# CODE OF ORDINANCES
# City of Essexville, Michigan

*(Originally introduced April 11, 1974, effective April 26, 1974)*

Codified and Reprinted with Amendments through July 2016

# CODE OF ORDINANCES

## TITLE I: ADMINISTRATION

### CHAPTER 1

### GENERAL PROVISIONS

Sec. 1.101. Publication and Distribution of Code.[1] Publication of the within codification of the ordinances of the City of Essexville is hereby directed. At a minimum copies of the Code shall be published in loose-leaf form and at least one copy shall be distributed to the City Clerk, City Attorney, City Manager, Department of Public Safety and Department of Public Works. Four copies shall be distributed to the 74th District Court of Bay County, Michigan.

Sec. 1.102. Amendment Procedure. This Code shall be amended by ordinance. The title of each amendatory ordinance, adapted to the particular circumstances and purposes of the amendment, shall be substantially as follows:

(a) To amend any section:

AN ORDINANCE TO AMEND SECTION_____ (or SECTIONS _____ AND _____) OF CHAPTER _____OF TITLE _____ OF THE CODE OF THE CITY OF ESSEXVILLE.

(b) To insert a new section, chapter, or title:

AN ORDINANCE TO AMEND THE CODE OF THE CITY OF ESSEXVILLE BY ADDING A NEW SECTION (_____ NEW SECTIONS, A NEW CHAPTER, or A NEW TITLE, as the case may be) WHICH NEW SECTION (SECTIONS, CHAPTER OR TITLE) SHALL BE DESIGNATED AS SECTION (SECTIONS____ AND____ ) OF CHAPTER ____ OF TITLE (or proper designation if a chapter or title is added) OF SAID CODE.

(c) To repeal a section, chapter, or title:

AN ORDINANCE TO REPEAL SECTION_____ (SECTIONS ____ AND ____), CHAPTER _____, TITLE _____ , (as the case may be) OF THE CODE OF THE CITY OF ESSEXVILLE.

Sec. 1.103. Amendment Publication and Distribution. Amendments to the Code shall be published as required by the Charter of the City of Essexville and not less than three (3) copies of each amendment shall be published in loose-leaf form suitable for insertion in the loose-leaf copies of the Code. The City Clerk shall distribute such copies to the officers or departments of the City having copies of the Code assigned to them. Each officer assigned a copy of the Code shall be responsible for maintaining the same and for the proper insertion of amendatory pages as received.

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[1] This Section amended by Ordinance No. 2004-1 adopted March 9, 2004, effective March 25, 2004.

Sec. 1.104. Contents of Code. This Code contains ordinances of a general and permanent nature of the City of Essexville and including ordinances dealing with municipal administration, municipal utilities and services, parks and public grounds, streets and sidewalks, zoning and planning (except as provided elsewhere), food and health, businesses and trades, building, electrical, heating and plumbing regulations, police regulations, traffic regulations, ordinances granting franchises and special privileges, regulating sewers and connections therewith, providing for the construction of particular sewers, streets or sidewalks, or for the improvement thereof.

The adoption of this Code shall not be interpreted as authorizing or permitting any use or the continuance of any use of a structure or premises in violation of any ordinance of the City in effect on the date of adoption of this Code. Ordinances hereafter adopted which are not of a general or permanent nature shall be numbered consecutively, authenticated, published and recorded in the book of ordinances, but shall not be prepared for insertion in this Code, nor be deemed a part hereof.

Sec. 1.105. Short Title. This ordinance may be known and cited as the "Essexville City Code".

Sec. 1.106. Headings. No provision of this Code shall be held invalid by reason of deficiency in any chapter or section heading.

Sec. 1.107. Responsibility. Whenever any act is prohibited by this Code, by an amendment thereof, or by any rule or regulation adopted thereunder, such prohibition shall extend to and include the causing, securing, aiding, or abetting of another person to do said act.

Sec. 1.108. Definitions and Rules of Construction. The following words and phrases, when used in this Code and any amendment thereto, shall for the purposes of this Code, have the meanings respectively ascribed to them in this section, except in those instances where the context clearly indicates a different meaning.

(a) City. The words "the city" or "this city" shall be construed as if the words "of Essexville, Michigan" followed it and shall extend to and include its several officers, agents and employees.

(b) City Clerk. The term "city clerk" shall mean the City Clerk of the City of Essexville.

(c) City Council. Whenever the words "City Council" or "City Commission" are used, they shall be construed to mean the City Council of the City of Essexville.

(d) Code. The term "this Code" or "Code" shall mean the Code of Ordinances of the City of Essexville, Michigan.

(e) Computation of Time. Whenever a notice is required to be given or an act to be done, a certain length of time before any proceeding shall be had, the day on which such notice is given, or such act is done, shall be counted in computing the time, but the day on which such proceeding is to be had shall not be counted.

(f) County. The words "the county" or "this county" shall mean the County of Bay in the State of Michigan.

(g) Gender. A word importing the masculine gender only shall extend and be applied to females and to firms, partnerships and corporations as well as to males.

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

(i) Owner. The word "owner", applied to a building or land, shall include any part owner, joint owner, tenant in common, tenant in partnership, joint tenant, or tenant by the entirety, of the whole or of a part of such building or land.

(j) Person. Shall include any individual, co-partnership, corporation, association, club, joint adventure, estate, trust, and any other group or combination acting as a unit, and the individuals constituting such group or unit,

(k) Public Place. Shall mean any place to or upon which the public resorts or travels, whether such place is owned or controlled by the City or any agency of the State of Michigan, or is a place to or upon which the public resorts or travels by custom, or by invitation, express or implied.

(l) State. The words "the state" or "this state" shall be construed to mean the State of Michigan.

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

(n) Fire Chief, Police Chief. The terms "Fire Chief" and "Police Chief" shall refer to the Director of the Department of Public Safety, and may be used interchangeably with that term.

(o) Fire Department, Police Department. The terms "Fire Department" and "Police Department" shall refer to the Department of Public Safety, and may be used interchangeably with that form.

Sec. 1.109. Title of Officer to include deputy or subordinate. Whenever, by the provisions of this Code, any officer of the City of Essexville is assigned any duty or empowered to perform any act or duty, the title of said officer shall mean and include such officer or his deputy or authorized subordinate.

Sec. 1.110. Penalty[2]. Unless another penalty is expressly provided by this Code for any particular provision or section, every person convicted of a violation of any provision of this code or any rule or regulation adopted or issued in pursuance thereof, shall be punished by a fine of not more than five hundred dollars ($500.00) and costs of prosecution or by imprisonment for not more than ninety (90) days, or by both such fine and imprisonment. Each act of violation and every day upon which any such violation shall occur shall constitute a separate offense. The penalty provided by this section, unless another penalty is expressly provided, shall apply to the amendment of any section of this Code whether or not such penalty is re-enacted in the amendatory ordinance.

In addition to the foregoing penalties, the City may enjoin or abate any violation of this Code by appropriate action.

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[2] This Section amended by Ordinance No. 2004-4 adopted October 12, 2004, effective October 28, 2004.

Sec. 1.111. Severability. It is the legislative intent of the Council in adopting this Code, that all provisions and sections of this ordinance be liberally construed to protect and preserve the peace, health, safety and welfare of the inhabitants of the City of Essexville, and should any provision or section of this ordinance be held unconstitutional or invalid, such holding shall not be construed as affecting the validity of any of the remaining provisions or sections, it being the intent that this ordinance shall stand, notwithstanding the invalidity of any provision or section thereof.

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

Sec. 1.112. Repeals. All ordinances or parts of ordinances conflicting with he provisions of this ordinance are hereby repealed insofar as they are inconsistent with this ordinance.

Unless otherwise expressly provided, no new ordinance shall be construed or held to repeal a former ordinance, whether such former ordinance is expressly repealed or not, as to any offense committed against the former ordinance or as to any act done, any penalty, forfeiture, or punishment incurred, or claims arising under the former ordinance, or in any way whatever to affect any such offense or act so committed or done, or any penalty, forfeiture, or punishment so incurred, or claims arising before the new ordinance takes effect, save only that the proceedings thereafter shall conform, so far as practicable, to the ordinances in force at the time of such proceeding. If any penalty, forfeiture, or punishment be mitigated by any provision of a new ordinance, such provision may, by the consent of the party affected, be applied to any judgment pronounced after the new ordinance takes effect.

This section shall extend to all repeals either by express words or by implication, whether the repeal is in the ordinance making any new provision upon the same subject, or any other ordinance.

Nothing contained in the preceding section shall be construed as abating any action now pending under or by virtue of any general ordinance of the City therein repealed; or as discontinuing, abating, modifying or altering any penalty accrued or to accrue, or as affecting the liability of any person; or as waiving any right of the City under any section or provision of the ordinances repealed.

When any ordinance repealing a former ordinance, clause, or provision shall be itself repealed, such repeal shall not be construed to revive such former ordinance, clause, or provision.

Sec. 1.113. Altering Code. It shall be unlawful for any person in the city to change or amend, by additions or deletions, any part or portion of this Code, or to insert or delete pages, or portions thereof, or to alter or tamper with such Code in any manner whatsoever which will cause the law of the city to be misrepresented thereby.

Sec. 1.114. Effective Date. This ordinance Code shall take effect fifteen (15) days after publication of a digest thereof in accordance with the provisions of the City Charter.

Sec. 1.115. Assignment or Reassignment of Amendments to Code of Ordinances to Codification System within the Code of Ordinances. Subsequent to the effective date of April 26, 1974 of the Code of Ordinances, if an amendatory ordinance shall be or have been adopted by the City of Essexville wherein such amendatory ordinance shall fail to properly assign such ordinance to a Title, Chapter, or Section of the Code of Ordinances or to which such amendatory ordinance shall have been assigned a Title, Chapter, or Section number already assigned by previous ordinance, the City Clerk or City Attorney is empowered to assign or reassign such amendatory ordinances to other codification's within the Code as necessary to correct such omission or conflicting assignments. (Adopted April 8, 1986; effective April 26, 1986)

Sec. 1.116 - 1.200. Reserved.

# TITLE I: ADMINISTRATION

## CHAPTER 2

## ELECTIONS

*This Chapter was repealed by Ordinance No. 2004-1 said Ordinance adopted by the City Council on March 9, 2004 and effective March 25, 2004.*

Sec. 1.201 - 1.300. Reserved.

## TITLE I: ADMINISTRATION

### CHAPTER 3

### PARKING VIOLATIONS BUREAU

Sec. 1.301. Parking Violation Bureau Established.[3] Pursuant to Sec. 600.8395 of the Revised Judicature Act, State of Michigan, as added by Act 154, Public Acts of 1968 a parking violations bureau, for the purpose of handling alleged parking violations within the city, is hereby established. The parking violations bureau shall be under the supervision and control of the City Manager.

Sec. 1.302. Location and Administration. [4]

Sec. 1.303. Jurisdiction.

(a) Only violations scheduled in Sec. 1.305 of this chapter shall be disposed of by the parking violations bureau. The fact that a particular violation is scheduled shall not entitle the alleged violator to disposition of the violation at the bureau and in any case the person in charge of such bureau may refuse to dispose of such violation in which case any person having knowledge of the facts may make a sworn complaint before any court having jurisdiction of the offense as provided by law.

(b) No violation may be settled at the parking violations bureau except at the specific request of the alleged violator. No penalty for any violation shall be accepted from any person who denies having committed the offense and in no case shall the person who is in charge of the bureau determine, or attempt to determine, the truth or falsity of any fact or matter relating to such alleged violation. No person shall be required to dispose of a parking violation at the parking violations bureau and all persons shall be entitled to have any such violation processed before a court having jurisdiction thereof if they so desire. The unwillingness of any person to dispose of any violation at the parking violations bureau shall not prejudice him or in any way diminish the rights, privileges, and protection accorded to him by law.

Sec. 1.304. Notice of Violation. The issuance of a traffic ticket or notice of violation by a police officer of the city shall be deemed an allegation of a parking violation. Such traffic ticket or notice of violation shall indicate the length of time in which the person to whom the same was issued must respond before the parking violations bureau. It shall also indicate the address of the bureau, the hours during which the bureau is open, the amount of the penalty scheduled for the offense for which the ticket was issued and advise that a warrant for the arrest of the person to whom the ticket was issued to sought if such person fails to respond within the time limited.

Sec. 1.305. Penalties.[5] Penalties for violations shall be those created by City Council resolution. In addition to such schedule of penalties for parking violations, the additional penalties stated in Section 1.306 shall apply.

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[3] This Section amended by Ordinance No. 2004-1 adopted March 9, 2004, effective March 25, 2004.
[4] This Section repealed by Ordinance No. 2004-1 adopted March 9, 2004, effective March 25, 2004.
[5] This Section amended by Ordinance No. 2004-1 adopted March 9, 2004, effective March 25, 2004.

Sec. 1.306. Additional Penalties.[6] Any parking violation not paid to the parking violations bureau within five (5) working days of the issuance of any notice of violation shall be double that prescribed by any City Council resolution setting fines stated in Section 1.35. Additionally, if the fine is not paid within five (5) working days of the violation to the parking violations bureau, the Director of Public Safety may any time thereafter create and file a civil infraction citation as prescribed by law, and presently MCL 257.741(4), and serve a copy of the citation by first class mail upon the registered owner of the vehicle at the owner's last known address to which, after issuance of such citation, the penalty shall be up to a maximum of $100 fine and costs allowed by law. Any person or owner of any vehicle which shall receive six (6) or more citations for violations set forth in Sec. 1.305 and such citations remain unpaid for more than fifteen (15) days shall be guilty of a misdemeanor subject to penalties set forth in Code of the City of Essexville.

Sec. 1.307-1.400 Reserved

[6] This Section amended by Ordinance No. 2004-1 adopted March 9, 2004, effective March 25, 2004.

## TITLE I: ADMINISTRATION

### CHAPTER 4

### PAYMENTS IN LIEU OF TAXES [7]

Sec. 1.401. Preamble. It is acknowledged that it is a proper public purpose of the State of Michigan and its political subdivisions to provide housing for its elderly citizens of low income and to encourage the development of such housing by providing for a service charge in lieu of property taxes in accordance with the State Housing Development Authority Act of 1966 (1966 PA 346, as amended, MCL 125.1401, et seq). The City of Essexville is authorized by this Act to establish or change the service charge to be paid in lieu of taxes by any or all classes of housing exempt from taxation under this Act at any amount it chooses, not to exceed the taxes that would be paid but for this Act. It is further acknowledged that such housing for elderly persons of low income is a public necessity, and as the City of Essexville will be benefited and improved by such housing, the encouragement of the same by providing certain real estate tax exemption for such housing is a valid public purpose; further, that the continuance of the provisions of this Ordinance for tax exemption and the service charge in lieu of taxes during the period contemplated in this Ordinance are essential to the determination of economic feasibility of housing developments which are constructed and financed in reliance on such tax exemption.

The City of Essexville acknowledges that Essex Place Limited Dividend Housing Association Limited Partnership, (the "Sponsor") has offered, subject to receipt of a mortgage loan and or an allocation under the LIHTC Program from the Michigan State Housing Development Authority, to erect, own and operate a housing development identified as Essex Place on certain property located in the City of Essexville described as Lot 2 except the south 30 feet of the west 5 feet, Lot 3, Lot 4, Lot 5, Lot 6, Lot 7, Lot 8 and Lot 9 of Block 2 also that portion of the vacated Lynn Street right-of-way lying North of Woodside Avenue, South of Saline Street, East of Block 2 and West of Block 3 all being part of Langstaff's First Addition to the Village of Essexville as per plat thereof recorded in Liber 1 of Plats, Page 64 of Bay County records, to serve elderly persons of low income, and that the Sponsor has offered to pay the City on account of this housing development an annual service charge for public services in lieu of all taxes.

Sec. 1.402. Definitions. All terms shall be defined as set forth in the State Housing Development Authority Act of 1966, being Public Act 346 of 1966 of the State of Michigan, as amended, except as follows:

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

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

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[7] This Chapter adopted by Ordinance No.2001-1 April 10, 2007, effective April 25, 2007.

(3) Contract Rents are as defined by the U.S. Department of Housing and Urban Development in regulations promulgated pursuant to the U.S. Housing Act of 1937, as amended.

(4) Authority means the Michigan State Housing Development Authority, a public body, corporate and politic of the State of Michigan.

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

(6) LIHTC Program means the Low Income Housing Tax Credit Program administered by the Authority under Section 42 of the Internal Revenue Code of 1986, as amended.

(7) Elderly shall mean a family wherein the head of the household is fifty-five (55) years of age or older and all other members are at least 50 years of age or older, or a single person who is fifty-five (55) years of age or older.

(8) Utilities mean fuel, water, sanitary sewer service and/or electrical service which are paid by the Housing Development.

(9) Mortgage Loan means a loan to be made by the Authority to the Sponsor for the construction and/or permanent financing of the Housing Development.

(10) Sponsor means a person(s) or entity which has applied to the Authority for a mortgage loan and or an allocation under the LIHTC Program to finance a Housing Development.

Sec. 1.403. Class of Housing Developments. It is determined that the class of Housing Developments to which the tax exemption shall apply and for which a service charge shall be paid in lieu of such taxes shall be Elderly Housing, which is assisted pursuant to the Act. It is further determined that Essex Place is of this class.

Sec. 1.404. Establishment of Annual Service Charge. The Housing Development identified as Essex Place, and the property on which it shall be constructed shall be exempt from all property taxes from and after the commencement of construction. The City of Essexville, acknowledging that the Sponsor and the Authority have established the economic feasibility of the Housing Development in reliance upon the enactment and continuing effect of this Ordinance and the qualification of the Housing Development for exemption from all property taxes and a payment in lieu of taxes as established in this Ordinance, and in consideration of the Sponsor's offer, subject to receipt of a mortgage loan and/or an allocation under the LIHTC Program from the Authority, to construct, own and operate the Housing Development, agrees to accept payment of an annual service charge for public services in lieu of all property taxes. The annual service charge shall be equal to four percent (4%) of the difference between the Annual Shelter Rent actually collected and Utilities.

Sec. 1.405. Limitation on the Payment of Annual Service Charge. Notwithstanding Sec. 1.404, the service charge to be paid each year in lieu of taxes for the part of the Housing Development which is tax exempt and which is occupied by other than low income persons or families shall be equal to the full amount of the taxes which would be paid on that portion of the Housing Development if the Housing Development were not tax exempt.

The term "low income persons or families" as used herein shall be the same meaning as found in Section 15(a)(7) of the Act except as modified herein.

Sec. 1.406. Contractual Effect of Ordinance. Notwithstanding the provisions of section 15(a)(5) of the Act to the contrary, a contract between the City and the Sponsor with the Authority as third party beneficiary under the contract, to provide tax exemption and accept payments in lieu of taxes, as previously described, is effectuated by enactment of this Ordinance and shall endure or terminate consistent with the provisions of Section 1.408 as set forth thereafter.

Sec. 1.407. Payment of Service Charge. The annual service charge in lieu of taxes as determined under the Ordinance shall be payable in the same manner as general property taxes are payable to the City except that the annual payment shall be paid on or before August 15th, of each year and if not so paid, the city shall have the right to perfect and enforce a lien enforceable in the manner of any tax lien or any other lien upon the property described in Section 1.401.

Sec. 1.408. Duration. This Ordinance shall remain in effect and shall not terminate so long as (i) a mortgage loan made to the sponsor for the development of the proposed ELDERLY HOUSING PROJECT subject to this article remains outstanding and unpaid or the Housing Authority has an interest in the property subject to a service charge under this Ordinance OR (ii) the project is restricted under Section 42 of the Internal Revenue Code of 1986, as amended; and provided that construction of the Housing Development commences within two years from the effective date of this Ordinance.

Sec. 1.409. Severability. The various sections and provisions of this Ordinance shall be deemed to be severable, and should any section or provision of this Ordinance be declared by any court of competent jurisdiction to be unconstitutional or invalid the same shall not affect the validity of the Ordinance as a whole or any section or provision of this Ordinance other than the section or provision so declared to be unconstitutional or invalid.

Sec. 1.410. Acknowledgment. The City hereby acknowledges receipt of documentation from the Authority indicating that the Authority's participation with the Housing Development may limited solely to the allocation of tax credits under the LIHTC Program.

Sec. 1.411. Effective Date. This Ordinance shall become effective fifteen days after adoption. All ordinances or parts of ordinances in conflict with this Ordinance are repealed to the extent of such conflict.

Sec. 1.412-1.500 Reserved

TITLE I: ADMINISTRATION

CHAPTER 5

SPECIAL ASSESSMENTS[8]

Sec. 1.501. Definitions. The following words, terms and phrases when used in this chapter shall have the meanings ascribed to them within it except where the context clearly indicates a different meaning:

(1) Cost, when referring to the cost of any public improvement, means the cost of services, plans, condemnation, spreading of rolls, notices, advertising, financing, engineering fees, construction and legal fees and all other costs incident to the making of such improvement, the special assessments therefor and the financing thereof.

(2) Council shall mean the Essexville city council.

(3) Public improvement means any improvements upon public property which results in a special or ordinary benefit to the real property, the property abutting it, or in the vicinity of such improvement.

(4) Owner of privately owned taxed parcels of real property within a special assessment district, for the purposes of Sec. 1.414 (4) of this Chapter, shall mean one owner even if there is more than one person titled to the property. If there are more than one titled owners to a property and one person titled as an owner objects in writing to the assessment, all owners of the property shall be deemed to have objected for the purposes of said Section. An owner of more than one taxed parcel in the district proposed for a special assessment who objects in writing to the assessment shall have the each separately taxed parcel owned count as a separate vote in determining a 50% total.

Sec. 1.502. Special Assessment. The entire cost and expense or any part thereof of all public improvements as defined in this chapter or any other chapter or provision of the City Charter, may be defrayed by special assessment upon the lands specially benefited by the improvement in the manner provided in this chapter.

Sec. 1.503. Methods of Creation of an Assessment. A special assessment subject to this chapter may be created by any of the follows causes:

(1) By Council Resolution. Proceedings for making public improvements and defraying the entire cost or any part thereof by creating a special assessment district may be initiated by resolution of the council. For the purpose of determining whether a sufficient number of property owners are interested in a public improvement, the council may require petitions from the owners of property in the proposed special assessment district. Whenever the council shall determine to make any public improvement and defray the entire cost and expense thereof or any part thereof by special assessment, the council shall by resolution direct the city manager to make an investigation of the proposed public improvement and report his findings to the council. The report shall include an analysis of the following:

(a) The estimated cost of the proposed public improvement;

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[8] This Chapter adopted by Ordinance No. 2011-05 July 6, 2011, effective July 21, 2011.

(b) plans and specifications for the public improvement;

(c) the portion of the cost to be borne by the special assessment district and the portion, if any, to be borne by the city at large;

(d) the extent of the improvement and boundaries of the district; and

(e) any other facts or recommendations which will aid the council in determining whether the improvement shall be made and how the improvement shall be financed.

(2) By Ordinance. A special assessment against a specific property may be created by an ordinance that requires property to be maintained to a certain level and if not so maintained allows for the city to improve the property to the required level. Prior to taking such action, the city shall give notice as required by the ordinance of the compliance level required and if not so created or maintained by the date required after such notice, the city may make the improvements and assess the cost thereof against the property benefited.

(3) By Charter. Any special assessment allowed or required by the City Charter may be assessed and collected by the procedures stated in this chapter.

(4) By State Statute. Any special assessment created by Michigan state statute shall by collected by the procedures stated in this chapter unless the procedural requirements for creation and collection of the state statue for a special assessment shall be different or conflicting. In such case, the requirements of the state statue shall be controlling and followed if required by law.

(5) Any Other Special Assessment Existing By Law. Any other special assessment allowed by law shall be collected by the procedures and requirements of this chapter unless superior law or authority requires otherwise.

Sec. 1.504. Procedure for Assessment if to be Created by Council Resolution. If a special assessment is initiated by council resolution, the following procedure shall be followed to enact the special assessment:

(1) Expenditures Limited before Approval. No control or expenditure, except for the necessary procedures of the council and for the preparing of necessary profiles, plans, specifications and estimates of cost, shall be made for any public improvement, the cost of which is to be paid by special assessment upon the property especially benefited thereby, until the council has passed a resolution determining to proceed with such public improvement.

(2) Procedure to Approve. Upon receipt of the report of the city manager, if the council shall determine to proceed with the improvement, it shall by resolution approve the report and the plans and specifications and the estimate of cost for the public improvement as stated. In addition, by such resolution, the council shall determine to proceed with the public improvement, determine the necessity and the nature thereof, designate the limits of the special assessment district to be affected, describe the lands to be assessed, determine the part or proportion of the cost of the public improvement to be paid by the lands specially benefited thereby and the part or proportion, if any, to be paid by the city at large for benefit to the city at large, determine the number of installments in which the special assessment may be paid, the rate of interest, not exceeding ten percent per annum, to be charged if the payment of any balance is to be deferred. The terms of

the resolution shall direct the city assessor to make a special assessment roll of the part or the proportion of the cost to be borne by the lands specifically benefited according to the benefits received and report the special assessment roll to the council.

(3) Special Assessment Roll and Notice of Meeting to Review. When the special assessment roll shall have been reported to the council, it shall order the special assessment roll filed in the office of the city clerk for public examination along with the report of the city manager required to be made pursuant to section 1.403 (1) and shall fix a date, time and place when the council shall meet and review such special assessment roll.

(4) Petition Objecting to Special Assessment. If at or prior to final confirmation of any special assessment, more than 50 percent of the owners of privately owned taxed parcels of real property within a special assessment district, as defined in Sec. 1.401 (4) of this Chapter, to be assessed for improvements shall object in writing to the proposed improvement, it shall not be made by the proceedings authorized in this section without a five-sevenths vote of the members of the council.

Sec. 1.505. Procedure for Assessment if to be Created by City Ordinance, City Charter, State Statute, or Otherwise Allowed by Law. If a special assessment created by any other cause other than initiation by the council, the council shall confirm the creation of those special assessments at a public hearing to be held annually at the council's May or October monthly meetings wherein property owners of property proposed to be specially assessed may protest such assessments as allowed by law.

Sec. 1.506. Notice of Hearings for All Special Assessments. Notice of all hearings contemplating creation of special assessments shall be given as follows:

(1) Notice by Publication. The city clerk shall give notice of the meeting of the council to review such special assessment roll by publication at least once in a newspaper circulated in the city at least ten days prior to the time of such meeting.

(2) Notice by Mail. Notice of hearings and special assessment proceedings shall also be given to each owner of, or party in interest in, property to be assessed whose name appears upon the last local tax assessment records, by mailing by first class mail addressed to that owner or party in interest at the address shown on the tax records, at least ten days before the date of such hearing.

(a) For the purposes of paragraph (2) above, the last local tax assessment records means 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 on that roll.

(b) The notice of hearing that is mailed 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 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; and shall include a statement that the owner or any person having an interest in the real property may file a written appeal of the special assessment with the state tax tribunal within 30 days after the confirmation of the special assessment roll if that special assessment was protested at the hearing held for the purpose of confirming the roll.

Sec. 1.507. Conduct of All Special Assessment Confirmation Hearings. The council shall meet and review the special assessment roll at the time and place appointed or at an adjourned meeting thereof and shall consider any objections thereto. 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. The council 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. The council may correct the 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 council's minutes. After such hearing and review the council 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 or any proceedings in connection therewith. The city clerk shall endorse the date of confirmation upon each special assessment roll. Such roll shall be, upon confirmation, final and conclusive.

Sec. 1.508. 2/3rds Vote of Council Members Elected and Serving Required to Create Assessment. All special assessments of whatever sort created by the council shall require an affirmative vote of not less than 2/3rds of its members elected and serving who shall declare in its creating resolution that it has determined that the whole or part of the cost of any public improvement or repair shall be defrayed by special assessment upon the parcels of property especially benefited.

Sec. 1.509. Special Assessments Shall Constitute a Lien. All special assessments contained in any special assessment roll, including any part thereof to be paid in installments, shall from the date of confirmation of such roll constitute a lien upon the respective lots or parcels of land assessed and until paid shall be a charge against the respective owners of the several lots and parcels of land and a debt to the city from the persons to whom they are assessed. Such liens shall be of the same character and effect as the lien created by the City Charter for city taxes and shall include accrued interest and fees. No judgment or decree or act of the council 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 equitably charged against the premises or as by a regular mode of proceeding might be lawfully assessed thereon. All special assessments shall become due upon confirmation of the special assessment roll or in annual installments, not to exceed 20 in number, as the council may determine at the time of confirmation, and, if in annual installments, the council shall determine the date on which the first installment payment is to be made, the amount thereof, and the subsequent installments to be due either on July 1 or on December 1 of the next year, in the discretion of the council, or at such other date, or dates, as the council shall determine, and annually on that day and month of each succeeding year.

Sec. 1.510. Statements of Assessment. Whenever any special assessment roll shall be confirmed and be payable, the council shall direct the city clerk to transmit such assessment roll to the city treasurer for collection. The city treasurer shall mail statements of the assessments to the respective owners of the lots and parcels of land assessed, as indicated by the records of the city assessor, stating the amount of the assessment and the manner in which it may be paid; provided, however, that failure to mail any such statement shall not invalidate the assessment or entitle the owner to an extension of time within which to pay the assessment.

Sec. 1.511. Payment. The whole or any part of any such assessment may be paid prior to the date of the treasurer's transmittal of the assessment roll to the city assessor without further interest or penalty.

Sec. 1.512. Rights and Remedies. Each special assessment shall be collected by the City treasurer with the same rights and remedies as provided in the City Charter for the collection of taxes, except as otherwise provided in this chapter. Special assessments and all interest and charges thereon, from the date of confirmation of the roll shall be and remain a lien upon the property assessed of the same character and effects as the lien created by general law for the state and county taxes and by this charter for City taxes, until paid. From such date after confirmation as shall be fixed by the council, the same collection fees, penalties and interest shall be paid on delinquent special assessments and upon delinquent installments of such special assessments as are provided by this chapter to be paid on delinquent city taxes. In case any assessment or any part thereof, shall remain unpaid on the first Monday of May or October following the date when the assessment becomes delinquent, the assessment shall be reported unpaid by the treasurer to the council, and such delinquent assessments, together with all accrued interest and any authorized administrative fee shall be transferred and reassessed on the next annual city tax roll in a column headed "Special Assessments".

Sec. 1.513. Expiration of Payment Period. After the expiration of the period provided in Section 1.411 for payment without interest or fees, any installment may be discharged by paying the face amount thereof together with fees and interest thereon from the date of confirmation to the date of payment; provided, however, that if the public improvement has been financed by the sale of non-callable bonds or other evidences of indebtedness which are not pre-payable, then the interest shall be computed from the date of confirmation to the date upon which such installment would have fallen due had it not been prepaid.

Sec. 1.514. Financial Report to Council. Upon completion of the improvement, the financing thereof and the payment of the cost thereof, the city manager shall certify to the council the total cost of such improvement together with the amount of the original roll for the improvement.

Sec. 1.515. Additional Assessments. Should the assessments in any special assessment roll, including the amount assessed to the city at large, prove insufficient for any reason to pay the cost of the improvement for which they were made, then the council may make additional assessments to supply the deficiency against the city and the several lots and parcels of land in the same ratio as the original assessments.

Sec. 1.516. Assessment Larger Than Cost. The excess by which any special assessment prove larger than the actual cost of the improvement and expenses incidental thereto may be placed in the public improvement/public building fund or the general fund of the city if such excess is five percent or less of the assessment, but should the assessment prove larger than necessary by more than five percent the entire excess shall be refunded on a pro rata basis to the owners of the property assessed. Such refund shall be made by credit against future unpaid installments to the extent such installments then exist and the balance of such refund shall be paid to the property owners. No refunds may be made which contravene the provisions of any outstanding evidence of indebtedness secured in whole or in part by such special assessment.

Sec. 1.517. Apportioning Assessments After Division of Land. Should any lots or lands be divided after a special assessment thereon has been confirmed and divided into installments, the city assessor shall apportion the uncollected amounts upon the several

lots and lands so divided, and shall enter the several amounts as amendments upon the special assessment roll. The city treasurer shall, within ten days after such apportionment, send notice of such action to the persons concerned at their last known address by first class mail. The apportionment shall be final and conclusive on all parties unless protest in writing is received by the city treasurer within 20 days of the mailing of the notice.

Sec. 1.518. Invalid or Illegal Assessments. Whenever the council deems any special assessment invalid or defective, or whenever a court adjudges an assessment to be illegal in whole or in part, the council may cause a new assessment to be levied for the same purpose, whether or not the improvement or any part thereof has been completed, or any part of the special assessment collected. In reassessment proceedings pursuant to this article, it shall not be necessary for the council to re-determine the necessity of the improvement or to hold a hearing thereon. If any portion of the original special assessment is collected and not refunded, it shall be applied upon the reassessment, and the reassessment shall to that extent, be deemed satisfied. If more than the amount reassessed is collected, the balance shall be refunded to the person making such payment.

Sec. 1.519. Judgment in Lieu of Improper Judgment. If in any action it shall appear that by reason of any irregularities or informalities the assessment has not been properly made against the person assessed or upon the lot or 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 person assessed or the lot or premises in question, render judgment for the amount properly chargeable against such person or upon such lot or premises.

Sec. 1.520. City Charter Procedure for Contesting Assessment. No suit of any kind shall be instituted or maintained for the purpose of contesting or enjoining the collection of any special assessment:

(1) unless the special assessment is protested at the hearing held for the purpose of confirming the special assessment roll, and

(2) unless such suit or action shall be commenced within 30 days after confirmation of the roll.

Sec. 1.521 – 1.600 Reserved

# TITLE I: ADMINISTRATION

## CHAPTER 6

## CIVIL INFRACTIONS[9]

Sec. 1.601. Purpose. The purpose of this chapter is to create a civil infraction violation bureau in addition to the Parking Violation Bureau established by Chapter 3 of Title I of this Code, establish a civil infraction fine schedule and authorize city personnel and others to issue civil infraction citations and notices.

Sec. 1.602. 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:

(1) Act means Act No. 236 of the Public Acts of Michigan of 1961, as amended, being MCLA 600.101 et seq., MSA 27A.101 et seq.

(2) Authorized city official means a police officer or other personnel of the city authorized by this Code or any ordinance to issue municipal civil infraction citations or municipal ordinance violation notices.

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

(4) Municipal civil infraction means an act or omission that is prohibited by any ordinance or code of the city, but which is not a crime under this Code or other ordinance, and for which civil sanctions, including, without limitation, fines, damages, expenses and costs, may be ordered as authorized by chapter 87 of Act No. 236 of the Public Acts of Michigan of 1961, as amended. Unless a violation of any ordinance or code of the city is specifically designated in the ordinance or code as a municipal civil infraction, the violation shall be deemed a misdemeanor. A municipal civil infraction is not a lesser included offense of an ordinance violation or a code violation that is a criminal offense.

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

(6) Municipal civil infraction citation or citation means a written complaint or notice to appear in court upon which an authorized city official records the occurrence or existence of one or more civil infractions by the person cited.

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

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[9] New Chapter added by Ordinance No. 2012-5 Adopted February 14, 2012, Effective February 28, 2012.

Sec. 1.603. Persons Authorized to Serve Citations and Notices. In addition to police officers, the following city personnel, as provided by Act No. 12 of the Public Acts of Michigan of 1994 (MCLA 600.8701 et seq.), as amended, are local officials legally authorized to issue and serve municipal civil infraction citations and municipal ordinance violation notices in conformance with chapter 87 of the Revised Judicature Act, Act No. 236 of the Public Acts of Michigan of 1961, as amended:

(1) Building inspector.

(2) Electrical inspector.

(3) Plumbing inspector.

(4) Mechanical inspector.

(5) Housing inspector.

(6) Zoning officer.

(7) Fire Marshal and/or fire inspectors.

(8) Fire chief.

(9) City Manager.

(10) Director of Department of Public Works

(11) West Bay County WWTP Superintendent

(12) Code Enforcement Agent[10]

Sec. 1.604. Civil Infraction Action Commencement. A municipal civil infraction action may be commenced upon the issuance by an authorized city official by:

(1) A municipal civil infraction citation directing the alleged violator to appear in court; or

(2) A municipal ordinance violation notice directing the alleged violator to appear at the city municipal ordinance violations bureau.

Sec. 1.605. Citation's issuance and Service. Municipal civil infraction citations shall be issued and served by authorized city officials as follows:

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

(2) The place for appearance specified in a citation shall be the district court.

(3) Each citation shall be numbered consecutively and shall be in a form approved by the state court administrator. The original citation shall be filed

[10] Subparagraph adopted Ordinance 2012-6 on May 8, 2012 effective May 23, 2012

with the district court. Copies of the citations shall be retained by the city and issued to the alleged violator as provided by section 8705 of the act.

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

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

(6) An authorized city official may issue a citation to a person if, based on the investigation, the official has reasonable cause to believe that the person is responsible for a municipal civil infraction; or, based upon investigation of a complaint by someone who allegedly witnessed the person commit a municipal civil infraction, the official has reasonable cause to believe that the person is responsible for an infraction and if the city attorney approves in writing the issuance of the citation.

(7) Except as otherwise provided under subsection (8) of this section, municipal civil infraction citations shall be served by an authorized city official who shall personally serve a copy of the citation upon the alleged violator.

(8) If the municipal civil infraction action involves the use or occupancy of land, a building or other structure, a copy of the citation need not be personally served upon the alleged violator, but may be served upon the 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 record of the land, building or structure at the owner's last known address.

Sec. 1.606. Contents. Citations shall contain the following:

(1) A municipal civil infraction citation shall contain the name and address of the alleged violator, the municipal civil infraction alleged, the place where the alleged violator shall appear in court, the telephone number of the court and the time at or by which the appearance shall be made. The citation shall inform the alleged violator that he may do one of the following:

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

(b) Admit responsibility for the municipal civil infraction with explanation by mail by the time specified for appearance, or in person, or by representation.

(c) Deny responsibility for the municipal civil infraction by either appearing in person for an informal hearing before a judge or district court magistrate, without the opportunity of being represented by an attorney, unless a formal hearing before a

judge is requested by the city, or by appearing in court for a formal hearing before a judge with the opportunity of being represented by an attorney.

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

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

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

(c) That a hearing shall be an informal hearing unless a formal hearing is requested by the alleged violator or the city.

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

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

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

Sec. 1.607. Municipal Ordinance Violations Bureau. The city hereby establishes the municipal ordinance violations bureau ("bureau") as authorized under section 8396 of the act to accept admissions of responsibility for a municipal civil infraction in response to municipal ordinance violation notices issued and served by authorized city officials, and to collect and retain civil fines and costs as prescribed by this code or any other ordinance.

(1) The bureau shall be located at city hall and shall be under the supervision and control of the city treasurer. The city treasurer, subject to the approval of the city council, shall adopt rules and regulations for the operation of the bureau and appoint any necessary qualified city employees to administer the bureau.

(2) The bureau may dispose only of municipal civil infraction violations for which a fine has been scheduled and for which a municipal ordinance violation notice has been issued. The fact that a fine has been scheduled for a particular violation shall not entitle any person to dispose of the violation at the bureau. Nothing in this chapter shall prevent or restrict the city from issuing a municipal civil infraction

citation for any violation or from prosecuting any violation in a court of competent jurisdiction. No person shall be required to dispose of a municipal civil infraction violation at the bureau and may have the violation processed before a court of appropriate jurisdiction. The unwillingness of any person to dispose of any violation at the bureau shall not prejudice the person or in any way diminish the person's rights, privileges and protection accorded by law.

(3) 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.

(4) Municipal ordinance violation notices shall be issued and served by authorized city officials under the same circumstances and upon the same persons as provided for citations as provided in subsections 1.605 (7) and (8). In addition to any other information required by this Code or other ordinance, the violation notice shall indicate the time by which the alleged violator must appear at the bureau, the methods by which an appearance may be made, the address and telephone number of the bureau, the hours during which the bureau is open, the amount of the fine scheduled for the alleged violation and the consequences for failure to appear and pay the required fine within the required time.

(5) An alleged violator receiving a municipal ordinance 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 ordinance violation notice. An appearance may be made by mail, in person or by representation.

(6) 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 cost, if any, prescribed by the schedule of fines for the violation are not paid at the bureau, a municipal civil infraction citation may be filed with the district court and a copy of the citation may be served by first class mail upon the alleged violator at the alleged violator's last known address. The citation filed with the court does not need to comply in all 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.

Sec. 1.608. Civil Penalties. A schedule of civil fines payable to the bureau for admissions of responsibility by persons served with municipal ordinance violation notices is hereby established. The fines for the classes of municipal civil infractions are as follows:

SCHEDULE OF MUNICIPAL CIVIL INFRACTION FINES[11]

| Class | First Offense | Second Repeat Offense Within Three Years | Third and Subsequent Repeat Offenses Within Three Years |
|---|---|---|---|
| A | $25.00 | $50.00 | $100.00 |
| B | 50.00 | 100.00 | 200.00 |
| C | 100.00 | 200.00 | 300.00 |
| CC | 150.00 | 250.00 | 350.00 |
| D | 200.00 | 300.00 | 400.00 |
| DD | 250.00 | 350.00 | 450.00 |
| E | 300.00 | 400.00 | 500.00 |
| EE | 350.00 | 450.00 | 500.00 |
| Special as set by specific section | Specific amount | 1st offense X 2 | 1st offense X 4 |

(1) All violations of Chapter 3 of Title II (entitled "Sewer Use Ordinance") of this Code of Ordinances shall be charged as a citation and not by use of an infraction notice and shall be subject to the additional penalties described in Chapter 3 inclusive of larger civil fines and offenders being charged with misdemeanors.

(2) Fines and penalties for parking violations shall be determined by a separate fine schedule as determined by the City Council from time to time.

(3) A copy of the schedule, as amended, shall be posted at the municipal ordinance violations bureau. A separate offense shall be deemed committed each day during or on which a violation or noncompliance occurs or continues, unless otherwise provided.

Sections 1.609 – 1.699 Reserved.

[11] This Section amended by Ordinance No. 2012-9 adopted August 14, 2012, effective August 29, 2012.

# TITLE II: UTILITIES AND SERVICES

## CHAPTER 1

## COMMUNITY ANTENNA TELEVISION SYSTEM

Sec. 2.101. Grant of Authority. The City of Essexville hereby agrees to permit the establishment of a Community Antenna Television System for the reception and distribution of television signals to fee paying subscribers by the execution of permits, giving the right and privilege to construct, erect, operate and maintain in, upon, along, across, above, over and under the streets, alleys, public ways and public places now laid out or dedicated, and all extensions thereof, and additions thereto, in the City, poles, wires, cables, underground conduits, manholes, and other television conductors and fixtures necessary for the maintenance and operation thereof in the City.

Sec. 2.102. Non-Exclusive Grant. The right to use and occupy said streets, alleys, public ways and public places, for the purposes herein set forth, shall not be exclusive, and the City reserves the right to grant similar uses of said streets, alleys, public ways and public places, to other persons at any time during the period of any existing permit.

Sec. 2.103. Compliance with Applicable Laws and Ordinances. Any permittee shall, at all times during the life of its permit, be subject to all lawful exercise of the police power by the City, and to such reasonable regulation as the City shall, hereafter by resolution or ordinance provide.

Sec. 2.104. Permittee Liability - Indemnification. Any permittee shall save the City harmless from all loss sustained by the City on account of any suit, judgment, execution, claim or demand whatsoever, resulting from negligence on the part of any permittee in the construction, operation or maintenance of its television system in the City. The City shall notify any permittee's representatives in the City within thirty (30) days after the presentation of any claim or demand, either by suit or otherwise, made against the City on account of any negligence as aforesaid on the part of any permittee.

Sec. 2.105. Service Standards. Any permittee shall maintain and operate its system and render efficient service in accordance with the rules and regulations as are, or may be promulgated by the City Council or by any other regulatory body having lawful jurisdiction over Community Antenna Television Systems.

(1) Notice of Interruption for Repairs. Whenever it is necessary to shut off or interrupt service for the purpose of making repairs, adjustments or installations, any permittee shall do so at such time as will cause the least amount of inconvenience to its customers, and unless such interruption is unforeseen and immediately necessary, it shall give reasonable notice thereof to its customers.

Sec. 2.106. Permittees Rules. Any permittee shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable it to exercise its rights and perform its obligations under any permit, and to assure an uninterrupted service to each and all of its customers, provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the provisions hereof or of any regulatory body having lawful jurisdiction over Community Antenna Television Systems.

Sec. 2.107. Condition on Street Occupancy.

(a) Use. All transmission and distribution structures, lines and equipment erected by the permittee within the City shall be so located as to cause minimum interference with the proper use of streets, alleys and other public ways and public places, and to cause minimum interference with the rights or reasonable convenience of property owners, who adjoin any of the said streets, alleys or public ways and public places.

(b) Restoration. In case of any disturbance of pavement, sidewalk, driveway or other surfacing, any permittee shall, at its own cost and expense and in a manner approved by the City Inspector, replace and restore all paving, sidewalk, driveway or surfacing of any street or alley disturbed, in as good condition as before said work was commenced, and shall maintain the restoration in an approved condition for a period of three (3) years.

(c) Relocation. In event that at any time during the period of this permit the City shall lawfully elect to alter, or change the grade of, any street, alley, or other public way, the permittee, upon reasonable notice by the City, shall remove, relay, and relocate its poles, wires, cables, underground conduits, manholes, and other fixtures at its own expense.

(d) Placement of Fixtures. The permittee shall not place poles or other fixtures where the same will interfere with any gas, electric or telephone fixture, sewer, water hydrant or main, or city utilities and all such poles or other fixtures placed in any street shall be placed at the outer edge of the sidewalk and inside the curb line, and those placed in alleys shall be placed close to the line of the lot abutting on said alley, and then in such a manner as not to interfere with the usual travel on said streets, alleys and public ways.

(e) Temporary Removal of Wire for Building Moving. The permittee shall, on the request of any person holding a building moving permit issued by the City, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal, raising or lowering of wires shall be paid by the person requesting the same, and the permittee shall have the authority to require such payment in advance. The permittee shall be given not less than ninety-six hours advance notice to arrange for such temporary wire changes.

(f) Tree Trimming. The permittee shall have the authority to trim trees upon and overhanging streets, alleys, sidewalks and public places of the City so as to prevent the branches of such trees from coming in contact with the wires and cables of the permittee, all trimming to be done under the supervision and direction of the City and at the expense of the permittee.

Sec. 2.108. Preferential of Discriminatory Practices Prohibited. The permittee shall not, as to rates, charges, service facilities, rules, regulations or in any other respect, make or grant any preference or advantage to any person, nor subject any person to any prejudice or disadvantage, provided that nothing in the permit shall be deemed to prohibit the establishment of a graduated scale of charges and classified rate schedules to which any customer coming within such classification would be entitled.

Sec. 2.109. Extension Policy. The permittee shall file with the City Clerk Property Damage and Public Liability Insurance in such limits as the City Council may require.

Sec. 2.110. Approval of Transfer. The permittee may sell or transfer its Plant or system to another, subject to the approval of the City and any regulatory body having

jurisdiction thereof, provided that such approval will not be unreasonably withheld, and provided further that no sale or transfer shall be effective until the vender, assignee or lessee has filed in the office of the City Clerk an instrument, duly executed, reciting the fact of such sale, assignment or lease, accepting the terms of the permit, and agreeing to perform all the conditions thereof.

Sec. 2.111. City Rights.

(a) City Rules. The right is hereby reserved to the City to adopt, in addition to the provisions herein contained, and existing applicable ordinances, such additional regulations and ordinances as it shall find necessary in the exercise of the police power, provided that such regulations, by ordinance or otherwise, shall be reasonable, and not in conflict with the rights herein granted, and shall not be in conflict with the laws of the State of Michigan or of the United States or of any regulatory body, states or federal, having jurisdiction thereof.

(b) Use of System by City. The City shall have the right, during the life of the permit, free of charge, where aerial construction exists, of maintaining upon the poles of the permittee, if any, within the City limits, wire and pole fixtures necessary for a police and fire alarm system, such wires and fixtures to be constructed and maintained at the City's expense to the satisfaction of the permittee and in accordance with permittee's specifications. All municipal buildings, churches, public, and parochial schools shall be permitted to use said system service without charge, where aerial construction exists, upon payment of drop-line charges.

(1) Compliance with Company Rules The City in its use and maintenance of such wires and fixtures, shall at all times comply with the rules and regulations of the permittee, so that there may be a minimum danger of contact or conflict between the wires and fixtures of the permittee and the wires and fixtures used by the city.

(2) Liability. The City shall be solely responsible for all damage to persons or property arising out of the construction or maintenance of said wires and fixtures authorized by this chapter with regard to the City and shall save the permittee harmless from all claims and demands whatsoever arising out of the attachment, maintenance, change or removal of said City wires or fixtures to the poles of the permittee. In case of the rearrangement of the permittee plant or removal of poles or fixtures, the City shall save the permittee harmless from any damage to persons or property arising out of the removal or construction of the City's wires or fixtures.

(3) Inspection. The City shall have the right to make such inspections of all construction or installation work performed, subject to the provisions of this chapter.

Sec. 2.112. Fees. The permittee shall pay to the City an initial fee of Two Hundred dollars ($200.00), and for the privilege of operating a television antenna system under the permit, such percentage of the annual gross operating revenues, excluding drop-line charges, taken in and received by any permittee on all retail sales of television signals within the City as may be determined by the City Council, such fee shall not exceed three percent or such statutory limit as may be fixed by state or federal regulatory agencies.

Sec. 2.113. Rates.[12] Rates charged by the permittee for service thereunder shall be that as determined and allowed by Chapter 7 of Title II of this Code of Ordinances and as may be from time to time hereafter amended.

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[12] This Section amended September 14, 1993, effective October 2, 1993.

Sec. 2.114. Records and Reports. The City shall have access at all reasonable hours to all of the permittee's plans, contracts, and engineering, accounting, financial, statistical, customer and service records relating to the property and the operation of the permittee in the City and to all other records required to be kept thereunder relating to the City. The following records and reports shall be filed with the City Clerk and in the local office of the permittee:

(a) Company Rules and Regulations. Copies of such rules, regulations, terms, and conditions adopted by the permittee for the conduct of its business.

(b) (2) Gross Revenue. Annual summary report showing gross revenues received by the permittee from its operations within the City during the preceding year and such other information as the City shall request with respect to properties and the expenses related to the permittee's service within the City.

Sec. 2.115. Term of Permit. The permit and rights therein granted, shall take effect and be in force from and after the date of such permit, from year to year, for such term as may be determined by the City Council but not less than one year; provided that unless construction is commenced within six months from granting of the permit and completed and service begun within eighteen months after the acceptance date, permit shall be null and void.

Sec. 2.116. Unlawful Theft of Service.[13] Any person who willfully or fraudulently attaches, or who willfully or fraudulently permits or continues to permit the attachment of any line, wire or other device to any line, wire or other device of any permittee under the Article, without the consent of such permittee or its duly authorized agent or officer with the intent of misappropriation of such service provided by the permittee shall be guilty of a misdemeanor and punishable by imprisonment for not more than ninety days or one hundred ($100.00) dollars, or both.

Sec. 2.117 - 2.200. Reserved.

[13] This Section adopted June 9, 1981, effective June 26, 1981.

# TITLE II: UTILITIES AND SERVICES

## CHAPTER 2

## WATER [14]

Sec. 2.201. Jurisdiction. The City Manager shall have jurisdiction over the installation, maintenance, and operation of all water mains, meters, related apparatus, and fixtures.

Sec. 2.202. Permit. No person shall tap or make a connection to any part of the City's water distribution system without first obtaining all permits required by the City.

Sec. 2.203. Fees and Charges. Fees and charges assessed for water taps and connections, consumption of water, discontinuance of service, activation, or reactivation of service, and all other water utility services shall be set by resolution of the City Council.

Sec. 2.204. Meters. All water taps and connections shall be served by a meter.

Sec. 2.205 Access to Property and Authority to Discontinue Service.[15] Upon the written or oral request by the City Manager or any person authorized by him or her as a representative of the City, the residents or owners of any property receiving water service from the City shall allow access by the representative of the City to the property where the water meter for such service is located for the purpose of installing, inspecting, repairing and maintaining such water meters and related fixtures. A written request may be sent by first class mail to the mailing address and/or the owners of property receiving water advising that access will be required at a specific time and date.

Water service to any property may be discontinued when:

(a) Residents or owners of a property receiving water service from the City fail or refuse access upon written or oral request by City representatives to the property and where the water meter is located for the purpose of installing, inspecting, repairing and maintaining such water meters and related fixtures; or

(b) Any person receiving water and/or sewer service from the City neglects or refuses to pay charges for such service ten (10) or more days after written notice demanding payment of delinquent charges is mailed by first class to the customer; or

(c) Conditions exist that constitute a public health threat or hazard if such water service is not discontinued or where the installation or operation of such water service is in violation of law.

Sec. 2.206. Single Service. No tap or connection shall serve more than one service or dwelling.

Sec. 2.207. Shut-Offs. Each service line shall have shut-off valves installed as specified by the City.

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[14] This Chapter amended April 11, 2000, effective April 26, 2000

[15] This Section amended by Ordinance No. 2004-1 adopted March 9, 2004, effective March 25, 2004.

Sec. 2.208 Water Bills.[16] For the purpose of billing, the City's water consumers shall be divided into three geographically created billing cycles. Water bills shall be due and payable quarterly upon the first day of the month of the beginning of each billing cycle. If bills are not paid by the twentieth day of the month in which they are sent there shall be immediately due and owing to the City an additional amount of ten per cent more than the originally billed amount. The City Treasurer is authorized to instigate collection procedures on any water bill unpaid after the twentieth day of the month when due.

Sec. 2.209 Notice and Deposit Required Where Leases Require Tenants to Pay Water and Sewer Bills.[17] All persons who are not owners of the premises for which application is made for water service, hereafter referred to as tenants, shall be required to make a deposit for the activation of such service in an amount of money as shall be set by resolution of the City Council. For a deposit to be accepted from a tenant as being responsible for payment of charges for water and sewer services, the City must be notified of such fact in writing, the notice to include a copy of the lease of the affected premises, if there is one.

Deposits received and held by the City for activation of water service shall be refunded to the depositor, less all unpaid water charges for such service, upon proper notice to the City by the tenant and the owner that the tenant has vacated the property receiving the water service. A security deposit may not be used in lieu of payment of amounts due and owing by tenants continuing in possession. No interest shall be paid on deposits. Said deposit will be credited to the final bill upon termination of service. Deposits are nontransferable. The City Manager or City Treasurer are hereby empowered to discontinue water service for nonpayment of any water rates, sewer rates, assessments, or charges of rentals due to the City or for the violation of any provision of this Chapter or improper use or tampering of or with City meters or other water measuring equipment."

Sec. 2.210. Liability. All parties using water from the water system of the City for any purpose whatsoever do so at their own risk and neither the City nor its employees shall be liable for any damages caused by or arising from the City's supplying of water or for accidents or damage of any kind caused by or arising from the use or failure of such water supply.

Sec. 2.211. Consumer Responsibility. The consumer shall be responsible for the installation; maintenance and repair of all service lines located on the consumer's property and up to the City "curb cock".

Sec. 2.212. Service Lines. All new or renewed service lines must be of type and materials specified by the City. The consumer must have all material for new or replacement service lines on site and the excavation completed and exposed to the curb cock before the connection or tap is made. Only material approved by the City may be used for service lines and/or connections to any part of the City's water distribution system.

Sec. 2.213. Approval of Installation. All water mains, valves, hydrant connections, corporation, and curb cocks, joints, pipes or service lines shall remain exposed until such installations have been approved for service by the City.

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[16] This Section amended by Ordinance No. 2004-1 adopted March 9, 2004, effective March 25, 2004.
[17] This Section amended by Ordinance No. 2015-3 adopted October 20, 2015, effective November 4, 2015.

Sec. 2.214. Compliance with Standards. No water service shall be activated until approved by the City in accordance with the requirements of the City Code and law.

Sec. 2.215. Records of Installation. The City shall maintain a record of all water connections and taps including the date, size, and material used up to the meter and the location of the connection or tap, curb box and service line for each connection.

Sec. 2.216. Meter Boxes. The location, size, and materials used for construction of meter boxes shall be determined and approved by the City.

Sec. 2.217. Interference with Service. It shall be unlawful for any person to interfere with the supply of water service or to damage or contaminate any water main, supply, or service equipment of the City. No person shall disconnect, take apart, tamper with any water meter, or line ahead of any water meter, nor make any water connection or use any line or consume any water from a connection ahead of a water meter.

Sec. 2.218. Lien Against Premises Served.[18] The charges for water and services which are, under the provisions of Michigan Complied Law (MCL) 141.121, as amended, made a lien on all premises served thereby, unless notice is given that a tenant is responsible under the provisions and requirements of law, are hereby recognized to constitute such lien and whenever any such charge against any piece of property shall be delinquent for six (6) months, the City official in charge of the collection thereof shall certify to the tax assessing officer of the City the fact of such delinquency, whereupon such charge shall be entered upon 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. All provisions of the Charter of the City and of the laws of the state applicable to the time and manner of certification and collection of delinquent City taxes levied against real estate in the City shall be applicable to and shall be observed in the certification and collection of charges for water service. Provided, however, where notice is given that a tenant is responsible for such charges and service in the manner provided by MCL 141.121, no further service shall be provided to any piece of property until a cash deposit pursuant to Section 2.209 of this Code shall have been made as security for the payment of such charges and service."

Sec 2.219 - 2.300. Reserved.

[18] This Section added by Ordinance No. 2015-3, adopted October 20, 2015, effective November 4, 2015.

# TITLE II: UTILITIES AND SERVICES

## CHAPTER 3

## SEWER USE ORDINANCE[19]

Sec. 2.301. Short title. This Ordinance shall be known as the Sewer Use Ordinance ("Ordinance".)

Sec. 2.301 (a). Purpose. The Charter City of Essexville ("City") adopts this Ordinance to fulfill its obligations incurred by the City having acquired an ownership interest in the West Bay County Regional Wastewater System.

Sec. 2.301 (b). Repeal of Ordinances. All such portions of other ordinances of the City which are in conflict with this ordinance are hereby repealed.

Sec. 2.301 (c). Intent and Purpose. This Ordinance sets forth uniform requirements for direct and indirect contributors of sewage located within the City of Essexville ("City") into the West Bay County Regional Wastewater System ("POTW") and the Local Sewer System and enables the City and the Bay County Department of Water and Sewer of the Bay County Council of County Road Commissioners (the "Department") (also referred to as the "Control Authority" or the "POTW," as appropriate to the context herein) to comply with all applicable state and federal laws as required by the Federal Water Pollution Control Act (also known as the "Clean Water Act"), as amended, 33 USC 1251, et seq.; the General Pretreatment Regulations (40 CFR part 403); Part 31 of Act 451 of the Public Acts of Michigan of 1994, MCLA §324.3101 et seq., as amended ("Water Resources Protection"); and the rules, Michigan Administrative Code, R323.2301 et seq., as amended, promulgated pursuant to Sections 3103, 3106 and 3109 of Part 31 of Act 451 of the Public Acts of Michigan of 1994, as amended.

Sec. 2.301 (d). The purposes and objectives of this Ordinance are:

(1) To establish standards, rules, and regulations with respect to the use of the Local Sewer and Storm System and discharges to the POTW;

(2) To prevent the discharge of pollutants into the POTW that do not meet applicable pretreatment standards and requirements; that would interfere with the operation of the POTW; that would pass through the POTW into the receiving waters or the atmosphere; that would inhibit or disrupt the POTW's processing, use, or disposal of sludge; that would cause health or safety problems for any person working on the POTW; or that would result in a violation of the POTW's NPDES permit or of other applicable laws and regulations;

(3) To improve and maximize the opportunity to recycle and reclaim wastewaters and sludges from the system;

(4) To regulate the discharge of wastewater to the POTW and to enforce the requirements of this Ordinance through the issuance of permits and through other means as provided by this Ordinance;

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[19] This Chapter was amended by repealing Sewage Disposal Ordinance which was adopted February 9, 1988 effective February 26, 1988 and replacing it with Sewer Use Ordinance No. 2012-1 adopted January 10, 2012 effective January 25, 2012.

(5) To authorize and require all inspection, monitoring, reporting and enforcement activities as necessary to insure compliance with applicable pretreatment standards and requirements and other applicable laws and regulations.

Sec. 2.302. Scope and Authority.

(a) This Ordinance shall apply to all persons that discharge to the POTW from within the City.

(b) Except as otherwise specifically provided by this Ordinance or other agreement, specifically Section 2.370, wherein the WWTP Superintendent is empowered to act, the City Manager shall administer, implement, and enforce the provisions of this Ordinance on behalf of the City and the POTW.

(c) It shall be unlawful for any person to discharge any wastewater or pollutant to the POTW or to any storm sewer or natural outlet within the City or in any area under the jurisdiction of the City, except in accordance with the provisions of this Ordinance and law. If any user discharges or proposes to discharge wastewaters or pollutants that are prohibited or limited by this Ordinance, authorized representatives of the City and/or the POTW may take any action as provided by this Ordinance or other applicable laws or regulations to assure and require compliance with the provisions of this Ordinance.

Sec. 2.303. Definitions. Unless the context specifically indicates otherwise, the following terms and phrases, as used in this Ordinance, shall have the meanings hereinafter designated:

"Act" (or "the Act"). The Federal Water Pollution Control Act (also known as the "Clean Water Act"), 33 USC 1251, et seq., as amended.

"ASTM" means the American Society for Testing and Materials, an international, nonprofit, technical, scientific and educational society devoted to the promotion of knowledge of the materials of engineering, and the standardization of specifications and methods of testing.

"Authorized Representative of User." An authorized representative of a User is:

(a) A responsible corporate officer, if the user is a corporation. "Responsible corporate officer" means: a president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or the principal manager of one or more manufacturing, production, or operation facilities employing more than 250 persons or having gross annual sales or expenditures of more than $25,000,000.00 in second quarter 1980 dollars, if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(b) A general partner or proprietor, if the user is a partnership or proprietorship, respectively.

(c) The principal executive officer, ranking elected official, or director having responsibility for the overall operation of the discharging facility, if the user is a federal, state or local governmental entity.

(d) If none of the categories listed in (a), (b) or (c), above, are applicable to the user, then a representative of the industrial user as approved by the WWTP Superintendent.

(e) A duly authorized representative of an individual designated in (a), (b), (c) or (d) above, if the representative is responsible for the overall operation of the facilities from which the discharge to the POTW originates.

(1) To be considered "duly authorized," the authorization must be made in writing by an individual designated in (a), (b), (c) or (d) above. The authorization must specify either an individual or a position having responsibility for the overall operation of the facility (such as the position of plant manager, operator of a well or well field, or a position of equivalent responsibility, or having overall responsibility for the environmental matters for the company or entity). The written authorization must be submitted to the WWTP Superintendent prior to or together with any reports to be signed by the authorized representative.

(2) If an authorization under (e)(1) above is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, or overall responsibility for environmental matters for the company or entity, a new written authorization must be submitted to the WWTP Superintendent prior to or together with any reports to be signed by the newly authorized representative.

"BOD" or "Biochemical Oxygen Demand." The quantity of oxygen used in the biochemical oxidation of organic matter under standard laboratory procedures for five (5) days at 20 degrees Centigrade, expressed in milligrams per liter (mg/l).

"Building Lead." The portion of building sewer from the soil pipe to the sewer stub.

"Building Sewer." The portion of a sewer from the soil pipe to the wye branch of the sewer main.

"Bypass." The intentional diversion of waste streams from any portion of an industrial user's treatment facility.

"Categorical Pretreatment Standard." A national pretreatment standard promulgated by the U.S. EPA in accordance with Sections 307(b) and (c) of the Act that specifies quantities or concentrations of pollutants or pollutant properties that may be discharged to a POTW by users in specific industrial subcategories.

"Categorical User." Any non-domestic user subject to a categorical pretreatment standard.

"COD" or "Chemical Oxygen Demand." The quantity of oxygen consumed from a chemical oxidant in a specific test, expressed in milligrams per liter (mg/l).

"Chlorine Demand." The difference between the amount of chlorine applied and the amount of free chlorine available at the end of the contact time, expressed in milligrams per liter (mg/l).

"Compatible Pollutant." A pollutant which, as determined by the WWTP Superintendent, is susceptible to effective treatment by the POTW as designed, and which will not interfere with, or pass through, the POTW, and which is otherwise not incompatible with the treatment processes or in excess of the capacity at the POTW. The

term “compatible” is a relative concept that must be determined on a case-by-case basis. In determining whether or not a pollutant is compatible with the POTW, the Superintendent may consider, among other factors determined relevant by the Superintendent, the nature and qualities of the pollutant, and the concentration, mass, and flow rate at which the pollutant is (or is proposed to be) discharged. Thus, for example, even pollutants such as BOD, fats, oils or grease, phosphorus, suspended solids, and fecal coliform bacteria, which are typically considered “compatible” may be determined incompatible, if discharged in concentrations or flows that would cause interference or pass through or exceed the POTW’s capacity. Specifically excluded from the definition of “compatible pollutants” are “heavy” metals, PCBs, and any other pollutants that will likely contribute or cause operational or sludge disposal problems or unacceptable discharges to the receiving waters, as determined by the WWTP Superintendent.

“Composite Sample.” A series of individual samples taken at regular intervals over a specific time period and combined into a single sample (formed either by continuous sampling or by mixing discrete samples) representative of the average stream during the sampling period. For categorical sampling, a composite sample shall consist of at least four (4) individual samples taken within a 24-hour period.

“Control Authority.” The Department of Water and Sewer of the Bay County Council of County Road Commissioners acting in its capacity to administer and implement the approved industrial pretreatment program and this ordinance, as provided for in Section 2.302(b).

“Control Authority Enforcement Response Plan” (CAER Plan). The plan prepared by the POTW as required by 40 CFR 403.8(f)(5) that describes how the POTW will investigate and respond to instances of non-compliance and the types of escalated enforcement actions the POTW will take in response to violations of applicable standards and requirements.

“Cooling Water (non-contact).” Water used for cooling purposes only that has no direct contact with any raw material, intermediate, or final product and that does not contain a detectable level of contaminants higher than that of the intake water or exceed local limits.

“Cooling Water (contact).” Water used for cooling purposes only that may become contaminated or polluted either through the use of water treatment chemicals (such as corrosion inhibitors or biocides) or by direct contact with process materials and/or wastewater.

“County.” The County of Bay, Michigan.

“Daily Maximum.” The concentration (or mass loading, expressed in terms of pounds per day) that shall not be exceeded on any single calendar day. Where daily maximum limitations are expressed in terms of a concentration, the daily discharge is the arithmetic average measurement of the pollutant concentration derived from all measurements taken that day. Where daily maximum limitations are expressed in units of mass, the daily discharge is the total mass discharged during the day. Sampling for daily maximum shall be a 24-hour flow proportioned composite sample, except that a minimum of 4 grab samples shall be taken in lieu of a 24-hour flow proportioned composite sample for pH, cyanide, phenol (T), residual chlorine, oil and grease, sulfides, volatile organic compounds (and any other parameters specified by the WWTP Superintendent). If it is not feasible to obtain a flow proportioned composite sample, a time proportioned composite sample or a minimum of 4 grab samples may be used in lieu of the flow

proportioned composite sample if the user demonstrates to the WWTP Superintendent that a representative sample will be obtained. If the pollutant concentration in any sample is less than the applicable detection limit, that value shall be regarded as zero when calculating the daily maximum concentration (except as otherwise provided in a permit, order or agreement issued under this Ordinance). If a composite sample is required for a parameter, the determination whether the daily maximum limitation for that parameter has been exceeded on a single calendar day shall be based on the composite sample collected for that parameter on that calendar day. If grab samples are required for a parameter, the determination whether the daily maximum limitation for that parameter has been exceeded on a calendar day shall be based on the average of all grab samples collected for that parameter on that calendar day. If only one grab sample is collected for a parameter on a given day, the determination whether the daily maximum limitation for that parameter has been exceeded for the day shall be based on the results of that single grab sample.

"Department." The Department of Water and Sewer of the Bay County Council of County Road Commissioners, or the Department's authorized agents, deputies, or representatives; also referred to as the "Control Authority" or the "POTW" as appropriate to the context herein.

"Director." The Director of the Department, or the Director's authorized agents, deputies, or representatives.

"Discharge." The introduction of wastewater or pollutants into the POTW, whether intentional or unintentional, and whether direct or indirect (including inflow and infiltration).

"Domestic User." A user that discharges only segregated normal strength domestic waste into the POTW.

"Domestic Waste." Water-carried waste of human origin generated by personal activities from toilet, kitchen, laundry, or bathing facilities, or by other similar facilities used for household or dwelling purposes ("sanitary sewage"). Domestic waste shall not include any waste resulting from industrial or commercial processes, including, without limitation, any hazardous or toxic pollutants.

"Dwelling." Any structure designed for habitation, including but not limited to houses, mobile homes, apartment buildings, condominiums and townhouses.

"Environmental Protection Agency" (EPA). The United States Environmental Protection Agency, or its duly authorized representatives.

"Footing Drain." A pipe or conduit placed around the perimeter of a building foundation and that intentionally admits ground water.

"Garbage." Solid wastes from the preparation, cooking, and dispensing of food, from the handling, storage, processing and sale of produce, or from the canning or packaging of food.

"Grab Sample." An individual sample that is taken from a wastestream on a one-time basis without regard to the flow in the wastestream and over a period of time not to exceed 15 minutes.

"Ground Water." The subsurface water occupying the saturation zone from which wells and springs are fed.

“Hazardous Waste.” Any substance discharged or proposed to be discharged into the POTW, that, if otherwise disposed of, would be a hazardous waste under 40 CFR part 261.

“Heavy metals.” Heavy metals include, but shall not be limited to, elemental, ionic, or combined forms of antimony, arsenic, barium, cadmium, chromium, cobalt, copper, lead, mercury, molybdenum, nickel, selenium, silver, and zinc, and other metals that may accumulate in sludge, and/or are generally toxic in low concentrations to animal and plant life, as determined by the WWTP Superintendent.

“Holding Tank Waste.” Any waste from holding tanks such as vessels, chemical toilets, campers, trailers, septic tanks, and vacuum-pump tank trucks.

“Incompatible Pollutant.” Any pollutant that is not a compatible pollutant.

“Indirect Discharge.” The introduction of pollutants into the POTW, intentionally or unintentionally, from any non-domestic source regulated under Section 307(b), (c) or (d) of the Act (including, without limitation, holding tank waste or trucked or hauled waste discharged into the POTW and pollutants entering the POTW through infiltration or inflow).

“Industrial User.” Any non-domestic user that contributes, causes or permits the contribution or introduction of wastewater or pollutants into the POTW, whether intentional or unintentional, and whether direct or indirect.

“Infiltration.” Any waters entering the POTW from the ground, through means such as, but not limited to, defective pipes, pipe joints, connections or manhole walls. Infiltration does not include, and is distinguished from, inflow.

“Inflow.” Any waters entering the POTW from sources such as, but not limited to, roof leaders; cellar, yard, and area drains; footing drains; foundation drains; cooling water discharges; drains from springs and swampy areas; manhole covers; storm sewers; catch basins; storm waters; surface runoff; street wash waters; or drainage. Inflow does not include, and is distinguished from, infiltration.

“Instantaneous Maximum Concentration.” The maximum concentration of a pollutant allowed to be discharged at any instant in time (independent of the flow rate or duration of the sampling event). If the concentration determined by analysis of any grab sample, composite sample, or discrete portion of a composite sample exceeds the instantaneous maximum concentration, the instantaneous maximum concentration shall be deemed to have been exceeded. Any discharge of a pollutant at or above a specified instantaneous maximum concentration is a violation of this Ordinance.

“Interceptor Sewer.” A sewer intended to receive dry weather flow from a number of transverse sewers or outlets that conducts such waters to a point for treatment or disposal.

“Interference.” A discharge that, alone or in conjunction with a discharge or discharges from other sources: (1) inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal; or (2) is a cause of a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation), or of the prevention of sewage sludge use or disposal in compliance with the following statutory provisions and regulations or permits issued there

under (or more stringent State or local regulations, as applicable): Section 405 of the Act; the Solid Waste Disposal Act (SWDA) (including Title II, more commonly referred to as RCRA, and including State regulations contained in any State sludge management plan prepared pursuant to Subtitle D of the SWDA); the Clean Air Act; the Toxic Substances Control Act; and the Marine Protection, Research, and Sanctuaries Act.

"Lateral Sewer." A sewer that is designed to receive a building sewer.

"Local Sewer System." All of the sanitary sewer and storm system located within the corporate limits of the City of Essexville which are solely owned and operated by the City including, but not limited to, sewer lines, pump stations and all appurtenances thereto.

"May" is permissive. (See "Shall.")

"Monthly Average." The concentration (or mass loading, expressed in terms of pounds per day) that shall not be exceeded for any single calendar month. Where expressed in terms of a concentration, the monthly average limit means the sum of the concentrations of a pollutant obtained through sample analysis during a calendar month divided by the number of samples taken during that calendar month. Where expressed in terms of a mass loading, the monthly average limit means the sum of the daily mass loadings of a pollutant obtained through sample analysis during a calendar month divided by the number of days that mass loading samples were taken during that calendar month. The concentrations (or loadings) that are added are single numbers for single calendar days for all days during the calendar month for which analyses are obtained (whether by the user or the POTW), but the concentrations (or loadings) may be based upon a sample or samples taken over either all or part of that day and upon single or multiple analyses for that day, as determined by the WWTP Superintendent. Sampling for monthly average shall be by composite samples, except that a minimum of four (4) grab samples shall be taken in lieu of a 24-hour flow proportioned composite sample for a single day for pH, cyanide, phenol (T), residual chlorine, oil and grease, sulfide, and volatile organic compounds (and any other parameters specified by the WWTP Superintendent). If it is not feasible to obtain a flow proportioned composite sample, a time proportioned composite sample or a minimum of 4 grab samples may be used in lieu of the flow proportioned composite sample if the user demonstrates to the WWTP Superintendent that representative samples will be obtained. If the pollutant concentration in any sample is less than the applicable detection limit, that value shall be regarded as zero when calculating the monthly average concentration (except as otherwise provided in a permit, order or agreement issued under this Ordinance). If no samples are taken during particular months because less than monthly sampling is required for a pollutant parameter (e.g., a specified quarterly monitoring period), the monthly average for each month within the specified monitoring period shall be deemed to be the sum of concentrations (or loadings) for the monitoring period divided by number of samples taken during the monitoring period.

"Natural Outlet." Any outlet into a watercourse, pond, ditch, lake or other body of surface or ground water.

"New Source." Any building, structure, facility or installation from which there is or may be a discharge of pollutants, the construction of which commenced after the publication of proposed pretreatment standards under Section 307(c) of the Act that will be applicable to the source, if pretreatment standards are thereafter promulgated in accordance with that section, provided that:

(a) The building, structure, facility or installation is constructed at a site at which no other source is located; or

(b) The building, structure, facility or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or

(c) The production or wastewater generating processes of the building, structure, facility or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source should be considered.

Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility or installation meeting the criteria of paragraphs (b) or (c) of this Section, above, but otherwise alters, replaces, or adds to existing process or production equipment. Commencement of construction of a new source shall be determined in a manner consistent with 40 CFR 403.3(k)(3).

“Non-domestic User.” Any user other than a domestic user.

“Normal Strength Domestic Waste.” A domestic waste flow for which the levels of pollutants (including, without limitation, BOD, TSS, ammonia nitrogen, or phosphorous) are below the surcharge levels for any parameter as established by this Ordinance. Further, to be considered normal strength, the wastewater must have a pH between 6.5 and 9.5, and must not contain a concentration of other constituents that would interfere with POTW treatment processes.

“NPDES Permit.” A permit issued pursuant to Section 402 of the Act.

“Operation and Maintenance.” All work, materials, equipment, utilities and other effort required to operate and maintain the POTW consistent with insuring adequate treatment of wastewater to produce an effluent in compliance with the NPDES permit and other applicable state and federal regulations.

“Pass Through.” A discharge that exits the POTW into waters of the State (or waters of the United States) in quantities or concentrations that, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation).

“Person.” Any individual, partnership, co-partnership, firm, company, corporation, association, society, group, trust, estate, governmental entity or any other legal entity, or their legal representatives, agents or assigns. As used in this Ordinance, the masculine gender shall include the feminine, and the singular shall include the plural where indicated by the context.

“PH.” The logarithm (base 10) of the reciprocal of the concentration of hydrogen ions expressed in grams per liter of solution.

“Pollutant.” The term “pollutant” includes, without limitation, all of the following:

(a) Any material that is discharged into water or other liquid, including, without limitation, dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, wrecked or discharged equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste.

(b) Properties of materials, including, but not limited to, pH and heat.

(c) Substances regulated by categorical standards.

(d) Substances discharged to the POTW that are required to be monitored by a user under this Ordinance, are limited in the POTW's NPDES permit, or required to be identified in the POTW's application for an NPDES permit.

(e) Substances for which control measures on industrial users are necessary to avoid restricting the POTW's residuals management program; to avoid operational problems at the POTW; or to avoid POTW worker health and safety problems.

"POTW" (Publicly Owned Treatment Works). The complete West Bay County Regional Wastewater sewage disposal system and "treatment works" (as defined by the Act), including any devices, equipment, structures, property, processes and systems used in the storage, treatment, recycling or reclamation of wastewater, sewage or sludge, as well as sewers (including all main, lateral and intercepting sewers), manholes, inlets, pipes and other conduits and conveyances used to collect or convey wastewater or sewage from any source to the treatment works, as now or hereafter added to, extended or improved, including the Local Sewer System. The term "POTW" is also used to refer to the Department acting in its capacity as the Control Authority to administer and implement the approved industrial pretreatment program and this ordinance, as provided for in Section 2.302(b).

"POTW Treatment Plant." The portion of the POTW that is designed to provide control and treatment (including recycling or reclamation) of sewage and industrial waste (commonly referred to as the "wastewater treatment plant" or "WWTP").

"Premises." A lot or parcel of land, or a building or structure, having any connection, direct or indirect, to the POTW, or from which there is a discharge to the POTW.

"Pretreatment (or Treatment)." The reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater to a less harmful state prior to or in lieu of discharging or otherwise introducing such pollutants into the POTW. The reduction or alteration can be obtained by physical, chemical or biological processes, process changes or other means, except for the use of dilution as prohibited by MAC R 323.2311(6).

"Pretreatment Requirement." Any substantive or procedural requirement related to pretreatment, other than a national pretreatment standard, imposed on an industrial user.

"Pretreatment Standard." Any regulation containing pollutant discharge limits promulgated by the U.S. EPA in accordance with Section 307(b) and (c) of the Act that applies to industrial users, including prohibitive discharge limits and local limits established under MAC R 323.2303 and categorical standards.

"Private." Jurisdiction by a non-governmental entity.

"Properly Shredded Garbage." The wastes from the preparation, cooking and dispensing of food that have been cut or shredded to such a degree that all particles will be carried freely under flow conditions normally prevailing in public sewers, with no particle greater than ½ of an inch in any dimension.

"Public." Jurisdiction by a governmental entity.

"Public Sewer." A sewer in which all owners of abutting property have equal rights and that is controlled by public authority.

"Replacement." The replacement in whole or in part of any equipment or facilities in the POTW to ensure continuous treatment of wastewater in accordance with the NPDES permit and other applicable state and federal regulations.

"Sanitary Sewer." A sewer intended to carry liquid and water-carried wastes from residences, commercial buildings, industrial plants and institutions, together with minor quantities of ground, storm and surface waters that are not intentionally admitted.

"Septage." Any human excrement or other domestic waste, including graywater and other material or substance removed from a portable toilet, septic tank, seepage pit, cesspool, holding tank, or other similar enclosure that receives, or is intended to receive, only domestic, non-industrial waste.

"Severe Property Damage." Substantial physical damage to property, damage to the treatment facilities that causes them to become inoperable, or substantial and permanent loss of natural resources that can reasonably be expected to occur in the absence of a "bypass." Severe property damage does not mean economic loss caused by delays in production.

"Sewer." Any pipe, tile, tube or conduit for carrying wastewater or drainage water.

"Sewer Stub." The part of the sewerage system extending from the wye branch on the sewer main to the private property or easement line of the property.

"Shall" is mandatory. (See "May.")

"Significant Industrial User." Any industrial user:

(a) Subject to categorical pretreatment standards; or

(b) Any other industrial user that:

(1) discharges to the POTW an average of 25,000 gallons per day or more of process wastewater (excluding sanitary, non-contact cooling and boiler blow-down wastewater);

(2) contributes a process waste stream that makes up 5% or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or

(3) is otherwise designated by the WWTP Superintendent as a significant industrial user on the basis that the industrial user has a reasonable potential to adversely affect the operation of the POTW, to violate any pretreatment standard or requirement, or

because the WWTP Superintendent determines that a wastewater discharge permit for the user's discharge is required to meet the purposes and objectives of this Ordinance.

The WWTP Superintendent may determine that a user that meets the criteria of Subsections (b)(1) and (b)(2) above is not currently a significant industrial user, if the Superintendent finds that the user has no reasonable potential to adversely affect the operation of the POTW, to violate any pretreatment standard or requirement, or that a permit is not required to meet the purposes and objectives of this Ordinance. A determination that a user is not a significant industrial user (or that a permit is therefore not required) shall not be binding and may be reversed by the Superintendent at any time based on changed circumstances, new information, or as otherwise determined necessary by the Superintendent to meet the purposes and objectives of this Ordinance.

"Significant Non-Compliance." A violation (or group of violations) of applicable pretreatment standards or requirements or any other action (or failure to act) by an industrial user that meets the criteria set forth in Section 2.380 of this Ordinance, or that will otherwise adversely affect the operation or implementation of the POTW's pretreatment program as determined by the WWTP Superintendent.

"Slug," "Slug Load," or "Slug Discharge." Any discharge of a non-routine, episodic nature, including, but not limited to, an accidental spill or a non-customary batch discharge.

"Soil Pipe." The 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 5 feet outside the inner face of the building wall.

"State." The State of Michigan.

"Standard Industrial Classification" (SIC). A classification pursuant to the Standard Industrial Classification Manual issued by the Executive Office of the President, Office of Management and Budget, 1972, as amended.

"Storm Sewer" or "Storm Drain." A sewer intended to carry storm water and surface water, street wash, other wash waters, or drainage, but not wastewater.

"Storm Water." The excess water running off from the surface of a drainage area during and immediately after a period of rain or snow melt and is that portion of the rainfall or snow melt runoff and resulting surface flow in excess of that which can be absorbed through the infiltration capacity of the surface of the basin.

"Superintendent." See "WWTP Superintendent."

"Surcharge." The additional treatment charges made by the POTW for the treatment of wastewater containing pollutants in excess of specified concentrations, loadings or other applicable limits.

"Suspended Solids." The suspended matter that floats on the surface of, or is suspended in, water, wastewater or other liquids, and that is removable by laboratory filtering (referred to as non-filterable residue in laboratory testing).

"Toxic Pollutant." Any pollutant or combination of pollutants that is or can potentially be harmful to the public health or the environment, including, without limitation,

those listed as toxic in regulations promulgated by the Administrator of the EPA under Section 307(a) of the Act or under other laws.

"Trade Secret." The whole or any portion or phase of any manufacturing proprietary process or method which is not patented, which is secret, which is useful in compounding an article of trade having a commercial value, and the secrecy of which the owner has taken reasonable measure to prevent from becoming available to persons other than those selected by the owner to have access for limited purposes. Trade secret shall not be construed, for purposes of this Ordinance, to include any information regarding the quantum or character of waste products or their constituents discharged, or sought to be discharged, into the POTW.

"Trucked or Hauled Waste or Pollutants." Any waste proposed to be discharged to the POTW from a mobile source, including, without limitation, holding tank waste.

"TSS." Total suspended solids.

"Upset." An exceptional incident in which there is unintentional and temporary noncompliance with categorical pretreatment standards because of factors beyond the reasonable control of the industrial user. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

"User." Any person who contributes, causes or permits the contribution, introduction or discharge of wastewater into the POTW, whether intentional or unintentional, and whether direct or indirect.

"Wastewater." The liquid and water-carried industrial or domestic waste from dwellings, commercial buildings, industrial facilities, and institutions (including, without limitation, contaminated groundwater and landfill leachate), whether treated or untreated, that is contributed, introduced or discharged into the POTW.

"Wastewater Discharge Permit." A permit issued to industrial users as provided by this Ordinance to control the discharge of wastewater to the POTW and to ensure compliance with applicable pretreatment standards and requirements.

"Wastewater Transmission Facilities." The facilities for collecting, transporting, regulating, pumping and storing of wastewater.

"Wastewater Treatment Works." The arrangement of devices and structures for treating wastewater, industrial wastes, and sludge.

"Waters of the State." All streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, that are contained within, flow through, or border upon the State or any portion of the State, and as otherwise specified by applicable laws and regulations.

"Waters of the United States." All waters as defined by 40 CFR 122.2.

"WWTP Superintendent" (or "Superintendent"). The person designated by the Department to supervise the operation, maintenance, alteration, repair and management of the POTW and who is charged with certain duties and responsibilities by this Ordinance, or the Superintendent's duly authorized agents, deputies or representatives.

"Wye Branch." The part of the POTW connecting the sewer main and the sewer stub.

Sec. 2.304. Abbreviations. The following abbreviations shall have the following designated meanings:

| | |
|---|---|
| BOD | Biochemical Oxygen Demand |
| CFR | Code of Federal Regulations |
| COD | Chemical Oxygen Demand |
| EPA | Environmental Protection Agency |
| l | Liter |
| mg | Milligrams |
| mg/l | Milligrams per liter |
| MAC | Michigan Administrative Code |
| NPDES | National Pollutant Discharge Elimination System |
| POTW | Publicly Owned Treatment Work |
| SIC | Standard Industrial Classification |
| SWDA | Solid Waste Disposal Act, 42 USC 6901, et seq. |
| USC | United States Code |
| T | Total |
| TSS | Total Suspended Solids |

Sec. 2.305. Use of Public Sewers. The following requirements shall apply to all connections to the Local Sewer System by users of the Local Sewer System and/or the POTW:

(a) The owner of any house, building, property or premises used for human occupancy, employment, recreation, or other purposes, and from which sanitary sewage originates and which is situated within the City is hereby required at the owner's expense to install wastewater facilities therein in accordance with law and to connect such facilities directly with the available public sewer in accordance with the provisions of this Ordinance within 90 days after notification from the City or the POTW.

(b) The requirements of this Section shall be in addition to any requirements that may be imposed by the United States and/or the State of Michigan.

(c) Plans and specifications for all sewers (including, but not limited to, sewer mains) to be constructed within the City shall be approved by the City.

(d) Each new sewer for which a sewer stub is not presently available but which is designed and is to be constructed so as to connect with or constitute an integral part of the Sewer System shall not be constructed without a written permit issued by the City.

(e) No person shall uncover, make any connections with or opening into, use, alter, repair or disturb any public sewer or appurtenance thereof including sewer stub, wye branch and sewer main, without first obtaining a written permit from the City.

(f) All permit and inspection fees shall be established from time to time by resolution of the City Council.

(g) No openings shall be made into the Local Sewer System without first obtaining a sewer connection permit on an application form furnished by the City. All applications for a permit shall be made by the owner of the premises, or the owner's authorized agent.

Each application for a permit shall be accompanied by an application and inspection fee to defray the cost of processing the application and subsequent inspection of construction or installation. All inspections shall be done in conformance with regulations as adopted and approved by the City. If conditions require more than one inspection or if a full time inspector be required, an additional inspection fee may be charged. The removal of the cookie or stopper and connection to the Sewerage System shall be performed only in the immediate presence of the City's Inspector or an authorized representative of the City. It shall be unlawful for any person, performing work under a permit for the laying of a sewer stub or building lead to cover any portion thereof until such time as same has been inspected and approved by the City's Inspector or an authorized representative of the City. Such person shall notify the City when the work is ready for inspection and shall leave the premises in a condition convenient for examination by the Inspector. The person who applies for the permit shall be responsible to remove and replace all rejected work, restore all public streets and alleys to a similar condition as existed prior to excavation, and shall make all adjustments necessary to fully meet the requirements of this Ordinance, other rules and regulations hereinafter established and the conditions of the permit as required by the City.

(h) All costs and expenses incidental to the installation, connection and maintenance including inspections of the sewer stub and building lead shall be borne by the owner(s). The owner(s) shall indemnify the City and the POTW from any loss or damage that may directly or indirectly be occasioned by the installation, connection and maintenance of the sewer stub and building lead.

(i) A separate and independent building sewer shall be utilized for every building except where one building stands at the rear of another on an interior lot and no building sewer is available or can be constructed to the rear building through an adjoining alley, court yard, or driveway, the front building may extend a sanitary sewer to the rear building and the whole considered as one building sewer after approval by the City. Old building leads and sewer stubs may be used in connection with new buildings only when they are found, after examination and test by the City to meet all requirements of this Ordinance.

(j) Each person other than an owner or land contract vendee applying for a sewer connection permit shall be approved by the City.

(k) In all buildings in which any soil pipe is too low to permit gravity flow to the public sewer, wastewater carried by such soil pipe shall be lifted by approved means and discharged to the building sewer. All excavations required for the installation of a sewer shall be open trench work unless otherwise approved. Pipe laying bedding and backfill shall be performed in accordance with applicable ASTM specifications. No backfill shall be placed until the work has been inspected and approved.

(l) No person shall make connection of roof downspouts, footing drains, areaway drains, sump pumps, or other sources of surface runoff or groundwater and other sources of uncontaminated water to a sewer stub or building lead which in turn is connected directly or indirectly to a public sewer. If any such connection is determined to exist, the City may order its disconnection at the property owner's expense, and if the property owner refuses to obey the order, then the City may disconnect the connection and the costs shall be charged to the property owner.

(m) All excavations for the wye branch and/or sewer stub 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 construction shall be restored to the same or better condition than prior to excavation.

(n) The type and quality of sanitary sewer pipe and fittings used shall conform to the current City specifications at the time the permit is issued.

Sec. 2.306. Plans, Specifications and Capacity for Sewer Extensions.

(a) Plans and specifications for all sewer main extensions shall be prepared by a registered professional engineer. The plans and specifications shall be reviewed, and, if acceptable, approved by the City.

(b) All sewer stubs and building leads shall be made at the wye branch in the sewer main designated for the property if such branch is available. Any connection not made at the designated wye branch in the sewer main shall be made only as directed by the City.

(c) It shall be unlawful to connect any sanitary sewer to the existing sewer system until it has been tested. Copies of test results and procedures shall be kept on file for inspection.

(d) No sewer extension shall be allowed unless there is capacity available in all downstream sewers, lift stations, force mains, and POTW, including capacity for BOD and suspended solids.

Sec. 2.307. Grease, Oil, Sand and Sediment Traps or Bar Screens.

(a) Grease, oil, sand and sediment traps shall be provided when determined necessary by the City for the proper handling of liquid wastes containing grease in excessive amounts, or any flammable wastes, sand, sediment and other harmful ingredients. All traps shall be of a type and capacity approved by the City (or when applicable, by the WWTP Superintendent pursuant to Section 2.370) and shall be located so as to be readily and easily accessible for cleaning and inspection.

(b) Grease and oil traps shall be constructed of impervious materials capable of withstanding abrupt and extreme changes in temperature. They shall be of substantial construction, watertight, and equipped with easily removable covers that, when bolted in place, shall be gas tight and water tight.

(c) All grease, oil and sand interceptors shall be provided and maintained by the owner, at the owner's expense, in continuous efficient operation at all times.

(d) Bar screens shall be provided when determined necessary by the City or when applicable, by the WWTP Superintendent pursuant to Section 2.370 for the proper removal of rags, plastics, paper products or other materials which may enter the POTW and cause blockage.

Sec. 2.308. Discharge Prohibitions.

The general discharge prohibitions under Section 2.308(a) and the specific discharge prohibitions under Section 2.308(b) apply to every person whether or not the person is subject to any other national, state or local pretreatment standards or

requirements, and whether or not the discharge is made pursuant to a wastewater discharge permit issued pursuant to this Ordinance.

(a) General Prohibitions. No person shall discharge, contribute or cause to be discharged or contributed, directly or indirectly to the local sewer system or POTW, any pollutant or wastewater that will pass through or interfere with the operation or performance of the local sewer system or POTW.

(b) Specific Prohibitions. No user shall discharge, contribute, or cause to be discharged or contributed, to the local sewer system or the POTW, directly or indirectly, any of the pollutants, substances, or wastewater as provided by this subsection. This subsection sets forth the minimum requirements for a user's discharges to the local sewer system or POTW. Additional or more restrictive requirements may be required of particular users under a wastewater discharge permit, or as otherwise authorized or required by this Ordinance or other applicable laws and regulations.

(1) Pollutants in concentrations that exceed the instantaneous maximum, daily maximum or monthly average concentrations listed below in this subsection:

| *Parameter* | *Daily Maximum (mg/l)*† | *Monthly Average (mg/l)*† | *Instantaneous Maximum (mg/l)*† |
|---|---|---|---|
| Arsenic | 0.45 | 0.45 | --- |
| Cadmium | 0.38 | 0.38 | --- |
| Chromium | 11.70 | 11.70 | --- |
| Copper | 8.52 | 8.20 | --- |
| Lead | 1.53 | 1.53 | --- |
| Nickel | 1.14 | 1.14 | --- |
| Selenium | 0.24 | 0.20 | --- |
| Silver | 0.07 | 0.07 | --- |
| Zinc | 1.94 | 1.94 | --- |
| Cynanide | 0.20 | 0.20 | --- |
| 1, 2-Dichlorobenzene | 1.63 | 1.63 | --- |
| 1, 2-Dichloroethane | 10.41 | 10.41 | --- |
| 4-Isopropyltoluene | 0.00 | 0.00 | 0.00 |
| Acetone | 340 | 340 | --- |
| Benzene | 0.41 | 0.41 | --- |
| Carbon Tetrachloride | 0.03 | 0.03 | --- |
| Chlorobenzene | 2.31 | 2.31 | --- |
| Chloroform | 0.41 | 0.41 | --- |
| Cis-1, 2-Dichloroethene | 0.28 | 0.28 | --- |
| Methylene Chloride | 2.06 | 2.06 | --- |
| o-Xylene | 1.81 | --- | --- |
| P&M-Xylene | 1.80 | --- | --- |
| Total Xylene | --- | 2.1 | --- |
| Toluene | 1.36 | 1.36 | --- |
| Vinyl Chloride | 0.0003 | 0.0003 | --- |
| BOD[20] | 1500 | --- | --- |
| TSS[21]1500 | 1500 | --- | --- |
| Phosphorus (T) as P[22] | 30 | --- | --- |

[20]Any discharge of BOD in excess of 300 mg/l shall be subject to a surcharge at such rates set from time to time by the POTW.

[21]Any discharge of TSS in excess of 300 mg/l shall be subject to a surcharge at such rates set from time to time by the POTW.

| | | | |
|---|---|---|---|
| Ammonia Nitrogen as N[23] | 80 | --- | --- |

Notes:

† Discharges containing more than one pollutant which may contribute to fume toxicity shall be subject to more restrictive limitations, as determined necessary by the WWTP Superintendent. The more restrictive discharge limits will be calculated based on the additive fume toxicity of all compounds identified or reasonably expected to be present in the discharge, including, without limitation, the specific compounds listed in Section 2.308(b)(1) of this Ordinance.

This Daily Maximum Limit for BOD of 1400 mg/l was effective until December 31, 2006. Thereafter, the Daily Maximum Limit for BOD shall decrease by 100 mg/l per year as follows: 1300 mg/l (effective 01/01/ 2007 through 12/31/2007) and from that date thereafter, unless and until this Ordinance is subsequently amended as approved by the POTW to provide a different Daily Maximum Limit for BOD).

(2) Pollutants in concentrations that exceed the instantaneous maximum, daily maximum or monthly average concentrations listed below in this subsection:

Mercury. The instantaneous maximum concentration, daily maximum and monthly average discharge limit for mercury is 0.0000026 mg/l. except as otherwise required by the WWTP Superintendent, compliance with this limit shall be determined as follows:

A compliance limit of “non-detect” shall be used for instantaneous maximum concentration, daily maximum and monthly average. Any discharge of mercury at or above the detection limit is a specific violation of this Ordinance. The detection limit shall be established pursuant to the procedure for determination of the method detection limit (“MDL”) as set forth in section 3(a) of Appendix B of 40 CFR part 136. The MDL study used to determine the MDL shall be made available to the POTW immediately upon request. In no case may the detection limit exceed 0.0002 mg/l, unless a higher detection limit is approved by the WWTP Superintendent because of sample matrix interference.

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[22]Any discharge of Total Phosphorus as P in excess of 8 mg/l shall be subject to a surcharge at such rates set from time to time by the POTW.

[23]Any discharge of Ammonia Nitrogen as N in excess of 40 mg/l shall be subject to a surcharge at such rates set from time to time by the POTW.

All surcharges shall be in addition to any other fees or charges required by this Ordinance. Surcharges are intended to reimburse the POTW for all costs incurred by the POTW in handling or treating a discharge which contains pollutants in excess of specified surcharge concentrations, loadings or other applicable limits. Any user exceeding applicable surcharge limitations or other applicable limits shall be subject to the imposition of one or more surcharges as provided by this Section to reimburse the POTW for any costs or expenses, direct or indirect, the POTW may incur in handling or treating the discharge, or which may be imposed upon the POTW, where the exceedence of applicable limits causes or contributes to those costs or expenses. All exceedences of applicable discharge prohibitions and limitations and all instances of noncompliance with applicable discharge requirements shall constitute a violation of this Ordinance, subject to applicable fines, penalties and other enforcement actions provided by this Ordinance. In no event shall the imposition of a surcharge for a discharge which does not meet the applicable prohibitions, limitations or requirements be construed as authorizing the illegal discharge or otherwise excuse a violation of this Ordinance.

Mercury sampling procedures, preservation and handling, and analytical protocol for compliance monitoring of a user's discharge shall be in accordance with EPA method 245.1, unless other sampling procedures, protocol or methods (including, but not limited to, EPA method 1631) are required or approved in advance by the WWTP Superintendent.

If determined necessary by the WWTP Superintendent to prevent interference or pass through, to protect the POTW, to comply with applicable federal or state laws or regulations, to comply with the POTW's NPDES permit, or to otherwise meet the purposes and objectives of this Ordinance, any user determined by the WWTP Superintendent to have a reasonable potential to discharge mercury to the POTW may be required to develop, submit for approval, and implement a Mercury Reduction Plan ("MRP"). At a minimum, the MRP shall contain such requirements and conditions (including, but not limited to, requirements and conditions regarding source identification; best management practices; schedules of compliance; monitoring, sampling and analysis; and reporting), as determined necessary by the WWTP Superintendent to ensure the mercury reduction efforts will be effective in achieving the goals of this Section. Failure to submit an approvable MRP within the specified deadlines or to comply with any condition or requirement of an approved MRP shall constitute a violation of this Ordinance, subject to the fine, penalty, and other enforcement provisions of this Ordinance.

(3) Any liquid, solid, gas or other pollutant which by reason of its nature or quantity is sufficient either alone or by interaction with other substances to create a fire or explosion hazard or be injurious in any other way to persons, the POTW, or to the operation of the sewerage system, including, but not limited to, wastestreams with a closed cup flashpoint of less than 140º F or 60º C using test methods specified in 40 CFR 261.21. At no time shall two successive readings on an explosion hazard meter at the point of discharge into the POTW (or at any point in the POTW) be more than 5% nor any single reading over 10% of the Lower Explosive Limit (LEL) on the meter. Prohibited materials include, but are not limited to, gasoline, kerosene, naphtha, benzene, fuel, fuel oil, toluene, xylene, ethers, alcohols, ketones, aldehydes, peroxides, chlorate, perchlorates, bromates, carbides, hydrides and sulfides and any other substances which the POTW, the State or EPA has notified the user is a fire hazard or a hazard to the system.

(4) Pollutants that may cause corrosive structural damage to the POTW, or that due to their corrosive properties are capable of causing injury to persons or POTW personnel or harm to fish, animals or the environment. Discharges that have a pH lower than 6.5 or greater than 9.5 shall not be discharged.

(5) Any solid, insoluble or viscous substance in concentrations or quantities which may cause obstruction to the flow in the POTW, may create an encumbrance to the POTW operations, or which otherwise may result in interference, including, but not limited to, grease, animal entrails or tissues, bones, hair, hides or fleshings, whole blood, feathers, ashes, cinders, sand, cement, spent lime, stone or marble dust, metal, glass, straw, shavings, grass clippings, rags, strings, fibers, spent grains, spent hops, wastepaper, wood, plastics, tar, asphalt residues, residues from refining or processing of fuel or lubricating oil, mud or glass grinding or polishing wastes or tumbling and deburring stones.

(6) Pollutants, including, but not limited to, oxygen demanding pollutants, released at a flow rate and/or pollutant concentration that may cause pass through or interference with the POTW or constitute a slug load. In no case shall a slug load have a flow rate or contain concentrations or qualities of pollutants that exceed for any time period longer than 15 minutes, more than 5 times the average 24-hour concentration, quantities or flow during normal production.

(7) Wastewater (or vapor) having a temperature that will inhibit biological activity in the POTW resulting in interference, or heat in such quantities that the temperature at the POTW treatment plant exceeds 104º Fahrenheit (40º C). No discharge to the POTW shall have a temperature less than 32º Fahrenheit (0º C) or greater than 150º Fahrenheit (65.7º C).

(8) Petroleum oil, non-biodegradable cutting oil, or products of mineral oil origin in amounts that will cause interference or pass through.

(9) Pollutants that result in the presence of toxic gases, vapors or fumes within the POTW in a quantity that may cause acute worker health and safety problems. This prohibition includes, but is not limited to, wastewaters which contain liquids, solids or gases that cause gases, vapors or fumes from the discharge to exceed 10% of the immediately dangerous to life and health (IDLH) concentration. Discharges which contain more than one pollutant which may contribute to fume toxicity shall be subject to more restrictive limitations, as determined necessary by the WWTP Superintendent. The more restrictive discharge limits shall be calculated based on the additive fume toxicity of all compounds identified or reasonably expected to be present in the discharge.

(10) Trucked or hauled pollutants, except those discharged at the WWTP at the discharge point designated by the WWTP Superintendent, subject to the prior approval of the Superintendent and issuance of a wastewater discharge permit.

(i) The WWTP Superintendent shall determine whether to allow the discharge of trucked or hauled pollutants based on the particular nature or quantity of the proposed discharge in accordance with the discharge prohibitions, limitations and requirements provided by this Ordinance.

(ii) The WWTP Superintendent may impose any conditions on the discharge determined necessary to ensure compliance with this Ordinance, including, without limitation, conditions regarding the time, place, and manner of discharge, restrictions on the quantity and quality of the discharge, and sampling requirements.

(iii) The discharge shall not commence without prior notice to, and authorization from, the WWTP Superintendent, and a representative of the POTW shall be present at all times during the discharge.

(iv) All trucked or hauled wastes to be discharged to the POTW must be accompanied by a completed waste manifest form signed by the permittee and the hauler as provided by the minimum requirements of this Section. The permittee shall certify in writing on the manifest as to the source of all wastes in the load proposed to be discharged and that the wastes have been pre-treated as required by applicable pretreatment standards and requirements. The hauler shall certify in writing on the

manifest that no wastes other than those listed on the manifest have been accepted by the hauler. The manifest must be reviewed by the WWTP Superintendent prior to commencing discharge of the load. Failure to accurately record every load, falsification of data, or failure to transmit the form to the WWTP Superintendent for review prior to discharge shall constitute a violation of the permit and may result in revocation of the permit and/or the imposition of fines and penalties as provided by this article.

(v) The permittee's discharge of hauled wastes shall be subject to sampling by the POTW at any time, including, without limitation, prior to and during discharge. The WWTP Superintendent may require the permittee to refrain from, or suspend, discharging until the sample analysis is complete.

(vi) Trucked or hauled pollutants will be accepted only if transported to the POTW in compliance with state and federal hazardous waste and liquid industrial waste laws.

(vii) For each discharge of trucked or hauled pollutants, the permittee will be required to pay to the POTW a trucked or hauled pollutant discharge fee to cover the POTW's administrative expenses and any additional treatment, handling or inspection expenses incurred by the POTW in connection with the discharge. The fee shall be established, paid, and collected as provided by Section 2.389. This discharge fee shall be in addition to any sewer rates, fees, charges, or surcharges otherwise required by this Ordinance.

(11) Solvent extractables, including, but not limited to, oil, grease, wax, or fat, whether emulsified or not, in excess of applicable local limits; or other substances that may solidify or become viscous (with a viscosity of 110% of water) at temperatures between 32º Fahrenheit and 150º Fahrenheit in amounts that may cause obstruction to the flow in sewers or other interference with the operation of the POTW.

(12) Noxious or malodorous liquids, gases, or solids that either singly or by interaction with other wastes are sufficient to create a public nuisance or hazard to life or are sufficient to prevent entry into the sewers for maintenance and repair.

(13) Wastewater containing toxic pollutants in sufficient quantity, either singly or by interaction with other pollutants, to injure or interfere with any wastewater treatment process, constitute a hazard to humans or animals, create a toxic effect in the receiving waters of the POTW, or to exceed the limitation set forth in a categorical pretreatment standard.

(14) Any substance that may cause the POTW's effluent or any other product of the POTW such as residues, sludges, or scums, to be unsuitable for reclamation, reuse or disposal, or otherwise interfere with the reclamation, reuse, or disposal process. In no case shall a substance discharged to the POTW cause the POTW to be in non-compliance with sludge use or disposal criteria, guidelines or regulations developed under Section 405 of the Act; under the Solid Waste Disposal Act (SWDA) (including Title II, more commonly referred to as RCRA, and including State regulations contained in any State sludge management plan prepared pursuant to Subtitle D of the SWDA); the Clean Air Act; the Toxic Substances Control Act; the Marine

Protection, Research, and Sanctuaries Act; or any more stringent state or local regulations, as applicable.

(15) Soluble substances in a concentration that may increase the viscosity to greater than 10% over the viscosity of the water or in amounts that will cause obstruction to the flow in the POTW resulting in interference.

(16) Any medical or infectious wastes, as defined by the Michigan Department of Environmental Quality, or its successor.

(17) Any pollutant that results in excess foaming during the treatment process. Excess foaming is any foam that, in the opinion of the WWTP Superintendent, may interfere with the treatment process.

(18) Any unpolluted water, non-contact cooling water, storm water, surface water, groundwater, roof runoff or subsurface drainage (except to a storm sewer as authorized by this Ordinance and other applicable laws and regulations) and subject to the prior approval of the WWTP Superintendent.

(19) Any substance that will cause the POTW to violate its NPDES permit, the receiving water quality standards, or associated local, state or federal laws, rules or regulations.

(20) Wastewater with objectionable color or light absorbency characteristics that interfere with treatment processes or analytical determinations, including, but not limited to, dye wastes and vegetable tanning solutions.

(21) Wastewater containing any radioactive wastes or isotopes of a half-life or concentration that may exceed limits established by applicable state or federal laws, rules or regulations.

(22) Any contaminated groundwater or landfill leachate determined by the WWTP Superintendent to have a reasonable potential to adversely affect the operation of the POTW, to result in pass through or interference, or to violate any pretreatment standard or requirement.

(23) Septage.

(24) Any hazardous waste as defined by this Ordinance.

(25) Any garbage or other solid material that has not been properly shredded. Garbage or solid materials having a specific gravity greater than 1.2 or a cross-section dimension of one-half inch (½") or greater, or which are sufficient in quantity to cause pass through or interference to the POTW shall be deemed improperly shredded. The installation and operation of any garbage shredder equipped with a motor of 3/4 HP or greater shall be subject to the review and approval of the WWTP Superintendent.

(26) Any substance which exerts or causes a high concentration of inert suspended solids, including, but not limited to, lime slurries, diatomaceous earth and lime residues.

(27) Any substance which exerts or causes a high concentration of dissolved solids, including, but not limited to, sodium chloride.

(28) Any substance which causes a high chlorine demand, including, but not limited to, nitrite, cyanide, thiocyanate, sulfite and thiosulphate.

(29) Any compatible or incompatible pollutant in excess of the allowed limits as determined by applicable local, state or federal laws, rules or regulations.

(30) Any sludge, precipitate or waste resulting from any industrial or commercial treatment or pretreatment of any person's wastewater or air pollutants.

(31) Residue (total on evaporation) in an amount that will cause obstruction to the flow in the POTW resulting in interference.

(32) Any wastewater containing polychlorinated biphenyls (PCBs).

(33) Any discharge containing strong acid, iron, pickling waste or concentrated plating solutions whether neutralized or not.

(34) Any discharge containing phenols or other taste or odor-producing substances in such concentrations exceeding limits which may be established by the WWTP Superintendent as necessary, after treatment of the composite sewage, to meet the requirements of the state, federal or other public agencies having jurisdiction for such discharge to the receiving waters.

(35) Any pollutant, substance, or wastewater that, either directly or indirectly, and either singly or by interaction with other pollutants:

(i) creates a chemical reaction with any materials of construction to impair the strength or durability of sewer structures;

(ii) causes a mechanical action that will damage or destroy sewer structures;

(iii) impedes or restricts the hydraulic capacity of the POTW;

(iv) interferes with normal inspection or maintenance of sewer structures;

(v) places unusual demands upon the wastewater treatment equipment or processes by biological, chemical or physical means; or

(vi) causes a hazard to human life or creates a public nuisance.

Sec. 2.309. Pretreatment Standards and Requirements.

(a) Compliance with applicable standards and requirements. The national categorical pretreatment standards when finalized for specific industries shall become a part of the requirements of this Ordinance in accordance with federal and state laws and regulations. A user shall comply with all categorical pretreatment standards and any other pretreatment requirements established under the Act that are applicable to that user. A user shall also comply with all applicable pretreatment standards and requirements established under this Ordinance or under state laws and regulations.

(b) Deadlines for compliance. Compliance by existing sources with categorical pretreatment standards shall be within 3 years of the date the standard is effective unless a shorter compliance time is specified by 40 CFR chapter I, subchapter N. Existing sources that become industrial users subsequent to promulgation of an applicable categorical pretreatment standard shall be considered existing industrial users except where such sources meet the definition of "new source." New sources shall install and have in operating condition, and shall start-up all pollution control equipment required to meet applicable pretreatment standards and requirements before beginning to discharge. Within the shortest feasible time (not to exceed 90 days), new sources must meet all applicable pretreatment standards and requirements.

(c) Alternative categorical limits. Categorical pretreatment standards shall apply to an industrial user subject to categorical standards, unless an enforceable alternative limit to the corresponding national categorical standards is derived using any of the methods specified in MAC R 323.2313 (regarding removal credits, fundamentally different factor variances, net/gross calculations, equivalent mass per day limitations, and combined wastestream formula alternative limitations). If local limits are more stringent than derived alternative categorical limits, the local limits shall control.

(d) Compliance with other applicable laws and regulations. Users of the POTW shall comply with all local, state and federal laws and regulations that may apply to their discharges to the POTW, including, but not limited to, Article II, Air Pollution Control, Part 55 of Act 451 of the Public Acts of Michigan of 1994 (the Natural Resources and Environmental Protection Act).

Sec. 2.310. Right of Revision. The POTW reserves the right to establish more restrictive prohibitions, limitations or requirements for discharges to the POTW (and to revise or revoke wastewater discharge permits and/or, as a condition to continued discharge to the POTW, to require the City to revise this Ordinance accordingly) as necessary to prevent interference or pass through, to protect the POTW, to comply with applicable federal or state laws or regulations, to comply with the POTW's NPDES permit, or as otherwise determined necessary by the WWTP Superintendent. The POTW will provide reasonable advance notice to the City regarding required revisions to this Ordinance.

Sec. 2.311. POTW's Right to Refuse or Condition Discharge. The POTW may refuse to accept, or may condition its acceptance of, all or any portion of any proposed or existing discharge to the POTW, regardless of whether or not a wastewater discharge permit has been issued for the discharge, if the WWTP Superintendent determines that the discharge has a reasonable potential to adversely affect the operation of the POTW; result in pass through or interference; violate any pretreatment standard or requirement; cause the POTW to violate its NPDES permit; or if the impacts of the discharge on the POTW or the POTW's discharge are uncertain or unknown (because, for example, no local limits or headworks analysis has been conducted for particular pollutants in the discharge). If the WWTP Superintendent denies any person permission to commence or continue all or any portion of a discharge to the POTW, the person shall refrain from commencing to discharge or shall immediately terminate the discharge to the POTW and shall not thereafter recommence discharge without written authorization from the WWTP Superintendent. Similarly, if the WWTP Superintendent denies any person permission to commence or continue all or any portion of a discharge to the POTW except subject to conditions determined necessary and appropriate by the WWTP Superintendent, the person shall refrain from commencing or continuing the discharge except in full compliance with those conditions.

Sec. 2.312. Most Restrictive Standards and Requirements Apply. Notwithstanding any provision of this Ordinance to the contrary, the most stringent or restrictive standard or requirement applicable to a user's discharge shall control, whether established by this Ordinance, by any notice, order, permit, decision or determination promulgated, issued or made by the POTW or the WWTP Superintendent under this Ordinance, by state laws or regulations, including the POTW's NPDES permit, or by federal laws or regulations. Further, if state or federal laws or regulations provide for standards and requirements not covered by this Ordinance that are otherwise applicable to a user's discharge, those standards and requirements shall apply to the user in addition to those required by this Ordinance, and the most restrictive of those additional standards or requirements shall control and shall be complied with by the user within the time period required by the law or regulation.

Sec. 2.313. Dilution Prohibited as Substitute for Treatment. Unless expressly authorized to do so by an applicable pretreatment standard or requirement, no industrial user shall ever increase the use of process water, mix separate wastestreams, or in any other way attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with a federal, state or local standard, requirement or limitation. The POTW may impose mass limitations on non-domestic users that are using dilution to meet applicable pretreatment standards or requirements and in other cases where the imposition of mass limitations is appropriate as determined by the WWTP Superintendent.

Sec. 2.314. Wastewater Discharge Permits Required.

(a) It is unlawful for any significant industrial user (or any other non-domestic user as determined necessary by the WWTP Superintendent to carry out the purposes of this Ordinance) to discharge to the POTW without a wastewater discharge permit as provided by this Ordinance.

(b) Any violation of the terms or conditions of a wastewater discharge permit is a violation of this Ordinance, subject to the fine, penalty, and other enforcement provisions of this Ordinance. Obtaining a wastewater discharge permit shall not relieve a user of its obligation to obtain other permits or approvals that may be required by other local, state or federal laws or regulations.

(c) The issuance of a wastewater discharge permit shall not convey to a user any property rights or privilege of any kind whatsoever, nor shall it be construed to authorize any injury to private or public property or any invasion of personal rights, nor any violation of local, state or federal laws or regulations.

(d) The WWTP Superintendent may require any non-domestic user to obtain a permit to discharge to the POTW, subject to such terms and conditions as are determined necessary and appropriate by the WWTP Superintendent to achieve the purposes, policies and objectives of this Ordinance. A discharge permit issued to a user as provided by this sub-section may contain, but shall not be required to contain, any of the terms and conditions that would apply to a discharge permit issued to a significant industrial user as provided by this Ordinance, including, but not limited to, discharge limitations, and requirements regarding sampling and monitoring, pretreatment, pollution reduction plans, and best management practices, to comply with the general and specific discharge prohibitions of this Ordinance. Failure to comply with a permit issued under this subsection constitutes a violation of this Ordinance. In no case shall a permit issued to a user under this sub-section be construed as authorizing the illegal discharge or otherwise

excuse a violation of this Ordinance. To the extent determined appropriate by the WWTP Superintendent on a case-by-case basis, permits issued under this sub-section shall be subject to provisions otherwise applicable to permits for significant industrial users. However, all user permits are non-transferable, and are subject to the permit fee and permit appeals provisions of this Ordinance.

Sec. 2.315. Permit Application; Application Deadlines. Each industrial user must file an application for a wastewater discharge permit within the following deadlines:

(a) Existing users: Any industrial user discharging into the POTW as of the effective date of this Ordinance that has not previously submitted an application and/or obtained a permit to discharge to the POTW shall, within 30 days after the effective date of this Ordinance, apply to the WWTP Superintendent for a wastewater discharge permit as provided by this Ordinance and shall not cause or allow any discharges into the POTW after 120 days from the effective date of this Ordinance, except in accordance with a wastewater discharge permit as determined necessary by the WWTP Superintendent.

(b) New users: Any industrial user proposing to commence (or recommence) discharging into the POTW after the effective date of this Ordinance shall, at least 90 days prior to the anticipated date on which discharging will commence, apply to the WWTP Superintendent for a wastewater discharge permit, and shall not cause or allow any discharges into the POTW to commence, except in accordance with a wastewater discharge permit as determined necessary by the WWTP Superintendent.

Sec. 2.136. Permit Application Requirements. All industrial users shall submit the following information on the wastewater discharge permit application form supplied by the WWTP Superintendent in units and terms as determined necessary by the WWTP Superintendent to adequately evaluate the application, accompanied by payment of a permit application review fee:

(a) The name, address, and location of facility from which discharge will be made, including the names of the owner(s) and operator(s) of the facility.

(b) Whether the user is a corporation, partnership, proprietorship, or other type of entity, and the name of the person(s) responsible for discharges by the user.

(c) SIC code of both the industry (or use) as a whole and any processes for which categorical pretreatment standards have been promulgated.

(d) Wastewater constituents and characteristics, including, without limitation, any pollutants that are limited or regulated by any federal, state, or local standards or requirements. Sampling and analysis shall be performed in accordance with the procedures established by the U.S. EPA and contained in 40 CFR Part 136.

(e) Time and duration of discharges.

(f) Daily maximum and monthly average wastewater flow rates, including daily, monthly, and seasonal variations, if any. All flows shall be measured unless other variable techniques are approved by the WWTP Superintendent due to cost or non-feasibility.

(g) Description of activities, facilities, and plant processes on the premises, including a list of all raw materials and chemicals used at the facility (including copies of

material safety data sheets for all such materials and chemicals) that are, or could accidentally or intentionally be, discharged to the POTW.

(h) Site plans, floor plans, mechanical and plumbing plans and details to show all sewers, sewer connections, floor drains, inspection manholes, sampling chambers and appurtenances by size, location and elevation.

(i) Each product produced by type, amount, process and rate of production.

(j) Type and amount of raw materials processed (average and maximum per day) .

(k) Number and type of employees, hours of operation, and proposed or actual hours list of operation of the pretreatment system.

(l) A list of all environmental permits (and, if requested by the WWTP Superintendent, a copy of any environmental permit) held by the user applicable to the premises for which the wastewater discharge permit is being sought.

(m) Whether additional operation and maintenance (O&M) and/or additional pretreatment is required for the user to meet all applicable federal, state and local pretreatment standards and requirements. If additional O&M or additional pretreatment will be required to meet the applicable standards and requirements, then the user shall indicate the shortest time schedule necessary to accomplish installation or adoption of the additional O&M and/or pretreatment. The completion date in this schedule shall not be longer than the compliance date established for the applicable pretreatment standard. The following conditions shall apply to this schedule:

(1) The schedule shall contain progress increments in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the user to meet the applicable pretreatment standards (including, without limitation, hiring an engineer, completing preliminary plans, completing final plans, executing contracts for major components, commencing construction, completing construction, beginning operation, and conducting routine operation). No increment referred to above shall exceed 9 months, nor shall the total compliance period exceed 18 months.

(2) No later than 14 days following each date in the schedule and the final date for compliance, the user shall submit a progress report to the WWTP Superintendent including, at a minimum, whether or not it complied with the increment of progress, the reason for any delay, and if appropriate, the steps being taken by the user to return to the established schedule. In no event shall more than nine months elapse between submission of the progress reports to the WWTP Superintendent.

(n) Any other information determined necessary by the WWTP Superintendent to adequately evaluate the application. To the extent that actual data is not available for a new source, the applicant shall supply estimated or expected information.

(o) All site plans, floor plans, or other plans required to be submitted as a part of the application shall be prepared and sealed by a licensed engineer.

(p) All applications shall be signed by an “authorized representative” of the user and certified as provided by Section 2.338 of this Ordinance.

Sec. 2.317. Permit Issuance, Denial, or Determination that Permit not Required.

(a) The WWTP Superintendent shall evaluate the application information furnished by the user and may require additional information as necessary to complete and properly review the application. Within 120 days after the submission of a complete application, the WWTP Superintendent shall; either issue a wastewater discharge permit subject to terms and conditions provided by this Ordinance, deny the application, or determine that a permit is not required as provided by this Ordinance.

(b) A permit may be denied by the WWTP Superintendent if the Superintendent determines that the proposed discharge, or continued discharge, will not comply with all applicable standards and requirements of this Ordinance; if the user refuses to accept the terms and conditions of a permit as proposed to be issued by the WWTP Superintendent; for any reason that would support a suspension or revocation of the permit as provided by this Ordinance; if the WWTP Superintendent determines that the POTW cannot adequately, efficiently, or economically treat the discharge (due to insufficient capacity, quality or quantity of pollutants, for example); or for any other reason as determined necessary by the WWTP Superintendent to meet the intent and purposes of this Ordinance or to ensure compliance by the POTW with its NPDES permit.

Sec. 2.318. Permit Conditions. Wastewater discharge permits shall be subject to all provisions of this Ordinance and all other applicable regulations, user charges, surcharges, and fees established by the City and/or by the POTW. In addition, permits shall include any conditions determined to be reasonably necessary by the WWTP Superintendent to prevent pass through or interference, to protect the quality of the receiving waters, to protect worker health and safety, to facilitate POTW sludge management and disposal, to protect ambient air quality, and to protect against damage to the POTW. Unless determined by the WWTP Superintendent to be inapplicable to the user in question, all permits shall contain at least the following conditions:

(a) Limits on the average and/or maximum rate of discharge, time of discharge, and/or requirements for flow regulation and equalization.

(b) Limits on the average and/or maximum concentration, mass, or other measure of identified wastewater constituents or properties.

(c) Requirements for installation of pretreatment technology or construction of appropriate containment devices, or similar requirements designed to reduce, eliminate, or prevent the introduction of pollutants into the treatment works.

(d) Development and implementation of spill control plans or other special conditions, including additional management practices necessary to adequately prevent accidental, unanticipated, or routine discharges.

(e) Requirements for installation, maintenance, repair, calibration and operation of inspection and sampling facilities and discharge flow monitors.

(f) Specifications for monitoring programs which may include sampling locations, frequency of sampling, number, types, and standards for tests, and reporting schedules.

(g) Compliance schedules.

(h) Requirements for submission of technical reports or discharge reports.

(i) Requirements for maintaining and retaining plant records relating to wastewater discharge as specified by the WWTP Superintendent and affording the POTW access to those records.

(j) Requirements for notification of any new introductions of wastewater constituents or of any substantial change in the volume or character of the wastewater being introduced into the POTW.

(k) Requirements for the notification of any change in the manufacturing and/or pretreatment process used by the permittee.

(l) Requirements for notification of accidental or slug discharges, or discharges that exceed a discharge prohibition.

(m) A statement regarding limitations on transferability of the permit.

(n) A statement of the duration of the permit.

(o) A statement that compliance with the permit does not relieve the permittee of responsibility for compliance with all applicable pretreatment standards and requirements, including those that become effective during the term of the permit.

(p) A statement of applicable civil and criminal penalties for violation of discharge limitations, pretreatment standards and requirements, and compliance schedules.

(q) Requirements regarding development by a user of a pollutant reduction plan (e.g., for mercury or PCBs) or requirements regarding use of best management practices to reduce potential discharges of pollutants to the sewer or otherwise meet the purposes, policies and objectives of this Ordinance.

(r) Other conditions as determined necessary by the WWTP Superintendent to ensure compliance with this Ordinance and other applicable laws, rules and regulations.

If it is determined that a user is discharging substances of a quality, in a quantity, or in a location that may cause problems to the POTW or the receiving stream, the POTW has the authority to develop and enforce effluent limits applicable to the user’s discharge.

Sec. 2.319. Permit Modifications. A permit may be modified by the WWTP Superintendent for any reason determined necessary by the WWTP Superintendent to assure compliance with the requirements of this Ordinance and other applicable laws and regulations, including, without limitation, any of the following reasons:

(a) To incorporate any new or revised federal, state or local pretreatment standards or requirements, or other applicable requirement of law or regulation.

(b) Material or substantial changes or additions to the permittee's operations, processes, or the character or quality of discharge that were not considered in drafting or issuing the existing permit.

(c) A change in any condition in the permittee's discharge, facility, production or operations, or in the POTW, that requires either a temporary or permanent reduction or elimination of the permittee's discharge to assure compliance with applicable laws, regulations or the POTW's NPDES permit.

(d) Information indicating that the permitted discharge poses a threat to collection or treatment systems; the POTW's processing, use, or disposal of sludge; POTW personnel; or the receiving waters.

(e) Violation of any terms or conditions of the permit.

(f) Misrepresentation or failure to disclose fully all relevant facts in the permit application or in any required report or notice.

(g) Revision of, or a grant of a variance from, applicable categorical standards pursuant to 40 CFR 403.13.

(h) To correct typographical or other errors in the permit.

(i) To reflect transfer of the facility ownership and/or operation to a new owner/operator.

(j) To add or revise a compliance schedule for the permittee.

(k) To reflect changes or revisions in the POTW's NPDES permit.

(l) To ensure POTW compliance with applicable sludge management requirements promulgated by EPA

(m) To incorporate any new or revised requirements resulting from reevaluation of the POTW's local limits.

(n) To incorporate a request for modification by the permittee, as determined appropriate by the WWTP Superintendent and provided the request does not create a violation of any applicable requirement, standard, law, rule or regulation.

The permittee shall be informed of any changes in the permit at least 30 days prior to the effective date of the change, unless a shorter time is determined necessary by the WWTP Superintendent to meet applicable laws or to protect human health or the environment.

Sec. 2.320. Permit Duration. Permits shall be issued for a specified time period, not to exceed five (5) years, subject to modification, reissuance, suspension or revocation as provided by this Ordinance. At the discretion of the WWTP Superintendent, a permit may be issued for any period less than five (5) years and may be stated to expire on a specific date.

Sec. 2.321. Permit Reissuance. To apply for reissuance of a permit, a user must submit a complete permit application to the WWTP Superintendent accompanied by payment of an application fee at least 90 days prior to the expiration of the user's existing permit. It shall be the responsibility of the user to make a timely application for reissuance.

Sec. 2.322. Continuation of Expired Permits. An expired permit will continue to be effective until the permit is reissued only if:

(a) The user has submitted a complete permit application at least 90 days prior to the expiration date of the user's existing permit; and

(b) The failure to reissue the permit, prior to expiration of the previous permit, is not due to any act or failure to act on the part of the user.

In all other cases, discharge to the POTW following expiration of a permit is unlawful.

Sec. 2.323. Permit Suspension and Revocation. Permits may be suspended or permanently revoked by the WWTP Superintendent for any reason determined necessary by the WWTP Superintendent to assure compliance with the requirements of this Ordinance, the POTW's NPDES permit, or other applicable laws and regulations, including, without limitation, any of the following reasons:

(a) Falsifying self-monitoring reports.

(b) Tampering with monitoring equipment.

(c) Failure to allow reasonable access to the permittee's premises and records by representatives of the POTW for purposes authorized by this Ordinance, including, without limitation, inspection or monitoring.

(d) Failure to meet effluent limitations.

(e) Failure to pay fines or penalties.

(f) Failure to pay sewer charges.

(g) Failure to pay permit fees.

(h) Failure to meet compliance schedules.

(i) Failure to comply with any term or condition of the permit, an order, the requirements of this Ordinance, or any final judicial order entered with respect thereto.

(j) Failure to comply with any reporting or notice requirement.

(k) Failure to disclose fully all relevant facts in the permit application or during the permit issuance process, or misrepresentation of any relevant fact at any time.

(l) As determined by the WWTP Superintendent, the discharge permitted by the permit has a reasonable potential to endanger human health or the environment and the threat can be abated only by suspension or revocation of the permit.

Upon suspension or revocation of a permit, a user shall immediately terminate its discharge to the POTW and shall not thereafter recommence discharge without further authorization from the WWTP Superintendent as provided by this Ordinance. The WWTP Superintendent may reissue a revoked permit upon a showing satisfactory to the WWTP Superintendent that the permittee has corrected the violation or condition that led to the revocation. A person who has had a permit revoked may apply for a new permit.

Sec. 2.324. Limitations on Permit Transfer.

(a) A wastewater discharge permit is issued to a specific user for discharge from a specific facility and operation and shall not be assigned or transferred or sold to a new or different owner, operator, user, discharger, facility or premises, or to a new or changed

facility or operation, without the prior written approval of the WWTP Superintendent as provided by this Section.

(b) The WWTP Superintendent may deny any request for approval of a proposed transfer of a permit and require the proposed transferee to apply for a new permit as provided by this Ordinance, as determined appropriate by the Superintendent.

(c) If the transfer of a permit is approved, any succeeding transferee permittee must also comply with the terms and conditions of the existing permit. The Superintendent may approve the transfer of a permit only if all of the following conditions are met:

(1) The transferor (permittee) shall give at least 90 days advance notice to the Superintendent of the proposed transfer of the permit (unless a shorter notice period is approved by the Superintendent in advance). The notice shall include a written certification signed by the proposed transferee that (a) states that the transferee has no present intent to change the facility's operations and processes; (b) identifies the specific date on which the transfer is to occur; (c) acknowledges that the transferee has read and fully understands all terms and conditions of the permit; and (d) acknowledges that the transferee accepts all of the terms and conditions of the permit as written and accepts full responsibility for complying with the existing permit if the transfer is approved.

(2) As of the date of the proposed transfer, there are no unpaid charges, fines, penalties or fees of any kind due to the POTW or the City from the transferor or the transferee related to use of the POTW.

(3) Except as to the identity of the new discharger (the transferee), the application materials for the permit to be transferred as originally filed by the transferor, as well as the terms and conditions of the permit itself, are completely accurate with respect to, and fully applicable to, the discharge, facilities, and activities of the transferee.

(d) If the transfer of a permit is approved, the WWTP Superintendent shall make the necessary minor modifications to the permit to show the transferee as the permittee, and a copy of the permit shall be provided to the transferee for signature and certification by the transferee as provided by Section 2.338 of this Ordinance. The transferor (permittee) shall remain liable for any discharges to the local sewer system and POTW from the facility (along with any other persons actually discharging from the facility to the local sewer system and POTW) until a transfer of the permit has been approved as provided by this Section.

(e) This section is not intended to, and shall not be construed to, limit in any way the transfer of ownership of the property involved.

Sec. 2.325. <u>Duty to Provide Information.</u> Users shall furnish to the WWTP Superintendent any available information that the WWTP Superintendent requests to determine whether cause exists for modifying, revoking and reissuing, or terminating a permit, to determine compliance with a permit, or to determine whether a permit is required. Users shall also, upon request, furnish to the WWTP Superintendent copies of any records required to be kept by a permit. The information and records requested by the WWTP Superintendent shall be provided by the user to the WWTP Superintendent within 24 hours of the request, unless an alternative time frame is specified by the WWTP Superintendent when making the request or unless the WWTP Superintendent allows additional time for the user to submit the requested information based on a showing by the user of good cause for any delay. The user’s failure to submit the requested information

to the WWTP Superintendent within 24 hours (or within any alternate time period approved by the WWTP Superintendent as provided by this Section) shall constitute a violation of this Ordinance.

Sec. 2.326. Permit Appeals. Except as otherwise provided by this Section, an appeal to the WWTP Council of Appeals of any final decision made by the WWTP Superintendent in connection with issuing or implementing a wastewater discharge permit shall be governed by Section 2.388 of this Ordinance. An appealing party must specify in its notice of appeal the action of the WWTP Superintendent being appealed and the grounds for the appeal. If a particular permit provision is objected to, the notice of appeal must specify the reasons for the objection, and the alternative provision, if any, sought to be placed in the permit. The effectiveness of a permit or any final decision made by the WWTP Superintendent shall not be stayed pending a decision by the WWTP Council of Appeals. If, after considering the record on appeal including any statements provided by the WWTP Superintendent in response to the appeal, the Council of Appeals determines that a permit or any provision of a permit should be reconsidered, the Council of Appeals shall remand the matter to the WWTP Superintendent for further action as determined appropriate by the Council of Appeals. Specific provisions of a permit that are remanded by the Council of Appeals for reconsideration by the WWTP Superintendent shall be stayed pending further final action taken by the Superintendent as required by the decision of the Council of Appeals. A decision of the Council of Appeals not to remand any matter shall be considered final administrative action for purposes of judicial review.

Sec. 2.327. Permits Not Stayed. Except as otherwise expressly provided by Section 2.326, no action taken or request filed by any permittee shall operate to stay the effect of any permit or of any provision, term or condition of any permit, including, without limitation, a request for permit modification, reissuance, or transfer, or a notification of planned changes or anticipated noncompliance.

Sec. 2.328. Permit Fees. Wastewater discharge permit fees shall be established, paid and collected as provided by this Ordinance. The City Council is authorized by this Ordinance to establish such wastewater discharge permit fees from time to time.

Sec. 2.329. Reports By Industrial Users Regarding Categorical Pretreatment Standards and Requirements.

(a) Baseline Reports. Within 180 days after the effective date of a categorical pretreatment standard, or 180 days after the final administrative decision made upon a category determination submission under MAC R 323.2311(2), whichever is later, an existing industrial user subject to the categorical pretreatment standards and that currently discharges or is scheduled to discharge to the POTW shall submit a report to the POTW as required by MAC R 323.2310(2). At least 90 days prior to commencement of discharge, new sources, and sources that become industrial users subsequent to the promulgation of an applicable categorical pretreatment standard shall submit the reports to the POTW as required by MAC R 323.2310(2). Any changes to the information required to be submitted by an industrial user pursuant to MAC R 323.2310(2)(a) through (e) shall be submitted by the user to the POTW within 60 days when the user becomes aware of the change.

(b) Reports on Compliance with Categorical Pretreatment Standard Deadline. Within 90 days following the date for final compliance with applicable categorical pretreatment standard or, in the case of a new source, following commencement of the discharge to the POTW, any industrial user subject to categorical pretreatment standards and requirements shall submit the reports to the POTW required by MAC R 323.2310(3).

(c) Periodic Reports on Continued Compliance. Any industrial user subject to a categorical pretreatment standard, after the compliance date of the categorical pretreatment standard, or, in the case of a new source, after commencement of the discharge into the public sewer or POTW, shall submit the periodic reports to the POTW required by MAC R 323.2310(4). These periodic reports shall be submitted at least once every 6 months (during the months of June and December unless alternate months are approved by the WWTP Superintendent), unless required more frequently by the applicable pretreatment standard, by the WWTP Superintendent, or by the State. The reports shall include a record of all average and maximum daily flows during the reporting period, except that the WWTP Superintendent may require more detailed reporting of flows. All flows shall be reported on the basis of actual measurement unless the WWTP Superintendent agrees, due to cost or non-feasibility, to accept reports of average and maximum flows estimated using techniques approved by the WWTP Superintendent.

Sec. 2.330. Reports Required for Industrial Users Not Subject to Categorical Pretreatment Standards. All industrial users not subject to categorical pretreatment standards shall submit to the POTW periodic reports providing information regarding the quality and quantity of wastewater and pollutants discharged into the POTW (including, without limitation, information regarding the nature, concentration (or mass), and flow of the discharge). These reports shall be based on sampling and analysis performed in the period covered by the report in accordance with the sampling, analysis and monitoring requirements provided by this Ordinance. For significant industrial users, the reports shall be submitted at least once every 6 months for the preceding 6 months (during the months of June and December unless alternate months are specified by the WWTP Superintendent), unless required more frequently by the WWTP Superintendent. For all industrial users other than significant industrial users, the reports shall be submitted at least once every 12 months for the preceding 12 months (during the month of December unless an alternate month is specified by the WWTP Superintendent), unless required more frequently or less frequently by the WWTP Superintendent. The reports for all industrial users shall be submitted on forms provided by (or in a format required by) the WWTP Superintendent, and shall include, without limitation, the volume of wastewater; the concentration of pollutants; the names of all person(s) responsible for operating and maintaining any pretreatment equipment, pretreatment processes, or responsible for wastewater management at the user's facilities, with a brief description of each person's duties; information regarding materials or substances that may cause interference or pass through; and any other information deemed necessary by the WWTP Superintendent to assess and assure compliance with applicable discharge requirements or to safeguard the operation of the POTW.

Sec. 2.331. Notice by User of Potential Problems. All industrial users, whether or not subject to categorical pretreatment standards, shall notify the POTW immediately of all discharges by the user that could cause problems to the POTW, including, without limitation, slug loadings, or discharges that exceed a discharge prohibition or limitation provided by this Ordinance.

Sec. 2.332. Notice by User of Violation of Pretreatment Standards. If sampling performed by a user indicates a violation, the user shall notify the WWTP Superintendent within 24 hours of becoming aware of the violation (and shall comply with other applicable requirements provided by Section 2.344 regarding repeat sampling and analysis).

Sec. 2.333. Notice by User of Changed Discharge or Change in User Status. An industrial user shall promptly notify the WWTP Superintendent in advance of any substantial change in the volume or character of pollutants in its discharge, or of any

facility expansion, production increase, or process modifications that could result in a substantial change in the volume or character of pollutants in its discharge. For purposes of this Section, "substantial change" includes, without limitation, the following: (1) the discharge of any amount of a pollutant not identified in the user's permit application or in the permit issued; (2) an increase in concentration (or degree) of any pollutant that exceeds 15% of the concentration (or degree) for the pollutant as indicated in any report required under Section 2.329 or Section 2.330; (3) an increase in discharge volume that exceeds 15% of the volume as indicated in any report required under Section 2.329 or Section 2.330; (4) any increase in the amount of any hazardous wastes discharged, including, without limitation, the hazardous wastes for which the industrial user has submitted initial notification under Section 2.334 of this Ordinance; (5) the discharge of any ground waters purged for a removal or remedial action; (6) the discharge of any pollutants that are present in the discharge due to infiltration; or (7) a change in discharge that may convert an industrial user into a significant industrial user. This section shall not be construed to authorize a discharge that exceeds a discharge prohibition or limitation provided by this Ordinance or a permit. In determining whether to accept any changed discharge, or, if so, under what conditions, the WWTP Superintendent shall evaluate the changed discharge pursuant to the general and specific discharge prohibitions of Section 2.308 and other applicable provisions of this Ordinance.

Sec. 2.334. Notice By User Regarding Wastes That Are Otherwise Hazardous. Any industrial user that discharges to the POTW a substance that, if disposed of other than by discharge to the POTW, would be a hazardous waste under 40 CFR part 261 or under the rules promulgated under the state hazardous waste management act (Part 111 of Act 451 of the Public Acts of Michigan of 1994, MCLA §§ 324.11101 et seq., as amended) shall notify the WWTP Superintendent, the U.S. EPA Region V Waste Management Division Director, and the Chief of the Waste Management Division of the Michigan Department of Environmental Quality, of the discharge as required by MAC R 323.2310(15).

Sec. 2.335. Notice by User of Installation of New Pretreatment Facilities. Within 5 days after completing installation of new pretreatment facilities, the user shall notify the WWTP Superintendent in writing of the time and date when it intends to commence operation of the new facilities, and the identity of the person who will conduct any tests to be performed. The pretreatment facilities shall not be placed in regular operation until adequate tests have been conducted to establish that the discharges will comply with the requirements of this Ordinance and other applicable laws and regulations. Upon prior written request by the WWTP Superintendent, the user shall allow a representative of the POTW to observe the tests at the time they are conducted. The cost of the tests shall be paid by the user.

Sec. 2.336. Other Reports and Notices Required by this Ordinance or by Other Applicable Laws and Regulations. Users shall comply with all other reporting or notice requirements as provided by this Ordinance, by any notice, order or permit issued under this Ordinance, or as required by any other applicable law or regulation, including, without limitation, the reporting and notice requirements in connection with accidental discharge (Section 2.359), upset (Section 2.361), bypass (Section 2.364), and any other reports or notice requirements determined necessary by the WWTP Superintendent to assess and assure compliance with the requirements of this Ordinance.

Sec. 2.337. Requirements Applicable to All Reports and Notifications. All reports and notifications submitted by a user to the POTW as required by this Ordinance (or by any order, permit or determination issued or made pursuant to this Ordinance) shall meet the following requirements:

(a) All reports required by this Ordinance shall be based upon data obtained through appropriate sampling and analysis performed during the period covered by the report. The data shall be representative of conditions occurring during the applicable reporting period.

(b) If a user monitors any pollutant (or measures flow) more frequently than required by this Ordinance or a wastewater discharge permit, using the monitoring, sampling and analytical procedures as required by Section 2.340, the results of all such additional monitoring shall be included in any report or notification submitted pursuant to this Ordinance.

(c) The POTW may require that reports, notifications, and other required documents and data be submitted in a standardized format, as specified by the Superintendent.

(d) If the POTW instead of a user collects all of the information, including flow data, required for a report required by Sections 2.329 or 2.330, the WWTP Superintendent may in its discretion waive the requirement that the report be submitted by the user.

(e) The reports, notifications, and other documents and data required to be submitted or maintained by this Ordinance shall be subject to all of the provisions as specified by MAC R 323.2310(13).

(f) Failure to provide the reports and notifications required by this Ordinance constitutes an independent violation of this Ordinance. However, compliance with applicable reporting and notification requirements shall not relieve a user of any expense, loss, damage, or other liability that may be incurred as a result of damage to the POTW, fish kills, or any other damage to person or property; nor shall such report or notification relieve a user of any fines, penalties, or other liability that may be imposed by applicable laws or regulations. Further, the reporting and notification requirements required by this Ordinance shall not be construed to authorize a discharge that exceeds a discharge prohibition or limitation under this Ordinance or other applicable laws or regulations.

Sec. 2.338. Signature and Certification Requirements. All written reports and notifications required by this Ordinance shall be signed and certified as follows:

(a) Required Signatures. The reports and notifications shall be signed by an "authorized representative" of the user as defined in Section 2.303 of this Ordinance.

(b) Required Certification. The reports and notifications shall include the following certification statement:

> "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

(c) Exception. If the POTW elects to perform instead of the user all or any portion of the sampling or analysis otherwise required for a report or notification, the user will not be required to comply with the certification requirements for the sampling and analysis (or portion thereof) performed by the POTW.

Sec. 2.339. Sampling, Analysis and Monitoring. The sampling, analysis and monitoring requirements are applicable to all users of the POTW. However, it does not apply to domestic users except as may be determined appropriate by the POTW in specific cases. All users required by this Ordinance (or by any permit, order, decision or determination issued or made under this Ordinance) to sample, monitor and analyze their discharges to the POTW shall do so according to the minimum requirements provided by this Ordinance. Additional or more restrictive sampling, analytical or monitoring requirements may be required for a particular user by a permit, order, decision or determination issued or made under this Ordinance.

Sec. 2.340. Sampling and Analytical Techniques and Procedures. All sampling, measurements, tests, and analyses of the characteristics of discharges to the POTW shall be performed in accordance with the procedures approved by the U.S. EPA contained in 40 CFR part 136. If, as determined by the WWTP Superintendent, the sampling and analytical techniques contained in 40 CFR part 136 are not available, do not apply to the discharge or pollutants in question, are not appropriate under the circumstances for application to the discharge or pollutants in question, or where one or more alternate techniques are available under 40 CFR part 136, sampling and analysis shall be performed using validated sampling and analytical methods and procedures approved or required by the WWTP Superintendent.

Sec. 2.341. Sampling Frequency. Users shall sample their discharges to the POTW at a frequency necessary to assess and assure compliance with the requirements of this Ordinance, any permit or order issued pursuant to this Ordinance, all applicable pretreatment standards and requirements, other applicable state and federal laws and regulations, or as otherwise determined necessary by the WWTP Superintendent consistent with the purposes and intent of this Ordinance. At a minimum, all users shall sample their effluent 2 times per year and report the results to the POTW unless otherwise provided by the user's wastewater discharge permit. Each discharge point to the POTW shall be sampled and reported individually.

Sec. 2.342. Sample Types. Where representative samples are required to be taken, a user shall take a minimum of 4 grab samples for pH, cyanide, phenols (T), residual chlorine, oil and grease, sulfide, and volatile organics (and any other parameters designated by the WWTP Superintendent). For all other pollutants, 24-hour composite samples must be obtained through flow-proportional composite sampling techniques. The WWTP Superintendent may waive flow-proportional composite sampling for any user that demonstrates to the satisfaction of the WWTP Superintendent that flow-proportional sampling is infeasible. If flow-proportional sampling is waived, samples may instead be obtained through time-proportional composite sampling techniques, or through a minimum of 4 grab samples, if the user demonstrates to the satisfaction of the Superintendent that this will provide a representative sample of the effluent being discharged.

Sec. 2.343. Sampling Methods, Equipment and Location. A user shall use the sampling methods, sampling equipment, and sampling location specified by the user's wastewater discharge permit, or, in the absence of a permit, as required by the WWTP Superintendent.

Sec. 2.344. Costs of Monitoring, Sampling and Analyses. All required monitoring, taking of samples, and sample analyses shall be solely at the user's cost.

Sec. 2.345. Self-monitoring. Except as otherwise provided by this Ordinance, self-monitoring shall be conducted by each user to insure compliance with all applicable requirements of this Ordinance and other applicable laws and regulations. A user performing its own sampling shall submit the samples for analysis to a laboratory (which may include the user's own laboratory) approved by the WWTP Superintendent. A user performing its own sampling or monitoring shall record and maintain for all samples and monitoring the date, exact place, time (including start time and stop time) and method of sampling or measurement, and the name(s) of person(s) taking the samples or measurements; sampler programming information; the sample preservation techniques or procedures used; the full chain-of-custody for each sample; the dates the analyses were performed; who performed the analyses; the analytical techniques and methods used; quality assurance/quality control (QA/QC) procedures used and QA/QC data; and the results of the analyses. If sampling performed by a user indicates a violation, the user shall notify the WWTP Superintendent within 24 hours of becoming aware of the violation. The user shall also repeat the sampling and analysis and submit the results of the repeat analysis to the POTW within 30 days after becoming aware of the violation (unless a shorter time period is specified by the WWTP Superintendent to the user), except that the user shall not be required to resample if (a) the POTW performs sampling at the user at a frequency of at least once per month, or (b) the POTW performs sampling at the user between the time when the user performs its initial sampling and the time when the user receives the results of the sampling that indicates the violation. If a user uses its own laboratory for sample analysis, the WWTP Superintendent may require the user to send split samples to an independent laboratory at a frequency specified by the Superintendent as a quality control check.

Sec. 2.346. Sampling and Analyses Performed by POTW.

(a) The sampling and analysis required by this Ordinance may be performed by the POTW instead of the user, as determined necessary by the WWTP Superintendent for purposes of this Ordinance. The POTW shall provide the user with copies of analytical results prepared by the POTW. If the results of any sampling and analysis performed by the POTW instead of the user show that a pretreatment standard has been violated, the POTW shall provide the user with copies of the analytical results within 10 days after the results are available.

(b) If the POTW performs the required sampling and analysis for a user, the user shall pay a sampling fee to the POTW to fully reimburse the POTW for the sampling, including administrative and overhead costs. The POTW may contract with an independent firm to perform the sampling and analysis and the user shall fully reimburse the POTW for amounts paid by the POTW to the independent firm.

Sec. 2.347. Split Samples.

(a) If requested by the WWTP Superintendent, the POTW shall be provided with splits of any sample taken by a user.

(b) In cases of disputes arising over split samples, the portion taken and analyzed by the POTW shall be controlling unless proven invalid by the user at the user's sole cost.

Sec. 2.348. Maintenance, Repair and Calibration of Equipment. A user who is performing self-monitoring shall contract with an independent company (unless the

requirement to use an independent company is waived in advance by the WWTP Superintendent as determined appropriate by the Superintendent) to maintain, repair, and calibrate the sampling and flow measurement equipment and instruments used to monitor the user. The maintenance, repair, and calibration shall be performed as often as necessary to ensure that monitoring data is accurate and representative, and consistent with the accepted capability of the type of equipment used, and shall be at the sole cost of the user. A user shall keep a complete and accurate written record of all calibrations, inspections and maintenance done (including, without limitation, the date and time of the activity, a description of what was done and the methods used, the names of persons conducting the activity, and any required or recommended followup). The record shall also include a description of all problems discovered regarding the equipment whether in response to a regularly scheduled inspection or otherwise. The POTW, in any event, may inspect and test a user's sampling and flow measurement equipment and instruments at all reasonable times.

Sec. 2.349. Required Sampling Structures and Devices.

(a) The WWTP Superintendent may require any user to install at each discharge point a suitable control structure (such as a manhole or sampling vault) and necessary measuring and sampling devices (including automatic devices) to facilitate the observation, sampling, and measurement of the quantity, composition, and concentrations of discharges to the POTW.

(b) There shall be ample room in or near the control structure to allow accurate monitoring, measuring, sampling and preparation of samples for analysis, as determined necessary by the WWTP Superintendent. At a minimum, all sewers shall have an inspection and sampling manhole or structure with an opening of no less than 24 inches in diameter and an internal diameter of no less than thirty-six (36) inches containing flow measuring, recording and sampling equipment as required by the WWTP Superintendent to assure compliance with this Ordinance.

(c) The location and complexity of the required control structure or devices may vary with sampling requirements determined necessary by the WWTP Superintendent to protect the POTW and to comply with applicable laws and regulations.

(d) The required sampling structures and devices shall be constructed and installed at the user's sole expense in accordance with plans submitted to the WWTP Superintendent, and in compliance with all applicable local construction standards and specifications. Construction shall be completed within 90 days following written notification by the WWTP Superintendent, or within such other shorter or longer time period specified by the WWTP Superintendent as required by the particular circumstances to meet the requirements of this Ordinance. The structures and devices shall be operated and maintained by the user at the user's sole expense so as to be safe and accessible to POTW personnel during all reasonable times and so as to provide accurate and representative monitoring data. If a user fails to install or maintain a required structure or device, the POTW may do so and charge the costs to the user.

(e) The sampling structures and devices must be provided on the user's premises as approved by the WWTP Superintendent, but the Superintendent may, if the Superintendent determines that such a location would be impractical or cause undue hardship to the user, allow the facility to be constructed in the public street or sidewalk area and located so that it will not be obstructed by landscaping or parked vehicles.

(f) Samples shall be taken at a control structure approved by the WWTP Superintendent. However, in the absence of a suitable control structure as required by this Section, samples shall be taken immediately downstream from pretreatment facilities if pretreatment facilities exist, or immediately downstream from the regulated process if no pretreatment facilities exist. If other wastewaters are mixed with a regulated process wastestream prior to pretreatment, the user must measure the flows and concentrations necessary to allow use of the combined wastestream formula under MAC R 323.2311(7) or other methods required by the WWTP Superintendent to evaluate compliance with applicable pretreatment standards and requirements.

Sec. 2.350. Accidental Discharges. The minimum requirements for industrial users to prepare for, respond to, and report, accidental discharges to the POTW are set forth herein. Additional or more restrictive requirements may be required for particular users under a wastewater discharge permit, a slug control plan, or by other applicable laws and regulations.

(a) Each user shall provide and continuously maintain protection from accidental discharge of materials or other substances regulated by this Ordinance.

(b) Detailed plans showing facilities and operating procedures to provide the protections required by this Ordinance shall be submitted to the WWTP Superintendent for review. All existing users shall submit the required plans and information with their permit applications or upon request of the WWTP Superintendent. For new sources, facilities and operating procedures to provide the protections required by this Ordinance shall be approved by the WWTP Superintendent prior to commencing discharge. No user who commences discharging to the POTW after the effective date of this Ordinance shall be permitted to introduce pollutants into the system until accidental discharge facilities and procedures as provided by this Section are in place and have been approved by the WWTP Superintendent.

(c) Facilities to prevent accidental discharge of regulated materials or substances shall be provided and maintained at the user's cost and expense. Review and approval by the WWTP Superintendent of plans and operating procedures shall not relieve the industrial user from the responsibility to modify the user's facility as necessary to meet the requirements of this Ordinance. Compliance with the requirements of this Ordinance shall not relieve a user of any expense, loss, damage, or other liability that may be incurred as a result of damage to the POTW, or for any other damage to persons or property, or for any other liability that may be imposed under this Ordinance or under other applicable laws and regulations.

(d) No change shall be made in any plan or procedure approved by the WWTP Superintendent as provided by this Section without the prior review and approval of the WWTP Superintendent.

(e) All users shall notify the WWTP Superintendent in writing within 5 days of any change in the information required to be provided to the POTW as set forth below in this Section (including, without limitation, information regarding the person in charge of discharge operations, the description of chemicals stored, used or manufactured by the user, the description of user discharges, and the description of user premises).

Sec. 2.351. Designation of Person in Charge of Discharge Operations. Each industrial user shall designate at least 1 person to be in charge of and responsible for the user's discharges to the POTW, including responsibility for maintaining pretreatment facilities and operations, if any, and prevention of accidental discharges ("person in

charge”). The person so designated shall be an individual or a position with knowledge of all toxic wastes or hazardous substances routinely or potentially generated by the user, and of all process alterations that could, in any manner, increase or decrease normal daily flow or waste strength to the POTW. The names of the person (or persons) designated as provided by this Section and a phone number where the person can be reached shall be submitted by each user to the POTW.

Sec. 2.352. Description of Chemicals Stored, Used or Manufactured by User. Each industrial user shall catalog all chemicals stored, used, or manufactured by the user at the user's premises. The list of chemicals shall include specific chemical names (not just manufacturer's codes) and shall be provided to the POTW.

Sec. 2.353. Description of User Discharges. Each industrial user shall provide the POTW with a written description of the user's discharge practices, including an estimate of daily average flows, waste strengths, and flow types, separated according to appropriate categories, including process, cooling, sanitary, and other types of discharges.

Sec. 2.354. Description of User Premises. Each industrial user shall provide to the POTW a sketch of the user's plant building(s), including the location of pretreatment equipment, process and chemical storage areas, floor drains located near process and storage areas, manhole or other control structures, and sewer locations at the user's point of discharge into the POTW.

Sec. 2.355. Segregation of Wastewaters Requiring Pretreatment. Industrial users shall segregate wastewaters requiring pretreatment (including, without limitation, spent concentrates, toxins, and high strength organic wastes) as necessary to prevent pollutants from interfering with or passing through the POTW. All sludges generated by pretreatment shall be used and disposed of only as permitted by applicable local, state and federal laws and regulations.

Sec. 2.356. Secondary Containment Requirements. Each industrial user must provide and maintain at the user's expense secondary spill containment structures (including diking, curbing or other appropriate structures) adequate to protect all floor drains from accidental spills and discharges to the POTW of any pollutants or discharges regulated by this Ordinance. The containment or curbing shall be sufficient to hold not less than 150% of the total process area tank volume and not less than 150% of liquid polluting material stored or used, unless a lesser containment area or alternate control measures are approved in advance by the WWTP Superintendent. The containment area shall be constructed so that no liquid polluting material can escape from the area by gravity through the building sewers, drains, or otherwise directly or indirectly into the POTW. All floor drains found within the containment area must be plugged and sealed. Spill troughs and sumps within process areas must discharge to appropriate pretreatment tanks. Emergency containment shall also be provided for storage tanks that may be serviced by commercial haulers and for chemical storage areas. Solid pollutants shall be located in security areas designed to prevent the loss of the materials to the POTW. Detailed plans showing facilities and operating procedures to provide the protection required by this Section shall be submitted to the WWTP Superintendent for review, and shall be approved by the Superintendent before construction. Construction of approved containment for existing sources shall be completed within the time period specified by the WWTP Superintendent. No new source shall be permitted to discharge to the POTW until emergency containment facilities have been approved and constructed as required by this Section. The WWTP Superintendent may order an industrial user to take interim measures for emergency containment as determined necessary by the Superintendent under the circumstances.

Sec. 2.357. Submission of Pollution Incident Prevention Plan. Each industrial user required to develop a pollution incident prevention ("PIP") plan as provided by Part 5 of the Michigan Water Resources Commission Rules, 1979 ACR 323.1151 et seq., as amended (promulgated pursuant to Part 31 of Act 451 of the Public Acts of Michigan of 1994, MCLA §§ 324.3101 et seq., as amended), shall submit a copy of that plan to the WWTP Superintendent. The PIP Plan shall be submitted to the Superintendent within 60 days of the effective date of this Ordinance for an existing source, or 30 days prior to the date of discharge for a new source.

Sec. 2.358. Posting of Accidental Discharge Information. All industrial users shall post a clearly legible set of instructions in the area where the user manages wastewater so that the applicable reporting and notice requirements are made known and are available to the user's employees. In addition, all industrial users shall instruct their employees on the applicable reporting and notice requirements of this Section.

Sec. 2.359. Notice of Accidental Discharge. In the case of an accidental discharge, an industrial user shall immediately notify the WWTP Superintendent of the incident by telephone. The notification shall include available information regarding the location of the discharge, its volume, duration, constituents, loading and concentrations, corrective actions taken and required, and other available information as necessary to determine what impact the discharge may have on the POTW. A detailed written report providing the same and any additional available information (including specifying the measures that will be taken by the user to prevent similar future discharges) shall also be provided by the user to the WWTP Superintendent within 5 days of the incident.

Sec. 2.360. Slug Control Plan.

(a) Each significant industrial user shall prepare and implement an individualized slug control plan. Existing significant industrial users shall submit a slug control plan to the WWTP Superintendent for approval within 90 days of the effective date of this Ordinance. New sources that are significant industrial users shall submit a slug control plan to the WWTP Superintendent for approval before beginning to discharge. Upon written notice from the WWTP Superintendent, industrial users that are not significant industrial users may also be required to prepare and implement a slug control plan, and the plan shall be submitted to the WWTP Superintendent for approval as specified in the notice. All slug control plans shall contain at least the following elements:

(1) A description of discharge practices, including non-routine batch discharges;

(2) A description of stored chemicals;

(3) The procedures for immediately notifying the POTW of slug discharges, including any discharge that would violate any discharge prohibition, limitation or requirement under this Ordinance, and procedures for follow-up written notification within 5 days of the discharge;

(4) The procedures to prevent adverse impact from accidental spills, including inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site run-off, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants (including solvents), and measures and equipment for emergency response.

(b) If a user has submitted to the WWTP Superintendent plans or documents pursuant to other requirements of local, state or federal laws and regulations which meet all applicable requirements of Subsection 2.360(a), the WWTP Superintendent may in the Superintendent's discretion determine that the user has satisfied the slug plan submission requirements of this Section.

Sec. 2.361. Upset. An upset shall constitute an affirmative defense to an action brought for noncompliance with categorical pretreatment standards if all of the requirements of Section 2.361(a), below, are met. However, in the event of an upset, the user may still be liable for surcharges for exceeding applicable discharge limitations as provided by this Ordinance. In any enforcement proceeding, the user seeking to establish the occurrence of an upset shall have the burden of proof.

(a) Conditions Necessary to Demonstrate Upset. A user seeking to establish the affirmative defense of upset must demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence, all of the following:

(1) An upset occurred and the user can identify the cause(s) of the upset;

(2) The facility was at the time being operated in a prudent and workmanlike manner and in compliance with applicable operation and maintenance procedures;

(3) The user has submitted the following information to the POTW within 24 hours of becoming aware of the upset (if this information is provided orally, a written submission containing the same information must be provided within 5 days of becoming aware of the upset):

(i) A description of the discharge and cause of non-compliance;

(ii) The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the non-compliance is expected to continue; and

(iii) The steps being taken and/or planned to reduce, eliminate, and prevent recurrence of the noncompliance.

(b) User Responsibility in Case of Upset. The user shall control production or all discharges to the extent necessary to maintain compliance with categorical pretreatment standards and other applicable limits upon reduction, loss, or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost, or fails.

Sec. 2.362. Additional Affirmative Defenses. A user shall have an affirmative defense in any action brought against it alleging a violation of the general prohibitions under Section 2.308(a) and specific prohibitions under Sections 2.308(b)(5), (6), (7) or (8) if the user can demonstrate that all of the conditions necessary to establish the defense under MAC R 323.2303(3)(a) and (b) are met. However, even if the affirmative defense is established, the user may still be liable for surcharges for exceeding applicable discharge limitations as provided by this Ordinance. In any enforcement proceeding, the user seeking to establish the affirmative defenses provided by MAC R 323.2303(3) shall have the burden of proof.

Sec. 2.363. Bypass Not Violating Applicable Pretreatment Standards or Requirements. An industrial user may allow any bypass to occur that does not cause pretreatment standards or requirements to be violated, but only if the bypass is for essential maintenance to assure efficient operation. A bypass that meets the requirements of the preceding sentence of this Section is not subject to the provisions in Sections 2.364, 2.365 and 2.366. However, nothing in this Section shall be construed to authorize a discharge that exceeds a discharge prohibition or limitation under this Ordinance or other applicable laws or regulations; nor to relieve a user for any expense, loss, damage, or liability that may be incurred as a result of the bypass, such as damage to the POTW, fish kills, or any other damage to person or property; nor to relieve the user of any fines, penalties or other liability that may be imposed by applicable laws or regulations as a result of the bypass.

Sec. 2.364. Bypass Prohibited. Except as provided by Section 2.363, the bypass of industrial wastes from any portion of an industrial user's facility is prohibited, and shall be subject to enforcement action, unless all of the following apply:

(a) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage.

(b) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated waste, or maintenance during normal periods of equipment downtime. (This condition is not satisfied if adequate backup equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass that occurred during normal periods of equipment downtime or preventative maintenance.)

(c) The industrial user submitted the notices as required under Section 2.365.

Sec. 2.365. Required Notices.

(a) Anticipated bypass. If an industrial user knows in advance of the need for a bypass, it must submit prior notice of the bypass to the WWTP Superintendent. Such notice shall be submitted to the WWTP Superintendent as soon as the user becomes aware of the need for the bypass, and if possible, at least 10 days before the date of the bypass.

(b) Unanticipated bypass. An industrial user shall submit oral notice of an unanticipated bypass that exceeds applicable pretreatment standards to the WWTP Superintendent within 24 hours from the time the industrial user becomes aware of the bypass. A written submission shall also be provided within 5 days of the time the industrial user becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the bypass. The WWTP Superintendent may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

Sec. 2.366. POTW Approved Bypass. The WWTP Superintendent may approve an anticipated bypass after considering its adverse effects, if the Superintendent determines that it meets the conditions set forth in Sections 2.364(a), (b) and (c). It shall be a violation of this Ordinance for a user to allow an anticipated bypass to occur without the prior approval of the Superintendent.

Sec. 2.367. Confidential Information. The following provisions shall apply regarding the treatment by the POTW of confidential information submitted to or obtained by the POTW in the administration of this Ordinance:

(a) Information and data regarding a user obtained from reports, questionnaires, permit applications, permits and monitoring programs, and from inspections shall be available to the public or other governmental agency without restriction unless the user specifically requests at the time of submission and is able to demonstrate to the satisfaction of the WWTP Superintendent that the release of such information would divulge information, processes or methods of production entitled to protection as trade secrets of the user.

(b) Information submitted by a user for which confidentiality is requested shall be clearly marked on each page as to the portion or portions considered by the user to be confidential and shall be accompanied by a written explanation of why the user considers the information to be confidential or why the release of the information would divulge information, processes or methods of production entitled to protection as trade secrets of the user.

(c) Information that may disclose trade secrets or trade secret processes, and for which the user has requested confidentiality as provided by this Section, shall not be made available for inspection by the general public; however, that information shall be made available upon written request to governmental agencies for uses related to matters regulated by this Ordinance and shall be made available for use by the state, any state agency, the City or the POTW in judicial review or enforcement proceedings that involve the user that furnished the information. The POTW shall notify the user 10 days in advance if it intends to release confidential information to another governmental agency as authorized by this Section.

(d) Information furnished to the POTW on the volume or characteristics of wastewater or pollutants discharged or proposed to be discharged into the POTW shall be available to the public or other governmental agency without restriction.

(e) If a user has mass-based limits as allowed by certain categorical pretreatment standards on a production basis, the production data necessary to determine compliance must also be provided by the user to the POTW, and shall be available to the public. If application of the combined waste stream formula is necessary to apply categorical pretreatment standards to a user, the flow measurements and other data used in the calculation must be provided by the user to the POTW, and shall be available to the public.

(f) Observations made by POTW inspectors shall be subject to the confidentiality provisions of this Section as if they were in writing if the user specifies to the inspectors in writing for which particular observations made by the inspector the user seeks confidentiality.

Sec. 2.368. Maintenance of Records. All industrial users shall retain and preserve records, including, without limitation, all books, documents, memoranda, reports, correspondence and similar materials, related to matters regulated by this Ordinance as provided by the minimum requirements of this Section or as provided by a permit or order issued pursuant to this Ordinance.

(a) Discharge Records. An industrial user shall retain, preserve, and make available to the POTW for inspection and copying, for the period specified in Section

2.368(c), all records related to matters regulated by this Ordinance, including, without limitation, all documents, memoranda, correspondence and similar materials; copies of all required reports and notifications; all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation; copies of results of all sampling, monitoring, measurements and analyses; and records of all data used to complete the application for a permit. Any industrial user subject to the sampling, monitoring, analysis, or reporting requirements of this Ordinance shall maintain copies of all records and information pertaining to those requirements or resulting from any monitoring activities (whether or not such monitoring activities are required by this Ordinance). For all samples, the records shall include, at a minimum, the information required to be recorded by Section 2.345 of this Ordinance.

(b) Hazardous or Solid Waste. An industrial user shall retain and preserve all records regarding its generation, treatment, storage, or disposal of hazardous waste or solid waste for the period specified in Section 2.368(c), and shall make them available to the POTW for inspection and copying, subject to the provisions in this Ordinance regarding confidential information. (The terms “hazardous waste” and “solid waste” shall have the same definition as provided in the state hazardous waste management act, Part 111 of Act 451 of the Public Acts of Michigan of 1994, MCLA §§ 324.11101 et seq., as amended, and the rules promulgated under that act.)

(c) Retention Period. Users subject to the reporting requirements of this Ordinance (or of any permit or order issued pursuant to this Ordinance) shall retain the records specified in Sections 2.368(a) and (b) for a period of at least 3 years from (a) the date the record was created or (b) the date the record was first used or relied upon by the user, whichever is later. The 3 year retention period shall be extended during any administrative or judicial action, enforcement proceeding or litigation regarding matters regulated by this Ordinance (or regarding discharges of the POTW under its NPDES permit), until all such actions, proceedings, or activities have concluded and all periods of limitation with respect to any and all appeals have expired. The 3 year retention period may also be extended at any time at the request of the POTW, the City, the Michigan Department of Environmental Quality, or the U.S. EPA.

Sec. 2.369. Operation and Management of POTW. Except as otherwise expressly provided by this Ordinance, the operation, maintenance, alteration, repair and management of the POTW shall be under the supervision and control of the WWTP Superintendent. The WWTP Superintendent is charged with the duty of investigating, preventing and abating violations and enforcing the provisions of this Ordinance, and may establish any rules, regulations and procedures as determined necessary to assure the efficient management and operation of the POTW.

Sec. 2.370. Powers of WWTP Superintendent. After request by the WWTP Superintendent to the City to take action regarding a below enumerated circumstance, and upon the failure of the City after a designated amount of time to do so, the WWTP Superintendent is empowered, either directly, through authorized representatives, or in conjunction with the City, to take the following actions:

(a) Supervise the implementation of this Ordinance consistant with the provisions of Section 2.302 (b).

(b) Review plans submitted by users for pretreatment equipment.

(c) Make inspections and tests of existing and newly installed, constructed, reconstructed, or altered sampling, metering, or pretreatment equipment to determine compliance with the provisions of this Ordinance.

(d) Verify the completeness, accuracy and representativeness of self-monitoring data submitted and/or maintained by users.

(e) Investigate complaints of violations of this Ordinance, make inspections and observations of discharges, and maintain a record of the investigations, complaints, inspections and observations.

(f) Issue orders and notices of violation and take other actions as necessary to require compliance with this Ordinance.

(g) Assess civil administrative fines for violations of this Ordinance or of any permit, order, decision or determination promulgated, issued or made under this Ordinance.

(h) Develop and implement a Control Authority Enforcement Response (CAER) Plan as required by 40 CFR 403.8(f)(5). The CAER Plan shall provide procedures for the POTW to investigate and respond to instances of noncompliance by industrial users. The CAER Plan and any associated regulations developed by the WWTP Superintendent shall become effective upon approval by the Director.

(i) With the approval of the Director and notice to the City, and, as necessary, in conjunction with the POTW's legal counsel and/or the City and the City's legal counsel, institute necessary civil or criminal judicial legal actions and proceedings in a court of competent jurisdiction against all users violating this Ordinance to prosecute violations of this Ordinance, to compel the abatement or prevention of violations, to compel compliance with this Ordinance and any order, determination, permit or agreement issued or entered into under this Ordinance, and to pursue other necessary or advisable judicial relief or remedies with respect to violations of this Ordinance.

(j) Issue municipal civil infraction citations and municipal civil infraction violation notices for violations of this Ordinance.

(k) Perform any other actions authorized by this Ordinance, or as necessary or advisable for the supervision, management and operation of the POTW and the enforcement of this Ordinance and other applicable laws and regulations (subject to the rights, powers and duties in respect thereto that are reserved by law to the other officials or governmental bodies).

Sec. 2.371. Provision by Users of Necessary Pretreatment Facilities. Users shall provide necessary wastewater treatment as required to comply with all applicable pretreatment standards and requirements within the time limitations specified by applicable law or regulation. All facilities required to pre-treat wastewater shall be provided, operated, and maintained at the user's sole expense. Detailed plans showing the pretreatment facilities and operating procedures shall be submitted to the WWTP Superintendent for review, and shall be acceptable to the WWTP Superintendent before construction of the facility. The review of such plans and operating procedures does not in any way relieve the user from the responsibility of modifying the facility as necessary to produce an effluent acceptable to the WWTP Superintendent under the provisions of this Ordinance. Any subsequent changes in the pretreatment facilities or method of operation shall be reported to and be approved by the WWTP Superintendent prior to the user's

initiation of the changes. (Users shall notify the WWTP Superintendent regarding the installation of new pretreatment facilities as provided by Section 2.335 of this Ordinance.)

Sec. 2.372. Proper Operation and Maintenance. A user shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) that are installed or used by the user to comply with the requirements of this Ordinance, as determined necessary by the WWTP Superintendent. Proper operation and maintenance includes, without limitation, effective performance, adequate funding, adequate operator staffing, and adequate quality assurance/quality control (QA/QC) procedures for sampling and analysis.

Sec. 2.373. Removed Substances. Solids, sludges, filter backwash, or other pollutants removed in the course of treatment or control of wastewaters shall be disposed of in accordance with Section 405 of the Clean Water Act and Subtitles C and D of the Resource Conservation and Recovery Act, and other applicable local, state, and federal laws and regulations.

Sec. 2.374. Duty to Halt or Reduce Activity. Upon reduction of efficiency of operation, or loss, or failure of all or part of a user's pretreatment equipment or facility, the user shall, to the extent necessary to maintain compliance with categorical pretreatment standards and other applicable standards, requirements, and limits, control its production and all discharges until operation of the equipment or facility is restored or an alternative method of treatment is provided. This requirement applies in situations, including, without limitation, where the primary source of power for the pretreatment equipment or facility is reduced, lost, or fails. It shall not be a defense for a user in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this Ordinance.

Sec. 2.375. Duty to Mitigate. A user shall take all reasonable steps to minimize or correct any adverse impact to the POTW or the environment resulting from noncompliance with this Ordinance, including such accelerated or additional monitoring as necessary to determine the nature and impact of the non-complying discharge.

Sec. 2.376. Duty to Pre-treat Prior to Discharge to POTW. Except as otherwise expressly required by this Ordinance, by a wastewater discharge permit or order pursuant to this Ordinance, or other applicable law or regulation, the prohibitions and limitations provided by this Ordinance or a wastewater discharge permit shall apply at the point where wastewater and pollutants are discharged or caused to be discharged into the POTW and any required pretreatment shall, at a minimum, be completed before that point of discharge is reached.

Sec. 2.377. Inspection, Surveillance and Monitoring Authority; Right of Entry.

(a) In general. With reasonable advance notice to the City, the POTW is authorized to carry out all inspection, surveillance, sampling and monitoring activities and procedures, as necessary to determine, independent of information supplied by industrial users or any other persons, compliance or noncompliance with applicable pretreatment standards and requirements, with this Ordinance, and with other applicable laws and regulations. This authority includes, without limitation, the authority, either directly, or in conjunction with the City:

(1) To verify the completeness, accuracy and representativeness of self-monitoring data submitted by users.

(2) To determine compliance with the requirements of this Ordinance or with wastewater discharge permits.

(3) To support enforcement actions taken by the POTW against non-compliant users.

(4) To determine if users have corrected problems identified in previous inspections.

(5) To identify which (and to what degree) users influence the quality of the POTW's influent, effluent and sludge quality.

(6) To evaluate the impacts of the POTW's influent on its treatment processes and receiving stream.

(7) To evaluate the need for revised local limits.

(8) To maintain current data on each user.

(9) To assess the adequacy of each user's self-monitoring program and wastewater discharge permit.

(10) To provide a basis for establishing sampling and monitoring requirements for users.

(11) To evaluate the adequacy of each user's operation and maintenance activities on its pretreatment system.

(12) To assess the potential for spills and/or slug discharge control measures, and evaluate the effectiveness of spill and slug discharge control measures.

(13) To gather information for industrial user permit development.

(14) To evaluate compliance with existing enforcement actions.

(15) To require any user to submit one or more representative samples of the wastewater discharged or that the user proposes to discharge into the POTW.

(b) Right of entry. The WWTP Superintendent and other authorized representatives of the POTW or the City bearing proper credentials and identification are authorized to enter a user's premises to conduct inspection, surveillance and monitoring activities as necessary to determine compliance with this Ordinance, and in that regard shall have, without limitation, the following minimum authority:

(1) To enter into any premises of any user in which a discharge source, treatment system or activity is located or in which records are required to be kept as provided by this Ordinance, for the purpose of inspecting, observing, measuring, sampling and testing the wastewater discharge, removing samples of wastewater for analysis, and inspecting and making copies of required records.

(2) To set up and maintain on the discharger's property such devices as are necessary to conduct sampling, inspection, compliance monitoring and/or metering operations, or to require the discharger to do so, at the discharger's sole expense.

(3) To randomly sample and analyze the effluent from users and conduct surveillance activities to identify occasional and continuing noncompliance with applicable standards and requirements. The POTW shall inspect and sample the effluent from each significant industrial user at least once a year.

(4) To inspect any production, manufacturing, fabrication, or storage area where pollutants, subject to regulation under this Ordinance, could originate, be stored, or be discharged to the POTW.

(5) To enter all private properties through which the City, POTW, or other governmental agency holds an easement for the purposes of, but not limited to, inspection, observation, measurement, sampling, repair, and maintenance of any portion of the POTW or wastewater transmission facilities lying within the easement.

Representatives of the POTW entering a user's premises for purposes authorized by this Ordinance shall comply with the user's plant safety requirements regarding such matters as entry into confined spaces, use of safety glasses, and hearing protection requirements, as requested by the user.

(c) Access without delay required. Users shall allow POTW representatives ready access at all reasonable times to all parts of the user's facility where wastewater governed by this Ordinance is created, handled, conveyed, treated or discharged, or where any production, manufacturing, fabrication, or storage area where pollutants regulated under this Ordinance could originate, be stored, or be discharged to the POTW, or where wastewater records are kept, for the purposes of inspection, sampling, records examination, or in the performance of any of the POTW's duties. If a user has security measures in force that would require proper identification and clearance before entry into the premises by the POTW, the user shall make necessary arrangements in advance with its security guards so that upon presentation of suitable identification, authorized representatives of the POTW (or authorized state or federal personnel) will be permitted to enter, without delay, for the purposes of performing their specific responsibilities.

(d) Refusal to allow entry. If a user refuses to permit access to an authorized POTW representative or to permit the representative to obtain, take, and remove samples or make copies of documents or undertake other authorized inspection, surveillance and monitoring activities as provided by this Ordinance, the WWTP Superintendent may order the termination of the discharge of wastewater to the POTW; order the user to permit access within a time certain; issue the user a notice of violation of this Section; or take other appropriate action as provided by this Ordinance and other applicable laws and regulations.

Sec. 2.378. Notice of Violation. Any person found to be violating a provision of this Ordinance may be served with written notice stating the nature of the violation and providing a reasonable time limit for the satisfactory correction of the violation. The person shall, within the period of time stated in notice, permanently cease all violations. The notice of violation shall be served and shall contain the information as provided by Section 2.380 of this Ordinance.

Sec. 2.379. Orders. The WWTP Superintendent may, either directly or in conjunction with the City, issue an order to any user as determined by the Superintendent to be appropriate under the circumstances, as provided by this Section. Multiple orders may be issued simultaneously or in combination as a single order with respect to a single discharger.

(a) Service. An order shall be served upon a user and shall contain the information as provided by Section 2.380 of this Ordinance. However, orders to immediately cease and desist discharge, or to terminate sewer services, or other emergency orders where delay might endanger human health, the environment or the POTW, may be oral and may be served by telephone (to be followed within 5 days by written confirmation of the order by the WWTP Superintendent).

(b) Types of Orders. The WWTP Superintendent may issue the following types of orders:

(1) Order to Immediately Cease and Desist Discharge. The WWTP Superintendent may issue an order to cease and desist from discharging any wastewater, incompatible pollutant, or discharge not in compliance with this Ordinance. The order shall have immediate effect if the actual or threatened discharge of pollutants to the system presents, or may present, imminent or substantial endangerment to the health or welfare of persons, to the environment, or causes, or may cause, interference or pass through. The WWTP Superintendent shall implement whatever action is necessary to halt the illegal discharge. The user shall be assessed for any penalties, fines, charges, surcharges, expenses, or losses incurred due to the actual or threatened discharge of pollutants as provided by this Ordinance.

(2) Order to Cease Discharge Within a Time Certain. The WWTP Superintendent may issue an order to cease and desist from discharging any wastewater, incompatible pollutant, or discharge not in compliance with this Ordinance by a certain time and date. The proposed time for remedial action shall be specified in the order. In addition to other circumstances as determined appropriate by the WWTP Superintendent, the failure to pay applicable permit fees or to comply with any term of a wastewater discharge permit constitutes sufficient cause to issue an order under this Section.

(3) Order to Effect Pretreatment. The WWTP Superintendent may issue an order to a user requiring the user to pre-treat its discharge in accordance with this Ordinance. Any user subject to an order to pre-treat shall prepare a plan to pre-treat its discharge so that the discharge complies with the requirements of the order and this Ordinance. The plan shall be submitted to the WWTP Superintendent within a reasonable period as specified in the order. The plan shall be prepared in accordance with good engineering practice and shall state whether construction is necessary, as well as identify measures that can be completed without construction. The plan shall contain a schedule of compliance for completion of each of the various phases necessary to implement full pretreatment. The schedule of compliance must be approved by the WWTP Superintendent. The schedule of compliance shall consist of one or more remedial measures, including enforceable timetables for a sequence of actions or operations leading to compliance with an effluent standard, or other prohibition or standard. The following steps or phases shall be included in the schedule of compliance as determined necessary by the WWTP Superintendent:

(i) Retain a qualified engineer and/or consultant.

(ii) Obtain any engineering or scientific investigation or surveys deemed necessary.

(iii) Prepare and submit a preliminary plan to achieve pretreatment.

(iv) Prepare plans and specifications, working drawings, or other engineering or architectural documents that may be necessary to effect pretreatment.

(v) Establish a time to let any contract necessary for any construction.

(vi) Establish completion times for any construction necessary.

(vii) Establish a time limit to complete full pretreatment pursuant to the final order.

(viii) If a phase or unit of construction or implementation may be effected independently of another phase or unit, establish separate timetables for the phases or unit.

(4) Order to Perform Affirmative Action. The WWTP Superintendent may issue an order requiring a user to perform any action required under this Ordinance, including, without limitation, requiring a user to submit samples; to install sampling, metering and monitoring equipment; to submit reports; to permit access for inspection, sampling, testing, monitoring and investigations; to reduce or eliminate a discharge or pollutants in a discharge; or to pay permit fees or other applicable charges.

(5) Order to Terminate Sewer Services. The WWTP Superintendent may issue an order to terminate the sewer services of a user, including physical blockage of the user's sewer connection, for reasons including, without limitation, the following:

(i) A discharge that violates any general or specific discharge prohibition, including any pretreatment standard or requirement, and that reasonably appears to present an imminent endangerment to human health, the environment or the POTW.

(ii) Failure of a user to notify the POTW of any discharge as described in Section 2.379(b)(5)(i) of which the user was aware or reasonably should have been aware.

(iii) Failure of a user to sample, monitor, pre-treat or report, or failure to install monitoring or pretreatment facilities, as required by an order of the WWTP Superintendent.

(iv) A knowing, willful violation of any term, condition or requirement of an order or wastewater discharge permit, or any provision of this Ordinance.

(v) A negligent violation of any major term, condition or requirement of an order or wastewater discharge permit. For purposes of this Section, a “major” term, condition or requirement is one the violation of which is reasonably likely to endanger human health, the environment or the POTW.

(c) Immediate Response to Order by User may be Required. Any user issued an order as provided by this Section to immediately suspend its discharge to the POTW shall immediately stop or eliminate the discharge using whatever means are necessary to do so, or take any other action as required by the order. If the user fails to comply voluntarily with the order to immediately suspend its discharge, the POTW shall take any action determined necessary as authorized by this Ordinance, including, without limitation,

immediate suspension of water service and/or severance of the sewer connection or commencement of judicial proceedings, to prevent or minimize damage to the POTW or endangerment to public health, safety or the environment. The POTW may reinstate the wastewater treatment service and terminate any judicial proceedings, as applicable, upon satisfactory proof or other demonstration by the user that the non-complying discharge has been eliminated or will not reoccur. A detailed written statement submitted by the user describing the causes of the non-complying discharge and the measures taken to prevent any further occurrence shall be submitted to the WWTP Superintendent within fifteen (15) days of the occurrence.

(d) Noncompliance Due to Factors Beyond User's Control. If noncompliance with an order is unintentional and temporary and due to factors beyond the reasonable control of a user, and the user can demonstrate the conditions necessary for demonstration of an upset as provided by Section 2.361(a), the WWTP Superintendent may modify the order or take other actions as determined appropriate. However, a user shall not be relieved of liability for noncompliance with an order to the extent caused by operational error, improperly designed or inadequate treatment facilities, lack of preventative maintenance, or careless or improper operation.

(e) Amendment, Suspension and Revocation of Orders. An order shall be subject to amendment, suspension or revocation as determined appropriate by the WWTP Superintendent. Notice of the amendment, suspension or revocation shall be served upon the user in the same manner as notice was provided for the original order. An amendment, suspension or revocation of an order shall be subject to the same procedures for review and appeal as the original issuance of the order, as provided by this Ordinance.

(f) Consent Orders and Agreements. The WWTP Superintendent may enter into a consent order or agreement with a user to resolve disputed claims and address identified and potential deficiencies in the user's compliance status. The order or agreement shall be in the form of a written agreement with the user and may contain appropriate provisions, including, without limitation, compliance schedules and stipulated fines and remedial actions.

(g) POTW Authority to Require Financial Assurances. The POTW may require a noncompliant industrial user to post a performance bond (or other form of surety acceptable to the POTW) sufficient to cover expenses that might reasonably be incurred as a result of future violations. Industrial users that have in the prior two (2) years been responsible for causing interference or pass through at the POTW may be required to obtain liability insurance sufficient to cover the reasonable costs of responding or restoring the POTW in the event of a second such incident. These requirements may also be made conditions of an industrial user's permit.

Sec. 2.380. Service of Notices of Violations, Orders and Notices of Assessments. Except as otherwise expressly provided by this Ordinance, all orders, notices of violations and notices of assessments shall be served upon persons and shall contain the information as provided by this Section.

(a) Service. Service shall be by personal delivery or certified mail (return receipt requested), addressed to the user, alleged violator or other person, as applicable. The person served shall sign and date the order or notice and shall return the signed original copy to the POTW; provided, that the failure to do so shall not affect the person's obligation to comply with the order or notice.

(b) Contents. All orders and notices shall contain at least the following information, as applicable to the situation and to the extent known by the POTW or the City:

(1) The name and address of the violator;

(2) The location and time that the violation occurred or was observed, and the duration of the violation;

(3) The nature of the violation, including the provisions of this Ordinance or of any permit, order, decision, determination or agreement violated;

(4) The basis for determining that a violation has occurred (personal observation, pollutant analysis, or other basis);

(5) The amount of the fine, penalty or charge assessed or due, if any;

(6) The manner in which, and time and date by which, any fine, penalty or charge must be paid, including any penalty or charge for late payment;

(7) The remedial action ordered, the time within which required actions must be taken, and any consequences for failure to do so.

(8) The right to appeal the issuance of the order or notice and a summary of the procedures for appeal, or other applicable administrative procedures.

(9) The date and time the order or notice was issued.

(c) Request for Additional Information. A person served may request additional information from the WWTP Superintendent regarding the contents or requirements of any order or notice. However, a request for additional information shall not extend the time for compliance with an order or notice.

Sec. 2.381. Publication of Users in Significant Noncompliance. The POTW shall publish once per year in the largest daily newspaper in the County, a list of users that, at any time during the previous 12 months, were in significant noncompliance with applicable pretreatment standards or requirements. For the purposes of this Section, a user shall be considered to be in significant noncompliance if its violations meet one or more of the following criteria:

(a) Chronic violation of discharge limits, defined as results of analyses in which 66% or more of all of the measurements taken during a six-month period exceed (by any magnitude) the daily maximum limit or the average limit for the same pollutant parameter;

(b) Technical review criteria (TRC) violations, defined as results of analyses in which 33% or more of all of the measurements for each pollutant parameter taken during a six-month period equal or exceed the product of the daily maximum limit or the average limit times the applicable TRC (TRC = 1.4 for BOD, TSS, fats, oil and grease, and 1.2 for all other pollutants, except pH);

(c) Any other violation of a pretreatment effluent limit (instantaneous maximum concentration, daily maximum, or longer-term average) that the POTW determines has caused, alone or in combination with other discharges, interference or pass through (including endangering the health of POTW personnel or the general public);

(d) Any discharge of a pollutant that has caused imminent endangerment to human health, welfare, or to the environment, and has resulted in the POTW's exercise of its emergency authority to halt or prevent the discharge;

(e) Failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in a permit or enforcement order, for starting construction, completing construction, or attaining final compliance;

(f) Failure to provide any required reports within 30 days after the due date;

(g) Failure to accurately report noncompliance; or

(h) Any other violation or group of violations that the WWTP Superintendent determines will adversely affect the POTW or the operation or implementation of the POTW's pretreatment program.

Sec. 2.382. Continuing Violation. Each act of violation, and each day or portion of a day that a violation of this Ordinance, or of any permit, order, notice or agreement issued or entered into under this Ordinance is permitted to exist or occur, constitutes a separate violation and shall be subject to fines, penalties and other sanctions as provided by this Ordinance.

Sec. 2.383. Number of Violations. The number of violations resulting from a user's noncompliance with applicable discharge prohibitions or effluent limitations shall be determined as follows:

(a) Applicable concentration limitations and mass (or loading) limitations shall be treated as separate limitations, and a user may be liable and penalized separately for exceeding any of those limitations for a single pollutant or sampling parameter.

(b) Each violation of a daily maximum limit for a single pollutant or sampling parameter shall constitute a single violation for each day on which the violation occurs or continues.

(c) Each violation of an instantaneous maximum limit for a single pollutant or sampling parameter shall constitute a single violation for each such exceedence, and there may be multiple violations for each day on which such a violation occurs or continues.

(d) Each violation of a monthly average limit for a single pollutant or sampling parameter shall constitute a violation for each day of the month during which the violation occurred, regardless of the number of days on which samples were actually taken. (For example, in a month with 31 days, a violation of the monthly average limit for that month constitutes 31 violations for each pollutant parameter for which the monthly average limit was exceeded during the month.)

(e) If a wastewater discharge permit regulates more than one outfall, each outfall shall be considered separately in computing the number of violations as provided by this Section.

Sec. 2.384. Nuisance. A violation of this Ordinance, or of any permit, order, notice or agreement issued or entered into under this Ordinance, is deemed to be a public nuisance.

Sec. 2.385. Reimbursement of POTW and/or City.

(a) Any person who violates any provision of this Ordinance; or who discharges or causes a discharge that produces a deposit or obstruction or otherwise damages or impairs the POTW, or causes or contributes to a violation of any federal, state or local law governing the POTW; or whose discharge (or proposed discharge) to the POTW requires the POTW and/or the City to incur any expenses, costs, losses or damages over and above amounts covered by standard fees and charges provided by this Ordinance, shall be liable to and shall fully reimburse the POTW and/or the City, as applicable, for all expenses, costs, losses or damages (direct or indirect) payable or incurred by the POTW and/or the City as a result of any such discharge, violation, exceedence or noncompliance. The costs that must be reimbursed to the POTW and/or the City shall include, but shall not be limited to, all of the following:

(1) All costs incurred by the POTW and/or the City in responding to the violation or discharge, including, expenses for any cleaning, repair or replacement work, and the costs of sampling, monitoring, and treatment, as a result of the discharge, violation, exceedence or noncompliance.

(2) All costs to the POTW and/or the City of monitoring, surveillance, and enforcement in connection with investigating, verifying, and prosecuting any discharge, violation, exceedence or noncompliance.

(3) The full amount of any fines, assessments, penalties, and claims, including natural resource damages, levied against the POTW and/or the City by any governmental agency or third party as a result of a violation of the POTW's NPDES permit (or other applicable law or regulation) that is caused by or contributed to by any discharge, violation, exceedence or noncompliance.

(4) The full value of any POTW and/or City staff time (including any required overtime), consultant and engineering fees, and actual attorney fees and defense costs (including the POTW’s attorney, the City’s attorney, and any special legal counsel), associated with responding to, investigating, verifying, and prosecuting any discharge, violation, exceedence or noncompliance or otherwise enforcing the requirements of this Ordinance.

Further, the POTW and/or the City are authorized to correct any violation of this Ordinance or damage or impairment to the POTW caused by a discharge and to bill the person causing the violation or discharge for the amounts to be reimbursed. The costs reimbursable under this Section shall be in addition to fees, amounts or other costs and expenses required to be paid by users under other applicable regulations and requirements.

(b) In determining the amounts to be reimbursed, the POTW and/or the City, as applicable, may consider factors such as, but not limited to, the following:

(1) The volume of the discharge.

(2) The length of time the discharge occurred.

(3) The composition of the discharge.

(4) The nature, extent and degree of success the POTW and/or the City may achieve in minimizing or mitigating the effect of the discharge.

(5) The toxicity, degradability, treatability and dispersal characteristics of the discharges.

(6) The direct and indirect costs incurred by the POTW and/or the City, or imposed upon the POTW and/or the City to treat the discharges, including sludge handling and disposal costs.

(7) Fines, assessments, levies, charges, expenses and penalties imposed upon and/or incurred by the POTW and/or the City, including the costs of defense of actions, or suits brought or threatened against the POTW and/or the City by governmental agencies or third parties.

(8) Such other factors, including but not limited to the amount of any attorney's fees, consultant and expert fees, expenses, costs, sampling and analytical fees, and repairs, as the POTW and/or the City deem appropriate under the circumstances.

(c) The failure by any person to pay any amounts required to be reimbursed to the POTW and/or the City as provided by this Section shall constitute an additional violation of this Ordinance.

Sec. 2.386. Judicial Relief. The City may institute legal proceedings in a court of competent jurisdiction to seek all appropriate relief for violations of this Ordinance or of any permit, order, notice or agreement issued or entered into under this Ordinance. The action may seek temporary or permanent injunctive relief, damages, penalties, costs, and any other relief, at law or equity, that a court may order. The City may also seek collection of surcharges, fines, penalties and any other amounts due to the POTW or the City, as applicable, that a user has not paid. The City may also institute legal proceedings and seek all appropriate legal relief for violations of this Ordinance as provided by this Section.

Sec. 2.387. Cumulative Remedies. The imposition of a single penalty, fine, order, damage, or surcharge upon any person for a violation of this Ordinance, or of any permit, order, notice or agreement issued or entered into under this Ordinance, shall not preclude the imposition by the POTW, the City, or a court of competent jurisdiction of a combination of any or all of those sanctions and remedies or additional sanctions and remedies with respect to the same violation, consistent with applicable limitations on penalty amounts under state or federal laws or regulations. A criminal citation and prosecution of a criminal action against a person shall not be dependent upon and need not be held in abeyance during any civil, judicial, or administrative proceeding, conference, or hearing regarding the person.

Sec. 2.388. Procedures Available. Any person aggrieved by any action taken by the WWTP Superintendent under this Ordinance may request an informal hearing before the Superintendent or an appeal to the WWTP Board of Appeals. If an informal hearing or appeal is not properly and timely requested as provided by this Section, the WWTP Superintendent's action shall be deemed final.

(a) Informal Hearing Before the WWTP Superintendent. A request for an informal hearing before the WWTP Superintendent must be made in writing within 7 days from the date of the Superintendent's action in question. The request must state the reasons for the appeal and shall include all supporting documents and dates. The informal hearing shall be scheduled at the earliest practicable date, but not later than 7 days after receipt by the WWTP Superintendent of the request, unless the 7 day time period is extended by the mutual written agreement of the aggrieved party and the WWTP Superintendent. The hearing shall be conducted on an informal basis at the Wastewater Treatment Plant or at another location designated by the WWTP Superintendent. Following the informal hearing, the WWTP Superintendent may affirm or reverse, in whole or in part, the action appealed from, or may make any order, requirement, decision or determination as, in the Superintendent's opinion, ought to be made in the case under consideration. The decision of the Superintendent may be appealed to the WWTP Board of Appeals.

(b) Appeal to WWTP Board of Appeals. A WWTP Board of Appeals shall be established as provided by this Section to consider appeals from final decisions of the WWTP Superintendent and to determine, in particular cases, whether any deviation from strict compliance will violate the purposes and intent of this Ordinance or endanger public health, safety or welfare, the environment, or the POTW. The WWTP Board of Appeals shall consist of the Engineer/Manager of the Bay County Road Commission and one representative from each Local Unit as appointed by resolution of each Local Unit's legislative body to serve on the Board of Appeals. The Engineer/Manager may vote only to break a tie. A tie vote shall defeat the pending motion unless broken by the Engineer/Manager. The following provisions shall govern appeals of final decisions of the WWTP Superintendent made to the WWTP Board of Appeals under this Ordinance:

(1) An appeal from any final action of the WWTP Superintendent must be made to the WWTP Board of Appeals within 7 days from the date of the action appealed. The appeal may be taken by any person aggrieved by the action. The appellant shall file a notice of appeal with the WWTP Superintendent and with the Board of Appeals. The notice of appeal shall specify the grounds for the appeal. Failure to file a timely notice of appeal shall be deemed to be a waiver of the right to appeal.

(2) Prior to a hearing before the WWTP Board of Appeals regarding an appeal, the WWTP Superintendent shall transmit to the Board of Appeals a written summary of all previous action taken in connection with the action being appealed. The Board of Appeals may, at the Council's discretion, request the WWTP Superintendent to provide further information regarding the action that is the subject of the appeal.

(3) The WWTP Board of Appeals shall fix a reasonable time for the hearing of the appeal. Notice of the hearing shall be provided to require the attendance and testimony of witnesses and the production of evidence relevant to any matter involved in the hearing. Any testimony taken at the hearing shall be under oath and recorded. A copy of the transcript of the hearing shall be made available at cost to any person upon payment of applicable charges for the transcript. The Board of Appeals shall decide the appeal within a reasonable time.

(4) The WWTP Board of Appeals may reverse or affirm, in whole or in part, the action appealed from, or may make any order, requirement, decision or determination as, in its opinion, ought to be made in the case under consideration. To that end, the Board of Appeals shall have all the powers of the official from whom the appeal is taken.

(5) The final disposition of the appeal shall be in the form of a ruling by the WWTP Board of Appeals, either reversing, modifying, or affirming, in whole or in part, the action of the WWTP Superintendent. The action of the WWTP Superintendent shall not be reversed or modified, in whole or in part, and the WWTP Board of Appeals shall not otherwise find in favor of the appellant except by a majority vote of the Board of Appeals. The decision of the Board of Appeals shall be final.

(c) Payment Pending Outcome of Appeal. All service charges, penalties, fines, fees, surcharges, costs or expenses outstanding during any appeal process shall remain due and payable to the POTW and/or the City, as applicable. Upon resolution of any appeal, the amounts due and payable shall be adjusted accordingly. The POTW may terminate wastewater treatment services if a corrective course of action is not taken by a user or if service charges, penalties, fines, fees, surcharges, costs or expenses are not paid by a user.

(d) Finality of Administrative Action. If an appeal is not demanded as provided by this Section within the periods specified by this Section, the administrative action shall be deemed final. If an appeal is properly demanded, the action appealed shall be suspended until a final determination has been made by the WWTP Board of Appeals, except for orders to immediately cease and desist discharge; orders to terminate sewer services; other emergency orders or actions where a suspension or delay might endanger human health, the environment, or the POTW; and as otherwise expressly provided by this Ordinance (such as for permit appeals, Section 2.326).

(e) Appeals from Determination of WWTP Board of Appeals. Appeals from the determination of the WWTP Board of Appeals may be made to a state court of appropriate jurisdiction as provided by law. All findings of fact made by the WWTP Board of Appeals, if supported by the evidence, shall be deemed conclusive.

Sec. 2.389. Supplemental Fees. It is the purpose of this Ordinance to provide for the recovery from users of the POTW of all costs incurred by the POTW for the administration and implementation by the POTW of the industrial pretreatment program (IPP) established by this Ordinance. IPP fees will be assessed which are separate from, and in addition to, amounts chargeable to users for sewage disposal services by the City, extra-strength surcharges, and costs required to be reimbursed to the POTW and/or the City under any other provisions of this Ordinance or other laws and regulations.

(a) IPP Fees. The POTW may adopt IPP fees including, without limitation, fees for reviewing and processing wastewater discharge permit applications, processing permit renewal applications, and processing permit transfer requests; fees for performing compliance monitoring, sampling, analysis, inspections and surveillance (scheduled or unscheduled); fees for reviewing accidental discharge procedures and construction; fees for filing appeals; fees for consistent removal by the POTW of pollutants subject to state and federal pretreatment standards and requirements; and other fees as deemed necessary by the WWTP Superintendent to carry out the IPP requirements of this Ordinance.

(b) IPP Fee Amounts. IPP fees shall be paid by users to the POTW in amounts determined necessary by the POTW from time to time to reimburse the POTW for all expenses incurred by the POTW in administering the IPP. To the extent practical, the fees shall be set in an amount to include at least the POTW's average total costs for that purpose. With regard to IPP activities undertaken by the POTW with regard to particular users, the fees shall be charged to the users on a time and materials basis, plus general

administrative expenses, based on the nature and requirements of the IPP activities undertaken.

(c) Billing and Collection of IPP Fees. All fees shall be due and payable as specified by this Ordinance or as otherwise specified by the POTW, but in no case later than within 30 days of the date of the IPP activity for which the fee is required. For fees not paid at the time of service, the amount of the fee shall be added to the user's waste service charge or billed separately.

(d) No Free Service Permitted. No free service shall be rendered by the POTW to any person, firm or corporation, public or private, or any public agency or instrumentality.

Sec. 2.390 Liability. Neither the POTW nor the City shall be responsible for interruptions of service due to natural calamities, equipment failures, or actions of the system users. It shall be the responsibility of the user that all connected equipment remain in good working order so as not to cause disruption of service of any sewer or treatment plant equipment.

Sec. 2.391. Agreements Allowed. No statement contained in this article shall be construed as preventing any special agreement or arrangement between the POTW and any significant industrial user whereby an industrial waste of unusual strength or character may be accepted by the City for treatment, subject to payment therefore by the industrial concern and subject to National Pretreatment Standards.

Sec. 2.392. Interference With Wastewater Facilities Prohibited. No 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 wastewater works. Only authorized personnel shall be permitted to alter, uncover, or tamper with any structure, which is part of the wastewater works. Any person violating this provision shall be deemed to be a disorderly person and shall be subject to criminal prosecution as hereinafter provided. Violation of this provision shall be deemed to constitute a nuisance per se.

Sec. 2.393. Records of Local Sewer System To Be Maintained. The City shall maintain records of all public sewers and appurtenances, of all permits issued, and all inspections made. The City Manager is empowered to require the abandonment and removal of connections to the public storm sewers, which violate the provisions of this Ordinance.

Sec. 2.394. Invalidity Of Ordinance. The invalidity of any section, clause, sentence, or provision of this Ordinance shall not affect the validity of any other part of this Ordinance which can be given effect without such invalid part or parts.

Sec. 2.395. Lien For Charges. Pursuant to Section 21, Act 94, of Public Acts of Michigan 1933, as amended, whenever the charges for service against any piece of property shall be delinquent for six months, such charges shall be made a lien on the premises serviced by the sanitary sewer system. The City official or officials in charge of the collection of such charges for service shall certify annually, to the tax assessing office of the City, the facts of such delinquency. Such charge shall be entered upon 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.

Sec. 2.396. Discontinuance Of Water. In addition to the foregoing, and any other lawful enforcement methods, the payment of charges for sanitary sewer service to any premises may be enforced by discontinuing the water and sanitary sewer service. Such services shall not be re-established until all delinquent charges and penalties and a turn-on charge to be assessed by the City have been paid. Further, such charges and penalties may be recovered by the City by court action.

Sec. 2.397a. Municipal Civil Infractions.

(a) Violation; Municipal Civil Infraction. Except as provided by Section 2.397b, and notwithstanding any other provision of the City's ordinances to the contrary, a person who violates any provision of this Ordinance (including, without limitation, any notice, order, permit, decision or determination promulgated, issued or made by the POTW and/or the City under this Ordinance) is responsible for a municipal civil infraction, subject to payment of a civil fine of not less than $1,000.00 per day for each infraction and not more than $10,000.00 per day for each infraction, plus costs and other sanctions.

(b) Repeat Offenses; Increased Fines. Increased fines may be imposed for repeat offenses. As used in this Section, "repeat offense" means a second (or any subsequent) municipal civil infraction violation of the same requirement or provision of this Ordinance (i) committed by a person within any 12-month period and (ii) for which the person admits responsibility or is determined to be responsible. The increased fine for a repeat offense under this Ordinance shall be as follows:

(1) The fine for any offense that is a first repeat offense shall be not less than $2,500.00, plus costs.

(2) The fine for any offense that is a second repeat offense or any subsequent repeat offense shall be not less than $5,000.00, plus costs.

(c) Amount of Fines. Subject to the minimum fine amounts specified in Section 2.397a, (a) and (b), the following factors shall be considered by a court in determining the amount of a municipal civil infraction fine following the issuance of a municipal civil infraction citation for a violation of this Ordinance: the type, nature, severity, frequency, duration, preventability, potential and actual effect, and economic benefit to the violator (such as delayed or avoided costs or competitive advantage) of a violation; the violator's recalcitrance or efforts to comply; the economic impacts of the fine on the violator; and such other matters as justice may require. A violator shall bear the burden of demonstrating the presence and degree of any mitigating factors to be considered in determining the amount of a fine. However, mitigating factors shall not be considered unless it is determined that the violator has made all good faith efforts to correct and terminate all violations.

(d) Authorized Local Official. Notwithstanding any other provision of the City's laws, ordinances and regulations to the contrary, the following persons are designated as the authorized local officials to issue municipal civil infraction citations for violations of this Ordinance: the WWTP Superintendent; any representative of the City designated by the City; and any police officer.

(e) Other Requirements and Procedures. Except as otherwise provided by this Section, the requirements and procedures for commencing municipal civil infraction actions; issuance and service of municipal civil infraction citations; determination and collection of court-ordered fines, costs and expenses; appearances and payment of fines and costs; failure to answer, appear or pay fines; disposition of fines, costs and expenses paid; and other matters regarding municipal civil infractions shall be as set forth in Act No. 236 of the Public Acts of 1961, as amended.

Sec. 2.397b. Criminal Penalties; Imprisonment. Any person who (1) at the time of a violation knew or should have known that a pollutant or substance was discharged contrary to any provision of this Ordinance, or contrary to any notice, order, permit, decision or determination promulgated, issued or made by the POTW and/or the City under this Ordinance; or (2) intentionally makes a false statement, representation, or certification in an application for, or form pertaining to a permit, or in a notice, report, or record required by this Ordinance, or in any other correspondence or communication, written or oral, with the POTW and/or the City regarding matters regulated by this Ordinance; or (3) intentionally falsifies, tampers with, or renders inaccurate any sampling or monitoring device or record required to be maintained by this Ordinance; or (4) maliciously or willfully breaks, damages, destroys, uncovers, defaces or tampers with any structure, appurtenance, or equipment that is part of the POTW; or (5) commits any other act that is punishable under state law by imprisonment for more than 93 days; shall, upon conviction, be guilty of a misdemeanor punishable by a fine of $500.00 per violation, per day, or imprisonment for up to 90 days, or both in the discretion of the court.

Sec. 2.398. Penalties. In addition to any other penalty set forth in the Codes adopted by this Chapter, any person who shall violate the provisions of the Codes adopted herein shall be guilty of a misdemeanor and shall suffer the penalties of not more than Five Hundred Dollars ($500.00) and the cost of prosecution or by both imprisonment for not more than ninety (90) days, or by both such fine and imprisonment. Each act of violation and every day upon which such violation shall occur shall constitute a separate offense. In addition to the foregoing penalties, the City may enjoin or abate any violation of this Code by appropriate action. No appeal filed by any person in violation of the adopted Codes to any other forum shall delay or stay the right of prosecution for violations of the provisions of the Codes adopted herein.

Sec. 2.399 – 2.400 Reserved

## TITLE II: UTILITIES AND SERVICES

### CHAPTER 4

### USER CHARGES[24]

Sec. 2.401. Definitions.

(1) Authority - City of Essexville, Bay County, Michigan.

(2) Local Sewer System- All of the sanitary sewer and storm system located within the corporate limits of the City of Essexville which are solely owned and operated by the City including, but not limited to, sewer lines, pump stations and all appurtenances thereto.

(3) Person - Shall mean any individual, firm, company, municipality, association, society, corporation, or group.

(4) "POTW" (Publicly Owned Treatment Works). The complete West Bay County Regional wastewater sewage disposal system and treatment works, including any devices, equipment, structures, property, processes and systems used in the storage, treatment, recycling or reclamation of wastewater, sewage or sludge, as well as sewers (including all main, lateral and intercepting sewers), manholes, inlets, pipes and other conduits and conveyances used to collect or convey wastewater or sewage from any source to the treatment works, as now or hereafter added to, extended or improved, including the Local Sewer System.

(5) Premise - Shall mean each lot or parcel of land, building, or household having a connection to the authority sewer system.

(6) Shall is mandatory; May is permissive.

(7) Users - Shall mean each recipient of wastewater treatment services provided by the City of Essexville.

(8) User Charges - Shall mean a system of charges levied on users of the local sewer system for the cost of operation, maintenance, including replacement, of the local sewer system, and all costs of treatment of wastewater at the POTW and its debt service costs, if any.

(9) Wastewater - Shall mean the spent water of the community. It may be a combination of liquid and water-carried wastes from residences, commercial buildings, industrial plants, and institutions, together with any groundwater, surface water, and storm water that may be present.

Sec. 2.402. User Classes Subject to Charges

(1) Charges shall be levied for wastewater treatment services rendered to each lot, parcel of real estate or building having a connection with the City of Essexville local sewer system or otherwise being provided with service, either directly or indirectly. A

[24] This amended by repealing User Charge Ordinance and replacing it with Ordinance No. 2012-2 User Charges adopted January 10, 2012, effective January 25, 2012.

base charge regardless of use may be assessed and in addition thereto, charges shall be based upon the quantity of water consumed, as measured by water meters.

(2) All rates and charges are subject to the rules and regulations adopted by the United States Environmental Protection Agency.

Sec. 2.403. Administration

(1) Prior to the close of each fiscal year, the City of Essexville shall prepare an estimate of anticipated costs of operation and maintenance of the local sewer system including all costs of treatment at the POTW, debt service costs if any, and replacement and capital costs, for the forthcoming fiscal year. Such estimates shall be prepared in accordance with generally accepted accounting principals. Based upon the anticipated budget and data from the previous fiscal year, the rates will be reviewed and adjusted periodically. The rates shall generate sufficient revenues to offset the costs of all local sewer system operation and maintenance costs, including replacement, and such other expenditures authorized by this Ordinance.

(2) Revenues generated by user charge rates shall be deposited in a separate account and used solely for purposes of operation, maintenance and replacement costs of the local sewer system, including but not limited to, debt service and treatment costs at the POTW.

(3) There shall be no free service or discounts of the established rates provided any user.

Sec. 2.404. User Charge Rates.

(1) Sewer user charges shall be billed quarterly and as a separate item on the utility bill at a rate determined periodically and approved by a resolution of the City Council.

(2) Where a significant portion of the metered water does not and cannot enter the local sewer system, either directly or indirectly, and where the quantity of water entering the premises averages more than 5,000 gallons per month, the person having charge of the property may request permission from the City to install, at his own expense, an approved meter or meters to determine the quantity of water that cannot enter the local sewer system or an approved sewage measuring device or devices to determine the volume of sewage that actually enters the treatment works. The rates and charges will apply only to that portion of water or actual sewage entering the local sewer system.

(3) The charges for local sewer system service shall be billed to the owner of each lot, parcel of real estate or building having a connection with the City of Essexville local sewer system. If a tenant is billed, the owner shall in no way be relieved of liability in the event payment is not made by the tenant as herein required unless otherwise required by law. Such owner shall have the right to examine the City's collection records to ascertain whether such charges have been paid.

Sec. 2.405. Penalties.

(1) Charges for local sewer system service levied pursuant to this Ordinance shall be due and payable on or before the due dates shown on the bills. Any service charge not paid by the due date shall be considered delinquent. Such delinquent charges together with any applied penalty shall be collectable as hereinafter set forth.

(2) Delinquent local sewer system service charges may be made in lien against the property served. In such case, delinquent service charges, together with a mandatory penalty of ten percent, shall be placed on the tax rolls and be collected in the same manner as regular taxes and assessments are collected.

(3) In addition to the foregoing remedies, the City of Essexville shall have the right to bring a civil action to recover any delinquent charges together with a penalty of ten percent and a reasonable attorney’s fee. It shall also have the right to foreclose any lien established under the provisions of this Ordinance with recovery of the charges, penalty of ten percent and a reasonable attorney's fee.

Sec. 2.406 – 2.500 Reserved

## TITLE II: UTILITIES AND SERVICES

### CHAPTER 5

### UTILITIES EASEMENT [25]

Sec. 2.501. That wherever the word "Grantee" appears in this ordinance, it is hereby intended to designate, and shall be held to refer to the Consumers Power Company, a Michigan corporation, its successors and assigns. The right, power, and authority is hereby granted and vested in said Grantee to lay, maintain, and operate gas mains, pipes and services on, along, across, and under the highways, streets, alleys, bridges and other public places, and to do a local gas business in the City of Essexville, Bay County, Michigan, for a period of thirty years.

Sec. 2.502. In consideration of the rights, power and authority hereby granted, all of which shall vest in the Grantee for a period of thirty (30) years as aforesaid, said Grantee shall faithfully perform all things required by the terms hereof.

Sec. 2.503. No highway, street, alley, bridge, or other public place used by said Grantee shall be obstructed longer than necessary during the work of construction or repair, and shall be restored to the same good order and condition as when such work was commenced. No part of the highways, streets, alleys, bridges or other public places of said City shall be permitted to remain in a dangerous or unsafe condition by reason of anything done or omitted to be done by the Grantee, and it shall be liable for such damage as may be suffered by any person or corporation by reason of its negligence in the use of such highways, streets, alleys, bridges or other public places, and shall save harmless said City from all damage and liability on account thereof.

Sec. 2.504. Said Grantee shall construct and extend its gas distribution system within said City, and shall furnish gas to applicants residing therein in accordance with applicable laws, rules, and regulations.

Sec. 2.505. The rights and authority herein granted are not exclusive. Either manufactured or natural gas may be furnished hereunder.

Sec. 2.506. The Grantee shall be entitled to charge said City and its inhabitants for gas, the rates as approved by the Michigan Public Service Commission. Said rates shall be subject to review and change at any time by the Michigan Public Service Commission or its successors, upon proper application by either said Grantee or the City, acting by the City Council, being made thereto, and the regularly filed rates as approved by said Michigan Public Service Commission or its successors, as applicable to said City of Essexville, shall at all times be the lawful rates.

All bills for gas furnished by the Grantee shall be Payable monthly. The Grantee may collect the minimum charges as specified in said schedule The Grantee shall also furnish and maintain commercially accurate meters to measure the Has so furnished, and

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[25] This Chapter adopted March 8, 1983, effective March 25, 1983.

it shall, by its representatives, have at all reasonable times, access to the premises of its customers, for the purpose of reading, inspecting, removing and replacing such meters.

Sec. 2.507. Said Grantee shall, as to all other conditions and elements of service not herein fixed, be and remain subject to the reasonable rules and regulations of the Michigan Public Service Commission or its successors, applicable to gas service in said City.

Sec. 2.508. The franchise granted by this ordinance is not subject to revocation, and shall be and become valid and binding only upon its ratification by the affirmative vote of at least three-fifths of the electors of said City voting thereon at a regular or special municipal election to be held in the manner provided by law. This ordinance shall not be submitted to the electors unless the Grantee shall, within thirty days after the adoption hereof, file with the City Clerk its written acceptance, subject to the ratification by the electors of the City. Upon the acceptance hereof and the ratification by the electors as aforesaid, this ordinance shall constitute a contract between the City of Essexville and the Grantee for the full tern of thirty (30) years from and after the date of such ratification by the electors.

Sec. 2.509 – 2.600 Reserved

## TITLE II: UTILITIES & SERVICES

### CHAPTER 6

### CABLE TV RATE REGULATIONS [26]

Sec. 2.601. Definitions. For purposes of this Chapter, "Act" shall mean the Communication 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. All other words and phrases used in this Chapter shall have the same meaning as defined in the Act and FCC Rules.

Sec. 2.602. Purpose; Interpretation. The purpose of this Chapter 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 connection with basic cable service rate regulation by the City. This Chapter shall be implemented and interpreted consistent with the Act and FCC Rules.

Sec. 2.603. Rate Regulations Promulgated by FCC. In connection with the regulation of rates for basic cable service and associated equipment, the City of Essexville shall follow all FCC Rules.

Sec. 2.604. Filing: Additional Information: Burden of proof.

(1) 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 10 copies of the schedule or proposed increase with the City Clerk. For purposes of this Chapter, the filing of the cable operator shall be deemed to have been made when at least 10 copies have been received by the City Clerk. The City Council may, by resolution or otherwise, adopt rules and regulations prescribing the information, data and calculations which must be included as part of the cable operator's filing of the schedule of rates or a proposed increase.

(2) In addition to information and data required by rules and regulations of the City pursuant to Section 2.74(1) above, a cable operator shall provide all information requested by the City Manager in connection with the City's review and regulation of existing rates for the basic service tier and associated equipment or a proposed increase in these rates. The City Manager may establish deadlines for submission of the requested information and the cable operator shall comply with such deadlines.

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[26] This Chapter adopted September 14, 1993, effective October 2, 1993.

(3) 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. 2.605. Proprietary Information.

(1) If this Chapter, any rules or regulations adopted by the City pursuant to Section 2.604(1), or any request for information pursuant to Section 2.604(2) 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 resumed 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.

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

(3) 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. 2.606. Public Notice: Initial Review of Rates. Upon the filing of 10 copies of the schedule of rates or the proposed increase in rates pursuant to Section 2.74(1) 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 7 days after the public notice is published.

The City Clerk shall give notice to the cable operator of the date, time, and place of the meeting at which the City Council shall first consider the schedule of rates or the proposed increase. This notice shall be mailed by first-class mail at least 3 days before the meeting. In addition, if a written staff or consultant's report on the schedule of rates or the proposed increase is prepared for consideration of the City Council, then the City Clerk shall mail a copy of the report by first-class mail to the cable operator at least 3 days before the meeting at which the City Council shall first consider the schedule of rates or the proposed increase.

Sec. 2.607. 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 2.604(1) above unless the City Council (or other properly authorized body or official) tolls the 30 day deadline pursuant to 47 CFR § 76.933 by issuing a brief written order, by resolution or otherwise, within 30 days of the date of filing. The City Council may toll the 30-day deadline for an additional 90 days in cases not involving cost-of-service showings and for an additional 150 days in cases involving cost-of-service showings.

Sec. 2.608. Public Notice: Hearing on Basic Cable Service Rates Following Tolling of 3 Day Deadline. If a written order has been issued pursuant to Section 2.607 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 2.604 of this Chapter. In addition, the City Council shall hold a public hearing to consider the comments of interested parties within the additional 90-day or 150-day period, as the case may be. The City Clerk shall publish a public notice of the public hearing in a newspaper of general circulation within the City which shall state: (1) the date, time, and place at which the hearing shall be held; (2) 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 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. 2.609. Staff or Consultant Report; Written Response. Following the public hearing, the City Manager shall cause a report to be prepared for the City Council which shall (based on the filing of the cable operator, the comments or objections of interested parties, information requested from the cable operator and its response, staff or consultant's review, and other appropriate information) include a recommendation for the decision of the City Council pursuant to Section 2.610. The City Clerk shall mail a copy of the report to the cable operator by first class mail not less than 20 days before the City Council acts under Section 2.610. The Cable operator may file a written response to the report with the City Clerk. If at least 10 copies of the response are filed by the cable operator with the City Clerk within 10 days after the report is mailed to the cable operator, the City Clerk shall forward it to the City Council.

Sec. 2.610. Rate Decisions and Orders. The City Council shall issue a written order, by resolution or otherwise, which in whole or in part, approves the existing rates for basic cable service and associated equipment or a proposed increase in such rates, denies the existing rates or proposed increase, orders a rate reduction, prescribes a reasonable rate, allows the existing rates or proposed increase to become effective subject to refund, or orders other appropriate relief, in accordance with the FCC Rules. If the City Council issues an order allowing the existing rates or proposed increase to become effective subject to refund, it shall also direct the cable operator to maintain an accounting pursuant to 47 CFR 76.933. The order specified in this Section shall be issued within 90 days of the tolling order under Section 2.77 in all cases not involving a cost-of-service showing. The order shall be issued within 150 days after the tolling order under Section 2.77 in all cases involving a cost-of-service showing.

Sec. 2.611. Refund; Notice. The City Council may order a refund to subscribers as provided in 47 CFR 76.942. Before the City Council orders any refund to subscribers, the City Clerk shall give at least 7 days written notice to the cable operator by first-class mail of the date, time, and place at which the City Council shall consider issuing a refund order and shall provide an opportunity for the cable operator to comment. The cable operator may appear in person, by agent, or by letter at such time for purpose of submitting comments to the City Council.

Sec. 2.612. Written Decisions; Public Notice. Any order of the City Council pursuant to Section 2.710 or Section 2.711 shall be in writing, shall be effective upon adoption by the City Council, and shall be deemed released to the public upon adoption. The Clerk shall publish a public notice of any such written order in a newspaper of general circulation within the City which shall: (1) summary of 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 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. 2.613. Rules and Regulations. In addition to rules promulgated pursuant to Section 2.74, the City Council may, by resolution or otherwise, adopt rules and regulations by basic cable service rate regulation proceedings (including, without limitation, the conduct of hearings), consistent with the Act and the FCC rules.

Sec. 2.614. Failure to Give Notice. The Failure of the City Clerk to give the notices or to mail copies of reports as required by this Chapter shall not invalidate the decisions or proceedings of the City Council.

Sec. 2.615. Additional Hearings. In addition to the requirements of this Chapter, the City Council may hold additional public hearings upon such reasonable notice as the City Council, in its sole discretion, shall prescribe.

Sec. 2.616. Joint Public Hearing. Whenever a provision of this Chapter requires the publication of a notice, a public hearing, the preparation of staff or consultant's report, or other publication or similar action, the City may take such action jointly, in cooperation with any other local unit of government served by the same cable operator.

Sec. 2.617. Additional powers. The City shall possess all powers conferred by the Act, the FCC Rules, the cable operator's franchise, and all other applicable law. The powers exercised pursuant to the Act, the FCC Rules, and this Chapter shall be in addition to powers conferred by law or otherwise. The City may take any action not prohibited by the Act and the FCC Rules to protect the public interest in connection with basic cable service rate regulation.

Sec. 2.618. Failure to Comply: Remedies. The City may pursue any and all legal and equitable remedies against the cable operator (including, without limitation, all remedies provided under a cable operator's Consent Agreement with the City) for failure to comply with the Act, the FCC Rules, any orders or determinations of the City pursuant to this Chapter, any requirements of this Chapter, or any rules or regulations promulgated hereunder. Subject to applicable law, failure to comply with the Act, the FCC Rules, any orders or determinations of the City pursuant to this Chapter, any requirements of this Chapter, or any rules and regulations promulgated hereunder, shall also be sufficient grounds for revocation or denial of renewal of a cable operator's Consent Agreement.

Sec. 2.619. Conflicting Provisions. In the event of any conflict between this Chapter and the provisions of any prior ordinance or any franchise, permit, consent agreement or other agreement with a cable operator, then the provisions of this Chapter shall control.

Sec. 2.620 – 2.700 Reserved

## TITLE II: UTILITIES AND SERVICES

### CHAPTER 7

### GARBAGE AND REFUSE PICKUP

Sec. 2.701. Purpose and Intent. It is the intent of the City Council that this ordinance be liberally construed for the purpose of providing sanitary and satisfactory methods of preparation, collection and disposal of solid waste and recyclable materials, as well as the maintenance of public and private property in a clean, orderly and sanitary condition, for the health, safety and welfare of the community, and to provide for a reasonable system of user fees to defray the cost incurred by the City in collecting and administering waste removal and, if possible, to institute recycling programs.

The City Manager is hereby authorized to make such rules and regulations as from time to time appear to be necessary to carry out this intent, provided, however, that such rules are not in direct conflict with the City Code of Ordinances or the laws of the state.

Sec. 2.702. Definitions. The following definitions shall apply in the interpretation and enforcement of this ordinance. Words used in the present tense include the future; words in the singular number include the plural number and words in the plural number include the singular number; words in the male gender include the female gender; the word "shall" is mandatory and not directory.

a. Brush shall include yard waste such as shrub clippings, twigs, tree trimmings not greater than two inches (2") in diameter.

b. Bulk Items shall include but not be limited to any household furniture, bedsprings, storm doors and windows, metal furniture, water closets, toilets, bathtubs, sinks, carpets and pads, railroad ties, fences or fence posts not exceeding 3' x 4' in dimension, and other discarded material incidental to the usual routing of housekeeping.

c. City shall mean the City of Essexville.

d. Commission shall mean the City Council of the City of Essexville.

e. City Contractor means a person, with whom the City has entered into a contract for the collection, transportation, and disposal of refuse from properties within the City.

f. City Manager means the Administrator of the City of Essexville or his or her authorized representative.

g. Container Types shall include the following[27]:

1. Approved Container or Container shall be constructed of weather proof material and without holes to allow materials

[27] Section amended by Ordinance 2014-5, Adopted November 17, 2014, Effective December 1, 2014.

escaping from within, not capable of containing more than 33 gallons and having a lid or cover sufficient to prevent materials within the container from blowing out of the container. A plastic bag of not greater than 33 gallons capacity and securely tied closed is an approved container.

2. Recycling Container shall be a container approved by the City which complies with City rules and regulations and this ordinance for the purpose of storage and setting out for collection of commingled recyclables.

h. Collection Point shall mean the outlawn of all single-family residential units or the point nearest the side of the street where the refuse can be temporarily stored for collection. Commercial or apartment buildings may have collection points located at other locations. A residential unit is a single collection point. Apartment buildings with no more than six (6) residential units may also have one or more collection points.

i. Commercial Refuse shall mean any and all accumulation of mixed refuse generated by business establishments, churches, schools, apartment buildings with greater than six (6) units, office buildings, and other establishments, whether or not engaged in commerce. Commercial refuse as defined in this section shall not include residential unit mixed refuse, construction waste or industrial refuse.

j. Construction Waste shall mean waste materials from the demolition, construction, remodeling and repair operations on residences and other buildings.

k. Curbside is the designated physical location for the placement of refuse accumulations intended for single collection point collection and disposal. This designated location shall be as near as possible to the curb or edge of the roadway where the collection point is located.

l. Garbage the term "garbage" shall mean all waste from animal, fish, fowl, fruit, or vegetable matter incident to the use, preparation, and storage of food for human consumption. It does not include food-processing wastes from canneries, slaughterhouses, packinghouses, or similar industries, which shall be classified as industrial refuse or hazardous waste.

m. Hazardous Waste means waste, or a combination of waste and other discarded material, including solid, liquid, semisolid or contained gaseous material, which, because of its quality, concentration or physical, chemical or infectious characteristics, may cause or significantly contribute to an increase in mortality or an increase in serious irreversible illness or serious incapacitating, but reversible illness, or pose a substantial present or potential hazard to human health or the environment, if improperly treated, stored, transported, disposed of or otherwise managed. "Hazardous waste" does not include material which is sold for recycling or treatment and stored for one year or less, solid or dissolved material in domestic sewage discharge, solid or dissolved material in an irrigation return flow discharge, authorized industrial discharge to a municipal treatment system or industrial discharge which is a point source subject to

permits under section 402 of the Clean Water Act of 1977, 33 USC 1342, or is a source, special nuclear or byproduct material, as defined by the Atomic Energy Act of 1985, 42 USC 2011 to 2281. (See Hazardous Waste Management Act of Michigan, NO. 64, P.A. of 1979, as amended.)

n. Household Appliances shall include tables, washers, dryers, rugs, refrigerators, chairs, stoves, sewing machines, televisions, hot water tanks, sofas, yard furniture, bedsprings, and beds. The following items are not considered household appliances: construction, repair, remodeling, or demolition refuse other than defined as household goods; hazardous refuse; industrial refuse; loose brush; old motor vehicles or bodies; automotive batteries; explosives; hot ashes, and dead animals.

o. Industrial Waste. The term "industrial waste" shall mean all waste material resulting from industrial or manufacturing operations or processes of every nature whatsoever, including organic and non-organic wastes. The term includes refuse material resulting from cleaning up in connection with such industrial or manufacturing operations' and refuse material resulting from offices, stores, lunch rooms, warehouses or other operations established in conjunction with such industrial or manufacturing operations as well as garbage and rubbish. The term excludes hazardous waste.

p. Medical and Contagious Waste. All materials which may be contagious or dangerous, such as, but not limited to, needles, syringes, medicines or poisons, bandages, dressings, sputum cups, soiled tissues, cloth material, bedding, clothing and similar materials from hospitals, clinics, convalescent homes, nursing homes, doctors' offices or any similar source but excluding such items if originating from home use.

q. Mixed Refuse. shall include garbage, rubbish, brush and yard wastes which constitutes household refuse, but does not contain unacceptable items.

r. Multiple-Family Residence. shall mean a building with a total of more than six (6) household living units.

s. Person. an individual, partnership, corporation or other legal entity.

t. Recyclable materials. shall include, but not limited to all newspapers, glass, metal cans, plastics, corrugated materials and similar other materials. As the technology becomes available, new materials may be included in this definition. Economic considerations may allow the City to re-define what shall be labeled as “recyclable materials".

u. Refuse. means all waste which normally results from an operation of a household on a weekly basis, except body and animal waste, including but not limited to garbage, rubbish, metal can, papers, cardboard, glass jars, bottles, wood, ashes, sod, dirt, household construction/remodeling materials, cement, bricks, household appliances, furniture, water heaters, water softeners, plastics, and any other household refuse or materials small enough for one person to handle. The term refuse shall not include leaves, grass clippings, brush, or Christmas trees, nor shall it include building materials or other waste or debris resulting from new construction or major reconstruction of buildings or other major improvements.

v. Residential Premises. A separate parcel of land containing a residential structure containing no more than six (6) household units, plus any residential condominium unit designated as a residential premises by the City Manager.

w. Residential Unit. A household living unit contained in a residential premises.

x. Rubbish. shall include miscellaneous solid waste material, resulting from housekeeping, and shall include, but not be limited to ashes, packing boxes, cartons, magazines, ashes, tin can, bottles, glassware, dishes, rubber, rags, wood, leather, automobile tires, and floor sweepings.

y. Solid Waste, Garbage and Rubbish. Solid waste does not include human body waste, liquid waste, materials that have been separated either at the source or a processing site for the purpose of reuse, recycling or composting, or any material that has been identified by state or federal regulation to be unsuitable for disposal in a type II sanitary landfill as defined in Act 641 of the Public Acts of 1978, State of Michigan, as amended.

z. Unacceptable Bulk Items shall include a bulk item which is disallowed for pickup as stated in this Chapter or this Code of Ordinances.

aa. Unacceptable Items or Materials[28] shall include building materials in large amounts, including but not limited to concrete, wood, earth, motor vehicle or machinery parts, junk vehicles of any type, used oil; tree branches; logs or wood exceeding four (4') feet in length or four (4") inches in diameter, tree stumps; industrial waste, medical and contagious waste, commercial refuse, hazardous waste, any item not contained in a container or bag authorized by this ordinance, any bulk item or appliance without an authorized sticker attached, and those disallowed items for trash pickup as stated in this Chapter or this Code of Ordinances.

bb. Yard Wastes - means compostible, organic material consisting of grass clippings, hedge and tree prunings, weeds, brush, Christmas trees, leaves and other yard waste.

cc. Yard Waste Collection[29] - means the taking and receipt of all yard waste accumulated and bundled at all residential premises through three unit dwelling places in the City of Essexville.

Sec. 2.703. Responsibility of Owners and Occupants.[30]

a. Every owner, occupant or person in possession of a property or premises in the City is required to have accumulations of refuse removed and disposed of in accordance with this ordinance and in accordance with rules and regulations promulgated under this ordinance. The City shall provide for such refuse removal services for all residential premises and there shall be paid to the City the charges

[28] This Section amended by Ordinance 2014-5, Adopted November 17, 2014, Effective December 1, 2014

[29] This paragraph adopted January 14, 1997, effective February 18, 1997.

[30] This Section adopted January 14, 1997, effective February 18, 1997.

specified by the City Council for such services unless the owner of such premises opts for a different method of collection as provided within this ordinance. All owners of residential premises shall be deemed to have accepted City provided refuse removal services and agree to pay the rate required by the City for such services unless the owner of such residential premises shall opt not to continue to receive such service and advises the City in writing of its use of an alternate service as required by this ordinance and specifically Section 2.808 and subsections (c) and (d) of this section. The City Council shall have the right, however, by resolution, as an alternate payment method, to collect for the expenses of such services by real property millage assessment as allowed under Michigan State Law totally or by proportion between direct billing and millage as it deems appropriate.

b. Every owner, occupant or person in possession of multiple residential or nonresidential, commercial or industrial premises shall be responsible for the storage, collection and disposal of his or her own refuse by means authorized by this ordinance, or federal, state or local laws, rules and regulations or pay for services provided by the City for such pickup, if any.

c. No owner, occupant, tenant or lessee of any building, structure, property or premises in the City shall store, collect, transport or dispose of any refuse, garbage, rubbish or other rejected, unwanted or discharged waste materials, except in compliance with this ordinance and applicable state, federal and local laws, rules and regulations.

d. No refuse of any description may be accumulated on any property in the City for a period longer than seven (7) days, or the period between scheduled collection dates, whichever is longer. All refuse shall be collected from each property and disposed of in accordance with this ordinance, federal, state or local laws, and rules and regulations immediately. Notwithstanding the above periods, refuse not eligible for City contractor or licensee collection shall be immediately disposed of in a legal manner.

e. It shall be unlawful for any person to burn refuse at any place in the City, whether owned or occupied by such person or not or upon any alley, street, or other public place within the City.

f. In order to comply with the requirements of this ordinance and the rules and regulations adopted thereunder, no person shall use the services of a collector unless a collector has been licensed by the City after meeting all lawful requirements of the City.

Sec. 2.704. City Refuse Collection.[31]

a. Unless authorized otherwise by Section 2.703, every owner or occupant of a residential unit for which City refuse collection service is afforded under this ordinance shall place all accumulated and acceptable refuse for collection by the City or its contractor. Refuse shall be placed by the owner and occupant of the residential unit at the curb in front of the residence not earlier than 5:00 p.m. of the day preceding the collection day. The owner and occupant shall not place or cause to be placed any unacceptable items for collection. No person shall place

[31] This Section adopted January 14, 1997, effective February 18, 1997.

refuse materials of any kind on the premises of or in front of a residence for City collection service, except refuse originating in that residence.

b. The City Manager shall make such rules and regulations, including schedules, as he or she deems necessary to govern the collection and disposal of all refuse within the City. Such rules and regulations shall be in effect upon their approval by the City Council. The rules and regulations may provide for unique or infrequent waste collections such as Christmas trees or seasonal yard waste. The rules may provide for recycling and the placement of recycling containers. All rules and regulations shall be publicized.

c. City Contractor. The City may, by advertising for bids enter into a contract for City refuse collection with a contractor, who shall be licensed. The contractor shall be a person the City Council deems best able to collect and dispose of refuse in the City in accordance with the best interests of the City and its residents, and pursuant to this ordinance and rules and regulations adopted by the City. The contract documents shall contain provisions that the City contractor shall commit to collect and dispose of refuse from all premises in the City in full compliance with this ordinance and applicable local, state and federal laws, rules and regulations subject to provisions for alternate collection and disposal under Section 2.703, if any.

Sec. 2.705.[32] Removal of Uncontained Refuse. Unacceptable Materials, Yard Waste, and Weight and Size Limits.

a. The owner and occupant of a residential unit shall remove any scattered or uncontained refuse, including unacceptable materials within twenty-four (24) hours after the same has been scattered or deposited, and dispose of the same in accordance with this ordinance or in accordance with federal and state laws, rules and regulations.

b. Unacceptable items, including but not limited to commercial, medical and contagious, industrial refuse, untagged or unacceptable appliance or bulk items, shall be removed from all premises and disposed of by the owner and occupant thereof in accordance with this ordinance or federal and state laws, rules and regulations. It shall be unlawful to store any unacceptable items on any premises.

c. Yard Waste shall be placed in separate containers clearly marked “yard wastes” or paper compostible bags. Yard waste shall not be placed in plastic bags and shall be kept unmixed from other types of waste or refuse and may be refused to be collected by the City or its contractor if mixed with refuse in the same receptacle. Yard waste shall only be placed at a collection point or a curbside for pickup between April 1 to December 1 of each year exclusive of Christmas trees which shall be allowed to be so placed during the last week of December and the month of January of each year.

d. Brush shall be in bundles and should be limited to 48" in length, 24" in diameter, and 50 pounds in weight. Individual pieces of brush shall not exceed 2" in diameter. Christmas trees are not subject to the above limitations.

Weight Limitations. No refuse container contents or refuse bag shall be collected if they weigh in excess of 50 pounds. Garbage cans shall not exceed 33 gallons in capacity

[32] This Section adopted January 14, 1997, effective February 18, 1997.

and shall be fitted with handles and lids. All other receptacles placed for collection shall be of such size and form as to allow collection by one person.

Sec. 2.706.[33] Bulk Items and Household Appliances. All household appliances having heating and cooling equipment with chlorofluorocarbons (CFC) shall have it removed and evidence of such affixed to it by the property owner that such has occurred prior to being placed at curbside for pickup. Bulk items and household appliance shall be collected by the City or its contractors pursuant to a schedule and rules and regulations promulgated by the City Manager. No such item will be collected unless in conformity with the rules and regulations established by the City Manager and in accordance with the definition of bulk items and household appliances as defined in Section 2.801 of this Ordinance.

Sec. 2.707. Collection of Recyclable Materials.[34]

a. Specifications for City recycling containers and their use shall be promulgated by the City Manager and adopted in the rules and regulations.

b. When required by the City, recycling containers shall be provided by the City, through its contractor or other means to every residential unit served within the City.

c. Residents, owners and occupants of buildings shall not be required to separate materials and if they do not wish to recycle material or participate in the recycling program and if any resident shall desire not to do so they may take the recycling containers provided for recycling to the Essexville City Hall and execute a form giving thirty day notice of their desire not to participate to which their billing for refuse pickup shall be adjusted accordingly. No other form of declination of recycling by any other form of notice to the City of a resident's desire not to participate in recycling shall be recognized by the City and billing shall continue to each resident for recycling until such proper form is executed and recycling containers are returned to the City.

d. Recycling containers shall only be used for the collection and removal of recyclable materials.

e. The collection of recyclable materials and use of recycling containers shall be made available at times and during periods set forth in rules and regulations, which shall be adopted from time to time by the City and publicized.

Sec. 2.708. Scope of Services.[35] Curbside pickup and other services as defined in this Ordinance shall be provided only to residential properties and to occupants of buildings containing six or less residential units. Commercial or larger multiple residential premises and industrial properties may be served by individual agreement and contract with the City, if able to be made available by the City. Alternate pickup services may be provided by the City to residential or other properties such as tree leaf, brush, and tree limb removal for which the City may use alternate collection procedures for the cost thereof including the continuation of millages as allowed under state law.

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[33] This Section adopted January 14, 1997, effective February 18, 1997.
[34] This Section adopted January 14, 1997, effective February 18, 1997.
[35] This Section adopted January 14, 1997, effective February 18, 1997.

Sec. 2.709. Service Fees and Billing Procedures.[36]

a. The City Council shall establish, by resolution, all fees for refuse collection. Such fees shall be subject to revision by the City Council from time to time. Owners of each residential unit served by City refuse collection shall be charged and responsible for the payment of the applicable fees by the procedures described below.

b. In the case of residential premises containing more than one dwelling unit, which units are billed separately for charges by the City for sewer or water service, fees for refuse collection shall be billed to the person who is the customer of the City. In the case of such premises containing more than one residential unit, which premises are served by a single water and sewer bill, so that occupants or tenants cannot be billed separately by the City, fees or refuse collection shall be billed to the customer of the single utility bill and that customer shall be liable for the fee for such premises. Owners and occupants of residential premises who are not water or sewer customers of the City shall be billed. Regardless of billing procedures, owners of all properties served shall be responsible for all charges.

c. Collection of refuse and appropriate charges for service shall continue, regardless of the customer's response to the billing procedure, so long as the customer has not notified the City in writing on a form supplied by the City of its nondesire of service unless the City determines to stop service for non-payment of fees. The nonuse of collection services for any period of time, whether temporary or extended, shall not be a basis to abate or relieve any customer of their requirement for payment for services unless the customer has followed the formal procedure of notifying the City in writing as required above of its desire of nonuse of the services.

d. Billing Procedures. The following billing procedures shall be controlling as to City refuse collection service:

   (1) Statements shall be rendered on combined City water, sewer and waste collection bills, and shall be payable in the same manner as is normal for the payment of water and sewer bills. Separate billings for premises where no water or sewer services occur shall be made.

   (2) The billing statement shall be payable on or before the due date shown on the statement. The payment date shall constitute the date upon which payment is received at the appropriate office. Late charges in accordance with water and sewer bills shall be assessed on all charges for waste collection.

   (3) Partial payments on combined water, sewer and waste collection bills shall be prorated to each service. There shall be no allocation of charges among services.

e. Lien for Charges.

   (1) Charges for City refuse collection shall constitute a lien on such premises.

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[36] This Section adopted January 14, 1997, effective February 18, 1997.

(2) In addition to the methods for collecting fees imposed by or pursuant to this ordinance, the City Treasurer's office shall certify all unpaid charges for waste collection services to any premises which have remained unpaid in the same manner as water and sewer charges but regardless of a non-owner occupant's responsibility to make primary payment under state statutes for payment of water and sewer billings. Said unpaid charges shall be certified to the City Assessor who shall place the same on the tax assessment roll of the City.

(3) The City may terminate refuse collection service to a premises for failure to pay fees. The power to terminate does not require the City to do so, and the City may elect to continue service and invoke other remedies for failure to pay fees as set forth above.

Sec. 2.710. Collection and Disposal as Business: License Required.[37]

a. No person shall engage in the business of collection, transportation or disposal of refuse in the City without first obtaining a license therefore as provided in this chapter. All persons or organizations shall obtain a license and be subject to the provisions of this ordinance to collect, transport or dispose of refuse in or from the City.

b. License Application. Application for a license under this chapter shall be made in writing to the City Clerk's office upon forms furnished by such office, and each applicant shall state his or her name, residence and business address, the number, year and style of conveyances and vehicles to be used and owned by the applicant, the vehicle numbers of the motor vehicles and the places where such vehicles are parked overnight. Such application shall also contain an agreement by the applicant to obey, abide by and comply with all provisions of this ordinance and all other laws, ordinances, rules and regulations applicable to the conduct of such business now in force or which may hereafter be adopted.

c. Equipment Inspection. Before any license is granted to any applicant under this chapter, all equipment used or to be used by such applicant in the conduct of the business of refuse collection, transporting or disposal shall be inspected and approved by the Police Department and the City Manager or his of her designee.

d. Indemnification. A licensee shall pay any judgment which may be obtained against the City, along or jointly with such licensee, on account of any injury or damage to persons or to property by reason of any license or licensee activity. The licensee shall intervene and defend any such suit or action upon written notice thereof given by the City.

e. Vehicle Requirements. All vehicles of any licensee carrying refuse under this chapter shall have on both sides thereof a sign containing the name of the licensee, (not "City", Essexville" or "City of Essexville"), with the telephone number and the number of the vehicle, all of which shall be painted thereon in plain and unobscured letters not less than four inches in height. The number of the vehicle shall be registered in the office of the City Clerk.

f. Compliance With Specifications. Rules and Regulations. The City Manager shall promulgate specifications and rules and regulations approved by the City

[37] This Section adopted January 14, 1997, effective February 18, 1997.

Council which must be complied with by any person issued a license hereunder. Demonstration to the City of an applicant's ability to so comply shall be required before a license may be issued. Such specifications, rules and regulations shall not exceed the requirements complied with by a City contractor, but, further, in no event shall such specifications, rules and regulations allow a licensee to carry on a collection and disposal business or collect refuse under conditions less stringent or using methods or equipment different from those imposed upon a City contractor. Rules and regulations adopted to regulate trash collection, in the absence or separate specifications in rules and regulations for licensed collectors, shall apply to every licensed collector, who shall comply with them fully.

g. Issuance of License. If the applicant has complied with this ordinance and all provisions of the specifications, rules and regulations promulgated by the City Manager and approved by the City Council, applicable to the business sought to be licensed the City Clerk shall issue the license provided for in this chapter after the City Council has approved thereof.

h. Identification of Vehicles and Equipment. Upon the granting of a license and the fulfillment of the conditions imposed by this chapter, the City Clerk shall furnish each licensee a sticker for each vehicle registered, which sticker shall be conspicuously displayed and permanently affixed on the windshield at all times.

i. Fee. Bonding and Insurance Requirements. Every person who engages in the collection, transportation or disposal of refuse in the City shall meet the fee, bonding and insurance requirements set forth in the rules and regulations. Licenses shall be good for one year from the date issued.

j. Compliance of Licensee. The licensee shall at all times comply with all requirements of this ordinance and all rules and regulations issued pursuant to this ordinance.

k. License Denial. Suspension and Revocation. The City Manager may, for cause, deny a license applied for under this ordinance or suspend or revoke any license granted under this ordinance, after complaint, hearing with written charges, and a written decision giving the reasons therefor. In the discretion of the City Manager, the City's contractor's license may be continued, in lieu of suspension or revocation, during contractual periods for continuation or notification for termination of service.

Any applicant or licensee aggrieved by a final decision of the City Manager under this section shall have the right to a hearing before the City Council, provided that a written request therefor is flied with the City Clerk within five (5) days after receipt of the notice of the City Manager's decision. During the pendency of any such appeal, the final determination of the City Manager shall remain in full force and effect.

l. The routes, dates of service, equipment to be supplied and other aspects of the service to be provided by a licensee shall be determined by the City, and made a condition of the license.

m. The City Council shall determine by resolution the filing and processing fees for applications for licenses, based upon the reasonable administrative cost incurred

by the City for the investigation and determination to issue licenses, and monitoring of compliance by licensees.

Sec. 2.711. Prohibition Against Certain Deposits of Trash[38]. It shall be a civil infraction for any property owner, person or to cause any person to place trash, rubbish, or refuse upon an out lawn or otherwise for intended pickup by City services if such objects or materials:

(1) were brought into the City for the specific purpose of using the City's trash and rubbish pickup services to dispose of said items whether or not permission was obtained from the property owner adjoining where the trash is placed for pickup; or

(2) were originally placed out for curb side trash pickup in another city where they were obtained and brought into the City of Essexville, and whether or not stored or kept for a period of time, were placed on the out lawn or otherwise for pickup by City services; or

(3) are placed upon the property or out lawn in front of property owned by another for pickup by City services even if done with the permission of the property owner where the out lawn is located.

Sec. 2.712. Prohibition Against Scattering Trash[39]. It shall be a civil infraction for any person, to cause any person, or to allow any dog or other animal owned or controlled by a person to disturb or scatter trash, rubbish, or refuse which has been placed upon an out lawn for intended pickup by City services.

Sec. 2.713. Prohibition Against Deposit of Disallowed Items for Trash Pickup[40]. It shall be a civil infraction for any person or to cause any person to place upon an out lawn or other place of collection for intended pickup by City services any of the following items:

(1) items defined by Section 2.702 of this chapter as hazardous waste, medical and contagious waste, unacceptable bulk items, or unacceptable items or materials or any item at a time not allowed by this chapter or in excess of the weight, size, or length allowed by this chapter, its definitions, or of any provision of this Code of Ordinances; or

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[38] Section amended by Ordinance 2014-5, Adopted November 17, 2014, Effective December 1, 2014.

[39] Section amended by Ordinance 2014-5, Adopted November 17, 2014, Effective December 1, 2014.

[40] Section amended by Ordinance 2014-5, Adopted November 17, 2014, Effective December 1, 2014.

(2) loose materials in a pile or not properly placed in rigid, weather-proof containers of not greater than 3' in length, 2.5' in diameter, and less the 50 pounds in weight and of sufficient strength to withstand collapse when moved into a trash collection vehicle; or

(3) unbound materials such as carpeting not rolled into strips tightly bound with rope or duct tape and not greater the 3' in length, 1.5' in diameter, and less than 50 pounds in weight or lengths of wood or similar materials free of nails or screws and in tied in bundles not greater than the same dimensions and weight; or

(4) items not in an approved container as defined by Section 2.702, subpart g of this chapter; or

(5) tires of any type and specifically inclusive of those commonly used on automobiles, trucks, or other motor vehicles; or

(6) liquid petroleum or organic products generally regarded as hazardous materials specifically inclusive of, but not limited to, paint, oil, anti-freeze, or alcohol products, whether in liquid or evaporated solid form; or

(7) construction materials whether removed from an existing structure for disposal or excess new construction materials used for the renovation or construction of a structure if the work thereon is being performed by a licensed contractor, or

(8) Needles, syringes or small glass pieces not contained in a lidded metal can or
plastic jug; or

(9) any other materials otherwise disallowed for deposit in landfills by state federal
law or statute inclusive of but not limited to the following:

a. Regulated hazardous waste.

b. PCB's or PCB items, as defined in 40 C.F.R. Sec. 761.3.

c. Bulk or non-containerized liquid waste or waste that contains free liquids, unless the waste is household waste other than septic waste or the waste is leachate or gas condensate that is approved for recirculation pursuant to the State Administrative provisions of Rule 299.4432.

d. Containers that hold liquid waste, unless the container is household waste or is a small container similar in size to that normally found in household waste

e. Sewage

f. Materials that would adversely affect a liner or leachate collection and removal system.

g. Asbestos waste, unless the disposal area complies with the provisions of 40 C.F.R. Sec. 61.154.

h. Empty drums, unless crushed to eliminate voids.

i. Used lead acid batteries.

j. Yard clippings, as prohibited by law**;** or

(10) Items with a gas tank or engine, landscape timbers or deck board, wire fencing, barbed wire, or metal posts.

(11) More than one bulk item per week exceeding 50 pounds and that does not fit into a standard 33 gallon bag or trash can. Furniture, mattresses and appliances are examples of bulky items.

Sec. 2.714. Prohibition Against Leaving Uncollected Items on Out Lawn[41]. It shall be a civil infraction for any property owner, person or to cause any person to allow any uncollected item upon the out lawn of any property, other than a bulk item ticketed for later pickup, for more than 24 hours after the scheduled time and date of trash pickup for that property.

Sec. 2.715. Violations and Penalties[42]. Any property owner who violates the provisions of this chapter or who allows or directs other persons to violate the provisions of this chapter, or any person who violates the provisions of this chapter, shall be guilty of a misdemeanor or civil infraction as set forth below. Whosoever violates any of the provisions of Section 2.710 shall be guilty of a misdemeanor and subject to a penalty of up to five hundred dollars ($500.00) fine and/or ninety (90) days in jail. Whosoever violates any of the provisions of Section 2.711 through 2.714 shall be guilty of a civil infraction and subject to a civil penalty of a Class C infraction as described in Section 1.508 of this Code of

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[41] Section amended by Ordinance 2014-5, Adopted November 17, 2014, Effective December 1, 2014.

[42] Section amended by Ordinance 2014-5, Adopted November 17, 2014, Effective December 1, 2014.

Ordinances. Violators of all other sections of this chapter shall be guilty of a civil infraction and subject to a civil penalty of a Class A infraction as described in Section 1.508 of this Code of Ordinances. A separate violation shall be deemed to have been committed each day during which a violation occurs and continues to occur.

Sec. 2.716 – 2.800 Reserved

# TITLE II: UTILITIES AND SERVICES

## CHAPTER 8

## WOLVERINE POWER MARKETING COOPERATIVE ELECTRIC DISTRIBUTION FRANCHISE

Sec. 2.801. Purpose and Intent. It is the intent of the City Council to grant to WOLVERINE POWER MARKETING COOPERATIVE, its successors and assigns, the right, power and authority to transmit, supply, deliver and distribute electricity and electrical services as specifically set forth herein, along, over and under the streets, bridges, waterways and other public places to customers in the CITY OF ESSEXVILLE, BAY COUNTY, MICHIGAN, and to otherwise do business therein, for an indefinite period.

Sec. 2.802. Grant Term. The CITY OF ESSEXVILLE, BAY COUNTY, MICHIGAN, hereby grants the right, power and authority to the Wolverine Power Marketing Cooperative, its successors and assigns, hereinafter called the "Grantee," to transmit, supply, deliver and distribute electricity and electrical services as part of a Retail Open Access (“ROA”) program approved or authorized by a state or federal agency, or otherwise permitted by law, along, over and under the streets, bridges, waterways and other public places to customers in the CITY OF ESSEXVILLE, BAY COUNTY, MICHIGAN, and to otherwise do business therein, for a period of five years. Grantee does not have the right, power or authority to construct or maintain electric lines consisting of towers, masts, poles, crossarms, guys, braces, feeders, transmission and distribution wires, transformers and other electrical appliances along, over or under the streets, bridges, waterways and other public places in the City but only the right to use such facilities as are owned and maintained by others by agreement with them or as otherwise allowed by law.

Sec. 2.803. Acceptance of Obligations. If the Grantee shall accept the franchise by notice to the City as stated in Section 2.810, the Grantee shall also be deemed to have accepted the obligations of the Grantee under all Sections of this Chapter, Ordinance and City Charter.

Sec. 2.804. Conditions. No street, bridge, waterway or other public place shall be obstructed by said Grantee in the performance of its business hereunder.

Sec. 2.805. Hold Harmless. Said Grantee shall at all times keep and save the City free and harmless from all loss, costs and expense to which it may be subject by reason of the granting of this franchise. In case any action is commenced against the City on account of, or as a direct or indirect result of, the franchise herein given, said Grantee shall, upon notice, defend the City and save it free and harmless from all loss, cost and damage, including litigation costs and actual attorney fees, arising therefrom.

Sec. 2.806. Extensions. Said Grantee may from time to time extend its services and furnish electricity to any and all customers within said City in accordance with applicable laws, rules and regulations. There are no limitations on the number of customers, which Grantee may serve hereunder.

Sec. 2.807. Franchise Not Exclusive. The rights, power and authority herein granted, are not exclusive.

Sec. 2.808. Rates. In so long as customers in the City shall be able to freely elect Grantee as their electric service provider, said Grantee shall be entitled to charge its customers for the services and electricity at the rates contractually agreed upon with said customers. This section does not attempt to convey to Grantee any power and authority beyond that granted by applicable state or federal law, rule or regulation.

Sec. 2.809. Revocations. The franchise granted by this ordinance is subject to revocation without the necessity of cause, and for any reason whatsoever, and upon sixty (60) days written notice by the party desiring such revocation.

Sec. 2.810. Other Regulation. Said Grantee shall, as to all other conditions and elements of service not herein fixed, be and remain subject to the reasonable rules and regulations provided by law over the services or electricity furnished by Grantee in said City.

Sec. 2.811. Effective Date. This ordinance shall take effect upon the expiration of the fifteenth day after the date of publication thereof; provided, however, it shall cease and be of no effect after thirty days from its adoption unless within said period the Grantee shall accept the same in writing filed with the City Clerk.

Sec. 2.812 – 2.900 Reserved

## TITLE II: UTILITIES AND SERVICES

### CHAPTER 9

### ACCESSS TO PUBLIC RIGHTS OF WAY BY TELECOMMUNICATIONS PROVIDERS [43]

Sec. 2.901. Purpose and Intent. The purposes of this ordinance are to regulate access to and ongoing use of public rights-of-way by telecommunications providers for their telecommunications facilities while protecting the public health, safety, and welfare and exercising reasonable control of the public rights-of-way in compliance with the Metropolitan Extension Telecommunications Rights-of-Way Oversight Act (Act No. 48 of the Public Acts of 2002) ("Act") and other applicable law, and to ensure that the City of Essexville qualifies for distributions under the Act by modifying the fees charged to providers and complying with the Act.

Sec. 2.902. Conflict. Nothing in this ordinance shall be construed in such a manner as to conflict with the Act or other applicable law.

Sec. 2.903. Definitions. The terms used in this ordinance shall have the following meanings:

1. Act means the Metropolitan Extension Telecommunications Rights-of-Way Oversight Act (Act No. 48 of the Public Acts of 2002), as amended from time to time.

2. City means the City of Essexville.

3. City Council means the City Council of the City of Essexville or its designee. This Section does not authorize delegation of any decision or function that is required by law to be made by the City Council.

4. City Manager means the City Manager for the City or his or her designee.

5. Permit means a non-exclusive permit issued pursuant to the Act and this ordinance to a telecommunications provider to use the public rights-of-way in the City for its telecommunications facilities.

6. All other terms used in this ordinance shall have the same meaning as defined or as provided in the Act, including without limitation the following:

    a. Authority means the Metropolitan Extension Telecommunications Rights-of-Way Oversight Authority created pursuant to Section 3 of the Act.

    b. MPSC means the Michigan Public Service Commission in the Department of Consumer and Industry Services, and shall have the same meaning as the term "Commission" in the Act.

    c. Person means an individual, corporation, partnership, association, governmental entity, or any other legal entity.

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[43] This Chapter added by Ordinance No. 2003-1 adopted November 17, 2003, effective December 2, 2003.

d. Public Right-of-Way means the area on, below, or above a public roadway, highway, street, alley, easement or waterway. Public right-of-way does not include a federal, state, or private right-of-way.

e. Telecommunication Facilities or Facilities means the equipment or personal property, such as copper and fiber cables, lines, wires, switches, conduits, pipes, and sheaths, which are used to or can generate, receive, transmit, carry, amplify, or provide telecommunication services or signals. Telecommunication facilities or facilities do not include antennas, supporting structures for antennas, equipment shelters or houses, and any ancillary equipment and miscellaneous hardware used to provide federally licensed commercial mobile service as defined in section 332(d) of part I of title III of the communications act of 1934, chapter 652, 48 Stat. 1064, 47 U.S.C. 332 and further defined as commercial mobile radio service in 47 CFR 20.3, and service provided by any wireless, two-way communication device.

f. Telecommunications Provider, Provider and Telecommunications Services mean those terms as defined in Section 102 of the Michigan telecommunications act, 1991 PA 179, MCL 484.2102. Telecommunication provider does not include a person or an affiliate of that person when providing a federally licensed commercial mobile radio service as defined in Section 332(d) of part I of the communications act of 1934, chapter 652, 48 Stat. 1064, 47 U.S.C. 332 and further defined as commercial mobile radio service in 47 CFR 20.3, or service provided by any wireless, two-way communication device. For the purpose of the Act and this ordinance only, a provider also includes all of the following:

i. A cable television operator that provides a telecommunications service.

ii. Except as otherwise provided by the Act, a person who owns telecommunication facilities located within a public right-of-way.

iii. A person providing broadband internet transport access service.

Sec. 2.904. Requirement to Obtain Permit.

1. Permit Required. Except as otherwise provided in the Act, a telecommunications provider using or seeking to use public rights-of-way in the City for its telecommunications facilities shall apply for and obtain a permit pursuant to this ordinance.

2. Application. Telecommunications providers shall apply for a permit on an application form approved by the MPSC in accordance with Section 6(1) of the Act. A telecommunications provider shall file three copies of the application with the City Clerk. Applications shall be complete and include all information required by the Act, including without limitation a route map showing the location of the provider's existing and proposed facilities in accordance with Section 6(5) of the Act.

3. Confidential Information. If a telecommunications provider claims that any portion of the route maps submitted by it as part of its application contain trade secret, proprietary, or confidential information, which is exempt from the

Freedom of Information Act, 1976 PA 442, MCL 15.231 to 15.246, pursuant to Section 6(5) of the Act, the telecommunications provider shall prominently so indicate on the face of each map.

4. Application Fee. Except as otherwise provided by the Act, the application shall be accompanied by a one-time non-refundable application fee in the amount of five hundred dollars ($500.00).

5. Additional Information. The City Manager may request an applicant to submit such additional information which the City Manager deems reasonably necessary or relevant. The applicant shall comply with all such requests in compliance with reasonable deadlines for such additional information established by the City Manager. If the City and the applicant cannot agree on the requirement of additional information requested by the City, the City or the applicant shall notify the MPSC as provided in Section 6(2) of the Act.

6. Previously Issued Permits. Pursuant to Section 5(1) of the Act, authorizations or permits previously issued by the City under Section 251 of the Michigan telecommunications act, 1991 PA 179, MCL 484.2251 and authorizations or permits issued by the City to telecommunications providers prior to the 1995 enactment of Section 251 of the Michigan telecommunications act but after 1985 shall satisfy the permit requirements of this ordinance.

7. Existing Providers. Pursuant to Section 5(3) of the Act, within 180 days from November 1, 2002, the effective date of the Act, a telecommunications provider with facilities located in a public right-of-way in the City as of such date, that has not previously obtained authorization or a permit under Section 251 of the Michigan telecommunications act, 1991 PA 179, MCL 484.2251, shall submit to the City an application for a permit in accordance with the requirements of this ordinance. Pursuant to Section 5(3) of the Act, a telecommunications provider submitting an application under this subsection is not required to pay the five hundred dollar ($500.00) fee referenced in subsection (4) above. A provider under this subsection shall be given up to an additional 180 days to submit the permit application if allowed by the Authority, as provided in Section 5(4) of the Act.

Sec. 2.905. Issuance of Permit.

1. Approval or Denial. The authority to approve or deny an application for a permit is hereby delegated to the City Manager. Pursuant to Section 15(3) of the Act, the City Manager shall approve or deny an application for a permit within forty-five (45) days from the date a telecommunications provider files an application for a permit under Section 2.1004(2) of this ordinance for access to a public right-of-way within the City. Pursuant to Section 6(6) of the Act, the City Manager shall notify the MPSC when the City Manager has granted or denied a permit, including information regarding the date on which the application was filed and the date on which permit was granted or denied. The City Manager shall not unreasonably deny an application for a permit.

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

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

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

Sec. 2.906. Construction/Engineering Permit.[44] A telecommunications provider shall not commence construction upon, over, across, or under the public rights-of-way in the City of Essexville without first making application for and obtaining a permit to do so as shall be required by this chapter or any other chapter or section of the Code of Ordinances of the city. No fee shall be charged for such application or permit. All construction and location of telecommunication equipment shall be in conformity with the requirements of this and all other chapters and sections of the Code of Ordinances of the city.

Sec. 2.907. Conduit or Utility Poles. Pursuant to Section 4(3) of the Act, obtaining a permit or paying the fees required under the Act or under this ordinance does not give a telecommunications provider a right to use conduit or utility poles.

Sec. 2.908. Route Maps.[45] Pursuant to Section 4(3) of the Act, a telecommunications provider shall, within 90 days after the substantial completion of construction of new telecommunications facilities in the city, submit route maps showing the location of the telecommunications facilities to both the MPSC and to the city. The route maps shall be in a electronic format required by this or other chapters and sections of the Code of Ordinances of the city.

Sec. 2.909. Repair of Damage. Pursuant to Section 15(5) of the Act, a telecommunications provider undertaking an excavation or construction or installing telecommunications facilities within a public right-of-way or temporarily obstructing a public right-of-way in the City, as authorized by a permit, shall promptly repair all damage done to the street surface and all installations under, over, below, or within the public right-of-way and shall promptly restore the public right-of-way to its preexisting condition.

Sec. 2.910. Establishment and Payment of Maintenance Fee. In addition to the non-refundable application fee paid to the City set forth in Section 2.904(4) above, a telecommunications provider with telecommunications facilities in the City's public rights-of-way shall pay an annual maintenance fee to the Authority pursuant to Section 8 of the Act.

Sec. 2.911. Modification of Existing Fees. In compliance with the requirements of Section 13(1) of the Act, the City hereby modifies, to the extent necessary, any fees charged to telecommunications providers after November 1, 2002, the effective date of the Act, relating to access and usage of the public rights-of-way, to an amount not

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[44] This Section amended by Ordinance No. 2008-3 adopted on November 17, 2008, effective on December 2, 2008.

[45] This Section amended by Ordinance No. 2008-03 adopted on November 17, 2008, effective on December 2, 2008.

exceeding the amounts of fees and charges required under the Act, which shall be paid to the Authority. In compliance with the requirements of Section 13(4) of the Act, the City also hereby approves modification of the fees of providers with telecommunication facilities in public rights-of-way within the City's boundaries, so that those providers pay only those fees required under Section 8 of the Act. The City shall provide each telecommunications provider affected by the fee with a copy of this ordinance, in compliance with the requirement of Section 13(4) of the Act. To the extent any fees are charged telecommunications providers in excess of the amounts permitted under the Act, or which are otherwise inconsistent with the Act, such imposition is hereby declared to be contrary to the City's policy and intent, and upon application by a provider or discovery by the City, shall be promptly refunded as having been charged in error.

Sec. 2.912. Savings Clause. Pursuant to Section 13(5) of the Act, if Section 8 of the Act is found to be invalid or unconstitutional, the modification of fees under Section 2.911 above shall be void from the date the modification was made.

Sec. 2.913. Use of Funds. Pursuant to Section 10(4) of the Act, all amounts received by the City from the Authority shall be used by the City solely for rights-of-way related purposes. The City shall deposit and account for all funds received pursuant to this ordinance and the Act in compliance with the Act.

Sec. 2.914. Annual Report. Pursuant to Section 10(5) of the Act, the City Manager shall file an annual report with the Authority on the use and disposition of funds annually distributed by the Authority.

Sec. 2.915. Cable Television Operators. Pursuant to Section 13(6) of the Act, the City shall not hold a cable television operator in default or seek any remedy for its failure to satisfy an obligation, if any, to pay after November 1, 2002, the effective date of this Act, a franchise fee or similar fee on that portion of gross revenues from charges the cable operator received for cable modem services provided through broadband internet transport access services.

Sec. 2.916. Existing Rights. Pursuant to Section 4(2) of the Act, except as expressly provided herein with respect to fees, this ordinance shall not affect any existing rights that a telecommunications provider or the City may have under a permit issued by the City or under a contract between the City and a telecommunications provider related to the use of the public rights-of-way.

Sec. 2.917. Compliance. The City hereby declares that its policy and intent in adopting this ordinance is to fully comply with the requirements of the Act, and the provisions hereof should be construed in such a manner as to achieve that purpose. The City shall comply in all respects with the requirements of the Act, including but not limited to the following:

1. Exempting certain route maps from the Freedom of Information Act, 1976 PA 442, MCL 15.231 to 15.246, as provided in Section 2.904(3) of this ordinance;

2. Allowing certain previously issued permits to satisfy the permit requirements hereof, in accordance with Section 2.904(6) of this ordinance;

3. Allowing existing providers additional time in which to submit an application for a permit, and excusing such providers from the $500 application fee, in accordance with Section 2.904(7) of this ordinance;

4. Approving or denying an application for a permit within forty-five (45) days from the date a telecommunications provider files an application for a permit for access to and usage of a public right-of-way within the City, in accordance with Section 2.905(1) of this ordinance;

5. Notifying the MPSC when the City has granted or denied a permit, in accordance with Section 2.905(1) of this ordinance;

6. Not unreasonably denying an application for a permit, in accordance with Section 2.905(1) of this ordinance;

7. Issuing a permit in the form approved by the MPSC, with or without additional or different permit terms, as provided in Section 2.905(2) of this ordinance;

8. Limiting the conditions imposed on the issuance of a permit to the telecommunications provider's access and usage of the public right-of-way, in accordance with Section 2.905(3) of this ordinance;

9. Not requiring a bond of a telecommunications provider which exceeds the reasonable cost to ensure that the public right-of-way is returned to its original condition during and after the telecommunication provider's access and use, in accordance with Section 2.905(4) of this ordinance;

10. Not charging any telecommunications providers any additional fees for construction or engineering permits, in accordance with Section 2.906 of this ordinance;

11. Providing each telecommunications provider affected by the City's right-of-way fees with a copy of this ordinance, in accordance with Section 2.911 of this ordinance;

12. Submitting an annual report to the Authority, in accordance with Section 2.914 of this ordinance; and

13. Not holding a cable television operator in default for a failure to pay certain franchise fees, in accordance with Section 2.915 of this ordinance.

Sec. 2.918. Reservation of Police Powers. Pursuant to Section 15(2) of the Act, this ordinance shall not limit the City's right to review and approve a telecommunication provider's access to and ongoing use of a public right-of-way or limit the City's authority to ensure and protect the health, safety, and welfare of the public.

Sec. 2.919. Severability. The various parts, sentences, paragraphs, sections, and clauses of this ordinance are hereby declared to be severable. If any part, sentence, paragraph, section, or clause of this ordinance is adjudged unconstitutional or invalid by a court or administrative agency of competent jurisdiction, the unconstitutionality or invalidity shall not affect the constitutionality or validity of any remaining provisions of this ordinance.

Sec. 2.920. Authorized City Officials. The City Manager or his or her designee is hereby designated as the authorized City official to issue citations for violations under this ordinance as provided by the City Code.

Sec. 2.921. Violations of the Ordinance. A person who violates any provision of this ordinance or the terms or conditions of a permit shall be guilty of a misdemeanor, and shall be subject to the penalties of Section 1.110 of the Code of Ordinances of the City. Nothing in this Section 2.921 shall be construed to limit the remedies available to the City in the event of a violation of this ordinance or a permit."

Sec. 2.922. Repealer. All ordinances and portions of ordinances inconsistent with this ordinance are hereby repealed.

Sec. 2.923. Effective Date. This ordinance shall take effect fifteen (15) days after the date of adoption by the City Council.

Sec. 2.924 – 2.1000 Reserved

## TITLE II: UTILITIES AND SERVICES

### CHAPTER 10

### LOCATION AND PLACEMENT OF UTILITY EQUIPMENT [46]

Sec. 2.1001. 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.

Franchisee means the holder of a franchise issued pursuant to this chapter and the laws of the state of Michigan.

Person means an individual, corporation, association, partnership, governmental entity, or any other legal entity.

Public right-of-way means the area on, below or above a public roadway, highway, street, alley, easement or waterway. Public right-of-way does not include federal, state, or private right-of-way nor any other public spaces, such as public parks, or any other real or personal property owned by the city.

Video Service means video programming, cable services, IPTV, or OVS provided through facilities located at least in part in the public rights-of-way without regard to delivery technology, including internet protocol technology. This definition does not include any video programming provided by a commercial mobile service provider defined in 47 USC 332(d), or provided solely as part of, and via, a service that enables users to access content, information, electronic mail or other services offered over the public internet.

Utility means a service carried, transmitted, received or otherwise provided to the public through the use of pipes, cables, wires, lines, conduit or other means. Such services include but are not limited to water, sewer, electricity, telephone, cable or video services and telecommunications.

Video Service Provider or Provider means a person authorized under this Chapter and the laws of the state of Michigan to provide video service.

Sec. 2.1002. Compliance with laws, ordinances, rules etc. Each Franchisee shall in the operation of its Video Services system, comply with all applicable laws and ordinances and rules, regulations and requirements of regulatory agencies of both the state and federal governments.

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[46] This Chapter added by Ordinance No. 2008-04 adopted November 17, 2008, effective December 2, 2008.

Sec. 2.1003. Indemnification of city. Each Franchisee shall save the city harmless from all loss sustained by the city on account of any suit, judgment, execution, claim, or demand whatsoever resulting from the construction, operation or maintenance of its video services system in the public property or public rights-of-way in the city.

Sec. 2.1004. Insurance for video service.

(a) Each franchisee shall file with the city clerk evidence of compliance with the insurance requirements as set forth in the Code of Ordinances of the city.

(b) Each franchisee shall defend, save, keep, hold harmless and indemnify the city, its officers, agents and employees from and against all claims, injuries, damages, losses and expenses, including attorney fees, arising out of, resulting from or caused by the franchisee's construction erection, operation or maintenance of a video services system which is caused in whole or in part by any action or omission, of the franchisee or anyone directly or indirectly employed retained or consulted by it, or anyone for whose acts it may be liable. This indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the franchisee under worker's compensation acts, disability benefits acts or other employee benefit acts.

Sec. 2.1005. Use of public rights-of-way generally.

(a) Each franchisee shall have the right, so long as its franchise is in force and effect, to utilize public rights-of-way of the city to the extent set forth in its application for a franchise for the transmission of television and radio signals from its antenna location to the premises of subscribers as otherwise provided by the city ordinances or the city council. Such right does not extend to the use of other city owned real property such as parks or other open spaces owned by the city without the franchisee receiving the express written approval and agreement of the city. The franchisee may erect its wires, cables, poles, utility cabinets, and appurtenances public rights-of-way in a manner and location approved by the city manager. The franchisee may, at its option, authorize, subject to the same requirements as to manner and location, the installation of such cables and appurtenances by others to be used by the franchisee on a lease, rental, fee or other basis; and all such wires, cables, conduits, appurtenances, poles and utility cabinets placed or installed by others for the use of the franchisee shall exist and continue to exist solely by authority of the permission granted to the franchisee for its own use but shall not be leased to third parties not franchised by the city.
The franchisee shall not sublease or grant others the right to use its franchisee with the city or the franchisee's right to use the city's right-of-ways without the city's express written approval and agreement.

(b) Every franchisee's distribution system public rights-of-way shall comply with all applicable laws and regulations and the city's code of ordinances, and all its wires and cables suspended from poles in the streets shall comply with the minimum clearances above ground required for telephone lines, cables, wires and conduits.

Sec. 2 .1006. Use of public rights-of-way for providing video services. A franchisee shall not, without prior approval of the city as required by this chapter, utilize the public rights-of-way of the city for providing video services.

Sec. 2.1007. Interference with use of public rights-of-way by others. All transmission and distribution structures, lines and equipment, including but not limited to wires, poles, and utility cabinets, erected by the franchisee or on its behalf within the city shall be so located as to cause minimum interference with the reasonable public rights-of-way and minimum interference with the rights and reasonable convenience of property owners who adjoin any public rights-of-way.

Sec. 2.1008. Restoration of disturbed surfacing. In case of any disturbance of pavement, sidewalk, driveway or other surfacing, the franchisee shall, within 10 days, at its own cost and expense and in a manner approved by the city manager, replace and restore all paving, sidewalk, driveway or surfacing within any public rights-of-way disturbed, in as good condition as before such work was commenced, and shall maintain the restoration in an approved condition for a period of 10 years.

Sec. 2.1009. Lines, cables and wires to be underground in certain areas. In areas of the city in which telephone lines and electric utility lines are underground, all lines, cables and wires installed pursuant to this chapter shall be underground.

Sec. 2.1010. Relocation of poles, wires, utility cabinets, etc. If, at any time during the existence of a franchise or permit granted under this chapter, the city shall lawfully widen, realign or otherwise alter the street right-of-way, or construct, reconstruct, realign, change the grade of or otherwise alter pavement or any water main, fire hydrant, sewer or appurtenance, the franchisee or permittee and anyone acting for it in connection with the use of the streets, upon reasonable notice by the city, shall remove, relay and relocate its poles, utility cabinets, wires, cables, underground conduits, manholes and other fixtures at its own expense.

Sec. 2.1011. Right-of-way of lines of city; removal of conflicting lines, and resolution of conflicts of routes of private utility lines. City utilities, such as but not limited to water lines, sewer lines, and communication lines, above and below ground, shall have the absolute right-of-way over all lines of wires, conduits, conductors, poles and utility cabinets of any type whatsoever owned, operated or maintained by any corporation, company or individual and occupying the streets, alleys, public rights-of-way or other public places of the city. All such lines of wires, poles, utility cabinets and conductors owned, operated or maintained by any corporation, company or individual which may in any manner obstruct any proposed route for the city utilities or that may require removal or relocation for installation of city utilities at a location shall be immediately removed by the owner at its own expense in a manner to satisfy the needs of the city. If the routes of two or more private utility franchisees across the city's right-of-ways conflict, or become conflicting, the City Manager shall determine the route that each utility's lines shall take and his or her determination shall be final.

Sec. 2.1012. Injuring, defacing, etc., poles, utility cabinets and wires. No person, except as may be authorized by law, shall destroy, injure, deface, cut down, or remove, with intent to cause injury or damage, any telegraph, telephone, electric light or other pole, utility cabinet or any wire or the appurtenances or fixtures thereunto belonging or appertaining, and used in connection with or for any purpose requiring electrical current, in or upon any public street, alley or place in the city.

Sec. 2.1013. Removal, correction of hazardous facilities.

(a) The city manager shall, from time to time as deemed appropriate by him or her, cause to be conducted a survey of the various wires, conductors, lines, utility poles, utility cabinets, and appurtenances within the corporate limits of the city and shall

determine the location and ownership of such wires, conductors, lines, utility poles, utility cabinets, and appurtenances which are not being utilized or maintained for the purposes of providing essential services to the customers of the utility owning the same or which constitute a safety hazard to the public or which will, if not corrected, constitute a safety hazard to the public or the property of the city or the facilities of the city, and shall notify in writing such owning person or organization that the specific wires, conductors, lines, utility poles, utility cabinets and appurtenances are not being utilized or constitute a safety hazard to the public or facilities of the city and that such condition shall be corrected within 30 calendar days following the delivery of such notice.

(b) The city manager shall cause an inspection as soon as practical after the expiration of the 30-day notice, and shall take notice of any wires, conductors, lines, poles, utility cabinets, and appurtenances not corrected in accordance with the notice and shall immediately proceed to institute such action as may be deemed appropriate to cause the removal of non-utilized property or the correction of the hazard caused by such wires, conductors, lines, utility poles, utility cabinets, and appurtenances and shall render an invoice with a minimum charge of $100.00 or the cost of such correction to the owner of such wires, conductors, lines, utility poles, utility cabinets, and appurtenances, whichever sum is greater.

(c) Failure to pay such assessment within 90 calendar days may be deemed a violation of franchise, and the appropriate city officer shall cause to be spread on the tax roll of the owner the amount as a special assessment plus appropriate penalty and interest.

Sec. 2.1014. Severability. No other portion, paragraph or phrase of the Code of Ordinances of the City of Essexville shall be affected by this ordinance except as to the above, and in the event any portion, section, subsection or phrase of this ordinance shall be held invalid for any reason, such invalidation shall not be construed to affect the validity of any other part or portion of this ordinance or of the Code of Ordinances of the City of Essexville.

Sec. 2.1015. Penalties. Any person who shall violate the provisions of this chapter shall be guilty of a misdemeanor and shall suffer the penalties of not more than Five Hundred Dollars ($500.00) and the cost of prosecution or by both imprisonment for not more than ninety (90) days, or by both such fine and imprisonment. Each act of violation and every day upon which such violation shall occur shall constitute a separate offense. Such penalties shall not be exclusive nor prohibit the city from seeking further and other remedies for violation as provided for and allowed by law

Sec. 2.1016 - 2.1100 Reserved

# TITLE II: UTILITIES AND SERVICES

## CHAPTER 11

## UTILITY CABINETS [47]

Sec. 2.1101. Purpose. This Ordinance is adopted to protect the health, safety, and welfare of the residents and the traveling public by regulating the location, installation and design of the utility cabinets in public rights-of-way. The city's public rights-of-way are used by all residents, visitors, and people traveling in and through the community in vehicles and as pedestrians. Every type of utility, both public and private, including water, sewer, electricity, gas, and the newer communication services use the city's public rights-of-way. Because public rights-of-way occupy a finite space, it is imperative that they are properly managed to provide for safe travel, distribution of essential services and maximum efficiency. Furthermore, the beauty and history of the city is reflected in its tree-lined streets, and its well maintained properties. The integrity of these invaluable resources must be maintained. The following regulations have been found necessary to ensure that utility cabinets:

(a) Do not create an obstacle in the right-of-way;

(b) Minimize impediments to a driver's view of the street or sidewalk;

(c) Do not create an attractive nuisance to children;

(d) Do not interfere with essential services;

(e) Do not detract from the streetscape; and

(f) Protect property owners' rights to attractive, well-maintained public spaces and rights-of-way, while ensuring that the legitimate needs of utility companies are met.

Sec. 2.1102. Definitions. The following terms as used in this article shall have the following meanings

Out lawn means the area between the sidewalk and the street or curb.

Right-of-way means the land lying between property lines on either side of a street, alley, or boulevard in the city, including out lawns, sidewalks and the area reserved therefore where the same are not yet constructed.

Utility or utilities means a service carried, transmitted, received or otherwise provided to the public through the use of pipes, cables, wires, lines, conduit or other means. Such services include but are not limited to water, sewer, electricity, telephone, cable or video services and telecommunications.

Utility cabinet means an enclosure, shelter or cover for equipment used in conjunction with a utility.

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[47] This Chapter added by Ordinance No. 2008-05 adopted November 17, 2008, effective December 2, 2008.

Sec. 2.1103. Permit Required,

(a) A permit is required for the installation of a utility cabinet. Such permit is in addition to the permission required for the utility itself such as a franchise agreement for a cable or video services system or a permit for a telecommunication service. The city shall not grant an installation permit for a utility cabinet until permission for the utility itself has been granted.

(b) The written permit application in the form approved by the city manager shall be submitted to the city manager or his or her designated representative. Submitted with the written application shall be a plan review fee as established by resolution of the City Council and complete construction plans, including a boundary survey of all land within one hundred (100) feet of the proposed utility cabinet. The survey shall be prepared and sealed by a registered land surveyor or, in the alternative, include a signed statement in the application by the franchisee that reads "The franchisee submitting this document agrees to indemnify, defend and hold harmless the City of Essexville for any injury to it that is a direct result, in whole or in part, to the franchisee's herein or later submitted drawings and/or as-built drawings being inaccurate regarding the location of the franchisee's utility cabinet, related equipment, fixtures or appurtenances. The survey shall contain the following:

(1) the surveyor's name, address and telephone number;

(2) drawing date, north arrow, and site location map;

(3) drawing scale (no less than 1" = 10');

(4) lot lines and right-of-way boundaries including the location of any benchmarks or property corners either found or set;

(5) proposed equipment location;

(6) location of neighboring houses, garages or other buildings, driveways, sidewalks, fences, trees, telephone poles, fire hydrants, play equipment, etc.;

(7) location of all other utilities in the right-of-way; and

(8) for a ground mounted utility cabinet, the elevation of the land and surrounding properties and any proposed change in elevation (based on U.S.G.S. datum).

(c) The utility cabinet shall not be installed and preparation work shall not begin unless and until the permit has been issued. All work performed under the permit shall be inspected and a street address shall not be assigned until such work has passed the inspection.

Sec. 2.1104. Notification Required. At least fourteen days before the utility cabinet is installed, the applicant shall give notice of such installation by first-class mail to all property owners within one hundred (100) feet of the proposed utility cabinet.

Sec. 2.1105. Location.

(a) A Utility Cabinet shall only be installed at a location which complies with the criteria listed in subsection (b) of this section. The city manager or his or her designated representative shall review each application's proposed utility cabinet location, giving appropriate consideration to the factors listed in Section 2.1101, above, and the requirements of this section.

(b) Placement of the utility cabinet shall not be:

(1) within fifteen (15) feet of a fire hydrant,

(2) within twenty (20) feet of a crosswalk,

(3) within thirty (30) feet of a the approach to a stop sign or traffic control signal located at the side of the road or within the out lawn,

(4) in a place or manner that blocks egress from an emergency exit,

(5) within ten (10) feet of the intersection of a sidewalk or street and the edge of a driveway,

(6) within seventy-five (75) feet of the center of the intersection of two streets,

(7) within ten (10) feet of a tree,

(8) within ten (10) feet of a mailbox owned by the United States Postal Service,

(9) within thirty (30) feet of the approach to a bus stop,

(10) within eight hundred fifty (850) feet of another utility cabinet, or

(11) in a right-of-way adjacent to the front lot line of a property

(13) placed in a manner that interferes with another utility's access to, maintenance of, or operation of its facilities.

Sec. 2.1106. Specifications. Utility cabinets in public rights-of-way shall be pole-mounted wherever practicably possible. Other required specifications are as follows:

(a) Pole-mounted utility cabinets shall not exceed thirty (30) inches in width, twelve (12) inches in depth and seventy-two (72) inches in height, and shall be mounted a minimum of twelve (12) inches above grade.

(b) Ground-mounted utility cabinets shall have a maximum height of sixty-six (66) inches and shall not exceed eighty (80) cubic feet in volume, not including a meter box. The meter box shall not exceed twenty-two (22) inches in width, nine (9) inches in depth and forty-two (42) inches in height. The ground-mounted utility cabinet and meter box shall be mounted on a concrete pad that shall not to exceed one hundred (100) square feet.

(c) Underground utility vaults may have a ground-mounted utility cabinet with a maximum height of two (2) feet and a volume that does not exceed seventy-two

(72) cubic feet, not including a meter box. The meter box shall not exceed twenty-two (22) inches in width, nine (9) inches in depth and forty-two (42) inches in height.

(d) Utility cabinets shall not display any advertising.

(e) Utility cabinets in the public right-of-way shall be mounted with their width parallel to the street.

(f) On a plague or sign no larger than four (4) inches by six inches on the front of the each cabinet installed by the franchisee shall be displayed the name of the owner of the cabinet, the type equipment contained therein, and the owner's emergency telephone number.

(g) The utility cabinet number shall be displayed on the cabinet. Such numbers shall not exceed two and one half (2½) inches in height.

Sec. 2.1107. Issuance of Permit.

(a) A designated representative of the city manager reviewing the application on a form created by the city, which shall include the required construction plans and survey, shall make a written recommendation to the city manager as to the issuance of the requested permit. The city manager or his or her designated representative's recommendation shall be based on the application's compliance with and conformity to the requirements of this chapter including the factors listed in Section 2.1101 above.

(b) After receiving an application and recommendation from any designated representative, the city manager shall review the application and approve the application and issue the permit or deny the application.

(c) The city manager's decision as to the application is final.

(d) An application that is denied shall be returned to the applicant with a written statement detailing the reasons for the application's denial.

Sec. 2.1108. Permit Modified or Denied. The city manager shall have the right to modify or deny any permit that does not comply with the regulations set forth in this chapter or conform to the requirements set forth in sections 2.1101 and 2.1105.

Sec. 2.1109. As-built drawings; Indemnification. Within ninety (90) days of substantial completion of installation of a franchisee's utility cabinet and related equipment, fixtures and appurtenances, the franchisee shall provide to the City accurate as-built drawings of the entire area within one hundred (100') feet of the installed utility cabinet location. Such as-built drawings shall include:

(a) the name, address and telephone number of the individual responsible for the content of the as-built drawings;

(b) the drawing date, north arrow, and sit location map;

(c) the drawing scale (of no less than 1" = 10');

(d) lot lines and right-of-way boundaries including the location of any benchmarks or property corners either found or set;

(e) the accurate location, including height and or depth, of the franchisee's utility cabinet, related equipment, fixtures and appurtenances;

(f) the locations and exterior dimensions of neighboring houses, garages, or other buildings, driveways, sidewalks, fences, trees, telephone poles, fire hydrants, bus stops, play equipment, etc.;

(g) the locations of all existing utilities in the right-of-way; and

(h) an agreement signed by the franchisee, which shall read "The franchisee submitting this document agrees to indemnify, defend and hold harmless the City of Essexville for any injury to it that is a direct result, in whole or in part, to the franchisee's as-built drawings being inaccurate regarding the location of the franchisee's utility cabinet, related equipment, fixtures or appurtenances."

Sec. 1110. Maintenance of Utility Cabinets. All owners of utility cabinets shall maintain them in an aesthetic and physical condition of quality comparable to that of when they were originally installed and free of rust, graffiti, and other unauthorized writings or markings, whether or not such writings or markings were made by the owner or other known or unknown persons or parties.

(a) Upon written notice of defacement of a utility cabinet by the city to the owner, such utility cabinet shall completely be repainted a single solid color over its entirety within 72 hours if the city considers any suh defacements have been made by criminal groups. All other written notices of defect or defacement shall be corrected within 7 days from such notice by the city. If the owner shall not make the required corrections within the required time period, or upon the written or verbal permission of a representative of the owner, the city shall have the right to make such corrections itself and render an invoice with a minimum charge of $100.00 or, if greater, the actual cost to the city for such of such correction.

(b) Failure to pay such assessment within 90 calendar days may be deemed a violation of franchise, and the appropriate city officer shall cause to be spread on the tax roll of the owner the amount as a special assessment plus appropriate penalty and interest.

Sec. 2.1111. Severability. No other portion, paragraph or phrase of the Code of Ordinances of the City of Essexville shall be affected by this ordinance except as to the above, and in the event any portion, section, subsection or phrase of this ordinance shall be held invalid for any reason, such invalidation shall not be construed to affect the validity of any other part or portion of this ordinance or of the Code of Ordinances of the City of Essexville.

Sec. 2.1112. Penalties. Any person who shall violate the provisions of this chapter shall be guilty of a misdemeanor and shall suffer the penalties of not more than Five Hundred Dollars ($500.00) and the cost of prosecution or by both imprisonment for not more than ninety (90) days, or by both such fine and imprisonment. Each act of violation and every day upon which such violation shall occur shall constitute a separate offense.

Such penalties shall not be exclusive nor prohibit the city from seeking further and other remedies for violation as provided for and allowed by law.

Sec. 2.1113 – 2.1200 Reserved

TITLE II: UTILITIES AND SERVICES

CHAPTER 12

SEWER CONSTRUCTION AND REGULATION[48]

Sec. 2.1201. Definitions. Unless the context specifically indicates otherwise, the meaning of terms used in this chapter shall be as follows:

(a) "Building Connection" shall mean the connection of the building drain to the building sewer.

(b) "Building Drain" shall mean 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, which begins five feet outside the inner face of the building wall.

(c) "Building Sewer" shall mean the extension from the building drain to the public sewer or other place of disposal.

(d) "City" shall mean the City of Essexville, Bay County, Michigan.

(e) "Combined Sewer" shall mean a sewer receiving both surface runoff and wastewater.

(f) "Developer" shall mean any person constructing a private wastewater system.

(g) "Direct Discharge" shall mean the discharge of treated or untreated wastewater directly to the waters of the State of Michigan.

(h) "DPW Director" shall mean the DPW Director of Public Works for the City or his authorized deputy, agent or representative.

(i) "Domestic User" shall mean residential contributors to a wastewater system.

(j) "Effluent" shall mean that which flows out from a point source; outflow.

(k) "Garbage" shall mean solid wastes from the domestic and commercial preparation, cooking, and dispensing of food, and from the handling, storage, and sale of produce.

(l) “Indirect Discharge” shall mean the discharge or the introduction of pollutants from any source into the wastewater treatment plant

(m) "Industrial User" shall mean a source of indirect discharge of industrial waste.

(n) "Industrial Wastes" shall mean the liquid wastes from industrial manufacturing processes, trade, or business and distinct from sanitary wastewater.

(o) "Influent" shall mean that which flows in; inflow.

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[48] This chapter added by Ordinance No. 2012-3 adopted January 10, 2012, effective January 25, 2012.

(p) "Inspector" shall mean an authorized agent of the City of Essexville observing the construction, alteration, tapping, or repair of any public or building sewer or engaged in other work provided for herein.

(q) "Interference" shall mean the inhibition or disruption of the waste works treatment plant treatment processes or operations which contribute to a violation of any requirement of a controlling NPDES Permit.

(r) "Meter" shall mean a device to measure the quantity of water or wastewater passing through it.

(s) "Natural Outlet" shall mean any outlet into a watercourse, pond, ditch, lake, or body of surface water or groundwater.

(t) "Non-Domestic User" shall mean any contributor to a wastewater system which is not a domestic user.

(u) "NPDES Permit" shall mean National Pollutant Discharge Elimination System Permit.

(v) "Person" shall mean any individual, firm, company, association, society, corporation, or group.

(w) "Plumber" shall mean a plumber who is licensed and authorized to engage in plumbing work in the City in accordance with City Ordinances and State Statutes.

(x) "Plumbing Contractor" shall mean any contractor registered with the City to engage in work of a plumber.

(y) "Plumbing Inspector' shall mean that the person designated by the City to enforce plumbing code and this and other ordinances of the City or his authorized deputy, agent, or representative.

(z) ''Premise or Premises" shall mean a structure, which cannot be completely divided in its present utilitarian condition through sale. The following are examples of what is meant by premise or premises:

(1) A building under one roof owned, leased, or occupied by one party as one business or residence; or

(2) A combination of residential buildings or commercial buildings, leased or occupied by one party in one common enclosure; or

(3) The one side of a double house having a solid vertical partition wall; or

(4) A building owned by one party having more than one internal division, such as apartments, offices, stores, etc., and which may have a common or separate entrance.

(aa) "Private Wastewater Disposal Facilities" shall mean any privately owned and maintained privy, privy vault, septic tank, cesspool, or outlet into any pond, ditch, lake, or other body of surface water or groundwater, or other facility intended or used for the disposal of wastewater.

(bb) "Public Sewer" shall mean a sewer in which all owners of abutting properties have equal rights and is controlled by public authority.

(cc) "Sanitary Sewer" shall mean a sewer which carries wastewater and to which storm water, surface water, and groundwater are not intentionally admitted.

(dd) "Sewer" shall mean a pipe or conduit for carrying wastewater.

(ee) "Shall" is mandatory; "May" is permissive.

(ff) "Storm Drain" and "Storm Sewer" shall mean a sewer, which carries storm and surface waters and drainage, but excludes wastewater and industrial wastes, other than unpolluted cooling water.

(gg) "Storm Water" shall mean that part of the rainfall, which reaches the sewers as runoff from natural land surface, building roofs or pavements or as groundwater infiltration.

(hh) "User" shall mean any person who contributes, causes or permits the contribution of wastewater into the wastewater treatment plant.

(ii) "Wastewater" shall mean a combination of the liquid and water carried wastes from residences, commercial buildings, industrial plants, and institutions, together with any groundwater, surface water, and storm water that may be present.

(jj) "Wastewater Treatment Plant" shall mean any arrangement of devices for treating and disposing of wastewater, industrial wastes, and sludge, whether within or without the boundaries of the City and whether or not owned by the City or others to which the City contracts.

(kk) "Wastewater Works" shall mean all facilities for collecting, pumping, treating and disposing of wastewater, industrial wastes, and sludge.

(ll) "Watercourse" shall mean a channel in which a flow of water occurs, either continuously or intermittently.

Sec. 2.1202. Prohibition Against Deposit Of Unsanitary Waste. It shall be unlawful for any person to place, deposit, or permit to be deposited in any unsanitary manner on public or private property within the City, or in any area under the jurisdiction of said City, any human or animal excrement, garbage, or other objectionable waste.

Sec. 2.1203. Prohibition To Discharge Waste Against Provisions Of Ordinance. It shall be unlawful to discharge into any natural outlet within the City, or in any area under the jurisdiction of said City, any wastewater or other polluted waters, except where suitable treatment has been provided in accordance with subsequent provisions of this Ordinance.

Sec. 2.1204. Prohibition Against Private Wastewater Facilities. Except as hereinafter provided, it shall be unlawful to construct, maintain, or use any private wastewater disposal facilities for the disposal of wastewater.

Sec. 2.1205. Requirement Of Suitable Toilet Facilities. The owner of any house, building, or property used for human occupancy, employment, recreation, or other such

purpose, situated within the City is hereby required at his expense in install suitable toilet facilities therein, and to connect such facilities directly with the proper public sewer in accordance with the provisions of this Ordinance.

Sec. 2.1206. Removal Of Private Wastewater Facilities. At such times as any premises are connected to the public sewer, the owner shall complete the following:

(a) Within 30 days from the date that connection to the public sewer is completed, disconnect all connections to private wastewater disposal facilities;

(b) Fill all cesspools, septic tanks, privy vaults, dry wells, block trenches, and any other private wastewater disposal facilities in compliance with requirements of the Bay County Health Department.

Sec. 2.1207. Unlawful To Make Connections To Public Sewers Without Authorization. No person, except an authorized employee of the City or persons authorized by the City, shall uncover, make any connections with or into, install, repair, alter, or disturb any public sewer, building sewer, or appurtenance thereof. A written permit for such work issued by the Plumbing Inspector shall be required for each interference with any public sewer or appurtenance thereto.

Sec. 2.1208. Permits. There shall be two classes of building sewer permits: (a) for residential and commercial service, and (b) 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 drawings, specifications, or other information considered pertinent in the judgment of the Plumbing Inspector. The applicant shall designate the person to perform the work. The person designated to perform the work shall meet the qualifications for performing such work as may be required by the Plumbing Inspector. A permit and inspection fee for a residential or commercial building sewer permit and for an industrial building sewer permit shall be paid to the City at the time the application is filed and in an amount as set by the City Council by resolution from time to time.

Sec. 2.1209. Payment Of Fees Required. No permit shall be issued until all charges and fees, inclusive but not limited to permit and inspection fees, connection charges, tap fees and other charges required by this and related ordinances, have been paid or provisions for the payment of the same has been made with the City Treasurer.

Sec. 2.1210. Expenses To Be Borne By Owner. All costs and expenses related to and incidental to the installation and connection of the building sewer to the public sewer, including the cost of materials and metering devices as may be required, shall be borne by the owner. The owner shall indemnify the City from any loss or damage that may directly or indirectly result from the installation of the building sewer or connection to the public sewer.

Sec. 2.1211. Separate Sewers Required. A separate and independent building sewer shall be required for each premise to be connected to the public sewer.

Sec. 2.1212. Existing Sewers May Be used If Adequate. Old building sewers may be used in connection with new premises only when they are found, on examination and test by the Plumbing Inspector, to meet all requirements of this Ordinance.

Sec. 2.1213. Rules And Codes Controlling. All sewer construction, connections, maintenance, and repairs to sewer facilities shall be subject to Rules and Regulations

promulgated from time to time in accordance with the provisions of this Chapter, and shall conform to the Building and Plumbing Codes of the City, and any other applicable codes.

Sec. 2.1214. Sewer Elevation To Be Below Basement Floor. Whenever possible, the building sewer shall be brought to the building at an elevation below the basement floor. In all buildings in which any building drain is too low to permit gravity flow to the public sewer, wastewater carried by such building drain shall be lifted by an apparatus approved by the Plumbing Inspector, and discharged to the building sewer.

Sec. 2.1215. Foundation Drains Or Surface Runoff To Sanitary Or Combined Sewer Not Allowed. No person shall make connection of roof downspouts to any sewer. Further, no person shall make connection of the foundation drains, areaway drains, or other sources of surface runoff or groundwater to a building sewer or building drain, which in turn is connected directly or indirectly to a public sanitary sewer after the date of this Ordinance.

(a) Whenever such connections are found in any premises, the Plumbing Inspector shall notify the owner in writing in accordance with provisions hereinafter for giving notice of any violations.

(b) Such connection shall be deemed to constitute a nuisance per se.

(c) Failure to remove said connection within 30 days from the date of service of notice shall be deemed to be a separate violation of these provisions.

Sec. 2.1216. 48 Hours Notice of Intent To Connect To Sewer Required. The person designated pursuant to Section 2.1019 to perform the work of connecting, installing, repairing, altering, or disturbing any public sewer shall notify the Plumbing Inspector in writing at least 48 hours in advance of when the building sewer will be ready for installation and connection to the public sewer. It is the responsibility of the person designated to do such work to insure the delivery of such notice to the Plumbing Inspector. This notice shall state the permit number, street, sublot number and anticipated construction time required for the inspection requested. The person designated to do the work shall immediately inform the Plumbing Inspector of any unforeseen delays or postponements prior to 8:00 a.m. of the day for which inspection was arranged. No work may be performed in the absence of an Inspector unless written permission is granted by the Plumbing Inspector. Said written permission shall not be unreasonably denied. The City shall not be liable for any expense incurred by the person designated to do the work in locating mains, wires, house connections or other sewer appurtenances arising out of information procured from the records of the City.

Sec. 2.1217. Presence Of Inspector Required. Any work covered prior to inspection shall be uncovered by the person designated to do the work and an opportunity MUST be given to inspect the inside as well as the outside of the sewer pipe. The actual tapping of a connection into a sanitary sewer and the connection to the building drain shall be done only in the presence of an Inspector.

Sec. 2.1218. Quality Of Materials And Workmanship. The Plumbing Inspector shall approve the quality of all materials and workmanship, and shall have the right to inspect the same at all times. He may order removed from the job any inferior or defective material, and he may cause to be re-laid any portion of a building sewer, which is not constructed in accordance with the provisions of this Ordinance.

Sec. 2.1219. Individual Permits required. Where a new sanitary sewer main is being built in a street and building drain or building sewer connections are included in the contract, the contractor for such main sanitary sewer shall be required to obtain a permit for each connection to a building drain that he may be employed to connect.

Sec. 2.1220. Excavations Of Streets Or Right-Of-Ways. No permit for sewer construction, connection, maintenance or repair shall be issued for any such work requiring excavation in any street, highway or road right-of-way until the person who is to make such excavation shall obtain from the proper authority the required permit for each excavation and shall agree to comply with all the requirements of the issuing authority, or shall obtain a written statement by that authority that no road opening permit is required. This permit shall be shown to the Inspector at the commencement of construction and shall be kept on the job at all times, while work is in progress.

Sec. 2.1221. Completion Of Interior Plumbing Required. No sanitary sewer connection shall be made to any premises for which the rough interior plumbing has not been completed, inspected, and approved by the proper authority. The connection between the interior plumbing building drain and the building sewer shall be made at a point approximately five feet outside the inner face of the foundation wall.

Sec. 2.1222. Property Owner To Pay Costs. The property owner shall be responsible for the maintenance of the building sewer to the sanitary sewer main. The Plumbing Inspector may require the property owner to make whatever repairs or perform any maintenance of the building sewer that he deems necessary for the proper function of the sanitary wastewater system. If the City is requested, or finds it necessary for the proper maintenance of the system, to repair or maintain any building sewer or connections, the cost of such repair or maintenance shall be billed directly to the owner of the premises and shall be the responsibility of the owner to pay within 30 days from the date of the billing statement. Failure to pay such billed costs within six months of billing shall result in a lien being placed against the property in the amount of the cost.

Sec. 2.1223. Refusal Of Contractor To Comply With Ordinance Or Rules And Regulations. If any Plumbing Contractor neglects or refuses to do any act required by this Ordinance or the Rules and Regulations promulgated there under within the time specified after receiving written notice from the Plumbing Inspector to do so, the Plumbing Inspector may cause such work to be done and charge the same to the Plumbing Contractor. If such charges are not paid within 30 days from the date of the billing statement, the City may revoke the Plumbing Contractors authority to perform work in the City. Failure by the Plumbing Contractor to comply with the provisions of this Ordinance or of the Rules and Regulations promulgated there under or with the direct orders of the Plumbing Inspector shall be deemed just cause for the City to revoke the Plumbing Contractor's authority to perform work in the City. This sanction shall be in addition to and not in lieu of those penalties provided for violation of this Ordinance.

Sec. 2.1224. City Not Responsible For Stoppage Of Sanitary Sewer. The City expressly disclaims and shall not be responsible for any damages caused by, or arising from any stoppage of the main sanitary sewer.

Sec. 2.1225. Excavations To Be Guarded And City Property Restored. 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.

Sec. 2.1226. Interference With Wastewater Facilities Prohibited. No 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 wastewater works. Only authorized personnel shall be permitted to alter, uncover, or tamper with any structure, which is part of the wastewater works. Any person violating this provision shall be deemed to be a disorderly person and shall be subject to criminal prosecution as hereinafter provided. Violation of this provision shall be deemed to constitute a nuisance per se.

Sec. 2.1227. Powers And Authority Of DPW Director And Inspectors. The Plumbing Inspector is authorized and directed to adopt and enforce Rules and Regulations in accordance with the provisions of the Code of Ordinance for the purpose of providing control over sewer construction, installation, maintenance, repair and connections and the inspection thereof. Any Rules and Regulations promulgated by the Plumbing Inspector shall be in accordance with the following provisions:

a. All such Rules and Regulations shall be entitled "Sanitary Sewer Rules and Regulations".

b. All such Rules and Regulations and any amendments thereto shall be in writing and shall be filed with the City Clerk and shall be placed on file at the office of the Clerk.

c. Such Rules and Regulations shall specify the effective date thereof and shall be subscribed by the Clerk and dated as of the date they are promulgated.

d. Notice shall be given in a newspaper of general circulation in the city that, the Council has promulgated certain Rules and Regulations, or amendments thereto, for the Sanitary Sewer Ordinance of the City and that the same are on file with the City Clerk.

e. Said Rules and Regulations or any amendments shall become effective 30 days after the date of publication of notice as above specified.

f. Said Rules and Regulations, or any amendments may be modified at any time by the City. Such modification shall become effective within 30 days after the date of publication of the notice that said modifications have been made and are on file with the City Clerk. Publication of the notice and filing shall be in accordance with provisions a through e above.

Sec. 2.1228. Authority To Enter Properties. The DPW Director and other duly authorized employees of the City bearing proper credentials and identification shall be permitted to enter all properties and buildings, public and private, for the purpose of inspection, measurement, sampling and testing for violations of this Ordinance, and of the Rules and Regulations. The DPW Director or his representative shall also have the authority to inspect and copy those records of the user required by CFR 403.12(n) to be kept on-site. However, the DPW Director 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 or waterways or facilities for waste treatment.

Sec. 2.1229. Indemnification Of User. While performing the necessary work on private properties referred to in Sec. 2.1028 above, the DPW Director 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 City employees and the City shall indemnify the company against loss or damage to its property by City employees and against liability 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 any ordinance or building code of the City or any statute or regulation of the State of Michigan.

Sec. 2.1230. Entry of Easements. The DPW Director and other duly authorized employees of the City bearing proper credentials and identification shall be permitted to enter all private properties through which the City holds a duly negotiated easement for the purposes of, but not limited to, inspection, observation, measurement, sampling, repair, and maintenance of any portion of the wastewater works lying within said easement. All entry and subsequent work, if any, on said easement, shall be done in full accordance with the terms of the duly negotiated easement pertaining to the private property involved.

Sec. 2.1231. Records To Be Maintained. The City Clerk and DPW Director shall maintain accurate and complete records of all public sewers and appurtenances, of all permits issued, and all inspections made. The DPW Director is empowered to require the abandonment and removal of connections to the public storm sewers, which violate the provisions of this Ordinance.

Sec. 2.1232. Discharge Of Waste To Cease. Any person notified of a suspension of the wastewater treatment service shall immediately stop or climate the discharge. In the event of a failure of the person to comply voluntarily with the suspension order, the DPW Director shall take such steps as deemed necessary including immediate severance of the Sewer connection, to prevent or minimize damage to the wastewater works and treatment plant system or endangerment to any individuals. The DPW Director shall reinstate the wastewater treatment service upon proof of the elimination of the non-complying discharge. A detailed written statement submitted by the user describing the causes of the harmful contribution and the measures taken to prevent any future occurrence shall be submitted to the DPW Director within 15 days of the date of occurrence.

Sec. 2.1233. Invalidity Of Ordinance. The invalidity of any section, clause, sentence, or provision of this Ordinance shall not affect the validity of any other part of this Ordinance which can be given effect without such invalid part or parts.

Sec. 2.1234. Lien For Charges. Pursuant to Section 21, Act 94, of Public Acts of Michigan 1933, as amended (codified as MCL 141.101, et. seq.), whenever the charges for service against any piece of property shall be delinquent for six months, such charges shall be made a lien on the premises serviced by the sanitary sewer system. The City official or officials in charge of the collection of such charges for service shall certify annually, to the tax assessing office of the City, the facts of such delinquency. Such charge shall be entered upon 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 services as provided by said Section 21, no further service shall be rendered for such premises until a cash deposit in the amount of $50.00 shall have been made as security for payment of such charges and services.

Sec. 2.1235. Discontinuance Of Water. In addition to the foregoing, and any other lawful enforcement methods, the payment of charges for sanitary sewer service to any

premises may be enforced by discontinuing the water and sanitary sewer service. Such services shall not be re-established until all delinquent charges and penalties and a turn-on charge to be assessed by the City have been paid. Further, such charges and penalties may be recovered by the City by court action.

Sec. 2.1236. Liability For Expenses. Any person violating any of the provisions of this Ordinance shall become liable to the City for all expense, loss or damage occasioned the City by reason of such violation.

Sec. 2.1237. Penalties. In addition to any other penalty set forth in the Codes adopted by this Chapter, any person who shall violate the provisions of the Codes adopted herein shall be guilty of a misdemeanor and shall suffer the penalties of not more than Five Hundred Dollars ($500.00) and the cost of prosecution or by both imprisonment for not more than ninety three (93) days, or by both such fine and imprisonment. Each act of violation and every day upon which such violation shall occur shall constitute a separate offense. In addition to the foregoing penalties, the City may enjoin or abate any violation of this Code by appropriate action. No appeal filed by any person in violation of the adopted Codes to any other forum shall delay or stay the right of prosecution for violations of the provisions of the Codes adopted herein.

Sec. 2.1238 – 2.1300 Reserved

# TITLE III: PARKS AND PUBLIC GROUNDS

## CHAPTER 1

## TREES AND GRASS

Sec. 3.101. Planting. Care and Protection of Trees.[49] The City Manager shall have exclusive jurisdiction, authority, control, supervision and direction over all trees, plants, shrubs, and grassy areas planted or growing in or upon the public rights-of-way and all other public places of the City of Essexville including the planting, removal, care, maintenance and protection thereof. It shall be unlawful for any person, firm or corporation to plant or set out any tree, plant or shrub in or upon any part of any public right-of-way or any public place without first obtaining a written permission from the City Manager.

Sec. 3.102. Permit to Cut. Trim. or Prune. Except upon the order of the City Manager, it shall be unlawful for any person, firm or corporation or the officer or employee of a corporation without a written permit from the City Manager to remove, destroy, cut, break, climb or injure any tree, plant or shrub or portion thereof that is planted or growing in or upon any public highway or public place within the City of Essexville, or cause or authorize to procure any person to cut, break, climb, remove, destroy or injure any such tree, plant or shrub or part thereof; or to injure, misuse or remove, or cause, authorize or procure any person in injure, misuse or remove any device set for the protection of any tree, plant, or shrub, in or upon any public highway or public place. Any person, firm or corporation, or officer or employee of a corporation, desiring for any lawful purpose, to remove, destroy, cut, prune, treat with a view to its preservation from disease or insects, or trim any tree, plant or shrub in or upon any public highway or public place, shall make application, on blanks furnished by the City, to the City Manager. Such application must state the number and kind of trees to be trimmed, removed or treated and the kind and condition of nearest trees upon the adjoining property. If in the judgment of the City Manager the desired removing, cutting, pruning, treatment or trimming shall appear necessary, the proposed method and manner shall be such as the City Manager shall approve. The City Manager shall thereupon issue a written permit for such work. Any work performed under such written permit shall be in strict accordance with the terms thereof and the provisions of this chapter and under the supervision and direction of the City Manager or his duly authorized representative.

Sec. 3.103. Gas, Salt, Brine Water, Oil or Other Substances That May Kill or Injure. It shall be unlawful for any person, firm or corporation, owning, using, or having control or charge of gas or other substances, deleterious to tree life-, to allow such gas, or other deleterious substance, to escape or come into contact with the soil surrounding the roots of any tree, shrub or plant, in any public highway or public place, in such manner as may kill, destroy or injure any tree, shrub, or plant. It shall be unlawful for any person to cause any salt, brine, oil, or other substance deleterious to tree life to flow into the soil about the base of any tree, shrub or plant, so as to injure or damage the same.

It shall be unlawful for any person, firm or corporation to deface with paint, whitewash, or other materials, trees or shrubs in any public highway or public place.

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[49] This Section amended by Ordinance No. 2004-1 adopted March 9, 2004, effective March 25, 2004.

Sec. 3.104. Stone, Cement, or Impervious Material - Minimum Opening. It shall be unlawful for any person, firm or corporation, without a written permit from the City Manager to place or maintain upon the ground around any tree, plant or shrub, in any public highway or public place, any stone, cement or other impervious material or substance, in any manner which may prohibit the free access of air and water to the roots of any tree, plant or shrub. Unless otherwise permitted, there shall be at least nine square feet of ground for each tree, three inches in diameter, and for every two inches of increase of such diameter, there shall be an increase of at least one square foot of open ground, maintained about the base.

Sec. 3.105. Wire or Electricity That May Injure or Kill. It shall be unlawful for any person, firm, or corporation to cause any wire or other conductor, charged with electricity, to come into contact with any tree, plant or shrub in or upon any public highway or public place in such manner as to injure or abrade, destroy or kill the same.

Sec. 3.106. Attachment, Wires, Ropes, Chains, Signs. It shall be unlawful for any person, firm or corporation to attach or keep attached to any tree, plant, or shrub in or upon any public highway or public place or to guard or stake intended for the protection of such tree, any rope, wires, chains, signs or other device whatsoever, except for the purposes of protecting it or the public.

Sec. 3.107. Horses, Injury, or Possible Injury. It shall be unlawful for any person, firm or corporation to tie any horse or other animal to any tree, plant or shrub; to allow, cause or procure it to injure any tree, plant or shrub, in or upon any public highway or public place.

Sec. 3.108. Guarding of Trees During Construction. During the erection, repair, alteration or removal of any building or structure, it shall be unlawful for any person or persons responsible for such erection, repair, alteration or removal, to leave any tree in or upon any public highway or public place, in the vicinity of such building or structure, without a good and sufficient guard, or protector, which will prevent injury thereto. The moving of trees, plants or shrubs in or upon any public highway or place necessitated by the moving of any building or structure or for any other purpose, shall be done by or under the supervision of the City Manager, at the expense of the applicant. Should such moving or replanting cause the death of such tree, plant or shrub, the applicant shall replace the same at his expense.

Sec. 3.109. Signs, Fixtures and Other Items Prohibited.[50] Except as permitted by Sections 2.704, 2.705, 2.706 and 2.707 in the Essexville Code of Ordinances, no person shall place, put, deposit, plant, install, post, affix or otherwise leave any sign, fixture, planting or items or materials of any kind anywhere within the street or alley rights-of-way in the City of Essexville without written permission from the City. Any such sign, fixture, planting, item or materials found in the right-of-way in violation of this section shall be considered abandoned and removed and disposed of by the City.

Sec. 3.110. Removal of Utilities. The City Manager may, twenty-four (24) hours after service of a written notice upon any person or utility company, require the temporary removal of any utility, conduit, wires, conductors, pipeline or appurtenances thereto, for the purpose of the removal or pruning of any tree or shrub growing upon a public highway or place.

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[50] This Section amended by Ordinance No. 2004-1 adopted March 9, 2004, effective March 25, 2004.

Sec. 3.111. Permit to Plant Necessary.[51]

Sec. 3.112. Planting Plan Requirements.[52]

Sec. 3.113. Certain Trees Prohibited.[53]

Sec. 3.114. Regulations.[54]

Sec. 3.115[55]. Power to Provide for and Order the Care, Preservation, and Removal of Trees, Plants, and Shrubbery on Public and Private Property. The City Manager shall have the right to plant, trim, spray, preserve and remove trees, plants, and shrubs within the lines of all streets, alleys, outlawns, avenues, lands, squares and public grounds, as may be necessary to insure safety or preserve the symmetry and beauty of such public grounds. When the City Manager determines that any tree, plant, or shrubbery existing on private property within the city is dead, diseased, infested with parasites or insects, and by such or other reasons constitute a hazard or danger to adjoining private or public property or to the public or other properties, he is authorized to, by written order, require the owners of such property to cause treatment, care, trimming, or removal of such conditions. The order shall be served by at least one of the following methods:

(1) By making personal delivery of the order to an owner of the premises.

(2) By a first class mailing of a copy of the order to the last known address of the owner(s) of the premises as indicated by the tax records of city treasurer.

(3) By, if the owner(s) of the premises or his or her address(es) cannot be located, posting a copy of the order in a conspicuous location upon the property wherein the hazard or danger is located.

*(2)* Statement of Compliance Required and Time for Completion. The order required by this section shall set forth the nature of the existing hazard and the date by which the hazard shall be removed or compliance with the order shall be completed. The time for compliance shall not be less than 30 calendar days of the delivery, mailing, or publishing of the order. In cases of extreme danger to persons or property, the City Manager or his or her designee shall have the authority to require compliance immediately upon service of the order. In a case of imminent danger to persons or property, if the owner cannot be found within a reasonable amount of time depending on the individual circumstances involved, the City Manager or his designee may order the hazardous or dangerous condition abated by the use of city employees or contracted persons, even if service of the order has not occurred.

(3**)** Appeal from Order. An owner of any property which is the subject of an order under this section shall have the right, within five business days after service of such order, to appeal in writing to the city housing hearing officer who shall review the order, site, and written appeal within five business days and file his written

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[51] This Section repealed by Ordinance No. 2004-1 adopted March 9, 2004, effective March 25, 2004.
[52] This Section repealed by Ordinance No. 2004-1 adopted March 9, 2004, effective March 25, 2004.
[53] This Section repealed by Ordinance No. 2004-1 adopted March 9, 2004, effective March 25, 2004.
[54] This Section repealed by Ordinance No. 2004-1 adopted March 9, 2004, effective March 25, 2004.
[55] This Section adopted by Ordinance No. 2015-5 on January 12, 2016, effective January27, 2016

decision thereon. Unless the order is revoked or modified, it shall remain in full force and be obeyed by the person to whom it was directed. If an appeal is denied, the original order must be complied with within 14 calendar days after the date on which the denial occurred.

(4) Refusal to Comply or Noncompliance with Order. Refusal or failure to comply with an order under this section shall constitute a civil infraction to which all owners of the property which is the subject of the order shall be responsible and therefore be subject to the penalties set forth in this section. The City Manager may also, by any other legal action, seek a judicial order requiring removal of the hazardous or dangerous condition or allowing the city to enter the property and remove the hazard or danger at a cost payable by the property owner(s).

(5) Special Assessment. If the cost to the city of remedying a condition on private property is not paid within 30 days after receipt of a statement itemizing the cost of remedying such condition from City Treasurer or his or her designee, such cost shall be levied against the property upon which said hazard existed as a special assessment and is collectable subject to all applicable ordinances of the city. The levying of such an assessment shall not affect the liability of the person to whom the order was directed to the penalties stated in this section.

(6) Violations and Penalties. Any owner of the property which is the subject of an order which is issued under the provisions of this section that fails to comply with its requirements within the time stated in the order shall be responsible for a civil infraction and subject to a civil penalty of a Class D infraction as described in Section 1.508 of this Code of Ordinances. A separate violation shall be deemed to have been committed each day during which a violation occurs and continues to occur. Such penalties shall not be exclusive nor prohibit the City from seeking further and other remedies for violation as provided for and allowed by law inclusive of issuance of an Order of Compliance issued under MCL 600.8302 (4).

Sec. 3.116. Interference with the City Manager or Employees. It shall be unlawful for any person, firm or corporation to prevent, delay or interfere or cause or authorize or procure any interference or delay with the City Manager or any of his employees, agents or servants, while they are engaged in and about the planting, cultivating, mulching, pruning, spraying or removing of any trees, plant or shrub in or upon any public highway or public place or upon any private grounds as authorized in the previous section or in removing any device attached to such tree, plant or shrub or in such removing of stone, cement, sidewalk or other materials or substance as may be necessary for the protection and care of any such tree, plant or shrub in accordance with the requirements set forth in Sec. 3.104 hereof as to the area of open grounds to be maintained about the base of the trunk of each tree in the public highways or other public place of the City.

Sec. 3.117 – 3.200 Reserved

# TITLE III: PARKS AND PUBLIC GROUNDS

## CHAPTER 2

## PARKS AND RECREATION AREAS[56]

Sec. 3.201. Rules and Regulations. [57] The City Manager is empowered and authorized to make such rules and regulations pertaining to the conduct, use and operation of public parks, park facilities, and recreation areas defined to include the pavilion and parking areas located in an adjoining the city hall as are necessary to administer the same or to protect public property or the safety, health, morals, public welfare, peace and/or quiet and good order of the neighborhood. Such rules and regulations shall be posted at all public parks, park facilities, and recreation areas where such rules and regulations are to be effective. It shall be a violation of the Essexville Code of Ordinances for any person to fail to comply with such rules and regulations.

Sec. 3.202. Copies to be Available for Public Inspections.[58] Printed copies of such rules and regulations issued under the authority granted by Sec. 3.201 shall be kept in the office of the City Clerk and made available for public use and inspection.

Sec. 3.203. Misconduct in a Park. A person commits disorderly conduct and is subject to penalties provided in Sec. 1.10 of the Essexville Code of Ordinances if said person in a park or recreation area owned by the City of Essexville:

(1) Enters, uses, or occupies said park or recreation area for any purpose when said areas are posted prohibiting such entry, use or occupancy or as determined by the City Manager of the City of Essexville.

(2) Injures, removes or otherwise mutilates or disturbs any plant or wildlife; or

(3) Defaces, mars or in any way damages any building structure, sign, equipment or other physical feature; or

(4) Builds an open fire, except in the places or facilities provided for that purpose; or

(5) Disposes of garbage, rubbish, or refuse on park lands or in adjoining waters, other than in the appropriate receptacles provided and refuse disposed of should be that normally generated by the direct use of the park, i.e. accumulated household or business refuse is not to be deposited in park containers; or

(6) Conducts himself in a disorderly or indecent manner; or

(7) Fails to keep his dog or dogs or other animal or animals owned by him under control, or fails to assume the responsibility for damage caused by such animals; or

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[56] This Title amended by Ordinance No. 2013-1 adopted April 9, 2013, effective April 24, 2013.
[57] This Section amended by Ordinance No. 2004-1 adopted March 9, 2004, effective March 25, 2004 and Ordinance No. 2013-1 adopted April 9, 2013, effective April 24, 2013.
[58] This Section amended by Ordinance No. 2004-1 adopted March 9, 2004, effective March 25, 2004 and Ordinance No. 2013-1 adopted April 9, 2013, effective April 24, 2013.

(8) Carries or possesses a pistol or other firearm except as otherwise permitted by law; or[59]

(9) Uses or discharges a pistol or firearm of any description including a rifle or slingshot; or[60]

(10) Fails to drive or operate vehicles with caution at all times; or

(11) Drives or parks a vehicle anywhere except on established drives in the parking areas; or

(12) Uses a park drive for the purpose of demonstrating, teaching, or learning to drive a vehicle.[61]

Sec. 3.204. Right of Public Safety to Expel Violators.[62] Any person or persons who shall violate or indicate by word or action an intent to violate any rules or regulations posted in conformity with Section 3.201 of this Chapter may be advised by a Public Safety Officer of the City to depart from the park or recreation area in which the person is then occupying and advised if they return to the park or recreation that they will be considered a trespasser and arrested.

Sec. 3.205 – 3.300 Reserved

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[59] This Section amended by Ordinance No. 2004-1 adopted March 9, 2004, effective March 25, 2004.
[60] This Section adopted by Ordinance No. 2004-1 adopted March 9, 2004, effective March 25, 2004.
[61] This Section adopted July 10, 1984, effective July 28, 1984.
[62] This Section adopted by Ordinance No. 2013-1 April 9, 2013, effective April 24, 2013.

# TITLE IV: STREETS AND SIDEWALKS

## CHAPTER 1

## GENERAL

Sec. 4.101. Petition for Curb and Gutter. Sixty-six and two-thirds (66 2/3) of the property owners upon any particular street location may petition the City Council to have curb and gutter placed opposite their property on said street, and the City Council, upon this petition being presented by said property owners, may order constructed upon that particular area so described curb and gutter on said street.

Sec. 4.102. Notice of Construction. The City Clerk, upon the order of the City Council, shall notify all the property owners bordering on said street, that thirty (30) days after the date of said notice, construction of said curb and gutter will be commenced.

Sec. 4.103. Costs Paid by Property Owners. All curb and gutter construction within the city limits of the City of Essexville shall be paid for by the property owners on said street, one hundred percent (100%).

Sec. 4.104. Costs Payable Over Three-Year Period. The cost of the construction of any curb and gutter shall be placed on the tax roll of the property benefited, to be paid for over a period of three years, one-third payable each year after the completion of the curb and gutter, which cost of construction shall become a lien against the property of the benefited property.

Sec. 4.105. Discount for Prompt Payment. If the whole amount assessed against any particular benefited property shall be paid within thirty days after the same has been invoiced, a ten percent (10%) discount shall be allowed.

Sec. 4.106. Divided Costs Apply to All Owners Benefited. The manner of dividing the cost of construction for curb and gutter into three yearly payments shall apply to all property benefited by said curb and gutter, that each property owner to be benefited may pay in advance one hundred percent (100%) of the cost of construction of said curb and gutter, and by such payment shall be entitled to a ten percent (10%) discount on the cost against the property benefited.

Sec. 4.107. Curb and Gutter Ordered by City Without Petition. Where a pavement or blacktop has been ordered for any particular street in the City of Essexville, then and in that event the City Council of the City of Essexville may order curb and gutter placed on said street as a necessity to said pavement without the petition of the sixty-six and two-thirds (66 2/3) owners of the adjoining property to be affected by said pavement and curb and gutter.

Sec. 4.108. Construction to Proceed Upon Notice. Where the City Council of the City of Essexville deems it a necessity for the placing of curb and gutter on any street, they may, without the consent of the said property owners to be affected thereby, by giving said owners a thirty day notice of said necessity, after which notice proceed to construct said curb and gutter as above set forth herein.

Sec. 4.109 – 4.200 Reserved

## TITLE IV: STREETS AND SIDEWALKS

### CHAPTER 2

### SIDEWALK CONSTRUCTION ORDINANCE [63]

Sec. 4.201 Construction of Sidewalks and Drive Approaches.[64] All sidewalks and drive approaches constructed within public rights-of-way or other public places shall be constructed to standards and specifications established by the City Manager. No person shall construct, repair, or replace any sidewalk or drive approach within the public rights-of-way or other public places without first obtaining a permit from the City. Fees for such permits shall be established by City Council resolution.

Sec. 4.202. Permit for Sidewalks:[65]

Sec. 4.203. Construction Standards for Sidewalk.[66]

Sec. 4.204. Materials and Specification for Sidewalks[67]

Sec. 4.205. Sidewalk Ordered by Council.

a. Whenever the Council shall by resolution declare the necessity for and direct the construction of sidewalks, crosswalks, or driveways, in any street in front of or adjoining private property, it shall be the duty of the City Manager to notify the owner, or party in interest as indicated in the most recent tax rolls for the city, where such sidewalks, crosswalks, or driveways are required in front of any lot or parcel of land or adjacent thereto, and to give notice by publication in the official newspaper of the city, which notice shall be published once, to construct such sidewalks, crosswalks, or driveways according to specifications, said notice to be in form as follows:

> CITY OF ESSEXVILLE SIDEWALK NOTICE Essexville
> _____, 19____
>
> TO WHOM IT MAY CONCERN:
> Take notice that by order of the Council you are required to construct a _____ sidewalk, crosswalk, or driveway on the _____side of _____ Street/Avenue, in front of or adjoining such lot, lots, or parts of lots numbered _____(insert description) as are owned by you or in which you have an interest, within thirty (30) days from the date hereto, or, in default thereof, the same will be constructed by the City and the expense thereof, together with the cost of advertising, will be assessed against said lot, lots or parts of lots.
>
> City Manager

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[63] This Chapter adopted December 11, 1979, effective December 18, 1979.
[64] This Section amended by Ordinance No. 2004-1 adopted March 9, 2004, effective March 25, 2004.
[65] This Section repealed by Ordinance No. 2004-1 adopted March 9, 2004, effective March 25, 2004.
[66] This Section repealed by Ordinance No. 2004-1 adopted March 9, 2004, effective March 25, 2004.
[67] This Section repealed by Ordinance No. 2004-1 adopted March 9, 2004, effective March 25, 2004.

b. Service of such notice shall also be made upon each such owner, occupant, or party in interest through the United State mail to the last known address of the owner, occupant or party in interest, according to the latest assessment roll of the city, with full first class postage prepaid thereon.

c. It shall be the duty of every owner or party in interest of any lot or parcel of land when notified by the City Manager to build sidewalks, crosswalks, or driveways as ordered.

Sec. 4.206. Sidewalks installed by City Special Assessment. If any person so notified shall not have constructed such walk within the time mentioned, it shall be the duty of the City to construct such sidewalk, crosswalk, or driveway in front of or adjoining the premises of the person so in default. The City Manager shall then ascertain the cost and expense of the construction of said sidewalk, crosswalk, or driveway and prepare for the Assessor a report of the form of a tentative assessment roll. This tentative roll shall be made as designated by the Assessor and shall show the exact amount according to cost and expense that should be assess against each parcel of land for the sidewalk, crosswalk, or driveway so constructed. The City shall proceed to the completion of the assessment roll from the facts contained in the tentative roll, in legal and proper form and assess the amount so recorded against the owner or parties in interest upon the lot, lots, or parts of lots fronting or adjoining the sidewalk, crosswalk, or driveway so laid and in proportion to the number of square feet constructed.

Sec. 4.207. Assessment Roll for Sidewalks. Upon the completion of said roll, the Assessor shall give notice by one publication in a newspaper published in the city and by United States mail to the last known address of the owner, occupant, or party in interest according to the latest assessment roll of the city, with full first class postage prepaid thereon. That such roll is completed and will remain in his office for at least seven days from the date of publication of said notice for the inspection of all concerned. This notice shall be as follows:

CITY OF ESSEXVILLE SIDEWALK ASSESSMENT NOTICE Essexville _____19__

TO WHOM IT MAY CONCERN:

Take notice that sidewalk assessment roll No. _____ for defraying the cost, and expense of construction sidewalks hereinafter described has been prepared, and is (are) now open for inspection, revision or correction in this office, and will be presented to the Council at a meeting thereof, to be held on the _____ day of _____, 19__.
The lot or lots described in each roll have been assessed for the cost and expense of constructing the walk in front of or adjoining the parcels named in such rolls. Notice is hereby given that an assessment has been made upon all the lots and premises liable to be assessed for said improvement; that a roll of said assessments is now completed and will remain at the Assessor's office in the City of Essexville for at least seven days from the date of publication of this notice, that is from the date hereof until the _____ day of _____, 19___ at 10:00 A.M., at his office in the City Hall, and that he will remain in his office for a period of six hours thereafter on said day, to hear any person or persons desiring to object to any assessments so made, and to review and correct the same. If correction thereof be found necessary.

Assessor

Sec. 4.208. Confirmation of Sidewalk Special Assessment Roll.

a. The City Assessor upon the date last mentioned in said notice which shall be at least seven days after the publication of same, and after needful correction or revision of such roll shall transmit the said roll to which shall be attached the affidavit of publication of the assessment notice, together with the report of the City Manager, to the Council for confirmation.

b. Notice of the meeting of the Council to consider each such special assessment roll shall be published in a newspaper published in the city not less than seven days prior to such meeting.

c. Upon the confirmation of said roll, after opportunity for persons affected to be hear thereon, the same shall be transmitted to the City Treasurer for collection.

Sec. 4.209. Collection of Sidewalk Special Assessment roll.

a. The assessment roll shall contain a list of lots, parts of lots, or parcels of land assessed thereon as provided herein and the total amount assessed thereon shall be due and payable thirty (30) days after the assessment roll is confirmed by the Council provided, that if the said assessment is not paid within the time stated a penalty shall be attached thereto of five percent (5%) of the amount of such assessment in addition to interest of said assessment at the rate of three fourth's of one percent (3/4%) for each month or fraction of a month from the date said assessment roll was confirmed by the Council. Assessments so levied shall be a lien upon said lots, parts of lots, or parcels of land until paid and in default of payment of said assessment the lots, parts of lots, or parcels of land so assessed may be treated and sold thereafter in the manner and procedure provided by law for the sale of land for unpaid taxes.

Sec. 4.210. Petition and Agreement Concerning Sidewalks.

Upon petition or agreement of any person or persons concerning the installation of sidewalks in the city at or not to exceed an agreed cost per lineal foot of sidewalk, the city may proceed to install sidewalks in areas of streets abutting property owned by the signers of any such petition or the parties to any such agreement, without the necessity of notice of hearing on any special assessment roll therefor.

Sec. 4.211. Effective Date. This Ordinance shall become effective on the 18th day of December, 1979.

Sec. 4.212 – 4.300 Reserved

## TITLE IV: STREETS AND SIDEWALKS

### CHAPTER 3

### SNOW REMOVAL [68] [69]

Sec. 4.301. Ice and Snow-Clearing of sidewalks by owner or occupant of adjoining property. No person shall allow the accumulation of snow or ice on the sidewalk adjoining any premises owned or occupied by him for a greater length of time than twenty-four (24) hours after the cessation of any storm of snow or sleet. When ice is formed on any sidewalk, it shall be the duty of the owner or occupant of property adjoining thereto to remove the same from the entire width of the sidewalk as soon as it has formed, and to cause a sufficient quantity of salt, sawdust, sand or ashes to be strewn on the sidewalk in such a manner as will render it safe for persons walking thereon.

Sec. 4.302. Ice and Snow-Depositing on Public Property. No person shall remove any snow or ice from any private property, including any private driveway, road, or parking area, and deposit the same in or upon any public property, including streets, sidewalks, the out lawn adjoining private property owned by a person other than the person depositing the ice and snow, crosswalks, ditches and gutters

Sec. 4.303. Penalties and actions upon failure to remove ice or snow. The failure of the owner or occupant of real property to remove ice or snow within 24 hours as required herein shall cause them to be guilty of a misdemeanor as stated in paragraph (1) below and the City shall have the right to take the actions stated thereafter:

(1)[70] Whosoever violates any of the provisions of this Chapter shall be guilty of a civil infraction and subject to a civil penalty of a Class A infraction as described in Section 1.608 of this Code of Ordinances. A separate violation shall be deemed to have been committed each day during which a violation occurs and continues to occur.

(2) In addition to the penalties herein, upon 24 hours notice by the City to property owner or occupant of its right to do so as stated in Sec. 4.304 below, the City may cause the snow or ice upon the sidewalks adjoining the property to be cleared and to bill the property owners or occupants for the actual cost of its doing so plus the administrative fee established by the city council.

(3) A bill stating the cost of the snow and ice removal shall be sent to the owner of the property by first class mail to the address stated on the records of the City treasurer to which tax statements are regularly sent.

(4) If the bill for such services are not paid within sixty (60) days of mailing, the amounts required to be paid therein shall become a tax lien on the property in the manner and under the procedures as allowed and required by the City ordinances as a special assessment or tax lien otherwise and the statutes of the State of Michigan for the enforcement of tax liens.

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[68] This Chapter adopted January 13, 1997, effective February 6, 1997.
[69] This Chapter amended by Ordinance 2011-04 adopted on May 10, 2011, effective May 25, 2011.
[70] This Chapter amended by Ordinance 2012-07 adopted on June 12, 2012, effective June, 27, 2012.

Sec. 4.304. Notice of intent to remove ice and snow. 24 hours prior to the City's removal of ice and snow from the sidewalks abutting a property, at least one of the property owners or occupants of the property shall be provided with a copy of this ordinance. Such notice may be delivered by personal service by any city public safety officer, employee, or official, or by first class mail with delivery presumed on the next day mail is delivered after posting with the U.S. Postal Service. This requirement of notice prior to the City's removal of ice and snow shall not be required before a misdemeanor shall be deemed to have been occurred under the provisions of sec. 4.303 (1) above.

Sec. 4.305 – 4.400 Reserved

# TITLE V: ZONING AND PLANNING

## CHAPTER 1

## PLANNING COMMISSION [71]

Sec. 5.101. Provisions in General. A considered plan for the general physical development of the City of Essexville is a matter of necessity and will promote the health, safety, morals, order, convenience, prosperity and general welfare of the citizens, and to such end there is hereby established with provisions for appointment of its members, a planning commission for the City of Essexville.

Sec. 5.102. Appointment of Members. The planning commission shall consist of five residents of the City of Essexville who are registered voters who shall be appointed by the Mayor subject to approval by a majority vote of the City Council. The Mayor in appointing such members shall, insofar as is possible, select persons who are representative of different professions or occupations and other important segments of the community.

The planning commission shall also include two ex-officio members. Such ex-officio members shall consist of any combination of the Mayor, a member of the City Council, the City Manager or an administrative official of the city designated by the City Manager.

All members of the planning commission shall serve without compensation.

Sec. 5.103. Terms of Office. The term of each member, except ex-officio members, shall be three years or until his successor takes office, excepting of the members first appointed shall be for one year and two years respectively. The terms of ex-officio members shall correspond to their respective official tenures, excepting that the term of the administrative official selected by the Mayor shall terminate with the term of the Mayor selecting him.

Sec. 5.104. Governance of the Commission. The planning commission bylaws as approved by the City Council shall govern the affairs and procedures of the planning commission.

Sec. 5.105. Removal From Office. The City Council may remove a member of the planning commission for misfeasance, malfeasance or nonfeasance in office upon written charges and after a public hearing.

Sec. 5.106. Powers and Duties. The power and duties of the planning commission shall be as provided by Act 33 of the Michigan Public Acts of 2008, as amended, to the same extent and with the same legal result and effect as if the powers and duties of the City Planning Commission as declared and provided by said Act, had been at length set forth and declared herein.

Sec. 5.107 - 5.200. Reserved.

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[71] This Chapter amended by Ordinance 2008-06 adopted January 13, 2008, effective January 28, 2008.

# TITLE V: ZONING AND PLANNING

## CHAPTER 2

## SWIMMING POOLS

Sec. 5.201. Definition. Unless the context specifically indicates otherwise, the meaning of terms used in this chapter shall be as follows:

(1) Pool. Swimming, wading or ornamental pools which will be hereafter referred to in the chapter as "pool" shall mean any artificially constructed pool, portable or permanent, wholly or partly outdoors, either above or below or partly above and partly below grade, capable of being used for swimming, wading, bathing or for any ornamental purpose including but not limited to fish ponds and having a depth of two feet or more at any point.

(2) Private. "Private" shall mean that the swimming, wading or ornamental pool is not publicly owned or not otherwise under the jurisdiction of and exclusively regulated by the State of Michigan, either by statute or by the rules and regulations of one of its administrative bodies.

Sec. 5.202 Fees and Permits.[72] A permit shall be required for the installation of all private pools or other water features exceeding two feet in depth. Where plumbing and electrical installations are made in connection with the installation of the pool, separate plumbing and/or mechanical and electrical permits as applicable are also required to be obtained prior to installation of the pool. Permit fees shall be set by City Council resolution.

Sec. 5.203. Fences, Walls, and Screening.

(1) Fence Specifications.[73] All private pools shall be enclosed by a fence, wall or permanent screen which shall be at least four feet high (but not higher in the front or side lot lines unless specifically allowed to be such as set forth in the Fence Ordinance or any other Ordinance of the City) and of a type not readily climbed by children. A dwelling or accessory building may be used as a part of such enclosure.

(2) Gate Specifications. Each gate in said fence, wall or screening and all doorways giving direct access to the enclosure shall be equipped with a lock and self-closing and self-latching device, not readily operable by children.

(3) Enclosing Complete Premises. If the entire premises of the residence are to be enclosed in conjunction with proposed construction, applicant shall obtain a permit to construct said fence under the provisions of Title VIII, Chapter 2 of this Code.

(4) Existing Pools. Compliance Required. Pools constructed prior to the adoption of this Code shall comply with this section within ninety (90) days after the effective date hereof.

Sec. 5.204. Operation and Maintenance.

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[72] This Section amended by Ordinance No. 2004-1 adopted March 9, 2004, effective March 25, 2004.
[73] This Section adopted August 12, 1986, effective August 29, 1986.

(1) No pool shall be used, kept, maintained or operated in the City if such use, keeping, maintaining or operating shall be the occasion of any nuisance or shall be dangerous to life or detrimental to health.

(2) The owners of all pools shall prevent all water from touching or contaminating adjoining property. The current standards and requirements set by the State of Michigan Department of Public Health and the Bay County Department of Public Health to protect health in the use of such pools are hereby adopted and made a part of this chapter.

Sec. 5.205. Shielding. Lights and Illumination. Lights used to illuminate any pool shall be so shielded, arranged and shaded as to reflect light away from adjoining premises.

Sec. 5.206. Unnecessary Noise Prohibited.

(1) It shall be unlawful for any person to make, continue or cause to be made or continued at any pool any loud, unnecessary or unusual noise or any noise which annoys, disturbs, injures, or endangers the comfort, repose, health, peace or safety of others.

(2) In the operation of television, radio, musical instrument, phonograph or other machine or device for amplification, producing or reproducing of sound in such manner as to disturb the peace, quiet and comfort of the neighboring inhabitants or at any time with louder volume or sound than is necessary for the convenient hearing of the person or persons who are in the pool shall be unlawful.

Sec. 5.207. Water Supply. There shall be no cross-connection of the City water supply with any other source of water supply to the pool. The line from the City water supply to the pool shall be protected against back flow of polluted water by means of an air-gap and shall discharge at least six (6) inches above the maximum high water level of the make-up tank on the pool.

Sec. 5.208. Waste Disposal. The drain line for the pool may be connected to the City sewer system if the following provisions are complied with:

(1) Pool drain shall be connected to the storm sewer if one is available.

(2) Where a storm sewer is not available, the pool drain may be connected to a sanitary sewer or a combined sewer subject to the approval of the City Engineer or his duly authorized representative. Before any pool shall be used, a final inspection and approval must be had from the City Plumbing Inspector.

Sec. 5.209. Electrical Wiring and Fixtures. All electrical equipment including lighting and other equipment either fixed or portable and all requirements for grounding of pool structures and accessories shall be installed in accordance with the rules and regulations of the National Electric Code, and before any pool shall be used, a final inspection and approval must be had from the City of Essexville Electrical Inspector.

Sec. 5.210. Design Standards. All pools shall be designed and constructed in accordance with accepted engineering structural principles, taking into account all soil and ground water conditions of the site on which the pool is to be located in accordance with the minimum standards of the Uniform Building Code of the City.

Sec. 5.211. Hazards of Pools. Whenever it shall come to the attention of the City Manager either by personal inspection voluntarily made, and which he is hereby authorized to make, or by inspection by said Administrator following complaints that any

pool in the City of Essexville is so operated as to constitute a hazard to the health, safety and welfare of the citizens of the City of Essexville, the said City Manager shall, by certified mail, call attention of the owner or owners of record of the property upon which such pool may be located of the hazard, giving a brief description thereof, and requiring such owner or owners of record within ten (10) days to remedy the condition. Should such owner or owners fail to follow the directions and remove the hazard pointed out by the City Manager, such owner or owners not only shall be liable for the penalties hereinafter set forth, but said City Manager is authorized by his agents and employees, to remedy the condition and the reasonable costs thereof shall be a lien against the property upon which such pool is located, handled and collected in the manner prescribed for the collection of liens for special benefits in the Charter of the City of Essexville.

Sec. 5.212. Abandonment and Non-Use. Any pool that has been abandoned or which is no longer in use and operation shall be filled in accordance with state law or covered in such manner as to render the same free of all hazards which might endanger the health, safety and welfare of the inhabitants of the City of Essexville.

Sec. 5.213. Pool Locations and Set Backs. There shall be a minimum distance of not less than twenty-five (25) feet from the outside of the pool wall and the front yard lot line, or street line of a lot and a minimum distance of not less than five (5) feet between the adjoining side or rear property line and the outside of the pool wall. The pool shall not be located within ten (10) feet of any side street or alley right-of-way. The side of the pool shall be the outside measurements of the walls thereof and shall not include any cement or hard surfaces adjacent to said pool.

Sec. 5.214. Interpretations - Purpose and Conflict. In interpreting and applying the provisions of this chapter, they shall be held to the minimum requirements for the promotion of public safety, health, convenience, comfort, prosperity, and general welfare. Where this chapter imposes a greater restriction upon the use of premises than are imposed or required by other ordinances, rules, regulations or by easements, covenants or agreements, the provisions of this chapter shall govern.

Sec. 5.215. Appeals and Variances. Appeals from the rulings of the Essexville officers and department of inspection concerning variances or deviations from the terms of this chapter shall be to the Essexville Zoning Board of Appeals, which shall have jurisdiction to hear and decide appeals and permit variation in the location requirements hereof where there are unusual practical deviations or unnecessary hardships in the carrying out of these Provisions so long as the health, welfare and safety of the inhabitants of the City of Essexville are not dangerously affected thereby.

Sec. 5.216. Non-Conforming - Existing Private Pools Compliance. The owners of non-conforming existing private pools shall comply with all of the requirements of this chapter within ninety (90) days from the effective date hereof.

Sec. 5.217. Penalties. In addition to the regular penalties that are applicable, the City may enjoin or abate any violation of this chapter by appropriate action and assess any costs in connection with the matter against the property in the same manner as taxes are assessed and collected.

Sec. 5.218 - 5.300. Reserved.

# TITLE V: ZONING AND PLANNING

## CHAPTER 3

## ZONING, SIGNS

Sec. 5.301. Definitions. A sign is any panel, screen or other similar device on which letters, characters or illustrations are printed, painted, stamped, carved or raised thereon, or having paper or other materials attached thereto with letters, characters or illustrations printed or painted thereon or any such device which is illuminated, designed or used for display purposes or for the purpose of advertising the name of a person, firm or product or having any form of inscription, notice or publicity thereon.

Sec. 5.302. Types of Signs. For the purpose of this chapter, signs shall be divided into the following types:

(1) Type 1. Temporary Signs. Temporary signs are signs maintained for a period of thirty (30) days or less.

(2) Type 2. Flat Signs. A flat sign is any sign attached to the wall of any building and in the same plane as such wall or parallel to the face of such wall.

(3) Type 3. Projecting Signs. Vertical and Horizontal. A projecting sign is any sign projecting at an angle approximately ninety degrees from the face of a wall and constructed on a framework, the members of which are supported to the wall by a structural member of cantilever-type construction.

(4) Type 4. Standard Sign. A standard sign is any sign erected on one or more posts or standards set in the ground and independent of a building and carrying a two-faced sign having an area of not more than fifty (50) square feet on a side.

(5) Type 5. Roof Signs. A roof sign is any sign or advertising panel erected on the roof of a building.

(6) Type 6. Portable Signs. A portable sign is any advertising panel less than eight (8) square feet in area and less than fifty (50) pounds in weight and supported on a movable base.

Sec. 5.303. General Provisions.

(1) Existing Signs. Existing signs may be maintained in their present location provided that they do not interfere with traffic lights or traffic signs, or create other hazards. No new sign shall be erected to replace any existing sign, nor shall any existing sign be re-erected unless it conforms to the requirements of this chapter.

(2) Conformity with Zoning Regulations. No sign shall be erected on any lot in the residential district or any other district except in conformity with the regulations of the present existing zoning ordinance, as amended.

(3) Regulations for Erecting. No sign shall be attached to any door, window casing or tree. No sign other than a standard sign shall be erected on the ground or with supports in the ground on any lot or parcel of land closer to the Property line of any street or alley than a distance equal to the height from the grade to the top of the sign.

(4) Signs at Intersections. Distance Set Back. Signs having a face area of greater than fifteen (15) square feet located at the corner of intersecting streets shall be set back a distance of not less than twenty (20) feet from either property line of said intersection, unless such sign is placed flat against a supporting building or unless it is a projecting sign or a standard sign erected in accordance with the provisions of this chapter.

(5) Placement Relative to Fire Escapes and Exits. No sign shall obstruct or be attached to any part of any fire escape and where a sign is hung near any fire escape, it must be arranged to swing away from such fire escape. Nor shall any sign be placed in front of any window or so as to obstruct any exit.

(6) Illuminated Signs. No illuminated signs or lights for purpose of illuminating signs shall be placed in such a way as to obstruct or interfere with traffic lights or traffic signs or to create other hazards.

(7) Electrical Signs Compliance with Standards. Any sign illuminated by electricity or having electrical wires or appliances attached to it for any purpose must comply with the rules and regulations of the National Board of Fire Underwriters relative to electrical wiring and with any rules of the fire department and with all laws of the City of Essexville and the State of Michigan. The wiring of any such sign must be approved by the acting Electrical Inspector, and no alteration shall be made in any wiring of any such sign unless approved by the acting Electrical Inspector.

Sec. 5.304. Type 1. Temporary Signs.

(1) Materials. Signs with cloth or paper panels attached to the outside of buildings are prohibited.

(2) Erection. Standard sign hooks, lag screws or expansion bolts and shields, or other adequate supporting devices approved by the Fire Chief shall be used in sufficient number to support the sign.

(3) Removal. All temporary signs shall be removed within thirty (30) days from the erection thereof. The insured sign hanger erecting such signs shall be responsible for removal of all temporary signs erected by him at the expiration of the permit.

Sec. 5.305. Type 2. Flat Signs. All flat signs shall be securely fastened and anchored against the wall as closely as possible by expansion bolts and hooks or through bolts with washers on the inside of the wall.

Sec. 5.306. Type 3 Projecting Signs, Vertical and .Horizontal.

(1) Placement. All signs overhanging any sidewalk must have at least twelve (12) feet clearance from ground level to the bottom of sign; and at least eighteen (18) feet from ground level to the bottom of any sign overhanging any alley or roadway. The outer edge of all projecting signs hereafter erected shall not project more than ten (10) feet beyond the property line over City property, nor in any case closer than two (2) feet to a street curb line existing or established by the City Engineer. The inner edge of all projecting signs hereafter erected shall not be more than three (3) feet from the face of the wall.

(2) Pavement Widening. Where a pavement widening is made, all projecting signs, not conforming with the new sidewalk widths, shall be changed to meet the above requirements.

(3) Construction and Design. The framework of all standard signs shall be constructed of metal and shall be of such structural design as to insure adequate safety. A sufficient number of galvanized steel chains, cables or rods, or turnbuckles capable of withstanding a wind pressure of thirty (30) pounds per square foot of sign shall be installed to prevent swinging of sign. All such signs shall be fastened to a building or structure with steel or iron hinges so arranged as to permit the sign to fold back against the building or structure to which it is attached in case the guys should break.

(4) Support for Sign. All such signs must be so constructed that the structural member to which the sign frame is attached must pass through the wall and be fastened on the inside of the building in a substantial manner. Each such support or hanger for all signs must have a tensile strength of at least four times greater than the weight of the sign.

Sec. 5.307. Type 4. Standard Sign.

(1) Placement of Sign. All standard signs overhanging any alley or roadway must have at least eighteen (18) feet clearance from ground level to the bottom of the sign; any such sign overhanging other public property must have a clearance of twelve (12) feet. The outer edge of all standard signs hereafter erected shall not project more than ten (10) feet beyond the property line over City property, nor in any case closer than two (2) feet to a street curb line, existing or established by the City Engineer. The uprights or standards of a standard sign shall not be closer than two (2) feet from any public property.

(2) Pavement Widening. Where pavement widening are made, all standard signs shall be changed to meet the above requirements.

(3) Construction and Design. The framework of all standard signs shall be constructed of metal and shall be of such structural design as to insure adequate safety. A sufficient number of galvanized steel chains, cables or rods or turnbuckles capable of withstanding a wind pressure of thirty (30) pounds per square foot of sign shall be installed. The uprights or standards of all such signs shall be set in concrete.

Sec. 5.308. Type 5. Roof Signs.

(1) Need for Permit. No sign shall be placed upon the roof of any building unless the construction and erection thereof shall be approved by the Fire Chief and the acting Building Inspector. The party applying for the permit for such signs shall submit sketches as hereinafter provided.

(2) Placement Relative to Fire Escapes, Exits. No roof sign shall be located in front of a fire escape, scuttle or other place of exit, nor shall it be in excess of twenty-four (24) feet in height above the roof surface.

(3) Framework Design, Placement. The framework of roof signs shall be of structural steel, properly designed to resist a wind pressure of thirty (30) pounds per square foot of exposed solid area of sign and supported on structural steel members, spanning from wall to wall, independent of roof support, or anchored to existing steel roof frame provided the roof framing is capable of carrying the entire dead weight of sign plus the strain due to wind pressure exerted on the sign. The distance from the roof surface to the underside of the sign panel shall be at least six (6) feet. The distance from the inside of that parapet wall which is most nearly parallel to the face or back surface of the sign shall be equal to or more than the height from the roof surface to the top of the sign, and the sign shall be four (4) feet or more from the inside of the side parapet walls.

Sec. 5.309. Type 7. Portable Signs. Portable signs shall not exceed four (4) feet in height and shall be located at least two (2) feet inside of private property lines. No insured sign hanger's services are required for portable signs.

Sec. 5.310. Signs Requiring Permits. No sign as hereinbefore defined shall be erected, re-erected, or altered within the limits of the City of Essexville unless a permit therefore shall have been obtained from the Essexville City Clerk. Provided, however, that no such permit shall be required for portable signs, signs painted directly on the wall of a private building, lettering on awnings or signs erected on private property not closer to the property line of any street or alley than the distance from the grade to the top of the sign, and signs not more than two (2) square feet in area located on private property.

Sec. 5.311 Fees and Permits.[74] Permits when required by Sec. 5.310 shall be obtained prior to the installation, alteration and/or repair of any sign. Permit fees shall be set by City Council resolution

Sec. 5.312. Insured Sign Hanger's and Owner's Indemnity. Every person, firm, or corporation before engaging or continuing in the business of erecting, structural repairing, maintaining, or the dismantlement of signs in the City of Essexville shall, prior to the erection, structural repairing or the dismantlement thereof, furnish to the City of Essexville a public liability insurance policy, to be approved by the City Attorney, in the amount of Twenty Thousand Dollars ($20,000) for injury to one person, Forty Thousand Dollars ($40,000) for injury to more than one person, and in the sum of Ten Thousand Dollars ($10,000) for property damage, to indemnify and save said sign hanger or owner and the City of Essexville harmless from all suits and actions for damages of every nature and description brought or claimed against the owner, sign hanger and/or the City, for or on account of any injury or damages to persons or property received or sustained by any person or persons through any act or omission or through the negligence of said owner, sign hanger, its servants, agents and employees, in the erection, re-erection, altering, maintaining, repairing or dismantling of any sign. Said policy of liability insurance should contain a provision that the same may not be canceled without ten (10) days notice of such intended cancellation being given in writing to the City Clerk.

Sec. 5.313. Maintenance of Signs. The responsibility for keeping signs in good repair shall rest entirely with the owner or owners of the sign. All signs of Types 2, 3, 4, and 5, if such signs are suspended over or may fall onto any public street or property, shall be inspected at least once each year by the Department of Public Works.

Sec. 5.314. Removal of Signs.

(1) Unsafe Signs. Whenever any sign of any type is found to be in an unsafe condition or to constitute a hazard, the owner shall be notified by the Fire Chief or the acting Building Inspector to have the sign placed in a safe condition or removed from the building or other support within twenty-four (24) hours from the receipt of such notice. If such unsafe sign is not made safe or removed as specified in the notice, then upon the expiration of the time specified in the notice, the sign shall be torn down and removed from the premises by the Fire Chief or the acting Building Inspector. Provided, however, that if the owner of the sign cannot be located and it is reasonably necessary to public safety, the Fire Chief or the acting Building Inspector may remove the sign forthwith, without notice.

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[74] This Section amended by Ordinance No. 2004-1 adopted March 9, 2004, effective March 25, 2004.

(2) Signs not in Compliance. In all other cases, all signs hereafter erected not complying with this chapter or not permitted under the provisions of this chapter shall be made to comply herewith or shall be removed within twenty-four (24) hours of receipt of notice thereof. In the event of failure by the owner thereof to remove such sign in the prescribed period, the Fire Chief or the acting Building Inspector shall proceed to remove same.

(3) Owner Liability. When the Fire Chief or the acting Building Inspector removes any sign as provided in this chapter, the owner thereof shall pay the cost of removal of the said sign and shall be liable to the City therefore, and no permit shall be issued for the re-erection of said sign or the erection of a new sign for said owner until the owner has paid the cost of removal.

Sec. 3.315[75]. Violations and penalties. Whosoever violates any of the provisions of Sections 3.307, 3.308, and 3.314 shall be guilty of a misdemeanor and subject to a penalty of up to five hundred dollars ($500.00) fine and/or ninety (90) days in jail. Violators of all other Sections of this Chapter shall be guilty of a civil infraction and subject to a civil penalty of a Class D infraction as described in Section 1.608 of this Code of Ordinances. A separate violation shall be deemed to have been committed each day during which a violation occurs and continues to occur.

Sec. 5.316 – 5.400 Reserved

[75] This Section added by Ordinance No. 2012-07 adopted June 12, 2012, effective June 27, 2012.

# TITLE V: ZONING AND PLANNING

## CHAPTER 4

## SUBDIVISION CONTROL ACT

### In General

Sec. 5.401. Purpose.

The City of Essexville Ordains: Provisions governing the subdivision of land within the City of Essexville are hereby established to promote the public health, safety and general welfare; and to further the orderly layout and use of land. These regulations provide for certain minimum design standards and the provisions, of improvements, such as pavements, sewers, sidewalks, street signs, trees, water mains and other underground utilities. They also pertain to the making, approving, filing and recording of plats.

Sec. 5.402. Authority.

The Provisions are adopted pursuant to the Subdivision Control Act of 1967 (Public Act No. 288, as amended) and conform with the Municipal Planning Commission Act (Act 285 of the Public Acts of 1931, as amended.)

Sec. 5.403. Definitions.

Definitions used in the Subdivision Control Act of 1967 shall have the same meaning when used herein Also the following words as used in this chapter shall have the meaning ascribed to them in this section unless the context indicates otherwise:

Block. The term "block" shall mean that property abutting one side of a street and lying between the two nearest intersecting streets, or between the nearest street and railroad right-of-way, unsubdivided acreage, river or live stream, or between any of the foregoing and any other barrier to the continuity of development.

Master Plan. The words "master plan" shall mean the Essexville master plan or any part or amendments thereof, adopted by the Essexville Planning Commission pursuant to the Planning Commission Act, Act 285, P.A 1931, as amended.

Court or cul-de-sac. The term 'court" or "cul-de-sac" shall mean a minor street or short length, having one end open to traffic and being permanently terminated at the other end by a vehicular turn-around.

Double frontage lot or through lot. A "double frontage lot" or "through lot" is an interior lot with frontage on two (2) streets.

Improvements. The term "improvements" shall mean any or all of the following: street pavement, curb and gutter, sidewalks, driveway approaches, water mains, combined or separate storm and sanitary sewers and any other underground utilities, trees, street signs, and may include walkways or any other items normally considered public improvements.

Subdivision. The partitioning or dividing of a parcel or tract of land by the proprietor thereof or by his heirs, executors, administrators, legal representatives, successors or

assigns for the purpose of sale or lease of more than one (1) year, or of building development, where the act of division creates five (5) or more parcels of land each of which is ten (10) acres or less in area; or five (5) or more parcels of land each of which is ten (10) acres or less in area created by successive divisions within a ten (10) year period.

Zoning ordinance. The words “zoning ordinance" shall mean the zoning ordinance adopted by the city June 13, 1966, as amended, or any new zoning code which may be hereafter adopted by the City Council and all new ordinances relating to zoning restrictions and districts which may hereafter be adopted under the provisions of Act 207 of the Michigan Public Acts of 1921, as amended.

Sec. 5.404. Procedure for Preparation and Filing of Preliminary Plats

1. Sketch Plan.

The purpose of the sketch plan is to provide the proprietor with an opportunity to avail himself of the advice and assistance of the Planning Commission, before the preparation of a preliminary plat and its submission for approval, In order to save time and money and to make the most of his opportunities. Nothing in this section, however, shall so be construed as to require any pre-application contact and review at this stage shall not constitute any approval of the proposed preliminary plat but shall serve primarily as guidance to the prospective proprietor. Any proprietor may elect to begin subdividing by submitting a preliminary plat in accordance with the provisions of this chapter.

2. Requirement for Platting.

Each preliminary plat involving property in the City of Essexville must carry the approval of the City Council and the Essexville Planning Commission before the final plat will be considered.

3. Application.

The owner, subdivider proprietor or his authorized representative, hereinafter used interchangeably, shall submit to the city clerk an application in writing together with eighteen (18) copies of the preliminary plat for which approval is requested.

The city clerk shall forward the application and seven (7) copies of the plat to the City Council. The City Council shall refer it to the Essexville Planning Commission for review and recommendation.

Whenever a preliminary plat application has been presented to the City Council it shall be the duty of the Council to take action on said plat within ninety (90) days after filing of the same by the proprietor with the Council.

4. Preliminary plat.

The preliminary plat drawn at a scale of not more than two hundred (200) feet to the inch shall show the following:

(a) The location of existing property lines as described in the public record, including dimensions bounding the tract to be subdivided and all property lines within or outside the tract which intersect these boundary lines.

(b) Title under which proposed subdivision is to be processed, description of land to be platted, names and addresses of developers and/or owner or owners of record.

(c) The location on the property and adjoining properties of existing streets, rights-of-way, names of subdivisions immediately adjacent, and other public spaces on immediately adjoining properties; as well as the location of water courses, approximate floodplains, rail roads and any other physical or topographical features as are readily available which may effect the location of a proposed street, road or alley.

(d) Location, widths and radius of curvatures of proposed streets; and alleys, easements, parks, open spaces and lot lines.

(e) All parcels of land proposed to be dedicated to public use, i.e. streets, parks and condition of such dedication.

(f) Date, cardinal point, scale.

(g) Suitable signature blocks on its face for all approvals required by the municipality.

(h) A map indicating plans for the development of the entire area in sketch form if the proposed plat is a portion of a larger holding intended for subsequent development.

(i) The city may require preliminary data for street, sewer, and other required public improvements. This data shall contain enough information and detail to enable Planning Commission to make a preliminary determination as to the conformance of the proposed improvements to applicable regulations and standards.

5. Tentative approval of preliminary plat.

Tentative approval of a preliminary plat by the City Council shall be subject to tentative approval of the Essexville Planning Commission.

The Essexville Planning Commission shall hold a public hearing thereon as required by law (Municipal Planning Commission Act, Act 285, P.A. 1931, as amended). If the preliminary plat receives tentative approval of the city Planning Commission, it shall be recommended to the City Council. If rejected the Essexville Planning Commission shall give in writing to the applicant and City Council the reasons for rejection and requirements for approval. Preliminary plats thus tentatively approved by the Planning Commission shall bear the signature of its secretary.

The Essexville Planning Commission shall transmit the preliminary plat with its tentative approval to the City Council. The City Council shall tentatively approve and note its approval on the preliminary plat, or set forth in writing its reasons for rejection and requirements for tentative approval. Preliminary plats thus tentatively approved shall bear the signature of the city clerk. Such tentative approval shall confer upon the proprietor for a period of one (1) year from date approval of lot sizes, lot orientation and street layout. Such tentative approval may be extended if applied for by the proprietor and granted by the City Council in writing.

After City Council approval the city clerk shall retain one (1) signed copy of the tentatively approved plat.

6. Final approval of preliminary plat.

Prior to submission of the preliminary plat to the City Council for final approval, the proprietor shall, submit the preliminary plat to the Planning Commission to determine compliance with the tentatively approved preliminary plat. The plat shall be accompanied by letters from all public utilities, giving assurance that the preliminary plat being submitted for final approval has been coordinated with the respective utilities, and that all lots, and all street lights can be adequately served from underground service. If, not acceptable, the proprietor shall be notified in writing of the reasons for rejection.

Upon receipt of tentative approval as provided above in this section the proprietor shall:

(a) Submit a preliminary plat to all authorities as required by sections 112 to 119 of the Subdivision Control Act of 1967 (Public Act No 288) as amended.

(b) Submit a list of all such authorities to the city clerk certifying that the list shows all authorities as required by sections 112 to 119 of the Subdivision Control Act of 1967 (Public Act No, 288), as amended.

(c) Submit a letter from the Bay County Planning Department which indicates that the proposed street or road names have been reviewed and accepted by that office.

(d) Submit all approved copies to the city clerk after all necessary approvals have been secured.

The city clerk shall submit the approved copies and certifications to the City Council where it will be acted upon within twenty (20) days of the date of submission

After review and consideration the City Council shall:

(a) Approve the final preliminary plat, if the proprietor has met all conditions laid down for tentative approval of the preliminary plat.

(b) Instruct the city clerk to promptly notify the proprietor of approval or rejection in writing and if rejected, give the reasons.

Final approval of a preliminary plat by the City Council under this section shall constitute acceptance thereof as the basis for preparation of the final plat and be valid for two (2) years. The two (2) year period may be extended, if applied for by the proprietor and granted by City Council in writing. Written notice of the extension shall be sent by the city clerk to the other approving authorities.

Sec. 5.405. Procedure for Preparation and Filing of Final Plats.

1. Final plat administrative review and approval. Prior to submission of the final plat to the City Council, the proprietor shall submit the final plat and any restrictive covenants to the following:

(a) City Planning Commission:

To review accuracy of description and relative error of closure. To review all public and private streets, alleys, easements and roads for determination of proper drainage, grading and construction with approved materials of a thickness and width as provided in these regulations and for the installation of bridges and culverts where deemed necessary, for accomplishment of which he may require submission of complete plans for grading, drainage and construction which shall have been prepared and sealed by a civil engineer in the state.

To determine conformance to the approved preliminary plat in order to receive consideration at the next subsequent meeting of the Planning Commission, the final plat shall be filed with the city clerk not less than eight (8) days prior to such meeting.

(b) City Attorney:

To prepare any necessary agreements to guarantee the construction or installation of improvements as provided in article V hereof.

2. Requirement for platting.

Each final plat involving property in the City of Essexville must have prior approval of the City Council and city Planning Commission before it can be recorded.

3. Final plat legislative review and approval.

Upon receipt of tentative approval as provided in section 39-20, the proprietor shall deliver the final plat to the city clerk to be submitted to the City Council, where it will be acted upon within twenty (20) days of the date of submission.

After review and consideration, the City Council shall:

(a) Approve the final plat, if it conforms to the provisions of the city ordinances and department regulations and instruct the clerk to certify the City Councils approval on the plat, showing the date of the City Council's approval.

(b) Reject the plat if it does not conform to the provisions of (a) above, and instruct the clerk to return the plat to the proprietor, along with a copy of the proceedings setting forth the reasons.

Sec. 5.406. Design Standards.

1. General requirements.

The arrangement of streets in a new subdivision shall make provision for the continuation of the principal existing streets in the adjoining subdivision (or their proper projection when adjoining property is not subdivided), insofar as they may be necessary for public requirements. Streets that are continuous shall bear the same name throughout The Essexville Planning Commission may, in addition, require the continuation of such minor streets as are necessary for the extension of public improvements or for access by adjoining property owners.

Half street shall be prohibited except where unusual circumstances make it essential to the reasonable development of the tract in conformance with these regulations and where satisfactory assurance for the dedication of the remaining part of the street is provided. Whenever a tract to be subdivided borders on existing half or partial street, the other part of the street shall be dedicated within such tract.

Dead-end streets are prohibited except those designed as permanent cul-de-sacs or those required for further access to adjacent unplatted property. Temporary turn-around arrangements for dead-end streets which will be extended in the future may be required by the Planning Commission.

Where the plat submitted covers only a part of the subdivider's land, a sketch of the prospective future design of the unsubmitted part shall be furnished, and the street system of the part submitted shall be considered in the light of adjustments in connection with the street system of the part not submitted.

Where the parcel is subdivided into larger tracts than for building lots, such parcels shall be divided so as to allow for the opening of major streets and the ultimate extension of adjacent minor streets.

Subdivisions showing unplatted strips or private streets as the only means of connecting two (2) or more public streets will not receive approval.

Insofar as is practical, acute angles between streets at their intersections are to be avoided.

Names of new streets shall not duplicate existing street names either by sound or sight; however, any proposed street, which, in future plats, can be extended in a logical manner to connect with an existing named street shall bear the same name.

2. Streets.

The width of major and secondary streets shall conform to widths designated on the official maps relative to streets or to such width as the Essexville Planning Commission may determine to be necessary to carry out the intended function of the Essexville Master Plan. The Essexville Planning Commission in making their determination shall require that streets conform to the following minimum right-of-way widths:

(a) Expressway — 200 - 300 feet.

(b) Parkway — 80 feet,

(c) Arterial street — 80 feet.

(d) Collector street — 66 feet.

(e) Local street — 60 feet

(f) Cul-de-sac — 60 feet.

(g) Marginal access street — 60 feet.

(h) Alley — 20 feet.

The minimum width of streets whose ultimate length is in excess of five hundred (500) feet shall be sixty (60) feet or greater. In cases where physical conditions appear to make the required minimum width of street impractical, the Essexville Planning Commission may modify this requirement.

Streets designed to have one end permanently closed (cul-de-sac) shall be not less than sixty (60) feet in width and shall have a turning circle at the closed end with a right-of-way radius of not less than fifty (50) feet and a pavement. radius of not less than forty (40) feet.

3. Blocks.

No block may be more than one thousand three hundred twenty (1, 320) feet in length between the centerlines of intersecting streets, except where, in the opinion of the Essexville Planning Commission, extraordinary conditions unquestionably justify a departure from this maximum.

4. Lots.

All lots shall conform in width and area requirements to the Zoning Code, as amended.

In all quadrangular lots, and insofar as it is practicable all other lots, the side lines shall be at right angles to straight lines and radical to curved street lines.

Alleys shall be prohibited unless warranted by special unique conditions.

5. Acceptance of parks and public open space.

The Planning Commission may recommend the acceptance of the dedication of parks, playgrounds and other public open spaces when it appears that the community will benefit from such dedication.

6. Utilities.

The proprietor shall make arrangements for all distribution lines for telephone, electric, television, and other similar services distributed by wire or cable to be placed underground entirely through the residential subdivided area.

This section shall not be constructed to prohibit the construction above ground of surface equipment associated with an underground distribution system, including manholes which cannot be made flush with the ground, surface mounted transformers, power and communication terminal pedestals, meters and meter boxes, cabinets to house switches and other electrical distribution apparatus, concealed wires, street lights and street light poles. Overhead utilities shall be permitted in nonresidential subdivisions.

Conduits, cables and gas mains shall be placed within utility easements provided to public utilities by the proprietor or within dedicated public ways. All utilities, water, sewer, gas, electric and telecommunications shall be so planned as to location so as not to conflict with each other.

All underground public utility installations, including lines for street lighting systems, which traverse privately owned property shall be protected by easements granted by the

proprietor. These easements may be recorded on the final plat as utility easements for public utilities. Easements for underground utilities shall be graded to within five-tenths (.5) of a foot of finished grade before trenching for utilities is begun.

Sec. 5.407. Improvement Requirements.

1. Permanent improvements.

The proprietor shall agree that the following permanent improvements shall be installed by the city as provided in Sections 41 and 42 of this article, unless otherwise agreed upon by the city; sewer, water, sidewalk, curb and gutter, driveway approaches, pavement, trees, street signs and street lighting.

2. Improvement to be installed by the city.

Improvements to be installed by the city shall be initiated by the proprietor, who shall file petitions with the City Council requesting the installation of any or all of the improvements required (storm sewer, sanitary sewer, water, sidewalk, driveway approaches, curb and gutter, street lighting, pavement and other improvements as may be required). The cost of such improvements or any part thereof shall be assessed against benefited properties as determined by the City Council as provided for in Article XXXIII of the Essexville City Charter adopted May 27, 1958. The city may require cash or a corporate surety bond or an irrevocable bank letter of credit from the proprietors in an amount as determined by the city. To assure that the city will have sufficient funds to construct the improvements if the proprietor fails to have them constructed.

3. Improvements provided or installed by the proprietor.

Required improvements may be installed by the proprietor. Improvements provided by the proprietor with prior city approval shall be installed in accordance with plans prepared by a registered professional engineer provided said plans and specifications have been approved by the city. Where necessary to assure the actual construction and completion of such improvement, the city may require cash or a corporate surety bond or an irrevocable bank letter of credit from the proprietors in an amount as determined by the city.

In order to assure uniformity in street signs, the proprietor shall arrange, for the furnishing and installation of street signs with the city.

Shade trees with a trunk diameter of one and one half (1½) inches shall be planted in a residential subdivision between curbing and sidewalk as prescribed by the City Manager. Withered and/or dead trees shall be replaced within a reasonable period of time but no longer than one (1) growing season.

4. Extent or improvement installations or petitions for improvements.

Installation of or petition for improvements shall apply to the full length of all streets or other public ways provided, however, that installation of sewer may not be required on sections of street having no lot frontage and on which sewer extensions are not planned.

5. Temporary road surfacing and drainage.

After underground utilities have been installed the owner may grade all streets or other public ways and apply an approved material to a compacted depth of not less than six (6) inches for a minimum width of twenty (20) feet to provide temporary access to any lot before building construction thereon has been started. Building permits will be issued for construction on such a temporary street for model homes. No homes may be sold until the final plat has been approved and recorded by the register of deeds.

6. Agreement between proprietor and the city.

The proprietor shall enter into an agreement with the city providing that all improvements to be installed by the proprietor shall be completed within a reasonable period of time as designated in said agreement.

Sec. 5.408. Miscellaneous Provisions.

1. Compliance; conflict. Compliance with these regulations shall be prerequisite to the approval by the City of Essexville of any plat or subdivision, except insofar as such regulations may be in conflict with any applicable state law or any applicable provisions of the city charter and the Essexville Master Plan.

2. Fees. To help defray the costs of examining plans, advertising and public hearings and other expenses incidental to the approval of a subdivision, the proprietor shall pay a fee at the time of application for tentative approval of a preliminary plat. Such fee will be based upon the estimated number of lots created. At the time of application for final plat approval, the required fee will be recalculated on the basis of the actual number of lots created, and an adjustment of the fee will be made, the proprietor to pay an additional amount or to receive a refund if the adjusted fee differs from the original fee. There will be no refund of any portion of the fee if the proprietor fails to apply for final approval of the subdivision.

a. If the proprietor fails to submit a final preliminary plat within twelve (12) months after receiving tentative approval of a preliminary plat, or

b. Submit a final plat within two (2) years after receiving approval of the final preliminary plat, it will be necessary to resubmit a preliminary plat for tentative approval, and the proprietor shall be required to pay the fee currently in effect at the time of resubmission.

[76]Fees for reviewing and approving plats shall be determined periodically and approved by a resolution of the City Council. Such fees shall be paid at the time of application and submission of the preliminary plat.

Sec. 5.409. Validity. This chapter and the various articles, sections, paragraphs and clauses thereof, are hereby declared to be severable. If any article, section, paragraph or clause is adjudged unconstitutional or invalid, the remainder of the chapter shall not be affected thereby.

Sec. 5.410. Repeal.[77] All ordinances or parts of ordinances in conflict with this chapter are hereby repealed.

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[76] This Section amended by Ordinance No.2004-03 adopted August 10, 2004, effective August 26, 2004.
[77] This Section adopted March 22, 1978, effective March 31, 1978.

Sec. 5.411 – 5.500 Reserved

# TITLE V: ZONING AND PLANNING

## CHAPTER 5

## DIVISION OF PLATTED LOT [78]

Sec. 5.501. Limitation On Division Of Platted Lots. It shall be unlawful for the owner of any platted lot to transfer to any third party less than the entire platted lot unless such transfer is to an adjoining landowner and the land retained by the transferor either of the remaining untransferred platted lot or in combination with any adjoining land owned by the transferor meets the minimum lot size requirements as described in Section 5.72 hereof.

Sec. 5.502. Form Of Transfer Document. Any instrument transferring less than an entire platted lot shall be acknowledged by both transferor and transferee, filed with the Bay County Register of Deeds and the Essexville City Clerk, and recite: (a) that on the date of transfer the transferor and transferee were adjoining landowners; (b) that portion of the platted lot retained by the transferor individually or in combination with land adjoining thereto owned by the transferor meets the minimum lot size as required by the Ordinances of the City of Essexville; and (c) the transferee, his heirs, successors and assigns agree to cause the transferred parcel to be assessed and taxed as an undivided part of the transferee's adjoining land.

Sec. 5.503. Minimum Size Required. No platted lot shall be divided if the transferor's partial platted lot and any adjoining land owned by the transferor remaining after the division does not meet the minimum width, depth and area required by the Subdivision Control Act of the City of Essexville, Title V, Chapter 4 of the Essexville Code of Ordinances or the requirements of the Zoning Ordinance of the City of Essexville unless the owner of each parcel of land to be divided, shall prior to division, apply for and obtain a variance therefrom from the Zoning Board of Appeals.

Sec. 5.504. Violations Not To Be Acknowledged On Tax Rolls. Any deed of transfer filed with the Register of Deeds further dividing a platted lot to an extent greater than any deed of transfer filed with the Register of Deeds prior to January 1, 1992, and received by the City Assessor which are in violation of this Ordinance or the Michigan Subdivision Control Act of 1967, as amended, MCLA 560.101, et seq. shall not be acknowledged nor transferred on the tax rolls of the City of Essexville.

Sec. 5.505. Penalties. Any person who shall hereafter transfer or agree to transfer less than all of a platted lot without first complying with the requirements of this Chapter shall be guilty of a misdemeanor and suffer the penalties provided by Sec. 1.10 of the Code of the Ordinances of the City of Essexville and be subject to the penalties and remedies of the Michigan Subdivision Control Act of 1967, as amended, MCLA 560.101, et. seq.

Sec. 5.506 - 5.600 Reserved

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[78] This Chapter adopted March 10, 1992, effective March 29, 1992.

# TITLE V: ZONING AND PLANNING

## CHAPTER 6

## DOWNTOWN DEVELOPMENT AUTHORITY [79]

Sec. 5.601 . Establishment of Downtown Development Authority. Pursuant to Act No. 197 of Public Acts of 1975, as amended, the City of Essexville, does hereby establish a Downtown Development Authority which shall be established and regulated pursuant to said Act 197. The Authority shall analyze the impact of economic changes and growth in the Downtown District and develop plans in coordination with the City's Planning Commission to promote orderly economic growth in the Downtown Development District. With the advice and consent of the City Council, the Authority shall implement a development plan in the Downtown District as necessary to achieve the purposes of the Downtown Development Act and in accordance with the powers granted by said Act.

Sec. 5.602. Boundaries of District. The boundaries of the Downtown District within which the Downtown Development Authority shall exercise its powers shall be as described in Exhibit A.

Sec. 5.603. Board Membership. The affairs of the Downtown Development Authority shall be governed by an authority under the supervision and control of a Board consisting of the City Manager and eight members and in conformance with the following:

A. Members shall be appointed by the City Manager subject to approval by the City Council. Not less than a majority of the members shall be persons having interest in property located in the downtown district. Not less than one of the members shall be a resident of the downtown district if it is determined that the Downtown District has 100 or more persons residing within it. Of the members first appointed, two shall have their term expire on January 1, 1994; two shall have their term expire on January 1, 1995; two shall have their term expire on January 1, 1996; and two shall have their term expire on January 1, 1997. After the initial term of each member, the term of office of each successor shall be for a term of four years, but all shall hold office until their successor is appointed.

B. An appointment to fill a vacancy shall be made by the City Manager for the unexpired term only.

C. Members of the Board shall serve without compensation, but shall be reimbursed for actual and necessary expenses.

D. A Chairperson of the Board shall be elected by the Board. The Board shall adopt rules consistent with Act No. 267 of the Public Acts of 1976 governing its procedure and the holding of regular meetings, subject to the approval of the City Council. Special meetings may be held if called in the manner provided in the rules of the Board.

E. Before assuming the duties of office, a member shall qualify by taking and subscribing to the Constitutional Oath of Office. Pursuant to notice and having been given opportunity to be heard, a member of the Board may be removed for cause by the City Council.

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[79] This Chapter was adopted August 23, 1988, effective September 10, 1988.

F. All expense items of the Board shall be publicized monthly and its financial records shall be always open to the public. Any writing prepared, owned, used, in the possession of, or retained by the Board in the performance of an official function shall be made available to the public in compliance with the Freedom of Information Act, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

G. All business which the Board may perform shall be in compliance with the Open Meetings Act of the State of Michigan, being sections 15.261 to 15.275 of the Michigan Compiled Laws; the requirements of MCLA 125.1654; and as otherwise required by law. (Amended August 10, 1993; effective August 28, 1993)

Sec. 5.604. Meetings.

1. Within thirty (30) days after the appointment of the Board of Downtown Development Authority, the Authority shall call a meeting. The meeting shall open with a call for an election of Board Officers which shall consist of the following officers:

a. Chairman
b. Vice Chairman
c. Treasurer
d. Secretary

2. The Board shall prepare by-laws to govern the procedure of meetings and powers of its officers which shall be submitted to the City Council for approval prior to their adoption by the Board.

Sec. 5.605. Source of Revenue. Permitted Expenditures. The activities of the Authority shall be financed from one or more of the funding sources set out in Section I of Act 197 of Public Act of 1975, as amended, and shall expend no monies without prior approval of the City Council of the City of Essexville.

Sec. 5.606. Authority Subject to State Law. The Downtown Development Authority is to be controlled and regulated strictly by the Downtown Development Authority Act, being Act 197 of Public Act of 1975, as amended.

Sec. 5.607. Publication Requirements. Promptly after adoption of this Ordinance, a copy of same shall be filed with the Secretary of State of the State of Michigan and shall be published at least once in a newspaper of general circulation within the City.

Sec. 5 608. Conflicting Ordinances, Resolutions or Orders. All ordinances, resolutions or orders or parts thereof, in conflict with the provisions of this Ordinance, are, to the extent of such conflict, repealed.

Sec. 5.609. Severability. Should any section of this Ordinance or any clause or provision hereof be declared by the Courts to be invalid, the same shall not affect the validity of the ordinance at whole or any part there other than the part declared to be invalid.

Sec. 5.610 Development Plan and Tax Increment Financing Plan.[80] Pursuant to Act 197

[80] This section amended by Ordinance No. 2007-02 adopted April 10, 2007, effective May 25, 2007.

of Public Acts of 1975, as amended; the “2007 Amended Development Plan and Tax Increment Financing Plan for the City of Essexville Development Area” is approved and adopted.

Sec. 5.611 – 5.700 Reserved

# TITLE VI: HEALTH REGULATIONS

## CHAPTER 1

## HOUSING CODE

Sec. 6.101. Title and Purpose.

(1) Short Title. This chapter shall be known as the "Housing Code" of the City of Essexville.

(2) Purpose. The purpose of this chapter is to protect the health, safety, and welfare of the people of the City of Essexville by providing for a housing code establishing minimum housing standards and to eliminate and prevent the development of slum conditions, determine and establish the responsibilities of owners and occupants of residential buildings, and provide for administration, enforcement and penalties.

(3) Copies on File. Printed copies of the Housing Code as herein adopted and hereafter amended, shall be kept in the office of the City Clerk and made available for public use and inspection, and printed copies thereof shall be made available in the office of the Essexville City Clerk for distribution to the public at all times.

Sec. 6.102. Administration.

(1) Application. The provisions of this Code shall apply to all buildings used or designed, or intended to be used, for human habitation. Such occupancies and uses in existing buildings may be continued if such use or occupancy was legal at the time of adoption of this Code; provided such structures are not substandard and such continued use is not dangerous to life. The decision of the enforcement officer therein shall be subject to appeal to the appeal board, as herein provided.

(2) Alterations and Relocation. Existing buildings which are altered or enlarged shall be made to conform to this Code insofar as the new work is concerned, and in accordance with the provisions of the Building Code as adopted by the City. Existing buildings which are moved or relocated shall be considered new buildings and shall comply with all the requirements of this Code.

(3) Enforcement. The enforcement officer of this Code shall be the Building Inspector, who is hereby authorized and directed to enforce the provisions thereof, and the term "enforcement officer" as used in this Code shall mean the Building Inspector or his duly designated and authorized representative.

(4) Notice of Violation. Whenever the enforcement officer determines that there exists a violation of any provision of this Code, he shall give notice of such violation to the person or persons responsible therefore and order compliance. Such notice and order shall:

a. Be in writing.

b. Include a list of violations referring to the sections of the Code violated.

c. Set a reasonable time, not to exceed ninety (90) days in any event for the performance of any act it requires.

d. Contain an outline of remedial action which, if taken, will effect compliance with the provisions of this Code.

e. Advise the owner of record or occupant of the procedure for appeal.

f. Be served upon the owner of record or occupant by delivering it to him personally or by leaving the same at his residence, office, or place of business with some person of suitable age and discretion who shall be informed of the contents thereof, or by mailing a copy thereof by certified mail to his last known address, or, if the person to be served is unknown, by posting said notice in some conspicuous place on the premises .

(5) Duplicate Notice. Whenever the owner of record of a dwelling is notified by the enforcement officer of a violation for which he is responsible, a copy of the notice shall also be posted on the premises, delivered, or sent by ordinary mail to the occupants of the dwelling; and whenever an occupant is notified by the enforcement officer of a violation for which he is responsible a copy of the notice shall also be delivered, or sent by ordinary mail to the owner of the dwelling. Failure to send such duplicate notice, however, shall not affect the validity of any proceedings against the owner of record or occupant.

(6) Substandard or Dangerous Buildings.[81] All buildings or portions thereof which are determined to be substandard or dangerous as herein defined or by the definitions of any Uniform Building Code adopted by the City are hereby declared to be public nuisances and shall be abated by repair, rehabilitation, demolition or removal in accordance with the procedure as specified in Sec. 6.4 of this Chapter. If procedure for such repair, rehabilitation or demolition or removal as stated in Sec. 6.4 hereafter is in conflict with any other building code or ordinance adopted by the City, the provisions of Sec. 6.4 of this Chapter shall prevail.

(7) Emergency Procedure. Whenever the enforcement officer shall find an emergency existing which requires immediate action to protect the public health or safety, he shall, without notice or hearing, issue an order reciting the existence of such an emergency and requiring such action be taken as he deems necessary to meet the emergency. Notwithstanding any other provision of this code, such order shall be immediately effective and no person shall knowingly violate the provisions of such order.

(8) Orders to Vacate. Where a notice of violation and order to comply has been issued as herein provided and upon reinspection at the end of the time specified for compliance is found that the violation or violations have not been corrected, or at any time when required in accordance with the emergency procedure, the enforcement officer may order the dwelling or the parts thereof affected by the continued violations to be vacated in accordance with the following procedures:

a. The vacation shall he within a reasonable time as determined by the enforcement officer, but not to exceed sixty (60) days.

b. Vacated buildings shall have all outer doors, windows or other openings securely boarded so as to prevent entry.

c. The building shall be posted "DO NOT ENTER, UNSAFE TO OCCUPY”.

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[81] This paragraph adopted August 13, 1996, effective August 30, 1996.

d. Such buildings shall not be used for human habitation until all violations have been corrected and a written determination obtained from the enforcement officer that the dwelling complies with the provisions of this Code.

(9) Removal of Notices. No person shall interfere with, obstruct, mutilate, conceal, or tear down any official notice or placard posted by the enforcement officer, without his permission.

(10) Rules and Regulations Authorized. The enforcement officer is hereby empowered to make such rules and regulations as shall be necessary for the enforcement of this Code.

(11) Extension of Time. The enforcement officer in his discretion shall have the authority to extend additional time, not to exceed six months, for the performance of any work he has ordered to be done pursuant to this Code where inclement weather has prevented or will prevent compliance with said order. All other extensions shall be authorized only by the Appeal Board.

Sec. 6.103. Inspection of Dwellings.

(1) Inspection Authorized. The enforcement officer is hereby authorized to make inspections to determine the conditions of dwellings, dwelling units, lodging units, and premises located within the city in order that he may perform his duty of safeguarding the health and safety of the occupants of dwellings and the general public. For the purpose of making such inspections and to perform any duty imposed upon him by this Code, the enforcement officer is hereby authorized according to law to enter, examine, and survey at all reasonable times all such premises. The owner of record or occupant of every dwelling unit, or the person in charge thereof shall give the enforcement officer free access to such dwelling at all reasonable times for the purpose of such inspection, examination, and survey. Every occupant of a dwelling or dwelling unit shall give the owner of record thereof or his agent or employee, access to any part thereof at all reasonable times for the purpose of making such repairs or alterations as are necessary to effect compliance with the provisions of this Code.

(2) Frequency of Inspections. The enforcement officer shall cause a periodic inspection to be made of every multiple dwelling or leased dwelling unit. Such inspection shall include a thorough examination of all parts of such dwelling and the premises connected therewith. The inspection officer is also empowered to make similar inspections of all dwellings as frequently as may be necessary or convenient.

Sec. 6.104. Appeals and Hearings.[82]

(1) Hearing Officer. There is hereby created an administrative position of Housing Hearing Officer who shall be appointed by the City Council for a term of its pleasure. The Housing Hearing Officer shall not be the current Building Inspector of the City and shall be knowledgeable of the City's Housing and Building Codes through his or her experience as an engineer, architect, building inspector, contractor or the like.

(2) Appeals. Any person effected by any notice, order, decision or ruling of any official issued in connection with the enforcement of this code may request and shall be granted a hearing on the matter before the Housing Hearing Officer. An appeal may also

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[82] This Section amended August 13, 1996, effective August 30, 1996.

be taken by the City Manager, the Building Inspector, or their authorized agents on behalf of the City. The Housing Hearing Officer shall also hear any other hearings as required by this Chapter including any appeal filed seeking relief from an order of the Building Inspector that the occupancy permit for that building or structure has been withdrawn, that the building or structure must be vacated or not occupied for any use.

Any appeal filed shall be in writing and shall specify the name, address, and telephone number of the person appealing the decision of the City Building Inspector and contain a brief statement of the grounds for appeal and, except in the case of the appeal filed by the City, shall be accompanied by a fee in an amount set by the City Council and shall be filed within ten days after the notice and order appealed from is served. If not appealed within said time, any right of appeal shall lapse.

Hearings shall be commenced within a reasonable time after a petition has been filed, and the petitioner shall be notified thereof. At such hearing, the petitioner shall be entitled to appear in person or by agent or attorney and show cause why the matter appealed from should be modified or withdrawn. The failure of petitioner or a representative to appear at a hearing shall constitute an abandonment of the petition.

(3) Notice of Dangerous or Unsafe Conditions and Requirement to Repair, Rehabilitate, Demolish or Remove; Contents, Hearing Officer; Service.

a. Not withstanding any other provision of this act, when the whole or any part of any building or structure is found to be in a dangerous or unsafe condition or in need of maintenance, the Building Inspector shall issue a notice of the dangerous and unsafe condition, state the section of the City's Housing or Building Codes violated, the action required to abate such conditions, and the time allowed to do so. The Building Inspector shall file a copy of the notice that the building or structure is a dangerous building with the Hearing Officer. In the event that the Building Inspector shall direct that the building or structure either be repaired, demolished, or maintained a hearing shall be held after notice prior to any action by the City to repair, demolish, or maintain said structure upon the conditions stated hereafter.

b. Such notice shall be directed to the owner, agent or lessee registered with the Building Inspector in accordance with Section 6.102 (4). If no owner, agent or lessee has been registered, then the notice shall be directed to each owner of or party in interest in the building in whose name the property appears on the last local tax assessment records.

c. The notice shall specify the time and place of a hearing regarding the condition of the building or structure at which time and place the person to whom the notice is directed shall have the opportunity to show cause why the building or structure should not be ordered to be demolished, otherwise made safe, or properly maintained.

d. All notices shall be in writing and shall be served upon the person to whom they are directed personally, or in lieu of personal service may be mailed by certified mail-return receipt requested addressed to such owner or party in interest at the address shown on the tax records, at least 10 days before the date of the hearing described in the notice. If any person to whom a notice is directed is not personally served, in addition to mailing the notice, a copy thereof shall be posted upon a conspicuous part of the building or structure.

(4) Hearing; testimony; determination to dismiss proceedings or order building demolished or made safe, compliance hearing, cost of compliance as lien, collection.

a. The Hearing Officer shall take testimony of the Building Inspector, the owner of the property and any interested party. The Hearing Officer shall render his decision by either dismissing the proceedings or ordering the building to be demolished, otherwise made safe, or properly maintained not more than five days after completion of the hearing.

b. If it is determined by the Hearing Officer that the building or structure should be demolished, otherwise made safe, or properly maintained, he shall so order, fixing a time in the order for the owner, agent or lessee to comply therewith. Any order of demolition issued by the Hearing Officer or the City Council to demolish any property or requiring demolition of any structure by the owner or authorizing demolishing by the City if not demolished by the owner after the passage of a reasonable period of time shall include the following:

1. The order shall give the owner the option to repair such structure to conform with building codes of the city, even if not financially practical, by a time as stated in such order.

2. The order shall require filing of the order with the register of deeds in order that any future purchasers of or persons coming in interest of the property be notified of the existence of such order.

3. Personal service be enacted upon the owners of said building if possible and if not possible publishing in a newspaper of common distribution within the county shall be required as well as the posting of such order upon a conspicuous part of the building or structure.

4. Notice shall be served upon any mortgage holder or lien holder of record of such order by certified mail-return receipt requested.

c. If the owner, agent or lessee fails to appear or neglects or refuses to comply with the order, the Hearing Officer shall file a report of his findings and a copy of his order with the City Council not more than five days after noncompliance by the owner and request that the necessary action be taken to enforce the order. A copy of the findings and order of the Hearing Officer shall be served on the owner, agent or lessee in the manner prescribed Sec. 6.104 (3).

d. The City Council shall fix a date for hearing, reviewing the findings and order of the Hearing Officer and shall give notice to the owner, agent or lessee in the manner prescribed in Section 6.104 (3) of the time and place of the hearing.

e. The City Council shall fix a date not less than thirty days after the hearing described in Section 6.104 (4) (A) above for a hearing on the findings and order of the Hearing Officer and shall give notice to the owner, agent, or lessee in the manner described in Section 6.3 (3) (D) above of the time and place of the hearing. At the hearing, the owner, agent or lessee shall be given the opportunity to show cause why the order should not be enforced. The City Council should either approve, disapprove, or modify the order. If the City Council approves or modifies the order, the City Council shall take all necessary action to enforce the

order. If the order is approved or modified, the owner, agent or lessee shall comply with the order within sixty days after the date of the hearing under this subsection. In the case of an order of demolition, if the City Council determines that the building or structure has been substantially destroyed by fire, wind, flood or other natural disaster and the cost of repair of the building or structure will be greater than the state equalized value of the building or structure, the owner, agent or lessee shall comply with the order of demolition within twenty-one days after the date of the hearing under this sub-section.

f. The cost of the demolition, of making the building safe, or of maintaining the exterior of the building or structure, or grounds adjoining the building or structure incurred by the city to bring the property in conformance with this ordinance shall be reimbursed to the City by the owner or party in interest in whose name the property appears.

g. The owner or party in interest in whose name the property appears upon the last local tax assessment records shall be notified by the assessor of the amount of the cost the City shall have a lien for the cost incurred by the City to bring the property in conformance with this ordinance. The lien shall not take effect until notice of the lien has been filed or recorded as provided by law. A lien provided for in this subsection does not have priority over previously filed or recorded liens and encumbrances unless so allowed by law. The lien for the cost shall be collected and treated in the same manner as provided for property tax liens under the general property tax act, Act No. 206 of the Public Acts of 1893, being sections 211.1 to 211.157 of the Michigan Compiled Laws.

h. In addition to other remedies under this ordinance, the City may bring an action against the owner of the building or structure for the full cost of the demolition, of making the building safe, or of maintaining the exterior of the building or structure or grounds adjoining the building or structure. The City shall have a lien upon the property for the amount of judgment obtained pursuant to this subsection. The lien provided for in this subsection shall not take effect until notice of the lien is filed or recorded as required by law. The lien shall not have priority over prior filed or recorded liens and encumbrances unless so allowed by law.

i. A judgment in an action brought pursuant to subsection (H) may be enforced against assets of the owner other than the building or structure. The City shall have a lien for the amount of judgment obtained pursuant to subsection (H) against the owner's interest in all real property located in this state that is owned in whole or in part by the owner of the building or structure against whom the judgment is obtained. A lien obtained provided for under this section does not take effect until notice of the lien is filed and recorded as provided by law, and the lien does not have priority over prior filed or recorded liens and encumbrances unless so allowed by law.

j. [83]A person who fails or refuses to comply with an order approved or modified by the City Council under this section within the time prescribed by the City Council is guilty of a misdemeanor punishable by a fine of not more than $500.00 or imprisonment of up to ninety days, or both. Each day that such a violation should exist shall be considered a separate offense to which the violator may be cited

[83] This Sub-Section amended by Ordinance No. 2014-1 Adopted on May 13, 2014, Effective May 28, 2014.

with an individual additional offense punishable as a misdemeanor by a fine of not more than $500.00 or imprisonment for ninety days, or both.

(5) Appeals. Any owner aggrieved by any final decision or order of the Hearing Officer or the City Council may appeal the decision or order to the circuit court by filing a petition for an order of superintending control within 20 days from the date of the decision.

Sec. 6.105[84]. Definitions. For the purpose of this chapter, certain terms shall be construed as herein defined, or as defined in any other chapter in the Code of Ordinances of the City of Essexville or, if not in conflict, as defined in the Building Code as adopted, or, if not in conflict, as defined in the Housing Law of Michigan.

(1) Basement. The floor of a building below its principal floor. The term cellar and basement are synonymous.

(2) Boarding house. A rooming or lodging house that provides meals to roomers or lodgers occupying a rooming or lodging house. (See lodging house and rooming house.)

(3) Cellar. The floor of a building below its principal floor. The term cellar and basement are synonymous.

(4) Dwelling. Any house, building, structure, tent, shelter, trailer or vehicle, or portion thereof, (except railroad cars, on tracks or rights-of-way) which is occupied in whole or in part as the home, residence, living or sleeping place of 1 or more human beings, either permanently or transiently. A house trailer or other vehicle, when occupied or used as a dwelling, shall be subject to all the provisions of this act.

a. Classes of dwellings. For the purposes of this act dwellings are divided into the following classes:

1. A private dwelling or dwelling unit is a dwelling occupied by but 1 family, and so designed and arranged as to provide cooking and kitchen accommodations for 1 family only.

2. A multiple dwelling is a dwelling occupied otherwise than as a private dwelling and that is designed for and occupied by 2 or more families.

b. Classes of multiple dwellings. All multiple dwellings are dwellings and for the purpose of this act are divided into the following two 2 classes:.

1. Class A: Multiple dwellings of Class A are dwellings which are occupied more or less permanently for residence purposes by several families and in which the rooms are occupied in apartments, suites or groups, in which each combination of rooms is so arranged and designed as to provide for cooking accommodations and toilet and kitchen sink accommodations within the separate units. This class includes tenement houses, flats, apartment houses, apartment hotels, bachelor apartments, studio apartments, duplex apartments, kitchenette apartments, and all other dwellings similarly occupied whether specifically enumerated herein or not.

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[84] This Section amended by Ordinance No. 2014-1 Adopted on May 13, 2014, effective May 28, 2014.

2. Class B: Multiple dwellings of Class B are dwellings which are occupied, as a rule transiently, as the more or less temporary abiding place of individuals who are lodged, with or without meals, and in which as a rule the rooms are occupied singly and without any attempt to provide therein or therewith cooking or kitchen accommodations for the individual occupants. This class includes hotels, lodging houses, boarding houses, furnished room houses, club houses, convents, asylums, hospitals, jails and all other dwellings similarly occupied, whether specifically enumerated herein or not.

(5) Single Family or Family. An individual or a group of individuals occupying the same dwelling unit as a single housekeeping unit related by blood or marriage to the owner or renter of a dwelling unit by being either his or her spouse, parents, grandparents, great-grandparents, children, grandchildren, great-grandchildren, current in-laws, brothers, sisters, or legal wards and including not more than a total of two other persons not so related. A single family or family unit does not include any society, club, fraternity, sorority, association, lodge, organization or group of individuals.

(6) Habitable Room. Any room meeting the requirements of this chapter for sleeping, living, cooking or eating purposes, excluding such enclosed places as closets, pantries, bath or toilet rooms, service rooms, connecting corridors, laundries, unfinished attics, foyers, storage spaces, cellars, utility rooms and similar spaces.

(7) Hotel. Any building containing ten (10) or more rooms intended or designed to be used, or which are used, rented, or hired out to be occupied, or which are occupied for sleeping purposes by guests.

(8) Lodging House. Any dwelling in which any part thereof in which non-owners, aside from the family members of the owner, are allowed to dwell or occupy for a fee or without fee for any period of time. Rooming houses and boarding houses are lodging houses.

(9) Nuisance: The word “nuisance” shall be held to embrace public nuisance as known at common law or in equity jurisprudence; and whatever is dangerous to human life or detrimental to health; whatever dwelling is overcrowded with occupants or is not provided with adequate ingress and egress to or from the same, or is not sufficiently supported, ventilated, sewered, drained, cleaned or lighted, in reference to its intended or actual use; and whatever renders the air or human food or drink unwholesome, are also severally, in contemplation of this act, nuisances; and all such nuisances are hereby declared illegal.

(10) Owner. Every person who is listed on the records in the office of the City Assessor as owning a parcel of property on which any dwelling or dwelling unit is located.

(11) Rooming House. Any dwelling, or that part of any dwelling containing one or more rooms or rooming units, in which space is let by the owner or occupant to persons who are not family members of the owner or occupant, regardless of whether

payment is made or required for the use of the space. Rooming houses are lodging houses.

(12) Sub-standard building or dwelling. A building or dwelling of any class which not so equipped as to have each of the following items: running water, inside toilets, operating heating equipment; or a dwelling which has inadequate cellar drainage, defective plumbing or wiring, and inside rooms having no windows therein, improper exits or defective stairways so as to make such dwelling a fire hazard or other conditions creating a hazard to the life, health, safety, and welfare to the public or occupants thereof.

Sec. 6.106. Minimum Standards for Basic Equipment and Facilities.

(1) Compliance with Standards. No person shall occupy as owner-occupant or let to another for occupancy any dwelling or dwelling unit, for the purpose of living therein, which does not comply with the minimum standards for basic equipment and facilities as provided herein.

(2) Kitchen Sink. Every dwelling unit shall contain a kitchen sink in good working condition.

(3) Water Closet and Lavatory. Every dwelling unit shall contain a room which affords privacy to a person within said room and which is equipped with a flush water closet, and a lavatory basin or washbowl in good working condition.

(4) Bathtub or Shower. Every dwelling unit shall contain a room which affords privacy to a person within said room and which is equipped with a bathtub or shower in good working condition.

(5) Water Heating Facilities. Every kitchen sink, lavatory basin and bathtub or shower required by this code shall be properly connected with both hot and cold water lines. The hot water lines shall be connected with supplied water heating facilities which are properly installed and maintained in safe and good working condition, and are capable of heating water to such a temperature as to permit an adequate amount of water to be drawn at every required kitchen sink, lavatory basin, and bathtub or shower at a temperature of not less than one hundred twenty degrees (120 degrees) F.

(6) Water and Sewage Facilities. All plumbing fixtures required by this code shall be properly connected to an approved water system and to an approved sewerage system.

(7) Garbage and Rubbish Disposal. Every dwelling unit shall have adequate garbage and rubbish storage containers in which to place the garbage and rubbish produced therein. The containers shall consist of watertight cans, not more than twenty (20) gallons in capacity, equipped with adequate handles or bails. In lieu of a garbage container, a dwelling unit may be equipped with an incinerator provided it is properly vented into the chimney of the building and is capable of reducing garbage to ashes without causing an objectionable odor in the neighborhood; or a garbage disposal unit connected with an integral part of the sewerage system of the building and capable of reducing all garbage deposited therein to particles no greater than one-half (1/2) inch in any dimension.

(8) Exitways. Every dwelling unit shall have access to one unobstructed exitway leading to a public street or alley. Where there are two or more dwelling units located on

the second story of a dwelling or where there are more than two stories in a dwelling every floor above the first shall have at least two approved means of egress, two of which shall be accessible to all occupants of the floor, and are accessible without passing through another dwelling unit.

Exception. A second story may be served by a single interior stairway if such stairway is enclosed by one-hour fire resistive materials, and all doors opening into the stairway shall be self-closing Class "B" fire doors or solid wood doors not less than one and three-eighths (1 3/8) inches thick. This exception shall not apply in cases where the second story exceeds one thousand (1,000) square feet of habitable floor area.

Sec. 6.107. Minimum Standards for Light, Ventilation, and Heating.

(1) Compliance with Standards. No person shall occupy as owner-occupant or let to another for occupancy any dwelling or dwelling unit, for the purpose of living therein, which does not comply with the minimum standards for light, ventilation, and heating as herein provided.

(2) Windows. Every habitable room shall have at least one (1) window or skylight facing directly to the outdoors. The minimum total window area measured between stops, for every habitable room shall be ten (10) percent of the floor area of such room. Whenever walls or other portions of structures face a window of any such room and such light-obstructing structures are located less than three (3) feet from the window and extend to a level above that of the ceiling of the room, such a window shall not be deemed to face directly to the outdoors and shall not be included as contributing to the required minimum total window area. Whenever the only window in a room is a skylight type window in the top of such room, the total window area of such skylight shall equal at least fifteen (15) percent of the total floor area of such room.

(3) Ventilation. Every habitable room shall have at least one (1) window or skylight which can be easily opened. The total openable window area shall be equal to at least forty-five (45) percent of the minimum window area size or minimum skylight area size as required in Sec. 6.7(2) of this chapter. An approved system of mechanical ventilation or air conditioning may be used in lieu of openable windows. Such system shall provide not less than four (4) air changes per hour.

(4) Ventilation in Bathrooms. Every bathroom and water closet compartment shall comply with the light and ventilation requirements for habitable rooms as herein provided, except that no window or skylight shall be required in bathrooms or water closet compartments which are equipped with a mechanical ventilating system to the outside air which is capable of completely changing the air in the room every two (2) minutes.

(5) Electrical Service. Every habitable room shall contain at least two (2) separate floor or wall-type electric convenience outlets or one such convenience outlet and one supplied ceiling or wall-type electric light fixture. Additional convenience outlets shall be provided in sufficient number to adequately service the electrical devices or appliances located therein, without the use of unapproved wiring methods. Cords to appliances and devices shall not be run through doorways, under rugs or stapled to wood baseboards, door casings or through holes in partitions or floors. All installations and repairs shall be made in conformance with the electrical code as adopted by the City. All outlets and fixtures shall be properly installed and shall be maintained in a good and safe working condition, and shall be connected to the source of electric power in a safe manner.

(6) Lighting in Public Halls. Every public hall and stairway in every multiple dwelling serving five (5) or more dwelling units and in every rooming house or hotel serving ten (10) or more rooming units, shall be adequately lighted at all times. Every public hall and stairway in structures devoted solely to dwelling occupancy and serving less than the above number of dwelling or rooming units may be supplied with conveniently located light switches controlling an adequate light system which may be turned on when needed, instead of full time lighting.

(7) Windows and Door Screens. Every door opening directly from a dwelling unit to outdoor space shall be supplied with a screen door equipped with a self-closing device in good operating condition. Every window used for ventilation shall also be supplied with screen. Screens shall be in place by June 1 of each year and shall not be removed before October 1. Screens will not be required on windows in rooms above the fourth story. All screens shall not be less than number sixteen (16) wire mesh.

(8) Screen on Basement Windows. Every basement or cellar window used for ventilation shall also be supplied with a screen or such other device as will effectively prevent the entrance of rodents.

(9) Heating Facilities. Every dwelling shall have heating facilities which are properly installed, are maintained in safe and good working condition, and are capable of safely and adequately heating all habitable rooms in every dwelling unit located therein to a temperature of at least 70 degrees F., at a distance of three (3) feet above floor level under all ordinary winter conditions. Portable heating equipment employing a flame and heating equipment using gasoline or kerosene as fuel are prohibited.

Sec. 6.108. Minimum Space, Use, and Location Requirements.[85]

(1) Compliance with Standards. No persons shall occupy as owner-occupant or let to another for occupancy any dwelling or dwelling unit, for the purpose of living therein, which does not comply with the minimum standards for space, use, and location as herein provided.

(2) Minimum Floor Area. Every dwelling unit shall contain at least one hundred twenty-five (125) square feet of floor space for the first occupant thereof and at least seventy-five (75) additional square feet of floor space for every additional occupant thereof, the floor space to be calculated on the basis of total habitable room area.

(3) Minimum Floor Area of Sleeping Rooms. Every room occupied for sleeping purposes by one (1) occupant shall contain at least seventy (70) square feet of floor space, and every room occupied for sleeping purposes by more than one occupant shall contain at least forty (40) square feet of floor space for each occupant twelve (12) years of age and over and at least thirty-five (35) square feet for each occupant under twelve (12) years of age, the floor space to be calculated on the basis of total habitable room area.

(4) Room Arrangement. No dwelling or dwelling unit containing two (2) or more sleeping rooms shall have such room arrangements that access to a bathroom or water closet compartment intended for use by occupants of more than one (1) sleeping room can be had only by going through another sleeping room; nor shall room arrangements be such that access to a sleeping room can be had only by going through another sleeping room or water closet compartment.

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[85] This Section amended by Ordinance No. 2014-1, Adopted on May 13, 2014, Effective May 28, 2014.

(5) Minimum Ceiling Height. At least one-half (1/2) of the floor area of every habitable room, bathroom, water closet, compartment, and hallway shall have a ceiling height of not less than seven (7) feet. The floor area of that part of any habitable room where the ceiling height is less than five (5) feet shall not he considered as part of the floor area in computing the total floor area of the room for the purpose of determining the maximum permissible occupancy thereof.

(6) Cellar or Basement Space not Habitable[86]. No cellar or basement space shall be used as a habitable room or dwelling unit; provided, however, that this section shall not prohibit a recreation room in a cellar as long as it is not used for sleeping purposes. Such room cannot be used in computing the total floor area of the dwelling for the purpose of determining the maximum permissible occupancy thereof. No rented cellar or basement space shall be occupied as a dwelling unit unless in conformity with the requirements of subsection 6.110 (1) d. of this chapter.

(7) Basement Dwelling Units[87]. No basement space shall be used as a dwelling or rooming unit unless:

a. The floor and walls are impervious to leakage of underground and surface on-off water;

b. The total window area in each room is equal to at least ten (10) percent of the floor area of the room as measured between stops and is entirely above the grade of the ground adjoining such window area;

c. The total openable window area in each room is equal to forty-five (45) percent of the minimum window area, except where there is supplied a mechanical ventilating system to the outside air capable of completely changing the air in the room every fifteen (15) minutes;

d. The ceiling height throughout the unit is at least seven (7) feet;

e. It is separated from heating equipment, incinerators, or other equally hazardous equipment by a standard petition;

f. Access can be gained to the unit without going through a furnace room;

g. Two (2) independent means of egress are provided from every basement containing more than one (1) dwelling unit. If rooming units are provided in a basement two (2) exits shall be provided if ten (10) or more persons occupy such rooming units.

Sec. 6.109. Minimum Standards for Safe and Sanitary Maintenance of Dwellings and Dwelling Units.

(1) Compliance with Standards. No person shall occupy as owner-occupant or let to another for occupancy any dwelling or dwelling unit, for the purpose of living therein, which does not comply with the minimum standards for safe and sanitary maintenance of dwellings and dwelling units as herein provided.

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[86] This Subsection amended by Ordinance No. 2014-1, Adopted on May 13, 2014, Effective May 28, 2014.
[87] This Subsection amended by Ordinance No. 2014-1, Adopted on May 13, 2014, Effective May 28, 2014.

(2) Exterior Foundation, Walls, Roof. The foundation shall adequately support the dwelling at all points and every exterior foundation wall, and roof shall be weather-proof, watertight, and rodent-proof; shall be capable of affording privacy; and shall be kept in a reasonably good state of maintenance and repair.

(3) Interior Walls, Floors, Ceilings. Every interior partition, wall, floor and ceiling shall be capable of affording privacy, kept in reasonable good state of repair, and maintained so as to permit them to be kept in a clean and sanitary condition.

(4) Rain Water Drainage from Roof. All rain water shall be so drained and conveyed from every roof so as not to cause dampness in the walls, ceilings, or floors, or any habitable room, or of any bathroom or toilet room.

(5) Protection of Exterior Wood Surfaces. All exterior wood surfaces shall be reasonably protected from the elements and against decay, by paint or other approved protective coating applied in a workmanlike fashion.

(6) Exterior Openings. Every window, exterior door, and basement hatchway shall be weathertight, watertight, and rodent-proof, fully supplied with windowpanes without cracks or holes, and each sash, door, and hatch shall fit tightly within its frame.

(7) Stairs, Porches. Every inside and outside stair, every porch, and every appurtenance thereto shall be so constructed as to be safe to use and capable of supporting the load that normal use may cause to be placed thereon; and shall be kept in sound condition and good repair, and in conformance with the following conditions:

a. Every flight of stairs and every porch floor shall be free of holes, groves, and cracks, which are large enough to constitute possible accident hazards;

b. No flight of stairs shall have more than one (1) inch of settlement from its intended position or shall be separated from its supporting structures;

c. No flight of stairs or porch shall have rotting, loose or deteriorating supports;

d. Every stair tread shall be strong enough to bear a live load of at least one hundred (100) pounds per square foot without danger of breaking;

e. All stairways more than six (6) risers high shall be equipped with handrails not less than thirty (30) inches nor more than thirty-four (34) inches high, measured vertically from the nose of the tread to the top of the rail. Stairways more than forty-four (44) inches wide shall be equipped with two (2) handrails, one on each side. On exterior unenclosed stairways where only one handrail is required, it shall be placed on the outside edge of the stairway.

(8) Supplied Facilities. Every supplied facility, piece of equipment, or utility, which is required under this Code shall be so constructed or installed that it will function safely and effectively, and shall be maintained in satisfactory working condition.

(9) Facilities Not to be Shut Off. No owner, operator or occupant shall cause any service, facility, equipment, or utility which is required under this chapter to be removed from or shut off from or discontinued for any occupied dwelling let or occupied by him, except for such temporary interruption as may be necessary while actual repairs or alterations are being made.

(10) Plumbing Fixtures. Every plumbing fixture and water and waste pipe shall be properly installed and maintained in good sanitary working condition, free from defects, leaks and obstructions.

(11) Floor Surfaces. Every water closet compartment bathroom, and kitchen floor surface shall be constructed and maintained so as to be water resistant and so as to permit such floor to be easily kept in a clean and sanitary condition.

(12) Chimney and Supplied Smoke Pipes. Every chimney and every supplied smoke pipe shall be adequately supported, reasonably clean, and maintained in a reasonably good state of repair.

(13) Non-Dwelling Structures and Fences. Every non-dwelling structure and fence shall be kept in a reasonably good state of maintenance and repair or shall be removed.

(14) Cleanliness and Public Areas. All public areas, yards, and premises shall be kept in a reasonably clean and sanitary condition.

Sec. 6.110. Rental Units.[88]

(1) Minimum Basic Requirements. No dwelling or dwelling unit shall be rented, leased, or otherwise offered or provided for occupancy unless said unit shall occupy with the minimum standards for basic equipment, and facilities, as specified in Sec. 6.106, the minimum standards for light, ventilation, and heating as specified in Sec. 6.107, and minimum space, use, and location requirements as specified in Sec. 6.108, and the minimum standards for safe and sanitary maintenance of dwelling and dwelling units as specified in Sec. 6.109 and the minimum requirements as hereafter required.

a. Public halls in multiple dwellings; lighting; exit lights**.** In every multiple dwelling all public halls shall be kept adequately lighted at all times by the owner. In every multiple dwelling of Class B, except those of fireproof construction having more than 15 rooms or sleeping accommodations for more than 30 persons, the location of stairways and means of egress shall be designated on each floor by electrically illuminated exit sign shaving letters at least 4 inches in height. All exit lights shall be on a separate circuit or circuits and wires shall be installed in approved metal raceway.

b. Water closets in cellars or basements. No water-closet shall be maintained in the cellar or basement of any dwelling without a permit in writing from the health officer, who shall have power to make rules and regulations governing the maintenance of such closets. Under no circumstances shall the general water-closet accommodations of any multiple dwelling be permitted in the cellar or basement thereof; this provision, however, shall not be construed so as to prohibit a general toilet room containing several water-closets, provided such water-closets are supplementary to those required by law.

c. Water closet accommodations. In every dwelling existing prior to the passage of this act there shall be provided at least 1 water-closet for every apartment, group or suite of rooms, or fraction thereof, except that in multiple-dwellings of Class B

[88] This Section amended by Ordinance No. 2014-1, Adopted on May 13, 2014, Effective May 28, 2014.

there shall be provided at least 1 water-closet for every 15 occupants or fraction thereof.

d. Basement and cellar rooms. No room in the cellar or basement of any dwelling shall be occupied for living purposes without a written permit from the health officer, which permit shall be kept readily accessible in the main living room of the apartment containing such room. No such room shall hereafter be occupied unless all the following conditions are complied with:

1. Such room shall be at least 7 feet high in every part from the floor to the ceiling.

2. The ceiling of such room shall be in every part at least 3 feet 6 inches above the surface of the street or ground outside of or adjoining the same.

3. There shall be appurtenant to such room the use of a water-closet.

4. All of the rooms of the apartment of which such room is an integral part shall have a window opening directly to the street or yard, of at least 12 square feet in size clear of the sash frame, and which shall open readily for purposes of ventilation.

5. The lowest floor shall be water-proof and damp-proof and its floor and walls shall be impervious to leakage of underground and surface run-off water.

6. Such room shall have sufficient light and ventilation, shall be well drained and dry, and shall be fit for human habitation.

7. The total window area in each room is equal to at least ten (10) percent of the floor area of the room as measured between stops and is entirely above the grade of the ground adjoining such window area;

8. The total open able window area in each room is equal to forty-five (45) percent of the minimum window area, except where there is supplied a mechanical ventilating system to the outside air capable of completely changing the air in the room every fifteen (15) minutes;

9. It is separated from heating equipment, incinerators, or other equally hazardous equipment by a standard petition;

10. Access can be gained to the unit without going through a furnace room;

11. Two (2) independent means of egress are provided from every basement containing more than one (1) dwelling unit. If rooming units are provided in a basement, two (2) exits shall be provided if eight (8) or more persons occupy such rooming units.

e. Joint use of kitchen by more than one family prohibited. No kitchen or cooking accommodations shall be permitted or maintained in any room or space of any building for the common or joint use of the individual occupants of a 2 family or multiple family dwelling.

f. Water closets and sinks; floors under and around. In all 2 family dwellings and multiple dwellings the floor or other surface beneath and around water-closets and sinks shall be maintained in good order and repair and if of wood shall be kept well painted with light colored paint.

g. Repairs and drainage. Every dwelling and all the parts thereof including plumbing, heating, ventilating and electrical wiring shall be kept in good repair by the owner. The roof shall be so maintained as not to leak and the rain water shall be drained and conveyed there from through proper conduits into the sewerage system in accordance with plumbing regulations so as to avoid dampness in the walls and ceilings and insanitary conditions.

h. Water Supply. Every dwelling shall have within each apartment or family unit at least 1 approved sink with running water furnished in sufficient quantity at all times. The owner shall provide proper and suitable tanks, pumps or other appliances to receive and to distribute an adequate and sufficient supply of such water at each floor in the said dwelling at all times of the year, during all hours of the day and night. But a failure in the general supply of city water shall not be construed to be a failure on the part of such owner, provided proper and suitable appliances to receive and distribute such water have been provided in said dwelling.

i. Catch-basins. In the case of dwellings where, because of lack of city water supply or sewers, sinks with running water are not provided inside the dwellings, 1 or more catch-basins or some other approved convenience for the disposal of waste water, as may be necessary in the opinion of the health officer or such other appropriate public official as the city manager may designate, shall be provided in the yard or court, level with the surface thereof and at an easy point of access to the occupants of such dwelling.

j. Cleanliness of dwellings. Every dwelling and every part thereof shall be kept clean and shall also be kept free from any accumulation of dirt, filth, rubbish, garbage or other matter in or on the same, or in the yards, courts, passages, areas or alleys connected therewith or belonging to the same. The owner of every dwelling shall be responsible for keeping the entire building free from vermin. The owner shall also be responsible for complying with the provisions of this section except that the tenants shall be responsible for the cleanliness of those parts of the premises that they occupy and control.

k. Multiple dwellings; walls of courts. In multiple dwellings the walls of all courts, unless built of a light color brick or stone, shall be thoroughly whitewashed by the owner or shall be painted a light color by him, and shall be so maintained. Such whitewash or paint shall be renewed whenever necessary, as may be required by the health officer, or by such other appropriate public official as the city manager may designate.

l. Multiple dwellings; walls and ceilings of rooms. All multiple dwellings the health officer or such other appropriate official as the city manager may designate, may require the walls and ceiling of every room that does not open directly on the street to be kalsomined white or painted with white paint when necessary to improve the lighting of such room and may require this to be renewed as often as may be necessary.

m. Multiple dwellings; wallpaper. No wall paper shall be placed upon a wall or ceiling of any multiple-dwelling unless all wall paper shall be first removed there from and said wall and ceiling thoroughly cleaned.

n. Receptacles for ashes, garbage and rubbish; chutes prohibited. The owner of every multiple dwelling, and in the case of private and 2 family dwellings, the

occupant or occupants thereof, shall provide for said dwelling, keep clean and in place, proper covered receptacles of non-absorbent material for holding garbage, refuse, ashes, rubbish and other waste matter. Garbage chutes are prohibited.

o. Prohibited uses. No horse, cow, calf, swine, sheep, goat, chickens, geese, ducks, spiders, insects, reptiles, or amphibians shall be kept in any dwelling or part thereof. Nor shall any such animal be kept on the same lot or premises with a dwelling except under such conditions as may be prescribed by specific city ordinances. No such animal, shall under any circumstances be kept on the same lot or premises with a multiple dwelling. No dwelling or the lot or premises thereof shall be used for the storage or handling of rags or junk.

p. Combustible materials and storage spaces. No dwelling, nor any part thereof, nor of the lot upon which it is situated, shall be used as a place of storage, keeping or handling of any article dangerous or detrimental to life or health; nor of any combustible article, except under such conditions as may be prescribed by the fire commissioner, or the proper official, under authority of a written permit issued by him. No multiple dwelling nor any part thereof, nor of the lot upon which it is situated, shall be used as a place of storage, keeping or handling of feed, hay, straw, cotton, paper stock, feathers or rags.

q. Storage of combustible materials; openings between storage room and public hall. There shall be no transom, window or door opening into a public hall from any part of a multiple dwelling where paint, oil, or inflammable liquids are stored or kept for the purpose of sale or otherwise.

r. Fire prevention and safety requirements. In any multiple dwelling housing more than 8 families, in which the owner thereof does not reside, there shall be a responsible person, or persons, designated as such by the owner. Every multiple dwelling of Class B containing over 75 sleeping rooms or sleeping accommodations for 150 persons or more above the first floor, which is not of fireproof construction, or not protected with an approved sprinkler system or an approved and self supervised and properly maintained automatic fire alarm system, shall have adequate watch service, reporting each 1 hour between the hours of 10:00 p.m. and 7:00 a.m. on each floor at locations designated by the enforcing official on a suitable recording device.

In addition every multiple dwelling of Class B, not of fireproof construction, or not protected with an approved sprinkler system or an approved and self supervised and properly maintained automatic fire alarm system, having sleeping accommodations for over 50 persons above the first floor, shall have on duty at all times at least 1 employee and more if necessary, so that there shall be 1 employee on duty at all times for each 100 persons, or major fraction thereof, of the normal capacity of the building.

In all multiple dwellings of Class B, not of fireproof construction, having sleeping accommodations for over 25 persons there shall be provided a bell, gong, siren or other approved alarm, of sufficient size and adequacy to be heard in every room or apartment of the building by a person of normal auditory perception, on each floor of the building, such warning device to be manually controlled from locations designated by the enforcing official.

All employees of multiple dwellings shall be regularly instructed and drilled relative to the proper proceeding in case of fire or panic by a person whose

qualifications are approved by the enforcing officer. All employees of multiple dwellings shall be instructed as to the location of the fire alarm boxes or other devices or notifying the fire department. In case of fire in the building it shall be the duty of such employees to forthwith and immediately notify the fire department of the existence of such fire through the surest and quickest means of notification available. Such employees shall then proceed to warn or notify the occupants of the building of the existence of such fire and to assist them in the immediate evacuation of the building in the quickest and safest manner possible.

The owners or manager of every multiple dwelling of Class B shall maintain a register or list of guests and tenants which shall be kept and safeguarded so as to be available at all times.

s. Class A multiple dwelling; smoke alarm; requirements; violation as misdemeanor; penalty; definitions.

1. Each dwelling unit contained within a Class A multiple dwelling shall be equipped with a single-station or multiple-station smoke alarm that complies with the standards set forth in the state construction code promulgated under section 4c of the Stille-DeRossett-Hale single state construction code act, 1972 PA 230, MCL 125.1504c.

2. A Class A multiple dwelling constructed before November 6, 1974 has 1 year after the effective date of the rules promulgated under section 4c of the Stille-DeRossett-Hale single state construction code act, 1972 PA 230, MCL 125.1504c, to comply with subsection 1.

3. An existing building that is converted to a Class A multiple dwelling shall comply with the requirements that may be imposed by the Stille-DeRossett-Hale single state construction code act, 1972 PA 230, MCL 125.1501 to 125.1531.

4. A person owning a Class A multiple dwelling shall comply with this section.

5. A person who violates this section is guilty of a misdemeanor punishable by a fine of not more than $500.00 or imprisonment of not more than 90 days, or both.

6. As used in this section:

(a) “Dwelling unit” means a single unit providing complete independent living facilities for 1 or more persons, including permanent provisions for cooking, living, sanitation, and sleeping.

(b) “Smoke alarm” means a single-station or multiple-station alarm responsive to smoke and not connected to a system.

(c) “Single-station smoke alarm” means an assembly incorporating a detector, the control equipment, and the alarm sounding device into 1 unit, operated from a power supply either in the unit or obtained at the point of installation.

(d) “Multiple-station smoke alarm” means 2 or more single-station alarm devices that are capable of interconnection such that actuation of 1 causes all integral or separate audible alarms to operate.

t. Overcrowding; minimum space requirements. In addition to the requirements of Section 6.111 (6) of this chapter, no bedroom or room used as a bedroom in any Class B multiple dwelling shall be so occupied as to provide less than 624 cubic feet of air space per occupant, exclusive of the cubic air space of bathrooms, toilet rooms and closets. No room, suite or group of rooms, comprising a family dwelling unit, in any single, 2 family or Class A multiple dwelling shall be so occupied as to provide less than 800 cubic feet of air space per occupant exclusive of the cubic air space of bathrooms, toilet rooms and closets. No bedroom or room used as a bedroom in any single, 2 family or Class A multiple dwelling shall be so occupied as to provide less than 624 cubic feet of air space per occupant, exclusive of the cubic air space of bathrooms, toilet rooms and closets.

u. Multiple dwellings; regulation; application; lodgers prohibited. The health officer or such other appropriate public official as the city manager may designate may prohibit in any multiple dwelling the letting of lodgings therein by any of the tenants occupying such multiple dwelling, and may prescribe conditions under which lodgers or boarders may be taken in multiple-dwellings. It shall be the duty of the owner in the case of multiple-dwellings to see that the requirements of the health officer or such other appropriate public official as the city manager may designate in this regard are at all times complied with, and a failure to so comply on the part of any tenant, after due and proper notice from said owner or from the health officer or such other appropriate public official as the city manager may designate shall be deemed sufficient cause for the summary eviction of such tenant and the cancellation of his lease. The provisions of this section may be extended to private dwellings and 2 family dwellings, as may be found necessary by the health officer or by such other appropriate public official as the city manager may designate.

v. Health order; infected and uninhabitable dwellings to be vacated. Whenever it shall be certified by an inspector or officer of the health department that a dwelling is infected with contagious disease or that it is unfit for human habitation, or dangerous to life or health by reason of want of repair, or of defects in the drainage, plumbing, lighting, ventilation, or the construction of the same, or by reason of the existence on the premises of a nuisance likely to cause sickness among the occupants of said dwelling, or for any cause, the health officer or such other appropriate public official as the city manager may designate, may issue an order requiring all persons therein to vacate such house within not less than 24 hours nor more than 10 days for the reasons to be mentioned in said order. In case such order is not complied with within the time specified, the health officer or such other appropriate public official as the city manager may designate may cause said dwelling to be vacated. The health officer or such other appropriate

public official as the city manager may designate whenever he is satisfied that the danger from said dwelling has ceased to exist, or that it is fit for human habitation may revoke said order or may extend the time within which to comply with the same.

w. Site of illegal drug manufacturing; notification of potential contamination; determination of contamination; rules; order by local health department.

1. Within 48 hours of discovering an illegal drug manufacturing site, a state or local law enforcement agency shall notify the enforcing agency, the local health department if the enforcing agency is not the local health department, and the department of community health regarding the potential contamination of any property or dwelling that is or has been the site of illegal drug manufacturing. The state or local law enforcement agency shall post a written warning on the premises stating that potential contamination exists and may constitute a hazard to the health or safety of those who may occupy the premises.

2. Within 14 days after receipt of the notification under subsection 1 or as soon thereafter as practically possible, the department of community health, in cooperation with the enforcing agency, shall review the information received from the state or local law enforcement agency, emergency first responders, or hazardous materials team that was called to the site and make a determination regarding whether the premises are likely to be contaminated and whether that contamination may constitute a hazard to the health or safety of those who may occupy the premises. The fact that property or a dwelling has been used as a site for illegal drug manufacturing shall be treated by the department of community health as prima facie evidence of likely contamination that may constitute a hazard to the health or safety of those who may occupy those premises.

If the property or dwelling, or both, is determined likely to be contaminated under subsection 2, the enforcing agency shall issue an order requiring the property or dwelling to be vacated until the property owner establishes that the property is decontaminated or the risk of likely contamination ceases to exist. The property owner may establish that the property is decontaminated by submitting a written assessment of the property before decontamination and a written assessment of the property after decontamination, enumerating the steps taken to render the property decontaminated, and a certification that the property has be decontaminated and that the risk of likely contamination no longer exist to the enforcing agency. The property or dwelling shall remain vacated until the enforcing agency has reviewed and concurred in the certification.

4. The department of community health shall promulgate rules and procedures necessary to implement this section.

5. Nothing in this section precludes a local health department from exercising its powers or duties under this ordinance or the public health code, 1978 PA 368, MCL 333.1101 to 333.25211. However, if there is a determination under subsection 2 that is contrary to an order made by a local health department, then the determination made under subsection 2 takes precedence.

x. Health order; repairs to buildings, other structures. Whenever any dwelling or any building, structure, excavation, business pursuit, matter or thing, in or about a dwelling, or the lot on which it is situated, or the plumbing, sewerage, drainage, light or ventilation thereof, is in the opinion of the health officer or such other appropriate public official as the city manager may designate in a condition or in effect dangerous or detrimental to life or health, the health officer or such other appropriate public official as the city manager may designate may declare that the same to the extent he may specify is a public nuisance, and may order the same to be removed, abated, suspended, altered or otherwise improved or purified as the order shall specify.

y. Fire escape maintenance. All fire escapes shall be kept in a safe and sound condition and shall be properly painted and repaired to maintain this condition. No encumbrance or obstruction shall be placed or maintained on any part of any fire escape or in any means of access to a fire escape.

z. Scuttles, bulkheads, ladders and stairs in multiple dwellings. In all multiple dwellings where there are scuttles or bulkheads, they and all stairs or ladders leading thereto shall be easily accessible to all occupants of the building and shall be kept free from encumbrances and ready for use at all times. No scuttle and no bulkhead door shall at any time be locked with a key, but either may be fastened on the inside by movable bolts or hooks.

(2) Responsibilities of Owners[89].

a. Minimum basic requirements. No owner shall rent, lease, or otherwise offer or provide for occupancy any dwelling or dwelling unit not meeting the minimum basic requirements as provided in Sec. 6.110 (1).

Sec. 6.111. Minimum Standards for Lodging Houses and Hotels.

(1) Compliance with Standards. No person shall operate a lodging house, rooming house, hotel, motel, inn or tourist home or let to another any unit therein, except in compliance with the provisions of this Code, except that compliance shall not be required for Sec. 6.106.

(2) Minimum Basic Facilities. Every lodging house shall be equipped with at least one (1) lavatory basin or washbowl, and one (1) bathtub or shower for each eight (8) persons or fraction thereof within the lodging house, including members of the family of the owner or operator if they share the use of the facilities. The lavatory basin and bathtub or shower shall be connected to a hot water system as specified in Sec. 6.106 (5) of this Code. In a lodging house in which both sexes are accommodated, a minimum of two (2) flush water closets and lavatory basins located in separate rooms which are conspicuously marked shall be required. In a lodging house in which rooms are let only to males, flush urinals may be substituted for not more than one-half (1/2) the required number of water closets. All the facilities required under this section shall be connected to a approved water and sewer system and shall be installed within one (1) year from the effective date of this Code.

(3) Location of Toilets, Baths. Every flush closet, flush urinal, lavatory basin, and bathtub or shower required by Sec. 6.111 (2) shall be located within the lodging house in a room or rooms which:

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[89] This Subsection amended by Ordinance No. 2014-1, Adopted on May 13, 2014, Effective May 28, 2014.

a. Afford privacy and are separate from the habitable rooms;

b. Are accessible from a common hall and without going outside the rooming house or hotel;

c. Are not more than one (1) story removed from the rooming unit of the occupant intended to share the facilities.

(4) Shades, Drapes, etc. Every window of every room used for sleeping shall be supplied with shades, draw drapes, or other devises or materials which, when properly used, will afford privacy to the occupant of the room.

(5) Bedding, Bed Linen, Towels. Where bedding, bed linen, or towels are supplied, the owner shall maintain the bedding in a clean and sanitary manner, and he shall furnish clean bed linen and towels at least one each week and prior to the letting of any room to any occupant.

(6) Minimum Space. Every room occupied for sleeping purposes by one person shall contain at least eighty (80) square feet of floor space, and every room occupied for sleeping purposes by more than one person shall contain at least fifty (50) square feet of floor space for each occupant thereof.

(7) Means of Egress. Every rooming unit shall be readily accessible to an exit by passage through public passageways and without passing through any part of any other unit, which exit shall provide a safe and unobstructed means of egress leading to safe and open space at ground level.

(8) Responsibility for Maintenance. The operator of every lodging house shall be responsible for the sanitary maintenance of all walls, floors, and ceilings, and for maintenance of a sanitary condition in every other part of the house that is based or occupied by the operator.

(9) Guest Register. The operator of every lodging house shall keep at all times in a convenient place a book or register wherein every person applying for accommodations are furnished and such book or register shall be available for inspection by the enforcement officer at all times.

(10) Hotels. Every provision of this chapter which applies to lodging houses shall also apply to hotels, motels, inns, and other comparable facilities, except to the extent that such provisions may be in conflict with the laws of the State of Michigan or with the lawful regulations of any state board or agency.

Sec. 6.112 Licensing and Permits[90].

(1) License and Permits Required. No person shall operate a lodging house, rooming house, boarding house, tourist home, hotel, inn, motel, or other comparable facility serving persons not members of the family of the owner or operator unless he or she holds a valid license or permit issued by the enforcement officer in the name of the operator and for the specified building in which the facility is located.

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[90] This Subsection amended by Ordinance No. 2014-1, Adopted on May 13, 2014, Effective May 28, 2014.

(2) License or Permit Procedure. Application for licenses and/or permits shall be filed with the enforcement officer on forms to be furnished by him. No license shall be issued by the enforcement officer unless he is satisfied that all the applicable provisions of this chapter have been complied with. The license or permit issued shall not be transferable, and the operator shall notify the enforcement officer in writing within forty-five (45) days if he shall sell, transfer, or otherwise dispose of the control of the premises. The license or permit shall be conspicuously displayed on the premises at all times. If the enforcement officer shall determine that any condition or practice on the premises specifying such conditions or practices which are to be corrected, and if not corrected within the period of time as specified, the license or permit shall be suspended. Upon notice of suspension, the operator shall immediately cease operation of the license's or permit's activity. The refusal or the suspension of a license or permit shall be subject to appeal to the housing board of appeals as provided in this chapter.

(3) License or Permit Fee. License or permit fees shall be determined periodically and approved by a resolution of the City Council.

Sec. 6.113. Conflict of Ordinances. Where a provision of this Code is found to be in conflict with a provision of any zoning, building, fire, safety or health ordinance or code of the City of Essexville existing on the effective date of this Code, the provision which established the higher standard for the promotion of the health and safety of the people shall prevail. Where a provision of this Code of the City of Essexville which established a lower standard for the promotion and protection of the health and safety of the people, the provisions of this Code shall be deemed to prevail.

Sec. 6.114 -6.200. Reserved.

# TITLE VI: HEALTH REGULATIONS

## CHAPTER 2

## WEED ORDINANCE [91]

Sec. 6.201. Cutting and Removing of Noxious Weeds. It shall be unlawful for any owner, lessee, tenant or occupant of any occupied or unoccupied lot or land, or any part thereof, in the City of Essexville to cause, permit, or allow noxious weeds, as hereinafter defined, to grow on any lot or land whether occupied or unoccupied, including the area between said lot or land and the traveled portion of any alley, street, or road which adjoins said lot or land, to a height above 6 inches from the ground, or to allow said noxious weeds to go to seed or blossom or otherwise spread or become a detriment to the public health.

Sec. 6.202. Cutting and Removal of Grass, Weeds and Brush. It shall also be unlawful for any owner, lessee, tenant or occupant of any occupied or unoccupied lot or land, or any part thereof, in the City of Essexville to cause, permit or maintain on any such lot or land, including the area between said lot or land and the traveled portion of any alley, street, or road which adjoins said lot or land, any growth of grass, weeds or brush, other than noxious weeds as hereinafter defined, to a greater height than 6 inches on the average, or any accumulation of dead weeds, grass or brush.

Sec. 6.203. Removal of Debris, Junk, Trash, Rubbish or Refuse. It shall also be unlawful for any owner, lessee, tenant or occupant of any occupied or unoccupied lot or land, or any part thereof, in the City of Essexville to cause, permit or maintain on any such lot or land, including the area between said lot or land and the traveled portion of any alley, street, or road which adjoins said lot or land, any accumulation of debris, junk, trash, rubbish or refuse that would in any manner hinder, impede, interfere or, restrict the cutting down and destruction of any growth of grass, weeds, brush, or noxious weeds.

Sec. 6.204. Duty of Owner, Lessee, Tenant or Occupant.[92] It shall be the duty of any owner, lessee, tenant, or occupant of any lot or land located within the City of Essexville, Michigan, to cut and remove or cause to be cut and removed or destroyed by lawful means all such weeds, grass, brush, and noxious weeds, and to remove as well as all debris, junk, trash, rubbish or refuse, as often as may be necessary to comply with the provisions of Sections 6.201, 6.202 and 6.204 of this Ordinance; provided, that the cutting, removing or destroying of such weeds, grass, brush and noxious weeds at least once a month commencing May 1st through and including October 1st shall be deemed to be in compliance with this Ordinance.

Sec. 6.205. Definition of Noxious Weeds. Noxious weeds, within the meaning of the Ordinance, shall include Canada Thistle (Circium arvense), dodders (any species *OT* Cuscuta), mustards (charlock. black mustard and Indian mustard, species of Brassica, or Sinapis), wild carrot (Daucus Carota), bindweed (Donvelvelvus arvensis), perennial sowthistle (Sonchus arvensis), hoary alyssum (Beteroca incana), quackgrass (Syropyron repens), crabgrass (Digitaria Sanguialis), ragweed, poison ivy (Rhus toxidondendron), poison sumac (Rhus vernic), or other weeds, plants brush, or grasses which the City Council may, from time to time, specifically designate as coming within the meaning of this section.

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[91] This Chapter adopted February 8, 1983, effective February 25, 1983.
[92] This Section amended August 10, 1993, effective August 28, 1993.

Sec. 6.206. Publishing of Notice.[93] During the month of March of each year, the City Manager shall cause a notice to be published in a newspaper of general circulation in Bay County which shall substantially state as follows:

"To all owners, lessees, tenants, or occupants of lands situated within the City of Essexville, Michigan. Notice is hereby given that all noxious weeds, grasses, brush, and other weeds growing on any land owned or occupied by you within the City of Essexville, including the area between any lots or land and the traveled portion of any alley, street, or road which adjoins said lots or land, must be cut down, removed, or destroyed by the first day of May of this year to prevent such weeds from reaching a seed bearing stage, to prevent their re-growth, and from becoming a detriment to public health. You are further notified that all such noxious weeds, grasses, brush, and other weeds, must be cut and maintained to a height not greater than six inches.

Methods of treating and eradicating the noxious weeds may be by cutting, mowing, tilling, or the spraying of herbicides. This notice shall not apply to weeds in fields devoted to growing any small grain crop such as wheat, oats, barley, or rye. Any owner who refuses to destroy noxious weeds as provided for in this notice shall be subject to a fine of not more than $100 for each offense.

Notice is also given that any accumulations of debris, junk, trash, rubbish or refuge that would in any manner hinder, impede, interfere, restrict the cutting down and destruction of any growth of noxious weeds, grasses, brush, and other weeds in any land owned and occupied by you within the City, including the area between said lots or land and the traveled portion of an alley, street, or road which adjoins said lots or land must be removed.

If the owner, agent, or occupant of any land refuses to destroy the noxious weeds or cause them to be destroyed, or fails to remove any debris, junk, trash, rubbish, or refuge upon such lands, the City shall enter upon the land and destroy the noxious weeds or cause them to be destroyed. Any expense incurred in the destruction shall be paid by the owner or owners of the land and the City shall have a lien against the land for the amount of the expense which shall be assessed and collected in the same manner provided for collection of taxes, plus 15% for inspection and cost in connection there with.

As provided by State statute, the City may cut weeds as many times as necessary and charge the cost to the property owner as set forth above."

Sec. 6.207. When Cutting Occurs by the City.[94] If any owner, agent, or occupier of land within the City shall fail to comply with the Public Notice as set forth in Section 6.206 by May 1 of each year, the City Manager or his or her duly authorized representative shall cause, as many times as is necessary, such noxious weeds, grasses, brush, or other weeds to be removed and destroyed and the removal of any debris, junk, trash, rubbish, or refuge and the cost of cutting, removal, or destruction as made to be determined from time to time by the City Council plus 15% for inspection and other additional cost in connection there with, shall be certified by the City Manager or his or her duly authorized representative and shall become and be a lien upon the property with such noxious weeds, grasses, brush, or other weeds were located, and shall be assessed and collected in the same manner provided in the Charter of the City for collection of taxes.

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[93] This Section amended August 10, 1993, effective August 28, 1993.
[94] This Section amended August 10, 1993, effective August 28, 1993.

Sec. 6.208.[95]

Sec. 6.209.[96]

Sec. 6.210. Penalty. Any owner lessee, tenant, or occupant of lands in the City of Essexville who shall fail, neglect or refuse to comply with the provisions of any notice herein provided, or who shall violate any of the provisions of this Ordinance, shall be punished by a fine of not more than $100.00 or by imprisonment for not more than 90 days, or by both such fine and imprisonment.

Sec. 6.211. Effective Date of Ordinance. This Ordinance shall become effective February 25, 1983.

Sec. 6.212 – 6.300 Reserved

[95] This Section repealed August 10, 1993, effective August 28, 1993.
[96] This Section repealed August 10, 1993, effective August 28, 1993.

# TITLE VI: HEALTH REGULATIONS

## CHAPTER 3

## OPEN RUBBISH FIRES

Sec. 6.301. Definition. Rubbish is any waste, offal, debris, refuse, grass, leaves, compost, vegetable matter, rubber, paper, synthetic or plastic material, garbage, lumber, building materials, litter, combustible or non-combustible.

Sec. 6.302. Burning Rubbish. No person shall kindle or maintain any open, out-of-doors bonfire, rubbish fire, or burn garbage or rubbish any place within the corporate limits of the City of Essexville on public or private property other than in incinerators which shall be located inside of buildings in accordance and in compliance with the Standards of the National Board of Fire Underwriters for Incinerators.

Sec. 6.303 – 6.400 Reserved

# TITLE VI: HEALTH REGULATIONS

## CHAPTER 4

## LITTERING [97]

Sec. 6.401. Public Property. No person shall deposit any garbage, refuse, litter, broken glass or other dangerous pointed or edged substance or material, foul noxious or offensive substance or material, grass clippings, leaves or other waste material of any kind in or upon any public street, highway, road, alley or other public place or property, except where placed in containers intended for receiving such material or where placed for removal in accordance with the applicable policy of the City of Essexville.

Sec. 6.402. [Originally adopted October 14, 1980 and effective October 21, 1980; Sec. 6.402 was repealed by Council action adopted April 12, 1984 and effective April 28, 1984]

Sec. 6.403. Penalties. Any person, firm or corporation violating any provision of this ordinance shall upon conviction thereof be punished by fine of not more than five hundred ($500.00) dollars or by imprisonment in the County Jail for not more than 90 days or by both such fine and imprisonment, within the discretion of the Court.

Sec. 6.404. Effective Date. This ordinance shall become effective on the 21st day of October, 1980.

Sec. 6.405 – 6.500 Reserved

[97] This Chapter adopted October 14, 1980, effective October 21, 1980.

# TITLE VI: HEALTH REGULATIONS

## CHAPTER 5

## HAZARDOUS MATERIAL INCIDENTS AND REMOVAL [98]

Sec. 6.501. Purpose. The purpose of this ordinance is to create penalties and to enable the City to require reimbursement from those responsible for the leaking, spilling, or otherwise allowing of certain dangerous or hazardous substances or materials to escape containment, whether located on public or private property which requires cleanup and disposal of such substances or materials by the City or its agents.

Sec. 6.502. Definitions. The following definitions shall apply to the language contained in this chapter:

A. “HAZARDOUS MATERIALS": is defined as and including, but not limited to, a chemical that is a combustible liquid, a flammable gas, explosive, flammable, organic peroxide, and oxidizer, pyrophoric, unstable reactive or water reactive.

B. "RESPONSIBLE PARTY": any individual, firm, corporation, association, partnership, commercial entity, consortium, joint venture, government entity or any other legal entity that is responsible for a release of a hazardous material, either actual or threatened, or is an owner, tenant, occupant or party in control of property unto which or from such hazardous materials was released, whether or not such material emulated to surrounding property.

C. "RELEASE": shall be defined as any spilling, leaching, pumping, pouring, emitting, discharging, injecting, leaching, dumping or disposing of a hazardous material into the environment, whether or not such release initially begins or is contained on public or private property.

Sec. 6.503. Duty to Remove and Clean-up. It shall be the duty of any responsible party as defined in Sec. 6.502, B, to immediately remove any released dangerous or hazardous substance and to clean up the area of spillage, leakage, or other release of substances in such manner that the area involved is fully restored to its condition before such happening, whether on public or private property.

Sec. 6.504. Failure to Remove and Clean-up. Any responsible party which fails to immediately comply with this duty to clean up or remove a hazardous or dangerous substance, as set forth in Sec. 6.502 above shall be guilty of a misdemeanor and each day that such hazardous or dangerous substance is not completely cleaned up or removed, shall constitute a separate and individual violation.

Sec. 6.505. Reimbursement for Costs and Expenses. The responsible party shall be liable to the City for any response required by the City, which in its judgment, was necessary to a hazardous or dangerous material release, whether occurring on public or private property, and shall include but shall not necessarily be limited to the following: Actual labor costs of the City personnel, including workers compensation benefits, fringe benefits, administrative overhead; cost of equipment operation; cost of materials obtained directly by the City for use of a clean up; and the cost of any contractor labor or materials

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[98] This Chapter adopted January 14, 1999, effective March 9, 1999.

necessary. Cost under this section shall not be deemed to include actual fire suppression services, which are normally or usually provided by the City unrelated to a hazardous or dangerous material release.

Sec. 6.506. Billing Procedures. Following the conclusion of the hazardous material incident, the Director of Public Safety shall submit a detailed listing of all known expenses to the City Treasurer, who shall prepare an invoice to the responsible party for payment. The Treasurer's invoice shall demand full payment within thirty (30) days of receipt of the bill. Any additional expenses that become known to the Director of Public Safety following the transmittal of the bill to the responsible party shall be billed in the same manner on a subsequent bill to the responsible party. For any amounts due that remain unpaid after thirty (30) days, the City shall impose a late charge of one percent (1 %) per month, or fraction thereof.

Sec. 6.507. Lien. Such costs if unpaid shall be a lien against any real property, which was the location of any clean up by the City. The owner or party in interest in whose name the property appeared upon the last local tax assessment records shall be notified of the amount of such cost by first-class mail at the address shown on the records. If he or she fails to pay the same within thirty (30) days after mailing by the Treasurer of the notice of the amount thereof, the Treasurer and City Assessor shall add the same to the next tax roll of the city and the same shall be collected in the same manner in all respects as provided by law for the collection of taxes. The City shall also have the right to bring in action in any appropriate court against each responsible party to collect such costs if it deemed such action to be necessary or desirable.

Sec. 6.508 – 6.600 Reserved

# TITLE VI: HEALTH REGULATIONS

## CHAPTER 6

## PROPERTY MAINTENANCE [99]

Sec. 6.601. Definitions.

In this interpretation of this Chapter, the following definitions shall apply:

(1) *Commercial premises* is any building or other structure, designed or used, either wholly or in part, for commercial purposes, whether inhabited or temporarily or continuously uninhabited or vacant, and shall include any yard, ground, walk, driveway, porch, steps, vestibule or mailbox belonging or appurtenant to such building or other structure.

(2) *Face Cord of Wood* is defined as a quantity of wood being 4 feet high, 8 feet long, and 16 inches wide, its equivalent square footage of coverage.

(3) *Front Yard* is the required front open space on any private premise as defined by Sec 2.7 and Sec 7.8 of Zoning Ordinance of the City of Essexville and related sections.

(4) *Garbage* is putrescible animal and vegetable wastes resulting from the handling, preparation, cooking, and consumption of food.

(5) *Junk* is any motor vehicles, machinery, appliances, product, merchandise with parts missing, or scrap metals or other scrap materials that are damaged, deteriorated, or in a condition which cannot be used for the purpose for which the product was manufactured.

(6) *Litter* is “garbage,” “junk,” “refuse” and “rubbish” as defined herein and all other waste material which, if thrown or deposited as herein prohibited, tends to create a danger to public health, safety and welfare.

(7) *Outside Storage* is the keeping of any object upon private property, which is not fully enclosed in a structure or behind a screening fence and stored at a height less than the fence, for a period of more than 48 hours during any one-year period.

(8) *Private Premises* is any dwelling, house, building, or other structure, designed or used either wholly or in part for private residential purposes, whether inhabited or temporarily or continuously uninhabited or vacant, and shall include any yard, grounds, walk, driveway, porch, steps, vestibule or mailbox belonging or appurtenant to such dwelling, house, building, or other structure.

(9) *Private Property* is any commercial premise, private premise, or any other real property located within the City, which is not owned by the City of Essexville or the State of Michigan.

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[99] This Chapter adopted by Ordinance No. 2004-02 on August 10, 2004, effective August 25, 2004.

(10) *Rear Yard* is the required rear open space on any private premise as defined by Sec 2.7 and Sec 7.11 of Zoning Ordinance of the City of Essexville and related sections.

(11) *Refuse* is all putrescible and nonputrescible solid wastes (except body wastes), including garbage, rubbish, ashes, street cleanings, dead animals, abandoned vehicles, and solid market and industrial wastes.

(12) *Rubbish* is nonputrescible solid wastes consisting of both combustible and noncombustible wastes, such as paper, wrappings, cigarettes, cardboard, tin cans, yard clippings, leaves, wood, glass, bedding, crockery, and similar materials.

(13) *Side Yard* is the required side open space on any private premise as defined by Sec 2.7 and Sec 7.10 of Zoning Ordinance of the City of Essexville and related sections.

Sec. 6.602. Litter on Private Property.

No person shall throw or deposit litter on any private property within the City, whether owned by such person or not, except that the owner or person in control of private property may maintain authorized private receptacles for collection in such a manner that litter will be prevented from being carried or deposited by the elements upon any street, sidewalk, or other public place or upon private property.

Sec. 6.603. Owner to Maintain Premises Free of Litter.

The owner and/or person in control of any private property shall at all times maintain the premises free of litter. Provided, however, that this Section shall not prohibit the storage of litter in authorized private receptacles for collection.

Sec. 6.604. Litter on Vacant Lots.

No person shall throw or deposit litter upon any open or vacant private property within the City whether owned by such person or not.

Sec. 6.605. Use of Yard Spaces and Other Open Areas not to be Used for Junk Storage.

No machinery, equipment, vehicles, lumber piles, crates, boxes, building blocks or other similar materials either discarded, unsightly or showing evidence of a need for repairs, with or without a current license, including that defined as junk in this Chapter, shall be placed, stored, parked, abandoned or junked in any open area that is visible from the street, public place or adjoining residential property for longer than seven days. If the above items are permitted to be placed, stored, parked, abandoned or junked in such area, the building inspector shall give written notice to the owner of the premises on which such item is stored and/or to the owner of the stored item to remove, or cause to be removed such item within 48 hours after giving of such notice. Failure to comply with such notice within 48 hours shall constitute a violation of this chapter. The above notwithstanding, the City Manager may, upon investigation, issue a letter to the owner or owners authorizing a grace period not to exceed 30 days. This section does not apply to storage of building materials for on-site construction purposes.

Sec. 6.606. Prohibition Against Front Yard Storage.

Front yard storage of any objects whatsoever for any period of time longer than 24 hours in a one-year period is prohibited except for vehicles that are legally parked and that are not otherwise in violation any other provision of the Code.

Sec. 6.607. Prohibition Against Excess Storage of Objects.

(1) Objects, whether or not considered junk or litter under this Chapter, shall be stored in the rear or side lots of private property when outside storage of such objects would exceed 35% of the vacant square footage of such rear lots and side lot areas separately measured.

(2) Outside storage of certain materials is further regulated as follows:

(a) No more than six (6) face cords of wood may be stored on any private property, no matter the square footage of such property except when the wood is stored completely inside of a building or when the wood is stored completely behind a screened fence or enclosure. All wood stored on property of any type shall be neatly and tightly stacked so as to minimize crevices for which vermin such as mice and rats may harbor themselves.

(b) No building materials, commercial materials, furniture, car parts, recreational vehicle parts, lawn mower parts for more than two lawn mowers, or any other product may be stored upon private premises if such property or materials is part of any business or is intended for resale to any other person.

(3) No compost of decaying vegetation or other material, including animal waste, shall be stored upon any property that shall cause an odor or smell of any type to be discernable upon adjoining or other lands.

Sec. 6.608. Property Nuisances Prohibited.

The following conditions are declared a public nuisance on properties set forth in this Article:

(1) Ragweed, poison ivy, poison sumac, poison oak and similar plants.

(2) Grass, weeds and undergrowth higher than six (6) inches.

(3) Stagnant or unsanitary water.

(4) Garbage, excrement or other unwholesome, deleterious, or offensive thing or substance.

(5) Dead trees deemed hazardous to the public or to adjacent property.

(6) Trash, rubbish, rubble, brush, used materials or discarded items of little or no value.

(7) Accumulated litter and junk as defined by this Chapter.

(8) The accumulation of any personal property located in greater amounts or in a greater percentage of coverage of private premises or in locations on private premises prohibited by this Chapter.

(9) The outside storage of a refrigerator, an airtight container, a tank with an open access hole and any other contrivance, which encloses or partially encloses a space.

Sec. 6.609. Misdemeanor.

Any violation of the Sections 6.601 through 6.609 of this Chapter, with or without notice by the City of such violation shall cause the owner and/or the occupants of the property to be guilty of a misdemeanor for which the maximum penalty shall be up to 90 days in jail and/or up to a $500.00 fine. Each successive day that such violation continues to exist shall be considered a separate violation.

Sec. 6.610. Abatement of Violations by the City and charges of the cost to property owners after Notice to Abate.

Whether or not criminal charges have been filed against property owners, and/or occupants of property, if the City determines to abate violations of this Chapter, by removal of such violations, it shall first issue a Notice to Abate to the owner(s) of the real property shown as the taxpayer on the City Assessor's records. The Notice shall be served by First Class Mail to the address shown on the Assessor's records and to the owners and/or any occupants of the property at the property's mailing address, if any, where the violation is occurring. The Notice to Abate shall inform the owner(s):

(1) Of the nature of the violation.

(2) Of the time within which the violation must be abated, being not less than three (3) days nor more than fifteen (15) days from the date of Notice unless such violation constitutes a fire or health hazard for which a shorter time period of removal may be required.

(3) That the City may act to abate the violation if it is not abated by the owner.

(4) That the cost of abatement by the City, plus an administrative fee, shall be a personal debt of the owner, which may be assessed as a lien against the property until paid.

(5) That if the violation is not abated within the time required, the owner and/or occupants of the property may be charged with a misdemeanor, in addition to any, which are already pending, in which the maximum penalty is up to ninety (90) days in jail and/or up to a $500.00 fine. Each successive day that such violation continues to exist shall be considered a separate violation.

Sec. 6.611. Appeal from Notice to Abate.

Any property owner and/or occupants of property, which is the subject of a Notice to Abate, shall have a right to appeal such notice if done within the time allotted for abatement contained in the notice. Appeals shall be in writing and shall contain a complete statement of the grounds for appeal. The appeal must be filed with the City Clerk with an appeal fee approved by the City Council by resolution on file with the City Clerk and within the time period allowed for abatement in the Notice to Abate.

(1) Within ten days of the receipt by the City Clerk of such an appeal, the clerk shall schedule an appeal hearing. Unless waived by the appellant(s), the clerk shall mail by first-class mail a written notice to the appellant(s) of the time and location

of the appeal hearing at least five days prior to the hearing. The appeal shall be an informal hearing held before a hearing panel consisting of:

(a) The City Manager or his or her designee;

(b) The affected department head or his or her designee, or there is no City Department affected, the Director of Public Safety or his or her designee; and

(c) The City Clerk or his or her designee.

(2) The decision of the hearing panel shall be reached by majority vote and mailed to the appellant within seven days of the conclusion of the hearing. The decision shall include:

(a) The appeal application and the type and nature of the appeal;

(b) The applicant's position;

(c) The original reason for issuance of the written order;

(d) The facts as the hearing panel determined them to be;

(e) The decision of the hearing panel;

(f) The hearing panel's rationale or basis for the decision;

(g) The due date by which the violation must be removed; and

(h) The date when the decision was placed in a United States mail receptacle by the City Clerk.

(3) The hearing panel shall have no authority to issue any form of variance from the requirements of this Chapter and its decision shall be final.

Sec. 6.612. <u>Owner Responsible for Removal and City action upon failure to do so</u>.

(1) Upon the failure of a property owner to abate a violation as ordered in a Notice to Abate, the City shall order a vendor or other authorized provider to abate the cited conditions and shall the property owner to pay for such service when completed properly. The City may also prosecute any owner or occupant who refuses access to the cited property for the purposes of abatement.

(2) Upon the removal by the City of any refuse as provided for herein, the property owner shall, in addition to other remedies provided for in this Code, be responsible for all City costs and fees.

(3) City costs and fees shall include, but not limited to:

(a) The cost of removal and disposal of the refuse or solid waste, and

(b) An administrative fee as provided for in Section 6.613 of this Chapter to pay for the City's administrative costs.

(4) When the City has collected and disposed of refuse pursuant to this section, the costs and fees established by this section shall be billed to the property owner. The costs and fees so billed shall be a personal debt of the owner to the City and may be collected in a civil action against the owner. The costs and fees so billed for the abatement of this nuisance shall also constitute a lien against the property and may be so assessed and collected as provided for in the City Charter.

Sec. 6.613. Administrative Fees.

The following administrative fees shall be billed to the property owner for the following circumstances:

(1) Actual cost to the City to abate the cited nuisance plus a 15% administrative fee when the City has ordered and paid for abatement of a cited nuisance or when a vendor whom the City has ordered to abate a cited nuisance has been denied entry to a property.

(2) Actual cost to the City to abate the cited nuisance plus a 15% administrative fee when the City has ordered and paid for towing of a vehicle from a property.

Sec. 6.614 – 6.700 Reserved

# TITLE VII: BUSINESS AND TRADES

## CHAPTER 1

## SOLICITORS AND PEDDLERS

Sec. 7.101. License Required. It shall be unlawful for any solicitor, canvasser or peddler, as defined in this chapter, to engage in such business in the City of Essexville without first having obtained a license therefor.

Sec. 7.102. Definitions.

(1) The term Solicitor or Canvasser is defined as any individual traveling either by foot, wagon, automobile, motor truck, or any other type of conveyance, from place to place, from house to house, or from street to street, taking or attempting to take orders for the sale of goods, wares, merchandise, or personal property of any nature whatsoever, for future delivery, or for services to be furnished or performed in the future, whether or not such individual has, carries, or exposes for such sale a sample of the subject of such sale, or whether he is collecting advance payments on sale or not.

(2) The term Peddler as used herein shall include any person, whether a resident of the City of Essexville, Michigan, or not, traveling by foot, wagon, automotive vehicle, or any other type of conveyance, from place to place, from house to house, from street to street, carrying, conveying, or transporting goods, wares, merchandise, baked goods, fruits or vegetables, offering, exposing the same for sale or making and delivering articles to purchasers.

Sec. 7.103. Exemptions. The following classes of solicitors, canvassers, and peddlers shall be exempted from the payment of fees:

(1) Those engaged in interstate commerce.

(2) Those selling only products produced, grown, or manufactured by their own labor. This exemption does not apply to makers of baked goods.

(3) Those representing retail or wholesale establishments which have engaged in the business in the City of Essexville three (3) months or longer.

(4)Those representing charitable or non-profit organizations.

Sec. 7.104. Written Application Required. Each person desiring to obtain a license to engage in business as a solicitor, canvasser or peddler shall make written application therefor to the City Clerk on a form furnished by said Clerk.

The application for license required herein shall contain the following items together with such additional information as the City Clerk may require. If any of the information given is found to be false, the applicant's license will be denied or revoked immediately.

(1) The full name, age, permanent residence, and local address (if other than the foregoing) of the applicant.

(2) The name of the firm or corporation represented, if any, together with the address of the central or district office of such firm or corporation.

(3) The address or location of the place within the City of which the applicant proposes to engage in business.

(4) A list or general description of the goods, wares, or merchandise to be sold or offered for sale.

(5) The length of time for which the license is desired.

(6) Whether the applicant has held a solicitor's, canvasser's, or peddler's license from the City or has applied for such license previous to the present application, together with the years in which such previous licenses were held or applications were made.

(7) The place or places, other than the permanent place of business of the applicant, where the applicant has conducted business during the previous six (6) months.

(8) A photograph of the applicant taken within sixty (60) days immediately prior to the date of filing of the application, which picture shall be two inches by two inches (2" x 2") showing the head and shoulders of the applicant in a clear and identifiable manner.

(9) The fingerprints of the applicant.

(10) A statement of any convictions of the applicant of any crime or misdemeanor or violation of any City ordinance, the nature of the offense and the punishment or penalty assessed therefor.

(11) The affidavit of the applicant to the truth of the statements contained in the application signed by the applicant.

Sec. 7.105. Weights and Measures. If the business of the applicant shall require the use of weighing or measuring devices, the application shall be accompanied by a certificate from the Sealer of Weights and Measures stating that said devices have been examined and approved.

Sec. 7.106. License Fee and Bond.

(1) Fees, Bonds, and Recovery for Damages Under Bond.[100] For each license issued under this chapter, the applicant shall pay such fees as determined periodically and approved by a resolution of the City Council. Applicants shall also deposit with the City Clerk the sum of five hundred dollars ($500.00) as a cash bond, or shall file a surety company bond in a like amount. Such cash bond or surety bond shall be conditioned for the faithful performance of his promises and contracts made during his course of business as a solicitor or peddler within the City of Essexville and for compliance with all ordinances of such City.

Said bonds shall further provide that any person injured by the breach of any obligation which a bond is given to secure may sue upon such bond in his own name in any court of competent jurisdiction to recover any damages such person may have sustained by such breach and shall be for a term of not less than six (6) months.

(2) Disposition of Bond. Deposits of money or bonds made with the City Clerk as required by the provisions of this chapter shall be subject to the claims of creditors in all

[100] This Section amended by Ordinance No. 2004-03 adopted August 10, 2004, effective August 26, 2004.

cases where a judgment has been obtained against such solicitor or peddler and the date for the appeal of the judgment has expired. In such cases garnishment proceedings may be commenced against the City Clerk. It shall be the duty of the City Clerk to remit to any court any balance of the cash deposit remaining in his hands not exceeding the amount of the judgment for the purpose of satisfying the same. Any balance of the cash deposit remaining in the hands of the City Clerk for a period of six (6) months after the expiration of said license shall be remitted to said solicitor or peddler.

(3) Expiration of License. Any license issued under the provisions of this chapter shall expire and be void as soon as the amount of the bond filed with the City Clerk as provided herein shall have been diminished or used in whole or in part because of suits as hereinbefore provided.

Sec. 7.107. Investigation of Applicant.[101] On receipt of such application together with the appropriate fee, the City Clerk shall make such investigation as he deems necessary for the protection of the public good. If as a result of such investigation the applicant is found to have been convicted of a violation of the statutes or ordinances of any state, city, village or township, or the federal government, or is under investigation on charges of consumer fraud, the application shall be denied. If the application is denied, the City Clerk shall refund the license fee less an amount determined periodically and approved by a resolution of the City Council such amount retained by the City to reimburse its cost of processing the application and conducting the investigation.

Sec. 7.108. License to Minors. No license shall be issued to a person under eighteen (18) years of age except that this limitation shall not apply to "street trades" as the term is defined in Act 157 of 1947, (M.S.A. 17.728, Sec. 28) of the Statutes of the State of Michigan, as amended.

Sec. 7.109. Acceptance of License. Each licensee, upon receipt of said license, in the presence of the City Clerk shall affix his signature thereon, accepting the license and all conditions of its use as stated in this chapter, respecting the use of said license, and agreeing to the suspension and revocation of said license, should any of the conditions be violated.

Sec. 7.110. Regulations. The following conditions and regulations shall apply to the exercise of privileges granted by licenses issued under the provisions of this chapter, in addition to those set forth elsewhere in this Code:

(1) Weights and Measures. No licensee shall use any weighing or measuring device in the conduct of his business, or have in his possession any weighing or measuring device, unless said device shall have been examined and approved by the Sealer of Weights and Measures.

(2) No licensee shall sell or offer for sale any article or commodity purporting to be in quantities of standard weight or measure, whether an original or other packages or not, unless the same shall be actually of the weight or measure purported.

(3) Defective Merchandise. No licensee shall sell or offer for sale any unsound or unripe or unwholesome food, or a defective, faulty, incomplete or deteriorated article of merchandise, unless the goods are so represented to the prospective customers.

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[101] This Section amended by Ordinance No. 2004-03 adopted August 10, 2004, effective August 26, 2004.

(4) Vehicle Tags. Every vehicle used for peddling or vending shall have a tag attached to each side thereof, bearing the same number as the license issued to the owner, said tag to be furnished by the City Clerk and to be marked "Peddler's License". Every owner licensed to sell or vend from a vehicle or vehicles, shall be entitled to one (1) helper to each vehicle.

(5) Inspection of Merchandise. The City Clerk may require that the goods, wares, and merchandise of any applicant for a license hereunder be inspected by the Director of the Department of Public Safety or any inspector of the Department designated by the Director to act for him, before issuing a license under the terms of this chapter. The City Clerk shall refuse a license to any applicant, and may revoke any license issued hereunder where the goods, wares or merchandise are found to be a fire hazard by the inspecting official.

(6) Compliance With Traffic Rules. Persons peddling or vending goods from a vehicle shall comply with the traffic and parking provisions of the City Code relative to vehicles and no vehicles shall be allowed to remain standing at one place on any of the streets, alleys, or public places for a longer period than ten (10) minutes at any one block while being used for peddling or vending purposes.

(7) This license shall be worn in full view on the person to whom issued, whenever he is actively engaged in soliciting or peddling.

Sec. 7.111. Effect of Revocation. No person whose license has been revoked shall be eligible for another such license for a period of one (1) year from and after the date of such revocation and in the event of revocation, the license fee shall not be refunded.

Sec. 7.112. Expiration of License. All licenses issued under the provisions of this chapter shall expire six (6) months from and after the date of issue, or sooner if the license so provides, and all licenses must thereafter be renewed by compliance with the provisions of this chapter.

Sec. 7.113.[102] Violations and penalties. Whosoever violates any of the provisions of this Chapter shall be guilty of a civil infraction and subject to a civil penalty of a Class D infraction as described in Section 1.608 of this Code of Ordinances. A separate violation shall be deemed to have been committed each day during which a violation occurs and continues to occur.

Sec. 7.114 - 7.200. Reserved.

[102] This Section added by Ordinance No. 2012-7, adopted June 12, 2012, effective June 27, 2012.

# TITLE VII: BUSINESS AND TRADES

## CHAPTER 2

## TAXICABS

*This Chapter was repealed by Ordinance No. 2004-03 said ordinance adopted by the City Council on August 10, 2004, effective August 26, 2004.*

Sec. 7.201 - 7.300 Reserved.

# TITLE VII: BUSINESS AND TRADES

## CHAPTER 3

## TAXICABS, VEHICLE LICENSE

*This Chapter was repealed by Ordinance No. 2004-3 said ordinance adopted by the City Council on August 10, 2004 and effective August 26, 2004.*

Sec. 7.301 – 7.400 Reserved

# TITLE VII: BUSINESS AND TRADES

## CHAPTER 4

## PLACES OF AMUSEMENT [103]

Sec. 7.401. Definitions:

(1) Place of Amusement shall be defined as any place where five (5) or more amusement devices are maintained or operated, except taverns, bars, or other places licensed by the Michigan Liquor control Commission.

(2) Amusement Devices shall be defined as any machine, electronic or mechanical device which, upon insertion of a coin, token, slug, disc or plate may be operated by the public generally for use as a game, or contest of any description, or for entertainment or amusement of any description.

Sec. 7.402. License.

(1) No person shall conduct, maintain, display for use, operate or engage in business as owner, operator, agent, employee or in any other capacity in any establishment or place of business within the city where more than five (5) coin operated games and/or amusement devices are located therein without having secured a license to do so.

(2) Before any license under this section shall be granted, application therefore shall be made to he City Council in writing on a form available from the City Clerk's office. The application shall state the name, age and address of the person or persons or firm, company or corporation. It shall state where the business is to be operated, the zoning of the property or which it is to be operated, the name and address and age of the person in charge or to operate the business, and the number and description of devices the applicant intends to operate. Upon filing of the application herein described, the same shall be referred to the Director of Public Safety, building inspector (including plumbing and electrical inspectors). These departments are to report to same said commission with their recommendations, If, after investigation, the City Council shall determine that the applicant has complied with all of the requirements of this article, then the City Council shall authorize the City Clerk to issue the applicant a license.

(3) [104]The annual license fee for the operation of a place of amusement shall be determined periodically and approved by a resolution of the City Council. The applicant shall pay the annual license fee at the time of application. All licenses shall expire at midnight on June 30 of each year. Persons wishing to continue operating a place of amusement must submit an application for a license each year.

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[103] This Chapter adopted March 12, 1981, effective March 27, 1981.
[104] This Section amended by Ordinance No. 2004-03 adopted August 10, 2004, effective August 26, 2004.

Sec. 7.403. Hours of Operation:

(1) Any person licensed by the city for operation or maintaining a "place of amusement" within the corporate limits of the city is hereby restricted to the playing of any amusement therein or thereon between the hours of 3:00 P.M. and 9:00 P.M. each day except Friday and Saturday when the hours shall be extended to 10:00 P.M. Saturday opening may be earlier in the day. Upon application or petition from the licensee, the City Council may suspend these restrictions on hours of operation for days that city schools are not in session. During all other hours, no persons other than the licensee or his agent shall be allowed in said place of amusement. The licensee or his agent shall be responsible for keeping the hours as set forth herein and may be penalized as provided for herein if he fails to do so.

(2) No operator shall install or permit the use of a mechanical or electronic amusement device which contains an automatic pay-off device for the return of slugs, money, coins, checks, tokens, discs or plated.

(3) No person under the age of seventeen (17) years, unless accompanied by a parent or guardian, shall play or operate any mechanical or electronic amusement device. No person, agent, or operator in charge of said premises upon which an amusement device may be situated shall permit any person under seventeen (17) years of age to play or operate any such amusement device unless accompanied by parent or guardian.

(4) Nothing in this section shall in any way be construed to authorize, license, or permit any gambling device whatsoever.

(5) The owner, his agent, operator or person in control of the premises shall have reached the age of twenty-one (21) years of age and shall be inside the premises at all times of operation. There shall be no loitering on said premises, nor around said premises, and the conduct of said business shall in no way nor manner disturb, destroy or disrupt any surrounding establishment, business or dwelling.

(6) Any license issued under the provisions of this article may be revoked by the City Council at any time that the City Council may deem or determine that the holder of the license has failed to comply with the requirements of this article or any other ordinances pertinent to the operation of business establishments. Revocation shall be accomplished by a hearing held before the City Council upon a written complaint duly verified by one having knowledge of the facts upon which the complaint is based and by issuance of an order to show cause from the City Council directed to the licensee by certified mail and served upon the licensee along with a copy of said written complaint at least five (5) days before the date of hearing of the order requiring the licensee to show cause before the City Council in the City Hall at any hour therein designated, why the license should not be revoked. Any order revoking a license issued under this article shall be accompanied by written findings supporting such revocation.

Sec. 7.404.[105] Violations and penalties. Whosoever violates any of the provisions of this Chapter shall be guilty of a civil infraction and subject to a civil penalty of a Class D infraction as described in Section 1.608 of this Code of Ordinances. A separate violation shall be deemed to have been committed each day during which a violation occurs and continues to occur.

Sec. 7.405 – 7.500 Reserved

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[105] This Section added by Ordinance No. 2012-7, adopted June 12, 2012, effective June 27, 2012.

# TITLE VII: BUSINESS AND TRADES

## CHAPTER 5

## MEDICAL MARIHUANA DISPENSARY LICENSE [106]

Sec. 7.501. Purpose.

The purpose of this chapter is to establish standards and procedures for the review and input of the City of Essexville on the issuance, renewal and/or revocation of medical marihuana licenses for medical marihuana dispensaries in order to:

(1) Serve and protect the health, safety and welfare of the general public;

(2) Establish a set of rules and regulations which are fair and equitable for those interested in establishing medical marihuana dispensaries.

(3) To provide reasonable regulation pursuant to the City's general police power granted to cities by the Michigan Constitution of 1963 and the Home Rule City Act, MCL §117.1 et.seq., as amended.

Sec. 7.502. Definitions.

All words and terms used in this chapter shall have the same meaning as those defined in Section 2.8 of the Essexville Zoning Ordinance and include *Drug paraphernalia, Greenhouse, Marihuana , Marijuana, Cannabis, Medical Use of Marihuana, Primary Caregiver,, Qualifying Patient, and Medical Marihuana Dispensary.* Any term defined in the Michigan Medical Marihuana Act, Initiated law 1 of 2008, MCL §333.26243a *et seq.* but not defined herein shall have the definition as stated in said Act.

Sec. 7-503. Adoption of state rules and regulations.

All activities related to medical marihuana shall be in compliance with the General rules of the Michigan Department of Community Health and the Michigan Medical Marihuana Act, Initiated law 1 of 2008, MCL §333.26243a *et seq* (hereafter called the Michigan Medical Marihuana Act).

Sec. 7.504. License required.

(1) No person shall own or operate a medical marihuana dispensary in the City without first applying for and receiving a license from the city clerk's office.

(2) Any medical marihuana dispensary opened prior to the adoption of this ordinance must file for a license within thirty (30) days of the adoption of this ordinance.

(3) All activities of licensed medical marihuana primary caregivers as defined by the Michigan Marihuana Act shall be considered to be operating a medical marihuana dispensary, which shall require a license to operate with the city.

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[106] This Chapter added by Ordinance No. 2011-02 adopted May 10, 2011, effective May 25, 2011.

(4) Licenses shall only be issued to operate medical marihuana dispensaries at the specific locations allowed by the city zoning ordinance and shall not be issued for use as a home occupation in a residential zoning district or any other area of the city.

(5) Licenses are non-transferrable and shall only apply to the person listed on the license at the address listed on the application.

(6) Medical marihuana dispensary licenses shall be valid for a period of one year, from January 1 to December 31 of each year.

(7) A license shall be issued or renewed upon payment of the required fee, the submission of a completed application in compliance with the provisions of this chapter, and compliance with all provisions and requirements of this chapter and the city zoning ordinance. Application to renew a license to operate a medical marihuana dispensary shall be filed at least 30 days prior to the date of expiration. Such renewal shall be as required in the time periods stated in paragraph (4) above and shall be accompanied by the required fee.

(8) Every applicant shall pay a non-refundable fee at the time of the application for an initial or renewal license, which fee shall be set by city council resolution.

(9) The license requirements set forth in this chapter shall be in addition to, and not in lieu of, any other licensing and permitting requirements imposed by any other federal, state, or local law.

(10) The issuance of any license pursuant to this chapter does not create an exception, defense or immunity to any person in regard to any potential criminal liability the person may have for the production, distribution or possession of marihuana.

Sec. 7.505. Application.

(1) An applicant for a license to maintain, operate or conduct a medical marihuana dispensary must be a person who possesses a registry identification card issued as a primary caregiver as defined by the Michigan Medical Marihuana Act and may not be a corporation, partnership, or other legal entity not an individual person as required by said Act.

(2) Application for a Medical Marihuana Dispensary. Every applicant for a license to maintain, operate or conduct a medical marihuana dispensary shall file an application under oath with the city clerk's office upon a form provided by the city, which shall fulfill all of the requirements indicated on the form, including but not limited to:

(a) The name and address of applicant including:

i. Name, age and address of the applicant including proof that the applicant and proposed employees are at least 21 years of age,

ii. Photo identification of the applicant and/or operator's driver's license,

iii. Business occupation or employment of the applicant for the three years immediately preceding the date of the application,

iv. The medical marihuana dispensary history of the applicant; whether such person has had a business license revoked or suspended, the reason therefore, and the business activity or occupation subsequent to such action of suspension or revocation,

v. Proof that the applicant is a primary caregiver in possession of a registry identification card issued under the authority of the Michigan Medical Marihuana Act;

(b) The location and mailing address and all telephone numbers where the business is to be conducted, and the name and address of the owner, if different from the holder of the license, and written evidence of the applicant's right to possession of the premises;

(c) An area map, drawn to scale, indicating within a radius of five hundred feet (500') and one thousand feet (1,000') from the boundaries of the proposed dispensary, the proximity of the site to any school or library, existing dispensary, nursery school, or child care center or possess a clearance from the zoning administrator verifying the proposed use of the location at which the license will be utilized is in compliance with the zoning ordinance;

(d) A statement signed by the applicant that he or she has read and understands the city zoning ordinance requirements relating to medical marihuana dispensaries, will not violate any of the laws of the State of Michigan or the ordinances of the City of Essexville in conducting the business in which the license will be used, and that any false statements in the application or a violation on the premises may be cause for objecting to renewal of the license, or for requesting revocation of the license;

(e) A description of the security plan for the facility, including, but not limited to, any lighting alarms, barriers, recording/monitoring devices, and /or security guard arrangements proposed for the dispensary and premises;

(f) Proof of insurance for fire damage in the amount of the value of the premises and liability insurance with minimum limits of $500,000.00;

(g) A description of the process for tracking medical marihuana quantities and inventory controls including medical marihuana products received from outside sources, as well as caregivers/patients on the premises;

(h) A description of the products and services to be provided by the Dispensary, including retail sales of food and/or beverages, if any, and any related accommodations or facilities;

(i) A floor plan, drawn to scale showing the layout of the dispensary and the principle uses of the floor area depicted therein, including a detailed interior depiction of where any services other than the dispensing of medical marihuana and proposes to occur on the premises;

(j) Detailed description of all marihuana storage facilities;

(k) Description of the process for tracking medical marihuana quantities and inventory controls, including on-site cultivation and processing; and

(l) Detailed description of all medical marihuana storage facilities and equipment including enclosed, locked facilities, if any, as may be required by the Act.

Sec. 7.506. Approval of application.

The City Manager or designee may issue a license for a medical marihuana dispensary if inspections for safety, zoning compliance, criminal history background checks, and all other information available to the city verify that the applicant has submitted a full and complete application, paid the appropriate fee, and has made improvements to the location consistent with the application and is prepared to operate the business in compliance with this code, the city zoning ordinance, and any other applicable law, rule or regulation. The City Manager or designee will deny any application that does not meet the requirements of this chapter or any other applicable law, rule or regulation, or that contains any false or incomplete information.

Sec. 7.507. Conditions necessary.

(1) No license, or renewal of a license, to conduct a medical marihuana dispensary shall be issued unless the city, if it is deemed necessary, confirms by inspection of a premise before the issuance of a license or during its term that the proposed medical marihuana facility complies with all of the following minimum requirements:

(a) Conforms to all provisions of the city building, fire, electrical and health codes;

(b) All provisions of the Essexville zoning ordinance for medical marihuana dispensaries have been fulfilled;

(c) The applicant does not have any felony convictions;

(d) In the case of renewals, the existing facility shall not have experienced an excessive amount of criminal activity on the premises or related to the business of 3 or more calls in any 30 day period;

(2) Any violation of this chapter, the city zoning ordinance, or of the laws of this State or any other State relating to the operation of a medical marihuana dispensary may be considered sufficient grounds for the denial of a license or the suspension or revocation of a license issued pursuant to the provisions of this chapter. These grounds for denial, suspension or revocation of a license provided for in this chapter shall be in addition to other grounds for denial, suspension or revocation of licenses or permits provided for in this chapter.

Sec. 7.508. Non-Renewal or revocation.

The City Manager may choose to not renew or revoke a license based on any of the following:

(1) A failure to meet the conditions or maintain compliance with the standards established by this division in reference to applications for a new license or the renewal of an existing license; or

(2) One or more violations of any city ordinance on the premises; or

(3) Maintenance of a nuisance on the premises; or

(4) A demonstrated history of excessive calls for public safety (police, fire, and EMS) services originating from the premises, being three or more calls in any 30 day period, or

(5) Any of the conditions of Section 7.507 (2) above are found to exist or have occurred.

Sec. 7.509. Appeal Process.

If an applicant or licensee chooses to appeal denial of a license or revocation of a license, the applicant or licensee can enter in a written appeal to the clerk's office, and the matter will go before the city council for a decision at its next regularly scheduled meeting more than seven (7) days after the written appeal is filed with the city clerk.

Sec. 7.510. Violations and penalties.

Whosoever violates any of the provisions of the Chapter shall be guilty of a misdemeanor and subject to a penalty of up to five hundred dollars ($500.00) fine and/or ninety (90) days in jail. A separate violation shall be deemed to have been committed each day during which a violation occurs and continues to occur.

Sec. 7.511 – 7.600 Reserved

**TITLE VII: BUSINESS AND TRADES**

CHAPTER 6

# RENTAL PROPERTIES[107]

Sec. 7.601. Purpose. The purpose of this chapter is to establish standards and procedures for the registration, the issuing of rental permits, and inspection of rental dwelling units within the City for the following purposes:

(1) To serve and protect the health, safety and welfare of the general public;

(2) To ensure that rental unit owners, legal agents, and tenants are informed of and adhere to all applicable code provisions governing the use and maintenance of rental units;

(3) To protect a tenant's right to safe and habitable housing;

(4) To establish standards for obtaining rental permits and inspection of rental units, and the issuance of certificates of compliance of rental units; and

(5) To reduce crime by promoting, conserving, and preserving healthy neighborhoods through the maintenance of housing standards and the reduction of nuisances.

Sec. 7.602. Definitions. For purposes of this chapter, words and phrases shall be construed in accordance with the definitions of this section.

(1) "Business day" means those days upon which the City Hall is open for business. It does not include any Saturday, Sunday, or holidays observed by the City.

(2) "Dwelling" means any structure, yard, or part thereof used for residential purposes, whether occupied or not.

(3) "Dwelling, multiple" means a building or group of buildings on one lot or contiguous lots under common ownership, which has accommodations for and can be legally occupied by two or more families living independently of each other.

[107] This Chapter amended by Ordinance No. 2013-5 adopted December 10, 2013, effective December 25, 2013.

(4) "Dwelling, single-family" means a building, mobile home, or pre-manufactured or precut dwelling structure designed and used for the complete living accommodations of a single family.

(5) "Guest" includes not only those persons invited onto the property by the owner, the owner's legal agent, occupant or other responsible party, but also those individuals that come on to the property and are permitted to remain by the owner, the owner's legal agent, tenant, occupant, or other responsible party. "Permitted to remain" means that the owner, owner's legal agent, tenant, tenant, occupant, or other responsible party did not take action to make the individual leave the premises. There is a rebuttable presumption that a person is a guest where no complaint has been made with the police to remove the person from the property by the owner, owner's legal agent, tenant, occupant, or other responsible party.

(6) "Hard Surface Parking Space" is a parking space for motor vehicles located on a rental property that is a minimum of eight (8) feet by twenty (20) feet in size whose surface is either composed of bituminous asphalt at least two (2) inches thick over a properly prepared stone base or cast in place concrete at least four (4) inches thick having a compressive strength of at least 3000 psi over a properly prepared sand base, both of which types having been constructed in a manner to provide adequate drainage to City drainage structures and not onto adjacent properties. Loose stone or other aggregate of any type shall not be considered a satisfactory substitute and shall not be considered a hard surface.

(7) "Legal agent" includes an attorney if fact under a valid power of attorney, the resident agent, individual partner, or managing member of any business entity, and the local agent, if the owner does not reside in Bay County.

(8) "Nuisance" for the purposes of this chapter includes anything that is a public nuisance under common law, and anything declared a public nuisance in the City ordinances, state, or federal law.

(9) "Owner" is a person who has current legal or equitable title by deed, land contract, life estate or other like interest. It does not include a person with a possessor interest pursuant to a lease with option to purchases, lease to purchase, or any like possessory interest.

(10)"Permittee" is the owner or owners of record of dwelling units located within the City who have obtained a permit from the City to rent or

allow the dwelling unit to be resided in by persons who are not owners of record.

(11)"Relative to the rental dwelling" means the violation(s) provided for in this chapter occurs in, on, or about, the rental dwelling, including its lot and contagious lots under common ownership; or occurs with 500 feet of the rental dwelling and committed by a tenant of the rental dwelling, or their guest".

(12)"Roomer" means any person not a member of the a property owner's single family who stays on or at a premise more than seven days in any one month period regardless if that person is paying rent or providing any other compensation to the owner.

(13)[108]"Single Family or Family" is an individual or group of individuals occupying the same dwelling unit as a single housekeeping unit related by blood or marriage to the owner or renter of a dwelling unit by being either his or her spouse, parents, grandparents, great-grandparents, children, grandchildren, great-grandchildren, current in-laws, brothers, sisters, or legal wards and including not more than a total of two other persons not so related. A single family or family unit does not include any society, club, fraternity, sorority, association, lodge, organization or group of individuals."

Sec. 7.603. Types of Rental Permits; Conditions; Standard Terms, Contents.

(1) Types of Rental Permits. There shall be three types of rental permits:

(a) Regular rental permit. A regular rental permit is issued when there is compliance with all requirements of the Housing Code.

(b) Temporary rental permit. If the City fails to complete its requirements as provided for in Section 6.609, a temporary rental permit shall be issued. The temporary permit shall only remain in effect until the City completes its review process.

(c) Conditional rental permit. A conditional rental permit may be issued to an applicant when there are one or more violations of the Housing Code or other City ordinance that can be corrected, none of which pose a hazard to the health or safety

[108] This Sub Section amended by Ordinance No. 2014-2, adopted June 10, 2014, effective June 25, 2014.

of a tenant or the public. Conditional rental permits shall not be issued allowing applicants time to make the property conform to the hard surface parking space requirements or other requirements of this Chapter for a time period of longer than six months and shall not be extended in time, renewed, or reissued thereafter.

(2) Conditions Which May be Placed on a Conditional Rental Permit. A conditional rental permit will contain one or more of the following conditions based upon the information contained in the rental permit application process documentation:

(a) That corrective work be completed by a certain date, as evidenced by a certificate of completion issued by the Code Compliance Department or other City department or the permit expires on that date.

(b) That neither the permittee, the permittee's legal agent, a tenant, occupant, or other person violate a City ordinance on the part of the permittee or the permittee's legal agent for a violation of the City's housing code, zoning ordinance, or junk vehicle ordinance, regarding the property which is the subject of the rental permit or the permit expires on the date the order is entered.

(c) That the permittee take those actions, as allowed by law, against the tenants, occupants, or the guests of either, whose conduct has resulted in those conditions described in Section 6.616 (5) (c).

(3) Terms to Which all Rental Permits are Subject. All rental permits are granted subject to the following:

(a) Rental permits are not transferable, nor may they be used in any way as security or collateral for any transaction;

(b) The owner and/or legal agent, if any, shall notify the City Clerk, in writing, of any change in ownership, name of ownership entity, mailing address or telephone number of the owner and/or ownership entity, within ten business days of the date of the change.

(c) The owner shall notify the City Clerk, in writing, of any change in their designated legal agent, including the name, date of birth (or in the case of a corporation, the corporate ID number), mailing address, and telephone number within ten business days of the date of the change.

(d) The owner shall not permit any charges, taxes, fees, fines, and costs incurred by the owner relative to the rental dwelling, to become delinquent.

(4) Contents of Permit. The permit, when issued, shall contain the following information:

(a) The address of the rental dwelling or rental unit for which the permit is issued;

(b) The type and class of permit issued;

(c) Any conditions on the permit;

(d) The name, address, and telephone number of the permittee and the permittee's legal agent, if any; and

(e) The expiration date of the permit.

Sec. 7.604. Classes of Rental Permits; Conditions; Standard Terms, Contents.

(1) Classes of Rental Permits. There shall be three classes of rental permits and the requirements for each, not being part of the City zoning ordinance, shall not be subject to the issuance of a variance by any appeal or petition to the City Zoning Board or any City officer, board, agency, or department:

(a) Class 1 Rental Permit – Single Family Dwelling. A Class 1 rental permit shall be issued to rented properties classified or zoned as single family dwelling places not occupied by any owner of the property and when it and its occupants are in compliance with all the requirements and stays in compliance with the requirements of this Chapter, the City housing code, building code, zoning ordinance, all other City ordinances, and the following specific requirements:

(1) The rental property may only be occupied by single families as defined by this Chapter and two additional unrelated persons so long as all persons residing on the premises do not exceed the space occupancy requirements of the City housing code.

(2) A hard surface parking space of the dimensions and surface construction as defined in this chapter shall be provided for parking of any motor vehicle owned or registered to any occupant or guest on the property residing on the property over night for more than two nights in any one month period.

(b) Class 2 Rental Permit – Multiple Family Dwellings. A Class 2 rental permit shall be issued to rented properties where the property has units designed for more than a single family occupying the premises and when it and its occupants are in compliance with all the requirements and stays in compliance with the requirements of this Chapter, the City housing code, building code, zoning ordinance, all other City ordinances, and the following specific requirements:

(1) Each rental unit may only be occupied by single families as defined by this chapter and two additional unrelated persons so long as all persons residing on the premises do not exceed the space occupancy requirements of the City housing code.

(2) A hard surface parking space of the dimensions and surface construction as defined in this chapter shall be provided for parking of any motor vehicle owned or registered to any occupant or guest on the property residing on the property over night for more than two nights in any one month period.

(3) Each multiple family dwelling unit shall have an electrical and water shutoff and meter completely separate from the other dwelling units on the premises and if the water shutoffs are not located on City easements adjacent to the premises, receipt of

a rental permit by the property owner shall constitute permission to the City, its agents, or employees to enter the premises at any time to shut off the water flow for repair or for non-payment of water bills by the tenant or the owner.

(c) Class 3 Rental Permit – Owner Occupied with Roomers. A Class 3 rental permit shall be issued to rented properties classified as single family dwelling places occupied by any owner of the property renting individual rooms to renters and when it and its occupants are in compliance with all the requirements and stays in compliance with the requirements of this Chapter, the City housing code, building code, zoning ordinance, all other City ordinances, and the following specific requirements:

(1) The rental property may only be occupied by the owner and his or her family as defined by this Chapter and two additional unrelated persons, so long as all persons residing on the premises do not exceed the space occupancy requirements of the City housing code.

(2) A hard surface parking space of the dimensions and surface construction as defined in this chapter shall be provided for parking of any motor vehicle owned or registered to a property owner or his or her family members residing on the property and to any roomer, occupant or guest on the property residing on the property over night for more than two nights in any one month period.

(3) Persons staying on the premises who are not a member of the owner's single family as defined in this Chapter shall be considered roomers even if they do not pay rent and shall cause the owner to obtain a rental permit. Guests shall be considered a roomer if they reside on a premises and sleep there more than seven days in any one month period.

Sec. 6.605. Registry of owners and permits to rent premises.

1. A registry of owners and premises of dwelling units as provided in subsection
shall be maintained in the office of the City Clerk.

2. All legal and equitable owners of a dwelling unit, rooming unit, rooming house, private dwelling, or multiple dwelling units containing one or more living units offered to let, rent, or hire shall register their names, places of residence, dates of birth, driver's

license numbers or state identification numbers, and the location of the premises regulated by this article with the building department. If the registering entity is a partnership, limited liability company or corporation the registration shall include all partners, members, or officers, respectively. Registration and the obtaining of a permit to rent shall be completed prior to occupancy. The provisions of this section shall not apply to a hotel or motel unless the hotel or motel offers units to let or hire on a weekly or more lengthy basis.

3. If the premises are managed or operated by an agent, the agents name and place of business shall be placed with the name of the owner in the register. Any owner who does not reside or have a usual place of business within a 50-mile radius of the limits of the City shall be required to designate an agent who has a place of residence or place of business within a 50-mile radius of the limits of the City.

(a) Registration is not transferable and every transfer of legal or equitable ownership of any premises regulated by this article shall require registration by the new owner within 30 days of such transfer of ownership.

(b) All fees charged for registrations as required in paragraph (2) above shall be approved by the City Council and on file with the City Clerk.

Sec. 7.606. Rental Permit Required. On or before September 1, 2014 and thereafter, the owner of any rental unit being leased shall file for and obtain a rental permit required by this chapter subject to the conditions of the following subparts. Failure to do so shall be considered a Class D civil infraction and shall construct a separate infraction for every calendar day the property is occupied without a valid rental permit. A rental permit shall not be issued if the owner of the property does not first obtain a certificate of compliance as required by this chapter except that those properties registered and pending inspection by the property compliance officer shall have a temporary rental permit issued until the date of inspection.

(1) Except as otherwise provided in this section, occupancy of any dwelling by any person other than the owner of record shall be considered renting, whether or not any compensation or consideration is paid or given for the right to do so, and shall require that the owner obtain a current, valid, rental permit.

(2) The occupancy of any dwelling under a lease with an option to purchase agreement or any other form of conditional sales agreement shall require that the owner obtain a rental unit permit if legal or equitable ownership is not transferred by valid deed or land contract to the occupant within ninety days of execution of the conditional sales agreement. Proof of the transfer of ownership shall be established by a copy of the deed, land contract or memorandum of land contract which has been recorded with the Bay County Register of Deeds.

(3) A rental permit is not required under the following circumstances:

(a) In the case of a sale if a single-family dwelling which is occupied by the seller under the sales agreement or a rental agreement associated with the sale, for a period of less than ninety days following the closing.

(b) By an adult foster care home, home for the aged, assisted living facility, or other care facility licensed and inspected by the State in accordance with the state law.

(c) Where there is more than one dwelling on the same lot or a contiguous lot under common ownership, and all of the dwellings are occupied by one or more members of the owner's family.

Sec. 7.607. Failure to have Rental Permit. In addition to all other remedies provided for in this chapter or by any other local ordinance, state statute, or federal law, the following shall apply when a rental permit has not been obtained as required:

(1) Order to Vacate. Failure to have a current, valid, rental permit subjects the rental dwelling to being ordered vacated as established in accordance with the provisions of this chapter, until a valid rental permit is issued.

(2) Failure to Vacate. In addition to any other remedy available to the City under law, including City ordinances, an owner, tenant, or other occupant who fails to vacate a dwelling after having been given notice of an order to vacate under this chapter is subject to the penalties set forth in this chapter.

Sec. 6.608. Rental Permit Application. A rental permit application shall be commenced by submitting to the City Clerk a completed application form,

available from the City Clerk, as provided by this section. The application is not complete, and no permit decision can be made until the owner or owner's legal agent meets all requirements of this section. This includes, but is not limited to, the rental dwelling or rental unit being inspected as required in Section 6.609, that all applicable fees have been paid, and that there are no delinquent City or court assessed taxes, fees, charges, fines, or costs, due and payable to the City to the property. A completed application constitutes a request for Certificate of Compliance as provided for in 1967 PA 167, being MCL 125.401 et seq.

(1) Rental Permit Application Form. A rental permit application form shall require at least the following:

(a) The name, date of birth, permanent home address and business address, and home telephone number and business telephone number of the owner and the legal agent, if any. In the case of a corporation, the corporate ID number shall also be provided.

(b) The number of rental units in the rental dwelling.

(c) The street address(es) of the rental unit(s).

(d) A copy of the legal document under which the owner claims his/her/its ownership interest.

(e) As an attachment, information regarding the rental dwelling or rental units and parking, as provided in subsection (g).

(f) For a corporate owner and/or corporate legal agent, a copy of the most recent annual report filed with the State; for any other business entity a copy of a legal document proving the existence of the entity and its principals.

(g) Signature(s) as required by this section.

(2) Renewal of Rental Permit. An application for the renewal of a rental permit shall be made as follows:

(a) Clerk sends renewal application form to permittee. A rental permit renewal application form will be sent to the permittee or the permittee's legal agent at the most recent address on file with the City Clerk for that rental dwelling or rental unit, at least 120 days prior to the expiration of the current rental permit.

(b) Contents of rental permit renewal application form. A rental permit renewal application form shall require the same information as an initial application form. The permittee must provide, on the rental permit renewal application form, all changes in information from the previous application form. Where there is no change in information from the previous application form the permittee shall indicate so on the renewal application form. In that case, the prior information is considered incorporated by reference.

(c) Filing time limits. The completed rental permit renewal application form must be filed by the permittee with the City Clerk no less than sixty days before the expiration of the current permit to:

1. Obtain a decision on the rental permit renewal application prior to the expiration of the current rental permit;

2. Qualify for a temporary rental permit renewal under Section 6.603 (1) (b) if the delay in the decision on the rental permit renewal is caused by the City; and,

3. Avoid rental permit renewal late fees.

(3) Deficiency in Form. The City Clerk, within five business days of receipt of a rental permit application form, shall notify the applicant of any deficiencies in the application form, including the failure to pay any fee, which prevents its acceptance. Failure to cure the deficiencies set forth in the notice within thirty days from date of the notice will result in the application being deemed abandoned and the application file closed. Thereafter, an application initiated for the same property is deemed a new application requiring compliance with all initial permit application provisions, including any application fee.

(4) Signature Requirements. All rental permit applications shall be signed as follows:

(a) In the case of a non-business entity the application shall be signed by the owner or the owner's legal agent.

(b) In the case of a business entity, the application shall be signed by at least one general partner or corporate officer and the resident agent and any other legal agent, if any, indicating the capacity in which they sign.

(c) The signature shall be in the handwriting of a required signature unless the City has an e-file signature process, in which case the applicant may comply with the e-file requirements.

(d) A signature must indicate the capacity in which a legal agent signs; the signature of a legal agent binds the owner to the same extent as if the owner personally signed the application.

(5) Effect of Signature. By signing the rental permit application form the owner and the owner's legal agent, if any, is:

(a) Verifying that all information supplied by the owner or owner's legal agent on the form is accurate as of the date signed, and

(b) Certifying that insurance coverage for structural loss or damage and premises liability for personal injury exists and shall be maintained on the permitted property.

(6) Information Regarding Rental Dwelling or Rental Units; Parking. The applicant shall indicate on the application or a separate sheet attached to the application, the number of rental units in a rental dwelling, whether the rental units are accessed from an interior or exterior door; the number of sleeping rooms in each rental unit; the number of other non-sleeping rooms and their uses; the number and location of off-street parking spaces for each rental dwelling or rental unit and where they are located. If a property that is the subject of the application has been reviewed through a site plan development with the City the owner may reference that site plan and affirm that there have been no changes.

(7) Additional Information. In addition to the information supplied by the applicant for the rental permit application the City Clerk shall also attach any recommendation(s) provided by a City department, office, board, or employee, on granting or denial of the rental permit and the basis for the recommendation. A copy of any adverse recommendation that is attached to the application shall be mailed by first class mail to the applicant. The applicant shall have ten business days from the date of mailing to provide a written response to the City Clerk. The written response shall be attached to the application.

Sec. 7.609. Inspection and Certificate of Compliance.

(1) Initial Inspection of Existing Rental Properties on the Effective Date of This Chapter.

(a) Prior to December 31 of the third calendar year after the date of issuance of the Certificate of Registration, the Code Enforcement Officer shall schedule an inspection of each rental housing unit and notify both the owner, and the occupant of the unit, of the date and time of the scheduled inspection for compliance with the requirements of the City of Essexville Property Maintenance Code and City ordinances. The inspection of all rental housing units in the City shall be scheduled in such a manner as to distribute the total number of inspections to be performed over the three (3) year period as uniformly as possible, for the purpose of providing the Code Enforcement Officer the opportunity to conduct the required inspections in an orderly and efficient manner. A Notice of Inspection shall be mailed to the owner of the rental housing property, at the address indicated on the registration form, and to the occupant of the rental housing unit, at the address of the unit, by first class mail not less than 10 working days prior to the scheduled inspection. Notice to the occupant of the unit may be addressed to "Occupant".

(b) The owner of the rental property or the occupant of the rental housing unit may contact the Code Enforcement Officer not less than 72 hours before the scheduled date and time of the inspection to reschedule the inspection, if the scheduled date and time would present a hardship to the owner or occupant. Upon such contact by the owner or occupant, the Code Enforcement Officer will reschedule the inspection for a date and time which is mutually agreeable to the owner and the occupant, subject to the limitation that the inspection shall be conducted within thirty (30) calendar days of the date of mailing of the notice of inspection. Failure or refusal on the part of the owner or occupant to consent to the required inspection within thirty (30) days of mailing of the notice of inspection shall be considered a violation of this ordinance, and shall subject the party refusing to consent to inspection to the penalty provisions of this chapter. Consent on the part of the occupant of the rental housing unit to allow inspection of the unit shall be deemed by the Code Enforcement Officer to be sufficient permission to enter the unit for purposes of inspection.

(c) Inspection of a rental housing unit shall be made between the hours of 8 AM and 6 PM on business days by an inspector employed by the City, on presentation of an identification card provided by the City of Essexville. A person other than the

occupant, the owner, or their agents shall not accompany the inspector unless his presence is necessary for the enforcement of this ordinance. An inspection pursuant to this ordinance shall be solely for the purposes of enforcing the City codes and ordinances.

(d) Prior to December 31 of the third calendar year after the date of issuance of the Certificate of Registration, the owner of any rental housing unit which has not yet undergone initial inspection and which is at the time vacant and untenanted may, at his or her option, request that the unit be inspected during the period of vacancy. The Code Enforcement Officer shall schedule an inspection time within 3 working days of such request.

(e) If, during any inspection, it is determined that violation of the Property Maintenance Code exists, the procedures indicated within that code shall be invoked to obtain correction of the violation. A Certificate of Compliance shall not be issued pursuant to this ordinance until correction of any and all violations has been made, and correction has been verified by re-inspection by the Code Enforcement Officer.

(2) Certificate of Compliance.

(a) When it has been determined by inspection that a rental housing unit is in compliance with the Property Maintenance Code and the City Code of Ordinances, the Code Enforcement Officer shall issue a Certificate of Compliance for the unit to the owner within 10 working days of the inspection. The Certificate of Compliance shall be mailed to the owner by first class mail.

(b) The Certificate of Compliance shall be valid through December 31 of the third calendar year after the year during which the first inspection was conducted pursuant to the previous Certificate of Registration or Certificate of Compliance.

(c) The Certificate of Compliance shall state the address of the rental housing unit, the name and address of the agent (if any) in charge of the unit, the name and address of the owner of the building, the date of issue, and the date of expiration.

(d) When it has been determined by inspection that a violation or violations of the Property Maintenance Code exist in a structure which do not present an immediate threat to the health, safety and

welfare of the occupants, the Code Enforcement Officer may, at his or her discretion, issue a temporary Certificate of Compliance for a period not to exceed six (6) months. Upon expiration of the temporary Certificate of Compliance, the Rental Housing Unit shall be re-inspected in accordance with paragraph (3) immediately below and if found to be fully in compliance with the City codes and ordinances, the Code Enforcement Officer shall issue a Certificate of Compliance in accordance with the provisions of this section. In no case shall the temporary Certificate of Compliance be renewed or the expiration date be extended.

(3) Inspections Prior to Permit Renewal.

(a) During the year in which the Certificate of Compliance for a rental housing unit will expire, the Code Enforcement Officer shall schedule an inspection of the unit and notify both the owner and the occupant of the unit of the date and time of the scheduled inspection for compliance with the requirements of the City codes and ordinances. Notice of Inspection shall be mailed to the owner of the rental housing property, at the address indicated on the registration form, and to the occupant of the rental housing unit, at the address of the unit, by first class mail not less than 10 working days prior to the scheduled inspection. Notice to the occupant of the unit may be addressed to "Occupant".

(b) The owner of the rental property or the occupant of the rental housing unit may contact the Code Enforcement Officer not less than 72 hours before the scheduled date and time of the inspection to reschedule the inspection, if the scheduled date and time would present a hardship to the owner, or occupant. Upon such contact by the owner or occupant, the Code Enforcement Officer will attempt to reschedule the inspection for a date and time which is mutually agreeable to the owner, occupant, and the Code Enforcement Officer, subject to the limitation that the inspection shall be conducted within thirty (30) calendar days of the date of mailing of the notice of inspection. Failure or refusal on the part of the owner or occupant to consent to the required inspection within thirty (30) days of mailing of the notice of inspection shall be considered a violation of this ordinance, and shall subject the party refusing to consent to inspection to the penalty provisions indicated herein. Consent on the part of the occupant of the rental housing unit to allow inspection of the unit shall be deemed by the Code Enforcement Officer to be sufficient permission to enter the unit for purposes of inspection.

(c) Inspection of a rental housing unit shall be made between the hours of 8 AM and 6 PM on business days by an inspector employed by the City, on presentation of an identification card provided by the City of Essexville. A person other than the occupant, the owner, or their agents shall not accompany the inspector unless his presence is necessary for the enforcement of this ordinance. An inspection pursuant to this ordinance shall be solely for the purposes of enforcing this ordinance and the City codes and ordinances.

(d) In order that the owner of the building may have adequate time to correct any violations that may be found on inspection, the Code Enforcement Officer shall schedule the initial inspection for an expiring Certificate of Compliance no later than November 1 of the year of expiration. The owner or occupant may request rescheduling or the inspection at a later date, according to the terms of codes and ordinances.

(e) The owner of any rental housing unit for which a current valid Certificate of Compliance has been issued and which is at the time is vacant and untenanted may, at his or her option, request that the unit be inspected during the period of vacancy. The Code Enforcement Officer shall schedule an inspection time within 3 working days of such request.

(4) Rental Housing Units Created After the Effective Date of this Ordinance. At any time subsequent to 180 days after the effective date of this ordinance, it shall be unlawful for any person to cause a rental housing unit to be occupied by a tenant unless a valid Certificate of Compliance and Rental Permit has been issued for the unit as required by this ordinance. Failure to comply with the provisions of this section shall constitute a violation of this ordinance by the owner, and shall subject the owner to the penalty provisions indicated in this chapter.

Sec. 7.610. Inspections During the Term of a Permit; Right of Entry; Notice of Correction; Fee.

(1) A structure covered by this code which is damaged by fire, windstorm, structure failure, shifting of soil or land there under, or any other catastrophe, or is reported to be otherwise in violation of the code, shall be inspected within the shortest possible time after such occurrence.

(2) Inspections shall also be conducted upon the occurrence of any of the following events:

(a) If a complaint is received, the complaint will be inspected within a reasonable time after receipt of the complaint by the code official.

(b) The code official has reasonable cause to believe that building code violations exist at the dwelling place or upon the real property of the rented property.

(c) A follow-up inspection is required to insure that previous violations have been corrected and compliance has occurred.

(d) An inspection may be performed by the code official, or by a team of code officials.

(3) Inspections shall be subject to all required fees approved by the City Council in compliance with the Code of Ordinances.

(4) If the cost of performing any inspection referred to in this section remains uncollected or unpaid for a period of 90 days after the bill for the same has been rendered, the cost shall constitute a special assessment against and a lien upon the property and shall be collected as a special assessment as provided by the Code of Ordinances.

Sec. 7.611. Warrant to inspect, preparation, issuance.

(1) Upon refusal of the owner or occupant to permit entry to perform an inspection as required by this article, the code official shall obtain a warrant from the court of competent jurisdiction. The City Attorney shall prepare the warrant, stating the address of the building to be inspected, the nature of inspection as defined in this article and other applicable codes or laws, and the reason for the inspection.

(2) The court shall issue the warrant when it finds the warrant is in proper form and in accordance with this section.

Sec. 7.612. Order to Vacate. Where a notice of violation and order to comply has been issued and upon re-inspection at the end of the time ordered for compliance it is found that any violation has not been corrected, the code official shall be permitted to order the structure vacated in accordance with the following procedures:

(1) The code official shall order the structure vacated within a reasonable time not to exceed 60 days.

(2) Vacated structures shall have all outer doors, windows or other openings securely boarded up by the owner, his agent or the City at the owner's expense so as to prevent entry.

(3) The structure shall be posted: "DO NOT ENTER, UNSAFE TO OCCUPY."

(4) Any notice or placard posted by the code official shall not be removed, obstructed or mutilated except as approved by the code official.

(5) Such structures shall not be occupied until all violations have been corrected and written approval has been obtained from the code official.

Sec. 7.613. Abatement of violations.

(1) The code official shall be permitted to bring an action in the court of jurisdiction to abate or enjoin a violation of an order contained in a notice of violation.

(2) The code official shall be permitted to seek a preliminary injunction or other temporary relief appropriate to remove a danger when any uncorrected violation creates an imminent danger to the health and safety of an occupant of a structure.

(3) The court, having obtained jurisdiction, shall make such orders and determinations as are consistent with the objectives of this code. The court may enjoin the maintenance of any unsafe, unhealthy or unsanitary condition, or any violation of this article and may order repairs or corrections necessary to abate the conditions. The court may authorize the code official to make repairs at the expense of the owner.

(4) When the expense of repairs is not otherwise provided for, the court may enter an order approving the expenses and providing that there shall be a lien on the real property for the payment thereof. The order may establish the priority of the lien and may provide that it shall be a lien senior to all other liens except a mortgage of record having a recording date prior to all other liens of record. The order may also specify the time and manner for foreclosure on the lien if not satisfied.

A true copy of the order shall be filed in the office of the register of deeds for the county.

Sec. 7.614. Rental Permit Expiration. A rental permit shall expire thirty-six months from the effective date of the permit with the following exceptions:

(1) Sale or transfer of property. In the case of a sale or transfer of ownership, the rental permit expires upon sale or transfer except where the new owner has, within five business days from the date of the sale or transfer, made application for a rental permit in accordance with this chapter, in which case the rental permit expires forty-five days after the sale or transfer. This also includes transfers of ownership between corporations or other legal entities even where there is identical ownership interest in the acquiring legal entity as in the previous legal entity.

(2) Inspection violation(s). A rental permit will expire no more than twenty-four months from the effective date of the permit if, at the last inspection, the rental property was cited for violations of the building or housing code or other City ordinances.

(5) In accordance with any conditions. The permit expires in accordance with the conditions placed on the permit under this Chapter.

Sec. 7.615. Effect of Rental Permit Expiration. Upon expiration of a rental permit:

(I) The rental dwelling is subject to being ordered vacated in accordance with this Chapter until a valid rental permit is issued, and

(2) If the rental permit expired for failure to comply with conditions place on the permit, application for a new or renewal rental permit may be made only after the conditions have been met.

Sec. 7.616. Notice of Violations and Rental Permit Sanctions. If a violation of any City ordinance or other regulation stated in this section shall be discovered on a rental property with a rental permit, the following procedure shall be followed and sanctions shall be applied if such violations are not timely cured or corrected:

(1) Notice of Violations Before Referral for Sanctions. The City Clerk will send to the owner or owner's legal agent and tenant(s) written notification of each violation of this chapter alleged by a City department, agency, board, or employee that could result in referral for sanctions to a rental permit. The notification to the owner's or owners' legal agent will be by first class mail to the address of record with the City Clerk. The notice to the tenant will be by first class mail addressed to the tenant by name, if known, or, if not known, addressed to the "tenant" at the address of the rental unit.

(2) Referral for Sanctions. If the owner or owner's legal agent does not cure or resolve the violation(s) within a time limit stated in the notice, a referral for sanctions to the rental permit may be made to the City Clerk by the City department, agency, board, or employee thereof, on a form provided by the City Clerk.

(3) Referral Requirements. The referral shall contain a recitation of the factual basis upon which sanctions are requested under this chapter; include as an attachment all supporting documentation; be signed by a person authorized to make a referral; and, be dated.

(4) Types of Rental Permit Sanctions. The following types of sanctions may be imposed upon a rental permit as to an entire rental dwelling or as to an individual rental unit, which in the determination of the designated sanctioning authority serves the purpose of this chapter:

(a) Additional conditions of the type provided for in Section 6.603 (2);

(b) Suspension of a rental permit for a certain period of time of up to one year, with or without conditions.

(5) Basis for Imposition of Additional Conditions. Additional conditions may be placed on a rental permit for any of the following reasons:

(a) Conditional Stipulated to by Owner or Owner's Legal Agent. The owner or the owner's legal agent stipulates with a City department, agency, board, or employee to have additional conditions placed on the rental permit to resolve an issue regarding the rental dwelling.

(b) Violation of Conditions. Conditions stipulated to by the owner or owner's legal agent in paragraph (a) above, or otherwise imposed upon the rental permit, have been violated.

(c) Violations of Law Relative to the Rental Dwelling. After January 1, 2014, the owner, the owner's legal agent, tenant, occupant, or a guest have been issued court appearance tickets, criminal warrants or indictments, civil actions, or citations, for violation(s) committed within sixty days of imposition of a condition, of any of the following City ordinances, State, or Federal statutes, relative to the rental dwelling:

1. City adopted Building, Plumbing, Mechanical, and Fire Codes.

2. City Housing Code as found at Title VI, Chapter 1 of the City Code.

3. Disorderly conduct violations contrary to Title VI, Chapter 6 and fireworks violations contrary to Title IX, Chapter 20 of the City Code and the Michigan Penal Code Chapters XI (Assaults), XXVIII (Disorderly Person), XXXIX (Fireworks), XLIV (Gambling), XLVIII (Indecency and Immorality), LXVII (Prostitution), XXVA (Criminal Enterprises).

4. Drug or controlled substance violations contrary to Title VII, Chapter 5 of the City Code and Chapter 333, Article 7, Part 74 of the Michigan Public Health Code (MCL 333.7401 et seq).

5. Offenses against property contrary to Michigan Penal Code Chapters XVI (Breaking and Entering), LII (Larceny), LVI (Malicious Mischief).

6. Weapons/explosive offenses contrary to Title IX, Chapter 3 of the City Code and Michigan Penal Code Chapter XXXIII (Explosives, Bombs, and Harmful Devices), XXXVII (Firearms) or a substantially similar Federal offense.

7. Junk or inoperable vehicles offenses contrary to Title IX, Chapter 4 of the City Code.

8. Animal offenses contrary to Title IX, Chapter 12 of the City Code or Chapter IX of the Michigan Penal Code.

9. Violation(s) of the City zoning ordinance.

(6) Basis for Rental Permit Suspension. A rental permit may be referred for suspension for any of the following reasons:

(a) Non-compliance with Order. The owner or the owner's legal agent has failed to comply with an order issued by a City inspector or Court.

(b) Violation of Conditions. Failure of the owner or the owner's legal agent to comply with conditions of the permit previously imposed, including the standard conditions.

(c) Owner's Failure to Act on Other's Violations. The owner has not taken corrective action available to the owner under law to cure violations of conditions imposed on the rental permit committed by the tenant(s), occupant(s) or their guest(s).

(d) Danger to Health or Safety. Where an owner or owner's legal agent, tenant, occupant, or a guest creates or allows to exist a violation, condition or factor that constitutes a hazard to the health or safety of occupants of the rental dwelling or the general public.

(e) Violations of Law Relative to Rental Dwelling. After January 1, 2014, the owner, the owner's legal agent, tenant, occupant, a guest, or any combination of those, three or more separate occasions, within a rolling twelve month period from the date of the most recent occasion, have violated and been arrested, issued court appearance ticket, citation, criminal warrants or indictments, or civil action for any local ordinance, or State or Federal law violations committed on or relative to the rental dwelling, unless the owner or the owner's legal agent was the party reporting the violation or, unless the owner or their legal agent shows that all available lawful actions have been taken to evict the tenant(s). The local ordinance, or State or Federal law violations that will be considered as a basis for rental permit suspension include those stated in Section 6.616 (5) (c) of this Chapter.

(f) False Statements or Information on Application. The owner or owner's legal agent is found to have made false statements or provided false information which is material to the decision on the issuance of a rental permit.

(g) False Statement or Information to City Employee. The owner or owner's legal agent is found to have made false statements or have provided false information to an employee of the City which is material to the performance of their duties under this Chapter.

(7) Effective Date of Sanction. All sanctions shall take effect fourteen days from the date that a notice of sanction was served in accordance with subsection (8) of this section, except that:

(a) The sanction shall be effective immediately upon notice if the violation constitutes an imminent or immediate danger to life, limb or property of an occupant of the rental dwelling, the rental unit, or the general public; or

(b) If the owner or owner's legal agent requests a hearing as provided for in Section 6.618 within seven business days from the date notice was served under subsection (8) of this section, then the sanction, other than those in paragraph (a), above, will be held in abeyance pending the outcome of the hearing.

(8) Notice of Rental Permit Sanction. Notice of rental permit sanction shall be given by the City Clerk in the following manner:

(a) Notice shall be in writing and personally served or sent by first class mail to the owner or the owner's legal agent at the most recent address provided to the City Clerk by the owner or the owner's legal agent and by first class mail addressed to the tenant by name, if known, and, if not known, addressed to "tenant" at the address of the rental unit.

(b) The notice shall set forth the sanction and the basis upon which the sanction is being imposed, including a copy of any relevant document(s) being relied upon; set forth the date upon which the sanction will become effective; and, advice of the right to a hearing under Section 6.618.

(9) Sanctions Relation to Instances of Domestic Violence. Notwithstanding the general inclusion of assaultive crimes in those violations that can form the bases of rental permit sanctions, in any case where the assaultive crime is determined by the City Public Safety Department to be considered an incident of domestic violence according to State law, a complaint made by the victim will not be considered a violation for purposes of initiating sanctions.

Sec. 7.617. Order to Vacate Rental Dwelling: Reason; Contents; Notice; Time. A notice to vacate a rental unit may be issued in the following circumstances and in the following form:

(1) Reason. Where a current, valid, rental permit is not in effect for a rental dwelling or rental unit for any reason under this Chapter, the City Clerk, or another person or official designated by the City Manager, may issue an order to vacate to the following persons for the following reasons:

(a) To the owner and/or owner's legal agent for any reason that there is not a current, valid rental permit. It is the intent of this section that where an order to vacate is issued to an owner or owner's legal agent for any reason other than a condition that is a danger to life, limb, property, or safety of the tenant, other occupants, or the general public, the owner or owner's legal agent will vacate the tenant(s) from the property through the most expeditious means available under the law, whether eviction, or otherwise.

(b) To the tenant when there exists on the property a condition that is a danger to life, limb, property or safety of the tenant, other occupants or the public.

(2) Contents. The order to vacate shall include:

(a) If written, a bold capitalized caption prominently displayed at the top of the page in at least a fifteen point font stating "Order to Vacate";

(b) The address of the rental dwelling or rental unit that must be vacated;

(c) The reason the rental dwelling or rental unit must be vacated;

(d) The date and/or time by which the rental dwelling or rental unit must be vacated;

(e) Advice of the right to request a hearing on the order to vacate and instructions for doing so;

(f) If in writing, be signed and dated by the City Clerk, or another person or official designated by the City Manager, on the date of issuance.

(2) Method of Notice. The City Clerk, or other person or official designated by the City Manager, will give notice of the order to vacate as follows:

(a) In the case of a condition such that there is an imminent danger to life, limb, property or safety of the occupants or the general public, the notice to vacate may be given orally and shall be effective as if given in writing. After the notice is given orally, the notice shall be reduced to writing at the soonest reasonable opportunity.

(b) In all other cases, the notice shall be in writing.

(c) When the notice is given in writing, the procedure shall be as follows:

1. By personal service to the owner, the owner's legal agent, if any, and to the tenant(s) of the rental dwelling;

2. By posting the notice on the entrance door of the rental dwelling, or if more than one rental unit in the rental dwelling, then on the entrance door of each rental unit to be vacated;

3. By sending the notice by certified mail to the owner and owner's legal agent at the most recent address for the owner and the owner's legal agent in the City's rental permit records, or if none, to the address for the record owner in the City Assessor's records; and,

4. By sending the notice by certified mail addressed to the tenant by name, if known, and if not known, then addressed to "tenant" at the address of the rental dwelling or rental unit subject to the order to vacate.

Time to Vacate. An order to vacate shall state a date and time to vacate in accordance with the following:

(a) In the case of an emergency condition such that there is an imminent danger to life, limb, property or safety of the occupants

or the general public, the property can be ordered to be vacated immediately.

(b) In the case where there is a condition on the property that poses a hazard to the life, limb, property or safety of the occupants or general public, other than an imminent danger, the property is to be ordered vacated within thirty days.

(c) In all other cases, the property is to be ordered vacated at the soonest date using the most expeditious means available to the owner under the law, whether eviction, or otherwise, but in any case no later than sixty days unless the owner or owner's legal agent provides documentation that any delay beyond sixty days is not attributable to the actions or inactions of the owner or owner's legal agent.

(e) Notwithstanding paragraph (c) above, if the order to vacate is issued because the owner has not made application for and received a rental permit, the order to vacate may be held in abeyance for up to forty-five days if there are no conditions in the property posing a hazard to life, limb, property or safety of the occupants or the general public, and, the owner makes application in compliance with this chapter. The tardy application does not preclude the owner from being cited for municipal civil infractions for failing previously to make a rental permit application.

Sec. 7.618. Hearings. All rights to hearing and the hearing proceedings are as set forth herein:

(1) Persons Entitled to a Hearing. The following persons are entitled to a hearing upon request under the terms of this section:

(a) A rental permit applicant who has been granted a conditional permit.

(b) A rental permit applicant who has been denied a permit.

(c) A rental permittee who has been given notice of rental permit sanction action.

(d) An owner or owner's legal agent who has been given an order to vacate a premises.

(e) A tenant who has received an order to vacate a premises or whose landlord has received notice of rental sanction action or been given an order to vacate.

(2) Request for a Hearing. Unless the person entitled to a hearing under this section makes a request for a hearing within ten business days from the date notice of any action was served under this chapter, by filing a signed and completed "Request for Hearing" form with the City Clerk, the decision is final. The request for hearing form is available from the City Clerk and will contain at least the name and signature of the person entitled to a hearing, the address of the person requesting the hearing, the date the form is filed with the City Clerk and information sufficient to identify the action that is being contested.

(3) Hearing Date. Hearings shall be scheduled as expeditiously as possible, but in no case any later than the following:

(a) Twenty-one days from the date of filing of a request for a hearing contesting a decision on a permit application.

(b) Twenty-one days from the date of filing of a request for a hearing contesting a permit sanction action.

(c) Twenty-one days from the date of filing of a request for a hearing contesting an order to vacate under this chapter.

(d) Notwithstanding the provisions of this paragraph (3) and its subparagraphs above, except where the order to vacate is due to an imminent danger to life, limb, property or safety of the occupants or the general public, in no case shall a hearing contesting an order to vacate be scheduled after the date a tenant is ordered to vacate under this chapter.

(4) Notice of Hearing. Except as provided in paragraph (c) below, at least seven business days before the hearing, the City Clerk:

(a) Shall cause notice of the date, time, and place of the scheduled hearing to be served upon the person requesting the hearing notice of the date, time, and place of the scheduled hearing by certified mail at the address on the request for hearing or by causing personal service of such information to be served on the requesting party.

(b) If it is documented by the City Clerk that notice of the scheduled hearing is not able to be given by the above means, notice may then be made by publishing at least seven days before the scheduled hearing;

(c) Shall give notice of a hearing to an owner, owner's legal agent or tenant, who did not have the right to request a hearing, or if having such right, was not the person who requested the hearing. In this case, the City Clerk shall send notice of the date, time and place of the hearing to such persons by pre-paid first class mail at least seven days before the hearing. The failure of persons covered by this subsection to receive notice of the hearing shall not be grounds to invalidate any determination made at the hearing;

(d) May send notice by first class mail to any other person or entity which may have an interest in the outcome of the hearing; and

(e) In the case of an order to vacate, the time limits and the manner of notice may be adjusted to provide a tenant or an owner a hearing at the soonest reasonable opportunity if requested by the person who has the right to the hearing.

(5) Failure to Receive Notice. Where the City has proof of service of the notice given as required, failure of the owner, or the owner's legal agent, or a tenant to receive the notice does not affect the validity of the hearing or its outcome.

(6) Conduct of the Hearing. The hearing provided for under this section shall be conducted as follows:

(a) Housing Hearing Officer. The Housing Hearing Officer as created by Section 6.104 (1) of the City Code of Ordinances shall conduct the hearing and make the determination on the action which is contested.

(b) Evidence. The Michigan Rules of Evidence do not apply in the hearing. To be admissible, evidence must be of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. The Housing Hearing Officer shall determine what evidence is admissible and shall consider all admissible competent, material, and relevant evidence from the Code Compliance Department, the Zoning Official, the Building Official, other City department, the applicant, and witnesses, if any. In all cases, the owner and/or the owner's legal agent, and

the tenant, shall have a reasonable opportunity to address the Housing Hearing Officer, to present witnesses and other relevant documents and testimony, and to cross examine witnesses.

(c) Standards. The Housing Hearing Officer shall apply the standards set forth in this chapter that are applicable to the action being contested. All determinations shall be based upon competent, material and substantial evidence on the record.

(d) Continuation of Hearing. In the discretion of the Housing Hearing Officer, the hearing once commenced may be continued to another date if the Housing Hearing Officer finds that such continuation is for good cause.

(e) Decision. After hearing all of the evidence, the Housing Hearing Officer, shall make a decision regarding the contested action by setting forth findings of fact on the record, and by entering an order affirming, modifying, or reversing the action being contested. If not appealed in accordance with Section 6.619, the order is final.

(7) Failure to Appear/Rescheduling. Failure of the person(s) requesting the hearing to appear for a scheduled hearing constitutes an abandonment of the request for hearing. The hearing may be rescheduled once upon request, if the request is made before or within seven days after the initially scheduled hearing.

Sec. 7.619. Appeals. All appeals under this chapter shall be to the Bay County Circuit Court in accordance with the following standards and procedures:

(1) Persons Entitled to Appeal. Any person listed in Section 6.618 (1) who is aggrieved by a final decision or order of the Housing Hearing Officer, may appeal that decision or order within fourteen days of the date of the decision or order to the Bay County Circuit Court in accordance with subsection (2) hereof. If not appealed within fourteen days, the decision or order is final.

(2) Petition; Standard of Review. An appeal to the Bay County Circuit Court shall be made by filing an action seeking a review similar to that for appeals of contested cases from State administrative agencies. On appeal, the Circuit Court shall review the record and

final decision or order of the Housing Hearing Officer, to insure that the decision meets all of the following:

(a) Complies with the Federal and Michigan constitutions and laws of this state.

(b) Is based upon proper procedure.

(c) Is supported by competent, material, and substantial evidence on the record.

(d) Represents the reasonable exercise of discretion granted by law to the Housing Hearing Officer.

(3) Further Proceedings. If the Circuit Court finds the record of the hearing under Section 6.618 inadequate to make the review required by this section, or that additional evidence exists which is material and with good reason was not presented to the Housing Hearing Officer, the Court shall order further proceedings before the Housing Hearing Officer on conditions which the Court considers proper. The Housing Hearing Officer may modify the findings and decision or order as a result of the new proceedings, or may affirm the original decision. The supplementary record and decision shall be filed with the Court.

(4) Appeal Results. As a result of the review required by this section, the court may affirm, reverse, or modify the decision of the Housing Hearing Officer.

Sec. 7.620. Proof of Service. For all provisions that require service of notice to be made, the City Clerk shall prepare a proof of service. The proof of service is prima facie evidence of receipt of the notice by the addressee.

Sec. 7.621. Facilities not to be shut off. No owner, operator or occupant shall cause any service, facility, metering device, equipment or utility which is required under this article or the code adopted in this article to be removed from or shut off from or discontinued for any occupied dwelling let or occupied by him except for such temporary interruption as may be necessary while actual repairs or alterations are being made.

Sec. 7.622. Violations, Penalties, and Other Remedies. Whosoever violates any of the provisions of the Chapter shall be subject to the following:

(1) Except as provided in subsection (4), where the order to vacate is not based upon an imminent danger to life, limb or property of the occupant or the public at large, then an owner or tenant who fails to vacate after notice of an order to do so is responsible for a Class C Civil Infraction. Each day that the person fails to vacate after the date indicated on the notice is a new violation.

(2) Where the order to vacate is based upon an imminent danger to life, limb or property of the occupant or the public at large, then a person who fails to vacate after notice of the order to do so is guilty of a misdemeanor with a fine of up to five hundred dollars ($500.00) and/or ninety days in jail. Each day that the person fails to vacate after the date indicated on the notice is a new violation.

(3) Anyone other than an owner or tenant of a dwelling that has been ordered vacated, who fails to vacate, is guilty of a misdemeanor with a fine of up to five hundred dollars ($500.00) and/or ninety days in jail.

(4) An owner, permittee, or tenant who has filed an appeal in accordance with the provisions of this chapter is not subject to the provisions of subsection (1) hereof during the course of those actions when this chapter provides for the stay of an order during such actions.

(5) Failure to obtain a rental permit or certificate of compliance as required by this chapter is a misdemeanor punishable by a fine of up to five hundred dollars ($500.00) and/or ninety days in jail. Each day that a person fails to obtain a rental permit is a separate violation.

(6) Anyone who intentionally makes a false statement to a City employee in the course of the City employee's duties under this chapter, or who intentionally gives false information, including a signature which is not their own, on an application for rental permit under this chapter, is guilty of a misdemeanor punishable by a fine of up to five hundred dollars ($500.00) and/or ninety days in jail. Each false statement or false piece of information is a separate violation.

(7) Anyone violating any provision of this chapter not specifically stated in the section or specifically set within this chapter shall be guilty of a Class C Civil Infraction and each day such violation shall occur shall be considered a separate infraction.

(8) The actions, sanctions, and remedies in this chapter are in addition to all other actions, sanctions and remedies available to the City under any other City ordinance, State or Federal law.

Sec. 7.623 – 7.700 Reserved

# TITLE VIII: BUILDING REGULATIONS

## CHAPTER 1

## BUILDING CODE

*This Chapter was repealed by Ordinance No. 2004-1 said Ordinance adopted by the City Council on March 9, 2004 and effective March 25, 2004.*

Sec. 8.101. – 8.200 Reserved.

# TITLE VIII: BUILDING REGULATIONS

## CHAPTER 2

## FENCE ORDINANCE [109]

Sec. 8.201. Permit Required. From and after this date it shall be unlawful for any person, firm or corporation to construct any fence upon any property within the corporate limits of the City of Essexville without first having obtained a permit therefore, in the manner hereinafter provided.

Sec. 8.202. Application for Permit Fee. Any person desiring to construct a fence upon property in the City of Essexville shall first apply in writing to the City Clerk for a permit for which, there shall be a fee set by the City Council. Such application shall contain any and all information, including a sketch of the property involved and a detailed description and sketch of type and location of fence to be built, necessary to the determination of whether or not the construction of such fence will violate any ordinance of the City of Essexville.

Sec. 8.203. Fence Requirements.

(1) Type and Construction. All fences shall be constructed of posts, boards or other materials without barbs or projections likely to injure. Posts shall be erected on the property owner's side with the finished side toward the adjoining property owner, or the street, as the case may be.

(2) Definitions.

a. All words and phrases used herein shall be defined as set forth in Article 2 of the City of Essexville Zoning Ordinance adopted May 10, 1983 except for the definition of principal building which shall be altered and amended to read as follows :

   Principal Building: A building in which is conducted the principal use of the lot on which the building is situated exclusive of accessory buildings whether attached or unattached to the principal building. Garages, whether attached or unattached to residential principal buildings, shall not be considered part of the principal building under this ordinance for the purpose of determining required open spaces unless such garage has been converted to a living area use of the residence.

b. As used herein the following words are defined as follows:

   i. Required Setback: The distance required to obtain the required front, side and rear open space provisions of this Ordinance.

   ii. Required Open Space: The open space established between the lot lines and the required setback, open, unoccupied and unobstructed by any building or part thereof, from the ground to the sky, except as otherwise proved in this Ordinance.

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[109] This Chapter adopted July 13, 1999, effective July 28, 1999.

iii. Required Front Open Space: The required open space extending the full width of the lot and of a depth equal to the required setback measured horizontally at right, angles to the front lot line.

iv. Required Rear Open Space: The required open space extending the full width of the lot and of a depth equal to the required setback measured horizontally at right angles to the rear lot line or in case the rear lot line abuts an alley, to the centerline of the alley.

v. Required Side Open Space: The required open space extending from the front open space to the rear open space, of a width equal to the required side setback measured horizontally at right angles to the side lot line.

vi. Fence. Any aboveground structure, excluding a hedge as defined herein, serving as an enclosure, barrier or boundary and that is wholly or partially constructed of wood, metal, plastic or other man made materials.

vii. Clear Vision Fence. Any fence constructed of wire, except for posts and supporting members, with all areas measured over any square foot at least eighty percent (80%) open when viewed at right angles to the fence.

viii. Hedge: A hedge is defined as a boundary or enclosure formed by a dense row of plantings, shrubs, bushes, evergreens or other non-deciduous trees that are planted or grown in a continuous line so as to be a barrier to sight or to ingress or egress.

Any shrubs, bushes or other growing plants, which project into or across adjacent land, may be trimmed by the adjacent owner back to the lot line.

(3) Front and Side Open Spaces, Location.

a. Fences or hedges erected or planted in the front or side required open space shall be at least three (3) feet in height above sidewalk grade.

b. Fences or hedges may be erected or grown in the front or side required open space up to a maximum height of four (4) feet above the sidewalk grade unless otherwise required to be less than four (4) feet as set forth in this chapter. The construction or erection of an in-ground or above ground pool shall not cause or allow side lot maximum height requirements of four (4) feet to be increased to a greater height for any reason except as allowed by variance pursuant to the procedures required by Sec. 8.207 hereafter.

c. Residential Zones - Special Restrictions. Within the limits of sight zones as hereinafter provided, all fences and hedges, structures or plantings, shall not exceed three (3) feet in height above grade, except

that such restriction shall not apply to clear vision fences as defined herein. Such sight zones shall be determined as follows:

i. Street Corners. The triangle formed by legs measured twenty-five (25) feet on each side of a street corner lot, measured on the property or lot line. Where a sidewalk exists the inside edge of the sidewalk may be considered the property line for this purpose.

ii. Driveways. The triangle formed on each side of driveways, measured ten (10) feet along the property or lot line on one leg, and along the outside edge of the driveway for the other leg. Where a sidewalk exists, the inside edge of the sidewalk may be considered the property line for this purpose.

(4) Rear Open Space, Location.

a. Fences erected in the required rear open space shall be at least three (3) feet in height above the finished grade (The average grade one foot each side of the line of the fence at any particular point).

b. Fences may be erected in the owner's required rear open space up to a maximum height of six (6) feet above finished grade provided such fence or structure is located fifteen (15) feet or greater from any principal building on the adjacent lot. If the fence is located less than fifteen (15) feet from a principal building located on the adjacent lot then any portion of the fence that is constructed along a front or side yard open space of the adjacent lot shall not exceed four (4) feet in height.

(5) Corner Lots. Fences, structures or hedges shall not be erected or grown to a height greater than four (4) feet within twenty-five (25) feet of the street lot line.

(6) Fences, structures or hedges erected, planted or grown in conformity with this ordinance shall not be caused to be impermissible or be required to be altered or removed thereafter due to subsequent construction or changes to the principal building on the abutting lots.

Sec. 8.204. Barbed Wire, Fence Guard, Electrical Fences. It shall be unlawful for any person to build or maintain any fence — constructed wholly or in part of barbed wire, fence guard or that is electrically charged — along any lot, public street, adjacent to a sidewalk or as a partition fence between any parts of lots occupied for residential or commercial purposes. Provided however, barbed wire or similar instruments may be used along the top of such fences surrounding industrial plants and real estate appurtenant thereto if fastened to a portion of the fence extending at an angle inside and over the property enclosed and not projecting on the opposite side of the side adjacent to a sidewalk or public way.

Sec. 8.205. Property and Lot Lines. It shall be the obligation and sole responsibility of persons obtaining fence permits and erecting fences to determine the location of property or lot lines. The City shall not determine property or lot lines, and the issuance of a fence permit shall in no way be construed as a determination of the correct valid or legal location for the correct, valid or legal location of the fence, or incur any liability upon the City or prejudice in any way, the rights of adjacent or abutting property owners.

Fences, structures or hedges shall not be erected or planted within fifteen (15) inches of any public right-of-way, so as to allow for snow clearing and other maintenance services.

Sec. 8.206. Erection on Street or Between Sidewalk and Curb. It shall be unlawful to construct any fence or barrier in any public street in the city or between the sidewalk and curb except in conjunction with the excavation for a building or similar structure temporarily permitted.

Sec. 8.207. Appeals. Persons wishing to appeal any refusal by the City to issue a fence permit because the application proposes a fence that is not in conformity with this ordinance may appeal such decision to the Board of Zoning Appeals in the same manner and under the same provisions as set forth in the zoning ordinance of the City of Essexville. Provided however, the Board of Zoning Appeals shall have no authority to issue or to create a variance from the requirements of this ordinance and such appeals shall be limited to whether the proposed fence will conform to the requirements herein.

Sec. 8.208. Removal of Violations. Any structure, fence, shrub or hedge erected or otherwise in violation of this chapter may be removed by the Building Inspector 5 days after notice by the Building Inspector that said structure, fence, shrub or hedge is in violation of this code. The cost of such removal may be charged against the person responsible, and upon his failure to pay may be considered a lien against the property involved and collect for the same as taxes.

Sec. 8.209. Penalty Whosoever violates any of the provisions of this chapter of the codified ordinances of the City of Essexville, shall be guilty of a misdemeanor, and shall be subject to the penalties as set forth in Title I, Chapter 1, Sec. 1.110 of the codified ordinances of the City of Essexville. A separate violation shall be deemed of been committed each day during or which a violation occurs and continues to occur. The filing of an appeal to the Zoning Board of Appeals as set forth in Sec. 8.207 shall not stay or prevent any prosecution which may be pending or advanced by the City for violation of this chapter whether such appeal is filed prior to or subsequent to the institution of any prosecution hereunder.

Sec. 8.210 – 8.300 Reserved

# TITLE VIII: BUILDING REGULATIONS

## CHAPTER 3

## NUMBERING OF BUILDINGS

Sec. 8.301. Numbering Buildings Plan. All buildings situated or hereafter erected and located on any of the streets, avenues and public highways, except alleys, within the City of Essexville, shall be numbered by the owner or owners, occupant or occupants thereof, according to the plan now on file with the Clerk of this City.

Sec. 8.302. Change of Numbers. Such numbers shall not be changed without the consent of the City of Essexville, and it shall be the duty of the City Council to adjust numbers or renumber such streets from time to time as the same may be required.

Sec. 8.303. Size and Placement of Numbers. Each of the figures of each number shall be at least two (2) inches in length being so marked as to be easily and distinctly read. Said numbers shall be placed on, above or immediately to the side of the door or else at some other or more conspicuous place on the front of the building to serve the purpose for which intended.

Sec. 8.304. Vacant Lots. All vacant lots or unplatted land shall be assigned numbers in accordance with the general plan herein provided for.

Sec. 8.305. Provisions for Numbering. For the purpose of numbering all property in the City of Essexville, each fifty (50) feet of frontage shall be considered a lot and assigned a number, and whenever the occupancy is not in harmony therewith, the occupancy shall be assigned a number of the lot the greater part of which is included in such occupancy; provided, that whenever a portion of a lot is occupied separately, it shall be numbered the same as the last preceding number, with the fraction one-half (1/2) added. For the purpose of numbering east, such numbers will begin with number one hundred (100) at the east Bay City limits and number east therefrom.

Sec. 8.306. Plat Kept by City Clerk. For the purpose of facilitating a correct enumeration, a plat of all streets, avenues, and public highways, except alleys, shall be prepared and kept on file in the Office of the City Clerk, which plat shall be opened during the office hours of the City Clerk to the inspection of any owner or occupant of any building desiring to know the proper numbering of his building.

Sec. 8.307. Penalty for Failure to Number Building. Any person being the owner or occupant of any building now erected or that may hereafter be erected in the City of Essexville, who shall for thirty (30) days after notice by the City Council of the proper number of such building, neglect or refuse to number any building owned or occupied by him, in conformity with the provisions of this chapter and with the plan for numbering buildings aforesaid, shall be subject to a penalty of Five Dollars ($5.00) and a similar penalty every thirty (30) days thereafter that he shall neglect or refuse to number said building.

Sec. 8.308 - 8.400. Reserved.

# TITLE VIII: BUILDING REGULATIONS

## CHAPTER 4

## ELECTRICAL CODE

*This Chapter was repealed by Ordinance No. 2004-1 said Ordinance adopted by the City Council on March 9, 2004 and effective March 25, 2004.*

Sec. 8.401. – 8.500. Reserved.

# TITLE VIII: BUILDING REGULATIONS

## CHAPTER 5

## STORAGE TANKS, PIPELINES, ETC.

Sec. 8.501. Permission Required. No person, firm, or corporation shall erect, construct, maintain or use any storage tanks, pipe lines, or other structures or equipment incidental to the storage of oil, ether, gasoline, benzoil, naptha, or other liquid volatile petroleum products, volatile coal tar derivatives, or synthetic volatile compounds, by whatever name called, within the City limits of Essexville, without first obtaining permission from the Essexville City Council.

Sec. 8.502. Limitation on Amount Stored. No person, firm, or corporation shall construct, maintain or use any storage tanks, for the storage of oil, ether, gasoline, benzoil, naptha, or other liquid volatile petroleum products, volatile coal tar derivatives, or synthetic volatile compounds, by whatever name called, in excess of four (4) 20,000 gallon capacity tanks.

Sec. 8.503. Approval of Plans. No storage tanks, pipe lines or structures for the storage of aforesaid products shall be constructed within the City of Essexville until all plans and specifications thereof have been submitted and approved by the Fire Marshall of the State of Michigan, the Chief of the Fire Department of the City of Essexville and the City Council.

Sec. 8.504. Vote of Electors Required for Variance. No person, firm, or corporation shall construct any storage tanks incidental to aforesaid uses in excess of the limits in quantity or gallonage capacity imposed by this chapter except upon approval by an affirmative vote of a majority of the qualified electors of the City of Essexville voting upon such proposition at a general or special election called for that purpose, with all incidental costs and security therefore being borne by the person seeking such authority.

.Sec. 8.505 Permit Fee.[110] The permit fee for the construction, operation and use of storage tanks shall be set by City Council resolution

Sec. 8.506 - 8.600. Reserved.

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[110] This Section amended March 9, 2004, effective March 25, 2004.

# TITLE VIII: BUILDING REGULATIONS

## CHAPTER 6

## PLUMBING CODE

*This Chapter was repealed by Ordinance No. 2004-1 said Ordinance adopted by the City Council on March 9, 2004 and effective March 25, 2004.*

Sec. 8.601. – 8.700 Reserved.

# TITLE VIII: BUILDING REGULATIONS

## CHAPTER 7

## CROSS CONNECTIONS

Sec. 8.701. Adoption. The Water Supply Cross Connection Rules of the Michigan Department of Public Health being R325.431 to R325.440 of the Michigan Administrative Code and any amendments thereto are hereby adopted by reference.

Sec. 8.702. Inspections. Inspections shall be made of all properties served by the public water supply where cross connections with the public water supply is deemed possible. The frequency of inspections and re-inspections, based on potential health hazards involved, shall be as established by the City Manager and as approved by the Michigan Department of Public Health.

The representative of the City of Essexville shall have the right to enter at any reasonable time any property served directly or indirectly by a connection to the public water supply system of the City of Essexville for the purpose of inspecting the piping system or systems thereof for cross connections. On request the owner, lessees or occupants of any property so served shall furnish to the inspection agency any pertinent information regarding the piping system or systems on such property. The refusal of such information or refusal of access, when requested, shall be deemed evidence of the presence of cross connections.

Sec. 8.703. Discontinuance of Water Service. The Water Department is hereby authorized and directed to discontinue water service after reasonable notice to any property wherein any connection in violation of this chapter exists, and to take such other precautionary measures deemed necessary to eliminate any danger of contamination of the public water supply system. Water service to such property shall not be restored until the cross connection(s) has been eliminated in compliance with the provision of this chapter.

Sec. 8.704. Posting "Water Unsafe for Drinking". The potable water supply made available on the properties served by the public water supply shall be protected from possible contamination as specified by this chapter and by the State and City of Essexville Plumbing Codes. Any water outlet which could be used for potable or domestic purposes and which is not supplied by the potable system must be labeled in a conspicuous manner as "Water Unsafe for Drinking".

Sec. 8.705. Plumbing Code. This chapter does not supersede the State Plumbing Code and the Plumbing Code of the City of Essexville, but is supplementary to them.

Sec. 8.706 – 8.800 Reserved

# TITLE VIII: BUILDING REGULATIONS

## CHAPTER 8

## MANAGEMENT OF REGULATED FLOOD PRONE HAZARD AREAS [111]

Section 8.801. Designated Agency and Enforcement Officer. Pursuant to Section 8b(6) of Act 230, Michigan Public Acts of 1972, as amended ("the Act"), the Building Official for the City of Essexville is hereby designated as the enforcement officer to discharge the responsibility of the City of Essexville under the Act. The City of Essexville assumes responsibility for the administration and enforcement of the state construction code throughout the corporate limits of the City of Essexville.

Section 8.802. Code Appendix Enforced. Pursuant to the Act, Appendix G of the Michigan Building Code shall be enforced by the City of Essexville.

Section 8.803. Designation of Regulated Flood Prone Hazard Areas. The Federal Emergency Management Agency Flood Insurance Study entitled "Flood Insurance Study Number 26017CV000A" dated March 20, 2009 and the Flood Insurance Rate Map panel numbers 0351 and 0352 dated March 20, 2009 are adopted by reference for the purposes of administration of the Michigan Construction Code and declared to be a part of Section 1612.3 of the Michigan Building Code and to provide the content of the "Flood Hazards" section of Table 301.2(1) of the Michigan Residential Code.

Section 8.804. Permit to Develop Required. No person, firm, corporation or other legal entity shall commence any development within a regulated flood prone hazard area located within the corporate limits of the City of Essexville and where such regulated flood prone hazard area has been designated by a federal or state agency with jurisdiction to make and enforce such designation without first obtaining a permit from the City of Essexville and such federal and/or state agencies where required.

Development shall mean any change to improved or unimproved real property including but not limited to the construction of buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations.

Section 8.805. Application for a Permit. Any person, firm, corporation or other legal entity desiring to develop in a regulated flood prone hazard area shall first apply in writing to the City Clerk. Applicant must also provide evidence of having obtained all permits required by any federal or state agency with jurisdiction over development within a flood plain."

Sec. 8.806 – 8.900 Reserved

[111] This Chapter amended by Ordinance No. 2010-04 adopted August 10, 2010, effective August 25, 2010.

# TITLE VIII: BUILDING REGULATIONS

## CHAPTER 9

## REGULATION OF DISH-TYPE SATELLITE SIGNAL-RECEIVING ANTENNAS AND OTHER ANTENNAS

Sec. 8.901. Preamble.[112] This ordinance is to regulate the size and location of certain airway type antennas used to send and receive video and audio programming. A purpose for these regulations is the safety of the users of the devise, the preservation of the property, both personal and real upon which the devices are located, and the safety of surrounding properties and property owners. Safety reasons for restrictions on the use of these devices is for similar reasons to other similar types of objects which might be placed upon real property or structures and include avoiding electrical shock, the rusting and collapse of supporting structures over a period of time, the ability to withstand the force of natural elements, locating of devices so that if they should topple or fall they do not do so upon adjoining properties, the mounting devices upon structures that are generally not secure or could result in a hazard, and like other safety considerations.

Sec. 8.902. Definitions:[113]

(1) “Antenna” shall mean all radio, television, communication, or electronic signal-receiving devices including dish-type satellite signal-receiving antennas defined below.

(2) "Dish-type Satellite Signal-Receiving Antennas," also referred to as "satellite dishes" or “ground stations" shall mean one, or a combination of two or more of the following:

a. A signal-receiving device (antenna, dish antenna, or dish-type antenna), the purpose of which is to receive communication or other signals from satellites in earth orbit and other extraterrestrial sources.

b. A low-noise amplifier (UNA) which is situated at the focal point of the receiving component and the purpose of which is to magnify, store, transfer and/or transmit electronic or light signals.

c. A coaxial cable the purpose of which is to carry or transmit said signals to a receiver.

(2) “Receiver.” shall mean a television set or radio receiver.

(3) "Dish" shall mean that part of a satellite signal receiving antenna characteristically shaped like a saucer or dish.

(4) "Grounding rod" shall mean a metal pole permanently positioned in the earth to serve as a electrical conductor through which electrical current may safely pass and dissipate.

Sec. 8.903. Permits Required.[114] No person, firm, partnership, corporation, trust or other legal entity shall construct an antenna without a Building Permit and an Electrical

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[112] This Section adopted March 9, 2004, effective March 25, 2004.
[113] This Section amended March 9, 2004, effective March 25, 2004.

Permit, nor shall construction commence prior to the issuance of said permits and in the case of a Building Permit in accordance with Section 8.903 of this Chapter.

Sec. 8.904. Application for Permit. The owner, or occupant with written permission from the owner, of any lot, premises or parcel of land within the City of Essexville, who desires to construct an antenna on said lot, premises, or land parcel, must first obtain a permit to do so from the City of Essexville, Building Inspector.

The Building Inspector shall issue such permit, provided the applicant submits a written application upon forms provided and approved by the Building Inspector, along with a plot plan of the lot, premises or land parcel attached, showing the exact location and dimensions of the proposed antenna; a description of the kind of antenna proposed; the exact location and dimensions of all buildings or structures; and construction plans and specifications. Each application shall specify among other things the name and address of the owner of the real estate; the applicant; and the person to be permitted to construct the proposed antenna.

The applicant shall present documentation of the possession of any license or permit required by any federal state or local agency pertaining to the ownership, construction or operation of an antenna.

The applicant shall submit with each application the sum of twenty-five dollars ($25.00) which represents the permit fee. The permit fee shall cover the costs of reviewing the construction plans and specifications, inspecting the final construction and processing the application.

Sec. 8.904a.[115] The requirements of Sections 8.903 and 8.904 shall not apply to the installation of an antenna, whose dish is one (1) meter or less in diameter, or TV antennas and wireless cable antennas of less than 12 feet in height. Additionally, the requirements of this chapter shall not apply to any device of dimension or type stated in this section whenever any section or subsection of this chapter is followed by the notation "(Not required by Section 8.904a type devices.)

Sec. 8.905. Location of Satellite Dish.[116]

(1) All ground –mounted antennas shall comply with the following:

a. No antenna shall be constructed in any front or side yard, but, shall be constructed to the rear of the residence or main structure.

b. No antenna, including its concrete base slab or other substructure, shall be constructed less than the distance of its height from any property line or easement.

c. An antenna shall not exceed a grade height of twelve (12) feet.

d. All structural supports shall be of rustproofed metal.

e. Wiring between an antenna and a receiver shall be placed at least four (4) inches beneath the surface of the ground within rigid conduit.

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[114] This Section adopted April 14, 1992, effective May 3, 1992.
[115] This Section adopted March 9, 2004, effective March 25, 2004.
[116] This Section amended March 9, 2004, effective March 25, 2004.

f. Such antenna shall be designed to withstand a wind force of seventy-five (75) miles per hour without the use of supporting guy wires.

g. Any driving motor shall be limited to ll0v maximum power design and be encased in protective guards.

h. A satellite dish must be bonded to a grounding rod.

i. No satellite dish shall be constructed upon the roof top of any garage, residential dwelling, church, school, apartment building, hospital or any other commercial building or structure. (Not required by Section 8.904a type devices.)

(2) All roof–mounted antennas shall comply with the following:

a. Antennas shall be mounted directly upon the roof of a primary or accessory structure, as defined in the Building Code, and shall not be mounted upon appurtenances such as chimneys, towers, trees, poles or spires.

b. An antenna shall not exceed a height of more than four (4) feet above the roof upon which it is mounted.

c. A satellite dish "dish" shall not exceed three (3) feet in diameter.

d. An antenna shall be designed to withstand a wind force of eighty-five (85) miles per hour without the use of supporting guy wires.

e. Any driving motor shall be limited to ll0v maximum power design and be encased in protective guards.

f. An antenna must be bonded to a grounding rod.

(3) All building–mounted antennas shall comply with the following:

a. No antenna shall be mounted on a pole or similar apparatus on the wall of any building except in the rear of the residence of main structure of the premises.

b. All antennas primarily mounted on the backyard side of a building shall be securely fastened to the side of the building and shall meet those requirements as if such were roof-mounted as set forth in paragraph (2) above.

(2) No individually taxed parcel of land within the City of Essexville shall have located upon it more than one antenna.

(3) No antenna shall be linked, physically or electronically, to a receiver which is not located on the same lot, premises or parcel of land as is the satellite dish unless all cables, wires, or lines leading to such receiver are buried beneath the ground or elevated to a minimum height of ten (10) feet above the ground at all points and properly mounted and secured to permanent supporting apparatus. In instances where the satellite dish are linked to receivers not located on the same lot, no fee may be charged by the owner or operator of such satellite dish of persons on other lots receiving signals from such satellite dish. (Not required by Section 8.904a type devices.)

Sec. 8.906. Penalty.[117] Whosoever violates any of the provisions of Chapter 8 of Title VIII of the Codified Ordinances of the City of Essexville, shall be guilty of a misdemeanor and shall be subject to the penalties as set forth in Title I, Chapter 1, Section 1.110 of the Codified Ordinances of the City of Essexville. A separate violation shall be deemed to have been committed each day during or on which a violation occurs and continues to occur.

Sec. 8.907. Removal of Violations.[118] Any structure erected in violation of this Chapter may be removed by the Building Inspector five days after notice by the Building Inspector that said structure is in violation of this code. The cost of such removal may be charged against the person responsible, and upon his failure to pay may be considered a lien against the property involved and collected the same as taxes.

Sec. 8.908. Appeals.[119] Appeals from decisions of the Building Inspector shall be made to the Board of Zoning Appeals as provided by the Zoning Ordinances of the City of Essexville. However, no appeal shall be considered valid if filed more than 30 days after notice by the Building Inspector of Violation of this code nor shall the filing of such appeal stay or prevent any prosecution which may be then pending or advanced thereafter by the City.

Sec. 8.909. Right of Building Inspector to Grant Variances to Permittees Operating a Community Antenna Television System.[120] The Building Inspector shall have the right and authority to grant a variance of the requirements of this Chapter to any permitee licensed by the City of Essexville to operate a community antenna television system as described in Chapter 1 of Title II of the Essexville City Code without the requirement of an appeal for such variance to the Board of Zoning Appeals. Such variance shall be deemed granted by the Building Inspector if transmitted in written form to such permitee describing specifically the variance(s) allowed.

Sec. 8.910 Right of Existing Antennas to Exist Without Permit.[121] All antennas within the City of Essexville as of the effective date of this Chapter shall be allowed to remain without a permit as required herein. However, the Building Inspector shall have the right to enter upon any property within the City of Essexville wherein such antennas exist and require conformity with the provisions of this Chapter by written notice of violation wherein conditions or defects exist to the extent that the life, health, property or safety of the public is endangered.

Sec. 8.911 – 8.1000 Reserved

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[117] This Section adopted March 12, 1986, effective March 28, 1986.
[118] This Section adopted March 12, 1986, effective March 28, 1986.
[119] This Section adopted March 12, 1986, effective March 28, 1986.
[120] This Section adopted March 12, 1986, effective March 28, 1986.
[121] This Section adopted March 12, 1986, effective March 28, 1986.

# TITLE VIII: BUILDING REGULATIONS

## CHAPTER 10

## MECHANICAL CODE

*This Chapter was repealed by Ordinance No. 2004-1 said Ordinance adopted by the City Council on March 9, 2004 and effective March 25, 2004.*

Secs. 8.1001. – 8.1100 Reserved.

# TITLE VIII: BUILDING REGULATIONS

## CHAPTER 11

## FIRE CODE [122]

Sec. 8.1101. Adoption of International Fire Code. The International Fire Code, 2006 edition, published by the International Code Council, Inc. is hereby adopted as the Fire Code of the City of Essexville.

Sec. 8.1102. Duties of the Department of Public Safety.

a. The International Fire Code shall be enforced by the Department of Public Safety of the City of Essexville.

Sec. 8.1103. Definitions.

a. Wherever the word "jurisdiction" is used in the International Fire Code, it shall mean the City of Essexville.

b. Whenever the term "Board of Appeals" is used in the International Fire Code, such term shall be the construed to be the Construction Board of Appeals of the City of Essexville as created and set forth in Sec. 8.1301 through Sec. 8.1305 of the Code of Ordinances of the City of Essexville and whose procedural rules shall apply and supersede all appeal procedures which may be contained within the International Fire Code adopted herein.

c. Whenever the term "Chief" or "Fire Chief" is used in the International Fire Code, such terms shall be construed to be the Director of the Department of Public Safety.

d. Wherever the term “fire code official” is used in the International Fire Code such term shall be construed to be the Director of the Department of Public Safety or his or her designee acting as the Fire Inspector for the City of Essexville.

Sec. 8.1104. Establishment of Limits of Districts in Which Storage of Flammable or Combustible Liquids in Outside Above Ground Tanks is Prohibited. The limits referred to in Sec. 3404.2.9.5.1 of the International Fire Code where the storage of flammable or combustible liquids in outside above ground tanks is prohibited, are hereby established as follows: any area of the City South of Woodside Avenue from the West City limits East to Pine Street then North to Saline Street then East to the West City limits. An exception to this limitation shall be approved tanks used to store combustible fuels only for the purpose of residential home heating and not exceeding 300 gallons capacity and approved tanks used to store combustible fuels only for the purpose of servicing buses and vehicles belonging to School Districts.

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[122] This Chapter amended by Ordinance No. 2008-01 adopted by March 11, 2008, effective March 26, 2008.

Sec. 8.1105. Establishment of Limits in Which Storage of Liquefied Petroleum Gases is to be Restricted. The limits referred to in Sec. 3804.2 of the International Fire Code, in which storage of liquefied petroleum gas is restricted, are hereby established as follows: City limits of the City of Essexville. An exception to this limitation shall be approved tanks used to store LP gas only for the purpose of residential home heating not to exceed 100 pound capacity per tank and A maximum of two tanks per installation.

Sec. 8.1106. Permits Required for Recreational Fires. That portion of Sec. 105.6.30 excepting recreational fires from the requirement of an operational permit is not adopted. There shall be no exceptions to Sec. 105.6.30 of the International Fire Code and a permit shall be required for all recreational fires upon any public or private property within the limits of the City of Essexville.

Sec. 8.1109. No Notice Required Before Violation may be Charged. In addition to any other method of service or notice of violation requirement set forth in the International Fire Code, the fire code official may, without notice or opportunity to comply with the Code, charge any person who violates any provision of the International Fire Code with a misdemeanor as set forth in Sec. 8.1112 hereafter.

Sec. 8.1110. Appeals. Any person orally or in writing denied a permit or disputing an interpretation of the Code by a fire code official not the Fire Chief shall have five calendar days to appeal such denial or interpretation in writing to the Fire Chief. Any oral or written denied appeal to the Fire Chief or oral or written denial of a permit or disputed interpretation of the Code by the Fire Chief may be appealed to the Board of Appeals in writing within fourteen calendar days of such oral or written denial or disputed interpretation.

Sec. 8.1111. Non-Adoption of Some Provisions of the International Fire Code. Appendix A, C, D, all subsections of Section 108, and other sections or portions of sections of the International Fire Code as specifically delineated in this ordinance as altered are not adopted as ordinances of the City of Essexville.

Sec. 8.1112. Penalties. Any person who violates any of the provisions of International Fire Code as adopted herein shall be guilty of a misdemeanor and shall suffer the penalties up to and including those set forth in Sec. 1.110 of Chapter 1 of Title I of the Essexville City code. No appeal filed by any person in violation of the adopted Code shall delay or stay the right of prosecution for violations of the Code. A separate violation shall be deemed to have been committed each day during which a violation occurs and continues to occur.

Sec. 8.1113 – 8.1200 Reserved

# TITLE VIII: BUILDING REGULATIONS

## CHAPTER 12

## SPACING BETWEEN STRUCTURES [123]

Sec. 8.1201. Space Between Structures Required. In order to prevent the spread of fire from one structure to another and to allow space between structures to facilitate movement of equipment or vehicles in the event of emergency, it shall be unlawful to construct two structures as defined by Section 2.4 of the Zoning Ordinance of the City within 6 feet of each other in any zoning district of the City. A structure shall also be defined as being inclusive of any deck or decking of any composition.

Sec. 8.1202. Enforcement. Enforcement of this ordinance shall primarily be in the Building Inspector of the City who shall cause enforcement to be in accordance and as this ordinance were part of the City's building code. Any rights of enforcement or abatement contained within the City's building code, its supplements, or the Uniform Code for the Abatement of Dangerous Buildings shall apply as if this ordinance were part of such provisions in addition to other penalties which may be provided for herein.

Sec. 8.1203. Variance. Persons wishing to move for a variance of the strict application of this chapter may appeal any decision of the building inspector in the same manner and under the same provisions as set forth in the zoning ordinance of the City of Essexville.

Sec. 8.1204. Penalty. Whosoever violates any of the provisions of this chapter shall be guilty of a misdemeanor and shall be subject to the penalties set forth in Title I, Chapter 1, Sec. 1.110 of the codified ordinances of the City of Essexville. A separate violation shall be deemed to have been committed each day during or which a violation occurs and continues to occur. The filing of an appeal to the Zoning Board of Appeals set forth in this chapter shall not stay or prevent any prosecution which may be pending or advanced by the City for violation of this chapter whether such appeal is filed prior to subsequent to the institution of any prosecution hereunder.

Sec. 8.1205 – 8.1300 Reserved

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[123] This Chapter adopted October 12, 1995, effective October 27, 1995.

# TITLE VIII: BUILDING REGULATIONS

## CHAPTER 13

## CONSTRUCTION BOARD OF APPEALS [124]

Sec. 8.1301. Establishment of Construction Board of Appeals. Pursuant to Act 230, Public Acts of 1972, as amended, the City of Essexville does hereby establish a Construction Board of Appeals, which shall be established and regulated pursuant to said Act 230 commonly known as the "State Construction Code Act of 1972".

Sec. 8.1302. Board Membership. The appointment, qualifications and terms of the members of the Construction Board of Appeals shall be consistent with Section 14 (1) of Act 230 Public Acts of 1972 and set forth as follows:

A. The Mayor, subject to confirmation by the City Council, shall appoint the members of the board.

B. Members shall be appointed for indefinite terms.

C. Members of the board shall be qualified by experience or training to hear appeals and render decisions arising out of the City's administration of the Uniform Building, Plumbing, Mechanical and Fire Codes as adopted by the City Council of the City of Essexville.

Sec. 8.1303. Meetings. The board shall meet as required and all meetings held by the board shall be public meetings held in compliance with Act 267, Public Acts of 1976, as amended and commonly known as the "Open Meetings Act". Public notice of the time, date and place of the meeting shall be given in the manner required by Act 267, Public Acts of 1976.

Sec. 8.1304. Records. A record of decisions made by the board, properly indexed, and any other writing prepared, owned, used, in the possession of, or retained by the board in performance of an official function shall be made available to the public in compliance with Act 442, Public Acts of 1976, as amended commonly known as the "Freedom of Information Act".

Sec. 8.1305. Authority Subject to Law. The Construction Board of Appeals is controlled and regulated strictly in accordance with Act 230, Public Acts of 1972 as amended.

Sec. 8.1306 – 8.1400 Reserved

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[124] This Chapter adopted November 15, 1999, effective December 1, 1999.

# TITLE VIII: BUILDING REGULATIONS

## CHAPTER 14

## WIND ENERGY SYSTEMS [125]

Sec. 8.1401. Construction and Operating Permits Required. All real property owners desiring to build a wind energy system as allowed by the City Zoning Ordinance shall, prior to the commencement of any construction, make application for and obtain the construction and operating permits required by this Chapter.

Sec. 8.1402. Definitions. Any words used that are defined in the City Zoning Ordinance in Section 15.6, B shall have the same definition when used in this Chapter.

Sec. 8.1403. Application for Building and Electrical Permits. All real property owners desiring to construct a wind energy system, as defined in the city zoning ordinance, shall pay application fees set by the City Council and file an application with the City Clerk for a building and electrical permit, which shall include the following information and contents:

A. Primary Information. The application shall contain the name of the property owners, the address where they reside, and the address and parcel number of the property where the wind energy system is proposed to be constructed.

B. Site Plan. The application shall contain a site plan including maps (drawn to scale) showing the proposed location of all components and ancillary equipment of the proposed wind energy system, property lines, physical dimensions of the property, existing building(s), setback lines, right-of-ways, public easements, overhead utility lines, sidewalks, non-motorized pathways, roads, and contours. The sit plan must also indicate the location and use of all structures on the adjoining properties and be in accordance with the National Electrical Code and its setback requirements of electrical equipment from structures generally. If the Code's setback requirements are lesser than those of the requirements of the City Zoning Ordinance for setbacks of wind energy systems, the requirements of the Zoning Ordinance shall be required.

C. Details of Proposed System. The application shall list the proposed type and height of the wind energy system to be constructed; including the name of the manufacturer and model, product specifications including maximum noise output (measured in decibels), total rated generating capacity, tower and pedestal dimensions, system weight, rotor blade diameter, and a description of ancillary facilities.

D. Wind energy systems shall not be located so as to cause or allow their shadow flickers to enter occupied structures on adjacent real properties through window or door openings. If it is determined after the issuance of any operating permit required by the City that such is occurring, the operating permit for the system may be revoked, withdrawn, or modified to prohibit such

[125] This Chapter adopted by Ordinance No. 2010-02 on February 9, 2010, effective February 24, 2010.

effects inclusive but not limited to the non-operation of such system during time internals when prohibited events are occurring.

E. Roof Mounted Systems. Applicants shall provide an engineering analysis and certification stating that the roof at its location in which a wind energy system is proposed to be mounted is structurally sufficient to support the wind energy system generally and during structure stress producing weather conditions.

F. Compliance of Government Regulations. Upon request of the building inspector, the applicant shall provide written evidence of compliance confirming that the proposed wind energy system complies with all governmental regulations and requirements.

G. Notice to Electrical Utility Company. The application shall include evidence that the property's provider of electricity has been informed of the applicant's intent to install an interconnected, customer-owned generator and that such connection has been approved. Off-grid systems shall be exempt from this requirement.

H. Maintenance Procedures. The application shall include a description of the methods that will be used to perform maintenance on the wind turbine and the procedures that will be used for removing the wind turbine in order to conduct maintenance upon it.

I. Application of Building Code. All provisions of the City Building Code shall apply to the construction of wind energy systems except where in conflict with this Chapter where upon the provisions of this Chapter shall control.

J. Statement and Signature of Property Owners. At the bottom of the application shall be a statement above their signature that reads:

"I, as an applicant for construction and operating permit of the above wind energy system, by my signature hereon, acknowledge that I have read and understand the requirements of construction and operation of a wind energy system within the City as stated in its Zoning Ordinance and Code of Ordinances. I understand that I will be personally responsible for its operation and compliance with the city's requirements and that the details and representations made by me in this application are complete and accurate. I also understand that the operating permit of a wind energy system may be suspended, revoked, or modified if it is not operated in conformity with the requirements of the City zoning and code of ordinances."

Sec. 8.1404. Issuance of Construction Permits and Revocation for Noncompliance. If the applications are found to be complete and in conformity with this Chapter and the City Zoning Ordinance, construction permits will issue. However, such permits may be suspended or revoked if the construction of a wind energy system is determined to be is determined by the building or electrical inspector to not be in conformity with its design as stated in its application, or violation of the Zoning Ordinance, this Chapter, the City Building Codes, or the City Code of Ordinances. If a construction permit is suspended or revoked, all construction upon the work site shall immediately cease.

Section 8.1405. Issuance of an Operating Permit. Upon completion of construction of a wind energy system in conformity with its application, this Chapter, the City Building Codes, and the City Code of Ordinances, an operating permit shall issue to the applicant(s) and continue so long as the wind energy system remains in conformity with its application and City Codes, as they now exist or may be hereafter amended.

Section 8.1406. Suspension or Revoking of an Operating Permit. At any time after issuance of an operating permit, if a wind energy system is determined to be in violation of its application, the City Building Codes, and the City Code of Ordinances, its operation and/or operating permit may be verbally or in writing ordered suspended or revoked by the City building inspector, electrical inspector, fire inspector, or any public safety officer under the following circumstances:

A. The building inspector, electrical inspector, fire inspector, or any public safety officer may order the operation a wind energy system to be suspended verbally or in writing after determination that any violation of any provision of its application, City Building Code, or its Code of Ordinances and specifically including its noise control ordinances, are being violated by its operation. Notice of suspension to any owner of the real property and the reason therefore shall be considered notice to all owners. Failure to suspend operation of a wind energy system after notice to an owner to do so shall be a misdemeanor with each day that such violation continues shall be considered a separate violation.

B. The building inspector, electrical inspector, or fire inspector may revoke an operating permit by written notice to the owners of the real property upon which the system has been operating. Such notice shall be given in the manner required for revoking of a certificate of occupancy under the City Building Code and shall state the reason for the revocation or of the operating permit. Failure to suspend operation of a wind energy system after notice to an owner to do so shall be a misdemeanor with each day that such violation continues shall be considered a separate violation.

C. After correction of the reason for suspension or revoking of an operating permit, a suspended or revoked operating permit shall be restored by written notice to the owner of the property of location of a wind energy system by the official or city agency that suspended or revoked the operating permit.

D. Appeals of orders of suspension or revocation shall be made to the Construction Board of Appeals of the City of Essexville as created and set forth in Sec. 8.1301 through Sec. 8.1305 of the Code of Ordinances of the City of Essexville and whose procedural rules shall apply and supercede all appeal procedures which are contained within the City Building Code in conflict therewith.

Sec. 8.1407 – 8.1500 Reserved

# TITLE VIII: BUILDING REGULATIONS

## CHAPTER 15

## STORM WATER DISCHARGE SYSTEMS[126]

Section.8.1501 Purpose. To encourage alternate design standards for the regulation and control of storm water and pollution caused directly or indirectly by storm water runoff from all zoning districts within the City of Essexville; to protect sensitive areas in the community; and to encourage alternate construction standards which will implement the long range goals and objectives adopted by the Bay County Storm Water Authority which affects both storm water and natural water resources but encourages flexibility in design concepts.

Section.8.1502. Short Name. This Ordinance is hereby adopted and shall be known as the City of Essexville Alternate Design for Storm Water Discharge and Preservation of Natural Water Resources Ordinance.

Section.8.1503. Repeal of Existing Ordinances. All Ordinances, resolutions or orders, or parts thereof, in conflict with the provisions of this Ordinance are hereby repealed in their entirety.

Section 8.1504. Definitions.

"BASWA" is the Bay Area Storm Water Authority of which the City of Essexville is a member, with the lead governmental agency being the Bay County Drain Commissioner.

"BMP" or "Best Management Practice" means a practice or combination of practice and design criteria that comply with the Michigan Department of Environmental Quality Guidebook for Michigan Watersheds and Low Impact Development Manual for Michigan or equivalent practices and criteria that minimize storm water runoff and prevent the discharge of pollutants into storm water.

"LEED" is a low impact design concept called Leadership in Energy and Environmental Design. and is an internationally recognized green building certification system, providing third-party verification primarily through the Washington, D.C. based U.S. Green Building Council (USGBC) which is a non-profit organization committed to a prosperous and sustainable future through cost-efficient and energy-saving green buildings using the concept of LEED. Leed is aimed at improving performance across all the areas involved in construction of buildings and infrastructure, including energy savings, water efficiency, C02 emissions reduction, improved indoor environmental quality, and stewardship of resources and sensitivity to their impacts.

"LID" means Low Impact Development which incorporates storm water management by the use of the basic principle that is modeled after nature: manage rainfall where it lands. LID uses design methods to control storm water by mimicking a site's pre-settlement hydrology by using design techniques that infiltrate, filter, store, evaporate, and detain runoff close to its source. Storm water management historically focused on managing the flood effects from larger storms. Exclusive reliance on peak rate control prevents flooding, but doesn't protect streams and water quality. Thorough storm water management should

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[126] This chapter added by Ordinance No. 2012-4 adopted on January 10, 2012, effective January 25, 2012.

target infrequent large storms, as well as the much more frequent, smaller storms. With the change in land surface generated by land development, not only does the peak rate of runoff increase, but the total volume of runoff also often dramatically increases. LID focuses on both peak rates and total volumes of runoff.
LID application techniques are designed to hold constant peak rates of runoff for larger storms
and prevent runoff volume increases for the much more frequent, smaller storms. Thus, the natural flow pattern is kept in better balance, avoiding many of the adverse impacts associated with storm water runoff.

Section. 8.1505 Objectives
LID is often seen as a site specific storm water management practice, while smart growth is often a broader vision held at a community, county, or regional level. Wherever possible, design should be based on site specific information gathered by field investigation or other local data sources. It is the purpose of this ordinance to establish minimum storm water management requirements and controls to accomplish, among others, the following objectives:

A. To minimize increased storm water runoff rates and volumes from identified land development;
B. To minimize nonpoint source pollution;
C. To minimize the deterioration of existing watercourses, culverts and bridges, and other structures;
D. To encourage water recharge into the ground where geologically favorable conditions exist;
E. To maintain the ecological integrity of stream channels;
F. To minimize the impact of development upon streambank and streambed stability;
G. To control non-storm water discharges to storm water conveyances and reduce pollutants in storm water discharges;
H. To preserve and protect water supply facilities and water resources by means of controlling increased flood discharges, stream erosion, and runoff pollution;
I. To reduce the adverse impact of changing land use on water bodies and, to that end, this ordinance establishes minimum standards to protect water bodies from degradation resulting from changing land use where there are insufficient storm water management controls;
J. To ensure that storm drain drainage or storm water BMPs are adequate to address storm water management needs within a proposed development, and for protecting downstream landowners from flooding and degradation of water quality. The procedures, standards, and recommendations set forth in this Ordinance and the State of Low Impact Development Manual for Michigan are designed for these purposes; and
K. To ensure that all storm water facilities necessary for a proposed development will have an appropriate governmental unit responsible in perpetuity for performing maintenance or for overseeing the performance of maintenance by a private entity, such as a property owners' association.

Section 8.1506 Procedure

A. All site plans except single family homes shall include a storm water management plan for the entire site being considered for development. The storm water plan shall be designed, constructed and maintained so as to prevent flooding, minimize stream and river impacts, protect water quality and achieve the purposes of this Ordinance as set forth in Section 4 above. The design of the storm water management plan may:

1. Comply with generally accepted local requirements; or,
2. Use LEED designs so that LID development is incorporated into the plan; or
3. Use a combination of both A and B.

B. Copies of the storm water management plan shall be submitted to both the City of Essexville for review by its engineering and/or planning consultants to ensure that there is compliance with all other applicable ordinances and meets the intent of this Ordinance. After review and comment is made at the local level, then both the comments and the plans shall be submitted to the Bay County Drain Commissioner for his comments. The applicant will submit five copies of final construction plans for storm water BMPs with a letter of transmittal submitted to the City of Essexville with the final site plan /subdivision plan review. Construction or building permits shall not be issued until approval of the construction plans. The construction plans shall be drawn to a scale no smaller than I" = 50', and on sheets no larger than 24" x 36". The scales used shall be standard engineering scales and shall be consistent throughout the plans. When plans have been completed with computer aided design technology, locations should be geo-referenced and a copy of the electronic file shall also be provided. The construction plans shall include:

4. Proposed storm water management facilities (plan and profile).
5. Proposed storm drains including rim and invert elevations.
6. Proposed open channel facilities including slope, cross section detail, bottom elevations, and surface material.
7. Final sizing calculations for storm water quality and quantity treatment facilities and storm water conveyance facilities.
8. Storage provided by one (I) foot elevation increments.
9. Tributary area map for all storm water management facilities indicating total size and average runoff coefficient for each sub-area.
10. Analysis of existing soil conditions and groundwater elevation (including submission of soil boring logs) as required for proposed retention and infiltration facilities.
11. Details of all storm water BMPs including but not limited to:
    i. Outlet structures.
    ii. Overflow structures and spillways.
    iii. Riprap.
    iv. Manufactured treatment system.
    v. Underground detention cross section and product details.
    vi. Cross section of infiltration and/or bioretention facilities.

12. Final landscaping plan and details.
13. Final easements for storm water management facilities.
14. Maintenance plan and agreement.

C. Construction drawings and engineering specifications shall be subject to review and approval by the City of Essexville Engineer and Environmental Consultants to ensure that the construction plan conforms with the approved Storm water Plan and that adequate storm drainage will be provided and that the proposed storm water management system provides adequately for water quantity and quality management to ensure protection of property owners and watercourses both within the proposed development and downstream.

D. A construction permit shall not be issued unless the detailed engineering drawings and specifications meet the standards of this Ordinance, applicable City of Essexville ordinances, engineering standards and practices, and any applicable requirements of other government agencies.

E. An as-built certification for storm water BMPs must be provided to the City of Essexville prior to final approval of the development. The certification should include the following:

1. A plan view of all detention basins, retention basins, and/or sediment forebays detailing the proposed and final as-built elevation contours. Sufficient spot elevations should be provided on each side of the basin, the bottom of the basin, and along the emergency spillway(s).
2. Detention basin, retention basin, and/or sediment forebay calculations along with corresponding volumes associated with the as-built elevations. The proposed volume and final as-built volume should be indicated.
3. Final as-built invert elevations for all inlet pipes and all associated outlet structure elevations, riser pipe hole sizes, and number of holes should be included. Invert elevations of the final outlet pipe to the receiving water and elevation of the final overflow structure should also be provided.
4. The side slopes of all storm water basins should be identified and must meet minimum safety requirements.
5. The certification should be signed and sealed by a registered professional engineer or landscape architect.

Sec.8.1507- 8.1599 <u>Reserved</u>

# TITLE VIII: BUILDING REGULATIONS

## CHAPTER 16[127]

## TENTS, CANOPIES, AND MEMBRANE STRUCTURES

Sec. 8.1601. Purpose, Supplementation to Fire or Building Code, and Conflicts in Codes. This Ordinance is adopted to protect the health, safety, and welfare of the residents by regulating the location, installation and design of tents, awnings, canopies, membrane structures, and other temporary structures upon private property by supplementing but not replacing the requirements of the City's Building and Fire Codes. All provisions of the City's adopted Building and Fire Codes shall remain in effect. In the event the requirements of this Chapter conflict with any Fire or Building Code adopted by the City now or hereafter, the requirements of this Chapter shall govern and be the ordinance of the City in such regard.

Sec. 8.1602. Definitions. The following terms as used in this article shall have the following meanings

(a) Air-Supported Structure means a structure, enclosure or shelter wherein the shape of the structure is attained by air pressure, and occupants of the structure are within the elevated pressure area.

(b) Canopy means a structure, enclosure or shelter constructed of fabric or pliable materials supported by any manner, except by air or the contents it protects, and is open without sidewalls or drops on 75 percent or more of the perimeter.

(c) Membrane Structure means an air-inflated, air-supported, cable, or frame-covered structure.

(d) Tent means a structure, enclosure or shelter constructed of fabric or pliable material supported by any manner except by air or the contents that it protects.

(e) Temporary Structure means any tent, canopy, air supported structure, membrane structure, or similar structure.

Sec. 8.1603. Permit Required.

(d) Temporary structures less than 120 square feet shall not require a permit but temporary structures of all dimensions shall be erected, maintained, and removed in compliance with the requirements of this Chapter and the City's Building and Fire Codes.

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[127] This Chapter added by Ordinance No. 2015-1, adopted September 15, 2015, effective September 30, 2015.

(e) A permit is required for the erection or use of a temporary structure if the temporary structure is larger horizontally than 120 square feet at its widest or largest level. The issuance of a permit shall not lengthen the length of time a temporary structure may be erected on a property nor alter the locations it may be placed upon or required set-backs required by this Chapter or the City's Fire or Building Codes.

(f) A written permit application in a form approved by the City Manager shall be submitted to the City Manager or his or her designated representative. Submitted with the written application shall be a fee in an amount as established by the City Council.

(g) Temporary structures shall not be installed and preparation work shall not begin unless and until a permit has been issued. All work performed under the permit shall be inspected after completion and before use of the structure.

Sec. 8.1604. Location. The location of temporary structures on properties in residentially zoned areas of the City shall be as follows:

(a) Temporary structures of every size, whether located on a front, side or a rear open space on a property, shall be not be placed closer to 20 feet of any lot line, building, or other temporary structure.

(b) Temporary structures shall not be located in any front yard open space in any residentially zoned district of the City except that one tent or canopy may be located in the front yard open space for a period of 3 days twice per each calendar year (separated by a period of at least seven days) for the purpose of a yard sale of property owned by the residents of the property. A temporary structure larger than 120 square feet at its widest horizontal point that is located in a front open space shall require a permit as set forth in this Chapter. The erection of any type of temporary structure in a front yard open space for any period of time lasting less than three days shall constitute one complete three day period. The erection of any type of temporary structure in a front yard open space shall constitute the use of one three day time period per year.

(c) Air-supported structures or membrane structures may not be located in the front open space of a property even by permit and must comply with all size restrictions, set-back, and time of use restrictions when located in side or rear lot locations.

Sec. 8.1605. Use Period. Temporary structures not located in a front yard open space by shall be limited to two seven day use periods per year separated by at least seven days. The erection of any type of temporary structure for any period of time lasting less than seven days shall constitute one complete seven

day period. The erection of any type of temporary structure shall constitute the use of one seven day time period.

Sec. 8.1606. No Variances Allowed. No use or location variances under the Zoning Code or otherwise may be granted nor allowed from the requirements of this Chapter.

Sec. 8.1607. Violations and penalties. Whosoever violates any of the provisions of this Chapter shall be guilty of a civil infraction and subject to a civil penalty of a Class C infraction as described in Section 1.508 of this Code of Ordinances. A separate violation shall be deemed to have been committed each day during which a violation occurs and continues to occur. Such penalties shall not be exclusive nor prohibit the City from seeking further and other remedies for violation as provided for and allowed by law.

Sec.8.1607- 8.1599 Reserved

# TITLE VIII: BUILDING REGULATIONS[128]

## CHAPTER 17

## RODENT PROOFING

Sec. 8.1701. Purpose. This Ordinance is adopted to protect the health, safety, and welfare of the residents from infestations of rodents by regulating the location, construction, installation and design of certain detached building and structures located upon private property that are not inhabited by people. This ordinance supplements but does not replace nor relieve the requirements of the City's Building, Residential, Zoning, and Fire Codes.

Sec. 8.1702. Definitions. The following terms as used in this article shall have the following meanings

(f) Detached Building means a structure, enclosure or shelter not inhabited by people who are or would live, sleep, or work there or in which feed, food, or foodstuff is not stored, prepared, processed, served, or sold. A building designed or used to store automobiles or other vehicles not attached to a primary structure on a property, accessory buildings, storage buildings, and sheds are all detached buildings.

(g) Occupied Structure means a structure, enclosure or shelter inhabited by people who are or would live, sleep, or work there or in which feed, food, or foodstuff is stored, prepared, processed, served, or sold.

(h) Primary Structure is a building or structure designed for habitation and/or used for the occupation of people.

(i) Zoning Permit is a document issued by the City Clerk's office after submission by a property owner of a zoning permit application describing the proposed construction of a detached building or other structure upon his or her property. Buildings or structures may not be constructed or located upon a property without prior issuance of a zoning permit.

Sec. 8.1703. Permit Required and Fees.

(h) A zoning permit is required before construction may commence of any detached building. However, if the proposed detached building is smaller horizontally than 80 square feet at its widest or largest level, a fee shall not be charged for the permit. Fees for larger or other detached structures shall be set by the City Council.

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[128] This Chapter added by Ordinance No. 2015-4, adopted November 16, 2015, effective December 1, 2015.

(i) A written permit application for a permit in a form approved by the City Manager shall be submitted to the City Manager or his or her designated representative. Submitted with the written application shall be a fee in an amount as established by the City Council.

(j) Detached buildings shall not be installed and preparation work shall not begin unless and until a permit has been issued. All work performed under the permit shall be inspected after completion and before use of the structure and be in compliance with the requirements of this Chapter and the City's Building, Residential, Zoning and Fire Codes.

Sec. 8.1704. Location. The location of detached buildings on properties in residentially zoned areas of the City shall be as follows:

(d) Detached buildings of every size, whether located on a front, side or a rear open space on a property, shall be located in compliance with setback requirements stated in the City Zoning Ordinance and City Fire, Building and Residential Codes.

(e) No detached building shall be placed upon or maintained on any property in a residential district without the existence upon the property of a principal building as required in the City Zoning Ordinance.

Sec. 8.1705. General Rodent Proofing Requirements. Rodent proofing requirements for all detached buildings are as follows except as modified by Section 8.1706 below:

(a) General requirement. All structures shall be constructed in accordance with this section and are also subject to the requirements of other sections of City's Residential Code and the provisions of Section 8.1706 below.

(b) Foundation wall ventilation openings. Foundation wall ventilator openings shall be covered for their height and width with perforated sheet metal plates no less than 0.070 inch (1.8 mm) thick, expanded sheet metal plates not less than 0.047 inch (1.2 nun) thick, cast-iron grills or grating, extruded aluminum load-bearing vents or with hardware cloth of 0.035 inch (0.89 mm) wire or heavier. The openings therein shall not exceed ¼ inch (6.4 mm).

(c) Foundation and exterior wall sealing. Annular spaces around pipes, electric cables, conduits, or other openings in the walls shall be protected against the passage of rodents by closing such openings with cement mortar, concrete masonry or noncorrosive metal.

(d) Doors. Doors on which metal protection has been applied shall be hinged so as to be free swinging. When closed, the maximum

clearance between any door, door jambs and sills shall not be greater than 3/8 of an inch (9.5 mm).

(e) Rodent-accessible openings. Windows and other openings for the purpose of light and ventilation on the exterior walls not covered in this chapter, accessible to rodents by way of exposed pipes, wires, conduits and other appurtenances, shall be covered with wire cloth of at least 0.035-inch (0.89 mm) wire. In lieu of wire cloth covering, said pipes, wires, conduits and other appurtenances shall be blocked from rodent usage by installing solid sheet door metal guards 0.024 inch (0.61 mm) thick or heavier. Guards shall be fitted around pipes, wires, conduits or other appurtenances. In addition, they shall be fastened securely to and shall extend perpendicularly from the exterior wall for a minimum distance of 12 inches (305 mm) beyond and on either side of pipes, wires, conduits or appurtenances.

(f) Pier and wood construction. Pier and wood construction shall be as follows:

(1) Sill less than 12 inches above ground. Buildings not provided with a continuous foundation shall be provided with protection against rodents at grade by providing an apron and grade floors as set forth below.

(2) Apron. Where an apron is provided, the apron shall not be less than 8 inches (203 mm) above, nor less than 18 inches (457 mm) below, grade. The apron shall not terminate below the lower edge of the siding material. The apron shall be constructed of an approved nondecayable, water-resistant rodent proofing material of required strength and shall be installed around the entire perimeter of the building. Where constructed of masonry or concrete materials, the apron shall not be less than 4 inches (102 mm) in thickness.

(3) Grade floors. Where continuous concrete grade floor slabs are provided, open spaces shall not be left between the slab and walls, and openings in the slab shall be protected.

(g) Sill at or above 12 inches above ground. Buildings not provided with a continuous foundation and which have sills 12 or more inches (305 mm) above the ground level shall be provided with protection against rodents at grade in accordance with any of the following:

(1) Installing the apron or grade floors required by subsection (f) above, or

(1) By installing solid sheet metal collars at least 0.024 inch (0.6 mm) thick at the top of each pier or pile and around each pipe, cable,

conduit, wire or other item which provides a continuous pathway from the ground to the floor; or

(2) By encasing the pipes, cables, conduits or wires in an enclosure constructed in accordance with the apron requirements set forth above.

Sec. 8.1706. Rat Wall and Flooring Requirements of Detached Buildings. Rat walls and flooring requirements of detached buildings of the following dimensions shall be as follows:

(a) All detached buildings larger 400 square feet or larger in dimension or with an eave height of 10 feet or more shall meet the requirements of Sec. 8.1805 above except for the requirements of subpart (f) (2) but shall require foundations as required by Section 403.1.4.1 and other applicable sections of the City's Residential Code.

(b) All detached buildings larger than 80 square feet in dimension and less than 400 square feet in dimension shall require rodent foundation protection at least consisting of not less than 18 inches in depth of treated lumber of .06 retention and an interior floor of concrete or stone gravel of at least 4 inches provided that open spaces shall not be left between the slab and walls and openings in the slab shall be protected as required in Section 8.1805 (f) (2) and (3) above.

(f) All detached buildings of 80 square feet or less in dimensional size shall not require rodent foundation protection but shall be provided with a floor consisting of either 4 inches of concrete or stone gravel covering the entire interior or is a pre-manufactured structure that includes and has in place an approved flooring of a non-decayable, water-resistant rodent proofing material that covers the entire interior floor of the structure.

Sec. 8.1706. Violations and penalties. Whosoever violates any of the provisions of this Chapter shall be guilty of a civil infraction and subject to a civil penalty of a Class C infraction as described in Section 1.508 of this Code of Ordinances. A separate violation shall be deemed to have been committed each day during which a violation occurs and continues to occur. Such penalties shall not be exclusive nor prohibit the City from seeking further and other remedies for violation as provided for and allowed by law.

# TITLE IX: POLICE REGULATIONS

## CHAPTER 1

## NUISANCES

Sec. 9.101. Nuisances Prohibited. No owner or occupant, firm or corporation having control or management of any dwelling or any building, structure, excavation business pursuit, matter or thing within the City of Essexville, shall create or maintain any nuisance or allow any nuisance to be created or to exist on the premises of which such person is the owner or over which he exercises control or management.

Sec. 9.102. Declaration of Existence and Issuance of Order to Abate. If the Director of the Department of Public Safety shall find, on the inspection of any premises, building or structure, any rubbish, debris, waste or flammable material or building, or defective wiring or chimney that, in his opinion, constitutes a fire hazard to any person lawfully in or on the premises or to any surrounding property, he may declare the same, to the extent that he may testify, a public nuisance and may order the same to be remedied, removed, abated, suspended, altered or otherwise improved and made safe as the order may specify.

Sec. 9.103. Same by Building Inspector. If the Building Inspector shall find, on the inspection of any premises, building or structure, that the premises, building or structure is unsafe or unfit for human habitation or constitutes a danger to life or limb of any person lawfully in or on the premises, or to any other persons, or is in such an unsightly condition as to constitute a neighborhood nuisance, and does or is likely to depreciate the value of surrounding premises owned or occupied by other persons, he may declare the premises, building, or structure or appendage thereto, to the extent he may testify, to be a public nuisance and may order the same to be remedied, removed, abated, altered, or otherwise improved, as the order may specify.

Sec. 9.104. Responsibility to Abate. The owner, the person in possession, and any other person having control of a premises shall be jointly and severally responsible to abate any nuisance existing thereon. It shall be a violation of this chapter for any such person to willfully refuse or neglect to comply with an order served on him as provided in this chapter. Where such nuisance is not abated within forty-eight (48) hours after such order has become final, it shall be presumed that such failure is willful. The subsequent abatement of such nuisance by officers or agents of the City, as provided for in this chapter, shall not excuse such willful refusal or neglect or constitute a defense to a prosecution for such violation.

Sec. 9.105. Appeal From Order to Abate. Should any person consider himself aggrieved by any order issued pursuant to this chapter, he may, within forty-eight (48) hours after such order has been served on him by the issuing officer, appeal in writing from such order to a Board of Appeal which is hereby constituted and shall consist of the members of the Zoning Board of Appeals, the Director of the Department of Public Safety, and the Building Inspector. The Board of Appeal shall thereupon make such order concerning the premises as the Board shall deem right and reasonable, and its order shall be final.

Sec. 9.106. Abatement by City.

(1) If any person shall fail or refuse to carry out any order served upon him pursuant to this chapter, after the expiration of the time allowed for an appeal from such order, or shall fail or refuse to carry out the order of the Board of Appeal, within the time fixed by the order, the officer issuing the original order shall proceed to carry out the same through his agents, employees or contractors, and the cost of carrying out such order shall constitute a lien against the premises.

(2) In the event the cost of carrying out an order referred to in Subsection (1) remains uncollected or unpaid for a period of one year after the bill for the same has been rendered, the amount of the bill in arrears for the year ending the previous thirty-first of December shall be returned by the officer who issued the order to the assessors of the City on or before the first day of February in each year, and the same, together with interest at the rate of seven percent (7%) per annum thereon, shall be placed upon the tax roll then in course of preparation as a charge against the property upon which the order was carried out. The charge shall become and remain a lien against the land and premises, and the land and premises shall be subject to sale for such arrears in the same manner as for arrears in other municipal taxes.

Sec. 9.107.[129] Violations and penalties. Whosoever violates any of the provisions of this Chapter shall be guilty of a civil infraction and subject to a civil penalty of a Class D infraction as described in Section 1.608 of this Code of Ordinances. A separate violation shall be deemed to have been committed each day during which a violation occurs and continues to occur.

Sec. 9.108 - 9.200. Reserved.

[129] Section added by Ordinance No. 2012-7, adopted June 12, 2012, effective June 27, 2012.

# TITLE IX: POLICE REGULATIONS

## CHAPTER 2

## CURFEW

Sec. 9.201. Minors Under Fifteen. No minor under the age of fifteen (15) years shall loiter, idle or congregate in or on any public street, highway, alley or park between the hours of ten P.M. and six A M. unless the minor is accompanied by a parent or guardian, or some adult designated by the parent or guardian to accompany the child.

Sec. 9.202. Minors Under Seventeen. No minor under the age of seventeen (17) years shall loiter, idle or congregate in or on any public street, highway, alley or park between the hours of 12 midnight and six A.M., immediately following, except where the minor is accompanied by a parent or guardian, or some adult delegated by the parent or guardian to accompany the minor child, or where the minor is upon an errand or other legitimate business directed by his parent or guardian.

Sec. 9.203. Aiding or Abetting Violations. Any person of the age of seventeen (17) years or over assisting, aiding, abetting, allowing, permitting or encouraging any minor under the age of seventeen (17) years to violate the provisions of Sections 9.201 or 9.202 shall be guilty of a violation of this chapter.

Sec. 9.204[130]. Violations and penalties. Whosoever violates any of the provisions of this Chapter shall be guilty of a civil infraction and subject to a civil penalty of a Class C infraction as described in Section 1.608 of this Code of Ordinances. A separate violation shall be deemed to have been committed each day during which a violation occurs and continues to occur.

Sec. 9.205 – 9.300 Reserved.

[130] This Section added by Ordinance No. 2012-7, adopted June 12, 2012, effective June 27, 2012.

# TITLE IX: POLICE REGULATIONS

## CHAPTER 3

## WEAPONS

Sec. 9.301. Definitions. The following words and phrases, when used in this chapter, shall have the meanings respectively ascribed to them.

(1) Firearm. Shall include any weapon, pistol, gun.

(2) Weapon. Shall include any pistol, gun, firearm, Bee-Bee gun, air gun, rifle, spring gun, blow gun, bow and arrow, slingshot, or cross-bow.

(3) Bomb. Shall include malodorous, stench, explosive, gas, powder, chemical, liquid.

(4) Explosive. Shall include dynamite, powder, gas, liquid, nitroglycerin, trinitrotoluene, hydrogen, atomic energy.

Sec. 9.302. Written Permit Required. No person, firm or corporation shall, within the City limits of the City of Essexville, without first obtaining a written permit from the Chief of Police of the City of Essexville, shoot, fire, discharge, set off, detonate, propel or release, by physical, mechanical or other means, any firearms, bomb, gun, pistol, rifle, shot gun, or other weapon, including Bee-Bee gun, air gun, pellet gun, blow gun, slingshot, bow and arrow, cross-bow, or other dangerous weapon.

Sec. 9.303. Bombs Prohibited. No person shall set off, release or explode any stench, bomb, malodorous powder, or fire bomb within any public place, within the City limits of Essexville.

Sec. 9.304 - 9.400 Reserved.

# TITLE IX: POLICE REGULATIONS

## CHAPTER 4[131]

## AUTOS, STORAGE AND REPAIR

Sec. 9.401. Definitions. The following terms when used in this Chapter shall be defined as follows:

(1) Motor Vehicles. Motor vehicles are hereby defined as any wheeled vehicles which are self-propelled or intended to be self-propelled.

(2) Inoperable Motor Vehicles. Inoperable motor vehicles are defined as motor vehicles which, by reason of dismantling, disrepair or other causes, are incapable of being propelled under their own power.

(3) Dismantled Motor Vehicles. Dismantled and partially dismantled motor vehicles are defined as motor vehicles from which some part or parts which are ordinarily a component of such motor vehicle has been removed or is missing.

(4) Unlicensed Motor Vehicles. Unlicensed Motor Vehicles are defined as motor vehicles which do not meet the requirements for lawful operation upon the highways of this state, including those vehicles which lack a current license plate and a current unexpired registration tab or sticker attached, a current registration issued by the Secretary of State, and motor vehicle insurance as required by law, regardless of whether said motor vehicles are classified as dismantled or inoperable under this section.

Sec. 9.402. Outdoor Storage of Inoperable or Dismantled Motor Vehicles. No owner or lessee of real property, owner, possessor, or driver of a motor vehicle, or other person, firm or corporation shall allow to be parked or shall park or store any dismantled, partially dismantled or inoperable motor vehicles, or parts thereof, on any premises or real property owned or leased by him or her or owned or possessed by others in the City of Essexville except those properties zoned for M-1 Industrial or M-2 Light Industrial purposes, for a period of more than seven (7) calendar days. This section shall not apply to dismantled, partially dismantled, or inoperable motor vehicles or parts thereof stored in a closed building.

Sec. 9.403. Extension of Time to Complete Repairs. Any owner or lessee of real property, owner, possessor, or driver of a motor vehicle, or other person, firm or corporation owning a dismantled, partially dismantled or inoperable motor vehicle, who is repairing or who is about to have the said motor vehicle repaired, may request from the Department of Public Safety an extension of time to permit the said motor vehicle to remain on the premises or real property owned or leased by him or her or owned or possessed by others while said repairs are completed. The Department of Public Safety may grant one such extension of time and for a period of not more than ten (10) days.

Sec. 9.404. Outdoor Storage of Unlicensed Motor Vehicles. No owner or lessee of real property, owner, possessor, or driver of a motor vehicle, or other person, firm or corporation shall allow to be parked or shall park or store any unlicensed motor vehicle or parts thereof, on any premises or real property owned or leased by him or herself or

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[131] This Chapter repealed and replaced on July 12, 2016, effective July 27, 2016.

owned or possessed by others in the City of Essexville whatsoever except in areas zoned for M-1 Industrial or M-2 Light Industrial purposes. No warning or grace period in order to correct a violation is required by an enforcing officer of the City prior to issuance of a notice of violation or citation. This section shall not apply to unlicensed motor vehicles or parts thereof stored in a closed building.

Sec. 9.405. Outdoor Storage Nuisance. The presence of any dismantled, partially dismantled unlicensed, or inoperable or unlicensed motor vehicle or parts thereof outdoors on any premises in the City of Essexville except zoned for M-1 Industrial or M-2 Light Industrial purposes is hereby declared to be a public nuisance and is hereby further declared to be offensive to the public health, welfare and safety to which the City may seek enforcement by its own removal of the violating property through a civil infraction compliance and/or injunctive order.

Sec. 9.406. Prohibited on Streets. Disabled or inoperable motor vehicles shall not be permitted in the rights-of-way of the streets, alleys or highways within the city; provided, however, that this shall not apply to towing or similar transporting of such vehicles; and provided further, that a reasonable time (not to exceed twenty-four [24] hours from the time of disability) shall be permitted for the removal or servicing of a disabled vehicle in emergency caused by accident or sudden breakdown of the vehicle. Failure of the owner or the last operator of such vehicle to remove said disabled or inoperable motor vehicle from the right-of-way of any street, alley or right-of-way within the city limits within twenty-four (24) hours from the time of disability shall empower the Department of Public Safety to cause such inoperable or disabled vehicle to be removed or impounded and the costs thereof to be charged to the registered owner, or person responsible therefore, and failure to pay same after ten (10) days notice by certified mail shall authorize the City to dispose of, sell or scrap same.

Sec.9.407. Violations and penalties. Whosoever violates any of the provisions of this Chapter shall be guilty of a civil infraction and subject to a civil penalty of a Class C infraction as described in Section 1.508 of this Code of Ordinances. A separate violation shall be deemed to have been committed each day during which a violation occurs and continues to occur.

Sec. 9.408 - 9.500 Reserved.

## TITLE IX: POLICE REGULATIONS

### CHAPTER 5

### NOISE CONTROL

Sec. 9.501. Prohibition Against Noise. [132] It shall be unlawful for any person to make, continue, or cause to be made or continued any noise which is unreasonably loud. Unreasonably loud noise which arises from the use or operation of any automobile, motorcycle, snowmobile, or other vehicle or instrumentality shall be deemed to have been caused or continued by;

(a) Any person with actual physical control over the vehicle or instrumentality which creates the unreasonably loud noise; or

(b) Any person who has a right of possession or control over a vehicle or instrumentality and who has actual or constructive notice of the unreasonably loud use of such vehicle or instrumentality.

Evidence that a noise is unreasonably loud is inclusive of but not limited to the following:

(a) Any noise emitted by a vehicle upon the streets or public right of way of the City which is audible at any time beyond the street or public right of way and audible upon any public or private property adjacent thereto.

(b) Any noise emitted from private property in such a manner as to be audible upon property owned by another.

(c) Any noise audible more than fifty feet from the source

Sec. 9.502. Building and Excavation. The erection, including excavation, demolition, alteration or repair of any building or the excavation of streets and highways in any residential district or section, other than between the hours of 6 A.M, and 6 P.M. is hereby prohibited, except in the case of urgent necessity or emergency in the interest of public health and safety, and then only with permission from the Department of Public Safety with the approval of the City Manager.

Sec. 9.503. Use of Audio Equipment.[133] The using, operating, or permitting to be played, used or operated any radio receiving set, musical instrument, phonograph, or other machine or device for the producing or reproducing of sound in such a manner as to be audible beyond the property line of the premises upon which such radio receiving set, musical instrument, phonograph, or other machine or device for the producing or reproducing of sound is being used is hereby expressly prohibited.

Sec. 9.503a. Application to Wind Energy Systems. The provisions, requirements and restrictions of the provisions of Section 9.501 and penalties of this Chapter shall apply to the operation of wind energy systems as defined in the City Zoning Ordinance. In

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[132] This Section amended March 9, 2004, effective March 25, 2004.
[133] This Section amended July 9, 1991, effective July 28, 1991.

addition, operation of a wind energy system in violation of this Chapter shall result in suspension or revocation of its operating permit by the following authorized City officials:

(1) If a violation of Section 9.501 is determination to have occurred due the operation of wind energy system by the City Building Inspector or any Public Safety Officer, such official may immediately verbally or in writing order the suspension of the operating permit and the operation of the wind energy system by the owner or possessor of the property where the wind energy system is located. The Building Inspector may also revoke the operating permit of a wind energy system in violation of this Chapter.

(2) If a wind energy system operating permit is suspended or revoked due to excessive noise, it shall not be operated again until the suspension revocation is terminated by the suspending officer or the building inspector.

(3) Failure of the owner or possessor to cease operation of a wind energy system when ordered to do so or the resumption of operation of a wind energy system whose operating permit has been suspended or revoked shall be a separate and additional violation of this chapter and subject the violator to the penalties of Section 9.505 of this Chapter.

Sec. 9.504. Persons Responsible for the Emission of Unlawful Noise.[134] Any person who creates an unlawful noise, any owner or occupant of real property upon which there is created an unlawful noise, or any owner or person in physical control of any vehicle or object which creates an unlawful noise as defined herein shall be guilty of a misdemeanor and subject to the penalties set forth in Title 1, Chapter I, Section 1.110 of the Codified Ordinances of the City of Essexville.

Sec.9.505.[135] Violations and penalties. Whosoever violates any of the provisions of this Chapter shall be guilty of a civil infraction and subject to a civil penalty of a Class C infraction as described in Section 1.608 of this Code of Ordinances. A separate violation shall be deemed to have been committed each day during which a violation occurs and continues to occur. If Public Safety Officer should issue a civil infraction under this Chapter, leave the scene of the infraction, and be called to return to the scene within 24 hours as the first offense due to another or continued infraction under this Chapter by the same offender, such offender shall be guilty of a misdemeanor and shall be subject to the penalties as set forth in Title I, Chapter 1, Section 1.110 of the Codified Ordinances of the City of Essexville.

Sec. 9.506 - 9.600 Reserved

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[134] This Section amended July 9, 1991, effective July 28, 1991.
[135] This Section added by Ordinance No. 2012-7, adopted on June 12, 2012, effective June 27, 2012.

# TITLE IX: POLICE REGULATIONS

## CHAPTER 6

## DISORDERLY CONDUCT AND VANDALISM

Sec. 9.601. Definition.[136] The Term "public place" as used in this Chapter shall mean any street, alley, park, public building, any place of business or assembly open to or frequented by the public, and any other place, including, but not limited to private property which is open to the public view, or to which the public has access.

Sec. 9.602. Disorderly Conduct.[137] A person commits disorderly conduct and shall suffer the penalties of Section 1.110 of Title 1 of this Code of Ordinances if he or she:

(1) Engages in fighting or in violent, tumultuous or threatening behavior;

(2) Makes unreasonable noise; or

(3) In a public place uses abusive or obscene language, or makes an obscene gesture; or

(4) Without lawful authority, disturbs any lawful assembly or meeting of persons; or

(5) obstructs vehicular or pedestrian traffic; or

(6) Congregates with other persons in a public place and refuses to comply with a lawful order of the police to disperse; or

(7) Creates a hazardous or physically offensive condition by any act that serves no legitimate purpose; or

(8) Remains upon any public or private place after having been told by the owner or person in control and authority of such public or private place to immediately leave such property; or

(9) Engages in indecent conduct, obscene conduct, or urinates when any such conduct occurs in a public place or is viewable in or from a public place; or

(10) Is intoxicated in a public place and who is either endangering directly the safety of another person or of property or is acting in a manner that causes a public disturbance.

Sec. 9.603. Vandalism of Public Property.[138]

(1) It shall be unlawful for any person to destroy, injure, or in any manner deface or disturb the physical integrity of any Public Building or Public Property within the City, or the appurtenances or fixtures belonging thereto.

(2) For purposes of this Chapter, the term "Public Property" includes, but is not limited to, any building or property owned or occupied by a school or municipal

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[136] This Section adopted April 14, 1992, effective May 3, 1992.
[137] This Section adopted April 14, 1992, effective May 3, 1992.
[138] This Section adopted April 14, 1981, effective April 30, 1981.

educational body, and any buildings or grounds that are used for school-related activities or events.

Sec. 9.604 – 9.700 Reserved.

# TITLE IX: POLICE REGULATIONS

## CHAPTER 7

## FALSELY REPORTING AN INCIDENT

Sec. 9.701. Crime to Falsely Report Incident. A person commits the crime or falsely reporting an incident if with knowledge that the information reported, conveyed, or circulated is false, he initiates or circulates a false report or warning of an alleged occurrence or impending occurrence of a fire, explosion, crime, catastrophe or emergency under circumstances in which it is likely to cause evacuation of a building, place or assembly, or transportation facility, or to cause public inconvenience or alarm.

Sec. 9.702 – 9.800 Reserved.

# TITLE IX: POLICE REGULATIONS

## CHAPTER 8

## LOITERING

Sec. 9.801. Definition. A person commits the crime of loitering if he:

(1) Loiters, remains or wanders about in a public place for the purpose of begging; or

(2) Loiters or remains in a public place for the purpose of gambling with cards, dice or other gambling paraphernalia; or

(3) Loiters or remains in a public place for the purpose of engaging or soliciting another person to engage in prostitution or deviate sexual behavior; or

(4) Being masked or in any manner disguised by unusual or unnatural attire, loiters, remains or congregates in a public place with other persons so masked or disguised, or knowingly permits or aids persons so masked or disguised to congregate in a public place; or

(5) Loiters or remains in or about a school building or grounds, not having any reason or relationship involving custody of or responsibility for a pupil or any other specific, legitimate reason for being there, and not having written permission from a school administrator; or

(6) Loiters or remains in any place with one or more persons for the purpose of unlawfully using or possessing a dangerous drug.

Sec. 9.802. Exceptions. A person does not commit a crime under Sec. 9.801(4) if he is going to and from a masquerade party or is participating in a public parade or presentation of an educational, religious, or historical character or in an event such as a lecture, theater performance or show, concert, circus, sports contest or any other entertainment, amusement, or cultural event.

Sec. 9.803. Dangerous Drug. Dangerous drug in Sec. 9.801(6) means any narcotic drug, barbiturate or amphetamine.

Sec. 9.804.[139] Violations and penalties. Whosoever violates any of the provisions of this Chapter shall be guilty of a civil infraction and subject to a civil penalty of a Class C infraction as described in Section 1.608 of this Code of Ordinances. A separate violation shall be deemed to have been committed each day during which a violation occurs and continues to occur.

Sec. 9.805 – 9.900 Reserved.

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[139] This Section added by Ordinance No. 2012-7, June 12, 2012, effective June 27, 2012.

# TITLE IX: POLICE REGULATIONS

## CHAPTER 9

## DOGS

Sec. 9.901 Dog Warden. The Bay County Dog Warden is hereby designated and appointed as dog warden for the City of Essexville. The County Dog Warden shall hold the office of dog warden for the City at the pleasure of the City Council, but he shall be paid no salary by the City. The City Council retains the authority to discharge the County Dog Warden from his duties as City Dog Warden, and to designate and appoint any other person as City Dog Warden, which person so appointed shall hold office at the pleasure of the City Council and be paid such salary as shall be determined and fixed by the City Council. The County Dog Warden, or such other person as shall be appointed dog warden for the City, shall hereinafter in this chapter be referred to as the Dog Warden.

Sec. 9.902. Dogs Running at Large. It shall be unlawful for any person to permit or allow any dog to run at large or stray beyond the premises of such owner, unless under reasonable control of some person or while engaged in lawful hunting accompanied by its owner or some person.

Sec. 9.903. Dangerous Dogs. It shall be unlawful for any person owning, possessing or having charge of any dog known to be of an ugly disposition or dangerous to persons or property to permit or allow such dog to be at large at any time in the City.

Sec. 9.904. Confinement at Night. Every dog shall, at all times between sunset of each day and sunrise of the following day, be confined upon the premises of its owner or custodian, except when such dog is otherwise under the reasonable control of its owner or some other person.

Sec. 9.905. Confinement of Bitches in Heat. It shall be unlawful for the owner of any female dog to permit or allow such female dog to go beyond the premises of such owner when she is in heat, unless such female dog is held properly in leash or is under reasonable control of some person. For the purposes of this section, every person in possession of any dog who shall suffer such dog to remain about his premises for a space of five (5) days shall be deemed the owner thereof.

Sec. 9.906. Owning or Harboring Vicious Dog; Rabies Control.

(1) No person shall own or harbor a vicious dog, or a dog that has been bitten by any animal known to have been afflicted with rabies.

(2) Any person who shall have in his possession a dog which has contracted rabies, or which has been subjected to the same, or which is suspected of having rabies, or which has bitten any person, shall, upon demand of the dog warden or of the health officer, produce and surrender such dog to the dog warden or the health department to be held for observation. It shall be the duty of any person owning or harboring a dog which has been attacked or bitten by another dog or other animal showing the symptoms of rabies, to immediately notify the dog warden or the health department that such person has such a dog in his possession. Whenever a dog is brought to the pound for having bitten a person, the dog warden may) if deemed necessary and advisable, and after holding such dog for sufficient length of time to meet the requirements of the health department for investigation, cause such a dog to be destroyed as a vicious dog.

Sec. 9.907. Barking or Howling Dog. No person shall harbor or keep any dog which, by loud or frequent or habitual barking, yelping or howling, shall cause a serious annoyance to the neighborhood or to people passing upon the streets.

Sec. 9.908.[140] Violations and penalties. Whosoever violates any of the provisions of Section 9.906 shall be guilty of a misdemeanor and subject to a penalty of up to five hundred dollars ($500.00) fine and/or ninety (90) days in jail. Violators of all other Sections of this Chapter shall be guilty of a civil infraction and subject to a civil penalty of a Class C infraction as described in Section 1.608 of this Code of Ordinances. A separate violation shall be deemed to have been committed each day during which a violation occurs and continues to occur.

Sec. 9.909 - 9.1000 Reserved.

[140] This Section amended by Ordinance No. 2012-7, adopted June 12, 2012, effective June 27, 2012.

# TITLE IX: POLICE REGULATIONS

## CHAPTER 10

## MOVING OF BUILDINGS

Sec. 9.1001. Permit Required. No person shall move any building of any kind whatsoever, upon, across or along any street, alley, avenue or other public place within the corporate limits of the City, without a license and permit duly obtained as hereinafter provided.

Sec. 9.1002. Application for Permit. Any person desirous of moving a building as provided in Sec. 9.1001 shall file an application with the City Clerk for a permit to do so, showing the plan of the building, its dimensions and a description of the route over which it is desired to move the same.

Sec. 9.1003. Certification. No permit required by this chapter shall be granted except upon certification to such effect, by the City Manager after due investigation. Such permit shall specify the route which must be used and any other terms or conditions which the City Manager may impose.

Sec. 9.1004. Filing of Bond.[141] No person shall move a building anywhere within the City of Essexville without first obtaining a permit from the City Clerk. The City Clerk shall not issue such permit until the person engaged in moving the building has filed a bond with the City Clerk with sufficient sureties approved by the City Clerk and in the penal sum of one thousand five hundred dollars ($1,500.00). Said bond shall be conditioned that the person licensed will save Essexville, and all persons owning property along or traveling upon such streets as he may be permitted to use, harmless from all damage, loss, costs and expense that may be incurred by the moving of any such buildings, that he will obey all ordinances of the City and all orders and directions of the Department of Public Safety.

Fees for such permit shall be determined periodically and approved by a resolution of the City Council."

Sec. 9.1005. Posting of Permit. Any person receiving a permit shall post the same in a conspicuous place upon the building to be moved, and keep the same upon such building until it has been taken entirely out of the public street, alley or other public place.

Sec. 9.1006. Leaving Building on Street. No person shall leave any building while in progress of removal, standing upon any street crossing at any time, and no person shall leave any building standing in or upon any street or public place at any time during the day time, and if it should be necessary for such building to stand in any public street or place during the night, the person or persons having charge of said removal shall have good and sufficient lights, showing a bright red color, as a warning to persons traveling upon and along such street or public place of the situations thereof, and such lights shall be kept burning during the entire night, from sunset until sunrise.

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[141] This Section amended by Ordinance No. 2004-03 adopted on August 10, 2004, effective August 26, 2004.

Sec. 9.1007. Securing to Trees, Poles, etc. No person engaged in moving any building shall attach any hawser, rope, chain or other appliance to any shade tree, hydrant, fire alarm, electric light, telephone pole or other pole! or drive any spike, draw iron or other fastening into any pavements on the street or streets upon which permission has been granted to move such building.

Sec. 9.1008. Overhead Wires. Before any overhead wires shall be cut down or removed for the passage of any building upon any of the public highways of Essexville, the expense of the same shall be paid to the owners or operators of said overhead wires by the person removing the building, and in no case whatsoever shall any such wires be tampered with or removed until the owner or operators of said wire shall be first notified.

Sec. 9.1009. Enforcement. It shall be the duty of the Department of Public Safety that the provisions of this chapter are complied with, and to cause complaint to be made against any person or persons violating the same.

Sec. 9.1010.[142] Violations and penalties. Whosoever violates any of the provisions of this Chapter shall be guilty of a civil infraction and subject to a civil penalty of a Class D infraction as described in Section 1.608 of this Code of Ordinances. A separate violation shall be deemed to have been committed each day during which a violation occurs and continues to occur.

Sec. 9.1011 – 9.1100 Reserved

[142] This Section added by Ordinance No. 2012-7, added June 12, 2012, effective June 27, 2012.

## TITLE IX: POLICE REGULATIONS

### CHAPTER 11

### WATERWAY USAGE [143]

Sec. 9.1101. Act 303, P.A. 1967. All words and phrases used in this ordinance shall be construed and have the same meanings as those words and phrases defined in Act 303, P.A. 1967, as amended, M.S.A. 18.1287(8).

Sec. 9.1102. No Wake Zone. On the waters of the Saginaw River located within the City limits of Essexville, Michigan, Bay County, it is unlawful for the operator of a vessel to exceed a slow-no wake speed.

Sec. 9.1103. Conflict With Other Ordinances. All other ordinances or parts of ordinances in conflict herewith are hereby repealed.

Sec.9.1104.[144] Violations and penalties. Whosoever violates any of the provisions of this Chapter shall be guilty of a civil infraction and subject to a civil penalty of a Class C infraction as described in Section 1.608 of this Code of Ordinances. A separate violation shall be deemed to have been committed each day during which a violation occurs and continues to occur.

Sec. 9.1105. Severability. This ordinance and the various parts, sections, subsections, provisions, sentences and clauses are severable. If any part of this ordinance is found to be unconstitutional or invalid it is declared the remainder of this ordinance shall not be affected thereby.

Sec. 9.1106. Effective Date. This ordinance shall take effect five days after its publication in accordance with law.

Sec. 9.1107 – 9.1200 Reserved

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[143] This Chapter adopted September 8, 1981, effective September 15, 1981.
[144] This Chapter amended by Ordinance No. 2012-7, adopted June 12, 2012, effective June 27, 2012.

## TITLE IX: POLICE REGULATIONS

## CHAPTER 12[145]

## ANIMAL REGULATION

Sec. 9.1201. Definitions. For purposes of this chapter, certain words used herein are defined as follows:

a. Animal shall mean any live creature excepting human beings.

b. Animal control officer shall mean any person designated by the State of Michigan, the County of Bay, or any other unit of government as a law enforcement officer who is qualified to perform such duties under the laws of this state.

c. Animal shelter shall mean any facility operated by a humane society, governmental agency or its authorized agents for the purpose of impounding or caring for animals held under the authority of this chapter or state law.

d. Domestic livestock shall mean any animal normally raised on a farm for food, the products created by their bodies such as wool, fur, eggs, milk, or the like or for their labor in farming activities. Domestic animals shall include but not be limited to:

(1) Mammals including but not limited to, horses, cows, pigs, hogs, swine, rabbits, sheep, mink, and goats;

(2) Birds or fowl including but not limited to, chickens, pigeons, ducks, geese, and turkeys;

(3) Insects including but not limited to, bees, wasps, or ants;

(4) Reptiles and invertebrates of all types;

(5) Worms including but not limited to earthworms, angleworms, and the like.

e. Domestic pet shall mean an animal that has traditionally, through a long association with humans, lived in a state of dependence upon humans or under the dominion and control of humans and has been kept as tame pets for pleasure rather than utility, no longer possessing a disposition or inclination to escape, raised as livestock, or used for commercial breeding purposes. Domestic pets shall include but not limited to dogs, cats, canaries, parakeets, gerbils, and hamsters.

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[145] This Chapter amended by Ordinance No. 2012-10 adopted September 11, 2012, effective September 26, 2012.

f. Exotic or wild animal shall mean an animal not occurring naturally in the city, either presently or historically, or animals are normally found in the wild. Exotic animals shall include but not be limited to:

(1) Apes, monkeys and related forms, excepting monkeys used to assist disabled persons;
(2) Poisonous reptiles, spiders, insects, and all other poisonous animal;
(3) Constrictor and non-constrictor types of snakes;
(4) Cats and felines from the wild family, including, but not limited to bobcats, cheetahs, cougars, jaguars, leopards, lions, lynxes, mountain lions, panthers, pumas, tigers;
(5) Nondomesticated carnivorous animals including hybrid crosses of nondomesticated carnivorous animals, including, but not limited to bears, possums, raccoons, skunks, foxes, coyotes, and the like;
(6) Marsupials, including but not limited to kangaroos, possums, and wombats,
(7) Crocodylia, including, but not limited to crocodiles and alligators;
(8) Piranha or any other type fish prohibited from possession without a license or otherwise by any Michigan state or Federal agency or authority;
(9) Chondrichthyes, including, but not limited to sharks;
(10) Struthio, including, but not limited to ostriches;
(11) Proboscidea, including, but not limited to elephants;
(12) Perissodactyla, including, but not limited to rhinoceros;
(13) Artiodactyla, including, but not limited to camels and other hoofed mammals;
(13) Birds of prey including but not limited to eagles, hawks, falcons, and vultures.
(14) All other types of exotic or wild animals capable of biting, clawing, scratching, injuring, or carrying any disease able to be contracted by a human being.

g. Nuisance per se shall mean any animal which:

(1) Molests or threatens persons passing by or pursues passing vehicles,

(2) Attacks other animals or persons,

(3) Trespasses on school grounds,

(4) Is found at large,

(5) Damages private or public property,

(6) Barks, whines, howls or makes any noise which is audible on any adjoining property, or

(7) Defecates repeatedly at the same general location or on the lands of a person other than its owner.

h. Owner shall mean any person, partnership, corporation or association owning, keeping or harboring one or more animals or owns real property in which animals are kept by an owner or another.

i. Restraint shall mean any animal secured by a leash or lead or under the control of a responsible person and obedient to that person's commands or within the real property limits of its owner.

j. Vicious animal shall mean any animal or animals that constitute a physical threat to human beings or other animals.

Sec. 9.1202. Keeping of Animals. It shall be unlawful for any person to own, keep, harbor or maintain any animal within the City unless in conformity with this chapter. Unless specifically stated in a section of this chapter, violation by any person shall constitute a Class C civil infraction as described in Section 1.608 of this Code of Ordinances.

Sec. 9.1203. Keeping of Domestic Pets. Domestic pets shall be allowed within the City upon lands owned or possessed by its owner but it shall be unlawful for any such animals to be beyond such premises unless under the immediate restraint of its owner and beyond the following requirements:

a. A maximum of four domestic animals of any species and limited to three of any single species shall be kept upon a singly taxed parcel of land within the city. It shall be a violation of this ordinance for any owner of real property within the city to allow any animals in excess of the number allowed by this subsection, regardless of who the actual owner of an animal actually is, to be kept or remain upon a property if the excess number of animals are physically present on a property overnight or for a period of more than 24 hours at any time.

b. Any offspring of any lawfully kept domestic animal may be retained for a period of not more than 120 days from the date of birth of the offspring. Any person claiming offspring are less than 120 days old shall present conclusive evidence of the date of birth of the offspring.

c. Persons possessing lawfully licensed domestic pets in excess of the numbers allowed by this section on the effective date of this ordinance, may, upon proof that such a pet(s) were kept upon a taxed parcel on the effective date of this ordinance shall be allowed to retain such animal(s) on the property for the remainder of the pets' lifetime.

d. Violation of this section shall constitute a Class C civil infraction as described in Section 1.608 of this Code of Ordinances.

Sec.9.1204. Exotic or Wild Animals Prohibited. No exotic or wild animal as defined by Section 9.1201 of this Chapter shall be kept, maintained, allowed to remain on private or public property within the City and any person so doing shall be guilty of a misdemeanor and shall be subject to the penalties set forth in title I, Chapter I, sec. 1.110 in the Codified Ordinances of the City of Essexville.

Sec.9.1205. Domestic Livestock Prohibited in All Residential Areas. No domestic livestock as defined by Section 9.1201 of this Chapter shall be kept, maintained, allowed to remain on private or public property within any area designated as a residential district by the City's zoning ordinance as it now exists or is hereafter amended to include or any zoning district adjoining a residential district. Residential zoning districts shall be specifically defined to include those zoning districts designated as R-1, R-O, or allowing residential use by right. Domestic livestock shall also be prohibited in any area of the City designated by the states of the State of Michigan or through authority delegated to its Department of Agriculture as being an area where domestic animals or agriculture is regulated and prohibited. A violation of the regulations of Michigan Department of Agriculture regarding the method or location of the keeping of animals as they exist now or in the future shall be considered a violation of this ordinance. Violation of this section shall constitute a Class C civil infraction as described in Section 1.608 of this Code of Ordinances.

Sec. 9.1206. Noise of Animals. It shall be unlawful for any person to allow any animal to make noise or audible sound which can be heard or are audible upon the lands of another. Violation of this section shall constitute a Class C civil infraction as described in Section 1.608 of this Code of Ordinances.

Sec. 9.1207. Odor of Animals. It shall be unlawful for any person to allow the odor or smell of any animal or its waste to be able to be discernibly smelled upon the lands of another. Violation of this section shall constitute a Class CC civil infraction as described in Section 1.608 of this Code of Ordinances.

Sec. 9.1208. Other Animals. It shall be unlawful for any person to own, keep, harbor, allow to run free, or maintain any domestic, farm, exotic, or wild animal within the City whatsoever. Violation of this section shall constitute a Class C civil infraction as described in Section 1.608 of this Code of Ordinances.

Sec. 9.1209. Animals Running at Large. No animal shall be permitted to run at large anywhere within the limits of the City. All animals allowed within the city off property owned by its harborer or owner shall be kept under restraint as defined in section 9.1201 of this chapter. Violation of this section shall constitute a class C civil infraction as described in Section 1.608 of this Code of Ordinances.

Sec. 9.1210. Nuisance per se. Any owner or harborer of an animal that engages in conduct that constitutes a nuisance per se as defined in Sec.

9.1201 of this chapter shall be guilty of a civil infraction. Violation of this section shall constitute a Class C civil infraction as described in Section 1.608 of this Code of Ordinances.

Sec. 9.1211. Vicious Animals. Any owner or harborer of a vicious animal kept within the city as defined in Sec. 9.1201 of this chapter shall be guilty of a misdemeanor and shall be subject to the penalties set forth in title I, Chapter I, sec. 1.110 in the Codified Ordinances of the City of Essexville.

Sec. 9.1212. Fifteen Days to Meet Requirements of Ordinance. Any person owning, keeping, harboring or maintaining animals in violation of this ordinance prior to the effective date of this ordinance shall have fifteen days from the effective date of this ordinance to come within compliance of this ordinance and if not doing so shall be cited for the violation thereof. Violation of this section shall constitute a Class C civil infraction as described in Section 1.608 of this Code of Ordinances.

Sec. 9.1213. Cruelty to Animals. No person shall overwork, torture, torment, deprive of necessary sustenance, cruelly beat, mutilate or cruelly kill any animal. Any person having custody of any animal shall provide such animal with proper food, drink, shelter or protection from the weather. Violators of this section shall be guilty of a misdemeanor and shall be subject to the penalties set forth in title I, Chapter I, sec. 1.110 in the Codified Ordinances of the City of Essexville.

Sec.9.1214. Violations to be Considered Continuing. Each day that a violation of this chapter, whether a misdemeanor or a civil infraction, shall occur shall be considered a separate violation for which a violator may be cited.

Sec. 9.1215 – 9.1300 Reserved

## TITLE IX : POLICE REGULATIONS

### CHAPTER 13

### FRONT YARD PARKING [146]

Sec. 9.1301. Definitions. As used in this Chapter:

a. "Driveway" means that space on a lot, except where such space forms the apron to the entrance of a garage, specifically designated and used for the movement of motor vehicles, trailers and trailered watercraft from an authorized curb cut at the street to a garage, carport or to the side lot adjacent to the principal building on a lot. In order to be considered a driveway under this Chapter, such an area must be surfaced with concrete, asphalt, brick or 4 inch solid concrete blocks, or 4 inches of gravel, be properly graded for drainage, and be maintained in good condition free of dust, trash and debris. A surface turnabout area, a circular driveway from an authorized curb cut to another authorized curb cut shall be permitted if such areas and driveways shall not. occupy in excess of 50% of the area of the front yard and are surfaced with materials and maintained as said above.

b. "Front yard" means that space on a lot extending the full width of the lot and situated between the street line and the front line of the main building on the lot. However, when a lot is located at the intersection of two or more streets, the front yard shall, in addition, include that space on the lot extending the full width or length of the lot situated between either street line and the opposing side lot line from either street.

c. "Motor Vehicle" means any trackless, self propelled vehicle, whether operable or not, and includes, but is not limited to, an automobile, bus, truck, pick-up truck, truck tractor, van, wrecker or road construction or maintenance equipment or machinery.

d. "Trailer" means any contrivance without power designed for transporting property or persons and for being drawn by a motor vehicle.

e. "Watercraft" means any contrivance used or designated for navigation and the transport of persons or property on water and includes, but is not limited to, any boat, raft, vessel, canoe ship, motor vessel, motorboat or rowboat whether or not on a trailer.

Sec. 9.1302. Front yard parking not allowed. No motor vehicle, trailer, or watercraft shall be parked on the front yard on any property within the city zoned R-1 single family residential district except on the driveway.

Sec. 9.1303. Presumption in reference to illegal parking. In any prosecution under this Chapter, proof that the particular motor vehicle, trailer or watercraft described in the complaint which parked in violation of this chapter, together with proof, is disclosed by the records of the Secretary of State, that the defendant named in the complaint was, at the time of such parking, the registered owner of such motor vehicle, trailer or watercraft, shall constitute in evidence a prima-facie presumption that the registered owner thereof was a person who parked or placed such motor vehicle, trailer or watercraft at the point where, for a time during which, such violation occurred.

Sec.9.1304.[147] Violations and penalties. Any person who shall own real property on which a motor vehicle, trailer, or watercraft is parked or who owns or causes a motor

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[146] This Chapter effective September 1, 1990.

[147] This Section amended by Ordinance No. 2012-7, adopted June 12, 2012, effective June 27, 2012.

vehicle, trailer, or watercraft to be parked on real property in the City of Essexville in violation of any of the provisions of this Chapter shall be guilty of a civil infraction and subject to a civil penalty of a Class C infraction as described in Section 1.608 of this Code of Ordinances. A separate violation shall be deemed to have been committed each day during which a violation occurs and continues to occur.

Sec. 9.1305 – 9.1400 Reserved

# TITLE IX: POLICE REGULATIONS

## CHAPTER 14

## ALCOHOL USE BY MINORS [148]

Sec. 9.1401. Definitions. For the purpose of this Chapter, the following terms shall be defined as follows:

(1) “Adult” means a person 17 years of age or older.

(2) "Alcoholic Beverage means any beverage containing more than 1/2 of 1% of alcohol by weight. The percentage of alcohol by weight shall be determined in accordance with the provisions of Michigan Compiled Laws, Section 436.2 as the same may be amended from time to time.

(3) "minor" means a person not legally permitted by reason of age to possess alcoholic beverage pursuant to Michigan Compiled Laws, Section 436.33b, as the same may be amended from time to time.

(4) "Residence” means a home, apartment, condominium or other dwelling unit and includes the curtilage of such dwelling unit.

(5) "Open House Party”. means a social gathering of persons at a residence, other than the owner or those with rights of possession or their immediate family members.

(6) ”'Drug" means a controlled substance as defined now or hereafter by the Public Acts of the State of Michigan. Currently, such controlled substances are defined by Act No. 196 of the Public Acts of 1971, as amended, being Section 333.7104 of the Michigan Compiled Laws.

(7) “Control” means any form of regulation or dominion including a possessor right.

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Sec. 9.1402. Regulation. No person, whether an adult or minor under the age of 17 years having control of any residence shall knowingly allow an open house party to take place at said residence if any alcoholic beverage or drug is possessed or consumed at said residence by any minor.

Sec. 9.1403. Exception. The provisions of this Chapter shall not apply to:

a. The consumption, use or possession of a drug by a minor pursuant to a lawful prescription of such drug;

b. Religious observances, educational activities and medical treatment.

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[148] This Chapter adopted March 10, 1992, effective March 29, 1992.

c. The possession of alcoholic beverages or lawfully prescribed drugs by a minor as may be incidental to the lawful employment of such minor.

Sec. 9.1404. Penalties. Whosoever violates any of the provisions of this Chapter shall be guilty of a misdemeanor and shall be subject to the penalties as set forth in Title I, Chapter 1, Section 1.110 of the Codified Ordinances of the City of Essexville.

Sec. 9.1405 – 9.1500 Reserved

# TITLE IX: POLICE REGULATIONS

## CHAPTER 15

## MOTOR VEHICLE PLATES AND REGISTRATION TABS [149]

Sec. 9.1501. Definitions. The terms used herein shall be defined as and if such terms are defined in the Uniform Traffic Code heretofore adopted by the City.

Sec. 9.1502. Use of license plates or tabs stolen or registered to another vehicle.

It shall be a civil infraction[150] for any person to:

(1) Possess, be in control of, or operate a motor vehicle affixed with a registration plate or registration expiration tab issued to another motor vehicle.

(2) Affix to a motor vehicle a registration plate or registration expiration tab issued to another motor vehicle.

(3) As owner of a registration plate or registration expiration tab issued to a motor vehicle, to allow any person to affix such plate or tab upon another motor vehicle.

(4) Possess, be in control of, or operate a motor vehicle affix with a registration plate or registration tab issued to and stolen from another motor vehicle, whether or not such theft occurred within or without the City of Essexville.

Sec. 9.1503.[151] Violations and penalties. Whosoever violates any of the provisions of this Chapter shall be guilty of a civil infraction and subject to a civil penalty of a Class D infraction as described in Section 1.608 of this Code of Ordinances. A separate violation shall be deemed to have been committed each day during which a violation occurs and continues to occur.

Sec. 9.1504 – 9.1600 Reserved

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[149] This Chapter adopted December 8, 1992, effective December 26, 1992.
[150] This word amended by Ordinance No. 2012-7, adopted June 12, 2012, effective June 27, 2012.
[151] This Section amended by Ordinance No. 2012-7, adopted June 12, 2012, effective June 27, 2012.

# TITLE IX: POLICE REGULATIONS

## CHAPTER 16

## YARD WASTE

Sec. 9.1601. Definitions. For the purposes of this Chapter;

A. YARD WASTE is defined as any organic plant or vegetative material whether or not such material originally grew on property within or without the City of Essexville, such as, but not limited to grass clippings, tree or shrubbery leaves, or the stalks, stems or roots of any weeds, flowers, vegetables, or other vegetation.

B. OUTLAWN is defined as that area of real property located between the sidewalk and the curb (or the side of any street if there is no curb) or, in the event the real property has no sidewalk, the area between the curb (or the side of any street if there is no curb) and 10 feet onto said property from a line drawn perpendicular from the curb or the side of the street.

Sec. 9.1602.[152]

Sec. 9.1603. Prohibition Against Causing Yard Waste to be Placed on Public Streets or Outlawns.[153] It shall be a civil infraction[154] for any person or the owner of any real property to cause yard waste to be swept, raked, or placed onto the surface of any public street or out lawn within the City of Essexville except for tree leaves by residents of real property located within the City during designated time periods for pickup by the City.

Sec. 9.1604. Prohibition Against Placing Yard Waste On The Property Of Another. It shall be a civil infraction[155] for any person or to cause any person to place yard waste on the real property or the outlawn adjoining the real property owned by another, whether or not such placement was intended for the purposes of collection of such yard waste by the City as part of its regular trash and rubbish pickup.

Sec. 9.1605. Delayed effectiveness of Sec. 9.1602. The effective date of Sec. 9.1602 shall be January 1, 1994.

Sec. 9.1606.[156] Violations and penalties. Whosoever violates any of the provisions of this Chapter shall be guilty of a civil infraction and subject to a civil penalty of a Class C infraction as described in Section 1.608 of this Code of Ordinances. A separate violation shall be deemed to have been committed each day during which a violation occurs and continues to occur.

Sec. 9.1607 – 9.1700 Reserved

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[152] This Section repealed January 14, 1997, effective February 16, 1997.
[153] This Section amended January 11, 1994, effective January 29, 1994.
[154] This word amended by Ordinance No.2012-7, adopted June 12, 2012, effective June 27, 2012.
[155] This word amended by Ordinance No. 2012-7, adopted June 12, 2012, effective June 27, 2012.
[156] This Section amended by Ordinance No. 2012-7, adopted June 12, 2012, effective June 27, 2012.

# TITLE IX: POLICE REGULATIONS

## CHAPTER 17

## TRASH PICKUP

This Chapter was repealed by Ordinance No. 2014-5 said Ordinance adopted by the City Council on November 17, 2014 and effective December 1, 2014.

Sec. 9.1701 – 9.1800 Reserved

# TITLE IX: POLICE REGULATIONS

## CHAPTER 18

## POSSESSION BY MINORS OF INTOXICATING BEVERAGES [157]

Sec. 9.1801. Sale to Minors Prohibited. Alcoholic liquor shall not be sold or furnished to a person unless the person has attained 21 years of age. A person who knowingly sells or furnishes alcoholic liquor to a person who is less than 21 years of age, or who fails to make diligent inquiry as to whether the person is less than 21 years of age, is guilty of a misdemeanor.

Sec. 9.1802. Purchase. Consumption and Possession by Minors Prohibited. A person less than 21 years of age shall not purchase or attempt to purchase alcoholic liquor, consume or attempt to consume alcoholic liquor, or possess or attempt to possess alcoholic liquor.

This section does not prohibit a person less than 21 years of age from possessing alcoholic liquor

(A) During regular working hours and in the course of his or her employment if employed by a person licensed to sell or transport alcoholic liquor, if the alcoholic liquor is not possessed for his or her personal consumption;

(B) or consuming alcoholic liquor in a course offered by an accredited post secondary educational institution in an academic building of the institution under the supervision of a faculty member if the purpose of the possession or consumption is solely educational and is a necessary ingredient of the course;

(C) or consuming alcoholic liquor, including sacramental wine, in connection with religious services at a church, synagogue or temple;

(D) in an undercover operation under the direction of the person's employer and with the prior approval of the local prosecutor’s office as part of an employer sponsored internal enforcement action;

(E) in an undercover operation under the direction of the State Police, the Liquor Control Commission, or a local police agency as part of an enforcement action.

Sec. 9.1803. Furnishing or Using Fraudulent Identification.

(A) A person who furnishes fraudulent identification to a person less than 21 years of age is guilty of a misdemeanor.

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[157] This Chapter adopted March 6, 1996, effective March 29, 1996.

(B) A person who uses fraudulent identification to purchase alcoholic liquor, or to enter a business where alcoholic liquor is sold, is guilty of a misdemeanor.

Sec. 9.1804. Authority to Stop; Appearance Tickets. An officer or member the Essexville Department of Public Safety who witnesses a violation of Section 9.1802 may stop and detain the person for purposes of obtaining satisfactory identification, seizing illegally possessed alcoholic liquor, and issuing an appearance ticket.

Sec. 9.1805. Penalty Provisions.

(A) A retail licensee or a retail licensee's clerk who violates Section 9.1801 shall be guilty of a misdemeanor punishable by jail of not more than ninety (90) days and a fine of not more than five hundred ($500.00) dollars, or both.

(B) A person who violates Section 9.1802 shall be guilty of a misdemeanor punishable as follows:

(1) For the first violation a fine of not more than one hundred ($100.00) dollars plus community service and substance abuse screening and assessment at his or her own expense.

(2) For a second violation a fine of not more than two hundred ($200.00) dollars, plus substance abuse prevention or substance abuse treatment and rehabilitation services as defined in MCL 333.6107, and community service, and community service, and substance abuse screening and assessment at his or her own expense, and sanctions against his or her operator's or chauffeur's license as provided below.

(3) For a third or subsequent violation a fine of not more than five hundred ($500.00) dollars, plus substance abuse prevention or substance abuse treatment and rehabilitation services as defined in MCL 333.6107, and community service, and substance abuse screening and assessment at his or her own expense, and sanctions against his or her operator's or chauffeur's license as provided below.

(C) A person who violates section 9.1801, and is not a retail licensee, or a retail licensee's clerk, agent or employee, shall be fined one thousand ($1,000.00) dollars and may be sentenced to imprisonment for up to sixty (60) days for a first offense, and shall be sentenced to imprisonment for up to ninety (90) days for a second or subsequent offense, and may be ordered to perform community service.

(D) A person who violates section 9 1803 shall be guilty of a misdemeanor punishable by jail of not more than ninety (90) days and a fine of not more than five hundred ($500.00) dollars, or both, and community service

The court shall order the secretary of state to suspend, pursuant to MCL 257.3190, for a period of ninety (90) days the operator or chauffeur license of a person who is convicted of furnishing or using fraudulent identification in violation of subsections 9.1803(A) or 9.1803(B) The court immediately shall forward the surrendered license and an abstract of conviction to the secretary of state. A suspension ordered under this subsection shall be in addition to any other suspension of the person's operator or chauffeur license.

Sec. 9.1806. License Sanctions. Immediately upon the entry of a conviction or a probate court disposition for a violation of Section 9 1802, the court shall consider all prior convictions or probate court dispositions of Section 9.1802, or any state or local law substantially corresponding to Section 9.1802, and shall impose the following sanctions:

(A) If the court finds that the person has one (1) prior conviction or probate court disposition, the court shall order the secretary of state to suspend the operator or chauffeur license of the person for a period of not less than ninety (90) days or more than one hundred eighty (180) days. The court may order the secretary of state to issue to the person a restricted license after the first thirty (30) days of the period of suspension in the manner described in MCL 436.33b (6) and 257.319. In the case of a person who does not possess an operator or chauffeur's license, the secretary of state shall deny the application for an operator or chauffeur license for the applicable suspension period.

(B) If the court finds that the person has 2 or more such prior convictions or probate court dispositions the court shall order the secretary of state to suspend the operator or chauffeur license of the person for a period of not less than one hundred eighty (180) days or more than one (1) year. The court may order the secretary of state to issue to the person a restricted license after the first sixty (60) days of the period of suspension in the manner described in MCL 436.33b (6) and 257.319. In the case of a person who does not possess an operator or chauffeur license, the secretary of state shall deny the application for an operator or chauffeur's license for the applicable suspension period.

Sec. 9.1807. Notice to Parents or Guardians. Upon determining that a person less than 18 years of age who is not emancipated pursuant to MCL 772.1-772.6 allegedly consumed, possessed, purchased or attempted to consume, possess, or purchase alcoholic liquor in violation of section 9.1802, the Essexville Department of Public Safety shall notify the parent or parents, custodian, or guardian of the person as to the nature of the violation is the name of a parent, guardian or custodian is reasonably ascertainable. The notice shall be made within 48 hours of determining that the person who allegedly violated section 9.1802 is less than 18 years of age and not emancipated.

The notice may be made by any means reasonably calculated to give prompt actual notice including, but not limited to, notice in person, by telephone, or by first class mail. If a person less than 17 years of age is incarcerated for violating section 9.1802, then his or her parents or legal guardian shall be notified immediately.

Sec. 9.1808 – 9.1900 Reserved

# TITLE IX: POLICE REGULATIONS

## CHAPTER 19[158]

## TRAVEL TRAILER AND TRAILER PARKING AND USE PROHIBITIONS

Sec. 9.1901. Definitions.

For the purposes of this chapter, the following words shall be defined as hereafter stated:

(a) HARD SURFACE AREA means a parking space for motor vehicles, travel trailer, or trailer that is of a size large enough so that portions or parts of any vehicle or trailer parked upon it shall be vertically over the parking space and whose surface is either composed of bituminous asphalt at least two (2) inches thick over a properly prepared stone base or cast in place concrete at least four (4) inches thick having a compressive strength of at least 3000 psi over a properly prepared sand base, both of which types having been constructed in a manner to provide adequate drainage to City drainage structures and not onto adjacent properties. Loose stone or other aggregate of any type shall not be considered a satisfactory substitute and shall not be considered a hard surface.

(b) TRAVEL TRAILER means any vehicle used or intended for use as a dwelling, regardless of whether such vehicle is self-propelled or is moved by other agencies. A boat upon a trailer or any other structure which is capable of being lived in or is actually being lived in is considered within this definition of a travel trailer as is an automobile, truck, or other motor powered vehicle which has any unit mounted upon it designed for the purpose of providing temporary or permanent living or sleeping quarters.

(c) TRAILER means any vehicle or vehicle designed to be towed or hauled behind a powered vehicle, whether or not such trailer is in a condition to be capable of actual movement.

Sec. 9.1902. Prohibition Against Living in Travel Trailer or Trailer. No person shall park nor shall any real property owner or other person permit the parking of a travel trailer or trailer for occupancy or residency upon any private property in the City, except in an authorized trailer camp licensed under the provisions of Act 243 of the Public Acts 1959, as amended or as allowed by this Act. Additionally, no person shall occupy, reside, or live in any travel trailer or trailer parked upon any private property in the City, except as authorized in a trailer camp licensed under the provisions of Act 243 of the Public Acts 1959, as amended or as allowed by this Act.

Sec. 9.1903. Prohibition Against Improper Parking and Requirement of Hard Surface. No person shall nor shall any owner of real property permit a travel trailer or trailer to be parked in the front open space of any private residence within the City wherein such travel trailer or trailer is not upon a hard surface area as required by Chapter 13 of Title IX of the ordinances of the City and is not clear of or over any public sidewalk of the City, or in the event no public sidewalk is in front of such residence or location, within 18 feet of the traveled edge of the improved roadway of the street in front of such residence or location.

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[158] This new Chapter was added by Ordinance No. 2015-2 adopted September 15, 2015,effective September 30, 2015.

Sec. 9.1904. Prohibition Against Utility Services to Travel Trailers or Trailers. No person shall nor shall any owner of real property permit a travel trailer or trailer to be parked upon any private property in the City which is not an authorized mobile home camp or park at any time or for any length of time and have hooked, attached, or connected to such travel trailer or trailer any utility service leads or connections inclusive of but not limited to electrical power, water, either by permanent connection or temporary rubberized hose connection, sewage disposal connections, or other similar connections.

Sec. 9.1905. Side and Rear Lot Setbacks Must be Complied With. No person nor shall any real property owner allow any travel trailer or trailer to be parked in any side lot or rear lot of any residential district wherein such travel trailer is not parked at least the minimum set back distance for side and rear yards as required and set forth in Article 7 of Zoning Ordinance of the City of Essexville and upon an hard surface as defined by Section 9.1901 of this Chapter.

Sec. 9.1906. Temporary Travel Trailer Living Permit. The Building Inspector may grant a temporary occupancy permit for the placement of a travel trailer for living purposes or office use or any zoning district in which the principal use building has been damaged by fire or other destructive forces and is uninhabitable in the opinion of the Building Inspector subject to the following conditions:

(a) The permit may not exceed 90 days and may be renewed for an additional 90 days upon review and approval after application to the Zoning Board of Appeals.

(b) The travel trailer shall be placed in the driveway of the property where practical or other locations as approved by the Building inspector.

(c) The required setback for the zoning district shall be met when possible. The Building Inspector may allow variances when placement of the travel trailer is restricted by other permanent structures.

(d) The travel trailer must be connected to the principal building's sanitary sewer and water supply.

(e) The travel trailer must be removed within ten days of issuance of any occupancy permit on the principal structure in the event that the travel trailer is not so removed within ten days of the issuance of a occupancy permit on the principal structure.

(f) No decision of the Building Inspector or other requirement as set forth in subparagraphs (a)-(e) above shall be appealable to the Zoning Board of Appeals, the Essexville City Council, or any other administrative office or department of the City of Essexville.

Sec. 9.1907. Violations and penalties. Whosoever violates any of the provisions of this Chapter shall be guilty of a civil infraction and subject to a civil penalty of a Class D infraction as described in Section 1.508 of this Code of Ordinances. A separate violation shall be deemed to have been committed each day during which a violation occurs and continues to occur.

Sec. 9.1908 – 9.2000 Reserved

# TITLE IX: POLICE REGULATIONS

## CHAPTER 20

## FIREWORKS[159]

Sec. 9.2001. Definitions. For the purposes of this chapter, the following words shall be defined as hereafter stated:

(a) CONSUMER 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.

(b) DISPLAY FIREWORKS means large fireworks devices that are explosive material intended for use in fireworks displays and designed to produce visual or audible effects by combustion, deflagration, or detonation, as provided in 27 CFR 555.11, 49 CFR 172, and APA standard 87-1.

(c) FIREWORK or FIREWORKS means any composition or device, except for a starting pistol, a flare gun, or flare, designated 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.

(d) 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.

(e) NOVELTIES or NOVELTY means that term as defined under APA standard 87-1, 3.2, 3.2.1, 3.2.2, 3.2.3, 3.2.4, and 3.2.5 and all of the following:

1. Toy plastic or paper caps for toy pistol in sheets, strips, rolls, or individual caps containing not more that .25 of a grain of explosive content per cap, in packages labeled to indicate the maximum explosive content per cup.

2. Toy pistols, toy cannons, toy canes, toy trick noisemakers, and toy guns in which toy caps as described in subparagraph 1 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 from a missile by the explosion.

3. Flitter sparklers in paper tubes not exceeding 1/8th inch in diameter.

Sec. 9.2002. Prohibition on Use of All Fireworks Except as Allowed; Exception. No person shall ignite, discharge, or use any fireworks within the city except as allowed by this chapter.

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[159] This Chapter amended by Ordinance No. 2012-8, adopted June 13, 2012, effective June 18, 2012.

Sec. 9.2003. Prohibition on Use of Display Fireworks; Exception. No person shall ignite, discharge or use display fireworks within the city at any time without a license or permit issued by the Fire Marshal or Chief of Public Safety.

Sec. 9.2004. Prohibition on Use of Consumer Fireworks; Exception. [160] No person shall ignite; discharge or use consumer fireworks within the city, except this prohibition shall not preclude any person from the ignition, discharge and use of consumer fireworks on the preceding, the day of, or the day after a national holiday consistent with Sec. 7 (2) of Michigan Public Act 256 of 2011 subject to the following conditions:

**(a)** Consumer fireworks shall not be ignited, discharged, or used on the day preceding, the day of, or the day after a national holiday as defined above between the hours of 1 AM and 8 AM. Violators of this subpart only shall be subject to a civil fine of not more than $500.00 for each violation.

**(b)** Consumer fireworks ignited, discharged, or used on the dates allowed by this section to be shall strictly conform to the definition of consumer fireworks as stated in this chapter and state statute by only creating visual but not audible effects by their combustion and if not so conforming shall be prohibited on said dates as well as all other times.

Sec. 9.2005. Use of Low-Impact or Novelty Fireworks. Low-impact fireworks shall be ignited, discharged, or used so as to not cause injury or damage to any person or property but shall not be ignited, discharged, or used inside any building or structure at any time without a license or permit issued by the Fire Marshal or Chief of Public Safety. Novelty fireworks may be ignited, discharged, or used without restriction but such shall only occur in a manner so as to not cause injury or damage to any person or property.

Sec. 9.2006. Penalty. Whosoever violates any of the provisions of this chapter, except for the provisions of Sec. 9.2004 (a), shall be guilty of a misdemeanor and shall be subject to the penalties set forth in Title I, Chapter I, Sec. 1.110 in the Codified Ordinances of the City of Essexville.

Sec. 9.2007-9.3000

[160] This section amended by Ordinance 2013-4 adopted August 9, 2013, effective August 24, 2013.