Every person desiring to avail himself of the services of the collector shall arrange for collections directly with the collector or his representative, and not through the city authorities. Payments to the collector for this service shall also be made directly to him and in accordance with the approved schedule of rates or charges. Complaints regarding collection service or rates may be made either directly to the collector, his representative, or the clerk.

Sec. 42-32. Review of collections schedule and rates.

The city commission shall have the authority to approve or reject, from time to time, the schedule of rates or charges to be made for collection service by the licensee, and to review the time of collections schedule used by the collector. The collector shall, at all times and at all seasons of the year, maintain a schedule of collections adequate from the standpoint of convenience to the subscribing and the safeguarding of public health. The city commission shall decide as to the adequacy of the service rendered.

Sec. 42-33. Depositing, burning, etc., of garbage and refuse.

It shall be unlawful for any person to throw, bury, or burn any garbage or refuse in any alley, street, court or public place, or in any vacant lot in the city; nor shall any person deposit or place any garbage upon private premises within the city except as provided for in section 42-27 of this article.

Sec. 42-34. Penalty for violations of article.

Any person, partnership, company or corporation violating any of the provisions of this article, or of the rules and regulations promulgated by the city commission for the control of the dump or disposal site, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine as prescribed in section 1-13.

Secs 42-35 through 42-45. Reserved.

Sec. 42-46. License required.

No person, partnership, company or corporation shall engage in the collection and disposal of garbage in the city until an application to do so has been approved by the city commission, and a license therefor issued by the clerk.

Sec. 42-47. Application.

The application for a garbage and refuse collector's license shall be in the form prescribed by the city commission, and shall contain at least the following information:

(1) Name of applicant, and date of application.
(2) Name of owner of vehicle to be used in collections, if other than applicant.
(3) Address of applicant.
(4) Number and type of vehicles to be used for collections, and the state license numbers thereof.
(5) Number of men to be employed on each vehicle.
(6) Whether the applicant is, or ever has been, engaged in garbage and refuse collection in the city.
(7) Attached schedule of proposed rates to be charged for service.

Sec. 42-48. Issuance.

Upon the approval of the application by the city commission, and payment by the applicant of the license fee prescribed for each vehicle to be used by applicant, together with bond and proof of public liability and property damage insurance, the clerk shall issue a license.

Sec. 42-49. Duration; fees.

The collector's license shall be for one year or balance of the year if part of a year has elapsed before making application, and the license fee shall be $50.00 for each vehicle proposed to be used in making collections; except that if the application is made and approved after six months of the year have elapsed, then the fee charged shall be $25.00. All licensees issued under this division shall terminate on the last day of February in each year unless revoked prior thereto by action of the city.

Sec. 42-50. Insurance requirements.

Before the clerk shall issue a license, the applicant shall file with him proof of insurance coverage of vehicles used by him and he shall also furnish proof of insurance coverage of his employees while engaged in the collection of garbage and refuse. The amount of insurance shall be as specified by the city commission from time to time. In addition to the foregoing insurance provisions he shall file with the clerk a surety bond in a sum as determined by the city commission from time to time conditioned upon the faithful performance by the licensee of all the provisions contained in this article.

Sec. 42-51. Revocation.

The city commission shall have the authority to revoke without refund of license fee or any part thereof, the license of any collector for any of the following causes:

(1) False or misleading information contained in the application for a license,
(2) Charging those to whom service is rendered more than the approved fee contained in the approved schedule of rates.
(3) Repeated violations of this article, traffic chapter 58 or other city ordinances.
(4) Employment of persons with a criminal background.
(5) Lapse, or cancellation, of insurance coverage or bond.

Sec. 42-52. Penalty for violations of article.

Any person violating any of the provisions of this article shall be responsible for a municipal civil infraction.

Chapters 43-45. RESERVED.

Chapter 46. SPECIAL ASSESSMENTS

Sec. 46-1. Definitions.

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

Costs means and includes the expense of survey, spreading of roll, notice, advertising, printing, condemnation, cost and necessary expenses incurred for engineering, financial, legal and administrative services in the making and financing of the improvement and the levying and collecting of the special assessments therefor, rights-of-way and all other costs and expenses incident to the making of the improvement, the special assessment therefor and the financing thereof. Where any such service is rendered by city employees, the city may include the fair and reasonable cost of rendering the service.

Improvement means any public improvement, any part of the costs of which is to be assessed against one or more lots or parcels of land to be especially benefited therby, in proportion to the benefit to be derived therefrom.

Sec. 46.2 Power.

The commission shall have the power to assess and reassess the cost, or any portions thereof, of any public improvement to a special district as provided in the Charter of the city and the laws of the state in accordance with the procedures established by this chapter.

Sec. 46-3. Determination.

The commission shall have power to determine, by resolution, that the whole or any part of the expense of any improvement shall be defrayer by special assessment upon the property especially benefited in proportion to the benefits derived or to be derived, but such determination shall not be made until the preliminary proceedings provided for in this chapter shall have been completed.

Sec. 46-4. Petition for improvement.

The commission, in order to ascertain whether or not a reasonable number of property owners to be assessed desire any particular improvement to be made, may request and receive a petition therefor, or may receive a petition voluntarily presented; but in either event such petition shall be advisory only and shall not be jurisdictional.

Sec. 46-5. Report of city official.

Before determining to make any improvement, any part of the cost of which is to be defrayed by special assessment, the commission shall require the mayor or his designee to prepare, or cause to be prepared, plans and specifications therefor and an estimate of the cost thereof, and to file the same with the city clerk, together with his recommendation as to what proportion of the cost should be paid by special assessment and what part, if any, should be a general obligation of the city, the number of installments in which assessments may be paid and the lands which should be included in the special assessment district. After the report is filed with the clerk, it shall be available to the public for inspection, and the owner of any property within such special assessment district may file written objections to such report with the clerk, prior to the public hearing thereon as provided for in section 46-6.

Sec. 46-6. Public hearing.

(a) After the filing of the report referred to in section 46-5, a public hearing shall be held before the commission at a time and place to be fixed by it. The city clerk shall cause notice of the time and place of such hearing to be published once in a newspaper which is of general circulation in the city not less than ten days prior to the date of the hearing. Such notice shall also state whether the report, plan and estimate is on file with the city clerk for public examination and that written objection thereto may be filed with clerk. Notice of such hearing shall also be given to each owner of, or party in interest in, property to be assessed, whose name appears upon the last local tax

assessment records, by mailing such notice by first class mail addressed to such owner or party at the address shown on the tax records at least ten days before the date of such hearing. The last local tax assessment records shall mean the last assessment roll for ad valorem tax purposes which has been reviewed by the local board of review, as supplemented by any subsequent changes in the names or the addresses of such owners or parties listed thereon. At the time and place specified in such notice for the public hearing, the commission shall meet and hear any person to be affected by the proposed public improvement. The hearing may be adjourned from time to time by order of the commission.

(b) The notice of hearing shall include a statement that appearance and protest at the hearing is required in order to appeal the amount of the special assessment to the state tax tribunal.

(c) The owner or party in interest or his agent may appear in person at the hearing to protest the special assessment, or he shall be permitted to file his protest by letter and his personal appearance shall not be required.

(d) The city commission shall maintain a record of parties who appear to protest at the hearing. If the hearing is terminated before a party is heard he shall be considered to have protested.

Sec. 46-7. Commission determination of necessity.

After completion of the hearing required by this chapter the commission may, by resolution, determine to make the improvement and to defray the whole, or any part, of the cost of the improvement by special assessment upon the property especially benefited, in proportion to the benefits thereto. By resolution the commission shall approve the plans and specifications for the improvement and determine the estimated cost thereof; determine what proportion of the estimated cost shall be paid by special assessment upon the property especially benefited and what part, if any, shall be the obligation of the city at large; determine the number of installments, if any, but not to exceed 20 annual installments, in which the special assessment shall be paid and the date of payment for the first installments, determine the rate of interest to be charged on the installments, which interest shall be as adopted by resolution of the city commission from time to time, except in cases where the project has been financed by borrowing, which cases shall be governed by the City Charter, plus a collection fee as provided in section 46-19; designate the district or the land and premises upon which special assessments shall be levied; direct the city assessor to prepare a special assessment roll in accordance with the commission's determination; and designate the name by which the assessment roll shall be known and referred to. By such resolution, the commission may also direct the city manager to obtain firm bids when such work is to be performed under contract.

Sec. 46-8. Objections to improvement.

If prior to the public hearing on the advisability of proceeding with the making of the improvement, written objections to the proposed improvement have been filed by the owners of property in the district who will be required to bear more than 50 percent of the amount of such special assessment, the resolution determining to proceed with the improvement shall be adopted only by the affirmative vote of five or more members of the commission.

Sec. 46-9. Preparation of roll.

The city assessor shall prepare a special assessment roll, including all lots and parcels of land within the special assessment district designated by the commission, and shall assess to each such lot or parcel of land such relative portion of the whole sum to be levied against all the lands in the special assessment district as the benefit to such lot or parcel of land bears to the total benefits to all lands in such district. There shall also be entered upon such roll the amount, if any, which has been assessed to the city at large.

Sec. 46-10. Assessor's certificate.

When the city assessor shall have completed the assessment roll, he shall attach thereto, or endorse thereon, his certificate to the effect that the roll has been made by him pursuant to a resolution of the commission; giving date of adoption of such resolution, and that in making the assessments therein, he has, as near as may be, according to his best judgment, conformed in all respects to the directions contained in such

resolution and the city Charter and the provisions of this chapter. Thereupon, he shall file the special assessment roll with the city clerk who shall present the special assessment roll to the commission.

Sec. 46-11. Notice of hearing.

(a) Upon receipt of the special assessment roll, the commission shall order it filed in the office of the clerk for public examination, shall fix the time and place when the commission will meet and review such roll, and shall direct the city clerk to give notice of such review. Such notice shall state that the special assessment roll is on file for public inspection with the city clerk and that any objections thereto must be filed in writing with the clerk. Such notice shall further specify the time and place of such review and shall be published once in a newspaper which is of general circulation in the city not less than ten days prior to the date of such review. Notice of hearing on such special assessment shall be given to each owner of, or party in interest in, property to be assessed, whose name appears upon the last local tax assessment records, by mailing such notice by first class mail addressed to such owner or party at the address shown on the tax records at least ten days before the date of such hearing. The "last local tax assessment records" shall mean the same as specified in section 46-6. Any failure to give notice as required in this chapter shall not invalidate an entire assessment roll but only the assessment on property affected by the lack of notice. In no case shall any special assessment be deemed invalid as to any property if the owner of or party in interest thereof has actually received notice, has waived notice, or has paid any part of the assessment. If any assessment is declared void by court decree or judgment, a reassessment against the property may be made.

(b) The notice of hearing shall include a statement that appearance and protest at the hearing in the special assessment proceedings is required in order to appeal the amount of the special assessment to the state tax tribunal and shall describe the manner in which an appearance and protest shall be made.

(c) An owner or party in interest, or his agent may appear in person at the hearing to protest the special assessment, or shall be permitted to file his appearance or protest by letter and his personal appearance shall not be required.

(d) The city commission shall maintain a record of parties who appear to protest at the hearing. If a hearing is terminated or adjourned for the day before a party is provided the opportunity to be heard, a party whose appearance was recorded is considered to have protested the special assessment in person.

Sec. 46-12. Objections to roll.

Any person deeming himself aggrieved by the special assessment roll may file his objections thereto in writing with the city clerk prior to the close of the hearing, which written objections shall specify in what respect he deems himself aggrieved.

Sec. 46-13. Hearing; review; confirmation; statement.

The commission shall meet and review the special assessment roll at the time and place appointed, or at an adjourned date therefor, and shall consider any written objections thereto. The commission may correct the roll as to any assessment or description of any lot or parcel of land or other error appearing therein. Any changes made in such roll shall be noted in the commission minutes. After such hearing and review the commission may confirm such special assessment roll with such corrections as it may have made, if any, or may refer it back to the city assessor for revision or may annul it and any proceedings in connection therewith. The city clerk shall endorse the date of the confirmation upon each special assessment roll. Such roll shall, upon confirmation, be final and conclusive. The city treasurer shall issue an initial statement on the first day of the month following the date of confirmation, the statement to include the total assessment, and to advise the property owner that he may pay a single installment or multiple installments without interest during the 60-day period subsequent to the date of the statement. Failure to mail such statement shall not invalidate the assessment or entitle the property owner to an extension of time within which to pay the assessment. The first installment on all special assessment rolls confirmed after the last day of February shall not be billed until May 1 of the succeeding year.

Sec. 46-14. Written contract.

If all persons or property owners to be affected by any proposed improvement agree that such proposed improvement be made and that a special assessment be levied in connection therewith, the city may, in lieu of the procedure provided for in this chapter, enter into a written contract with all of the persons or property owners affected thereby, which contract when properly approved and executed shall operate as a complete special assessment procedure and the assessment shall be made in accordance with the contract.

Sec. 46-15. Deferred payment.

The commission, at a date no later than confirmation of the roll, may provide for the deferred payment of special assessments from person who, in the opinion of the commission and assessor, by reason of poverty are unable to contribute toward the cost thereof. In all such cases as a condition to the granting of such deferred payments, the city shall require mortgage security on the real property of the beneficiary payable upon his death.

Sec. 46-16. Lien on property.

All special assessments contained in any special assessment roll, including any part thereof deferred as to payment, shall become a debt to the city from the persons to whom they are assessed and, until paid, shall be a lien upon the property assessed for the amount of such assessments and all interest and charges thereon. Such liens shall be of the same character and effect as the lien created by the city Charter for city taxes. No judgment or decree, nor any act of the commission vacating a special assessment, shall destroy or impair the lien of the city upon the premises assessed for such amount of the assessment as may be equitable charged against the same, or as by a regular mode or proceeding might be lawfully assessed thereon.

Sec. 46-17. Roll sent to treasurer.

The assessment roll shall be transmitted by the city clerk to the city treasurer for collection immediately after confirmation. The clerk shall attach to the roll a certification, reading, substantially, as follows:

I hereby certify that on _____the city commission of the City of Fennville did confirm the attached special assessment roll.

_____

City Clerk

Sec. 46-18. Installment payment.

The first installment shall be due on May 1 of each year together with interest upon the unpaid balance from the date of confirmation of the roll to and including May 31 of each year, except on rolls confirmed after the last day of February as provided in section 46-13; provided that any fraction of a month shall be, for purposes of computing interest, considered as a full month. Thereafter, one installment shall be due on May 1 of each year together with one year's interest on the unpaid balance computed to the following May 31; provided that when any annual installments shall have been prepaid, then there shall be billed for such year only the interest upon the unpaid balance. After each installment has been billed, the same shall be collected by the city treasurer with the same rights and remedies as provided in the Charter for the collection of taxes.

Sec. 46-19. Collection fee.

Each special assessment, or each installment of any assessment when installment payments are provided for, shall be collected by the treasurer without a collection fee for a period ending 30 days subsequent to the due date. If payment is made on or after June 1, the treasurer shall add to such assessment or installment together with accrued interest thereon a collection fee as prescribed by the city commission from time to time.

Sec. 46-20. Report of total costs.

Upon completion of the improvement and the payment of the cost thereof, the city treasurer shall certify to the city manager a report of the total cost of the improvement. The city manager shall forward this report to the commission, together with the amount of costs contained in the original roll for such improvement.

Sec. 46-21. Additional assessments.

Should the assessment in any special assessment roll, including the amount that may be contributed by the city at large, or should the proceeds of the sale of special assessment bonds issued in anticipation thereof prove insufficient for any reason to pay the cost of the improvement for which it was levied and the expenses incidental thereto or to pay the principal and interest on bonds or other evidence of obligations issued therefor, then the city may make an additional contribution and the commission may make additional assessments against the several lots and parcels of land, in the same ratio as the original assessments, to supply the deficiency; but the total amount assessed against any lot or parcel of land shall not exceed the value of the benefits received from the improvement. Any such additional assessment shall not exceed 15 percent of the assessment as originally confirmed, unless a meeting of the commission shall be held to review such additional assessment, for which meeting notices shall be published and mailed as provided for in this chapter in the case of the review of the original special assessment roll.

Sec. 46-22. Waiver of assessment.

Whenever the commission shall determine that a special assessment levied upon a single lot or parcel of land is illegal or results in no benefit to the owner or was levied in error, or if such assessment violates the policy of the commission not to assess twice the same property for the same type of improvement, then the commission shall have the power and authority to waive collection of a part or all of such assessment, and the city treasurer, upon receiving notice from the commission of such waiver, shall thereafter make collection on such assessment only in accordance with the notice.

Sec. 46.23. Reassessment.

Whenever any special assessment shall, in the opinion of the commission, be invalid by reason of irregularity or informality in the proceedings or if any court of competent jurisdiction shall adjudge such assessment to be illegal, the commission shall, whether the improvement has been made or not, or whether any part of the assessment has been paid or not, have power to cause a new assessment to be made for the same purpose for which the former assessment was made. All proceedings on such reassessment and for the collection thereof shall be conducted in the same manner as provided for in the original assessment, except respecting the correction of the proceedings for the purpose of making the proceedings legal. Whenever any sum or part thereof levied upon any property in the assessment so set aside has been paid and not refunded, the payment so made be applied upon the reassessment and the reassessment shall to that extent be deemed satisfied.

Sec. 46-24. Refunds.

The excess by which the special assessment proves larger than the actual cost of the improvement may be transferred by the city commission to such fund as it shall determine if such excess is five percent or less of the assessment. If the amount received is in excess of five percent of the cost of the improvement, the entire excess shall be refunded on a pro rata basis to the owners of the property assessed as shown by the current assessment roll of the city, or proportionally to the city and such property owners. Such refund shall be made by credit against future unpaid installments to the extent such installments then exist, and the balance of such refund shall be in cash. No refunds may be made which contravene the provisions of any outstanding evidence of indebtedness secured in whole or part by such special assessment.

Sec. 46-25. Collection by court actions.

In addition to any other remedies that the city may have from any source whatsoever and without impairing the lien therefor, any delinquent special assessment, together with interest and penalties, may be collected in an action in assumpsit in the name of the city against the person assessed, in any court of competent jurisdiction. If in any action it shall appear that by reason of any irregularities or otherwise the assessment has not been properly made against the defendant, or the premises sought to be charged, the court may, nevertheless, on satisfactory proof that expense has been incurred by the city which is a proper charge against the defendant or the premises in question, render judgment for the amount properly chargeable against such defendant or such premises.

Sec. 46-26. Accounts.

Except as otherwise provided for in the city Charter, moneys raised by special assessment for any improvement shall be credited to a special account and shall be used to pay for the costs of the improvement for which the assessment was levied and expenses incidental thereto and to repay any money borrowed therefor.

Sec. 46-27. Single lot procedure.

(a) *Report by city official.* When any expense shall have been incurred by the city upon or in respect to any single lot or parcel of land, which expense is chargeable against such lot or parcel of land and the owner thereof, by any city Charter provision, or ordinance or the laws of the state, and is not of that class required to be prorated among several lots or parcels of land in a special assessment district, the amount of labor and material or any other expense or service for which such expense was incurred, with a description of the lot or parcel of land upon or in respect to which the expense was incurred, and the name of the owner, if known, shall be reported by the mayor or his designee to the commission.

(b) *Determination by commission.* After reviewing the report of the mayor or his designee, the commission may, if it so desires, determine by resolution what amount or part of each such expense shall be charged and the person, if known, against whom and the premises upon which the same shall be levied as a special assessment. By resolution the commission shall determine the number of installments in which the assessment may be paid, determine the rate of interest to be charged on installments, not to exceed six percent per annum, designate the land and premises upon which the special assessment shall be levied, direct the city assessor to prepare a special assessment roll in accordance with the commission's determination, and designate the name by which the assessment roll shall be known and referred to, and as often as the commission shall deem expedient, require notice of the several amounts so reported and determined to be given by the city clerk to each owner of or party in interest in the property to be assessed whose name appears upon the last local tax assessment records, by mailing by first class mail addressed to such owner or party at the address shown on the tax records. The "last local tax assessment records" shall mean the same as specified in section 46-6.

(c) *Preparation of roll.* The city assessor shall thereupon prepare a special assessment roll, including all lots and parcels of land within the special assessment district designated by the commission, and shall assess to each such lot or parcel of land such sums as may have been directed by the commission.

(d) *Certificate of assessor.* When the city assessor shall have completed such assessment roll, he shall attach thereto and endorse thereon his certificate to the effect that the roll has been made by him pursuant to a resolution of the commission, giving date of adoption of such resolution, and that in making the assessments therein he has, as near as may be, according to his best judgment, conformed in all respects to the directions contained in such resolution, the city Charter and the provisions of this chapter. Thereupon, he shall file the special assessment roll with the city clerk who shall present the special assessment roll to the commission.

(e) *Resolution notice of hearing.* Upon receipt of such special assessment roll the commission shall order it filed in the office of the city clerk for public examination and shall, by resolution, fix the time and place when the commission shall meet and review such roll, which meeting shall not be less than ten days after notice thereof, specifying the purpose, time and place, has been given to each owner of or party in interest in the property to be assessed whose name appears upon the last local tax assessment records, by mailing such notice by first class mail addressed to such owner or party at the address shown on such tax records at least ten days prior to the date of the hearing. The "last local tax assessment records" shall mean the same as specified in section 46-6 of this chapter.

(f) *Objections to roll.* Any person deeming himself aggrieved by the special assessment roll may file his objections thereto in writing with the city clerk prior to the close of the hearing, which written objection shall specify in what respect he deems himself aggrieved.

(g) *Review of roll.* The commission shall meet and review the special assessment roll at the time and place appointed or at an adjourned date therefor and shall consider any written objections thereto.

(h) *Changes in roll.* The commission may correct such roll as to any assessment or description of any lot or parcel of land or other errors appearing therein. Any changes made in such roll shall be noted in the commission minutes.

(i) *Confirmation of roll.* After such hearing the commission shall confirm such special assessment roll with such corrections as may have been made, and the city clerk shall endorse the date of confirmation thereon, and upon confirmation such roll shall be final and conclusive.

Chapters 47 – 49. RESERVED.

Chapter 50. STREETS, SIDEWALKS AND OTHER PUBLIC PLACES.

Sec. 50-1. Trees or shrubs encroaching on public ways; notice to remove; abatement by city.

(a) Whenever the city commission shall determine, after public hearing thereon and upon giving the owner of the involved premises five days' notice by registered or certified mail of an opportunity to be heard at such hearing, that any tree or shrub growing on private property constitutes a hazard to traffic or persons traveling upon the sidewalks or any public right-of-way within the city or is in any way a menace to public health, safety and welfare, it shall cause to be served upon the owner or occupant of the involved premises a written notice by registered or certified mail designating therein the location of the tree or shrub and the nature of the hazard or menace, and what shall be done to eliminate such hazard or menace.

(b) The owner or occupant of the involved premises shall remove such hazard or menace with ten days after the notice is served. Failure to do so shall cause the city to eliminate the hazard or menace and the cost thereof incurred by the city shall be charged to the owner, and if not paid within 30 days, interest at the rate of six percent per annum shall be added to the charge until paid. If such charge is not paid prior to the preparation of the next subsequent tax roll, the amount due, together with interest thereon from the date of invoice, shall be placed upon such subsequent tax roll as unpaid taxes.

Sec. 50-2. Sidewalk use permit.

(a) *Intent.* Downtown area businesses within the City Center Overlay District may be permitted to use the public right-of-way sidewalk for commercial sales given that sidewalks maintain a minimum of five feet of travel area and in accordance with this section.
   (1) Temporary potted plants or flower boxes may be permitted to encroach no more than two feet (two feet measured from the building line) into the public right-of-way on the sidewalk without a permit.
   (2) Outdoor seating or outdoor sales may encumber up to five feet of the ten-foot or greater sidewalk with a sidewalk permit issued to section 50-2 hereof. Larger seating areas, sidewalk sales or outdoor displays will require additional sidewalk width.

(b) *Administration.* An applicant shall submit a sidewalk use permit application to the city clerk or city treasurer. The permit shall be reviewed and approved by the city commission. The city clerk or city treasurer shall issue sidewalk use permits upon approval by the city commission. The terms and conditions of the permit shall be stated thereon. The duration of the sidewalk permit shall not exceed two years, but such duration may be extended in one-year intervals so long as the permittee continues to meet the requirements of this section.

(c) *Regulations and conditions.*
   (1) *Outdoor cafe/dining:* An outdoor cafe service operated by a restaurant or other food establishment, which sells food for immediate consumption, may be permitted, subject to the following conditions:
      a. An outdoor cafe shall be allowed only during normal operating hours of the establishment.
      b. All food preparation shall be inside the establishment.
      c. If alcoholic beverages are to be served, the requirements of the liquor control commission rules and regulations shall be met at all times and must be abided.
      d. The gross area of the cafe shall be included in the required parking calculation.
      e. No music, intercom or other noise shall be permitted that negatively impacts adjacent properties or louder than 45 dB at the property line. All music or other noise shall cease at 10:30 p.m.
      f. Appropriate screening and/or fencing shall be provided as determined to be necessary and advisable by the downtown design review committee in the course of its site plan review process.
      g. Café service areas shall comply with all regulations and provisions required for the establishment/building.
      h. There shall be a minimum of five feet of clearance between the edge of the seating area or fence and any other obstruction for a pedestrian area.

i. If not owner-occupied, the operator shall provide a letter from the owner indicating their acceptance of the outdoor area.
j. The number of table and chairs should be limited based on the size of the area to be used.
k. Business operator shall be responsible for the clean and orderly maintenance of sidewalk area.
l. Other than an attachment to secure a fence or barrier, no structural alteration of the sidewalk shall be permitted. Umbrella tables may not be permanent fixtures, but must be secured for normal wind load.

Acceptable examples of sidewalk café and outdoor dining experiences using the public right-of-way: GRAPHIC LINK: Acceptable Examples.

Unacceptable examples of sidewalk café using the public right-of-way without additional sidewalk width: GRAPHIC LINK: Unacceptable Examples.

(2) *Outdoor sales:* commercial sale of goods may be permitted in the public right-of-way, subject to the following conditions:
a. Outdoor sales shall be allowed only during normal operating hours of the establishment.
b. There shall be a minimum of five feet of clearance between the edge of the outdoor display area and any other obstruction or a pedestrian area.
c. If not owner occupied, the operator shall provide a letter from the owner indicating their acceptance of the outdoor sales area.
d. Outdoor sales areas may not have a canopy or awning that is freestanding or unattached to the building.
e. Business operator shall be responsible for the clean and orderly maintenance of sidewalk area.
f. All outdoor display items shall be removed from the sidewalk at closing.

GRAPHIC LINK: Example of outdoor sales.

(3) *Signs-sidewalk:* One sidewalk sign per storefront may be permitted in the public right-of-way subject to the following conditions:
a. A sidewalk use permit has been issued.
b. The applicant shall sign a hold harmless agreement with the city to the effect that the applicant will accept liability for any damages caused by the sign.
c. The maximum size shall be eight square feet on any one side.
d. There shall be a minimum of five feet width of unobstructed pedestrian walkway running the width of the building.
e. No sidewalk sign shall have either internal lights or be lighted in any way.
f. No sidewalk sign shall exceed four feet in height.
g. No sidewalk sign shall interfere with pedestrian or vehicular traffic flow or visibility.
h. Sidewalk signs shall be removed each night at close of business or by sunset whichever is earlier. They shall also be removed or not put out on days of winds exceeding 20 miles per hour or when sidewalks must be cleared of snow.

Secs. 50-3 through 50-25. Reserved.

Sec. 50-26. Determination of necessity. SIDEWALK CONSTRUCTION.

(a) The city commission shall determine by resolution the necessity for the construction, reconstruction or repair of any sidewalk in any street, alley or court in the city, and such resolution shall provide that notice shall be given to the abutting property owners who shall bear all of the cost thereof except as provided in this article.
(b) If all or any portion of the cost is to be assessed to abutting property owners, the assessment will follow the procedures of chapter 46 of this Code.

Sec. 50-27. Damage, responsibility to replace.

If any sidewalk is damaged or destroyed by any person, then such sidewalk shall be replaced at the expense of such person to specifications as set forth in this article.

Sec. 50-28. Grades and specifications.

All new, reconstructed or repaired sidewalks shall be constructed in strict conformity to alignment and grade as established by the city engineer and in accordance with the standard city specifications for concrete sidewalks adopted by reference in this article and made a part of this article and as may, from time to time, be amended by the city commission.

Sec. 50-29. Standard specifications.

The city commission shall adopt, and hereby does adopt a set of standard specifications which are hereby made a part of this article. These specifications, which may be amended from time to time as circumstances required, shall govern all sidewalk construction, reconstruction and repair in the city.

Sec. 50-30. Construction permit.

No new sidewalk shall be constructed in the city without a construction permit therefor having been obtained from the city clerk. The city clerk is hereby authorized to issue such permit, upon application, and the permit shall contain at least the date issued, name of the owner of property where such sidewalk is to be construction, description of the property, estimated square feet of sidewalk to be constructed, and shall contain a statement to be signed by the owner agreeing to conform in every way to grade, specifications and the regulations governing sidewalk construction. No such permit shall be required for reconstruction of an existing sidewalk nor for repairs to an existing sidewalk.

Sec. 50-31. Revocation of permit.

The city commission may revoke any permit issued under this article for unsatisfactory workmanship; failure to comply with, and adhere to, grades, alignment and specifications; or any violation of this article. In order to invoke the terms of this section, the city engineer may cause all work under a construction permit granted for the construction to be stopped until the city commission is given an opportunity to consider and examine the work.

Sec. 50-32. Construction requirements.

All sidewalk construction, including new sidewalks, reconstruction or repairs thereto, shall be done by experienced and qualified builders. Qualifications shall include adequate financial stability, proper equipment and experience in like construction work. The city clerk may refuse to issue a construction permit if, in the opinion of the city commission, the builder lacks the proper qualifications to do satisfactory work or if past performance has been unsatisfactory. Nothing in this section shall be construed to prevent the owner of adjacent or abutting property from constructing, reconstructing or repairing sidewalks adjacent to or abutting his property if qualified to do so.

Secs. 50-33 through 50-45. Reserved.

Sec. 50-46. General requirements. CONCRETE SIDEWALKS.

The specifications set out in this division apply to concrete sidewalks both in the residential and business districts of the city where the sidewalk is to be constructed on a public street or alley and cover the preparation of the subbase, laying and finishing of the sidewalk and its protection during the period of early hardening. The specific provisions set out in this division apply only to one-course construction; two-course sidewalks will not be permitted.

Sec. 50-47. Materials.

Materials for concrete sidewalks shall meet the following specifications:

(1) *Cement.* The cement shall meet the requirements of the current standard specifications for Portland cement of the American Society for Testing Materials.

(2) *Sources of supply.* Before delivery on the job and at such times as the city engineer deems it necessary the contractor or builder shall furnish any samples he may require of the material mentioned in this section. These samples shall be tested and if found to pass the requirements of the specifications set out in this division, the material shall be considered as acceptable for the work. In no case shall aggregate containing frost or lumps of frozen material be used.

(3) *Fine aggregate.*

(a) Fine aggregate shall consist of sand or other approved inert material with similar characteristics or a combination thereof having hard, strong, durable particles. The amount of deleterious material contained therein shall not exceed the following percentages by weight:

Removed by decantation: 3%
Clay lumps: 1%
Chert: 1%
Total: 5%

(b) All fine aggregate shall be free from injurious amounts of organic impurities. Aggregates shall be subject to the colorimetric test made in the field as follows: Fill a 12 ounce graduated bottle to the 4 ½ ounce mark with the fine aggregate to be tested. Add a three percent solution of sodium hydroxide until the volume, after shaking, amounts to seven ounces. Shake thoroughly and let stand for 24 hours. The sample shall then show a practically colorless solution or at least a solution not darker than straw color.

(c) Fine aggregate shall be well graded from course to fine and when tested by means of laboratory sieves shall conform to the following requirements:

Passing

(1) 3/8 inch sieve: 100 percent
(2) No. 4 Sieve: 85 to 100 percent
(3) No. 16 Sieve: 45 to 80 percent
(4) No. 50 Sieve: 2 to 30 percent
(5) No. 100 Sieve: 0 to 5 percent

(d) Fine aggregate shall be of such quality that mortar composed of one part cement and three parts fine aggregate by weight, when made into briquettes or cylinders, shall show a tensile or compressive strength at seven and 28 days at least equal to the strength of briquettes or cylinders similarly made and proportional with Ottawa sand.

(4) *Course aggregate.*

(a) Coarse aggregate shall consist of crushed stone, gravel blast furnace slag or other approved inert material of similar characteristics or combinations thereof, having hard, strong, durable pieces and free front adherent coatings. The amount of deleterious substances shall not exceed the following percentage by weight:

Removed by decantation:	2%
Shale (removed by flotation test):	1%
Clay lumps and other soft fragments:	3%

(b) Coarse aggregate shall be well graded from one inch down with 90 to 100 percent passing through a sieve with one-inch square openings, and 25 to 60 percent passing through a sieve with one-half-inch square openings or not more than ten percent passing through a screen having one-quarter-inch square openings.

(5) *Bank-run aggregate.* Bank-run aggregate being aggregate taken directly from a bank or deposit shall be composed of a combination of hard, strong durable particles of sand and gravel, or other approved inert material of similar characteristics containing not more than six percent total deleterious substances. This material shall be so graded from fine to coarse as to meet with the approval of the city engineer.

(6) *Water.* Water shall be clean, free from acid, alkali, vegetable or other organic material.

(7) *Joint fillers.* The joint fillers shall be of a suitable elastic waterproof compound that will not become soft and run out in hot weather, nor hard and brittle in cold weather, or it may be prepared strips of

fiber matrix and bitumen meeting the approval of the city engineer. These strips, if used, shall be one-half inch in thickness and their width shall at least equal the full thickness of the sidewalk slab and their length the full width of the slab at each particular joint.

Sec. 50-48. Subgrade.

All soft and spongy places shall be removed and all depressions filled with suitable material which shall be thoroughly compacted in layers not exceeding six inches in thickness. The subgrade shall be thoroughly tamped until brought to a firm un-yielding surface. It shall have a transverse slop of not more than one-half inch per foot unless otherwise authorized by the city engineer. The use of muck, quicksand, clay, spongy or perishable material is prohibited. All deep fills shall be made in a manner satisfactory to the engineer. The top of all fills shall extend beyond the walk on each side at least one foot and the side shall have a slope of not less than one on two. When required by the engineer a suitable drainage system shall be installed and connected with sewers or drains where indicated. The subgrade shall be not less than four inches below the finished surface of the sidewalk. Where sidewalks cross an alley the subgrade shall be thoroughly wet when the concrete is deposited thereon but shall contain no pools of water.

Sec. 50-49. Forms.

(a) *Materials.* Forms shall be of wood or metal, and if of wood, free from warp or twist and of sufficient strength to resist springing out of alignment when concrete is placed therein.
(b) *Setting.* The forms shall be well staked or otherwise held to the established grade of the sidewalk.
(c) *Division plates.* Suitable metal division plates shall be provided which completely separate adjacent slabs during construction.
(d) *Treatment.* All wood forms in use shall be thoroughly wetted and metal forms oiled before depositing any material against them. All mortar and dirt shall be removed from forms that have been previously used.

Sec. 50-50. Construction.

(a) *Size of slabs.* The slabs of independently divided blocks when not reinforced shall have an area of not more than 100 square feet. The length of slab shall be equal to the width and where necessary to construct slabs exceeding 100 square feet in area they shall be reinforced.
(b) *Thickness of walk.* Minimum thickness of sidewalks shall be four inches, except where a sidewalk crosses an alley, where it shall be six inches in thickness.
(c) *Joints.* A one-half join shall be provided at least once every 40 linear feet of walk. Which joint shall be filled with suitable joint filler. A similar joint shall be provided at each intersection of sidewalk and street curb and each intersection of sidewalk with concrete driveways. Sidewalks constructed in business districts shall be separated from the abutting building by one-half-inch joint properly filled.
(d) *Protection of edges.* The upper edge of the concrete slabs shall be rounded to a radius of one-half-inch. The edge of all slabs abutting a business act as curbing and shall be rounded to a radius of 1 ½ inches.
(e) *Width of sidewalk.* All sidewalks in the residential district shall be five feet in width unless otherwise permitted by resolution of the city commission, and all sidewalks in the business district where streets are curbed shall extend from the face of the building to the back of the curbline.

Sec. 50-51. Measuring and mixing.

(a) *Measuring.* The method of measuring the materials for the concrete or mortar, including water, shall be one which will ensure separate and uniform proportions of each of the materials at all times. A sack of Portland cement, 94 pounds net, shall be considered one cubic foot.
(b) *Machine mixing.* All concrete shall be mixed by machine except when the city engineer shall otherwise permit in the case of quantities involving less than 50 square feet of sidewalk. A batch mixed of any approved type shall be used except where such permission has been given by the city engineer for the use of transit mixed concrete. The ingredients of the concrete shall be mixed to the

proper consistency, and if mixed in a batch mixer the mixing shall continue for at least one minute after all materials are in the drum. The drum shall be completely empty before receiving material for the succeeding batch.

(c) *Measurements.* Cement shall be measured by weight or in a full bag. When the cement is measured by weight it shall be weighed on a scale separate from those used for the other materials. When the cement is measured by bags no fractional bags shall be used. Coarse and fine aggregates or bank-run aggregate, if permitted to be used, shall be measured by weight or volume as required by the city engineer.

(d) *Mixing.* The mixing equipment shall be capable of mixing the aggregates, cement and water within the specified time into a thoroughly mixed and homogeneous mass which can be discharged without segregation. Concrete shall be delivered to the forms at the consistency specified, and shall be hauled thereto in a watertight container in which segregation will not take place and from which the concrete can be freely discharged. The concrete shall be delivered into the forms within 1 ½ hours after the water has been added to the batch of dry materials. Concrete delivered to the forms when the outdoor temperature is below 40 degrees Fahrenheit shall have a temperature of not less than 60 degrees when placed in the forms.

(e) *Hand mixing.* When it is necessary to mix the concrete by hand and permission is obtained to do so, the material shall be mixed dry in a watertight mortar box until the mixture is of uniform color, the required amount of water then added. And the mixing continued until the mass is of uniform consistency.

(f) *Retempering.* Retempering of mortar or concrete which has partially hardened, that is remixing with or without additional materials or water shall not be permitted.

Sec. 50-52. Protection.

(a) *Treatment and curing.* As soon as the finished sidewalk has hardened sufficiently to prevent damage thereto, the surface of the walk shall be sprinkled with water or covered with sand and kept wet for at least three days. Chemical curing agents may be used if approved by the city engineer and applied according to the manufacturer's specifications. When high early strength or quicksetting cement is used the curing period may be reduced to 24 hours. The freshly finished sidewalk shall be protected from the rays of the hot sun or drying winds until it can be sprinkled or covered as above specified.

(b) *Protection from rain.* The concrete surface must not be allowed to be pitted by raindrops and to provide against such a condition sufficient covering to completely cover all sections that may be laid in an eight-hour period shall be kept available at the site of the work.

(c) *Barriers.* The contractor shall erect and maintain suitable barriers, properly lighted from sundown until sunrise, to protect the walk from traffic, pedestrian or vehicular, and any sections of walk damaged by traffic or other causes occurring prior to official acceptance by the city engineer shall be repaired or replaced by the contractor at this expense and in a manner satisfactory to the city engineer. Before the sidewalk is opened to traffic all covering shall be removed and disposed of by the contractor. The sidewalk shall not be opened to traffic until authorized by the city engineer.

(d) *Precautions against freezing.* If at any time during the progress of the work the temperature shall fall, or in the opinion of the city engineer, will fall within 24 hours to 35 degrees, the water and aggregate shall be heated and precaution taken to protect the work from freezing for at least five days.

Sec. 50-53. Construction.

(a) *Proportions.* The concrete shall be mixed in the proportions of one part Portland cement, two parts fine aggregate, and three parts coarse aggregate. The number of bags of cement per cubic yard of concrete in place shall be not less than six. Water shall be added in an amount not to exceed six gallons per bag of cement used. The amount of water so used shall be governed by the moisture content of the aggregate at the time of mixing. If bank-run aggregates are permitted to be used the proportions shall be one part of Portland cement to five parts of bank-run aggregate, with water added in an amount not to exceed six gallons per bag of cement used.

(b) *Consistency.* The materials shall be mixed with only sufficient water added to produce a concrete which will hold its shape when struck off with a strikeboard or screed. Consistency shall not be such as to cause a separation of the coarse aggregate from mortar during the process of handling, and shall be sufficiently dry to prevent any pooling of water on the surface of slab, after using the screed.

(c) *Placing.* After mixing, the concrete shall be handled rapidly and the successive batches deposited in a continuous operation which will complete individual sections to the required depth, length and width. Under no circumstances shall concrete that has partially hardened be used. The forms shall be filled and the concrete brought to the established grade by means of a screed or straight edge. The method of placing the various sections shall be such as to produce a straight clean-cut joint between them, making each section an independent unit. Any concrete in excess of that needed to complete a section when operations for any reason are suspended shall not be used. In no case shall concrete be deposited upon a frozen subgrade.

(d) *Reinforcing.* Slabs having an area of more than 100 square feet or having dimensions greater than ten feet shall be reinforced with wire fabric or with plain or deformed reinforcing bars as required by the city engineer. Such reinforcement shall be placed two inches below the finished surface of the walk. The reinforcement shall not cross joints and shall be lapped sufficiently to develop the full strength of the material.

(e) *Finishing.* After the concrete has been brought to the established grade by means of a screed or straight edge, it shall be worked with a wood float to produce the desired surface specifically in this section. In no case shall dry cement or a mixture of dry cement and sand be sprinkled on the surface to absorb moisture or to hasten hardening. All traverse joints and longitudinal joints shall be rounded to a radius of one-half inch.

(f) *Medium rough surface.* The surface shall be floated with a wooden float only, producing an even, gritty finish. Where the width of sidewalks makes this type of finishing impracticable the finish may be done with two applications of a canvas belt not less than six inches wide and at least two feet longer than the width of the sidewalk. For the first application the belt shall be drawn across the surface with vigorous strokes at least 12 inches long and moved forward one-quarter of the belt width with each stroke. The second application shall be given immediately after the water glaze or sheen disappears and the stroke of the belt shall be not more than four inches forward.

(g) *Measurements and payment.* In every case where the city is to participate in the cost of new sidewalks, measurement of the sidewalk shall be made by the city engineer and the basis of payment shall be per square foot of sidewalk constructed measured within the forms used in the work.

Sec. 50-54. Parking of Commercial Vehicles on Residential Streets.

(a) Definitions:

Commercial Vehicle shall mean any self-propelled or towed vehicle designed to be used or actually used on a public street with a gross vehicle weight of more than 10,000 pounds. By way of example, commercial vehicles shall include, but not be limited to, package and product delivery trucks, dump trucks, garbage trucks, tow trucks, step vans, service trucks, semi tractors, panel trucks, cargo vans, tank trucks, beverage trucks and school buses. *Commercial vehicle* shall not include pick- up trucks or full-size passenger vans.

Residential Street shall mean any portion of any public street bordered on either side by a single family or multi-family residence.

Trailer shall mean any trailer as defined by MCL 257.59 and MCL 257.73, as amended from time-to-time.

(b) Parking Commercial Vehicles on a Residential Street Prohibited:

No person, firm or corporation shall park or allow to stand a commercial vehicle or trailer on any residential street at any time except as set forth hereinafter.

(c) Exceptions:

This section shall not apply to the following:

1. Delivery trucks in the process of picking up or delivering
2. Moving vans in the process of actively loading or unloading.

3. Commercial vehicles parked in front of a single-family or multi-family residence while being used in the actual repair, construction or maintenance of the property.
4. Vehicles used by utilities including, but not limited to, gas, water, electric, cable television, satellite television and similar services involved in the placement or repair of such utilities or services.
5. Vehicles owned by the City of Fennville.

(d) Penalty for Violation:

Any person, firm or corporation violating this section shall be responsible for a municipal civil infraction subject to the following civil fines:

1. First offense within a calendar year: $100.00.
2. Second offense within a calendar year: $250.00.
3. Third offense with a calendar year: $500.00.

Secs. 50-55 through 50-75. Reserved.

ARCTICLE III. EXCAVATIONS

Sec. 50-76. Signals, etc., required for openings at night.

Any person making or causing to make any excavation or opening in any street, alley, sidewalk or other public place or within five feet of the line of any street, alley, sidewalk, or other public place shall, between sunset and sunrise or every night that such excavation or opening remains open or danger exists therefrom, keep such excavation or opening fenced and barricaded and properly lighted so as to warn all persons of such excavation or opening and all obstructions. No unauthorized person shall remove or interfere in any way with any such lantern or other danger signal of any such barriers.

Sec. 50-77. Filing of plans of with city.

Every person owning, constructing, maintaining or proposing to own, construct, or maintain any mains, service pipes, conduits, conductors, poles, or other appliances pertinent thereto, shall file with the city clerk a plan or map drawn to scale of not smaller than 200 feet to one inch, showing thereon by standard symbols the location of all mains, service pipes, conduits, conductors, poles, or other appliances. Such map shall remain a part of the permanent files of the city. In no case shall a person open or remove an area of surface greater than that specified in the original or supplementary application for a permit as set out in division 2 of this article, and in no case shall a person open or remove an area of surface at a location other than that specified in the original or supplementary application for the permit required by this article.

Sec. 50-78. City to prescribe location of all pipes, conduits, etc.

The depth at which any utility shall lay its pipes, mains, conduits, or other equipment or services, and the route or locations of such pipes, mains, conduits, or other equipment or services, shall be as prescribed by the city.

Sec. 50-79. Replacement of damaged structures, etc.

The city commission may designate such persons as it shall deem advisable to replace such utilities, structures, or improvements, including shrubs, trees, and grass plots, damaged or interfered with by reason of construction work being engaged in under the provision of this article, all of which shall be at the expense of the applicant.

Sec. 50-80. Refilling and resurfacing.

All openings and excavations shall be refilled and temporarily resurfaced on or before the time fixed in the permit, and written notice shall be given to the city when the work is completed. Such temporary resurfacing shall be maintained by the person to whom a permit is issued until the city or person designated by the city shall

permanently resurface such opening. All refilling shall be done according to the specifications set forth by the city in each particular case.

Sec. 50-81. Inspections.

The city shall have the right to inspect all work done or privilege exercise under any permit issued pursuant to the provisions of this article.

Sec. 50-82. Penalty for violations of article.

Any person violating any of the provisions of this article shall be responsible for a municipal civil infraction.

Secs 50-83 through 50-95. Reserved.

Sec. 50-96. Permit required.

No person shall tear up any street or alley, or make any excavations within the limits of any street or alley in the city, for any purpose whatever, until a permit therefor shall have been obtained from the city clerk with the exception of the two initial permits, the first to grant the permit for excavation for the mains, the second to permit the excavations for the initially planned installations. Those two initial permits shall be granted by the streets and sidewalks committee of the commission.

Sec. 50-97. Application for permit; emergency excavations.

No permit shall be issued allowing any person to tear up or make any excavation or opening in any street, alley, sidewalk, or other public place, unless and until an application for such permit shall be made in writing with the city clerk setting forth the name and address of the applicant, the purpose of the proposed excavation, the size and location of the excavation, the starting time and the completion time for such excavation. It is provided however, that in the case of any emergency, excavations and openings may be made in any street, alley, sidewalk or other public place without obtaining a permit, on the condition that application for such permit for any emergency excavation shall be made before noon of the next business day.

Sec. 50-98. Indemnification of city of permittee.

The person to whom an excavation permit shall be granted shall do no injury in any street, alley, sidewalk, or other public place or to any shade tree, shrub, lawn, concrete paving or sidewalk or other like improvements, nor shall such person in any way disturb or interfere with any sewer, water main, pipe or conduit, or any other public or private appliance laid or constructed by any authorized person. Any person to whom such permit is granted shall fully indemnify and save harmless the city from any and all claims and damages for which the city might be made or become liable to pay by reason of the construction, maintaining, repairing, or operating of such poles, conduits, wires, mains, pipes, or any apparatus connected therewith or otherwise arising from the use or possession of any of the rights and privileges granted or from any neglect on the part of such persons to comply with the provisions of this article or of any of the ordinances of the city, and especially shall indemnify the city and assume all liability and damages which may arise, come or occur to the city from any injury to persons or property from the doing of any work covered by this article, or the neglect of any person to comply with the provisions of this article or other ordinances relative to the use of streets or other public places, especially as to the putting up of lights or barriers at or around excavations. The acceptance by any person of any permit under the provisions of this article shall be an agreement by him to pay to the city any sum of money for which the city may become liable from or by reason of such injury. Provided, such person shall be given written notice of any and all formal claims, suits and demands filed with the city within 30 days after the receipt of such claim, suit or demand and shall be given an opportunity to defend any such claim, suit or demand.

Sec. 50-99. Bond required.

The permittee shall file and keep in force with the city clerk a bond in an amount determined by resolution of the city commission from time to time to be in a form approved by the city attorney and conditioned

upon the indemnification of the city for all losses or damages sustained by any person arising or growing out of the construction, operation or maintenance of the pipes, mains, or conduits or other equipment or services of the permittee in the use of the public streets, alley, sidewalks or other public places of the city, when, and if the city shall become legally obligated and required to pay the same to any such person. Such bond shall be furnished conditioned that the permittee shall indemnify and save harmless the city from all losses and damages caused by or arising or growing out of the work of such permittee in laying pipes, mains, or conduits, and all accessories thereto and the operation and maintenance thereof; and that such permittee shall properly replace and restore all materials removed in any street in making any openings therein in as good a state and condition as it was before being disturbed. An adequate public liability insurance policy, upon the approval of the city commission of such insurance policy, may be filed in lieu of the bond referred to in this section.

CHAPTERS 55 – 57 RESERVED.

Chapter 58. TRAFFIC AND MOTOR VEHICLES.

Sec. 58-1. Driving into or through or parking in gasoline service station.

a. *Definition.* For the purpose of this section, the term "gasoline service station" means any privately owned premises having entrances or exits upon a public street and where gasoline pumps are situated for the dispensing of gasoline to the public.
b. *Restrictions on driving into gasoline service stations.*
    1. It shall be unlawful for the operator of any motor vehicle to drive such vehicle into a gasoline service station from one street and leave the premises by an intersecting street except for the purpose of procuring one or more of the services provided by such gasoline service station.
    2. It shall be unlawful for the operator of any motor vehicle to drive such vehicle into a gasoline service station, except for the purpose of procuring one or more of the services provided by such service station, and leave the premises by the same street.
c. *Manner of parking at gasoline service stations.* It shall be unlawful for the operator of any motor vehicle to park such vehicle at a gasoline service station so that it interferes with, or impedes, pedestrian traffic on the public street.
d. *Penalty for violations.* Any person violating any of the provision of this section shall be responsible for a municipal civil infraction.

Sec. 58-2. Exhibition driving.

a. *Municipal civil infraction declared.* Any person who engages in exhibition driving on any public street, highway or alley, or aids or abets another to do so whether or not the authorized speed limit is exceeded, shall be responsible for a municipal civil infraction.
b. *Definition.* Exhibition driving is defined as the driving of a motor vehicle in such an unusual manner or out of the usual flow of traffic, whether or not other traffic is present, so as it is likely to attract the attention of the public, whether or not there is anyone present, or it shall consist of any two or more of the following acts:
    1. Rapid acceleration.
    2. Squealing, peeling or burning of the tires.
    3. The swaying of the motor vehicle from side to side commonly referred to as "fishtailing"
    4. Racing or running of the engine of a motor vehicle at such high revolutions per minute combined with the engaging of the gears causing excessive or unusual noise.
    5. Unnecessary and excessive changing of lanes.
    6. The emission of any unreasonably loud or raucous or disturbing and unnecessary noise from the engine or exhaust system of any motor vehicle.
c. *Violation.* Any person convicted of violation of this section is responsible for a civil infraction.

Secs. 58-3 through 58-25. Reserved.

Sec. 58-26 UNIFORM TRAFFIC CODE. Adoption.

The Uniform Traffic Code for Cities, Township, and Villages promulgated by the Director of State Police and published in the 1979 edition of the Michigan Administrative Code and amendments as published in the Quarterly Supplement No. 5 to the 1979 edition of the Michigan Administrative Code, in accordance with Act No. 62 of the Public Acts of Michigan of 1956 (MCL 257.951 et seq. MSA 9.2651 et seq.) is hereby adopted by reference as in this article modified. References to governmental unit therein shall mean the City of Fennville.

Sec. 58-27. Copies available for inspection.

Complete copies of the uniform traffic code, as amended and supplemented, are available at the office of the city clerk, city hall, for inspection by and distribution to the public during normal office hours.

Sec. 58-28. Amendments.

The following sections and subsections of the Uniform Traffic Code for Michigan Cities, Township and Villages adopted in this article are hereby amended as set forth and additional sections and subsections are added as indicated. Section numbers shall refer to the like-numbered sections in the uniform traffic code.

Definitions.

Commercial motor vehicle. "Commercial motor vehicle" means a bus; a school bus; a school transportation vehicle; a motor vehicle, except a motor home, having a gross vehicle weight rating or gross combination weight rating of 26,001 or more pounds; a motor vehicle towing a vehicle with a gross vehicle weight rating of more than 10,000 pounds; or a motor vehicle carrying hazardous material and on which is required to be post a placard as defined and required under 49 C.F.R. parts 100 to 199. A commercial motor vehicle does not include a vehicle used exclusively to transport personal possessions or family members for nonbusiness purposes.

Conviction. Conviction means a final conviction, the payment of a fine, a plea of guilty of nolo contendere if accepted by the court, or a finding of guilt or probate court order of disposition for a child found to be within the provisions of Chapter XII of Act No. 288 of the Public Acts of 1939, being sections 712A.1 to 712A.28 of the Michigan Compiled Laws, or a traffic law violation charge, regardless of whether the penalty is rebated or suspended.

Law of another state. Law of another state means a law or ordinance enacted by another state or by a local unit of government in another state.

Prosecuting attorney. Prosecuting attorney except as the context otherwise requires means the attorney general, the prosecuting attorney of a county, or the attorney representing a local unit of government.

Sec. 5.15 Operating while under influence of intoxicating liquor or controlled substance, or combination thereof, or operating a motor vehicle while visibly impaired.

1. A person, whether licensed or not, shall not operate a vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within the City of Fennville, if either of the following applies:
    a. The person is under the influence of intoxicating liquor, a controlled substance, or a combination of intoxicating liquor and a controlled substance.
    b. The person has an alcohol content of 0.10 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.
2. The owner of a vehicle or a person in charge or in control of a vehicle shall not authorize or knowingly permit the vehicle to be operated upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of motor vehicles, within the City of Fennville, by a person who is under the influence of intoxicating liquor, a controlled substance, or a combination of intoxicating liquor and a controlled substance, who has an alcohol content or 0.10 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters or urine, or whose ability to operate the motor vehicle is visibly impaired due to the consumption of intoxicating liquor, a controlled substance , or a combination of intoxicating liquor and a controlled substance.
3. A person whether licensed or not, shall not operate a vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within the City of Fennville, when, due to the consumption of an intoxicating liquor, a controlled substance, or a combination of an intoxicating liquor and a controlled substance, the person's ability to operate the vehicle is visibly impaired. If a person is charged with violating subsection (1) a finding of guilty under this subsection may be rendered.
4. A person who is less than 21 years of age, whether licensed or not, shall not operate a vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within the City of Fennville if the person has any bodily alcohol content. As used in this subsection, "any bodily alcohol content" means either of the following:
    a. An alcohol content of not less than 0.02 grams or more than 0.07 grams per 100 milliliters of blood, per 2.10 liters of breath, or per 67 milliliters of urine.
    b. Any presence of alcohol within a person's body resulting from the consumption of intoxicating liquor, other than consumption of intoxicating liquor as a part of a generally recognized religious service or ceremony.

5. A person, whether licensed or not, shall not operate a vehicle in violation of subsection (4) while another person who is less than 16 years of age is occupying the vehicle. If a person is convicted of violating this subsection (5), the following shall apply:
    a. The person is guilty of a misdemeanor, punishable by one or more of the following:
        i. Community service for not more than 60 days.
        ii. A fine or not more than $500.00
        iii. Imprisonment for not more than 93 days.
    b. In the judgment of sentence under this section, the court may, unless the vehicle is ordered forfeited under MCL 257.625n, order vehicle immobilization as provided in MCL 257.904d.
6. If a person is convicted of violating subsection (1), the person Is guilty of a misdemeanor, punishable by one or more of the following:
    a. Community service for not more than 45 days.
    b. Imprisonment for not more than 93 days.
    c. A fine of not less than $100.00 or more than $500.00
7. A person who is convicted of violating subsection (2) is guilty of a misdemeanor, punishable by imprisonment for not more than 93 days, or a fine of not less than $100.00 or more than $500.00, or both.
8. If a person is convicted of violating subsection (3), the person is guilty of a misdemeanor punishable by one or more of the following:
    a. Community service for not more than 45 days.
    b. Imprisonment for not more than 93 days.
    c. A fine of not more than $300.00.
9. If a person is convicted of violating subsection (4) all of the following shall apply:
    a. Except as otherwise provided in subsection (b) the person is guilty of a misdemeanor punishable by one or both of the following:
        i. Community service for not more than 45 days.
        ii. A fine of not more than $250.00.
    b. If the violation occurs within seven years of one or more prior convictions, the person may be sentenced to one or more of the following:
        i. Community service for not more than 60 days.
        ii. A fine of not more than $500.00.
        iii. Imprisonment of not more than 93 days.
10. In addition to imposing sanctions prescribed under this section, the court may order the person to pay the costs of the prosecution, pursuant to the code of criminal procedure, Act No. 175 of the Public Acts of 1927, being sections 760.1 to 776.22 of the Michigan complied Laws.
11. A person sentenced to perform community service under this section shall not receive compensation and shall reimburse the state or appropriate local unit of government for the cost of supervision incurred by the state of local unit of government as a result of the person's activities in that service.
12. If a person is charged with a violation of subsection (1) (3) or (5) or of MCL 257.625m, the court shall not permit the defendant to enter a plea of guilty or nolo contendere to a charge of violating subsection (4) in exchange for dismissal of the original charge. This subsection does not prohibit the court from dismissing the charge upon the motion of the prosecuting attorney.
13. Except as otherwise provided in subsection (15), if a person is charged with operating a vehicle while under the influence of a controlled substance or a combination of intoxicating liquor and a controlled substance in violation of subsection (1) , the court shall require the jury to return a special verdict in the form of a written finding or, if the court convicts the person without a jury or accepts a plea of guilty or nolo contendere, the court shall make a finding as to whether the person was under the influence of a controlled substance or a combination of intoxicating liquor and a controlled substance at the time of the violation.
14. Except as otherwise provided in subsection (15) , if a person is charged with operating a vehicle while his or her ability to operate the vehicle was visibly impaired due to his or her consumption of a controlled substance or a combination of intoxicating liquor and a controlled substance in violation of subsection (3), the court shall require the jury to return a special verdict in the form of a written

finding or, if the court convicts the person with a jury or accepts a plea of guilty or nolo contendere, the court shall make a finding as to whether, due to the consumption of a controlled substance or a combination of intoxicating liquor and a controlled substance, the person's ability to operate a motor vehicle was visibly impaired at the time of the violation.

15. A special verdict described in subsections (13) and (14) is not required if a jury is instructed to make a finding solely as to either of the following:
    a. Whether the defendant was under the influence of a controlled substance or of a combination of intoxicating liquor and controlled substance at the time of the violation.
    b. Whether the defendant was visibly impaired due to his or her consumption of a controlled substance or a combination of intoxicating liquor and controlled substance at the time of the violation.
16. If a jury or court makes a finding under subsection (13, (14), or (15) that the defendant operated a motor vehicle under the influence of or while impaired due to the consumption of a controlled substance or a combination of controlled substance and an intoxicating liquor, the court shall do both of the following:
    a. Report the finding to the secretary of state.
    b. Forward to the department of state police, on a form or forms prescribed by the state court administrator, a record that specifies the penalties imposed by the court, including any term of imprisonment and any licensing sanction imposed under section MCL 257.625n or MCL 257.904d.
17. Except as otherwise provided by law, a record described in subsection (16) (b) is a public record and the department of state police shall, retain the information contained on that report for a period of not less than seven years.
18. In a prosecution for a violation of subsection (4), the defendant shall bear the burden of providing that the consumption of intoxicating liquor was a part of a generally recognized religious service or ceremony by a preponderance of the evidence.

Section 5.15a Arrest without warrant for violation; tests for presence of alcohol or controlled substances in blood; admissibility of tests into evidence.

1. A peace officer, without a warrant, may arrest a person when the peace officer has reasonable cause to believe that the person was, at the time of an accident, the operator of a vehicle involved in the accident in the City of Fennville while in violation of section 5.15(1) (3) or (4) of the Uniform Traffic code adopted by the City of Fennville.
2. A peace officer who has reasonable cause to believe that a person was operating a vehicle upon a public highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, in the City of Fennville, and that the person by the consumption of intoxicating liquor may have affected his or her ability to operate a vehicle, of reasonable cause to believe that a person was operating commercial motor vehicle within the state while the person's blood contained any measurable amount of alcohol by weight or while the person had any detectable present of intoxicating liquor, or reasonable cause to believe that a person who is less than 21 years of age was operating a vehicle upon a public highway or other place open to the public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within this state, while the person had any bodily alcohol content as that term is defined in section 5.15(4) of the Uniform Traffic Code adopted by the City of Fennville, MCL 257.625(6), or may require the person to submit to a preliminary chemical breath analysis. The following provisions shall apply with respect to a preliminary chemical breath analysis:
    a. A peace officer may arrest a person based in whole or in part upon the results of preliminary chemical breath analysis.
    b. The results of a preliminary chemical breath analysis are admissible in a criminal prosecution for a crime enumerated in section 5.15c(1) of the Uniform Traffic Code adopted by the City of Fennville or in an administrative hearing solely to assist the court or hearing officer in determining a challenge to the validity of an arrest. This subdivision does not limit the introduction of other competent evidence offered to establish the validity of an arrest.

c. A person who submits to a preliminary chemical breath analysis shall remain subject to the requirements of sections MCL 257.625c, 257.625d, 257.625e, 257.625f and Sections 5.15c, 5.15d, 5.15e, and 5.15f of the Uniform Traffic Code adopted by the City of Fennville, for the purposes of chemical tests described in those sections.
d. A person who refuses to submit to a preliminary chemical breath analysis upon a lawful request by a peace officer is responsible for a civil infraction.

3. The results of a preliminary chemical breath analysis conducted pursuant to this section shall be used by a police officer to determine whether a person shall be ordered out-of-service under subsection 5.15h of the Uniform Traffic Code adopted by the City of Fennville. A police officer shall order out-of-service as required under subsection 5.15h of the Uniform Traffic Code adopted by the City of Fennville, a person who was operating a commercial motor vehicle and who refuses to submit to a preliminary chemical breath analysis as provided in this section. This section does not limit use of other competent evidence by the police officer to determine whether a person shall be ordered out-of-service under subsection 5.15h of the Uniform Traffic Code adopted by the City of Fennville.
4. A person who was operating a commercial motor vehicle and who is requested to submit to a preliminary chemical breath analysis under this section shall be advised that refusal of the request of a police officer to take a test described in this section is a misdemeanor, punishable by imprisonment for not more than 90 days, or a fine of not more than $100.00 or both, and shall result in the issuance of a 24-hour out-of-service order.
5. A person who was operating a commercial motor vehicle and who refuses to submit to a preliminary chemical breath analysis upon a lawful request by a police officer is guilty of a misdemeanor, punishable by imprisonment for not more than 90 days, or a fine of not more than $100.00 or both.
6. The following provisions apply with respect to chemical tests and analysis of a person's blood, urine, or breath, other than preliminary chemical breath analysis:
    a. The amount of alcohol or presence of a controlled substance or both in a driver's blood at the time alleged as shown by chemical analysis of the person's blood, urine, or breath is admissible into evidence in any civil or criminal proceeding.
    b. A person arrested for a crime described in section 5.15c(1) of the Uniform Traffic Code adopted by the City of Fennville shall be advised of all of the following:
        i. That if he or she takes a chemical test of his or her blood, urine, or breath administered at the request of a peace officer, he or she has the right to demand that a person of his or her own choosing administer 1 of the chemical tests; that results of the test are admissible in a judicial proceeding as provided under the City of Fennville Ordinances and MCL 257.625, et seq. and shall be considered with other competent evidence in determining the innocence or guilt of the defendant; and that he or she is responsible for obtaining a chemical analysis of a test sample obtained pursuant to his or her own request.
        ii. That if he or she refuses the request of a peace officer to take a test described in subparagraph (i) a test shall not be given without a court order, but the peace officer may seek to obtain such a court order.
        iii. That his or her refusal of the request of a peace officer to take a test described in subparagraph (i) shall result in the suspension of his or her operator's or chauffeur's license or operating privilege and in the addition of 6 points to his or her driving record.
    c. A sample or specimen of urine or breath shall be taken and collected in a reasonable manner. Only a licensed physician, or an individual operating under the delegation of a licensed physician under section 16215 of the Public Health Code, Act no. 368 of the Public Acts of 1978, being section 333.16215 of the Michigan Compiled Laws and qualified to withdraw blood acting in a medical environment, at the request of a peace officer, may withdraw blood for the purpose of determining the amount of alcohol or presence of a controlled substance or both in the person's blood, as provided in this subsection. Liability for a crime or civil damages predicated on the act of withdrawing or analyzing blood and related procedures shall not attach to a qualified person who withdraws or analyzes blood or

assists in the withdrawal or analysis in accordance with this act unless the withdrawal or analysis is performed in a negligent manner.

d. A chemical test described in this subsection shall be administered at the request of a peace officer having reasonable grounds to believe the person has committed a crime described in MCL 257.625c(1) or section 5.15c (1) of the Uniform Traffic Code adopted by the City of Fennville. A person who takes a chemical test administered at the request of a peace officer, as provided in this section, shall be given a reasonable opportunity to have a person of his or her own choosing administer 1 of the chemical tests described in this subsection within a reasonable time after his or her detention, and the results of the test shall be admissible and shall be considered with other competent evidence in determining the innocence or guilt of the defendant. If the person charged is administered a chemical test by a person of his or her own choosing, the person charged shall be responsible for obtaining a chemical analysis of the test sample.

e. If, after an accident, the driver of a vehicle involved in the accident is transported to a medical facility and a sample of the driver's blood is withdrawn at that time for the purpose of medical treatment, the results of a chemical analysis of that sample shall be admissible in any civil or criminal proceeding to show the amount of alcohol or presence of a controlled substance or both in the person's blood at the time alleged, regardless of whether the person had been offered or had refused a chemical test. The medical facility or person performing the chemical analysis shall disclose the results of the analysis to a prosecuting attorney who requests the results for use in a criminal prosecution as provided in this subdivision. A medical facility or person disclosing information in compliance with this subsection shall not be civilly or criminally liable for making the disclosure.

f. If, after an accident, the driver of a vehicle involved in the accident is deceased, a sample of the decedent's blood shall be withdrawn in a manner directed by the medical examiner for the purpose of determining the amount of alcohol or the presence of a controlled substance, or both, in the decedent's blood. The medical examiner shall give the results of the chemical analysis of the sample to the law enforcement agency investigating the accident, and that agency shall forward the results to the department of state police.

7. The provisions of subsection (6) relating to chemical testing do not limit the introduction of any other competent evidence bearing upon the question of whether or not a person was impaired by, or under the influence of, intoxicating liquor or a controlled substance, or a combination of intoxicating liquor and a controlled substance, or whether the person had a blood alcohol content of 0.10 percent or more or if the person is less than 21 years of age whether the person had any bodily alcohol content within his or her body. As used in this section, "any bodily content" means either of the following:
    a. A blood alcohol content of not less than 0.02 percent or more than 0.07 percent by weight of alcohol.
    b. Any presence of alcohol within a person's body resulting from the consumption of intoxicating liquor.
8. If a chemical test described in subsection (6) is administered, the results of the test shall be made available to the person charged or the person's attorney upon written request to the prosecution, with a copy of the request filed with the court. The prosecution shall furnish the results at least 2 days before the day of the trial. The results of the test shall be offered as evidence by the prosecution in that trial. Failure to fully comply with the request shall bar the admission of the results into evidence by the prosecution.
9. Except in a prosecution relating solely to a violation of section 5.15(1)(b) or 5.15(4) of the Uniform Traffic Code adopted by the City of Fennville, the amount of alcohol in the driver's blood at the time alleged as shown by chemical analysis of the person's blood, urine, or breath shall give rise to the following presumptions:
    a. If there was at the time 0.07 percent or less by weight of alcohol in the defendant's blood, it shall be presumed that the defendant's ability to operate a motor vehicle was not impaired

due to the consumption of intoxicating liquor, and that the defendant was not under the influence of intoxicating liquor.

b. If there was at the time in excess of 0.07 percent but less than 0.10 percent by weight of alcohol in the defendant's blood, it shall be presumed that the defendant's ability to operate a vehicle was impaired within the provisions of section 5.15(3) of the Uniform Traffic Code adopted by the City of Fennville due to the consumption of intoxicating liquor.

c. If there was at the time 0.10 percent or more by weight of alcohol in the defendant's blood, it shall be presumed that the defendant was under the influence of intoxicating liquor.

10. A person's refusal to submit to a chemical test as provided in subsection (6) shall be admissible in a criminal prosecution for a crime described in section 5.15c(1) of the Uniform Traffic Code adopted by the City of Fennville only for the purpose of showing that a test was offered to the defendant, but not as evidence in determining innocence or guilt of the defendant. The jury shall be instructed accordingly.
11. If a person is arrested without a warrant in any of the following cases, the arrested person shall, without unreasonable delay, be taken before the magistrate who is nearest or most accessible within the judicial district as provided in section 13 of chapter IV of the code of criminal procedure, Act no. 175 of the Public Acts of 1927, being section 764.13 of the Michigan Compiled Laws, or if a minor, before the probate court within the county in which the offense charged is alleged to have been committed:
    a. If the person is arrested under section 5.15(1), 5.15(3) or 5.15(4) of the Uniform Traffic Code adopted by the City of Fennville.
    b. If a person is arrested under section 5.14 of the Uniform Traffic Code adopted by the City of Fennville. If under the existing circumstances it does not appear that releasing the person pending the issuance of a warrant will constitute a public menace, the arresting officer may proceed as provided by MCL 257.728.
    c. If a person arrested does not have in his or her immediate possession a valid operator's or chauffeur's license or the receipt described in MCL 257.311a. If the arresting officer otherwise satisfactorily determines the identity of the person and the practicability of subsequent apprehension in the event of the person's failure to voluntarily appear before a designated magistrate or probate court as directed, the officer may release the person from custody with instructions to appear in court, given in the form of a citation as prescribed by section MCL 257.728.

Sec. 5.15b Reserved.

Sec. 5.15c Consent to chemical tests; persons not considered to have given consent to withdrawal of blood; administration of tests.

1. A person who operates a vehicle upon a public highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within the City of Fennville, is considered to have given consent to chemical tests of his or her blood, breath, or urine for the purpose of determining the amount of alcohol or presence of a controlled substance or both in his or her blood in all of the following circumstances: if the person is arrested for a violation of section 5.15(1)(3)a 4 of the Uniform Traffic Code adopted by the City of Fennville.
2. A person who is afflicted with hemophilia, diabetes, or a condition required the use of an anticoagulant under the direction of a physician shall not be considered to have given consent to the withdrawal of blood.
3. The tests shall be administered according to the provisions of MCL 257.625a (6), or section 5.15a (6) of the Uniform Traffic Code adopted by the City of Fennville.

Sec. 5.15d Refusal to submit to a chemical test.

1. If a person refuses the request of a peace officer to submit to a chemical test offered pursuant to MCL 275.625a(6) or section 5.15a(6) of the Uniform Traffic Code adopted by the City of Fennville, a test shall not be given without a court order, but the officer may seek to obtain the court order.

2. A written report shall immediately be forwarded to the secretary of state by the peace officer. The report shall state that the officer had reasonable grounds to believe that the person had committed a crime described in MCL257.625c(1) or section 5.15c(1) of the Uniform Traffic Code adopted by the City of Fennville, and that the person had refused to submit to the test upon the request of the peace officer and had been advised of the consequences of the refusal. The form of the report shall be prescribed and furnished by the secretary of state.

Sec. 5.15e Confiscation by peace officer of accused's license upon refusal to take test or it test revels impermissible blood alcohol content; issuance of temporary license; report to secretary of state; destruction of accused's license.

1. If a person refuses a chemical test offered pursuant to MCL 257.625a(6) or section 5.15a(6) of the Uniform Traffic Code adopted by the City of Fennville, or submits to a chemical test or a chemical test is performed pursuant to a court order, and the test reveals an unlawful alcohol content the peace officer who requested the person to submit to the test shall do all of the following:
    a. On behalf of the secretary of state, immediately confiscate the person's license or permit to operate a motor vehicle, and, if the person is otherwise eligible for a license or permit issue a temporary license or permit to the person. The temporary license or permit shall be on a form provided by the secretary of state.
    b. Except as provided in subsection (2), immediately do all of the following:
        i. Forward a copy of the written report of the person's refusal to submit to a chemical test to the secretary of state.
        ii. Notify the secretary of state by means of the law enforcement information network that a temporary license or permit was issued to the person.
        iii. Destroy the person's driver's license or permit.
2. If a person submits to a chemical test offered pursuant to MCL 257.625a(6) or section 5.15a(6) of the Uniform Traffic Code adopted by the City of Fennville that requires an analysis of blood or urine and a report of the results of that chemical test is not immediately available, the peace officer who requested the person to submit to the test shall comply with subsection (1)(a) pending receipt of the test report. If the report reveals an unlawful alcohol content the peace officer who requested the person to submit to the test shall immediately comply with subsection (1)(b). If the report does not reveal an unlawful alcohol content, the peace officer who requested the person to submit to the test shall immediately notify the person of the test results and immediately return the person's license or permit by first-class mail to the address given at the time of arrest.
3. A temporary license or pursuant issued under this section is valid for one of the following time periods.
    a. If the case is not prosecuted, for 90 days after issuance or until the person's license or permit is suspended pursuant to MCL 257.625f, whichever occurs earlier. The prosecuting attorney shall notify the secretary of state if a case referred to the prosecuting attorney is not prosecuted. The arresting law enforcement agency shall notify the secretary of state if a case is not referred to the prosecuting attorney for prosecution.
    b. If the case is prosecuted, until the criminal charges against the person are dismissed, the person is acquitted of those charges, or the person's license or permit is suspended, restricted, or revoked.
4. As used in this section, "unlawful alcohol content" means any of the following, as applicable:
    a. If the person tested is less than 21 years of age, 0.02 grams or more of alcohol per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.
    b. If the person tested was operating a commercial motor vehicle within this state, 0.04 grams or more of alcohol per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.
    c. If the person tested is not a person described in subsection (a) or (b), 0.10 grams or more of alcohol per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters or urine.

Sec. 5.15h Out of service orders.

1. A person, whether licensed or not, whose blood contains 0.015% or more by weight of alcohol shall not operate a commercial motor vehicle within the City of Fennville.

2. A police officer who has reasonable cause to believe that a person was operating a commercial motor vehicle within the state while the person's blood contained 0.015 percent or more by weight of alcohol, as measured by a preliminary chemical breath analysis or a chemical test provided under section 5.15a, shall order the person out-of-service immediately for a period of 24 hours, which shall being upon issuance of the order.
3. A police officer shall order out-of-service immediately for a period of 24 hours, which shall begin upon issuance of the order, a person who refuses to submit to a preliminary chemical breath analysis requested under section 5.15a(2).
4. A person ordered out-of-service under this section, a local ordinance substantially corresponding to this section, or a law or local ordinance of another state substantially corresponding to this section, shall not operate a commercial motor vehicle within this state during the 24 hour our-of-service period.
5. A police officer who issues an out-of-service order under this section shall provide for the safe and expeditious disposition of a product carried by a commercial motor vehicle that is hazardous or would result in damage to the vehicle, human health, or the environment.
6. Failure to comply with subsection (1) is not a civil infraction or criminal violation of this act.
7. A person who violates subsection (4) is guilty of a misdemeanor, punishable by imprisonment for not more than 90 days, or a fine of not more than $100.00, or both.

Sec. 5.16b Transportation or possession of alcoholic liquor in containers open or uncapped or upon which seal is broken.

1. Except as provided in subsection (2), a person shall not transport or possess alcoholic liquor in a container that is open or uncapped or upon which the seal is broken within the passenger compartment of a vehicle upon a highway, or within the passenger compartment of moving vehicle in any place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, in the City of Fennville.
2. A person may transport or possess alcoholic liquor in a container that is open or uncapped or upon which the seal is broken within the passenger compartment of a vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designed for the parking of vehicles, in the City of Fennville, if the vehicle does not have a trunk or compartment separate from the passenger compartment, the container is enclosed or encased, and the container is not readily accessible to the occupants of the vehicle.
3. A person who violates this section is guilty of a misdemeanor. A court shall not accept a plea of guilty or nolo contendere for a violation of this section from a person charged solely with a violation of MCL 257.625(6) or section 5.15(4) of the Uniform Traffic Code by the City of Fennville.
4. This section does not apply to a passenger in chartered vehicle authorized to operate by the Michigan department of transportation.

Sec. 5.16c Consumption of alcoholic liquor on a highway, public place or area generally accessible to motor vehicles, including area designated for parking of vehicles.

1. A person shall not consume alcoholic liquor upon a highway, street, alley, or any public or private property which is open to the general public and which is not licensed to sell alcoholic liquor for consumption on the premises, or within the passenger compartment of a moving vehicle upon a highway or in any place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, in the City of Fennville.
2. A person who violates this section is guilty of a misdemeanor, punishable by a term of imprisonment of not more than 90 days and a fine of not more than $100.00 or both.

Sec. 5.62a Operation of a motor vehicle by person whose license is suspended, revoked or denied or who has never applied for license.

1. A person whose operator's or chauffeur's license or registration certificate has been suspended or revoked and who has been notified as provided in MCL 257.212 of that suspension or revocation, whose application for license has been denied, or who has never applied for a license, shall not operate a motor vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of motor vehicles within the City of Fennville.

2. A person shall not knowingly permit a motor vehicle owned by the person to be operated upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within the City of Fennville, by a person whose license or registration certificate is suspended or revoked, whose application for license has been denied, or who has never applied for a license, except as permitted under this Code of the Michigan Vehicle Code.
3. Except as otherwise provided in this section, a person who violates bisection (1) or (2) is guilty of a misdemeanor punishable as follows: For a first violation, by imprisonment for not more than 93 days or a fine of not more than $500.00, or both. Unless the vehicle was stolen or used with the permission of a person who did not knowingly permit an unlicensed drive to operate the vehicle, the registration plates of the vehicle shall be canceled by the secretary of state upon notification by a peace officer.
4. Before a person is arraigned before a district court magistrate or judge on a charge of violating this section, the arresting officer shall obtain the driving record of the person from the secretary of state and shall furnish the record to the court. The driving record of the person may be obtained from the secretary of state's computer information network.
5. This section shall not apply to a person who operates a vehicle solely for the purpose of protecting human life or property, if the life or property is endangered and summoning prompt aid is essential.
6. A person whose vehicle group designation is suspended or revoked and who has been notified as provided in MCL 257.212 of that suspension or revocation, or whose application for a vehicle group designation has been denied, as provided in this act, or who has never applied for a vehicle group designation, and who operates a commercial motor vehicle within this state, except as permitted under this Code or the Michigan Vehicle Code, while any of those conditions exist is guilty of a misdemeanor, punishable, except as otherwise provided in this section by imprisonment for not less than 3 days or more than 93 days, or a fine of not more than $100.00 or both.
7. For purposes of this section, a person who never applied for a license includes a person who applied for a license, was denied, and never applied again.

Sec. 5.62b Order of Impoundment.

1. When a person is convicted under section 5.62a(1) of the Uniform Traffic Code adopted by the City of Fennville, of operating a motor vehicle while his or her license to operate a motor vehicle is suspended, revoked, or denied, the motor vehicle, if it is owned in whole or in part by that person, shall be ordered impounded for not less than a period the court orders but not more than 120 days from the date of judgment.
2. An order of impoundment issued pursuant to subsection (1) is valid throughout the state. Any peace officer may execute the impoundment order. The order shall include the implied consent of the owner of the vehicle to the storage for insurance coverage purposes.
3. The owner of a motor vehicle impounded pursuant to this section is liable for expenses incurred in the removal and storage of the vehicle whether or not the vehicle is returned to him or her. The vehicle shall be returned to the owner only if the owner pays the expenses for removal and storage. If redemption is not made or the vehicle is not returned as provided in this section within 30 days after the time set in the impoundment order for return of the vehicle, the vehicle shall be considered an abandoned vehicle and disposed of as provided in section 2-5a of the Uniform Traffic Code adopted by the City of Fennville.
4. Nothing in this section affects the rights of a conditional vendor, chattel mortgagee or lessor of a motor vehicle registered in the name of another person as owner who becomes subject to this act.

Sec. 5.62c. Confiscation of registration plate and issuance of temporary vehicle registration plate.

1. When a peace officer detains the driver of a motor vehicle for a violation of a law of this state or local ordinance for which vehicle immobilization is required, the peace officer shall do all of the following:
    a. Immediately confiscate the vehicle's registration plate and destroy it.
    b. Issue a temporary vehicle registration plate for the vehicle in the same form prescribed by the secretary of state for temporary registration plates issued under section MCL 257.226a or MCL 257.226b.

c. Place the temporary vehicle registration plate on the vehicle in the manner required by the secretary of state.
d. Notify the secretary of state through the law enforcement information network in a form prescribed by the secretary of state that the registration plate was confiscated and destroyed, and a temporary plate was issued.

2. A temporary vehicle registration plate issued under this section is valid until the charges against the person are dismissed, the person pleads guilty or nolo contendere to those charges, or the person is found guilty of or is acquitted of those charges.

Sec. 5.62e Immobilization of vehicles.

1. A court shall order a vehicle immobilized under MCL 257.904d by the use of any available technology approved by the court that locks the ignition, wheels, or steering of the vehicle or otherwise prevents any person from operating the vehicle or that prevents the defendant from operating the vehicle. If a vehicle is immobilized under this section, the court may order the vehicle stored at a location and in a manner considered appropriate by the court. The court may order the person convicted of violating section 5.15 of this Code or MCL 257.625, or a suspension, revocation, or denial under section 5.62a of this Code of MCL 257.904 to pay the cost of immobilizing and storing the vehicle.
2. A vehicle subject to immobilization under this section may be sold during the period of immobilization, but shall not be sold to a person who is exempt from paying a use tax under section 3(3)(a) of the use tax act, 137 PA 94, MCL 205.93 without a court order.
3. A defendant who is prohibited from operating a motor vehicle by vehicle immobilization shall not purchase, lease, or otherwise obtain a motor vehicle during this immobilization period.
4. A person shall not remove, tamper with, or bypass or attempt to remove, tamper with or bypass a devise that he or she knows or has reason to know has been installed on a vehicle by court order by vehicle immobilization or operate or attempt to operate a vehicle that he or she knows or has reason to know has been ordered immobilized.
5. A person who violates this section is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than $100.00, or both.
6. To the extent that a local ordinance regarding the storage or removal of vehicles conflicts with an order of immobilization issued by the court, the local ordinance is preempted.
7. If a peace officer stops a vehicle that is being operated in violation of an immobilization order, the vehicle shall be impounded pending an order of a court of competent jurisdiction.
8. The court shall require the defendant or a person who provides immobilization services to the court under this section to certify that a vehicle ordered immobilized by the court is immobilized as required.

Sec. 58-29 through 58-50. Reserved.

Article III INOPERABLE MOTOR VEHICLES

Sec. 58-51. Definitions.

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

Motor vehicle means any wheeled vehicle which is self-propelled or is intended to be self-propelled.

Registered inoperable motor vehicle means any motor vehicle which, by reason of dismantling, disrepair, or any other cause, is incapable of being propelled under its own power, but has valid and current registration.

Unregistered inoperable motor vehicle means any motor vehicle which, by reason of dismantling, disrepair, or any other cause, is incapable of being propelled under its own power, and is without valid and current registration.

Sec. 58-52. Prohibited.

No person may store or place, or allow to be stored or placed, within the city any unregistered inoperable motor vehicle, or any registered inoperable motor vehicle for a period of time exceeding 30 days after the service of notice as described in this article. Notwithstanding any exception in this article to the prohibition stated in this

section, no unregistered or registered inoperable motor vehicle may be stored or placed on any street in the city, or in any unfenced front yard in the city, as defined in the city zoning ordinance.

Sec. 58-53. Notice.

Notice of this article and of the 30-day limitation described in section 58-52 shall be given by the city if a registered inoperable motor vehicle is stored or placed in the city. Such notice shall be given in writing, by first class mail or personal service, to:

1. The last registered owner of the registered inoperable motor vehicle in question, at the last address reflected by the records of the secretary of state;
2. The owner of the premises in the city upon which the registered inoperable motor vehicle is stored or placed, at the last address reflected by the city's tax assessment records; and/or
3. Any lessee of the premises in the city upon which the registered inoperable motor vehicle is stored or places.

The notice shall be deemed served upon personal delivery or upon deposit in a United States mail receptacle with postage fully prepaid. The notice shall advise the recipient that he or shall be guilty of a misdemeanor if the registered inoperable motor vehicle remains stored or placed on the premises in question beyond the 30-day period.

Sec. 58-54. Exceptions to prohibitions.

The prohibition described in section 58-52 shall not apply to any unregistered or registered inoperable motor vehicle which is stored or placed entirely within a wholly enclosed garage or other wholly enclosed structure. Further, the prohibition described above shall not apply to:

1. The storage or placement of unregistered or registered inoperable motor vehicles upon the premises of a junkyard which is not in violation of the city's zoning ordinance, and which has all necessary licenses and approvals from the state, the city, and any other unit of government having jurisdiction.
2. The storage or placement of unregistered or registered inoperable motor vehicles upon the premises of a motor vehicle body or engine repair shop, or a motor vehicle maintenance garage, but only if any such unregistered or registered inoperable motor vehicles are actually being repaired or rebuilt or used for parts, and only if any such body or engine repair shop or maintenance garage is not in violation of the city's zoning ordinance.

The open area of any such junkyard, body or engine repair shop or maintenance garage must be completely enclosed with a fence which completely conceals any unregistered or registered inoperable motor vehicle from public view, and which is specifically approved by the city zoning administrator.

Sec. 58-55. Nuisance.

Any violation of this article is hereby declared to be a public nuisance per se. The city may enforce the provisions of this article by seeking injunctive relief in a court of competent jurisdiction in addition to any other remedies which may be available under the law or this article.

Sec. 58-56. Penalty for violations of article.

Any person violating any of the provisions of this article shall be responsible for a municipal civil infraction.

Sec. 58-57 through 58-80. Reserved.

ARTICLE IV. STOPPING, STANDING, AND PARKING

Sec. 58-81. Parking prohibited during certain times.

It shall be unlawful for any operator, driver or person in charge of any vehicle, whether motor driven or otherwise, to park upon the public streets, highways or alleys during the hours of 4:00 a.m. to 6:00 a.m. from November 15 to April 1.

Sec. 58-82. Violations of article.

Any person violating any of the provisions of this article shall be responsible for a municipal civil infraction.

Sec. 58-83 through 58-105. Reserved.

ARTICLE V BICYCLES, MOTORCYCLES.

Sec. 58-106 through 58-115. Reserved.

Sec. 58-116 Definitions. Bicycles.

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

Bicycle means every device propelled by human power upon which any person may ride, having two tandem wheels either of which is over 20 inches in diameter, and including any device generally recognized as a bicycle though equipped with two front or two rear wheels.

Sec. 58-117. Reserved.

Sec. 58-118. Violations of division by child.

The parent of any child and the guardian of any ward shall not authorize or knowingly permit any such child or ward to violate any of the provisions of this division.

Sec. 58-119. Applicability of division.

The regulations in this division applicable to bicycles shall apply whenever a bicycle is operated upon the street or upon any public path set aside for the exclusive use of bicycles, subject to those exceptions stated in this division.

Sec. 58-120. Repealed (Ordinance 09-01 – June 15, 2009)

Sec. 58-121. Traffic and riding regulations.

a. No bicycle shall be ridden but may be pushed however on the sidewalk of Main Street in that section of Main Street bounded on the west by South Street and on the east by the railroad tracks.
b. Every person riding a bicycle upon the roadway shall be granted all the rights and shall be subject to all the duties applicable to the driver of a vehicle by the laws of this state declaring rules of the road applicable to vehicles, except as to special regulations in this division and except as to those provisions of laws and ordinances which by their nature can have no applications.
c. A person riding a bicycle shall not ride other than astride or upon a permanent and regular seat attached thereto.
d. No bicycle shall be used to carry more persons at one time than the number for which it is designed and equipped.
e. No person operating a bicycle shall carry any package, bundle or article which prevents the driver from keeping both hands upon the handlebars of such bicycle.
f. The following rules shall apply to the riding of bicycles on sidewalks in unrestricted areas:
    1. Persons riding bicycle upon a sidewalk shall ride in single file.
    2. Persons riding bicycles upon a sidewalk must exercise due caution and courtesy when passing and have their bicycles under control at all times, assuming responsibility in avoiding accidents.
g. The following rules shall apply to the riding of bicycles in streets or roads:
    1. Every person riding a bicycle upon a roadway or street shall ride as near the right side as practicable, exercising due care when passing a standing vehicle or one proceeding in the same direction.
    2. Persons riding bicycles upon a roadway shall not ride more than two abreast.

3. No person riding a bicycle upon a roadway, street or sidewalk shall attach the bicycle or himself to any vehicle upon such roadway, street or sidewalk.

h. Every bicycle shall be equipped with a brake which will enable the operator to make the braked wheels skid on dry, level, clean pavement.

i. All Bicycles must be properly equipped with reflectors.

Sec. 58-122. Parking.

No bicycle may be parked on the sidewalks on either side of Main Street between Maple Street on the west and the railroad on the east except in the racks provided for parking such bicycles.

Sec. 58-123. Unregistered bicycles.

Any person riding a bicycle in the city, whether or not that bicycle is registered with the police department, shall be subject to the rules of conduct set out in this division, and shall be subject to the same penalty for violations.

Sec. 58-124. Penalty for violations of division.

Any person violating any of the provisions of this division shall be responsible for a municipal civil infraction. An addition, the city may impound any bicycle used in the violation of any of the provisions of this division for up to 30 days.

Sec. 58-125 through 58-135. Reserved.

Sec. 58-136. Riding in parks and recreation areas prohibited. Motorcycles.

a. No person shall ride a motorcycle or motor-driven cycle within the parks and recreation areas of the city. All such parks and recreation areas shall be properly posted.

b. The terms “person,” “motorcycle” and “motor-driven cycle” are defined in accordance with the uniform traffic code of the city.

Sec. 58-137 through 58-160. Reserved.

ARTICLE VI. SNOWMOBILES

Sec. 58-161. Definitions

As used in Article VI, the following words or phrases have the following meanings. Any word or phrase in Article VI that does not have a definition as provided by this section will have a standard, dictionary definition.

(a) *Historic snowmobile* means a snowmobile over 25 years old and that is owned solely as a collector’s item and for occasional use and participation in club activities, exhibitions, tours, parades, and similar uses, including mechanical testing.

(b) *Minor* means any person under the age of 18 years.

(c) *Minor operator* means any operator under the age of 18 years.

(d) *Operate, operation, or operating* means being in actual physical control of a snowmobile regardless of whether or not the person is licensed to act as an operator.

(e) *Operator* means every person, other than a chauffeur, who is in actual, physical control of a snowmobile on a roadway.

(f) *Owner* means any of the following:

(1) Any person, firm, association, or corporation renting a snowmobile or having the exclusive use thereof, under a lease or otherwise, for a period greater than thirty (30) days.

(2) A person who holds legal title to a snowmobile.

(3) A person who has the immediate right of possession of a snowmobile under a sale, lease, installment sale, or conditional sale. If possession is based on a conditional sale, the buyer is

deemed the owner of the snowmobile upon the conditions precedent stated in the agreement occurring or being satisfied.

For purposes of this Ordinance, a snowmobile may have more than one owner.

(g) *Passenger* means a person on a snowmobile, or being towed by a snowmobile, who is not operating the snowmobile.
(h) *Person* means a human-being.
(i) *Right-of-way* means the privilege of the immediate use of a roadway.
(j) *Roadway* means that portion of a highway or street improved, designed, or ordinarily used for vehicular travel.
(k) *Shoulder* means that portion of the roadway contiguous to the roadway generally extending the contour of such which is not designed for vehicular travel but is maintained for the temporary accommodation of disabled or stopped vehicles otherwise permitted on the roadway.
(l) *Snowmobile* means any motor-driven vehicle designed for travel primarily on snow or ice and is of a type which utilizes sled-type skis or an endless belt tread or any combination thereof.
(m) *Street* or *highway* means the entire width between the boundaries of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.
(n) *Vehicle, motor vehicle* means the current definition as defined by the Michigan Vehicle Code, MCL §257.1 *et seq.*.

Sec. 58-162. Operation on Public Rights-of-Way

As used in this section, "operator" or "person" includes both a minor and non-minor operator or person.

(a) Except as permitted in subsections (b) through (e), no person is permitted to operate a snowmobile on any roadway within the city limits not authorized and designated for snowmobile use.
(b) By resolution of the City Commission, when a roadway has been authorized and designated for snowmobile use, the operator of the snowmobile shall comply with all of the following:
    (1) The operator shall comply with all parts of the Michigan Snowmobile Act, MCL 324.82101 et seq.
    (2) Operation of a snowmobile is restricted to only the far right-hand portion and with the flow of traffic on the roadway.
    (3) Subject to subsection (2), a snowmobile may be operated on a roadway against the flow of motor vehicle traffic if the snowmobile trail is designed and designated to operate against the flow of motor vehicle traffic.
    (4) The operator of a snowmobile shall obey all traffic-control devices including but not limited to stop signs and traffic lights.
    (5) Unless the snowmobile is equipped with illuminated traffic signal capabilities, the operator shall use hand signals for all turns and stops.
    (6) The snowmobile shall have at least one (1) operating headlight and at least one (1) operating taillight. The operator shall use the snowmobile's headlight(s) and taillight(s) at least thirty (30) minutes before sunset and until thirty (30) minutes after sunrise. Such lights shall not be covered by any lens cap of any color other than the lens cap color originally installed by the manufacturer. This section does not apply to a historic snowmobile.
    (7) A snowmobile shall be equipped with brakes which are capable of 1 of the following while the snowmobile travels on packed snow and carries an operator who weighs 175 pounds or more:
        (i) Stopping the snowmobile in not more than 40 feet from an initial speed of 20 miles an hour.
        (ii) Locking the snowmobile traction belt(s).
    (8) The operator shall not pass any vehicle which is ahead and moving in the same direction as the snowmobile.

(9) The operator shall yield to faster moving vehicles moving in the same direction as the snowmobile.

(10) The operator shall not tow any passenger(s) unless the passenger(s) is contained in a commercially-manufactured trailer designed for the conveyance of a passenger(s) and such trailer is affixed to the snowmobile by a ball or pin hitch attached to a rigid tow bar.

(11) When two or more snowmobiles are operated together, they shall be operated in a single file.

(12) Every operator or passenger must wear a crash helmet approved by the United States Department of Transportation.

(13) An operator shall not operate a snowmobile with more than the manufacturer's designated occupant capacity.

(14) Subject to subsection (15), the operator shall not operate a snowmobile greater than 15 miles per hour. In no event shall the operator operate a snowmobile at a rate of speed greater than is reasonable and proper having due regard for conditions then existing.

(15) The operator shall not operate a snowmobile within 100 feet of a dwelling between 12 midnight and 6am, at a speed greater than the minimum required to maintain forward movement of the snowmobile.

(16) An operator shall not operate a snowmobile within the city limits, unless on private property, unless the snowmobile is equipped with a muffler in good working order and in constant operation from which noise emission does not exceed either of the following:

(i) For a snowmobile manufactured after July 1, 1977, and sold or offered for sale in the State of Michigan, 78 decibels at 50 feet as measured using the 2003 Society of Automotive Engineers standard J192.

(ii) For a stationary snowmobile manufactured after July 1, 1980, and sold or offered for sale in the State of Michigan, 88 decibels, as measured using the 2004 Society of Automotive Engineers standard J2567.

(c) Subject to subsections (a) and (b), an operator is authorized to operate a snowmobile on a roadway within the city limits not specifically authorized and designated for snowmobile use for the limited purpose of:

(1) Entering a roadway authorized and designated for snowmobile use immediately from a private residence or exiting from a roadway authorized and designated for snowmobile use immediately to a private residence.

(i) The operator shall use the shortest route available to enter an approved roadway immediately from a private residence or exit from an approved roadway immediately to a private residence.

(ii) If stopped by law enforcement on a roadway not authorized and designated for snowmobile use, an operator, claiming such operation was to enter or exit to a private residence, is presumed to have not taken the shortest route available. Such presumption is rebuttable by the operator.

(iii) The snowmobile shall be parked wholly on the property of the private residence when not being operated.

(2) Entering a roadway authorized and designated for snowmobile use immediately from a commercial business or exiting from a roadway authorized and designated for snowmobile use immediately to a commercial business.

(i) The operator shall use the shortest route available to enter to an approved roadway immediately from a commercial business or exit from an approved roadway immediately to a commercial business.

(ii) If stopped by law enforcement on a roadway not authorized and designated for snowmobile use, an operator, claiming such operation was to enter or exit to a commercial business, is presumed to not have taken the shortest route available. Such presumption is rebuttable by the operator.

(iii) While an operator is visiting a commercial business, the snowmobile shall be parked in a public or private parking lot.

(iv) Parking on a roadway is prohibited.

(v) Parking on a sidewalk is prohibited.

(3) No operator shall operate a snowmobile including on any roadway or snowmobile trail in careless or negligent manner which is likely to endanger any person or property. Any operator who violates this subsection is responsible for a state civil infraction.

(4) No operator shall operate a snowmobile including on any roadway or snowmobile trail in a willful or wanton disregard for the safety of persons or property. Any operator who violates this subsection is guilty of a misdemeanor punishable by a fine of not more than $250.

(5) An operator who operates a snowmobile in a careless or negligent manner causing the death or serious impairment of bodily function of another is guilty of a misdemeanor and shall be imprisoned for not more than two (2) years or fined not more than $2,000, or both.

(d) A person who is ordered not to operate a snowmobile by any authority authorized to issue such an order and who has been notified of the order by personal service or first-class mail shall not operate a snowmobile within the city. A snowmobile owner shall not knowingly permit a snowmobile owned by him or her to be operated by a person who is subject to a do-not-operate order. A person who violates this subsection is guilty of a misdemeanor as follows:

(1) For a first offense violation, imprisonment of not more than 90 days or a fine of not more than $500, or both.

(2) For second and subsequent violations, imprisonment for not more than one (1) year or a fine of not more than $1,000, or both.

(e) An operator of a snowmobile who is given a signal by a peace or police officer directing the operator to bring his or her snowmobile to a stop and who willfully fails to obey the order is guilty of a misdemeanor. The officer giving the signal shall be in uniform.

Sec. 58-163. Operating a snowmobile under the influence of intoxicating liquor or controlled substance.

(a) To the extent allowable and applicable, this ordinance adopts by reference all parts of the Michigan Snowmobile Act pertaining to operating a snowmobile under the influence of an intoxicating liquor or controlled substance, currently MCL §324.82127 through §82149.

(b) To the extent allowable and applicable, this ordinance adopts by reference all parts of the Michigan Snowmobile Act pertaining to operating a snowmobile under the influence of an intoxicating liquor or controlled substance, currently MCL §324.82127 through §82149.

Sec. 58-164. Snowmobile Registration; Trail Permits

As used in this section, "operator" includes both a minor and non-minor operator.

(a) Except as provided in subsections (b) and (c), a snowmobile shall not be operated within the city or on a designated snowmobile trail, unless the owner first obtains a certificate of registration and a registration decal as required by MCL §§324.82103 and §82105.

(1) A person in violation of this subsection is responsible for a state civil infraction and shall be fined not more than $50.

(b) A certificate of registration or registration decal is not required for a snowmobile that is exclusively operated in a special event of limited duration and which has been prearranged under a permit issued by the city.

(c) A historic snowmobile registered with the state and displaying a historic snowmobile registration decal bearing the words "historic snowmobile – Michigan" and the registration number is exempt from subsections (a) and (f).

(d) An operator of a snowmobile shall make the certificate of registration available for inspection upon a demand by a peace officer.

(e) The registration decal shall be displayed as prescribed by rules promulgated by the department of state.

(f) In addition to registration of a snowmobile under MCL §324.82105, or registration in another state or province, a person who desires to operate a snowmobile in the city must also display a valid Michigan snowmobile trail permit sticker.
    (1) The Michigan snowmobile trail permit sticker shall be permanently affixed to the snowmobile directly above or below the headlight of the snowmobile.
    (2) A person who fails to secure a permit under this subsection is responsible for a state civil infraction and shall be fined not more than $100.

Sec. 58-165. Vehicle Number

Possession of a snowmobile with an altered, defaced, or obliterated vehicle number is a misdemeanor, punishable by imprisonment of not more than 1 year, or by a fine of not more than $1000, or both.

Sec. 58-166. Operating Restrictions

As used in this section "operator" includes both a minor and non-minor operator.

An operator shall not operate a snowmobile:

(a) On or across the Fennville Municipal Cemetery.
(b) On any sidewalk, bicycle path, or foot path.
(c) On a railroad or railroad right-of-way, except railroad, public utility, or law enforcement personnel while in the performance of their duties.
(d) While transporting a bow unless the bow is unstrung or encased.
(e) While transporting a firearm, unless unloaded in both barrel and magazine and securely encased.
(f) For purposes of racing another snowmobile.
(g) To hunt, pursue, worry, or kill any animal.

Sec. 58-167. Operation by Minors

(a) A parent or legal guardian shall not permit a person under the age of twelve (12) years of age to operate a snowmobile without direct supervision by a person over the age of eighteen (18) years of age, except on land owned or under the control of the parent or legal guardian.
(b) A minor who is at least twelve (12) years of age but less than seventeen (17) years of age may operate a snowmobile if he or she:
    (1) Is under the direct supervision of a person over the age of eighteen (18) years of age,
    (2) Has in his or her immediate possession a snowmobile safety certificate issued pursuant to state law, or
    (3) Is on land owned or under the control of a parent or legal guardian.
    (4) A minor who is operating a snowmobile pursuant to subsection (2) shall present his or her snowmobile safety certificate to any peace officer upon demand.
(c) Any training program for minor operators between the age of twelve (12) years of age and seventeen (17) years of age in compliance with MCL §324.82108 is deemed to be sufficient for purposes of this ordinance.
(d) A minor who has a valid safety certificate from another state or province shall not be required to complete the safety education and training program outlined in MCL §324.82108(7).
(e) Any minor operator who fails to carry a safety certificate is subject to a state civil infraction of not more than $25.

Sec. 58-168. Notice of Accident; Police Report; Administration

As used in this section "operator" or "person" includes both a minor and non-minor operator or person.

(a) The operator of a snowmobile who has been involved in an accident resulting in injuries to another person or property damage estimated to be greater than $100 shall immediately notify the City of Fennville's police department, the Allegan County Sheriff, or the Michigan State Police.

(b) If the City of Fennville police department responds to the operator's contact or to the accident scene, the responding officer shall complete a report of the accident on a form prescribed by the State of Michigan and shall forward the report to the Michigan State Police within fourteen (14) days. A copy of the accident report shall be retained by the City of Fennville for not less than seven (7) years.

(c) Payments to the city for a violation of this ordinance will be reported to the Secretary of State on forms prescribed by the Secretary of State.

Sec. 58-169. Violations; Appearance Tickets

As used in this section, "operator" or "person" includes both a minor and non-minor operator or person.

(a) Except as provided in subsection (b), unless a specific subsection of the ordinance designates otherwise, any violation of this ordinance is a misdemeanor.

(b) Any person or operator who violates Section 3(b)(10), 3(b)(13), 3(c)(1), 3(c)(2), 7(b), or 7(g) is guilty of a municipal civil infraction and will be fined:
    (1) $50 plus costs for a first violation of this ordinance.
    (2) $250 plus costs for a first repeat offense.
    (3) $500 plus costs for a second repeat offense or any subsequent repeat offense.
        (i) As used in this subsection, "repeat offense" means a second, or any subsequent violation, of 3(b)(10), 3(b)(13), 3(c)(1), 3(c)(2), 7(b), or 7(g) as was committed in the first violation within any 12 month period and for which the person or operator admits responsibility or is determined to be responsible.

(c) If a specific subsection under any part of this municipal ordinance designates a violation as a state civil infraction, such violation is not a municipal civil infraction.

(d) If a specific subsection under any part of this municipal ordinance designates a violation as a crime, such violation is not a municipal civil infraction.

(e) A peace or police officer may issue appearance tickets for violations of this article pursuant to MCL 764.9a-e, MSA 28.868(1)-(5).

Chapters 59-61. RESERVED.

Chapter 62. UTILITIES.

Sec. 62-1 through 62-27. Reserved.

ARTICLE II. WATER

Sec. 62-28. 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:

System means all water mains, water supply facilities and their appurtenances which the city has ownership of or beneficial use of or shall have possession of or operating responsibility for, together with all works, plants, instrumentalities and properties used or useful in connection therewith in the obtaining of a water supply or in the treatment or distribution of water, and all extensions, enlargements and improvements thereto in the city. The system shall include the city's interest in any water mains located in streets which serve as a boundary between the city and surrounding municipalities.

Sec. 62-29. Third party contractor.

All rights, duties and prerogatives granted to the city in this article, shall be exercisable by any third party with whom the city has contracted or may in the future contract for the operation and maintenance of the system.

Sec. 62-30. Superintendent, appointment and duties.

a. The city commission shall, in accordance with the provisions contained in section 4.7 of the city Charter, appoint a superintendent of the water department who shall have charge of the maintenance and operation of the water department including the water supply, pumping equipment, treatment, if any, distribution system, water services from the mains, meters, fire hydrants and all other appurtenances pertaining to the waterworks system. He shall supervise all extensions and alterations of the waterworks system as the city commission may direct and he shall be responsible for the reading of all water meters.
b. The superintendent shall report to the city commission at such times and in such detail as it may from time to time direct, and this report may include his suggestions for improving the operation of the department. On the first Monday of each year he shall make a full report covering the water department, including the expenditures, number of gallons of water pumped and overall condition of the system.

Sec. 62-31. Adoption of rules and regulations.

The city may, from time to time, adopt by resolution rules and regulations governing the type and quality of materials and accessories to be used for connection to the water system, construction methods for connections to the system, and other operational and maintenance matters pertaining to the system. Violation of any such rule or regulation shall constitute a violation of this article and shall be subject to the penalties and other remedies prescribed in this article.

Sec. 62-32. Control of system; extension of water mains, permit.

1. The water distribution system, including mains and water services, shall be under the exclusive control of the superintendent and no person other than agents or employees of the water department shall cut, tap, change, obstruct, alter or interfere with any part of the system.
2. All petitions for the extension of water mains shall be presented to the city commission for its consideration and action thereon and it shall prescribe the manner in which the cost of such extension shall be defrayed.
3. Any person desiring to extend or install water mains at his expense shall first make an application for permission to do so to the city commission and such application shall be accompanied by plans and

specifications for the work he proposes to do. After such plans and specifications have been approved and the permit granted, all such work shall be done under the supervision of the waterworks superintendent. He may require tests to be made as he may consider necessary, including pressure tests for possible leaks and the water shall not be turned into the new mains, except for testing, until the installation has been accepted by him on behalf of the city commission. The provisions contained in this subsection shall apply to the installation of water main extensions within the city or outside the corporation limits of the city if such a permit has been granted. All water mains extended within the city or outside the corporation limits if laid in a public street or public thoroughfare shall become the property of the city water department.

Sec. 62-33. Connection to the system generally.

Connection to the system, directly or indirectly, and the use of water therefrom for any purpose shall only be in compliance with this article, and in compliance with all rules and regulations of the city applicable thereto.

Sec. 62-34. Cross connections prohibited.

No cross connection which would violate the water supply cross connection rules of the state department of health contained in paragraphs R325.11401 through R325.11407 of the Michigan Administrative Code, as such paragraphs shall be amended or supplemented from time to time, shall be made. The city shall have the right to enter at any reasonable time any premises connected to the system for the purpose of inspecting the piping system related thereto for cross connections. On request, the owners, lessees or occupants of any premises served by the system shall furnish to the city any pertinent information relating to the piping system on such premises. The city is authorized and directed to discontinue water service after reasonable notice to any premises where a cross connection has been made in violation of this article. In addition, the city may take such other precautionary measures as shall be necessary to eliminate any danger of contamination of the system. Water service which has been discontinued because of a cross connection shall not be restored until the cross connection has been eliminated and a charge to be established and adjusted from time to time by city commission resolution has been paid to the city.

Sec. 62-35. Application to connect.

No connection shall be made to the water system without obtaining a permit therefor. Application for such permit shall be made by the premises titleholder or land contract purchaser and filed with the city. The city shall issue such permit when all prescribed conditions have been met. Such permit shall be issued subject to such regulations as may be established and amended by city commission resolution from time to time.

Sec. 62-36. One service line per premises.

Unless otherwise authorized by the city in writing, each water service line shall serve one premises only.

Sec. 62-37. Work in right-of-way.

All work in the street right-of-way or on public easements, including service lines to the property line, shall be constructed and performed by the city or its agents or independent third party contractors. Any work done in any other (i.e. private) location which is intended to provide water service for more than one premises shall be designed to city standards, acceptable to the city engineer, and shall become a part of the system upon completion and acceptance by the city. The person who pays for any such work done in any other (i.e., private) location shall have the right to make one connection to the system with the payment of the indirect connection fee for one year after the acceptance of such work by the city as part of the system. Thereafter any connection to the system by such person shall be permitted only with the payment of the direct connection fee.

Sec. 62-38. General standards for installation of service pipes.

a. All water service pipes on either public or private property shall be laid on firm ground not less than four feet below the grade of the street. Service pipes laid in the same trench with a sewer shall be at least 18 inches distant from the sewer horizontally and at least the same distance above sewer. The service pipe shall be shelved into the side of a trench to ensure a firm bottom upon which the pipe will rest. Under no circumstances shall a service pipe be laid on a fill.

b. All water service pipes, from the distribution main to the street shut-off box or curb stop, shall be of lead, copper, or galvanized iron pipe not less than three-fourths-inch inside diameter, and approved by the waterworks superintendent. Curb stops shall be at least three-fourth-inch roundway stop and waste type and installed 12 inches inside the sidewalk line or at the street line.
c. A separate stop and waste shall be placed on the service pipe just inside the building wall on the influent side of the water meter where there is a meter. These stops shall be equal in quality to the curb stop.
d. The corporation stop, service pipe from the main to the curb stop, curb stop and stop box will be provided and installed and maintained by the water department after payment of the established fee for a water service permit as provided in this section. All service pipes from the curb stop to the building shall be installed and properly maintained by the owner. The owner shall keep the stop box free from dirt, stones, or other substances that may prevent the use of the key to curb stop.
e. All service pipes on private property and all water piping in all premises shall be installed by a licensed plumber. Licensed plumbers shall not interfere in any way with the service pipes installed by the water department and they shall not turn water on or off at the curb stop except for the purpose of testing their work, in which case the curb stop shall be left in the same condition and position as it was found. Any plumber called upon to shut off water and drain pipes in any premises shall do so inside the building only.

Sec. 62-39. Specifications for service pipes; temporary meters; use; turnoff; checkvalves; fire protection.

a. *Opening of curb stop.* When new service pipes are put into any premises, the service or curb stop shall be left in a closed position and will be opened only by an authorized employee of the water department and only at the request of the owner or his agent; provided, however, that exception shall be made for licensed plumbers in accordance with section 62-38(e).
b. *Temporary meters.* In cases where a permit has been issued as provided in section 62-38, and a water meter has been installed for the temporary use of water, the owner shall notify the water department upon completion of the work so that the meter may be read and the water service shut off.
c. *Change in use.* Where any building used as a single-family dwelling, and served by one water service pipe, is later to be used as a multiple-family dwelling, the owner shall notify the city clerk and thereafter the rates established for multiple-family dwellings will be charged to the owner.
d. *Use restricted.* No person shall take or use city water from premises other than his own, and no person shall sell or give away water from his own premises for any purpose. No connection through which water may pass from one property to another shall be made though the ownership of both properties may be the same. Any violation of the provisions contained in this subsection may result in the water being turned off and not turned on again until the payment of a fee determined by resolution of the city commission from time to time has been paid to the city clerk by the owner of the premises to which water service connection was made.
e. *Turnoff.* Wherever the water service has been turned off by authority of the water department for any reason, no person, except an authorized employee of the water department, may turn in on again. Whenever this rule is violated the water department may cause the water to be shut off and the curb stop sealed. Water will not again be turned on until the owner shall have paid to the city clerk double the rate for the water used in violation of this provision in addition to the estimated expense incurred by the water department in connection with turnoff, sealing stop and turning water on again.
f. *Checkvalves.* No steam boiler or water heater shall be connected to water pipes without an approved checkvalve between water meter, if there is one, and the boiler or water heater. If there is no meter the checkvalve shall be installed between the point where water service enters the building and the boiler or water heater.
g. *Inspections.* The water superintendent or any of his authorized agents shall have free access at all reasonable hours to inspect any premises supplied with water or to read a water meter. No person shall refuse to admit such agents of the water department to any premises for such purposes. In case any authorized employee is refused admittance, or is in any way hindered in making the necessary inspection or examination, the water may be turned off from such premises after giving 24 hours' notice to the owner or occupant thereof.
h. *Fire protection, testing.* Where water pipes are provided for fire protection on any premises, or where hose connections for fire apparatus are provided, each such connection or opening shall not be used for

other than fire purposes or for testing fire equipment. No tests shall be conducted unless a permit is first secured from the water superintendent.

i. *Use of fire hydrants, obstructions.* No person, except an employee of the city or other person duly authorized by the city, shall open or use any fire hydrant except in the case of an emergency, without first securing written permission from the city and paying such charges as the city may prescribe. Fire hydrants may be opened and used only by the water and fire departments of the city. No person shall in any manner obstruct or prevent free access to any fire hydrant by placing or storing temporarily or otherwise, any object, or materials of any kind within 20 feet of such fire hydrant.

Sec. 62-40. Service line maintenance.

The owner of each premises served by water shall maintain the service line in good condition with no leaks, breaks or other malfunctions from the street right-of-way to the building, structure or other improvement served with water.

Sec. 62-41. Damage to system facilities.

No person, except an employee of the city or other person duly authorized by the city, shall break, damage, destroy, uncover, deface or tamper with any structure, appurtenance or equipment which is part of the water system.

Sec. 62-42. Disruption of service.

The city shall not b e liable for any failure or deficiency in the supply of water to water customers, whether occasioned by maintenance or repair of the system or any other cause.

Sec. 62-43. Water emergency orders.

The city superintendent or, in his absence or inability to act, the top-ranking city public works employee on duty or on call may, by written order, subject to review and modification or reversal by the city commission, regulate, limit, or prohibit the use of water. Such order may restrict less essential water uses to the extent deemed necessary to ensure an adequate supply for essential domestic and commercial water needs and for fire protection. Notice of the promulgation of any such order shall be published in a newspaper of general circulation in the city as soon as reasonably possible after promulgation. Violation of such an order shall constitute a violation of this article and shall be subject to the penalties and other remedies prescribed in this article.

Sec. 62-44. Repairs or modifications; notice.

a. In the event of an unforeseen malfunction in the City's water system or for the purpose of making repairs or modifications, the city water department, through its employees and agents, shall have the authority to curtail or reduce the supply of water in any portion of the city for the time period necessary to undertake and complete the required repairs or modifications. The water department shall, where appropriate and reasonable, give timely and adequate notice, either written or verbal, to water customers affected by the curtailment or reduction.
b. Any action taken by the city superintendent, city commission, or other city officials or employees pursuant to this section shall not render the mayor, mayor pro tem, city commission or its individual members, the city or any of its officers, agents or employees liable or responsible for damage, inconvenience, injury or loss which may result therefrom.

Secs 62-45 through 62-55 Reserved.

DIVISION 2. METERS

Sec. 62-56. Inspection by city; inaccurate meters.

The city shall have the right to enter at any reasonable time any premises connected to the water system for the purpose of installing and/or reading the water meter or otherwise inspecting the piping systems which are connected to the water system. If any meter shall fail to register properly, the city shall estimate the amount of water consumed based on prior billing periods and bill the water customer accordingly. A water customer may

request that a water meter be tested for accuracy. If the meter is found accurate within American Waterworks Association standards, a charge to be established and adjusted from time to time by city commission resolution shall be made to the water customer. If the meter is found to be inaccurate within acceptable tolerances, the meter shall be repaired or a new meter shall be installed and no charge shall be made to the water customer either for the test or the meter repair or replacement.

Sec. 62-57. Sealed by water department.

Meters shall be sealed by the water department and no one except an authorized employee of the department may break or injure such seals. No person, other than authorized employees of the department may change the locations, alter or interfere in any way with a water meter.

Sec. 62-58. Repair or replacement of meter or connections.

If the water meter or connections are damaged for any reason, all required repair and replacement shall be at the expense of the owner of the premises. If the water meter or connections malfunction or are defective, repair or replacement shall be at the expense of the city.

Sec. 62-59. Expenses.

The expense of installing and maintaining meters will be borne by the water department; provided, however, that where replacements, repairs, or adjustments of a meter are made necessary by the act, negligence, or carelessness of the owner or occupant of the premises, the expense to the department caused thereby shall be charged to and collected from the owner of the premises.

Sec. 62-60. Placement.

All meters shall be set in an accessible location and in a manner satisfactory to the water superintendent. Where the premises contain no basement or accessible cellar, the meter shall be installed outside the building in a meter box or pit, the location of which shall be approved by the superintendent. Where it is necessary to set the meter in a pit or meter box, it shall be built at the expense of the owner as directed by the superintendent and to his entire satisfaction.

Sec. 62-61. Care and maintenance.

The owner of the premises where a meter is installed will be held responsible for its care and protection from freezing and from injury or interference by any person. In cases of injury to the meter, or in case of its stoppage or imperfect operation, the owner or occupant of the premises shall give immediate notice to the water department. All water furnished by the city and used on any metered premises must pass through the meter. No bypass or connection around the meter will be permitted. In the event of a meter getting out of order, or failing to register the amount consumed, the customer will be charged at the average quarterly consumption rate as shown over the period of the preceding four quarters when the meter was accurately registering.

Sec. 62-62. Testing.

Meters will be tested for accuracy by the department upon written request of the owner of the premises where the meter is located. An advance fee as established from time to time by resolution of the city commission will be charged to cover the cost of the test. If the test indicates that the meter registered over five percent more water than actually passes through it, another meter will be substituted for it and the fee will be refunded to the owner. The water bill may be adjusted in such a manner as may be fair and equitable.

Secs. 62-63 through 62-75. Reserved.

DIVISION 3. RATES AND CHARGES

Sec. 62-76. Connection fee.

All premises connecting to the water system shall pay a connection fee in an amount to be established and adjusted from time to time by city commission resolution. The connection fee shall be payable in full in cash at the time application is made for a permit connect to the system, which permit must be obtained before any

required building permit can be obtained. The city shall be the owner of the water service line from the water main to the edge of the street right-of-way. The connection fee shall either be a direct connection fee or an indirect connection fee.

1. A direct connection fee shall be charged for a tap to any water main, service lead or manhole which is part of the system.
2. An indirect connection fee shall be charged for a tap to any water main, service lead or manhole which is not part of the system, such as an onsite main connected by a user for the customer's own development.

Sec. 62-77. Tap charge.

Each person desiring to tap a single-family residential premises into the water system shall pay in cash at the time of application for a tap permit a charge for the privilege of using the facilities and receiving the service of the system in the amount determined by the city commission. The amount of such charge for premises other than single-family residential shall also be determined by the city commission. All new customers shall have meters installed upon connection to the system.

Sec. 62-78. Use fee.

Rates for water supplied to each premises connected to the system and a readiness-to-serve charge shall be established and adjusted from time to time by city commission resolution. No fee service shall be furnished by the system to the city or to any person, firm or corporation, public or private, or to any public agency or instrumentality. The city shall pay for water supplied to it or any of its departments or agencies at the rates established pursuant to this section. In addition, the city shall pay for water used through fire hydrants for fire protection and other purposes at rates established and adjusted from time to time by city commission resolution.

Sec. 62-79. Nonmetered rates.

Each nonmetered service rate shall be fixed by separate action of the city commission. All nonmetered customers will be billed twice yearly, and all bills must be paid by February 1 and August 1 of each year. A penalty of ten percent will be added to the amount of the bill if not paid within 30 days and water will be shut off if not paid within 90 days.

Sec. 62-80. Out-of-city customers.

Any out-of-city customer or potential customer shall attempt to annex to the city as a condition of obtaining water service from the city, unless the city commission adopts a resolution waiving such condition. Any such out-of-city customer or potential customer who is unable to annex to the city or who is not required to attempt to annex to the city shall, if serviced by the system, pay connection fees and use fees equal to 150 percent of the connection fees and use fees which would be charged the customer or potential customer if he were in the city, plus a per quarter service charge.

Sec. 62-81. Other charges.

Charges for water service turn-off and turn-on, service for a frozen meter, or water for a construction project shall be established and adjusted from time to time by city commission resolution. All such charges shall be paid in cash at the time the service is provided, or else included on the next quarterly bill sent by the city for water service. Water must be turned off or on by the city water superintendent. Water services discontinued or shut off shall not be restored until all sums then due and owning shall have been paid, plus a turn-on charge for all water which has been discontinued for delinquent water bills. Water turned off for other purpose than delinquent charges and at the request of the owner shall be turned on without charge, except it turned on after working hours then a charge shall be made.

Sec. 62-82. Billing and enforcement.

a. Charges for water service shall be billed quarterly. Bills shall be mailed by the 15th day of the month following the quarter for which the bills are rendered and shall be payable on or before the 15th day of the next month. Customers whose bills are not paid on or before the due date shall have a penalty charge, in an amount to be established and adjusted from time to time by city commission resolution, added

thereto and shall then be mailed a reminder bill which shall include the penalty amount. If the reminder bill is not paid within ten days after the date of mailing of such reminder bill, a 72-hour shutoff notice shall be sent by certified mail or personal delivery. If the bill is not paid within 72 hours after the date of the shutoff notice, then the customer's public water service shall be turned off immediately without further notice.

b. Water service shall not be restored until the entire amount of the water bill has been paid together with the penalty charge referred to above and a restoration charge, which shall be established and adjusted from time to time by city commission resolution. Charges for water service shall constitute a lien on the property served. On or before March 1 of each year the city treasurer shall deliver to the city assessor a certified statement of all water charges and penalty charges thereon then six months or more past due and unpaid. The city assessor shall then place such charges on the tax roll and the charges shall be collected and such lien shall be enforced in the same manner as is provided for general city taxes.
c. Any person violating any of the provisions of this article shall be responsible for a municipal civil infraction. Each day during which a violation of a provision of this article continues shall be deemed a separate and distinct violation. In addition to any other penalties, the city may maintain any equitable or legal action available to it for the abatement of any violation of this article.

Sec. 62-83. Determination of billing period; late charges; turn-on fee.

a. For the purpose of making and collecting water charges for water used by consumers, the calendar year shall be divided as follows: quarterly periods shall begin on January 1, April 1, July 1 and October 1, respectively, and shall extend to the first day of the succeeding quarterly period. Metered customers will be billed quarterly and all unmetered customers will be billed twice yearly on January 1 and July 1.
b. All charges for water supplied in any period must be paid within 30 days from due date. Ten percent of such charges will be added to the amount of the bill if not paid within 30 days and the water will be turned off if not paid within 90 days. When the water is turned off it will not be turned on again until all charges have been paid. A turn-off and turn-on fee as prescribed from time to time by resolution of the city commission will be added to the other charges due.
c. In case of a temporary vacancy of any premises, water will be turned off at the curb stop by the water department upon request of the owner or occupant of the premises made to the water department, and will be turned on again when requested and upon the payment of a turn-on fee as prescribed from time to time by resolution of the city commission. The minimum charge for any quarter in which vacancy occurs will be reduced in proportion to such vacancy but no rebate will be allowed for a period of less than 30 consecutive days in any one quarterly period. Where the premises are left unoccupied, and the owner or occupant does not request a turn-off by the water department, no rebate will be allowed. No allowance will be made for any water registered by a water meter that may leak or waste through pipes or plumbing fixtures.
d. The water rates or charges for water supplied by the water department now in effect or as they may be changed from time to time by resolution duly adopted by the city commission, are hereby made a part of this division.
e. The water system shall be operated on the basis of a fiscal year which is the same as the city fiscal year.

Secs. 62-84 through 62-105. Reserved.

ARTICLE III. SEWERS

DIVISION 1 GENERALLY

Sec. 62-106. Definitions.

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

System means all sewer lines, lift stations, pumping facilities, septic tanks, sewer collection facilities and their appurtenances which the city owns or which are owned on behalf of the city by county, or which the city has possession of and/or operating responsibility for, whether owned by the city or not, together with all works,

plants, instrumentalities and properties used or useful in connection therewith in collecting sewage and transmitting and conveying such collected sewage to sewage treatment facilities, and all extensions, enlargements and improvements thereto in the city.

Sec. 62-107. Penalties and enforcement.

Any person violating any of the provisions of this article shall be responsible for a municipal civil infraction. Each day during which a violation of a provision of this article continues shall be deemed a separate and distinct violation. In addition to any other penalties, the city may maintain any equitable or legal action available to it for the abatement of any violation of this article.

Sec. 62-108. Third-party contractor.

All rights, duties and prerogatives granted to the city in this article, shall be exercisable by any third party with whom the city has contracted or may in the future contract for the operation and maintenance of the systems.

Sec. 62-109. Adoption of rules and regulations.

The city may, from time to time, adopt by resolution rules and regulations governing the type and quality of materials and accessories to be used for connection to the sewer system, construction methods for connections to the system, and other operational and maintenance matters pertaining to the system. Violation of any such rule or regulation shall constitute a violation of this article and shall be subject to the penalties and other remedies prescribed in this article.

Sec. 62-110. Connection to the system generally.

Connection to the system, directly or indirectly, and the discharge of sewage into the system, shall only be in compliance with this article, and in compliance with all rules and regulations of the city applicable thereto.

Sec. 62-111. Application to connect.

No connection shall be made to the system without obtaining a permit therefor. Application for such permit shall be made by the premises titleholder or land contract purchased and filed with the city. The city shall issue such permit when all prescribed conditions have been met. Such permit shall be issued subject to such regulations as may be established and amended by city commission resolution from time to time.

Sec. 62-112. One service line per premises.

Unless otherwise authorized by the city in writing, each sewer service line shall serve one premises only.

Sec. 62-113. Work in Right-of-way.

All work in the street right-of-way or on public easements, including service lines to the property line, shall be constructed and performed by the city or its agents or independent third party contractors. Any work done in any other (i.e. private) location which is intended to provide sewer service for more than one premises shall be designed to city standards, acceptable to the city engineer, and shall become part of the system upon completion and acceptance by the city. The person who pays for any such work done in any other (i.e. private) location shall have the right to make one connection to the system with the payment of the indirect connection fee for one year after the acceptance of such work by the city as part of the system; thereafter any connection to the system by such person shall be permitted only with the payment of the direct connection fee.

Sec. 62-114. Right of city to install meters and inspect.

The city shall have the right to enter at any reasonable time any premises connected to the system for the purpose of installing and/or reading a meter or otherwise inspecting the piping systems which are connected to the system. If any meter shall fail to register properly, the city shall estimate the amount of sewer service provided to the premises based on prior billing periods and bill the customer accordingly. A customer may request that a meter be tested for accuracy. If the meter is found accurate within American Waterworks Association standards, a charge to be established and adjusted from time to time by city commission resolution shall be made to the

customer. If the meter is found to be inaccurate within acceptable tolerances, the meter shall be repaired or a new meter shall be installed and no charge shall be made to the customer either for the test or the meter repair or replacement.

Sec. 62-115. Connection line maintenance.

The owner of each premises served by a system sewer line shall maintain the connection line leading from the building, structure or other improvement served with sewer service to the system septic tank in good condition with no breaks, leaks or other malfunctions.

Sec. 62-116. Damage to system facilities.

No person, except an employee of the city or other person duly authorized by the city, shall break, damage, destroy, uncover, deface or tamper with any structure, appurtenance or equipment which is a part of the sewer system.

Sec. 62-117. Repair or replacement of meter or connections, cost.

If the meter or connections are damaged for any reason, all required repair and replacement shall be at the expense of the premises owner. If the meter or connections malfunction or are defective, repair or replacement shall be at the expense of the city.

Sec. 62-118. Disruption of service.

The city shall not be liable for any failure or deficiency in the operation of the system, whether occasioned by maintenance or repair of the system or any other cause.

Sec. 62-119. Sewer emergency orders.

The city superintendent or, in his absence or inability to act, the top-ranking city public works employee on duty or on call may, by written order, subject to review and modification or reversal by the city commission, regulate, limit, or prohibit the continuation of sewer services. Any such order may restrict less essential sewer services to the extent deemed necessary to ensure adequate sewer services for essential sewer needs. Notice of the promulgation of any such order shall be published in a newspaper of general circulation in the city as soon as reasonably possible after promulgation. Violations of such an order shall constitute a violation of this article and shall be subject to the penalties and other remedies prescribed in this article.

Secs. 62-120 through 62-130. Reserved.

DIVISION 2. SEWER USE

Sec. 61-131. Definitions.

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

BOD (denoting biochemical oxygen demand) means the quantity of oxidation of organic matter under standard laboratory procedure in five days at 20 degrees Celsius, expressed in milligrams per liter.

Building drain means that part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste and other drainage pipes inside the walls of the building and conveys it to the building sewer, beginning five feet outside the inner face of the building wall.

Building sewer means the extension from the building drain to the public sewer or other place of disposal.

Classes of users means the division of sanitary sewer customers into classes by similar process or discharge flow characteristics as follows:

Residential user means an individual home or dwelling unit including a mobile home, apartment, condominium or multifamily dwelling, that discharges only segregated domestic wastes or wastes from sanitary conveniences.

Commercial user means any retail or wholesale business engaged in selling merchandise or a service that discharges only segregated domesticated wastes or wastes from sanitary conveniences.

Governmental user means any federal, state, or local governmental office or governmental service facility that discharges only segregated domestic wastes or wastes from sanitary conveniences.

Industrial user mean:

1. Any nongovernmental user of publicly owned treatment works which discharges more than 25,000 gallons per day of sanitary waste, or a volume of process waste, or combined process and sanitary waste, equivalent to 25,000 gallons per day of sanitary waste.
2. Any nongovernmental user of a publicly owned treatment works which discharges wastewater to the treatment works which contains toxic pollutants or poisonous solids, liquids, or gases in sufficient quantity either singly or by interaction with other wastes, to injure or interfere with any sewage treatment process, constitute a hazard to humans or animals, create a public nuisance, or create any hazard in, or have an adverse effect on, the waters receiving any discharge from the treatment works.
3. All commercial users of an individual system constructed with grant assistance under section 201(h) of the act and this division.

Institutional user means any educational, religious or social organization such as a school, church, nursing home, hospital or other institutional user that dischargers only segregated domestic wastes or wastes from sanitary conveniences.

Combined sewer means a sewer receiving both surface runoff and sewage.

Compatible pollutant means biochemical oxygen demand, suspended solids, pH and fecal coliform bacteria, plus any additional pollutants identified in the NPDES permit if the treatment works was designed to treat pollutants to a substantial degree. The term "substantial degrees" generally means removals in the order of 80 percent or greater.

Garbage means solid wastes from the domestic and commercial preparation, cooking and dispensing of food, and from the handling, storage and sale of produce.

Incompatible pollutant means any pollutant that is not a compatible pollutant, as defined in this section.

Industrial cost recovery means the recovery from each industrial user, as defined, of that portion of the U.S. Environmental Protection Agency grant which is allocable to the treatment of industrial wastes from such industries. The industrial cost recovery charge is defined in the sewer rates and charges division.

Industrial wastes means the liquid wastes from industrial manufacturing processes, trade or business as district from segregated domestic strength wastes, or wastes from sanitary conveniences.

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

Infiltration/inflow means the total quantity of water from both infiltration and inflow.

Inflow means any waters entering the system through such sources as, but not limited to, building downspouts, footing or yard drains, cooling water discharges, seepage lines from springs and swampy areas, and storm drain cross connections.

Inspector means any person authorized by the city to inspect and approve the installation of building sewers and their connection to the public sewer system.

Manager means the mayor or this authorized operator, agent or representative.

Natural outlet means any outlet into a watercourse, pond, ditch, lake or other body of surface water or groundwater.

Normal strength sewage means a sanitary wastewater flow containing an average daily BOD of not more than 200 mg/l or an average daily suspended solids concentration of not more than 250 mg/l.

NPDES permit means the permit issued pursuant to the national pollution discharge elimination system for the discharge of wastewater into the waters of the state.

Operation and maintenance (O & M) costs means all costs, direct and indirect, other than debt service, necessary to ensure adequate wastewater treatment on a continuing basis, to conform with all related federal, state and local requirements, and to assure optimal long-term facility management (O&M costs include depreciation and replacement costs).

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

Pretreatment means the treatment of extra strength wastewater flows in privately owned pretreatment facilities prior to discharge into publicly owned sewage works.

Properly shredded garbage means the wastes from the preparation, cooking and dispensing of food that have been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than one-half inch in dimension.

Public sewer means a sewer in which all owners of abutting properties have equal rights, and which is controlled by public authority.

Replacement means necessary expenditures made during the service life of the treatment works to replace equipment and plant appurtenances required to maintain the intended performance of the treatment works.

Sanitary sewer means a sewer which carries sewage and to which stormwater, surface water and groundwater are not intentionally admitted.

Sewage means a combination of the water-carried wastes from residences, business buildings, institutions and industrial establishments, together with such groundwater, surface water and stormwater as may be present. The three most common types of sewage are:

Combined sewage means wastes including sanitary sewage, industrial sewage, stormwater and infiltration and inflow carried to the wastewater treatment facilities by a combined sewer.

Industrial sewage means a combination of liquid and water-carried wastes discharged from any industrial establishment and resulting from any trade or process carried on in that establishment, this shall include the wastes from pretreatment facilities and polluted cooling water.

Sanitary sewage means the combination of liquid and water carried wastes discharged from toilet and other sanitary plumbing facilities.

Sewage treatment facility means any arrangement of devices and structures used for treating sewage.

Sewage works means all facilities for collecting, pumping, treating and disposing of sewage.

Sewer means a pipe or conduit for carrying sewage.

Slug means any discharge of sewage or industrial waste which, in concentration of any given constituent, exceeds for any period of duration longer than 15 minutes more than five times the average 24-hour concentration during normal operation.

Storm drain (sometimes termed "storm sewer") means a sewer which carries stormwater, surface water and drainage, but excludes sewage and industrial wastes, other than unpolluted cooling water.

Suspended solids means solids that either float on the surface of, or in suspension in, water, sewage or other liquids and which can be removed by laboratory filtering.

User debt retirement charge means the charge levied on all users of the sewage works for the cost of any bond debt of which debt repayment is to be met from the revenues of such works.

User O & M charge means the charge levied on all users of the sewage works for the cost of any bond debt of which debt repayment is to be met from the revenues of such works.

Watercourse means a channel in which a flow of water occurs, either continuously or intermittently.

Wye branch means a local service connection to the sewer that is made at an angle similar to a "Y" so that a sewer cleaning rod will not come into the sewer at a right angle and penetrate the far side, but will travel down the course of the sewer.

Sec. 62-132. Prohibited acts.

a. It shall be unlawful for any person to place, deposit or permit to be deposited, in an unsanitary manner, upon public or private property within the city or in any area under the jurisdiction of the city, any human or animal excrement, garbage or other objectionable waste which ordinarily would be regarded as sewage or industrial wastes.
b. It shall be unlawful to discharge to any natural outlet within the city, or in any area under the jurisdiction of the city, any sanitary sewage, industrial waste, or other polluted waters, except where suitable treatment has been provided in accordance with subsequent provisions of this division.

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

Sec. 62-133. Installation of toilet facilities.

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

Sec. 62-134. Industrial waste discharges.

Any industry or structure discharging industrial wastes to the sanitary sewer, storm sewer or receiving stream shall file the material listed in this section with the manager. The city may require each person who applies for sewer service, receives sewer service, or through the nature of the enterprise creates a potential environmental problem, to file the following material:

1. A written statement setting forth the nature of the enterprise, the source and amount of water used, and the amount of water to be discharged, with the present or expected bacterial, physical, chemical, radioactive or other pertinent characteristics of the wastes.
2. A plan map of the building, works or complex, with each outfall to the surface waters, sanitary sewer, storm sewer, natural watercourse, or groundwaters noted, described and the waste stream identified.
3. Sample and test reports on appropriate characteristics of wastes on a schedule, at locations, and according to methods outlined in section 62-139(b) of this division. These reports shall also be filed with the appropriate state agencies.
4. An affidavit placing waste treatment facilities, process facilities, waste streams or other potential waste problems under the specific supervision and control of persons who have been certified by an appropriate state agency as properly qualified to supervise such facilities.
5. A report on raw materials entering the process or support system, intermediate materials, final product, and waste byproducts as those factors may affect waste control.
6. Records and reports on the final disposal of specific liquid, solids, sludge, oil, radioactive material, solvent or other waste.
7. If any industrial process is to be altered so as to include or negate a process waste or potential waste, written notification shall be given to the city and manager subject to approval.

Sec. 62-135. Private sewage disposal systems.

a. Where a public sanitary or combined sewer is not available under the provisions of section 62-133, the building sewer shall be connected to a private sewage disposal system complying with all requirements of the county health department.
b. At such time as a public sewer becomes available to a property served by a private sewage disposal system, as provided in section 62-133, a direct connection shall be made to the public sewer in compliance with this division; and any septic tanks cesspools and similar private sewage disposal facilities shall be abandoned and filled with suitable material.
c. The owner shall operate and maintain the private sewage disposal facilities in a sanitary manner at all times, at no expense to the city.
d. No statement contained in this section shall be construed to interfere with any additional requirements that may be imposed by the state department of public health.

Sec. 62-136. Building sewers.

a. *Permit required; bond; liability insurance.* No one, except a drain layer licensed by the city, shall uncover, make any connection with or opening into, use, alter or disturb any public sewer or appurtenances thereof, without first obtaining a written permit from the manager. Before a general license or particular

permit may be issued for excavating for plumbing or drainlaying in any public street, way or alley, the person applying for such permit shall execute unto the city and deposit with the treasurer, a bond with corporate surety in the sum of $1,000.00, conditioned that he will faithfully perform all work with due care and skill, and in accordance with the laws, rules, and regulations established under the authority of the city pertaining to sewers and plumbing. This bond shall state that the person will indemnify and save harmless the city and the owner of the premises against all damages, costs, expenses, outlays and claims of every nature and kind arising out of mistake or negligence or his part in connection with plumbing, sewer line division. Such bond shall remain in force and must be executed for a period of one year, except that, upon such expiration, it shall remain in force as to all penalties, claims and demands that may have accrued thereunder prior to such expiration. The licensee shall also provide public liability insurance for the protection of the city, the property owner, and all persons, to indemnify them for all damages caused by accidents attributable to the works, with limits of $100,000.00 for one person, $300,000.00 for bodily injuries per accident, and $50,000.00 for property damages.

b. *Application for permit, fee.* There shall be two classes of building sewer permits:
    1. Permits for residential and commercial service; and
    2. Permits for service to establishments producing industrial wastes.

    In either case, the owner or his agent shall make application on a special form furnished by the city. The permit application shall be supplemented by any plans, specifications or other information considered pertinent in the judgment of the manager. A minimum permit and inspection fee of $10.00 for a residential, $25.00 for a commercial, and $50.00 for an industrial building sewer permit shall be paid to the city at the time the application is filed.
c. *Costs; indemnification of city.* All costs and expenses incidental to the installation and connection of the building sewer shall be borne by the owner. The owner of the person installing the building sewer for such owner shall indemnify the city from any loss or damage that may directly or indirectly be occasioned by the installation of the building sewer.
d. *Separate sewer to be provided for each building, exceptions.* A separate and independent building sewer shall be provided for every building, except where one building stands at the rear of another on an interior lot and no private sewer is available or can be constructed to the rear building through an adjoining alley, court, yard, or driveway, the building sewer from the front building may be extended to the rear building and the whole considered as one building sewer. Other exceptions will be allowed only by special permission granted by the city.
e. *Use of old sewers.* Old building sewers or portions thereof may be used in connection with new buildings only when they are found, on examination and testing by the inspector of his representative, to meet all requirement of this division.
f. *Types of pipes permit.* The building sewer shall be constructed of one of the following types of pipe meeting the current ASTM specifications:
    1. Plastic (ABS) ASTM D 1527 SDR 35.
    2. Plastic (PVC) ASTM D 1785 SDR 35.
    3. Vitrified clay (VC) ASTM C-700 extra strength.
    4. Asbestos cement (AC) ASTM C-428, C1-2400.
    5. Cast iron extra heavy ASTM A-74.
    6. Nonreinforced concrete ASTM C-14 extra strength.

    If installed in filled or unstable ground, the building sewer shall be of cast iron extra heavy pipe, except that other types of pipe may be used if laid on a suitable improved bed or cradle as approved by the inspector.
g. *Joints and connections.* All building sewer joints and connections shall be made gastight and watertight and shall conform to the requirements of the correct building and plumbing codes. Vitrified clay sewer pipe shall be fitted with factory-made resilient compression joints meeting the current ASTM specifications for vitrified clay pipe joints having resilient properties. Asbestos cement or concrete sewer pipe joints shall be of rubber ring, flexible compression type, similar and equal to joints specified for vitrified clay pipe. The joints and connections shall conform to the manufacturer's recommendations.
h. *Size and slope.* The size and slope of the building sewers shall be subject to the approval of the inspector, but in no event shall the diameter be less than four inches. Minimum grade shall be as follows:

Six inch pipe: One-eighth inch per foot or one inch per eight feet.
Four inch pipe: One-fourth inch per foot or two inches per eight feet.

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

j. *Artificial lift.* In all buildings in which any building drain is too low to permit gravity flow to the public sewer, sanitary sewage carried by such drains shall be lifted by approved artificial means and discharged to the building sewer.

k. *Wye branches.* The connection of the building sewer into the public sewer shall be made at the "Y" branch designated for the property if such branch is available at a suitable location. Any connection not made at the designated "Y" branch in the main sewer shall be made only as directed by the inspector.

l. *Connection to public sewer.* The applicant for the building sewer shall notify the inspector when the building sewer is ready for inspection and connection to the public sewer. The connection shall be made under the supervision of the inspector or his representative.

m. *Excavation safeguards, restoration of streets, etc.* All excavations for building sewer installation shall be adequately guarded with barricades and lights so as to protect the public from hazard. Streets, sidewalks, parkways and other public property disturbed in the course of the work shall be restored in a manner satisfactory to the city.

n. *Requirements for connection.* No connection will be allowed unless there is capacity available in downstream sewers, pump stations, interceptors, force mains and treatment plant including capacity for BOD and suspended solids in the treatment plant.

Sec. 62-137. Prohibited discharges.

a. *To sanitary sewers.* No person shall discharge, or cause to be discharged, any stormwater, surface water, groundwater, roof runoff, subsurface drainage, uncontaminated cooling water, or unpolluted industrial process waters to any sanitary sewer.

b. *Stormwater, unpolluted drainage.* Stormwater and all other unpolluted drainage shall be discharged to such sewers as are specifically designated as combined sewers or storm sewers, or to a natural outlet approved by the appropriate state agency, to a storm sewer or natural outlet.

c. *Enumerated.* Except as provided in this section by specific limits, no person shall discharge any of the following described waters or wastes to any public sewers:

1. BOD in excess of 200 mg/l.
2. COD in excess of 450 mg/l.
3. Chlorine demand in excess of 15 mg/l.
4. Color, as from, but not limited to, dyes, inks or vegetable tanning solutions, shall be controlled to prevent light absorbency which would interfere with treatment plant processes or that prevent analytical determinations.
5. Explosive liquid, solid or gas, gasoline, benzene, naphtha, fuel oil or other flammable waste.
6. Garbage not properly shredded, no particle size greater than one-half inch.
7. Grease, oil, wax or fat, whether emulsified or not, in excess of 50 mg/l, or other substances which may solidify or become at temperatures between 32 degrees Fahrenheit and 150 degrees Fahrenheit.
8. Industrial wastes in concentrations above those listed below:

CD Cn+6 CR Cr Total Cu	Limitations set forth by appropriate state agencies to comply with federal guidelines for protection of treatment plant and receiving watercourse, and limitations set forth in NPDES permit.

Fe
Ni
Pb
Phenols
Zn

Or any other metallic compounds in sufficient quantity to impair the operations of the sewage treatment processes.

9. Inert suspended solids such as, but not limited to, fuller's earth, lime slurries, and lime residues, or dissolved solids such as, but not limited to, sodium chloride and sodium sulfate, in unusual concentrations.
10. Insoluble, solid or viscous substances such as, but not limited to, ashes, cinders, sand, mud, straw, shavings, metal, glass, tar, feather, plastics, wood, hair, fleshings, etc.
11. Noxious or malodorous gas such as, but not limited to, hydrogen sulfide, sulphur dioxide, or oxides of nitrogen, and other substances capable of public nuisance.
12. pH less than 6.5 and greater than 9.5.
13. Radioactive wastes or isotopes of such halflife or concentration which may exceed limits established by applicable state and federal regulations.
14. Suspended solids in excess of 250 mg/l.
15. Temperature of wastes less than 32 degrees Fahrenheit and greater than 150 degrees Fahrenheit.
16. Water or wastes containing substances which are not amenable to treatment or reduction by the sewage treatment processes employed, or are amendable to treatment to only such degree that the sewage treatment plant effluent cannot meet the requirements of other agencies having jurisdiction over discharge to the receiving waters.
17. Discharges that would result in excess foaming during the treatment process. Excess foaming is any foam which, in the opinion of the manager, is a nuisance in the treatment process.

d. *Action by city.* If any water or wastes are discharged, or are proposed to be discharged, to the public sewers, which waters contain the substances or possess the characteristics enumerated in subsection (c) of this section, and which in the judgment of the manager may have a deleterious effect upon the sewage works, processes, equipment or receiving waters, or which otherwise create a hazard to life or constitute a public nuisance, the city may:
    1. Reject the wastes.
    2. Require pretreatment to the level defined as "normal strength sewage."
    3. Require pretreatment to an acceptable level (other than normal strength sewage) for discharge to the public sewers.
    4. Require new industrial customers or industries with significant changes in strength or flow to submit prior information to the city concerning the proposed flows.

If the city permits the pretreatment or equalization of waste flows, the design and installation of the plants and equipment shall be subject to the review and approval of the manager and subject to the requirements of all applicable codes, ordinances and laws.

e. *Grease, oil and sand interceptors.* Grease, oil and sand interceptors shall be provided when, in the opinion of the manager, they are necessary for the proper handling of liquid wastes containing grease in excessive amounts, or any flammable wastes, sand or other harmful ingredients; except that such interceptors shall not be required for private living quarters or dwelling units. All interceptors shall be of a type and capacity approved by the manager, and shall be located as to be readily and easily accessible for cleaning and inspection.

Sec. 62-138. Preliminary treatment or flow equalizing facilities.

Where preliminary treatment or flow equalizing facilities are provided for any waters or wastes, they shall be maintained continuously in satisfactory and effective operation by the owner at his expense.

Sec. 62-139. Control Manholes.

a. When required by the city, the owner of any property serviced by a building sewer carrying industrial wastes shall install a suitable control manhole together with such necessary meters and other appurtenances in the building sewer to facilitate observation, sampling and measurement of the wastes. Such manhole, when required, shall be accessibly and safely located, and shall be constructed in accordance 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.
b. All measurements, tests and analyses of the characteristics of water and wastes to which reference is made in this division shall be determined in accordance with the most recent edition of Standard Methods for the Examination of Water and Sewage and shall be determined at the control manhole provided for, or upon suitable samples taken at, such 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.
c. Sampling shall be carried out by customarily accepted methods to reflect the effect of constituents upon the sewage works and to determine the existence of hazards to life, limb, and property. The particular analyses involved will determine whether a 24-hour composite of all outfalls of a premises is appropriate or whether grab samples should be taken. The responsibilities of industry are further defined in the industrial waste control program shown in section 62-143 et seq.

Sec. 62-140. Treatment of industrial waste of unusual strength.

No statement contained in this division 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, subject to payment therefor, by the industrial concern.

Sec. 62-141. Treatment of industrial cooling water.

Industrial cooling water containing such pollutants as insoluble oils or grease, or other suspended solids, shall be treated for removal of the pollutants and then discharged to the storm sewer.

Sec. 62-142. Entry authorized for inspection, sampling, etc.

Agents of the city, state department of natural resources, or U.S. environmental Protection Agency shall have the right to enter all properties for the purpose of inspecting, measuring, sampling and testing the wastewater discharge.

Sec. 62-143. Industrial waste control.

a. One person from each industry shall be delegated to the city to be responsible for industrial wastes admitted to the city sewers. He shall be involved with maintaining any pretreatment facility operations and assuring a continual high level of performance. In case no pretreatment is provided, he shall be involved with prevention of accidental discharges of process wastes admitted to the sanitary sewer system. He must become aware of all potential and routine toxic wastes generated by his industry. He must be informed of all process alterations which could, in any manner, increase or decrease normal daily flow or waste strength discharged to the sanitary sewers.
b. This industrial representative shall catalogue all chemicals stored, used or manufactured by his industry. Such a listing shall include specific chemical names, not manufacturer's codes. These wastes admitted to the sanitary sewer are a prime concern; however, all discharges shall be catalogued. An estimate of daily average flows and strengths shall be made including process, cooling, sanitary, etc. Such a determination should separate the flows according to appropriate categories. The flow and chemical listing is to be sent to the manager and shall be treated as confidential information.
c. The industrial representative should attempt to determine whether or not large process alternations will occur during the next few years—one year, two years, five years. He should consult with management to determine if such alterations are scheduled and forthcoming.
d. A sketch of the plant buildings shall be made, including a diagram of process and chemical storage areas. Location of any pretreatment equipment must be indicated, and floor drains located near process and storage areas must be noted. Manhole and sewer locations at the industry's point of discharge into the municipal collection system must be included on the plant layout sketch.

e. There shall be separation of spent concentrates from the sanitary sewer to prevent toxic wastes from upsetting the treatment plant. Supervision and operation of the pretreatment equipment for spent concentrates, as well as all toxic wastes and high strength organic wastes to an acceptable level as detailed in this division, is the responsibility of the industrial representative. All sludges generated by such treatment must be handled in an acceptable manner, such as in a designated area of a sanitary landfill or by a licensed waste hauler. Adequate segregation of those waters and wastes to be pretreated to meet discharge limits is a vital portion of the industrial effort to prevent operational problems at the wastewater treatment plant.

f. Throughout the industry, adequate secondary containment of curbing must be provided to protect all floor drains from accidental spills and discharges to the receiving sewers. Such curbing should be sufficient to hold 150 percent of the total process area tank volume. All floor drains found within the containment area must be plugged and sealed. Spill-throughs or sumps within process areas must discharge to appropriate pretreatment tanks. Secondary containment should be provided for storage tanks which may be serviced by commercial haulers and for chemical storage areas.

g. An adequate sampling vault or manhole must be provided in a fully accessible place for city personnel to obtain samples and flow measurement data. The complexity of the vault will vary with the sampling requirements the manager determines necessary to protect the treatment plant and receiving streams. Should the city desire continual flow recording and long duration, 24-hour composite sampling, than a more complex manhole would be mandatory, complete with 110 volt AC. Samples collected may be divided between the industry and city for analysis if so desired by the industry. The sampling vault shall be located so as to give access by the city personnel without entering the industrial property.

h. A yearly surveillance fee may be initiated to reduce some equipment costs or for maintenance or monitoring devices. If a graduated surcharge is deemed necessary to check industrial discharges, than a factor should be incorporated to reduce the costs as industry lowers its waste strength. Consequently, a direct dollar incentive would be given to stimulate continued progress in industrial waste control. A graduated surcharge may not be required if industry provides adequate safeguard devices and treatment facilities to ensure protection of the municipal treatment plant and biological processes involved.

Sec. 62-144. City inspections of private industry.

a. The manager and other duly authorized employees of the city, bearing proper credential and identification, shall be permitted to enter upon all properties for the purpose of inspection, observation, measurement, sampling and testing in accordance with the provisions of this division. The manager or his representatives shall have no authority to inquire into any processes including metallurgical, chemical, oil refining, ceramic, paper or other industries beyond that point having a direct bearing on the kind and source of discharge to the sewers and waterways or facilities for waste treatment.

b. While performing the necessary work on private properties referred to in subsection (a) of this section, the manager or duly authorized employees of the city shall observe all safety rules applicable to the premises established by the company and the company shall be held harmless for injury or death to the employees, and the city shall indemnify the claims and demands for personal injury or property damage asserted against the company and growing out of the gauging and sampling operation, except as such may be caused by negligence or failure of the company to maintain safe conditions as required in subsection 62-139(b).

Sec. 62-145. Tampering with the sewage works.

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 sewage works. Any person violating this provision shall be subject to immediate arrest under charge of disorderly conduct.

Sec. 62-146. Installation and maintenance of sewers; inspections; amendments.

a. At the time of original construction of the public sewer, the city shall install that portion of the building sewer from the public sewer to the lot or easement line of all occupied premises. The city shall maintain, at its expense, the public sewer. Those customers making connection at the time of original construction

of the public sewer shall install, at their expense, that portion of the building sewer from such lot or easement line to their premises. The customer shall maintain, at his expense, the building sewer.

b. Those customers making connections subsequent to the time of original construction of the public sewer shall install, at their expense, that portion of the building sewer from the public sewer to the lot or easement line in addition to that portion of the building sewer from such lot or easement line to their premises.
c. The premises receiving sanitary sewer service shall, at all reasonable hours, be subject to inspection by duly authorized personnel of the city.
d. The rules set out in this division may be changed or amended.

Sec. 62-147. Penalties for violations of division.

a. Any person found to be violating any provision of this division, except section 61-143 et seq., shall be served with written notice stating the nature of the violation and providing a reasonable time limit for the satisfactory correction thereof. The offender shall, within the period of time stated in such notice, permanently cease all violations.
b. A violation of this division is also declared to be a public nuisance and the city may enforce same by injunction or other remedy, including the right to correct the violation and bill the owner or person in charge of the premises therefor.
c. Any business, industry or person violating any of the provisions of this division which result in fines or penalties being levied against the city shall become liable for such fine or penalty, plus any expenses, loss or damage occasioned by such violation. This fine or penalty would be levied in addition to the fine identified in subsection (b) of this section.

Secs. 62-148 through 62-160. Reserved.

DIVISION 3. RATES AND CHARGES

Sec. 62-161. Definitions.

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

Revenues or net revenues shall be understood to have the meanings as defined in section 3, Act No. 94 of the Public Acts of Michigan of 1933 (MCL 141.101 et seq., MSA 5.2731 et seq.) as amended.

The system means all facilities of the city and all subsequent additions, including all sewers, pumps, lift stations, and all other facilities used or useful in the collection, treatment and disposal of domestic, commercial or industrial wastes, including all appurtenances thereto and including all extensions and improvements thereto which may be acquired.

Sec. 62-162. Operation and management of system.

The operation, maintenance, alteration, repair and management of the system shall be under the supervision and control of the city. The city may employ such persons in such capacities as it deems advisable to carry on the efficient management and operations of the system and may make such rules, orders and regulations as it deems advisable and necessary to ensure the efficient management and operation of the system.

Sec. 62-163. Fiscal year.

The system shall be operated on the basis of a fiscal year which is the same as the city's fiscal years.

Sec. 62-164. Connection fee.

All premises connecting to the system shall pay a connection fee in an amount to be established and adjusted from time to time by city commission resolution. The connection fee shall be payable in full in cash at the time application is made for a permit to connect to the system, which permit must be obtained before any required building permit can be obtained. The city shall be the owner of the sewer stub line from the sewer line to the property line. The connection fee shall either be a direct connection fee or an indirect connection fee.

(1) A direct connection fee shall be charged for a tap to any sewer main, service lead or manhole which is part of the system.

(2) An indirect connection fee shall be charged for a tap to any sewer main, service lead or manhole which is not part of the system, such as an onsite main connected by a customer for the customer's own development.

Sec. 62-165. Inspection charge.

The city commission may, by resolution, establish and adjust from time to time an inspection charge for all premises connecting to the system.

Sec. 62-166. Use fee.

a. A commodity charge for sewer service supplied to each premises connected to the system and a readiness-to-serve charge shall be established and adjusted from time to time by city commission resolution. The commodity charge shall be based on the actual volume of use and the assigned waste load of each particular customer or class of customer. No free service shall be furnished by the system to the city or to any person, firm or corporation, public or private, or to any public agency or instrumentality. The city shall pay for sewer service supplied to it or any of its departments or agencies at the rates established pursuant to this section.

b. The quarterly sewer user charges shall consist of a user O & M charge and a user debt retirement charge.

c. The quarterly user charge, so payable by each premises, shall be a readiness-to-serve charge plus a per 1,000 gallon treatment charge and shall consist of a basic charge for operation, maintenance, replacement and depreciation of the sewage works. The readiness to serve charge is based on peak demands of mains and is a prescribed by resolution of the city commission from time to time. For miscellaneous services or where a premises received sewer service but not water service for which a special rate shall be established, such rates shall be fixed by the city commission by resolution under the same regulations as for the passing of ordinances.

d. The charges for services which are under the provisions of section 21, Act No. 94 of the Public acts of Michigan of 1933 (MCL 141.101 et seq., MSA 5.2731 et seq.), as amended, made a lien on all premises served thereby, and are hereby recognized to constitute such lien; and whenever any such charge against any piece of property shall be delinquent for six months, the city official in charge of the collection thereof shall certify annually, on August 1 of each year, to the tax assessing officer of the city, the next tax roll as a charge against such premises and shall be collected and the lien thereof enforced in the same manner as general city taxes against such premises are collected and the lien thereof enforced; provided, however, where notice is given that a tenant is responsible for such charges and service as provided by such section 21, no further service shall be rendered such premises until a cash deposit shall have been made as security for payment of such charges and service.

e. The city shall have the right to adjust the user charge based on an annual audit review of the sewage works operation and maintenance costs. Such an audit review shall be conducted annually by the city.

f. All customers of the sewage works will be included in a user class and each user class will pay for its proportionate use of the sewage works in terms of volume and pollutant loading. Sewer user chares are levied to defray the cost of operation, maintenance, including replacement, and debt retirement of the sewage works. The classes of users of the sewage works, for the purpose of determining the user charges, shall be as follows:

    1. *Class 1 – residential* shall include those customers which discharge only segregated domestic wastes or wastes from sanitary conveniences and are define as residential users in division 2 of this article.
    2. *Class II – Commercial* shall include those customers which discharge only segregated domestic wastes or wastes from sanitary conveniences and are defined as commercial users in division 2 of this article.
    3. *Class III – Institutional* shall include those customers which discharge only segregated domestic wastes or wastes from sanitary conveniences and are defined as institutional users in division 2 of this article.

4. *Class IV – Governmental* shall include those customers which discharge only segregated domestic wastes or wastes from sanitary conveniences and are defined as governmental users in division 2 of this article.
5. *Class V – Industrial* shall include those customers which discharge industrial sewage and are defined as industrial users in division 2 of this article. An industrial user, for the purpose of the industrial cost recovery system, shall be a user as defined in division 2 of this article, except that user which discharges less than 25,000 gallons per day of sanitary waste, if the discharge does not contain pollutants which interfere, or are incompatible, with the treatment process, or contaminated or reduce the utility of sludge.

g. Each industrial user, as defined in subsection (f) of this section, shall pay his share of the operation, maintenance, replacement and depreciation costs for treatment of the industrial sewage, plus an amount that may be paid by industrial users for the recovery of the portion of federal grants allocated to the treatment of industrial sewage as defined in section 62-136 et seq.
h. Each industrial sewer customer that discharges to the system process wastewater which does not exceed the limits of normal strength sewage shall be charged and shall make quarterly payments to the city in amounts based on the actual volume and strength of the flow from such premises.
i. Each industrial user that proposes to discharge to the system process wastewater which exceeds the limits of normal strength sewage will be required to either;
    1. Provide satisfactory pretreatment to reduce the strength of the wastewater to normal strength sewage; or
    2. Pay a surcharge determined by the relative concentration of BOD suspended solids, or other pollutant as compared to normal strength sewage.
j. Prior to discharging to the system process wastewater which exceeds the limits of normal strength sewage, a permit must be obtained from the city.

Sec. 62-167. Industrial cost recovery charges.

a. Each industrial user, as defined in this division and in division 2 of this article, that discharges to the system will be subject to an industrial cost recovery charge equal to each industrial user's allocable share of the federal construction grant received after March 1, 1973, based on pollutant loading, volume and delivery flow rate.
b. An industrial user, for the purpose of the industrial cost recovery system, shall be as defined in division 2 of this article.
c. A nonindustrial user is any user of the system that is not an industrial user. Nonindustrial users are not subject to the industrial cost recovery system.
d. The industrial cost recovery period is the time period that is provided to allow industrial users to pay their total industrial cost recovery charge. The period of time shall be equal to 30 years or the useful life of the system, whichever is less, as determined by the city.
e. The industrial cost recovery charge for each industrial user shall be a portion of the federal construction grant amount equal in proportion to the industrial share of the total capacity of the system in terms of strength volume and delivery flow rate. Specifically, the industrial share of the total capacity shall be determined by one of the three following relationships, whichever produces the largest value:
    1. Industrial volume contribution per unit. Plant design volume per unit of time.
    2. Industrial BOD contribution per unit of time. Plant suspended solids design capacity per unit of time.
    3. Industrial suspended solids contribution per unit of time. Plant suspended solids design capacity per unit of time.

Industrial cost recovery charges shall be calculated and paid annually in an amount equal to the total industrial cost recovery charge for any industrial user divided by the number of years in the cost recovery period.

f. Costs recovered from industrial users shall be deposited by the city in a separate account identified as the "industrial cost recovery account." Funds shall be distributed from the industrial cost recovery account with U.S. Environmental Protection Agency rules and in the following manner:
    1. The city shall retain 50 percent of the recovered amount. The remainder, together with any interest earned thereon, shall be returned to the U.S. Treasury on an annual basis.

2. Eighty percent of the retained amount, together with interest earned thereon, shall be used solely for the eligible costs of expansion or reconstruction of the treatment works. The remainder of the retained amount may be used as the city sees fit.
3. Pending use, the city shall invest the retained amounts for expansion and reconstruction in:
    a. Obligations of the U.S. government;
    b. Obligations guaranteed as to principal and interest by the U.S. government or any agency thereof; or
    c. Shall deposit such amounts in accounts fully collateralized by obligations of the U.S. government or any agency thereof.

g. The city shall have the right to adjust the industrial cost recovery charges to any industrial user that makes a significant change in the volume strength or delivery flow rate. Industrial users will only be required to pay for those years of the cost recovery period that they use the system and only at an annual rate in proportion to the length of the entire recovery period.

Sec. 62-168. Out-of city customers.

All out-of-city customers or potential customers shall attempt to annex to the city as a condition of obtaining sewer service from the city, unless the city commission adopts a resolution waiving such condition. Any such out-of-city customer or potential customer who is unable to annex to the city or who is not required to attempt to annex to the city shall, if serviced by the system, pay connection fees which would be charged the customer or potential customer if he were in the city.

Sec. 62-169. Sanitary sewer special assessments.

a. All premises connected directly or indirectly to the sanitary sewers of the city, and being located on land included within the boundaries of a sanitary sewer special assessment district, shall be charged an assessment fee in accordance with the provisions of such special assessment district. In addition, where no lateral stub exists, the actual cost of the installation of such stub, along with the service lateral, will be borne entirely by the property owner.
b. Where a sewer already exists, each person desiring to tap single-family residential premises into the system shall pay in cash at the time of application for a tap permit a charge for the privilege of using the facilities and receiving the service of the system in an amount to be determined by the city commission.

Sec. 62-170. Billing and enforcement.

a. Charges for sewer service shall be billed quarterly. Bills shall be mailed by the 15th day of the month following the quarter for which the bills are rendered and shall be payable on or before the 15th day of the next month. Customers whose bills are not paid on or before the due date shall have a penalty charge, in an amount to be established and adjusted from time to time by city commission resolution, added thereto and shall then be mailed a reminder bill which shall include the penalty amount. If the reminder bill is not paid within ten days after the date of mailing, a 72 hour shutoff notice shall be sent by certified mail or personal delivery. If the bill is not paid within 72 hours after the date of the shutoff notice, then the customer's public sewer service shall be turned off immediately and without further notice.
b. Sewer service shall not be restored until the entire amount of the sewer bill has been paid, together with the penalty charge referred to in this section and a restoration charge, which shall be established and adjusted from time to time by city commission resolution. Charges for sewer service shall constitute a lien on the property served. On or before March 1 of each year the city treasurer shall delivery to the city assessor a certified statement of all sewer charges and penalty charges thereon then six months or more past due and unpaid. The city assessor shall then place such charges on the tax roll and the charges shall be collected and such lien shall be enforced in the same manner as is provided for general city taxes.
c. All bills and notices relating to the conduct of the business of the city and of the sewage works will be mailed to the customer at the address listed on the application for the connection permit, unless a change of address has been filed in writing at the business office of the City Clerk, 222 S. Maple, Fennville, Michigan. The city shall not otherwise be responsible for delivery of any bill or notice, nor will the customer be excused from nonpayment of a bill or from any performance required in such notice.

d. Applications for connection permits may be canceled and/or sewer service disconnected by the city for any violation of any rule, regulation or condition of service, and especially for any of the following reasons:
    1. Misrepresentation in the permit application as to the property or residential equivalents to be serviced by the sewage works.
    2. Nonpayment of bills.
    3. Improper or imperfect service pipes and failure to keep the same in a suitable state of repair.
e. Where the sewer service supplied to a customer has been discontinued for nonpayment of a delinquent bill, the city reserves the right to request a nominal sum be placed on deposit with the city for the purpose of establishing or maintaining any customer's credit. Service shall not be reestablished until all delinquent charges and penalties may be recovered by the city by court action.
f. The city shall make all reasonable efforts to eliminate interruptions of service and, when such interruptions occur, will endeavor to reestablish service with the shortest possible delay. Whenever service is interrupted for the purpose of working on the sewage works, all customers affected by such interruption will be notified in advance whenever it is possible to do so.

CHAPTER 62 ZONING.

Sec. 72-1 Adopted by reference.

A zoning ordinance regulating the development and use of land has been adopted by the City Commission of the City of Fennville.