

TITLE XI: BUSINESS REGULATIONS

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CHAPTER 110: AMUSEMENTS

Section

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AMUSEMENT DEVICES

' 110.01 LICENSE REQUIRED.

No person shall keep and maintain, in any public place, shuffleboards for hire, pinball machines, or other mechanical amusement devices requiring the insertion of coins or tokens for the operation thereof, without first having obtained a license therefor in the manner set forth in this subchapter.

(Prior Code, ' 804.01) (Ord. passed 6-13-1949)

Penalty, see ' 110.99

' 110.02 LICENSE APPLICATION; FEE.

Any person who wishes to keep and maintain, in any public place, any shuffleboard for hire, pinball machine, or other mechanical amusement device requiring the insertion of coins or tokens for the operation thereof shall make application for a license

to the Clerk, in writing, stating the proposed location, the number of shuffleboards, pinball machines, or other mechanical amusement devices requiring the insertion of coins or tokens for the operation thereof, and the proposed owners of the devices. The application shall then be voted upon by the Council at its next regular meeting.

(Prior Code, ' 804.02) (Ord. passed 6-13-1949; Ord. 2005-3, passed 1-10-2005)

' 110.03 GAMBLING PROHIBITED.

No person shall allow gambling in any form to be indulged in connection with the operation of any of the amusement devices referred to in ' 110.02.

(Prior Code, ' 804.03) (Ord. passed 6-13-1949)

Penalty, see ' 110.99

BILLIARD AND POOL TABLES

' 110.15 USE FOR GAMBLING PROHIBITED.

No person keeping a billiard or pool table in the village shall knowingly permit any person to make use of the table for the purpose of playing for stakes or gambling of any kind.

(Prior Code, ' 808.01) (Ord. passed 6-8-1936)

Penalty, see ' 110.99

' 110.16 MINORS.

No person keeping a billiard or pool table in the village shall knowingly permit any minor under the age of 18 years, who is unsupervised by a parent or guardian, to play thereon.

(Prior Code, ' 808.02) Penalty, see ' 110.99

' 110.99 PENALTY.

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

(B) Any person who is convicted twice of a violation of ' ' 110.01 through 110.03 shall forfeit his or her license and all moneys paid thereon, and shall not be eligible for another license for a period of two years following the date of the last conviction.

(Prior Code, ' 804.99) (Ord. passed 6-13-1949)

CHAPTER 111: TELECOMMUNICATIONS RIGHTS-OF-WAY

Section

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' 111.01 PURPOSE.

The purposes of this chapter are to regulate access to and ongoing use of public rights-of-way by telecommunications providers for their telecommunications facilities while protecting the public health, safety, and welfare and exercising reasonable control of the public rights-of-way in compliance with the Metropolitan Extension Telecommunications Rights-of-Way Oversight Act (Act), Public Act 48 of 2002, being M.C.L.A.

' ' 484.3101 *et seq.*, and other applicable law, and to ensure that the village qualifies for distributions under the Act by modifying the fees charged to providers and complying with the Act.
(Prior Code, ' 1024.01) (Ord. 2002-4, passed 12-9-2002)

' 111.02 CONFLICT.

Nothing in this chapter shall be construed in such a manner as to conflict with the Act or other applicable law.
(Prior Code, ' 1024.02) (Ord. 2002-4, passed 12-9-2002)

' 111.03 DEFINITIONS.

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

ACT. The Metropolitan Extension Telecommunications Rights-of-Way Oversight Act, Public Act 48 of 2002, being M.C.L.A. ' ' 484.3101 *et seq.*, as amended from time to time.

PERMIT. A nonexclusive permit issued pursuant to the Act and this chapter to a telecommunications provider to use the public rights-of-way in the village for its telecommunications facilities.

VILLAGE. The Village of Pentwater, Michigan.

VILLAGE COUNCIL. The Village Council of the Village of Pentwater, Michigan, or its designee. This section does not authorize delegation of any decision or function that is required by law to be made by the Village Council.

VILLAGE MANAGER. The Village Manager or his or her designee.

(b) All other terms used in this chapter shall have the same meaning as defined or as provided in the Act, including, without limitation, the following.

AUTHORITY. The Metropolitan Extension Telecommunications Rights-of-Way Oversight Authority created pursuant to ' 3 of the Act.

MPSC. The Michigan Public Service Commission in the Department of Consumer and Industry Services, and shall have the same meaning as the term ACommission@ in the Act.

PERSON. An individual, corporation, partnership, association, governmental entity, or any other legal entity.

PUBLIC RIGHT-OF-WAY. The area on, below, or above a public roadway, highway, street, alley, easement, or waterway. **PUBLIC RIGHT-OF-WAY** does not include a federal, state, or private right-of-way.

TELECOMMUNICATION FACILITIES or FACILITIES. The equipment or personal property, such as copper and fiber cables, lines, wires, switches, conduits, pipes, and sheaths, which are used to or can generate, receive, transmit, carry, amplify, or provide telecommunication services or signals. **TELECOMMUNICATION FACILITIES or FACILITIES** do not include antennas, supporting structures for antennas, equipment shelters or houses, and any ancillary equipment and miscellaneous hardware used to provide federally-licensed commercial mobile service as defined in ' 332(d) of Part I of Title III of the Communications Act of 1934,

Chapter 652, 48 Stat. 1064, 47 U.S.C. ' 332, and further defined as Acommercial mobile radio service@ in 47 C.F.R. ' 20.3, and service provided by any wireless, two-way communication device.

TELECOMMUNICATIONS PROVIDER, PROVIDER, and TELECOMMUNICATIONS SERVICES. Those terms as defined in ' 102 of the State Telecommunications Act, Public Act 179 of 1991, being M.C.L.A. ' 484.2102. **TELECOMMUNICATIONS PROVIDER** does not include a person or an affiliate of that person when providing a federally-licensed commercial mobile radio service, as defined in ' 332(d) of Part I of the Communications Act of 1934, Chapter 652, 48 Stat. 1064, 47 U.S.C. ' 332, and further defined as Acommercial mobile radio service@ in 47 C.F.R. ' 20.3, or service provided by any wireless, two-way communication device. For the purpose of the Act and this chapter only, a provider also includes all of the following:

(a) A cable television operator that provides a telecommunications service;

(b) Except as otherwise provided by the Act, a person who owns telecommunication facilities located within a public right-of-way; and

(c) A person providing broadband internet transport access service. (Prior Code, ' 1024.03) (Ord. 2002-4, passed 12-9-2002)

' 111.04 PERMIT REQUIRED.

(A) *Permit required.* Except as otherwise provided in the Act, a telecommunications provider using or seeking to use public rights-of-way in the village for its telecommunications facilities shall apply for and obtain a permit pursuant to this chapter.

(B) *Application.* Telecommunications providers shall apply for a permit on an application form approved by the MPSC in accordance with ' 6(1) of the Act. A telecommunications provider shall file one copy of the application with the Village Clerk, one copy with the Village Manager, and one copy with the

Village Attorney. Upon receipt, the Village Clerk shall make two copies of the application and distribute a copy to the Village Manager and Village President. Applications shall be complete and include all information required by the Act, including, without limitation, a route map showing the location of the provider=s existing and proposed facilities in accordance with ' 6(5) of the Act.

(C) *Confidential information.* If a telecommunications provider claims that any portion of the route maps submitted by it as part of its application contain trade secret, proprietary, or confidential information, which is exempt from the Freedom of Information Act, Public Act 442 of 1976, being M.C.L.A. ' ' 15.231 through 15.246, pursuant to ' 6(5) of the Act, the telecommunications provider shall prominently so indicate on the face of each map.

(D) *Application fee.* Except as otherwise provided by the Act, the application shall be accompanied by a one-time nonrefundable application fee in the amount of \$500.

(E) *Additional information.* The Village Manager may request an applicant to submit any additional information that the Village Manager deems reasonably necessary or relevant. The applicant shall comply with all the requests in compliance with reasonable deadlines for the additional information established by the Village Manager. If the village and the applicant cannot agree on the requirement of additional information requested by the village, the village or the applicant shall notify the MPSC as provided in ' 6(2) of the Act.

(F) *Previously-issued permits.* Pursuant to ' 5(1) of the Act, authorizations or permits previously issued by the village under ' 251 of the State Telecommunications Act, Public Act 179 of 1991, being M.C.L.A. ' 484.2251, and authorizations or permits issued by the village to telecommunications providers prior to the 1995 enactment of ' 251 of the State Telecommunications Act but after 1985 shall satisfy the permit requirements of this chapter.

(G) *Existing providers.* Pursuant to ' 5(3) of the Act, within 180 days from 11-1-2002, the effective date of the Act, a telecommunications provider with facilities located in a public right-of-way in the village as of the date, that has not previously obtained authorization or a permit under ' 251 of the State Telecommunications Act, Public Act 179 of 1991, being M.C.L.A. ' 484.2251, shall submit to the village an application for a permit in accordance with the requirements of this chapter. Pursuant to ' 5(3) of the Act, a telecommunications provider submitting an application under this division (G) is not required to pay the \$500 application fee required under division (D) above. A provider under this division (G) shall be given up to an additional 180 days to submit the permit application if allowed by the Authority, as provided in ' 5(4) of the Act.

(Prior Code, ' 1024.04) (Ord. 2002-4, passed 12-9-2002) Penalty, see ' 10.99

' 111.05 ISSUANCE OF PERMIT.

(A) *Approval or denial.* The authority to approve or deny an application for a permit is hereby delegated to the Village Manager. Pursuant to ' 75(3) of the Act, the Village Manager shall approve or deny an application for a permit within 45 days from the date a telecommunications provider files an application for a permit under ' 111.04(B) for access to a public right-of-way within the village. Pursuant to ' 6(6) of the Act, the Village Manager shall notify the MPSC when the Village Manager has granted or denied a permit, including information regarding the date on which the application was filed and the date on which permit was granted or denied. The Village Manager shall not unreasonably deny an application for a permit.

(B) *Form of permit.* If an application for permit is approved, the Village Manager shall issue the permit in the form approved by the MPSC, with or without additional or different permit terms, in accordance with ' ' 6(1), 6(2), and 15 of the Act.

(C) *Conditions.* Pursuant to ' 15(4) of the Act, the Village Manager may impose conditions on the issuance of a permit, which conditions shall be limited to the telecommunications provider=s access and usage of the public right-of-way.

(D) *Bond requirement.* Pursuant to ' 15(3) of the Act, and without limitation on division (C) above, the Village Manager may require that a bond be posted by the telecommunications provider as a condition of the permit. If a bond is required, it shall not exceed the reasonable cost to ensure that the public right-of-way is returned to its original condition during and after the telecommunications provider=s access and use.

(Prior Code, ' 1024.05) (Ord. 2002-4, passed 12-9-2002)

' 111.06 CONSTRUCTION/ENGINEERING PERMIT.

A telecommunications provider shall not commence construction upon, over, across, or under the public rights-of-way in the village without first obtaining a construction or engineering permit as required under ' 111.04, as amended, for construction within the public rights-of-way. No fee shall be charged for such a construction or engineering permit. (Prior Code, ' 1024.06) (Ord. 2002-4, passed 12-9-2002) Penalty, see ' 10.99

' 111.07 CONDUIT OR UTILITY POLES.

Pursuant to ' 4(3) of the Act, obtaining a permit or paying the fees required under the Act or under this chapter does not give a telecommunications provider a right to use conduit or utility poles.

(Prior Code, ' 1024.07) (Ord. 2002-4, passed 12-9-2002)

' 111.08 ROUTE MAPS.

Pursuant to ' 6(7) of the Act, a telecommunications provider shall, within 90 days after the substantial completion of construction of new

telecommunications facilities in the village, submit route maps showing the location of the telecommunications facilities to both the MPSC and to the village. The route maps should be in paper or electronic format unless and until the MPSC determines otherwise, in accordance with ' 6(8) of the Act.

(Prior Code, ' 1024.08) (Ord. 2002-4, passed 12-9-2002)

' 111.09 REPAIR OF DAMAGE.

Pursuant to ' 15(5) of the Act, a telecommunications provider undertaking an excavation or construction or installing telecommunications facilities within a public right-of-way or temporarily obstructing a public right-of-way in the village, as authorized by a permit, shall promptly repair all damage done to the street surface and all installations under, over, below, or within the public right-of-way and shall promptly restore the public right-of-way to its preexisting condition.

(Prior Code, ' 1024.09) (Ord. 2002-4, passed 12-9-2002) Penalty, see ' 10.99

' 111.10 ESTABLISHMENT AND PAYMENT OF MAINTENANCE FEE.

In addition to the nonrefundable application fee paid to the village set forth in ' 111.04(D), a telecommunications provider with telecommunications facilities in the village=s public rights-of-way shall pay an annual maintenance fee to the Authority pursuant to ' 8 of the Act.

(Prior Code, ' 1024.10) (Ord. 2002-4, passed 12-9-2002)

' 111.11 MODIFICATION OF EXISTING FEES.

In compliance with the requirements of ' 13(1) of the Act, the village hereby modifies, to the extent necessary, any fees charged to telecommunications providers after 11-1-2002, the effective date of the

Act, relating to access and usage of the public rights-of-way, to an amount not exceeding the amounts of fees and charges required under the Act, which shall be paid to the Authority. In compliance with the requirements of ' 13(4) of the Act, the village also hereby approves modification of the fees of providers with telecommunication facilities in public rights-of-way within the village=s boundaries, so that those providers pay only those fees required under ' 8 of the Act. The village shall provide each telecommunications provider affected by the fee with a copy of this chapter, in compliance with the requirement of ' 13(4) of the Act. To the extent any fees are charged telecommunications providers in excess of the amounts permitted under the Act, or which are otherwise inconsistent with the Act, the imposition is hereby declared to be contrary to the village=s policy and intent, and upon application by a provider or discovery by the village, shall be promptly refunded as having been charged in error.

(Prior Code, ' 1024.11) (Ord. 2002-4, passed 12-9-2002)

' 111.12 SAVINGS CLAUSE.

Pursuant to ' 13(5) of the Act, if ' 8 of the Act is found to be invalid or unconstitutional, the modification of fees under ' 111.11 shall be void from the date the modification was made.

(Prior Code, ' 1024.12) (Ord. 2002-4, passed 12-9-2002)

' 111.13 USE OF FUNDS.

Pursuant to ' 10(4) of the Act, all amounts received by the village from the Authority shall be used by the village solely for rights-of-way related purposes. In conformance with that requirement, all funds received by the village from the Authority shall be deposited into the Major Street Fund and/or the Local Street Fund maintained by the village under Public Act 51 of 1951.

(Prior Code, ' 1024.13) (Ord. 2002-4, passed 12-9-2002)

' 111.14 ANNUAL REPORT.

Pursuant to ' 10(5) of the Act, the Village Manager shall file an annual report with the Authority on the use and disposition of funds annually distributed by the Authority.

(Prior Code, ' 1024.14) (Ord. 2002-4, passed 12-9-2002)

' 111.15 CABLE TELEVISION OPERATORS.

Pursuant to ' 13(6) of the Act, the village shall not hold a cable television operator in default or seek any remedy for its failure to satisfy an obligation, if any, to pay after 11-1-2002, the effective date of this Act, a franchise fee or similar fee on that portion of gross revenues from charges the cable operator received for cable modem services provided through broadband internet transport access services.

(Prior Code, ' 1024.15) (Ord. 2002-4, passed 12-9-2002)

' 111.16 EXISTING RIGHTS.

Pursuant to ' 4(2) of the Act, except as expressly provided herein with respect to fees, this chapter shall not affect any existing rights that a telecommunications provider or the village may have under a permit issued by the village or under a contract between the village and a telecommunications provider related to the use of the public rights-of-way.

(Prior Code, ' 1024.16) (Ord. 2002-4, passed 12-9-2002)

' 111.17 COMPLIANCE.

(A) The village hereby declares that its policy and intent in adopting this chapter is to fully comply with the requirements of the Act, and the provisions hereof should be construed in such a manner as to achieve that purpose.

(B) The village shall comply in all respects with the requirements of the Act, including, but not limited to, the following:

(1) Exempting certain route maps from the Freedom of Information Act, Public Act 442 of 1976, M.C.L.A. ' ' 15.231 through 15.246, as provided in ' 111.04(C);

(2) Allowing certain previously-issued permits to satisfy the permit requirements hereof, in accordance with ' 111.04(F);

(3) Allowing existing providers additional time in which to submit an application for a permit, and excusing the providers from the \$500 application fee, in accordance with ' 111.04(G);

(4) Approving or denying an application for a permit within 45 days from the date a telecommunications provider files an application for a permit for access to and usage of a public right-of-way within the village, in accordance with ' 111.05(A);

(5) Notifying the MPSC when the village has granted or denied a permit, in accordance with ' 111.05(A);

(6) Not unreasonably denying an application for a permit, in accordance with ' 111.05(A);

(7) Issuing a permit in the form approved by the MPSC, with or without additional or different permit terms, as provided in ' 111.05(B);

(8) Limiting the conditions imposed on the issuance of a permit to the telecommunications provider=s access and usage of the public right-of-way, in accordance with ' 111.05(C);

(9) Not requiring a bond of a telecommunications provider which exceeds the reasonable cost to ensure that the public right-of-way is returned to its original condition during and after the telecommunication provider=s access and use, in accordance with ' 111.05(D);

(10) Not charging any telecommunications providers any additional fees for construction or engineering permits, in accordance with ' 111.06;

(11) Providing each telecommunications provider affected by the village=s right-of-way fees with a copy of this chapter, in accordance with ' 111.11;

(12) Submitting an annual report to the Authority, in accordance with ' 111.14; and

(13) Not holding a cable television operator in default for a failure to pay certain franchise fees, in accordance with ' 111.15.

(Prior Code, ' 1024.17) (Ord. 2002-4, passed 12-9-2002)

' 111.18 RESERVATION OF POLICE POWERS.

Pursuant to ' 15(2) of the Act, this chapter shall not limit the village=s right to review and approve a telecommunication provider=s access to and ongoing use of a public right-of-way or limit the village=s authority to ensure and protect the health, safety, and welfare of the public.

(Prior Code, ' 1024.18) (Ord. 2002-4, passed 12-9-2002)

' 111.19 AUTHORIZED VILLAGE OFFICIALS.

The Village Manager, or his or her designee, is hereby designated as the authorized village official to issue municipal civil infraction citations (directing alleged violators to appear in court) or municipal civil infraction violation notices (directing alleged violators to appear at the Village Ordinance Violations Bureau) for violations under this chapter as provided by this code.

(Prior Code, ' 1024.19) (Ord. 2002-4, passed 12-9-2002)

' 111.20 VIOLATIONS.

A person who violates any provision of this chapter or the terms or conditions of a permit is responsible for a municipal civil infraction, and shall be subject to the provisions of ' 10.99. Nothing in this section shall be construed to limit the remedies available to the village in the event of a violation by a person of this chapter or a permit.

(Prior Code, ' 1024.20) (Ord. 2002-4, passed 12-9-2002) Penalty, see ' 10.99

CHAPTER 112: HORSE-DRAWN SIGHTSEEING VEHICLES

Section

- 112.01 Findings of fact
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- 112.03 Licensing requirements
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' 112.01 FINDINGS OF FACT.

The Village Council finds and declares that it is in the public interest and public welfare that horse-drawn sightseeing vehicles be regulated under the police power of the village in order to promote the safety and welfare of the citizens and residents and visitors to the village, to reduce pollution in the village, and to reduce interference with the flow of traffic through the village. The Village Council further finds that these aforementioned conditions may be adversely affected with the unregulated use of horse-drawn vehicles permitted on a regular basis on the public streets of the village.

(Prior Code, ' 832.01) (Ord. 98-1, passed 7-13-1998)

' 112.02 DEFINITION.

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

HORSE-DRAWN SIGHTSEEING VEHICLE.

Any vehicle drawn by a horse or horses which has a passenger-carrying capacity, to carry, for hire, persons through the village.

(Prior Code, ' 832.02) (Ord. 98-1, passed 7-13-1998)

' 112.03 LICENSING REQUIREMENTS.

(A) License required; effective period; renewal.

No person shall operate or drive a horse-drawn sightseeing vehicle, either owned or controlled by that person, upon any street, alley, highway, or road within the village until a license has been first procured from the Village Clerk with first approval thereof of the Village Council. This license will automatically expire at the end of the calendar year in which it is issued. Requests for renewal shall be subject to the approval of the Village Council and payment of the required license fee.

(B) Contents of license.

The license required by division (A) above shall clearly describe the route to be used by the vehicle, as well as loading and unloading zones, and shall designate the maximum number of passengers for each licensed vehicle.

(C) *License fee.* The Village Council shall require the payment of a license fee in such amount as the village shall determine by ordinance or resolution from time to time. The Village Council retains the right to base this fee on the number of horse-drawn vehicles.

(D) *Suspension of license.* The Village Manager or the Chief of Police may suspend an operator's license to operate at any time, if, in his or her opinion, the public health or safety is endangered or a public nuisance is created.

(E) *Revocation of license without cause.* The Village Council retains the right to revoke any and all licenses issued under this chapter at any time without cause upon 30-days' notice to the operator.

(Prior Code, ' 832.03) (Ord. 98-1, passed 7-13-1998) Penalty, see ' 10.99

' 112.04 INSURANCE REQUIREMENTS.

The owner of every horse-drawn sightseeing vehicle shall procure and file with the Village Clerk a liability insurance policy, together with a receipt showing the payment of the premiums thereof issued by a good and responsible insurance company to be approved by the Village Clerk, the company being authorized to do business in the state and having possession of a certificate issued by the State Insurance Commissioner. The amount of the liability insurance for each horse-drawn sightseeing vehicle shall be as follows: an amount of not less than \$500,000 because of bodily injury to or death of any one person; an amount of \$1,000,000 because of bodily injury or death of two or more persons in any one accident; an amount of \$1,000,000 because of injury to or destruction of property of others in any one accident; and an amount of not less than \$1,000 in medical coverage for each passenger. The policy of insurance may be in the form of a separate policy for each horse-drawn sightseeing vehicle, or may be in the form of a fleet policy covering all horse-drawn sightseeing vehicles operated by the owners; provided, however, that such a policy shall provide for the same amount of liability for each horse-drawn sightseeing

vehicle operated. The policy shall name the village as an additional insured and shall also provide that the policy may not be canceled until the expiration of 30 days after notice of intent to cancel has been given in writing to the Village Clerk by certified mail or personal delivery of the notice.

(Prior Code, ' 832.04) (Ord. 98-1, passed 7-13-1998)

' 112.05 TERMINATION OF INSURANCE.

In the event of cancellation of the policy of insurance required above, it shall be unlawful and illegal for the owner of any horse-drawn sightseeing vehicle to allow the vehicle to be operated or driven upon the streets, roads, alleys, or highways of the village.

(Prior Code, ' 832.05) (Ord. 98-1, passed 7-13-1998) Penalty, see ' 10.99

' 112.06 HOURS OF OPERATION.

Horse-drawn sightseeing vehicles shall be allowed to operate on the streets of the village during daylight hours and no later than 11:00 p.m. local time.

(Prior Code, ' 832.06) (Ord. 98-1, passed 7-13-1998) Penalty, see ' 10.99

' 112.07 MANURE CONTROL.

(A) A horse-drawn sightseeing vehicle shall not be allowed to operate unless the horse or horses are equipped with an adequate device to prevent manure from falling upon the streets of the village, and no licensee or driver of such a vehicle shall cause the same to be operated, or operate the same, upon the streets of the village unless the animals are so equipped.

(B) Any manure that should escape onto the streets of the village shall be promptly removed by the operator.

(C) Any manure retained within the village shall be deposited in a sealed container so as to prevent ventilation for flies and the escaping of odor.

(D) Any manure placed in temporary storage shall be totally removed daily.
(Prior Code, ' 832.07) (Ord. 98-1, passed 7-13-1998) Penalty, see ' 10.99

' 112.08 MAINTENANCE OF EQUIPMENT.

(A) All vehicles shall be equipped with any safety devices as are required by the state. Particular emphasis shall be given to the adequacy of front and rear lights on each vehicle which is used for nighttime operation. Prior to any nighttime operation, the lighting system shall be subject to the approval of the Chief of Police.

(B) All vehicles and tack shall be maintained in a clean, neat, and safe condition at all times.

(C) All vehicles shall be equipped with hydraulic or disk foot-brakes which shall be maintained in proper working condition at all times.
(Prior Code, ' 832.08) (Ord. 98-1, passed 7-13-1998) Penalty, see ' 10.99

' 112.09 CARE OF HORSES.

All carriage horses shall be treated in a humane manner. All carriage horses shall also be properly diapered. An owner shall be responsible for the humane care and treatment of his or her carriage horses when they are under his or her direct supervision and control. At all other times, the owner is required to take all necessary and reasonable steps to ensure the humane care and treatment of his or her horse while the horse is under the direct supervision and control of a licensed driver. Horses shall be attended by and under the control of competent and properly trained persons at all times.
(Prior Code, ' 832.09) (Ord. 98-1, passed 7-13-1998) Penalty, see ' 10.99

' 112.10 HEALTH CERTIFICATE REQUIREMENT.

The operator of a horse-drawn sightseeing vehicle shall file with the Village Clerk any Doctor of Veterinary Medicine certificate of health as the Village Clerk may require for all animals used in the operation of the sightseeing vehicle.
(Prior Code, ' 832.10) (Ord. 98-1, passed 7-13-1998)

' 112.11 TEAMSTERS.

A teamster operating a horse-drawn sightseeing vehicle shall be at least 18 years of age, shall be a licensed driver for the state, and shall have received at least 12 hours of instruction and training in the operation of a horse-drawn sightseeing vehicle.
(Prior Code, ' 832.11) (Ord. 98-1, passed 7-13-1998) Penalty, see ' 10.99

' 112.12 CLEANUP REIMBURSEMENT.

The operator of a horse-drawn sightseeing vehicle shall be obligated to reimburse the actual cost incurred by the village for the removal and cleanup of any manure and urine.
(Prior Code, ' 832.12) (Ord. 98-1, passed 7-13-1998)

' 112.13 HORSE SHOES.

(A) During the period from November 1 through March 31 of each year, horses used to pull sightseeing vehicles may be shod with metallic shoes.

(B) During the period from April 1 through October 31, the horses shall be shod with nonmetallic shoes.
(Prior Code, ' 832.13) (Ord. 98-1, passed 7-13-1998)

CHAPTER 113: TRANSIENT MERCHANTS, PEDDLERS, HAWKERS AND SOLICITORS

Section

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- 113.13 Loud noises and speaking devices
- 113.14 Enforcement
- 113.15 Provisions cumulative with other laws

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' 113.01 PURPOSE.

The purpose of this chapter is to license and regulate transient merchants, peddlers, hawkers and solicitors in the village, the enactment of this chapter being necessary to promote and protect the public safety of those persons as well as to protect the public's general welfare, health and safety, protect residents' privacy, and prevent fraud and misrepresentation.

(Prior Code, ' 862.01) (Ord. 2010-1, passed 2-8-2010)

' 113.02 DEFINITIONS.

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

HAWKER. Any person who offers goods, property or services for sale on the sidewalks, streets, highways, parks, thoroughfares or public rights-of-way of the village by crying out or by signals, music or other noise.

PEDDLER. Any person who travels from place to place by vehicle, wagon, cart or any other means of conveyance whatsoever for the purpose of displaying, selling, offering for sale, taking orders for sale, or leasing with the option to buy any goods, wares, food, beverages, merchandise or service.

PERSON. Any individual, group, club, association, partnership, corporation, society, or any other business entity or organization.

SOLICITOR. Any person who travels from place to place and offers for sale, takes orders for or attempts to take orders for the retail sale of any goods, wares, food, beverages, merchandise or services whatsoever for future delivery; or while on a public street or while in a public place, offers for sale, takes orders for or attempts to take orders for the retail sale of any goods, wares, food, beverages, merchandise or services whatsoever for future delivery.

TRANSIENT MERCHANT. Any person, whether owner, agent, consignee or employee, whether a resident or non-resident of the village, that engages in a temporary business of selling, offering or exhibiting for sale any goods, wares, food, beverages,

merchandise or service from any lot, stand, vehicle or cart whether motorized or not, or any other temporary or portable structure.

(Prior Code, ' 862.02) (Ord. 2010-1, passed 2-8-2010)

' 113.03 LICENSE REQUIRED.

It shall be unlawful for any person to engage in the business of transient merchant, peddler, hawker, or solicitor, as defined in ' 113.02 of this chapter, within the limits of the village without first obtaining a license as provided herein.

(Prior Code, ' 862.03) (Ord. 2010-1, passed 2-8-2010) Penalty, see ' 113.99

' 113.04 LICENSE APPLICATION.

An application for a license shall be made to the Village Clerk, upon the forms provided by the Clerk, not less than one week prior to commencing any activity defined in ' 113.02 of this chapter. A license application filed hereunder shall contain the following information:

(A) Name and description of the applicant.

(B) Permanent home and/or business address of the applicant.

(C) A copy of the most recent driver's license or state identification card and recent photograph of the applicant.

(D) The name, address, copy of driver's license, and recent photograph of any person acting on behalf of the applicant in any activity defined in ' 113.02 of this chapter.

(E) If a vehicle is to be used, a description of the same, together with license number or other means of identification.

(F) A brief description of the nature of the business and the goods or services to be sold.

(G) A statement as to the approximate locations within the village where any activity defined in ' 113.02 of this chapter will take place.

(H) A copy of a valid Michigan sales tax license.

(I) A copy of any Health Department licenses, if required under local, state or federal law.

(J) A statement as to whether or not the applicant, or anyone acting on behalf of the applicant, has been convicted of any felony, misdemeanor or violation of any municipal ordinance, the nature of the offense and the punishment or penalty assessed therefor.

(Prior Code, ' 862.04) (Ord. 2010-1, passed 2-8-2010) Penalty, see ' 113.99

' 113.05 LICENSE FEE.

The administrative fees for a license under this chapter shall be established from time to time by resolution of the Village Council.

(Prior Code, ' 862.05) (Ord. 2010-1, passed 2-8-2010)

' 113.06 INVESTIGATION, ISSUANCE OF LICENSE, DENIAL AND APPEAL.

(A) Upon receipt of such application, the Village Clerk shall cause such investigation of the applicant and the applicant's business to be made as the Clerk deems necessary for the protection of the public good, including a determination of whether or not the proposed activity is to be conducted in an area zoned for such activity. The Clerk shall thereupon approve or disapprove the license application. If the application is approved, the Clerk shall, upon payment of the prescribed license fee, deliver to the applicant a license. Such license shall contain the signature of the issuing Clerk, the name, address and photograph of said licensee, the kind of goods to be sold, the amount of the fee paid, the date of issuance, the approximate location of the activity and/or the license number or identifying description of any vehicle used in conjunction with such activity.

(B) Any denial of a license application shall be made in writing, specifying the reasons for denial, within five business days of the filing of the application. An appeal of a denial shall be made to the Village Council, in writing, which shall decide the appeal within 35 calendar days of filing of the appeal. (Prior Code, ' 862.06) (Ord. 2010-1, passed 2-8-2010)

' 113.07 DISPLAY AND ALTERATION OF LICENSE.

(A) The license granted under this chapter shall be clearly and noticeably displayed during any activity defined in ' 113.02 of this chapter.

(B) The licensee shall exhibit such license to any police officer upon request. Failure to do so shall be deemed a violation of this chapter and may result in the revocation of such license.

(C) No licensee shall alter, change, remove or obliterate any information contained on such license. Any alteration, change, removal or obliteration of any information contained on such license shall be deemed a violation of this chapter and may result in the revocation of such license. (Prior Code, ' 862.07) (Ord. 2010-1, passed 2-8-2010) Penalty, see ' 113.99

' 113.08 TERM OF LICENSE.

All licenses issued pursuant to this chapter shall be valid for not more than 28 days from issuance, unless renewed by the applicant using the procedures outlined in ' 113.04 of this chapter and approved by the Village Clerk. The license granted under this chapter shall not be transferable or assignable. (Prior Code, ' 862.08) (Ord. 2010-1, passed 2-8-2010) Penalty, see ' 113.99

' 113.09 EXEMPTIONS.

The licensing provisions of this chapter shall not apply to the following:

(A) Any person who is commencing any activity defined in ' 113.02 of this chapter that is under the direct supervision of any school, state or federally registered or recognized charitable, non-profit or religious organization, provided that such person shall provide identification and evidence of their organizational affiliation upon request of the Village Council or village officers.

(B) Any person who is commencing any activity defined in ' 113.02 of this chapter that is exclusively intended to canvas or petition for a public official, political candidate, public policy or initiative being promoted for the purpose of a public referendum, initiative or election.

(C) Any war veteran who has first obtained a license pursuant to Act No. 359 of the Public Acts of Michigan 1921, being M.C.L.A. ' ' 35.441 *et seq.*, as amended.

(D) Any person engaged in the distribution of newspapers.

(E) The sale by farmers of their own products either produced by themselves or by their regular farm employees when such activity is being conducted in conjunction with a village sanctioned AFarmers' Market. @

(F) A person soliciting orders by sample, brochure, or sales catalog for future delivery or making sales at residential premises pursuant to an invitation issued by the owner or legal occupant of the premises.

(G) A person selling at an art fair or festival or similar event at the invitation of the event's sponsor if all the following conditions are met:

(1) The sponsor is a governmental entity or non-profit organization;

(2) The person provides the sponsor with the person's sales tax license number;

(3) If any food or beverage for immediate consumption is being sold, the person provides the sponsor with any license or permit required by the local and/or state health department.

(H) Store owners in the village who sell goods, wares or merchandise on the sidewalk in front of their stores on days designated as ASidewalk Sale Days@ by the Village Council.

(I) Exemption from the licensing provisions hereof does not eliminate the requirement of obtaining scheduling permission for use of the village parks or streets under other provisions of these codified ordinances.
(Prior Code, ' 862.09) (Ord. 2010-1, passed 2-8-2010)

' 113.10 REVOCATION OF LICENSE.

(A) Licenses issued under the provisions of this chapter may be revoked for any of the following causes:

(1) Fraud, misrepresentation, or false statements contained in the application for license;

(2) Fraud, misrepresentation, or false statements made in the course of conducting any activity defined in ' 113.02 of this chapter;

(3) Any violation of this chapter;

(4) Conviction of any crime involving moral turpitude;

(5) Conducting any activity defined in section ' 113.02 of this chapter in such a manner as to constitute a breach of peace, nuisance, or which constitutes a menace to the health, safety, or general welfare of the public.

(B) Any revocation of a license shall be made in writing, specifying the reasons for revocation. An appeal of a revocation shall be made to the Village Council, in writing, which shall decide the appeal at the next regularly scheduled Council meeting.
(Prior Code, ' 862.10) (Ord. 2010-1, passed 2-8-2010)

' 113.11 HOURS OF OPERATION.

The activities defined in ' 113.02 of this chapter may take place within the Village only between the hours of 9:00 a.m. and 9:00 p.m.
(Prior Code, ' 862.11) (Ord. 2010-1, passed 2-8-2010) Penalty, see ' 113.99

' 113.12 USE OF PUBLIC STREETS, ALLEYS, SIDEWALKS, PARKS AND PROPERTY RESTRICTED.

(A) No person engaged in any activity defined in ' 113.02 of this chapter shall have any exclusive right to any location in the public streets, alleys, sidewalks, parks or other public property, nor shall such person obstruct any street, alley, sidewalk or driveway or any congested area where operations would reasonably impede the free flow of pedestrian or vehicular traffic or at any time after having been requested to desist by any public officer because of congested or dangerous traffic conditions or for the public health, safety or welfare.

(B) No person engaged in any activity defined in ' 113.02 of this chapter shall conduct business at a location in the roadway where stopping, standing or parking is prohibited or during a time periods when stopping, standing or parking is restricted.

(C) Any person engaged in any activity defined in ' 113.02 of this chapter shall obey all traffic and parking laws, rules and regulations.

(D) Any person engaged in any activity defined in ' 113.02 of this chapter, for the purpose of protecting the general health, safety and welfare of the

public, is, from May 1 through September 30, prohibited from engaging in such activities on, or on any property fronting on Hancock Street or its adjoining sidewalks, alleys or parks from the intersection of Hancock and 6th Streets to the intersection of Hancock and Lowell Streets, and east and west from the west side of Carroll Street to the west side of Dover Street or the waterfront, as applicable, due to street and sidewalk congestion and impediment of the free flow of pedestrian and vehicular traffic, unless such activity is conducted entirely on private property with the express written permission of the property owner.

(E) No person engaged in any activity defined in ' 113.02 of this chapter shall sell, offer or expose for sale any goods, wares, food, beverages, merchandise or services within the Village Green or upon or along any street or public place which forms a boundary of said park. This section shall not apply to any person who is commencing any activity defined in ' 113.02 of this chapter who is under the direct supervision of any school, state or federally registered or recognized charitable, non-profit or religious organization, provided that such person shall provide identification and evidence of their organizational affiliation upon request of the Village Council or village officers, or any person who is canvassing or petitioning for a public official, political candidate, public policy or initiative being promoted for the purpose of a public referendum, initiative or election, or to any person who has a separate permit authorized or issued by the village providing use thereof.

(F) No person shall engage in any activity defined in ' 113.02 of this chapter on any property against the wish or desire of the property owner or occupant of the property. No person engaged in such activity shall visit any dwelling or residence without an appointment where a sign is displayed stating, No peddlers@, No solicitors@, No sales@, No trespassing@, or words of similar meaning. (Prior Code, ' 862.12) (Ord. 2010-1, passed 2-8-2010) Penalty, see ' 113.99

' 113.13 LOUD NOISES AND SPEAKING DEVICES.

No person shall shout, make any cryout, or use any sound device, including any loudspeaker or sound amplifying system, upon any of the streets, alleys, parks or other public places of said village or upon any private premises in the said village where sound of sufficient volume is emitted or produced for the purpose of attracting attention to any goods, wares, food, beverages, merchandise or services which the licensee proposes to sell. (Prior Code, ' 862.13) (Ord. 2010-1, passed 2-8-2010) Penalty, see ' 113.99

' 113.14 ENFORCEMENT.

It shall be the duty of any peace officer or person charged with enforcing this chapter to require any person who is seen undertaking any activity defined in ' 113.02 of this chapter and who is not known by such officer to be duly licensed pursuant to this chapter, to produce the license and to enforce the provisions of this chapter against any person found to be in violation of the same. (Prior Code, ' 862.14) (Ord. 2010-1, passed 2-8-2010) Penalty, see ' 113.99

' 113.15 PROVISIONS CUMULATIVE WITH OTHER LAWS.

The provisions of this chapter shall be in addition to and not instead of the provisions of any other chapter, laws, codes, rules or regulations of the federal, state, or county government applicable to the subject. (Prior Code, ' 862.16) (Ord. 2010-1, passed 2-8-2010)

' 113.99 PENALTY.

Any person found to be in violation of any provision of this chapter shall be punished by a fine not to exceed \$500 or by imprisonment not to exceed

90 days, or both. Each day a violation of this chapter continues shall be considered a separate offense and is subject to the penalties stated herein.

(Prior Code, ' 862.15) (Ord. 2010-1, passed 2-8-2010)

CHAPTER 114: CABLE TELEVISION

Section

- 114.01 Definitions
- 114.02 Purposes; interpretation
- 114.03 Rate regulations
- 114.04 Filing of schedule of rates; additional information required; burden of proof of compliance with the Act and the FCC rules
- 114.05 Proprietary information
- 114.06 Public notice; initial review of rates
- 114.07 Effective date of rates; tolling order
- 114.08 Public notice; hearing regarding rates following tolling of 30-day deadline
- 114.09 Staff or consultant report; written response
- 114.10 Rate decisions and orders
- 114.11 Refunds; notice
- 114.12 Written decisions; public notice
- 114.13 Rules and regulations
- 114.14 Effect of failure to give notice or to mail copies of reports
- 114.15 Additional hearings
- 114.16 Powers of village
- 114.17 Conflicts of laws
- 114.18 Failure to comply; remedies

Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, being 47 U.S.C. ' ' 609 *et seq.*), and as may be amended from time to time.

ASSOCIATED EQUIPMENT. All equipment and services subject to regulation pursuant to 47 C.F.R. ' 76.923.

BASIC CABLE SERVICE. Basic service, as defined in the FCC Rules, and any other cable television service which is subject to rate regulation by the village pursuant to the Act and the FCC Rules.

FCC. The Federal Communications Commission.

FCC RULES. All rules of the FCC promulgated from time to time pursuant to the Act.

INCREASE IN RATES. An increase in rates or a decrease in programming or customer services. (Prior Code, ' 812.01) (Ord. 146, passed 11-8-1993)

' 114.02 PURPOSES; INTERPRETATION.

(A) The purposes of this chapter are 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 connection with basic cable service rate regulation by the village.

' 114.01 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning. All other words and phrases used in this chapter shall have the same meanings given in the Act and the FCC Rules.

ACT. The Communications Act of 1934, being 47 U.S.C. ' ' 201 *et seq.*, as amended (and specifically as amended by the Cable Television

(B) This chapter shall be implemented and interpreted to be consistent with the Act and the FCC Rules.

(Prior Code, ' 812.02) (Ord. 146, passed 11-8-1993)

' 114.03 RATE REGULATIONS.

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

(Prior Code, ' 812.03) (Ord. 146, passed 11-8-1993)

**' 114.04 FILING OF SCHEDULE OF RATES;
ADDITIONAL INFORMATION REQUIRED;
BURDEN OF PROOF OF COMPLIANCE
WITH THE ACT AND THE FCC RULES.**

(A) A cable operator shall submit its schedule of rates for the basic service tier and associated equipment or a proposed increase in the rates in accordance with the Act and the FCC Rules. The cable operator shall include as part of its submission any 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 Clerk. For purposes of this chapter, the filing by the cable operator shall be deemed to have been made when at least ten copies have been received by the Clerk. Council may, by resolution or otherwise, where reasonable, adopt rules and regulations prescribing the information, data, and calculations which must be included as part of the cable operator's filing of its schedule of rates or a proposed increase.

(B) In addition to the information and data required by rules and regulations of the village pursuant to division (a) above, a cable operator shall provide all information requested by the Village Manager in connection with the village's review and regulation of existing rates for the basic service tier and associated equipment or a proposed increase in these rates. The Village Manager may establish

reasonable deadlines, as mutually agreed to by the village and the cable operator, for submission of the requested information, and the cable operator shall comply with the deadlines.

(C) A cable operator will provide appropriate support that its schedule of rates for the basic service tier and associated equipment, or a proposed increase in the rates, complies with the Act and the FCC Rules, including, without limitation, 47 U.S.C. ' 543 and 47 C.F.R. ' ' 76.922 and 76.923.

(Prior Code, ' 812.04) (Ord. 146, passed 11-8-1993)

' 114.05 PROPRIETARY INFORMATION.

(A) If this chapter, any rules or regulations adopted by the village pursuant to ' 114.04(A), or any request for information pursuant to ' 114.04(B), requires the production of proprietary information, the cable operator shall produce the information. However, at the time, the alleged proprietary information and the facts in support thereof shall be treated as proprietary. The request for confidentiality will be granted if the village determines that the preponderance of the evidence shows that nondisclosure is consistent with the provisions of the Freedom of Information Act, 5 U.S.C. ' 552. The village 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, then, where the cable operator is proposing a rate increase, it may withdraw the proposal, in which case the alleged proprietary information will be returned to it. Alternatively, 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 village. The village shall weigh the policy considerations favoring nondisclosure against the reasons cited for permitting inspection in light of the facts of the particular case. The village will then promptly notify the requesting entity and the cable operator that submitted the information as to the

disposition of the request. The village may grant, deny, or condition a request. The requesting party or the cable operator may seek review of the decision by filing an appeal in an 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 C.F.R. pt. 459. (Prior Code, ' 812.05) (Ord. 146, passed 11-8-1993)

' 114.06 PUBLIC NOTICE; INITIAL REVIEW OF RATES.

Upon the filing of ten copies of a schedule of rates or a proposed increase in rates pursuant to ' 114.04(A), the Clerk shall publish a public notice in a newspaper of general circulation in the village which shall state that the filing has been received by the Clerk and (except that those parts which may be withheld as proprietary) is available for public inspection and copying and that interested persons are encouraged to submit written comments on the filing to the Clerk not later than seven days after the public notice is published. The Clerk shall give notice to the cable operator of the date, time, and place of the meeting at which Council shall first consider the schedule of rates or the proposed increase. This notice shall be mailed, by first-class mail, at least three days before the meeting. In addition, if a written staff or consultant=s report on the schedule of rates or the proposed increase is prepared for consideration by Council, then the 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 Council shall first consider the schedule of rates or the proposed increase. (Prior Code, ' 812.06) (Ord. 146, passed 11-8-1993)

' 114.07 EFFECTIVE DATE OF RATES; 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 ' 114.04(A), unless Council (or another properly authorized body or official) tolls the 30-day deadline pursuant to 47 C.F.R. ' 76.933 by issuing a brief written order, by resolution or otherwise, within 30 days of the date of filing. Council may toll the 30-day deadline for an additional 90 days in cases not involving cost-of-service showings, and for an additional 150 days in cases involving cost-of-service showings. (Prior Code, ' 812.07) (Ord. 146, passed 11-8-1993)

' 114.08 PUBLIC NOTICE; HEARING REGARDING RATES FOLLOWING TOLLING OF 30-DAY DEADLINE.

(A) If a written order has been issued pursuant to ' 114.07 and 47 C.F.R. ' 76.933 to toll the effective date of existing rates for the basic service tier and associated equipment or a proposed increase in the rates, the cable operator shall submit to the village any additional information required or requested pursuant to ' 114.04. In addition, Council shall hold a public hearing to consider the comments of interested persons within the additional 90-day or 150-day period, as the case may be.

(B) The Clerk shall publish a public notice of the public hearing in a newspaper of general circulation within the village which shall state the date, time, and place at which the hearing shall be held, that interested persons may appear in person, by agent or by letter at the hearing to submit comments on or objections to the existing rates or the proposed increase in rates, and that copies of the schedule of rates or the proposed increase in rates and related information (except those parts which may be withheld as proprietary) are available for inspection or copying

from the office of the Clerk. The public notice shall be published not less than 15 days before the hearing.

In addition, the 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.

(Prior Code, ' 812.08) (Ord. 146, passed 11-8-1993)

' 114.09 STAFF OR CONSULTANT REPORT; WRITTEN RESPONSE.

Following a public hearing, the Village Manager shall cause a report to be prepared for Council, which shall include a recommendation for the decision of Council pursuant to ' 114.10, based on the filing of the cable operator, the comments or objections of interested persons, information requested from the operator, and its response, a staff or consultant's review, and other appropriate information. The cable operator may file a written response to the report with the Clerk. If at least ten copies of the response are filed by the cable operator with the Clerk within ten days after the report is mailed to the cable operator, the Clerk shall forward them to the Council.

(Prior Code, ' 812.09) (Ord. 146, passed 11-8-1993)

' 114.10 RATE DECISIONS AND ORDERS.

Council shall issue a written order, by resolution or otherwise, which, in whole or in part, approves the existing rates for basic cable service and associated equipment or a proposed increase in the 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 Council issues an order allowing the existing rates or proposed increase to become effective, subject to refund, it shall also direct the cable operator to maintain an accounting pursuant to 47 C.F.R. ' 76.933. An order issued pursuant to this section shall be issued within ninety days of a tolling order set forth in ' 114.07 in all cases not involving a

cost-of-service showing. An order shall be issued within 150 days after a tolling order set forth in ' 114.07 in all cases involving a cost-of-service showing.

(Prior Code, ' 812.10) (Ord. 146, passed 11-8-1993)

' 114.11 REFUNDS; NOTICE.

Council may order a refund to subscribers as provided in 47 C.F.R. ' 76.942. Before Council orders any refund to subscribers, the 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 Council shall consider issuing a refund order and shall provide an opportunity for the cable operator to comment. The cable operator may appear in person, by agent, or by letter at the time for the purpose of submitting comments to Council.

(Prior Code, ' 812.11) (Ord. 146, passed 11-8-1993)

' 114.12 WRITTEN DECISIONS; PUBLIC NOTICE.

Any order of Council issued pursuant to ' 114.10 or 114.11 shall be in writing, shall be effective upon adoption by Council, and shall be deemed to be released to the public upon adoption. The Clerk shall publish a public notice of any such written order in a newspaper of general circulation in the village, which notice shall summarize the written decision and state that copies of the text of the written decision are available for inspection or copying from the office of the Clerk. In addition, the Clerk shall mail a copy of the text of the written decision to the cable operator by first-class mail.

(Prior Code, ' 812.12) (Ord. 146, passed 11-8-1993)

' 114.13 RULES AND REGULATIONS.

In addition to rules promulgated pursuant to ' 114.04, Council may, by resolution or otherwise, adopt rules and regulations for basic cable service rate regulation proceedings (including, without limitation, the conduct of hearings), consistent with the Act and the FCC Rules.

(Prior Code, ' 812.13) (Ord. 146, passed 11-8-1993)

' 114.14 EFFECT OF FAILURE TO GIVE NOTICE OR TO MAIL COPIES OF REPORTS.

The failure of the Clerk to give the notices or to mail copies of the reports required by this chapter shall not invalidate the decisions or proceedings of Council.

(Prior Code, ' 812.14) (Ord. 146, passed 11-8-1993)

' 114.15 ADDITIONAL HEARINGS.

In addition to the requirements of this chapter, Council may hold additional public hearings upon such reasonable notice as Council, pending notice to a cable operator, shall prescribe.

(Prior Code, ' 812.15) (Ord. 146, passed 11-8-1993)

' 114.16 POWERS OF VILLAGE.

The village shall possess all powers conferred by the Act, the FCC Rules, the cable operator=s franchise, and all other applicable laws. The powers exercised pursuant to the Act, the FCC Rules and this chapter shall be in addition to powers conferred by law or otherwise. The village 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.

(Prior Code, ' 812.16) (Ord. 146, passed 11-8-1993)

' 114.17 CONFLICTS OF LAWS.

In the event of a conflict between any of the provisions of this chapter and a provision of any prior ordinance or any franchise, permit, consent agreement, or other agreement with a cable operator, the provision of this chapter shall control, unless it is contrary to the provisions of the Act or federal law.

(Prior Code, ' 812.17) (Ord. 146, passed 11-8-1993)

' 114.18 FAILURE TO COMPLY; REMEDIES.

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

(Prior Code, ' 812.18) (Ord. 146, passed 11-8-1993)

CHAPTER 115: MEDICAL MARIHUANA CAREGIVER

Section

- 115.01 Intent
- 115.02 Definitions
- 115.03 Permit requirements
- 115.04 Application for a permit
- 115.05 Restriction on distribution
- 115.06 No vested rights
- 115.07 Conflict

- 115.99 Penalty

' 115.01 INTENT.

It is the intent of this chapter to protect the health, safety and welfare of persons in this community while authorizing permitted uses of medical marihuana as set forth in the Michigan Medical Marihuana Act (M.C.L.A. ' ' 333.26421 *et seq.* (the Act). This chapter shall in no way prevent otherwise lawful activity that may be described in the Act or the Department of Community Health Regulations, 2009 Administrative Code: 2009 AC, R 333.101 *et seq.* or the amendment of said Act or Regulations. (Ord. 2012-1, passed 4-9-2012)

' 115.02 DEFINITIONS.

The words and phrases contained within this chapter shall be interpreted and construed in accordance with the definitions set forth in the Michigan Medical Marihuana Act, M.C.L.A. ' ' 333.26421, *et seq.*, and Michigan Administrative Rules, R 333.101, *et seq.* (Ord. 2012-1, passed 4-9-2012)

' 115.03 PERMIT REQUIREMENTS.

Activities of a permittee under this chapter shall only occur in accordance with this chapter and only after a permit has been issued to allow the activity of a medical marihuana caregiver at a particular location via a home occupation permit under Section 3.22 of the Pentwater Community Zoning Ordinance. A permittee shall fully comply with the requirements of this chapter, the Act and Administrative Rules promulgated pursuant to the Act (M.C.L.A. ' ' 333.26421 *et seq.* and 2009 Administrative Code: 2009 AC, R 333.101 *et seq.*), and Section 3.22 of the Pentwater Community Zoning Ordinance. (Ord. 2012-1, passed 4-9-2012) Penalty, see ' 115.99

' 115.04 APPLICATION FOR A PERMIT.

(A) The requirement of this chapter is to permit a location and not to permit persons. No permit will be necessary for a patient who is growing and possessing marihuana of 12 plants or less for personal medical use. A confidential application for a home occupation permit under this section shall be submitted to the Pentwater Village Zoning Administrator and shall conform to the following specifications. An application shall include:

(1) The name of the applicant and address and legal description of the precise premises at which there will be possession or cultivation of marihuana by a caregiver as defined in the Act. If the applicant is not the owner of the subject premises, he or she must provide written evidence of the owner's authorization to operate as a caregiver on the property.

(2) Specify the name and address of the place where all unused portions of marihuana plants cultivated in connection with the use of marihuana or caregiver activity at the premises shall be disposed.

(3) Describe the enclosed, locked facility in which any and all cultivation or storage of marihuana is proposed to occur, with such description including: a photograph of the location within the building; precise measurements in feet, of the floor dimensions and height; the security device for the facility.

(4) A copy of each patient's registration card for whom marihuana is proposed to be cultivated, and a statement of the maximum number of plants to be grown or cultivated at any one time.

(5) For safety and other code inspection purposes, it shall describe and provide detailed specifications of all lights, equipment, and all other electrical, plumbing, and other means proposed to be used to facilitate the cultivation and storage of marihuana plants as such specifications relate to the need for the installation of facilities.

(B) In addition to the requirements of Section 3.22 of the Pentwater Community Zoning Ordinance for home occupations, the following requirements and standards shall also apply for approval of a medical marihuana caregiver permit under this chapter:

(1) Location shall not be within 500 feet from an existing licensed daycare facility, church, or public park, and 1,000 feet from a library, public or private pre-school, elementary school, middle school, high school and all other schools that have different name reference but serve students of the same age.

(2) Location shall not be within 250 feet from the site of any other registered caregiver location. NOTE: Measurements for purposes of this division (B)(2) shall be made from property boundary to property boundary.

(3) All medical marihuana cultivation shall occur within the confines of a building permitted

under this section, and such activities shall occur only in locations not visible to the public and adjoining uses, provided, this division shall not prohibit a caregiver from assisting a patient at the patient's principal residence or at a hospital.

(4) Not more than one registered caregiver shall operate from any permitted location.

(5) The premises shall be open for inspection upon request by the Zoning Administrator, Fire Department, building or related inspector and law enforcement officials for compliance with all applicable laws and rules when anyone is present at the premises.

(6) No sign related to medical marijuana shall be permitted on the premises.

(7) An approval of a home occupation permit may include any other reasonable conditions requested in writing by the applicant during the application and review process.

(8) If approved, all use of property shall be in accordance with an approved application, including all information and specifications submitted by the applicant in reliance on which application shall be deemed to have been approved.

(9) The caregiver shall submit a written annual report each year on the anniversary date of the approved home occupation permit with current information regarding any changes and/or additions to the number or identity of patients served by the caregiver and/or other modifications in the operation of the facility.

(Ord. 2012-1, passed 4-9-2012) Penalty, see ' 115.99

' 115.05 RESTRICTION ON DISTRIBUTION.

A caregiver and any other person authorized under the Act to assist patients, if any, shall distribute medical marihuana only on a confidential, one-on-one

basis, within the patient's private residence with no other caregiver being present at the same time.

(Ord. 2012-1, passed 4-9-2012) Penalty, see ' 115.99

' 115.06 NO VESTED RIGHTS.

A property owner shall not have vested rights or nonconforming use rights that would serve as a basis for failing to comply with this chapter or any amendment of this chapter other than for the purpose of location requirements of ' 115.04(B)(1) and (2).

(Ord. 2012-1, passed 4-9-2012)

' 115.07 CONFLICT.

If there is a conflict between the provisions of Section 3.22 of the Pentwater Community Zoning Ordinance and this chapter, this chapter shall control.

(Ord. 2012-1, passed 4-9-2012)

' 115.99 PENALTY.

Whoever violates any provisions of this chapter and/or Section 3.22 of the Pentwater Community Zoning Ordinance is guilty of a Class C civil infraction in accordance with Chapter 34 of this Code of Ordinances, as amended, and/or subject to termination of the home occupation permit or both.

(Ord. 2012-1, passed 4-9-2012)

