

# **CODIFIED ORDINANCES OF TRAVERSE CITY PART TEN - STREETS, UTILITIES AND PUBLIC SERVICES CODE**

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# CHAPTER 1020

## Streets

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### CROSS REFERENCES

Use of streets by utilities - see CHTR. Sec. 117; S.U. & P.S. 1040.02

Authority of City re streets - see CHTR. Ch. XIII

Use of streets by Light and Power Board - see CHTR. Sec. 179(f)

Curbs and gutters - see M.C.L.A. Secs. 91.1, 102.8; S.U. & P.S. Ch. 1026

Streets and alleys in home rule cities - see M.C.L.A. Secs. 117.4d, 117.4e, 117.4h

Excavations generally - see M.C.L.A. Secs. 554.251 et seq.; S.U. & P.S. Ch. 1024

Special assessments for pavement - see ADM. 232.08

Streets in subdivisions - see P. & Z. 1246.01, 1248.09

Zoning of vacated streets - see P. & Z. 1256.04

Street numbers - see B. & H. Ch. 1470

### 1020.01 STREET MAP.

- (a) Adoption. All streets shall be known and designated by the names applied thereto, respectively, on the map of the City filed with the City Clerk, which map is hereby adopted and made a part of this section by reference. The naming of any new street or the changing of the name of any street shall be done by resolution, which resolution shall amend the map.
- (b) Vacated Streets. Vacated portions of streets and alleys shall be shown on the map. The vacating of any street or alley shall be done by resolution, which resolution shall amend the map. (1976 Code Sec. 9.01)

### 1020.02 VACATING.

- (a) Resolution. When the City Commission deems it advisable to vacate, discontinue or abolish any street, alley, public ground or part thereof, it shall by resolution so declare, and in the same resolution shall appoint a time, not less than four weeks thereafter, when it will meet and hear objections to such action.
- (b) Notice. Notice of such meeting, with a copy of the resolution, shall be published in the official newspaper three times, at least one week apart, before the time appointed for such meeting. Notice of such meeting shall also be mailed to all abutting property owners, based on current assessment records, at least seven days prior to such meeting.
- (c) Objections. Objections to such proposed action of the Commission may be filed with the City Clerk, in writing, and if any objection is filed, the street, alley, public ground or any part thereof shall not be vacated or discontinued, except by a concurring vote of five members of the Commission.

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- (d) Fee. Before any action is taken as provided in this section, the party proposing, recommending or petitioning for the vacation, discontinuance or abolishment of any street, alley, public ground or part thereof shall pay to the City Treasurer a fee as fixed from time to time by resolution of the City Commission. Under no condition shall such fee or any part thereof be refunded for failure of such vacation, discontinuance or abolishment to be approved by the City Commission.

(1976 Code Sec. 9.02; Ord. 12. Passed 2-21-77; Ord. 39. Passed 11-7-77; Ord. 322. Passed 12-16-91.)

### **1020.03 OBSTRUCTIONS.**

- (a) Prohibitions. No person shall encumber, obstruct or endanger the proper use of any street, sidewalk or alley.
- (b) Liability. Any person having the care, either as owner or occupant, of any premises bordered by a public street or alley shall be liable to the City for any legal liability that may be adjudged against the City as a result of the placing of obstructions of any nature in the public street or alley by such person.

(1976 Code Sec. 9.04)

### **1020.04 PLAYING IN STREETS AND ALLEYS; TOY VEHICLES.**

- (a) No person shall play ball or any other game upon any public street or alley.
- (b) No person upon roller skates or riding any coaster, toy vehicle or similar device shall go upon any roadway except while crossing a street on a crosswalk. (1976 Code Sec. 9.06)
- (c) A person who violates this section is responsible for a civil infraction.

(Ord. No. 410. Passed 12-19-94).

### **1020.05 CLOSING STREETS; PERMIT REQUIRED.**

No person other than a police officer or firefighter shall close any street without a permit. A person who violates this section is responsible for a civil infraction.

(1976 Code Sec. 9.18. Ord. 411. Passed 12-19-94.)

### **1020.06 MATERIALS OVERHANGING STREETS.**

- (a) In General. No person shall suspend or support any article which will overhang any portion of a public street or alley, except as provided in these Codified Ordinances or except as authorized by written permission in the sound discretion of the City Commission.
- (b) Ropes and Pulleys. No person shall raise anything from or lower anything to any street, alley or public place by means of a rope, chain, pulley or similar device without first obtaining a permit therefor from the City Engineer. Protection for pedestrians using the street or alley shall be provided. A bond in an amount determined by resolution of the City Commission shall be posted with the City Engineer.
- (c) Awnings. No person shall install any awning overhanging any public street or alley unless such awning is of a type that will permit rolling up, elevating or otherwise withdrawing at will or unless authorized by written permission in the sound discretion of the City Commission. No awning shall have less than seven feet of clearance between its lowest projection and the surface of the public street or alley, nor shall it project into the street or alley more than nine feet from the lot line of the premises adjacent thereto.

(d) Poles and Wires. No person, other than a recognized public utility company, shall place or remove any pole or string or remove any wire in the public streets or alleys without first obtaining a permit therefor from the City Engineer. The issuance of such permit shall be contingent upon the requirement that the placement of such pole or wire shall not be detrimental to the public safety and that the amount of tree trimming required shall be held to a minimum. A bond in an amount determined by resolution of the City Commission shall be posted with the City Engineer to protect the City and the public from damages from such operation.

(e) Violation. A person who violates this section is responsible for a civil infraction. (1976 Code; Adopting Ordinance; Ord. 412. Passed 12-19-94.Ord. No. 434. Passed 2-5-96.)

**1020.07      SIDEWALK CAFE PERMITS.**

(a) Permit Conditions. The City Clerk may issue to an adjacent food service establishment a revocable sidewalk cafe permit to occupy a portion of adjacent City right-of-way to place tables and chairs, planters and windscreens adjacent to the tables and chairs in conjunction with selling and consuming food and beverages under the following terms and conditions:

- (1) Prohibitions. The occupancy must not:
  - A. Interfere with the use of the right-of-way for pedestrian or vehicular travel.
  - B. Unreasonably interfere with the view, access to, or use of property adjacent to said street.
  - C. Reduce the pedestrian travel area of any sidewalk to less than (4) feet in width; a clear linear path at least four (4) feet in width must be maintained at all times; and effective April 1, 2015, not reduce the pedestrian travel area of any sidewalk to less than five (5) feet in width; a clear linear path at least five (5) feet in width shall be maintained at all times. The pedestrian travel area shall not include trees, bushes, walls, parking meters, fire hydrants, tree grates or any other fixtures permanently located in the right-of-way.
  - D. Cause damage to the street or sidewalk or to trees, benches, landscaping, or other objects lawfully located in the right-of-way. The sidewalk anchoring system to secure an item in the sidewalk shall be approved by the City Engineer in writing prior to installation. Anchoring systems secured to adjacent buildings and approved by the building owner, do not require approval by the City Engineer.
  - E. Cause a violation of any state or local laws.
  - F. Be used for off-premises advertising. All signs must conform to the Sign Ordinance.
  - G. Conceal or detract from the appearance of landscaping features in or adjacent to the street.
  - H. Be in or adjacent to property zoned exclusively for residential purposes.

- I. Be attached to or reduce the effectiveness of or access to any utility pole, sign or other traffic control device.
  - J. Cause increased risk of theft or vandalism.
  - K. Violate regulations adopted by the City Manager pursuant to this Code.
  - L. Serve alcohol unless the business holds a Sidewalk Café with Alcohol Permit issued by the City Clerk.
  - M. Leave any furniture or equipment associated with the Sidewalk Café on public property when the café is not in operation. This subsection shall be effective April 1, 2015.
  - N. May not operate beyond 11 p.m.
- (2) Notice. Notice to the adjacent property owners or occupants on both sides of the applicant's property shall be required before issuing a permit to occupy any right-of-way area between the edge of the vehicle use area of the right-of-way and the right-of-way property line. Said notice should include an enumeration of the conditions or rights provided under Section 1020.07(1) of this Code.
- (3) Fee. Prior to the issuance of a permit, a fee in an amount established by resolution of the City Commission shall be paid to the City Clerk. This fee shall be tripled if any such occupancy occurred prior to the issuance of a permit.
- (4) Insurance. The Permittee shall show proof of and maintain comprehensive general liability insurance and have the City as an additional named insured. The amount of such insurance shall be determined by the City Clerk.
- (5) Waste. Any holder of a Sidewalk Café Permit shall be responsible for the proper disposal of all waste associated with their Sidewalk Café occupancy and shall ensure that the waste is removed on a daily basis.
- (6) Food Service Establishment. Food service establishment shall be defined in accordance with its meaning in the Food Law of 2000, as amended. MCLA 289.1101.
- (7) Regulations. The City Manager may adopt an executive order controlling the occupancy pursuant to a sidewalk cafe permit.
- (8) Site Plan and Barrier Requirement. A site plan shall be submitted with the application showing where a barrier will be placed to maintain an unobstructed foot path five (5) feet wide for pedestrians at all times, to ensure compliance with the Americans with Disabilities Act. A barrier shall delineate the sidewalk café and generally be 36" in height and be approved by the City Planning Director. Barriers shall be anchored to the sidewalk upon approval by the City Engineer; alternatively, barriers can be anchored to the adjacent building with the building owner's approval. The placement of any required barriers shall be marked on the sidewalk by the Code Enforcement Officer and shall include an anchoring system; the barrier shall be such that it is sufficient to ensure compliance with the approved site plan. The barrier shall be removed when the business closes each day. If the city's ADA Coordinator determines that existing conditions are such that a barrier is not required to maintain an unobstructed foot access path at least five (5) feet wide for pedestrians, the requirement for the barrier may be waived by the city's ADA Coordinator. This subsection shall be effective April 1, 2015.

- (9) Compliance with Approved Site Plan. The café shall, at all times, comply with the approved site plan.
- (b) Duration. Permits shall be for the period of April 1 to November 1 for the year in which granted.
- (c) Display. A permit shall only be valid if displayed in a manner visible to the public.
- (d) Permit Revocation. Any permit may be revoked by the City Clerk upon a finding that the occupancy does not meet the standards of this Code, any other provisions of this Code, or other applicable law or regulation, or that the right-of-way is needed for other street or utility purposes. Upon such revocation, the fee paid for any period after termination of the street occupancy shall be refunded.
- (e) Appeal. Persons who are refused a permit or have had their permit revoked may request in writing a hearing on that determination before the City Manager. The decision of the Manager may be appealed to the City Commission. Requests for a hearing or an appeal must be made within five (5) days of the questioned decision.
- (f) Non-renewal of permit. If a permit holder has two (2) or more violations in a permit year, the City Clerk shall not renew the permit the following permit year.
- (g) Appearance Tickets. The Police Chief and the appointed officers of the Police Department, or such other officials as are designated by the City Manager, are hereby authorized to issue and serve appearance tickets with respect to a violation of this chapter pursuant to Section 1 of Act 147 of the Public Acts of 1968, as amended (MCLA 764.9c(2); MSA 28.868(3)(2)). Appearance tickets shall be in such form as determined by the City Attorney and shall be in conformity with all statutory requirements.
- (h) Violations. A person who violates this section is responsible for a civil infraction. (Ord. 368. Passed 8-16-93. Ord. 539. Passed 7-16-01. Ord. 570. Passed 7-1-02. Ord. 658. Passed 12-6-04 Ord. 700. Passed 4-3-06. Ord. 1009. Passed 8-4-14. Ord. 1013. Passed 2-17-15)

#### **1020.08 SIDEWALK CAFÉ WITH ALCOHOL PERMIT.**

- (a) Permit Conditions. The City Clerk may issue to a food service establishment a revocable Sidewalk Café with Alcohol Permit to occupy a portion of adjacent City right-of-way to place tables and chairs, planters and windscreens in conjunction with selling and consuming food and alcoholic beverages, provided the following terms and conditions are met:
- (1) May not operate beyond 11 p.m.
  - (2) Service of alcohol at the Sidewalk Café does not violate any state, federal or local laws, promulgated rules, or policies or executive orders of the city.
  - (3) A barrier shall surround the sidewalk café; it shall be approved by the City Planning Director, generally be 36" in height, and shall be removed when the establishment closes each day.
  - (4) A site plan shall be submitted with the application showing where a barrier will be placed to maintain an unobstructed foot path five (5) feet wide for pedestrians at all times, to ensure compliance with the Americans with Disabilities Act. Barriers shall be anchored to the sidewalk upon approval by the City Engineer; alternatively, barriers can be anchored to the adjacent building with the building owner's approval. The placement of any required barriers shall be marked on the sidewalk by the Code Enforcement Officer and shall include an anchoring system; the barrier shall be such that it is sufficient to ensure compliance with the

approved site plan. The barrier shall be removed when the business closes each day. If the city's ADA Coordinator determines that existing conditions are such that a barrier is not required to maintain an unobstructed foot access path at least five feet wide for pedestrians, the requirement for the barrier may be waived by the city's ADA Coordinator. This subsection shall be effective April 1, 2015.

- (5) The business must post a sign in a prominent location that is one (1) square foot that indicates, "No beverages beyond the barrier of this Sidewalk Café." Specifically, the sign shall be posted within the perimeter of the Sidewalk Cafe.
- (6) Prohibitions. The occupancy must not:
- A. Interfere with the use of the right-of-way for pedestrian or vehicular travel.
  - B. Unreasonably interfere with the view, access to, or use of property adjacent to said street.
  - C. Reduce the pedestrian travel area of any sidewalk to less than four (4) feet in width; a clear linear path at least four (4) feet in width must be maintained at all times. Effective April 1, 2015, the occupancy must not reduce the pedestrian travel area of any sidewalk to less than five (5) feet in width; a clear linear path at least five (5) feet in width must be maintained at all times. The pedestrian travel area shall not include trees, bushes, walls, parking meters, fire hydrants, tree grates or any other fixtures permanently located in the right-of-way.
  - D. Cause damage to the street or sidewalk or to trees, benches, landscaping, or other objects lawfully located in the right-of-way. The sidewalk anchoring system to secure an item in the sidewalk shall be approved by the City Engineer in writing prior to installation. Anchoring systems secured to adjacent buildings and approved by the building owner, do not require approval by the City Engineer.
  - E. Cause a violation of any state or local laws.
  - F. Be used for off-premises advertising. All signs must conform to the Sign Ordinance.
  - G. Conceal or detract from the appearance of landscaping features in or adjacent to the street.
  - H. Be in or adjacent to property zoned exclusively for residential purposes.
  - I. Be attached to or reduce the effectiveness of or access to any utility pole, sign or other traffic control device.
  - J. Cause increased risk of theft or vandalism.
  - K. Leave any furniture or equipment associated with the Sidewalk Café on public property when the café is not in operation. This subsection shall be effective April 1, 2015.
  - L. Violate regulations adopted by the City Manager pursuant to this Code.
- (7) Notice. Notice to the adjacent property owners or occupants on both sides of the applicant's property shall be required before issuing a permit to occupy any right-

of-way area between the edge of the vehicle use area of the right-of-way and the right-of-way property line. Said notice should include an enumeration of the conditions or rights provided under Section 1020.08(1) of this Code.

- (8) Fee. Prior to the issuance of a permit, a fee in an amount established by resolution of the City Commission shall be paid to the City Clerk. This fee shall be tripled if any such occupancy occurred prior to the issuance of a permit.
- (9) Insurance. The Permittee shall show proof of and maintain comprehensive general liability insurance and liquor liability insurance and have the City of Traverse City as an additional named insured. The amount of such insurance shall be determined by the City Clerk.
- (10) Waste. Any holder of an Sidewalk Café with Alcohol Permit shall be responsible for the proper disposal of all waste with their Sidewalk Café occupancy and shall ensure that the waste is removed on a daily basis.
- (11) Compliance with Approved Site Plan. The café shall, at all times, comply with the approved site plan.
- (12) Food Service Establishment. Food service establishment shall be defined in accordance with its meaning in the Food Law of 2000, as amended. MCLA 289.1101.
- (13) Regulations. The City Manager may adopt an executive order controlling the occupancy pursuant to a Sidewalk Café with Alcohol Permit.
- (14) Agreement For Cafes not Directly Adjacent to Building Required. For Sidewalk Cafes where the café area is on sidewalk that is adjacent to the building but configured so that the pedestrian walkway is between the building and the café area, the owner of the Sidewalk Café shall enter into an Sidewalk Café License Agreement with the city further specifying the terms and conditions of the permit. The City Clerk is authorized to execute such agreements on behalf of the city.
- (15) Duration. Permits shall be for the period of April 1 to November 1 for the year in which granted.
- (16) Display. A permit shall only be valid if displayed in a manner visible to the public.
- (17) Permit Revocation. Any permit may be revoked by the City Clerk upon a finding that the occupancy does not meet the standards of this Code, any other provisions of this Code, or other applicable law or regulation, or that the right-of-way is needed for other street or utility purposes. Upon such revocation, the fee paid for any period after termination of the street occupancy shall be refunded.
- (18) Appeal. Persons who are refused a permit or have had their permit revoked may request in writing a hearing on that determination before the City Manager. The decision of the Manager may be appealed to the City Commission. Requests for a hearing or an appeal must be made within five (5) days of the questioned decision.
- (19) Non-renewal of permit. If a permit holder has two (2) or more violations in a permit year, the City Clerk shall not renew the permit the following permit year.
- (20) Appearance Tickets. The Police Chief and the appointed officers of the Police Department, or such other officials as are designated by the City Manager, are hereby authorized to issue and serve appearance tickets with respect to a violation of this chapter pursuant to Section 1 of Act 147 of the Public Acts of 1968, as

amended (MCLA 764.9c(2); MSA 28.868(3)(2). Appearance tickets shall be in such form as determined by the City Attorney and shall be in conformity with all statutory requirements.

(21) Violations. A person who violates this section is responsible for a misdemeanor. (Ord. 700. Passed 4-3-06. Ord. 1009. Passed 8-4-14. Ord. 1013. Passed 2-17-15)

**1020.09. NEWSRACK PERMITS**

(a) Purpose. It is the intent of this Section to place reasonable time, place, and manner restrictions on the location of newsracks or newspaper vending machines to further the City’s objective in preserving the public health, safety and welfare by providing for the proper and efficient maintenance and intended use of the public rights-of-way and aesthetics while also leaving open adequate means of distribution of newspapers and other publications in public places in a manner that treats all equally regardless of their size, content, circulation, or frequency of publication.

(b) Definitions. The following words, terms and phrases, when used in this Section, shall have the meanings ascribed to them in this subsection.

“Newsrack” means any self-servicing or coin-operated box, container, vending machine, storage unit or other dispenser installed, used or maintained for the display, sale, or dissemination of any newspaper, news periodicals, or magazines, including the dissemination of any real estate or other publications. “Owner” means the person who is responsible for installing or maintaining a Newsrack. “Right-of-Way” means lands, by deed, conveyance, agreement, easement, grant, dedication, usage or process of law, dedicated to the general public for street, highway, alley, pedestrian walkway, storm drainage, bicycle path or other purposes.

“Sidewalk” means any surface primarily intended for the use of pedestrians on any Right-of-Way.

(c) Newsracks Prohibited. No person shall install, use or maintain any newsrack or other structure that projects onto, into or over any part of the Right-of-Way except the Sidewalk.

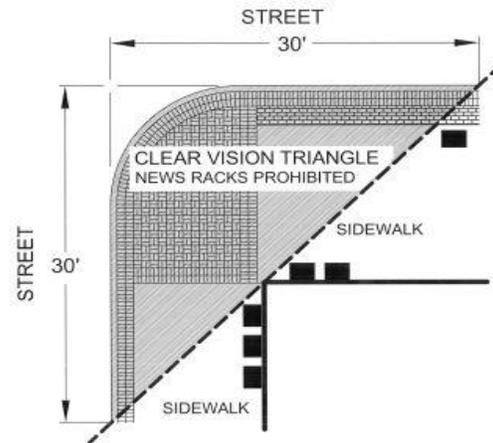
(d) Permit Required. No Owner shall place or install, use or maintain any Newsrack on a Sidewalk without first obtaining a permit from the City Clerk therefore. The City Clerk may issue a revocable Newsrack permit under the following terms and conditions:

- (1) The Newsrack shall be maintained in a clean, neat and attractive condition and in good repair at all times.
- (2) No Newsrack shall exceed a maximum height of 48 inches, 22 inches in depth, and 26 inches in width.
- (3) Newsracks shall not be placed, installed, used or maintained:
  - A. Within 10 feet of any crosswalk.
  - B. Within 10 feet of any fire hydrant or other fire department connection.
  - C. Within 10 feet of any driveway.
  - D. Within 10 feet of any designated bus stop.
  - E. At any location whereby the clear space for the passageway of pedestrians is reduced to less than 4 feet.

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- F. On or within 4 feet of any street sign, parking meter, streetlight, water valve, manhole, utility pole or other similar structure.
- G. Within 4 feet from outside edges of designated emergency exit or Knox Box.
- H. Within the clear vision triangle.
- I. Over utility covers.

- (4) All Newsracks placed where on-street parking is permitted shall be placed parallel to and not less than 18 inches or more than 42 inches from the face of the curb.
- (5) All Newsracks shall be stable and made of durable material.
- (6) Newsracks shall not be secured to any public property.
- (7) Newsracks shall not be secured to any private property without the permission of the owner or person in possession of the property.



- (8) Newsracks shall contain a clearly legible, weather resistant identification plate, not less than 10 square inches in area, stating the name of the Owner along with the installation date and permit number.

- (e) Expiration. Once issued a Permit shall be valid provided that all terms and conditions of the Permit are met and the Newsrack is not otherwise deemed abandoned pursuant to this Section.
- (f) Fee. The permit fee shall be as established, and as may be changed from time to time, by resolution of the City Commission and shall be paid at the time of the application.
- (g) Insurance. Prior to the issuance of the Permit, the Owner shall provide the City with proof of general liability insurance naming the City as an additional insured. Such insurance shall be maintained and the Owner shall provide the City with proof thereof for the term of the Permit. The amount of insurance shall be determined by the City Clerk.
- (h) Permit Revocation. Any permit may be revoked by the City for any of the following reasons:
  - (1) The occupancy does not meet the terms and conditions of this Section.
  - (2) The Newsrack has been abandoned. A Newsrack shall be deemed abandoned when no publication is in the Newsrack for a period of more than 30 consecutive days.
  - (3) If the Newsrack constitutes a threat to public health or safety.

If the City determines that any of the above conditions exist, the City shall notify the Owner in writing of the determination. The notice shall specify a reasonable time, not to exceed 10 days, in which the Owner may cure the condition. In addition, a copy of the Notice shall be affixed on the Newsrack. In the event that the Owner fails to take corrective action and does not appeal the determination as provided in subsection (i), the Permit shall be deemed revoked and the City may remove the Newsrack pursuant to subsection (j)(2).

- (i) Appeal. An Owner, who receives notification as provided in subsection (h), may request in writing a hearing on that determination before the City Manager. The City Manager's determination is final. Requests for a hearing or an appeal must be made within 10 days of the date of the notice.
- (j) Removal of Newsrack.
  - (1) By Owner. In the event that an Owner desires or is required to remove a Newsrack, the Owner shall notify the City Clerk, completely remove the machine, and restore the Right-of-Way to a safe condition.
  - (2) By City. If the Permit is revoked pursuant to subsection (h), and the Owner fails to remove the Newsrack within 10 days from receipt of notice of such revocation or appeal the determination, the City shall remove the Newsrack. Upon removal, the City shall deliver a notice of removal to the Owner describing the location from which the Newsrack was removed and the address of the location where the Newsrack is being stored.
- (k) Release of Newsrack. After Removal by the City, a Newsrack shall be released to its Owner, upon proof of ownership and payment of a pick-up and collection charge. If any Newsrack is not claimed within 30 days, the Newsrack shall be deemed abandoned and shall become the property of the City for disposal; and a disposal charge plus the pick-up and collection charge shall be assessed to the owner. The fees shall be as established, and as may be changed from time to time, by resolution of the City Commission.
- (l) Emergency Removal. Should any Newsrack constitute a threat to the public health or safety, the Newsrack shall be subject to immediate removal by the City. In the event that the Newsrack is so removed the City shall provide the Owner with notice of the removal as soon as practical thereafter.
- (m) Severability. The provisions of this Section are severable. If any provision of this Section or its application to any person or circumstance is held invalid, such invalidity shall not affect other provisions or application of this Section that can be given effect without the invalid provisions or application.
- (n) Penalty. Any person in violation of this Section shall be responsible for a Municipal Civil Infraction, and a separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

(Ord. 823. Passed 1-19-09.)

**1020.99 PENALTY.**

(EDITOR'S NOTE: See Section 202.99 for general Code penalty if no specific penalty is provided).

# CHAPTER 1022

## Sidewalks

1022.01	Construction and repair of sidewalks, displays in curbs and gutters; permit required.	1022.05	Merchandise C-4 districts.
1022.02	Widths.	1022.99	Penalty.
1022.03	Repairs of unsafe sidewalks.		
1022.04	Openings.		

### CROSS REFERENCES

Authority of City re public property - see CHTR. Ch. XIII

Failure of property owner to keep sidewalks free of obstruction - MCL Sec. 103.4

Liability of City - see M.C.L.A. Secs. 691.1401 et seq.

Special assessments for sidewalks - see ADM. 232.06

Streets - see S.U. & P.S. Ch. 1020

Sidewalks in subdivisions - see P. & Z. 1246.01, 1248.11

### **1022.01. CONSTRUCTION AND REPAIR OF SIDEWALKS, CURBS AND GUTTERS; PERMIT REQUIRED.**

- a) **Structures in Right of Way.** No person shall construct, reconstruct, repair or remove any sidewalk or any structure of any nature lying within the limits of any street or alley right of way or any curb, gutter or structure for regulating, governing or facilitating the flow of water, except in accordance with the line, grade and specifications established by the City Engineer, or without a permit.
- b) **Sidewalk Requirements for New Development.** On curbed streets, public concrete sidewalks built or repaired to the City Engineer's specifications and requirements shall be constructed in public rights of way for all new development, including substantial additions or improvements (of a construction cost of twenty thousand dollars (\$20,000) or more within a twelve-month period), with no cost of the sidewalk construction to be borne by the City. Single and two-family development, exterior cosmetic alterations which do not increase the usable area, capacity or exterior limits (footprint) of the building, interior alteration work, or change in use projects that do not require a site plan, shall be exempt from this requirement. The City Engineer may waive the requirement for a new sidewalk if, in his or her opinion, unfavorable physical conditions exist. Responsibility for this requirement is limited to twenty percent of the project cost.

(Ord. 295. Passed 4-1-91. Ord. 365. Passed 7-6-93.)

### **1022.02. WIDTHS.**

- a) **Elmwood Avenue.** All sidewalks on the west side of Elmwood Avenue from Bay Street south to the corporate limits shall be laid in such a manner as to leave a space of nine feet between the inner line of the walk and the boundary line of the abutting property on the west side of Elmwood Avenue.
- b) **Residential Areas.** In all residential sections of the City the sidewalk shall be not less than five feet wide and the inside line shall be placed eighteen inches distant from the abutting property line unless the City Manager determines that this requirement is

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impractical by reason of physical conditions.  
(1976 Code Sec. 9.13)

### **1022.03. REPAIRS OF UNSAFE SIDEWALKS**

- a) **Required.** No person shall permit any sidewalk adjoining property owned by him or her to fall into a state of disrepair or to be unsafe.
- b) **Notice to Repair.** Whenever the City Manager determines that a sidewalk is unsafe for use, notice to repair such sidewalk shall be given to the adjoining property owner.
- c) **Time Limit.** The owner shall repair the sidewalk within sixty days after delivery or posting of the notice.
- d) **Repairs by City.** If the sidewalk remains out of repair for longer than five days after the notice has been given, the City Manager may cause the same to be repaired and the cost of the repairs may be collected from the owner in an action at law.

(1976 Code Sec. 9.14)

### **1022.04. OPENINGS.**

No person shall open or use any opening in a sidewalk unless such opening is provided with suitable protection and a guard approved by the Police Chief.

(1976 Code Sec. 9.15)

### **1022.05. MERCHANDISE DISPLAYS IN C-4 DISTRICTS.**

- a) **Prohibitions.** No person shall exhibit, display or offer for sale any goods, merchandise, food, drink or services on any public sidewalk in a C-4 Zoning District except in accordance with this section.
- b) **Permit Required.** The City Manager may issue a permit to allow the temporary exhibition, display or offering of goods, merchandise, food, drink or services upon written application, to which application is attached a petition subscribed to by the owners or occupiers of at least sixty percent of the entire footage fronting on the public sidewalk on both sides of any street which extends between two other streets intersecting that street. Permits shall be issued only in conformity with Section 802.02 of the Business Regulation and Taxation Code, except as modified by this section.
- c) **Conditions for Issuance of Permits.** No permit shall be issued unless the City Manager determines that accommodation has been made for pedestrian traffic and safety, that the public health, welfare and safety will not be disserved and that a majority of those businesses, or others dependent upon the public sidewalk, will not be injured by the issuance of the permit.
- d) **Contents of Permits.** A separate permit may be issued to each applicant complying with this section or a block permit may be issued to a civic, charitable or public service group, based in the metropolitan area, complying with this section. Permits shall be issued for not more than seven days. Such restrictions may be placed in the permit as will best protect the public and neighboring businesses as described in subsection (c) hereof. The permit shall indicate who may conduct exhibitions, displays or sales and the location thereof.
- e) **Insurance.** Insurance in the amounts and form as required by the City Clerk shall be provided.
- f) **Exemptions.** The following are exempt from this section:

## SIDEWALKS

- i. Persons or organizations engaged in public solicitation in possession of a valid permit and in compliance with City ordinances. The sale of goods, merchandise, food, drink or services in connection with a valid public solicitation permit is not prohibited unless there is a fixed base for such activity on the public sidewalk, in which case a permit under subsection (b) hereof must be obtained
- ii. Coin-operated newsstands.
- g) Transfers of Permits. Permits may not be transferred or assigned.  
(1976 Code Sec. 9.08; Ord. 25. Passed 7-11-77. Ord. 961. Passed 5-6-13)

### **1022.99 PENALTY.**

(EDITOR'S NOTE: See Section 202.99 for general Code penalty if no specific penalty is provided.)

# CHAPTER 1024

## Excavations

1024.01	Permit required. warning lights.	1024.05	Barricades and
1024.02	Railroads. completion of work.	1024.06	Time limit for
1024.03	Emergencies; authority of Police Department.	1024.07	Obstructions.
1024.04	Bond.	1024.08	Backfilling.
		1024.99	Penalty.

### CROSS REFERENCES

Authority of City re streets and public property - see CHTR.Ch. XIII  
 Streets and alleys in home rule cities - see MCL Secs.117.4d, 117.4e, 117.4h  
 Excavations generally - see MCL Secs. 554.251 et seq.  
 Streets - see S.U. & P.S. Ch. 1020  
 Excavations in sidewalks - see S.U. & P.S. 1022.04  
 Excavations for C.A.T.V. installations - see S.U. & P.S. 1048.17  
 Excavation permits - see P. & Z. 1252.03(e)

#### **1024.01 PERMIT REQUIRED**

No person, public utility company, franchisee, or licensee other than a duly authorized City official or employee in the course of his or her employment, shall make any excavation or opening in or under any public right of way, street or alley or upon any public property without first obtaining a permit therefor from the City Engineer.  
 (1976 Code Sec. 9.161. Ord. 622. Passed 2-9-04.)

#### **1024.02 RAILROADS.**

No railroad company shall be required to obtain a permit for the purpose of repairing the roadbed of its railway or replacing or repairing the pavement or surface between its tracks and two feet outside thereof.  
 (1976 Code Sec. 9.162)

#### **1024.03 EMERGENCIES; AUTHORITY OF POLICE DEPARTMENT.**

In case of an emergency arising outside of office hours, when an immediate excavation may be necessary for the protection of public or private property, the same shall be reported to the Police Department. The Department shall grant permission to make the necessary excavation upon the express condition that an application be made before 12:00 noon of the next business day.  
 (1976 Code Sec. 9.163)

#### **1024.04 RESTORATION OF SURFACE.**

- (a) Restoration Required. Upon completion of the work done pursuant to a permit under this Chapter, the public right-of-way, street, alley, or public property shall be restored by the Owner or Owners of the property for which the work is being done to the satisfaction of the City Engineer.

## EXCAVATIONS

- (b) To ensure restoration of the public right-of-way, street, alley, or public property to its former condition, the Owner or Owners of the property for which the work is being done or the Owners' Representative shall:
- i. Post a bond with the City in an amount established by the City Manager by executive order.
  - ii. In lieu of posting a bond, the Owner or Owners of the property for which the work is being done may agree to a special assessment against the benefitted property for the labor, material or services incurred by the City in restoring the public right-of-way, street, alley, or public property to its former condition in the event that the applicant fails to restore the public right-of-way, street, alley, or public property to its former condition as required by this Section. Such assessment shall be imposed pursuant to the City's Procedure for Assessing Single Parcels as set forth in Chapter 232 of these Codified Ordinances.
- (c) Notwithstanding the foregoing, the Owner(s) or the Owner's representative of the property for which the work is being done shall post a bond in an amount established by the City Manager by executive order, for all work to restore the public right-of-way, street, alley, or public property to its former condition not subject to special assessment. For purposes of this subsection, such improvements are defined as those improvements to public right-of-way, street, alley, or public property that do not abut or specially benefit the property for which the work authorized by the permit is being done.
- (d) Any bond posted under this Section shall be returned to the applicant within 30 days from the date that the work authorized by the permit is completed and the public right-of-way, street, alley, or public property has been restored.

(1976 Code Sec. 9.164. Ord. 851. Passed 12-21-09.)

### **1024.05 BARRICADES AND WARNING LIGHTS.**

An applicant shall keep the excavation operations carefully barricaded, lighted at night and otherwise protected as required by the City Manager for the protection of the public.

(1976 Code Sec. 9.165)

### **1024.06 TIME LIMIT FOR COMPLETION OF WORK.**

The applicant shall work as continuously as practical and shall complete operations within the time specified in the permit. If, in the judgment of the City Manager, the work is not prosecuted in such a manner as to ensure completion within the time specified, the City may undertake the work and collect the cost therefor from the applicant in an action at law or from the applicant's bond.

(1976 Code Sec. 9.166)

### **1024.07 OBSTRUCTIONS.**

No person shall render more than one-half of the traveled width of any street or alley unavailable for travel in connection with any opening or excavation. If any sidewalk is blocked, a temporary sidewalk shall be constructed.

(1976 Code Sec. 9.167)

### **1024.08 BACKFILLING.**

Backfilling shall be subject to the approval of the Engineering Department.

## EXCAVATIONS

(1976 Code Sec. 9.168)

### **1024.99 PENALTY.**

Whoever violates or fails to comply with any of the provisions of this Chapter or a permit issued under this Chapter shall be subject to the civil infraction sanctions, injunctive relief, nuisance abatement, surcharges and equitable remedies as provided in the Traverse City Code of Ordinances or as otherwise available under the law, as well as any damages resulting from such violation. A separate offense shall be deemed committed each day during or on which a violation or noncompliance occurs or continues.

(Ord. 851. Passed. 12-21-09.)

# CHAPTER 1026

## Curb Cuts

1026.01	Permit required; specifications.	1026.99	Penalty.
1026.02	Conditions for issuance.		

### CROSS REFERENCES

Authority of City re streets and public property - see CHTR.Ch. XIII

Curbs and gutters - see MCL Secs. 91.1, 102.8

Streets and alleys in home rule cities - see MCL Secs. 117.4d, 117.4e, 117.4h

Excavations generally - see MCL Secs. 554.251 et seq.;S.U. & P.S. Ch. 1024

Special assessments for curbs - see ADM. 232.07

Streets - see S.U. & P.S. Ch. 1020

### **1026.01 PERMIT REQUIRED; SPECIFICATIONS**

No person shall make any opening in or through any curb of any street or alley without first obtaining a permit therefor. Such curb cut shall be made in accordance with plans and specifications established by the City Engineer.

(1976 Code Sec. 9.171)

### **1026.02 CONDITIONS FOR ISSUANCE**

No curb cut permit will be issued:

- a) When the curb cut is to be made permanent and is within twenty feet of any other permanent cut on the same premises;
- b) When such cut is to be made permanent and is intended to be more than thirty-two feet in its total throat width;
- c) When such cut is on corner property and is within the quadrant of an intersection or the sidewalk area;
- d) When, in the opinion of the City Manager, such cut will interfere with the safety of the public; or
- e) Unless the sidewalk above the area of the curb opening is constructed of an approved grade of monolithic concrete, not less than six inches in thickness for residential drives.

(1976 Code Sec. 9.172)

### **1026.99 PENALTY**

(EDITOR'S NOTE: See Section 202.99 for general Code penalty if no specific penalty is provided.)



TREES AND SHRUBS

Permits shall be granted only with the consent of the owner of the public area.

- b) The application for a permit required under this section shall contain:
  - i. Evidence of sufficient interest in the property;
  - ii. The location and species of each tree or shrub to be planted, trimmed or removed;
  - iii. A description of the action to be taken; and
  - iv. A fee as determined by resolution of the City Commission.

If the action includes removal, the permit shall specify replacement as required under this chapter or give reason why replacement is not necessary.

(Ord. 200. Passed 5-19-86.)

**1028.04 TRIMMING OF TREES BY UTILITY COMPANIES.**

- a) Utility corporations may trim trees in order to facilitate installation and maintenance of existing facilities of electric power lines, telephone lines and other utility installations, provided such public utilities shall provide written notice to Department of Public Services Director of their intended operations and the locality thereof. Said notice shall provide the location of the proposed trimming. Any such trimming shall be in accordance with instructions of the Department of Public Services Director or his or her designee and in accordance with this ordinance. Acts of God, the loss of utilities services due to weather and like emergencies constitute an exception to this subsection.
- b) Line Clearance: The following standards represent tree trimming guidelines that are in accordance with industry standards for maintaining safe distances between utility lines and trees:

	Secondary	Primary	Transmission
Top Trimming	1' to 3'	5' to 7'	15'
Side Trimming	1' to 3'	4' to 6'	15'
Over Trimming	1' to 3'	6'	No overhand permitted

- c) Utility companies shall provide written notice to the house addresses of residents prior to treelawn tree pruning activities for non-emergency trimming.

**1028.05 STREETS, UTILITIES AND PUBLIC SERVICES CODE**

- a) All maintenance of City trees shall be in accordance with the National Arborist Association's Pruning Standards.
- b) The removal of trees requires authorization from the Department of Public Services Director.

(Ord. 519. Passed 11-20-00.)

**1028.05 URBAN FOREST PLAN; ARBORCULTURAL STANDARDS.**

The City Commission shall adopt, by resolution:

- a) An Urban Forest Plan which shall include the species of trees and shrubs allowed on public areas; and
- b) Arboricultural standards which shall specify proper procedures for the planting, maintenance and removal of trees and shrubs.

(Ord. 200. Passed 5-19-86.)

**1028.06 PLANTING PROHIBITIONS.**

No person shall plant any tree or shrub contrary to the following:

- a) Plantings between the sidewalk and curb shall be not closer than thirty inches to the sidewalk or curb. Where there is adequate space on private property, plantings shall be at least four feet in back of the inside edge of the sidewalk.
- b) Plantings on corners or intersections shall be set back at least twenty-five feet from the corner or intersection to provide unobstructed vision for vehicular traffic.

(Ord. 200. Passed 5-19-86.)

**1028.07 RESPONSIBILITY FOR MAINTENANCE**

Any person owning or occupying real property bordering on any street, upon which property are trees or shrubs, shall maintain such trees and shrubs so that they will not obstruct or shade street lights, obstruct the passage of pedestrians on sidewalks, obstruct safe vision of traffic signs or obstruct the safe view of any street intersection. The minimum clearance of any overhanging portion thereof shall be ten feet over sidewalks and fourteen feet over all improved portions of streets.

(Ord. 200. Passed 5-19-86.)

**1028.08 REMOVAL AND REPLACEMENT.**

When it is necessary to remove a tree or shrub from a treelawn in connection with the paving of a sidewalk or the paving or widening of a street, the City shall, if possible, replant or replace such tree or shrub, as provided for in the Urban Forest Plan and arboricultural standards. No person shall remove or cause to have removed any tree or shrub from the treelawn for the purpose of construction, or for any other reason, without replacing the removed tree or shrub, if possible, in accordance with the Urban Forest Plan and arboricultural standards.

(Ord. 200. Passed 05-19-86.)

**1028.09 PROTECTION OF TREES.**

- a) Defacing, Abuse or Mutilation. Except by written permission of the City Manager, no person shall intentionally damage, cut, carve, transplant or remove any tree or shrub in any public area; attach any fence, wall, rope, wire, nails, advertising poster or other contrivance to any tree or shrub; allow a gaseous, liquid or solid substance which is harmful to such tree or shrub to come into contact with such tree or shrub; or set fire or permit any fire to burn when such fire or the heat therefrom will injure any portion of any tree or shrub. No person shall tap such public area tree for sap.
- b) Construction. All trees and shrubs on public areas near any excavation, street work or construction of any building or structure shall be guarded with a substantial fence, frame or box not less than four feet high and eight feet square, or at a distance in feet from the tree equal to the diameter of the trunk in inches D.B.H., whichever is greater. All building material, dirt or other debris shall be kept outside the barrier.
- c) Depositing Materials. A person shall not deposit, place, store or maintain upon any public area of the City any stone, brick, sand, concrete or other material which may impede the free passage of water, air and fertilizer to the roots of any tree or shrub growing therein, except by written permission from the City Manager.

TREES AND SHRUBS

(Ord. 200. Passed 5-19-86. Ord. 601. Passed 5-5-03.)

**1028.99 PENALTY**

(EDITOR'S NOTE: See Section 202.99 for general Code penalty if no specific penalty is provided.)

# CHAPTER 1040

## Utilities Generally

1040.01	Rules and regulations.	1040.04	Obstructions to utility meters;
1040.02	Operations in streets.		accessibility.
1040.03	Plans of underground structures; general layout maps.	1040.99	Penalty.

### CROSS REFERENCES

Utilities generally - see CHTR. Ch. XI

Municipally owned utilities - see CHTR. Ch. XII

Department of Public Utilities - see ADM. Ch. 258

Shutting off of service - see ADM. 266.01(b)

Utilities in subdivisions - see PLANNING 1248.05, 1248.06, 1248.08, 1248.12

Utility equipment in floodways - see B. & H. 1458.08

Aerial wires - see F.P. 1610.13

### **1040.01 RULES AND REGULATIONS.**

Public utilities operating in the City shall be subject to such rules and regulations as the City Commission may from time to time adopt in the manner provided by law.

(1976 Code Sec. 13.01)

### **1040.02 OPERATIONS IN STREETS.**

(a) Regulations. Except as provided in this chapter, public utilities operating in the City shall be subject to these Codified Ordinances with regard to operations carried on in public streets.

(b) Permits.

(1) For operations involving routine maintenance and minor extensions an annual permit may be issued.

(2) No major construction job or extension shall be undertaken until a job permit has been secured from the City Engineer.

(c) Reimbursement of Costs. The utility shall reimburse the City for necessary inspection costs, if any, are incurred, and for the cost of replacing road surfaces or drainage structures if such replacement is necessary and any and all damage to public infrastructure that occurred as a result of the utility's work.

(d) Bond. Public utilities shall be required to furnish a bond or insurance policy as required by the City Engineer.

(1976 Code Sec.13.02. Ord. 635. Passed 4-19-04.)

### **1040.03 PLANS OF UNDERGROUND STRUCTURES; GENERAL LAYOUT MAPS.**

All public utilities operating in the City shall, upon request, file details of their underground structures within the public streets or alleys with the City Manager. All public utilities shall likewise file copies of their general layout maps insofar as public streets, alleys and other public properties are affected.

(1976 Code Sec. 13.03.)

**1040.04 OBSTRUCTIONS TO UTILITY METERS; ACCESSIBILITY;**

- (a) No person shall place or allow any obstruction within three feet of any operating gas, water or electric utility meter.
  - (b) All heating, plumbing and electrical appliances shall be installed in any building in an accessible location, and shall remain accessible at all times for inspection or repair.
  - (c) A five-foot horizontal separation shall be maintained from all City water and sewer utilities unless otherwise approved by the City Engineer.
  - (d) A person who violates this section is responsible for a municipal civil infraction.
- (1976 Code Sec. 13.04. Ord. 636. Passed 4-19-04. Ord. 662. Passed 02-22-05.)

**1040.99 PENALTY.**

(EDITOR'S NOTE: See Section 202.99 for general Code penalty if no specific penalty is provided.)

# CHAPTER 1042

## Sewer Construction and Maintenance

*EDITOR'S NOTE: Chapter 1042, previously titled "Sewers" was re-titled and re-enacted in its entirety by Ordinance 336, passed September 8, 1992.*

1042.01	Purposes.	1042.07	General discharge Restrictions.
1042.02	Definitions.	1042.08	Sewer connections required; private sewage disposal systems.
1042.03	Construction permits.	1042.09	Tampering with facilities.
1042.04	Building sewers.	1042.10	Violations; nuisances; abatement;
1042.05	Public sewers.		Right of entry.
1042.06	Existing sewers.	1042.99	Penalty.

### CROSS REFERENCES

Sewers and sewer systems generally - see Mich. Const. Art. 7, Sec. 24; M.C.L.A. Secs. 46.171 et seq., 67.34, 123.241 et seq., 323.151 et seq., 325.201 et seq.

Sewers and sewer systems in home rule cities - see M.C.L.A. Secs. 117.4b, 117.4e, 117.4f, 117.35

Special assessments for sewers - see ADM. 232.04, 232.05

Sewers in lodging houses and hotels - see B.R. & T. 836.03

Wastewater discharge regulations - see S.U. & P.S. Ch. 1043

Ground-water protection and storm-water runoff control - see S.U. & P.S. Ch. 1068

Sewers in subdivisions - see P. & Z. 1248.05, 1248.08

Sewers for mobile homes - see B. & H. 1480.01

Sewers in rental dwellings - see B. & H. 1482.11(h)

### **1042.01      PURPOSES.**

The purposes of this chapter are to require and regulate the construction, alteration and maintenance of sewers in order to best protect the public health, safety and general welfare; to comply with State and Federal laws; and to protect the environment and natural resources of the City and the State.

(Ord. 336. Passed 9-8-92.)

### **1042.02      DEFINITIONS.**

Unless the context specifically indicates otherwise, as used in this chapter:

- (1) "Building drain" means, in plumbing, the part of the lowest horizontal piping of a drainage system that receives the discharge from soil, waste and other drainage pipes inside the walls of the building and conveys it to the building sewer (house sewer). Such sewer begins five feet outside the inner face of the building wall.
- (2) "City Engineer" means the City Engineer of the City or his or her designee.
- (3) "City Manager" means the City Manager of the City or his or her designee.
- (4) "Footing drain" means a pipe or conduit which is placed around the perimeter of a building foundation and which intentionally admits ground water.
- (5) "Infiltration" means that portion of ground water which is unintentionally admitted to

## SEWER CONSTRUCTION AND MAINTENANCE

- a sewer.
- (6) "Natural outlet" means any outlet into a watercourse, pond, ditch, lake or other body of surface or ground water.
  - (7) "Owner" means the last recorded titleholder of any lot or parcel of land, or the person whose name is last listed upon the tax roll as the owner of a certain lot or parcel of land.
  - (8) "Person" means any individual, firm, company, association, society, corporation, group, City, township, village, county, municipality or public corporation; or any single, multiple, commercial or industrial establishment.
  - (9) "Plumbing Inspector" means the Plumbing Inspector of the City.
  - (10) "Pumping system" means a mechanical device for lifting or pressurizing wastewater flows. Specifically:
    - a. "Booster station" means a pumping station designed primarily to move wastewater horizontally.
    - b. "Lift station" means a pumping station designed primarily to move wastewater vertically.
  - (11) "Sewage" means wastewater.
  - (12) "Sewer" means a pipe or conduit that carries wastewater or drainage water, including the following:
    - a. "Building sewer" means, in plumbing, the extension from the building drain to the public sewer or other place of disposal, and is also called the house connection.
    - b. "City sewer" means a public sewer controlled by the City.
    - c. "Combined sewer" means a sewer intended to receive both wastewater and stream or surface water.
    - d. "Common sewer" means a sewer in which all owners of abutting properties have equal rights.
    - e. "Intercepting sewer" means a sewer that receives dry weather flow from a number of transverse sewers or outlets and frequently additional undetermined quantities of storm water, and conducts such waters to a point for treatment or disposal.
    - f. "Lateral sewer" means a sewer which is designed to receive a building sewer.
    - g. "Outfall sewer" means a sewer that receives wastewater from a collection system or from a treatment plant and carries it to a point of final discharge.
    - h. "Public sewer" means a common sewer controlled by the City or other governmental agency.
    - i. "Sanitary sewer" means a sewer that carries 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 admitted intentionally.
    - j. "Separate sewer" means a sewer intended to receive only wastewater and not storm or surface water, and is also called a sanitary sewer.
    - k. "Separate sewer" means a sewer intended to receive only wastewater and not storm or surface water, and is also called a sanitary sewer.
    - l. "Storm sewer" means a sewer that carries storm water, surface water, street wash and other wash waters or drainage, but excludes domestic wastewater and industrial wastewater, and is also called a storm drain.
    - m. "Trunk sewer" means a sewer which connects the lateral sewer to the interception

sewer and to which building sewers may be connected.

- (13) "Sewer facilities" means sewers, wastewater facilities and all appurtenant equipment, including the real property on which they are located.
- (14) "Sewerage" means wastewater facilities.
- (15) "Storm water" means the excess water running off from the surface of a drainage area during and immediately after a period of rain. It is that portion of the rainfall and resulting surface flow that is in excess of that which can be absorbed through the infiltration capacity of the surface of the basin.
- (16) "Wastewater" means all or any part of the spent water of a community. From the standpoint of source, it may be a combination of the liquid and water-carried wastes from residences, commercial buildings, industrial plants and institutions, together with any ground water, surface water and storm water that may be present. In recent years, "wastewater" has taken precedence over the word "sewage."
- (17) "Wastewater collection system" means all facilities for collecting, transporting, regulating, pumping and storing wastewater.
- (18) "Watercourse" means a channel in which a flow of water occurs, either continuously or intermittently.

(Ord. 336. Passed 9-8-92.)

### **1042.03 CONSTRUCTION PERMITS.**

- (a) Required. No person shall construct a sewer or uncover, make any connection with or opening into, alter or disturb any public sewer or appurtenance thereof without first obtaining a written permit therefor from the City. There are two types of construction sewer permits, one for a building sewer and another for a public sewer.
- (b) Conditions. The following general conditions shall apply to all sewer construction permits:
  - (1) All costs and expenses incident to the installation of, connection to or reconstruction of any sewer for which a permit is issued shall be paid by the applicant. The applicant and all contractors acting on behalf of the applicant shall indemnify the City and its agents from any loss or damage that may directly or indirectly be occasioned by the installation of any sewer, unless otherwise authorized by the City Commission for a public sewer.
  - (2) The violation of any terms or conditions of the permit by the applicant shall constitute an automatic revocation and shall remove all rights acquired by the applicant or anyone acting on behalf of the applicant.
  - (3) The applicant for a sewer construction permit shall notify the Engineering Department prior to excavating for construction, alteration or connection of a sewer. The installation shall be made under the inspection of a representative of the City.
  - (4) The City may inspect the construction, alteration or connection and may inspect the building and property to be serviced by the sewer. City personnel shall be given suitable access and opportunity to conduct inspections.
  - (5) Permit may not be assigned.
  - (6) A permit shall expire one year from the date of its issuance unless a different duration is granted by the City Engineer for good cause and is stated in writing on the permit.

(Ord. 336. Passed 9-8-92.)

**1042.04 BUILDING SEWERS.**

(a) Permits.

- (1) The Plumbing Inspector may issue permits for installations, alterations and connections of building sewers. Permits may be issued only as follows:
  - (A) To any bona fide residential owner to personally install the building sewer in the property of his or her own residence, if the owner does the work himself or herself in accordance with this chapter; and
  - (B) To applicants through sewer contractors. Those sewer contractors who are not currently licensed by the State as a Master Plumber shall register with the City annually as provided in Section 1446.01(b). (Ord. 327. Passed 2-18-92.)
- (2) A permit may only be issued to an applicant who owns the property on which a building sewer is or will be located.
- (3) A separate building sewer and connection shall be provided for each building. The building sewer shall serve only property owned by the owner of the building sewer. If any other property is connected to the tributary sewer system, the permit shall automatically expire and the owner of the building sewer and the persons responsible for the connection shall be deemed to have violated this chapter.
- (4) Nondomestic users may be issued a sewer construction permit, and connections for them shall be authorized, only if the wastes discharged will conform to the requirements of Chapter 1043 and other applicable City ordinances.
- (5) The property owner and occupier shall be jointly and severally responsible for the construction and maintenance of the building sewer.
- (6) The applicant, at the time of filing the application, shall pay such permit fees and other charges for connections to a City sewer or related inspection work as required and established by resolution of the City Commission.
- (7) In addition to the normal fees, and any other ordinance to the contrary notwithstanding, connection to or discharge of any wastewater in the Eighth Street sanitary sewer pumping station (which is more fully described on engineering plans on file with the City Engineer) shall have a connection fee at the rate of \$0.2156 per square foot of land area. Parcels of land for which this section shall apply are currently designated by tax numbers 682-001 (estimated 10,625 square feet), 682-002 (estimated 29,250 square feet) and 103-003 (estimated 60,975 square feet) and 682-005 (estimated 12,560 square feet). This connection fee shall be in lieu of a special assessment and related procedures for the construction and installation of the Eighth Street sanitary sewer pumping station which has occurred prior to December 31, 1983. A connection or discharge shall not be permitted until the City Engineer determines that the volume of wastewater to be received does not impede the proper operation of the facility.

(b) Materials and Designs.

- (1) Building sewers shall comply with the following:
  - (A) A building sewer shall be constructed of vitrified clay, concrete, asbestos cement, cast iron or approved (PVC Schedule 40, ABS extra strength, or

approved equal) sewer pipe, unless otherwise approved by the City Engineer.

- (B) A commercial or industrial building sewer shall not be less than six inches in diameter unless approved otherwise by the Plumbing Inspector. The following minimum diameters (in inches) shall be used for all building sewers in the City unless otherwise permitted by the City Engineer:

Building Sewer	Commercial ROW and Public Easements	Residential House Leads Private Property	Forced Leads
Vitrified Clay	6	6	6
Plastic	6	6	4
Cast Iron	6	6	4
Concrete	6	6	6
Asbestos Cement (Transit Pipe)	6	6	6

- (C) The Plumbing Inspector, based on foundation and building design or construction methods, reserves the right to specify and require, for public protection, that any building sewer be encased or placed in a concrete cradle.
  - (D) Whenever possible, the building sewer shall be brought to the building at an elevation below the basement floor. No building sewer shall be laid parallel to or within three feet of any bearing wall which might thereby be weakened. The depth shall be sufficient to afford protection from frost. The building sewer shall be laid at uniform grade. The line shall be straight or laid with properly curved pipe and fittings. Changes in direction greater than forty-five degrees shall be provided with clean-outs accessible for cleaning. The slope of a building sewer shall be not less than one-fourth inch per foot, unless otherwise permitted by the Plumbing Inspector.
  - (E) Clean-out connections shall be made in the building sewer or the building drain outside of the walls of the building as required by the Plumbing Inspector.
  - (F) All connections with the public sewer main shall be made with Y branches or other approved devices so that the angle of entrance shall be not greater than forty-five degrees.
- (2) Building drains shall comply with the following:
- (A) Building drain inlets shall be sealed by an approved method during construction until such time as the plumbing is carried to the first floor, the basement is backfilled, the first floor is constructed and the footing drain system is operative, thereby providing that no water from the excavated basement will enter the sanitary sewer.
  - (B) The building drain shall be laid to a depth of not less than three and one-half feet at its highest point if there is no basement. In special cases it may

be laid to such a grade and depth as is approved by the Plumbing Inspector. As used in this paragraph, "depth" means the distance from the building grade to the top of the pipe.

- (C) In all buildings in which any building drain is too low to permit gravity flow to the public sewer, the sanitary sewage carried by such drain shall be lighted by artificial means approved by the Plumbing Inspector. The discharge of the building sewer of such a system shall only be permitted to enter the public sewer by gravity at a manhole, as required by the Engineering Department. All costs involved shall be the owner's.
  - (D) All connections to the public sewerage system shall be made in accordance with City ordinances. Connections of building drains shall only be permitted for plumbing systems within or on any building, structure or premises conforming to the State Construction Code.
- (3) Interceptors shall be provided when, in the opinion of the Plumbing Inspector or the City Manager, they are necessary for the proper handling of liquid wastes containing grease or oil in excessive amounts, flammable wastes, sand and other harmful ingredients. However, such interceptors shall not be required for private living quarters or dwelling units. Interceptors shall comply with the following:
- (A) Interceptors shall be of a type and capacity approved by the Plumbing Inspector and shall be located as to be readily and easily accessible for cleaning and inspection.
  - (B) Interceptors shall be constructed of impervious materials capable of withstanding abrupt and extreme changes in temperature.
  - (C) Interceptors shall be of substantial construction, watertight and equipped with easily removable covers which, when bolted in place, shall be gastight and watertight.
  - (D) Interceptors shall be maintained by the owner, at his or her expense, in continuously efficient operation at all times.
- (c) Pre-Existing Sewers.
- (1) Pre-existing sewers may be used to serve new buildings only when Such sewers are found to meet all requirements of this chapter. Tests, as directed by the Plumbing Inspector, may be required at the owner's expense.
  - (2) Abandoned or discontinued building sewers shall be properly bulkheaded, capped or sealed, as directed by the Plumbing Inspector, at the owner's expense. If the Plumbing Inspector determines that an old building sewer has not been properly abandoned, he or she shall inform the City Manager, who may cause such work to be properly completed. All costs incurred by the City in causing such work or regarding the same shall be a lien against the premises, and the City Commission shall direct that the costs be assessed against the property in question on the next succeeding City tax roll.

(Ord. 336. Passed 9-8-92.)

#### **1042.05 PUBLIC SEWERS.**

(a) Permits.

- (1) Generally. Construction on a public sewer shall not begin except pursuant to a public sewer permit issued according to this section.

- (2) Standards. All construction for any sewer that is proposed to be accepted as part of a public system or any common sewer shall be in accordance with standards and specifications of the Engineering Department. The extension of a public system that requires a permit from the State Department of Public Health shall first be approved by the City Engineer.
- (3) As-built plans. A new or reconstructed public sewer shall not be placed in service until it is approved by the City Engineer. Approval shall be contingent upon receipt of satisfactory test results and shall be subject to receipt of as-built plans within ninety days. Building and drain connections shall not be permitted until the public sewer is accepted by the City Engineer.
- (4) Common sewers. Any sewer which services two or more separate building sewers shall be a public sewer, unless the buildings are part of a singly owned complex or a public complex where future division of ownership is not anticipated, or where the rights and obligations of the sewer are held in common by all owners, pursuant to the Condominium Act.
- (5) Municipal connections. Connections by another municipal sewerage system to a City sewer will be permitted only for wastewater connection systems and extensions thereto constructed and maintained in accordance with the standards and specifications of the Engineering Department. The proposed connection must have received prior approval of the municipality for which it serves. The municipality must adopt an ordinance having requirements as restrictive as or more restrictive than this chapter.
- (6) Revocation. Any permit to locate a sewer in a City right of way or a public easement which is not to be accepted by the City as part of the City sewerage system is revocable at the will of the City Commission, subject to the conditions of various applicable contracts. The owner, as a condition of the permit, must waive any rights to damages or compensation if the permit or right to occupy the right of way or easement is revoked.
- (7) Plans for public sewers. Five sets of plans shall be submitted to the City Engineer for all proposed public sewers. Complete plans shall be transmitted by the City to the Michigan Department of Natural Resources for a construction permit. The following data shall be incorporated in the plans:
  - (A) A location map indicating the quarter section in which the project is located shall be shown.
  - (B) When more than one sheet is required for the plan, a small scale overall plan shall be shown.
  - (C) Each set of plans shall bear the embossed seal of the engineer who is responsible for the plans.
  - (D) Two bench marks shall be shown on each plan sheet.
  - (E) Existing utilities shall be shown on the plan and profile.
  - (F) In instances where the Engineering Department has no record of the outfall sewer or where the outfall sewer is not shown in accordance with previously approved plans, as-built plans of the outfall sewer and evidence of acceptable leakage tests shall also be submitted for approval.
  - (G) All existing sewer inverts must be field measured and shall be so designated on the plan.

- (H) A profile, including inverts, top of casting grades, gradient, length and drop connections, shall be shown for each run of sewer or force main.
  - (I) The proposed and existing elevation of the curb, road or ground above the sewer shall be shown on the profile. Where the difference in elevation between the road grade and sewer invert is less than seven feet, basement elevations should be indicated on the plan.
  - (J) The locations of stoppers and bulkheads shall be indicated on the plan.
  - (K) Manholes shall be numbered on plans and profiles.
  - (L) The allowable types of pipe, joints and stoppers for public and building sewers shall be indicated on the plan.
  - (M) An easement shall be designated on the plan for each run of public sewer not in a public right of way. The minimum easement shall be twelve feet wide, or as required by the City Engineer.
  - (N) The following notes shall appear on the plan:
    - 1. All construction and materials shall conform to the City's current standards, specifications and details.
    - 2. No connection receiving storm water shall be made to sanitary sewers.
    - 3. Infiltration for any section of sewers between manholes shall not exceed 200 gallons per inch of pipe diameter, per mile, per day, as required by the City Engineer.
    - 4. All elevations are based on City datum pursuant to the United States Geodetic Survey.
  - (O) Details of pipe bedding, building sewers, drop connections, bulkheads, manholes, manhole covers and other appurtenances shall be submitted with the plan.
  - (P) Extension of the City sewerage system outside the City limits shall be required when deemed necessary by the City Manager, with the approval of the applicable township representative or designated official. Such approval shall be submitted prior to final City approval.
- (8) Bond and fees. The applicant, at the time of filing the application, shall furnish a cash bond and fees in an amount determined by resolution of the City Commission to cover the cost of processing the application, including necessary plan review, testing and inspection.
- (b) Materials and Design.
- (1) Materials generally. Any generally accepted material for sewers will be given consideration, but the material selected should be adapted to local conditions, such as the character of industrial wastes, the possibility of septicity, soil characteristics, exceptionally heavy loadings, abrasion and similar problems. Sewer joints and materials shall be designed to minimize infiltration and to prevent the entrance of roots. All joints shall be of a premium nature. Based on items in paragraphs (b)(3) and (4) hereof or on other pertinent data, the City Engineer may reject any type of sewer pipe or joint for any project whose wastewater is proposed to be processed by the wastewater facilities under the control of the City.
  - (2) Bulkheads. A bulkhead shall be installed at each outlet to an existing system and

shall not be removed until the new sewerage system has been accepted by the City Engineer.

(3) General design.

- (A) Public sewers shall be a minimum of eight inches in diameter unless outletting to an older, smaller public sewer.
- (B) Public sewers shall be designed for mean velocities, when flowing full, of not less than two feet per second, based on Kutter's formula, using an "n" value of 0.013. Use of other "n" values may be permitted if deemed justifiable on the basis of research or field data presented.
- (C) Public sewers shall be designed with a uniform slope and direction between manholes.
- (D) If a smaller sewer joins a larger one, the invert of the larger sewer shall be lowered at least enough to maintain the 0.8 depth point of both sewers at the same elevation or as accepted by the City Engineer.
- (E) If velocities greater than twelve feet per second are expected or attained, special provisions may be required to protect against scouring and thrust displacement.
- (F) All public sewers shall be designed so as to limit infiltration to 200 gallons per inch of pipe diameter, per mile, per day, or as determined by the City Engineer.
- (G) Public sewers shall be sufficiently deep so as to prevent freezing.
- (H) Public sewers shall be properly vented.
- (I) Public sewers shall have the following design flows:
  - 1. Sewers shall be designed on the basis of an average daily flow which shall include not less than 100 gallons per occupant and the estimated flow from nondomestic sources.
  - 2. Sewers shall be designed to carry, when running full, not less than the following peak flows:
    - a. Lateral sewers, 400 percent of the average daily flow; and
    - b. Trunk sewers, 260 percent of the average daily flow.
  - 3. When deviations from such design flows are requested, a complete description of the procedure used for sewer design shall be included.

(4) Manholes. Manholes shall be installed at the end of each line, at all changes in grade, type of pipe, size and alignment, at all intersections and at distances not greater than 400 feet, and shall comply with the following:

- (A) A standard drop connection shall be provided for a sewer whose invert is at an elevation of twenty-four inches or more above the manhole invert. Where the difference in elevation between the invert of the incoming sewer and the manhole invert is less than twenty-four inches, the proposed sewer shall enter the manhole at its bottom or as approved by the City Engineer.
- (B) The minimum inside diameter of a manhole shall be forty-eight inches.
- (C) Only solid manhole covers shall be used. Where venting is required, vent pipe shall be installed.
- (D) The flow channel through manholes shall be made to conform in shape

- and slope to that of the sewers.
- (E) All manholes shall be watertight. Precast manholes shall have approved joints. Joints shall be wrapped with a bituminous waterproof coating if required. Manholes of brick or segmented block shall be waterproofed on the exterior with plaster coatings, supplemented by a bituminous waterproof coating, if required.
- (5) Pumping systems. All pumping systems in the public sewerage system should be equipped with an approved recording totalizing flow meter and a wet well level indicator. Provision of an emergency power supply for pumping stations should be made and may be accomplished by connection of the station to at least two independent public utility sources, by provision of portable or in-place internal combustion engine equipment which will generate electrical or mechanical energy or by provision of portable pumping equipment.
  - (6) Flow rate; relief valves. At design average flow, a cleaning velocity of at least two feet per second shall be maintained in the public sewerage system. If necessary, an automatic air relief valve shall be placed at high points in the force main to prevent air locking. A velocity reducing device may be required at the juncture of the force main and the gravity sewer.
  - (7) Inverted siphons. Inverted siphons in a public sewer shall have not less than two barrels. The inlet and outlet details shall be arranged so that normal flow is diverted to one barrel and so that either barrel may be taken out of service for cleaning. Inverted siphons shall comply with the following:
    - (A) The minimum pipe size shall be six inches.
    - (B) The terminal manholes shall have adequate clearances for rodding and shall be equipped with necessary appurtenances for convenient flushing and maintenance.
    - (C) Sufficient head shall be provided and pipe size shall be selected to obtain a velocity of at least three feet per second for maximum daily flow.
    - (D) The smallest pipe shall be designed to obtain a velocity of three and for the maximum daily flow anticipated five years from the date of installation.
  - (8) Testing sewers. Testing shall include the following:
    - (A) Appropriate tests shall be required for all public sewers before acceptance. The use of a television camera for inspection may be required. Tests and television inspections shall be witnessed by the City Engineer or his or her authorized representative. Satisfactory results shall be obtained prior to permitting any building sewer connection. Leakage tests shall be specified. This may include appropriate water or low pressure air tests. The leakage outward or inward (exfiltration or infiltration) shall not exceed 200 gallons per inch pipe diameter, per mile, per day for any section of the system, or as required by the City Engineer.
    - (B) Tests of pumping systems shall be conducted to verify performance curves of each pumping device installed in the system.

(Ord. 336. Passed 9-8-92.)

**1042.06      EXISTING SEWERS.**

- (a) Alterations. Work which would change the capacity of existing sewerage systems or result in nonconformity with these regulations shall not be performed, except by written permission of the City Engineer. Such work shall comply with the following:
  - (1) When it is necessary to excavate adjacent to manholes or similar structures, the excavation shall extend around the entire perimeter, except by permission of the City Engineer.
  - (2) Siphons shall not be constructed in existing sewers, except where it can be demonstrated to the satisfaction of the City Engineer that such siphons will not have a detrimental effect on the maintenance of the sewer or hydraulic gradient of the system.
- (b) Approval. Sewer systems not having been previously approved as City sewers may be accepted as City sewers, provided they meet all general requirements of this chapter. The City Engineer shall cause such tests on the sewer as deemed necessary, including television inspection. All costs of performing such tests shall be borne by the owner of the facility.

(Ord. 336. Passed 9-8-92.)

**1042.07 GENERAL DISCHARGE RESTRICTIONS.**

- (a) No person shall discharge or cause to be discharged any storm water, surface water, ground water, roof run-off, footing drainage, subsurface drainage, uncontaminated cooling water or unpolluted industrial process water directly or indirectly to any sanitary sewer, except as specifically allowed herein.
- (b) Storm water and unpolluted drainage shall be discharged into such sewers as are specifically designed as storm sewers or to a natural outlet. Unpolluted process waters shall be discharged into a storm sewer or natural outlet subject to the approval of the City and all applicable governmental agencies.
- (c) No person shall discharge or cause to be discharged any wastewater or other material which may singly or by interaction with other material:
  - (1) Damage, impair or retard the strength or durability of sewers, sewer facilities or processes, such as by chemical reaction, mechanical action or otherwise;
  - (2) Interfere with the normal inspection or maintenance of sewers or sewer facilities;
  - (3) Create a hazardous condition to sewer maintenance or treatment personnel or to the general public or a segment of the public;
  - (4) Endanger life, limb or public property or constitute a public nuisance; or
  - (5) Be contrary to any provision of this chapter.
- (d) Wastewater shall not be discharged into any sewer except as may be allowed by Chapter 1043 or other ordinance.

(Ord. 336. Passed 9-8-92.)

**1042.08 SEWER CONNECTIONS REQUIRED; PRIVATE SEWAGE DISPOSAL SYSTEMS.**

- (a) No person shall deposit or discharge any wastewater or waste upon any public or private property, except as allowed by City ordinances. The disposal by the City of stabilized, processed sludge under the control of the City Manager shall not be a violation of this chapter.
- (b) No person shall discharge into any natural outlet or storm sewer in the City, or which

leads into the City, any wastewater, waste or other polluted water, except as allowed by City ordinances.

- (c) No person shall erect any building without providing sanitary wastewater disposal facilities and connections to the public sewer if such building is located within 200 feet of a public sewer.
- (d) No person shall occupy any property located within 200 feet of a public sanitary sewer, which property is not connected to such sanitary sewer, within twelve months after written notice by the City Manager to connect the property to the public sewer. The connection shall be made earlier if the septic tank has to be pumped out or drained or becomes unsanitary or offensive. Procedure thereafter shall be as defined in Act 288 of the Public Acts of 1972, as amended. All septic tanks, cesspools and similar private sewage disposal facilities shall be properly abandoned for sanitary use.
- (e) Where a public sanitary sewer is not available under this section, the building sewer shall be connected to an approved water carried private sewage disposal system. The owner shall operate and maintain the water carried private sewage disposal facilities in a sanitary manner at all times, at no expense to the City.
- (f) No person shall construct or maintain any privy or privy vault.
- (g) No person shall use portable privies, except at special events for a maximum of two weeks or at construction sites during actual construction.
- (h) No statement contained in this section shall be construed to interfere with any additional requirements that may be imposed by the Health Department.

(Ord. 336. Passed 9-8-92.)

**1042.09 TAMPERING WITH FACILITIES.**

No person shall maliciously, willfully or negligently break, dam, destroy, uncover, deface, interfere with or tamper with any structure, appurtenance or equipment which is part of the wastewater facilities or stormwater facilities.

(Ord. 336. Passed 9-8-92.)

**1042.10 VIOLATIONS; NUISANCES; ABATEMENT; RIGHT OF ENTRY.**

- (a) In addition to the penalty provided in Section 1042.99, whoever violates any of the provisions of this chapter shall be liable to the City for any expense, loss or damage occasioned by such violation. A violation of any regulation or standard adopted by this chapter, or a violation of any order, notice or permit authorized by this chapter, shall be deemed to be a violation of this chapter and shall be subject to the same penalty and remedies as would a violation of this chapter.
- (b) If the City deems there to be a public nuisance under procedures established by the City, the City may abate the nuisance and, in addition, the City Engineer may order the following:
  - (1) A property owner and the occupier of the property to connect to or repair the sewer within sixty days after service of written notice on the owner or occupier, or within such shorter time as may be necessary to protect the public health, in the discretion of the City Engineer;
  - (2) That a privy, vault, cesspool or septic tank be cleaned, removed or altered within five days after service of written notice on the owner or occupier, or within such shorter time as may be necessary to protect the public health, in the discretion of

the City Engineer;

- (3) The separation of wastes, including the separation of storm or surface water drains or any drain for cooling water of air conditioners, compressors, air filters, air washers or other appliances of a similar nature from the sanitary sewerage system, and order suitable separate drains within sixty days after service of written notice on the owner or occupier, or within such shorter time as may be necessary to protect the public health, in the discretion of the City Engineer; or
  - (4) The termination or limit the times of occupancy of a structure or property as deemed necessary, in the discretion of the City Engineer.
- (c) The City Manager or his or her authorized representative is hereby authorized to issue and serve appearance tickets with respect to any violation of this chapter pursuant to Section 1 of Act 147 of the Public Acts of 1968, as amended (M.C.L.A. 765.9c(2); M.S.A. 28.868(3)(2)). Appearance tickets shall be in such form as determined by the City Attorney in conformity with all statutory requirements.
  - (d) The City Manager or his or her authorized representative is hereby authorized to enter at all reasonable times upon and into any premises, building or structure for the purpose of examining and inspecting the same to ascertain the condition thereof with regard to sewer construction, use or discharge.
  - (e) While working within the scope of their authority, the City and duly authorized representatives and employees of the City shall be held harmless for negligence causing damage, injury or death.

(Ord. 336. Passed 9-8-92.)

**1042.99 PENALTY.**

(EDITOR'S NOTE: See Section 202.99 for general Code penalty if no specific penalty is provided.)

# CHAPTER 1043

## Wastewater Discharge Regulations

1043.01	Purposes.	1043.22	Industrial waste survey questionnaires.
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1043.07	Prohibited wastewater discharges.	1043.28	Right of entry for inspection, sampling and analysis.
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1043.09	Conflicts with Federal or State pretreatment standards; alternative methods of computing pollutant limits.	1043.30	Notice of violation.
1043.10	Conflicts with industrial discharge permits.	1043.31	Enforcement of wastewater discharge services or permits.
1043.11	Dilution.	1043.32	Suspension of wastewater discharge services or permits.
1043.12	Noxious or offensive conditions.	1043.33	Publication of users in Significant noncompliance.
1043.13	Unauthorized entry into, destruction or operation of collection system and treatment plant facilities.	1043.34	Costs of abatement.
1043.14	Response of Control Authority to discharges of prohibited substances.	1043.35	Affirmative defenses to violations.
1043.15	Accidental discharges.	1043.36	Construction and location of Pretreatment and monitoring.
1043.16	Upsets.	1043.37	Establishment of charges and Fees.
1043.17	Bypasses.	1043.38	Recovery of costs.
1043.18	Discharges of hazardous waste.	1043.39	Rates and service charges.
1043.19	Notice of prohibited discharges.	1043.40	Collection of charges, fees, penalties, etc.
1043.20	Additional monitoring; control of production.	1043.41	Injunctive relief.
1043.21	Compliance required prior to discharge to the collection system and treatment plant.	1043.99	Penalty.

### CROSS REFERENCES

- Sewers and sewer systems generally - see Mich. Const. Art. 7, Sec. 24; M.C.L.A. Secs. 46.171 et seq., 67.34, 123.241 et seq., 323.151 et seq., 325.201 et seq.
- Sewers and sewer systems in home rule cities - see M.C.L.A. Secs. 117.4b, 117.4e, 117.4f, 117.35
- Special assessments for sewers - see ADM. 232.04, 232.05
- Sewers in lodging houses and hotels - see B.R. & T. 836.03
- Sewer construction and maintenance - see S.U. & P.S. Ch. 1042
- Ground-water protection and storm-water runoff control - see S.U. & P.S. Ch. 1068
- Sewers in subdivisions - see P. & Z. 1248.05, 1248.08

Sewers for mobile homes - see B. & H. 1480.01

Sewers in rental dwellings - see B. & H. 1482.11(h)

**1043.01 PURPOSES.**

This chapter is adopted to protect the health, safety and welfare of the people; to provide uniform requirements for all uses of and discharges into the collection system and treatment plant; to provide for the connection of structures in which sanitary sewage originates to an available public sanitary sewer system; to prescribe limitations on the discharge of certain waters and wastes into the public sewer system; to comply with applicable regulations, prevent pollution, guard against injury to persons and property and enhance efficient economical operation of the collection system and treatment plant; to provide for the administration of this chapter; and to establish remedies.

This chapter and the companion ordinances adopted by the City and the townships set forth uniform requirements for all uses of and discharges into the collection system and treatment plant to enable compliance with applicable State and Federal laws and regulations pertaining to wastewater treatment and industrial pretreatment.

(Ord. 337. Passed 9-8-92.)

**1043.02 RESPONSIBILITY OF CITY AS CONTROL AUTHORITY.**

The City as Control Authority, shall:

- (a) Regulate and control discharges into the collection system and treatment plant in accordance with this chapter and applicable State and Federal laws and regulations, including Federal categorical pretreatment standards;
- (b) Regulate or prohibit discharges which could interfere with the operation of the collection system or the reclamation or disposal of wastewater or sludge, cause the treatment plant to exceed the NPDES permit effluent limits or cause pass-through of pollutants to the receiving stream or atmosphere;
- (c) Control discharges to the collection system and treatment plant by regulation, permit, order and other means;
- (d) Inspect and monitor facilities and discharges to determine the extent of compliance;
- (e) Require compliance by industrial users with applicable pretreatment standards and requirements;
- (f) Require the development of a compliance schedule by each industrial user for the installation of personnel, procedures and facilities necessary or desirable to meet applicable pretreatment standards and requirements and reports from such users necessary to determine adherence to the compliance schedule;
- (g) Seek judicial enforcement of the standards of this chapter and penalties imposed by the Control Authority under this chapter;
- (h) Recover from users all damages to the collection system, treatment plant and the environment caused by such users, including any fines, penalties (and the cost of administrative and judicial proceedings in connection therewith) imposed upon the Control Authority, the City of Traverse City, Grand Traverse County and the townships, attributable to that user's indirect discharge, in whole or in part.
- (i) Halt or prevent any indirect discharge which threatens the health or welfare of persons or property, endangers or may endanger the environment or interferes or threatens to interfere with the operation of the collection system or treatment plant;

(j) Comply with the confidentiality requirements imposed by law; and

(k) Impose fines and penalties as provided by this chapter.

(Ord. 337. Passed 9-8-92.)

**1043.03 SCOPE.**

This chapter shall apply to all persons discharging or intending to discharge to the collection system and treatment plant, including those who have agreements or permits from the Control Authority.

(Ord. 337. Passed 9-8-92.)

**1043.04 ADMINISTRATION.**

The Control Authority will administer and enforce the provisions of this chapter, subject to any agreement between the Control Authority and a township or municipal corporation adopting an equivalent ordinance.

(Ord. 337. Passed 9-8-92.)

**1043.05 DEFINITIONS.**

Unless otherwise indicated, the following terms and phrases shall have the following meanings:

(1) "Act" or "the Act" means the Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. Part 1251, et seq.

(2) "Approval Authority" means the Michigan Department of Natural Resources.

(3) "Approved method" or "test procedure" means analyses performed in accordance with the analytical test procedures approved under 40 CFR, Part 136. Analysis for those pollutants not covered therein shall be performed in accordance with procedures approved by the Approval Authority.

(4) "Authorized signatory" means:

(A) A responsible corporate officer, if the industrial user is a corporation. As used in this paragraph, a responsible corporate officer means:

(1) 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

(2) The manager of one or more manufacturing, production or operation facilities, 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 industrial user is a partnership or sole proprietorship respectively; or

(C) A duly authorized representative of the individual designated in paragraph (4) A. or B. hereof if:

(1) The authorization is made in writing by the individual described in paragraph (4)A. or B. hereof;

(2) Such authorization specifies either an individual or a position having responsibility for the overall operation of the facility from which the industrial discharge originates, such as the position of plant manager, operator of a well or well-field superintendent, a position of equivalent responsibility or a position having overall responsibility for environmental matters for the company; and

## WASTEWATER DISCHARGE REGULATIONS

- (3) The written authorization is submitted to the Control Authority.
- (5) "Biochemical oxygen demand" or "BOD" means the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five days at twenty degrees Celsius expressed in terms of weight and concentration (milligrams per liter (mg/l)) in accordance with an approved test procedure.
- (6) "Bypass" means an action which bypasses, in whole or in part, approved pretreatment facilities, permitting wastewater to flow into the collection system without the usual treatment.
- (7) "Categorical user" means an industrial user classified according to specific industrial subcategories for which separate regulations have been established under subparts of 40 CFR, Chapter I, Subchapter N. These regulations establish specific quantities or concentrations of pollutants or pollutant properties that may be discharged to a collection system and treatment plant.
- (8) "Collection system" means the sanitary sewer system established by the City and the townships of Acme, East Bay, Elmwood, Garfield and Peninsula, which flows directly and indirectly to the treatment plant, including all attachments and appurtenances to the collection system as modified and extended from time to time.
- (9) "Compatible pollutant" means biochemical oxygen demand, suspended solids, pH, fecal coliform bacteria and such additional pollutants in quantities that the collection system and treatment plant has the designed capacity to treat.
- (10) "Compliance schedule" means a schedule of remedial measures, including an enforceable sequence of actions or operations leading to compliance with water quality standards, an effluent limitation or other limitation, prohibition or standard.
- (11) "Composite sample" means, as defined by 40 CFR, Part 403, Appendix E, a sample comprised of a minimum of twelve aliquots collected over a period of no more than twenty-four hours. The sample may be collected manually or automatically.
- (12) "Control Authority" means the City of Traverse City.
- (13) "Cooling water" means any water used for the purpose of carrying away excess heat, and which may contain biocides used to control biological growth or other additives to protect the system against corrosion, scaling or other deterioration.
- (14) "Discharge" means an intentional or unintentional action or omission resulting in the releasing, spilling, leaking, pumping, pouring, emitting, emptying or dumping of a pollutant into the waters of the State, onto land or into wells from which it might flow or drain into such waters or into waters or onto lands outside the jurisdiction of the State, which pollutant enters the waters of the State or the United States. The term "discharge" includes the release of any pollutant into a collection system and treatment plant.
- (15) "Domestic wastewater" means the wastewater discharged from the usual and customary residential use of premises.
- (16) "EPA" or "USEPA" means the United States Environmental Protection Agency.
- (17) "Effluent data" means information necessary to determine the identity, amount, frequency, concentration, temperature or other characteristics of any pollutant discharged.
- (18) "Effluent limitation" means any restriction on quantities, quality, rates and concentration of chemical, physical, thermal, biological and other constituents of pollutants.
- (19) "Federal categorical pretreatment standards" means pretreatment standards as codified in 40 CFR 1(N), specifying quantities or concentrations of pollutants or pollutant properties which may be discharged or introduced to a collection system and treatment plant by existing or

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- new industrial users in specific industrial subcategories.
- (20) "Flow-proportioned" means a composite sample that is collected continuously or discretely. Discrete sampling may be flow-proportioned by varying either the time interval between each aliquot or the volume of each aliquot. All composites must be flow-proportional to each stream flow at the time of collection of the aliquot or to the total flow since the previous aliquot.
  - (21) "Garbage" means solid wastes from the domestic and commercial preparation, cooking, dispensing, handling, storage and/or sale of food, fruits, vegetables, poultry, fish or other aquatic organisms or meat.
  - (22) "Grab sample" means an individual sample collected over a period of time not to exceed fifteen minutes. It is a single sample taken at neither a specific time nor flow and is representative of conditions or characteristics of the indirect discharge at the time that it is collected.
  - (23) "Highest ranking official" means the industrial user's official having day-to-day managerial and operational responsibilities for the discharging facility.
  - (24) "Holding tank waste" means any waste from holding tanks, such as vessels, chemical toilets, campers, trailers, septic tanks and vacuum-pump tank trucks.
  - (25) "Incompatible pollutant" means any pollutant which is not a "compatible pollutant" as defined in this section.
  - (26) "Indirect discharge" means the discharge of wastewater into the collection system and treatment plant.
  - (27) "Industrial Pretreatment Coordinator" or "IPC" means the authorized representative of the Control Authority that implements and coordinates the pretreatment program.
  - (28) "Industrial user" means a user who is a source of indirect discharges of non-domestic wastewater.
  - (29) "Industrial waste survey questionnaire" means a request for information by the Control Authority of users of the collection system and treatment plant on indirect discharge characteristics, operating procedures and schedules, water consumption and waste disposal methods and amounts.
  - (30) "Interference" means an indirect discharge which, alone or in conjunction with indirect discharges from other sources:
    - (A) Inhibits or disrupts the collection system or treatment plant, its treatment processes or operations or its sludge processes, use or disposal; or
    - (B) Causes a violation of any requirement of the City's NPDES permit (including an increase in the magnitude or duration of a violation) or the prevention of sewage sludge use or disposal in accordance with applicable permits, laws and regulations.
  - (31) "Liquid waste hauler" means any person who transports waste by way of truck or rail.
  - (32) "Maximum allowable headworks loading" (MAHL) means the maximum mass of any pollutant that can enter the wastewater treatment plant per day without causing interference or pass-through.
  - (33) "National pollutant discharge elimination system" or "NPDES" means the Federal system for issuing, modifying, suspending, revoking, reissuing, terminating, monitoring and enforcing discharge permits pursuant to the Act.
  - (34) "Nondomestic wastewater" means any wastewater that is not "domestic wastewater" as defined in this section.
  - (35) "Pass-through" means an indirect discharge which exits the treatment plant into waters of

the United States in quantities or concentrations which, alone or in conjunction with indirect discharges from other sources, is a cause of a violation of any requirement of the Control Authority's NPDES permit (including an increase in the magnitude or duration of a violation).

- (36) "Permit" means the discharge control mechanism issued by the Control Authority to a user.
- (37) "Permit holder" means any person who legally has a permit.
- (38) "Person" means any individual, corporation, company, partnership, firm, association, owner or operator of a treatment works, any political subdivision of this State and any state or interstate agency. "Person" shall also mean any responsible corporate official for the purpose of enforcement action under this chapter.
- (39) "pH" means the logarithm (base ten) of the reciprocal of the concentration of hydrogen ions in moles per liter of solution. Solutions with a pH greater than seven are said to be basic. Solutions with a pH less than seven are said to be acidic. A pH equal to seven is considered neutral. Analysis shall be performed in accordance with an approved test procedure.
- (40) "Pollutant" means any dredged soil, solid waste, holding tank waste, incinerator residue, sewage, garbage, refuse, oil, grease, sewage sludge, septage, munitions, chemical wastes, biological materials, radioactive substances, thermal wastes, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal or agricultural waste or other residue directly or indirectly discharged into the waters of the State. The term "pollutant" includes both hazardous and nonhazardous pollutants.
- (41) "Pretreatment" means the alteration, reduction or elimination of pollutants in the wastewater before discharge to the collection system or treatment plant.
- (42) "Program" means the industrial pretreatment program of the Control Authority.
- (43) "Significant industrial user" means:
  - (A) All industrial users subject to Federal categorical pretreatment standards under 40 CFR 403.6, and 40 CFR, Chapter I, Subchapter N; and
  - (B) Any other industrial user that:
    - (1) Discharges an average of 25,000 gallons per day or more of process wastewater to the collection system;
    - (2) Discharges process wastewater which makes up five percent or more of the hydraulic or organic capacity of the treatment plant; or
    - (3) Is designated by the Control Authority as having a reasonable potential for adversely affecting the operation of the collection system and treatment plant or for violating any pretreatment standard or requirement.
- (44) "Significant noncompliance" means a violation by an industrial user which meets one or more of the following criteria:
  - (A) Chronic violations of wastewater discharge limits, defined here as those in which sixty-six percent 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 here as those in which thirty-three percent or more of all of the measurements for any pollutant parameter taken during a six-month period equal or exceed the product of the daily maximum limit or the average limit multiplied by the applicable TRC (TRC = 1.4 for BOD, TSS, fats, oil and grease, and 1.2 for all other pollutants except pH);

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- (C) Any other violation of an effluent limit (daily maximum or longer-term average) that the Control Authority determines has caused, alone or in combination with other indirect discharges, interference or pass-through (including endangering the health of collection system and treatment plant personnel or the general public);
  - (D) Any discharge of a pollutant that has caused imminent danger to human health or welfare or to the environment or has resulted in the Control Authority's exercise of its emergency authority to halt or prevent such an indirect discharge;
  - (E) Failure to meet, within ninety days after the schedule date, a compliance schedule milestone or enforcement order for starting construction, completing construction or attaining final compliance;
  - (F) Failure to provide, within thirty days after the due date, required reports, such as baseline monitoring reports, ninety-day compliance reports, periodic self-monitoring reports and reports on compliance with compliance schedules;
  - (G) Failure to accurately report noncompliance;
  - (H) Any other violation or group of violations which the Control Authority determines will adversely affect the operation or implementation of the program.
- (45) "State" means the State of Michigan.
- (46) "Slug" means any indirect discharge with an instantaneous flow rate or concentration, or both, which exceeds five times any applicable limit.
- (47) "Storm water" means any flow occurring during or immediately following any form of natural precipitation and resulting therefrom. CFR, Part 136.
- (48) "Total suspended solids" means the total nonfilterable residue as defined in Standard Methods for the Examination of Water and Wastewater and analyzed in accordance with 40
- (49) "Treatment plant" means the publicly owned treatment works (POTW), known as the Traverse City Regional Wastewater Treatment Plant, located in Traverse City, Michigan.
- (50) "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with an effluent limitation because of an event beyond the reasonable control of the permittee, including fire, riot, sabotage, flood, storm event, natural cause, other act of God or other similar circumstances, which is the cause of the violation.
- (51) "User" means a person who is the source of indirect discharges of wastewater.
- (52) "Violation" means noncompliance with Federal, State or local pretreatment standards or requirements, any provisions of or adopted pursuant to this chapter or any requirements or conditions of an industrial discharge permit.
- (53) "Wastewater" means the liquid and water-carried wastes from dwellings, commercial buildings, industrial facilities and institutions.

Terms not otherwise defined herein shall be as adopted in Standard Methods for the Examination of Water and Wastewater, Seventeenth Edition, published by the American Public Health Association, the American Water Works Association and the Water Pollution Control Federations; the Clean Water Act, 33 U.S.C. Part 1251 et seq., and 40 CFR, Title 40, Part 403.  
(Ord. 432. Passed 12-4-95. Ord. 337. Passed 9-8-92.)

### **1043.06 ABBREVIATIONS.**

The following abbreviations shall have the designated meanings:

- ASPP - Accidental Spill Prevention Plan or Accidental Spill Prevention Program.
- BMR - Baseline monitoring report.
- BOD - Biochemical oxygen demand.

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CFR	-	Code of Federal Regulations.
IWSQ	-	Industrial waste survey questionnaire.
mg/l	-	Milligrams per liter (i.e., parts per million).
NPDES	-	National Pollutant Discharge Elimination System.
SIU	-	Significant industrial user.
TSS	-	Total suspended solids.
USC	-	United States Code.
USEPA	-	United States Environmental Protection Agency.

(Ord. 337. Passed 9-8-92.)

### **1043.07 PROHIBITED WASTEWATER DISCHARGES.**

- (a) General Prohibitions. No user may discharge any pollutants into the collection system or treatment plant which cause pass-through or interference.
- (b) Specific Prohibitions. In addition to the provisions of subsection (a) hereof, no user shall discharge the following into the collection system or treatment plant:
  - (1) Pollutants in such concentrations that, either alone or by interaction with other substances, create a fire or explosion hazard in the collection system or treatment plant including, but not limited to, gasoline, kerosene, naphtha, benzene, toluene, xylene, ethers, alcohols, ketones, aldehydes, peroxides, chlorates, perchlorates, bromates, carbides, hydrides, and sulfides;
    - (A) Pollutants shall not cause the atmosphere in a monitoring manhole or any part of the Collection System to exceed ten percent (10%) of the Lower Explosive Limit (LEL) for any single reading five percent (5%) of the LEL for more than 9 minutes per day.
  - (2) Any indirect discharges which have a pH lower than 6.0 Standard Units or higher than 11.0 Standard Units, which will react with water to form products which have a pH value lower than 6.0 Standard Units or greater than 9.0 Standard Units or which have any other corrosive property capable of causing damage or hazard to structure, equipment and personnel of the collection system or treatment plant. Prohibited wastes include, but are not limited to, concentrated acids, alkalies, chlorides, sulfides, fluoride compounds and any iron pickling wastes or concentrated plating solutions, whether neutralized or not.
  - (3) Solid or viscous pollutants in amounts which will cause obstruction to the flow in the collection system or treatment plant or other interference with the proper operation of the collection system or treatment plant; any garbage, except domestic wastewater discharged from garbage disposal units in private dwellings, that has not been ground or comminuted to such a degree that all particles float or are carried freely in suspension under flow conditions normally prevalent in the collection system and which contains particles of a size not greater than one-half of one inch in any dimension; or other wastes, including, but not limited to, bones, hair, hides or fleshing, whole blood, recognizable portions of the human anatomy, tissue fluids, entrails, ashes, cinders, mud, straw, sand, wood, grass clippings, spent lime, stone or marble dust, shavings, metal, glass, rags, feathers, tar, asphalt residues, glass grinding or polishing wastes, plastics, spent grains, spent hops, waste paper, styrofoam and residues from the refining or processing of fuel or lubricating oil.
  - (4) Any pollutant, including oxygen demanding pollutants (BOD, etc.), released in an

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- indirect discharge at a flow rate and/or pollutant concentration which will cause interference with the collection system or treatment plant.
- (5) Heat in amounts which will inhibit biological activity in the treatment plant resulting in interference, but in no case heat of a temperature in excess of 150 degrees Fahrenheit or sixty-five Celsius at the sewer connection or of a quantity that causes the temperature at the treatment plant to exceed 104 degrees Fahrenheit or forty degrees Celsius.
  - (6) Pollutants which result in the presence of toxic gases, vapors or fumes within the collection system or treatment plant in a quantity, either singly or by interaction with other pollutants, that may cause acute worker health and safety problems, pass-through or interfere with the collection system and treatment plant, or that exceed standards promulgated by either the USEPA pursuant to Section 307(a) of the Act or the State pursuant to any applicable statutory provisions.
  - (7) Any trucked or hauled pollutants or sludge from septic tanks, cesspools, chemical toilets, privies, grease traps or grit traps, unless received by the Grand Traverse County Septage Treatment Facility in accordance with the rules and regulations of the Grand Traverse County Septage Treatment Facility. Discharge of such material into a township collection system shall require the consent of that township.
  - (8) Any substance which, either singly or by interaction with other substances, is noxious or malodorous or is capable of creating a public nuisance or hazard to life or health, or whose concentrations prevent entry into the collection system and treatment plant for maintenance, repair or other reasons.
  - (9) Any radioactive wastes or isotopes of such half-life or concentration as may exceed limits established by Federal or State regulations;
  - (10) Storm water, surface water, ground water, roof runoff, subsurface drainage, uncontaminated cooling water or unpolluted industrial process waters, either discharged by gravity or from sump pumps.
  - (11) Any waste producing excessive discoloration that may cause the water of the treatment plant to exceed appropriate color criteria;
  - (12) Any waters or wastes containing suspended solids or dissolved matter of such character and quantity that unusual attention or expense is required to handle such materials in the collection system and treatment plant.
  - (13) Any water or wastes containing algicides, fungicides, antibiotics, insecticides, strong oxidizing agents or strong reducing agents.
  - (14) Any wastes requiring an excessive quantity of chlorine or other chemical compound used for disinfection purposes or excessive treatment in order to meet the NPDES discharge limitations of the treatment plant.
  - (15) Any slug discharge.
  - (16) Any water or waste containing substances which are not amenable to treatment or which causes the treatment plant effluent to fail to meet the discharge requirements established by the NPDES permit.
  - (17) Any substance which may cause sludge to be unsuitable for reclamation and reuse, or which may interfere with the reclamation process of the treatment plant, or which may preclude the treatment plant from selecting the most cost-effective alternative for sludge disposal or which may cause the treatment plant to be in noncompliance with sludge use or disposal criteria established by State or federal regulation.

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- (18) Any material discharged into a manhole through its top.
- (19) Detectable concentrations of mercury or polychlorinated biphenols (PCBs).
- (20) Ethylene glycol-based antifreeze.
- (21) Any other pollutant which the Control Authority determines to be, or have the potential to be, detrimental to the collection system, treatment plant or receiving waters.

(Ord. 432. Passed 12-4-95. Ord. 914. Passed 5-16-11.)

**1043.08 LIMITATIONS ON WASTEWATER DISCHARGES.**

- (a) No user shall discharge wastes to the collection system and treatment plant having pollutant concentrations in excess of those in the following lists without an industrial waste discharge permit issued by the Control Authority. Permits may be issued by the Control Authority that specifically permit discharge of greater concentrations, up to maximums established by the Control Authority, and incorporated into the industrial waste discharge permit.

Maximum Daily Average Pollutant	Concentration (mg/L)
Arsenic	0.01
Barium	8.7
Cadmium	0.008
Chloride	750
Chromium	0.43
Copper	0.11
Cyanide	0.01
Lead	0.05
Mercury**	0.0002
Molybdenum	1.0
Nickel	0.08
Selenium	0.02
Silver	0.01
Thallium	0.005
Zinc	0.18
Phenol	4.0
	Maximum Instantaneous Concentration (mg/L)
Pollutant	
Oil and grease	200.0
Total BTEX	0.13

- (b) No user shall discharge wastes to the Collection System and treatment plant having daily pollutant concentrations in excess of the following without an industrial waste discharge permit issued by the Control Authority and payment of the appropriate surcharge established pursuant to this Code.

Pollutant	Maximum Daily Average Concentration (mg/L)
BOD	285
TSS	285
TKN	60
Phosphorus	13.0

The Control Authority reserves the right to establish by ordinance or permit more stringent limitations or requirements on Indirect Discharges to the Collection System and treatment plant if deemed necessary to comply with objectives presented in Section 1043.01 of this Code. (Ord. 432. Passed 12-4-95. Ord. 914. Passed 5-16-11.)

**1043.09 CONFLICTS WITH FEDERAL OR STATE PRETREATMENT STANDARDS; ALTERNATIVE METHODS OF COMPUTING POLLUTANT LIMITS.**

- (a) If the Federal standard for a particular industry, pursuant to a Federal categorical pretreatment standard, and/or State standard, is more stringent than a standard imposed under this chapter, then the Federal and/or State standard shall apply. Affected industrial users shall comply with the appropriate standard within the compliance deadlines provided in 40 CFR 403.6(b). The Control Authority will notify affected industrial users of the applicable reporting requirements under 40 CFR 403.12, but failure of the Control Authority to notify does not relieve such users of the obligation to comply with such reporting requirements.
- (b) The Control Authority may change the way in which categorical users are regulated through the implementation of equivalent mass/concentration limits defined in 40 CFR 403.6(c)(2)-(7), through the combined waste stream formula defined in 40 CFR 403.6(e), or through the net/gross calculation defined in 40 CFR 403.15. The Control Authority will consider requests from any categorical user to examine the use of any of these alternative methods of computing pollutant limits.
- (c) Federal or State requirements and limitations on indirect discharges shall apply in any case where they are more stringent than limitations contained in this chapter.

(Ord. 337. Passed 9-8-92.)

**1043.10 CONFLICTS WITH INDUSTRIAL DISCHARGE PERMITS.**

Industrial discharge permit requirements shall apply in any case where they are more stringent than limitations contained in this chapter.

(Ord. 337. Passed 9-8-92.)

**1043.11 DILUTION.**

No industrial user shall in any way dilute an indirect discharge to achieve compliance with Federal categorical pretreatment standards, State limitations or any other pollutant-specific limitation contained in this chapter or a permit.

(Ord. 337. Passed 9-8-92.)

**1043.12 NOXIOUS OR OFFENSIVE CONDITIONS.**

No person shall suffer or permit any premises belonging to or occupied by him or her or under his or her control, or any cellar, vault, privy, cesspool, holding tank, pretreatment facility, protective facility, sewer or private drain thereon or therein, to become nauseous, foul, offensive or prejudicial to the public health or public comfort.

(Ord. 337. Passed 9-8-92.)

**1043.13 UNAUTHORIZED ENTRY INTO, DESTRUCTION OR OPERATION OF COLLECTION SYSTEM AND TREATMENT PLANT FACILITIES.**

- (a) No unauthorized person shall enter any sewer, manhole, pumping station, collection system, treatment plant or appurtenant facility in the jurisdiction covered by this chapter. No person shall maliciously, willfully or negligently break, damage, destroy, deface or tamper with any structure, appurtenance or equipment which is part of the collection system and treatment plant.
- (b) No unauthorized person shall operate or change the operation of any sewer, pumping station, treatment plant, outfall structure or appurtenant facility.

(Ord. 337. Passed 9-8-92.)

**1043.14 RESPONSE OF CONTROL AUTHORITY TO DISCHARGES OF PROHIBITED SUBSTANCES.**

If wastewaters containing any prohibited substance exceeding prescribed limits or violating restrictions imposed by Section 1043.07 through 1043.13 are discharged or proposed to be discharged into the collection system and treatment plant, the Control Authority may take any one or more of the following actions necessary to protect the collection system and treatment plant:

- (a) Prohibit the discharge of such wastewater;
- (b) Require the user to demonstrate that in-plant modifications will bring such indirect discharge into conformance with this chapter;
- (c) Require pretreatment by physical, chemical or biological processes, manufacturing process changes or by other means (except as prohibited by 40 CFR 403.6(d)), including, but not limited to, storage facilities or flow equalization necessary to ensure compliance with this chapter;
- (d) Require the user, within twenty-four hours of the prohibited discharge or violation, or both, to provide the Control Authority with additional information regarding the discharge as may be required by the Control Authority, including, but not limited, to requested laboratory analysis results;
- (e) Require the user creating the prohibited discharge to pay all additional costs or damage attributable to such discharge, including, but not limited to:
  - (1) Incidental and consequential damages;
  - (2) Fines or penalties assessed against the Control Authority; and
  - (3) Actual attorney fees incurred by the Control Authority in connection with the discharge, including actions relating to paragraphs (e)(1) and (2) hereof.
- (f) Assess civil penalties, seek injunctive relief and petition for criminal prosecution pursuant to applicable statutory provisions; and
- (g) Take such other remedial action, including, but not limited to, suspension or termination of service as may be deemed to be necessary to achieve the purposes of this chapter. If the Control Authority takes a regulatory action, it will not foreclose taking a different regulatory action for the same discharge or a continuation of that discharge.

(Ord. 337. Passed 9-8-92.)

**1043.15 ACCIDENTAL DISCHARGES.**

- (a) Protective Facilities. Each user shall provide protection against accidental discharge of prohibited materials or other wastes regulated by this chapter. Users shall provide and maintain, at their expense, protective facilities, such as, but not limited to, retention basins, dikes, storage tanks or other devices designated to eliminate, neutralize, offset or otherwise negate the effects of prohibited materials or indirect discharges in violation of this chapter. Prior to construction, or as otherwise required by the Control Authority, the user shall submit to the Control Authority for approval detailed plans of the protective facilities or equipment and operating procedures.
- (b) Accidental Spill Prevention Plans. All significant industrial users and other users as required by the Control Authority shall submit an accidental spill prevention plan. At a minimum, this plan shall include the following elements:
  - (1) A description of discharge practices, including nonroutine batch discharges;
  - (2) A description of stored chemicals;
  - (3) Procedures for immediately notifying the treatment plant and Control Authority of slug discharges, including any indirect discharge that would violate a prohibition provided in Sections 1043.07 through 1043.13, with procedures for follow-up written notification within five days;
  - (4) If necessary, 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 runoff, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants (including solvents) and/or measures and equipment for emergency responses;
  - (5) Other information as required by the Control Authority. Review and approval of such plans and operating procedures by the Control Authority shall not relieve the user from the responsibility for the effectiveness of the facility and for modifications to the facility as necessary to meet the requirements of this chapter or a permit.
- (c) Posting of Emergency Numbers. The user shall cause to be furnished and permanently posted on the user's bulletin boards notices advising employees whom to call in case of an accidental discharge.
- (d) Notification. The user shall immediately notify the treatment plant upon the accidental discharge of wastes to the collection system so that countermeasures may be taken to minimize damage to the environment, the collection system and treatment plant and the receiving waters. Such notification shall include the location of the discharge, the date and time thereof, the type of waste, the concentration and volume of the discharge and corrective actions taken by the user. This notification shall be followed, within fifteen days of the date of occurrence, by a detailed written statement to the Control Authority describing the causes of the accidental discharge and the measures being taken to prevent future occurrence.

Such notification will not relieve the user of liability for any fines provided for in this chapter or any ordinance, for any expense, loss or damage to the environment, the collection system and treatment plant or treatment processes or for any fines imposed on the Control Authority on account thereof.

(Ord. 337. Passed 9-8-92.)

**1043.16 UPSETS.**

An industrial user experiencing an upset shall submit the following information to the Control Authority as soon as possible and no later than twenty-four hours of becoming aware of the upset:

- (a) A description of the indirect discharge and cause of noncompliance;
- (b) The period of noncompliance, including exact dates and times, or, if not corrected, the anticipated time the noncompliance is expected to continue;
- (c) Steps being taken and/or planned to reduce, eliminate and prevent recurrence of the noncompliance; and
- (d) Other information as required by the Control Authority.

(Ord. 337. Passed 9-8-92.)

**1043.17 BYPASSES.**

- (a) A bypass may be approved by the Control Authority if request is made at least ten days before the proposed date of the bypass and if:
  - (1) The bypass is for essential maintenance to ensure efficient operation;
  - (2) Pretreatment standards or requirements will not be violated by the bypass; and
  - (3) The Control Authority determines that no adverse effect will result from the bypass.
- (b) An emergency bypass initiated without the prior approval provided in subsection (a) hereof will not be subject to enforcement if:
  - (1) The bypass was unavoidable to prevent loss of life, personal injury or substantial property damage;
  - (2) There was no feasible alternative to the bypass, such as the use of auxiliary treatment facilities, reduction or cessation of production, retention of untreated wastes or maintenance during normal periods of equipment downtime; and
  - (3) The need for the bypass shall not have resulted from the failure to install adequate back-up equipment if required by a permit or in the exercise of reasonable engineering judgment.
- (c) Any user who experiences a bypass, whether approved or not, shall submit the following information:
  - (1) In the case of an emergency or unapproved bypass, the user shall submit oral notice to the Control Authority as soon as reasonably practical following discovery of such bypass, and in any event within twenty-four hours of such bypass.
  - (2) In all cases a written statement shall be submitted to the Control Authority within five days of the bypass, providing, at a minimum, the following information.
    - (A) A description of the bypass and its cause;
    - (B) 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;
    - (C) Steps taken or planned to reduce, eliminate and prevent recurrence of the bypass; and
    - (D) Other information as required by the Control Authority.

(Ord. 337. Passed 9-8-92.)

**1043.18 DISCHARGES OF HAZARDOUS WASTE.**

- (a) A user shall notify the Control Authority, the USEPA Regional Waste Management Division Director and State hazardous waste authorities, in writing, of any discharge from a

facility under the user's control into the collection system and treatment plant of a substance, which, if otherwise disposed of, would be a hazardous waste under 40 CFR, Part 261 or Section 3001 of the Resource Conservation and Recovery Act. Such notification must include, at a minimum:

- (1) The name of the hazardous waste as set forth in 40 CFR, Part 261;
  - (2) The USEPA hazardous waste number;
  - (3) The type of discharge (continuous, batch or other);
  - (4) The following information to the extent such information is known and readily available to the industrial user:
    - (A) Identification of the hazardous constituents contained in the wastes; and
    - (B) An estimation of the mass and concentration of such constituents in the waste stream discharged.
- (b) For the purposes of notification under this section, the user must contact, at a minimum, the following:
- (1) Industrial Pretreatment Coordinator or Plant Manager  
Traverse City Regional Wastewater Treatment Plant  
606 Hannah Avenue Traverse City, MI 49686  
(616) 922-4921
  - (2) The Office of Solid Waste and Hazardous Waste  
U.S. Environmental Protection Agency  
260 S. Dearborn Avenue  
Chicago, IL 60604
  - (3) Chief, Waste Management Division  
Michigan Dept of Natural Resources  
P.O. Box 30241  
Lansing, MI 48909

(Ord. 337. Passed 9-8-92. Ord. 914. Passed 5-16-11.)

#### **1043.19 NOTICE OF PROHIBITED DISCHARGES.**

All users shall notify the treatment plant and the Control Authority immediately of any prohibited discharge to the collection system or treatment plant, including any slug loading.

(Ord. 337. Passed 9-8-92.)

#### **1043.20 ADDITIONAL MONITORING; CONTROL OF PRODUCTION.**

- (a) In addition to all other requirements of this chapter, each industrial user shall take all reasonable steps to identify and minimize any indirect discharge in violation of the standards of this chapter or of a permit, including accelerated or additional monitoring necessary to determine the nature and impact of the noncomplying discharge.
- (b) Each industrial user shall control production and all discharges to the extent necessary to maintain compliance with pretreatment standards and requirements upon reduction, loss or failure of its pretreatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies, for example, in the situation where the primary source of power to the pretreatment facility is reduced or fails.

(Ord. 432. Passed 12-4-95.)

**1043.21 COMPLIANCE REQUIRED PRIOR TO DISCHARGE TO THE COLLECTION SYSTEM AND TREATMENT PLANT.**

It shall be unlawful for any person to discharge directly or indirectly into the collection system and treatment plant without having satisfied all applicable terms and conditions of this chapter. (Ord. 337. Passed 9-8-92.)

**1043.22 INDUSTRIAL WASTE SURVEY QUESTIONNAIRES.**

All industrial users proposing to connect to or discharge wastewater into the collection system and treatment plant shall complete and file with the Control Authority, prior to connecting to the collection system and treatment plant, an industrial waste survey questionnaire (IWSQ). Each existing industrial user shall file an IWSQ periodically as required by the Control Authority. All IWSQs shall be signed by an authorized signatory of the user. (Ord. 337. Passed 9-8-92.)

**1043.23 INDUSTRIAL DISCHARGE PERMITS.**

- (a) If the Control Authority determines, following review of the IWSQ for a user, that the user is a significant industrial user, or if the Control Authority deems it necessary to impose special requirements on the user, the user shall provide any further information, including a baseline monitoring report, if requested, pay any applicable fees that may be required by the Control Authority and obtain an industrial discharge permit. This permit shall be in addition to all others permits required by the City. The application form and required information for such permit shall be at the discretion of the Control Authority.
- (b) The Control Authority will evaluate such application and approve and issue the permit, deny the permit or require the submission of additional information. Notice of denial of completed applications shall be given expeditiously and shall contain a statement of reasons for denial. Written notices will be sent to the address provided by the applicant. Any user whose permit application is proposed to be denied shall have the opportunity for a hearing before the Control Authority before the application is denied unless immediate action is necessary to protect the collection system, treatment plant or the public health, safety or welfare approvals may be subject to certain preconditions which, if not met, shall negate and void the permit without further action of the Control Authority. Approvals may be subject to certain requirements, which, if not met, may result in revocation of the permit.
- (c) Each permit shall be deemed to incorporate all provisions of this chapter as if the same were fully set forth herein. Each permit requires the permit holder to take the following steps and meet the following standards (whether or not expressly recited in the permit), except as the permit may otherwise provide:
  - (1) Achieve effluent limitations based upon standards and requirements established pursuant to any and all applicable Federal, State or local regulations, including this chapter, together with such further discharge restrictions and safeguards against unauthorized discharges as may be necessary to meet water quality standards, area-wide plans adopted pursuant to law or other legally applicable requirements;
  - (2) Where appropriate, meet schedules for compliance with the terms of the permit and interim deadlines for progress or reports of progress towards compliance;
  - (3) Ensure that all indirect discharges are consistent at all times with the terms and conditions of the permit and that no pollutant will be discharged more frequently than authorized or at a level in excess of that which is authorized by the permit;

## WASTEWATER DISCHARGE REGULATIONS

- (4) Submit a written request for revision of the permit prior to any contemplated facility expansion, process modification or changes in production that would result in new or increased indirect discharges, or, if these would not violate effluent limitations or other restrictions specified in the permit, notify the Control Authority of such new or increased indirect discharges;
  - (5) Install, use and maintain monitoring equipment, sample in accordance with methods, maintain and retain records of information from monitoring activities for a minimum of three years and submit to the Control Authority reports of monitoring results, as such may be stipulated in the permit or required by the Control Authority. Users shall report their monitoring results to the Control Authority as required by the permit, unless otherwise required by the Control Authority. Users shall identify the authorized signatory, as defined in this chapter, and discharge monitoring reports shall be signed by such authorized signatory of such users.
  - (6) At all times, maintain in good working order and operate as effectively as possible all facilities or systems of control installed to achieve compliance with the terms and conditions of the permit.
- (d) Permits shall be issued for a specified time period, but in no case for more than five years. The permittee shall submit such information, forms and fees as are required by the Control Authority for renewal of the permit 30 days prior to the date of expiration. If the permittee is not notified of reissuance or denial of the permit by the Control Authority prior to the expiration of the permit, the permit shall be extended until such time as the Control Authority reissues or denies a new permit.
  - (e) Transfer by way of incorporation of an unincorporated entity, or transfer of control of a corporate entity by way of merger or consolidation, shall not be deemed an assignment of the permit. If all or substantially all of the assets of the user at the facility are sold and the operation for which the permit is issued is carried-on without substantial change, the purchaser shall be deemed the permit holder with the same rights and responsibilities. The original permit holder shall give notice, in writing, to the Control Authority prior to transfer and shall provide a copy of the permit to the purchaser. The purchaser shall identify an authorized signatory and shall submit a letter to the Control Authority within thirty days, stating that a transfer has occurred.
  - (f) Any permittee who violates any conditions of the permit, this chapter or 40 CFR, Part 403, is subject to revocation of the permit.
  - (g) Unless the payment condition is waived by the Control Authority, no permit may be issued, modified or renewed by the Control Authority until the applicant or permittee, as the case may be, has paid all fees, charges, penalties or fines due and owing, or has entered into an agreement with the Control Authority establishing a payment schedule therefor, except that if a penalty or fine is contested, the applicant or permittee shall satisfy the provisions of this section by posting financial security as required pursuant to applicable statutory provisions.
  - (h) The Control Authority may revise a permit in order to meet the changing needs of the collection system and treatment plant or the user or to meet the requirements of new or revised regulations. When a permit is to be revised, the permit holder shall be given written notice of the proposed revision and the opportunity to comment, if time permits, prior to issuance of the revised permit.
  - (i) If pretreatment, operational changes, maintenance or any combination thereof is required to meet the requirements of the user's permit, the user shall develop and submit a compliance

schedule to the Control Authority. The schedule shall contain increments of progress 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 industrial user to meet applicable Federal categorical pretreatment standards and requirements or any local pretreatment standard or requirement, e.g., hiring an engineer, completing preliminary plans, completing final plans, executing contracts for major components, commencing construction, completing construction, etc. No increment shall exceed nine months and the total length of the compliance schedule shall not exceed eighteen months. The Control Authority will review the proposed schedule and decide whether it is appropriate for the improvements needed to meet applicable standards. The Control Authority will notify the user of its decision and may then incorporate the compliance schedule into a permit or other control document and issue it to the user. Not later than fourteen days following each date in the schedule and the final date for compliance, the industrial user shall submit a progress report to the Control Authority including, at a minimum, whether or not it complied with the increment of progress to be met on such date and, if not, the date on which it expects to comply with this increment of progress, the reason for the delay and the steps being taken by the industrial user to return the construction to the schedule established. In no event shall more than nine months elapse between such progress reports to the Control Authority.

- (j) No permit shall be issued allowing an indirect discharge to the collection system and treatment plant, that, taken together with existing and projected discharges, would exceed the design average capacity of the treatment plant or exceed a Maximum Allowable Headworks Loading or probably exceed the ability of the treatment plant to effectively treat the wastewater inflow. Provided that, no such permit shall issue which would cause the total inflow of any factor or pollutant to exceed the capacity allocated to the unit of government in which the permit holder is discharging into the system.

(Ord. 432. Passed 12-4-95.)

#### **1043.24 LIQUID WASTE HAULERS.**

It shall be unlawful for any person to transport and discharge holding tank waste into the collection system or treatment plant unless received by the Grand Traverse County Septage Treatment Facility in accordance with the rules and regulations of the Grand Traverse County Septage Treatment Facility. (Ord. 337. Passed 9-8-92. Ord. 914. Passed 5-16-11.)

#### **1043.25 MONITORING AND REPORTING.**

- (a) Within 180 days after the effective date of a Federal categorical pretreatment standard, or 180 days after the final administrative decision made upon a category determination submission under 40 CFR 403.6(a)(4), whichever is later, existing industrial users subject to such Federal categorical pretreatment standards and currently discharging to or scheduled to discharge to the collection system and treatment plant shall submit to the Control Authority a baseline monitoring report (BMR) which contains, at a minimum, the following information:
  - (1) The name and address of the facility, including the name of the operator and owners;
  - (2) A list of any environmental control permits held by or for the facility;
  - (3) A brief description of the nature, average rate of production and standard industrial classification of the operations carried-out by such industrial user. This description shall include a schematic process diagram which indicates points of discharge to the

- collection system and treatment plant from the regulated processes.
- (4) Information showing the measured average daily and maximum daily flow, in gallons per day, to the treatment plant from each of the following:
    - (A) Regulated process streams; and
    - (B) Other streams as necessary to allow use of the combined waste stream formula of 40 CFR 403.6(e).
  - (5) The Federal categorical pretreatment standards applicable to each regulated process;
  - (6) The results of sampling and analysis identifying the nature and concentration (or mass, where required by the applicable standard or Control Authority) of regulated pollutants in the discharge from each regulated process. The sample shall be representative of daily operations and shall be done in accordance with 40 CFR 403.12(b)(iii) and (iv).
  - (7) Other information as required by the Control Authority.

All categorical users, and any other users required by the Control Authority, shall submit a baseline monitoring report containing the information provided in this subsection as a requirement of application for a permit to discharge to the collection system and treatment plant.

- (b) Within ninety days following the date for final compliance with applicable Federal categorical pretreatment standards, or, in the case of a new source as defined in 40 CFR 403.5(k)(1), following commencement of the introduction of wastewater into the collection system and treatment plant, any industrial user subject to Federal categorical pretreatment standards shall submit to the Control Authority a compliance status report.
- (c) Each industrial user shall complete monitoring and submit monitoring reports to the Control Authority as required by this chapter, the program and a permit. If during any reporting period an industrial user fails to comply with permit requirements and limitations, the industrial user shall include in the report an explanation of the noncompliance, any known or suspected causes and actions taken or to be taken to prevent further occurrences.
- (d) If an industrial user monitors any pollutant more frequently than required by the Control Authority, using approved procedures, the results of such monitoring shall be included in the report.
- (e) All sampling, analyses and flow measurements shall be performed by a laboratory approved by the Control Authority. Monitoring and analysis shall be conducted according to methods approved under 40 CFR, Part 136, unless other test procedures have been specified by the Control Authority.
- (f) All users shall furnish to the Control Authority, upon request, any information which may be requested to determine if cause exists for modifying, revoking or reissuing a permit or to determine compliance with this chapter, the program or a permit.
- (g) All users shall provide any and all information to the Control Authority that may be required to determine the characteristics or nature of the potential discharge.
- (h) If monitoring and/or analysis is performed by the Control Authority in lieu of the user performing it, the user may be charged and shall be required to pay any fees imposed by the Control Authority.

(Ord. 432. Passed 12-4-95.)

#### **1043.26 NOTIFICATIONS OF NONCOMPLIANCE.**

- (a) A user shall promptly notify the treatment plant or the Control Authority in advance of any substantial change in the volume or character of pollutants in the indirect discharge.
  - (b) A user shall notify the Control Authority of any indirect discharge which causes injury to persons or damage to the environment, or poses a threat to human health or the environment, as soon as the user becomes aware of the occurrence.
  - (c) If sampling performed by an industrial user, or other information available to it, indicates a violation, the user shall notify the Control Authority within twenty-four hours of becoming aware of the violation. If the standard violated is a Categorical Pretreatment Standard, or if the Control Authority requires it, the user shall also repeat the sampling and analysis and submit the results of the repeat analysis to the Control Authority within thirty days after becoming aware of the violation, except that the industrial user is not required to resample if the Control Authority performs sampling of the Industrial User within thirty days of the initial violation.
  - (d) All users shall comply with the notification requirements of this chapter.
- (Ord. 432. Passed 12-4-95.)

**1043.27      RETENTION OF RECORDS; SAMPLING REQUIREMENTS;  
                  FALSIFICATION.**

- (a) Any industrial user subject to the reporting requirements required by this chapter, the program or a permit shall be required to retain, for a minimum of three years from the date of the sample, measurement, report or application, any records of monitoring activities and results (whether or not such monitoring activities are required by this chapter) and shall make such records available for inspection and copying by the Control Authority. Records include all calibration and maintenance records, copies of all reports required by this chapter, the program or a permit and records of all data used to complete the application for a permit. This period may be extended by request of the Control Authority at any time. This period of retention shall be extended during the course of any unresolved litigation regarding the industrial user or when requested by the USEPA or the Michigan Department of Natural Resources.
  - (b) The following information, at a minimum, is required for all samples:
    - (1) The date, exact place, method and time of sampling and the names of the person or persons taking such samples;
    - (2) The dates analyses were performed;
    - (3) Who performed the analyses;
    - (4) The analytical techniques/methods used; and
    - (5) The results of such analyses.
  - (c) The reports and other documents required to be submitted or maintained under this chapter, the program or a permit are subject to the provisions of 18 U.S.C. Section 1001 relating to fraud and false statements, the provisions of Section 309(c)(4) of the Act, as amended, governing false statements, representation or certification and the provisions of Section 309(c)(6) of the Act regarding responsible corporate officers, which sections provide for civil and/or criminal penalties for making any false statement, record, report, plan or other document.
- (Ord. 337. Passed 9-8-92.)

**1043.28 RIGHT OF ENTRY FOR INSPECTION, SAMPLING AND ANALYSIS.**

All users shall allow any authorized representative of the Control Authority bearing proper credentials to enter upon the premises of any facility without delay where a real or potential discharge is located to inspect the facility, monitoring equipment and practices and pretreatment operations, and/or to measure, sample or test any discharge of wastewater to the collection system and treatment plant. Where records are required to be kept under the terms and conditions of this chapter or a permit, access must be granted at reasonable times to copy records required to be kept under the terms and conditions of this chapter or a permit in order to determine compliance with the requirements of this chapter, a permit or 40 CFR, Part 403.

(Ord. 337. Passed 9-8-92.)

**1043.29 CONFIDENTIAL INFORMATION; PUBLIC ACCESS.**

- (a) Except as otherwise provided in 40 CFR 2.302, any records, reports or other information obtained pursuant to this chapter, the program or a permit, including any correspondence relating thereto, shall be available to the public. However, any information submitted by a user which the user believes to be entitled to protection as a trade secret should specifically be identified by the user when submitted. If the Control Authority determines that making public of any report or information, or a part thereof, other than effluent data, would divulge methods or processes entitled to protection as trade secrets, the Control Authority will consider such record, report or information, or part thereof, to be confidential, and access thereto shall be limited to authorized officers or employees of Federal or State agencies or the Control Authority.
- (b) The Control Authority will serve upon the furnisher of such confidential information verbal notice of the intent to disclose such information prior to disclosure, written notice of the disclosure of such information and the person who properly requested such information. The Control Authority will submit the claim of confidentiality with the information to the requesting person.
- (c) Information provided by users or the Control Authority pursuant to this chapter and the program that has not been classified as confidential are open for public inspection. Requests for such review are to be made in writing and an appointment for review may be required.

(Ord. 337. Passed 9-8-92.)

**1043.30 NOTICE OF VIOLATION.**

A notice of violation will be issued, in writing, by the Control Authority to any user for failure to meet any pretreatment standards or requirements pursuant to Federal, State or local regulations, this chapter or a permit. The notice shall be delivered to the user or mailed. If mailed, the notice shall be addressed to the permit holder if a permit has been issued or, if not, to the user, by registered or certified mail, to such user's or permit holder's last known address.

(Ord. 337. Passed 9-8-92.)

**1043.31 ENFORCEMENT RESPONSE PLAN.**

The Control Authority will enforce the provisions of this chapter according to an enforcement response plan which contains detailed procedures for investigation and response to violations of this chapter or a permit. The plan:

- (a) Describes escalating enforcement responses to all anticipated types of violations by users and the time periods within which enforcement action shall be taken.

- (b) Identifies, by title, the officials responsible within the Control Authority for taking enforcement action.
- (c) Will be made available to users in such manner as the Control Authority will determine, and, at a minimum, will be distributed to each permit holder at the time the permit is issued.

The Control Authority will at all times retain the authority to vary from the express terms of the plan if it determines that the public interest and the interests served by this chapter will be furthered by the variance.

(Ord. 337. Passed 9-8-92.)

**1043.32       SUSPENSION OF WASTEWATER DISCHARGE SERVICES OR PERMITS.**

- (a) The Control Authority may suspend wastewater treatment service or a permit, or both, without notice, or with such notice, including notice by telephone or facsimile, as the Control Authority deems feasible, when, in the opinion of the Control Authority, an indirect discharge or other act or omission violates or threatens to violate this chapter or a permit and such suspension is immediately necessary to prevent an actual or threatened discharge or other activity which presents a serious danger to the health, safety or welfare of the public, the environment, the collection system or the treatment plant. Immediately following a suspension under this section, the Control Authority will promptly proceed as provided in subsection (b) hereof.
- (b) In the event the Control Authority determines that an indirect discharge or other act or omission violates or threatens to violate this chapter or a permit, the Control Authority may take action under this section to suspend sewer service, a permit or both. The Control Authority will give written notice of such proposed action to the user or permit holder, as the case may be, by personal delivery or certified mail. In case of delivery, notice shall be given not less than thirty days in advance of the proposed action, counting the date of delivery as the first day. In the case of certified mail, the date the mail was deposited with postage fully paid in a U.S. Postal Service receptacle shall count as the first day. The notice shall be addressed to the user or permit holder's last known address, as the case may be. If the address is unknown, the notice shall be sent to the address of the owner of the premises at which the indirect discharge is made into the collection system. The notice shall contain a statement of the reasons for the proposed action. The permit holder or the user, as the case may be, shall be given the opportunity for a hearing before the Control Authority or its designee prior to taking final action. Failure to respond in writing to the notice of violation during the notice period shall be deemed consent to the proposed action.
- (c) Thirty days after notice (and following a hearing, if requested by the user or permit holder, as the case may be), the Control Authority may modify or suspend the permit or limit, regulate or suspend the user's indirect discharge into the collection system and treatment plant, all as the Control Authority deems appropriate, or may terminate the notice if the violation or threat of violation has abated. The Control Authority will provide written notice of its actions to the user or the permit holder, as the case may be, in like manner as the notice of action.
- (d) Any user or permit holder notified of suspension of wastewater treatment service, a permit or both, shall immediately stop its indirect discharge or eliminate the violation. In the event the indirect discharge is not stopped or the violation eliminated, the Control Authority may

take such steps it deems necessary, including, but not limited to, immediate capping of the sewer connection, to prevent or minimize the violation.

- (e) The Control Authority may reinstate the wastewater treatment service, permit or both, if it is satisfied that the violation has been or will be corrected and upon payment of all fines and costs outstanding against the user or permit holder assessed by the Control Authority in connection with the sewer service. Prior to reinstatement, the Control Authority may require a written statement submitted from the user or permit holder describing the cause of the violation and describing the measures completed to prevent future violations. Reinstatement may be conditioned upon completion of such measures. The Control Authority may require the posting of a bond or other financial security as a condition of restoring sewer service, the permit or both.

(Ord. 337. Passed 9-8-92.)

**1043.33 PUBLICATION OF USERS IN SIGNIFICANT NONCOMPLIANCE.**

The Control Authority, at least annually, will publish in the daily newspaper with the greatest circulation in the City and the townships of Acme, East Bay, Elmwood, Garfield and Peninsula, a public notice which will identify all users meeting the criteria for "significant noncompliance" with pretreatment requirements, as defined in this chapter, during the period since the last publication. The notice will identify the user and state the basis for the finding of significant noncompliance, together with such other information as the Control Authority deems appropriate in light of the purposes of this chapter.

(Ord. 337. Passed 9-8-92.)

**1043.34 COSTS OF ABATEMENT.**

All costs of abatement of any and all violations by any user shall be borne by that user.

(Ord. 337. Passed 9-8-92.)

**1043.35 AFFIRMATIVE DEFENSES TO VIOLATIONS.**

A person shall have an affirmative defense in any action brought against him or her alleging a violation of the general prohibitions established in Section 1043.07(a) and the specific prohibitions provided in Section 1043.07(b)(3), (4), (5), (6) and (7) where such person can demonstrate that:

- (a) An upset occurred;
- (b) He or she did not know or have reason to know that his or her indirect discharge, alone or in conjunction with an indirect discharge or indirect discharges from other sources, would cause pass-through or interference;
- (c) A local limit was developed for each pollutant in the indirect discharge that caused pass-through or interference, and that the user was in compliance with each such local limit directly prior to and during the pass-through or interference; or
- (d) If a local limit designed to prevent pass-through and/or interference, as the case may be, has not been developed for the pollutants that caused the pass-through or interference, the indirect discharge directly prior to and during the pass-through or interference did not change substantially in nature or constituents from the prior discharge activity when the treatment plant was regularly in compliance with its NPDES permit requirements and, in the case of interference, applicable requirements for sewage sludge use or disposal.

In any enforcement proceeding, the industrial user seeking to establish the occurrence of an upset shall have the burden of proof and may not claim an upset unless it has complied with the requirements of Section 1043.16.

(Ord. 337. Passed 9-8-92.)

**1043.36 CONSTRUCTION AND LOCATION OF PRETREATMENT AND MONITORING FACILITIES.**

- (a) A wastewater pretreatment system or device may be required to treat flows prior to discharge to the collection system and treatment plant of certain waste constituents not in compliance with this chapter, the program or a permit, in order to distribute more equally over a longer time period any peak discharges of wastewater, or to meet effluent limits required by this chapter, the program or a permit. All pretreatment systems or devices shall be approved by the Control Authority, but such approval shall not relieve the user of the responsibility of meeting any requirement of this chapter, the program or a permit.
- (b) All users shall be required to install, use and maintain such monitoring equipment or methods as may be necessary to carry out the objective of this chapter, including, but not limited to, suitable manholes, meters and appurtenances or other facilities to facilitate observation, sampling and measurement of the combined wastes from the premises. All monitoring equipment and facilities shall be installed by the user at his or her expense and shall be maintained by such user so as to be safe, operable and accessible at all times. All manholes installed to meet the requirements of this section shall be located on the user's premises unless the such a location would be impractical or cause an undue hardship. If no suitable location exists on the user's premises, the Control Authority may permit construction of a manhole in the public right of way or easement, subject to the approval of the local unit of government. If the monitoring facilities are located within a locked fence, the Control Authority shall be provided with keys to the gate lock. Unrestricted access to monitoring manholes or other meters, appurtenances or monitoring facilities shall be available to authorized personnel of the Control Authority at all times.
- (c) The Control Authority may require any user to furnish and install at the monitoring manhole or other appropriate location a calibrated flume, weir, flow meter or similar device approved by the Control Authority and suitable to measure the flow rate and total volume of the indirect discharge. A flow indicating-, recording- and totalizing-register may be required by the Control Authority.
- (d) Grease, oil and sand interceptors shall be provided and installed by any user when, in the opinion of the Control Authority, they are necessary for the proper handling of liquid wastes containing grease in excessive amounts or any flammable wastes, sand or other harmful ingredients. All interceptors shall be of a type and capacity approved by the Control Authority and shall be so located as to be readily and easily accessible for cleaning and inspection.
- (e) All monitoring facilities, whether on public or private property, shall be constructed in accordance with applicable State and local construction standards and specifications. Plans and specifications for all such work shall be submitted, prior to construction, to the Control Authority for approval as conforming to requirements of the program, this chapter and other applicable ordinances.
- (f) All users shall obtain approval from the Control Authority prior to construction, installation, modification or operation of any facility for the collection, treatment or discharge of any

pollutant into the collection system and treatment plant.  
(Ord. 337. Passed 9-8-92.)

**1043.37 ESTABLISHMENT OF CHARGES AND FEES.**

The Control Authority may establish, by resolution, reasonable charges and fees, which may include, at a minimum:

- (a) Fees for reviewing accidental discharge procedures and construction;
- (b) Fees for permit applications, modifications or renewals;
- (c) Fees for treatment of extra-strength pollutants;
- (d) Fees for monitoring and/or analysis of a user's indirect discharge;
- (e) Fees for filing appeals;
- (f) Other fees as the Control Authority may deem necessary to carry out the requirements of this chapter.

Such charges and fees relate solely to matters covered by this chapter and are separate from all other fees chargeable by any local unit of government.

(Ord. 337. Passed 9-8-92.)

**1043.38 RECOVERY OF COSTS.**

For each and every occurrence of any impact to the environment, the collection system, treatment facilities or other appurtenances thereto or the receiving waters, caused by an indirect discharge, and notwithstanding any fines, penalties and/or surcharges that may be applicable to the discharge, the Control Authority may recover from the user, and the user shall pay, the direct and indirect costs associated with the clean-up, repair, recovery or any other activity required directly or indirectly due to the impact of the discharge. Costs shall include, but not be limited to:

- (a) The actual direct and indirect costs of any labor required to monitor, test, repair, clean-up, pick-up, pump, vacuum, sweep or in any other way recover from the discharge and return the affected facility to the conditions required by permit;
- (b) The actual direct and indirect costs of any outside services billed to the Control Authority and/or its representatives for any services, monitoring, testing, repairs, clean-up, pumping, recording, containment, work or other activity engaged in to directly or indirectly assist the Control Authority in returning the affected facility to the conditions required by permit;
- (c) The actual direct and indirect costs of any materials, supplies, parts and/or equipment used by the Control Authority and/or its representatives for any services, monitoring, testing, repairs, clean-up, pumping, recording, containment, work or other activity engaged in to directly or indirectly assist the Control Authority in returning the affected facility to the conditions required by the permit;
- (d) The actual direct and indirect costs of any services related to the discharge provided to the Control Authority by any public agency;
- (e) The actual amount of any and all legal fees incurred by the Control Authority in defending against fines, penalties, administrative fees, judgments and/or settlements against the Control Authority or its representatives resulting directly or indirectly from the discharge;
- (f) The actual amount of any and all attorney fees and costs incurred by the Control Authority in enforcing this chapter, a permit or a compliance schedule, in prosecuting violations and in collecting any and all fines, penalties, administrative fees, judgments and/or settlements against the user or its representatives resulting directly or indirectly from the discharge; or

- (g) The actual amount of any fines, penalties, administrative fees, judgments and/or settlements against the Control Authority or its representatives resulting directly or indirectly from the discharge, whether imposed, adjudicated, negotiated or required by any legal means.

Costs shall be calculated by the Control Authority from the records, reports, documents and/or invoices submitted by the contractors, vendors, suppliers, agencies and/or claimants and may be verified by legal counsel to the Control Authority if requested by the user. The user shall be invoiced for these costs as they are developed and submitted, and payment is due net ten days, with the Control Authority receiving interest at the highest rate of interest permitted by law.

(Ord. 337. Passed 9-8-92.)

### **1043.39 RATES AND SERVICE CHARGES.**

- (a) It is hereby declared to be necessary and conducive to the protection of the public health, welfare and convenience to levy and collect rates and service charges upon premises served by the collection system.
- (b) To determine the sanitary wastewater flow from any source, the City Manager may use one of the following methods:
  - (1) The amount of water supplied to the premises by a public or private water supply as shown upon the water meter, if the premises are metered;
  - (2) If the premises are supplied with unmetered water from sources, such as private wells, the estimated amount of water supplied from such sources;
  - (3) If such premises are used for a nondomestic purpose of such a nature that the water supplied to the premises cannot be entirely discharged into the sewerage system, the estimated amount of wastewater discharged into the sewer system;
  - (4) The number of cubic feet of wastewater discharged into the sewerage system, as determined by measurements and samples taken at a manhole installed by the owner of the property served by the sewerage system in accordance with the terms and conditions of the permit issued by the City; or
  - (5) A figure determined by the City Manager by any combination of the methods described in paragraphs (b)(1) and (4) hereof or by another equitable method.
- (c) Wastewater treatment service charges shall be established for all users of the public sanitary sewerage system in the City by resolution of the City Commission placed on file with the City Clerk. When establishing rates, the City Commission shall establish a late payment interest and penalty as allowed by law.
- (d) The City shall not honor deductions from any customer's sanitary wastewater treatment account for water consumed which does not reach the sanitary sewer, unless such water is taken from a separate "deduct" metered connection. The expense of such connection shall be borne by the consumer in the same manner as other water supply connections. Notwithstanding the foregoing, in order to give credit for lawn sprinkling for residential customers for the period from April 15 through October 15, the average waste consumption for the months of January, February and March shall be used as the basis for a sewer service charge.
- (e) For disposal of holding tank waste, the rate shall be established by the City Manager for each delivered load.
- (f) The City may enter into a special agreement or arrangement with any nondomestic user whereby waste of an unusual strength or character may be accepted by the treatment plant,

subject to payment therefor. Additional payment will be required to cover the added cost of handling and treating the waste. Surcharges required for excessive BOD, suspended solids and phosphorus shall be made. Where surveillance is required to limit wastewater flows or to sample waste to ensure compliance with this chapter, the user shall be billed for actual costs incurred by the City.

(Ord. 337. Passed 9-8-92.)

**1043.40 COLLECTION OF CHARGES, FEES, PENALTIES, ETC.**

The Control Authority may use all legal means of collecting charges, fees, costs, rates, interest, penalties and all other monetary charges, including the following:

- (a) The Control Authority may terminate or interrupt service to secure collection.
- (b) The Control Authority may commence litigation in any court of competent jurisdiction to secure collection, and the user shall be responsible for and shall pay all reasonable attorney's fees and costs of such litigation.
- (c) Charges for services furnished to premises shall be a lien on the premises at the time the services are rendered. Charges delinquent for six months or more shall be certified annually to the proper tax assessing officer, who shall enter the lien on the next tax roll against the premises to which the services have been rendered. Charges shall be collected and the lien shall be enforced in the same manner as other local property taxes. Where a tenant is responsible for the payment of the charges and the City is so notified in writing, together with a true copy of the lease for the affecting party premises, if there is one, the charges shall become a lien against the premises after the date of the notice. If a tenant is responsible for the payment of charges, the City may require a cash deposit in a sum not to exceed two-months estimated service charges as security for the payment of such charges.

(Ord. 337. Passed 9-8-92.)

**1043.41 INJUNCTIVE RELIEF.**

In addition to penalties provided in Section 1043.99 and all other remedies for violations of this chapter, a permit or a compliance schedule, an action may be commenced for an injunctive order restraining a violation of this chapter or a permit or requiring compliance therewith in the Circuit Court for the County in which the user is located.

(Ord. 337. Passed 9-8-92.)

**1043.99 PENALTY.**

- (a) Whoever violates any provision of this chapter, a permit or a compliance schedule, shall be guilty of a misdemeanor subject to a fine not less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000) for each violation (or such lesser sum as may be established by law as a maximum penalty for violation of this chapter). Each day during which a violation occurs or continues shall constitute a separate offense. A violation of the terms of a permit or a compliance schedule established under this chapter shall be deemed a violation of this chapter.
- (b) In addition to the provisions of Section 1043.41 and the penalties provided in this section, the Control Authority and any township affected by a violation of this chapter, a permit or a compliance schedule may recover from any person committing such violation all costs and damages as set forth in detail in Section 1043.38. Suit may be commenced in any court of competent jurisdiction.

(Ord. 432. Passed 12-4-95.)

# CHAPTER 1044

## Water

1044.01	Purpose.	1044.10	Reading of meters.
1044.02	Connections; permit required; fee.	1044.11	Access for inspections.
1044.03	Service pipes.	1044.12	Use of hydrants.
1044.04	Supply and distribution.	1044.13	Cross connections prohibited.
1044.05	Inspections.	1044.14	Private wells.
1044.06	Ownership and maintenance of connections.	1044.15	Tampering.
1044.07	Application for service.	1044.16	Rates and charges.
1044.08	Responsibility for maintenance.	1044.17	Collection of unpaid charges.
1044.09	Meters generally.	1044.99	Penalty.

### CROSS REFERENCES

- Power to regulate water - see CHTR. Secs. 150, 151
- Water supply generally - see Mich. Const. Art. 7, Sec. 24; M.C.L.A. Secs. 46.171 et seq., 123.111 et seq., 486.51 et seq., 486.101 et seq.
- Water quality - see M.C.L.A. Secs. 67.38, 323.1 et seq.
- Water supply in home rule cities - see M.C.L.A. Secs. 117.4b, 117.4e, 117.4f, 117.35, 123.115
- Special assessments for water mains - see ADM. 232.03
- Water pollution - see S.U. & P.S. 1062.11
- Ground-water protection and storm-water runoff control - see S.U. & P.S. Ch. 1068
- Water in subdivisions - see P. & Z. 1248.06
- Water for mobile homes - see B. & H. 1480.01
- Water in rental dwellings - see B. & H. 1482.11(g)
- Collection of water charges - see MSA 5.2531(1)

#### **1044.01 PURPOSE.**

The purpose of this Chapter is to provide for the protection of the public health, safety and welfare. The City finds that the use of wells and secondary water supplies from wells for the delivery or use of water may influence the movement of contaminated groundwater and constitute a potential public health risk. It is further recognized that protection of residents from consumption of groundwater containing hazardous substances or contaminants which may be injurious to human health may in certain cases be fostered by the adoption of restrictions regarding the installation and use of wells. The term “contamination” means groundwater contamination that exceeds residential drinking water criteria developed by the Michigan Department of Environmental Quality pursuant to Section 20120(a)(1)(a) of the Natural Resources Environmental Protection Act, 1994 Public Act 451, as amended, and its rules.

#### **1044.02 CONNECTIONS; PERMIT REQUIRED; FEE.**

- (a) Permit required. No person shall connect a water service pipe to the City water distribution system without first obtaining a permit. An application shall be made to the City Treasurer's Office and shall contain the legal description or parcel code number of

the premises to be served, the size of the service desired and such other pertinent data as may be required by the City Treasurer.

- (b) Fee. Connections to the distribution mains shall be installed only by the City for a fee as established by resolution of the City Commission.
- (c) Costs included in fee. The connection permit fee shall include the costs of excavation and backfill, making the tap, furnishing and installing a service pipe from the main to a point between the curb and the sidewalk within the public right-of-way and furnishing and installing the service box and curb stop.
- (d) Reasons for not granting permit. A connection permit shall not be granted if the application is incomplete, or if, in the judgment of the City Manager, the making of the connection will endanger the mains due to frost, excess usage withdrawal rates, potential cross connections, or for any other cause.

**1044.03 SERVICE PIPES.**

- (a) Water Service Material. Water service pipe used in connecting to the City water system shall be copper tube, Type K Soft, no larger than two inches in diameter and shall meet all American Society for Testing and Materials standards and the following specifications:

Pipe Size (in)	Outside Diameter (in)	Wall Thickness (in)	Inside Diameter (in)	Weight (lbs/ft)
¾	.875	.065	.745	.641
1	1.125	.065	.995	.839
1 ½	1.625	.072	1.481	1.36
2	2.125	.083	1.959	2.06

- (b) Depth. The minimum depth of cover for service lines shall be five feet below the surface of the ground or established street grade, whichever is lower.
- (c) Frost. No service line shall be laid inside a building along an outside wall or in any position where there is danger of the service line freezing.
- (d) Valves. Every service line shall be furnished with a valve both on the influent side and the effluent side of the meter.
- (e) Location. A water line laid in the same trench with a sewer line shall be installed in accordance with the Michigan Plumbing Code, as amended.

**1044.04 SUPPLY AND DISTRIBUTION.**

- (a) Connection requirements. Every connection to a water main for a potable water supply shall include a corporation or tapping sleeve at the main, a shut off valve and curb box or valve manhole on the public side of the property line, and a meter approved by the Water Maintenance Division with appropriate prescribed valving.
- (b) Meter required. No water connection shall be made prior to the installation of a meter.
- (c) Separate service line; fire line; access. Each building to be served with City water shall have a separate service line and connection to the public water main. When a building is served by a two inch or greater fire suppression line, a domestic water service for that building may be tapped off this fire line, provided the City is granted acceptable access and control to turn on or to turn off such domestic service, as the City may deem

necessary. Failure of the business to provide acceptable access to City personnel may require, upon written notification to the owner of the business served, the termination of availability of City water for fire suppression purposes. The location of the post indicator valve shall be approved by the Fire Marshall and the potable water supply shall be protected against contamination as outlined in the American Water Works Association Manual M-14, as amended, and as required by the Michigan Department of Health and the State Plumbing Code, as amended.

**1044.05 INSPECTIONS**

All work performed in making additions, connections, repairs, extensions or alterations to any fixture connected to the water distribution system from the point on the system designated by the State Plumbing Code including connection to the curb stop valve shall be subject to inspection by the Plumbing Inspector who may order any part of such work discontinued or changed to comply with the rules and regulations of the State Plumbing Code or this chapter.

**1044.06 OWNERSHIP AND MAINTENANCE OF CONNECTIONS.**

Ownership and maintenance of the street portion of the water service, including the corporation, tapping sleeve, curb stop, service box, valves, valve manhole and service pipe, is vested in the City.

**1044.07 APPLICATION FOR SERVICE.**

A person may apply for and be granted the use of water if application is made in writing at the City Treasurer's office on such forms as shall be prescribed.

**1044.08 RESPONSIBILITY FOR MAINTENANCE**

- (a) Maintenance Required. Every person having service from the City water distribution system shall, at his or her own cost and expense, keep in repair that portion of the service between the service box and the meter, the inlet and outlet meter valving and bypass connection. If the service is permitted to remain out of repair, the Water Maintenance Division may shut off the water.
- (b) Fire Suppression Maintenance. All fire suppression systems which were installed in compliance with any law or order shall be maintained in an operative condition at all times. The Fire Marshal shall be notified before disconnection, interruption of protection, when test, repairs, alterations or additions are started and upon completion of such work. When booster pumps are approved for installation in areas of marginal low volume and residual system pressure, a pressure sustaining control valve on the discharge side of the pump, preset to a minimum suction pressure to throttle the discharge of volume, or a low pressure cutoff valve set at 10 PSI to control the pump's suction pressure, shall be installed to prevent damage to the public distribution system.

**1044.09 METERS GENERALLY**

- (a) Required. All connections to the water mains, with the exception of fire hydrants and automatic fire suppression systems, shall require the water to pass through a meter. No water shall be supplied to any property unless the water is measured by a water meter of a size and design approved and installed by the City. The City shall not furnish meters larger than the City Manager deems necessary.

- (b) Exceptions. Water for automatic fire suppression systems shall be furnished at the rates set forth by resolution of the City Commission. No person shall use any water from the automatic fire suppression system except in case of fire. An approved control valve for all automatic fire suppression systems shall be located so as to be readily accessible to the Fire Department in accordance with National FPA standards.
- (c) Non-Domestic Meter. Meters used to measure water that is not returned in the sanitary sewer system (such as lawn irrigation or cooling system meters) are termed non-domestic meters. Non-domestic meter installations shall be installed with proper backflow protection through a separate tap placed in the water line after the regular service meter.
- (d) Placement. The meter for the water supply shall be located in a clean, dry and sanitary place inside the building as close as practical to the outside wall of the building being served. It shall be readily accessible, no more than four feet above the floor and capable of being reached quickly requiring no removal of obstacles or the use of ladders for inspection, maintenance or operation. Actual installation of the meter shall be done by the City when a City-approved location has been provided by the property owner at his or her own expense. All metered water lines in excess of one inch in diameter, hereafter installed, shall be provided with a bypass around the meter, plumbed and valved so as to allow removal of the meter for testing, repair or replacement without disrupting the service to the premises. All bypass valves shall be sealed except when used in meter work.
- (e) Maintenance. The City shall maintain all meters, meter horns, wiring and meter reading accessories and make all necessary replacements caused by wear and tear through normal usage. The consumer shall be held responsible for care and protection of the meter from freezing or damage by hot water and from damage by any person. Any damage which may occur to any water meter, wiring or outside service register (OSR) shall be paid for by the consumer upon presentation of a statement of damages.
- (f) Testing. The accuracy of the meter on any premises shall be tested by the City upon written request of the owner accompanied by a fee determined by resolution of the City Commission. If, on such test, the meter is found to register greater than three percent more water than actually passes through it, another meter shall be substituted therefor, the fee shall be refunded to the owner and the water bill for the previous 12 months may be adjusted by the City Treasurer. If, on such test, the meter is found to register less than or equal to a three percent variance, the fee shall not be refunded.
- (g) New Construction. All new building construction which is proposed to have water service and building construction which significantly alters a meter location shall be prewired in a neat and workmanlike manner with an acceptable conduit providing for an outside service register (OSR), at the expense of the building owner and at no cost to the City, except that wire shall be supplied by the City. If there is a failure to provide prewiring or acceptable conduit for an OSR, the City may so provide on a time and material cost basis to the building owner. The wire shall be UL approved, 3 conductor, 18 gauge, Class 2 cable run from the inside water meter location to a location outside the building next to the electrical meter.

**1044.10 READING OF METERS.**

- (a) Statements. The City shall cause all meters to be read periodically and shall render statements for the amounts due as shown by the reading. Statements shall be payable as

determined by this chapter, but in no event shall failure to receive a statement excuse any consumer for nonpayment.

- (b) Estimates. If a meter reading does not appear to be consistent or if the meter has ceased to register, the amount of water charged for shall be an amount estimated by the City Treasurer. In making such an estimate, previous quantities of water used at that location shall be used as a basis for the estimate. The estimate shall be retroactive for a maximum period of twelve months. Special conditions such as leaky fixtures or an abnormal demand for water may also be considered. When it appears that an abnormal use of water has resulted from leakage or carelessness on the part of the consumer, no deduction shall be made therefor.

#### **1044.11 ACCESS FOR INSPECTIONS**

- (a) Meter accessibility. The City shall have access to the meter and to all water plumbing fixtures at any reasonable hour for the purpose of inspecting the meter or any other plumbing used in connection with the water supply system. No such meter or auxiliary equipment shall be covered or fenced in such a way as to be inaccessible. Meters installed in new construction and as a result of major plumbing renovation of a building shall be readily accessible, that is, capable of being reached quickly requiring no removal of obstacles, locks or the use of ladders for inspection, maintenance or operation.
- (b) Failure to allow access. If a person fails to allow access to the water meter for service, after reasonable notice, the City may cause the water supply to be turned off until arrangements for access to the meter are made.

#### **1044.12 USE OF HYDRANTS**

- (a) Permit Required. Except for the City, no person shall draw water from any hydrant or any other public connection with the water supply system without first obtaining a permit. A permit to use a hydrant may be granted by the City Treasurer only for specific hydrants, at specific times and for specific work.
- (b) Deposits. Persons desiring service from a fire hydrant shall place on deposit an amount equal to the value of the size meter desired. This sum shall be held until all charges incurred have been fully paid and all City equipment has been returned in acceptable condition. The cost of water registered on the meter during its use shall be charged at prevailing rates with a minimum monthly rental on meters. The City may use any portion of such deposit to repair or replace any equipment damaged through negligence by the consumer or by reason of the use thereof.
- (c) Meter. Before drawing water from a hydrant is permitted, the discharge port shall be fitted with a valve, vacuum breaker, and meter under the direction of the City.

(Ord. 830. Passed 5-4-09.)

#### **1044.13 CROSS CONNECTIONS PROHIBITED.**

- (a) Prohibited. No person shall make or maintain any cross connection between the municipal water supply system and another public or private water supply.
- (b) State rules adopted. The City hereby adopts by reference the water supply cross connection rules of the Michigan Department of Public Health, being R325.11401 to R325.11407 of the Michigan Administrative Code, as amended.
- (c) Inspections.

- (1) The City shall inspect all properties served by the public water supply where cross connections with the public water supply are deemed possible. The frequency of inspections and reinspections based on the potential health hazards involved shall be as established by the City Manager and as approved by the Michigan Department of Public Health.
- (2) A representative of the City may enter, at any reasonable time, any property served by a connection to the public water supply system of the City for the purpose of inspecting the piping system thereof for cross connections. On request, the owner, lessee or occupant of any property so served shall furnish to the inspection agency any pertinent information regarding the piping system of such property. The refusal of such information or refusal of access, when requested, shall be deemed evidence of the presence of cross connections.
- (d) Service discontinuance; precautionary measures. The City shall discontinue water service to any property where any connection in violation of this chapter exists. The City may take such other precautionary measures deemed necessary to eliminate any danger of contamination of the public water supply system. Water service to such property shall not be restored until the cross connection has been eliminated in compliance with this chapter.
- (e) Contamination protection; labeling. A person connected to the City water supply shall insure that on their property the public water supply is protected from possible contamination as specified by this chapter and by the State Plumbing Code. Any water outlet which could be used for potable or domestic purposes and which is not supplied by the potable system shall be labeled in a conspicuous manner as "WATER UNSAFE FOR DRINKING".

**1044.14 PRIVATE WELLS.**

- (a) Defined; exceptions. A private well is defined as an opening in the surface of earth for the purpose of removing water through mechanical or non-mechanical means for any purpose except construction site dewatering or conducting response activity, including sampling or treatment of the groundwater, under a plan approved by the Michigan Department of Environmental Quality. These exceptions apply only when all necessary permits have been obtained for the well in question.
- (b) Prohibitions; permits. No person shall install a private well, without first obtaining a permit from the City Director of Public Services. No permit for a private well shall be issued where City water is available within 200 feet of the property. If municipal water service is unavailable within 200 feet of any developable parcel, a private well may be permitted if the well water is tested annually and approved for human consumption by the Michigan Department of Environmental Quality, Drinking Water and Radiological Protection Division or the County Health Department and if written proof of such annual approval is delivered to the City Director of Public Services.
- (c) Temporary use. A well meeting the above criteria may be used temporarily for water until the City water service is available within 200 feet of the property, at which time the well shall be properly capped and abandoned and proper hook-up to the City water system shall be required. The cost of proper abandonment of a well that was temporarily allowed under this section and proper hookup to the city water system shall be the owner's responsibility.

- (d) Property split or conveyance. No split or conveyance of any property shall be effective to render City water service unavailable.
- (e) Modification notice. At least 30 days prior to adopting a modification of this section or 30 days prior to the lapsing or revocation of this section, the City shall notify the Director of the Michigan Department of Environmental Quality by registered mail.

**1044.15 TAMPERING.**

Unless authorized by the City, no person shall tap any pipe, open or close any hydrant, valve or stopcock or interfere in any manner or tamper with any part of the public waterworks system, or use water which does not pass through a meter, except as provided herein. No person shall interfere with or remove a meter from any service connection. No person shall break, remove or tamper with any seal, wires or outside service registers. No person shall place in use any device which allows water to be used which does not pass through a meter. A person shall pay all costs and damages resulting from such unlawful interference or tampering with the system. A person violating this section is guilty of a misdemeanor.

**1044.16 RATES AND CHARGES.**

- (a) Fixing of Rates. The City Commission shall by resolution establish reasonable rates and such other charges for supplying water.
- (b) Due Date. Water use charges shall be payable quarterly or monthly at the discretion of the City Commission, and shall be due as indicated on the statement for the period during which billing is made, unless otherwise provided.
- (c) Connection Fees. Charges for water service connections to the City's water distribution system shall be determined from time to time by resolution of the City Commission. Sizes larger than one inch are charged on a time and material basis. For the extension of water service to a franchised area outside the City, the person requesting service shall be required to pay the cost of the installation of the water main extension, monthly rates for service and the fee for water connection as established by resolution of the City Commission.
- (d) Customers who have a separate irrigation meter will be invoiced monthly from May 1 through October 31. The final irrigation read will be the date of the last bill that has a reading date of October 31 or before. Any used water subsequent to the read date will be invoiced with the next read date, the subsequent year. A customer may annually request different activation and deactivation dates than prescribed in the ordinance. The first read date after activation and the last read date before activation will be used for meter readings and a "paper turn on and off" fee established through resolution will be charged.
- (e) M-22 Connection Area. In addition to other established fees, connection to or obtaining potable water from the City's water main, as constructed along M-22 during the 1990 construction season, shall have a connection fee at the rate of one thousand eight hundred ninety dollars (\$1,890) for all parcels with 100 feet or less footage abutting M-22, and at the rate of one thousand eight hundred ninety dollars (\$1,890) plus eighteen dollars and ninety cents (\$18.90) for each foot in excess of 100 feet with footage of more than 100 feet abutting M-22. This connection fee shall be in lieu of a special assessment for that water main, which is more fully described in engineering plans on file with the City Engineer. Parcels of land, estimates of footage and connection fees, for which this subsection shall apply, are designated as of March, 1991, as follows:

WATER

City Tax Number	Footage (ft)	Connection Fee
145-00	125.0	\$ 2,326.50
140-00	85.0	\$ 1,890.00
139-00	325	\$ 6,142.00
136-10	106.25	\$ 2,008.13
137-00	156.8	\$ 2,963.52
136-00	189.0	\$3,572.10
132-00	138.6	\$ 2,619.54
131-00	69.3	\$ 1,890.00
130-00	66.0	\$ 1,890.00
112-00	79.76	\$ 1,890.00
124-00	123.9	\$ 2,341.71
126-00	99.4	\$ 1,890.00

Other parcels as may be approved by the Water Maintenance Division not listed above may connect service leads to this water main at the rates herein stated above, plus interest, at a cost as may be determined by the City Treasurer. The connection charge for such parcels not listed shall be in addition to normal tap and service lead installation fees as may be established by the City Commission from time to time. Payment of the fee may be made in full at the time of connection or may be based on ten equal installments, with an annual interest rate of six percent on the unpaid balance. The ten-year installment payment period shall commence on July 1, 1991, and end on July 1, 2001. For connections after July 1, 1991, the initial installment at the time of connection shall be equal to all installment payments, including interest that would have been paid if payments had commenced on July 1, 1991. In any event the maximum accrued interest shall be ten years' worth.

The City Clerk is directed to mail notice to the owners of record of the above affected property as the City's property tax records so indicate.

- (f) M-72 Connection Area. In addition to other established fees, connections to or obtaining potable water from the City's water main, as constructed along M-72 during the 1994 construction season, shall have a connection charge at the rate of two thousand one hundred seventy four dollars (\$2,174) for all parcels in the City and three thousand nine hundred ninety nine dollars (\$3,999) for all parcels in Garfield Township with 100 feet or less footage abutting M-72. The connection charge shall be at a rate of two thousand one hundred seventy four dollars (\$2,174), plus twenty one dollars and seventy four cents (\$21.74) for each foot in excess of 100 feet with footage of more than 100 feet abutting M-72 for all parcels in the City, and three thousand nine hundred ninety nine dollars (\$3,999), plus thirty nine dollars and ninety nine cents (\$39.99) for each foot in excess of 100 feet with footage of more than 100 feet abutting M-72 for all parcels in Garfield Township. This connection charge shall be in lieu of a special assessment for that water main, which is more fully described in engineering plans on file in the office of the City Engineer. Parcels of land, estimate of footage and connection charges, for which this subsection shall apply, are designated as of October, 1994 as follows:

WATER

<b>City Tax Number</b>	<b>Footage</b>	<b>Connection Fee</b>
45-051-033-058-00	174	\$ 3,782.76
45-051-033-063-00	75	\$ 2,174.00
45-051-033-057-00	88.2	\$ 2,174.00
45-051-033-056-00	186	\$ 4,043.64
45-051-033-055-00	175	\$ 3,804.50
45-051-033-044-00	108	\$ 2,347.92
45-051-033-043-00	150	\$ 3,261.00
45-051-033-050-00	88.72	\$ 2,174.00
45-051-033-049-00	88.6	\$ 2,174.00
45-051-033-048-00	58.76	\$ 2,174.00
45-051-033-047-00	114.88	\$ 2,497.49
45-051-033-052-00	55	\$ 2,174.00
45-051-033-053-00	55	\$ 2,174.00
45-051-033-046-00	54.76	\$ 2,174.00
45-051-033-045-00	89.5	\$ 2,174.00

<b>Garfield Twp. Tax Number</b>	<b>Footage</b>	<b>Connection Fee</b>
28-05-004-015-00	75	\$ 3,999.00
28-05-004-014-00	75	\$ 3,999.00
28-05-004-013-00	75	\$ 3,999.00

Other parcels as may be approved by the Water Maintenance Division not listed above may connect service leads to this water main at the rates herein stated above, plus interest, at a cost as may be determined by the City Treasurer. The connection charge for such parcels not listed shall be in addition to normal tap and service lead installation fees as may be established by the City Commission from time to time.

Payment of the charges for property within the City may be made in full at the time of connection or may be based on ten (10) equal installments, with an annual interest rate of six (6) percent on the unpaid balance. The ten-year installment payment period shall commence on July 1, 1995, and end on June 30, 2005. For all connections after July 1, 1995, the initial payment at the time of connection shall be equal to all installment payments including interest, that would have been paid if payments had commenced on July 1, 1995. In any event, the maximum accrued interest shall be ten years' worth.

Payment of this connection charge for property within Garfield Township shall be made in full, prior to the time of connection. Beginning July 1, 1995, the connection charges listed shall be increased at a rate of six (6) percent per annum, simple interest, for a period of ten (10) years, as may be determined by the City Treasurer.

The City Clerk is directed to mail notice to the owners of records of the above affected property as the City's property tax records so indicate.

(Ord. 973. Passed 7-1-13)

**1044.17      COLLECTION OF UNPAID CHARGES.**

- (a) Lien. In addition to other remedies possessed by the City for the collection of water service charges connection fees and other similar charges, the City shall have a lien upon the premises to which such water has been supplied. Such lien shall become effective immediately upon the distribution of water to the premises, and the official records of the City shall constitute notice of the pendency of such lien. Such lien shall have priority over all other liens, except taxes and special assessments, even where such other liens accrued or were recorded prior to the lien herein created.
- (b) Exception. In all cases when a tenant is responsible for the payment of any such rates and other fees or charges under a legally executed lease containing a provision that the lessor shall not be liable for the payment of rates and other fees or charges for water service and the City Treasurer is so notified in writing by the owner, then no such rates and other fees or charges shall become a lien against the premises occupied by the tenant from and after the date of such notice. Such notice shall be in the form of an affidavit with respect to the execution of such lease and shall set forth the expiration date thereof. Twenty (20) days' notice shall be given the City Treasurer by the lessor of any cancellation, change in, or termination of such lease. Failure to give such twenty days' notice shall reinstate such lien for rates and other fees or charges, for water service furnished to such premises by the City on and after the date of such cancellation, change in, or termination, until a new notice is filed as above required. Each such notice shall be accompanied by a true copy of the lease executed between the lessor and the lessee.
- (c) Guarantee Deposits Required Where No Lien Exists. In each case where such a notice has been filed with the City by any lessor, the lessee shall deposit with the Treasurer a guarantee deposit before water may be turned on in, or continued to, the premises specified in such notice. Such guarantee deposit shall be in a sum estimated by the City Treasurer to be the rates and other charges to the premises affected equal to any two billing periods and shall be held by the City to hold the City harmless in the event of delinquency in paying rates and other charges for water service and any damages to service pipe, service cock, stop box and water meters used in extending such services to the premises. Whenever any customer shall have promptly paid for rates and other charges for such services for two years and has otherwise established satisfactory credit the City therefor, the Treasurer may refund the guarantee deposit, without interest.
- (d) Notice of Nonpayment. All unpaid water charges which, upon April 1 of each year, have remained unpaid for three months or more shall be reported by the City Manager to the City Commission at its first meeting in April. The City Commission shall thereupon order the publication, in a newspaper published in the City, of notice to all owners of property that all unpaid water charges which have remained unpaid for three months or more, as of April 1, and which have not been paid by April 30, shall be transferred to the City tax roll assessed against the property upon which the water was used, to be collected in the same manner as the lien created by City taxes on the tax roll. If the charges remain delinquent and unpaid after the expiration of the time limited in the warrant for the collection of taxes, such charges shall be returned to the County Treasurer to be collected in the same manner as the delinquent tax roll of the City.
- (e) Spread of Rates and Charges on Tax Roll. On or before the tenth day of May, the City official in charge of the collection of rates and other fees or charges for water service shall certify to the Assessor a list of all such rates and other charges remaining unpaid,

whereupon the Assessor shall enter such unpaid rates and other charges upon the tax roll against such premises in a column designated therefor.

- (f) Discontinuance of Service. The City Treasurer may discontinue water service from any premises because of the nonpayment of rates or other fees or charges for period of thirty (30) days after the due date. Service shall not be recommenced, until application therefor is made to the City in the same manner as that of a new customer, except that all delinquent rates and other fees or charges shall be paid or provisions satisfactory to the City Treasurer.
- (g) Suit for Delinquent Rates and Other Charges. In addition to the lien procedure, the City may institute suit for any delinquent rates and other fees or charges for water service in any court of competent jurisdiction within six years of delinquency. Suit may be instituted against any person receiving or benefitting from such service.
- (h) Continuance of Lien. Litigation to enforce the payment of any such rates, fees and other charges shall not invalidate or constitute a waiver of the lien created by this Code and the same shall stand until payment thereof is made in full.

**1044.99 PENALTY.**

Where practicable, a person who violates this chapter shall be served a written notice stating the nature of the violation and providing a reasonable time not exceeding 60 days for the satisfactory correction of said violation, except any well in violation of this Chapter shall be declared and deemed a nuisance, subject to abatement, and shall be immediately taken out of service and lawfully abandoned. Unless otherwise provided in this chapter, a person who continues the violation beyond the time limit provided is responsible for a civil infraction. Each day in which such violation continues shall be deemed a separate offense. In addition, the City may seek injunctive relief to restrain any person from violating this chapter, including the collection of costs and attorney fees associated with such enforcement action.

# CHAPTER 1045

## Gas Service

1045.01	Grant of Gas Franchise and Consent to Laying of Pipes, Etc.	1045.05	Successors and Assigns.
1045.02	Gas Service and Extension of System.	1045.06	Effective Date; Term of Franchise; Acceptance by Company.
1045.03	Use of Streets and Other Public Places	1045.07	Effect and Interpretation of ordinance.
1045.04	Standards and Conditions of Service; Rules, Regulations and Rates.		

### CROSS REFERENCES

Franchises - see CHTR. Ch. XI

#### **1045.01 GRANT OF GAS FRANCHISE AND CONSENT TO LAYING OF PIPES, ETC.**

Subject to all the terms and conditions of the Traverse City Charter, Chapter 11, and as stated in this chapter, consent is hereby given to Michigan Consolidated Gas Company, a corporation organized under the laws of the State of Michigan (the "Company"), and to its successors and assigns, to lay, maintain, operate, and use gas pipes, mains, conductors, service pipes and other necessary equipment in the highways, streets, alleys, and other public places in the City of Traverse City, and a non-exclusive franchise is hereby granted to the Company, its successors and assigns, to transact local business in the City of Traverse City for the purposes of conveying gas into and through and supplying and selling gas in the City and all other matters incidental thereto.

(Ord. 753. Passed 6-4-07.)

#### **1045.02 GAS SERVICE AND EXTENSION OF SYSTEM.**

If the provisions and conditions herein contained are accepted by the Company, as in Section 1045.06, then the Company shall furnish gas to applicants residing therein in accordance with applicable laws, rules and regulations; and provided further that such initial installation and any extensions shall be subject to the Main Extension provisions, the Area Expansion Program provisions, (if and where applicable), and other applicable provisions now or from time to time hereafter contained in the Company's Rules and Regulations for Gas Service as filed with the Michigan Public Service Commission or successor agency having similar jurisdiction.

#### **1045.03 USE OF STREETS AND OTHER PUBLIC PLACES.**

The Company, its successors and assigns, shall not unnecessarily obstruct the passage of any of the highways, streets, alleys, or other public places within the City and shall within a reasonable time after making an opening or excavation, repair the same and leave it in as good condition as before the opening or excavation was made. The Company, its successors and assigns, shall hold the City harmless from any and all claims made against the City as a result of the Company's

activities under this ordinance. The Company shall, in connection with this obligation, pay or reimburse the City for all damages, costs and expenses experienced by the City in connection with any such claim, including but not limited to judgments or awards for damages, settlements, court, dispute litigation or settlement costs, attorney fees, consultant and laboratory fees and any other expenses which may be incurred by the resulting from the activities of the Company or its officers, employees, agents or servants under this ordinance. The Company will not hold the City harmless from claims arising out of the sole negligence of the City. No road, street, alley or highway shall be opened for the laying of trunk lines or lateral mains except upon application to the City or other authority having jurisdiction in the premises, stating the nature of the proposed work and the route. Upon receipt of such application, it shall be the duty of the City Engineer, or such other authority as may have jurisdiction, to issue a permit to the Company to do the work proposed.

All facilities erected by the franchise within the City shall be so located as to cause minimum interferences with the proper use of the public rights-of-way and public places and to cause minimum interference with the rights and conveniences of adjoining property owners. In case of any disturbance or damage by company work to the buildings, streets, sidewalks, alleys, public ways or other public or private property, the franchisee shall at its own expense and in a manner acceptable to the City, replace, repair and otherwise restore such disturbance or damage.

If the City or the County Road Commission shall elect to alter the grade, alignment, or location of any street, sidewalk, alley or public way, the franchisee shall, upon reasonable notice from the City or the Road Commission, remove and relocate its facility in a manner acceptable to the City and at the franchisee's expense. The franchisee shall also promptly move, raise, and relocate any facility at the request of any private party, when required by the private road, but at the cost of that person.

(Ord. 753. Passed 6-4-07.)

**1045.04 STANDARDS AND CONDITIONS OF SERVICE; RULES, REGULATIONS AND RATES.**

The Company is now under the jurisdiction of the Michigan Public Service Commission to the extent provided by statute; and the rates to be charged for gas and the standards and conditions of service and operation hereunder shall be the same as set forth in the Company's schedule of rules, regulations and rates as applicable in the several cities, villages and townships in which the Company is now rendering gas service, or as shall hereafter be validly prescribed for the City under the orders, rules and regulations of the Michigan Public Service Commission or other authority having jurisdiction in the premises.

**1045.05 SUCCESSORS AND ASSIGNS.**

The words "Michigan Consolidated Gas Company" and "the Company", wherever used herein, are intended and shall be held and construed to mean and include both Michigan Consolidated Gas Company and its successors and assigns, regardless if so expressed.

(Ord. 753. Passed 6-4-07.)

**1045.06 EFFECTIVE DATE; TERM OF FRANCHISE; ACCEPTANCE BY COMPANY.**

This franchise shall continue in effect for a period of fifteen (15) years after its effective date, subject to revocation at the will of the City of Traverse City at any time during said fifteen year period; provided, however, that when this franchise shall become effective, the City Clerk shall deliver to the Company a certified copy of the ordinance accompanied by written evidence of publication and recording as required by law, and the Company shall, sixty (60) days after the date this franchise takes effect, file with the City Clerk its written acceptance of the conditions and provisions hereof, or the franchise shall be null and void.  
(Ord. 753. Passed 6-4-07.)

**1045.07 EFFECT AND INTERPRETATION OF CHAPTER.**

All ordinances and resolutions, and parts thereof, which conflict with any of the terms of this chapter, are hereby rescinded. In the case of conflict between this chapter and any such ordinances or resolutions, this chapter shall control. The Company shall reimburse the City all costs associated with the preparation and issuance of this franchise.

# CHAPTER 1046

## Electricity

1046.01	Delinquent bills.	1046.99	Penalty.
1046.02	Telecommunication services.		

### CROSS REFERENCES

Electricity generally - see Mich. Const. Art. 7, Secs. 24, 25  
Electrical Code in home rule cities - see M.C.L.A. Secs. 117.3, 117.4b et seq., 117.4f  
Aerial wires - see S.U. & P.S. 1020.06; F.P. 1610.13  
Electrical Inspector - see B. & H. 1444.03  
Electrical equipment in floodways - see B. & H. 1458.08  
Electric signs - see B. & H. 1476.19(d)  
Electricity for mobile homes - see B. & H. 1480.01  
Electricity in rental dwellings - see B. & H. 1482.13

### **1046.01 DELINQUENT BILLS.**

- (a) Lien. Charges for services provided by the Light and Power Department pursuant to Section 21 of Act 94 of the Public Acts of 1933, as amended (M.C.L.A. 141.121) are a lien on all premises served thereby, unless written notice is given by the owner that a tenant is responsible pursuant to this chapter.
- (b) Placement on Tax Roll. Whenever any such charge against any piece of property exceeds two hundred dollars (\$200) and is delinquent for six months, the City Treasurer or other official in charge of the collection thereof may certify, on or before May 1 of each year to the City Assessor, and on or before September 1 of each year to the proper tax assessing officer outside of the City, the fact of such delinquency. Upon such certification, such delinquent charge shall be entered upon the next tax roll as a charge against such premises, and a lien thereof shall be enforced in the same manner as general taxes against such premises are collected.
- (c) Tenancy. Where written notice is given by the owner that a tenant is responsible for such charges as provided by Section 21 of Act 94 of the Public Acts of 1933, as amended, no further service shall be rendered to such premises until a cash deposit of an amount, not exceeding two months service, has been made as security for payment of such charges. (Ord. 225. Passed 5-18-87.)
- (d) Collection. The Utility may utilize third party collection efforts in collecting any outstanding receivable before it is certified to the City Assessor. (Ord. 983. Passed 10-21-13)

### **1046.02 TELECOMMUNICATION SERVICES.**

The Light and Power Department of the City is hereby authorized to engage in telecommunications services. All powers and duties possessed by the Light and Power Department and the Light and Power Board pursuant to Chapter XVIII of the City Charter are hereby made applicable to telecommunication services. As used in this section, "telecommunication services" means approved cable television systems, approved cable communication systems or telephone systems, including plants, works, instrumentalities and properties used or useful in connection with such systems and

## ELECTRICITY

further means wired and wireless broadband services, and services whether wired or wireless for the transmission of 2-way interactive communication and associated usage.

(Ord. 261. Passed 10-3-88. Ord. 865. Passed 04-19-10.)

### **1046.03 METER TAMPERING**

- (a) TCL&P Meters. All electric meters receiving service from the Traverse City Light and Power Department are property of that electric utility.
- (b) Tampering. Unless authorized by the electric utility owning the meter, a person shall not work on, interfere with, damage or remove an electric meter or allow or assist another person to do so.
- (c) Bypassing Meter. A person shall not place in use any device which allows electricity to be used and not measured by an electric utility's meter.
- (d) Responsibility. An adult person occupying or having control over the property at which the meter is located or receiving a benefit from the electricity consumed is presumed responsible for any discovered tampering or bypassing of that meter.
- (e) Sanctions. A person who violates this section is responsible for a municipal civil infraction, the sanctions for such violation, and the retail price of electricity that has not been metered. The electric utility's estimate of the unmetered electricity consumed shall be presumed correct unless proven otherwise.

(Ord. 983. Passed 10-21-13)

### **1046.99 PENALTY.**

(EDITOR'S NOTE: See Section 202.99 for general Code penalty if no specific penalty is provided.)

# CHAPTER 1047

## Uniform Septage Control Ordinance

1047.01	Purpose.	1047.06	Discharge of a Prohibited Substance.
1047.02	Title.	1047.07	Transportation of Prohibited Substance.
1047.03	Definitions.	1047.08	Liability for Costs.
1047.04	No Land Discharge.	1047.09	Severability.
1047.05	Facility.	1047.10	Violations and Penalties.

### **1047.01 PURPOSE.**

This chapter is adopted to protect the health, safety and welfare of the people; to regulate the use of septic and holding tanks, to prohibit the discharge of septage on the ground surface and to require the treatment of City septage at the Grand Traverse County Septage Treatment Facility; to prevent pollution, guard against injury to persons and property and enhance efficient economical operation of the septage treatment system and the Grand Traverse County Septage Treatment Facility; to provide for the administration of this Chapter; and to establish remedies.

This Chapter and the companion ordinances adopted by the City and the townships set forth uniform requirements for all septage to enable compliance with applicable State and Federal laws and regulations pertaining to Septage discharge and treatment.

(Ord. 883. Passed 10-18-10.)

### **1047.02 TITLE.**

This Ordinance may be known and cited as the Uniform Septage Control Ordinance.

(Ord. 883. Passed 10-18-10.)

### **1047.03 DEFINITIONS.**

As used in this Ordinance, the following definitions apply:

- (a) "Biosolids" means the solid or semi-solid portion of septage and holding tank waste following treatment at the Septage Treatment Facility.
- (b) "Holding Tank Waste" means any human excrement or other domestic or food service or restaurant waste or other material stored in one or more tanks permitted as a holding tank by the county health department in the county in which the tank is located which is not connected to a drain field or leaching field.
- (c) "Person" includes natural persons, firms, associations, corporations, partnerships, limited liability companies, trusts, and all other entities.
- (d) "Septage" means human excrement, other domestic or restaurant waste or other material or substance removed from a portable toilet, septic tank, seepage pit, cesspool, septage lift station, or other enclosure used for the storage or decomposition of septage waste. Septage includes waste removed from grease traps which are a part of a food service or restaurant facility. Septage excludes waste removed from holding tanks. Septage excludes industrial waste, medical waste, or hazardous waste regulated under the Michigan Natural Resources and Environmental Protection Act CL 324.8501 et seq.
- (e) "Septage Hauler" means a person required to be licensed as a Septage Waste Servicer

under MCL 324.11701 et seq. or under successor legislation.

- (f) "Septage Treatment Facility" means the facility located 1717 Ahlberg Drive Traverse City, Michigan 49686, those portions of the sanitary sewer system used to transport the effluent from the facility to the Traverse City Regional Wastewater Treatment Plant, and the Traverse City Regional Wastewater Treatment Plant.
- (g) "Prohibited Substance" means any:
- i. substance which, alone or by interaction with other substances, will create the risk of fire or explosion hazard in the septic tank, or holding tank, collection pumper or at the septage treatment facility, or any gasoline or other petroleum product, kerosene, naphtha, benzene, toluene, xylene, ethers, alcohols, ketones aldehydes, peroxides, chlorates, perchlorates, bromates, carbides, hydrides or sulfides;
  - ii. substance having any corrosive property capable of causing damage or hazard to structure, equipment and personnel of the septic tank, or holding tank, collection pumper, or septage treatment facility including, but not limited to, concentrated acids, alkalies, chlorides, sulfides, fluoride compounds and any iron pickling wastes or concentrated plating solutions whether neutralized or not;
  - iii. any solid or viscous pollutants in amounts which will cause obstruction to the flow in the septic tank or holding tank, collection pumper or treatment facility or cause other interference with the proper operation of the septic tank or holding tank, collection pumper or septage treatment facility;
  - iv. any garbage except domestic wastewater discharged from garbage disposal units in private dwellings, that has been ground or comminuted to such a degree that all particles float or carry freely in suspension;
  - v. waste which contains particles of a size greater than one-half (1/2) inch in any dimension; other wastes including, but not limited to, bones, hair, hides, or flesh, whole blood, recognizable portions of the human anatomy, tissue fluids, entrails, ashes, cinders, mud, straw, sand, wood, grass clippings, spent lime, stone or marble dust, shavings, metal, glass, rags, feathers, tar, asphalt residues, spent grains, spent hops, waste paper, styrofoam, disposable diapers, and residues from refining or processing of fuel or lubricating oil;
  - vi. pollutants which result in the presence of toxic gases, vapors or fumes within the septic tank, collection pumper, or septage treatment facility in a quantity, either singly or by interaction with other pollutants, that may cause acute worker health and safety problems, or interference with the collection system and treatment plant or that exceed standards promulgated by either the EPA pursuant to Section 307(a) of the Act, or the state pursuant to any applicable statutory provisions;
  - vii. waters or wastes containing suspended solids or dissolved matter of such character and quantity that unusual attention or expense is required to handle such materials in the collection system and septage treatment facility;
  - viii. water or wastes containing algicides, fungicides, herbicides, antibiotics or other pharmaceuticals, insecticides, strong oxidizing agents or strong reducing agents;
  - ix. wastes requiring an excessive quantity of chlorine or other chemical compound used for disinfection purposes or excessive treatment in order to meet the discharge requirements of the collection system and treatment plant;
  - x. water or waste containing substances which are not amenable to treatment or which causes the treatment plant effluent to fail to meet the applicable discharge

- requirements and limitations;
- xi. substance which may cause sludge to be unsuitable for reclamation and reuse, or which may interfere with the reclamation process of the septage treatment facility or which may preclude the treatment plant from selecting the most cost-effective alternative for sludge disposal or which may cause the treatment plant to be in noncompliance with sludge use or disposal criteria established by state or federal regulation;
  - xii. detectable concentrations of arsenic, cadmium, chromium, copper, cyanide, lead, nickel, phosphorus, silver, zinc, sulfides or sulphates, (except as the same may be present in trace amounts in domestic or household products) oil, grease, mercury or polychlorinated biphenols (PCBs), ethylene glycol-based antifreeze. Any liquid industrial waste, medical waste, or hazardous waste regulated under the Michigan Natural Resources and Environmental Protection Act 35 MCLA 324.8501 et seq;

(Ord. 883. Passed 10-18-10.)

**1047.04 NO LAND DISCHARGE.**

Upon the Effective Date, as described below, it shall be unlawful for any person, firm, or corporation to discharge untreated septage or holding tank waste upon any lands within the City. Biosolids produced by the Septage Treatment Facility are treated, and are not subject to the limitations of this paragraph.

(Ord. 883. Passed 10-18-10.)

**1047.05 FACILITY.**

The City hereby designates the Septage Treatment Facility for deposit and treatment of all septage and holding tank waste collected within the City. All Septage Haulers collecting septage or holding tank waste within the City shall transport that waste to the Septage Treatment Facility and pay the treatment charges therefore in accordance with the rules and regulations of the Septage Treatment Facility.

(Ord. 883. Passed 10-18-10.)

**1047.06 DISCHARGE OF A PROHIBITED SUBSTANCE.**

No person shall discharge directly or indirectly into any septic or holding tank within the City any prohibited substance or material other than domestic strength wastewater; domestic strength wastewater includes household products in customary concentrations.

(Ord. 883. Passed 10-18-10.)

**1047.07 TRANSPORTATION OF PROHIBITED SUBSTANCE.**

No person shall transport or cause another to transport septage or holding tank waste containing a prohibited substance as defined herein to the Septage Treatment Facility unless the character of the waste is fully disclosed to the hauler and the Septage Treatment Facility before pumping, transportation, or receipt, as the case may be; any person causing another to transport or treat any septage or holding tank waste containing a prohibited substance shall be responsible for all of the costs incurred in connection with such transportation, testing, storing, and treatment of such waste.

(Ord. 883. Passed 10-18-10.)

**1047.08            LIABILITY FOR COSTS.**

- (a) The owner of premises upon which is located any septic or holding tank containing a prohibited substance as defined herein or material other than domestic strength wastewater shall be responsible for all of the costs incurred by the City, any person, any hauler or treatment facility in transporting, testing, storing, and treating any such waste.
- (b) The charges for services which are under the provisions of Act 178 Public Acts of Michigan 13 1939 as amended are made a lien on all premises from which said sewage or holding tank waste originated unless notice is given that a tenant is responsible, and whenever any such charge against any piece of property shall be delinquent for six (6) months the City official or officials in charge of the collection thereof shall certify annually on September 1st of each year to the tax assessing office of the City the facts 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 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 by delivering to the Grand Traverse County Department of Public Works an affidavit deposing that a lease has been executed containing a provision that the lessor is not responsible for the payment of any charges for septage or holding tank services rendered to the premises no such lien shall attach during the term of the lease.
- (c) The City and the Department of Public Works shall have the right to refuse service to any premises in the event of any unpaid charges with respect to such premises under this section.

(Ord. 883. Passed 10-18-10.)

**1047.09            SEVERABILITY.**

Whenever possible, each provision of this Ordinance should be interpreted in such a way as to be effective and valid under applicable law. If a provision is prohibited by or invalid under applicable law, it will be ineffective only to the extent of such prohibitions or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Ordinance.

(Ord. 883. Passed 10-18-10.)

**1047. 10           VIOLATIONS AND PENALTIES.**

- (a) Civil Infraction. Any person who violates any provision of this Ordinance shall be responsible for a municipal civil infraction and shall be subject to the following penalties:
  - i. For a first offense, the offender shall pay a fine of One Hundred and 00/1 00 (\$100.00) Dollars.
  - ii. For a second or subsequent offense within ten (10) years from the date the person was found responsible for the first violation, the offender shall pay a fine of Five Hundred (\$500.00) Dollars.

Each day this Ordinance is violated shall be considered a separate violation.

- (b) City Manager or his or her designee is hereby designated as the authorized official to issue municipal civil infraction citations.
- (c) Nuisance Per Se. A violation of this Ordinance is hereby declared to be a nuisance per se

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and is declared to be offensive to the public health, safety and welfare.

- (d) Civil Action. In addition to enforcing this Ordinance through the use of a municipal civil infraction preceding the City may initiate proceedings in the Circuit Court to abate or eliminate the nuisance per se or any other violation of this Ordinance.

(Ord. 883. Passed 10-18-10.)

# CHAPTER 1048

## Cable Television

1048.01	Short title.	1048.12	Construction standards; safety.
1048.02	Definitions.	1048.13	Street openings; barricades and warning lights.
1048.03	Nonexclusive local franchises.	1048.14	Relocation of facilities.
1048.04	Local franchise binding.	1048.15	Costs for work by governmental entity.
1048.05	Local franchise required.	1048.16	Regulation of service rates.
1048.06	Local franchise duration.	1048.17	Customer service standards.
1048.07	Franchise fee.	1048.18	Subscriber contracts.
1048.08	Local franchise transfer.	1048.19	Refund policy.
1048.09	Authorization for use of right-of-ways.	1048.20	Local franchise enforcement.
1048.10	Construction; permit required.		
1048.11	Underground facilities.		

### CROSS REFERENCES

Franchises - see CHTR. Ch. XI

Notice of public meetings - see MCLA Sec. 15.264

Construction and maintenance of facilities - see MCLA Secs 247.183 et seq.

Cables improperly located; insurance - see MCLA Sec. 500.3123

Telecommunication services - see S.U. & P.S. 1046.02 & 1050

#### **1048.01 SHORT TITLE.**

This Chapter 1048 shall be known as the “Cable Television Ordinance” or “Ordinance.” (Ord. 675. Passed 04-18-05.)

#### **1048.02 DEFINITIONS.**

For the purposes of this Ordinance, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, 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. The word “shall” is always mandatory and not merely directory. The word “may” is directory and discretionary and not mandatory. Words not defined shall be given their common and ordinary meaning.

- (a) “Act” means the Michigan Uniform Video Services Franchise Act, MCL 484.3301 et seq.
- (b) “Applicable Law” means any law, statute, charter, ordinance, rule, regulation, code, license, certificate, franchise, permit, writ, ruling, award, executive order, directive, requirement, injunction (whether temporary, preliminary or permanent), judgment, decree or other order issued, executed, entered or deemed applicable by any governmental authority.
- (c) “Basic Cable Service” means any Service tier which includes the retransmission of local television broadcast signals. Basic Cable Service as defined herein shall be consistent with 47 U.S.C. § 543(b) (7), as it may be amended from time to time.
- (d) “Cable Service” or “Service” means (A) the one-way transmission to Subscribers of (i) Video Programming or (ii) Other Programming Service, and (B) Subscriber interaction,

- if any, which is required for the selection or use of such Video Programming or Other Programming Service. Cable Service as defined herein shall be consistent with the definition set forth in 47 U.S.C. § 522(6), as it may be amended from time to time.
- (e) “Cable System” or “System” means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes Video Programming and which is provided to multiple Subscribers within a community, but such term does not include:
    - i. a facility that serves only to retransmit the television signals of one (1) or more television broadcast stations;
    - ii. a facility that serves Subscribers without using any public Right-of-Way;
    - iii. a facility of common carrier which is subject, in whole or in part, to the provisions of 47 U.S.C. § 201 et seq., except that such facility shall be considered a Cable System (other than for purposes of 47 U.S.C. § 541(c) to the extent such facility is used in the transmission of Video Programming directly to Subscribers, unless the extent of such use is solely to provide interactive on demand services;
    - iv. an open video system that complies with 47 U.S.C. § 653; or
    - v. any facilities of any electric utility used solely for operating its electric utility systems.
  - (f) “Channel” or “Cable Channel” means a portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television channel.
  - (g) “City” means City of Traverse City, a municipal corporation, in the State of Michigan, acting by and through its City Commission, or its lawfully appointed designee.
  - (h) “City Commission” means the governing body of the City of Traverse City, Michigan.
  - (i) “FCC” means the Federal Communications Commission and any legally appointed, designated or elected agent or successor.
  - (j) “Franchise Fee” includes any tax, fee, or assessment of any kind imposed by the City or other governmental entity on Grantee or Subscriber, or both, solely because of their status as such. It does not include any tax, fee, or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and cable operators or their Services but not including a tax, fee, or assessment which is discriminatory against Grantees or Cable Subscribers); capital costs which are required by the franchise to be incurred by Grantee for public, educational, or governmental access facilities; requirements or charges incidental to the awarding or enforcing of the franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; or any fee imposed under Title 17 of the United States Code.
  - (k) “Grantee” means a person who, in accordance with the provisions of this chapter and section 13 of the Act, executes a voluntary franchise agreement with the City for the nonexclusive privilege to erect, construct, operate, maintain, or dismantle a Cable System in the City.
  - (l) “Gross Revenue” shall be defined consistent with section 6 of the Act.
  - (m) “Installation” means the connection of the Cable System from feeder cable to the point of connection including Standard Installations and custom Installations with the Subscriber converter or other terminal equipment.
  - (n) “Internet” means the international computer network of both federal and non-federal

interoperable packet switched data networks, known as the Internet. Consistent with 47 U.S.C. § 230(e)(1), as may from time to time be amended.

- (o) “Local Franchise” means a voluntary franchise agreement consistent with the terms of section 13 of the Act.
- (p) “Member Municipalities” means those municipalities that are parties to a then valid and existing Intergovernmental Agreement for Coordinated Regulation of Cable Television which include Acme Township, Bingham Township, Blair Township, East Bay Township, Elmwood Township, Garfield Township, Green Lake Township, Village of Kingsley, Long Lake Township, Paradise Township, Peninsula Township, and Traverse City, Michigan.
- (q) “Other Programming Service” means information that a Grantee makes available to all Subscribers generally.
- (r) “PEG” means public, educational and governmental.
- (s) “Right-of-way” or “Rights-of-Way” means the area on, below or above any real property in City in which the City has an interest including, but not limited to any street, road, highway, alley, sidewalk, parkway, park, skyway, or any other place, area, or real property owned by or under the control of City, including other dedicated Rights-of-Way for travel purposes and utility easements.
- (t) “Service Area” or “Franchise Area” means the geographic boundaries of the City and shall include any additions and/or deletions thereto by annexation or other legal means.
- (u) “Service Interruption” means the loss of picture or sound on one (1) or more Cable Channels.
- (v) “Standard Installation” means any residential or commercial Installation which can be completed using a drop of one hundred twenty-five (125) feet or less.
- (w) “Subscriber” means any person who lawfully receives Cable Service via the System.
- (x) “Uniform Franchise” means a Uniform Video Service Local Franchise Agreement prepared by the Michigan Public Service Commission as contemplated by the Act.
- (y) “Video Programming” means programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

(Ord. 675. Passed 04-18-05. Ord. 796. Passed 06-02-08.)

### **1048.03 NONEXCLUSIVE LOCAL FRANCHISES.**

The City, may grant a nonexclusive Local Franchise for the occupation and use of streets, roads, and Rights-of-Way in the City for the construction, operation and maintenance of a Cable System to the extent permitted by the Act.

(Ord. 675. Passed 04-18-05. Ord. 796. Passed 06-02-08.)

### **1048.04 LOCAL FRANCHISE BINDING.**

All provisions of this Ordinance and any Local Franchise shall be binding upon the Grantee, its successors, lessees of the System, or assignees. In the event of a conflict between this Ordinance and any Local Franchise, the terms of the Local Franchise shall govern.

(Ord. 675. Passed 04-18-05. Ord. 796. Passed 06-02-08.)

### **1048.05 LOCAL FRANCHISE REQUIRED.**

No Cable System shall occupy or use the streets, roads, alleys, or Rights-of-Way of the City and no cable operator shall operate a Cable System in the City without an executed Local Franchise granted pursuant to this Ordinance or a Uniform Franchise granted pursuant to the Act.

(Ord. 675. Passed 04-18-05. Ord. 796. Passed 06-02-08.)

**1048.06 LOCAL FRANCHISE DURATION.**

A Local Franchise granted by the City may be granted for a maximum of ten (10) years. A Local Franchise may be renewed pursuant to the provisions of this Ordinance and Applicable Laws.

(Ord.675. Passed 04-18-05. Ord. 796. Passed 06-02-08.)

**1048.07 FRANCHISE FEE.**

(a) During the term of a Local Franchise, Grantee shall pay quarterly to the City or its delegates a Franchise Fee in an amount equal to five percent (5%) of its quarterly Gross Revenues.

(Ord. 675. Passed 04-18-05. Ord. 796. Passed 06-02-08.)

**1048.08 LOCAL FRANCHISE TRANSFER.**

- (a) To the extent permitted under the Act, no sale or transfer of a Local Franchise, or sale, transfer, or fundamental corporate change of or in Grantee shall take place without the prior written consent of City which consent shall not be unreasonably withheld.
- (b) No such consent shall be required, however, for a transfer in trust, by mortgage, or by other hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Local Franchise or Cable System to secure indebtedness. Grantee shall not be required to obtain approval from the City if such sale, transfer or assignment is to an entity controlling, controlled by, or under common control with the Grantee. However, Grantee shall provide written notice to City explaining such internal reorganization.
- (c) The Grantee shall file, in addition to all documents, forms and information required to be filed by Applicable Laws, either FCC Form 394 or all contracts, agreements or other documents that constitute the proposed transaction and all exhibits, attachments, or other documents referred to therein which are necessary in order to understand the terms thereof. City shall have such time as is permitted by Applicable Law to review a transfer request.
- (d) In no event shall a sale, transfer, corporate change, or assignment of ownership or control pursuant to this section be approved without any new Grantee becoming a signatory to the Local Franchise and assuming all rights and obligations thereunder, and assuming all other rights and obligations of the transferor to the City including, but not limited to, any adequate guarantees or other security instruments required by the City.
- (e) The approval of any sale, transfer or assignment pursuant to this section shall not be deemed to waive any rights of City to subsequently enforce noncompliance issues relating to the Local Franchise even if such issues predate the approval, whether known or unknown to City.

(Ord. 675. Passed 04-18-05. Ord. 796. Passed 06-02-08.)

**1048.09 AUTHORIZATION FOR USE OF RIGHT-OF-WAYS.**

A Local Franchise granted pursuant to this Ordinance shall confer upon the holder named therein the nonexclusive right to erect, install, construct, reconstruct, replace, remove, repair, maintain

and operate in, upon, under, above, across and from the streets, easements and Right-of-Ways, all necessary towers, poles, wires, cables, coaxial cables, transformers, amplifiers, underground conduits, manholes and other television or radio conductors and fixtures for the Installation, construction, maintenance and operation of a Cable System or for the furnishing of a Cable Service.

(Ord. 675. Passed 04-18-05. Ord 796. Passed 06-02-08.)

**1048.10 CONSTRUCTION; PERMIT REQUIRED.**

A Grantee shall at all times comply with the permitting requirements of the City before undertaking any work in the right-of-way.

(Ord. 675. Passed 04-18-05. Ord. 796. Passed 06-02-08.)

**1048.11 UNDERGROUND FACILITIES.**

In areas or portions of the City where all transmission or distribution facilities of both public utilities providing telephone service and electric service are underground, or are required to be underground, any Grantee shall likewise install, construct, maintain and operate its transmission and distribution facilities in like manner underground.

(Ord. 675. Passed 04-18-05. Ord. 796. Passed 06-02-08.)

**1048.12 CONSTRUCTION STANDARDS; SAFETY.**

All construction, Installation, maintenance and operation of any Cable System or of any facilities employed in connection therewith shall be in compliance with the National Electric Safety Code as well as all other applicable standards issued by the FCC, or other local, state or federal regulatory agencies in relation thereto. Each System installed, constructed, maintained or operated shall be so designed, constructed, installed, maintained and operated as not to endanger or interfere with the safety of persons or property.

(Ord. 675. Passed 04-18-05. Ord. 796. Passed 06-02-08.)

**1048.13 STREET OPENINGS; BARRICADES AND WARNING LIGHTS.**

Any opening or obstruction in, disturbance of or damage to a road, street, alley, public Right-of-Way or public place by any person in the exercise of any right granted pursuant to a Local Franchise shall be properly guarded by barriers, lights, signals and warnings so as to prevent danger to any person or vehicle using such road, street, alley, public Right-of-Way or public place and shall be promptly repaired, at the Grantee's expense, all in a manner specified and approved by the government having jurisdiction. Such approval shall not be unreasonably withheld.

(Ord. 675. Passed 04-18-05. Ord. 796. Passed 06-02-08.)

**1048.14 RELOCATION OF FACILITIES.**

A Grantee or a person acting under a Grantee shall, at its expense, and without reimbursement from the City, upon request of the City relocate, remove, temporarily disconnect, protect or support facilities in the roads, streets, alleys, easements, public Right-of-Ways or public places. A Grantee shall also, at the request of a private party holding an appropriate permit issued by a governmental entity, temporarily raise or lower its transmission or distribution wires or cables to permit the moving of any building or other structure, provided that the actual expense of such temporary raising or lowering shall be paid in full by the party requesting the same. Such

requests shall be made not less than thirty (30) days in advance of the activity requested, unless an emergency situation exists.

(Ord. 675. Passed 04-18-05. Ord. 796. Passed 06-02-08.)

**1048.15 COSTS FOR WORK BY GOVERNMENTAL ENTITY.**

If, after reasonable notice and opportunity to correct, a Grantee or any person acting under a Grantee fails to commence, pursue or complete any work required by law or this Ordinance to be done in any road, street, alley, public Right-of-Way, easement or public place, the appropriate governmental entity may cause such work to be done, and such Grantee shall pay to the governmental entity the cost thereof within thirty (30) days of receipt of an itemized statement of such cost.

(Ord. 675. Passed 04-18-05. Ord. 796. Passed 06-02-08.)

**1048.16 REGULATION OF SERVICE RATES.**

Subject to any prohibition contained in the Act, the City reserves the right to regulate rates for the provision of Cable Service, equipment, or any other communications service provided over the System in accordance with applicable federal law, in particular 47 C.F.R. Part 76 subpart N. In the event the City chooses to regulate rates it shall, in accordance with 47 C.F.R. § 76.910, obtain certification from the FCC, if applicable. The City shall follow all applicable FCC rate regulations and shall ensure that appropriate personnel are in place to administer such regulations. City reserves the right to regulate rates for any future Services to the extent permitted by law.

(Ord. 675. Passed 04-18-05. Ord. 796. Passed 06-02-08.)

**1048.17 CUSTOMER SERVICE STANDARDS.**

A Grantee shall comply with the customer service obligations required under the Act and, to the maximum extent permissible, those set forth by the FCC. The Grantee shall comply with the standards and requirements for customer service set forth in 47 C.F.R. § 76.309 and §§ 76.1601-1604, and shall comply with all applicable regulations relating to customer service obligations, including any amendments to FCC regulations should FCC regulations change during the term of a Local Franchise.

(Ord. 675. Passed 04-18-05. Ord. 796. Passed 06-02-08.)

**1048.18 SUBSCRIBER CONTRACTS.**

A Grantee shall file with City any standard form residential Subscriber contract utilized by Grantee. A list of Grantee's current Subscriber rates and charges for Cable Service shall be maintained on file with City and shall be available for public inspection.

(Ord. 675. Passed 04-18-05. Ord. 796. Passed 06-02-08.)

**1048.19 REFUND POLICY.**

- (a) If a Grantee's Cable Service is interrupted or discontinued for twenty-four (24) or more consecutive hours, Subscribers will be credited pro rata for such interruption, upon request. Credits must be issued no later than the Subscriber's next billing cycle following the determination that a credit is warranted. For this purpose, every month will be assumed to have thirty (30) days.
- (b) In the event a Subscriber establishes or terminates Service and receives less than one (1)

full month of Service, Grantee shall prorate the monthly rate on the basis of the number of days in the period for which Service was rendered to the number of days in the billing. (Ord. 675. Passed 04-18-05. Ord. 796. Passed 06-02-08.)

**1048.20 LOCAL FRANCHISE ENFORCEMENT.**

- (a) If the City believes that the Grantee has not complied with the terms of the Local Franchise, the City shall first informally discuss the matter with Grantee. If these discussions do not lead to resolution of the problem, the City shall notify the Grantee in writing of the exact nature of the alleged noncompliance (the "Violation Notice").
  - i. The Grantee shall have thirty (30) days, or such longer period of time as Grantee can reasonably demonstrate is necessary, from receipt of the Violation Notice to (i) respond to the City, contesting the assertion of noncompliance, or (ii) to cure such default.
  - ii. If the Grantee fails to respond to the Violation Notice received from the City, or if the default is not remedied within the cure period set forth above, the City shall schedule a public hearing if it intends to continue its enforcement procedure. The City shall provide the Grantee at least ten (10) to fourteen (14) days prior written notice of such hearing, which specifies the time, place and purpose of such hearing, notice of which shall be published by the City in accordance with Applicable Law. The Grantee shall have the right to present evidence and to challenge the validity of the alleged noncompliance. The City shall determine if the Grantee has committed a violation and shall make written findings of fact relative to its determination.
  - iii. In the event the City, after the hearing set forth in subparagraph (ii) above, determines that the Grantee is in default of any provision of the Local Franchise, the City may:
    - 1. Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages or determine damages of up to Five Hundred and No/100 Dollars (\$500.00) per day for each day of violation. Such damages may be determined by City on Grantee or drawn by City from any bond or other security posted by Grantee under any Local Franchise granted hereunder; or
    - 2. In the case of a substantial default of a material provision of the Local Franchise, seek to revoke the Local Franchise following the procedure in paragraph (b) below.
  - iv. If a violation is found, the Grantee shall have the right to appeal such decision to any court of competent jurisdiction.
- (b) Procedures for Revocation.
  - i. City shall provide Grantee with written notice of a cause for revocation and the intent to revoke and shall allow Grantee an additional thirty (30) days subsequent to receipt of the revocation notice in which to correct the violation or to provide adequate assurance of performance in compliance with the Local Franchise. In the revocation notice City shall provide Grantee with the basis of the revocation.
  - ii. Grantee shall be provided the right to a public hearing, in addition to the public hearing required under Section 1048.25(a)(ii) above, affording due process before the City Commission prior to the effective date of revocation, which public

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hearing shall follow the thirty (30) day notice provided in subparagraph (a)(i) above. Following conduct of the public hearing City shall provide Grantee with written notice of its decision together with written findings of fact.

- iii. Only after the public hearing and upon written notice of the determination by City to revoke the Local Franchise may Grantee appeal said decision with an appropriate state or federal court or agency.
- iv. During the appeal period, the Local Franchise shall remain in full force and effect unless the term thereof sooner expires or unless continuation of the Local Franchise would endanger the health, safety and welfare of any person or the public.

(Ord. 675. Passed 04-18-05. Ord. 796. Passed 06-02-08.)

# CHAPTER 1050

## TELECOMMUNICATIONS

1050.01	Purposes.	1050.13	Use of funds.
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### CROSS REFERENCES

Metropolitan Extension Telecommunications Rights-of-Way Oversight Act - see MCL 484.3101, et seq

Utilities generally - see CHTR. Ch. XI

Municipally owned utilities - see CHTR. Ch. XII

#### **1050.01 PURPOSES.**

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 qualifies for distributions under the Act by modifying the fees charged to providers and complying with the Act.

(Ord. 584. Passed 10-20-02.)

#### **1050.02 CONFLICT.**

Nothing in this ordinance shall be construed in such a manner as to conflict with the Act or other applicable law.

(Ord. 584. Passed 10-20-02.)

#### **1050.03 DEFINITIONS**

(a) The terms used in this ordinance shall have the following meanings:

- i. **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. Authority means the Metropolitan Extension Telecommunications Rights-of-Way Oversight Authority created pursuant to Section 3 of the Act.
- ii. **City** means the City of Traverse City.

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- iii. **City Commission** means the City Commission of the City of Traverse City 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 Commission.
  - iv. **City Manager** means the City Manager or his or her designee.
  - v. **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.
  - vi. **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.
  - vii. **Person** means an individual, corporation, partnership, association, governmental entity, or any other legal entity.
  - viii. **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.
  - ix. **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.
  - x. **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:
    - 1) A cable television operator that provides a telecommunications service.
    - 2) Except as otherwise provided by the Act, a person who owns telecommunication facilities located within a public right-of-way.
    - 3) A person providing broadband internet transport access service.
- (b) All other terms used in this ordinance shall have the same meaning as defined or as provided in the Act.
- (Ord. 584. Passed 10-20-02.)

### **1050.04 PERMIT REQUIRED**

- (a) Permit Required. Except as otherwise provided in the Act, a telecommunications provider using or seeking to use public rights-of-way in the City for its telecommunications

facilities shall apply for and obtain a permit pursuant to this ordinance.

- (b) Application. Telecommunications providers shall apply for a permit on an application form approved by the MPSC in accordance with Section 6(1) of the Act. A telecommunications provider shall file one copy of the application with the City Clerk. Upon receipt, the City Clerk shall make six (6) copies of the application and distribute a copy to the City Manager, the City Engineer, the Executive Director of Traverse City Light & Power, the Streets Department, the City Police Department, and the City Fire Department. 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.
  - (c) Confidential Information. If a telecommunications provider claims that any portion of the route maps submitted by it as part of its application contain trade secret, proprietary, or confidential information, which is exempt from the Freedom of Information Act, 1976 PA 442, MCL 15.231 to 15.246, pursuant to Section 6(5) of the Act, the telecommunications provider shall prominently so indicate on the face of each map.
  - (d) Application Fee. Except as otherwise provided by the Act, the application shall be accompanied by a one-time non-refundable application fee in the amount of \$500.00.
  - (e) Additional Information. The City Manager may request an applicant to submit such additional information which the City Manager deems reasonably necessary or relevant. The applicant shall comply with all such requests in compliance with reasonable deadlines for such additional information established by the City Manager. If the City and the applicant cannot agree on the requirement of additional information requested by the City, the City or the applicant shall notify the MPSC as provided in Section 6(2) of the Act.
  - (f) Previously Issued Permits. Pursuant to Section 5(1) of the Act, authorizations or permits previously issued by the City under Section 251 of the Michigan telecommunications act, 1991 PA 179, MCL 484.2251 and authorizations or permits issued by the City to telecommunications providers prior to the 1995 enactment of Section 251 of the Michigan telecommunications act but after 1985 shall satisfy the permit requirements of this ordinance.
  - (g) Existing Providers. Pursuant to Section 5(3) of the Act, within 180 days from November 1, 2002, the effective date of the Act, a telecommunications provider with facilities located in a public right-of-way in the City as of such date, that has not previously obtained authorization or a permit under Section 251 of the Michigan telecommunications act, 1991 PA 179, MCL 484.2251, shall submit to the City an application for a permit in accordance with the requirements of this ordinance. Pursuant to Section 5(3) of the Act, a telecommunications provider submitting an application under this subsection is not required to pay the \$500.00 application fee required under subsection (d) above. A provider under this subsection shall be given up to an additional 180 days to submit the permit application if allowed by the Authority, as provided in Section 5(4) of the Act.
- (Ord. 584. Passed 10-20-02.)

#### **1050.05 ISSUANCE OF PERMIT.**

- (a) Approval or Denial. The authority to approve or deny an application for a permit is hereby delegated to the City Manager. Pursuant to Section 15(3) of the Act, the City

Manager shall approve or deny an application for a permit within forty-five (45) days from the date a telecommunications provider files an application for a permit under Section 4(b) 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.

- (b) Form of Permit. If an application for permit is approved, the City Manager shall issue the permit in the form approved by the MPSC, with or without additional or different permit terms, in accordance with Sections 6(1), 6(2) and 15 of the Act.
- (c) Conditions. Pursuant to Section 15(4) of the Act, the City Manager may impose the following conditions on the issuance of a permit:
  - 1) Construction Standards; Safety. All construction, installation, maintenance, and operation of any telecommunication service or of any facilities employed in connection therewith shall be in compliance with applicable provisions of the National Electrical Safety Code, as prepared by the National Bureau of Standards, the National Electrical Code of the National Fire Protection Association, the Bell Telephone Systems Code of Pole Line Construction, any standards issued by the Federal Communications Commission or other Federal or State regulatory agencies in relation thereto. Each system installed, constructed, maintained, or operated shall be so designed, constructed, installed, maintained, and operated as not to endanger or interfere with the safety of persons or property.
  - 2) Street Openings; Barricades, and Warning Lights. Any opening or obstruction in, disturbance of, or damage to a road, street, alley, public right-of-way or public place by any person in the exercise of any right granted pursuant to a permit shall be properly guarded by barriers, lights, signals, and warnings so as to prevent danger to any person or vehicle using such road, street, alley, public right-of-way or public place and shall be promptly repaired, at the permit holder's expense, all in a manner specified and approved by the City. Such approval shall not be unreasonably withheld.
  - 3) Relocation of Facilities. A telecommunication provider or a person acting under a telecommunication provider shall, at its expense, and without reimbursement from the City, upon request of the City relocate, remove, temporarily disconnect, protect, or support facilities in the roads, streets, alleys, easements, public rights-of-way or public places. A telecommunication provider shall also, at the request of a private party holding an appropriate permit issued by a governmental entity, temporarily raise or lower its transmission or distribution wires or cables to permit the moving of any building or other structure, provided that the actual expense of such temporary raising or lowering shall be paid in full by the party requesting the same. Such requests shall be made not less than 30 days in advance of the activity requested, unless an emergency situation exists.
  - 4) Damage to Right-of-way. The telecommunication provider's access and usage shall not cause damage to the street or trees, benches, landscaping, or other objects lawfully located within the right-of-way.
  - 5) Right-of-way Permit. The Traverse City Engineering Department's Terms and Conditions for a Right-of-Way Permit as appropriate.

Additionally, a telecommunication provider is subject to the applicable terms and conditions contained in Chapter XI of the City's Charter and any other conditions the City Manager may impose relating to the telecommunication provider's access and usage of the public right-of-way.

- (d) **Bond Requirement.** Pursuant to Section 15(3) of the Act, and without limitation on subsection (c) above, the City Manager shall require that a bond be posted by the telecommunications provider as a condition of the permit. It shall not exceed the reasonable cost to ensure that the public right-of-way is returned to its original condition during and after the telecommunications provider's access and use.

(Ord. 584. Passed 10-20-02.)

**1050.06 CONSTRUCTION/ENGINEERING PERMIT.**

A telecommunications provider shall not commence construction upon, over, across, or under the public rights-of-way in the City without first obtaining a construction or engineering permit for construction within the public rights-of-way. No fee shall be charged for such a construction or engineering permit.

(Ord. 584. Passed 10-20-02.)

**1050.07 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.

(Ord. 584. Passed 10-20-02.)

**1050.08 ROUTE MAPS.**

Pursuant to Section 6(7) of the Act, a telecommunications provider shall, within 90 days after the substantial completion of construction of new telecommunications facilities in the City, submit route maps showing the location of the telecommunications facilities to both the MPSC and to the City. The route maps should be in paper and in GIS format unless and until either the City or the MPSC determines otherwise, in accordance with Section 6(8) of the Act.

(Ord. 584. Passed 10-20-02.)

**1050.09 REPAIR OF DAMAGE.**

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

(Ord. 584. Passed 10-20-02.)

**1050.10 ESTABLISHMENT AND PAYMENT OF MAINTENANCE FEE.**

In addition to the non-refundable application fee paid to the City set forth in subsection 4(d) above, a telecommunications provider with telecommunications facilities in the City's public rights-of-way shall pay an annual maintenance fee to the Authority pursuant to Section 8 of the Act.

(Ord. 584. Passed 10-20-02.)

**1050.11 MODIFICATION OF EXISTING FEES.**

In compliance with the requirements of Section 13(1) of the Act, the City hereby modifies, to the extent necessary, any fees charged to telecommunications providers after November 1, 2002, the effective date of the Act, relating to access and usage of the public rights-of-way, to an amount not exceeding the amounts of fees and charges required under the Act, which shall be paid to the Authority. In compliance with the requirements of Section 13(4) of the Act, the City also hereby approves modification of the fees of providers with telecommunication facilities in public rights-of-way within the City's boundaries, so that those providers pay only those fees required under Section 8 of the Act. The City shall provide each telecommunications provider affected by the fee with a copy of this 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.

(Ord. 584. Passed 10-20-02.)

**1050.12 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 11 above shall be void from the date the modification was made.

(Ord. 584. Passed 10-20-02.)

**1050.13 USE OF FUNDS.**

Pursuant to Section 10(4) of the Act, all amounts received by the City from the Authority shall be used by the City solely for rights-of-way related purposes. In conformance with that requirement, all funds received by the City from the Authority shall be deposited into the Major Street Fund and/or the Local Street Fund maintained by the City under Act No. 51 of the Public Acts of 1951.

(Ord. 584. Passed 10-20-02.)

**1050.14 ANNUAL REPORT.**

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

(Ord. 584. Passed 10-20-02.)

**1050.15 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. This ordinance does not affect the requirements of cable operators to obtain a franchise as required by Traverse City Code of Ordinances Chapter 1048.

(Ord. 584. Passed 10-20-02.)

**1050.16 EXISTING RIGHTS.**

Pursuant to Section 4(2) of the Act, except as expressly provided herein with respect to fees, this ordinance shall not affect any existing rights that a telecommunications provider or the City may have under a permit issued by the City or under a contract between the City and a telecommunications provider related to the use of the public rights-of-way.  
(Ord. 584. Passed 10-20-02.)

**1050.17 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:

- (a) Exempting certain route maps from the Freedom of Information Act, 1976 PA 442, MCL 15.231 to 15.246, as provided in Section 4(c) of this ordinance;
- (b) Allowing certain previously issued permits to satisfy the permit requirements hereof, in accordance with Section 4(f) of this ordinance;
- (c) 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 4(g) of this ordinance;
- (d) 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 5(a) of this ordinance;
- (e) Notifying the MPSC when the City has granted or denied a permit, in accordance with Section 5(a) of this ordinance;
- (f) Not unreasonably denying an application for a permit, in accordance with Section 5(a) of this ordinance;
- (g) Issuing a permit in the form approved by the MPSC, with or without additional or different permit terms, as provided in Section 5(b) of this ordinance;
- (h) Limiting the conditions imposed on the issuance of a permit to the telecommunications provider's access and usage of the public right-of-way, in accordance with Section 5(c) of this ordinance;
- (i) Not requiring a bond of a telecommunications provider which exceeds the reasonable cost to ensure that the public right-of-way is returned to its original condition during and after the telecommunication provider's access and use, in accordance with Section 5(d) of this ordinance;
- (j) Not charging any telecommunications providers any additional fees for construction or engineering permits, in accordance with Section 6 of this ordinance;
- (k) Providing each telecommunications provider affected by the City's right-of-way fees with a copy of this ordinance, in accordance with Section 11 of this ordinance;
- (l) Submitting an annual report to the Authority, in accordance with Section 14 of this ordinance; and
- (m) Not holding a cable television operator in default for a failure to pay certain franchise fees, in accordance with Section 15 of this ordinance.

(Ord. 584. Passed 10-20-02.)

**1050.18 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.  
(Ord. 584. Passed 10-20-02.)

**1050.19 COSTS FOR WORK BY GOVERNMENTAL ENTITY.**

If, after reasonable notice and opportunity to correct, a telecommunications service provider or any person acting under a telecommunications service provider fails to commence, pursue, or complete any work required by law or this ordinance to be done in any road, street, alley, public right-of-way, easement, or public place, the appropriate governmental entity may cause such work to be done, and such telecommunications service provider shall pay to the governmental entity the cost thereof within thirty (30) days of receipt of an itemized statement of such cost.  
(Ord. 584. Passed 10-20-02.)

**1050.20 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.  
(Ord. 584. Passed 10-20-02.)

**1050.21 AUTHORIZED BY CITY OFFICIALS.**

The City Manager or his or her designee is hereby designated as the authorized City official to issue municipal civil infraction citations or municipal civil infraction violation notices on a form approved by the City Attorney for violations under this ordinance as provided by the City's ordinances.  
(Ord. 584. Passed 10-20-02.)

**1050.22 MUNICIPAL CIVIL INFRACTION.**

A person who violates any provision of this ordinance or the terms or conditions of a permit is responsible for a municipal civil infraction. Nothing in this Section shall be construed to limit the remedies available to the City in the event of a violation by a person of this ordinance or a permit.  
(Ord. 584. Passed 10-20-02.)

**1050.23 REPEALER.**

All ordinances and portions of ordinances inconsistent with this ordinance are hereby repealed.  
(Ord. 584. Passed 10-20-02.)

# CHAPTER 1060

## Solid Waste

*EDITOR'S NOTE: The previous Chapter 1060 was repealed on January 18, 2011.*

1060.01	Definitions.	1060.08	Revocation of Waste Hauler License.
1060.02	Prohibited Storage or Disposal.	1060.09	Single Hauler Waste Collection and Disposal Program.
1060.03	Prohibited Collection.	1060.10	Violations and Penalties.
1060.04	Prohibited Placement of Waste.	1060.11	Severability.
1060.05	Storage Regulations.		
1060.06	Disposal Regulations.		
1060.07	Waste Hauler License Required.		

### CROSS REFERENCES

Authority to regulate disposal of garbage and rubbish, MCL 123.361 et seq., 324.4301 et seq., MSA 5.2726(1) et seq., 13A.4301 et seq.;

Hazardous waste management, MCL 324.11101 et seq., MSA 13A.11101 et seq.;

Solid waste management, MCL 324.11501 et seq., MSA 13A.11501 et seq.;

Waste management and resource recovery finance, MCL 324.11901 et seq., MSA 13A.11901 et seq.;

Recycling and related subjects, MCL 324.16101 et seq., MSA 13A.16101 et seq.;

Disposal of medical waste, MCL 333.13801 et seq., MSA 14.15(13801) et seq.;

Low-Level Radioactive Waste Authority Act, MCL 333.26201 et seq., MSA 14.528(362) et seq.

### 1060.01 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:

- (A) *Act 451* means Public Act. No 451 of 1994, MCL 324.101 *et seq.*
- (B) *Bulk Item* means large solid waste items, including furniture, appliances, washers, dryers, heaters, carpet, wood, metal, construction and demolition debris not in excess of 1 cubic yard, and other items with a weight and volume greater than allowed for container collection.
- (C) *Commingled* means recyclable materials that have been mixed at the site of generation and placed in the same container for curbside pickup.
- (D) *Compost* means the humuslike product of the composting process.
- (E) *Compostables* means yard clippings and residential compostables.
- (F) *Container* means a vermin proof, watertight, wooden, metallic, plastic or masonry receptacle for the storage and placement of solid waste.
- (G) *Curbside* means a location near the traveled portion of the roadway or alley used for the collection of solid waste, recyclable materials or yard clippings.
- (H) *Designated Facility* means a facility that the County of Grand Traverse has identified as an approved location for the disposal of solid waste or the collection process and marketing of yard waste or recyclable material as defined by Ordinance No. 17.
- (I) *Designated Waste Hauler* means any person awarded a contract by the City of Traverse City to engage in the business of collecting of solid waste, recyclable materials, yard clippings, and bulk items from Residential Generation Sites within the City of Traverse

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- City and hauling, transporting or disposing of such materials.
- (J) *Garbage* means rejected food wastes, including waste accumulation of animal, fruit or vegetable matter used or intended for food or that attends the preparation, use, cooking, dealing in or storing of meat, fish, fowl, fruits or vegetables.
  - (K) *Generator of waste* means any person who has acquired or stored any waste at a site of generation.
  - (L) *Hazardous waste* means waste or a combination of waste and other discarded material, including solid, liquid, semisolid or contained gaseous material, that because of its quantity, 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 may 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 that is solid or dissolved material in domestic sewage discharge, solid or dissolved material in an irrigation return flow discharge, industrial discharge that is a point source subject to permits under section 402 of title IV of the Federal Waste Pollution Control Act, chapter 758, 86 Stat. 880, 33 USC 1342, or is a source, special nuclear or byproduct material as defined by the Atomic Energy Act of 1954, chapter 1073, 68 Stat. 919.
  - (M) *Licensed Waste Hauler* means a waste hauler who has been issued a hauler license by the County of Grand Traverse.
  - (N) *Litter* means all rubbish, refuse, waste material, garbage, offal, paper, glass, cans, bottles, trash, debris or other foreign substances of every kind and description.
  - (O) *Newspaper* means all newsprint and materials which are part of a newspaper except the glossy inserts placed in the newspaper.
  - (P) *Ordinance No. 17* means the County of Grand Traverse, Ordinance No. 17 regulating the collection, transportation, delivery and disposal of solid waste, yard waste, and recyclable materials as may be amended from time to time and its rules and regulations.
  - (Q) *Premises* means any area of land used for residential, commercial, industrial or governmental purposes, separately or in combination, to which a separate street address, postal address or box number, tax roll description, or other similar identification has been assigned or is in use by a person having control of such area.
  - (R) *Recyclable materials* means source-separated materials, site-separated materials, high-grade paper, glass, metal, plastic, aluminum, newspaper, corrugated paper, yard clippings and other material deemed to be recyclable materials by the County of Grand Traverse, Ordinance No. 17 or resolution of the City Commission unless the Licensed Hauler is capable of sorting Recyclable Materials at a Designated Facility.
  - (S) *Residential compostables* means fruit and vegetable material which is produced incidental to the preparation of food for human consumption in residential structures.
  - (T) *Residential Generation Site* means all single-family residential structures and multi-family residential structures with 4 or less residential units per parcel located within the City of Traverse City.
  - (U) *Rubbish* means nonputrescible solid waste, excluding ashes, consisting of both combustible and noncombustible waste, including paper, cardboard, metal containers, yard clippings, wood, glass, bedding, crockery, demolished building materials, or litter of any kind that may be a detriment to the public health and safety.
  - (V) *Site of generation* means any premises in or on which litter is generated by any person.
  - (W) *Site-separated material* means glass, metal, wood, paper products, plastics, rubber,

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textiles, garbage, yard clippings or other material that may be recycled that is separated from solid waste for the purpose of conversion into raw material or new products. Site-separated material does not include the residue remaining after glass, metal, wood, paper products, plastics, rubber, textiles or other recyclable materials is separated from solid waste.

- (X) *Site separation* means the act of removing site-separated material from rubbish.
- (Y) *Solid waste* means solid waste as the term is defined in Act 451.
- (Z) *Specialty Waste Hauler* means a Licensed Waste Hauler that accepts specialty recyclable or other waste materials in a truck weighing 1 ton or less.
- (AA) *Waste* solid waste, litter, garbage, recyclable materials, yard clippings, hazardous waste, and all other waste regulated by Act 451.
- (BB) *Waste hauler* means any person engaged in the business of collecting waste within the City and hauling, transporting or disposing of such materials.
- (CC) *Yard clippings* means leaves, grass clippings, vegetables or other garden debris, shrubbery, brush or tree trimmings less than four feet in length and two inches in diameter, that can be converted to compost humus. This term does not include stumps, agricultural wastes, animal waste, roots, sewage, sludge or garbage.

Terms, words and phrases not otherwise specifically defined in this section shall have the meanings ascribed to them in Act 451.

(Ord. 901. Passed 1-18-11.)

### **1060.02 PROHIBITED STORAGE OR DISPOSAL.**

It shall be unlawful for any person to store or dispose of Waste except as expressly authorized by this chapter.

(Ord. 901. Passed 1-18-11.)

### **1060.03 PROHIBITED COLLECTION.**

All Waste shall become the property of the Licensed Waste Hauler at the time the material is collected at Curbside or other designated collection location. It shall be unlawful for any person other than a Licensed Waste Hauler or the Generator of the Waste to collect or cause to be collected any Waste after it has been placed at Curbside or other designated collection location.

(Ord. 901. Passed 1-18-11.)

### **1060.04 PROHIBITED PLACEMENT OF WASTE.**

It shall be unlawful for any person to place or cause to be placed Waste for disposal upon the premises of another person or with the Waste of another person placed at Curbside without the permission of the owner of the Premises.

(Ord. 901. Passed 1-18-11.)

### **1060.05 STORAGE REGULATIONS.**

All Waste at any Site of Generation shall be stored in the following manner:

- (A) Solid Waste. All Solid waste shall be:
  - (1) Gathered, stored and placed in a closed container or containers sufficient in number and size to store such waste;
  - (2) Shielded from public view upon the site of generation; and
  - (3) Not commingled with yard clippings.
- (B) Recyclable materials. All recyclable materials not commingled with solid waste shall be:
  - (1) Site-separated from other waste and stored and placed in a recycling collection container suitable for such purpose; or if newspapers or other recyclable paper

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- products, be stored and placed in recycling collection containers, paper bags or tied into bundles weighing not more than 50 pounds; and
- (2) Rinsed and cleaned before storage if metal, glass or plastic.
- (C) Residential compostables. All residential compostables not commingled with solid waste shall be collected, stored and disposed of pursuant to the following conditions:
- (1) Compost piles shall not be located within any drainage easement.
- (2) Compost piles shall not be located in any side yard or closer than five feet to any property line.
- (3) Compost piles shall not exceed four feet by eight feet or six feet in diameter and shall not exceed four feet in height.
- (4) Double compost piles may be utilized, provided the total size does not exceed the above. Compost piles shall be maintained in a manner to prevent the escape of offensive odors to adjacent property, the harboring of rodents, becoming a public nuisance.
- (D) Yard clippings. All yard clippings shall be site-separated from other waste and:
- (1) Stored in a manner that will not harbor rodents or become a public nuisance; and
- (2) Not commingled with solid waste or other recyclable materials.
- (E) Other. The storage of all other waste not expressly prescribed in this section shall be stored in accordance with Act 451 at any Site of Generation.
- (Ord. 901. Passed 1-18-11.)

### **1060.06 DISPOSAL REGULATIONS.**

All Waste at any Site of Generation shall be disposed of in the following manner:

- (A) Solid waste. All solid waste shall be removed from the Site of Generation within 30 days or before it becomes a nuisance or danger to the public health, safety or welfare by a licensed waste hauler or transport of a Generator of Waste's own solid waste to a Designated Facility.
- (B) Recyclable materials. All recyclable materials not commingled with solid waste shall be removed from the Site of Generation within 30 days or before such materials become a nuisance or danger to the public health, safety or welfare by a licensed waste hauler or transport by a Generator of Waste's own recyclable materials to a Designated Facility.
- (C) Yard clippings. All yard clippings shall be site-separated from other waste and, unless composted at the site of generation in accordance with Section 1060.05(3) of this Chapter or applied to the Site of Generation for use in mulching, enhancing soil, erosion control or compost or a combination of these, removed from the Site of Generation before such clippings become a nuisance or danger to the public health, safety or welfare by:
- (1) A licensed waste hauler; or
- (2) A person engaged in the business of providing landscaping services.
- (D) Preparation of yard clippings for disposal. If collected by the Licensed Waste Hauler, twigs, brush and branches shall be prepared as specified by the Licensed Waste Hauler. All other yard clippings shall be placed in bulk carts or containers or kraft paper bags clearly marked as yard clippings. Bulk disposal of yard clippings pursuant to rules and regulations of the City for pick-up by the City shall be allowed.
- (E) Other. The disposal of all other waste not expressly prescribed in this section shall be in accordance with Act 451.
- (F) Curbside placement.
- (1) No Waste or containers for same shall be placed or left at curbside for more than 48 hours;

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- (2) It shall be presumed that the owner, lessee or occupant in physical possession of a site of generation abutting a curbside where waste is located is the person who placed such waste at the curbside; and
  - (3) The presumption of placement may be rebutted by competent evidence.
  - (G) Collection refusal by Waste Hauler. A Waste Hauler may refuse to collect waste from any site of generation if such waste is not prepared for disposal in accordance with the provisions of this Chapter.
- (Ord. 901. Passed 1-18-11.)

**1060.07 WASTE HAULER LICENSE REQUIRED.**

- (A) It shall be unlawful for any person to operate as a Waste Hauler within the City without a valid license.
  - (B) A license issued to such person by the County of Grand Traverse in accordance with Ordinance No. 17 shall be a valid license for operation within the City unless revoked by the City under Section 1060.08.
- (Ord. 901. Passed 1-18-11.)

**1060.08 REVOCATION OF WASTE HAULER LICENSE.**

- (A) A license to operate in the City may be revoked by the City Manager upon any violation of a federal or state law, local ordinance or related rules and regulations in accordance with the following:
  - (1) Written notification shall be served on the Waste Hauler by depositing the notice in the United States mail, postage prepaid, certified or registered mail, return receipt requested, addressed to the Waste Hauler at the address shown on the Waste Hauler's license as issued by the County of Grand Traverse. Such notice shall be deemed served upon the Waste Hauler upon deposit in the mail.
  - (2) The notice shall inform the Waste Hauler of the reasons for such revocation, the beginning date of the revocation, and the right to appeal under the provisions of this Chapter.
  - (3) The revocation shall be effective ten days after written notice is served on the Waste Hauler.
- (B) A revocation may be appealed to the City Commission in accordance with the following:
  - (1) The appeal shall be filed in writing within ten days of service of the notice of revocation.
  - (2) The appeal shall state what action is being appealed and shall have attached a copy of the notice of revocation and shall specifically set forth the reasons for believing the action was in error.
  - (3) Upon receipt of an appeal pursuant to this Section, the City Clerk shall schedule such appeal for a hearing before the City Commission at a regularly scheduled meeting following the next regularly scheduled meeting of the City Commission and inform the person who initiated the appeal of the time and place of such meeting and the opportunity to appear and be heard by the City Commission.
  - (4) The City Commission may set aside the action appealed from and reinstate a license as the facts may warrant based upon the provisions of this Chapter, Ordinance No. 17, or other conditions as the City Commission may deem advisable. The decision of the City Commission shall be made within 10 days of the date of the public hearing, and the City Clerk shall notify the person who initiated the appeal of the City Commission's decision in writing at the address

provided by the person in its appeal. A decision of the City Commission shall be final.

- (5) An appeal shall automatically stay the revocation pending the final decision of the City Commission.

(Ord. 901. Passed 1-18-11.)

**1060.09 SINGLE HAULER WASTE COLLECTION AND DISPOSAL PROGRAM.**

- (A) Residential Generation Sites. Commencing on the effective date of the contract between the City and the Designated Waste Hauler, collection and disposal of solid waste, recyclable materials, yard clippings, and bulk items from Residential Generation Sites shall be in accordance with the following provisions:

- (1) Except as set forth in this Section, no person shall dispose of any Waste generated from a Residential Generation Site within the City other than by means of the Designated Waste Hauler contracted by the City of Traverse City for such purpose.
- (2) The Designated Waste Hauler shall deliver solid waste to a Designated Facility for disposal of such materials.
- (3) Except as set forth in this Section, no Waste Hauler except the Designated Waste Hauler shall engage in the business of collection, transporting, delivery or disposal of waste generated by Residential Generation Sites within the City of Traverse City.
- (4) The Designated Waste hauler shall comply with Act 451, Ordinance No. 17, as applicable, and all applicable federal, state and county laws, local ordinances, and rules and regulations in the collection, transportation and delivery of Waste.
- (5) No person shall knowingly place Hazardous Waste at curbside or other designated locations for collection, and the Designated Waste Hauler shall not knowingly collect or deliver Hazardous Waste to a processing or disposal site.
- (6) Exceptions:
  - (a) Yard clippings in accordance with Section 1060.06(3).
  - (b) Compost in accordance with Section 1060.05(2).
  - (c) A Generator of Waste's own waste transported by the Generator of Waste to a Designated Facility or Waste not accepted by the Designated Waste Hauler and accepted by a Specialty Waste Hauler.
  - (d) Bulk yard clipping collection by the City pursuant to rules and regulations of the City.
  - (e) Solid Waste collected from units in a Condominium where the Association for the Condominium has entered into an agreement with a Waste Hauler for the collection of solid waste, recyclable materials, yard clippings, or bulk items for those units.
  - (f) Solid waste, recyclable materials, yard clippings, or bulk items collected pursuant to a prepaid agreement with a Waste Hauler entered into prior to the effective date of this Section until the expiration of the prepaid agreement or April 1, 2012, whichever occurs first.

- (B) Rates, charges, and payments for solid waste and recycling collection and disposal services. The designated waste hauler shall charge fees for collection and disposal of waste and shall bill for such services in accordance with the following:

- (1) The designated waste hauler shall charge fees for collection and disposal of waste

placed for collection as set forth in the contract between the designated waste hauler and the city.

- (2) The designated waste hauler shall send a quarterly invoice, in advance, to each Residential Generation Site for which services are provided in the City. Such invoice shall represent charges for services to be rendered in the following quarter.
- (3) Unless otherwise specified by the City, the invoice shall be delivered by regular mail at least three weeks prior to the beginning of the quarter for which charges are imposed.

Ord. 901. Passed 1-18-11.)

**1060.10 VIOLATIONS AND PENALTIES.**

- (A) Violations. A violation of this Chapter is a municipal civil infraction and is further declared to be a nuisance per se and subject to abatement as provided in this code and by state law.
- (B) City Costs. Upon failure of any person to store or dispose of garbage or refuse in the manner set forth in this chapter and when such improper storage or disposal creates or is likely to create nuisance by virtue of littering, odor, putrefaction, rodent or insect attraction, or broken or hazardous substances, the enforcing officer may take immediate steps to abate such nuisance. All costs thereof shall be recoverable shall be collected as a debt from the owner maintaining or permitting the violation and shall be assessed against the real estate involved pursuant to the Single Parcel Special Assessment Procedure set forth in Section 232.04 of this Code. City costs shall include, but not be limited to, actual attorney fees and expense of removal and abatement.
- (C) Penalties. Penalties for violations shall be as follows:
  - (1) Residential Generation Site. All violations of this Chapter by owners or occupants of Residential Generation Sites pertaining to Waste collected or generated on the property of the Residential Generation Site shall be municipal civil infractions and upon conviction thereof, shall be punishable by a fine of \$25.00.
  - (2) Waste Haulers. Penalties for violations by Waste Haulers shall be municipal civil infractions as follows:
    - (a) All violations of this Chapter by Waste Haulers shall be subject to sanctions as provided in Section 202.99(c).
    - (b) Repeated violations of this article by a Waste Hauler shall be cause for suspension or revocation of a waste hauling unit license by the City.
- (D) Each day separate offense. Every day that a violation occurs or continues shall be deemed a separate offense.

Ord. 901. Passed 1-18-11.)

**1060.11 SEVERABILITY.**

In the event any provision of this section is held to be invalid or unenforceable by a court of competent jurisdiction or any other such legal authority, then the remaining subsections shall remain in such full force and effect as permitted by law.

Ord. 901. Passed 1-18-11.)

# CHAPTER 1062

## Harbor and Waterfront

1062.01	Definitions.	1062.09	Hazardous docks.
1062.02	Application of Federal law.	1062.10	Watercraft near swimming area.
1062.03	Police Chief as Harbor Master.	1062.11	Water pollution.
1062.04	Watercraft regulation.	1062.12	Swimming and Diving
1062.05	Forbidden cargo.	1062.13	Impoundment of Watercraft, Boat Cradle, or Anchor Equipment.
1062.06	Right of entry.	1062.99	Penalty.
1062.07	Dock Lines.		
1062.08	Construction and unlawful deposits outside dock limits.		

### CROSS REFERENCES

Parks generally - see Mich. Const. Art. 7, Sec. 23; SU & PS Ch. 1064  
 Authority of City re parks - see CHTR. Ch. XIII  
 Power to regulate watercourses - see CHTR. Secs. 150, 151  
 Parks and recreation facilities in home rule cities - see MCL Secs. 117.4e, 117.5  
 Sale of park property - see MCL Secs. 117.5  
 Harbors, channels and other navigational facilities, MCL 324.79301, et seq  
 Marine Safety Act - see MCL 324.80101  
 Harbor Development Act - see MC.LA Sec. 324.79101  
 Launching of watercraft in parks - see S.U. & P.S. 1064.15

#### **1062.01 DEFINITIONS.**

As used in this chapter:

**"Anchor"** means to secure a watercraft to the bed of a body of water by dropping an anchor or anchors or by using a buoy or other ground tackle.

**"Anchor Equipment"** means an anchor, anchor chain, line and associated gear.

**"Dock lines"** means the line described in Section 1062.07.

**"Harbor"** means such portions of the Boardman River that lie downstream from the south Union Street bridge and such portions of East Grand Traverse Bay or West Grand Traverse Bay that are included between the waterfront and is one mile distant therefrom.

**"Harbormaster"** means the Police Chief of the City of Traverse City.

**"Moor"** means to secure a vessel other than by anchoring.

**"Watercraft"** means a contrivance used or designed for navigation on water, including a vessel, boat, motor vessel, steam vessel, vessel operated by machinery either permanently or temporarily affixed, scow, jet ski, personal watercraft, tugboat, barge, raft, or any marine equipment that is capable of carrying passengers except a ferry.

(Ord. 443. Passed 7-1-96. Ord. 866. Passed 6-7-10.)

#### **1062.02 APPLICATION OF FEDERAL LAW.**

All laws, rules and regulations of the United States government pertaining to the Harbor, Boardman Lake and Boardman River shall be the law of the City.

(1976 Code Sec. 11.012. Ord. No. 517. Passed 11-6-00.)

**1062.03 POLICE CHIEF AS HARBORMASTER.**

- (a) The Police Chief shall be the Harbormaster. He or she shall enforce this chapter and shall establish and enforce such reasonable rules and regulations as may be desirable to promote order in the Harbor, Boardman River and Boardman Lake and to ensure the safety and convenience of the users as well as the general public.
- (b) The owner, master or person having charge of any watercraft shall observe all orders of the Harbormaster with reference to the navigation and disposal of his or her watercraft while in the Harbor, Boardman River or Boardman Lake.

(1976 Code Sec. 11.01. Ord. No. 517. Passed 11-6-00.)

**1062.04 WATERCRAFT REGULATION.**

- (a) Anchoring. No person shall anchor a watercraft in the Harbor, Boardman River or Boardman Lake except in accordance with the rules and regulations of the United States government, the State of Michigan and the City in respect thereto. In case of necessity, the Harbormaster may direct the location and length of time any watercraft may anchor.
- (b) Obstructing Passage. No person shall anchor, moor or otherwise fasten a watercraft in the Harbor, Boardman River or Boardman Lake in such a manner as to obstruct the passage of any other watercraft.
- (c) Mooring. No person shall moor any watercraft anywhere in the Harbor, Boardman River or Boardman Lake without the permission of the Harbormaster and the riparian owner or where prohibited and posted by the City Manager or Harbormaster.
- (d) Anchoring Lights. All vessels anchored between sunset and sunrise in the Harbor and not in a special anchorage area shall display a white light on the forward part of the vessel to be visible to any vessel to be visible to any vessel approaching from any direction.
- (e) Speed. No person shall operate a watercraft on the Boardman River so as to exceed a slow no-wake speed. Watercraft moving with the current shall have the right of way.
- (f) Noise. No person shall operate a watercraft in the Harbor, Boardman River or Boardman Lake so as to cause annoyance, disturbance or inconvenience to the public.
- (g) Mufflers. No person shall operate a watercraft operated by an internal combustion engine in the Harbor, Boardman River or Boardman Lake without being equipped with a muffler or other similar device which eliminates all unnecessary noise.
- (h) Unsafe Craft and Anchor Equipment. No person shall leave any watercraft, boat cradle or anchor equipment in the Harbor, on any dock, along the shore of Boardman Lake or along the bank of the Boardman River or upon any portion of public land within the City (i.e. MDOT seawall, Huron Hills Park "A", street ends, Bryant, West Bay and East Bay parks) in an unsafe or unseaworthy condition, or which sinks, grounds or becomes otherwise disabled, or in such position or location that will be an attractive nuisance to children or can be set adrift by children.
- (i) Unattended Watercraft. No person other than the riparian owner or their permittee shall leave unattended any watercraft or anchor equipment above the high water mark in the Harbor, along the shore of Boardman Lake, or along the bank of the Boardman River or upon any portion of public land within the City.
- (j) A person who violates this section responsible for a municipal civil infraction.

(1976 Code Sec. 11.02; Ord. 442. Passed 7-1-96. Ord. 518. Passed 11-6-00. Ord. 866. Passed 6-7-10. Ord. 907. Passed 2-22-11)

**1062.05 FORBIDDEN CARGO.**

No cargo shall be deposited upon any dock adjoining the Harbor, Boardman River or Boardman Lake, which cargo contains anything that is forbidden entrance to the State by State or Federal law or which is in any way dangerous to the health, safety or welfare of the public.(1976 Code Sec. 11.03. Ord. 517. Passed 11-6-00.)

**1062.06 RIGHT OF ENTRY.**

The police and health officials shall at all-time have the right to enter upon any watercraft entering all waters within the city's corporate limits to inspect the craft or any person thereon for law enforcement purposes. Fire personnel shall at all times have the right to enter upon any watercraft entering all waters within the city's corporate limits to inspect the craft or any person thereon for fire safety and/or illegal discharge issues.

(1976 Code Sec. 11.04. Ord. 517. Passed 11-6-00. Ord. 979. Passed 8-19-13)

**1062.07 DOCK LINES.**

The following dock lines are hereby established along the banks of the Boardman River within the City of Traverse City:

- (a) Westerly bank dock line. Along the left or westerly bank of the Boardman River beginning at a point which is 149.09' north of the north line of Front Street and 1278.19' east of the east line of Park Street, said point of beginning having Michigan Central Zone 1983 coordinates of 530361.68' North and 19361311.71' East; thence running upstream therefrom 78.10' southwesterly along a curve right having a radius of 60.74', central angle of 73E40'37", and long chord bearing distance of S62E33'36"W 72.83'; thence N85E58'35"W a distance of 448.42'; thence S00E14'53"W a distance of 40.47'; thence S88E05'53"W a distance of 137.61' to a point on the east line of Boardman Avenue extended 96.32' north of the north line of Front Street; thence S86E50'49"W a distance of 99.18' to a point on the west line of Boardman Avenue extended 90.0' north of the north line of Front Street; thence N89E30'06"W a distance of 135.19'; thence N79E26'39"W a distance of 400.93' to a point on the east line of Park Street 160.00' north of the north line of Front Street; thence N88E15'54"W a distance of 65.97' to a point on the west line of Park Street 161.45' north of the north line of Front Street; thence N82E24'31"W a distance of 259.04'; thence N85E45'11"W a distance of 77.06'; thence N84E54'40"W a distance of 332.70' to a point on the east line of Cass Street 225.10' north of the north line of Front Street, said point having Michigan Central Zone 1983 coordinates of 530455.15' North and 19359302.72' East; thence N89E38'50"W a distance of 65.97' to a point on the west line of Cass Street 224.99' north of the north line of Front Street; thence N82E21'52"W a distance of 136.71'; thence N77E51'03"W a distance of 241.83'; thence N89E26'11"W a distance of 292.04' to a point on the east line of Union Street 291.00' north of the north line of Front Street; thence N90E00'00"W a distance of 66.00' to a point on the west line of Union Street 290.27' north of the north line of Front Street; thence S80E01'27"W a distance of 276.62'; thence S81E14'16"W a distance of 306.55' to a point 189.26' north of the north line of Front Street and 575.37'

west of the west line of Union Street; thence S80E45'29"W a distance of 217.36'; thence S70E02'32"W a distance of 66.05'; thence S20E34'05"W a distance of 42.78'; thence S25E29'54"W a distance of 97.56' to a point on the north line of Front Street 906.94' west of the west line of Union Street; thence S31E14'28"W a distance of 90.51'; thence S48E21'15"W a distance of 137.79'; thence S01E58'14"W a distance of 183.98'; thence S24E39'44"E a distance of 95.35'; thence S40E32'48"E a distance of 102.54'; thence S67E29'25"E a distance of 121.09'; thence S73E47'07"E a distance of 270.52'; thence S75E24'35"E a distance of 262.62'; thence S73E12'46"E a distance of 369.03' to a point on the west line of Union Street 301.49' south of the south line of State Street, said point having Michigan Central Zone 1983 coordinates of 529438.53' North and 19358498.35' East; thence S73E39'43"E a distance of 68.97' to a point on the east line of Union Street 320.44' south of the south line of State Street; thence S81E48'19"E a distance of 37.36'; thence S08E35'26"E a distance of 85.26'; thence S72E36'31"E a distance of 114.28'; thence S67E25'29"E a distance of 182.42'; thence S01E29'36"E a distance of 40.49'; thence S74E37'15"E a distance of 109.50'; thence N86E58'52"E a distance of 41.97'; thence S84E20'27"E a distance of 44.60'; thence N81E05'13"E a distance of 42.34'; thence S84E50'38"E a distance of 40.16'; thence N74E29'23"E a distance of 40.48'; thence N33E18'49"E a distance of 8.30'; thence N50E56'38"E a distance of 22.17' to a point on the west line of Cass Street 546.85' south of the south line of State Street, said point having Michigan Central Zone 1983 coordinates of 529188.29' North and 19359227.27' East; thence S88E09'09"E a distance of 65.99' to a point on the east line of Cass Street 548.33' south of the south line of State Street; thence S42E29'39"E a distance of 24.07'; thence S21E09'02"E a distance of 78.51'; thence S58E27'45"E a distance of 42.16'; thence S65E46'25"E a distance of 254.89'; thence S56E46'30"E a distance of 68.16'; thence S49E31'58"E a distance of 53.92'; thence S61E36'05"E a distance of 67.06'; thence N76E28'17"E a distance of 29.04'; thence S57E05'55"E a distance of 92.52'; thence S61E41'26"E a distance of 32.24'; thence S50E13'10"E a distance of 107.68'; thence S35E51'37"E a distance of 62.78'; thence S58E58'26"E a distance of 48.54'; thence N81E44'41"E a distance of 84.45'; thence S54E41'18"E a distance of 103.97'; thence S62E20'47"E a distance of 121.09'; thence S21E57'01"E a distance of 60.11' to a point on the north line of Eighth Street (as extended west across the Boardman River) 188.30' west of the west line of Boardman Avenue, said point having Michigan Central Zone 1983 coordinates of 528500.84' North and 19360356.80' East; thence S26E42'48"E a distance of 74.01' to a point on the south line of Eighth Street (as extended west across the Boardman River) 154.38' west of the West line of Boardman Avenue; thence S11E04'00"E a distance of 82.14'; thence S30E09'44"E a distance of 60.52'; thence S47E07'27"E a distance of 173.10'; thence S64E17'02"E a distance of 123.05'; thence S56E46'47"E a distance of 158.20'; thence S50E39'30"E a distance of 39.64'; thence S58E49'52"E a distance of 63.25'; thence S09E01'40"E a distance of 112.61' to a point on the north edge of a railroad trestle, said point having Michigan Central Zone 1983 coordinates of 527874.87' North and 19360908.75' East, said point also being the point of ending of the left dock line of the Boardman River according to a map of the river as surveyed on November 30, 1998, and hereby approved and placed on file in the office of the City Engineer.

- (b) Easterly bank dock line. Along the right or easterly bank of the Boardman River beginning at a point which is 144.92' north of the north line of Front Street and 1342.68' east of the east line of Park Street, said point of beginning having Michigan Central Zone 1983 coordinates of 530356.94' North and 19361376.15' East; thence running upstream therefrom S30E31'12"W a distance of 20.59'; thence 136.65' southwesterly along a curve right having a radius of 163.85', central angle of 47E46'55", and long chord bearing distance of S53E49'58"W 132.72'; thence S89E08'04"W a distance of 3.67' to a point on the east line of Wellington Street extended 47.76' north of the north line of Front Street; thence continuing S89E08'04"W a distance of 40.03'; thence N66E42'32"W a distance of 28.27' to a point on the west line of Wellington extended 57.75' north of the north line of Front Street; thence S87E45'58"W a distance of 142.33'; thence S53E30'20"W a distance of 18.80'; thence N89E30'08" a distance of 174.10'; thence N47E11'16"W a distance of 14.05'; thence N89E22'24"W a distance of 84.45'; thence S85E34'54"W a distance of 28.69'; thence N89E55'35"W a distance of 72.59' to a point on the east line of Boardman Avenue extended 46.32' north of the north line of Front Street; thence S86E50'49"W a distance of 99.18' to a point on the west line of Boardman Avenue extended 40' north of the north line of front street; thence N89E30'06"W a distance of 140.41'; thence N77E24'15"W a distance of 301.26'; thence N82E22'19"W a distance of 95.72' to a point on the east line of Park Street 115.00' north of the north line of Front Street; thence N88E33'31"W a distance of 65.96' to a point on the west line of Park Street 116.11' north of the north line of Front Street; thence N82E24'31"W a distance of 263.25'; thence N85E45'11"W a distance of 405.09' to a point on the east line of Cass Street 175.10' north of the north line of Front Street said point having Michigan Central Zone 1983 coordinates of 530405.15' North and 19359302.35' East; thence N89E38'50"W a distance of 65.97' to a point on the west line of Cass Street 174.99' north of the north line of Front Street; thence N83E51'52"W a distance of 437.66'; thence N83E43'32"W a distance of 230.16' to a point on the east line of Union Street 241.00' north of the north line of Front Street; thence N89E59'22"W a distance of 66.00' to a point on the west line of Union Street 240.28' north of the north line of Front Street; thence S78E47'12"W a distance of 269.19'; thence S81E14'16"W a distance of 306.18' to a point 135.00' north of the north line of Front Street and 566.39' west of the west line of Union Street; thence N89E22'05"W a distance of 45.96'; thence S69E13'35"W a distance of 118.92'; thence N71E45'40"W a distance of 20.06'; thence S51E02'32"W a distance of 40.92'; thence S56E15'02"W a distance of 43.43'; thence S41E45'38"W a distance of 62.45' to a point on the north line of Front Street 850.63' west of the west line of Union Street; thence S30E19'54"W a distance of 75.98' to a point on the south line of Front Street 294.18' west of the west line of Pine Street; thence S22E11'10"W a distance of 65.22'; thence S39E44'04"W a distance of 171.53'; thence S10E58'14"W a distance of 64.60'; thence S35E51'09"E a distance of 92.81'; thence S51E37'24"E a distance of 104.42'; thence S68E02'58"E a distance of 324.17' to a point on the west line of Pine Street extended 80.0' south of the south line of State Street; thence S74E42'15"E a distance of 614.57' to a point on the west line of Union Street 238.00' south of the south line of State Street, said point having Michigan Central Zone 1983 coordinates of 529502.02' North and 19358498.82' East; thence S74E21'41"E a distance of 68.73' to a point on the east line of

Union Street 256.07' south of the south line of State Street; thence N89E51'06"E a distance of 146.08'; thence S68E55'46"E a distance of 112.79'; thence S33E28'29"E a distance of 70.58'; thence S73E48'17"E a distance of 74.00'; thence N46E10'19"E a distance of 55.84'; thence N89E41'08"W a distance of 89.82'; thence S68E43'58"E a distance of 121.90'; thence S36E55'52"E a distance of 54.22'; thence S09E02'17"E a distance of 50.16'; thence S56E46'17"E a distance of 20.65' to a point on the west line of Cass Street 481.37' south of the south line of State Street; thence S86E41'43"E a distance of 66.06' to a point on the east line of Cass Street 484.72' south of the south line of State Street; thence N59E36'43"E a distance of .56'; thence S72E52'17"E a distance of 153.10'; thence S57E37'17"E a distance of 297.60', thence N82E43'43"E a distance of 107.70'; thence S74E34'53"E a distance of 104.76'; thence S53E44'20"E a distance of 115.25'; thence S80E34'16"E a distance of 56.67'; thence N82E23'33"E a distance of 25.89'; thence S59E54'18"E a distance of 47.08'; thence S66E17'42"E a distance of 79.02'; thence S34E36'17"E a distance of 60.26'; thence S55E11'17"E a distance of 151.90'; thence S32E42'22"E a distance of 79.48'; thence S00E06'58"W a distance of 191.39'; thence S33E52'52"E a distance of 18.70' to a point on the north line of Eighth Street 131.27' west of the west line of Boardman Avenue, said point having Michigan Central Zone 1983 coordinates of 528500.45' North and 19360413.83' East; thence S29E35'01"E a distance of 76.05' to a point on the south line of Eighth Street 93.07' west of the west line of Boardman Avenue; thence S15E59'47"E a distance of 21.84'; thence S45E13'25"E a distance of 139.89'; thence S77E37'18"E a distance of 109.53'; thence S64E58'58"E a distance of 215.83'; thence S32E58'23"E a distance of 49.93'; thence S44E39'14"E a distance of 41.85'; thence S44E57'02"E a distance of 85.55'; thence S05E31'09"E a distance of 150.03' to a point on the north edge of a railroad trestle, said point having Michigan Central Zone 1983 coordinates of 527918.50' North and 19360990.71' East, said point also being the point of ending of the right dock line of the Boardman River according to a map of the river as surveyed on November 30, 1998, and hereby approved and placed on file in the office of the City Engineer.

- (c) Encroaching docks. The following described docks encroach beyond the above-described dock lines as of the adoption date of this ordinance. In the event either dock is ever destroyed or damaged to the extent of half or more of its value, by fire, explosion, flood or other act of God or similar causes, the docks may not be restored or rebuilt beyond the above-described dock line. In no event shall these docks be enlarged or modified to create a different or greater degree of encroachment.

(1) Encroachment "A". Survey Description of Encroaching Wood Dock at 415 Front Street, Parcel #28-51-798-179-00 : Commencing at a point where the north line of Front Street intersects the east line of Park Street; thence S89E30'08"E along said north line of Front Street a distance of 714.23'; thence N00E29'52"E a distance of 47.93' to a point where the 1998 Boardman River right dock line intersects the face of an existing wood deck, said point also being the point of beginning of the encroachment to be described; thence N77E55'19"E along the face of said wood deck 16.60'; thence S88E28'23"E along the face of said wood deck 84.20'; thence S42E11'07"E along the face of said wood deck 1.61', said point also being the point of ending of the encroachment being described.

(2) Encroachment "B". Survey Description of Encroaching Wood Dock at 439, 441,

443, 447 and 449 Front Street, Parcel #28-51-798-177-00 and 28-51-798-176-00: Commencing at a point where the north line of Front Street intersects the West line of Wellington Street; thence N89E30'08"W along said north line of Front Street a distance of 149.08'; thence N00E29'52"E a distance of 45.69' to a point where the 1998 Boardman River right dock line intersects the face of an existing wood deck, said point also being the point of beginning of the encroachment to be described; thence S84E58'48"W along the face of said wood deck 11.59'; thence N53E40'12"E along the face of said wood deck 16.89'; thence N87E37'33"E along the face of said wood deck 89.66'; thence N88E18'43"E along the face of said wood deck 58.32'; thence S00E51'02"E along the face of said wood deck 3.98' to a point on said 1998 Boardman River right dock line, said point also being the point of ending of the encroachment being described

(Ord. 471. Passed 1-22-99. Ord. 773. Passed 11-5-07.)

**1062.08 CONSTRUCTION AND UNLAWFUL DEPOSITS OUTSIDE DOCK LIMITS.**

No person shall maintain, construct or extend any dock, structure, construction or fill of any kind, or deposit earth, rocks, sand, waste, rubbish or any other material or matter, in the Boardman River beyond the dock lines and limits set forth and described in Section 1062.07. However, with the prior approval of the City Commission, public projects may extend beyond the dock lines and limits set forth and described in Section 1062.07 if the project is to be constructed and maintained by a political subdivision, and if the project benefits the general public.

(1976 Code Sec. 11.06; Ord. 127. Passed 10-5-81.)

**1062.09 HAZARDOUS DOCKS.**

No person shall allow any dock, structure, wharf, pier or landing strip operated by him or her to fall into disrepair or to remain in a dangerous condition. Any such structure, when no longer in use, shall be posted in a manner approved by the Harbormaster and may be removed as a nuisance in the manner provided in Chapter 662 of the General Offenses Code. (1976 Code Sec. 11.07)

**1062.10 WATERCRAFT NEAR SWIMMING AREA.**

On the waters of the West Arm of Grand Traverse Bay, Lake Michigan, located in the City, south of a line as extended from the northernmost point of land at the Clinch Yacht Harbor, thence east to the northernmost portion of the Boardman River breakwater:

- (a) No person shall operate a watercraft so as to exceed a slow no-wake speed.
- (b) No person shall beach, moor or operate a vessel within fifty feet of the buoyed swim area, which area has been established by a permit within the portion of the West Arm of Grand Traverse Bay.

(Ord. 265. Passed 4-17-89.)

**1062.11 WATER POLLUTION.**

No person shall discharge or permit to be discharged into the harbor or into any watercourse in the City any industrial waste, garbage, untreated sewage, refuse, ashes, cherries, cherry pits, oil, fruits, fruit juices, animal substance, mineral substance, vegetable substance, shavings, sawdust

or other waste material. This section shall not prohibit the discharge into the Boardman River of the effluent of the City sewage disposal plant. (1976 Code Sec. 11.08)

**1062.12 SWIMMING AND DIVING.**

No person shall swim, dive, bathe or wade in any area prohibited for that purpose and so posted by the City Manager. A person who violates this section is responsible for a municipal civil infraction.

(Ord. 399. Passed 10-3-94. Ord. 578. Passed 10-7-02)

**1062.13 IMPOUNDMENT OF WATERCRAFT, BOAT CRADLE, OR ANCHOR EQUIPMENT.**

In addition to any other penalties provided by law, in the event of a violation of 1062.04(h) or 1062.04(i), then the watercraft, boat cradle, or anchor equipment may be impounded immediately, without notice to the owner. In such an event, written notice of impoundment shall be given to the registered owner of the watercraft, boat cradle, or anchor equipment if there is a registered owner. The owner shall be responsible for all costs incurred by the city in impounding the watercraft or boat cradle as well as any cost of clean-up. If the city's costs are not paid to the City Treasurer within 20 days from the date of notice of impoundment, the watercraft, boat cradle, or anchor equipment shall become the property of the city.

(Ord. 866. Passed 6-7-10.)

**1062.99 PENALTY.**

(EDITOR'S NOTE: See Section 202.99 for general Code penalty if no specific penalty is provided.)

# CHAPTER 1064

## Parks

1064.01	Definitions	1064.11	Pets in parks.
1064.02	Hours of operation.	1064.12	Motor vehicles
1064.03	Property destruction; injuring wildlife and vegetation.	1064.13	Off-the-road vehicles.
1064.04	Garbage and rubbish.	1064.14	Parking.
1064.05	Camping.	1064.15	Boat launching.
1064.06	Swimming, bathing and wading.	1064.16	Rules and regulations.
1064.07	Fires.	1064.17	Park concessions.
1064.08	Weapons and explosives.	1064.18	Enforcement.
1064.09	Alcoholic beverages.	1064.19	Events.
1064.10	Disorderly conduct.	1064.99	Penalty.

### CROSS REFERENCES

Parks generally - see Mich. Const. Art. 7, Sec. 23  
 Authority of City re parks - see CHTR. Ch. XIII  
 Parks and recreation facilities in home rule cities - see MCLA Secs. 117.4e, 117.5  
 Sale of park property - see MCLA Sec. 117.5  
 Misapplication of park funds - see MCLA Sec. 123.67  
 Harbor and waterfront - see S.U. & P.S. Ch. 1062

#### **1064.01) DEFINITIONS.**

“**Event**” means a planned activity to use a Park which has an attraction to the public, such as games or amplified sound.

“**Park**” means and includes all park and recreation lands, facilities and water areas owned or under the control of the City, whether presently being used for recreation or being held for future recreational use, including, but not limited to, areas for picnicking, swimming or potential swimming, beach activities, boat launching sites, parking and sports, and excluding the Duncan L. Clinch Yacht Harbor and Zoo.

(Ord. 292. Passed 2-19-91. Ord. 791. Passed 3-17-08.)

#### **1064.02) HOURS OF OPERATION.**

The City Manager shall establish and post at each individual park its hours of opening and closing. Parks open continuously shall be so posted. No person shall be in any park except when such park is open. A person who violates this section is responsible for a civil infraction.

(Ord. 32. Passed 8-15-77. Ord. 643. Passed 6-21-04.)

#### **1064.03) PROPERTY DESTRUCTION; INJURING WILDLIFE AND VEGETATION.**

No person shall injure, damage, deface, disturb or destroy any part of any park or any facility, building, sign, structure, equipment, utility or other property found therein. No person shall dig for, remove, injure, damage or destroy any tree, flower, shrub, plant or growing thing within any park. No person shall injure, kill, trap, hunt, pursue or in any manner disturb any wild bird or animal within any park, unless authorized by the City Manager for preservation of the peace.

(Ord. 32. Passed 8-15-77.)

## PARKS

### **1064.04) GARBAGE AND RUBBISH.**

No person shall deposit or abandon in any park, or in any waters in or adjacent to any park, any garbage, refuse, litter or obnoxious material, except in receptacles provided for such purpose. No person shall bring refuse or litter, originating outside any park into a park for the purpose of depositing such refuse or litter in park receptacles designated for park users.  
(Ord. 32. Passed 8-15-77.)

### **1064.05) CAMPING.**

No person shall camp within any park. No person shall park overnight any house trailer or camping vehicle in any park. A person who violates this section is responsible for a civil infraction.  
(Ord. 32. Passed 8-15-77. Ord. 644. Passed 6-21-04.)

### **1064.06) SWIMMING, BATHING AND WADING.**

No person shall swim, bathe or wade in any park in those areas prohibited for that purpose and so posted by the City Manager. No person shall have a glass container within any water area or land area used as a swimming or bathing beach area. A person who violates this section is responsible for a civil infraction.  
(Ord. 32. Passed 8-15-77. Ord. 579. Passed 10-07-02.)

### **1064.07) FIRES.**

No person shall build a fire in any park except in places designated for such purpose by the City Manager.  
(Ord. 32. Passed 8-15-77.)

### **1064.08) WEAPONS AND EXPLOSIVES.**

No person shall possess or control any fireworks or explosive in any park. No person shall possessor control any bow or arrow in any park except in an area designated for use as an archery range.  
(Ord. 32. Passed 8-15-77. Ord. 828. Passed 3-16-09.)

### **1064.09) ALCOHOLIC BEVERAGES.**

No person shall possess any alcoholic beverage, other than beer and wine, in any park. The consumption and possession of beer and wine, is not allowed in the Open Space during the events of the Traverse City Film Festival, the week of Cherry Festival except in the Festival Beverage Pavilion and for the National Cherry Festival Wine Tasting Event. The City Commission, by resolution, may ban the consumption and possession of beer and wine, in any park or designated portion of a park. A ban of all alcoholic beverages shall be posted on signs at such points within or at the perimeter of the area where the ban is in effect. (Ord. 32. Passed 8-15-77; Ord. 199. Passed 8-5-86; Ord. 473. Passed 4-19-99. Ord. 805. Passed 7-21-08; Ord. 815. Passed 11-17-08.)

### **1064.10) DISORDERLY CONDUCT.**

No person shall be intoxicated or engage in any violent, abusive, loud, boisterous, vulgar, obscene or otherwise disorderly conduct tending to create a breach of the peace or disturb or annoy a reasonable person using the park in a proper manner.  
(Ord. 32. Passed 8-15-77. Ord. 805. Passed 7-21-08)

**1064.11 PETS IN PARKS**

No person shall bring or allow any dog or other pet in any park unless the dog or pet is kept on a leash not over eight feet in length, and under the immediate control of a responsible person. Dogs are permitted to be off-leash as provided in Chapter 610 of these Code of Ordinances, subject to compliance with the rules and regulations adopted for the designated off-leash area. Dogs and other pets are not allowed in 1) park buildings or shelters, 2) designated swimming areas and 3) the city beaches, or portions thereof that are mechanically groomed. Dogs and other pets are not permitted in the Open Space area during the National Cherry Festival or in the Farmers' Market area during its hours of operation unless the dog or other pet is confined in a motor vehicle. The "Farmers" Market area is defined as that part of Parking Lot "B" extending from the water's edge of the Boardman River north to 12 feet north of the center of Parking Lot "B", which center is defined as the concrete island that is shared by and separates the north and south parking bays, and running east from the westerly edge of the Grandview Parkway entrance to the westerly edge of the sidewalk parallel to Cass Street. No dog or pet shall be permitted to touch, worry, disrupt or disturb any person using park facilities. A person who violates this section is responsible for a civil infraction.

(Ord. 32. Passed 8-15-77. Ord. 435. Passed 3-18-96. Ord. 531. Passed 5-21-01. Ord. 846. Passed 9-18-09. Ord. 946. Passed 6-4-12)

**1064.12 MOTOR VEHICLES.**

No person shall operate a motor vehicle in excess of fifteen miles per hour in any park, except when otherwise posted. No person shall operate a vehicle except on designated roads. No person shall park a motor vehicle except in designated parking spaces; provided, however, that a Mobile Food Vending Unit as defined in Traverse City Code of Ordinances Chapter 865, that has a valid Mobile Food Vending License may operate within and adjacent to parks in areas authorized by resolution of the City Commission. Drivers of motor vehicles shall obey all posted traffic control signs and devices. A person who violates this section is responsible for a civil infraction.

(Ord. 32. Passed 8-15-77. Ord. 645. Passed 6-21-04. Ord. 965. Passed 5-6-13)

**1064.13 OFF-THE-ROAD VEHICLES.**

No person shall operate an off-the-road motor driven vehicle, such as a snowmobile, dune buggy, trail bike, mini-bike or motorcycle, or any motorized device, in any park, except on designated roads, trails or areas posted for such use provided, however, that a Mobile Food Vending Unit as defined in Traverse City Code of Ordinances Chapter 865, that has a valid Mobile Food Vending License may operate within and adjacent to parks in areas authorized by resolution of the City Commission. A person who violates this section is responsible for a municipal civil infraction. (Ord. 32. Passed 8-15-77. Ord. 663. Passed 02-22-05. Ord. 965. Passed 5-6-13)

**1064.14 PARKING.**

- (a) Vehicles and trailers shall be parked only in areas designated for parking. In such designated areas parking will be allowed only for persons utilizing park or recreation facilities related to the parking area. In no event shall parking be permitted for patrons or employees of commercial, residential or industrial facilities in proximity thereto. Parking shall be regulated in accordance with City ordinances and regulations.
- (b) No person shall stop, stand or park a vehicle upon any portion of a public park for the

## PARKS

principal purpose of displaying such vehicle for sale or for advertising purposes.

(c) A person who violates this section is responsible for a civil infraction.

(Ord. 32. Passed 8-15-77. Ord. 646. Passed 6-21-04.)

### **1064.15 BOAT LAUNCHING.**

Boats may be launched from designated Municipal boat launching sites after a launch permit has been obtained from the City. The City Manager shall designate, in writing, the Municipal boat launching sites for which a launch permit is necessary and shall establish permit fees. Launch permits shall be displayed prominently and permanently on the tongue of the boat trailer when launching from the sites, or if a boat trailer is not used, the permit shall be displayed prominently and permanently on the motor vehicle used for transporting the boat to the launching site. A person who violates this section is responsible for a civil infraction.

(Ord. 32. Passed 8-15-77; Ord. 134. Passed 5-17-82. Ord. 647. Passed 6-21-04.)

### **1064.16 RULES AND REGULATIONS.**

The City Manager is hereby authorized, subject to approval and adoption by the City Commission, to make such other rules and regulations pertaining to the conduct and use of parks as are necessary to administer the same or to protect public property or the safety, health, morals or welfare of the public. No person shall fail to comply with such rules and regulations.

(Ord. 32. Passed 8-15-77.)

### **1064.17 PARK CONCESSIONS.**

No person shall sell or rent, or attempt to sell or rent, any service, merchandise or object in any park, subject to the following exceptions:

(a) Park concessions may be authorized by contract approved by the City Commission.

(b) A group or organization, authorized to use a park by permit from the City Manager for a special occasion, may sell to its own members.

(c) A Mobile Food Vending Unit as defined in Traverse City Code of Ordinances Chapter 865, that has a valid Mobile Food Vending License may operate within and adjacent to parks in areas authorized by resolution of the City Commission.

(d) A person who violates this section is responsible for a municipal civil infraction.

(Ord. 291. Passed 2-19-91. Ord. 661. Passed 02-22-05. Ord. 965. Passed 5-6-13)

### **1064.18 ENFORCEMENT.**

(a) Administration. The uniformed employees of the Parking Violations Bureau and other officials designated in writing by the City Manager are hereby authorized to issue and serve appearance tickets with respect to any violation of this chapter pursuant to Section 1 of Act 147 of the Public Acts of 1968, as amended (M.C.L.A. 764.9c(2); M.S.A. 28.868(3)(2)).

(b) Appearance Ticket. Appearance tickets shall be in such form as determined by the City Attorney in conformity with all statutory requirements.

(Ord. 135. Passed 5-17-82.)

### **1064.19 EVENTS.**

## PARKS

No Person shall conduct, host or sponsor an Event in a Park except in compliance with the City of Traverse City Park and Public Land Use Policy. Any person who conducts, hosts, or sponsors an Event in violation of the Policy:

- (a) May be removed from the City Park or adjacent public land, and if a person fails to leave after being requested to do so, that person shall be deemed to be trespassing and may, at the discretion of the City Manager, be prosecuted;
- (b) Is guilty of a municipal civil infraction;
- (c) Shall be responsible for paying all costs that would have been owed had the Event been conducted, hosted, or sponsored in compliance with the Policy. The City Manager shall be responsible for determining what costs were incurred by the City as a result of the Event.

(Ord. 791. Passed 3-17-08.)

### **1064.20 PROHIBITED CONDUCT AT EVENTS**

In addition to any other applicable provision of law, the following conduct shall be prohibited at any Event in any Park:

- (a) Conduct that materially and substantially prevents any other reasonable person from viewing, hearing or meaningfully participating in an Event.
- (b) Conduct that substantially interferes with the free passage of Event participants or attendees by creating an insurmountable obstacle at any entrance, aisle, walkway, stairwell, ramp, esplanade, vendor booth, riser or other area commonly used for public access, egress or ingress.
- (c) Entry into or remaining in any area of an Event that is posted as not open to the public without the consent of the Permit Holder for the Event or entry into or remaining in any area of an Event that is posted as open to the public only upon the payment of an entry fee or charge, without first paying the applicable entry fee or charge.
- (d) A person found responsible for violating this subsection after receiving an initial warning, may be removed from the City Park, and if a person fails to leave after being requested to do so, that person may be guilty of criminal trespassing.

(Ord. 804. Passed 6-16-08.)

### **1064.99 PENALTY.**

- (a) Misdemeanor Penalty. Whoever violates or fails to comply with any of the misdemeanor provisions of this chapter shall be fined not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100.00) or imprisoned not more than thirty days, or both, for each offense. A separate offense shall be deemed committed each day during or on which a violation or noncompliance occurs or continues.
- (b) Civil Infraction Penalty. Whoever violates or fails to comply with any of the civil infraction provisions of this Chapter shall incur the penalties provided in Traverse City Code Section 202.99 (b).

(Ord. 32. Passed 8-15-77. Ord. 648. Passed 6-21-04.)

# Chapter 1065

## Brown Bridge Conservation

1065.01	Purpose.	1065.04	Management Plan.
1065.02	Establishment.	1065.05	Real Property Disposition
1065.03	Brown Bridge Advisory Committee		Restrictions.

### CROSS REFERENCES

Parks - see S.U. & P.S. Chapter 1064

Parks and recreation facilities in home rule cities - see MCL Secs. 117.4e, 117.5

Brown Bridge Trust - see Charter, Section 129

#### **1065.01 PURPOSE.**

The purpose of this chapter is to assure that the City’s property commonly known as the “Brown Bridge Quiet Area” will be preserved in its predominantly natural, scenic, forested and open space condition and to:

- (a) Restore, preserve and protect the integrity of the natural environment, including its inhabitants, yet allow managed public use for generations to come;
- (b) Protect its natural resource and watershed values;
- (c) Maintain and enhance biodiversity, serenity and solitude;
- (d) Retain quality habitat for native plants and animals;
- (e) Maintain and enhance its natural features;
- (f) Prohibit any uses which may impair or interfere with the Management Plan.
- (g) Provide for limited oil and gas extraction.

(Ord. 651. Passed 8-16-04.)

#### **1065.02 ESTABLISHMENT.**

The Brown Bridge property was established as a natural area for quiet recreation by City Commission resolution on March 21, 1977, and July 1, 1991, on the City-owned property including frontage on the Boardman River commonly known as “Brown Bridge Quiet Area” and legally described as: All of Section 15 and Section 14, except the North 1/2 of the Northeast 1/4, East Bay Township (T.26N., R.10W.,) and the Northeast 1/4 of the Northwest 1/4 of Section 22, Paradise Township (T.26N., R.10W.), Grand Traverse County, Michigan. The Brown Bridge Quiet Area consists of the following described areas shown in the Brown Bridge Management Plan on a map entitled Brown Bridge Quiet Area:

- (a) **Core Area**, described generally as that portion of the Brown Bridge Quiet Area consisting of all City-owned land south of Hobbs Highway and Ranch Rudolf Road and north of Brown Bridge Road, extending to the east and west property lines of the Quiet Area.
- (b) **Grasshopper Ranch Area** purchased by the City on July 21, 1993.
- (c) **Perimeter Area** described generally as that portion of the Brown Bridge Quiet Area consisting of all City-owned lands outside of the Core area and the Grasshopper Ranch Area.

(Ord. 651. Passed 8-16-04. Ord. 1012. Passed 2-17-15)

**1065.03 BROWN BRIDGE ADVISORY COMMITTEE.**

- (a) **Established.** Upon recommendation of the City Manager, the Brown Bridge Advisory Committee is established pursuant to Section 30 of the City Charter. This Committee shall be a committee advisory to the City Commission and City Manager.
- (b) **Composition; terms; expenses; vacancies.** The Brown Bridge Advisory Committee shall consist of twelve voting members. No less than six of the members shall be City residents. Appointments shall be for three-year terms and shall be made by the City Commission. One member shall be the City Manager or his or her designee ex officio with voting authority and one member shall be a City Commissioner with voting authority. Members shall serve without compensation, but may be reimbursed for actual expenses incurred in Committee activities.
- (c) **Organization.** The Brown Bridge Advisory Committee shall hold regular meetings at least quarterly. All meetings shall be open to the public. The Committee may develop rules governing their operations. Seven members shall be considered a quorum.
- (d) **Duties.** The Brown Bridge Advisory Committee shall make recommendations to restore, preserve and protect the integrity of the Brown Bridge Quiet area under the direction of the City Manager. The Committee shall make recommendations regarding the Brown Bridge Quiet Area Management Plan.

(Ord. 651. Passed 8-16-04. Ord. 872. Passed 8-16-10. Ord. 1012. Passed 2-17-15)

**1065.04 MANAGEMENT PLAN.**

A Brown Bridge Quiet Area Management Plan shall be prepared by the Brown Bridge Advisory Committee and adopted by the City Commission. The Plan shall be reviewed by the Brown Bridge Advisory Committee every five years or as directed by the City Commission. Any amendments shall be adopted by City Commission.

(Ord. 651. Passed 8-16-04.)

**1065.05 REAL PROPERTY DISPOSITION RESTRICTIONS.**

The following restrictions apply to disposition of real property in the Brown Bridge Quiet Area:

- (a) **Core Area.** The City Commission may sell, donate, or long-term lease real property in the Core Area only after a public hearing and upon a unanimous vote. Such proposed action shall be introduced and scheduled for a public hearing at least two weeks after introduction. Notice of the public hearing shall be published in an official newspaper of general circulation in the City.
- (b) **Perimeter Area.** The City Commission may sell, donate or long-term lease real property in the Perimeter Area only after a public hearing and upon a vote of at least five affirmative votes. Such proposed action shall be introduced and scheduled for a public hearing at least two weeks after introduction. Notice of the public hearing shall be published in an official newspaper of general circulation in the City.
- (c) **Grasshopper Ranch Area.** Real property in the Grasshopper Ranch Area may only be sold, donated or leased according to the terms of the City Charter and the Michigan Natural Resources Trust Fund Land Acquisition Project Agreement between the Department of Natural Resources and the City of Traverse City dated July 21, 1993.
- (d) **Utility Easements.** The City Commission may grant an easement for utility or related purposes according to its usual procedures.

(Ord. 651. Passed 8-16-04.)

# CHAPTER 1066

## Cemeteries

1066.01	Definitions.	1066.06	Sale of plots.
1066.02	General regulations.	1066.07	Third Addition regulations.
1066.03	Administrative rules.	1066.08	Fourth Addition regulations.
1066.04	Monuments, markers and improvements.	1066.09	Clear zone for aircraft.
1066.05	Burials, interments and disinterments.	1066.10	Fees.
		1066.11	Enforcement.
		1066.99	Penalty.

### CROSS REFERENCES

Municipal cemeteries - see Mich. Const. Art. 7 Sec. 123; MCL Secs. 128.1 et seq.

Authority of City re cemeteries - see CHTR. Ch. XIII; MCL Sec. 117.4f

Cemetery Care Funds - see CHTR. Sec. 130

Vacation of cemeteries - see MCL Secs. 128.51 et seq.

### 1066.01 DEFINITIONS.

As used in this chapter, the following definitions shall apply:

- (a) "Burial Certificate" means a document issued by the City confirming burial rights or the right to place human remains. All Cemetery Deeds previously issued by the City are hereby deemed to be burial certificates.
- (b) "Cemetery" means any place in the City devoted to burial of persons.
- (c) "City Cemetery" means Oakwood Cemetery, including those parts known as the Jewish and Catholic sections.
- (d) "Plot" means that land or space allocated for placement of human remains and for which burial rights have been allocated or are available for transfer.

### 1066.02 GENERAL REGULATIONS.

- (a) Access. No person shall be in the City Cemetery or enter or leave other than by the established and open entrances or gateways established by the City, and during hours allowed by Cemetery rules.
- (b) Alcohol. No person shall carry or consume any alcoholic beverage in a cemetery.
- (c) Animals. No person shall allow any domestic animal to be upon or to run at large in a cemetery, except guide dogs accompanying the visually impaired.
- (d) Firearms. No person shall carry any firearm in a Cemetery except an escort accompanying a veteran's funeral or memorial services or upon written permission from the Police Chief or his or her designee.
- (e) Hours. No person shall be in the City Cemetery after sunset and before sunrise or except during the hours set by the Cemetery rules.
- (f) Lawns. Persons shall use designated roads and pathways in a cemetery. No person shall walk, ride or drive upon or across a cemetery plot or cemetery lawn except for walking necessary to gain access to a cemetery plot.
- (g) Littering. No person shall litter in a cemetery.
- (h) Plant Destruction. No person shall pluck any flowers or break any trees, shrubs, or plants

in the City Cemetery. This section shall not prohibit an owner from trimming shrubs and trees or removing plants on his or her own plot in those sections of the cemetery where the landscaping features are the responsibility of the owner.

- (i) Property Destruction. No person shall deface, mar, write upon or otherwise injure any monument, design, decoration or other property in a cemetery.
- (j) Signs. No person shall advertise or post signs within the City Cemetery.
- (k) Vehicles. No person shall operate a motor vehicle in a Cemetery unless upon cemetery business. No person shall use any cemetery for the purpose of demonstrating any vehicle or instructing another or learning to drive a vehicle. No person shall tow another vehicle within any cemetery except in the case of a breakdown in the cemetery. Vehicles shall not be operated at a speed greater than 15 miles per hour. The City Manager may prohibit and restrict the use of vehicles within the City Cemetery.
- (l) Vehicle Parking. No person shall park or leave a vehicle on any road in the City Cemetery in such a manner as to prevent any other vehicle from passing.

### **1066.03 ADMINISTRATIVE RULES.**

In addition to the regulations contained in this Chapter, the City Manager, by written executive order, may promulgate Cemetery Rules concerning the City Cemetery. Such rules shall be made a part of the Administrative Code. No person shall violate any rule or regulation promulgated by the City Manager concerning the City Cemetery.

### **1066.04 MONUMENTS, MARKERS AND IMPROVEMENTS**

- (a) Approval of City Manager. No curb, decoration, embellishment or improvement of any sort shall be placed upon any burial plot, no alteration of the surface of the ground shall be made and no labor shall be done in the City Cemetery except as permitted by Cemetery Rules. However, any aggrieved person, upon showing unusual circumstances, may request a waiver or change in a Cemetery Rule from the City Manager.
- (b) Permit. No person shall erect, clean or repair a mausoleum, monument or memorial in the City Cemetery without first obtaining a permit from the City Manager. Persons requesting such permit may be required to furnish satisfactory evidence of their ability to properly perform the work proposed and furnish proof of liability and worker's compensation insurance.
- (c) Design Review. Monuments, markers, crypts, niches, nameplates and other improvements on the grounds of the City Cemetery shall comply with Cemetery rules and shall not be offensive according to community standards as determined by the City Manager.
- (d) Removal of Improper Objects. If any monument or other structure, or any inscription thereon, is placed in or upon any burial plot in the City Cemetery which is determined by the City Manager to be offensive or if it does not comply with these regulations or Cemetery Rules, it shall be removed by the owner immediately. If the owner fails to remove it upon notice to do so from the City Manager, or if the owner cannot be found, the City may enter upon the premises and remove it at the owner's expense.
- (e) Removal of Trees, Shrubs and Plants. Within the City Cemetery if trees, shrubs, flowers, weeds or plants of any kind on any plot shall, by means of their roots, branches or otherwise, become detrimental to the adjacent grounds or unsightly, dangerous, detrimental, diseased, or an obstacle to the public or cemetery personnel, the City may

enter upon the premises and remove the plant or any part thereof.

- (f) Flowers and Decorations. Only such flowers and decorations as allowed by Cemetery Rules shall be permitted in the City Cemetery.

**1066.05 BURIALS, INTERMENTS AND DISINTERMENTS.**

- (a) Only personnel authorized by the City Manager shall bury, remove or disinter the body or cremains of any person in the City Cemetery, with the following exceptions:
  - 1. When directed to make a disinterment by order of a court of competent jurisdiction and a certified copy of such order has been filed with the Sexton, all fees paid and prior notice given.
  - 2. When the coroner directs the disinterment for the purpose of holding an inquest and has filed with the Sexton his or her signed authorization to release the body to the coroner or the coroner's lawful agents.
- (b) A burial transit permit from the Department of Public Health shall be required and provided for all burials including cremains arriving at the City Cemetery.
- (c) No holder of burial rights to a cemetery plot in the City Cemetery shall allow any interment to be made therein for remuneration.
- (d) No burials shall be allowed in the City Cemetery for other than human remains.
- (e) No person shall scatter cremains anywhere in the City Cemetery except in a cremation garden set aside by the City for that purpose and with written authorization from the City Sexton.
- (f) All burials in the City Cemetery shall be in reinforced concrete vaults or equivalent material approved by the City Sexton.
- (g) All buried cremations in the City Cemetery shall be in a reinforced, durable material approved by the City Sexton or as otherwise approved by the City Sexton.
- (h) Except as may be herein permitted, no burial shall be made in the City Cemetery on a Sunday, New Years Day, Memorial Day, Fourth of July, Labor Day, Veterans Day, Thanksgiving Day or Christmas Day. The City Manager may grant special permission for a burial on any prohibited day if necessary to protect the public health and safety, and if the City Manager certified in writing the cause for which such burial was made necessary. When a Sunday or legal holiday fall on consecutive days, the prohibition of burial on the legal holiday may be suspended if the City Manager considers it warranted by an emergency. No disinterment shall take place from December 1 to April 1 except under court order or permission of the City Manager.
- (i) No interment of two or more bodies shall be made in one grave in the City Cemetery except in the case of parent and infant or two infants buried in one casket. In the case of cremation, two cremations per adult grave space or the combination of one cremation urn and one interment of a human body will be allowed.
- (j) In the Third Addition, Block A, Lots 1 - 75, inclusive, are for the interment of cremations only, with no more than two cremations per lot. Lots 76 - 135, inclusive, are for the interment of one infant burial only in a vault not to exceed forty inches (40") in length.
- (k) Cremations inurned in a columbarium are limited to one per niche unless designed for multiple inurnments.
- (l) No burial or entombment shall take place or marker installed in the City Cemetery until the plot purchase price, cost of any services required to open or close the plot, the cost of perpetual care and other fees and charges have been paid in full.

(Ord. 424. Passed 6-19-95. Ord. 474. Passed 7-6-7-99.)

**1066.06 SALE OF PLOTS.**

In the City Cemetery:

- (a) No sale, transfer or conveyance of any Burial Certificate or the rights therein or any part thereof, or interest therein, other than by operation of law, shall be effectual to transfer any right to any person, unless such sale, transfer or conveyance is made from the seller to the City of Traverse City through the Cemetery office and from the City to the purchaser and officially recorded by the office of the City Clerk. This section shall not apply to lots in the Jewish portion of the City Cemetery, which shall be sold by the Jewish Cemetery sexton.
- (b) Purchase of a plot or the issuance of a Burial Certificate does not transfer ownership of property but is the transferring of the right of burial of human remains on that land subject to the ordinances and Cemetery Rules as they may be amended.
- (c) Payment of the Perpetual Care fee is required when a burial space is resold or transferred, unless prior payment for Perpetual Care has been made.
- (d) Upon purchase of a plot, the purchaser will be issued a Burial Certificate transferring the burial right on the land indicated therein.
- (e) When a plot is purchased by more than one person other than a husband and wife, each person's interest shall be joint with rights of survivorship.
- (f) The ownership of burial rights to any plot in the City Cemetery passes to the joint survivor or, if none, to the heirs of the last surviving owner as stated on the certificate.
- (g) It is the duty of the certificate holder to notify the Sexton of any change in his or her mailing address.
- (h) Descriptions of a plot will be in accordance with the City Cemetery plans which are kept on file in the Cemetery office.
- (i) The City disclaims all responsibility for loss or damage from causes beyond its reasonable control, and from damage caused by the elements, act of God, common enemy, thieves, vandals, strikers, malicious mischief makes, explosions, riots or order of any military or civil authority, whether the damage is direct or collateral.
- (j) The right to enlarge, reduce, replat, or change the boundaries or grading of the City Cemetery, or a section or sections, from time to time, including the right to modify or change the locations of or removal or regrade roads, drives, walks or any part thereof, is hereby reserved to the City. The right to lay, maintain and operate, or alter or change pipe lines or gutters for sprinkling systems, drainage, and so forth, is also expressly reserved, as well as the right to use plots not yet sold. The City reserves to itself and to those lawfully entitled thereto a perpetual right of ingress and egress over plots for the purposes of passing to and from other plots in the City Cemetery.

**1066.07 THIRD ADDITION REGULATIONS.**

The following regulations apply to the Third Addition of the City Cemetery:

- (a) All plots shall be maintained by the City in perpetuity.
- (b) All planting and landscaping shall be done by the City.
- (c) Upright monuments and markers may be placed in the following locations: Lots 1-40 inclusive and Lots 60-75, inclusive of Block B, and Lots 1-80 inclusive of Block C, Lots 91-118 inclusive of Block I and all lots in Block E and H.

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- (d) Monuments and markers shall be placed with the tops flush with the ground in the following locations: Lots 41-59 inclusive and Lots 76-96 inclusive of Block B; Lots 81-145 inclusive of Block C; Lots 1-90 inclusive and 119-178 inclusive of Block I; all of Block A, D, F, G and J.

(Ord. 424. Passed 6-19-95. Ord. 475. Passed 6-7-99.)

### **1066.08 FOURTH ADDITION REGULATIONS**

The following regulations apply to the Fourth Addition of the City Cemetery:

- (a) All plots shall be maintained by the City in perpetuity.
- (b) All planting and landscaping shall be done by the City.
- (c) All monuments and markers shall be placed on concrete foundations and approved by the City Manager.
- (d) All monuments and markers placed on the south half of the Fourth Addition shall face south. All monuments and markers placed on the north half of the Fourth Addition shall face north.
- (e) On the south half of the Fourth Addition, all monuments and markers shall be placed on the south end of each burial plot. On the north half of the Fourth Addition, all monuments and markers shall be placed on the north end of each burial plot.

### **1066.09 CLEAR ZONE FOR AIRCRAFT.**

No tree, shrub, tower, structure or other thing within the confines of the Oakwood Cemetery shall project into the clear zone space established for aircraft using Cherry Capital Airport. All such projections shall be removed by the City from the clear zone spaces.

### **1066.10 FEES.**

- (a) Determination. Price schedules on City Cemetery plots and services shall be established from time to time by resolution of the City Commission. Such resolution shall include prices for all standard services rendered by the City in the maintenance and operation of the cemetery and no amendments to the price schedule shall be made unless the entire schedule is stated in the resolution.
- (b) Perpetual Care. Perpetual care shall be obtained on all tomb sites, plots and crypts in the City Cemetery. Before any structure containing human remains is built, the fee for Perpetual Care of that structure shall be paid to the City.
- (c) Extra Fees. The City may, in addition to a fee for perpetual care of any plot, require an additional fee if, in the opinion of the City Manager, the condition of the planting, landscape features or other improvements would require more expense for maintenance than would be required on a normal plot. In such cases, the plot will be cared for upon the payment of an additional fee determined by the City Manager.

### **1066.11 ENFORCEMENT.**

- (a) Administration. The City Manager may appoint a Sexton and delegate all or a part of the City Manager's authority under this chapter to the Sexton.
- (b) Appearance Tickets. The Sexton, the officers of the Traverse City Police Department and other officials designated in writing by the City Manager are hereby authorized to issue and serve appearance tickets with respect to any violation of this chapter pursuant to Section 1 of Act 147 of the Public Acts of 1968, as amended (MCLA 764.9c(2); MSA 28.868(3)(2)). Appearance tickets shall be in such form as determined by the City

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Attorney, on conformity with all statutory requirements.

(c) Civil Infraction. A person who violates this Chapter is responsible for a civil infraction.

**1066.99 PENALTY.**

(EDITOR'S NOTE: See Section 202.99 for general Code penalty if no specific penalty is provided.) (Ord. 424. Passed 6-19-95.)

# CHAPTER 1068

## Ground-Water Protection and Storm-Water Runoff Control

1068.01	Purposes.	1068.07	Maintenance of facilities.
1068.02	Objectives.	1068.08	Storm-water management easements.
1068.03	Definitions.	1068.09	Compliance assurances.
1068.04	Storm-water runoff control permits.	1068.10	Inspections.
1068.05	Ground-water protection and storm-water runoff control plan.	1068.11	Enforcement.
1068.06	General standards for approval of ground-water protection and storm-water control plans.	1068.12	Stop-work orders and emergency actions.
		1068.13	General requirements violations.
		1068.99	Penalty.

### CROSS REFERENCES

Drains and drainage; flood control projects - see MCLA Sec. 280.429, 280.431  
 Soil Erosion and Sedimentation Control Act - see MCLA Sec. 324.9101 et seq.  
 Sewers generally - see S.U. & P.S. Ch. 1042  
 Water generally - see S.U. & P.S. Ch. 1044  
 Flood plain management - see B. & H. Ch. 1458

#### **1068.01 PURPOSES**

The purposes of this chapter are to aid in the prevention of surface and ground-water contamination, to regulate and control the construction and use of storm-water runoff facilities, to control discharges to the public storm drain system, to protect the public health, safety and general welfare and to prevent the pollution, impairment or destruction of a natural resource and the environment of the City and the State.  
 (Ord. 323. Passed 12-16-91.)

#### **1068.02 OBJECTIVES.**

The specific objectives of this chapter include the following:

- (a) To prevent ground-water contamination and accelerated soil erosion and to control storm-water runoff resulting from proposed earth changes both during and after construction.
- (b) To assure that property owners control the volume and rate of storm-water runoff originating from their property so that surface-water and ground-water quality is protected, soil erosion minimized and flooding reduced.
- (c) To preserve and use where feasible the natural or existing drainage system for receiving and conveying storm-water runoff.
- (d) To preserve natural infiltration and the recharge of ground-water and to maintain subsurface flows which replenish lakes, streams and wetlands.
- (e) To assure that storm-water runoff control systems are incorporated into site planning at

an early stage in the planning design process and to aid in the proper design, construction and maintenance of all storm-water control facilities.

- (f) To reduce the need for costly maintenance and repairs to roads, embankments, ditches, streams, lakes, wetlands and storm-water control facilities, which are the result of inadequate soil erosion and storm-water runoff control.
  - (g) To reduce long-term expenses and remedial projects which are caused by uncontrolled storm-water runoff containing hazardous substances and polluting materials.
  - (h) To encourage the design and construction of storm-water control systems which serve multiple purposes, including, but not limited to, flood prevention and water quality protection.
  - (i) To reduce any detrimental impacts of storm-water flows on downstream storm-water facilities and to allow for off-site storm-water control facilities and measures if the proposals meet the requirements of this chapter.
  - (j) To designate a local enforcing agency responsible for the administration and enforcement of this chapter.
  - (k) To provide for the enforcement of this chapter and penalties for violations.
- (Ord. 323. Passed 12-16-91.)

### **1068.03 DEFINITIONS**

Words used in the present tense include the future; the singular includes the plural and the plural the singular. In addition, as used in this chapter:

- (1) "Accelerated soil erosion" means the increased movement of soils that occurs as a result of human activities and development.
- (2) "Best management practice" or "BMP" means a structural device, measure, facility or activity which helps to achieve ground-water protection and storm-water management control objectives at a designated site.
- (3) "Channel" means the portion of a natural stream which conveys normal flows of water, or a ditch or channel excavated for the flow of water.
- (4) "City Engineer" means the City Engineer of the City of Traverse City or the authorized representative of the City Engineer.
- (5) "City Manager" means the City Manager of the City of Traverse City or the authorized representative of the City Manager.
- (6) "Commercial use" means all land uses, except for registered and permitted home occupations and one-family and two-family detached dwellings and structures accessory thereto. "Commercial use" also means the use of private property in connection with or for the purchase, sale, display or exchange of goods, merchandise or personal services, as well as the maintenance or operation of businesses or recreational or amusement enterprises.
- (7) "Depression storage" means the portion of precipitation trapped in depressions in the ground surface.
- (8) "Design standard" or "engineering design standard" means a specification that prescribes the type of design, location, mode of construction, mode of operation or other engineering detail for storm-water control facilities.
- (9) "Design storm" means a rainfall event that has a specific statistical probability of occurring in any given year. For example, a ten-year design storm is a storm with a ten percent chance of occurring during the year. Design storm figures are used to calculate

the runoff volume and peak discharge rate through a detention or retention basin or other storm-water management facility.

- (10) "Detention basin" means a structure or facility, natural or artificial, which stores storm-water on a temporary basis and releases it at a controlled rate. A detention basin may drain completely after a storm event, or it may be a body of water with a fixed minimum and maximum water elevation between runoff events.
- (11) "Discharge" means the rate of flow of water through an outlet structure at a given point and time, measured in cubic feet per second (cfs).
- (12) "Disturbed area" means an area of land subjected to erosion due to the removal of vegetative cover and/or earth-moving activities, including filling.
- (13) "Downstream" means lands, waters or storm-water facilities which receive storm-water runoff and other surface-water flows from a designated site. Downstream lands, waters and storm-water facilities are normally downgrade from the designated site.
- (14) "Drainage" means the interception and removal of ground-water or surface water by natural or artificial means.
- (15) "Drainage system" means all facilities, channels and areas which serve to convey, filter, store and/or receive storm water, either on a temporary or permanent basis.
- (16) "Drainage well" means a bed of stone or hole in the ground constructed for the purpose of trapping storm water for infiltration into the ground.
- (17) "Earth change" means a man-made change in the cover or topography of land, including grading, building construction and cut-and-fill activities or other similar activities, which may result in, contribute to or have the potential to cause unwanted storm-water problems affecting either the quality or quantity of storm-water runoff.
- (18) "Extended detention basin" means a detention basin designed to provide substantial removal of suspended solids and particulates, typically achieved by holding storm water for twenty-four hours or more.
- (19) "Flood" means an overflow of surface water onto lands not normally covered by water.
- (20) "Floodplain" means the area of land adjoining a lake or stream which is inundated when flow exceeds the capacity of the normal channel. For mapping purposes, floodplains are designated according to the frequency of the flood event, such as the 100-year floodplain.
- (21) "Grading" means any extensive stripping, site clearing, stumping, excavating, filling, stockpiling, or any combination thereof, including the land in its excavated or filled condition.
- (22) "Hazardous substances" and "polluting materials" means hazardous chemicals, as defined by the Michigan Department of Public Health and the Michigan Department of Labor; flammable and combustible liquids, as defined by the Michigan State Police Fire Marshal Division; critical materials, polluting materials and hazardous waste, as defined by the Michigan Department of Natural Resources; hazardous substances, as defined by the U.S. Environmental Protection Agency; and hazardous materials, as defined by the U.S. Department of Transportation.
- (23) "Impervious area" means impermeable surfaces, such as paved or gravel driveways, parking areas or any structures which, in general, prevent infiltration of water into the soil.
- (24) "Infiltration" means the downward movement or seepage of water from the surface to the subsoil and/or ground-water. The infiltration rate is expressed in terms of inches per hour.

- (25) "Infiltration facility" means a structure or area which allows storm-water runoff to gradually seep into the ground (e.g. French drains, seepage pits, infiltration basins, dry wells, or perforated pipes).
- (26) "Landscaping" means moving, seeding, sodding and other planned activity which is not classified as an earth change.
- (27) "Maintenance agreement" means a binding agreement between the landowner and the City of Traverse City which sets forth the location and design of best management practices as well as the terms and requirements for storm-water control facility maintenance recorded with the County Register of Deeds.
- (28) "Non-erosive velocity" means a rate of flow of storm-water runoff, measured in feet per second, which does not erode soils. Non-erosive velocities vary for individual sites, taking into account topography, soil type and runoff rates.
- (29) "Normal maintenance" means landscaping, repairs, road leveling, minor excavation or filling at a developed site, or other activities determined by the City Engineer to be exempt from permit requirements, provided that such activities do not violate standards set forth in this chapter.
- (30) "Off-site facility" means a storm-water management or erosion control facility which is located partially or completely off of the development site.
- (31) "Outfall" means the point where water flows out from a conduit, drain or stream.
- (32) "Outlet" means a stream or facility receiving the flow from a basin, drain or other storm-water management facility.
- (33) "Owner" means the last recorded titleholder of any lot or parcel of land or the person whose name is last listed upon the tax roll as the owner of a certain lot or parcel of land.
- (34) "Peak rate of discharge" or "peak flow" means the maximum calculated rate of storm-water flow at a given point in a channel, watercourse or conduit resulting from a predetermined frequency storm or flood, measured in cubic feet per second (cfs).
- (35) "Permit" means a storm-water runoff control permit.
- (36) "Person" means any individual, firm, partnership, association, public or private corporation, company, organization or legal entity of any kind.
- (37) "Pollution" means the man-made or man-induced alteration of the chemical, physical, biological or radiological integrity of water.
- (38) "Receiving body of water" means any lake, pond, stream, wetland or ground-water into which storm-water runoff is directed.
- (39) "Regional detention basin" means a basin to detain water flow from a number of development sites or a small watershed.
- (40) "Retention basin" means a wet or dry storm-water holding area, either natural or man-made, which does not have an outlet to adjoining watercourses or wetlands other than an emergency spillway.
- (41) "Runoff" means storm-water runoff.
- (42) "Sediment" means mineral or organic solid particulate matter that has been removed from its site of origin by soil erosion; suspension in water; and/or wind or water transport.
- (43) "Site" means any tract, lot or parcel of land or combination of tracts, lots or parcels of land proposed for development.
- (44) "Stop-work order" means a notice issued by the City Engineer requiring a person to cease grading or development activities.

- (45) "Storage facility" means a basin, structure or area, either natural or man-made, which is capable of holding storm water for the purpose of reducing the rate of discharge from the site.
- (46) "Storm drain" means a conduit, pipe, natural channel or man-made structure which serves to transport storm-water runoff.
- (47) "Storm frequency" means the average period of time during which a storm of a given duration and intensity can be expected to be equaled or exceeded.
- (48) "Storm sewer" means a sewer that carries storm-water, surface-water, street runoff and other runoff waters, unpolluted drainage or ground-water, but excludes domestic waste water and industrial waste water, and is also called a "storm drain."
- (49) "Storm-water" means the excess water running off from the surface of a drainage area during and immediately after a period of rain. It is that portion of the rainfall and resulting surface flow that is in excess of that which can be absorbed through the infiltration capacity of the surface of the basin.
- (50) "Storm-water control facilities and measures" means any facility, structure, channel, area or vegetative cover or measure which serves to control storm-water runoff in accordance with the purposes and standards of City regulations.
- (51) "Storm-water runoff" means waters from rains falling within a tributary drainage basin, flowing over the surface of the ground or collected in channels, watercourses or conduits, measured in depth of inches.
- (52) "Storm-water runoff control plan" means drawings and written information for a proposed land use or earth change which describe the way in which storm-water runoff will be controlled during and after completion of construction.
- (53) "Storm-water runoff control permit" means a signed written approval issued under this chapter authorizing the applicant to engage in specified earth changes.
- (54) "Stream" means a river, stream or creek which may or may not be serving as a drain which has definite banks, a bed and visible evidence of a continued flow or continued occurrence of water.
- (55) "Stream bank" means the usual boundaries, not the flood boundaries, of a stream channel.
- (56) "Swale" means a low-lying grassed area with gradual slopes which transports storm-water either on-site or off-site.
- (57) "Vegetative cover" means grasses, shrubs, trees and other vegetation which hold and stabilize soils.
- (58) "Water quality standards" means minimum standards established by the State of Michigan for water quality protection.
- (59) "Watercourse" means any natural or man-made waterway, drainage-way, drain, river, stream, diversion, ditch, gully, swale or ravine having banks, a bed and a definite direction or course, either continuously or intermittently flowing.
- (60) "Watershed" means a land area, also known as a drainage area, which collects precipitation and contributes runoff to a receiving body of water or point along a watercourse.
- (61) "Wetland" means land characterized by the presence of water at a frequency and duration sufficient to support, and under normal circumstances does support, wetland vegetation or aquatic life, and is commonly referred to as a bog, swamp or marsh. A wetland will contain a predominance, not just an occurrence, of wetland vegetation, aquatic life or

hydric soil.

(Ord. 323. Passed 12-16-91. Ord. 634. Passed 4-19-04.)

**1068.04 STORM-WATER RUNOFF CONTROL PERMITS.**

- (a) Regulated Land Uses and Earth Changes. Earth changes and other construction and activity requiring a ground-water protection/storm-water runoff control permit from the City Engineer include the following:
- (1) Earth changes proposed for any single-family or two-family residential site with one or more of the following characteristics:
    - A. Sites with a slope greater than ten percent (ten feet horizontal to one foot vertical).
    - B. Sites with heavy clay soils (commonly termed "hardpan clay"), and soils classified in hydrologic Group D in the Grand Traverse County Soil Survey.
  - (2) Earth changes for sites located within 100 feet of a protected wetland, stream or other body of water.
  - (3) Earth changes for other sites identified by the City as having a high potential for environmental degradation and/or flooding as a result of soil erosion, storm-water runoff or hazardous waste runoff, on-site or off-site.
  - (4) Earth changes for all multiple-family, commercial or industrial sites, including recreational and public facilities.
  - (5) All new land uses at the site of which 100 kilograms (twenty-five gallons or 220 pounds) or more of hazardous substances are generated or used per month or accumulated at one time.
  - (6) All proposed connections, direct or indirect, to the City's storm drain system.
  - (7) Landscaping and grounds maintenance as may be outlined by the City Engineer are exempt from permit requirements provided that such activities do not violate standards in this chapter.
- (b) Application Submittal.
- (1) All applications for storm-water runoff control permits shall include three copies of the proposed ground-water protection and storm-water runoff control plan, unless more copies are requested by the City Engineer. Copies of the permit application form shall be made available by the City Engineer.
  - (2) Permit applications shall be submitted to the City Engineer.
  - (3) Application for a permit shall be made prior to the start of any earth change or activity requiring a permit, including construction of access roads, driveways, tree and shrub removal or grading. Permit approval shall be given prior to the initiation of any work activity. Any unauthorized work shall be considered a violation of this chapter regardless of any later actions taken toward compliance. Soil test borings, cutting of vegetation for land surveys, percolation tests and normal maintenance shall not be considered a start of work under this chapter.
  - (4) Proposed ground-water protection and storm-water runoff control plan facilities shall be included as part of the final site plan requirements per Chapter 1252 of the Planning and Zoning Code.
  - (5) The application review period begins upon receipt of a completed application with all required drawings.

(c) Sequential Applications.

- (1) On projects which are so large or complex that a plan encompassing all phases of the project cannot reasonably be prepared prior to initial ground breaking, application for a permit on successive major incremental earth change activities may be allowed. Requests for sequential applications shall be approved by the City Engineer prior to submittal of a permit application.
- (2) Approval of sequential applications shall take place in two phases. First, the overall conceptual plan for the entire development shall be submitted for review and approval. Second, detailed plans for sections of the total project may be submitted for review and approval.
- (3) All permits processed and issued for phases of a project shall be clearly defined as to the nature and extent of work covered. Each phase of the project must be reviewed and permitted prior to construction.

(d) Permit Approval or Disapproval.

- (1) If the City Engineer determines that the proposed ground-water protection and storm-water runoff control plan complies with the standards in this chapter, a permit shall be issued specifying the work approved. If the proposed plan does not comply with the standards in this chapter, the permit request shall be modified or denied.
- (2) Upon request, the City Engineer shall furnish the applicant or other interested person with a statement, in writing, of the reasons for permit approval or denial.
- (3) A decision on a permit application will normally be made within seven to fourteen days of the time that a completed application and ground-water protection and storm-water runoff control plan have been received. The City Engineer shall determine whether the application and control plan submitted with the application provide sufficient information for review purposes. Review of permits may take longer if special engineering reviews are necessary or the development is of a large scale, thereby requiring extra time.

(e) Permit Expiration or Revocation.

- (1) Permits shall terminate automatically if construction has not commenced within one year of the date of issuance. The permit holder may request a one-year extension if there are valid reasons to support such an extension.
- (2) Any permit issued by the City Engineer under this chapter may be revoked or suspended after notice for any of the following causes:
  - A. A violation of a condition of the permit.
  - B. A misrepresentation made when obtaining a permit or failure to fully disclose relevant facts in the application or ground-water protection and storm-water runoff control plan. A change in a condition that requires a temporary or permanent change in the activity.

(f) Penalties for Initiating Earth Change Activities Without a Permit. Any person initiating a land use or earth change activity under this chapter without a valid permit shall be considered in violation of this chapter and subject to fines and other penalties as provided in this chapter.

(g) Permits and Approvals of Other Governmental Agencies. Approvals under this chapter shall not relieve a property owner of the need to obtain other permits or approvals from Federal, State, county and local agencies.

- (h) Soil Erosion and Sedimentation Control Act. The City Engineer or his or her authorized representative shall be the local enforcing agency responsible for the administration and enforcement of Soil Erosion and Sedimentation Control (Part 91), 1994 PA 451, as amended, and all rules promulgated thereunder. All such rules are hereby incorporated by reference.
- (i) Permit Fees. Charges for ground-water protection/storm-water runoff control permits shall be determined, from time to time, by resolution of the City Commission.  
(Ord. 342. Passed 3-15-93. Ord. 633. Passed 4-19-04.)

**1068.05 GROUND-WATER PROTECTION AND STORM-WATER RUNOFF CONTROL PLAN.**

- (a) Generally. A ground-water protection and storm-water runoff control plan shall be prepared for any land use or earth change subject to permit requirements. The plan for a given site shall be designed to effectively reduce problems associated with soil erosion, ground-water contamination due to hazardous substances and polluting materials, and to control the quality and quantity of storm-water runoff during and after the completion of construction.
  - (1) Any project and related improvements shall incorporate in its design measures to protect the natural environment, including lakes, ponds, streams, wetlands, floodplains, ground-water and steep slopes.
  - (2) Storm-water management practices and drainage facilities shall be designed to maintain the natural retention and storage capacity of any wetland, water body or watercourse, and shall not increase unwanted flooding potential, on-site or off-site.
  - (3) Sites at which hazardous substances and polluting materials are stored, used or generated shall be designed to prevent spills and discharges to the air, surface of the ground, ground-water, lakes, streams, rivers or wetlands.
  - (4) State and Federal agency requirements for storage, spill prevention, record-keeping, emergency response, transport and disposal of hazardous substances and polluting materials shall be met. No discharges to ground-water, including direct and indirect discharges, shall be allowed without required permits and approvals.
  - (5) The location and extent of any known contaminated soils and/or ground water on the site shall be shown on the site plan and shall be considered in the overall protection and control proposal to adequately protect the public health and the environment.
- (b) One-and Two-Family Residential Site Control Plan. Unless waived by the City Engineer, a residential site plan will need to show the following:
  - (1) The location of the site, including description, lot dimensions and ordinance-required setbacks.
  - (2) Site characteristics, including utility, building and drive locations, slopes and soil type.
  - (3) Proposed earth change activity and ground-water protection and runoff control measures proposed.
  - (4) If there are severe development limitations in regard to the existing site characteristics, the City Engineer may require that a residential development site plan be prepared by a registered professional engineer or architect licensed to

practice in the State of Michigan.

(c) Multiple-Family, Commercial and Industrial Site Control Plans.

- (1) A multiple-family/commercial/industrial site plan shall be prepared by a registered engineer or architect licensed to practice in the State of Michigan.
- (2) In addition to other required information, the submitted site plans shall show the following information:
  - A. A drawing or drawings at a scale sufficient to show all of the required information as may be determined by the City Engineer, including a legal description and site location sketch; predominant land features; and contour intervals and/or sufficient elevations or slope description.
  - B. A soils survey or written description of the soil types of the exposed land area contemplated for the earth change, and the location of the physical limits of each proposed earth change.
  - C. The location of all lakes, streams and protected wetlands partially or completely contained within the boundaries of the site.
  - D. A description and the location of all existing and proposed on-site ground-water protection and storm-water management facilities and measures, including existing public storm drain facilities and proposed method of connection.
  - E. A description and the location of all proposed temporary and permanent soil erosion control facilities and measures, including existing public storm drain facilities and proposed method of connection.
  - F. Storm-water runoff calculations.
  - G. For large sites, a program for the continued maintenance of all ground-water protection and storm-water runoff control facilities and measures, including the designation of the person or agency responsible for the maintenance and financial arrangements. A maintenance agreement shall become a part of any sales or exchange agreement for the land on which permanent soil erosion and storm-water runoff control facilities and measures are required.
  - H. Other information which the City Engineer requires to review the impact of the proposed earth change in relationship to the standards and requirements of this chapter.
- (3) In addition to the information required to be shown on site plans listed previously, the following additional provisions shall apply to all land uses and facilities, including private and public facilities, which use, store or generate substances or polluting materials in quantities greater than twenty-five gallons or 220 pounds.
  - A. Listing of types and quantities of hazardous substances and polluting materials which will be used or stored on-site at the facility in quantities greater than twenty-five gallons or 220 pounds.
  - B. Completion of the "Hazardous Substances Reporting Form for Site Plan Review."
  - C. Location of existing and proposed service facilities and structures, above and below ground, including:
    1. Areas to be used for the storage, use, loading/unloading, recycling or disposal of hazardous substances and polluting materials,

- including interior and exterior areas.
- 2. Underground storage tank locations.
- 3. Location of floor drains, exterior drains, water wells, dry wells, catch basins, retention/detention areas, sumps and other facilities designed to collect, store or transport storm water or waste water.

D. Delineation of areas on the site which are known or suspected to be contaminated, together with a report on the status of site cleanup.

(Ord. 323. Passed 12-16-91.)

**1068.06 GENERAL STANDARDS FOR APPROVAL OF GROUND-WATER PROTECTION AND STORM-WATER CONTROL PLANS.**

- (a) The City Engineer shall approve or disapprove storm-water runoff control permit applications and plans in accordance with written guidelines which shall be on file in the Traverse City Engineering Department.
- (b) All site plans subject to review under the requirement of this chapter shall be designed, constructed and maintained to aid in the protection against the detrimental effects of storm-water quality, incorporating therein best management practices (BMP's), which may include, but are not limited to, detention basins, retention ponds, infiltration basins, wet basins, drainage wells, grass swales, grass swales with check dams, filter strips, catch basins and other storm-water control facilities.
- (c) All storm-water control plans shall be designed, constructed and maintained to prevent detrimental off-site flooding of downstream properties and of the City storm-water drainage system.
- (d) The amount of storm water permitted to discharge from a site to the City's existing storm-sewer system shall be as determined by the City Engineer.
- (e) Measures required for ground-water protection and storm-water runoff control shall take into consideration natural features, proximity of the site to lakes, streams and protected wetlands, extent of impervious surfaces, potential for soil erosion and flooding and the size of the site.
- (f) Storm-water conveyance, storage facilities and infiltration facilities shall be designed to provide for non-erosive velocities of storm-water runoff. Alterations to natural drainage patterns shall not create downstream flooding or sedimentation.
- (g) Sites at which hazardous substances and polluting materials are stored, used or generated shall be designed to prevent spills and discharges to the air, surface of the ground, ground-water, lakes, streams, rivers or wetlands.
- (h) In lieu of complete on-site storm-water facilities and measures, the use of off-site storm-water facilities and measures may be proposed, together with on-site soil erosion, ground-water protection control and storm-water quality control.
- (i) General standards specified in this section shall be used in reviewing proposed ground-water protection and storm-water runoff control plans for storm-water facilities and measures.

(Ord. 323. Passed 12-16-91.)

**1068.07 MAINTENANCE OF FACILITIES.**

- (a) All ground-water protection and storm-water runoff control facilities and measures shall be maintained in accordance with applicable permit conditions.

- (b) The person(s) or organization(s) responsible for maintenance shall be designated in the ground-water protection and storm-water runoff control plan or the permit application submitted to the City Engineer. Options include:
  - (1) The owner of the property.
  - (2) A property owners association or other nonprofit organization, on the condition that provisions for financing necessary maintenance are included in deed restrictions or other contractual agreements.
- (c) Maintenance agreements shall specify responsibilities for financing maintenance and emergency repairs, including, but not limited to, the procedures specified in Sections 1068.12 and 1068.13.

(Ord. 323. Passed 12-16-91.)

**1068.08 STORM-WATER MANAGEMENT EASEMENTS.**

- (a) Storm-water management easements shall be provided by the property owner, if necessary, for access for facility inspections and maintenance, or for preservation of storm-water runoff conveyance, infiltration and detention areas and facilities, including flood routes, for a major storm event. The purpose of the easement shall be specified in the maintenance agreement signed by the property owner.
- (b) Storm-water management easements are required for all areas used for off-site storm-water control, unless a waiver is granted by the City Engineer.
- (c) Easements shall be recorded with the County Register of Deeds prior to the issuance of a permit by the City Engineer.

(Ord. 323. Passed 12-16-91.)

**1068.09 COMPLIANCE ASSURANCES.**

- (a) Performance Guarantees.
  - (1) Applicants proposing construction projects identified by the City Engineer as having high potential for storm-water related problems may be required to post a cash escrow, letter of credit or other acceptable form of performance security in an amount determined by the City Engineer to assure proper completion of the work as may be approved.
  - (2) Letters of credit, if used as a performance guarantee, shall extend for a minimum of one year with the option of renewal. Letters of credit will be returned to the applicant when the site is certified by the developer or engineer for the project that the site is completely in accordance with the approved site plan requirements as set forth by the City Engineer.
- (b) Construction Certification by Registered Professional.
  - (1) For any sites that require a professional site plan, a certification statement and plan shall be submitted after ground-water and storm-water runoff control facilities have been installed to affirm that construction has been completed in accordance with the approved ground-water protection and storm-water runoff control plan. This certification statement and plan shall be prepared by a registered engineer, or architect licensed to practice in the State of Michigan.
  - (2) If there are changes during the course of construction, the City Engineer may require final "as-built" drawings for final approval of the site work.
- (c) Certificate of Compliance. Upon receipt and approval of the certification letter, the City

Engineer shall issue a certificate of compliance to the property owner. (Ord. 323. Passed 12-16-91.)

**1068.10 INSPECTIONS.**

- (a) Authorized representatives of the City Engineer may enter at reasonable times upon any property to conduct on-site inspections. Such inspections may take place before, during and after any earth change or other activity for which a permit has been issued.
- (b) The permit holder shall notify the office of the City Engineer at least forty-eight hours before starting any earth change or activity for which a permit was issued.
- (c) If upon inspection existing site conditions are found not to be as stated in the permit or approved ground-water protection and storm-water runoff control plan, the permit will be invalidated and a stop-work order may be issued. No earth-disrupting work shall be undertaken or continued until revised plans have been submitted and a valid permit issued.
- (d) Requests for revisions must be submitted to and approved by the City Engineer in writing before being put into effect, unless approved by the City Engineer on the site. If this is done, a revised site plan shall be submitted for review and approval.

(Ord. 323. Passed 12-16-91.)

**1068.11 ENFORCEMENT.**

- (a) Notices of Violations: Administrative Adjustment. Whenever the City Engineer finds that any person or property owner has engaged in conduct which violates the requirements of the storm-water runoff control permit or of this chapter, the City Engineer shall serve or cause to be served upon such person or owner a written notice, either personally or by certified mail, stating the nature of the alleged violation. Within ten days of the date of receipt of the notice, said person or owner shall respond personally or in writing to the City Engineer, advising the City Engineer of his or her position with respect to the allegations. Thereafter, the City Engineer and said person or owner shall meet and confer to discuss the allegations and, where necessary, to establish a plan for the satisfactory correction thereof.
- (b) Hearings. Where a violation is not corrected by timely compliance by means of an administrative adjustment, the City Engineer may suspend or revoke the permit.. A written notice shall be served on the property owner by personal service or by certified mail, specifying the time and place of a hearing to be held by the City Engineer regarding the violation, the reasons why the enforcement action is to be taken and the proposed enforcement action, and directing the property owner to show reasons why the proposed enforcement action should not be taken. The notice of the hearing shall be served not less than ten days before the hearing. Service may be made on any agent, officer or authorized representative of the property owner. The City Engineer shall hold a hearing, consider evidence and then enter appropriate orders with respect to the alleged improper activities of the property owner. Appeals of such orders may be taken by the property owner to the Circuit Court by filing an action within twenty-one days after the order being appealed. The Circuit Court shall review such orders on the record to determine if they are supported by material, competent and substantial evidence. If the Court finds such support, the orders shall be affirmed.
- (c) Judicial Proceedings. The City may commence an action to enforce this chapter and any

order in the Circuit Court.  
(Ord. 323. Passed 12-16-91. Ord. 523. Passed 2-19-01.)

**1068.12 STOP-WORK ORDERS AND EMERGENCY ACTIONS.**

- (a) If necessary to assure compliance with permit requirements, standards and other provisions of this chapter, the City Engineer may issue a stop-work order for the purpose of preventing or minimizing ground-water contamination, storm-water runoff or other conditions posing imminent and substantial danger to public health, safety, welfare or natural resources.
- (b) If necessary to protect public safety or natural resources, including lakes, streams, protected wetlands and other receiving bodies of water, the City Engineer may initiate emergency action to abate imminent and substantial danger and risk, subject to the following:
  - (1) Storm-water control measures or facilities may be constructed or maintained by the City at the property owner's expense if the necessary provisions for the correction of a violation are not successfully implemented within ten calendar days after the notice of violation is mailed.
  - (2) All expenses incurred by the City to construct and maintain measures and facilities to bring the site into compliance, including actual attorney fees, shall be reimbursed by the property owner. The City shall have a lien for the expenses incurred. The lien shall have priority over all liens and encumbrances filed or recorded after the date of such expenditure. Except for single-family or multiple-family residential properties, the lien for such expenses shall be collected and treated in the same manner as provided for property tax liens.
- (c) Except as otherwise provided through maintenance agreements, the property owner may be held responsible for reimbursing the City for all costs incurred, including actual attorney fees and administrative costs, as a result of emergency action provided, that a finding is made that the property owner violated provisions of this chapter, a permit of this chapter or an approved maintenance agreement.
- (d) Violations of permit requirements will initially be brought to the attention of the individual in charge of on-site construction activities. Should efforts toward immediate compliance be unsuccessful, a stop-work order may be issued. Said order shall describe the specific alleged violation and the steps deemed necessary to bring the project back into compliance.
- (e) The stop-work order, when issued, shall require all specified earth change activities to be stopped.
- (f) If the City Engineer determines that ground-water contamination and/or sedimentation of the waters of this State has or will reasonably occur from a parcel of land in violation of this chapter, then the City Engineer, at his or her determination, may seek to enforce this chapter by notifying the person who owns the land by mail with return receipt requested. The notice shall contain a description of specific control measures which, if implemented by the property owner, would bring the owner into compliance.
- (g) The persons who own or occupy land subject to this chapter shall implement and maintain ground-water protection and storm-water runoff control measures in conformance with this chapter within ten days after the notice of violation has been given as specified in subsection (f) hereof.

(Ord. 323. Passed 12-16-91.)

**1068.13 GENERAL REQUIREMENTS; VIOLATIONS.**

- (a) Duty. A person shall not authorize or conduct an earth change or land use which requires a storm-water runoff control permit without first applying for and receiving such a permit. A person shall not authorize or conduct an earth change or activity requiring a permit under this chapter except in conformity with a properly issued permit.
- (b) Guideline Violation. A violation of any guideline, regulation or standard adopted or authorized by this chapter or a violation of any order, notice or permit authorized by this chapter shall be deemed to be a violation of this chapter and shall be subject to the same penalty and remedies as would a violation of this chapter.

(Ord. 323. Passed 12-16-91.)

**1068.99 PENALTY.**

*(EDITOR'S NOTE: See Section 202.99 for general Code penalty if no specific penalty is provided.)*

- (a) Persons who own or occupy land that is not in compliance with this chapter and who, after notice, refuse to implement and maintain ground-water protection and storm-water runoff control measures and facilities in conformance with these regulations, shall each be subject to a fine of not more than five hundred dollars (\$500.00) or ninety days in jail, or both, plus the cost of prosecution.
- (b) Each act of violation and every day upon which any violation shall occur or continues to occur shall constitute a separate offense.
- (c) In addition to the penalties provided in this section, any person found to have violated any of the provisions of this chapter shall be liable to the City for any expense, loss, damage and actual attorney fees occasioned by such violation.

(Ord. 323. Passed 12-16-91.)

# CHAPTER 1070

## Video Service Provider Right-of-Way Management

1070.01	Purposes.	1070.08	Insurance.
1070.02	Consistent Interpretation.	1070.09	Performance Bond or Letter of Credit.
1070.03	Definitions.	1070.10	Removal.
1070.04	Applicability to Permittees.	1070.11	Other Items.
1070.05	Contacts, Maps and Plans.	1070.12	Repealer.
1070.06	Use of Public Right-of-Way.		
1070.07	Indemnification.		

### **1070.01 PURPOSES.**

- (a) Under the Uniform Video Services Local Franchise Act, Video Service Providers may obtain a franchise to provide Video Services in the City using a standardized, uniform form of franchise agreement established by the Michigan Public Service Commission (MPSC). This form includes the right to use the Public Right-of-Way to provide such service but does not contain right-of-way management and related provisions.
- (b) Telecommunications providers who obtain such a standardized, uniform form of franchise agreement will usually have a City permit issued pursuant to the Metro Act allowing them to construct and maintain their telecommunications facilities in the Public Right-of-Way. Such Metro Act permits set forth the terms and conditions for such right-of-way usage. Standard forms for such permits were agreed to in a collaborative process between municipalities and providers that was initiated by the MPSC, and such standard forms have since been approved by the legislature and the MPSC.
- (c) Because telecommunications providers typically provide Video Services over combined video and telecommunications facilities, such Metro Act Permits generally provide adequate public right-of-way protections for the City and the public when such providers are providing Video Services.
- (d) Other Video Service Providers, in particular new providers or existing cable companies, may not have a Metro Act Permit issued by the City.
- (e) The Uniform Video Services Local Franchise Act and the standardized, uniform franchise agreement require Video Service Providers to comply with all valid and enforceable local regulations regarding the use and occupation of the Public Right-of-Way in the delivery of Video Services. This includes the police powers of the franchising entity, and makes such right-of-way usage subject to the laws of the State of Michigan and the police powers of the franchising entity.
- (f) The Uniform Video Services Local Franchise Act and the standardized, uniform franchise agreement state that franchising entities shall provide Video Service Providers with open, comparable, nondiscriminatory and competitively neutral access to the Public Right-of-Way, and may not discriminate against a Video Service Provider for the authorization or placement of a Video Service or communications network in the Public Right-of-Way.
- (g) The Michigan Constitution reserves reasonable control of their highways, streets, alleys and public places to local units of government.
- (h) The purpose of this ordinance is to promote and protect the public health, safety and welfare and exercise reasonable control over the Public Right-of-Way by regulating the

use and occupation of such rights-of-way by Video Service Providers who have a standardized, uniform franchise but who lack a Metro Act Permit from the City. This ordinance does so by setting forth terms and conditions for such usage and occupation of the public's rights of way from the forms of Metro Act permit approved by the MPSC and approved by the legislature in Section 6(1) of the Metro Act, thus providing open, comparable, nondiscriminatory, and competitively neutral access to the Public Right-of-Way and not discriminating against a Video Service Provider for the authorization or placement of a Video Service or communications network in Public Right-of-Way.

(Ord. 795. Passed 6-2-08.)

### **1070.02 CONSISTENT INTERPRETATION.**

This ordinance shall be interpreted and applied so as to be consistent with the Metro Act and corresponding provisions of the forms of Metro Act permit approved by the MPSC, including applicable MPSC, Metro Authority and court decisions and determinations relating to same.

(Ord. 795. Passed 6-2-08.)

### **1070.03 DEFINITIONS.**

The following definitions apply to this ordinance, including 1070.01 and 1070.02 above.

- (1) "Act" means the Uniform Video Services Local Franchise Act, being Act 480 of the Public Acts of 2006, MCL 484.3301 and following, as amended from time to time.
- (2) "City" or "The City" means the City of Traverse City.
- (3) "Claims" shall have the meaning set forth in Section 7.1.
- (4) "Facilities" means the lines, equipment and other facilities of a Permittee which use or occupy the Public Right-of-Way in the delivery of Video Services in the City.
- (5) "Franchise Agreement" means the franchise agreement entered into or possessed by a Video Service Provider with the City as required by Section 3(1) of the Act, if it is the standardized, uniform form of franchise agreement established by the MPSC.
- (6) "Manager" means the City Manager or his or her designee.
- (7) "Metro Act" means the Metropolitan Extension Telecommunications Rights-of-Way Oversight Act, being Act No. 48 of the Public Acts of 2002, MCL 484.3101 and following.
- (8) "Metro Act Permit" means a permit issued to use the Public Right-of-Way issued by the City under Chapter 1050 after a provider's application for same.
- (9) "Metro Authority" shall have the same meaning as "Authority" in the Metro Act.
- (10) "MPSC" means the Michigan Public Service Commission, and shall have the same meaning as the term "Commission" in the Act and the Metro Act.
- (11) "Permittee" means a Video Service Provider with a currently valid Franchise Agreement but without a currently valid Metro Act Permit.
  - i. Upon applying to the City for and then obtaining a Metro Act Permit from the City, a Video Service Provider is not a Permittee and is no longer required to comply with this ordinance. A Video Service Provider is also not a Permittee and is not required to comply with this ordinance if it and the City enter into a voluntary franchise agreement as described in 1070.11(b).
- (12) "Person" means an individual, corporation, association, partnership, governmental entity, or any other legal entity.
- (13) "Public Right-of-Way" shall have the same meaning as in the Act.

(14) “Street Construction” and “Street Resurfacing” shall have the meanings set forth in 1070.09(h).

(15) “Video Service” shall have the same meaning as in the Act.

(16) “Video Service Provider” shall have the same meaning as in the Act.

(Ord. 795. Passed 6-2-08.)

#### **1070.04 APPLICABILITY TO PERMITTEES.**

Compliance, Insurance Exceptions. All Permittees shall comply with this ordinance, except that a Permittee need not comply with the insurance provisions of 1070.08(a) through 1070.08(f) below if it is maintaining the insurance required by Section II.J (pertaining to incumbent video providers continuing certain insurance provided under their preceding franchise) of its Franchise Agreement to certain insurance.

(Ord. 795. Passed 6-2-08.)

#### **1070.05 CONTACTS, MAPS AND PLANS.**

(a) Permittee Contacts. Permittee shall provide the Manager with the names, addresses and the like for engineering and construction related information for Permittee and its Facilities as follows:

(1) The address, e-mail address, phone number and contact person (title or name) at Permittee’s local office (in or near the City).

(2) If Permittee’s engineering drawings, as-built plans and related records for the Facilities will not be located at the preceding local office, the location address, phone number and contact person (title or department) for them.

(3) The name, title, address, e-mail address and telephone numbers of Permittee’s engineering contact person(s) with responsibility for the design, plans and construction of the Facilities.

(4) The address, phone number and contact person (title or department) at Permittee’s home office/regional office with responsibility for engineering and construction related aspects of the Facilities.

(5) Permittee shall at all times provide Manager with the phone number at which a live representative of Permittee (not voice mail) can be reached 24 hours a day, seven (7) days a week, in the event of a public emergency.

(6) Permittee shall notify the City in writing pursuant to the notice provisions of the Franchise Agreement of any changes in the preceding information.

(b) Route Maps. Within ninety (90) days after the substantial completion of construction of new Facilities in the City, Permittee shall submit route maps showing the location of the Facilities to the City, in the same manner and subject to the same provisions as apply to telecommunications providers under Section 6(7) and 6(8) of the Metro Act, MCL 484.3106(7) and (8).

(c) As-Built Records. Permittee, without expense to the City, shall, upon forty-eight (48) hours’ notice, give the City access to all "as-built" maps, records, plans and specifications showing the Facilities or portions thereof in the Public Right-of-Way unless there exists an emergency situation requiring earlier view. Upon request by the City, Permittee shall inform the City as soon as reasonably possible of any changes from previously supplied maps, records, or plans and shall markup maps provided by the City so as to show the location of the Facilities.

(Ord. 795. Passed 6-2-08.)

**1070.06 USE OF PUBLIC RIGHT-OF-WAY.**

[RESERVED]

- (a) Overlashing. Permittee shall not allow the wires or any other facilities of a third party to be overlashed to Permittee's Facilities without the City's prior written consent. The City's right to withhold written consent is subject to the authority of the MPSC under Section 361 of the Michigan Telecommunications Act, MCL § 484.2361.
- (b) No Burden on Public Right-of-Way. Permittee, its contractors, subcontractors, and the Facilities shall not unduly burden or interfere with the present or future use of any of the Public Right-of-Way. Permittee's aerial cables and wires shall be suspended so as to not endanger or injure persons or property in or about the Public Right-of-Way. If the City reasonably determines that any portion of the Facilities constitutes an undue burden or interference, due to changed circumstances, Permittee, at its sole expense, shall modify the Facilities or take such other actions as the City may determine is in the public interest to remove or alleviate the burden, and Permittee shall do so within a reasonable time period. The City shall attempt to require all occupants of a pole or conduit whose facilities are a burden to remove or alleviate the burden concurrently.
- (c) No Priority. This ordinance does not establish any priority of use of the Public Right-of-Way by Permittee over any present or future permittees or parties having agreements with the City or franchises for such use. In the event of any dispute as to the priority of use of the Public Right-of-Way, the first priority shall be to the public generally, the second priority to the City, the third priority to the State of Michigan and its political subdivisions in the performance of their various functions, and thereafter as between other permit, agreement or franchise holders, as determined (except as otherwise provided by law) by the City in the exercise of its powers, including the police power and other powers reserved to and conferred on it by the State of Michigan.
- (d) Restoration of Property. Permittee, its contractors and subcontractors shall immediately (subject to seasonal work restrictions) restore, at Permittee's sole expense, in a manner approved by the City, any portion of the Public Right-of-Way that is in any way disturbed, damaged, or injured by the construction, installation, operation, maintenance or removal of the Facilities to a reasonably equivalent (or, at Permittee's option, better) condition as that which existed prior to the disturbance. In the event that Permittee, its contractors or subcontractors fail to make such repair within a reasonable time, the City may make the repair and Permittee shall pay the costs the City incurred for such repair.
- (e) Marking. Permittee shall mark its Facilities installed after the effective date of this ordinance as follows: Aerial portions of the Facilities shall be marked with a marker on Permittee's lines on alternate poles which shall state Permittee's name and provide a toll-free number to call for assistance. Direct buried underground portions of the Facilities shall have:
  - (1) a conducting wire placed in the ground at least several inches above Permittee's cable (if such cable is nonconductive); and
  - (2) at least several inches above that, a continuous colored tape with a statement to the effect that there is buried cable beneath; and

- (3) stakes or other appropriate above ground markers with Permittee's name and a toll-free number indicating that there is buried cable below.

Bored underground portions of the Facilities shall have a conducting wire at the same depth as the cable and shall not be required to provide the continuous colored tape. Portions of the Facilities located in conduit, including conduit of others used by Permittee, shall be marked at its entrance into and exit from each manhole and handhole with Permittee's name and a toll-free telephone number.

- (f) Tree Trimming. Permittee may trim trees upon and overhanging the Public Right-of-Way so as to prevent the branches of such trees from coming into contact with the Facilities, consistent with any standards adopted by the City. Permittee shall dispose of all trimmed materials. Permittee shall minimize the trimming of trees to that essential to maintain the integrity of the Facilities. Except in emergencies, all trimming of trees in the Public Right-of-Way shall have the advance approval of Manager.
- (g) Installation and Maintenance. The construction and installation of the Facilities shall be performed pursuant to plans approved by the City. The open cut of any Public Right-of-Way shall be coordinated with the Manager. Permittee shall install and maintain the Facilities in a reasonably safe condition. If the existing poles in the Public Right-of-Way are overburdened or unavailable for Permittee's use, or the facilities of all users of the poles are required to go underground then Permittee shall, at its expense, place such portion of its Facilities underground, unless the City approves an alternate location. Permittee may perform maintenance on the Facilities without prior approval of the City, provided that Permittee shall obtain any and all permits required by the City in the event that any maintenance will disturb or block vehicular traffic or are otherwise required by the City.
- (h) Pavement Cut Coordination. Permittee shall coordinate its construction and all other work in the Public Right-of-Way with the City's program for street construction and rebuilding (collectively "Street Construction") and its program for street repaving and resurfacing (except seal coating and patching) (collectively, "Street Resurfacing"). The goals of such coordination shall be to encourage Permittee to conduct all work in the Public Right-of-Way in conjunction with or immediately prior to any Street Construction or Street Resurfacing planned by the City.
- (i) Compliance with Laws. Permittee shall comply with all valid and enforceable federal and state statutes and regulations; and all valid and enforceable local regulations regarding the use and occupation of the Public Right-of-Way, including the police powers of the City; regarding the construction, installation, and maintenance of its Facilities, now in force or which hereafter may be promulgated. Before any installation is commenced, Permittee shall secure all necessary permits, licenses and approvals from the City or other governmental entity as may be required by law, including, without limitation, all utility line permits and highway permits. The City shall not unreasonably delay or deny issuance of any such permits, licenses or approvals. Permittee shall comply in all respects with applicable codes and industry standards, including but not limited to the National Electrical Safety Code (latest edition adopted by MPSC) and the National Electric Code (latest edition). Permittee shall comply with all zoning and land use ordinances and historic preservation ordinances as may exist or may hereafter be amended. This section

does not constitute a waiver of Permittee's right to challenge laws, statutes, ordinances, rules or regulations now in force or established in the future.

- (j) Street Vacation. If the City vacates or consents to the vacation of Public Right-of-Way within its jurisdiction, and such vacation necessitates the removal and relocation of Permittee's Facilities in the vacated Public Right-of-Way, Permittee shall consent to the vacation and remove its Facilities at its sole cost and expense when ordered to do so by the City or a court of competent jurisdiction. Permittee shall relocate its Facilities to such alternate route as the City and Permittee mutually agree, applying reasonable engineering standards.
  - (k) Relocation. If the City requests Permittee to relocate, protect, support, disconnect, or remove its Facilities because of street or utility work, or other public projects, Permittee shall relocate, protect, support, disconnect, or remove its Facilities, at its sole cost and expense, including where necessary to such alternate route as the City and Permittee mutually agree, applying reasonable engineering standards. The work shall be completed within a reasonable time period.
  - (l) Public Emergency. The City shall have the right to sever, disrupt, dig-up or otherwise destroy Facilities of Permittee if such action is necessary because of a public emergency. If reasonable to do so under the circumstances, the City shall attempt to provide notice to Permittee. Public emergency shall be any condition which poses an immediate threat to life, health, or property caused by any natural or man-made disaster, including, but not limited to, storms, floods, fire, accidents, explosions, water main breaks, hazardous material spills, etc. Permittee shall be responsible for repair at its sole cost and expense of any of its Facilities damaged pursuant to any such action taken by the City.
  - (m) Miss Dig. If eligible to join, Permittee shall subscribe to and be a member of "MISS DIG," the association of utilities formed pursuant to Act 53 of the Public Acts of 1974, as amended, MCL § 460.701 et seq., and shall conduct its business in conformance with the statutory provisions and regulations promulgated thereunder.
  - (n) Underground Relocation. If Permittee has its Facilities on poles of Traverse City Light & Power, Cherryland Electric, Consumers Energy, Detroit Edison or another electric or telecommunications provider, or their successors and assigns, and such electric or telecommunications provider relocates its system underground, then permittee shall relocate its Facilities underground in the same location at Permittee's sole cost and expenses.
  - (o) Identification. All personnel of Permittee and its contractors or subcontractors who have as part of their normal duties contact with the general public shall wear on their clothing a clearly visible identification card bearing Permittee's name, their name and photograph. Permittee shall account for all identification cards at all times. Every service vehicle of Permittee and its contractors or subcontractors shall be clearly identified as such to the public, such as by a magnetic sign with Permittee's name and telephone number.
- (Ord. 795. Passed 6-2-08.)

**1070.07 INDEMNIFICATION.**

- (a) Indemnity. Permittee shall defend, indemnify, protect, and hold harmless the City, its officers, agents, employees, elected and appointed officials, departments, boards, and commissions from any and all claims, losses, liabilities, causes of action, demands, judgments, decrees, proceedings, and expenses of any nature (collectively "Claims")

(including, without limitation, attorneys' fees) arising out of or resulting from the acts or omissions of Permittee, its officers, agents, employees, contractors, successors, or assigns, but only to the extent such acts or omissions are related to Permittee's use of or installation of Facilities in the Public Right-of-Way and only to the extent of the fault or responsibility of Permittee, its officers, agents, employees, contractors, successors and assigns.

- (b) Notice, Cooperation. The City shall notify Permittee promptly in writing of any such Claims and the method and means proposed by the City for defending or satisfying any such Claims. The City shall cooperate with Permittee in every reasonable way to facilitate the defense of any such Claims. The City shall consult with Permittee respecting the defense and satisfaction of such Claims, including the selection and direction of legal counsel.
- (c) Settlement. The City shall not settle any Claim subject to indemnification under the preceding two sections without the advance written consent of Permittee, which consent shall not be unreasonably withheld. Permittee shall have the right to defend or settle, at its own expense, any Claim against The City for which Permittee is responsible hereunder.

(Ord. 795. Passed 6-2-08.)

#### 1070.08 INSURANCE.

- (a) Coverage Required. Prior to beginning any construction in or installation of Permittee's Facilities in the Public Right-of-Way, Permittee shall obtain insurance as set forth below and file certificates evidencing same with the City. Such insurance shall be maintained in full force and effect until the end of the term of the Franchise Agreement. In the alternative, Permittee may satisfy this requirement through a program of self-insurance, acceptable to the City, by providing reasonable evidence of its financial resources to the City. The City's acceptance of such self-insurance shall not be unreasonably withheld.
  - (1) Commercial general liability insurance, including Completed Operations Liability, Independent Contractors Liability, Contractual Liability coverage, railroad protective coverage and coverage for property damage from perils of explosion, collapse or damage to underground utilities, commonly known as XCU coverage, in an amount not less than Five Million Dollars (\$5,000,000).
  - (2) Liability insurance for sudden and accidental environmental contamination with minimum limits of Five Hundred Thousand Dollars (\$500,000) and providing coverage for claims discovered within three (3) years after the term of the policy. Pursuant to the 2006 MPSC decision in Case U-14720, Permittee need not comply with the preceding sentence until such time after the effective date of this ordinance that it decides to place any new or existing Facilities underground within the Public Right-of-Way in the City.
  - (3) Automobile liability insurance in an amount not less than One Million Dollars (\$1,000,000).
  - (4) Workers' compensation and employer's liability insurance with statutory limits, and any applicable Federal insurance of a similar nature.
  - (5) The coverage amounts set forth above may be met by a combination of underlying (primary) and umbrella policies so long as in combination the limits equal or exceed those stated. If more than one insurance policy is purchased to

provide the coverage amounts set forth above, then all policies providing coverage limits excess to the primary policy shall provide drop down coverage to the first dollar of coverage and other contractual obligations of the primary policy, should the primary policy carrier not be able to perform any of its contractual obligations or not be collectible for any of its coverages for any reason during the term of the Franchise Agreement, or (when longer) for as long as coverage could have been available pursuant to the terms and conditions of the primary policy.

- (b) Additional Insured. The City shall be named as an additional insured on all policies (other than worker's compensation and employer's liability). All insurance policies shall provide that they shall not be canceled, modified or not renewed unless the insurance carrier provides thirty (30) days prior written notice to the City. Permittee shall annually provide the City with a certificate of insurance evidencing such coverage. All insurance policies (other than environmental contamination, workers' compensation and employer's liability insurance) shall be written on an occurrence basis and not on a claims made basis.
- (c) Qualified Insurers. All insurance shall be issued by insurance carriers licensed to do business by the State of Michigan or by surplus line carriers on the Michigan Insurance Commission approved list of companies qualified to do business in Michigan. All insurance and surplus line carriers shall be rated A+ or better by A.M. Best Company.
- (d) Deductibles. If the insurance policies required by this ordinance are written with retainages or deductibles in excess of \$50,000, they shall be approved by Manager in advance in writing. Permittee shall indemnify and save harmless the City from and against the payment of any deductible and from the payment of any premium on any insurance policy required to be furnished hereunder.\
- (e) Contractors. Permittee's contractors and subcontractors working in the Public Right-of-Way shall carry in full force and effect commercial general liability, environmental contamination liability, automobile liability and workers' compensation and employer liability insurance which complies with all terms of this Section 1070.08. In the alternative, Permittee, at its expense, may provide such coverages for any or all its contractors or subcontractors (such as by adding them to Permittee's policies).
- (f) Insurance Primary. Permittee's insurance coverage shall be primary insurance with respect to the City, its officers, agents, employees, elected and appointed officials, departments, boards, and commissions (collectively "them"). Any insurance or self-insurance maintained by any of them shall be in excess of Permittee's insurance and shall not contribute to it (where "insurance or self-insurance maintained by any of them" includes any contract or agreement providing any type of indemnification or defense obligation provided to, or for the benefit of them, from any source, and includes any self-insurance program or policy, or self-insured retention or deductible by, for or on behalf of them).

(Ord. 795. Passed 6-2-08.)

#### **1070.09 PERFORMANCE BOND OR LETTER OF CREDIT.**

Municipal Requirement. The City may require Permittee to post a bond (or letter of credit), in the amount provided in Section 15(3) of the Metro Act, as amended [MCL § 484.3115(3)].

(Ord. 795. Passed 6-2-08.)

**1070.10 REMOVAL.**

- (a) Removal; Underground. As soon as practicable after the term of the Franchise Agreement expires, Permittee or its successors and assigns shall remove any underground cable or other portions of Permittee's Facilities from the Public Right-of-Way which has been installed in such a manner that it can be removed without trenching or other opening of the Public Right-of-Way. Permittee shall not remove any underground cable or other portions of the Facilities which requires trenching or other opening of the Public Right-of-Way except with the prior written approval of Manager. All removals shall be at Permittee's sole cost and expense. For purposes of this subsection, "cable" means any wire, coaxial cable, fiber optic cable, feed wire or pull wire.
- (b) Removal; Above Ground. As soon as practicable after the expiration of the term of a Franchise Agreement, Permittee, or its successor or assigns at its sole cost and expense, shall, unless waived in writing by Manager, remove from the Public Right-of-Way all above ground elements of its Facilities, including but not limited to poles, pedestal-mounted terminal boxes, and lines attached to or suspended from poles.
- (c) Schedule. The schedule and timing of removal shall be subject to approval by Manager. Unless extended by Manager, removal shall be completed not later than twelve (12) months following the expiration of the term of the Franchise Agreement. Portions of Permittee's Facilities in the Public Right-of-Way that are not removed within such time period shall be deemed abandoned and, at the option of the City exercised by written notice to Permittee at the address provided for in the Franchise Agreement, title to the portions described in such notice shall vest in the City.

(Ord. 795. Passed 6-2-08.)

**1070.11 OTHER ITEMS.**

- (a) Duties. Permittees shall faithfully perform all duties required by this ordinance.
- (b) Different Terms. The Act allows local units of government and Video Service Providers to enter into voluntary franchise agreements that include terms and conditions which are different from those required under the Act or which are different from those in the standardized, uniform form of franchise agreement established by the MPSC. The Metro Act allows municipalities and providers to mutually agree to Metro Act Permit terms differing from those in the standard forms of Metro Act permit approved by the MPSC. Current or prospective Permittees who desire terms different from those in this ordinance, as applied to them, should request such a voluntary franchise agreement or a mutually agreed to Metro Act Permit from the City.
- (c) Interpretation and Severability. The provisions of this ordinance shall be liberally construed to protect and preserve the peace, health, safety and welfare of the public, and should any provision or section of this ordinance be held unconstitutional, invalid, overbroad or otherwise unenforceable, such determination/holding shall not be construed as affecting the validity of any of the remaining conditions of this ordinance. If any provision in this ordinance is found to be partially overbroad, unenforceable, or invalid, Permittee and the City may nevertheless enforce such provision to the extent permitted under applicable law.
- (d) Violations. A Permittee who violates any provision of this ordinance is responsible for a municipal civil infraction, and shall be subject to sanctions as established in Ordinance

202.99(c). Nothing in this Section shall be construed to limit the remedies available to the City in the event of a violation by a Permittee of this ordinance.

- (e) Authorized Officials. The Manager, which includes his or her designee, is hereby designated as the authorized official of the City to issue municipal civil infraction citations or municipal civil infraction violation notices on a form approved by the City Attorney for violations of this ordinance, as provided by the City's ordinances.

(Ord. 795. Passed 6-2-08.)

**1070.12 REPEALER.**

All ordinances, resolutions or rules, parts of ordinances, resolutions or rules inconsistent with the provisions hereof are hereby repealed.

(Ord. 795. Passed 6-2-08.)