

CODE OF ORDINANCES

City of

DOWAGIAC, MICHIGAN

Looseleaf Supplement

This Supplement contains all ordinances deemed advisable to be included at this time through:

Ordinance No. 19-5, enacted September 9, 2019.

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CODE OF ORDINANCES

City of

DOWAGIAC, MICHIGAN

Looseleaf Supplement

This Supplement contains all ordinances deemed advisable to be included at this time through:

Ordinance No. 14-2, enacted January 27, 2014.

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CODE OF ORDINANCES

CITY OF

DOWAGIAC, MICHIGAN

Published in 1995 by Order of the City Council

Adopted: December 4, 1995
Effective: December 5, 1995



OFFICIALS
of the
CITY OF
DOWAGIAC, MICHIGAN
AT THE TIME OF THIS CODIFICATION

James E. Burke
Mayor

Wayne D. Comstock
Sam H. Fowlkes
Robert E. Ickes
Rudolph T. Klobucar, Jr.
Bob B. Schuur
Donna S. Welsh
City Council

James Palenick
City Manager

Mark Westrate
City Attorney

James E. Snow
City Clerk

CURRENT OFFICIALS
OF THE
CITY OF
DOWAGIAC, MICHIGAN

Donald Lyons
Mayor

Charles Burling
James Dodd
Lori Hunt
Leon Laylin
Junior Oliver
Bob Schuur
City Council

Kevin Anderson
City Manager

James E. Snow
City Clerk

Robin Coffey
City Treasurer

PREFACE

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

Source materials used in the preparation of the Code were the 1972 Code, as supplemented through June 1993, and ordinances subsequently adopted by the city council. The source of each section is included in the history note appearing in parentheses at the end thereof. The absence of such a note indicates that the section is new and was adopted for the first time with the adoption of the Code. By use of the comparative tables appearing in the back of this Code, the reader can locate any section of the 1972 Code, as supplemented, and any subsequent ordinance included herein.

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

Chapter and Section Numbering System

The chapter and section numbering system used in this Code is the same system used in many state and local government codes. Each section number consists of two parts separated by a dash. The figure before the dash refers to the chapter number, and the figure after the dash refers to the position of the section within the chapter. Thus, the second section of chapter 1 is numbered 1-2, and the first section of chapter 6 is 6-1. Under this system, each section is identified with its chapter, and at the same time new sections can be inserted in their proper place by using the decimal system for amendments. For example, if new material consisting of one section that would logically come between sections 6-1 and 6-2 is desired to be added, such new section would be numbered 6-1.5. New articles and new divisions may be included in the same way or, in the case of articles, may be placed at the end of the chapter embracing the subject, and, in the case of divisions, may be placed at the end of the article embracing the subject. The next successive number shall be assigned to the new article or division. New chapters may be included by using one of the reserved chapter numbers. Care should be taken that the alphabetical arrangement of chapters is maintained when including new chapters.

Page Numbering System

The page numbering system used in this Code is a prefix system. The letters to the left of the colon are an abbreviation which represents a certain portion of the volume. The number to the right of the colon represents the number of the page in that portion. In the case of a chapter of the Code, the number to the left of the colon indicates the number of the chapter. In the case of an appendix to the Code, the letter immediately to the left of the colon indicates the letter of the appendix. The following are typical parts of codes of ordinances, which

may or may not appear in this Code at this time, and their corresponding prefixes:

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The index has been prepared with the greatest of care. Each particular item has been placed under several headings, some of which are couched in lay phraseology, others in legal terminology, and still others in language generally used by local government officials and employees. There are numerous cross references within the index itself which stand as guideposts to direct the user to the particular item in which the user is interested.

Looseleaf Supplements

A special feature of this publication is the looseleaf system of binding and supplemental servicing of the publication. With this system, the publication will be kept up-to-date. Subsequent amendatory legislation will be properly edited, and the affected page or pages will be reprinted. These new pages will be distributed to holders of copies of the publication, with instructions for the manner of inserting the new pages and deleting the obsolete pages.

Keeping this publication up-to-date at all times will depend largely upon the holder of the publication. As revised pages are received, it will then become the responsibility of the holder to have the amendments inserted according to the attached instructions. It is strongly recommended by the publisher that all such amendments be inserted immediately upon receipt to avoid misplacing them and, in addition, that all deleted pages be saved and filed for historical reference purposes.

Acknowledgments

This publication was under the direct supervision of Allen Z. Paul, Supervising Editor, and Robert McNaughton, Editor, of the Municipal Code Corporation, Tallahassee, Florida. Credit is gratefully given to the other members of the publisher's staff for their sincere interest and able assistance throughout the project.

The publisher is most grateful to James E. Snow, City Clerk, for his cooperation and assistance during the progress of the work on this publication. It is hoped that his efforts and those of the publisher have resulted in a Code of Ordinances which will make the active law of the city readily accessible to all citizens and which will be a valuable tool in the day-to-day administration of the city's affairs.

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ADOPTING ORDINANCE

ORDINANCE NO. 11, 1995

An Ordinance Adopting and Enacting a New Code for the City of Dowagiac, Michigan; Providing for the Repeal of Certain Ordinances Not Included Therein; Providing a Penalty for the Violation Thereof; Providing for the Manner of Amending Such Code; and Providing When Such Code and This Ordinance Shall Become Effective.

Be it Ordained by the City Council of the City of Dowagiac, Michigan:

Section 1. The Code entitled "Code of Ordinances, City of Dowagiac, Michigan," published by Municipal Code Corporation, consisting of Chapters 1 through 94, each inclusive, is adopted.

Section 2. All ordinances of a general and permanent nature enacted on or before July 10, 1995, and not included in the Code or recognized and continued in force by reference therein are repealed.

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

Section 4. Unless another penalty is expressly provided, every person convicted of a violation of any provision of the Code or any ordinance, rule or regulation adopted or issued in pursuance thereof shall be punished by a fine not to exceed \$500.00 or imprisonment not to exceed 90 days or both such fine and imprisonment. Each act of violation and each day upon which any such violation shall occur shall constitute a separate offense. The penalty provided by this section, unless another penalty is expressly provided, shall apply to the amendment of any Code section whether or not such penalty is reenacted in the amendatory ordinance. In addition to the penalty prescribed above, the city may pursue other remedies such as abatement of nuisances, injunctive relief, and revocation of licenses or permits.

Section 5. Additions or amendments to the Code, when passed in the form as to indicate the intention of the city council to make the same a part of the Code, shall be deemed to be incorporated in the Code, so that reference to the Code includes the additions and amendments.

Section 6. Ordinances adopted after July 10, 1995, that amend or refer to ordinances that have been codified in the Code shall be construed as if they amend or refer to like provisions of the Code.

Section 7. This ordinance shall become effective December 5, 1995.

Passed and adopted by the city council this 4th day of December, 1995.

/s/ _____
Mayor James E. Burke

/s/ _____
City Clerk James E. Snow

Moved: Schuur

1st reading 20 NOV 95

Seconded: Ickes

2nd reading 4 DEC 95

Yeas, Six (6)

Nays, None (0)

Certificate of Adoption

I hereby certify that the foregoing is a true copy of the ordinance passed at the regular meeting of the City Council of the City of Dowagiac, Michigan, held on the 4th day of December, 1995.

/s/ _____
James E. Snow, City Clerk

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SUPPLEMENT HISTORY TABLE

The table below allows users of this Code to quickly and accurately determine what ordinances have been considered for codification in each supplement. Ordinances that are of a general and permanent nature are codified in the Code Book and are considered "Includes." Ordinances that are not of a general and permanent nature are not codified in the Code Book and are considered "Omits."

Ord. No.	Date Adopted	Include/ Omit	Supp. No.
10-1	6-15-10	Include	14
10-2	6-15-10	Include	14
10-3	6-15-10	Include	14
10-4	7-13-10	Include	14
10-5	8-24-10	Include	14
10-6	11-23-10	Include	14
10-7	11-23-10	Include	14
10-8	11-23-10	Include	14
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11-1	5- 4-11	Omit	15
11-2	6-28-11	Include	15
11-3	7-28-11	Omit	15
11-4	7-28-11	Omit	15
11-5	7-28-11	Include	15
11-6	7-28-11	Include	15
11-7	7-28-11	Include	15
12-1	1-10-12	Include	16
12-2	6-12-12	Omit	16
12-3	7-10-12	Include	16
12-4	7-10-12	Include	16
12-5	12-10-12	Include	16
13-1	3-29-13	Include	17
13-2	8-29-13	Include	17
13-3	9-13-13	Include	17
14-1	1-27-14	Include	18
14-2	1-27-14	Include	18
14-3	4-28-14	Omit	18
14-4	10-27-14	Omit	18
14-5	7-28-14	Omit	18
15-1	5-11-15	Omit	19
15-2	6-25-15	Omit	19
15-3	7-31-15	Omit	19
16-1	2- 8-16	Omit	19
16-2	4-12-16	Include	19

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Ord. No.	Date Adopted	Include/ Omit	Supp. No.
16-3	4-12-16	Include	19
16-4	4-12-16	Include	19
16-5	7-28-16	Include	19
16-6	8-10-16	Include	19
17-1	7-10-17	Include	19
17-2	7-10-17	Include	19
17-3	8-28-17	Include	19
18-1	5-14-18	Include	19
18-2	5-14-18	Include	19
19-1	1-28-19	Include	19
19-1B	5-28-19	Include	19
19-2	5-28-19	Include	19
19-3	6-24-19	Include	19
19-4	6-24-19	Include	19
19-5	9 9-19	Include	19

CODE OF ORDINANCES

Chapter 1

GENERAL PROVISIONS

Sec. 1-1.	Designation and citation of Code.
Sec. 1-2.	Definitions and rules of construction.
Sec. 1-3.	Interpretation per state acts.
Sec. 1-4.	Application to territorial boundaries.
Sec. 1-5.	Captions.
Sec. 1-6.	References and notes.
Sec. 1-7.	Application to future legislation.
Sec. 1-8.	Rules of severability.
Sec. 1-9.	Reference to other sections.
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Sec. 1-11.	Certain provisions saved from repeal.
Sec. 1-12.	Supplementation of Code.
Sec. 1-13.	Enforcement official or agent.
Sec. 1-14.	Conflicting regulations.
Sec. 1-15.	Notice.
Sec. 1-16.	General penalty.
Sec. 1-17.	Pronunciation of city name.
Sec. 1-18.	Amendment procedure.

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

This codification of ordinances shall be known and cited as the "Code of Ordinances, City of Dowagiac, Michigan."

(Code 1972, § 1.5)

State law reference—Codification authority, MCL 117.5b, MSA 5.2084(2).

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

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

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

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

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

Council or city council. The words "council" or "city council" shall mean the council of the City of Dowagiac.

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

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

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

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

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

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

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

Officer, employee, department, board, commission or other agency. Whenever any officer, employee, department, board, commission or other agency is referred to by title only, such reference shall be construed as if followed by the words "of the City of Dowagiac, Michigan." Whenever, by the provisions of this Code, any officer, employee, department, board, commission or other agency of the city is assigned any duty or empowered to perform any act or duty, reference to such officer, employee, department, board, commission or agency shall mean and include such officer, employee, department, board, commission or agency or any deputy or authorized subordinate.

Or/and. The word "or" may be read "and" and the word "and" may be read "or" if the sense requires it.

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

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

State. The term “the state” or “this state” shall be construed to mean the State of Michigan.

Tense. Words used in the present or past tense include the future as well as the present and past. (Code 1972, §§ 1.8—1.10)

State law reference—Rules of construction, MCL 8.3 et seq., MSA 2.212 et seq.

Sec. 1-3. Interpretation per state acts.

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

Sec. 1-4. Application to territorial boundaries.

All provisions of this Code are limited in application to the territorial boundaries of the municipal corporation and any territory over which the municipal corporation shall have legal jurisdiction.

Sec. 1-5. Captions.

Headings and captions used in this Code, such as the chapter, article, division and section numbers, are employed for reference purposes only and shall not be deemed a part of the text of any section and do not limit the subject matter. (Code 1972, § 1.6)

Sec. 1-6. References and notes.

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

(b) The history notes appearing in parentheses after sections in this Code are not intended to have any legal effect but are merely intended to indicate the source of matter contained in the section.

Sec. 1-7. Application to future legislation.

All of the provisions of this chapter, not incompatible with future legislation, shall apply to

ordinances adopted that amend or supplement this Code, unless otherwise specifically provided.

Sec. 1-8. Rules of severability.

Each chapter, article, division or section or, whenever divisible, subsection of this Code is hereby declared to be severable, and the invalidity of any chapter, article, division, section or divisible subsection shall not be construed to affect the validity of any other chapter, article, division, section or subsection of this Code. (Code 1972, § 1.14)

Sec. 1-9. Reference to other sections.

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

Sec. 1-10. Reference to officers.

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

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

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

- (1) Any offense committed or penalty incurred or any right established prior to the effective date of the Code;
- (2) Any ordinance levying annual taxes;
- (3) Any ordinance appropriating money;
- (4) Any ordinance authorizing the issuance of bonds or borrowing of money;
- (5) Any ordinance establishing utility rates;
- (6) Any ordinance establishing franchises or granting special rights to certain persons;

- (7) Any ordinance authorizing public improvements;
- (8) Any ordinance authorizing the purchase or sale of real or personal property;
- (9) Any ordinance annexing or detaching territory;
- (10) Any ordinance granting or accepting easements, plats or dedication of land to public use;
- (11) Any ordinance dedicating, naming, establishing, locating, relocating, opening, paving, widening, vacating, etc., any street or public way in the city;
- (12) Any ordinance establishing or prescribing grades in the city;
- (13) Any ordinance prescribing the number, classification or compensation of any city officers or employees;
- (14) Any ordinance prescribing traffic and parking restrictions pertaining to specific streets;
- (15) Any ordinance pertaining to zoning;
- (16) Any other ordinance or part thereof which is not a general and permanent nature;

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

Sec. 1-12. Supplementation of Code.

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

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

(c) When preparing a supplement to this Code, the codifier (meaning the person, agency or organization authorized to prepare the supplement) may make formal, nonsubstantive changes in ordinances and parts of ordinances included in the supplement, insofar as it is necessary to do so to embody them into a unified code. For example, the codifier may:

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

Sec. 1-13. Enforcement official or agent.

If sections of this Code do not directly name a city official who is responsible for carrying out enforcement provisions, the city manager may direct any one of its employees, officers or another agency to perform the stated enforcement provisions.

Sec. 1-14. Conflicting regulations.

Where there is a difference or conflict between other provisions of this Code or those contained in lawfully adopted county, state, city, federal or other governmental agency rules, regulations, ordinances or laws, the most liberal interpretation of the most restrictive or the one imposing the most desirable standard shall prevail.

Sec. 1-15. Notice.

Notice regarding sidewalk repairs, sewer or water connections, dangerous structures, abating nuisances or any other act, the expense of which if performed by the city may be assessed against the premises under the provisions of this Code, shall be served:

- (1) By delivering the notice to the owner personally or by leaving the notice at his residence, office or place of business with some person of suitable age and discretion;
- (2) By mailing the notice by certified or registered mail to such owner at his last known address; or
- (3) If the owner is unknown, by posting the notice in some conspicuous place on the premises at least five days before the act or action concerning which the notice is given is to take place. No person shall interfere with, obstruct, mutilate, conceal or tear down any official notice or placard posted by any city officer, unless permission is given by the officer.

(Code 1972, § 1.11)

Sec. 1-16. General penalty.

(a) Unless another penalty is expressly provided by this Code for any particular provision or section, every person convicted of a violation of any provision of this Code or any rule, regulation or order adopted or issued in pursuance thereof shall be punished by a fine of not more than \$500.00 and costs of prosecution or by imprisonment for not more than 90 days, or by both such fine, costs and imprisonment in the discretion of the court. Each act of violation and every day upon which any such violation shall occur shall constitute a separate offense.

(b) The penalty provided by this section, unless another penalty is expressly provided, shall apply to the amendment of any section of this Code, whether or not such penalty is reenacted in the amendatory ordinance.

(c) The penalty shall be in addition to the abatement of the violating condition, any injunctive relief or revocation of any permit or license. (Code 1972, § 1.13)

Cross reference—Police regulations and civil infractions, ch. 58.

State law reference—Limitation on penalties, MCL 117.4i, MSA 5.2082.

Sec. 1-17. Pronunciation of city name.

The official pronunciation of the name of this city shall be and hereafter is “Doe-Wah-Jack,” with emphasis on the second syllable. The official name shall remain Dowagiac.

(Code 1972, § 1.12)

Sec. 1-18. Amendment procedure.

(a) *By ordinance.* This Code shall be amended by ordinance. The title of each amendatory ordinance, adapted to the particular circumstances and purposes of the amendment, shall be substantially as follows:

- (1) To amend any section:

An ordinance to amend section _____ (or sections _____ and _____) of the Code of Ordinances, City of Dowagiac, Michigan.

- (2) To insert a new section, division, article or chapter:

An ordinance to amend the Code of Ordinances, City of Dowagiac, Michigan, by adding a new section _____ (new sections, new divisions, new articles or a new chapter, as the case may be) which new section (sections, chapter) shall be designated as section _____ (sections _____ and _____) of chapter _____ (or proper designation if a chapter is added) of such Code.

(3) To repeal a section or chapter:

An ordinance to repeal section _____
(sections _____ and _____) chap-
ter _____, of the Code of Ordinances,
City of Dowagiac, Michigan.

(b) *Publication and distribution.* Amendments to the Code shall be published as required by the Charter by posting unless otherwise ordered by the council. No less than 25 copies of each amendment shall be published in looseleaf form suitable for insertion in the looseleaf copies of the Code. The city clerk shall distribute such copies to the officers of the city having copies of the Code assigned to them. Each officer assigned a copy of the Code shall be responsible for maintaining the same and for the proper insertion of amendatory pages as received.

(Code 1972, §§ 1.2, 1.3)

Chapter 2

ADMINISTRATION*

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Article II. City Council

Sec. 2-26. Meetings.
Secs. 2-27—2-45. Reserved.

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Sec. 2-48. Vacancies of administrative officers.
Sec. 2-49. Departments.
Sec. 2-50. Administrative manual.
Sec. 2-51. Payment of monies.
Sec. 2-52. Approval of legal documents.
Sec. 2-53. Bonds.
Sec. 2-54. Director of public services.
Sec. 2-55. Marriage ceremony fee.
Secs. 2-56—2-75. Reserved.

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Sec. 2-86. Purpose of division.
Sec. 2-87. Policy of division.
Sec. 2-88. Procedures.
Secs. 2-89—2-110. Reserved.

Article V. Boards and Commissions

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Sec. 2-111. Continuing existence; applicable provisions.
Secs. 2-112—2-120. Reserved.

Division 2. Airport Board

Sec. 2-121. Definitions.
Sec. 2-122. Composition; appointments and terms.

***Cross references**—Businesses, ch. 22; cable communications, ch. 26; community development, ch. 30; emergency preparedness, ch. 34; environment, ch. 38; fire prevention and protection, ch. 42; parks and recreation, ch. 54; solid waste, ch. 62; special assessments, ch. 66; streets, sidewalks and other public places, ch. 70; subdivisions, ch. 74; traffic and vehicles, ch. 78; utilities, ch. 82; zoning, ch. 94.

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- Sec. 2-123. Organization.
- Sec. 2-124. Duties; powers; responsibilities.
- Sec. 2-125. Rules.
- Sec. 2-126. Expenditures.
- Sec. 2-127. Accounts.
- Sec. 2-128. Budget.
- Sec. 2-129. Deposits.
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- Secs. 2-132—2-140. Reserved.

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- Sec. 2-141. Creation; general powers and duties.
- Sec. 2-142. Membership; composition; terms; compensation; removal; vacancy.
- Sec. 2-143. Conflict of interest.
- Sec. 2-144. Reports.
- Sec. 2-145. Meetings; rules; minutes; quorum; officers; employees.
- Sec. 2-146. Compensation and selection of officers and employees; deeds, contracts, leases, purchases by commission.
- Sec. 2-147. Records.
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Division 4. Human Relations Commission

- Sec. 2-161. Continuance.
- Sec. 2-162. Composition; appointment of members.
- Sec. 2-163. Terms of members.
- Sec. 2-164. Election of officers.
- Sec. 2-165. Service as standing committee; minutes of meetings.
- Sec. 2-166. Delegation of powers.
- Sec. 2-167. Powers.
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Division 5. Local Officers' Compensation Commission

- Sec. 2-181. Creation; composition; terms; appointments; vacancies; eligibility requirement.
- Sec. 2-182. Determination of salaries; expense allowances or reimbursements.
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- Sec. 2-187. Referendum.
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Division 6. Housing Assistance Commissions

- Sec. 2-190. Establishment; Dowagiac Housing Financial Assistance Commission.
- Sec. 2-191. Composition; appointment of members.
- Sec. 2-192. Organization.
- Sec. 2-193. Duties; powers; responsibilities.
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- Secs. 2-211—2-220. Reserved.

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- Sec. 2-221. Collection; generally.
- Sec. 2-222. Due date.
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- Secs. 2-225—2-235. Reserved.

Division 3. Purchasing, Contracting and Selling Procedures

- Sec. 2-236. Definitions.
- Sec. 2-237. Required authorization.
- Sec. 2-238. Formal competitive bid process.
- Sec. 2-239. Informal competitive quote process.
- Sec. 2-240. Expenditures of \$15,000.00 or more.
- Sec. 2-241. Additional purchases or change orders after competitive bidding
- Sec. 2-242. Emergency purchases.
- Sec. 2-243. Blanket order purchases.
- Sec. 2-244. Disqualification.
- Sec. 2-245. Purchases through state bid contracts.
- Sec. 2-246. Sale of personal property.
- Sec. 2-247. Emergency contracts.
- Secs. 2-248—2-260. Reserved.

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- Sec. 2-261. Division of city into wards.
- Sec. 2-262. First ward.
- Sec. 2-263. Second ward.
- Sec. 2-264. Third ward.
- Sec. 2-265. Precincts; polling places.

ARTICLE I. IN GENERAL

Secs. 2-1—2-25. Reserved.

ARTICLE II. CITY COUNCIL

Sec. 2-26. Meetings.

Pursuant to section 5.4 of the Dowagiac City Charter, regular meetings of the Dowagiac city council shall be held on the second and fourth Mondays of each month at 7:00 p.m. in the city council chambers.
(Ord. No. 98-1, § 1, 1-12-98)

Secs. 2-27—2-45. Reserved.

ARTICLE III. ADMINISTRATIVE POLICY AND PROCEDURE

Sec. 2-46. City manager—Duties generally; vacancy; compensation.

The city manager shall see that all laws, ordinances, rules, and regulations adopted by the city council and provisions of this Code are properly enforced. He shall attend all meetings of the city council, regular and special. During the temporary absence or incapacity of the city manager, he may designate an officer or other employee of the city to perform his duties. The city council shall designate some qualified person to perform the duties of the city manager during a vacancy in the office. The city council shall set the compensation and conditions of employment of the city manager.
(Code 1972, § 1.121)

Sec. 2-47. Same—Administrative officers responsible to; employment and discharge of personnel.

(a) All administrative officers are responsible to the city manager for the effective administration of their respective departments and offices, and all activities assigned to them. He shall employ and discharge all employees subject to the requirements of this chapter.

(b) Any administrative office created by ordinance shall be filled by appointment of the city manager, with the approval of the council. In the absence of an appointment, the city manager shall fill the duties of such position. The city manager may discharge any administrative officer over whom he has the power of appointment.

(c) The city manager may set aside any action taken by any administrative officer and may supersede him in the functions of his office.
(Code 1972, § 1.122)

Sec. 2-48. Vacancies of administrative officers.

In case of vacancy in office or during the absence of any administrative officer, the city manager may designate an interim acting head or perform personally the functions of the office, until such vacancy is filled in accordance with the Charter.
(Code 1972, § 1.123)

Sec. 2-49. Departments.

All departments of the city shall comply with the following:

- (1) *Inauguration of beneficial practices.* All department heads shall keep informed as to the latest practices in their particular field and shall inaugurate, with the approval of the city manager in the case of departments responsible to him or in the case of other departments, with the approval of the officer or body to whom the department head is responsible, such new practices as appear to be of benefit to the service and to the public.
- (2) *Reports.* Reports of the activities of each department shall be made to the city manager as he shall direct.
- (3) *Public records.* Each department head shall be held responsible for the preservation of all public records under his jurisdiction and shall provide a system of filing and indexing the same. No public records, reports, correspondence or other data relative to the business of any department

shall be destroyed or removed permanently from the files without the knowledge and approval of the city council.

(Code 1972, § 1.124)

Sec. 2-50. Administrative manual.

The city manager is authorized to adopt such administrative regulations in addition to, but not inconsistent with, the Charter and this Code, as he shall deem necessary and proper to provide for the adequate functioning of all departments. Such regulations shall comprise the administrative manual.

(Code 1972, § 1.125)

Sec. 2-51. Payment of monies.

Pursuant to section 8.9 of the city Charter, monies belonging to the city shall be paid out by checks drawn by the city clerk and countersigned by the city treasurer.

(Code 1972, § 1.126)

Sec. 2-52. Approval of legal documents.

The mayor shall sign, the city clerk shall attest to, the city manager shall approve as to substance, and the city attorney shall approve as to form all contracts and agreements requiring the assent of the city, unless otherwise provided for by law, the city Charter, ordinances or the provisions of this Code.

(Code 1972, § 1.127)

Sec. 2-53. Bonds.

Surety bonds, in accordance with section 4.5 of the city Charter, shall be filed by the following officers of the city in not less than the amounts indicated:

(1) Treasurer	\$50,000.00
(2) Manager	25,000.00
(3) Deputy treasurer	25,000.00
(4) Clerk	10,000.00
(5) Deputy clerk	10,000.00

All other officers of the city and employees, except the mayor and councilmembers, shall file a blanket bond of \$2,500.00.

(Code 1972, § 1.128)

Sec. 2-54. Director of public services.

The city director of public services shall be the city engineer. Wherever in this Code reference is made to the "city engineer," such term shall be deemed to mean the city director of public services.

(Code 1972, § 1.129)

Sec. 2-55. Marriage ceremony fee.

(a) Pursuant to the provisions of Act No. 211 of the Public Acts of Michigan of 1972 (MCL 551.7 et seq., MSA 25.7 et seq.), the city hereby determines that the sum of \$25.00 shall be charged for the solemnization of a marriage by the mayor of this city, which sum shall be paid to the city treasurer and deposited in the general fund of the city at the end of the month in which the money is received.

(b) The comptroller of the city shall establish the procedure for the handling and accounting for such monies.

(Code 1972, § 1.130)

Secs. 2-56—2-75. Reserved.

ARTICLE IV. OFFICERS AND EMPLOYEES

DIVISION 1. GENERALLY

Secs. 2-76—2-85. Reserved.

DIVISION 2. CONFLICTS OF INTEREST

Sec. 2-86. Purpose of division.

The purpose of this division is to provide procedures, pursuant to the mandates of section 14.11 of the city Charter, to ensure compliance

with section 14.11(a) of the city Charter requiring a statement by an officer or employee where dealings with the city are contemplated.
(Code 1972, § 1.500)

Sec. 2-87. Policy of division.

Section 14.11 of the city Charter provides that:
An officer or employee of the city who intends to have business dealings with the city, whereby he may derive any income or benefits other than such as are provided as remuneration for his

official duties, shall file with the city clerk a statement, under oath, setting forth the nature of such business dealings and his interest therein. The statement shall be filed with the clerk not less than ten days before the date when action may be taken by the council or any other agency of the city upon the matter involved. The statement shall be spread upon the proceedings of the council for the meeting at which it is received and published in full therewith. In each case where the type of dealings with the city are on a continuing basis, involving more than one or a sequence of transactions described in the statement, each such statement shall stand for and apply to such transactions for a period of six months, and may be renewed at the end of each six-month period for so long as such transactions continue. Each such renewal shall be spread upon the proceedings of the council and published as in the case of original statement. If the interest of any officer or employee of the city in any business dealings with the city changes at any time, he shall file a statement thereof as required by this section, which statement shall also be spread upon the proceedings of the council and published as required by this section. Approval of any such business dealings shall require a concurring vote of at least five members of the council, not including any member who is otherwise disqualified from voting by this city Charter. Any business dealings made in violation of this section shall be void.

(Code 1972, § 1.501)

Sec. 2-88. Procedures.

The following procedures shall govern and control any dealings by and between an officer or employee of the city or their immediate families (parents, spouse, brothers, sisters, and descendants) and the city:

- (1) *Notice.* The city manager shall post on bulletin boards in every department of the city where one is available, the following notice:

“NOTICE

An officer or employee of the city who intends to have business dealings with the city other than those as are provided for his

official duties shall file with the city clerk’s office a statement under oath setting forth the nature of his business dealings and his interest therein not less than ten days before the date when action is to be taken by the city council or other agency.”

Failure to file such statement shall be a misdemeanor, punishable as provided in section 1-16.

- (2) *Statement.* This statement shall be submitted in the following approximate form:

CONFLICT OF INTEREST

_____, occupying the position as _____, intends to have business dealings with the city whereby he may derive any income or benefits other than are as provided as remuneration for his official duties, as follows:

<i>Nature of Business</i>	<i>Interest in Business</i>
_____	_____
_____	_____
_____	_____

This statement shall be filed ten days before the date when action shall be taken by the city council or any other department of the city on such business. The statement may also be filed every six months and shall be renewed at the end of each six-month period for so long as the transactions continue unchanged. Any change in the relationship or business dealings requires a new notice.

- (3) *Placement of statement in council minutes; copies to councilmembers and mayor.* As soon as a statement indicating that an officer or employee is doing business with the city, as set forth in section 14.11 of the city Charter by the filing of such a statement, the clerk shall place the statement in the minutes of the city council of the next meeting or any meeting that has not been published. Copies of the statement shall also go to each councilmember and the mayor with the agenda at the next meeting.

- (4) *Calling attention to statement by councilmember.* At any time that a transaction involving a city councilmember or other employee of the city is acted upon by the council, the councilmember shall call attention to the fact that he has filed a statement with the city.
- (5) *Quorum for action on resolution.* In accordance with the Charter, it shall take five members of the council, other than the person who is disqualified, to take action on a resolution involving a conflict of interest.
- (6) *Voiding of unlawful dealing.* Any business dealing made in violation of this Charter provision shall be voidable by the city.
- (7) *Annual service of Charter provision; request for statement on conflict of interest.* The director of finance shall also annually serve a copy of section 14.11 of the city Charter on and request from each city councilmember, the city manager, department head, division head and any other officer or employee required by the city manager, a statement on conflict of interest. This statement shall request sufficient information to determine if a conflict of interest might exist and if any related party transactions have occurred. The term "related party transactions" means transactions between the city and members of the city council, the city manager, department heads, and other specified officers or employees, or their immediate families (parents, spouse, brothers, sisters, and descendants of members of the city council, the city manager, department heads and division heads).
- (8) *Statement deadline.* All conflict of interest statements shall be completed and returned to the director of finance within 30 days after the receipt of the request.
- (9) *Reporting of names of persons not meeting statement deadline.* The director of finance shall report the names of any individuals who have not completed and returned the conflict of interest statement within the 30-day period, if any, to the city council at its next regularly scheduled meeting after the expiration of the filing deadline.
- (10) *Evaluation of statements.* Upon receipt of all completed conflict of interest statements, they shall be evaluated by the director of finance, the city's legal counsel and the city's independent accountants.
- (11) *Audited financial statements; notice of printing.* If any conflict of interest or related party transactions exist that require disclosure in the city's audited financial statements, the person will be notified prior to the printing of such audited financial statements.
- (12) *Notice to council on results of evaluation of statement.* The city council shall be notified of the final results of the evaluation of the conflict of interest statements.
- (13) *Form of statement.* This statement will be submitted in the following approximate form:

CITY OF DOWAGIAC
STATEMENT OF CONFLICT
OF INTEREST

Name _____

Address _____

In order to determine what, if any, conflicts of interest or related party transactions should be disclosed in the city's audited financial statements for the year ending September _____, you are requested to complete the following information (if a question does not apply, please write in none):

1. Place of employment _____
Title _____
2. Other organizations and/or companies of which you or a member of your immediate family is a director, trustee, partner, sole proprietor, or significant shareholder (if over five percent of shares outstanding) which, to the best

of your knowledge, do business with the city:

<i>Company or organization</i>	<i>Title and/or percent of shares held if over five percent</i>
a. _____	_____
b. _____	_____
c. _____	_____
d. _____	_____

3. If you are a member of the city council complete part a. If you are a city employee, complete part b.

a. City councilmembers only:

1) Have you complied with section 14.11 of the city Charter? Yes ___ No ___ (If not, please explain the situation and why you have not complied): _____

2) Do any of the firms identified in questions 1 or 2 have any financial transactions with the city, other than the payment of taxes and utilities? If yes, please explain and describe your involvement therein: _____

b. City employees only:

1) Do you have an approved outside employment? Yes ___ No ___ If yes, please explain nature of outside employment: _____

2) Do any of the firms identified in question 2 have any financial transactions with the city, other than the payment of taxes and utilities?

Yes ___ No ___
If yes, please explain and describe your involvement therein:

3) Have you during the past 12 months received in money or in kind, as compensation, fees, remuneration of any kind, including gifts and gratuities in excess of \$25.00 from any person or company doing business with the city?

Yes ___ No ___
If yes, please explain:

<i>Company</i>	<i>Description and Amount or Value</i>
_____	_____

4) Do you agree to report to the director of finance within ten days after receipt of any money or in kind, as compensation, fees, gratuities in excess of \$25.00 from any person or company doing business with the city during the fiscal year beginning October 1, and ending September 30?

Yes ___ No ___

5) Have you had any personal financial transactions with any person or company, other than a bank or savings and loan company, which does business with the city, in which you owed them over \$100.00 for more than 30 days?

Yes ___ No ___

If yes, please explain in detail and give the original amount owed, current amount owed and the repayment terms:

CERTIFICATION

I hereby certify that the information presented herein is true and accurate, to the best of my knowledge and belief.

Signature

Date

(Code 1972, § 1.502)

Secs. 2-89—2-110. Reserved.

ARTICLE V. BOARDS AND COMMISSIONS

DIVISION 1. GENERALLY

Sec. 2-111. Continuing existence; applicable provisions.

The boards and commissions provided for in this article, as are in existence on November 7, 1972, shall be continued, and the members serving thereon shall remain in office for the duration of the term for which they were appointed. Except as otherwise provided for by law, city Charter or this Code, the following provisions shall be applicable to all boards and commissions of the city:

- (1) *Vacancy; filling.* Any vacancy occurring in the membership of any board or commission shall be filled for the remainder of the unexpired term in the manner provided for original appointment to such board or commission.
- (2) *Removal.* The appointing authority may remove any member of any board or commission for cause.
- (3) *Rules.* Each board and commission shall have the power to make rules and regulations concerning the administration of its affairs as shall not be inconsistent with laws, the city Charter and this Code.
- (4) *Compensation.* All members of boards and commissions shall serve without compen-

sation as members of such boards and commissions, unless otherwise expressly provided by the city Charter or this Code.

- (5) *Applicability of chapter 13 of city Charter.* The provisions of chapter 13 of the Charter shall be applicable to the boards and commissions therein referred to. The cemetery board, library board, park and recreation board and electrical facilities board shall be organized as provided in chapter 13 of the city Charter.

(Code 1972, § 1.141)

Secs. 2-112—2-120. Reserved.

DIVISION 2. AIRPORT BOARD

Sec. 2-121. Definitions.

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

Airport means any airport, flying field or other land owned, leased, or controlled by the city, together with all improvements, buildings and appurtenances thereon, used in connection with aviation.

Board means the board of control of such airport.

(Code 1972, § 1.145)

Cross reference—Definitions generally, § 1-2.

Sec. 2-122. Composition; appointments and terms.

The airport board, composed of five members appointed by the mayor, by and with the consent of the council is continued. Appointments and terms of office shall be in accordance with chapter 13 of the city Charter.

(Code 1972, § 1.146)

Sec. 2-123. Organization.

The airport board shall annually, during the month of May, organize and elect one of their members as president. A majority of the board shall constitute a quorum for the transaction of business. The city clerk shall be ex officio clerk of

the board, but shall have no vote therein. It shall be his duty to perform all the clerical labor required by the board, and he shall have charge of all its books, records, accounts and papers.
(Code 1972, § 1.147)

Sec. 2-124. Duties; powers; responsibilities.

The airport board, subject to the direction of the council, is hereby charged and entrusted with the following duties, powers and responsibilities: The construction, management, supervision and control of any airport as may or shall be owned or operated by the city.
(Code 1972, § 1.148)

Sec. 2-125. Rules.

The airport board shall have power to make and adopt all such bylaws, rules and regulations as they may deem necessary and expedient for the transaction of their business not inconsistent with the city Charter, this Code or the provisions of any state or federal law.
(Code 1972, § 1.149)

Sec. 2-126. Expenditures.

Whenever the expense of construction, maintenance or repair of any airport placed under the control of the airport board shall not exceed the sum of \$200.00, the work shall be done by the airport board in such a manner as they may deem proper. Whenever such expense shall exceed the sum of \$200.00, then the airport board shall submit the plans, diagrams, profiles and estimates of such construction, maintenance or repair to the council for their approval. When so approved, the board shall, subject to the approval of the council, cause such work to be done by contract, or otherwise in such manner as they may deem proper. If the expense shall exceed the sum of \$500.00, the board shall advertise for sealed proposals, and shall give such notice as the council may direct, and shall let the contract to the lowest responsible bidder who shall be deemed competent to do the work and able to give adequate security for the performance of such work, which contract and security shall be approved by the council.
(Code 1972, § 1.150)

Sec. 2-127. Accounts.

All work done under the supervision of the airport board shall be reported to the council from time to time, and no money shall be paid out of the treasury on account of any work done until the council shall have authorized the payment and ordered it paid by warrant drawn on the city treasurer. All claims or accounts against the city that in any manner relate to the works in charge of such board or that have been incurred by such board shall first be submitted to and approved by the airport board before the council shall be authorized to order such warrant drawn. It shall be the duty of the board to make an annual report to the council on the third Monday in April of each year, which report shall embrace an itemized statement of the revenues and the expenditures relating to or connected with each of the works under their control, keeping a separate account of each fund, and a statement of the condition, progress and operation of such works. They shall also make such other reports and furnish such other information to the council as that body shall by resolution or ordinance provide.
(Code 1972, § 1.151)

Sec. 2-128. Budget.

On or before the first Monday in April in each year, the airport board shall submit to the city manager a careful estimate in detail of the amount of money, which, according to the judgment of the board, will be needed for the airport fund during the ensuing year, which estimates may be increased, decreased or adopted by the city manager as in his judgment may seem justifiable.
(Code 1972, § 1.152)

Sec. 2-129. Deposits.

The airport board shall, on the first Monday of each month, pay into the city treasury, to the credit of the airport fund, all moneys received by it and belonging to any such fund, and shall file a detailed statement of such moneys, together with the receipt of the treasurer attached thereto, with the city clerk, who shall report the filing of such statement and receipt to the council.
(Code 1972, § 1.153)

Sec. 2-130. Rates and charges for space rentals and leases.

The airport board shall establish rates for space rentals and leases on the airport premises, providing for the terms of payment and a method of enforcing payment for such rentals and leases and may provide, in case of nonpayment, that any person neglecting or refusing to make such payment shall be denied the privileges and uses of the airport facilities.

(Code 1972, § 1.154)

Sec. 2-131. Employees.

The city manager, on the recommendation of the airport board, shall employ all necessary officers, agents and employees that they may deem necessary to operate, carry on and improve all the works and duties placed under their care and supervision, and subject to the approval of the council, to fix the salaries and compensation of such employees.

(Code 1972, § 1.155)

Secs. 2-132—2-140. Reserved.

DIVISION 3. HOUSING COMMISSION

Sec. 2-141. Creation; general powers and duties.

(a) Pursuant to Act No. 18 of the Public Acts of Michigan of 1933 (Ex. Sess.) (MCL 125.651 et seq., MSA 5.3011 et seq.), as amended, there is hereby created a commission, to be known as the city housing commission, which shall be referred to in this division as the "commission."

(b) The commission shall have the powers, duties and limitations set out in Act No. 18 of the Public Acts of Michigan of 1933 (Ex. Sess.) (MCL 125.651 et seq., MSA 5.3011 et seq.), as amended, and Act No. 293 of the Public Acts of Michigan of 1937 (MCL 125.601 et seq., MSA 5.3057(1) et seq.), as amended, and the supplemental powers and duties set out in this division; provided, nevertheless, that in the exercise of its powers and duties with respect to housing, the commission shall at all times strictly limit itself to the needs of those families and individuals (includ-

ing, but not by way of limitation, the elderly, the handicapped, and those displaced by urban renewal or other governmental action) who are in the lowest income group and who cannot afford to pay enough to cause private enterprise in the city metropolitan area to build an adequate supply of decent, safe and sanitary dwellings for their use. (Code 1972, § 1.161)

Sec. 2-142. Membership; composition; terms; compensation; removal; vacancy.

The commission shall consist of five members to be appointed by the mayor. The term of office of members of the commission shall be five years and shall commence on May 1. Members of the commission shall serve without compensation and may be removed from office by the city council. Any vacancy shall be filled by the mayor for the remainder of the unexpired term.

(Code 1972, § 1.162)

Sec. 2-143. Conflict of interest.

No member of the commission or any of its officers or employees shall have any interest directly or indirectly in any contract for property, materials or services to be acquired by the commission. Prior to entering into the duties of his office, each member of the commission shall certify in writing to the city clerk that he has read this section and knows the contents thereof and that he has no such interest, which certificate shall be kept on file by the city clerk.

(Code 1972, § 1.163)

Sec. 2-144. Reports.

(a) In addition to the annual audit, the commission shall make an annual written report of its activities to the city council, and shall promptly make such other reports as the city manager or city council may from time to time require. All of the reports shall be presented to the city council at the next meeting after their submission.

(b) The annual report shall cover the period from October 1 to September 30 of each year, inclusive, and shall be filed on or before the first meeting in October of each year.

(Code 1972, § 1.164)

Sec. 2-145. Meetings; rules; minutes; quorum; officers; employees.

The commission shall meet at regular intervals, and the meetings shall be public. It shall adopt its own rules of procedure, and shall keep a record of the proceedings. Three members shall constitute a quorum for the transaction of business. A president and vice-president shall be elected by the commission. The commission may appoint a director who may also serve as secretary, and such other employees or officers as shall be necessary. The commission shall prescribe the duties of all its officers and employees. The commission may from time to time, as necessary, employ engineers, architects and consultants. The president and vice-president shall be members of the commission and shall receive no compensation. (Code 1972, § 1.165)

Sec. 2-146. Compensation and selection of officers and employees; deeds, contracts, leases, purchases by commission.

(a) The compensation of all officers and employees of the commission shall be fixed by the commission with the approval of the city manager.

(b) All deeds, contracts, leases, or purchases entered into by the commission shall be in the name of the city and shall be approved by the city council before they shall be of any force or effect; provided, however, that contracts for the purchase of necessary materials, leases with tenants and options need not be so approved.

(c) The employees of the commission shall be selected and paid by such method as the city council may prescribe by resolution. (Code 1972, § 1.166)

Sec. 2-147. Records.

(a) The commission shall keep and maintain a complete record of its deeds, contracts, leases, purchases, receipts and disbursements including, but not by way of limitation, records which permit a speedy and effective financial and performance audit and which will fully disclose the amount and the disposition by the commission of the proceeds of any loan, advance, grant, or contribu-

tion, or any supplement thereto, as well as the capital cost of any construction project for which any loan, advance, grant or contribution is made.

(b) In accordance with section 5.11(b) of the city Charter, the commission may, by resolution, determine the place of keeping of its records, files and papers, but that determination shall be subject to the approval of the city council. (Code 1972, § 1.167)

Secs. 2-148—2-160. Reserved.

**DIVISION 4. HUMAN RELATIONS
COMMISSION**

Sec. 2-161. Continuance.

The human relations commission is hereby continued. (Code 1972, § 1.171)

Sec. 2-162. Composition; appointment of members.

The human relations commission shall be composed of nine members of the city area, of which at least five shall be electors of the city. The members shall be appointed by the mayor, with the advice and consent of the city council. (Code 1972, § 1.172)

Sec. 2-163. Terms of members.

Terms of the human relations commissioners shall be for four years, shall commence on May 1 and shall be staggered. (Code 1972, § 1.173)

Sec. 2-164. Election of officers.

From among its members, the human relations commission shall select one member to serve as president and one member to serve as vice-president. The president and vice-president shall serve for a term of one year commencing on May 1 of each year. (Code 1972, § 1.174)

Sec. 2-165. Service as standing committee; minutes of meetings.

The human relations commission shall serve as a standing committee at the pleasure of the mayor with the advice and consent of the city council, and the minutes of its meetings shall be delivered to the clerk and transmitted to the city council.

(Code 1972, § 1.175)

Sec. 2-166. Delegation of powers.

The human relations commission may appoint and may delegate such of the powers of the commission to committees or individuals as it deems necessary to effectuate its purposes. Persons named to committees need not be commission members, but must be residents of the city area.

(Code 1972, § 1.176)

Sec. 2-167. Powers.

The powers of the human relations commission shall include the following:

- (1) Proposal of legislation.
- (2) Proposal of programs to encourage improvement in the community in human relations.
- (3) Implementation and carrying out of its program.
- (4) Identification and definition of problems that exist and arise in human relations.
- (5) Delegation to subcommittees, committees, or to individuals the right to inquire into or hear problems, reception of reports thereon, and taking action on the reports or referring them to the proper officials, groups, agencies or to the commission itself for solution.
- (6) Encouragement, through the dissemination of information, and other actions, of improvement of human relations including education, recreation, housing, job opportunities, business and professional services, law enforcement, social organizations, religion, and in all other areas where humans interact.

(Code 1972, § 1.177)

Secs. 2-168—2-180. Reserved.

DIVISION 5. LOCAL OFFICERS' COMPENSATION COMMISSION

Sec. 2-181. Creation; composition; terms; appointments; vacancies; eligibility requirement.

A local officers' compensation commission is hereby created under the authority of section 5(c) of the Home Rules Cities Act, Act No. 279 of the Public Acts of Michigan of 1909 (MCL 117.1 et seq., MSA 5.2071 et seq.), as amended, which shall determine the salaries of each local elected official as set forth in this division. The commission shall consist of five members who are registered electors of the city, appointed by the mayor and is subject to confirmation by a majority of the members elected and serving on the city council. The terms of office shall be five years, except that of the members first appointed, one each shall be appointed for terms of one, two, three, four, and five years. All first members shall be appointed within 30 days following the effective date of the ordinance from which this article is derived. Thereafter, members shall be appointed at the first regular meeting of the city council in each calendar year. Vacancies shall be filled for the remainder of an unexpired term. No member nor employee of the legislative, judicial, or executive branch of any level of government, nor a member of the immediate family of such member or employee shall be eligible to be a member of the compensation commission.

(Code 1972, § 1.181)

Sec. 2-182. Determination of salaries; expense allowances or reimbursements.

The compensation commission shall separately determine the salary of each local elected official of the city. The determination shall be the salary of such official unless the city council, by resolution, adopted by two-thirds of the members elected to and serving on the city council, rejects it as to such official. The city council shall consider and vote upon each official salary as a separate resolution and may approve such salary recommen-

dation for some officials while rejecting it for others. The determination of the commission for such official shall be effective 30 days following its filing with the city clerk, unless rejected by the city council as provided in this section. If the determination is rejected, the existing salary of such official shall prevail. The expense allowance or reimbursement paid to elected officials, in addition to salaries, shall be for expenses incurred in the course of city business and accounted for to the city.
(Code 1972, § 1.182)

Sec. 2-183. Meetings; quorum; concurrence of majority; chairperson; session days; compensation.

The compensation commission shall meet for not more than 15 session days in each odd-numbered year and shall make its determination within 45 calendar days after its first meeting. A majority of the members of the commission constitutes a quorum for conducting the business of the commission. The commission shall not take action or make a determination without a concurrence of a majority of the members appointed and serving on the commission. The commission shall elect a chairperson from among its members. As used in this section, the term "session day" means a calendar day on which the commission meets and a quorum is present. The members of the commission shall not receive compensation, but shall be entitled to actual and necessary expenses incurred in the performance of official duties.
(Code 1972, § 1.183)

Sec. 2-184. Open meetings.

The business which the compensation commission may perform shall be conducted at a public meeting of the commission held in compliance with Act No. 267 of the Public Acts of Michigan of 1976 (MCL 15.261 et seq., MSA 4.1800(11) et seq.), as amended. Public notice of the time, date, and place of the meeting of the commission shall be given in the manner required by such act.
(Code 1972, § 1.184)

Sec. 2-185. Freedom of information.

A writing prepared, owned, used, in the possession of, or retained by the compensation commis-

sion in the performance of an official function shall be made available to the public in compliance with Act No. 442 of the Public Acts of Michigan of 1976 (MCL 15.231 et seq., MSA 4.1801(1) et seq.), as amended.
(Code 1972, § 1.185)

Sec. 2-186. Implementation; changes in procedure for establishing compensation.

The city council shall implement this division by resolution. After one year following the date that the ordinance from which this division is derived becomes effective, the procedure for establishing the compensation of elected officials may be changed by Charter amendment or revision.
(Code 1972, § 1.186)

Sec. 2-187. Referendum.

Not more than 60 days after the effective date of the ordinance from which this article is derived, a petition for a referendum of this article may be filed pursuant to the procedures provided in the city Charter, or otherwise by filing a petition with the city clerk containing the signatures of at least five percent of the registered electors of the city on the effective date of the ordinance from which this article is derived. The election shall be conducted in the same manner as an election on a Charter amendment. If a petition for referendum is filed, a determination of the compensation commission shall not be effective until this article has been approved by the electors.
(Code 1972, § 1.187)

Secs. 2-188, 2-189. Reserved.

DIVISION 6. HOUSING ASSISTANCE COMMISSIONS

Sec. 2-190. Establishment; Dowagiac Housing Financial Assistance Commission.

There is hereby established a Dowagiac Housing Financial Assistance Commission.
(Ord. No. 99-5, § 1, 8-11-99)

Sec. 2-191. Composition; appointment of members.

The housing financial assistance commission shall be comprised of five members to be appointed by the Mayor with the consent of the city council. The term of office for the commission members shall be staggered, four-year terms that shall commence on May 1. Members of the commission will serve without compensation and may be removed from office by the city council.
(Ord. No. 99-5, § 1, 8-11-99)

Sec. 2-192. Organization.

The housing financial assistance commission shall annually, during the month of May, organize and elect one of their members as chairperson. A majority of the commission shall constitute a quorum for the transaction of business. The city building official, or his designee, shall be an ex-officio member of the commission, but shall not have a vote therein.
(Ord. No. 99-5, § 1, 8-11-99)

Sec. 2-193. Duties; powers; responsibilities.

The housing financial assistance commission, subject to the direction of the city council, is given responsibility for providing advice and information to help homeowners obtain appropriate financing for the purchase or renovation of homes in the City of Dowagiac. The commission will also recommend guidelines for residential development and maintenance of existing homes to the city council.
(Ord. No. 99-5, § 1, 8-11-99)

Sec. 2-194. Establishment; housing design review commission.

There is hereby established a Dowagiac Housing Design Review Commission.
(Ord. No. 99-5, § 1, 8-11-99)

Sec. 2-195. Composition; appointment of members.

The housing design review commission shall be comprised of five members to be appointed by the mayor with the consent of the city council. The term of office for the commission members shall

be staggered, four-year terms that shall commence on May 1. Members of the commission will serve without compensation and may be removed from office by the city council.
(Ord. No. 99-5, § 1, 8-11-99)

Sec. 2-196. Organization.

The housing design review commission shall annually, during the month of May, organize and elect one of their members as chairperson. A majority of the commission shall constitute a quorum for the transaction of business. The city building official, or his designee, shall be an ex-officio member of the commission, but shall not have a vote therein.
(Ord. No. 99-5, § 1, 8-11-99)

Sec. 2-197. Duties; powers; responsibilities.

The housing design review commission, subject to the direction of the city council, is given responsibility for providing design and architectural advice and information to assist homeowners in making appropriate improvements for renovation of homes in the City of Dowagiac. The commission will make recommendations regarding the administration of a cash incentive program for those property owners making improvements to their homes in accordance with city guidelines. The amount of money available for the incentive program will be determined annually by city council as part of the budget appropriations process.
(Ord. No. 99-5, § 1, 8-11-99)

Secs. 2-198—2-210. Reserved.

ARTICLE VI. FINANCE

DIVISION 1. GENERALLY

Secs. 2-211—2-220. Reserved.

DIVISION 2. TAX PAYMENT SCHEDULE

Sec. 2-221. Collection; generally.

Pursuant to section 9.10 of the city Charter, city taxes imposed upon real and personal property shall be collected in accordance with the

schedule set forth in this division, and collection charges and interest shall be added to all such taxes as specified in this division.

(Code 1972, § 1.191)

Sec. 2-222. Due date.

The city taxes, assessments and charges spread and levied on the city tax roll shall be due and payable on July 1 of each year. Such taxes shall be delinquent on September 16 of each year.

(Code 1972, § 1.192)

Sec. 2-223. Collection fee.

Taxes paid to the city treasurer at his office at any time on or before September 15 may be paid without any charge for collection, but a four percent collection fee shall be charged and collected upon all taxes remaining unpaid, on September 16. All delinquent taxes collected on or after October 1 shall have an additional one percent added to the outstanding balance due.

(Code 1972, § 1.193)

Sec. 2-224. Division provisions not to constitute abandonment of powers of treasurer under law.

No provisions of this division shall be deemed to constitute an abandonment by the city or the city treasurer of any power, right, or method of enforcement he may otherwise have under the statutes of the state, the city Charter of the city, or any other ordinance of the council.

(Code 1972, § 1.194)

Secs. 2-225—2-235. Reserved.

DIVISION 3. PURCHASING, CONTRACTING AND SELLING PROCEDURES*

Sec. 2-236. Definitions.

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

Bid bond means an insurance agreement in which a third party agrees to be liable to pay a certain amount of money in the event of specific award bidder fails to sign the contract as bid.

Bid deposit means a sum of money or certified check, deposited with and at the request of the city to guarantee that the bidder shall, if selected, sign the contract as bid. If the bidder does not sign the contract, the full deposit is forfeited.

Blanket order means an annual purchasing agreement established with a supplier to allow small purchases by the city for up to a year without going through the purchasing procedure each time a purchase is made. Individual purchases under a blanket order cannot exceed \$250.00.

Change order means a purchaser's written modification or addition to a purchase order.

Formal bid limit means the minimum expenditure of \$15,000.00 at which a formal competitive bid is required unless excluded by section 2-240.

Formal competitive bid means the offer of firm bids by individuals or firms competing for a contract, privilege or right to supply specified services or merchandise or purchase city personal property. Bids are submitted in sealed envelopes to prevent dissemination of the contents before the deadline for the submission of all bids and to ensure fair competition among bidders. Bids are required, unless excluded by section 2-240, on

*Editor's note—Ord. No. 02-2, § 1, adopted Feb. 6, 2002, repealed the former Div. 3., §§ 2-236—2-241, and enacted a new Div. 3 as set out herein. The former Div. 3 pertained to similar subject matter and derived from Code 1972, § 1.251—1 256.

major procurements expected to cost at least \$15,000.00 and on the sale of city personal property of a value estimated in excess of \$1,000.00.

Purchase order means a purchaser's written document to a supplier formally stating all terms and conditions of a proposed transaction. It is required for all purchases over \$1,000.00. (Ord. No. 02-2, § 1, 2-6-02)

Sec. 2-237. Required authorization.

In accordance with the city Charter, the city manager shall be given the authority to act as the purchasing agent of the city, unless he/she shall designate another officer or city employee to act as purchasing agent. All purchase orders issued on behalf of the city shall be approved by the purchasing agent and the department head of the requesting department, or his/her designee, before being issued. The purchasing agent shall adopt a policy establishing a procurement system. (Ord. No. 02-2, § 1, 2-6-02)

Sec. 2-238. Formal competitive bid process.

(a) All supplies, equipment or contractual services amounting in value equal to or more than the formal bid limit of \$15,000.00 shall be secured by competitive bids and written contract. Advertisement notices for sealed, competitive bids shall be published once in a newspaper that is in general circulation in the city. Such notices shall state the general description of the article or service to be purchased, where specifications can be obtained, and the time and place for the opening of bids. The purchasing agency or department may, in addition, solicit sealed bids from prospective suppliers by sending them copies of the bid forms and specifications to acquaint them with the proposed purchase.

(b) All bids shall be submitted to the city clerk. In cases of construction contracts, or purchases involving large sums of money, the city council may require that the successful bidder post a bid bond or bid deposit in the amount that it deems proper. The bids shall be opened publicly by the city clerk or designee at the time and place stated in the public notice. After examination and tabulation by the city clerk, all bids may be inspected by the competing bidders. The city council may

reject any or all bids, or the bid for one (1) or more commodities included in the proposed contract, when the public interest will be served thereby. The city council may authorize the purchase of the commodities in the open market, provided the price paid in the open market shall not exceed any bid price submitted for the same commodity. Otherwise the contract shall be awarded by the city council on the basis of the bid most advantageous to the city. The city council shall take into consideration quality offered with the bid, delivery terms, and the service reputation of the vendor in making their award of the contract.

(c) Except as exempted in section 2-240. (Ord. No. 02-2, § 1, 2-6-02)

Sec. 2-239. Informal competitive quote process.

(a) All purchases of supplies, equipment or contractual services which are estimated to be less in cost than the formal bid limit of \$15,000.00 may be made in the open market, without newspaper advertisement and without the necessity of observing the procedure prescribed in section 2-238 for the award of the contracts. The purchasing agent shall keep a record of all open market orders and such records shall also be open to public inspection.

(b) Open market purchases of \$5,000.00 to \$14,999.00 shall, whenever possible, be based on at least three written quotes and shall be awarded on the basis of the quote most advantageous to the city.

(c) Open market purchases of \$1,000.00 to \$4,999.00 shall, whenever possible, be based on at least two written, verbal or faxed quotes and shall be awarded on the basis of the quote most advantageous to the city.

(d) Open market purchases of less than \$1,000.00 may be made from any available source, as opposed to buying from a vendor who has responded to an invitation to bid or provide a quote. Competitive bidding shall not be required for purchases under this subsection when it has been determined by the department director that it is not cost effective.

(e) Except as exempted in section 2-240.
(Ord. No. 02-2, § 1, 2-6-02)

Sec. 2-240. Expenditures of \$15,000.00 or more.

When an expenditure, other than the compensation of persons employed by the city, exceeds \$15,000.00, such expenditure shall first be authorized and directed by the city council. No purchase involving in excess of such sum shall be made or awarded without the securing of formal competitive bids as prescribed in section 2-238. Exceptions to this requirement may occur under the following circumstances:

- (1) When the subject of the contract is other than a public work or improvement and the product or material contracted for is not competitive in nature, no advantage to the city would result from requiring competitive bidding, and the city council authorizes execution of a contract without competitive bidding;
- (2) In the employment of professional services including but not limited to medical, accounting, auditing, data processing, legal, planning, engineering, and architectural and the city council authorizes execution of a contract without competitive bidding;
- (3) Where the scope of the work is not definitive and as a result a request for proposal is difficult to prepare and/or the cost of preparing such request for proposal is expected to exceed the cost of the contract and the city council authorizes execution of a contract without competitive bidding;
- (4) Emergency purchases as authorized by section 2-242;
- (5) When the city council determines a public interest will best be served by purchase from or joint purchase with another unit of government as provided in section 2.1 of the city Charter;
- (6) When the city elects to perform the work using city employees;
- (7) All kinds and types of insurance; and

- (8) Any contract, agreement or arrangement, or renewal thereof, for the purchase of electricity at wholesale from a governmental unit or agency of a governmental unit, an authority, a private or public cooperative or association, a public utility or other entity.

Sec. 2-241. Additional purchases or change orders after competitive bidding.

The purchasing agent may make additional purchases of supplies, materials, equipment or services from a successful bidder provided that:

- (1) The amount of additional purchase or change order is at the same cost or less per unit price as originally bid by the vendor;
- (2) The amount of additional purchase or change order does not exceed the cost of the original purchase;
- (3) The purchase or change order occurs not more than 12 months after the date of the original purchase;
- (4) The purchasing agent is reasonably certain that the same supply, material, equipment or service is not available at a lesser cost from any source;
- (5) The purchase or change order is considered an emergency purchase as provided in section 2-242; and
- (6) Any purchase or change order in excess of \$15,000.00 approved by the purchasing agent must be contained in a full report filed by the city manager to the city council and included in the council minutes.

(Ord. No. 02-2, § 1, 2-6-02)

Sec. 2-242. Emergency purchases.

In the case of an emergency or an apparent emergency endangering the public peace, health or safety of the city and its residents, the city manager or his/her designee may purchase directly any supplies, materials, equipment or services which he/she deems immediately necessary. Such actions will be allowed even if the resulting emergency purchases exceed \$15,000.00 without

competitive bidding. The nature of the emergency shall be contained in a full report filed by the city manager to the city council and shall be confirmed by the city council at its next meeting following such purchase.

(Ord. No. 02-2, § 1, 2-6-02)

Sec. 2-243. Blanket order purchases.

Periodic purchases from a single vendor as set forth in a single purchase order, reissued at least annually, for reasons of time savings, availability and competitive pricing may be made using a blanket order. The competitive pricing of such goods or services shall be reviewed no less frequently than every 12 months.

(Ord. No. 02-2, § 1, 2-6-02)

Sec. 2-244. Disqualification.

No bid shall be accepted from or contract awarded to a bidder who is in arrears to the city, who is in default on any contract with or payment due to the city or who has previously demonstrated bad faith in dealings with the city.

(Ord. No. 02-2, § 1, 2-6-02)

Sec. 2-245. Purchases through state bid contracts.

Whenever the city purchases items from a state bid contract, the provisions of sections 2-238 through 2-240 shall be deemed to have been complied with.

(Ord. No. 02-2, § 1, 2-6-02)

Sec. 2-246. Sale of personal property.

Personal property of a value in excess of \$1,000.00 shall be sold only after advertisement for competitive bids or, in the alternative, after intention to make a specific sale has been resolved at a prior council meeting and entered into the minutes thereof.

(Ord. No. 02-2, § 1, 2-6-02)

Sec. 2-247. Emergency contracts.

Where it is necessary to let a contract prior to the next regular meeting of the city council in order to prevent the possibility of damage to life or property or a vital interest of the city, the city

manager may obtain bids on a proposed contract or purchase from available, willing and able bidders and shall then obtain the verbal and/or written concurrence of a majority of the city council, following which he/she may then let the contract or make the purchase. The action of the city manager shall be ratified by the council at its next regular meeting; provided, however, that there is no evidence of collusion, fraud or malfeasance on the part of the city or the contractor.

(Ord. No. 02-2, § 1, 2-6-02)

Secs. 2-248—2-260. Reserved.

ARTICLE VII. ELECTIONS

Sec. 2-261. Division of city into wards.

Pursuant to the Charter of the city, the city shall be divided into three wards.

(Code 1972, § 1.21)

Sec. 2-262. First ward.

The first ward shall have the following boundaries: Beginning at the intersection of Division Street and Front Street, thence easterly 100 feet to the Center Section Corner of Section 1, 6, 31 and 36, thence southerly along section line to the intersection of Cass Avenue and East High Street, thence Southerly along Cass Avenue to the city limits, thence following the city limits in a clockwise direction to a point of the city limits and Middle Crossing Road, thence southeasterly along Middle Crossing Road to West Prairie Ronde Street, thence easterly along West Prairie Ronde Street to Sunnyside Drive, thence southerly along Sunnyside Drive and the demarcation property line of the R.M. Judd property, thence westerly along the demarcation property line of the R.M. Judd to North Lowe Street, thence southerly along North Lowe Street to Main Street, thence southeasterly along Main Street to Parsonage Street, thence northerly along Parsonage Street to Courtland Street, thence easterly along Courtland Street to North Front Street, thence southerly to the point of beginning.

Also the non-contiguous, detached property, PA 425 City of Dowagiac and Pokagon Township, Section 2.

(Code 1972, § 1.22; Ord. No. 02-1, § 1, 2-6-02; Ord. No. 11-2, § 1, 6-28-11)

Sec. 2-263. Second ward.

The second ward shall have the following boundaries: Beginning at the intersection of Division Street and Front Street, thence easterly 100 feet to the Center Section Corner of Section 1, 6, 31 and 36, thence northerly to Courtland Street, thence westerly along Courtland Street to Parsonage Street, thence southerly along Parsonage Street to Main Street, thence northwesterly along Main Street to North Lowe Street, thence northerly along North Lowe Street to the northerly demarcation property line of the R.M. Judd property, thence easterly along the R.M. Judd property line to the northerly demarcation property line, thence northerly to the intersection of Sunnyside Drive and West Prairie Ronde Street, thence westerly along West Prairie Ronde Street to Middle Crossing Road, thence northwesterly along Middle Crossing Road to the city limits, thence following the city limits in a clockwise direction to a point of the city limits and the Amtrak Railroad, thence southwesterly along the Amtrak Railroad to East Prairie Ronde Street, thence westerly along East Prairie Ronde Street to Oak Street, thence southwesterly along Oak Street to the intersection of Oak Street and Front Street, thence southerly to the point of beginning. (Code 1972, § 1.23; Ord. No. 02-1, § 1, 2-6-02; Ord. No. 11-2, § 1, 6-28-11)

Sec. 2-264. Third ward.

The third ward shall have the following boundaries: Beginning at the intersection of Division Street and Front Street, thence easterly 100 feet to the Center Section Corner of Section 1, 6, 31 and 36, thence northerly to the intersection of Oak Street, thence northeasterly along Oak Street to East Prairie Ronde Street, thence easterly to the Amtrak Railroad, thence following the city limits in a clockwise direction to a point of the city

limits and Cass Avenue, thence northerly along Cass Avenue and the Section line to East Division Street to the point of beginning.

(Code 1972, § 1.24; Ord. No. 02-1, § 1, 2-6-02; Ord. No. 11-2, § 1, 6-28-11)

Sec. 2-265. Precincts; polling places.

(a) *First ward precinct.* The first ward of the city, as set forth and defined in section 2-262, shall consist of one precinct.

(b) *Second ward precinct.* The second ward of the city, as set forth and defined in section 2-263, shall consist of one precinct.

(c) *Third ward precinct.* The third ward of the city, as set forth and defined in section 2-264, shall consist of one precinct.

(d) *Polling places.* The city clerk shall designate the polling places in each precinct. (Code 1972, §§ 1.25—1.28)

Chapters 3—5

RESERVED

Chapter 6

ALCOHOLIC LIQUORS*

- Sec. 6-1. Definitions.
- Sec. 6-2. Consumption in public.
- Sec. 6-3. Minors—Sales.
- Sec. 6-4. Same—Purchase by.
- Sec. 6-5. Same—Transporting or possessing.
- Sec. 6-6. Sales without license.
- Sec. 6-7. Open containers in vehicles.

*Cross reference—Parks and recreation, ch. 54.

State law reference—Liquor Control Act, MCL 436.1 et seq., MSA 18.971 et seq.

Sec. 6-1. Definitions.

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

Alcoholic liquor means as defined in Act No. 8 of the Public Acts of Michigan of 1933 (Ex. Sess.) (MCL 436.1 et seq., MSA 18.971 et seq.), as amended.

License means as defined in Act No. 8 of the Public Acts of Michigan of 1933 (Extra Sess.) (MCL 436.1 et seq., MSA 18.971 et seq.), as amended.
(Code 1972, § 9.111)

Cross reference—Definitions generally, § 1-2.

Sec. 6-2. Consumption in public.

No alcoholic liquor shall be consumed on the public streets, parks, or in any other public places, including any store or establishment doing business with the public not licensed to sell alcoholic liquor for consumption on the premises; nor shall any one who owns, operates or controls any such public establishment or store permit the consumption of alcoholic liquor therein.
(Code 1972, § 9.112)

Sec. 6-3. Minors—Sales.

No person, either directly or indirectly, by himself, clerk, agent, servant, or employee, shall at any time sell, furnish, give, or deliver any alcoholic liquor to any person unless such person shall have attained the age of 21 years; nor shall any person, either directly or indirectly by himself, clerk, agent, servant or employee, at any time, sell, furnish, give or deliver any alcoholic liquor to any person who is so intoxicated as not to be in control of all his faculties; provided, however, that nothing contained in this section shall prohibit the sale of alcoholic liquor to a minor upon authority of and pursuant to a prescription of a duly licensed physician.
(Code 1972, § 9.113)

Sec. 6-4. Same—Purchase by.

No person under the age of 21 years shall at any time purchase, offer or attempt to purchase, ob-

tain, consume, or bring into any premises within the city, for which a license has been issued to sell intoxicating liquor on the premises, any alcoholic liquor. Nor shall any person in order to procure the sale and furnishing of alcoholic liquor to any person under the age of 21 years make any false representations as to the age of the person for whom the alcoholic liquor is desired. Nor shall any person under the age of 21 years furnish any false information regarding his age or make any false representations as to his age to any law enforcement officer, or to any person in charge of or employed in a place of business where alcoholic liquor is sold, for the purpose of obtaining a sale of any alcoholic liquor to himself; provided, however, that nothing contained in this section shall prohibit the purchase of alcoholic liquor by a minor under authority of and pursuant to a prescription of a duly licensed physician.
(Code 1972, § 9.114)

Sec. 6-5. Same—Transporting or possessing.

No person under the age of 21 years shall purchase or knowingly possess or transport any alcoholic liquor, or knowingly possess, transport, or have under his control in any motor vehicle any alcoholic liquor unless such person is employed by a licensee under Act No. 8 of the Public Acts of Michigan of 1933 (Ex. Sess.) (MCL 436.1 et seq., MSA 18.971 et seq.), as amended, and is possessing, transporting, or having such alcoholic liquor in a motor vehicle under his control during regular working hours and in the course of his employment.
(Code 1972, § 9.115)

Sec. 6-6. Sales without license.

It shall be unlawful for any person within the city to sell, offer or keep for sale, or barter a wine, spirit, alcohol and/or alcoholic liquor, without having obtained a license to do so from the state liquor control commission.
(Code 1972, § 9.62(39))

Sec. 6-7. Open containers in vehicles.

It shall be unlawful for any person within the city to transport or possess any alcoholic liquor in

a container which was open, uncapped, or upon which the seal was broken, within the passenger compartment of a vehicle on any street, highway or alley, road or other public way within the municipal city limits.

(Code 1972, § 9.62(36))

Chapters 7—9

RESERVED

Chapter 10

ANIMALS*

- Sec. 10-1. Cruelty to animals.
- Sec. 10-2. Placement of poisonous substances in public or private places prohibited; exception.
- Sec. 10-3. Molesting, injuring, killing or capturing birds or animals; disturbing nests and hives; exception.
- Sec. 10-4. Keeping swine or other domesticated animals.
- Sec. 10-5. Harboring animals causing annoyance.
- Sec. 10-6. Confinement/restraint of dogs.
- Sec. 10-7. Confinement of dogs during quarantine required; notice; exception.
- Sec. 10-8. Dead animals.
- Sec. 10-9. Hunting, trapping or molesting; application of section; permit.
- Sec. 10-10. Pets and animals.

***Cross reference**—Parks and recreation, ch. 54.

State law references—Authority to adopt animal control ordinance, MCL 287.290, MSA 12.451; crimes relating to animals and birds, MCL 750.49 et seq., MSA 28.244 et seq.; dog law, MCL 287.261 et seq., MSA 12.511 et seq.

Sec. 10-1. Cruelty to animals.

No person shall engage in behavior which reasonably constitutes cruelty toward any species of bird, reptile, fish, mammal or amphibian. (Ord. No. 93-9, § 1(9.7(1)), 10-4-93)

Sec. 10-2. Placement of poisonous substances in public or private places prohibited; exception.

No person shall, except in the case of legitimate pest or infestation control, throw or deposit any poisonous substance on any exposed public or private place where it may endanger any species of bird, reptile, fish, mammal or amphibian. (Ord. No. 93-9, § 1(9.7(2)), 10-4-93)

Sec. 10-3. Molesting, injuring, killing or capturing birds or animals; disturbing nests and hives; exception.

Except by written permission of the police chief, no person, except a peace officer in his official capacity, shall molest, injure, kill or capture any wild bird or animal, or molest any wild bird's nest, bee hive, or the contents thereof. (Ord. No. 93-9, § 1(9.7(3)), 10-4-93)

Sec. 10-4. Keeping swine or other domesticated animals.

No person shall harbor, keep, or raise any swine or other domesticated animals for agricultural purposes. (Ord. No. 93-9, § 1(9.7(4)), 10-4-93)

Sec. 10-5. Harboring animals causing annoyance.

No person shall harbor or keep any animal, reptile, bird, or bee, which causes annoyance in the neighborhood by:

- (1) Barking, howling, braying, crowing, or other sounds common to its species;
- (2) Failure of the owner, caretaker or custodian to maintain in a clean and sanitary condition, devoid of rodents and vermin, and free from objectionable odor, all structures, pens, coops or yards wherein any animal, fowl, or bee is kept; or

- (3) In the case of bees, stinging or molesting any person.

(Ord. No. 93-9, § 1(9.7(5)), 10-4-93)

Sec. 10-6. Confinement/restraint of dogs.

No person shall permit any dog, of which he is the owner, caretaker, or custodian to be unconfined unless led by a leash of no more than six feet in length. In addition, no person shall permit any vicious dog of which he is the owner, caretaker, or custodian to be unconfined unless securely muzzled and led by a leash. Any dog shall be deemed vicious which has bitten a person or domestic animal without provocation, or which, by its actions, gives an indication that it is liable to bite any person or domestic animal without provocation.

(Ord. No. 93-9, § 1(9.7(6)), 10-4-93; Ord. No. 04-3, § 1, 8-13-04)

Sec. 10-7. Confinement of dogs during quarantine required; notice; exception.

Whenever notice of a dog quarantine shall be published in the official newspaper by the health officer, no person shall, during the period of such quarantine, permit any dog, of which he is the owner, caretaker or custodian, to be unconfined except under the conditions specified in such notice.

(Ord. No. 93-9, § 1(9.7(7)), 10-4-93)

Sec. 10-8. Dead animals.

(a) *Deposit in public or private place.* No person shall deposit, place, or throw any dead or fatally sick or injured animal, or part thereof, on any public or private place, or into, or on the banks of, any stream, lake, pond, sewer, well or other body of water.

(b) *Burying.* No person shall bury any dead or fatally sick or injured animal, or part thereof, in the city except that the owner or occupant of any unplatted property may bury thereon any dead animal owned by him dying on such premises, after having obtained a written permit to do so from the health officer. Such burial shall be made at a distance of not less than 200 yards from any residence, and the carcass shall be placed under-

ground and well covered with at least four feet of earth from the surface of the ground to the upper part of the carcass.

(c) *Conveyance; covering.* No person shall carry or convey any dead animal through or upon any street, alley or public place unless the dead animal is covered so that no part of it is exposed to view and no odors can emanate therefrom.

(d) *Removal; disposal.* Any dead animal, or part thereof, lying upon any street, alley or public place shall be removed by the street department forthwith. If any dead animal, or part of a dead animal, is upon private property, the owner or person in charge of such animal at the time of its death shall dispose of the same, or shall immediately report the facts to the police department. (Ord. No. 93-9, § 1(9.7(8)—(10)), 10-4-93)

(c) *Keeping or maintaining.* Unless otherwise provided, no livestock shall be kept or maintained in any zone established under chapter 94. For each dwelling unit, the occupant may keep for his personal use not more than two dogs or cats over 12 months of age.

(Code 1972, §§ 5.127, 9.51, 9.52)

Sec. 10-9. Hunting, trapping or molesting; application of section; permit.

No person shall hunt, trap, or otherwise molest or injure any bird or animal within the city limits; provided, however, that this restriction shall not apply to any rodent, bird, pigeon or other animal which is a pest or a danger to health, sanitation or the welfare of the public. A written permit issued by the chief of police shall be prima facie evidence that such bird, animal or rodent is a public nuisance, but the permit shall state specifically where, when and how such trapping or hunting shall be permitted.

(Ord. No. 93-9, § 1(9.7(11)), 10-4-93)

Sec. 10-10. Pets and animals.

(a) *Definition.* For the purpose of this chapter, the term "owner or keeper" shall include every person having a right of property in such dog or cat and every person who keeps or harbors such dog, or cat, or has it in his care, and every person who permits such dog or cat to remain on or about any premises occupied by him.

(b) *Allowing at large.* It shall be unlawful for any owner or keeper to allow any dog or cat to stray beyond the premises of the owner or keeper unless under the reasonable control of some person.

Chapters 11—13

RESERVED

Chapter 14

AVIATION

Article I. In General

- Sec. 14-1. Interpretation and intent of chapter; conflicting provisions.
- Sec. 14-2. Penalty for violation of chapter.
- Sec. 14-3. Additional injunctions or remedies for violation of chapter.
- Sec. 14-4. Compliance with Federal Airport Act.
- Sec. 14-5. Future improvements.
- Sec. 14-6. National emergencies.
- Sec. 14-7. Reckless operation of aircraft; penalty for violation of section.
- Sec. 14-8. Foreign-based operators; landing fees.
- Secs. 14-9—14-30. Reserved.

Article II. Airport Permits

- Sec. 14-31. Required for commercial activities; enumeration.
- Sec. 14-32. Uniform fees.
- Sec. 14-33. Fee schedules; posting; availability.
- Sec. 14-34. Fixed base operations; application for operating permit; fees; requirements and conditions.
- Sec. 14-35. Insurance.
- Sec. 14-36. Licensing.
- Sec. 14-37. Transfer.
- Sec. 14-38. Inspections.
- Sec. 14-39. Required by any revenue-producing activity at airport.
- Sec. 14-40. Nonexclusivity not granted by issuance.
- Sec. 14-41. Nondiscrimination by permittee in provision of tangibles and services.
- Sec. 14-42. Revocation.
- Secs. 14-43—14-65. Reserved.

Article III. Regulations

- Sec. 14-66. Mechanical work.
- Sec. 14-67. Flying clubs.
- Sec. 14-68. Compliance with the state aeronautics code.
- Sec. 14-69. Aircraft restrictions.
- Sec. 14-70. Responsibility for damage or theft on aircraft.
- Sec. 14-71. Fuel.
- Secs. 14-72—14-90. Reserved.

Article IV. Vehicles at Airport

Division 1. Generally

- Sec. 14-91. Traffic and parking.
- Sec. 14-92. Reckless operation; penalty for violation of article.
- Secs. 14-93—14-105. Reserved.

DOWAGIAC CODE

Division 2. Carriers for Hire

Subdivision I. In General

- Sec. 14-106. Definitions.**
- Sec. 14-107. Carrier regulations.**
- Secs. 14-108—14-120. Reserved.**

Subdivision II. Permit

- Sec. 14-121. Required; exception.**
- Sec. 14-122. Application; contents.**
- Sec. 14-123. Applicant proof of insurance.**
- Sec. 14-124. Review of application.**
- Sec. 14-125. Expiration.**
- Sec. 14-126. Suspension or revocation.**
- Sec. 14-127. Fee.**

ARTICLE I. IN GENERAL

Sec. 14-1. Interpretation and intent of chapter; conflicting provisions.

In interpreting and applying the provisions of this chapter, they shall be held to be the minimum requirements for the promotion of the public safety, health, convenience, comfort, prosperity and general welfare in connection with the operation of Cass County Memorial Airport. It is not intended by this chapter to interfere with, abrogate or annul any leases, covenants, or other agreements between parties; provided, however, that where this chapter imposes a greater burden or duty upon any person to whom this chapter may apply, then the provisions of this chapter shall control.

(Code 1972, § 3.111)

Sec. 14-2. Penalty for violation of chapter.

Any person who shall violate or disobey, or shall omit, neglect or refuse to comply with, or who resists the enforcement of any of the provisions of this chapter shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than \$100.00 for each offense, or by imprisonment in the county jail for a period not to exceed 90 days, or by both such fine and imprisonment in the discretion of the court. Each day that a violation is permitted to exist shall constitute a distinct and separate offense. If a fine is imposed, the court shall have power to commit the violator to the county jail until such time as the fine is paid, not to exceed, however, 90 days from the date of commitment.

(Code 1972, § 3.116)

Sec. 14-3. Additional injunctions or remedies for violation of chapter.

In addition to any other remedy, the city may institute in any court of competent jurisdiction an action to enjoin, restrict, correct or abate any violation of the provisions of this chapter or any of the rules, regulations or orders issued in connection with or pursuant thereto. The court may grant such relief, by way of injunction or otherwise, as may be necessary to effect the intent of

this chapter and the rules, regulations and orders of the city issued in connection with or pursuant thereto.

(Code 1972, § 3.117)

Sec. 14-4. Compliance with Federal Airport Act.

Each person operating on Cass County Memorial Airport shall comply with all the provisions of the Federal Airport Act (Public Law 277:79 Congress, 2nd Session, as amended) and the regulations issued pursuant thereto.

(Code 1972, § 3.81)

Sec. 14-5. Future improvements.

The issuance of a permit to any person shall not in any manner limit or restrict the right of the city to improve the public portions of Cass County Memorial Airport and/or all the publicly owned air navigation facilities of Cass County Memorial Airport as it deems proper and desirable.

(Code 1972, § 3.113)

Sec. 14-6. National emergencies.

During time of war or national emergency the city shall have the right to enter into an agreement with the United States government for military or naval use of part or all of Cass County Memorial Airport and/or its facilities, and if such agreement is executed by and between the city and the United States government, any permit issued as provided in article II of this chapter, shall be subject and subordinate to such agreement.

(Code 1972, § 3.114)

Sec. 14-7. Reckless operation of aircraft; penalty for violation of section.

Any person who shall operate any aircraft within the air space over and above Cass County Memorial Airport, and/or upon the lands constituting Cass County Memorial Airport, carelessly and heedlessly and with willful or wanton disregard of the rights or safety of others; without due caution and circumspection; or at a speed in a manner so as to endanger or be likely to endanger any person or property shall be guilty of a misdemeanor, the penalty for which shall be a fine of

not more than \$100.00, or by imprisonment in the county jail for not more than 90 days, or by both such fine and imprisonment in the discretion of the court. If a fine is imposed, the court shall have the power to commit the violator to the county jail until such time as the fine is paid, not to exceed, however, 90 days from the date of commitment. (Code 1972, § 3.118)

Sec. 14-8. Foreign-based operators; landing fees.

All scheduled, foreign-based commercial operators landing at Cass County Memorial Airport shall pay a landing fee in such amount as may from time to time be established by the city. (Code 1972, § 3.80(2))

Secs. 14-9—14-30. Reserved.

ARTICLE II. AIRPORT PERMITS

Sec. 14-31. Required for commercial activities; enumeration.

Any person based at and using Cass County Memorial Airport while conducting any or all of the following commercial activities offering services to the public shall, prior to the start of operations, be registered with and approved by, and obtain a permit from the city. Activities included are those offering services to the public, or to members of the public on a commercial, for hire or profit basis, and specifically include, but are not limited to:

- (1) Ground schools;
 - (2) Flight schools and flight instructors;
 - (3) Mechanical services;
 - (4) Mechanical schools and mechanical instructors;
 - (5) Sales, rental or leasing agencies;
 - (6) Air taxi and charter operators;
 - (7) Scheduled airlines; and
 - (8) Such other activities as car rentals, food service, advertising, etc.
- (Code 1972, § 3.71)

Sec. 14-32. Uniform fees.

(a) The city, on the recommendation of the airport board, shall, from time to time, and at least once each year, establish uniform fees for the permits to be so issued covering each class of operations or services referred to in section 14-31, and the fee applicable to such classification shall be paid by the applicant at the time of making application for the permit. The permit so issued shall be for one year and be renewable at the end of the year upon payment of the then effective renewal fee and meeting the then effective regulations for the issue of the permit to be renewed. Fees for fixed base operations shall include the permit fees referred to in section 14-31.

(b) The city council may, by resolution, establish the fees so authorized by this article, and may, in the absence of recommendations from the airport board, establish the fees on its own motion, and it may also alter, amend, delete or add to any recommendations of the airport board.

(c) Nothing in this provision is to be construed to permit other fees or charges than are specifically authorized by law. (Code 1972, §§ 3.72, 3.91)

Sec. 14-33. Fee schedules; posting; availability.

A supply of schedules of such permit fees, landing fees and service charges, etc., shall be posted in the airport manager's office, and a copy of such schedules shall, upon request, be made available to any interested person. (Code 1972, § 3.92)

Sec. 14-34. Fixed base operations; application for operating permit; fees; requirements and conditions.

Any person, corporation, partnership or organization using Cass County Memorial Airport as an operating base and offering to do business for hire in any aeronautical or related activity shall first make application and pay the required fixed base operator fee for an annual operating permit, and shall comply with the following minimum requirements and conditions:

- (1) *Proof of sufficient assets.* The applicant shall submit proof of sufficient assets which

in the opinion of the city will be adequate to permit acquisition, construction, and operation of the required facilities.

- (2) *Provision of structure and office.* The applicant shall provide a hangar type structure with a minimum of 3,000 square feet of aircraft storage space, and an adjoining office of at least 400 square feet.
 - (3) *Approval of construction by city.* Prior to construction all hangars and other buildings must be approved in writing by the city as to type of construction.
 - (4) *Utilities.* Necessary utilities will be brought from the closest source to the proposed building at the lessee's expense.
 - (5) *Improvements and conditions.* Improvements and additions may be made by the lessee only after approval in writing by the city.
 - (6) *Ramp space.* The lessee shall provide a minimum of 5,000 square feet of ramp space for aircraft parking in front of or adjacent to the hangar.
 - (7) *Automotive parking space.* The lessee shall provide sufficient automotive parking space for employees and customers.
 - (8) *Fire and insurance coverage.* The lessee shall carry fire and extended coverage insurance as agreed upon in the lease between the city and the lessee.
 - (9) *Airport employees; conflict of interest.* Airport employees may not own, operate, or be financially interested in any fixed base operation on Cass County Memorial Airport.
- (Code 1972, § 3.73)

Sec. 14-35. Insurance.

Each person applying for a permit to do business at Cass County Memorial Airport shall, prior to the issuance of such permit, furnish the city with copies of certificates of insurance providing adequate coverage against loss occasioned by bodily injury or property damage in such amounts as the city shall determine from time to time, and each class of permittee shall, if required by the city,

provide indemnification to the city against any loss occasioned by bodily injury or property damage in such amounts and such manner as the city shall determine from time to time.
(Code 1972, § 3.74)

Sec. 14-36. Licensing.

When required by the Federal Aviation Administration and/or the state aeronautics commission, persons doing business at Cass County Memorial Airport shall be properly certificated by these agencies.
(Code 1972, § 3.75)

Sec. 14-37. Transfer.

Permits issued pursuant to this article are nontransferable.
(Code 1972, § 3.76)

Sec. 14-38. Inspections.

Airport board personnel, the airport manager, or his assistant, and the appropriate law enforcement agencies shall have the authority to make such inspections as they deem necessary to determine compliance with this article.
(Code 1972, § 3.77)

Sec. 14-39. Required by any revenue-producing activity at airport.

No person may engage in any activity on or at Cass County Memorial Airport designed to produce revenue from the activities set forth without obtaining a permit as required in section 14-31. Such other activity is to be fostered and encouraged and shall require no permit.
(Code 1972, § 3.80(1))

Sec. 14-40. Nonexclusivity not granted by issuance.

The issuance of any permit as provided in this article to any person shall not be construed to be the granting of an exclusive right within the meaning of SS 308 of the Federal Aviation Act of 1958.
(Code 1972, § 3.112)

Sec. 14-41. Nondiscrimination by permittee in provision of tangibles and services.

Each person granted a permit as provided in this article, shall furnish tangibles and services on a fair, equal and nondiscriminatory basis to all purchasers or users thereof, and such permittee shall not, on the grounds of race, sex, religion or national origin, discriminate or permit discrimination against any person in any manner, as referenced in part 21 of the regulations of the office of secretary of transportation (D.O.T.). The city shall reserve and have the right to take such action as the federal government may direct to enforce this obligation.

(Code 1972, § 3.115)

Sec. 14-42. Revocation.

Any permit granted and issued pursuant to the provisions of this article shall be revocable by the city for good cause, after due notice in writing is given to the permittee, and a hearing had before the airport board at least 20 days subsequent to the giving of such notice. The permittee shall have the right at the hearing to appear, be heard and submit proofs, if he has any, on his own behalf.

(Code 1972, § 3.120)

Secs. 14-43—14-65. Reserved.

ARTICLE III. REGULATIONS

Sec. 14-66. Mechanical work.

(a) Welding will not be permitted in aircraft hangars unless written approval is obtained from the airport manager.

(b) All mechanical work except welding must be done inside of hangars unless it is impractical to do so.

(c) Doping in connection with fabric work shall not be done in hangars.

(Code 1972, § 3.78)

Sec. 14-67. Flying clubs.

Flying clubs operating from Cass County Memorial Airport shall comply with all applicable federal air regulations as well as part 13, "Flying Clubs," of the state aeronautics commission's "General Rules," and any future amendments to these regulations.

(Code 1972, § 3.79)

Sec. 14-68. Compliance with the state aeronautics code.

Each person operating on Cass County Memorial Airport shall comply with all the provisions of the state aeronautics code, being Act No. 327 of the Public Acts of Michigan of 1945 (MCL 259.1 et seq., MSA 10.101 et seq.), as amended, and the regulations issued pursuant thereto.

(Code 1972, § 3.82)

Sec. 14-69. Aircraft restrictions.

Aircraft rules shall include the following:

- (1) Aircraft engines shall not be started unless a pilot or a competent mechanic remains at the controls.
- (2) Aircraft engines shall not be started when the air stream may throw loose debris at buildings, parking areas or spectators.
- (3) In starting engines when the aircraft is not equipped with adequate brakes, blocks with ropes or other suitable devices for removing them shall be placed in front of the wheels. These blocks or devices shall be removed from the path of other aircraft after use.
- (4) Aircraft shall be taxied at a moderate rate of speed and with caution. Extra caution shall be taken while in the vicinity of other aircraft.
- (5) Parked aircraft shall be appropriately secured by proper tie-downs or chocks. The aircraft owner and/or pilot is responsible for tying down and chocking his own aircraft.

(Code 1972, § 3.83)

Sec. 14-70. Responsibility for damage or theft on aircraft.

The city shall not be responsible for any damage or theft to any aircraft parked or tied down at the Cass County Memorial Airport.
(Code 1972, § 3.84)

Sec. 14-71. Fuel.

(a) *Sale by authorized persons.* No fuel shall be sold, delivered or received by any person at or on Cass County Airport, except as the fuel may be sold, delivered or received by and through those persons or organizations designated by the city.

(b) *Charges.* Fuel charges shall be established by the city from time to time as conditions may require, and current prices shall be kept available in the airport manager's office and made available upon request to any interested person.
(Code 1972, § 3.93)

Secs. 14-72—14-90. Reserved.

ARTICLE IV. VEHICLES AT AIRPORT

DIVISION 1. GENERALLY

Sec. 14-91. Traffic and parking.

The city shall from time to time designate parking areas and roadways upon Cass County Memorial Airport; shall establish limitations and conditions applying to the use of such designated areas and roadways; and shall post such areas with adequate public signs stating the limitations and conditions on the use of such areas and roadways and the fee, if any, that is charged in connection with such use.
(Code 1972, § 3.101)

Sec. 14-92. Reckless operation; penalty for violation of article.

Any person who shall operate any nonaircraft upon any part or portion of the lands constituting Cass County Memorial Airport, including designated highways thereon, carelessly and heedlessly and with willful or wanton disregard of the rights or safety of others; without due caution and

circumspection; or at a speed in a manner so as to endanger or be likely to endanger any person or property shall be guilty of a misdemeanor, the penalty for which shall be a fine of not more than \$100.00, or by imprisonment in the county jail for not more than 90 days, or by both such fine and imprisonment in the discretion of the court. If a fine is imposed, the court shall have the power to commit the violator to the county jail until such time as the fine is paid, not to exceed, however, 90 days from the date of commitment.
(Code 1972, § 3.119)

Secs. 14-93—14-105. Reserved.

DIVISION 2. CARRIERS FOR HIRE

Subdivision I. In General

Sec. 14-106. Definitions.

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

Carrier for hire means and includes any motor vehicle, other than an aircraft, accepting passengers for transportation for hire.
(Code 1972, § 3.102(2))

Cross reference—Definitions generally, § 1-2.

Sec. 14-107. Carrier regulations.

The following regulations shall be observed by all carriers for hire operating on Cass County Memorial Airport pursuant to a permit issued by the city:

- (1) Passengers and baggage shall be loaded only in areas designated for that purpose by the city.
 - (2) No solicitation of passengers or luggage shall be conducted within the terminal building.
- (Code 1972, § 3.102(9))

Secs. 14-108—14-120. Reserved.

*Subdivision II. Permit***Sec. 14-121. Required; exception.**

No carrier for hire shall load passengers at any place on Cass County Memorial Airport without first having obtained a written permit from the city in accordance with this article. This provision shall not prohibit any carrier for hire from entering Cass County Memorial Airport for the purpose of discharging passengers.

(Code 1972, § 3.102(1))

Sec. 14-122. Application; contents.

Any carrier for hire desiring to load passengers on Cass County Memorial Airport shall file an application for a permit with the city, which application shall contain the following:

- (1) Name of carrier for hire.
- (2) Number and type of vehicles which applicant intends to operate at Cass County Memorial Airport.
- (3) Experience which the applicant has had in operation of such service.
- (4) A statement whereby the applicant agrees to comply with any and all pertinent federal, state and local government laws and regulations and all regulations of the city.
- (5) Proof that the applicant has obtained all licenses and permits necessary to engage in such service from the federal, state and local governments.

(Code 1972, § 3.102(3))

Sec. 14-123. Applicant proof of insurance.

If the city determines to grant a permit to a carrier for hire, such permit shall not issue until such carrier for hire has filed with the city proof of liability insurance issued by a responsible insurance company authorized to do business in the state, insuring the applicant and all motor vehicles which will be operated on Cass County Memorial Airport against liability for property damage and personal injury to a passenger in such vehicle or to members of the general public. The

insurance coverage shall be in amounts which at all times comply with the state financial responsibility law.

(Code 1972, § 3.102(4))

Sec. 14-124. Review of application.

The city shall review all applications and grant permits to those carriers for hire which meet the requirements of this division, and which the city, in its discretion, determines will provide the best service to passengers and the public at Cass County Memorial Airport.

(Code 1972, § 3.102(5))

Sec. 14-125. Expiration.

All permits issued pursuant to this subdivision shall expire on December 31, following the issuance of such permit.

(Code 1972, § 3.102(6))

Sec. 14-126. Suspension or revocation.

The city shall have the power to suspend or revoke any permit issued by it under this subdivision for any of the following reasons:

- (1) The city determines that any information contained in the application for a permit was false or misleading.
- (2) The city determines that the carrier for hire has failed to operate in accordance with the regulations of the city.
- (3) The carrier for hire has ceased to operate on Cass County Memorial Airport for a period of 30 consecutive days without having obtained permission for such cessation of operations from the city.

(Code 1972, § 3.102(7))

Sec. 14-127. Fee.

The fee for each permit shall be established each year prior to January 1 of such year.

(Code 1972, § 3.102(8))

Chapters 15—17

RESERVED

Chapter 18

BUILDINGS AND BUILDING REGULATIONS*

Article I. In General

Secs. 18-1—18-25. Reserved.

Article II. State Construction Code

- Sec. 18-26. Adoption by reference.
 - Sec. 18-27. Designation of enforcing agency.
 - Sec. 18-28. Name of jurisdiction as city.
 - Sec. 18-29. Permit fees.
 - Sec. 18-30. Penalty for violation of article.
 - Sec. 18-31. Penalty for violation of a stop work order.
 - Sec. 18-32. Signs overhanging public property; permit and bond or insurance required.
 - Sec. 18-33. Full force and effect of penalties for violation to remain; continuance of prior ordinance.
 - Sec. 18-34. Inspection fees for crematories and incinerators.
 - Sec. 18-35. Connection to public water main or sewer system.
 - Sec. 18-36. Freezing of pipes and sewers.
 - Sec. 18-37. Availability of copies required.
 - Sec. 18-38. Enforcing agency designated; responsibility of city to designate regulated flood hazard areas under the provisions of the State Construction Code Act.
- Secs. 18-39—18-60. Reserved.

Article III. Michigan Residential Code

- Sec. 18-61. Adoption by reference.
 - Sec. 18-62. Purpose of article.
 - Sec. 18-63. Penalty for violation of article.
 - Sec. 18-64. Availability of copies required.
- Secs. 18-65—18-85. Reserved.

Article IV. Property Maintenance Code

- Sec. 18-86. Adoption by reference.
 - Sec. 18-87. Purpose of article.
 - Sec. 18-88. Additions, insertions, deletions and changes.
 - Sec. 18-89. Penalty for violation of article.
 - Sec. 18-90. Availability of copies required.
- Secs. 18-91—18-110. Reserved.

Article V. Building Numbers

- Sec. 18-111. Assigning; affixing; notice upon failure.
- Secs. 18-112—18-130. Reserved.

Article VI. House Moving

- Sec. 18-131. Permit, clearance, cash deposit and insurance required.

***Cross references**—Community development, ch. 30; environment, ch. 38; fire prevention and protection, ch. 42; subdivisions, ch. 74; utilities, ch. 82; zoning, ch. 94.

State law reference—State construction code act, MCL 125.1501 et seq., MSA 5.2949(1) et seq.

DOWAGIAC CODE

Secs. 18-132—18-139. Reserved.

Article VII. Boarding Up of Buildings

- Sec. 18-140. Statement of purpose.
- Sec. 18-141. Boarding up of buildings.
- Sec. 18-141.1. Notice.
- Sec. 18-142. Nuisance per se.
- Sec. 18-143. Abatement.
- Sec. 18-144. Historical preservation policy.
- Sec. 18-145. Penalty for violation of article.
- Sec. 18-146. Other remedies.
- Secs. 18-147—18-149. Reserved.

Article VIII. Exterior Property Maintenance Code.

- Sec. 18-150. Statement of purpose.
- Sec. 18-151. Validity.
- Sec. 18-152. Applicability.
- Sec. 18-153. Definitions.
- Sec. 18-154. Maintenance responsibility.
- Sec. 18-155. Exterior painting.
- Sec. 18-156. Street numbers.
- Sec. 18-157. Foundations.
- Sec. 18-157.1. Stairs, decks, porches and balconies.
- Sec. 18-158. Roof, gutters and downspouts.
- Sec. 18-159. Exterior walls.
- Sec. 18-160. Handrails.
- Sec. 18-161. Infestation.
- Sec. 18-162. Windows.
- Sec. 18-163. Doors.
- Sec. 18-164. Chimneys.
- Sec. 18-165. Basement hatchways.
- Sec. 18-166. Maintenance of exterior yard areas.
- Sec. 18-167. Inspection authorized; right of entry.
- Sec. 18-168. Maintenance after casualty damage.
- Sec. 18-169. Notice of violation.
- Sec. 18-170. Failure to comply.
- Sec. 18-171. Penalty.
- Sec. 18-172. Other remedies.

ARTICLE I. IN GENERAL**Secs. 18-1—18-25. Reserved.****ARTICLE II. STATE CONSTRUCTION CODE****Sec. 18-26. Adoption by reference.**

The city hereby adopts by reference the Michigan Building Code, the Michigan Plumbing Code, the Michigan Mechanical Code and the Michigan Electrical Code, together with all appendices thereto, in its entirety, for all purposes including enforcement thereof within the corporate limits of the city, as authorized and provided by the provisions of Act No. 230 of the Public Acts of Michigan of 1972 (MCL 125.1501 et seq.), as amended, otherwise known as the State Construction Code Act of 1972.

(Code 1972, § 8.1; Ord. No. 01-8, § 1, 10-26-01)

Sec. 18-27. Designation of enforcing agency.

Pursuant to the provisions of the state construction code and in accordance with Act No. 230 of the Public Acts of Michigan of 1972 (MCL 125.1501 et seq.), as amended:

- (1) The building official of the city is hereby designated as the enforcing agency to discharge the responsibilities of the city for the Michigan Building Code. The city assumes the responsibility for the administration and enforcement of the act throughout its corporate limits.
- (2) The building official of the city is hereby designated as the enforcing agency to discharge the responsibilities of the city for the Michigan Mechanical Code. The city assumes the responsibility for the administration and enforcement of the act throughout its corporate limits.
- (3) The building official of the city is hereby designated as the enforcing agency to discharge the responsibilities of the city for the Michigan Electrical Code. The city assumes the responsibility for the administration and enforcement of the act throughout its corporate limits.

(4) The building official of the city is hereby designated as the enforcing agency to discharge the responsibilities of the city for the Michigan Plumbing Code. The city assumes the responsibility for the administration and enforcement of the act throughout its corporate limits.

(5) The building official of the city is hereby designated as the enforcing agency to discharge the responsibilities of the city for the Michigan Residential Code. The city assumes the responsibility for the administration and enforcement of the act throughout its corporate limits.

(Code 1972, § 8.2; Ord. No. 01-1, § 1, 2-14-01; Ord. No. 01-8, § 1, 10-26-01)

Sec. 18-28. Name of jurisdiction as city.

The name of the city shall be inserted, where appropriate, in the Michigan Building Code, and all divisions and sections of the state construction code, as the name of jurisdiction designated with responsibility for enforcement of such codes.

(Code 1972, § 8.3; Ord. No. 01-8, § 1, 10-26-01)

Sec. 18-29. Permit fees.

Fees for the various permits required by the state construction code and all divisions and sections of the state construction code shall be established by resolution of the city council, as provided in the zoning chapter, chapter 94 of this Code.

(Code 1972, § 8.4; Ord. No. 01-8, § 1, 10-26-01)

Sec. 18-30. Penalty for violation of article.

Any person who shall violate a provision of the state construction code adopted in section 18-26 by reference; who shall fail to comply with any of the requirements of such code; or who shall erect, construct, alter or repair a building or structure in violation of an approved plan or directive of the building official, or of a permit or certificate issued under the provisions of the state construction code, shall be guilty of a misdemeanor punishable by a fine of not more than \$100.00 or by

imprisonment not exceeding 90 days, or both such fine and imprisonment. Each day that a violation continues shall be deemed a separate offense.

(Code 1972, § 8.5; Ord. No. 01-8, § 1, 10-26-01)

Sec. 18-31. Penalty for violation of a stop work order.

Any person who shall continue any work in or about a structure after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be liable to a fine of not less than \$100.00 or more than \$500.00.

(Code 1972, § 8.6; Ord. No. 01-8, § 1, 10-26-01)

Sec. 18-32. Signs overhanging public property; permit and bond or insurance required.

A person shall not erect, install, remove, rehang or maintain over public property any sign for which a permit is required under the provisions of this article until an approved bond shall have been filed in a sum to be set by the city council or until an insurance policy shall have been filed for public liability in the amount of \$100,000.00 per accident and for property damage in the amount of \$20,000.00.

(Code 1972, § 8.9; Ord. No. 01-8, § 1, 10-26-01)

Sec. 18-33. Full force and effect of penalties for violation to remain; continuance of prior ordinance.

Any provisions of any prior ordinance hereby amended shall remain in full force and effect as to violations and penalties occurring prior to the effective date of the ordinance from which this chapter is derived, and the provisions of any prior law continued without interruption by this article shall remain in effect as if not repealed.

(Code 1972, § 8.10; Ord. No. 01-8, § 1, 10-26-01)

Sec. 18-34. Inspection fees for crematories and incinerators.

The inspection fee for each inspection of any crematory or incinerator requiring inspection un-

der the provisions of the state construction code adopted by reference in section 18-26 shall be \$50.00 per incinerator or crematory.

(Code 1972, § 8.11; Ord. No. 01-8, § 1, 10-26-01)

Sec. 18-35. Connection to public water main or sewer system.

There shall be inserted into the plumbing code section of the Michigan Plumbing Code, 66 feet as the distance within which a public water main or public sewer system shall be considered available to a building requiring connection of such building to public water main or sewer system under the provisions of such code.

(Code 1972, § 8.12; Ord. No. 01-8, § 1, 10-26-01)

Sec. 18-36. Freezing of pipes and sewers.

Water service piping and sewers shall be installed below recorded frost penetration but not less than four feet below grade for water piping and for sewers. Plumbing piping in exterior building walls or areas subject to freezing temperatures shall be adequately protected against freezing by insulation or heat, or both.

(Code 1972, § 8.13; Ord. No. 01-8, § 1, 10-26-01)

Sec. 18-37. Availability of copies required.

Printed copies of the Michigan Building, Mechanical, Plumbing and Electrical Codes and all appendices thereto shall be available for inspection at the building official's office at all times in the Dowagiac City Hall. Publication of this article shall include a notice to that effect.

(Code 1972, § 8.14; Ord. No. 01-8, § 1, 10-26-01)

Sec. 18-38. Enforcing agency designated; responsibility of city to designate regulated flood hazard areas under the provisions of the State Construction Code Act.

(a) *Agency designated.* Pursuant to the provisions of the State Construction Code, in accordance with section 8b(6) of Act 230, of the Public Acts of 1972, as amended, the Building Official of the City of Dowagiac is hereby designated as the enforcing agency to discharge the responsibility of the City of Dowagiac under Act 230, of the Public Acts of 1972, as amended, State of Michigan. The

City of Dowagiac assumes responsibility for the administration and enforcement of said Act throughout the corporate limits of the community adopting the ordinance from which this section derives.

(b) *Code appendix enforced.* Pursuant to the provisions of the State Construction Code, in accordance with Section 8b(6) of Act 230, of the Public Acts of 1972, as amended, Appendix G of the Michigan Building Code shall be enforced by the enforcing agency within the City of Dowagiac.

(c) *Designation of regulated flood prone hazard areas.* The Federal Emergency Management Agency (FEMA) Flood Insurance Study (FIS) Entitled Cass County, Michigan, (all jurisdictions) and dated September 5, 2007 and the Flood Insurance Rate Map(s) FIRMS) panel number(s) of 26027C0110C, 0130C and dated September 5, 2007 are adopted by reference for the purposes of administration of the Michigan Construction Code, and declared to be a part of Section 1612.3 of the Michigan Building Code, and to provide the content of the "Flood Hazards" section of Table R301.2(1) of the Michigan Residential Code.

(d) *Publication.* The ordinance from which this section derives shall be effective after legal publication and in accordance with provisions of the Act governing same.
(Ord. No. 07-2, §§ 1—3, 5, 9-5-07)

Secs. 18-39—18-60. Reserved.

ARTICLE III. MICHIGAN RESIDENTIAL CODE*

Sec. 18-61. Adoption by reference.

The Michigan Residential Code, together with the appendices added to that code, is hereby adopted by reference by the city.
(Code 1972, § 8.90; Ord. No. 01-9, § 1, 10-30-01)

***Editor's note**—Ord. No. 01-9, § 1, adopted Oct. 30, 2001, changed the title of Art. III from One- and Two-Family Dwelling Code to Michigan Residential Code.

Sec. 18-62. Purpose of article.

The purpose of this article is to regulate the fabrication, erection, construction, enlargement, alteration, repair, location and use of all detached one- and two-family dwellings, their appurtenances and accessory structures in the city; providing for the issuance of permits therefor; providing penalties for the violation of such code, and repealing all ordinances and parts of ordinances in conflict therewith.
(Code 1972, § 8.91; Ord. No. 01-9, § 1, 10-30-01)

Sec. 18-63. Penalty for violation of article.

Any person who shall violate a provision of this article or shall fail to comply with any of the requirements of this article or shall install improvements or make changes in violation of an approved plan or directive of the building official, or a permit or certificate issued under the provisions of this article, shall be guilty of a misdemeanor punishable by a fine of not more than \$100.00 or by imprisonment not exceeding 90 days, or both such fine and imprisonment. Each day that a violation continues shall be deemed a separate offense.
(Code 1972, § 8.93; Ord. No. 01-9, § 1, 10-30-01)

Sec. 18-64. Availability of copies required.

Printed copies of the Michigan Residential Code and appendices thereto shall be available for inspection at the building official's office at all times in the Dowagiac City Hall. Publication of this article shall include a notice to that effect.
(Code 1972, § 8.95; Ord. No. 01-9, § 1, 10-30-01)

Secs. 18-65—18-85. Reserved.

ARTICLE IV. PROPERTY MAINTENANCE CODE†

Sec. 18-86. Adoption by reference.

The International Property Maintenance Code, as amended, together with all appendices thereto,

†**Editor's note**—Ord. No. 1, § 1, effective Feb. 4, 2008, repealed the former Art. IV, §§ 18-86—18-90, and enacted a new Art. IV as set out herein. The former Art. IV pertained to the property maintenance code and derived from the Code of 1972, §§ 6.1—6.4, § 6.6; Ord. No. 01-10, § 1, 10-30-01; Ord. No. 04-1, § 1, 5-5-04.

promulgated and published by the International Code Council is hereby adopted by reference by the city.
(Ord. No. 08-1, § 1, 2-4-08; Ord. No. 19-5, 9-9-19)

Sec. 18-87. Purpose of article.

The purpose of this article is to protect the public health, safety, and welfare in all existing structures, residential and nonresidential, and on existing premises by:

- (1) Establishing minimum maintenance standards for all structures and premises for basic equipment and facilities for light, ventilation, space heating, and sanitation; for safety from fire; for space use and location; and for safe and sanitary maintenance of all structures and premises now in existence;
- (2) Fixing the responsibilities of owners, operators and occupations of all structures; and
- (3) Providing for administration, enforcement, and penalties of this article.

(Ord. No. 08-1, § 1, 2-4-08)

Sec. 18-88. Additions, insertions, deletions and changes.

The International Property Maintenance Code is amended and revised in the following respects:

- (1) The name of the city shall be inserted in section 101.1 of the code.
- (2) Section 102.3. Application of other codes, shall read as follows:

Repairs, additions or alterations to a structure, or changes of occupancy, shall be done in accordance with the procedures and provisions of the Michigan Building Code, the Michigan Residential Code, the Michigan Mechanical Code, the Michigan Plumbing Code, the Michigan Electrical Code and the International Fuel Gas Code. Nothing in this code shall be construed to cancel, modify or set aside any provisions of the Dowagiac Zoning Code.

- (3) Section 201.3. Terms defined in other codes, shall read as follows:

Where terms are not defined in this code and are defined in the Michigan Building, Residential, Plumbing, Mechanical, Electrical, International Fuel Gas Code, International Fire Code, ASME A17.1 or the Dowagiac Zoning Code, such terms shall have the meaning ascribed to them as in those code books.

- (4) Section 302, Exterior Property Areas and Section 304, Exterior Structure, Subsections, 302.1, 302.2, 302.3, 302.4, 302.5, 302.6, 302.7, 304.1, 304.2, 304.3, 304.4, 304.5, 304.6, 304.7, 304.8, 304.9, 304.10, 304.11, 304.12, 304.13, 304.13.1, 304.13.2, 304.14, 304.15, 304.16 and 304.17 shall be deleted.

(Ord. No. 08-1, § 1, 2-4-08)

Sec. 18-89. Penalty for violation of article.

Any person who shall violate a provision of this article or shall fail to comply with any of the requirements of this article shall install improvements or make changes in violation of an approved plan or directive of the building official, or a permit or certificate issued under the provisions of this article, shall be guilty of a violation of this article and shall be guilty of a misdemeanor punishable by a fine of not more than \$100.00 or by imprisonment not exceeding 90 days, or both such fine and imprisonment. Each day that a violation continues shall be deemed a separate offense.

(Ord. No. 08-1, § 1, 2-4-08)

Sec. 18-90. Availability of copies required.

A printed copy of the International Property Maintenance Code and appendices thereto shall be available for inspection at the building official's office at all times in the city hall. Publication of this article shall include a notice to that effect.

(Ord. No. 08-1, § 1, 2-4-08)

Secs. 18-91—18-110. Reserved.

ARTICLE V. BUILDING NUMBERS

Sec. 18-111. Assigning; affixing; notice upon failure.

All buildings upon property abutting the streets and alleys of the city shall be assigned a building number as determined by the director of public services. Nothing contained in this section shall, however, be construed to prohibit the director of the department of public services from requiring only one building number assignment to a particular property and not to auxiliary buildings associated with the main structure situated thereon. The director of the department of public services may compel the owner of any building to which a number has been assigned to affix the building number thereon at such location and in such manner as to be reasonably visible from the abutting public way. Failure of the property owner to so affix that number within ten days following written notice from the director of the department of public services shall be a misdemeanor.

(Code 1972, § 4.54)

Secs. 18-112—18-130. Reserved.

ARTICLE VI. HOUSE MOVING

Sec. 18-131. Permit, clearance, cash deposit and insurance required.

No person shall move, transport, or convey any building, machinery, truck or trailer more than eight feet, eight inches wide or higher than 13 feet, six inches above the surface of the roadway into, across or along any street or other public place in the city without first obtaining a permit from the engineer. The applicant shall file written clearance from the light, telephone, gas and water utilities, stating that all connections have been properly cut off and, where necessary, all obstructions along proposed route of moving will be removed without delaying moving operations. In addition, clearance shall be obtained from the police department approving the proposed route through the city streets and the time of moving, together with an estimated cost to the police department due to the moving

operations. The applicant shall deposit with the city the total estimated cost to the police department and the department of engineering, plus a cash deposit and shall file an insurance policy as required by section 70-32.

(Code 1972, § 4.35)

Secs. 18-132—18-139. Reserved.

ARTICLE VII. BOARDING UP OF BUILDINGS

Sec. 18-140. Statement of purpose.

The city recognizes that, due to such factors as fire, storm, vandalism, deterioration, neglect, etc., that certain buildings may, of necessity, be from time to time boarded up so as to prevent unauthorized access while vacant. The city further recognizes that allowing such buildings to remain boarded up beyond the time reasonably required to effectuate necessary repairs and improvements so as to render them habitable can and does adversely impact both the city and neighboring property-owners by continuing an unsightly condition and by inviting further acts of vandalism due to the obviously vacant state of such buildings. Accordingly, it is the purpose of this article to provide reasonable time frames during which buildings may remain boarded.

(Ord. No. 98-3, 1, 10-16-98)

Sec. 18-141. Boarding up of buildings.

In order to protect against unauthorized access of vacant buildings, and to provide for restoration of such buildings so that the same may be rendered suitable for occupancy, the city adopts the following provisions which shall be in addition to the requirements imposed by the property maintenance code codified in article iv of this part, and not in derogation thereof:

- (1) *Casual entry.* No person shall permit any vacant building to remain open to casual entry in the city.

- (2) *Time limit.* No person shall permit any building to be boarded up in the city for a period of longer than three months.
 - (3) *Boarding up of openings.* Any boarding up of openings in a building shall be done with plywood of minimum thickness of one-half-inch, free of holes. It shall fully cover each opening and be securely fastened. All exposed edges and surfaces shall be painted.
 - (4) *Extension.* The period of three months may be extended by the building official, but only in the event that the owner or person responsible for the premises shall obtain all necessary permits either to repair or demolish such premises within such three month period. No such extension shall be granted for a period longer than three additional months.
 - (5) *Existing buildings.* This section shall apply to existing boarded up or open buildings as well as those which may be boarded up or open in the future.
- (Ord. No. 98-3, 1, 10-16-98)

Sec. 18-141.1. Notice.

If any person shall permit a building to be boarded up for longer than the three month period above specified, or any extension thereof as granted by the building official, then the building official shall notify the owner of said property, as shown by the most recent tax rolls of the City of Dowagiac, that said building has remained boarded up in excess of the time permitted by this Code. Such notice shall require the owner to correct this condition within ten days of the date of such notice. Failure by the owner to comply with such notice within the time allowed shall constitute a violation of this article and shall subject such owner to the civil and criminal penalties herein set forth.

(Ord. No. 98-3, 1, 10-16-98)

Sec. 18-142. Nuisance per se.

In the event that any building shall remain boarded up in violation of this article, and in the event that the owner shall fail to correct such condition within ten days following notice as

hereinabove required, then said structure shall constitute a nuisance per se. In such event, the city council may, after notice to the owner and public hearing thereon, condemn such building by giving notice to the owner of the land upon which such building is located, specifying in what respects the building is a public nuisance and requiring the owner to correct such condition(s), either by repair or demolition, within such reasonable time, not exceeding 60 days, as may be necessary to do or have done the work required by such notice. The council may extend such period for additional periods not exceeding 30 days each for good cause shown. The notice shall also specify the time within which such work shall be commenced and necessary permits obtained.

(Ord. No. 98-3, 1, 10-16-98)

Sec. 18-143. Abatement.

If, at the expiration of any time limit in the notice, the owner has not complied with the requirements of the notice, the city may carry out the requirements of the notice. The cost of such abatement shall be charged against the premises and the owner thereof in accordance with the provisions of chapter 66 of this Code.

(Ord. No. 98-3, 1, 10-16-98)

Sec. 18-144. Historical preservation policy.

Notwithstanding the foregoing provisions, it shall continue to be the policy of the city that buildings and structures of historical significance be preserved and protected wherever reasonably possible. To that end, it shall be the policy of the city to protect such structures against demolition even though such structure(s) might be in violation of this article. All potential remedial measures short of demolition, and possible sources of funding for such remedial measures, shall be explored before demolition will be considered, including action by the city to prevent demolition of structures of historical significance and/or acquisition of such structures under the city's power of eminent domain.

(Ord. No. 98-3, 1, 10-16-98)

Sec. 18-145. Penalty for violation of article.

Any person who shall violate the provisions of this article by permitting any building to remain

boarded longer than the time limits hereinabove specified shall be guilty of a misdemeanor punishable by a fine of not more than \$100.00 or by imprisonment not exceeding 90 days or both such fine and imprisonment. Each day that a violation continues shall be deemed a separate offense. (Ord. No. 98-3, 1, 10-16-98)

Sec. 18-146. Other remedies.

Nothing contained herein shall be construed to limit or abrogate the right of the city to seek any other remedy permitted by law including, specifically, the right to seek abatement of any nuisance through circuit court action. (Ord. No. 98-3, 1, 10-16-98)

Secs. 18-147—18-149. Reserved.

ARTICLE VIII. EXTERIOR PROPERTY MAINTENANCE CODE

Sec. 18-150. Statement of purpose.

This article shall be known as the Exterior Property Maintenance Code of the City of Dowagiac. The purpose of this code is to protect the public health, safety and general welfare of the citizens by establishing minimum standards governing the exterior maintenance, condition and appearance of residential and nonresidential structures and premises; to prevent blighting problems and enhance property values; to fix responsibilities and duties upon owners and occupants of structures with respect to sanitation, repair and maintenance; to authorize and establish procedures for the inspection of premises; and to provide for penalties for violation of this code. (Ord. No. 99-6, § 1, 10-22-99)

Sec. 18-151. Validity.

(a) The provision of this property maintenance code shall not be construed to prevent the enforcement of other ordinances or regulations that prescribe standards other than are provided herein. In the event of conflict between any provisions of this code, including any rules and regulations adopted pursuant to this code, and any provisions of these codified ordinances or other ordinances of

the city, including rules and regulations adopted pursuant to such ordinances, the more restrictive shall prevail.

(b) If any section, subsection, paragraph, sentence, clause or phrase of this code is declared invalid for any reason whatsoever, such decision shall not affect the remaining portions of this code, which shall continue in full force and effect, and to this end the provisions of this code are hereby declared to be severable. (Ord. No. 99-6, § 1, 10-22-99)

Sec. 18-152. Applicability.

This property maintenance code shall apply to all structures and premises within the City of Dowagiac. (Ord. No. 99-6, § 1, 10-22-99)

Sec. 18-153. Definitions.

For the purpose of this article, certain terms and words are hereby defined. Words used in the present tense shall include the future; the singular number shall include the plural, and the plural the singular; the word "building" shall include the word "structure"; and the word "shall" is mandatory and not directory.

Accessory structure means a structure subordinate to the main structure on the same lot and serving a purpose customarily incidental to such other structure.

Code official means the building inspector or his/her designated representatives.

Deterioration means the condition or appearance of the exterior of a building or part thereof, characterized by holes, breaks, rot, crumbling or other evidence of physical decay, neglect or lack of maintenance.

Exterior of the premises means those portions of a building which are exposed to public view and the open space of any premises outside of any building.

Infestation means the presence of insects, rodents, vermin or other pests on the premises, which constitute a health hazard.

Nuisance means that which is defined in section 38-26 of the Code of Ordinances, City of Dowagiac.

Occupant means any person living and sleeping in a dwelling unit or having actual possession of such dwelling unit or any person who leases or rents a building, structure or portion thereof.

Owner means any person who, alone or jointly or severally with others, shall have legal or equitable title to any premises, with or without the accompanying actual possession thereof; or shall have charge, care of control as owner or agent of the owner, or as executor, administrator, trustee, receiver or guardian of an estate, or as a mortgagee in possession.

Person includes any individual, corporation, association, partnership, trustee, lessee, agent or assignee.

Premises means a lot, plot or parcel of land, including the building or structures thereon.

Principal structure means the primary structure located on a lot, including dwelling units, commercial structures and combinations thereof.

Workmanlike means executed in a skilled manner; e.g., generally plumb, level, square, in line, undamaged, and without marring adjacent work. (Ord. No. 99-6, § 1, 10-22-99)

Sec. 18-154. Maintenance responsibility.

(a) No owner, agent or occupant of any premises shall maintain or permit to be maintained at or on the exterior property areas of such premises any condition, which deteriorates or debases the neighborhood, or which creates a fire, safety or health hazard, or which creates a public nuisance.

(b) The owner shall be responsible for ensuring that the premises are maintained in compliance with this chapter. Occupants shall be responsible for maintaining in a clean and sanitary condition those premises or portions thereof which they occupy and/or control. In the case of commonly held properties associated with condominiums or similar projects, it shall be the responsi-

bility of the designated homeowner association or similar organization to maintain those items, which are under its direct control or ownership. (Ord. No. 99-6, § 1, 10-22-99)

Sec. 18-155. Exterior painting.

(a) Wood and metal surfaces, including but not limited to, siding, window frames, door frames, cornices, porches and trim of every principal structure and accessory structure shall be maintained in good condition. Peeling, flaking and chipped paint shall be eliminated and surfaces repainted with materials manufactured for such purposes, to the degree necessary to prohibit blight and meet community standards.

(b) During the course of the year, the code official shall send a letter by ordinary mail alleging a possible violation of section 18-155(a) to the owner(s) of the property. The letter shall include a copy of section 18-155 and shall advise the owner(s) of the citizens review committee (C.R.C.) process set forth below. In addition, the letter shall include a waiver form advising the owner(s) that the owner(s) may elect to waive the C.R.C. process by signing the waiver form and returning the same within 15 days of the date of the letter. The waiver shall advise the owner(s) that a failure to comply within 60 days shall subject the owner(s) to the provisions of section 1-16 of the City Code.

(c) At determined dates, a quorum of C.R.C. members shall meet and inspect each structure on the code official's list that has not been waived by the owner. Within ten days after the inspection, the C.R.C. shall schedule a hearing, notice of which shall be given to the property owner by either certified mail or personal service. At the hearing, the property owner shall be afforded an opportunity to state his/her position.

(d) The C.R.C. shall determine whether or not an exterior paint complaint is a violation of section 18-155(a). The C.R.C. shall decide if the alleged paint complaint meets the guidelines of "To the degree necessary to prohibit blight and meet community standards." The C.R.C. shall not require a specific quality of paint, manufacturer of paint, or specific color of paint. The C.R.C. may extend the compliance period for a property owner

if the C.R.C. determines that an extension would be in the best interests of the city. The city recognizes that absolute enforcement of any property maintenance code is difficult and reasonable enforcement is necessary. Rather than placing a reasonable enforcement of exterior painting in the hands of one person, the city has opted to place this important responsibility and determination with the C.R.C.

(e) A quorum of at least three members of the C.R.C. shall be necessary to determine that a paint complaint is a violation of section 18-155(a). If the C.R.C. rules that a violation exists, the code official shall serve notice of the violation directing the owner to comply with section 18-155(a) within 60 days. If the C.R.C. rules that a violation does not exist, the code official shall not process another exterior paint complaint on the same property for at 12 months.

(f) The C.R.C. shall be composed of five residents: one resident from each city ward and two at large members. All members shall be appointed by the mayor and shall be confirmed by the council. All C.R.C. members shall serve for three year terms. However, council shall stagger the initial term so that no more than three terms shall expire in any one year.
(Ord. No. 99-6, § 1, 10-22-99)

Sec. 18-156. Street numbers.

Each structure to which a street number has been assigned shall have such number displayed in a position easily observed and readable from the public right-of-way.
(Ord. No. 99-6, § 1, 10-22-99)

Sec. 18-157. Foundations.

All foundations shall be structurally sound and maintained so as to prevent the stagnation of water within the space enclosed by such foundation. Further, said foundation shall be free of all holes and cracks, which admit rodents to the interior of the building, or significantly lessen the capability of the foundation to adequately support the building.
(Ord. No. 99-6, § 1, 10-22-99)

Sec. 18-157.1. Stairs, decks, porches and balconies.

Every stair, deck, porch, balcony and all appurtenances thereto shall be kept in sound condition and good repair so as to be safe to use and capable of supporting the loads as outlined in the city building code.
(Ord. No. 99-6, § 1, 10-22-99)

Sec. 18-158. Roofs, gutters and downspouts.

All roofs, gutters, downspouts, fascia, soffits, rake and freeze boards of all structures shall be maintained weather tight and in good condition. Gutters and downspouts, if present, must be firmly anchored. Roof covering materials, including roof decking, shall be maintained in a water-tight condition and free from any serious defects, including roof flashing material. All roof framing members shall be capable of supporting imposed loads and maintained in reasonably good condition.
(Ord. No. 99-6, § 1, 10-22-99)

Sec. 18-159. Exterior walls.

Exterior walls and other exterior surface materials of all structures shall be free of holes, cracked, and loose or rotting boards, or any other condition, which could admit rodents, rain or dampness to the interior of the structure. All rotted or decayed walls, doors, windows, porches, floors, steps, trim, railings and their missing members must be replaced and put in good condition. All replacements must be permanent and of materials manufactured for such purpose. All work involved in replacement must be performed in a good workmanlike manner.
(Ord. No. 99-6, § 1, 10-22-99)

Sec. 18-160. Handrails.

Every handrail and guardrail of all buildings shall be firmly fastened to the structure and capable of safely supporting loads, intended live loads and shall be maintained in good condition. Every exterior flight of stairs having more than four risers shall have handrails provided. Handrails shall not be less than 30 inches nor more than 42 inches high, measured vertically above the nosing of the tread. Every portion of a stair,

porch, landing, or balcony, which is more than 30 inches above the grade or other surface, shall have guards provided, not less than 30 inches above the floor of the landing or balcony. (Ord. No. 99-6, § 1, 10-22-99)

Sec. 18-161. Infestation.

All structures shall be maintained free from sources of breeding and infestation by insects, vermin or rodents. (Ord. No. 99-6, § 1, 10-22-99)

Sec. 18-162. Windows.

(a) Windows of principle structures shall be fully supplied with window glass or other materials approved by the code official without open cracks or holes and shall have the sash in good condition; shall fit reasonably well within frames and shall be maintained so as to exclude adverse weather elements from entering the structure.

(b) Windows of all accessory structures shall be fully supplied with window glass or other materials approved by the code official. (Ord. No. 99-6, § 1, 10-22-99)

Sec. 18-163. Doors.

(a) Doors of principle structures shall be maintained so as to be structurally sound, fit reasonably well within frames so as to be weatherproof and waterproof and be provided with door hinges and latches that are in good working condition.

(b) Doors in all accessory structures shall be maintained so as to be structurally sound, fit reasonably well within frames, and be provided with door hinges and latches in good working order. (Ord. No. 99-6, § 1, 10-22-99)

Sec. 18-164. Chimneys.

Chimneys of principle and accessory structures shall be maintained in sound operating condition and free of loose members, which are subject to falling. (Ord. No. 99-6, § 1, 10-22-99)

Sec. 18-165. Basement hatchways.

Basement hatchways of all structures shall be so constructed and maintained as to prevent the entrance of rodents, rain and surface drainage into the dwelling or other structure, and be capable of supporting the loads that may be imposed upon them. (Ord. No. 99-6, § 1, 10-22-99)

Sec. 18-166. Maintenance of exterior yard areas.

The exterior yard area around each principal structure and accessory structure shall be maintained in a clean, safe, and sanitary condition and improved so as to provide for:

- (1) The diversion of water away from buildings and proper drainage of the lot.
- (2) Grass, plantings or other suitable ground cover to prevent soil erosion, which is or may become detrimental to the structures, lot use, or adjacent lots and structures.
- (3) Sidewalks, parking areas, driveways and exterior steps, which provide safe pedestrian access.
- (4) All yard areas shall be maintained free from accumulated trash, household debris, yard wastes and other assorted like materials.

(Ord. No. 99-6, § 1, 10-22-99)

Sec. 18-167. Inspection authorized; right of entry.

(a) The code official is authorized to make or cause to be made exterior inspections of all structures to determine whether such structures conform to the provisions of this Code.

(b) When a property owner/occupant denies the code official entry onto his/her property for the purpose of making an exterior inspection, the code official may apply for and obtain a search warrant pursuant to constitutional guidelines in order to gain access to such property. (Ord. No. 99-6, § 1, 10-22-99)

Sec. 18-168. Maintenance after casualty damage.

Within 30 days after being duly notified by the code official, the owner shall take the following steps to rectify casualty damages:

- (1) Obtain permits for the repair or restoration of all damaged areas of the structure and complete the removal of all debris; and/or,
- (2) Obtain a permit for demolition and removal of any part of the premises not to be repaired or restored and for the removal of all debris in connection therewith.

(Ord. No. 99-6, § 1, 10-22-99)

Sec. 18-169. Notice of violation.

(a) Whenever the code official determines that a structure is in violation of this chapter, other than section 18-155(a), the code official shall cause a written order to be served upon the owner or the occupant, in accordance with the maintenance responsibilities of each as set forth in section 18-154, to repair and bring said building or structure or property into compliance with this chapter.

(b) Said order for repairing of a structure as herein set forth shall specify a time in which said owner or occupant shall comply therewith, which time shall not be less than 30 days, and shall specify the needed repairs. Said order shall be mailed to the owner of record and the occupant thereof, by first class mailing.

(Ord. No. 99-6, § 1, 10-22-99)

Sec. 18-170. Failure to comply.

No owner of property or occupant thereof shall fail to comply with a repair or notice of violation within the time prescribed or such extension thereof as may be granted by the code official or C.R.C.

(Ord. No. 99-6, § 1, 10-22-99)

Sec. 18-171. Penalty.

Any person who shall violate the provisions of this article, shall be guilty of a misdemeanor punishable by a fine of not more than \$100.00 or by imprisonment not exceeding 90 days, or both

such fine and imprisonment. Each day that a violation continues shall be deemed a separate offense. No fines or penalties will be levied within the first two years of the adoption of this article. (Ord. No. 99-6, § 1, 10-22-99)

Sec. 18-172. Other remedies.

Nothing contained herein shall be construed to limit or abrogate the right of the city to seek any other remedy permitted by law including, specifically, the right to seek abatement of any nuisance through circuit court action.

(Ord. No. 99-6, § 1, 10-22-99)

Chapters 19—21

RESERVED

Chapter 22

BUSINESSES*

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- Sec. 22-2. Prohibition of marihuana businesses and establishments.
- Secs. 22-3—22-25. Reserved.

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***Cross references**—Administration, ch. 2; cable communications, ch. 26; environment, ch. 38.

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Article VI. Pawnbrokers

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Article VII. Secondhand and Junk Dealers

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Article VIII. Taxicabs

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ARTICLE I. IN GENERAL

Sec. 22-1. Reserved.

Sec. 22-2. Prohibition of marihuana businesses and establishments.

(a) The Michigan Regulation and Taxation of Marihuana Act, Initiated Law 1 of 2018, Section 6.1, MCL 333.27951, et seq., ("Act"), authorizes the city to completely prohibit marihuana businesses and marihuana establishments, as defined in the Act, within the boundaries of the city. Pursuant to this authority, the establishment or operation of any marihuana-related businesses or marihuana establishment as defined in the Act are hereby prohibited within the boundaries of the city.

(b) A person violating this section shall be guilty of a municipal civil infraction and shall be subject to the penalties, orders and sanctions set forth in chapter 58, article IX of this Code and/or the provisions of Chapter 87 of Act No. 236 of the Public Acts of Michigan of 1961 (MCL 600.101, et seq.).

(c) This section is effective upon ratification by city council.
(Ord. No. 19-1B, 5-28-19)

Secs. 22-3—22-25. Reserved.

ARTICLE II. LICENSES

Sec. 22-26. Definitions.

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

Cause means the doing or omitting of any act, or permitting any condition to exist in connection with any trade, profession, business or privilege for which a license or permit is granted under the provisions of this Code, or upon any premises or facilities used in connection therewith, which act, omission or condition is:

- (1) Contrary to the health, morals, safety or welfare of the public.

- (2) Unlawful, irregular or fraudulent in nature.
- (3) Unauthorized or beyond the scope of the license or permit granted.
- (4) Forbidden by the provisions of this Code or any duly established rule or regulation of the city applicable to the trade, profession, business or privilege for which the license or permit has been granted.

(Code 1972, § 7.18)

Cross reference—Definitions generally, § 1-2.

Sec. 22-27. Required.

No person shall engage, or be engaged, in the operation, conduct or carrying on of any trade, profession, business or privilege for which any license is required by any provision of this Code without first obtaining a license from the city in the manner provided for in this article.

(Code 1972, § 7.1)

Sec. 22-28. Required for individual businesses within multiple businesses.

The granting of a license or permit to any person operating, conducting or carrying on any trade, profession, business or privilege which contains within itself or is composed of trades, professions, businesses or privileges which are required by this Code to be licensed shall not relieve the person to whom such license or permit is granted from the necessity of securing individual licenses or permits for each such trade, profession, business or privilege, except as specifically provided elsewhere in this Code.

(Code 1972, § 7.2)

Sec. 22-29. State licensed businesses.

The fact that a license or permit has been granted to any person by the state to engage in the operation, conduct or carrying on of any trade, profession, business or privilege shall not exempt such person from the necessity of securing a license or permit from the city if such license or permit is required by this Code.

(Code 1972, § 7.3)

Sec. 22-30. Application.

Unless otherwise provided in this Code, every person required to obtain a license from the city to engage in the operation, conduct or carrying on of any trade, profession, business or privilege shall make application for such license to the city clerk upon forms provided by the city clerk and shall state, under oath or affirmation, such facts as may be required for, or applicable to, the granting of such license. No person shall make any false statement or representation in connection with any application for a license under this Code.

(Code 1972, § 7.4)

Sec. 22-31. License year.

Except as otherwise provided in this chapter as to certain licenses, the license year shall begin July 1 of each year and shall terminate at midnight on June 30 of the following year. Original licenses shall be issued for the balance of the license year at the full license fee. License applications for license renewals shall be accepted and licenses issued for a period of 15 days prior to the annual expiration date. In all cases where the provisions of this Code permit the issuance of licenses for periods of less than one year, the effective date of such licenses shall commence with the date of issuance thereof.

(Code 1972, § 7.5)

Sec. 22-32. Conditions for issuance.

No license or permit required by this Code shall be issued to any person who is required to have a license or permit from the state, until such person shall submit evidence of such state license or permit and proof that all fees appertaining thereto have been paid. No license shall be granted to any applicant therefor until such applicant has complied with all of the provisions of this Code applicable to the trade, profession, business or privilege for which application for license is made, nor unless the applicant agrees in writing to permit inspection of the licensed premises at reasonable hours by authorized officers of the city.

(Code 1972, § 7.6)

Sec. 22-33. Certification required in certain instances.

No license shall be granted where the certification of any officer of the city is required prior to the issuance of the license, until such certification is made.

(Code 1972, § 7.7)

Sec. 22-34. Health officer's certificate.

In all cases where the certification of the health officer is required prior to the issuance of any license by the city clerk, such certification shall be based upon an actual inspection and a finding that the person making the application and the premises in which he proposes to conduct or is conducting the trade, profession, business or privilege comply with all the sanitary requirements of the state and of the city.

(Code 1972, § 7.8)

Sec. 22-35. Fire chief's certificate.

In all cases where the certification of the fire chief is required prior to the issuance of any license by the city clerk, such certification shall be based upon an actual inspection and a finding that the premises in which the person making application for such license proposes to conduct or is conducting the trade, profession, business or privilege comply with all the fire regulations of the state and of the city.

(Code 1972, § 7.9)

Sec. 22-36. Police chief's certification.

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

(Code 1972, § 7.10)

Sec. 22-37. Building inspector's certificate.

In all cases where the carrying on of the trade, profession, business or privilege involves the use of any structure or land, a license therefor shall

not be issued until the building inspector shall certify that the proposed use is not prohibited by any zoning regulations of the city.
(Code 1972, § 7.11)

Sec. 22-38. Bonds.

Where the provisions of this Code require that the applicant for any license or permit furnish a bond, such bond shall be furnished in an amount deemed adequate by the proper city officer, or, where the amount thereof is specified in the schedule of fees and bonds set out in article III of this chapter or elsewhere in this Code, in the amount so required. The form of such bond shall be acceptable to the city attorney. In lieu of a bond, an applicant for a license or permit may furnish one or more policies of insurance in the same amounts and providing the same protection as called for in any such bond. Any such policies of insurance shall be approved as to substance by the city official issuing the license or permit and as to form by the city attorney.
(Code 1972, § 7.12)

Sec. 22-39. Late renewals.

All fees for the renewal of any license, which are not paid at the time the fees shall be due, shall be paid as late fees with an additional 25 percent of the license fee required for such license under the provisions of article III of this chapter,

for the first 15 days that such license fee remains unpaid and thereafter the license fee shall be that stipulated for such licenses under article III of this chapter, plus 50 percent of such fee.
(Code 1972, § 7.13)

Sec. 22-40. Issuance serves as receipt for fees.

If the application for any license is approved by the proper officers of the city, as provided in this Code, such license shall be granted and shall serve as a receipt for payment of the fee prescribed for such license.
(Code 1972, § 7.14)

Sec. 22-41. Payment of fees.

The fee required by this Code for any license or permit shall be paid at the office of the city treasurer upon or before the granting of the license or permit.
(Code 1972, § 7.15)

Sec. 22-42. Exempt persons.

No license fee shall be required from any person exempt from such fee by state or federal law. Such persons shall comply with all other provisions of this article. The city clerk shall, in all such cases, issue to such persons licenses which are clearly marked as to the exemption and the reasons therefor.
(Code 1972, § 7.16)

Sec. 22-43. Suspension or revocation.

Any license issued by the city may be suspended by the city manager for cause, and any permit issued by the city may be suspended or revoked by the issuing authority for cause. The licensee shall have the right to a hearing before the council on any such action of the city manager, provided a written request therefor is filed with the city clerk within five days after receipt of the notice of such suspension. The council may confirm such suspension or revoke or reinstate any such license. The action taken by the council shall be final. Upon suspension or revocation of any license or permit, the fee therefor shall not be refunded.
(Code 1972, § 7.17)

Sec. 22-44. Renewal.

Unless otherwise provided in this Code, an application for renewal of a license shall be considered in the same manner as an original application.
(Code 1972, § 7.19)

Sec. 22-45. Display; exhibit for examination.

No licensee shall fail to carry any license issued in accordance with the provisions of this chapter upon his person at all times when engaged in the operation, conduct or carrying on of any trade, profession, business or privilege for which the license was granted; except that where such trade, profession, business or privilege is operated, conducted or carried on at a fixed place or establishment, such license shall be exhibited at all times in some conspicuous place in his place of business. Every licensee shall produce his license for examination when applying for a renewal thereof or when requested to do so by any city police officer, or by any person representing the issuing authority.
(Code 1972, § 7.20)

Sec. 22-46. Exhibition on vehicle and machine.

No licensee shall fail to display conspicuously on each vehicle or mechanical device or machine required to be licensed by this Code such tags or stickers as are furnished by the city clerk.
(Code 1972, § 7.21)

Sec. 22-47. Display of invalid or duplicated license.

No person shall display any expired license or any license for which a duplicate has been issued.
(Code 1972, § 7.22)

Sec. 22-48. Transferability; misuse.

No license or permit issued under the provisions of this Code shall be transferable unless specifically authorized by the provisions of this Code. No licensee or permittee shall, unless specifically authorized by the provisions of this Code,

transfer or attempt to transfer his license or permit to another, nor shall he make any improper use of the license.
(Code 1972, § 7.23)

Sec. 22-49. Automatic revocation upon misuse.

In addition to the general penalty provision for violation of this article, any attempt by a licensee or permittee to transfer his license or permit to another, unless specifically authorized by the provisions of this Code, or to use the license or permit improperly shall be void and result in the automatic revocation of such license or permit.
(Code 1972, § 7.24)

Secs. 22-50—22-70. Reserved.

ARTICLE III. FEES AND BONDS

Sec. 22-71. Schedule established.

The fee required to be paid and the amount of any bond required to be posted, or insurance required to be carried, to obtain any license to engage in the operation, conduct, or carrying on of any trade, profession, business or privilege for which a license is required by the provisions of this Code shall be as provided in this article. No license shall be issued to any applicant unless he first pays to the city clerk the fee and posts a bond or evidence of insurance coverage in the amount required for the type of license desired.
(Code 1972, § 7.31)

Sec. 22-72. Registration required.

No person shall begin a trade, profession or business, or relocate an existing trade, profession or business within the city without first reporting to the city building inspector in writing and in duplicate the following information: The name and address of the owner of the business, the name of the business, the kind of business, profession or trade, and the business location. The city building inspector shall transmit a copy of such information to the city clerk, and the city clerk shall record this information in a permanent record book. The fee described in section 22-71 shall be accepted by the city clerk only after

notification by the city building inspector of the amount of fee and bond and other requirements of article II of this chapter to be met and any bonds posted or evidence of insurance coverage in the amount required for the type of license desired shall be filed with the city clerk. The city building inspector shall be responsible for enforcement of this article.
(Code 1972, § 7.32)

Sec. 22-73. Fees for licenses.

Fees for licenses shall be as prescribed in this section under the business, trade, occupation or privilege to be licensed. Bonds or insurance coverage, where required, shall be in the amounts listed beneath the license fee prescribed for such business. Any of the fees may be changed by resolution of the city council from time to time. Current fees shall be on file in the office of the city clerk.

<i>Business or Profession</i>	<i>Amount (in dollars)</i>
Carnival	
Fee, first day	\$ 50.00
Plus each additional day	10.00
Insurance	
Personal injury (including death)	
Per person	100,000.00
Per occurrence.....	1,000,000.00
Property damage	
Per occurrence.....	25,000.00
CATV	
Annual fee	See section 26-4
Liability insurance	
Personal injury (including death)	
Per person	100,000.00
Per occurrence.....	300,000.00
Property damage	
Per occurrence.....	100,000.00
Per policy year.....	200,000.00

Circus	
Fee, first day	50.00
Plus each additional day	10.00
Insurance	
Personal injury (including death)	
Per person	100,000.00
Per occurrence	1,000,000.00
Property damage	
Per occurrence	25,000.00
Garage, basement, yard or rummage sales	
Three-day license	2.00
Home occupations	
Initial application fee	75.00
Annual license fee	25.00
Pawnbroker	
Annual fee	200.00
Bond	1,000.00
Peddlers	
Per day	10.00
Per month	50.00
Per year	200.00
Precious metal and gem dealers	25.00
Secondhand merchant	
Annual fee	50.00
Show	
First day	50.00
Plus each additional day	10.00
Liability insurance	
Personal injury (including death)	
One person	100,000.00
One occurrence	1,000,000.00
Property damage	
One occurrence	5,000.00
Solicitors	
Per day	10.00
Per month	50.00

Per year	200.00
Taxicabs	
Initial application	
One-time fee	75.00
Each taxicab	
Annual permit fee	25.00
Permit transfer fee	100.00
Temporary alternate vehicle	
Ten-day permit fee	10.00
Liability insurance	
Personal injury (including death)	
Each person	100,000.00
Each occurrence	1,000,000.00
Property damage	
Each occurrence	5,000.00

(Code 1972, §§ 7.33—7.38; Ord. No. 11-6, § 1, 7-28-11)

Secs. 22-74—22-95. Reserved.

ARTICLE IV. PEDDLERS

Sec. 22-96. Definitions.

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

Peddler means any person traveling by foot, wagon, automotive vehicle or other conveyance, from place to place, from house to house, or from street to street, carrying, conveying or transporting goods, wares, merchandise, meats, fish, vegetables, fruits, garden truck, farm products or provisions, offering and exposing the same for sale or making sales and delivering articles to purchasers, or who, without traveling from place to place, shall sell or offer the same for sale from a wagon, automotive vehicle, or other vehicle or conveyance. Any person who solicits orders and as a separate transaction makes deliveries to purchasers as part of a scheme or design to evade the

provisions of this article, shall be deemed a peddler. The word "peddler" shall include the words "hawker" and "huckster."

(Code 1972, § 7.71)

Cross reference—Definitions generally, § 1-2.

Sec. 22-97. License required.

No person shall engage in the business of peddler without first obtaining a license therefor. No such license shall be granted except upon certification of the chief of police.

(Code 1972, § 7.72)

Sec. 22-98. Fixed stands.

No licensee shall stop or remain in any one place upon any street, alley or public place, longer than necessary to make a sale to a customer wishing to buy. Any peddler using a vehicle, when stopped, shall place his vehicle parallel to and within 12 inches of the curb and shall depart from such place as soon as he has completed sales with customers actually present.

(Code 1972, § 7.73)

Sec. 22-99. Prohibited areas.

No peddler, in the sale of goods, wares and merchandise, shall obstruct any street, alley, sidewalk or driveway except as may be necessary and reasonable to consummate a sale nor remain, barter, sell, offer or expose for sale any goods, wares or merchandise in front of or at the side of any property against the wish or desire of the property owner or the tenant or occupant of such property. No peddler shall engage in peddling on any street, alley or public place after having been requested to desist by any police officer of the city because of congested or dangerous traffic conditions.

(Code 1972, § 7.74)

Sec. 22-100. Prohibited practices.

No peddler shall shout or cry out his goods or merchandise, nor blow any horns, ring any bell or use any other similar device to attract the attention of the public.

(Code 1972, § 7.75)

Sec. 22-101. Curb service.

No person shall operate or maintain any stand, vehicle, store or place of business on or near to any highway in such a manner that the customers of or traders with such person occupy or congregate within the limits of any street, lane, highway, or public place within the city. No person shall be permitted to use the streets, alleys, lanes or public places of the city for the service of customers or for the transaction of business, or to use any stands, stores or other places of business in any manner that shall require the customer, when transacting such business, to stand within the limits of the streets, highways, alleys or public places of the city.

(Code 1972, § 7.76)

Sec. 22-102. Exempt persons.

The following shall be exempt from the licensing requirements of this article but shall be subject to the other provisions of this article:

- (1) Farmers or truck gardeners selling or offering for sale any products grown, raised or produced by them, the sale of which is not otherwise prohibited or regulated.
- (2) Any person under 18 years of age, when engaged in peddling on foot in the neighborhood of his residence under the direct supervision of any school or recognized charitable or religious organization.

(Code 1972, § 7.77)

Secs. 22-103—22-125. Reserved.

ARTICLE V. SOLICITORS

Sec. 22-126. Definitions.

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

Solicitor means any individual, whether a resident of the city or not, communicating by unsolicited telephone call, or traveling either by foot, wagon, automobile, motor truck or any other type of conveyance from place to place, from house to

house or from street to street, taking or attempting to take orders for sale of goods, wares and merchandise, books or magazines, personal property of any nature whatsoever for future delivery or for services to be furnished or performed in the future, whether to be furnished to the person called or to some other person, whether or not such individual has, carries or exposes for sale the sample of the subject of such sale, whether he is collecting a down payment of such sale or not. This definition shall include any person who for himself or for another person hires, leases, uses or occupies any building, structure, tent, railroad boxcar, boat, hotel room, lodginghouse, apartment, shop or any other place within the city for the sole purpose of exhibiting samples and taking orders for future delivery.

(Code 1972, § 7.81)

Cross reference—Definitions generally, § 1-2.

Sec. 22-127. License required.

No person shall engage in the business of a solicitor within the city without first obtaining a license therefor. No such license shall be granted except upon certification of the chief of police.

(Code 1972, § 7.82)

Sec. 22-128. Application for license.

The license application filed under the provisions of section 22-30 shall furnish the following information:

- (1) Name and description of the applicant.
- (2) Permanent home address and full local address of the applicant.
- (3) A brief description of the nature of the business and the goods to be sold.
- (4) If employed, the name and address of the employer, together with credentials establishing the exact relationship.
- (5) The length of time for which the right to do business is desired.
- (6) The place where the goods or property proposed to be sold, or orders taken for the sale of such goods or property, are manufactured or produced, where such goods or

products are located at the time the application is filed, and the proposed method of delivery.

- (7) A photograph of the applicant, taken within 60 days immediately prior to the date of the filing of the application, which picture shall be two inches by two inches showing the head and shoulders of the applicant in a clear and distinguishing manner.
- (8) The fingerprints of the applicant and the names of at least two reliable property owners of the county who will certify as to the applicant's good character and business respectability, or in lieu of the names of references, such other available evidence as to the good character and business responsibility of the applicant as will enable an investigator to properly evaluate such character and business responsibility.
- (9) A statement as to whether or not the applicant has been convicted of any crime, misdemeanor, or violation of any municipal ordinance, the nature of the offense, and the punishment or penalty assessed therefor.

(Code 1972, § 7.83)

Sec. 22-129. License fees.

The fees for a solicitor's license shall be as specified in article III of this chapter. No fee for a solicitor's license shall be so applied as to occasion an undue burden upon interstate commerce. In any case where a license fee is believed by a licensee or applicant for a license to place an undue burden upon interstate commerce, he may apply to the city manager for an adjustment of the fees so that it shall not be discriminatory, unreasonable, or unfair as to such commerce. Such application may be made before, at or within six months after payment of the prescribed license fee. The applicant shall, by affidavit, and supporting testimony, show his method of business and such other information as the city manager may deem necessary in order to determine the extent, if any, of such undue burden on such commerce. The city manager shall then conduct an investigation, comparing the applicant's business with other businesses of like nature and shall make

findings of fact from which he shall determine whether the fee fixed for the solicitor's license is unfair, unreasonable or discriminatory as to applicant's business and shall fix as the license fee for the applicant, an amount that is fair, reasonable and nondiscriminatory, or, if the fee has already been paid, shall order a refund of the amount over and above the fee so fixed. In fixing the fee to be charged, the city manager shall have the power to base the fee upon a percentage of gross sales, or any other method which will ensure that the fee assessed shall be uniform with that assessed on businesses of like nature, so long as the amount assessed does not exceed the fee as prescribed by article III of this chapter. Should the city manager determine the gross sales measure of the fee to be the fair basis, he may require the applicant to submit, either at the time of termination of applicant's business in the city or at the end of each three-month period, a sworn statement of the gross sales and pay the amount of fee therefor, provided that no additional fee during any one license year shall be required after the licensee shall have paid an amount equal to the annual license fee as prescribed in article III of this chapter.
(Code 1972, § 7.84)

Sec. 22-130. Hours for solicitation.

No person shall engage in activity as a solicitor except between the hours of 9:00 a.m. and 9:00 p.m. of the lawful time then in effect in the city.
(Code 1972, § 7.85)

Sec. 22-131. Exempt persons.

Persons under 18 years of age, when engaged in soliciting on foot in the neighborhood of their residence under the direct supervision of any school or recognized charitable or religious organization shall be exempt from the requirements of this article.
(Code 1972, § 7.86)

Secs. 22-132—22-150. Reserved.

ARTICLE VI. PAWNBROKERS

Sec. 22-151. License required.

No person shall engage in the business of pawnbroker without first obtaining a license there-

for. In accordance with the provisions of Act No. 273 of Public Acts of Michigan of 1917 (MCL 446.201 et seq., MSA 19.581 et seq.), as amended, pawnbroker licenses shall be issued by the mayor. The fee for such license shall be as prescribed in article III of this chapter. Any licensee violating any of the provisions of Public Act 273 of 1917, as amended, shall be guilty of a violation of this Code and punished as prescribed in section 1-16. The provisions of Act No. 231 of the Public Acts of Michigan of 1945 (MCL 445.471 et seq., MSA 19.740(1) et seq.), as amended, shall also apply to pawnbrokers licensed under the provisions of this article and any licensee violating any provision of this article shall be guilty of a violation of this Code and punished as provided in section 1-16.
(Code 1972, § 7.101)

Secs. 22-152—22-170. Reserved.

ARTICLE VII. SECONDHAND AND JUNK DEALERS

Sec. 22-171. License required.

No person shall engage in the business of dealer in secondhand goods or junk dealer without first obtaining a license therefor. Such license shall be issued by the mayor in accordance with the provisions of Act No. 350 of the Public Acts of Michigan of 1917 (MCL 445.401 et seq., MSA 19.711 et seq.), as amended. The fee for such licenses shall be as specified in article III of this chapter.
(Code 1972, § 7.111)

Sec. 22-172. Applicable state statutes.

Except as otherwise provided in this article, the provisions of Act No. 350 of the Public Acts of Michigan of 1917 (MCL 445.401 et seq., MSA 19.711 et seq.), as amended, and the provisions of Act No. 231 of the Public Acts of Michigan of 1945 (MCL 445.471 et seq., MSA 19.711 et seq.), as amended, shall apply to licensees under this article. Any licensee who shall violate any provision of the state statutes shall be guilty of a violation of this Code and punished as prescribed in section 1-16.
(Code 1972, § 7.112)

Secs. 22-173—22-195. Reserved.

ARTICLE VIII. TAXICABS

Sec. 22-196. Definitions.

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

Taxicab means as found in the Uniform Traffic Code adopted in section 78-26.
(Code 1972, § 7.151)

Cross reference—Definitions generally, § 1-2.

Sec. 22-197. Permit required.

It shall be unlawful for any person to operate any taxicab for hire upon the streets of the city, without first having applied for and received a permit therefor from the office of the city clerk. The permit applicant shall be required to remit an initial, one-time, nonrefundable application fee of \$75.00, along with an annual, nonrefundable fee of \$25.00 for each vehicle permitted. Any permit issued under this article will be and remain valid for a period of one calendar year (365 days) from and after the date of issuance. Thereafter, permits may be renewed for successive one-year periods, upon payment of the annual permit fee established and upon compliance with the application and insurance requirement provisions of sections 22-198 and 22-199. Permit fees established under this article may, from time to time, be amended or modified by resolution of the city council in such an amount and at such interval as may be determined to be appropriate by the city council.
(Code 1972, § 7.152)

Sec. 22-198. Application for permit.

The application for a permit to operate a taxicab on city streets shall be made by the owner of the vehicle and filed with the city clerk. Such application shall contain the name and address of the applicant, together with the address of his taxicab office or stand, and a description of the vehicle for which a permit is being sought. The city clerk shall, upon receipt of the completed

permit application, along with full payment of any and all established permit fees, promptly transmit the application to the chief of police, who shall inspect the vehicle to be permitted for road worthiness and compliance with local, state, and federal law. The police chief shall then forward on a completed vehicle inspection report to the city manager for final permit approval in compliance with all requirements of this article. Upon final approval, the city manager shall instruct the city clerk to issue the taxicab permit.
(Code 1972, § 7.153)

Sec. 22-199. Insurance requirements.

All applications for a taxicab permit shall include a copy of an insurance certificate evidencing that personal liability and property damage insurance coverage is in effect for the permitted vehicle in amounts, and to limits, not less than those imposed by state statute and regulation, as from time to time amended. The insurance certificate provided shall obligate, as evidenced thereon, the insurance company to provide, at a minimum, ten days' written notice to the city clerk prior to cancellation of such insurance.
(Code 1972, § 7.154)

Sec. 22-200. Taximeter.

All taxicabs permitted to operate within the corporate boundaries of the city shall, in compliance with the laws of the state, operate the taxicab utilizing a taximeter. Such meters shall display clearly lighted numbers and fares. All taximeters shall indicate and display in a lighted manner when the fare is being accrued and calculated on a mileage basis or when such fare is based on waiting time. At no time will a taxicab operator be allowed to utilize, or base fares on, a meter which charges both time and mileage concurrently. All taximeters shall be mounted and installed in a secure manner in an unobstructed location on the front dash area of the taxi, which affords a clear view from both the front and rear seat areas at all times.
(Code 1972, § 7.155)

Sec. 22-201. Proper display of signage, license and permit.

Any and all taxicabs operating within the city shall at all times maintain the prominent display

of clear and legible signage or lettering, permanently painted on or affixed to the vehicle which discloses the name of the taxi firm, the phone numbers, and current fares or rates of service. The taxicab operator must maintain and display the taxicab permit at all times in the interior of the vehicle. Also, the taxicab operator must, at all times, maintain and display his current state photo I.D. driver's license, with a valid chauffeur's endorsement, in a manner readily visible to rear seat passengers.

(Code 1972, § 7.156)

Sec. 22-202. Taxicab colors.

If a single owner or firm operates multiply permitted taxicabs within the city, such vehicles shall be of consistent, uniform color. Such color shall be recorded with the city clerk's office as part of the permit application, and any proposed change or alteration to the color shall constitute a modification of the original permit application and thereby require approval by the city manager. The city manager shall not unreasonably withhold approval for the change or modification in the color or visual appearance of a permitted taxicab.

(Code 1972, § 7.157)

Sec. 22-203. Determination of convenience and necessity.

The city council may, by resolution, refuse to grant a permit to any applicant when, in their judgment, there are already permitted a sufficient number of taxicabs to adequately serve the needs of the public of the city, or when the use of the streets of the city by additional taxicabs would interfere with the public use of the streets, or congest traffic.

(Code 1972, § 7.158)

Sec. 22-204. Permit—Quota.

The number of taxicab permits issued in the city shall not exceed one for each 1,000 population in the city, as measured by the most recent decennial federal census. No permit to operate taxicabs within the city, except renewals of existing licenses, shall be issued or granted except on a hearing before the council following written

notice, first class postage paid, no less than seven calendar days in advance, to all permitted operators within the city.

(Code 1972, § 7.159)

Sec. 22-205. Same—Transfer or sale.

Permits issued under this article may be transferred or sold to another owner/operator only upon approval by the city council following a hearing requested by both the proposed buyer and seller of the permit, written notice of which must be provided to all permitted operators within the city via first class mail no less than seven calendar days in advance of the hearing. The council must approve of both the buyer and his intent to do business as a taxicab operator within the city. Upon city council approval of a transfer or sale, a transfer fee of \$100.00 shall be paid to the office of the city clerk prior to the issuance of a new permit. The use of a spare or alternate vehicle, while the permitted vehicle is out-of-service or undergoing repairs, for a period not to exceed ten days does not constitute a transfer of permit. However, a notice of the intended use of an alternate vehicle must be recorded with the office of the city clerk at least two working days prior to the time such use is expected; excepting, however, that, should one or more of the permitted vehicles owned by the same person be rendered inoperable because of damages sustained in an accident, such notice may be filed the same day the vehicle substitution is intended. The chief of police shall withdraw the permit from any vehicle rendered inoperable during the complete time period for which an alternate vehicle is permitted under the provisions in this section. If the permitted vehicle is to be out-of-service for a time period in excess of ten days, a new waiver must be recorded with the clerk's office and a fee posted. The fee for the use of an alternate vehicle shall be \$10.00 per ten-day period. Alternate vehicles must comply with all provisions of this article and must be inspected and approved for use by the chief of police.

(Code 1972, § 7.160)

Sec. 22-206. Same—Revocation and suspension.

Any permit holder who shall violate the provisions of this article shall be subject to revocation

of his permit to operate a taxicab within the city. Such revocation is to be accomplished by resolution of the city council following written notice to the permit holder, setting forth the reasons for such action. Notice shall be by first class mail no less than seven calendar days prior to the scheduled action by the council. The city manager shall have the authority to suspend any taxicab permit pending formal action by the city council when, he shall determine that such suspension is reasonably necessary to protect the general public safety and welfare. Any permit holder aggrieved by the suspension or proposed revocation of his permit may request and be granted a hearing before the city council. Following such hearing, the council shall either lift the permit suspension or formally resolve to revoke the permit for cause. The determination of the city council shall be final. (Code 1972, § 7.161)

Sec. 22-207. Rates of fares.

The rates of fares to be charged to passengers within the city shall be filed by the applicant with the city clerk's office and shall be included in the resolution adopted by the city council formally approving the permit's issuance. (Code 1972, § 7.162)

Secs. 22-208—22-230. Reserved.

ARTICLE IX. SHOWS AND EXHIBITIONS

Sec. 22-231. Definitions.

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

Show or exhibition means, but shall not be limited to, the following:

- (1) Carnivals;
 - (2) Rodeos;
 - (3) Wild west shows;
 - (4) Tent shows; and
 - (5) Exhibitions for hire.
- (Code 1972, § 7.192)

Cross reference—Definitions generally, § 1-2.

Sec. 22-232. License required.

No person shall conduct, maintain, or operate any show, circus or exhibition without first obtaining a license therefor. (Code 1972, § 7.191)

Sec. 22-233. Licenses for carnivals.

Not more than two carnival licenses shall be issued in any calendar year. (Code 1972, § 7.193)

Sec. 22-234. Grant of license to be at the option of council; certifications required.

The granting of such license shall be optional with the city council, and in no event shall any such license be granted except upon prepayment of the license fee. No license under this article shall be granted except upon certification of the police chief, the fire chief, and the health officer. (Code 1972, § 7.194)

Sec. 22-235. Prohibited amusements.

(a) The following listed amusements are each and all, and every component part thereof, hereby declared to constitute public nuisances contrary to the safety, health, morals and welfare of the public, and are commonly known as:

- (1) Street fairs or street shows, including medicine shows.
- (2) Shooting galleries.
- (3) Endurance contests or marathons.
- (4) Freak shows, where artificial or natural curiosities are exhibited.

(b) No person shall conduct, participate in, attend or sell or purchase tickets for any such amusements listed in subsection (a) of this section in the city. (Code 1972, § 7.195)

Secs. 22-236—22-255. Reserved.

ARTICLE X. FUMIGATORS

Sec. 22-256. Notice to city.

The owner or other party in possession of any premises in the city which is to be fumigated shall notify the departments of police and fire and the city clerk at least 24 hours in advance of the fumigation of such premises.

(Code 1972, § 6.51)

Sec. 22-257. Warning signs.

At the time such fumigation process is started in any premises in the city, all entrances to such premises shall be placarded with appropriate warning signs such as DANGER - KEEP OUT.

(Code 1972, § 6.52)

Sec. 22-258. Poisonous fumigants; procedure for use.

If poisonous fumigants or gases are to be used in such process, then:

- (1) Any building in which poisonous fumigants are used shall be completely vacated, even though only a restricted portion of the building is to be fumigated.
- (2) All cracks, crevices, and apertures in walls and floors shall be sealed to prevent leakage of gas.
- (3) All windows shall be sealed and securely locked.
- (4) All entrances to the building, except one, shall be securely locked and fastened from the inside in such a manner that they cannot be unlocked or opened from the outside. Keyholes to all entrances shall be covered on the outside with heavy paper tape securely glued in place.
- (5) All soft or liquid food that may in any way be affected by the fumigant shall be removed.
- (6) All entrances to the building shall be placarded with signs containing the following words in red letters: "Danger - Keep Out - Deadly Poison Gas Being Used in This Building." The word "danger" shall be set in letters at least four inches high. The

placard shall also bear the name, address, and telephone number of the fumigating contractor.

- (7) The door through which the contractor or operator makes an exit shall be securely locked and sealed from the outside. The contractor shall retain the keys to all entrances.
 - (8) No person shall be permitted to enter the building during the process of fumigation.
 - (9) All fumigant residue left in jars, containers, or other receptacles shall be poured down the toilet bowl. All traces of the chemical shall be removed from the bowl by a thorough washing. Where toilets are not available, the residue may be buried.
 - (10) No person other than a fumigating contractor or the operator shall be permitted to enter the premises until at least six hours after doors and windows have been opened. Children under six years of age shall not be permitted to enter the premises until 12 hours after doors and windows have been opened, and until a litmus paper test has been made. The contractor shall inform all occupants of the building of this provision.
- (Code 1972, § 6.53)

Secs. 22-259—22-280. Reserved.

ARTICLE XI. PRECIOUS METAL AND GEM DEALERS

Sec. 22-281. Definitions.

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

Agent or employee means a person who, for compensation or valuable consideration, is employed either directly or indirectly by a dealer.

Dealer means any person, corporation, partnership, or association, which, in whole or in part, engages in the ordinary course of repeated and recurrent transactions of buying or receiving precious items from the public within this state.

Gold means elemental gold having an atomic weight of 196.967 and the chemical element symbol of Au, whether found by itself or in combination with its alloys or any other metal.

Jewelry means an ornamental item made of a material that includes a precious gem.

Local police agency means the police agency of the city, village, or township or, if none, the county sheriff.

Platinum means elemental platinum having an atomic weight of 195.09 and the chemical element symbol of Pt, whether found by itself or in combination with its alloys or any other metal.

Precious gem means a diamond, alexandrite, ruby, sapphire, opal, amethyst, emerald, aquamarine, morganite, garnet, jadeite, topaz, tourmaline, turquoise, or pearl.

Precious item means jewelry, a precious gem, or an item containing gold, silver, or platinum. Precious item does not include the following:

- (1) Coins, commemorative medals, and tokens struck by, or in behalf of, a government or private mint.
- (2) Bullion bars and discs of the type traded by banks and commodity exchanges.
- (3) Items at the time they are purchased directly from a dealer registered under this article, a manufacturer, or a wholesaler who purchased them directly from a manufacturer.
- (4) Industrial machinery or equipment.
- (5) An item being returned to or exchanged at the dealer where the item was purchased and which is accompanied by a valid sales receipt.
- (6) An item which is received for alteration, redesign, or repair in a manner that does not substantially change its use and returned directly to the customer.
- (7) An item which does not have a jeweler's identifying mark or a serial mark and which the dealer purchases for less than \$5.00.

(8) Scrap metal which contains incidental traces of gold, silver, or platinum which are recoverable as a by-product.

(9) Jewelry which a customer trades for other jewelry having a greater value, and which difference in value is paid by the customer.

Silver means elemental silver having an atomic weight of 107.869 and the chemical element symbol of Ag, whether found by itself or in combination with its alloys or any other metal. (Code 1972, § 7.250)

Cross reference—Definitions generally, § 1-2.

Sec. 22-282. Penalty for violation of article.

Any person who shall violate any provision of this article shall be guilty of a misdemeanor, punishable as set forth in section 1-16. (Code 1972, § 7.253)

Sec. 22-283. Certificate of registration.

(a) *Required.* A dealer shall not conduct business within the city unless he shall have obtained a valid certificate of registration from the chief of police.

(b) *Application; fee; contents.* A dealer shall apply to the chief of police for a certificate of registration, and pay a fee in the amount of \$10.00 to cover the reasonable cost of processing and issuing the certificate of registration, by disclosing the following information:

- (1) The name, address, and thumbprint of the applicant.
- (2) The name and address under which the applicant does business.
- (3) The name, address, and thumbprint of all agents or employees of the dealer. Within 24 hours after hiring a new employee, the dealer shall forward to the city police department the name, address, and thumbprint of the new employee.

(c) *Dealers or agents convicted of misdemeanors.* A dealer or an agent or employee of a dealer who is convicted of a misdemeanor under the provisions of Act No. 95 of the Public Acts of Michigan of 1981 (MCL 445.481 et seq., MSA 19.720(1) et seq.), or under section 535 of Act No.

328 of the Public Acts of Michigan of 1931 (MCL 750.1 et seq., MSA 28.191 et seq.), as amended, shall not be permitted to operate as a dealer within the city for a period of one year after conviction.

(d) *Dealers or agents convicted of felonies.* A dealer or an agent or employee of a dealer who is convicted of a felony under Act No. 95 of the Public Acts of Michigan of 1981 (MCL 445.481 et seq., MSA 19.720(1) et seq.), as amended, or under section 535 of Act No. 328 of the Public Acts of Michigan of 1931 (MCL 750.1 et seq., MSA 28.191 et seq.), as amended, shall not be permitted to operate as a dealer within the city for a period of five years after the conviction.

(e) *Compliance by dealer with Code.* Nothing contained in this section shall be construed to excuse a dealer from complying with all other requirements of this Code with respect to conducting and carrying on a business, including local zoning ordinances and other ordinances regulating commercial activities. However, nothing contained in this section shall be construed to provide additional standards over and above those set forth in section 3 of Act No. 95 of the Public Acts of Michigan of 1981 (MCL 445.481 et seq., MSA 19.720(1) et seq.), as amended.

(f) *Issuance.* Upon the receipt of the application described in subsection (2) of this section, the police chief shall issue a certificate of registration in accordance with this section.

(g) *Posting.* Upon receipt of the certificate of registration from the police chief, the dealer shall post it in a conspicuous place in the dealer's place of business.

(h) *Notification of change of address.* Not less than ten days before a dealer changes the name or address under which the dealer does business, the dealer shall notify the city police department of the change.
(Code 1972, § 7.251)

Sec. 22-284. Record of transactions; forms; contents.

(a) A dealer shall maintain a permanent record of each transaction on record of transaction forms provided for in subsection (f) of this section,

legibly written in ink in the English language. Each record of transaction form shall be filled out in triplicate by the dealer or agent or employee of the dealer with one copy going to the city police department pursuant to subsection (c) of this section, one copy going to the customer, and one copy to be retained by the dealer pursuant to subsection (e) of this section. At the time a dealer receives or purchases a precious item, the dealer or the agent or employee of the dealer shall ensure that the following information is recorded accurately on a record of transaction form:

- (1) The dealer certificate of registration number.
- (2) A general description of the precious item or precious items received or purchased, including its type of metal or precious gem. In the case of watches, the description shall contain the name of the maker and the number of both the works and the case. In the case of jewelry, all letters and marks inscribed on the jewelry shall be included in the description.
- (3) The date of the transaction.
- (4) The name of the person conducting the transaction.
- (5) The name, date of birth, driver's license number or state personal identification card number, and street and house number of the person with whom the transaction is being made, together with a legible imprint of the right thumb of the person with whom the transaction is made or, if that is not possible, then the left thumb or a finger of that person. However, the thumbprint or fingerprint shall only be required on the record of transaction form retained by the dealer. The thumbprint or fingerprint shall be made available to the city police department only during the course of a police investigation involving a precious item described on the record of transaction. After a period of one year from the date of the record of transaction, if a police investigation concerning a precious item described on the record of transaction has not occurred, the dealer and city police department shall destroy, and not keep a perma-

ment record of, the records of transaction. A dealer who goes out of business or changes his business address to another local jurisdiction, either within or out of this state, shall transmit the records of all transactions made by the dealer within one year before his closing or moving, to the city police department.

- (6) The price to be paid by the dealer for the precious item or precious items.
- (7) The form of payment made to the customer: check, money order, bank draft, or cash. If the payment is by check, money order, or bank draft, the dealer shall indicate the number of the check, money order, or bank draft.
- (8) The customer's signature.

(b) The record of each transaction shall be numbered consecutively, commencing with the number one and the calendar year.

(c) Within 48 hours after receiving or purchasing a precious item, the dealer shall send a copy of the record of transaction form to the city police department. The record of transaction forms received by the police department shall not be open to inspection by the general public. The city police department shall be responsible for ensuring the confidentiality of the record of transaction forms and ensuring that the record of transaction forms are used only for the purpose for which they were received.

(d) The record of transaction forms of a dealer and each precious item received shall be open to an inspection by the county prosecuting attorney, city police department, and the state police, at all times during the ordinary business hours of the dealer. As a condition of doing business, a dealer is deemed to have given consent to the inspection prescribed by this subsection. The record of transaction forms of a dealer shall not be open to inspection by the general public.

(e) Except as otherwise provided in the section, each record of a transaction shall be retained by the dealer for not less than one year after the transaction to which the record pertains.

(f) The form of the record of transaction shall have an 8½-inch by 11-inch size and shall be as follows:

Record of Transaction

Dealer Certificate # _____ (Printed on form)	# _____ (Transaction number printed on the form)
(1) Description of Property _____ _____ _____	
(2) _____, 19____ (Date)	(3) _____ (Name of Dealer/Employee)
(4) _____ (Name of Customer)	_____, 19____ (Date of Birth)
_____ (Driver's license No./ Michigan Personal ID Number)	_____ (Street Address)
	_____ (City and State, Zip)
(5) _____ (Price paid)	
(6) _____ (Check no., bank draft no., money order no., or cash)	
THUMBPRINT	_____ (Signature of Customer)

(Code 1972, § 7.252)

Secs. 22-285—22-305. Reserved.

ARTICLE XII. GARAGE, BASEMENT, YARD AND RUMMAGE SALES

Sec. 22-306. Definitions.

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

Garage sales, yard sales, basement sales, attic sales, flea markets means any sale of tangible personal property, whether used, damaged, or discarded and not otherwise regulated in ordinances of the city, advertised by any means whereby the public at large is or can be aware of such sale. (Code 1972, § 7.261)

Cross reference—Definitions generally, § 1-2.

Sec. 22-307. Penalty for violation of article.

Any person violating any of the provisions of this article shall be responsible for a municipal civil infraction and subject to a civil fine of not less than \$25.00, plus costs and other sanctions for each infraction. Repeat offenses under this article shall be subject to increased fines as provided by section 58-242.

(Code 1972, § 7.266; Ord. No. 96-2, § 1, 4-15-96)

Sec. 22-308. License required.

It shall be unlawful for any person, organization, corporation, partnership, or association of whatever description to conduct, advertise, or promote any sales of foods, secondhand, damaged, or discarded property of whatever description upon any property, public or private, within the city unless a proper license is secured, as provided by section 22-73, or is further permitted in this article.

(Code 1972, § 7.262)

Sec. 22-309. License application; contents; fee.

It shall be unlawful for any owner, tenant, or lessee of a residence or charitable institution to conduct, advertise, or promote a sale unless a license is obtained as provided in this section.

- (1) A written application shall be filed with the city clerk on the forms prescribed by the city clerk and shall contain the following:
 - a. Name and address of the person, association, or organization conducting such sale.
 - b. Location at which the sale is to be conducted.
 - c. Dates on which the sale is to be conducted within the limits prescribed in this section.
 - d. Date, nature, and location of any sales conducted within the last six months.
 - (2) An affidavit signed by the applicants, confirming that the items to be sold are the sole property of such applicants and were not purchased for resale, must be filed with the application.
 - (3) The applicant shall pay the sum of \$2.00 for the issuance of the license to the city clerk at the time of the filing of the application.
- (Code 1972, § 7.263)

Sec. 22-310. Conditions for conducting sales.

(a) *Duration; moving sales.* No sale as described in this article shall be conducted at a particular location for any period in excess of three days in the aggregate in any given six-week period, nor for more than six days in any given 12-month period, except as provided in this section. In the case of an applicant in the process of moving into or out of the city, the city clerk may grant a moving sale license for an additional period of not to exceed three days' duration, which period may fall within the six-week period. The city clerk may, in the case of an applicant seeking such additional moving sale license, require such affidavits or other evidence as shall be reasonably necessary to verify the act of moving.

(b) *Display of license.* The license authorizing such sale shall be displayed in the front window or other prominent place, clearly visible from the street, at each location where a sale is being conducted.

(c) *Placement of signs.* No signs advertising a sale required by this article shall be placed on public property or within the public right-of-way, on any utility pole, or on private property except that one sign advertising the sale may be placed on the property of the owner.

(d) *Size and illumination of signs.* The sign shall not be in excess of six square feet and shall not be illuminated in any manner whatsoever except incidentally by streetlights or houselights.

(e) *Location of items for sale.* The items offered for sale shall be displayed on the applicant's property and not on the city's property or right-of-way.

(Code 1972, § 7.264)

Sec. 22-311. Persons and sales exempted.

The following persons and kinds of sales shall be exempt from the provisions of this article:

- (1) Persons selling goods pursuant to an order of process of a court of competent jurisdiction;
- (2) Any person advertising for sale any items of personal property which are specifically named or described in an advertisement, and which separate items do not exceed ten in number;
- (3) Any sale conducted by any merchant or other business establishment from or at a place of business wherein such sale would be permitted by the zoning regulations of the city or are under the protection of section 94-371 et seq. for businesses in residential zones, or any other sale conducted by a manufacturer, dealer, or vendor and which sale would be conducted from properly zoned premises and not otherwise prohibited in the ordinances of the city;
- (4) Auctions by lawfully qualified auctioneers; and

(5) Persons acting in accordance with their powers and duties as public officials.

(Code 1972, § 7.265)

Secs. 22-312—22-331. Reserved.

ARTICLE XIII. ADULT ENTERTAINMENT BUSINESSES

Sec. 22-332. Purpose and intent.

It is the purpose and intent of this article to provide for the proper location and orderly regulation of adult entertainment businesses, as defined in this article, in the interest of public health, safety, and welfare. Regulating these uses through location is necessary to ensure that the adverse effects of such uses will not contribute to the "blighting" or downgrading of the surrounding neighborhood or locale. By establishing and maintaining certain minimum standards and regulations for adult entertainment businesses, as well as for their operators and employees, it is intended that this article will serve to prevent the solicitation for acts of prostitution in such businesses, and also mitigate against any otherwise deleterious effect upon adjacent areas.

(Ord. No. 96-3, § 1, 6-17-96)

Sec. 22-333. Definitions.

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

Adult book store means an establishment having as a substantial or significant portion of its stock and trade, books, magazines, video tapes, films, recordings, and other periodicals which are distinguished or characterized by their emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas" or any other "sexually explicit matter," as hereinafter defined, or an establishment primarily devoted to the sale or display of such material, or which establishment excludes admission to minors by virtue of age.

Adult cabaret means a cafe, restaurant or bar where patrons are entertained by dancers, strip-

pers or male or female impersonators, whether accompanied by music or not, whose conduct is characterized by an emphasis on specified sexual activities or specified anatomical areas.

Adult entertainment business includes, but is not limited to, adult book stores, adult video stores, adult personal service businesses, adult cabarets, adult novelty businesses, massage parlors, nude modeling studios and tattoo parlors.

Adult novelty business means a business which has a principle activity in the sale of devices which stimulate human genitals or devices designed for sexual stimulation.

Adult personal service business means a business having as its principle activity a person, while nude or displaying specific anatomical areas, providing personal services for another person. Such businesses include, but are not limited to massage parlors, exotic rubs, modeling studios, body painting studios, wrestling studios, individual theatrical performances or entertainment. It does not include activities performed by persons pursuant to and in accordance with, licenses issued to such persons by the state.

Adult video store means an establishment which has in excess of 50 percent of its stock-in-trade for sale or rental to the public or patrons, video cassettes or video tapes, having as a dominant theme an emphasis on matter depicting, describing or relating to specified sexual activity or specified anatomical areas.

Massage means the manipulation of body muscle or tissue by rubbing, stroking, kneading, tapping or vibrating, through the use of physical, mechanical or other device, of the body of another, for a fee.

Massage parlor means an establishment wherein private massage is practiced, used or made available as a principle use of the premises.

Nude modeling studio means any building, structure, premises or part thereof used primarily as a place which offers as its principle activity the providing of models to display specified anatomical areas for artists and photographers for a fee.

Protected use means a church, school, public park or playground, non-commercial public assembly building or public office building.

Specified anatomical areas means less than completely and opaquely covered human genitals, pubic region, buttock or female breast below a point immediately above the top of the areola, and human male genitals in a discernible turgid state, even if completely and opaquely covered.

Specified sexual activities means the stimulation or arousal of human genitalia, acts of human masturbation, sexual intercourse or sodomy, or fondling or other erotic touching of human genitals, pubic region, buttock or female breast.

Tattoo parlor means a business having as its principal activity the application or placing, by any method, of designs, letters, scrolls, figures, symbols or other marks upon or under the human skin with ink or any other substance resulting in the coloration of the skin by the aid of needles or any other instrument designed to touch or puncture the skin.

(Ord. No. 96-3, § 1, 6-17-96)

Sec. 22-334. Exempt activities.

The following activities are specifically excluded from the meaning of the term "adult entertainment business" and are exempt from the application of all provisions of this article.

- (1) Massages or other acts of physical therapy when administered by:
 - a. Physicians, surgeons, chiropractors, osteopaths, or physical therapists who are duly licensed to practice their respective professions in the state;
 - b. Nurses registered under the laws of the state;
 - c. Trainers of any amateur, semi-professional, or professional athlete or athletic team;
 - d. Professional massage therapists, while engaged in the performance of the duties of their profession, who meet the following criteria:
 1. Proof of graduation from a school of massage licensed by the State

of Michigan or another state with equivalent standards, consisting of at least 500 classroom hours of instruction and practical training, which include 300 hours of theory and practice of massage therapy, 100 hours of anatomy and physiology, and 100 hours of elective subjects; or proof of completion of a comprehensive course of study in a massage training program at an American community college or university, which requires at a minimum the training and curriculum above; and

2. Proof of current professional membership in the American Massage Therapy Association, International Myomassethics Federation, Associated Bodywork and Massage Professionals, or other national massage therapy organization with comparable prerequisites for certification, including liability insurance and testing.
- e. Barbers, beauty operators, or cosmetologists, when limited to massage only and administered to the scalp, face, neck or shoulders of patrons exclusively;
- (2) Any activity conducted or sponsored by any school district or other public agency;
 - (3) Portions of performances on theater, concert hall, music hall or auditorium stages wherein such displays are an integral part of a dramatic or comedic presentation;
 - (4) Private schools providing a course of instruction in photography or photography studios which do not provide for consideration, photography equipment, models and a studio;
 - (5) Modeling agencies, schools or services, except those which provide live modeling services, for consideration, in which a

patron may obtain an exclusive modeling exhibition in which he or she is the only observer.

(Ord. No. 96-3, § 1, 6-17-96; Ord. No. 01-5, § 1, 6-15-01)

Sec. 22-335. Restrictions on location.

An adult entertainment business may be located in the city only in accordance with the following restrictions:

- (1) No such business shall be located within 700 feet of a pre-existing district or parcel zoned A-residence, B-residence, multi-family-residence, planned-unit development with residential uses, or land zoned residential within a township. Such distance shall be measured by a straight line, without regard to intervening structures or objects, from the closest exterior wall of the adult entertainment business or building containing adult business to the nearest property line of the district or parcel so zoned.
- (2) No such business shall be located within 700 feet of a pre-existing protected use. Such distance shall be measured as prescribed in subsection (1) above.
- (3) Such business shall only be located in a district classified or "zoned" as general business, light industrial, or heavy industrial.
- (4) No such business shall be established and located within 700 feet of another adult entertainment business.

(Ord. No. 96-3, § 1, 6-17-96)

Sec. 22-336. Use regulations.

(a) No person shall reside in or permit any person to reside in the premises of an adult entertainment business.

(b) No person shall operate an adult entertainment business unless there is conspicuously posted in each room where such business is carried on, a notice indicating the prices for all services performed or products sold by such business. No

person operating or working at such place of business shall solicit or accept any fees except those indicated on any such notice.

(c) No person operating an adult entertainment business shall permit same to be frequented by known prostitutes who have been convicted of the act of prostitution within the previous 24 months, or by any customers convicted of being customers of prostitutes within the previous 24 months.

(d) No person shall operate an adult entertainment business without first having obtained a valid license from the city for same, subject to the regulations contained in section 22-337.

(e) No person operating an adult entertainment business shall permit any person under the age of 18 to be on the premises of such business either as an employee or customer, and shall further post, at the entrance to the business, a conspicuous notice of such exclusion.

(f) No person shall become the lessee or sublessee of any property for the purpose of using such property for an adult entertainment business without the express written permission of the owner of the property for such use. Nor shall any lessee or sublessee convert the property from any other use to an adult entertainment business without the express written permission of the property owner for such use.

(g) No person shall operate an adult entertainment business so as to allow a view into the interior of the building from any public or semi-public area. Screenings, coverings, or architectural features must be in place to prevent such viewing.

(h) No person operating an adult entertainment business shall install or permit to be installed or maintained, any windows, displays, signs, or decorative or structural elements of a building or buildings, which include or convey messages or graphics which are sexual in nature. Adult entertainment business shall be limited to one on-site sign in complete compliance with the city's sign ordinance.

(Ord. No. 96-3, § 1, 6-17-96)

Sec. 22-337. License required.

It shall be unlawful for any person to open or operate an adult entertainment business in the city without first obtaining, and maintaining in effect, an adult entertainment license as prescribed herein.

- (1) Application for an adult entertainment license shall be made to the city building director, who shall refer each application to the police chief for appropriate investigation.
- (2) Each application shall be accompanied by a nonrefundable application fee of \$250.00.
- (3) Each application for an adult entertainment business license shall contain, at minimum, the following:
 - a. The applicant's full legal name, social security number, drivers license number, and current residence address;
 - b. The applicant's two residence addresses immediately prior to the applicant's present address, and the dates of residence at each;
 - c. All felony and misdemeanor convictions of the applicant, excluding those for traffic offenses;
 - d. The applicant's complete fingerprints, recorded by the police department;
 - e. The name and current residence addresses of each person employed or intended to be employed by the adult entertainment business;
 - f. If an applicant is for an adult entertainment business for other than an individual, the information prescribed in subsections a. through d. above for each of its partners, directors, officers, and/or managers.
- (4) An application for license may be denied, or an existing license revoked, if the applicant or applicants:
 - a. Has made any false statement on the application;

- b. Is himself/herself or is employing or planning to employ someone not yet 18 years of age or older;
- c. Is in violation of any provision of this chapter or article;
- d. Has been convicted of a felony or other criminal offense involving moral turpitude, or any offense involving prostitution or related offenses including rape, indecent exposure, child molestation, and lewd and lascivious acts, or of any offense involving the unlawful carrying, possession, or use of a dangerous weapon, or of any offense involving the unlawful possession, sale, or use of controlled substances.

- (5) Any revocation of an existing license shall be pursued and accomplished so as to afford the licensee due process of law.
- (6) Approved licenses shall be reviewed and renewed (and/or revoked) biannually upon the two-year anniversary of the original approval date issued for same. At such time, the applicant shall remit such fees, and subject himself/herself to the same process as originally prescribed for the application of license approval.

(Ord. No. 96-3, § 1, 6-17-96)

Sec. 22-338. Penalty for violation of article.

Any person violating any of the provisions of this article shall, upon conviction thereof, be subject to a fine of not more than \$500.00 or imprisonment for a period of not more than 90 days or both such fine and imprisonment at the discretion of the court.

(Ord. No. 96-3, § 1, 6-17-96)

Sec. 22-339. Severability.

Should any section, subsection, paragraph, clause, or provision of this article be declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity or enforceability of the article as a whole, or of any part thereof, except for the part declared to be invalid.

(Ord. No. 96-3, § 1, 6-17-96)

Secs. 22-340—22-349. Reserved.

ARTICLE XIV. HOME OCCUPATIONS

Sec. 22-350. Purpose.

The services offered through a home occupation is a matter closely affecting the public interest. The public interest requires that home occupations be operated properly and in a safe, fair, honest, and competent manner by qualified persons, and is clearly incidental to or secondary to the residential use of the dwelling. Home occupations are divided into two classes as follows:

(Ord. No. 11-5, § 1, 7-28-11)

Sec. 22-351. Definitions.

Home occupation—Class A. Considered an accessory use, and is personal to the applicant, is not transferable to any other person, and does not apply to any other business of the applicant. It is also intended to allow businesses that rely solely on electronic or off-premise transactions. Types in this category include, but are not necessarily limited to:

- (a) Business where all work and communication is conducted over the internet, telephone, and/or electronic mail.
- (b) Business where a service is provided to a client or customer, with no client or customer visitation to the business location. In these instances, the business location is used solely for bookkeeping and electronic or telephone communication with clients and customers.
- (c) Business where the owner produces a product at the business location and offers it for sale or service over the internet or transports the products(s) to off-premise merchants, trade shows, flea markets, and the like for sale or service.
- (d) Business where a service, which includes but is not limited to, clerical, financial, cosmetic, kitchen ware, jewelry fine art, crafts, music instructor, tutoring of an individual, and clothing in nature is pro-

vided to a customer, and no more than two customers, clients, or students shall be on the premises at anyone time.

- (e) Offices for a writer, consultant, member of the clergy, lawyer, architect, engineer or accountant, limited to one client at a time.

Home occupation—Class B. A conditional use intended to allow businesses that generate limited quantities of customer visitation and/or merchandise and service deliveries. These businesses may be required to comply with other codes, i.e. building, housing, fire, and other local or state codes and ordinances for home occupations. The business is personal to the applicant, and is not transferable to any other person, and does not apply to any other business of the applicant. Types in this category include, but are not necessarily limited to:

- (a) Business where the design, preparation, production, storage, or distribution of goods and/or services takes place at the business location.
- (b) Business where not more than one-fourth of the living area of the dwelling unit and less than one-half of the living area of the main floor shall be devoted to the home occupation.
- (c) Business where chemicals, chemical compounds, fertilizer, combustible materials, corrosive, butane, nitrous oxide or flammable products are used.
- (d) Business where a service, which includes but is not limited to, hydroponic growing operation, bed and breakfast establishments, taxidermy, medical marijuana caregiver, and agricultural activities in nature is provided to a customer.
- (e) No more than two customers, clients, students, or patients shall be on the premises at any one time. This provision shall not apply to bed and breakfast establishments, which shall comply with chapter 20, section 20.6(B), bed and breakfast establishments of the Dowagiac Zoning Code.

- (f) Hair and nail salons, limited to one client at a time.

(Ord. No. 11-5, § 1, 7-28-11)

Sec. 22-352. Home occupation fire safety requirements.

Home occupations as defined by this chapter are required to install and maintain single-station or multiple-station smoke alarms in the place of residence, as specified in International Property Maintenance Code. Home occupations are further required to install and maintain at least one fire extinguisher that is properly selected, installed, and maintained in a conspicuous and unobstructed location(s) in the residence.

(Ord. No. 11-5, § 1, 7-28-11)

Sec. 22-353. Home occupation license required.

No person shall operate any home occupation—Class B business unless a license therefore has been obtained as provided for in this chapter.

(Ord. No. 11-5, § 1, 7-28-11)

Sec. 22-354. Application for home occupation license.

Any person desiring a license to operate a home occupation—Class B business in the city shall pay an application fee as provided for in this chapter and, after paying the application fee, shall file an application for a home occupation—Class B license with the city clerk. The application shall be in a form provided or prescribed by the city clerk and shall require such information to be provided under oath or affirmation as the city clerk deems necessary to a fair determination of the applicant's ability to provide home occupation service to the public in a safe, fair, honest and competent manner and to comply with the provisions of this Code and other applicable federal, state and local laws, or ordinances, rules and regulations. The applicant may also be required to furnish such other information under oath as the clerk may deem necessary.

(Ord. No. 11-5, § 1, 7-28-11)

Sec. 22-355. License fee.

No home occupation—Class B license shall be issued unless the fee provided for in this chapter shall have been paid.

(Ord. No. 11-5, § 1, 7-28-11)

Sec. 22-356. Issuance of license.

If, after investigation, the city clerk shall be reasonably satisfied that the applicant has complied with the requirements of this Code and all other applicable laws, statutes, rules and regulations, and if the proper fee shall have been paid, the city clerk shall issue a license for a home occupation—Class B license.

(Ord. No. 11-5, § 1, 7-28-11)

Sec. 22-357. Transfer prohibited.

No home occupation—Class B license may be sold, assigned, mortgaged or otherwise transferred.

(Ord. No. 11-5, § 1, 7-28-11)

Sec. 22-358. Grounds for denial, suspension or revocation of a home occupation license.

Any violation of this chapter of this Code, or of the laws of this state or any other state relating to the operation of a home occupation business may be considered sufficient grounds for the denial of a license or the suspension or revocation of a license issued pursuant to the provisions of this chapter. These grounds for denial, suspension or revocation of a license provided for in this chapter shall be in addition to other grounds for denial, suspension or revocation of licenses or permits provided elsewhere in this Code and the Dowagiac Zoning Code.

(Ord. No. 11-5, § 1, 7-28-11)

Sec. 22-359. Compliance with other laws.

All persons holding a license issued pursuant to the provisions of this chapter shall comply with all applicable federal, state and local laws, ordinances, rules and regulations. Failure to comply may be considered sufficient grounds for the de-

nial of a license or the suspension or revocation of a license issued pursuant to the provisions of this chapter.

(Ord. No. 11-5, § 1, 7-28-11)

Sec. 22-360. Conflicts with other laws or regulations.

If any provision of this chapter differs from a provision of any other applicable law, ordinance, rule or regulation, both the provision of this chapter and the differing provision shall apply if possible. If the two provisions are in conflict, then the provision establishing the higher or stricter standard shall apply.

(Ord. No. 11-5, § 1, 7-28-11)

Sec. 22-361. No immunity or indemnification from federal law.

A registered primary caregiver, in compliance with the General Rules of the Michigan Department of Community Health, the Michigan Medical Marihuana Act, Initiated Law 1 of 2008, MCL 333.26423(d) and the requirements of this chapter, shall be allowed as a home occupation. Nothing in this chapter, or in any companion regulatory provision adopted in any other provision of this Code, is intended to grant, nor shall they be construed as granting, immunity from criminal prosecution for growing, sale, consumption, use, distribution, or possession of marihuana not in strict compliance with that Act and the General Rules. Also, since federal law is not affected by that Act or the General Rules, nothing in this chapter, or in any companion regulatory provision adopted in any other provision of this Code, is intended to grant, nor shall they be construed as granting, immunity from criminal prosecution under federal law. The Michigan Medical Marihuana Act does not protect users, caregivers or the owners of properties on which the medical use of marihuana is occurring from federal prosecution, or from having their property seized by federal authorities under the Federal Controlled Substances Act.

(Ord. No. 11-5, § 1, 7-28-11)

Chapters 23—25

RESERVED

Chapter 26

CABLE COMMUNICATIONS*

Sec. 26-1.	Purpose.
Sec. 26-2.	Conflict.
Sec. 26-3.	Terms defined.
Sec. 26-4.	Permit required.
Sec. 26-5.	Issuance of permit
Sec. 26-6.	Construction/engineering permit
Sec. 26-7.	Conduit or utility poles
Sec. 26-8.	Route maps.
Sec. 26-9.	Repair of damage.
Sec. 26-10.	Establishment and payment of maintenance fee.
Sec. 26-11.	Modification of existing fees
Sec. 26-12.	Savings clause.
Sec. 26-13.	Use of funds.
Sec. 26-14.	Annual report.
Sec. 26-15.	Cable television operators
Sec. 26-16.	Existing rights.
Sec. 26-17.	Compliance.
Sec. 26-18.	Reservation of police powers
Sec. 26-19.	Authorized city officials
Sec. 26-20.	Municipal civil infraction

***Editor's note**—Ord. No. 02-8, adopted Oct. 31, 2002, repealed the former Ch. 26, §§ 26-1—26-17, 26-31—26-48, 26-61—26-72, 26-91—26-98, 26-111—26-116, 26-131—26-141, 26-161—26-172, and 26-191—26-197, and enacted a new Ch. 26 as set out herein. The former Ch. 26 pertained to similar subject matter and derived from Ord. No. 01-6, § 1, Exh. A, adopted July 24, 2001.

Cross references—Administration, ch. 2; businesses, ch. 22; streets, sidewalks and other public places, ch. 70; utilities, ch. 82.

Sec. 26-1. Purpose.

The purposes of this chapter are to regulate access to and ongoing use of public rights-of-way by telecommunications providers for their telecommunications facilities while protecting the public health, safety, and welfare and exercising reasonable control of the public rights-of-way in compliance with the Metropolitan Extension Telecommunications Rights-of-Way Oversight Act (Act 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. No. 02-8, § 1, 10-31-02)

Sec. 26-2. Conflict.

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

(Ord. No. 02-8, § 2, 10-31-02)

Sec. 26-3. Terms defined.

The terms used in this chapter shall have the following meanings:

Act means the Metropolitan Extension Telecommunications Rights-of-Way Oversight Act (Act No. 48 of the Public Acts of 2002), as amended from time to time.

City means the City of Dowagiac.

City council means the City of Dowagiac Council or its designee. This section does not authorize delegation of any decision or function that is required by law to be made by the city council.

City manager means the city manager or his designee.

Permit means a non-exclusive permit issued pursuant to the act and this chapter to a telecommunications provider to use the public rights-of-way in the city for its telecommunications facilities.

All other terms used in this chapter shall have the same meaning as defined or as provided in the act, including without limitation the following:

Authority means the Metropolitan Extension Telecommunications Rights-of-Way Oversight Authority created pursuant to Section 3 of the act.

MPSC means the Michigan Public Service Commission in the Department of Consumer and Industry Services, and shall have the same meaning as the term "commission" in the act.

Person means an individual, corporation, partnership, association, governmental entity, or any other legal entity.

Public right-of-way means the area on, below, or above a public roadway, highway, street, alley, easement or waterway. Public right-of-way does not include a federal, state, or private right-of-way.

Telecommunication facilities or facilities means the equipment or personal property, such as copper and fiber cables, lines, wires, switches, conduits, pipes, and sheaths, which are used to or can generate, receive, transmit, carry, amplify, or provide telecommunication services or signals. Telecommunication facilities or facilities do not include antennas, supporting structures for antennas, equipment shelters or houses, and any ancillary equipment and miscellaneous hardware used to provide federally licensed commercial mobile service as defined in Section 332(d) of Part I of Title III of the Communications Act of 1934, Chapter 652, 48 Stat. 1064, 47 U.S.C. 332 and further defined as commercial mobile radio service in 47 CFR 20.3, and service provided by any wireless, two-way communication device.

Telecommunications provider, provider and telecommunications services mean those terms as defined in Section 102 of the Michigan Telecommunications Act, 1991 PA 179, MCL 484.2102. Telecommunication provider does not include a person or an affiliate of that person when providing a federally licensed commercial mobile radio service as defined in Section 332(d) of Part I of the Communications Act of 1934, Chapter 652, 48 Stat. 1064, 47 U.S.C. 332 and further defined as commercial mobile radio service in 47 CFR 20.3, or service provided by any wireless, two-way

communication device. For the purpose of the act and this chapter 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.
- (Ord. No. 02-8, § 3, 10-31-02)

Sec. 26-4. 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 chapter.

(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 eight copies of the application with the city clerk. Applications shall be complete and include all information required by the act, including without limitation a route map showing the location of the provider's existing and proposed facilities in accordance with Section 6(5) of the act.

(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 chapter.

(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 chapter. 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. No. 02-8, § 4, 10-31-02)

Sec. 26-5. Issuance of permit.

(a) *Approval or denial.* The authority to approve or deny an application for a permit is hereby delegated to the city manager. Pursuant to Section 15(3) of the act, the city manager shall approve or deny an application for a permit within 45 days from the date a telecommunications pro-

vider files an application for a permit under subsection 26-4(b) of this chapter for access to a public right-of-way within the city. Pursuant to Section 6(6) of the act, the city manager shall notify the MPSC when the city manager has granted or denied a permit, including information regarding the date on which the application was filed and the date on which permit was granted or denied. The city manager shall not unreasonably deny an application for a permit.

(b) *Form of permit.* If an application for permit is approved, the city manager shall issue the permit in the form approved by the MPSC, with or without additional or different permit terms, in accordance with Sections 6(1), 6(2) and 15 of the act.

(c) *Conditions.* Pursuant to Section 15(4) of the act, the city manager may impose conditions on the issuance of a permit, which conditions shall be limited to the telecommunications provider's access and usage of the public right-of-way.

(d) *Bond requirement.* Pursuant to Section 15(3) of the act, and without limitation on subsection (c) above, the city manager may require that a bond be posted by the telecommunications provider as a condition of the permit. If a bond is required, it shall not exceed the reasonable cost to ensure that the public right-of-way is returned to its original condition during and after the telecommunications provider's access and use.
(Ord. No. 02-8, § 5, 10-31-02)

Sec. 26-6. Construction/engineering permit.

A telecommunications provider shall not commence construction upon, over, across, or under the public rights-of-way in the city without first obtaining a construction or engineering permit as required under Section 4(A) of this code, as amended, for construction within the public rights-of-way. No fee shall be charged for such a construction or engineering permit.
(Ord. No. 02-8, § 6, 10-31-02)

Sec. 26-7. 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 chapter does not give a telecommunications provider a right to use conduit or utility poles.

(Ord. No. 02-8, § 7, 10-31-02)

Sec. 26-8. Route maps.

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

(Ord. No. 02-8, § 8, 10-31-02)

Sec. 26-9. 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. No. 02-8, § 9, 10-31-02)

Sec. 26-10. 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. No. 02-8, § 10, 10-31-02)

Sec. 26-11. 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 telecommunication provider affected by the fee with a copy of the ordinance from which this chapter derives, in compliance with the requirement of Section 13(4) of the act. To the extent any fees are charged telecommunication 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. No. 02-8, § 11, 10-31-02)

Sec. 26-12. 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 26-11 above shall be void from the date the modification was made.

(Ord. No. 02-8, § 12, 10-31-02)

Sec. 26-13. Use of funds.

Pursuant 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. No. 02-8, § 13, 10-31-02)

Sec. 26-14. 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. No. 02-8, § 14, 10-31-02)

Sec. 26-15. 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.

(Ord. No. 02-8, § 15, 10-31-02)

Sec. 26-16. Existing rights.

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

(Ord. No. 02-8, § 16, 10-31-02)

Sec. 26-17. Compliance.

The city hereby declares that its policy and intent in adopting this chapter is to fully comply with the requirements of the act, and the provisions hereof should be construed in such a manner as to achieve that purpose. The city shall comply in all respects with the requirements of the act, including but not limited to the following:

- (1) Exempting certain route maps from the Freedom of Information Act, 1976 PA 442, MCL 15.231 to 15.246, as provided in subsection 26-4(c) of this chapter;
- (2) Allowing certain previously issued permits to satisfy the permit requirements hereof, in accordance with subsection 26-4(f);
- (3) Allowing existing providers additional time in which to submit an application for a permit, and excusing such providers from the \$500.00 application fee, in accordance with subsection 26-4(g);
- (4) Approving or denying an application for a permit within 45 days from the date a telecommunication provider files an ap-

plication for a permit for access to and usage of a public right-of-way within the city, in accordance with subsection 26-5(a);

- (5) Notifying the MPSC when the city has granted or denied a permit, in accordance with subsection 26-5(a);
 - (6) Not unreasonably denying an application for a permit, in accordance with subsection 26-5(a);
 - (7) Issuing a permit in the form approved by the MPSC, with or without additional or different permit terms, as provided in subsection 26-5(b);
 - (8) Limiting the conditions imposed on the issuance of a permit to the telecommunications provider's access and usage of the public right-of-way, in accordance with subsection 26-5(c);
 - (9) Not requiring a bond of a telecommunications provider which exceeds the reasonable cost to ensure that the public right-of-way is returned to its original condition during and after the telecommunication provider's access and use, in accordance with subsection 26-5(d);
 - (10) Not charging any telecommunications providers any additional fees for construction or engineering permits, in accordance with section 26-6;
 - (11) Providing each telecommunications provider affected by the city's right-of-way fees with a copy of the ordinance from which this chapter derives, in accordance with section 26-11;
 - (12) Submitting an annual report to the authority, in accordance with section 26-14; and
 - (13) Not holding a cable television operator in default for a failure to pay certain franchise fees, in accordance with section 26-15.
- (Ord. No. 02-8, § 17, 10-31-02)

Sec. 26-18. Reservation of police powers.

Pursuant to Section 15(2) of the act, this chapter 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. No. 02-8, § 18, 10-31-02)

Sec. 26-19. Authorized city officials.

The city manager or his or her designee is hereby designated as the authorized city official to issue municipal civil infraction citations (directing alleged violators to appear in court) or municipal civil infraction violation notices (directing alleged violators to appear at the municipal chapter violations bureau) for violations under this chapter as provided by this Code.
(Ord. No. 02-8, § 20, 10-31-02)

Sec. 26-20. Municipal civil infraction.

A person who violates any provision of this chapter or the terms or conditions of a permit is responsible for a municipal civil infraction, and shall be subject to article IX, Municipal Civil Infraction, of the this Code. 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 chapter or a permit.
(Ord. No. 02-8, § 21, 10-31-02)

Chapters 27—29

RESERVED

Chapter 30

COMMUNITY DEVELOPMENT*

Article I. In General

Secs. 30-1—30-25. Reserved.

Article II. Downtown Development Authority

Division 1. Generally

Sec. 30-26. Establishment.
Sec. 30-27. Designation of boundaries.
Sec. 30-28. Board—Composition; membership.
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Division 2. Tax Increment Financing Plan and Development Plan

Sec. 30-41. Definitions.
Sec. 30-42. Approval and adoption.
Sec. 30-43. Boundaries of development area.
Sec. 30-44. Preparation of base year assessment.
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Sec. 30-46. Establishment of project fund; approval of depository.
Sec. 30-47. Payment of tax increments to downtown development authority.
Sec. 30-48. Use of monies in the project fund.
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Article III. Housing Tax Exemption

Division 1. Senior Citizen

Sec. 30-71. Definitions.
Sec. 30-72. Application of article.
Sec. 30-73. Service charge—Established.
Sec. 30-74. Same—Payment.
Sec. 30-75. Same—Additional payment.
Sec. 30-76. Contractual effect of article; conditions and limitations.
Sec. 30-77. Duration of article.
Sec. 30-78. Housing projects to which exemption applies.
Sec. 30-79. Reserved.

Division 2. Low Income

Subdivision I. Eagle's Wood

Sec. 30-80. Title.
Sec. 30-81. Preamble.
Sec. 30-82. Definitions.

*Cross references—Administration, ch. 2; buildings and building regulations, ch. 18; zoning, ch. 94.

State law references—Downtown development authority, MCL 125.1651 et seq.; housing and slum clearance projects, MCL 125.651 et seq.; housing corporation law, MCL 125.601 et seq.; urban redevelopment corporations, MCL 125.901 et seq.; rehabilitation of blighted areas, MCL 125.71 et seq.; economic development corporations, MCL 126.1601 et seq.

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- Sec. 30-83. Class of housing developments.
- Sec. 30-84. Establishment of annual service charge.
- Sec. 30-85. Limitation on the payment of annual service charge.
- Sec. 30-86. Contractual effect of ordinance.
- Sec. 30-87. Payment of service charge.
- Sec. 30-88. Duration.
- Sec. 30-89. Acknowledgement.
- Sec. 30-90. Reserved.

Subdivision II. Eagle's Trace

- Sec. 30-91. Title.
- Sec. 30-92. Preamble.
- Sec. 30-93. Definitions.
- Sec. 30-94. Class of housing developments.
- Sec. 30-95. Establishment of annual service charge.
- Sec. 30-96. Limitation on the payment of annual service charge.
- Sec. 30-97. Contractual effect of ordinance.
- Sec. 30-98. Payment of service charge.
- Sec. 30-99. Duration.
- Sec. 30-100. Acknowledgement.

Subdivision III. Vineyard Place

- Sec. 30-100.001. Title.
- Sec. 30-100.002. Preamble.
- Sec. 30-100.003. Definitions.
- Sec. 30-100.004. Class of housing developments.
- Sec. 30-100.005. Establishment of annual service charge.
- Sec. 30-100.006. Limitation on the payment of annual service charge.
- Sec. 30-100.007. Contractual effect of ordinance.
- Sec. 30-100.008. Payment of service charge.
- Sec. 30-100.009. Duration.
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- Sec. 30-100.1. Title.
- Sec. 30-100.2. Preamble.
- Sec. 30-100.3. Definitions.
- Sec. 30-100.4. Class of housing developments.
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Article IV. Economic Development Corporation

- Sec. 30-101. Application to incorporate approved.
- Sec. 30-102. Articles of incorporation.
- Sec. 30-103. Project plan no. 1.

ARTICLE I. IN GENERAL

Secs. 30-1—30-25. Reserved.

ARTICLE II. DOWNTOWN DEVELOPMENT AUTHORITY

DIVISION 1. GENERALLY

Sec. 30-26. Establishment.

The city hereby establishes the downtown development authority pursuant to the provisions of Act No. 197 of the Public Acts of Michigan of 1975 (MCL 125.1651 et seq.), as amended. (Code 1972, § 1.400)

Sec. 30-27. Designation of boundaries.

(a) The downtown development district of the city, being the area within which the downtown development authority shall exercise its powers, is hereby established as:

That part of Section 1, Township 6 South, Range 16 West; Section 6, Township 6 South, Range 15 West, Section 31, Township 5 South, Range 15 West, and Section 36, Township 5 South, Range 16 West, City of Dowagiac, Cass County, Michigan, described as beginning at the southwest corner of lot 20, Patrick Hamilton's addition of the City of Dowagiac; thence north 132 feet; thence east 50 feet; thence north 58 feet; thence east 82 feet to the west right-of-way line of Orchard Street; thence south on the west right-of-way line 103 feet; thence east 132 feet; thence north 45 feet to the northwest corner of lot 17, Patrick Hamilton's addition; thence east 132 feet; thence north 132 feet to the south right-of-way line of Courtland Street; thence east on the south right-of-way line 26 feet; thence south 42.35 feet; thence southeasterly 46.13 feet to the northwest corner of lot 13, Patrick Hamilton's addition; thence east 66 feet; thence north 132 feet to the north right-of-way line of Courtland Street; thence east on the north right-of-way line 132 feet to the east right-of-way line of North Front Street extended; thence southerly 95 feet more or less to the northerlymost corner of lot 45, J.W. Mccombers addition to the city; thence southeasterly 132 feet

to the easterlymost corner of lot 45; thence northeasterly 66 feet to the easterlymost corner of lot 51, J.W. Mccombers addition; thence southeasterly on the southwesterly line of lot 51, a distance of 13 feet; thence northeasterly parallel with the northwesterly line of lot 51, a distance of 66 feet; thence northwesterly 13 feet to the northerlymost corner of lot 51; thence northeasterly 66 feet to the southerlymost corner of lot 41, J.W. Mccombers addition; thence northwesterly on the southwesterly line of lot 41 a distance of 33 feet; thence northeasterly parallel with the southeasterly line of lot 41, a distance of 66 feet to the southwesterly right-of-way line of Jay's Street; thence southeasterly on the southwesterly right-of-way line 165 feet to the northwesterly right-of-way line of West Railroad Street; thence northeasterly on the northwesterly right-of-way line 1,205 feet more or less to the north right-of-way line of East Telegraph Street; thence east on the north right-of-way line 335 feet, more or less, to the southeasterly right-of-way line of East Railroad Street; thence southwesterly on the southeasterly right-of-way line 1,390 feet, more or less, to a point 112.11 feet northeasterly of the most westerly corner of lot 70 of Erastus H. Spaulding addition in the city; thence southeasterly at right angles to the easterly right-of-way line 50 feet; thence east to a point 104.08 feet west of the east line of lot 68, Erastus H. Spaulding addition; thence south 91.1 feet to the north right-of-way line of East Division Street; thence southerly to a point 18 feet east of the northwest corner of lot 46, Erastus H. Spaulding addition; thence south 99 feet; thence west 60 feet; thence south 99 feet to the north right-of-way line of LaGrange Street; thence east on the north right-of-way line, 174 feet to the west right-of-way line of Cedar Street; thence north on the west right-of-way line 198 feet to the north right-of-way line of East Division Street; thence east 66 feet to the east right-of-way line of Cedar Street; thence south on the east right-of-way line 198 feet to the north right-of-way line of LaGrange Street; thence east on the north right-of-way line 396 feet to the west right-of-way line of South Mill Street; thence north on the west right-of-way line 264 feet to the north right-of-way line of East Division Street; thence east on the north right-of-way line 66 feet to the east right-of-way line of South Mill Street extended; thence south on the

east right-of-way line extended 165 feet; thence east 132 feet; thence south 66 feet; thence east 66 feet; thence north 165 feet to the south right-of-way line of East Division Street; thence east along the south right-of-way line 82.5 feet; thence south 132 feet; thence east 165 feet; thence north $0^{\circ} 24' 15''$ west 49.50 feet to a point 82.5 feet south $0^{\circ} 24' 15''$ east and 445.5 feet north $89^{\circ} 55' 15''$ east of the southeast corner of the intersection of Division Street and Mill Street in Erastus H. Spaulding addition; thence north $89^{\circ} 55' 15''$ east parallel with the north line of Section 6, Township 6 South, Range 15 West 49.5 feet; thence north $0^{\circ} 24' 15''$ west 16.5 feet; thence north $89^{\circ} 55' 15''$ east 214.5 feet; thence south $0^{\circ} 24' 15''$ east 33 feet; thence north $89^{\circ} 55' 15''$ east 198 feet; thence south $0^{\circ} 24' 15''$ east 33 feet; thence north $89^{\circ} 55' 15''$ east 66 feet; thence north $0^{\circ} 24' 15''$ west 33 feet; thence north $89^{\circ} 55' 15''$ east 198 feet; thence south $0^{\circ} 24' 15''$ east 33 feet; thence north $89^{\circ} 55' 15''$ east 66 feet; thence south $0^{\circ} 24' 15''$ east 66 feet; thence north $89^{\circ} 55' 15''$ east 200 feet more or less to the east right-of-way line of Riverside Drive; thence southerly on the east right-of-way line to the south line of the north half of the north half of Section 6, such point being 33 feet east of the north and south quarter line of Section 6; thence west on such south line to the thread of the southerly branch of Dowagiac Creek; thence southwesterly on such thread of the southerly branch to a point 325 feet east of the west line of Section 6; thence south to a point 94 feet north of the north right-of-way line of Hill Street; thence west 358 feet to the west right-of-way line of Cass Avenue; thence north on the west right-of-way line to a point 481.2 feet north and 34.17 feet north 75° west of the west quarter corner of Section 6; thence northeasterly 66 feet more or less to the intersection of the northerly right-of-way line of East High Street and the west line of Section 6, being 517.3 feet north of the west quarter corner of Section 6; thence north on the west section line to the southeast corner of lot 30, Jacob Beeson's addition in the city; thence west on the south line of lot 30 to a point 194.1 feet south $55^{\circ} 15'$ east and 233.9 feet south 36° west of the northerlymost corner of lot 29, Jacob Beeson's addition; thence north $55^{\circ} 15'$ west 194.1 feet to the southeasterly right-of-way line of Robinson Street; thence north 36° east on the southeast-

erly right-of-way line 90 feet more or less to the southwesterly right-of-way line of Park Place Street, extended southeasterly; thence northwesterly on the southwesterly right-of-way line extended 300 feet to the northerlymost corner of lot 24, Jacob Beeson's addition also being the southeasterly right-of-way line of the Amtrak Railroad, formerly Michigan Central Railroad; thence southwesterly on the southeasterly right-of-way line 316.5 feet to the northerlymost corner of lot 20, Jacob Beeson's addition, also being the southwesterly right-of-way line of High Street; thence northwesterly on the southwesterly right-of-way line 482.5 feet to the easterlymost corner of lot 165 of original Town Jacob Beeson Plat in the city; also being the northwesterly right-of-way line of South Front Street; thence northeasterly on the northwesterly right-of-way line 82.5 feet to the northeasterly right-of-way line of High Street; thence northwesterly on the northeasterly right-of-way line 214.5 feet to the southeasterly right-of-way line of Pennsylvania Avenue; thence northeasterly on the southeasterly right-of-way line 165 feet; thence southeasterly parallel with the southwesterly line of lot 149 the original Town Jacob Beeson Plat 99 feet to the southeasterly line of lot 149; thence northeasterly on the southeasterly line of lots 149 and 148 the original Town Jacob Beeson Plat 99 feet to the northeasterly line of lot 148; thence northwesterly on the northeasterly lot line 49.5 feet; thence northeasterly parallel with the southeasterly right-of-way line of Pennsylvania Avenue 66 feet to the northeasterly line of lot 147, the original Town Jacob Beeson Plat; thence northwesterly on the northeasterly lot line 49.5 feet to the southeasterly right-of-way line of Pennsylvania Avenue; thence northeasterly on the southeasterly right-of-way line 66 feet to the southwesterly right-of-way line of Main Street; thence northwesterly on the southwesterly right-of-way line 346.5 feet to the easterlymost corner of lot 76, the original Town Jacob Beeson Plat, also being the northwesterly right-of-way line of New York Street; thence northeasterly on the northwesterly right-of-way line 504 feet to the southwesterly right-of-way line of Commercial Street; thence northwesterly on the southwesterly right-of-way line 214.5 feet to the south right-of-way line of West Division Street; thence west on the south right-of-way line 360 feet more

or less to the southeasterly right-of-way line of Indiana Street; thence southwesterly on the southeasterly right-of-way line 310 feet more or less to the northerlymost corner of lot 19 the original Town Jacob Beeson Plat, also being the southwesterly right-of-way line of Main Street; thence northwesterly on the southwesterly right-of-way line 520 feet, more or less, to the north right-of-way line extended of West Division Street; thence east on the north right-of-way line extended 1,460 feet more or less to the place of beginning.

(b) This district shall be subject to the rights of the public and of any governmental unit in any part thereof taken, used, or deeded for street, road, or highway purposes.

(Code 1972, § 1.401; Ord. No. 06-1, § 1, 2-1-06)

Sec. 30-28. Board—Composition; membership.

(a) The downtown development authority established in section 30-26 shall consist of the following:

- (1) The mayor; and
- (2) Eight members at large to be appointed by the mayor with the approval of the city council, not less than five of whom shall be persons determined as having an interest in property located in the downtown development district, as such district is described in section 30-27.

(b) If the downtown development district, as established in section 30-27, shall, through subsequent amendment of the boundaries of such district or due to demographic change subsequently be determined to have 100 or more persons residing therein, then not less than one of the members of the board shall be a resident of such district.

(Code 1972, § 1.402)

Sec. 30-29. Same—Terms of office; compensation; chairperson.

(a) Of the members first appointed, two shall be appointed for initial terms of one year; two shall be appointed for initial terms of two years; two shall be appointed for initial terms of three years; two shall be appointed for initial terms of

four years. Thereafter each member shall hold office until the member's successor is appointed. An appointment to fill a vacancy shall be made by the mayor for the unexpired term only.

(b) Members of the board shall serve without compensation, but shall be reimbursed for actual and necessary expenses. The chairperson of the board shall be elected by the board.

(Code 1972, § 1.403)

Secs. 30-30—30-40. Reserved.

DIVISION 2. TAX INCREMENT FINANCING PLAN AND DEVELOPMENT PLAN

Sec. 30-41. Definitions.

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

Base year assessment roll means the base year assessment roll prepared by the city assessor in accordance with sections 30-44 and 30-45.

Captured assessed value means the amount in any one year by which the current assessed value as finally equalized of all taxable property in the development area exceeds the initial assessed value.

Development area means the area outlined in the development plan and legally described in section 30-27.

Development plan means the "Tax Increment and Development Plan of the Dowagiac Downtown Development Area," amended by Ordinance Number 94-5 on July 5, 1994, and transmitted to the city council by the downtown development authority for public hearing, as modified by action of the city council and confirmed by this chapter, copies of which are on file in the office of the city clerk.

Downtown development authority means the city downtown development authority.

Initial assessed value means the most recently assessed value as finally equalized of all taxable

property within the boundaries of the development area at the time of adoption of the ordinance from which this division derives.

Project fund means the downtown development authority project fund, established pursuant to section 30-46.

Taxing jurisdiction means each unit of government levying an ad valorem property tax property in the development area.

(Code 1972, § 1.700; Ord. No. 94-5, §§ 1—6, 7-5-94)

Cross reference—Definitions generally, § 1-2.

Sec. 30-42. Approval and adoption.

The development plan, as amended by the city council, is hereby approved and adopted. The duration of the plan shall be 30 years from the date of issuance of the last series of bonds issued pursuant to the development plan, except as it may be extended by subsequent amendment of the plan and this division. A copy of the plan and all amendments thereto shall be maintained on file in the city clerk's office and cross indexed to this division.

(Code 1972, § 1.701)

Sec. 30-43. Boundaries of development area.

The boundaries of the development area, as set forth in the development plan, are hereby adopted and confirmed as follows: See section 30-27 for a boundary description of the downtown development area.

(Code 1972, § 1.702)

Sec. 30-44. Preparation of base year assessment.

(a) Within 60 days of the effective date of the ordinance from which this division derives, the city assessor shall prepare the initial base year assessment roll. The initial base year assessment roll shall list each taxing jurisdiction levying taxes in the development area, the initial assessed value of the development area on the effective date of the ordinance from which this division derives, and the amount of tax revenue derived by each taxing jurisdiction from ad valorem taxes on the property in the development area.

(b) The assessor shall transmit copies of the initial base year assessment roll to the city treasurer, county treasurer, downtown development authority and each taxing jurisdiction, together with a notice that the assessment roll has been prepared in accordance with this division and the tax increment financing plan contained in the development plan approved by this division.

(Code 1972, § 1.703)

Sec. 30-45. Preparation of annual base year assessment roll.

Each year, within 15 days following the final equalization of property in the development area, the assessor shall prepare an updated base year assessment roll. The updated base year assessment roll shall show the information required in the initial base year assessment roll and, in addition, the captured assessed value for that year. Copies of the annual base year assessment roll shall be transmitted by the assessor to the same persons as the initial base year assessment roll, together with a notice that it has been prepared in accordance with this division and the development plan.

(Code 1972, § 1.704)

Sec. 30-46. Establishment of project fund; approval of depository.

The treasurer of the downtown development authority shall establish a separate fund which shall be kept in a depository bank account in a bank approved by the director of finance of the city, to be designated the downtown development authority project. All monies received by the downtown development authority, pursuant to the development plan, shall be deposited in the project

fund. All monies in that fund and earnings thereon shall be used only in accordance with the development plan and this division.
(Code 1972, § 1.705)

Sec. 30-47. Payment of tax increments to downtown development authority.

The city and county treasurer shall, as ad valorem taxes are collected on the property in the development area, pay that proportion of the taxes, except for penalties and collection fees, that the captured assessed value bear to the initial assessed value, to the treasurer of the downtown development authority for deposit in the project fund. The payments shall be made on the date on which the city and county treasurers are required to remit taxes to each of the taxing jurisdictions.
(Code 1972, § 1.706)

Sec. 30-48. Use of monies in the project fund.

The money credited to the project fund and on hand therein from time to time shall annually be used in the following manner and following order of priority:

- (1) Pay into the debt retirement fund for all outstanding series of bonds issued pursuant to this plan an amount equal to the interest and principal coming due, in the case of principal whether by maturity or mandatory redemption, prior to the next collection of taxes, less any credit for sums on hand in the debt retirement fund.
- (2) Establish a reserve account for payment of principal and interest on bonds issued pursuant to this plan, an amount equal to one-fifth of the largest combined annual principal and interest payments due on bonds issued pursuant to this plan until the amount to the credit of the reserve account is equal to the largest combined annual principal and interest requirements on bonds issued pursuant to this plan. Any amount to the credit of the reserve account at the beginning of a fiscal year in excess of the requirement of

the preceding sentence shall be considered tax increment revenue for that year.

- (3) Pay the administrative and operating costs of the downtown development authority and city for the development area, including planning and promotion, to the extent provided in the annual budget of the downtown development authority.
- (4) Pay, to the extent determined desirable by the downtown development authority and approved by the city, the cost of completing the remaining public improvements as set forth in the development plan to the extent those costs are not financed from the proceeds of bonds.
- (5) Pay the cost of any additional improvements to the development area determined necessary by the downtown development authority and approved by the city council.
- (6) Reimburse the city for funds advanced to acquire property, clear land, make preliminary plans, and improvements necessary for the development of the development area in accordance with this plan.
- (7) Provide a pool of mortgage financing as needed for private development in accordance with the development plan.
- (8) Any tax increment receipts in excess of those needed under subsections (1)—(7) of this section shall revert to the taxing jurisdictions or be used for future development activities within the development area, as defined in the development plan or as expanded to include all or parts of the downtown development district, pursuant to amendment or modification of the development plan, pursuant to applicable provisions of Act No. 197 of the Public Acts of Michigan of 1975 (MCL 125.1651 et seq.), as amended, and other laws.

(Code 1972, § 1.707)

Sec. 30-49. Annual report.

Within 90 days after the end of each fiscal year, the downtown development authority shall sub-

mit to the city council, with copies to each taxing jurisdiction, a report on the status of the project fund. The report shall include the amount and source of revenue in the account, the amount and purpose of expenditures from the account, the initial assessed value of the developmental area, the captured assessed value of the development area, the tax increments received and the amount of any surplus from the prior year, and any additional information requested by the city council or deemed appropriate by the downtown development authority. The secretary of the downtown development authority shall cause a copy of the report to be published once in full in a newspaper of general circulation in the city.
(Code 1972, § 1.708)

Sec. 30-50. Refund of surplus tax increments.

Any surplus money in the project fund at the end of the year, as shown by the annual report of the downtown development authority, shall be paid by the authority to the city or county treasurer, as the case may be, and rebated by them to the appropriate taxing jurisdiction.
(Code 1972, § 1.709)

Secs. 30-51—30-70. Reserved.

ARTICLE III. HOUSING TAX EXEMPTION*

DIVISION 1. SENIOR CITIZEN

Sec. 30-71. Definitions.

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

Act means the State Housing Development Authority Act, being Act No. 346 of the Public Acts of Michigan of 1966 (MCL 125.1401 et seq.), as amended.

***Editor's note**—Ord. No. 03-5, adopted on May 28, 2003, enacted new provisions which have been included in Art. III as Div. 2, §§ 30-80—30-89. For purposes of clarification, and at the editor's discretion, the title of Art. III has been changed from "Senior Citizen Housing Tax Exemption" to "Housing Tax Exemption", and the existing §§ 30-71—30-78 have been designated as Div. 1.

Authority means the state housing development authority.

FmHA means the Farmers Home Administration, U.S. Department of Agriculture.

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

Mortgage loan means a loan to be made by the FmHA to the sponsor for the permanent financing of the housing development.

Senior citizen means those persons exempted under section 503(1)(c) of the Elliot-Larsen Civil Rights Act, being MCL 37.2503(1)(c).

Sponsor means persons or entities which have applied for a federally aided mortgage loan to finance a housing development and is qualified to receive a tax exemption under the act, as determined by the authority.

Utilities means fuel, water, sanitary sewer service and/or electrical service which are paid by the development.
(Code 1972, § 1.600)

Cross reference—Definitions generally, § 1-2.

Sec. 30-72. Application of article.

It is hereby determined that the class of housing developments to which this article shall apply, and for which a service charge shall be paid in lieu of such taxes shall be senior citizen housing developments, which are financed or assisted pursuant to the act. It is further determined that Cedar Sands Apartments shall be considered to be of this class, provided that such project shall file with the city an affidavit of exemption, certified by the authority as to eligibility, on such form as shall be provided by the authority before November 1 of the year preceding the tax year in which the exemption is to begin. Pursuant to the specific provisions of section 15a, subsection (5) of Act No. 346 of the Public Acts of Michigan of 1966 (MCL 125.1401 et seq.), as amended, the city does

further specifically determine that the tax exemption established in subsection (1) of section 15a of Act No. 346 of the Public Acts of Michigan of 1966 (MCL 125.1401 et seq.), as amended, shall not apply to any housing project owned by a nonprofit housing corporation, consumer housing cooperative, limited dividend housing corporation, mobile home park corporation or mobile home park association as therein enumerated, excepting only housing projects limited to occupation by senior citizens as defined in section 30-71. The city, therefore, specifically designates, pursuant to the authority of subsection (5) of section 15a of Act No. 346 of the Public Acts of Michigan of 1966 (MCL 125.1401 et seq.), as amended, that all other housing projects within its boundaries shall not qualify nor receive the tax exemption established in subsections (1) and (2) of section 15a. (Code 1972, § 1.601)

Sec. 30-73. Service charge—Established.

The housing development identified as Cedar Sands Apartments, Dowagiac tax plate number 302B-1, describing the property upon which it shall be constructed, shall be exempt from all property taxes from and after the date of commencement of construction and until such time as this article shall be repealed or modified as set forth in section 1.606. The city, acknowledging that the sponsor and the FmHA have established the economic feasibility of the housing development in reliance upon the enactment and continuing effect of this article and the qualification of the housing development for exemption from all property taxes and a payment in lieu of taxes as established in this section, and in consideration of the sponsor's offer, subject to the receipt of a mortgage loan from the FmHA, to construct, own and operate the housing development, hereby agrees to accept payment of an annual service charge for public services in lieu of all property taxes for so long as this article shall remain in effect. The annual service charge shall be equal to two percent of the rents collected by the sponsor on that part of the housing development which is occupied by low income persons or families; provided, however, that the benefits of any exemption granted under this section shall be allocated by the sponsor exclusively to low income persons

or families in the form of reduced housing charges as required by the provisions of section 15(a)(6) of Act No. 346 of the Public Acts of Michigan of 1966 (MCL 125.1401 et seq.), as amended. (Code 1972, § 1.602)

Sec. 30-74. Same—Payment.

The service charge in lieu of taxes, as determined under this article, shall be billable and payable in the same manner as general property taxes are payable to the city; provided, however, that such service charge in lieu of taxes, if not paid when due, shall become a lien against the property encompassed hereby and may be enforced as a special assessment according to the procedures set forth in chapter 66. (Code 1972, § 1.605)

Sec. 30-75. Same—Additional payment.

(a) Notwithstanding the provisions of section 30-73, the service charge to be paid each year in lieu of taxes for that part of the housing development which is tax exempt and which is occupied by other than low income persons or families shall be equal to the full amount of the taxes which would be paid on that portion of the housing development if the housing development were not tax exempt.

(b) The term "low income persons or families" as used in this section shall be the same meaning as defined by the authority as those families and persons who cannot afford to pay the amounts at which private enterprise, without federally aided mortgages or loans from the authority, is providing a substantial supply of decent, safe and sanitary housing and who fall within the income limitations set by the authority in its rules, as they shall from time to time exist. (Code 1972, § 1.603)

Sec. 30-76. Contractual effect of article; conditions and limitations.

Notwithstanding the provisions of section 15(a)(5) of Act No. 346 of the Public Acts of Michigan of 1966 (MCL 125.1401 et seq.), as amended, but with due regard to the city's authority pursuant thereto to establish those classes of housing projects within its boundaries to which

tax exemption shall apply, a contract between the city and the sponsor with the FmHA as third party beneficiary thereunder to provide payments in lieu of taxes as previously described is effected by the enactment of this article, subject, however, to the following limiting conditions and limitations:

- (1) The tax exemption set forth in section 30-73 shall automatically cease upon the project's failure to meet the requirements of section 15(a)(1) of the act.
- (2) The tax exemption set forth in section 30-73 may be terminated by the city council at its discretion when the sponsor, after receiving 90 days' written notice, has failed to make timely service charge payments in lieu of taxes when due.
- (3) Any contractual obligation on the part of the city to continue tax exemption to the sponsor shall cease, and be of no further force and effect, upon the sponsor's failure to purchase its sewer, water and electrical services from the city, and to timely pay such charges and assessments as shall be levied in connection therewith so long as the city is able to provide such services.

(Code 1972, § 1.604)

Sec. 30-77. Duration of article.

This article shall remain in effect and shall not terminate, except as provided in section 30-76, for a period of 20 years from and after the effective date of the ordinance from which this section is derived, provided that construction of the housing development commences within one year from the effective date of this chapter; provided further that the tax exempt status of the project may thereupon be continued by the city, by proper ordinance, and subject to the city's power of limitation and/or adjustment of payment in lieu of taxes under the authority granted by Act No. 346 of the Public Acts of Michigan of 1966 (MCL 125.1401 et seq.), as amended.

(Code 1972, § 1.606)

Sec. 30-78. Housing projects to which exemption applies.

(a) The following are a list of all housing projects within the corporate limits of the city to which the tax exemption provisions of Act No. 346

of the Public Acts of Michigan of 1966 (MCL 125.1401 et seq.), as amended, shall apply: Cedar Sands Apartments, Plate No. 302B-1.

(b) The city council shall, upon the granting of any future tax exemption pursuant to the act and qualifying under the provisions of this article to such exemption, within 30 days following the granting of same, amend this section so as to include any additional housing projects to which the exemptions shall be extended.

(Code 1972, § 1.607)

Sec. 30-79. Reserved.

DIVISION 2. LOW INCOME

*Subdivision I. Eagle's Wood**

Sec. 30-80. Title.

This subdivision shall be known and cited as the "City of Dowagiac Tax Exemption Ordinance". (Ord. No. 03-5, 5-28-03)

Sec. 30-81. Preamble.

It is acknowledged that it is a proper public purpose of the State of Michigan and its political subdivisions to provide housing for its citizens of low income and to encourage the development of such housing by providing for a service charge in lieu of property taxes in accordance with the State Housing Development Authority Act of 1966 (1966 PA 346, as amended, MCL 125.1401, et seq.) The city is authorized by this act to establish or change the service charge to be paid in lieu of taxes by any or all classes of housing exempt from taxation under this act at any amount it chooses, not to exceed the taxes that would be paid but for this act. It is further acknowledged that such housing for persons of low income is a public necessity, and as the city will be benefited and improved by such housing, the encouragement of the same by providing certain real estate tax

*Editor's note—Ord. No. 05-2, adopted March 29, 2005, amended the Code by enacting additional provisions to the "City of Dowagiac Tax Exemption Ordinance". For purposes of classification, and at the editor's discretion, §§ 30-81—30-89 have been designated as Subdiv. I and the new provisions have been included as Subdiv. II.

exemption for such housing is a valid public purpose; further, that the continuance of the provisions of this subdivision for tax exemption and the service charge in lieu of taxes during the period contemplated in this subdivision are essential to the determination of economic feasibility of housing developments which are constructed and financed in reliance on such tax exemption.

The city acknowledges that Excel Dowagiac Limited Dividend Housing Association Limited Partnership (the "sponsor") has offered, subject to receipt of an allocation under the LIHTC program from the Michigan State Housing Development Authority, to erect, own and operate a housing development identified as Eagle's Wood Apartments on certain property located on Amerihost Drive in the Dowagiac Commercial Center in the City of Dowagiac to serve persons of low income, and that the sponsor has offered to pay the city on account of this housing development an annual service charge for public services in lieu of all taxes.

(Ord. No. 03-5, 5-28-03)

Sec. 30-82. Definitions.

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

- (1) *Act* means the State Housing Development Authority Act, being Public Act 346 of 1966 of the State of Michigan, as amended.
- (2) *Annual shelter rent* means the total collections during an agreed annual period from all occupants of a housing development representing rent or occupancy charges, exclusive of charges for gas, electricity, heat, or other utilities furnished to the occupants.
- (3) *Authority* means the Michigan State Housing Development Authority, a public body, corporate and politic of the State of Michigan.
- (4) *Housing development* means a development which contains a significant element of housing for persons of low income

and such elements of other housing, commercial, recreational, industrial, communal, and educational facilities as the authority determines improve the quality of the development as it relates to housing for persons of low income.

- (5) *LIHTC program* means the Low Income Housing Tax Credit Program administered by the authority under Section 42 of the Internal Revenue Code of 1986, as amended.
- (6) Reserved for definition of class (i.e. elderly, family, handicapped, etc., to which this subdivision shall apply).
- (7) *Utilities* means fuel, water, sanitary sewer service and/or electrical service which are paid by the housing development.
- (8) *Sponsor* means a person(s) or entity which has applied to the authority for an allocation under the LIHTC program to finance a housing development.

(Ord. No. 03-5, 5-28-03)

Sec. 30-83. Class of housing developments.

It is determined that the class of housing developments to which the tax exemption shall apply and for which a service charge shall be paid in lieu of such taxes shall be elderly and/or family, which are assisted pursuant to the act. It is further determined that Eagle's Wood Apartments is of this class.

(Ord. No. 03-5, 5-28-03)

Sec. 30-84 Establishment of annual service charge.

This housing development identified as Eagle's Wood Apartments and the property on which it shall be constructed shall be exempt from all property taxes from and after the commencement of construction. The city, acknowledging that the sponsor and the authority have established the economic feasibility of the housing development in reliance upon the enactment and continuing effect of this subdivision and the qualification of the housing development for exemption from all property taxes and a payment in lieu of taxes as established in this subdivision, and in consider-

ation of the sponsor's offer, subject to receipt of an allocation under the LIHTC program from the authority, to construct, own and operate the housing development, agrees to accept payment of an annual service charge for public services in lieu of all property taxes. The annual service charge shall be equal to eight percent of the annual shelter rent actually collected.
(Ord. No. 03-5, 5-28-03)

Sec. 30-85. Limitation on the payment of annual service charge.

Notwithstanding section 30-84 above, the service charge to be paid each year in lieu of taxes for the part of the housing development which is tax exempt and which is occupied by other than low income persons or families shall be equal to the full amount of the taxes which would be paid on that portion of the housing development if the housing development were not tax exempt.

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

The sponsor shall submit annually documentation certifying what percentage of the housing development is occupied by "low income persons or families" as defined in Section 15(a)(7) of the act.
(Ord. No. 03-5, 5-28-03)

Sec. 30-86. Contractual effect of ordinance.

Notwithstanding the provisions of Section 15(a)(5) of the act to the contrary, a contract between the city and the sponsor with the authority as third party beneficiary under the contract, to provide tax exemption and accept payments in lieu of taxes, as previously described, is effectuated by enactment of this subdivision.
(Ord. No. 03-5, 5-28-03)

Sec. 30-87. Payment of service charge.

The annual service charge in lieu of taxes as determined under the division shall be payable in the same manner as general property taxes are

payable to the city except that the annual payment shall be paid on or before September 15th of each year.
(Ord. No. 03-5, 5-28-03)

Sec. 30-88. Duration.

This subdivision shall remain in effect and shall not terminate so long as the housing development remains subject to income and rent restrictions pursuant to Section 42 of the Internal Revenue Code of 1986, as amended; and provided that construction of the housing development commences within one year from the effective date of this subdivision.
(Ord. No. 03-5, 5-28-03)

Sec. 30-89. Acknowledgement.

The city hereby acknowledges receipt of documentation from the authority indicating that the authority's participation with the housing development is limited solely to the allocation of tax credits under the LIHTC program.
(Ord. No. 03-5, 5-28-03)

Sec. 30-90. Reserved.

Subdivision II. Eagle's Trace

Sec. 30-91. Title.

This subdivision shall be known and cited as the "City of Dowagiac Tax Exemption Ordinance."
(Ord. No. 05-2, § 30-92, 3-29-05)

Sec. 30-92. Preamble.

It is acknowledged that it is a proper public purpose of the State of Michigan and its political subdivisions to provide housing for its citizens of low income and to encourage the development of such housing by providing for a service charge in lieu of property taxes in accordance with the State Housing Development Authority Act of 1966 (1966 PA 346, as amended, MCL 125.1401, et seq.) The city is authorized by this act to establish or change the service charge to be paid in lieu of taxes by any or all classes of housing exempt from taxation under this act at any amount it chooses, not to exceed the taxes that would be paid but for this act. It is further acknowledged that such

housing for persons of low and moderate income is a public necessity, and as the city will be benefited and improved by such housing is a valid public purpose; further, that the continuance of the provisions of the ordinance for tax exemption and the service charge in lieu of taxes during the period contemplated in this subdivision are essential to the determination of economic feasibility of housing developments which are constructed and financed in reliance on such tax exemption.

The city acknowledges that Excel-Dowagiac II Limited Dividend Housing Association Limited Partnership (the "sponsor") has offered, subject to receipt of an allocation under the LIHTC Program from the Michigan State Housing Development Authority, to erect, own and operate a housing development identified as Eagle's Trace on certain property located at Amerihost Drive in the city to serve persons of low and moderate income, and that the sponsor has offered to pay city on account of this housing development an annual service charge for public services in lieu of all taxes.

(Ord. No. 05-2, § 30-93, 3-29-05)

Sec. 30-93. Definitions.

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

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

Annual shelter rent means the total collections during an agreed annual period from all occupants of a housing development representing rent of occupancy charges, exclusive of charges for water and sewer utilities furnished to the occupants.

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

Housing development means a development which contains a significant element of housing for persons of low income and such elements of other housing, commercial, recreational, industrial, communal, and educational facilities as the

authority determines improve the quality of the development as it relates to housing for persons of low income.

LIHTC program means the low income housing tax credit program administered by the authority under Section 42 of the Internal Revenue Code of 1986, as amended.

This subdivision shall apply to family apartments.

Utilities mean water and sanitary sewer services, which are paid by the housing development.

Sponsor means a person(s) or entity, which has applied, to the authority for an allocation under the LIHTC program to finance a housing development.

(Ord. No. 05-2, § 30-94, 3-29-05)

Sec. 30-94. Class of housing developments.

It is determined that the class of housing developments to which the tax exemption shall apply for which a service charge shall be paid in lieu of such taxes shall be family apartments which are assisted pursuant to the act. It is further determined that Eagles Trace Apartments (40 units) is of this class.

(Ord. No. 05-2, § 30-95, 3-29-05)

Sec. 30-95. Establishment of annual service charge.

The housing development identified as Eagles Trace Apartments and the property on which it shall be constructed shall be exempt from all property taxes from and after the commencement of construction. The city acknowledging that the sponsor and the authority have established the economic feasibility of the housing development in reliance upon the enactment and continuing effect of this subdivision and the qualification of the housing development for exemption from all property taxes and a payment in lieu of taxes as established in the subdivision, and in consideration of the sponsor's offer, subject to receipt of an allocation under the LIHTC program from the authority, to construct, own and operate the housing development, agrees to accept payment of an annual service charge for public services in lieu of all property taxes. Than annual service charge

shall be equal to eight percent of the difference between the annual shelter rent actually collected and utilities.

(Ord. No. 05-2, § 30-96, 3-29-05)

Sec. 30-96. Limitation on the payment of annual service charge.

Notwithstanding section 30-94, the service charge to be paid each year in lieu of taxes for the part of the housing development which is tax exempt and which is occupied by other than low income persons or families shall be equal to the full amount of the taxes which would be paid on that portion of the housing development if the housing development were not tax exempt.

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

(Ord. No. 05-2, § 30-97, 3-29-05)

Sec. 30-97. Contractual effect of ordinance.

Notwithstanding the provisions of section 15(a)(5) of the act contrary, a contract between the city and the sponsor with the authority as third party beneficiary under the contract to provide tax exemption and accept payments in lieu of taxes, as previously described, is effectuated by enactment of this subdivision.

(Ord. No. 05-2, § 30-98, 3-29-05)

Sec. 30-98. Payment of service charge.

The annual service charge in lieu of taxes as determined under the ordinance shall be payable in the same manner as general property taxes are payable to the city except that the annual payment shall be paid on or before February 28th of each year.

(Ord. No. 05-2, § 30-99, 3-29-05)

Sec. 30-99. Duration.

This subdivision shall remain in effect and shall not terminate so long as the housing development remains subject to income and rent restrictions pursuant to Section 42 of the Internal Revenue Code 1986, as amended; and/or provided that a mortgage loan from the Michigan State Housing Development Authority remains outstand-

ing and unpaid, or the Michigan State Housing Development Authority has any interest in the property; and that construction of the housing development commences within two years from the effective date of this subdivision.

(Ord. No. 05-2, § 30-100, 3-29-05)

Sec. 30-100. Acknowledgement.

The city hereby acknowledges receipt of documentation from the authority indicating that the authority's participation with the housing development is limited solely to the allocation of tax credits under the LIHTC program.

(Ord. No. 05-2, § 30-102, 3-29-05)

*Subdivision III. Vineyard Place**

Sec. 30-100.001. Title.

This subdivision shall be known and cited as the "City of Dowagiac Tax Exemption Ordinance".

(Ord. No. 12-5, § 1(30-100.101), 12-10-12)

Sec. 30-100.002. Preamble.

It is acknowledged that it is a proper public purpose of the State of Michigan and its political subdivisions to provide housing for its citizens of low income and to encourage the development of such housing by providing for a service charge in lieu of property taxes in accordance with the State Housing Development Authority Act of 1966 (1966 PA 346, as amended, MCL 125.1401, et seq.). The city is authorized by this act to establish or change the service charge to be paid in lieu of taxes by any or all classes of housing exempt from taxation under this act at any amount it chooses, not to exceed the taxes that would be paid but for this act. It is further acknowledged that such housing for persons of low income is a public necessity, and as the city will be benefited and improved by such housing, the encouragement of the same by providing certain real estate tax exemption for such housing is a valid public

***Editor's note**—Ord. No. 12-5, adopted Dec. 10, 2012, amended the Code by enacting additional provisions to the "City of Dowagiac Tax Exemption Ordinance". For purposes of classification, and at the editor's discretion, Subdiv. III §§ 30-100.101—30-100.112 have been redesignated as Subdiv. III, §§ 30-100.001—30-100.012.

purpose; further, that the continuance of the provisions of this subdivision for tax exemption and the service charge in lieu of taxes during the period contemplated in this subdivision are essential to the determination of economic feasibility of housing developments which are constructed and financed in reliance on such tax exemption.

The city acknowledges that FHC Four Limited Dividend Housing Association Limited Partnership (the "Sponsor") has offered, subject to the receipt of an allocation under the LIHTC program from the Michigan State Housing Development Authority to rehabilitate, own and operate a housing development identified as Vineyard Place on certain property located in the City of Dowagiac to serve persons of low income, and that the sponsor has offered to pay the city on account of this housing development an annual service charge for public services in lieu of all taxes. (Ord. No. 12-5, § 1(30-100.102), 12-10-12)

Sec. 30-100.003. Definitions.

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

- (a) Act means the State Housing Development Authority Act, being Public Act 346 of 1966 of the State of Michigan, as amended.
- (b) Annual shelter rent means the total collections during an agreed annual period from all occupants of a housing development representing rent or occupancy charges, exclusive of charges for gas, electricity, heat, or other utilities furnished to the occupants.
- (c) Authority means the Michigan State Housing Development Authority, a public body, corporate and politic of the State of Michigan.
- (d) Housing development means a development which contains a significant element of housing for persons of low income and such elements of other housing, commercial, recreational, industrial, communal, and educational facilities as the au-

thority determines improve the quality of the development as it relates to housing for persons of low income.

- (e) LIHTC program means the Low Income Housing Tax Credit Program administered by the authority under Section 42 of the Internal Revenue Code of 1986, as amended.
- (f) Utilities means fuel, water, sanitary sewer service and/or electrical service which are paid by the housing development.
- (g) Sponsor means a person(s) or entity which has applied to the authority for an allocation under the LIHTC program to finance a housing development.

(Ord. No. 12-5, § 1(30-100.103), 12-10-12)

Sec. 30-100.004. Class of housing developments.

It is determined that the class of housing developments to which the tax exemption shall apply and for which a service charge shall be paid in lieu of such taxes shall be elderly and/or family, which are assisted pursuant to the act. It is further determined that Vineyard Place is of this class.

(Ord. No. 12-5, § 1(30-100.104), 12-10-12)

Sec. 30-100.005. Establishment of annual service charge.

This housing development identified as Vineyard Place and the property on which it is located shall be exempt from all property taxes from and after the acquisition by the sponsor. The city, acknowledging that the sponsor and the authority have established economic feasibility of the housing development in reliance upon the enactment and continuing effect of this subdivision and the qualification of the housing development for exemption from all property taxes and a payment in lieu of taxes as established in this subdivision, and in consideration of the sponsor's offer, subject to receipt of an allocation under the LIHTC program from the authority, to rehabilitate, own and operate the housing development, agrees to accept payment of an annual service charge for public services in lieu of all property taxes. The

annual service charge shall be equal to eight percent of the annual shelter rent actually collected.

(Ord. No. 12-5, § 1(30-100.105), 12-10-12)

Sec. 30-100.006. Limitation on the payment of annual service charge.

Notwithstanding section 30-84 above, the service charge to be paid each year in lieu of taxes for the part of the housing development which is tax exempt and which is occupied by other than low income persons or families shall be equal to the full amount of the taxes which would be paid on that portion of the housing development if the housing development were not tax exempt.

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

The sponsor shall submit annually documentation certifying what percentage of the housing development is occupied by "low income persons or families" as defined in Section 15(a) (7) of the act.

(Ord. No. 12-5, § 1(30-100.106), 12-10-12)

Sec. 30-100.007. Contractual effect of ordinance.

Notwithstanding the provisions of Section 15(a) (5) of the act to the contrary, a contract between the city and the sponsor with the authority as third party beneficiary under the contract, to provide tax exemption and accept payments in lieu of taxes, as previously described, is effectuated by enactment of this subdivision.

(Ord. No. 12-5, § 1(30-100.107), 12-10-12)

Sec. 30-100.008. Payment of service charge.

The annual service charge in lieu of taxes as determined under the division shall be payable in the same manner as general property taxes are payable to the city except that the annual payment shall be paid on or before September 15 of each year.

(Ord. No. 12-5, § 1(30-100.108), 12-10-12)

Sec. 30-100.009. Duration.

This subdivision shall remain in effect and shall not terminate so long as the housing development remains subject to income and rent restrictions pursuant to Section 42 of the Internal Revenue Code of 1986, as amended; any authority loan remains outstanding or unpaid or the authority has any interest in the property, and provided that rehabilitation of the housing development commences within 15 months from the effective date of this subdivision.

(Ord. No. 12-5, § 1(30-100.109), 12-10-12; Ord. No. 13-2, 8-29-13)

Sec. 30-100.010. Severability.

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

(Ord. No. 12-5, § 1(30-100.110), 12-10-12; Ord. No. 13-2, 8-29-13)

Sec. 30-100.011. Effective date.

This subdivision shall take full force and effect immediately upon its publication in a newspaper of general circulation within the City of Dowagiac. (Ord. No. 12-5, § 1(30-100.112), 12-10-12; Ord. No. 13-2, 8-29-13)

Editor's note—Ord. No. 13-2, adopted Aug. 29, 2013, repealed former § 30-100.011 and renumbered former § 30-100.012 as § 30-100.011. Former § 30-100.011 pertained to acknowledgment by the city of receipt of documentation from the authority, and derived from Ord. No. 12-5, § 1(30-100.111), 12-10-12.

Secs. 30-100.012—30-100.099. Reserved.

DIVISION 3. EXEMPTION FOR LOW INCOME HOUSING PROJECTS*

Sec. 30-100.1. Title.

This division shall be known and cited as "Division 3. Exemption for Low Income Housing Projects."

(Ord. No. 06-9, § 1, 12-18-06)

Sec. 30-100.2. Preamble.

Section 15a(5) of the State Housing Development Authority Act, codified at MCL 125.1415a(5), specifically provides that, notwithstanding the exemptions conferred by Section 15a(1) of the act, a municipality may provide by ordinance that the tax exemption therein established shall not apply to all or any class of housing projects within its boundaries to which subsection (1) applies. If the municipality makes that provision, the tax exemption established in subsection (1) shall not apply to the class of housing projects designated in the ordinance. Subsection (5) further provides that if the ordinance so provides, the ordinance shall be effective with respect to housing projects for which an exemption has already been granted on December 31 of the year in which the ordinance is adopted, but not before. The City of Dowagiac has received a notification to local assessor of exemption claimed by the Dowagiac Limited Dividend Housing Association. Since the Dowagiac Limited Dividend Housing Association did not seek such an exemption as a condition of constructing its project, the city will not be benefited and improved by granting the requested exemption, since the project has already been in place in excess of 20 years.

(Ord. No. 06-9, § 1, 12-18-06)

Sec. 30-100.3. Definitions.

All terms should be defined as set forth in the State Housing Development Authority Act of 1966, being Public Act 346 of 1966, as amended, except as follows:

Housing development means a development which contains a significant element of housing

*Editor's note—Ord. No. 06-9, § 1, adopted Dec. 18, 2006, set out provisions intended for use as §§ 30-90—30-94. Inasmuch as there were already provisions designated as such, said provisions have been redesignated as Div. 3, §§ 30-100.1—30-100.5, at the editor's discretion.

for persons of low income and such elements of other housing, commercial, recreational, industrial, communal, and educational facilities as the authority determines improve the quality of the development as it relates to housing for persons of low income.

(Ord. No. 06-9, § 1, 12-18-06)

Sec. 30-100.4. Class of housing developments.

It is determined that the class of housing developments to which the tax exemption granted by Section 15a(1) of the Act, codified at MCL 125.1415, shall be housing developments as herein defined.

(Ord. No. 06-9, § 1, 12-18-06)

Sec. 30-100.5. No effect on existing exemptions.

Pursuant to the authority of Section 15a(5) of the Act, codified at MCL 125.1415a(5), and inasmuch as the city is contractually bound with respect to exemptions previously granted, this ordinance shall not apply or be effective with respect to housing projects for which an exemption has already been granted.

(Ord. No. 06-9, § 1, 12-18-06)

ARTICLE IV. ECONOMIC DEVELOPMENT CORPORATION

Sec. 30-101. Application to incorporate approved.

(a) The application made May 6, 1976, by Richard M. Judd, Jr., Raymond Tutwiler and James E. Burke for permission to incorporate the economic development corporation of the city is hereby approved.

(b) The individuals mentioned in subsection (a) of this section are, therefore, expressly authorized to incorporate the economic development corporation and to file the corporation for the city.

(c) The suggested articles of incorporation previously submitted with the application are hereby approved.

(d) The economic development corporation is necessary and desirable for the improvement of the economic welfare of the citizens of the city and the general welfare of the community.
(Code 1972, §§ 1.361—1.364)

Sec. 30-102. Articles of incorporation.

(a) *Articles approved.* The articles of incorporation of the economic development corporation of the city submitted by Richard Judd, Jr., Ray Tutwiler and James Burke, as incorporators of such corporation, are approved.

(b) *Amendments.* The city expressly reserves the right to amend the articles of incorporation, by ordinance, at any time, provided that any such amendments shall in no way impair the obligation of any bond or contract.

(c) *Effective date.* The effective date of the economic development corporation shall be August 16, 1976.

(d) *Publication of notice.* The city clerk shall publish the articles of incorporation forthwith in the Dowagiac Daily News, a newspaper of general circulation within the city, together with the following statement: "The right exists for any person to question the incorporation of the economic development corporation in court, as provided in section 31 of Act No. 338 of the Public Acts of Michigan of 1974 (MCL 125.1601 et seq.), as amended.

(e) *Filing of copies.* The city clerk shall file forthwith one certified copy of the articles of incorporation with the state secretary and keep one certified copy in the city clerk's office.
(Code 1972, §§ 1.367—1.371)

Sec. 30-103. Project plan no. 1.

(a) *Approval.* Project plan no. 1 of the economic development corporation is hereby approved, pursuant to public hearing as required by Public Act No. 388 of the Public Acts of Michigan of 1974 (MCL 125.1601 et seq.), as amended.

(b) *Authorization to implement.* The economic development corporation is hereby expressly authorized to take whatever steps it deems necessary in the implementation of the project plan, as authorized by the above acts.

(c) *Necessary and desirable.* The city council hereby expressly finds that the implementation of Project plan no. 1 is both necessary and desirable for the economic well-being and general welfare of the citizens of the city.
(Code 1972, §§ 1.374—1.376)

Chapters 31—33

RESERVED

Chapter 34

EMERGENCY PREPAREDNESS*

- Sec. 34-1. Definitions.
- Sec. 34-2. Intent and purpose.
- Sec. 34-3. Effect on normal responsibilities and authority of elected officials, city departments; effect on volunteer agencies.
- Sec. 34-4. Office of emergency services designated as coordinating agency.
- Sec. 34-5. Organization for emergency services.
- Sec. 34-6. Powers and duties of city council, mayor, city manager.
- Sec. 34-7. Appointment of emergency services coordinator, assistant coordinators.
- Sec. 34-8. Duties of emergency services coordinator.
- Sec. 34-9. Volunteers.
- Sec. 34-10. Rights of city employees.
- Sec. 34-11. No governmental or private liability.
- Sec. 34-12. Conflicting ordinances, orders, rules and regulations suspended.
- Sec. 34-13. Establishment of police line or clear zone.
- Sec. 34-14. Violations.

***Cross references**—Administration, ch. 2; fire prevention and protection, ch. 42.

State law references—Emergency preparedness act, MCL 30.401 et seq., MSA 4.824(11) et seq.; governor's emergency powers, MCL 10.31 et seq., MSA 3.4(1) et seq.

Sec. 34-1. Definitions.

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

Coordinator means a person appointed to coordinate emergency planning and services within the city or as prescribed in this chapter. In the absence of an appointed person, the term "coordinator" shall mean any person appointed by the city manager, such as an assistant coordinator.

Disaster means an occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or manmade cause, including fire, flood, snow, ice or windstorm, wave action, oil spill, water contamination requiring emergency action to avert danger or damage, utility failure, hazardous peacetime radiological incident, major transportation accident, epidemic, air contamination, blight, drought, infestation, explosion, or hostile military or paramilitary action. Riots and other civil disorders are not within the meaning of this term unless they directly result from and are an aggravating element of the disaster.

District coordinator means the state police district emergency services coordinator or his authorized representative.

Emergency operations plan means the city emergency operations plan which has been prepared under section 34-8 to coordinate disaster response and recovery within the city.

Emergency services has a broad meaning to include preparations for and relief from the effects of natural and manmade disasters and includes civil defense.

Emergency services forces means all disaster relief forces; all agencies of the municipal government; private and volunteer personnel, public officers and employees; and all other persons or groups of persons having duties or responsibilities under this chapter or pursuant to a lawful order or directive authorized by this chapter.

Emergency services volunteer shall mean any person duly registered and appointed by the coordinator and assigned to participate in the emergency services activity.

State of disaster means a declaration by executive order or proclamation by the governor under the provisions of Act No. 390 of the Public Acts of Michigan of 1976 (MCL 30.401 et seq., MSA 4.824(11) et seq.), as amended, which activates the disaster response and recovery aspects of state, local and interjurisdictional disaster emergency plans and authorizes the deployment and use of any forces to which the plans apply.

State of emergency means a declaration by the city manager or coordinator pursuant to this chapter which activates the disaster response and recovery aspects of the city emergency operations plan and authorizes the deployment and use of any municipal forces to which the plan applies.

Cross reference—Definitions generally, § 1-2.

State law reference—Similar definitions, MCL 30.402, MSA 4.824(12).

Sec. 34-2. Intent and purpose.

It is the intent and purpose of this chapter to establish an organization that will ensure the complete and efficient utilization of all municipal resources during periods of emergency and disaster.

Sec. 34-3. Effect on normal responsibilities and authority of elected officials, city departments; effect on volunteer agencies.

This chapter will not relieve any elected officials or city departments of the normal responsibilities or authority given by general law or local ordinance, nor will it affect the work of the American Red Cross or other volunteer agencies organized for relief in a natural disaster.

Sec. 34-4. Office of emergency services designated as coordinating agency.

The city office of emergency services will be the coordinating agency responsible for citywide emergency preparedness; it will provide the means through which the city council and the city manager may exercise the authority and discharge the

responsibilities vested in them by this chapter and Act No. 390 of the Public Acts of 1976 (MCL 30.401 et seq., MSA 4.824(11) et seq.), as amended.

Sec. 34-5. Organization for emergency services.

(a) The city manager, with the approval of the city council, is hereby authorized and directed to create an organization to prepare for community disasters utilizing to the fullest extent existing agencies within the city. The city manager, as administrative head of the city government, shall be the director of the emergency services forces of the city and shall be responsible for their organization, administration and operation, working through the coordinator.

(b) The organization for providing emergency services shall consist of the following:

- (1) An office of emergency services established within city government. The office of emergency services shall have an administrative head appointed who will be known as the coordinator, office of emergency services. Such assistants and other employees as are deemed necessary for the proper functioning of the organization will be employed.
- (2) The employees, equipment and facilities of all municipal departments, boards, institutions and commissions suitable for, or adaptable to emergency services activities may be designated as part of the total emergency services forces. Such designations shall be by the city manager with the approval of the city council.

(c) All officers and employees of departments, commissions, boards, institutions and other agencies of the city government designated by the city manager, with the approval of the city council, as emergency services forces shall cooperate with the emergency services coordinator in the formulation of the emergency operations plan, and they shall assist the coordinator in all matters pursuant to the provisions of this chapter.

Sec. 34-6. Powers and duties of city council, mayor, city manager.

(a) The city council may exercise the emergency power and authority as specified in this

chapter. Whenever a situation requires, or is likely to require, that the mayor invoke such power and authority, he shall, as soon as reasonably expedient, convene the city council to perform its legislative and administrative duties as the situation demands, and shall report to that body relative to emergency activities. Nothing in this chapter shall be construed as abridging or curtailing the powers of the city council unless specifically provided in this chapter.

(b) Under the following circumstances, the city manager or coordinator may declare a state of emergency exists in the city and may assemble and utilize the emergency services forces in accordance with the city emergency operations plan, and he may prescribe the manner and conditions of the use of such emergency services forces:

- (1) Whenever, on the basis of information received from authoritative sources, he feels that a large-scale disaster or emergency situation in the city or state is imminent.
- (2) During any period of disaster in the city or state and thereafter as long as he shall deem it necessary.

(c) Whenever the city manager or city council deems that any condition in the city is beyond the control of local public or private agencies or has attained or threatens to attain the proportions of a major disaster, he may request the governor to declare a state of disaster exists therein by instructing the coordinator to contact the district coordinator in accordance with section 14 of Act No. 390 of the Public Acts of Michigan of 1976 (MCL 30.414, MSA 4.824(24)), as amended.

(d) The city manager, with the approval of the city council, is hereby empowered and has the authority:

- (1) To appropriate and expend funds, make contracts, obtain and distribute equipment, materials, and supplies for disaster purposes;
- (2) To provide for the health and safety of persons and property, including emergency assistance to the victims of a disaster;
- (3) To assign and make equipment available for duty, the employees, property, and equip-

ment of the city related to firefighting; engineering; rescue; health, medical, and related services; police; transportation; construction; and similar items or service for disaster relief purposes within or without the physical limits of the city;

- (4) In the event of a foreign attack upon this state, to waive procedures and formalities otherwise required by law pertaining to the performance of public work, entering into contracts, the incurring of obligations, the employment of permanent and temporary workers, the utilization of volunteer workers, the rental of equipment, the purchase and distribution with or without compensation of supplies, materials, and facilities, and the appropriation and expenditure of public funds.

(e) The city manager, with the approval of the city council, shall establish procedures for the succession of government during emergencies where officials are unavailable for exercising the powers and discharging the duties of their respective offices.

(f) The city manager, with the approval of the city council, may make regulations permitting the coordinator to assemble and utilize the emergency services forces and provide disaster relief aid as prescribed in subsections (b), (c) and (d) of this section.

(g) When obtaining formal approvals would result in delay of relief activity, the city manager may, until the city council convenes, waive procedures and formalities otherwise required pertaining to the performance of public works, entering into contracts, the incurring of obligations, the employment of temporary workers, the rental of equipment, the purchase and distribution of supplies, materials and facilities and expenditure of existing funds, and the city council is also empowered to waive any such procedures and formalities.

Sec. 34-7. Appointment of emergency services coordinator, assistant coordinators.

(a) The city manager, with the approval of the city council, shall appoint an emergency services

coordinator who shall be a person with the personal attributes, experience, and training needed to coordinate the activities of the agencies, departments, and individuals within the city to protect the public health, safety and welfare during emergency situations and disasters.

(b) Assistant coordinators shall be designated to work with the coordinator on emergency planning matters. Assistant coordinators shall be selected and shall serve as follows:

- (1) There shall be one such assistant coordinator appointed from each city department as designated by the department head, with the approval of the city manager as part of the emergency services forces.
- (2) Assistant coordinators shall assume the duties of the coordinator whenever he is unavailable during disasters or emergency situations in the order of designation by the city manager, acting upon the recommendation of the coordinator.

State law reference—Local coordinator, MCL 30.409, MSA 4.824(19).

Sec. 34-8. Duties of emergency services coordinator.

The emergency services coordinator shall be responsible for the administration, planning, coordination and operation of all emergency preparedness activities in the city. He shall maintain liaison with county, state, and federal authorities, and the authorities of adjacent and nearby political subdivisions so as to ensure the most effective emergency operations. His duties shall include but not be limited to the following:

- (1) Development of the city emergency operations plan and any other appropriate disaster plans for the immediate use of all of the facilities, equipment, manpower, and other resources of the city for the purpose of minimizing or preventing damage to persons or property; and protecting and restoring to usefulness governmental services and public utilities necessary for the public health, safety, and general welfare;
- (2) Coordinating the recruitment and training of volunteer personnel and agencies to augment the personnel and facilities of the city for emergency purposes;

- (3) Through public information programs, educating the population as to actions necessary and required for the protection of persons and property in case of a disaster;
- (4) Conducting practice alerts and exercises to ensure the efficient operation of the city's emergency organization and to familiarize residents of the city with emergency regulations, procedures and operations;
- (5) Coordinating the activity of all other public and private agencies engaged in any emergency or disaster relief programs;
- (6) Negotiating with owners or persons in control of buildings or other property for the use of such buildings or property for emergency or disaster relief purposes, and designating suitable buildings as public shelters;
- (7) Establishing and maintaining administrative control over a local radiological defense program, to include emergency preparations for both peacetime radiation incidents and international wartime disasters;
- (8) Coordinating municipal emergency preparedness activities with those at the county level and adjacent municipalities.

Sec. 34-9. Volunteers.

(a) Each department, commission, board, or other agency of city government may at any time appoint or authorize the appointment of volunteer citizens to augment the personnel of such city department, commission, board, or agency in time of emergency. Such individuals shall be enrolled as emergency services volunteers and shall be subject to the rules and regulations set forth by the respective department, commission, board, or agency head for such volunteers.

(b) The coordinator may enlist volunteer citizens to form the personnel of an emergency service for which the city has no counterpart, or to temporarily augment personnel of the city engaged in emergency activities. The coordinator shall maintain formal records of all such volunteers for workers' compensation purposes.

Sec. 34-10. Rights of city employees.

City employees assigned to duty as a part of the emergency services forces pursuant to the provisions of this chapter shall retain all of the rights, privileges, and immunities of city employees, and shall receive the compensation incident to their employment.

State law reference—Similar provisions, MCL 30.411(1)(b), MSA 4.824(21)(1)(b).

Sec. 34-11. No governmental or private liability.

(a) This chapter is an exercise by the city of its governmental functions for the protection of the public health, safety, and general welfare. As such, neither the city nor agents and representatives of the city, nor any individual, receiver, firm, partnership, corporation, association, nor trustee, nor any of the agents thereof acting in good faith carrying out, complying with, or attempting to comply with this chapter shall be liable for any damage sustained to persons or property as a result of such activity.

(b) Any person owning or controlling real estate or other premises who voluntarily and without compensation grants the city the right to inspect, designate and use the whole or any part of such real estate or premises for the purpose of sheltering persons during a disaster or during an authorized practice disaster exercise, shall not be civilly liable for the death of, or injury to, any person on or about such real estate or premises under such license, privilege or other permission, or for loss of or damage to the property of such person.

State law reference—Similar provisions, MCL 30.411(2), (3), (6), MSA 4.824(21)(2), (3), (6).

Sec. 34-12. Conflicting ordinances, orders, rules and regulations suspended.

At all times when the orders, rules and regulations made and promulgated pursuant to this chapter shall be in effect, they shall supersede all other existing ordinances, orders, rules and regulations, insofar as the latter may be inconsistent therewith.

State law reference—Temporary ordinances or rules, MCL 30.412(2), MSA 4.824(22)(2).

Sec. 34-13. Establishment of police line or clear zone.

(a) When any fire, accident, explosion, parade, calamity, public disturbance or other occasion causes or may cause persons to collect on the public streets, sidewalks or other areas of the city, the chief of police or officer acting for him may establish a police line or zone as may be necessary for the purpose of affording a clearing for:

- (1) The protection of persons and property;
- (2) Police officers, firemen, or public safety officers, and emergency medical personnel; and other personnel performing operations in accordance with their duties;
- (3) The exclusion of the public from the vicinity of a fire, accident, explosion, calamity, other emergency or public disturbances;
- (4) The passage of a parade;
- (5) The movement of traffic.

(b) Any person who shall knowingly cross any such line, knowingly enter into any such zone, or remain in any such zone after being requested to leave shall be guilty of a misdemeanor; provided, that bona fide and properly identified representatives of the press and media, residents of the zone, and such other persons as the chief of police or officer acting for him may authorize to cross such lines or be within such zone may be permitted to cross such lines or enter into such zone, and may remain in such zone so long as they will not and do not interfere with emergency personnel performing their duties.

(c) Every person present within such zone shall comply with any necessary order or instruction of any police officer and any person who refuses to comply with the necessary order of a police officer shall be guilty of a misdemeanor.

Sec. 34-14. Violations.

It shall be unlawful for any person willfully to obstruct, hinder or delay any emergency services forces in the enforcement or accomplishment of any rule or regulation issued pursuant to this chapter, or to do any act forbidden by any rule or regulation issued pursuant to the authority con-

tained in this chapter. It shall likewise be unlawful for any person to wear, carry or display any emblem, insignia or other means of identification as a member of the emergency services forces of the city unless authority to do so has been granted to such person by proper officials.

Chapters 35—37

RESERVED

Chapter 38

ENVIRONMENT*

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Article II. Nuisances

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DOWAGIAC CODE

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ARTICLE I. IN GENERAL

Secs. 38-1—38-25. Reserved.

ARTICLE II. NUISANCES

DIVISION 1. GENERALLY

Sec. 38-26. Definitions.

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

Nuisance means whatever annoys, injures or endangers the safety, health, comfort, or repose of the public; offends public decency; interferes with, obstructs or renders dangerous any street, highway, navigable lake or stream; or in any way renders the public insecure in life or property is hereby declared to be a public nuisance. Public nuisances shall include, but not be limited to, whatever is forbidden by any provision of this article.

(Ord. No. 93-9, § 1(9.1), 10-4-93)

Cross reference—Definitions generally, § 1-2.

Sec. 38-27. Commission, creation or maintenance.

No person shall commit, create or maintain any nuisance.

(Ord. No. 93-9, § 1(9.1), 10-4-93)

Secs. 38-28—38-40. Reserved.

DIVISION 2. DANGEROUS STRUCTURES

Sec. 38-41. Maintenance.

No person shall maintain any structure which is unsafe or which is a menace to the health, morals or safety of the public.

(Ord. No. 93-9, § 1(9.2), 10-4-93)

Sec. 38-42. Notice and hearing.

The city council may, after notice to the owner and after holding a public hearing thereon, condemn such structure by giving notice to the

owner of the land upon which such structure is located, specifying in what respects the structure is a public nuisance and requiring the owner to alter, repair, tear down or remove the dangerous structure within such reasonable time, not exceeding 60 days, as may be necessary to do or have done the work required by such notice. The council may extend such period for additional periods of not exceeding 30 days each for good cause shown. The notice shall also specify the time within which such work shall be commenced and necessary permits obtained therefor. (Ord. No. 93-9, § 1(9.2(1)), 10-4-93)

Sec. 38-43. Abatement.

If, at the expiration of any time limit in the notice, the owner has not complied with the requirements of the notice, the city may carry out the requirements of the notice. The cost of such abatement shall be charged against the premises and the owner thereof in accordance with the provisions of chapter 66 of this Code. (Ord. No. 93-9, § 1(9.2(2)), 10-4-93)

Sec. 38-44. Emergency abatement.

The city manager may abate any such public nuisance, if the public safety requires immediate action, without preliminary order of the city council. Thereafter, the cost of abating such nuisance shall be charged against the premises and the owner of the premises in accordance with the provisions of chapter 66 of this Code. (Ord. No. 93-9, § 1(9.2(3)), 10-4-93)

Sec. 38-45. Other remedies.

Nothing contained in this division shall be construed to limit or abrogate the right of the city to seek any other remedy permitted by law including, specifically, the right to seek abatement of any nuisance through circuit court action. (Ord. No. 93-9, § 1(9.2(4)), 10-4-93)

Secs. 38-46—38-55. Reserved.

DIVISION 3. BLIGHT

Sec. 38-56. Purpose of division.

It is the purpose of this division to prevent, reduce or eliminate potential blight in the city by

the prevention or elimination of certain environmental causes of blight or blighting factors which exist or may in the future exist in the city.

(Code 1972, § 6.31; Ord. No. 18-1, 5-14-18)

Sec. 38-57. Enforcement of division.

A violation of this division is designated as a municipal civil infraction, not a blight violation as that term is used in section 117.41 of the Home Rule City Act, 1909 PA 279, MCL 117.41, and this division may be enforced by an authorized city official as defined in § 58-241.

(Code 1972, § 6.33; Ord. No. 18-1, 5-14-18)

Sec. 38-58. Penalty for violation of division.

(a) Any violation of any of the provisions of this division is hereby declared a nuisance and proceedings may be instituted in any court of competent jurisdiction for injunctive or other relief to abate such nuisance.

(b) Any person violating any provision of this division shall be responsible for a municipal civil infraction and subject to a civil fine of not less than \$100.00 or more than \$500.00, plus costs. Any person violating any provision of this division for a second time shall be responsible for a municipal civil infraction and subject to a civil fine of not less than \$300.00 or more than \$500.00, plus costs. Any person violating any provision of this division more than two times shall be responsible for a municipal civil infraction and subject to a civil fine of \$500.00, plus costs. Costs shall include all expenses, direct and indirect, to which the city has been put in connection with the municipal civil infraction which shall not exceed \$500.00 plus the additional costs incurred in compelling the appearance of the defendant.

(c) The district court may issue and enforce any judgment, writ, or order necessary to enforce this division.

(Code 1972, § 6.35; Ord. No. 18-1, 5-14-18)

Sec. 38-59. Causes.

It is hereby determined that the following uses, structures and activities are causes of blight or blighting factors which, if allowed to exist, will tend to result in blighted and undesirable neighborhoods. No person shall maintain or permit to be maintained any of these causes of blight or blighting factors upon any property in the city, owned, leased, rented or occupied by such person:

- (1) In any area, except where specifically permitted, the storage upon any property of junk automobiles, junk motor-driven vehicles, trailers in disrepair, contractor's equipment in disrepair, or boat hulls in disrepair, except in a completely enclosed building. For the purpose of this division, the terms "junk automobiles," "junk motor-driven vehicles," "trailers in disrepair," "contractors' equipment in disrepair," or "boat hulls in disrepair" shall include any such article which is not licensed for use upon the highways of the state, or lakes and waterways, for a period in excess of 48 hours; and shall also include, whether so licensed or not, any of the above enumerated articles which are inoperative for any reason for a period in excess of 14 days.
- (2) In any area, except where specifically permitted, the storage upon any property of building materials unless there is in force a valid building permit issued by the city for construction upon such property, and the materials are intended for use in connection with such construction, except the temporary storage of building materials which, in the opinion of the building inspector, are not of a nature to be unsightly or a cause of blight. Building materials shall include, but shall not be limited to, lumber, bricks, concrete or cinder blocks, plumbing materials, electrical wiring or equipment, heating ducts or equipment, shingles, mortar, concrete or cement, nails, screws, or any other material used in the construction of any structure.

- (3) In any area, except where specifically permitted, the storage or accumulation of junk, trash, rubbish or refuse of any kind, except domestic refuse stored in a rodentproof receptacle, in such a manner as not to create a nuisance for a period of not to exceed 30 days. The term "junk" shall include parts of machinery or motor vehicles, unused stoves, unused, inoperable or broken outdoor cooking devices or other unused appliances stored in the open, inoperable or broken toys, remnants of wood, metal or other material or other cast-off material of any kind whether or not the same could be put to any reasonable use.
- (4) In any area, the existence of any structure or part of any structure which, because of fire, wind or other natural disaster, or physical deterioration, is no longer habitable, if a dwelling, or useful for any other purpose for which it may have been intended.
- (5) In any area zoned for residential purposes, the existence of any vacant dwellings, garages or other outbuildings unless such buildings are kept securely locked, windows kept glazed or neatly boarded up and otherwise protected to prevent entrance thereto by vandals.
- (6) In any area, the existence of any partially completed structure, unless such structure is in the course of completion in accordance with a valid and subsisting building permit issued by the city and unless such construction is completed within a reasonable time.
- (7) In any area, the owner or occupant of any premises on which is located any tree or other growth, if infected by disease or by injurious insects or if in a dangerous condition, shall destroy such tree or growth when such destruction is necessary for the protection of other trees and growth and for the public health, safety and welfare.
- (Code 1972, § 6.32; Ord. No. 18-1, 5-14-18)

Sec. 38-60. Notice.

(a) At the time of service in the manner provided in subsection 58-245(7) of a municipal civil infraction citation for a violation of this division, an authorized city official shall also serve in the same manner written notice that if the causes of blight or blighting factors set forth in section 38-59 found to exist on the property are completely removed or eliminated from such property within ten days after service of the notice, the relief provided in subsection 38-60(b) shall be available. An extension of time to comply with the notice may be granted by an authorized city official where bona fide efforts to remove or eliminate such causes of blight or blighting factors are in progress.

(b) Complete timely compliance with the notice shall be an affirmative defense to the violation alleged in the citation provided that during the 12-month period immediately preceding the date on which the citation is issued no other citation has been issued under this division to the alleged violator or to an owner or occupant of the land, building, or structure involved in the violation. (Code 1972, § 6.34; Ord. No. 18-1, 5-14-18)

Sec. 38-61. Abatement by city upon failure of owner or occupant.

If a person shall fail to comply with the provisions of section 38-59, by failing to remove or lawfully dispose of the blight or blighting factors within such time and in such a manner as may be necessary to effect compliance with the provisions of section 38-59, an authorized city official shall cause all materials to be removed from the lands of the person not complying with the provisions of this division. An accurate account of all expense incurred with respect to each parcel entered upon in carrying out the provisions of this division shall be kept. (Ord. No. 08-6, § 1, 7-31-08; Ord. No. 18-1, 5-14-18)

Sec. 38-62. Collection of costs from owner.

A copy of the account of the costs incurred on each of the several descriptions or parcels of property shall be transmitted to the city treasurer. The city treasurer shall add to all the accounts

50 percent of the amount of all such expenditures to cover the cost of publications, overhead and other expenses and collect the total amount as provided in chapter 66 of this Code. (Ord. No. 08-6, § 1, 7-31-08; Ord. No. 18-1, 5-14-18)

Secs. 38-63—38-70. Reserved.

DIVISION 4. NUISANCES PER SE

Sec. 38-71. Enumeration.

The following acts, services, apparatus and structures are hereby declared to be public nuisances:

- (1) The maintenance of any pond, pool of water or vessel holding stagnant water.
- (2) The throwing, placing, depositing or leaving in any street, highway, lane, alley, public place or premises or in any private place or premises where such throwing, placing, depositing or leaving is, in the opinion of the health officer, dangerous or detrimental to public health, likely to cause sickness or attract flies, insects, rodents and/or vermin, by any person, of any animal or vegetable substance, dead animal, fish, shell, tin cans, bottles, glass, or other rubbish, dirt, excrement, filth, unclean or nauseous water, or other fluids, hay, straw, soot, garbage, swill, animal bones, hides or horns, rotten soap, grease or tallow, offal or any other offensive article or substance whatever.
- (3) The pollution of any stream, lake or body of water by, or the depositing into or upon any highway, street, lane, alley, public street, or square, or into any adjacent lot or grounds of, or depositing or permitting to be deposited any refuse, foul or nauseous liquid or water, creamery or industrial waste, or the forcing or discharging into any public or private sewer or drain any steam, vapor, gas or oils.

- (4) The emission of noxious fumes or gas in such quantities as to render occupancy of property uncomfortable to a person of ordinary sensibilities.
- (5) Any vehicle used for any immoral or illegal purposes.
- (6) All indecent or obscene pictures, books, pamphlets, magazines and newspapers.
- (7) Betting, bookmaking and all apparatus used in such occupations.
- (8) All gambling devices.
- (9) All houses kept for the purpose of prostitution or promiscuous sexual intercourse and gambling houses.
- (10) The distribution of samples of medicines or drugs unless such samples are placed in the hands of an adult person.
- (11) All explosives, flammable liquids and other dangerous substances stored in any manner or in any amount contrary to the provisions of this Code, or state statutes.
- (12) Any use of the public streets and/or sidewalks which causes large crowds to gather, obstructing the free use of the streets and/or sidewalks.
- (13) All buildings, walls and other structures which have been damaged by fire, decay, or otherwise, and all excavations remaining unfilled or uncovered for a period of 90 days or longer, and which are so situated so as to endanger the safety of the public.
- (14) All dangerous, unguarded excavations or machinery in any public place, or so situated, left or operated on private property as to attract the public.
- (15) The owning, driving or moving upon any public streets and alleys of trucks or other motor vehicles which are constructed or loaded so as to permit any part of their load or contents to blow, fall or be deposited upon any street, alley, sidewalk or other public or private place, or which deposits from its wheels, tires, or other

parts onto the street, alley, sidewalk or other public or private place dirt, grease, sticky substances or foreign matter of any kind; provided, however, that under circumstances determined by the city manager to be in the public interest, he may grant persons temporary exemption from provisions of this subsection conditioned upon cleaning and correcting the violating conditions at least once daily and execution of an agreement by such person to reimburse the city for any maintenance expenses incurred by the city in connection with such violation.

- (16) The placing or causing to be placed in or on any motor vehicle parked upon any street, alley or other public place within the corporate limits of the city any paper, posters, signs, cards, or other advertising matter.

(Ord. No. 93-9, § 1(9.3), 10-4-93)

Secs. 38-72—38-80. Reserved.

**DIVISION 5. OPEN BURNING AND FIRE
HAZARD EMERGENCIES**

Sec. 38-81. Open burning.

(a) No person shall burn solid waste within the city limits. Such act shall constitute a public nuisance. In the event of such violation the department of police may, in addition to or in lieu of any other enforcement and penalty provision set out in this Code, serve, personally or by mail, a notice of such violation on any violator.

(b) Except in connection with the lawful operation of a coal, wood, gas, petroleum by product fired engine, furnace, fireplace, wood stove or heating appliance, or in an incinerator, licensed and approved by the state or a political subdivision thereof, it shall be unlawful to burn, cause to be burned, or to provide facilities for the burning of, at anytime, wood and paper products, refuse, animal waste, rubber or petroleum based products, plastic or leather goods, or other flammable or combustible liquids within the city limits.

Exception: Fire pits, or containers, for personal use meeting the following requirements;

- (1) Fire pits shall not be larger than 18 inches to 24 inches in diameter, and shall be constructed of noncombustible materials such as steel tire rings or concrete blocks. The height of all rings or pits shall be a minimum of six inches.
- (2) Fire containers shall be listed and approved for such use.
- (3) Burning materials shall be limited to natural wood products, manmade burning logs, and other similar materials. At all times when in use, the open pit or container shall be attended. Prohibited burning materials shall include discarded household trash and garbage, yard wastes, including leaves, twigs and grass, plastic or rubber items, petroleum products, animal feces or other noxious or hazardous materials.
- (4) No fire pit or container shall be located on or within 15 feet of any combustible surface.

(Ord. No. 93-9, § 1(9.5), 10-4-93; Ord. No. 06-6, § 1, 6-30-06)

Sec. 38-82. Fire hazard emergency; notice; misdemeanor penalties.

Pursuant to the authority granted by section 12.3 of the city Charter, the city fire chief shall be and hereby is permitted to, with the advise and consent of the city manager, declare a fire hazard emergency when circumstances exist, due to drought, lack of adequate water supply or other circumstances, which, in the opinion of the fire chief, causes undue risk of fire hazard. In such event notice of the fire hazard emergency and the reasons therefor shall be immediately submitted to the city council and placed for publication in a newspaper of general circulation within the city. In such event, no residential burning of any materials, whether in enclosed or unenclosed containers, shall thereafter be permitted until termination of the fire hazard emergency shall have been declared by the city fire chief, with the advice and consent of the city manager. The notice shall be published on not less than

two occasions, but shall be effective on the occasion of the first publication. Any person thereafter who shall engage in the burning of such combustible materials, or who shall aid and abet another in doing so, shall be guilty of a misdemeanor punishable by a fine of not to exceed \$100.00 and imprisonment for not more than 90 days for each such occurrence.

(Ord. No. 93-9, § 1(9.6), 10-4-93)

Sec. 38-83. Dense smoke.

No person who is responsible therefor shall permit the emission from any chimney or smoke-stack of dense smoke or smoke containing soot or other substance in sufficient quantity to noticeably permit the deposit of soot or other substance within the city.

(Ord. No. 93-9, § 1(9.4), 10-4-93)

Secs. 38-84—38-95. Reserved.

DIVISION 6. LITTER

Sec. 38-96. Dumps and refuse; littering of streets; hours for burning.

(a) No person shall dispose of any refuse, waste or other materials except at sites which have been approved and are supervised by the city health officer or other designated authority and which are clearly marked for such purposes. The disposal of garbage and refuse, excluding compostables and recyclables awaiting transport or processing, shall not be permitted on any site within the city limits.

(b) This section shall not prevent the burning of combustible materials in accordance with section 38-81.

(c) Except as provided in subsections (a) and (b) of this section, no person shall dump, abandon, throw, or scatter anything in or transport anything in such manner as to cause the littering of any street, alley, public place or of any private property not his own, or to cause the obstruction of any ditch, drain or gutter.

(Ord. No. 93-9, § 1(9.8), 10-4-93)

Sec. 38-97. Posters, handbills, cards or other advertising matter—Distribution.

No person shall distribute, throw, drop or scatter in any street, alley or public place or in or upon any vehicle located in any street, alley or public place any posters, handbills, cards, samples or other matter used for the purpose of advertising in such a manner as to result in the littering of any street, alley or public place.

(Ord. No. 93-9, § 1(9.9), 10-4-93)

Sec. 38-98. Same—Restrictions as to posting.

(a) No person shall attach, place, paint, write, stamp or paste any sign, advertisement or other matter upon any lamppost, electric light, railway, CATV or telephone pole, shade tree, fire hydrant or structure covering them; or on any bridge, pavement, sidewalk or crosswalk, public building, or any property or thing belonging to the city, or any article or thing within any park; provided, however, that this section shall not be construed to prevent any public officer from so doing for any public purpose.

(b) No person shall attach, place, paint, write, stamp or paste any sign, advertisement or other matter upon any house, wall, fence, gate, post or other structure without first having obtained the written permission of the owner, agents, or occupants of the premises and having complied with the building code.

(Ord. No. 93-9, § 1(9.10), 10-4-93)

Secs. 38-99—38-110. Reserved.

DIVISION 7. NOISE CONTROL

Sec. 38-111. Loud and necessary noises.

(a) *Enumeration.* It shall be unlawful for any person to make, continue or cause to be made or continued any excessive, unnecessary or unusually loud noise or any noise which either annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of others within the limits of the city. The following acts are declared to be loud, disturbing and unnecessary noises, but such enumeration shall not be deemed exclusive:

- (1) *Horns, signaling devices.* The sounding of any horn or signaling device on any automobile, truck, motorcycle, van, recreational vehicle, or other vehicle on any street or public place of the city, except as a danger warning; the creation by means of any such signaling device of any unreasonably loud or harsh sounds; and the sounding of any such device for an unnecessary and unreasonable period of time. The use of any signaling device, except one operated by hand or electricity; the use of any horn,

whistle or other device operated by engine exhaust; and the use of any such signaling device when traffic is for any reason held up.

- (2) *Radios, sound reproduction.* The using, operating or permitting to be played, used or operated any radio, receiving set, stereo, musical instrument, tape or disc player or other machine or device for the producing or reproducing of sound in such manner so as to disturb the peace, quiet and comfort of the neighboring inhabitants at any time with louder volume than is necessary for convenient hearing for persons who are in the room, vehicle or chamber in which such machinery device is operated and who are voluntary listeners thereto. The operation of any such set, instrument, tape player, machine or device in such a manner to be plainly audible at a distance of 50 feet from the building, structure or vehicle in which it is located shall be prima facie evidence of a violation of this section.
- (3) *Loudspeakers, amplifiers for advertising.* The using, operating or permitting to be played, used or operated of any radio, receiving set, musical instrument, tape player, loudspeaker, sound amplifier or other machine or device for the producing or reproducing of sound which is cast upon the public street for the purpose of commercial advertising or attracting the attention of the public to any building or structure. The city council may issue a license to operate sound amplification machines or devices, issuable at the discretion of the city council, after written application is filed with the city manager.
- (4) *Construction or repair of structures.* The erection, including excavation, demolition, alteration or repair of any exterior portion of a structure or any unenclosed structure, between the hours of 11:00 p.m. and 7:00 a.m., when such activity includes the use of tools which, in use, produce audible sound. In the case of urgent necessity in the interest of public health and safety, the building inspector may grant and issue a permit for the construction or repair of structures between the hours of 11:00 p.m. and 7:00 a.m., which shall be granted for a period not to exceed three days while the emergency continues and which may be renewed for periods of three days or less while the emergency exists.
- (5) *Schools, courts, churches, hospitals.* The creation of any excessive noise on any street adjacent to any school, institution of learning, church or court while the same are in use; or adjacent to any hospital, which unreasonably interferes with the workings of such institution, or which disturbs or unduly annoys patients in the hospital, provided conspicuous signs are displayed in such streets indicating that the same is a school, church, hospital or court street.
- (6) *Metal rails, pillars and columns; transportation.* The transportation of rails, pillars or columns of iron, steel or other materials, over and along streets and other public places upon carts, trays, cars, trucks, or in any other manner so loaded as to cause loud noises or as to disturb the peace and quiet of such streets or other public places.
- (7) *Piledrivers, hammers, and other loud tools and appliances.* The operation between the hours of 10:00 p.m. and 7:00 a.m. of any piledriver, steam shovel, pneumatic hammer, derrick, steam and electric hoist or other appliance, the use of which is attended by loud or unusual noise.
- (8) *Blowers.* The operation of any noise-creating blower or power fan or any internal combustion engine, the operation of which causes noise due to the explosion of operating gases or fluids, unless the noise from such blower or fan is muffled and such engine is equipped with a muffler device sufficient to deaden such noise.
- (b) *General prohibition; exception.* No person shall make, cause, permit or allow to be made upon a place open to the general public or in such close proximity to a place open to the general public as to be distinctly and loudly audible upon such place open to the general public, any noise of any kind by crying, calling or shouting, or by means of any whistle, rattle, bell, gong, clapper,

hammer, drum, horn, hand organ, mechanically operated piano, other musical instrument, wind instrument, mechanical device, radio, tape player, sound amplifying or other similar electronic device; provided, however, that an itinerant musician is not hereby restricted or prohibited so long as he has obtained a permit from the city council, nor does this subsection apply to bands and orchestras or similar musical bodies utilized as part of a parade or similar authorized musical production.

(Ord. No. 93-9, § 1(9.11), 10-4-93)

Sec. 38-112. Penalty for violation of section 38-111; additional remedy; declared public nuisance; exceptions.

(a) Any person convicted of a violation of any provision of section 38-111 shall be punished by a fine of not more than \$175.00 and costs of prosecution, or by imprisonment of not more than 90 days, or both. Each act or violation shall constitute a separate offense.

(b) Any person convicted of a violation of any provision of section 38-111 for a second time within a three-month period shall be punished by a fine of not more than \$500.00 and costs of prosecution or by imprisonment of not more than 90 days, or both. The city police department may also seize any instrumentality causing the sound as contraband.

(c) The operation or maintenance of any device, instrument, vehicle, or machinery in violation of section 38-111 which endangers the comfort, repose, health or peace of the residents of the city shall be deemed and is declared to be a public nuisance and may be subject to abatement summarily by a restraining order issued by a court of competent jurisdiction.

(d) None of the terms or prohibitions of this section shall apply to or be enforced against:

- (1) *Emergency vehicles.* Any police or fire vehicle or any ambulance, while engaged upon emergency business.
- (2) *Highway maintenance and construction.* Excavations, maintenance or repairs of bridges, streets, or highways by or on

behalf of the city or state, during the night, when the public safety, welfare and convenience renders it impossible to perform such work during the day.

(Ord. No. 93-9, § 1(9.12), 10-4-93; Ord. No. 13-3, § 1, 9-13-13)

Sec. 38-113. Motor vehicle noise and exhaust.

(a) *General requirements.* The following provisions in relation to motor vehicle noise and exhaust are required:

- (1) *Mufflers; use of cutout or bypass.* A motor vehicle, including a motorcycle or moped, shall at all times be equipped with a muffler in good working order and in constant operation to prevent excessive or unusual noise and annoying smoke. A person shall not remove, destroy, or damage any of the baffles contained in the muffler, nor shall a person use a muffler cutout, bypass, or similar device upon a motorcycle or moped on a highway or street.
- (2) *Engine adjustment to prevent fumes.* The engine and power mechanism of a motor vehicle shall be so equipped and adjusted as to prevent the escape of excessive fumes or smoke.
- (3) *Exhaust system, tailpipe and resonator.* A motor vehicle shall at all times be equipped with a properly operating exhaust system which shall include a tailpipe and resonator on a vehicle where the original design included a tailpipe and resonator.

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

Combination vehicle means any combination of truck, truck tractor, trailer, semitrailer or pole trailer used upon the highways or streets in the transportation of passengers or property.

Decibel means a unit of sound level on a logarithmic scale measured relative to the threshold

of audible sound by the human ear, in compliance with American National Standards Institute substandard 1.1-1960.

Decibels on the A-weighted network or *dba* means decibels measured on the A-weighted network of a sound level meter, as specified in American National Standards Institute standard 1.4-1971.

Exhaust system means the system comprised of a combination of components which provides for enclosed flow of exhaust gas from engine parts to the atmosphere.

Fast meter response means the meter ballistics of meter dynamic characteristics as specified by American National Standard 1.4-1971.

Gross vehicle weight rating means the value specified by the manufacturer as the loaded weight of a vehicle.

Maximum noise means the noise emitted from a vehicle during that manner of operation which causes the highest dba level possible from that vehicle.

Muffler means a device for abating the sound of escaping gases of an internal combustion engine.

Noise means any sound.

Total noise means noises radiating from a vehicle but does not include noises emitted from a horn, siren, bell or other similar device of an authorized emergency vehicle.

(c) *Exhaust system requirements.* Exhaust system requirements are as follows:

- (1) *Generally.* A motor vehicle, while being operated on a highway or street, shall be equipped with an exhaust system in good working order to prevent excessive or unusual noise and shall be equipped to prevent noise in excess of the limits established in this section.
- (2) *Special mobile equipment; exclusion.* For purposes of subsections (b) through (e) of this section, a motor vehicle does not include special mobile equipment.

(d) *Noise level limits; exhaust system parts.* Noise level limits and regulations governing exhaust system parts are as follows:

- (1) *Noise level limits.* A motor vehicle shall not be operated or driven on a highway or street if the motor vehicle produces total noise exceeding one of the following limits at a distance of 50 feet, except as provided in subsections (d)(1)b.3 and (d)(1)c.3 of this section.
 - a. A motor vehicle with a gross weight or gross vehicle weight rating of 8,500 pounds or more, combination vehicle with gross weight or gross vehicle weight ratings of 8,500 pounds or more.
 1. Ninety dba if the maximum lawful speed on the highway or street is greater than 35 miles per hour.
 2. Eighty-six dba if the maximum lawful speed on the highway or street is not more than 35 miles per hour.
 3. Eighty-eight dba under stationary run-up test.
 - b. A motorcycle or a moped as follows:
 1. Eighty-six dba if the maximum lawful speed on the highway or street is greater than 35 miles per hour.
 2. Eighty-two dba if the maximum lawful speed on the highway or street is not more than 35 miles per hour.
 3. Ninety-five dba under stationary run-up test at 75 inches.
 - c. A motor vehicle or a combination of vehicles towed by a motor vehicle not covered in subsections (d)(1)c.1 or (d)(1)c.2 of this section:
 1. Eighty-two dba if the maximum lawful speed on the highway or street is greater than 35 miles per hour.

2. Seventy-six dBA if the maximum lawful speed on the highway or street is not more than 35 miles per hour.
 3. Ninety-five dBA under a stationary run-up test 20 inches from the end of the tailpipe.
- (2) *Exhaust system defects; absence of muffler; cutout, bypass, amplifier or similar device.*

A person shall not operate a vehicle on a highway or street if the vehicle has a defect in the exhaust system which affects sound reduction, is not equipped with a muffler or other noise dissipative device, or is equipped with a cutout, bypass, amplifier or a similar device.

- (3) *Sale, installation or replacement of muffler or exhaust parts.* A person, either acting for himself or as the agent or employee of another, shall not sell, install, or replace a muffler or exhaust part that causes the motor vehicle to which the muffler or exhaust part is attached to exceed the noise limits established by this section.
 - (4) *Alteration of exhaust system parts; operation of altered vehicle.* A person shall not modify, repair, replace, or remove a part of an exhaust system causing the motor vehicle in which the system is attached to produce noise in excess of the levels established by this division, or operate a motor vehicle so altered on a street or highway.
- (e) *Penalty for violation of section.* The following provisions are the penalties for the violation of this section:
- (1) A person who violates subsection (d)(3) of this section is guilty of a misdemeanor punishable by a fine of \$100.00 and/or imprisonment for not more than 90 days.
 - (2) A person who violates subsection (c), subsection (d)(1), subsection (d)(2) or subsection (d)(4) of this section is responsible for a civil infraction.
 - (3) A person who, at the time of installation, knowingly installs a muffler or exhaust system which exceeds the decibel limits of this section shall be liable to the person who receives a citation for violation of subsection (d) of this section for the amount of not less than \$100.00, plus reasonable attorney's fees and court costs.
 - (4) If it is shown that the noise level of a motor vehicle is in excess of the dBA levels established in this section, that evidence shall be prima facie evidence that the motor vehicle was producing excessive noise in violation of this section.

(Ord. No. 93-9, § 1(9.13), 10-4-93)

Secs. 38-114—38-125. Reserved.

DIVISION 8. PROPERTY USED FOR ILLEGAL ACTIVITY

Sec. 38-126. Findings of fact with respect to drug use.

The city determines that whenever illegal activity occurs on any property increased criminal activity occurs in the neighborhood surrounding the property, increased pedestrian and/or vehicular traffic occurs in the neighborhood surrounding the property, and the peace and quiet of residents living in the neighborhood surrounding the property are disturbed. The presence of such activity thereby constitutes a public nuisance.

(Ord. No. 93-9, § 1(9.14), 10-4-93)

Sec. 38-127. Definitions.

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

Illegal activity means lewdness, prostitution, gambling, or using or keeping a property for the use of prostitutes or other disorderly persons, or using a property for the unlawful manufacture, storage, possession, transportation, sale, keeping for sale, bartering, furnishing or otherwise disposing of any controlled substance, drug and/or drug paraphernalia, as defined by law, or for the illegal manufacture, possession, sale, or use of alcoholic beverages.

Owner means any person who possesses or has any legal and/or equitable interest in the property in question.

Property means any structure, house, premises, building, vehicle, boat, aircraft or parcel of land. (Ord. No. 93-9, § 1(9.15), 10-4-93)

Cross reference—Definitions generally, § 1-2.

Sec. 38-128. Penalty for violation of section 38-132, 38-133, 38-134 or 38-135.

Upon conviction of a violation of section 38-132, 38-133, 38-134 or 38-135, a person shall be penalized as follows:

- (1) For the first violation, a fine of not less than \$175.00 nor more than \$500.00 and/or imprisonment for not less than seven days nor more than 90 days;

- (2) For a second violation, a fine of not less than \$300.00 nor more than \$500.00 and/or imprisonment for not less than 30 days nor more than 90 days; and
- (3) For the third or subsequent violation, a fine of not less than \$400.00 nor more than \$500.00 and/or imprisonment for not less than 60 days nor more than 90 days, plus costs of prosecution.

(Ord. No. 93-9, § 1(9.25), 10-4-93)

Sec. 38-129. Public nuisance—Declared; maintained.

(a) A property where illegal activity occurs is hereby declared a nuisance and the furniture, fixtures and contents of any such building, vehicle, boat, aircraft, or premises and all such alcoholic beverages therein are also declared nuisances. All such narcotic and/or hypnotic drugs and nuisances shall be enjoined and abated as provided in this division.

(b) Any person or his agent or employee who shall knowingly own, lease, conduct or maintain any building, vehicle or premises used for illegal activity or where any illegal activity is conducted, permitted or carried on, is guilty of maintaining a nuisance.

(Ord. No. 93-9, § 1(9.16), 10-4-93)

Sec. 38-130. Same—Declaration procedure.

Whenever the city council shall find that there has been repeated illegal activity occurring on any property, it may declare by resolution after notice to the owner and the holding of a public hearing, and after recommendation by the chief of police or his designee, that the property is a public nuisance.

- (1) *Public hearing.* A public hearing before the city council shall be held after publication of notice of such hearing wherein all interested parties may present opinions, evidence or other information bearing on whether the property should or should not be declared a public nuisance.
- (2) *Notice of public hearing.* A notice of public hearing setting forth the date, time and location of such hearing shall be given in

the manner provided in this section to the owner of the property at least seven, but not more than 15 days, prior to the public hearing.

a. In the case of real property the notice shall be personally served or sent by certified mail, restricted delivery. Alternate service, as defined under the state court rules, shall be utilized if service by mail or personal service is unsuccessful after three diligent attempts to the grantee or vendee of the last recorded conveyancing instrument, or memorandum thereof, at the county register of deeds office and, if different, to the taxpayer of record as indicated in the building division, in case of a rental unit, or the city assessor's office, in the case of a owner-occupied dwelling, and, if different, to the occupants of the premises and to any mortgagee or lienholder of record.

b. In the case of personal property the notice shall be given to the person shown to be the owner by certified record of the state or federal agency where titles to such property are required to be filed and, if different, to such other person as may be known to be in possession or control of the property and to any lienholder of record. Such notice shall be personally served or sent by certified mail, restricted delivery. Alternate service, as defined in the state court rules, shall be utilized if service by mail or personal service is unsuccessful after three diligent attempts.

(Ord. No. 93-9, § 1(9.17), 10-4-93)

Sec. 38-131. Same—Abatement; costs.

If the city council determines, by a preponderance of the evidence, that a property is a public nuisance, it may, by resolution, in addition to any other remedies available to the city at law or in equity, order abatement of the nuisance as follows:

- (1) Order the property vacated and declare that occupancy of all or a portion of the

property is prohibited and authorize the building department to prohibit the occupancy of the property by boarding or otherwise securing all or a portion of the property, as is appropriate, for a period of up to one year, as the city council shall determine based upon the evidence;

- (2) Determine that the owner shall be liable for the full costs of any materials and personnel, including police and any other city employees or contractors, involved in the padlocking, boarding or securing of the property in the first instance and the full cost of any personnel and materials involved in any subsequent or remedial padlocking, boarding or securing of the property;
- (3) Determine that the owner shall be liable for the full cost of any personnel, including police and code compliance officers, involved in each incident subsequent to the first incident; and
- (4) Determine that the costs set out in this section shall be a personal debt of the owner and/or assess those costs against the property as a lien, as provided for in section 2.2(1) of the city Charter.

(Ord. No. 93-9, § 1(9.18), 10-4-93)

Sec. 38-132. Same—Conclusive presumption.

It shall be a conclusive presumption that a property is a public nuisance if:

- (1) The property has been searched by police and controlled substances and/or drug paraphernalia or any of the other illegal activities described in section 38-112 have been found by the police.
- (2) A letter informing the addressee that controlled substances, illegal drugs, and/or drug paraphernalia or any other illegal activity have been found by the police at the property, and providing information as to the potential consequences if similar activity recurs at the property, has been:
 - a. Personally served on an owner of the property;

- b. Sent by certified mail to such owner, as provided for in this division, and a return receipt card has been received by the city; and

- (3) The same property is searched by the police again within six months from the date of the first incident and evidence of illegal activity is found in the subsequent incident by the police.

(Ord. No. 93-9, § 1(9.19), 10-4-93)

Sec. 38-133. Same—Posting and listing.

(a) Whenever the city council shall have ordered a property to be vacated and ordered that further occupancy is prohibited, the building department shall post a notice so stating at each entrance to any building on the property and shall replace any notices that are missing or unreadable. No person, other than an authorized city employee, shall tamper with, damage, alter, destroy or remove any such notice posted by the city.

(b) The city clerk shall maintain a list of those properties that have been declared to be public nuisances and of the remedy ordered by the city council. Immediately upon a declaration of public nuisance, as provided for in section 38-42, the city clerk shall add the property to the list. Any citizen requesting a list of such properties shall be supplied one at no charge. The list shall be available for public inspection at the city clerk's office.

(Ord. No. 93-9, § 1(9.20), 10-4-93)

Sec. 38-134. Entry into or use of any property declared nuisance, ordered vacated, or occupancy prohibited.

No person shall enter upon any property that has been declared by the city council to be a nuisance and which the city council has ordered to be vacated and for which occupancy has been prohibited.

(Ord. No. 93-9, § 1(9.21), 10-4-93)

Sec. 38-135. Receiving or admitting persons.

No person shall receive or admit, or offer to receive or admit, any person into any place, structure, house, or vehicle or any other property

for the purpose of illegal activity, or knowingly permit any person to remain in such place for any such purpose.

(Ord. No. 93-9, § 1(9.22), 10-4-93)

Sec. 38-136. Loitering.

No person shall knowingly loiter about any vacant lot, street, curb, lawn, alley, yard, apartment, store, boat, house, or other premises where illegal activity is occurring.

(Ord. No. 93-9, § 1(9.23), 10-4-93)

Sec. 38-137. Frequenting.

No person shall knowingly attend, frequent, operate or be an occupant of any property where illegal activity is occurring.

(Ord. No. 93-9, § 1(9.24), 10-4-93)

Sec. 38-138. Appeal.

An owner aggrieved by any final determination by the city council under this division may appeal the determination to the circuit court within ten days from the date of the decision.

(Ord. No. 93-9, § 1(9.26), 10-4-93)

Chapters 39—41

RESERVED

Chapter 42

FIRE PREVENTION AND PROTECTION*

Article I. In General

- Sec. 42-1. Dense smoke.
- Sec. 42-2. Trash fires.
- Sec. 42-3. Fire hazard emergency; penalty for misdemeanor.
- Secs. 42-4—42-25. Reserved.

Article II. Fire Prevention Code

- Sec. 42-26. Purpose and intent of article.
- Sec. 42-27. Adoption by reference.
- Sec. 42-28. Amendments to fire prevention code.
- Sec. 42-29. Copies to be kept available for inspection.
- Secs. 42-30—42-50. Reserved.

Article III. Fire Control Measures

- Sec. 42-51. Purpose of article.
- Sec. 42-52. Definitions.
- Sec. 42-53. Authority at fires and other emergencies.
- Sec. 42-54. Interference with fire department operations.
- Sec. 42-55. Compliance with orders.
- Sec. 42-56. Vehicles crossing fire hose.
- Sec. 42-57. Operation of vehicles on approach of authorized emergency vehicles.
- Sec. 42-58. Vehicles following fire apparatus.
- Sec. 42-59. Unlawful boarding or tampering with fire department emergency equipment.
- Sec. 42-60. Damage or injury to fire department equipment or personnel.
- Sec. 42-61. Emergency vehicle operation.
- Sec. 42-62. Blocking fire hydrants and fire department connections.
- Sec. 42-63. Hydrant use approval; permit required; application of section.
- Sec. 42-64. Provision of adequate fire flow and distribution pattern on public property; placement or removal of hydrants.
- Sec. 42-65. High fire or life hazards; provision of hydrants.
- Sec. 42-66. Maintenance of fire suppression equipment.
- Sec. 42-67. Sale, loan or giving away of defective fire extinguishers.
- Sec. 42-68. Street obstructions.
- Secs. 42-69—42-90. Reserved.

Article IV. False Alarms

- Sec. 42-91. Charges.
- Sec. 42-92. Preservation of rights as to violations and penalties of previous ordinances.
- Secs. 42-93—42-115. Reserved.

*Cross references—Administration, ch. 2; buildings and building regulations, ch. 18; emergency preparedness, ch. 34; environment, ch. 38; police regulations and civil infractions, ch. 58; utilities, ch. 82; zoning, ch. 94.

State law references—State fire prevention act, MCL 29.1 et seq., MSA 4.559(1) et seq.; crimes related to explosives and bombs, MCL 750.200 et seq., MSA 28.397 et seq.; crimes related to fires, MCL 750.240 et seq., MSA 28.437 et seq.

DOWAGIAC CODE

Article V. Hazardous Materials

- Sec. 42-116.** Intent and purpose of article.
- Sec. 42-117.** Notice to violators.
- Sec. 42-118.** Evaluation, cleanup, abatement, and disposal.
- Sec. 42-119.** Recovery of costs.

ARTICLE I. IN GENERAL

Sec. 42-1. Dense smoke.

No person who is responsible therefor shall permit the emission from any chimney or smoke-stack of dense smoke or smoke containing soot or other substance in sufficient quantity to noticeably permit the deposit of soot or other substance within the city.

(Code 1972, § 9.11)

Sec. 42-2. Trash fires.

No person shall burn trash or other like substance at a time and in a manner so as to materially interfere with the lawful and normal use of other premises in the proximate vicinity. Such act shall constitute a public nuisance. In the event of such violation the department of police may, in addition to or in lieu of any other enforcement and penalty provision set out in this Code, serve, personally or by mail, a notice of such violation on any violator.

(Code 1972, § 9.12)

Sec. 42-3. Fire hazard emergency; penalty for misdemeanor.

Pursuant to the authority granted by section 12.3 of the city Charter, the city fire chief shall be and hereby is permitted to, with the advice and consent of the city manager, declare a fire hazard emergency when circumstances exist, due to drought, lack of adequate water supply or other circumstances, which in the opinion of the fire chief cause undue risk of fire hazard. In such event notice of fire hazard emergency, and the reasons therefor, shall be immediately submitted to the city council and placed for publication in a newspaper of general circulation within the city. In such event, no residential burning of rubbish, waste, paper, boxes, shavings, or other combustible materials, whether in enclosed or unenclosed containers, shall thereafter be permitted until termination of the fire hazard emergency shall have been declared by the city fire chief with the advice and consent of the city manager. The notice shall be published on not less than two occasions, but shall be effective on the occasion of the first publication. Any person thereafter who shall en-

gage in a burning of such combustible materials, or who shall aid and abet another in doing so, shall be guilty of a misdemeanor punishable by a fine of not to exceed \$100.00 and imprisonment of not more than 90 days for each such occurrence. (Code 1972, § 9.13)

Secs. 42-4—42-25. Reserved.

ARTICLE II. FIRE PREVENTION CODE*

Sec. 42-26. Purpose and intent of article.

The purpose and intent of this article is to prescribe minimum requirements and controls to safeguard life, property or public welfare from the hazards of fire and explosion arising from the storage, handling, or use of substances, materials, or devices and from conditions, hazardous to life, property or public welfare in the use and occupancy of buildings, structure, sheds, tents, lots or premises.

(Ord. No. 2, § 1, 2-4-08)

Sec. 42-27. Adoption by reference.

The International Fire Code 2006, together with all appendices thereto promulgated and published by the International Code Council, is hereby adopted by reference by the city.

(Ord. No. 2, § 1, 2-4-08)

Sec. 42-28. Amendments to fire prevention code.

The Fire Prevention Code is hereby amended and changed as follows:

- (1) The name of the city shall be inserted in section 101.1.
- (2) The fire chief shall be responsible for the implementation, administration and enforcement of the provisions of this code.

*Editor's note—Ord. No. 2, § 1, effective Feb. 4, 2008, repealed the former Art. II, §§ 42-26—42-29, and enacted a new Art. II as set out herein. The former Art. II pertained to the fire prevention code and derived from the Code of 1972, §§ 9.131—9.133, § 9.137; Ord. No. 01-11, § 1, 10-30-01.

(3) The following listed sections, pertaining to permits required in the Fire Code, are hereby deleted:

105.6	1201.2	2001.2	2701.5	3401.4	4101.2
301.2	1301.2	2101.2	2801.2	3501.2	4201.2
307.2	1501.2	2201.2	2901.2	3601.2	4301.2
501.2	1601.2	2301.2	3001.2	3701.2	4401.2
601.2	1701.2	2403.4	3101.2	3801.2	
901.3	1801.5	2501.2	3201.2	3901.2	
1101.3	1901.2	2601.2	3301.2	4001.2	

(4) 105.7. The building official shall issue construction permits for work as set forth in sections 105.7.1 through 105.7.13.

(Ord. No. 2, § 1, 2-4-08)

Sec. 42-29. Copies to be kept available for inspection.

Printed copies of the International Fire Code and appendices thereto shall be available for inspection at the building official's office at all times in the city hall. Publication of this article shall include a notice to that effect.

(Ord. No. 2, § 1, 2-4-08)

Secs. 42-30—42-50. Reserved.

ARTICLE III. FIRE CONTROL MEASURES

Sec. 42-51. Purpose of article.

There is hereby adopted by the city the fire control measures and regulations as set forth in this article for the purposes of controlling conditions which could impede or interfere with fire suppression forces.

(Code 1972, § 9.134)

Sec. 42-52. Definitions.

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

Authorized emergency vehicles means those which are defined and authorized under the laws of the state.

(Code 1972, § 9.134(5))

Cross reference—Definitions generally, § 1-2.

Sec. 42-53. Authority at fires and other emergencies.

The fire chief or his duly authorized representatives, as may be in charge at the scene of a fire or other emergency involving the protection of life and/or property, is empowered to direct such operations as may be necessary to extinguish or control any suspected or reported fires, gas leaks, or other hazardous conditions or situations or to take any other action necessary in the reasonable performance of their duty. The fire official may prohibit any person, vehicle, or object from approaching the scene and may remove or cause to be removed from the scene any person, vehicle, or object which may impede or interfere with the operations of the fire department. The fire official may remove or cause to be removed any person, vehicle, or object from hazardous areas. All persons ordered to leave a hazardous area shall do so immediately and shall not reenter the area until authorized to do so by the fire official.

(Code 1972, § 9.134(1))

Sec. 42-54. Interference with fire department operations.

It shall be unlawful to interfere with, attempt to interfere with, conspire to interfere with, obstruct or restrict the mobility of, or block the path of travel of any fire department emergency vehicle in any way, or to interfere with, attempt to interfere with, conspire to interfere with, obstruct or hamper any fire department operation.

(Code 1972, § 9.134(2))

Sec. 42-55. Compliance with orders.

A person shall not willfully fail or refuse to comply with any lawful order or direction of the fire official or to interfere with the compliance attempts of another individual.

(Code 1972, § 9.134(3))

Sec. 42-56. Vehicles crossing fire hose.

A vehicle shall not be driven or propelled over any unprotected fire hose owned or used by the fire department when laid down on any street, alleyway, private drive, or any vehicular roadway without the consent of the fire official in command of the operation.

(Code 1972, § 9.134(4))

Sec. 42-57. Operation of vehicles on approach of authorized emergency vehicles.

Upon the approach of any authorized emergency vehicle, giving audible and visual signal, the operator of every other vehicle shall immediately drive the same to a position as near as possible and parallel to the right-hand edge or curb of the street or roadway, clear of any intersection, and shall stop and remain in such position until the authorized emergency vehicles shall have passed, unless otherwise directed by the fire official or a police officer.

(Code 1972, § 9.134(6))

Sec. 42-58. Vehicles following fire apparatus.

It shall be unlawful for the operator of any vehicle, other than one on official business, to follow closer than 300 feet from any fire apparatus traveling in response to a fire alarm, or to drive any vehicle within the block or immediate area where fire apparatus has stopped in answer to a fire alarm.

(Code 1972, § 9.134(7))

Sec. 42-59. Unlawful boarding or tampering with fire department emergency equipment.

A person shall not, without proper authorization from the fire official in charge of the fire

department emergency equipment, cling to, attach to, climb upon or into, board or swing upon any fire department emergency vehicle, whether the same is in motion or at rest; sound the siren, horn, bell, or other sound-producing device thereon, or to manipulate or tamper with, or attempt to manipulate or tamper with any levers, valves, switches, starting devices, brakes, pumps, or any equipment or protective clothing on, or a part of, any fire department emergency vehicle.

(Code 1972, § 9.134(8))

Sec. 42-60. Damage or injury to fire department equipment or personnel.

It shall be unlawful for any person to damage or deface, or attempt or conspire to damage or deface, any fire department emergency vehicle at any time or to injure, or attempt or conspire to injure, fire department personnel while performing departmental duties.

(Code 1972, § 9.134(9))

Sec. 42-61. Emergency vehicle operation.

(a) The driver of any emergency vehicle, as described in section 42-52, shall not sound the siren thereon or have the front red lights on or disobey any existing traffic regulation, except when the vehicle is responding to an emergency call or when responding to, but not upon returning from a fire. Tactical strategies such as, but not restricted to, moveups do not constitute an emergency call. The driver of an emergency vehicle may:

- (1) Park or stand irrespective of the provisions of existing traffic regulations;
- (2) Proceed past a red or stop signal or other sign, but only after slowing down as may be necessary for safe operation;
- (3) Exceed the prima facie speed limit by not more than ten miles per hour so long as the action does not endanger life or property; or
- (4) Disregard any regulations governing direction of movement or turning in specified directions.

(b) The exemptions granted subsection (a) of this section to an emergency vehicle shall apply

only when the driver of any such vehicle while in motion sounds audible signal by bell, siren, or exhaust whistle as may be reasonably necessary, and when the vehicle is equipped with at least one lighted lamp displaying a red light visible under normal atmospheric conditions from a distance of 500 feet to the front and rear of such vehicle. (Code 1972, § 9.134(10))

Sec. 42-62. Blocking fire hydrants and fire department connections.

It shall be unlawful to obscure from view, damage, deface, obstruct or restrict the access to any fire hydrant or any fire department connection for the pressurization of fire suppression systems, including fire hydrants and fire department connections that are located on public or private streets and access lanes, or on private property. (Code 1972, § 9.134(11))

Sec. 42-63. Hydrant use approval; permit required; application of section.

A person shall not use or operate any fire hydrant intended for use of the fire department for fire suppression purposes unless such person first secures a permit for such use from the fire official and the water company having jurisdiction. This section shall not apply to the use of such hydrants by a person employed by, and authorized to make such use by, the water company having jurisdiction. (Code 1972, § 9.134(12))

Sec. 42-64. Provision of adequate fire flow and distribution pattern on public property; placement or removal of hydrants.

The fire official shall recommend to the chief administrative official of the city, the location or relocation of new or existing fire hydrants and the placement or replacement of inadequate water mains located upon public property and deemed necessary to provide an adequate fire flow and distribution pattern. A fire hydrant shall not be placed into or removed from service until approved by the fire prevention code official. (Code 1972, § 9.134(13))

Sec. 42-65. High fire or life hazards; provision of hydrants.

All new and existing shipyards, oil storage plants, lumberyards, amusement or exhibition parks, and educational or institutional complexes and similar occupancies and uses involving high fire or life hazards, and which are located more than 150 feet from a public street or which require quantities of water beyond the capabilities of the public water distribution system shall be provided with properly placed fire hydrants. Such fire hydrants shall be capable of supplying fire flows as required by the fire official and shall be connected to a water system in accordance with accepted engineering practices. The fire official shall designate and approve the number and location of fire hydrants. The fire official may require the installation of sufficient fire hose and equipment housed in accordance with the approved rules and may require the establishment of a trained fire brigade when the hazard involved requires such measures. Private hydrants shall not be placed into or removed from service until approved by the fire official. (Code 1972, § 9.134(14))

Sec. 42-66. Maintenance of fire suppression equipment.

A person shall not obstruct, remove, tamper with, or otherwise disturb any fire hydrant or fire appliance required to be installed or maintained under the provisions of the fire prevention code except for the purpose of extinguishing fire, training or testing purposes, recharging or making necessary repairs, or when permitted by the fire official. Whenever a fire appliance is removed as permitted in this section, it shall be replaced or reinstalled as soon as the purpose for which it was removed has been accomplished. Defective and nonapproved fire appliances or equipment shall be replaced or repaired as directed by the fire official. (Code 1972, § 9.134(15))

Sec. 42-67. Sale, loan or giving away of defective fire extinguishers.

A person shall not sell, trade, loan, or give away any form, type, or kind of fire extinguisher which

is not approved by the fire official, or which is not in proper working order, or the contents of which do not meet the requirements of the fire prevention code official. The requirements of this section shall not apply to the sale, trade, or exchange of obsolete or damaged equipment for junk when such units are permanently disfigured or marked with a permanent sign identifying the unit as junk.

(Code 1972, § 9.134(16))

Sec. 42-68. Street obstructions.

A person shall not erect, construct, place, or maintain any bumps, fences, gates, chains, bars, pipes, wood, or metal horses or any other type of obstruction in or on any street, within the boundaries of the city. The word "street" as used in this article, shall mean any roadway accessible to the public for vehicular traffic including, but not limited to, private streets or access lanes, as well as all public streets and highways within the boundaries of the city.

(Code 1972, § 9.134(17))

Secs. 42-69—42-90. Reserved.

ARTICLE IV. FALSE ALARMS

Sec. 42-91. Charges.

(a) *Generally.* A nonrefundable fee of \$100.00 shall be levied against and due and payable from any owner, lessee, occupant, or tenant of a building, premises, or other structure in the city for each and every false alarm received, by the fire or police departments, which is the direct result of actions taken or actions omitted by the owner, lessee, occupant, or tenant.

- (1) Notwithstanding such fee, no charge shall be assessed for the first false alarm received per any given 30-consecutive-day period.
- (2) False alarms shall include those fire and intrusion alarm discharges caused by system malfunctions, inadequate maintenance, and by failure to notify the fire or police

departments and/or alarm monitoring companies prior to a fire or police apparatus response.

- (3) Any fee assessed for a false alarm, as provided in subsection (a) of this section, which remains unpaid and outstanding for a period exceeding 30 days following the date of invoice, shall result in a special assessment of the fee against the property.

(b) *Equipment maintenance.* In the event of a failure to maintain alarm-monitoring equipment, the city fire chief shall serve written notice upon the owner of the building, premises, or other structure to immediately initiate repairs to same.

(c) *Rules and regulations.* The city fire chief shall make recommendations to the city manager and propose rules and regulations pursuant to this article. The city manager shall approve such rules and regulations as he may deem necessary for the effective enforcement of this section and for the proper identification of violations and collection of fees and charges as provided for in this section.

(Code 1972, § 9.135)

Sec. 42-92. Preservation of rights as to violations and penalties of previous ordinances.

Any provisions of any prior ordinance hereby amended shall remain in full force and effect as to violations and penalties occurring prior to the effective date of the ordinance from which this chapter is derived, and the provisions of any prior law continued without interruption by this chapter shall remain in effect as if not repealed.

(Code 1972, § 9.136)

Secs. 42-93—42-115. Reserved.

ARTICLE V. HAZARDOUS MATERIALS

Sec. 42-116. Intent and purpose of article.

The city council finds that the surface waters, groundwaters, soils, and atmosphere within the city are particularly susceptible to damage from the handling, storage, use, processing, and disposal of hazardous materials. The expenses in-

curred by city taxpayers, as a result of the city having to clean up the surface waters, groundwaters, soils, and atmosphere that have been damaged by the handling of hazardous materials should be recovered from the individuals, firms, and corporations responsible for the damage. The use, handling, storage, disposal, or discharge of any hazardous material, as defined in section 42-118, in such a manner as to cause degradation of the surface waters, groundwaters, soils, and atmosphere of the city is hereby declared unlawful and a public nuisance.
(Code 1972, § 9.138(1))

Sec. 42-117. Notice to violators.

All persons who have damaged the surface waters, groundwaters, soils, or atmosphere within the corporate boundaries of the city by the handling, storage, disposal, or discharge of hazardous materials or who have violated any local, state, or federal environmental laws with respect to hazardous materials, are required to immediately notify the city, as represented by its mayor, city manager, building official, fire chief, or police chief.
(Code 1972, § 9.138(2))

Sec. 42-118. Evaluation, cleanup, abatement, and disposal.

The city manager or his designee is authorized to evaluate, clean up, or abate any damage to the surface waters, groundwaters, soils, or atmosphere within the city caused by the handling or storage of hazardous materials. Hazardous materials shall include, but not be limited to, such substances as explosives, radioactive materials, petroleum, or petroleum products, gases, poisons, or etiological (biological) agents, flammables, corrosives, and any substance or material classified or defined as a hazardous material by the environmental protection agency and all rules and regulations promulgated thereunder. Any person that has caused such damage shall be liable for the payment of all reasonable costs incurred by the city as a result of or attributable to such evaluation, cleanup, or abatement activities.
(Code 1972, § 9.138(3))

Sec. 42-119. Recovery of costs.

(a) For the purpose of this article, costs incurred by the city shall include, but shall not be limited to, the following: Actual labor cost of city personnel, including worker's compensation benefits, fringe benefits, administrative overhead, costs of equipment operation, costs of materials obtained directly by the city, consulting fees, engineering fees, and any other costs reasonably incurred as a result of any violation of this article.

(b) The person found liable for the damages incurred, shall bear full responsibility for the costs of proper disposal of all hazardous materials deposited or created within the city.

(c) In addition to any other remedy available at law or equity, to recover such costs or abate such nuisance, the city may specially assess such costs against any premises benefiting from such cleanup or abatement.
(Code 1972, § 9.138)

Chapters 43—45

RESERVED

Chapter 46

HUMAN RELATIONS

Article I. In General

Secs. 46-1—46-24. Reserved.

Article II. Discrimination in Housing

- Sec. 46-25. Declaration of policy of article.
- Sec. 46-26. Definitions.
- Sec. 46-27. Penalty for misdemeanor.
- Sec. 46-28. Prohibited acts.
- Sec. 46-29. Unlawful inducements to sell or list property for sale.
- Sec. 46-30. Exceptions to article.
- Sec. 46-31. Other preferences not excluded.
- Sec. 46-32. Article not to impose limit on other remedies.

ARTICLE I. IN GENERAL

Secs. 46-1—46-24. Reserved.

ARTICLE II. DISCRIMINATION IN HOUSING

Sec. 46-25. Declaration of policy of article.

It is hereby found that discrimination in housing violates the public policy of the city and that such discrimination is injurious to the public health, safety and general welfare of the city and the people thereof and adversely affects the continued development, renewal, growth, and progress of the city and its people.

(Code 1972, § 9.151)

Sec. 46-26. Definitions.

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

Age means chronological age.

Builders or suppliers of building materials means and includes building contractors, members of building trades, and owners, operators, and agents of firms or companies engaged in the supplying of materials necessary for the construction of housing units or accommodations.

Discriminate or discrimination means and includes any difference in treatment of individuals or groups in the sale, lease, rental, building or supplying of building materials, or financing of housing units, real estate, or housing accommodations because of race, color, religion, ancestry, national or sectional origin, sex, marital status, age, or handicap.

Financial institution means any person regularly engaged in the business of lending money or guaranteeing loans on real property.

Handicap means that terminable physical or mental condition of an individual or history of such condition which may result from disease, accident, condition of birth, or functional disorder

which constitutes a physical or mental limitation which is unrelated to any individual's ability to acquire, rent, or maintain property.

Owner means and includes the lessee, sublessee, assignee, managing agent, or other person having the right of ownership or possession or the right to sell, rent, or lease any housing accommodations or any part thereof.

Person means and includes an association, partnership, or corporation, as well as the natural person. The term as applied to partnerships or associations includes the members thereof and as applied to corporations, includes their officers.

Real estate broker and agent means any person who, for a fee or other valuable consideration, sells, purchases, exchanges, rents, negotiates, or attempts to negotiate the sale, purchase, exchange, or rental of real property or holds himself out as being licensed in the business of selling, purchasing, engaging, or renting the real property of another and who collects rental for the use of the real property of another.

Transfer means to sell, rent, lease, sublease, or assign real property.
(Code 1972, § 9.152)

Cross reference—Definitions generally, § 1-2.

Sec. 46-27. Penalty for misdemeanor.

Any person violating the provisions of this article shall be guilty of a misdemeanor and penalized in the manner set forth in section 1-16.
(Code 1972, § 9.158)

Sec. 46-28. Prohibited acts.

(a) No owner of real property, lessee, sublessee, real estate broker or salesman, builder or supplier of building materials, lender, financial institution, advertiser, or agent of any of the foregoing, shall discriminate against any other person because of religion, race, color, national or sectional origin of such other person or because of the religion, race, color, national or sectional origin of the friends or associates of such other person in regard to the sale, rental of, or dealings concerning real property located in the city.

(b) No owner of real property, lessee, sublessee, real estate broker, salesman, builder or supplier

of building materials, lender, financial institution, advertiser, or agent of any of the foregoing shall discriminate against any other person because of the sex, marital status, age, or handicap of such other person in regard to the sale, rental of, or dealings concerning real property located in the city.

(Code 1972, § 9.153)

Sec. 46-29. Unlawful inducements to sell or list property for sale.

It shall be unlawful for any person to commit any one or more of the following acts:

- (1) Induce directly or indirectly or to attempt to induce directly or indirectly the sale or listing for sale of real property by representing that a change has occurred or will or may occur with respect to the race, color, national or sectional origin, sex, marital status, age, handicap, religion, or ethnic composition of the block, neighborhood, or area in which the property is located.
 - (2) Induce directly or indirectly the sale or listing for sale of real property by representing that the presence or anticipated presence of persons of any particular race, color, national or sectional origin, sex, marital status, age, handicap, or religion in the area will or may result in the lowering of property value, an increase in criminal or antisocial behavior in the area, or a decline in the quality of the schools serving the area.
 - (3) Solicit the sale or listing for sale of real property by telephone, mail, or personally after the property owner has expressly requested the solicitor or company the solicitor represents to cease the solicitation.
- (Code 1972, § 9.154)

Sec. 46-30. Exceptions to article.

(a) The provisions of this article shall not apply to the rental of a room to three or less persons in a single-dwelling unit, the remainder of which dwelling unit is occupied by the owner or a member of his immediate family.

(b) The provisions of this article shall not apply with respect to the age provision only, to the sale, rental, or lease of housing accommodations meeting the requirements of state, federal or local housing programs for senior citizens, or accommodations otherwise intended, advertised, designed, or operated in a bona fide manner, for the purpose of providing housing accommodations for persons 50 years of age or older.

(Code 1972, § 9.155)

Sec. 46-31. Other preferences not excluded.

This article does not prohibit preference for reasons other than religion, race, color, national or sectional origin, sex, marital status, age, or handicap. Nothing in this article shall be deemed to prohibit owners from giving preference to prospective buyers or tenants for any reasons other than religion, race, color, national or sectional origin, sex, marital status, age, height, weight, familial status, or handicap.

(Code 1972, § 9.156)

Sec. 46-32. Article not to impose limit on other remedies.

Nothing in this article shall be construed as to limit the right of access by an individual to remedies before the state civil rights commission, before the courts of the state on an individual basis or to prohibit cooperation between the city and the state civil rights commission.

(Code 1972, § 9.157)

Chapters 47—49

RESERVED

Chapter 50

RESERVED*

***Editor's note**—Ord. No. 04-6, § 1, adopted Dec. 24, 2004, repealed Ch. 50, which pertained to library and derived from Code 1972, §§ 9.81—9.85; Ord. No. 96-1, adopted Feb. 5, 1996.

Chapters 51—53

RESERVED

Chapter 54

PARKS AND RECREATION*

Article I. In General

Secs. 54-1—54-25. Reserved.

Article II. Use of Parks

Sec. 54-26. Damage or injury to park property.
Sec. 54-27. Intoxicating liquors.
Sec. 54-28. Waste containers.
Sec. 54-29. Ball games.
Sec. 54-30. Rules, regulations and restrictions.
Sec. 54-31. Rules for Rudolphi Wildlife Refuge area.
Sec. 54-32. Additional rules.
Secs. 54-33—54-55. Reserved.

Article III. Fees

Sec. 54-56. Annual maintenance fees.
Sec. 54-57. Weekend maintenance fees.
Sec. 54-58. Electrical use fee schedule.
Sec. 54-59. Mill Pond Park Nature Center fees.
Sec. 54-60. Method of collection.

***Cross references**—Administration, ch. 2; alcoholic liquors, ch. 6; animals, ch. 10; environment, ch. 38; police regulations and civil infractions, ch. 58; vegetation, ch. 86.

State law reference—Authority to operate recreation areas and playgrounds, MCL 123.51 et seq., MSA 5.2421.

ARTICLE I. IN GENERAL**Secs. 54-1—54-25. Reserved.****ARTICLE II. USE OF PARKS****Sec. 54-26. Damage or injury to park property.**

No person shall obstruct any walk or drive in any public park or playground, and no person shall injure, mar or damage in any manner any monument, ornament, fence, bridge, seat, tree, fountain, shrub, flower, playground equipment, fireplaces, or other public property within or pertaining to the parks.

(Code 1972, § 3.1)

Sec. 54-27. Intoxicating liquors.

No person shall bring into or drink in any city park any alcoholic beverage.

(Code 1972, § 3.2)

Sec. 54-28. Waste containers.

No person shall place or deposit any garbage, glass, tin cans, paper or miscellaneous waste in any park or playground except in containers provided for that purpose.

(Code 1972, § 3.3)

Sec. 54-29. Ball games.

No baseball, football or softball throwing, or other violent or rough exercise or play shall be engaged in, in any public park or other public place, except in areas designated therefor by the city manager.

(Code 1972, § 3.4)

Sec. 54-30. Rules, regulations and restrictions.

The following rules, regulations and restrictions shall apply to all parks, refuge areas and other public grounds:

- (1) No ground fires shall be permitted. Any and all fires must be in a receptacle so designated for such use.

- (2) All parks, or other public grounds, shall open at 6:00 a.m. and be closed at 11:00 p.m.

- (3) The parking of motor vehicles in areas other than those areas designated as parking lots shall be prohibited. No horses shall be permitted in any park, refuge area, or other public grounds. The use of firearms or bows shall be strictly prohibited.

- (4) It shall be unlawful to make, or cause to be made, any noise or sounds of such a volume or of such a nature so as to cause annoyance to others using the park, refuge area, or public grounds, or such other persons in adjoining areas.

- (5) It shall be unlawful to knowingly dump, deposit, place, throw or leave, or cause to permit the dumping, depositing, placing, throwing or leaving of litter in an area or receptacle other than specified or designated for such purposes.

- (6) It shall be unlawful to sell or offer for sale any candy, ice cream, confection, or other food or beverage for human consumption in a park, refuge area or other public ground.
(Code 1972, § 3.11)

Sec. 54-31. Rules for Rudolphi Wildlife Refuge area.

The following specific rules and regulations shall apply to the Rudolphi Wildlife Refuge area for the protection and enhancement of the natural character of such refuge area in order to preserve and ensure this area for purposes of wildlife observation and study:

- (1) No pets shall be allowed.
- (2) It shall be unlawful for any person to engage in recreational or competitive running without prior written permission of the grounds director.
- (3) It shall be unlawful for any person to engage in the collection, removal, or picking up of natural flora or fauna.

(Code 1972, § 3.12)

Sec. 54-32. Additional rules.

The city manager shall adopt such additional rules and regulations pertaining to the conduct

and use of parks and public grounds as are necessary to administer the same and to protect public property and the safety, health, morals and welfare of the public. No person shall fail to comply with such rules and regulations. Such rules and regulations shall become effective upon approval by the city council and may thereafter be amended or rescinded by the city manager, subject to council approval.
(Code 1972, § 3.5)

Secs. 54-33—54-55. Reserved.

ARTICLE III. FEES

Sec. 54-56. Annual maintenance fees.

Agencies or organized groups participating or using the ballfields and/or tennis facilities at the parks shall pay a fee to offset the cost of maintaining the parks in the following amounts on an annual basis:

- (1) Ballfields:
 - a. Men's, women's and co-ed softball leagues, per team \$270.00
 - b. Daily contractual preparations per weekday:
 - Baseball field 97.00
 - Softball field 82.00
 - Preparations per weekend day:
 - Baseball field 120.00
 - Softball field 100.00
 - Additional preparation 70.00
 - c. Softball, baseball tournaments:
 - Full maintenance one day, one field 177.00
 - Additional field 21.00
 - Minimum maintenance one day, one field 75.00
 - Additional field 5.00
 - d. Litter deposit 50.00
- (2) Tennis court facilities, per hour 1.35

- (3) Lighting:
 - Softball, per hour 4.12
 - Tennis, per hour96
 - Lighting deposit 10.00
- (Code 1972, § 3.6)

Sec. 54-57. Weekend maintenance fees.

Any groups or organizations using the softball field at Rotary Park on Saturday or Sunday shall pay a maintenance fee equal to the city's direct cost of maintaining that facility.
(Code 1972, § 3.7)

Sec. 54-58. Electrical use fee schedule.

(a) Cost of electric power shall be charged to any group or organization requesting reservation of a facility specifically for their own use. Such organizations would include, but not be limited to, tennis leagues, horseshoe leagues, baseball leagues, and softball leagues.

(b) When requesting lighted facilities, the organization shall specify approximate hours of usage, and upon issuance of the park use permit, shall deposit 50 percent of the estimated amount. At the end of the activity, the balance of the fee shall be paid.

(c) The fees for each of the facilities will be calculated annually by the city department of public services.
(Code 1972, § 3.8)

Sec. 54-59. Mill Pond Park Nature Center fees.

Cost for usage of the Mill Pond Nature Center building is \$10.00 per day from October 1 through March 31, and \$5.00 per day from April 1 through September 30. Organized youth groups may use the facility free of charge.
(Code 1972, § 3.9)

Sec. 54-60. Method of collection.

The method and means of collection shall be as prescribed by the director of parks and recreation.
(Code 1972, § 3.10)

Chapters 55—57

RESERVED

Chapter 58

POLICE REGULATIONS AND CIVIL INFRACTIONS*

Article I. In General

- Sec. 58-1. Penalty for violation of chapter.
- Secs. 58-2—58-25. Reserved.

Article II. Offenses Affecting Governmental Functions

- Sec. 58-26. Disobeying orders of commanding firefighter.
- Sec. 58-27. False reporting of crime.
- Sec. 58-28. Failure to comply with police officer directing traffic.
- Sec. 58-29. Fleeing or attempting to elude police officer directing vehicle operator to stop.
- Sec. 58-30. Resisting and obstructing police officer.
- Secs. 58-31—58-50. Reserved.

Article III. Offenses Against the Person

- Sec. 58-51. Window peeping.
- Sec. 58-52. Defrauding owners of motels and restaurants.
- Sec. 58-53. Assault and battery.
- Secs. 58-54—58-75. Reserved.

Article IV. Offenses Against Property

- Sec. 58-76. Larceny by conversion.
- Sec. 58-77. Larceny under \$100.00.
- Sec. 58-78. Trespass.
- Sec. 58-79. Illegal entry.
- Sec. 58-80. Receiving and concealing property worth less than \$100.00.
- Sec. 58-81. Malicious destruction of signs, bills or notices.
- Sec. 58-82. Malicious destruction of property less than \$100.00.
- Sec. 58-83. Dumping on private property.
- Sec. 58-84. Arson.
- Sec. 58-85. Damaging motor vehicles.
- Sec. 58-86. Check; nonsufficient funds less than \$50.00.
- Sec. 58-87. Injury or interference with public utility service.
- Sec. 58-88. Loitering.
- Sec. 58-89. Public address.
- Secs. 58-90—58-110. Reserved.

Article V. Offenses Against Public Peace

- Sec. 58-111. Disturbing the peace.
- Sec. 58-112. Disrupting worship service; other assemblies.
- Sec. 58-113. Disorderly conduct in crowds.
- Sec. 58-114. Intoxication in public place; creating a disturbance.
- Sec. 58-115. Language or gestures causing public disorder.
- Sec. 58-116. Dog nuisances; prohibition; exceptions.
- Secs. 58-117—58-135. Reserved.

***Cross references**—General penalty, § 1-16; environment, ch. 38; fire prevention and protection, ch. 42; parks and recreation, ch. 54; traffic and vehicles, ch. 78.

State law reference—Crimes, MSA title 28.

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Article VI. Offenses Against Public Safety

Division 1. Generally

- Sec. 58-136. Weapons generally.
- Sec. 58-137. Firearms—Reckless use.
- Sec. 58-138. Same—Possession while under influence of intoxicating liquor.
- Sec. 58-139. Same—Pointing at or toward another.
- Sec. 58-140. Same—Transporting or possessing, while loaded, in motor vehicle.
- Sec. 58-141. Same—Transporting or possessing in improper manner.
- Sec. 58-142. Placing or throwing glass in public places.
- Sec. 58-143. Abandoning refrigerators, iceboxes and other containers.
- Sec. 58-144. Fireworks.
- Secs. 58-145—58-155. Reserved.

Division 2. Skateboards

- Sec. 58-156. Definitions.
- Sec. 58-157. Violation of division; misdemeanor.
- Sec. 58-158. In business district.
- Sec. 58-159. Responsible use.
- Sec. 58-160. Pedestrian right-of-way.
- Secs. 58-161—58-180. Reserved.

Article VII. Offenses Against Public Morals

- Sec. 58-181. Obscene conduct as disorderly behavior.
- Sec. 58-182. Indecent exposure.
- Sec. 58-183. Disorderly conduct of gambling.
- Sec. 58-184. Gambling and lotteries.
- Sec. 58-185. Accosting and soliciting.
- Sec. 58-186. Use of marijuana.
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- Secs. 58-188—58-210. Reserved.

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- Sec. 58-211. Minors under 13.
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- Sec. 58-213. Aiding or abetting violation of section 58-211 or 58-212.
- Sec. 58-214. Contributing to delinquency of minor.
- Sec. 58-215. Alcohol—Minor in possession.
- Sec. 58-216. Same—Furnishing to minor.
- Sec. 58-217. Same—Purchase by a minor.
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- Sec. 58-219. Same—Possession by minor in a motor vehicle.
- Secs. 58-220—58-240. Reserved.

Article IX. Municipal Civil Infractions

- Sec. 58-241. Definitions.
- Sec. 58-242. General penalties and sanctions for violations of city ordinances; continuing violations; injunctive relief.
- Sec. 58-243. Authorized city officials.
- Sec. 58-244. Municipal civil infraction action; commencement.
- Sec. 58-245. Municipal civil infraction citations—Issuance and service.
- Sec. 58-246. Same—Contents.

POLICE REGULATIONS AND CIVIL INFRACTIONS

- Sec. 58-247. Municipal ordinance violations bureau.**
- Sec. 58-248. Schedule of civil fines established.**

ARTICLE I. IN GENERAL**Sec. 58-1. Penalty for violation of chapter.**

Every person convicted of a violation of any provision of the city criminal code as set forth in this chapter, shall be punished by a fine as prescribed in section 1-16. Each act or violation and every day upon which any such violation shall occur shall constitute a separate offense.
(Code 1972, § 9.61)

Secs. 58-2—58-25. Reserved.**ARTICLE II. OFFENSES AFFECTING GOVERNMENTAL FUNCTIONS****Sec. 58-26. Disobeying orders of commanding firefighter.**

It shall be unlawful for any person within the city to, while in the vicinity of a fire, or other emergency situation, wilfully disobey a reasonable order or rule of the officer commanding a fire department at the fire or other emergency, such order or rule being given by the commanding fire officer or firefighter there present.
(Code 1972, § 9.62(25))

Sec. 58-27. False reporting of crime.

It shall be unlawful for any person within the city to wilfully and knowingly make or cause to be made a fictitious report of the commission of a crime, knowing the same to be false, to a police officer.
(Code 1972, § 9.62(32))

Sec. 58-28. Failure to comply with police officer directing traffic.

It shall be unlawful for any person within the city to fail to comply with an order of a police officer when such officer, for public interest and safety, was guiding, directing, controlling or regulating traffic.
(Code 1972, § 9.62(31))

Sec. 58-29. Fleeing or attempting to elude police officer directing vehicle operator to stop.

It shall be unlawful for any person in the city who is the driver of any motor vehicle, who was given hand, voice, emergency light or siren, i.e., a visible or audible signal by a police officer, acting in the lawful performance of his duty, directing the driver of the vehicle to stop; who thereafter wilfully failed to obey such direction by increasing his speed, extinguishing his lights, or otherwise attempting to flee and elude the officer. The officer giving the signal shall be in uniform, and a vehicle driven at night shall be adequately identified as an official police vehicle.
(Code 1972, § 9.62(29))

Sec. 58-30. Resisting and obstructing police officer.

It shall be unlawful for any person in the city to knowingly and wilfully obstruct, resist or oppose any police officer or other person duly authorized in serving, or attempting to serve or execute, any process, rule or order made or issued by lawful authority; who shall resist any officer in the execution of any ordinance, by law, or any rule, order or resolution made, issued or passed by the city council; who shall assault, beat or wound any police officer, constable or other police officer duly authorized, while serving, or attempting to serve or execute, any process, rule or order; for having served or attempted to serve or execute the same; or who shall so obstruct, resist, oppose, assault, beat or wound any police officer, or any other person authorized by law to maintain and preserve the peace, in their lawful acts, attempts and efforts to maintain, preserve and keep the peace.
(Code 1972, § 9.62(30))

Secs. 58-31—58-50. Reserved.**ARTICLE III. OFFENSES AGAINST THE PERSON****Sec. 58-51. Window peeping.**

It shall be unlawful for any person within the city to look, peer, or peep into, or to be found loitering around or within view of any window not

on his own property, with the intent of looking through such window in such a manner as would be likely to interfere with the occupant's reasonable expectation of privacy without the occupant's express or implied consent.
(Code 1972, § 9.62(15))

Sec. 58-52. Defrauding owners of motels and restaurants.

It shall be unlawful for any person in the city to obtain or procure any food, entertainment, or accommodation, from any certain hotel, motel, inn, restaurant or tavern, without paying and without an express agreement of credit therefor, with the intent to defraud such keeper or owner of such concerns out of the pay for such services.
(Code 1972, § 9.62(10))

Sec. 58-53. Assault and battery.

It shall be unlawful for any person in the city to make an assault or assault and battery upon the person of another.
(Code 1972, § 9.62(1))

Secs. 58-54—58-75. Reserved.

ARTICLE IV. OFFENSES AGAINST PROPERTY

Sec. 58-76. Larceny by conversion.

It shall be unlawful for any person in the city to commit the offense of larceny by conversion by being a person to whom certain property has been delivered, and thereafter embezzle or fraudulently convert such property to his own use, which property belonging to another was of a value of \$100.00 or less.
(Code 1972, § 9.62(8))

Sec. 58-77. Larceny under \$100.00.

It shall be unlawful for any person in the city to commit the offense of larceny by stealing, taking and carrying away the property of another, the value of which was \$100.00 or less.
(Code 1972, § 9.62(7))

Sec. 58-78. Trespass.

It shall be unlawful for any person in the city to wilfully enter upon the lands or premises of another, without lawful authority, or after having been forbidden so to do by the owner or other persons having immediate control.
(Code 1972, § 9.62(6))

Sec. 58-79. Illegal entry.

It shall be unlawful for any person in the city to enter any building or structure without first obtaining permission to enter from the owner or occupant or other person having immediate control of such building or structure.
(Code 1972, § 9.62(5))

Sec. 58-80. Receiving and concealing property worth less than \$100.00.

It shall be unlawful for any person in the city to buy, receive or aid in the concealment of certain property, which has been stolen, embezzled or converted, knowing that the property has been stolen, embezzled or converted and was of a value of \$100.00 or less.
(Code 1972, § 9.62(11))

Sec. 58-81. Malicious destruction of signs, bills or notices.

It shall be unlawful for any person in the city to wilfully tear down, destroy or deface any certain sign, bill or notice belonging to or possessed by another.
(Code 1972, § 9.62(13))

Sec. 58-82. Malicious destruction of property less than \$100.00.

It shall be unlawful for any person in the city to commit the offense of malicious destruction of property by wilfully and maliciously destroying or injuring property of another resulting in damage in the amount of \$100.00 or less.
(Code 1972, § 9.62(12))

Sec. 58-83. Dumping on private property.

It shall be unlawful for any person within the city to dump, deposit or place filth, garbage or refuse on the grounds, premises or the property of

another, or person in possession of such property, without the specific permission of the owner or possessor.

(Code 1972, § 9.62(28))

Sec. 58-84. Arson.

(a) It shall be unlawful for any person within the city to use, arrange, place, devise or distribute an inflammable, combustible or explosive material, liquid, substance, or device in or about certain personal property of another, such property having the value of \$100.00 or less, with the intent to wilfully and maliciously set fire to and burn the personal property.

(b) It shall be unlawful for any person in the city to wilfully and maliciously burn the property of another, the value of which was \$100.00 or less. (Code 1972, § 9.62(33), (34))

Sec. 58-85. Damaging motor vehicles.

It shall be unlawful for any person in the city to intentionally and without the authority of the owner of a certain motor vehicle, or person in lawful possession thereof, cut, mark, scratch or damage the chassis, running gear, body, sides, top, covering, upholstering, accessories, equipment, appurtenances, attachments, spare or extra parts thereon being or attached thereto. (Code 1972, § 9.62(44))

Sec. 58-86. Check; nonsufficient funds less than \$50.00.

It shall be unlawful for any person in the city, with the intent to defraud, to make or draw or utter or deliver any check, draft or order for the payment of money; to apply on account, or otherwise, upon any bank or other depository, knowing at the time of such making, drawing, uttering or delivering, that the maker or drawer, has not sufficient funds in or credit with such bank or other depository for the payment of such draft, check, or order, in full, upon its presentation; or for any person who, with the intent to defraud, shall make, draw, utter or deliver any check, draft or order for the payment of money to apply on account or otherwise, upon any bank or other depository and who shall not have sufficient funds for the payment for same when presentation for

payment is made to the drawee, except where such lack of funds is due to garnishment, attachment, levy or other lawful cause, and such fact was not known to the person who made, drew, uttered or delivered the instrument at the time of so doing.

(Code 1972, § 9.62(9))

Sec. 58-87. Injury or interference with public utility service.

(a) *Enumeration of unlawful acts.* A person shall not do any of the following:

- (1) Wilfully or fraudulently injure, or fraudulently allow to be injured, a meter, wire, line, pipe, or appliance belonging to a water, sewer, electric, gas company, propane gas dealer or distributor or any meter, wire, line, pipe, or appliance belonging to municipal utility companies or municipalities, including specifically all such meters, wires, lines, pipes and appliances.
- (2) Wilfully or fraudulently prevent a water, sewer, electric, gas or propane gas meter belonging to a water, sewer, electric, or gas company, or propane gas dealer or distributor, including such meters owned or operated by the city, duly registering the quantity of water, sewer, electric current, gas, or propane gas measured through the meter, or in any way hinder or interfere with the meter's proper action or just registration.
- (3) Attach a line, wire, or pipe to a line, wire, pipe, or main belonging to a water, sewer, electric, or gas company, or propane gas dealer or distributor, or the city. This subsection does not apply to the use of a ground wire to ground an electrical system.
- (4) Wilfully or fraudulently interfere with a pressure regulator device on a propane gas tank or incorporated into a propane gas system.
- (5) Use or burn, or cause to be used or burned, any water, electric current, gas, or propane gas supplied by a water, sewer, electric, or gas company, or propane gas dealer or distributor, or the city, without the written consent of the company or the propane gas

dealer or distributor, or the city, or the authorized agent of the company or propane gas dealer, distributor or the city, unless the water, sewer, electric current, gas, or propane gas passes through a meter or is measured by a meter set by the company or the propane gas dealer or distributor or the city; fraudulently use the water, sewer, electric current, gas or propane gas; or fraudulently waste the water, sewer, electric current, gas or propane gas supplied by a water, sewer, electric, or gas company, or propane gas dealer or distributor, or the city.

(b) *Right of compensation and damages by civil action.* A criminal prosecution under this section shall not in any way impair the right of the company, propane gas dealer, distributor or the city to full compensation and damages by civil action.

(c) *Application of section.* The provisions of this section shall extend and apply to all offenses against all water, sewer, electric, or gas companies, or propane gas dealers or distributors, or the city, and boards or municipalities owning or operating plants for producing, manufacturing, furnishing, transmitting, or conducting water, sewer, electricity, or gas, either natural, liquefied or artificial.

(d) *Presumption of intent to avoid payment.* A person who attaches any line, wire, or pipe or any other device or process to any line, wire, or pipe of a water, sewer, electric, or gas company, or propane gas dealer or distributor which interferes with the proper operation and just registration of a meter within the meaning of this section, or who interferes with a pressure regulator device on a propane gas tank or incorporated into a propane gas system, is presumed to do so with intent to avoid, or to enable another to avoid, payment for the service involved.

(e) *Evidence of violation.* In all prosecutions under this section, proof that the defendant other than a lessor had control of or occupied the premises where the offense was committed, or received the benefit of the water, sewer, electric

current, gas or propane gas used or consumed shall be prima facie evidence of a violation of this section.

(f) *Violation of section; misdemeanor.* A person who violates this section is guilty of a misdemeanor if the value of the water, sewer, electric current, gas or propane gas used, burned, or wasted, or the damage caused as a result of this violation, is not more than \$500.00.

(Code 1972, § 9.62(49))

Sec. 58-88. Loitering.

(a) *Prohibited acts.* No person shall loiter on a public street, sidewalk or any premises or any other public place or place open to the general public in such a manner as to:

- (1) By words or conduct, harass, assault, molest or intimidate any other person.
- (2) Interfere with any person's use of the streets, sidewalks, public places, or places open to the general public after having been requested to cease such interference by a peace officer.
- (3) Create a reasonable belief that a breach of the peace is imminent or a reasonable concern for the safety of persons or property in the vicinity. Among the circumstances which may be considered in determining whether there is a reasonable belief that a breach of the peace is imminent or a reasonable concern for the safety of persons or property are the following:
 - a. The person takes flight upon appearance of a police officer or endeavors to conceal himself or any object.
 - b. The person is one of a group threatening, making threatening gestures at, or otherwise menacing persons in the vicinity.
 - c. The person appears to be illegally consuming or using or concealing illegal consumption or use of alcoholic beverages or controlled substances.
 - d. The person is one of a group which is blocking the free passage of pedestrian or vehicle traffic on a street or sidewalk.

(b) *"Harass" defined.* The term "harass," as used in this section, shall include, but not be limited to, the use of any personally abusive epithets, words, language, or conduct of an offensive nature, which when addressed to or directed at a reasonable person, are inherently likely to provoke a reaction of fear, anger, or apprehension.

(c) *Opportunity to explain behavior.* Prior to any arrest under this section, a peace officer shall afford the person an opportunity to dispel any concern or belief which would otherwise be warranted by requesting the person to explain his presence and conduct, unless flight by such person or other circumstances makes it impracticable or futile.

(d) *Civil fine.* Any person who violates this section shall be liable to pay a civil fine of not more than \$500.00.

(e) *Penalty for violation of section; misdemeanor.* Following the issuance of a civil fine citation under subsection (d) of this section, a person failing to leave the premises within a reasonable time after the request of a police officer shall be guilty of a misdemeanor and shall be subject to a fine of up to \$500.00 or by imprisonment of not more than 90 days, or by both such fine and imprisonment.

(Code 1972, § 9.62a)

Sec. 58-89. Public address.

No person shall address the public either personally or by mechanical means, either by word, music or other means, upon any public way, or place, except in such places designated by the city council, or by written permission from the mayor or the chief of police.

(Code 1972, § 9.69(3))

Secs. 58-90—58-110. Reserved.

ARTICLE V. OFFENSES AGAINST PUBLIC PEACE

Sec. 58-111. Disturbing the peace.

(a) *Noisemaking devices; by mouth or voice.* No person shall ring any bell, blow any horn or operate any other noisemaking device, or by mouth

or voice make sounds and noises causing annoyance to others, or be likely to annoy or disturb others.

(b) *Public meeting.* It shall be unlawful for any person in the city to make or excite a disturbance or contention at any public meeting where citizens were peaceably and lawfully assembled.

(c) *Election place.* It shall be unlawful for any person in the city to make or excite a disturbance or contention at an election place where citizens were peaceably and lawfully assembled.

(d) *Streets and public places.* It shall be unlawful for any person in the city to make or excite a disturbance or contention in any street, alley, highway, public place, including public building or other business place open to the public.

(Code 1972, §§ 9.62(2)—(4), 9.73)

Sec. 58-112. Disrupting worship service; other assemblies.

No person shall disrupt or aid in disrupting in any manner any service of worship, or any other assembly for lawful purposes.

(Code 1972, § 9.70)

Sec. 58-113. Disorderly conduct in crowds.

(a) It shall be unlawful to collect, gather or be a member of any disorderly crowd or any crowd gathered for any unlawful purposes, including the purpose of loitering.

(b) No person shall make or assist in making any improper noise or disturbance, quarrel or riot by which the peace and order of the community are disturbed; nor shall any persons collect or stand in crowds, or remain loitering on the public ways, or other places so as to interfere with free and uninterrupted passage of other persons.

(Code 1972, § 9.69(1), (2))

Sec. 58-114. Intoxication in public place; creating a disturbance.

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

Sec. 58-115. Language or gestures causing public disorder.

A person shall be deemed guilty of a misdemeanor if, with the purpose of causing public danger, alarm, disorder or nuisance, or if his conduct is likely to cause public danger, alarm, disorder or nuisance, such person wilfully uses abusive or obscene language or makes an obscene gesture to any other person when such words by their very utterance inflict injury or tend to incite an immediate breach of the peace.

Sec. 58-116. Dog nuisances; prohibition; exceptions.

(a) *Title.* This section will be known and referred to as the "Dowagiac Dog Nuisance Ordinance".

(b) *Nuisances prohibited; exceptions.*

- (1) No person owning or having charge, custody or control of any dog shall permit that dog's feces to remain on any public sidewalk, public street, public park or any other public property or on any private property not owned or possessed by the person who has charge, custody, or control of the dog.
- (2) No person owning or having charge, custody or control of any dog shall permit or allow that dog to be on any public sidewalk, public street, public park or any other public property or on any private property not owned or possessed by the person who has charge, custody, or control of the dog unless that person has in their possession, devices, implements or materials to carry away or disposal of doge feces.
- (3) The provisions of this section shall not apply to:
 - a. Any blind person, as defined in Act 260 of the Public Acts of 1978.
 - b. Any deaf person, as defined in Act 82 of the Public Acts of 1981.
 - c. Any audibly impaired person, as defined in Act 1 of the Public Acts of 1966.

- d. Any physically limited person, as defined in Act 1 of the Pubic Acts of 1966.
- e. Any guide dog being trained to be a guide or service dog for the blind, deaf, audibly impaired or physically limited, pursuant to a recognized program of training provided that the dog is on a leash, and the person in charge of the dog has proof with them that the dog is participating in the training program at this time.

(Ord. No. 06-7, § 1, 8-31-06)

Secs. 58-117—58-135. Reserved.

ARTICLE VI. OFFENSES AGAINST PUBLIC SAFETY

DIVISION 1. GENERALLY

Sec. 58-136. Weapons generally.

No person shall shoot any air gun, spring gun, crossbow or firearm, or other dangerous weapon or instrument in the city.
(Code 1972, § 9.71)

Sec. 58-137. Firearms—Reckless use.

It shall be unlawful for any person in the city to recklessly, heedlessly, wilfully or wantonly use, carry, handle or discharge any firearm without due caution and circumspection for the rights, safety or property of others within the municipal city limits.
(Code 1972, § 9.62(18))

Sec. 58-138. Same—Possession while under influence of intoxicating liquor.

It shall be unlawful for any person within the city to possess, have under control, use or discharge any firearm while under the influence of intoxicating liquor.
(Code 1972, § 9.62(19))

Sec. 58-139. Same—Pointing at or toward another.

It shall be unlawful for any person within the city to, without malice, intentionally point or aim a firearm at or toward the person of another.

(Code 1972, § 9.62(22))

Sec. 58-140. Same—Transporting or possessing, while loaded, in motor vehicle.

It shall be unlawful for any person within the city to transport or possess in or upon any motor vehicle a firearm, which is not a pistol or revolver, while such firearm is loaded in either barrel or magazine.

(Code 1972, § 9.62(20))

Sec. 58-141. Same—Transporting or possessing in improper manner.

It shall be unlawful for any person in the city to transport or possess in or upon any automobile a firearm, which was not a pistol or revolver, while the firearm was not taken down or enclosed in a case or carried in the trunk of the automobile.

(Code 1972, § 9.62(21))

Sec. 58-142. Placing or throwing glass in public places.

It shall be unlawful for any person within the city to place or throw glass or other dangerous pointed or edged substances in or on any beach or waters adjacent thereto, street, road, or walk, or on public property within 50 feet of any public street or road.

(Code 1972, § 9.62(27))

Sec. 58-143. Abandoning refrigerators, iceboxes and other containers.

It shall be unlawful for any person within the city to knowingly leave, in a place accessible to children, an abandoned, unattended, or discarded icebox, refrigerator or other container of a kind and size sufficient to permit the entrapment and suffocation of a child therein, without first removing the snap lock or other device from the lid or cover thereof.

(Code 1972, § 9.62(43))

Sec. 58-144. Fireworks.

No person shall explode or cause to explode any fireworks, cannon or other instrument set forth in MCL 750.243a, MSA 28.440(1), as amended, unless the terms and conditions of such state statutes have been first complied with. No person shall sell, or expose for sale, such fireworks or other instruments.

(Code 1972, § 9.72)

Secs. 58-145—58-155. Reserved.

DIVISION 2. SKATEBOARDS

Sec. 58-156. Definitions.

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

Skateboard or other like instrument means any nonmotorized instrument used to transport persons by means of wheels, rollers, etc., propelled solely by the force of its rider and shall not include any wagon or other device not so propelled.

(Code 1972, § 10.95)

Cross reference—Definitions generally, § 1-2.

Sec. 58-157. Violation of division; misdemeanor.

Any person violating the provisions of this division shall be guilty of a misdemeanor.

(Code 1972, § 10.99)

Sec. 58-158. In business district.

No person shall use, operate or permit the use or operation of any skateboard or like instrument on any sidewalk, street, parking lot, or other public place in the business district of the city.

(Code 1972, § 10.96)

Sec. 58-159. Responsible use.

The use of any skateboard or other like instrument is hereby permitted on all other sidewalks, streets and other public ways within the city; provided, however, that any person who shall use, operate or permit to be used or operated, any

skateboard or like instrument on any street, sidewalk, parking lot, etc., shall do so in a careful and prudent manner and not in a manner so as to cause or be likely to cause danger to any person or property.

(Code 1972, § 10.97)

Sec. 58-160. Pedestrian right-of-way.

The user of any such skateboard or like instrument shall give way to any pedestrian, motor vehicle or any other user of the sidewalk, street, parking lot, etc., and shall not interfere with the proper use of any public way by any other person.

(Code 1972, § 10.98)

Secs. 58-161—58-180. Reserved.ARTICLE VII. OFFENSES AGAINST
PUBLIC MORALS**Sec. 58-181. Obscene conduct as disorderly behavior.**

It shall be unlawful for any person in the city to be a disorderly person by engaging in indecent or obscene conduct in a public place.

(Code 1972, § 9.62(14))

Sec. 58-182. Indecent exposure.

No person shall exhibit himself in any place of entertainment or in any public place, nude or indecently clad. No person shall indulge in any indecent, immoral or suggestive conduct in such places. No person shall designedly make any open or indecent exposure of his person, or of the person of another.

(Code 1972, § 9.64)

Sec. 58-183. Disorderly conduct of gambling.

It shall be unlawful for any person in the city to be a disorderly person by engaging in the illegal occupation or business of gambling.

(Code 1972, § 9.62(17))

Sec. 58-184. Gambling and lotteries.

(a) No person or his agent or employee shall, directly or indirectly, take, receive or accept money or valuable thing, with the agreement, understanding or allegation that money or any valuable thing will be paid or delivered to any such person where such payment or delivery is contingent upon the result of a race, contest, game or the happening of an event not known to the parties to be certain.

(b) No person shall keep any device used for the purposes mentioned in subsection (a) of this section.

(c) No person shall use, own or let any place or property and knowingly suffer acts forbidden under subsection (a) of this section.

(d) No person shall assist, solicit or advertise for, or occupy any place wherein acts forbidden under subsection (a) of this section are conducted.

(e) In addition to other penalties provided in this article, the police department may seize and destroy devices mentioned in subsection (b) of this section.

(Code 1972, § 9.67)

Sec. 58-185. Accosting and soliciting.

It shall be unlawful for any person within the city, while being a person 17 years of age or older, to accost, solicit, or invite any person, in any public place, or in or from any building or vehicle, by word, gesture, or other means, to commit prostitution or to do any of the lewd or immoral acts.

(Code 1972, § 9.62(42))

Sec. 58-186. Use of marijuana.

Except as otherwise provided by law, it is unlawful for any person to knowingly or intentionally use or possess marijuana unless such substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his professional practice.

(Code 1972, § 9.74)

Sec. 58-187. Frequenting places where controlled substances or drug paraphernalia sold or dispensed.

(a) *Prohibited areas.* No person shall knowingly loiter about, frequent or live in any building, house, vacant lot, street, curblawn, alley, yard, apartment, store, automobile, boat, boathouse, airplane or other place of any description whatsoever where controlled substances or drug paraphernalia are sold, dispensed, furnished, given away or stored.

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

Controlled substance means as it is defined in Public Health Code, MCL 333.7104, MSA 14.15(7104).

Drug paraphernalia means any item which is used or intended for use with a controlled substance.

Used or intended for use (with a controlled substance) means:

- (1) The item was primarily designed or adapted, because of its objective physical features, for use with a controlled substance;
- (2) The item was intended by an individual for use with a controlled substance; or
- (3) An individual would know, or should have known, that the item was intended for use with a controlled substance.

(c) *Exemptions.* This section shall not apply to persons licensed by the state to engage in the activity prohibited by subsection (a) of this section, nor to any person lawfully possessing a controlled substance pursuant to a prescription written by a person authorized to write prescriptions under law.

(d) *Penalty for violation of section; misdemeanor.* Any person who violates this section shall be subject to a fine of up to \$500.00 or by imprisonment of not more than 90 days, or by both such fine and imprisonment.
(Code 1972, § 9.62b; Ord. No. 98-2, § 1, 8-26-98)

Secs. 58-188—58-210. Reserved.

**ARTICLE VIII. OFFENSES INVOLVING
UNDERAGED PERSONS**

Sec. 58-211. Minors under 13.

No minor under the age of 13 years shall loiter, idle or congregate in or on any public street, highway, alley or park between the hours of 10:00 p.m. and 6:00 a.m., unless the minor is accompanied by a parent or guardian, or some adult delegated by the parent or guardian to accompany the child.
(Code 1972, § 9.91)

Sec. 58-212. Minors under 17.

No minor under the age of 17 years shall loiter, idle or congregate in or on any public street, highway, alley or park between the hours of 12:00 midnight and 6:00 a.m., immediately following, except where the minor is accompanied by a parent or guardian, or some adult over the age of 21 years, delegated by the parent or guardian to accompany the minor child, or where the minor is upon an errand or other legitimate business directed by his parent or guardian.
(Code 1972, § 9.92)

Sec. 58-213. Aiding or abetting violation of section 58-211 or 58-212.

Any person of the age of 17 years or over assisting, aiding, abetting, allowing, permitting or encouraging any minor under the age of 17 years to violate the provisions of section 58-211 or 58-212 shall be guilty of a violation of this article.
(Code 1972, § 9.93)

Sec. 58-214. Contributing to delinquency of minor.

It shall be unlawful for any person within the city to encourage, contribute toward, cause or intend to cause a minor child under the age of 17 years to become neglected or delinquent, so as to come or tend to come under the jurisdiction of the juvenile division of the probate court, as defined in section 2 of chapter 12(a) of Act No. 288 of the Public Acts of Michigan of 1939 (MCL 701.1 et seq., MSA 27.3178(1) et seq.), as added by Act No. 54 of the Public Acts of Michigan of

1944 (Ex. Sess.) (MCL 712A.1 et seq., MSA 27.3178(598.1) et seq.) and any amendments thereto, whether or not such child shall thereafter in fact be adjudicated as a ward of the probate court.
(Code 1972, § 9.62(24))

Sec. 58-215. Alcohol—Minor in possession.

It shall be unlawful for any person in the city under the age of 21 years to knowingly possess any alcoholic liquor.
(Code 1972, § 9.62(35))

Sec. 58-216. Same—Furnishing to minor.

It shall be unlawful for any person in the city to knowingly give or furnish any alcoholic beverage to a minor.
(Code 1972, § 9.62(37))

Sec. 58-217. Same—Purchase by a minor.

It shall be unlawful for any person in the city to purchase, while under the age of 21 years, alcoholic liquor or other intoxicating beverages.
(Code 1972, § 9.62(38))

Sec. 58-218. Same—Misrepresenting age to procure.

It shall be unlawful for any person in the city, while under the age of 21 years, to falsely represent himself to be 21 years of age or over, for the purpose of purchasing or attempting to purchase an alcoholic liquor.
(Code 1972, § 9.62(40))

Sec. 58-219. Same—Possession by minor in a motor vehicle.

It shall be unlawful for any person within the city to possess, transport, or have under his control any alcoholic beverage in a motor vehicle, while under the age of 21 years.
(Code 1972, § 9.62(41))

Secs. 58-220—58-240. Reserved.

ARTICLE IX. MUNICIPAL CIVIL INFRACTIONS

Sec. 58-241. Definitions.

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

Act means the Revised Judicature Act, 1961 PA 236, MCL 600.101 et seq., as amended.

Authorized city official means a police officer, building inspector, code enforcement officer or other designated official or employee of the city authorized by this article or any ordinance to issue municipal civil infraction citations or municipal civil infraction violation notices.

Bureau means the city municipal ordinance violations bureau, as established by this article.

Municipal civil infraction means an act or omission that is prohibited by this article or any ordinance of the city, but which is not a crime under this article or other ordinance, and for which civil sanctions, including, without limitation, fines, damages, expenses, and costs, may be ordered, as authorized by chapter 87 of the Act, as amended. A municipal civil infraction is not a lesser included offense of a violation of this Code that is a criminal offense.

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

Municipal civil infraction citation means a written complaint or notice prepared by an authorized city official, directing a person to appear in court regarding the occurrence or existence of a municipal civil infraction violation by the person cited.

Municipal civil infraction violation notice means a written notice prepared by an authorized city official, directing a person to appear at the city municipal ordinance violations bureau and to pay the fine and costs, if any, prescribed for the

violation by the schedule of fines adopted by the city, as authorized under sections 8396 and 8707(6) of the Act.

(Ord. No. 94-8, § 1(9.159), 8-15-94; Ord. No. 18-2, 5-14-18)

Cross reference—Definitions generally, § 1-2.

Sec. 58-242. General penalties and sanctions for violations of city ordinances; continuing violations; injunctive relief.

(a) Unless a violation of this article or any ordinance of the city is specifically designated in the ordinance as a municipal civil infraction, the violation shall be deemed to be a misdemeanor.

(b) The penalty for a misdemeanor violation shall be a fine not exceeding \$500.00, plus costs of prosecution, or imprisonment not exceeding 90 days, or both, unless a specific penalty is otherwise provided for the violation by this article or any ordinance.

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

- (1) Unless otherwise specifically provided for a particular municipal civil infraction violation by this article or any ordinance, the civil fine for a violation shall be not less than \$25.00, plus costs and other sanctions, for each infraction.
- (2) Increased civil fines may be imposed for repeated violations by a person of any requirement or provision of this article or any ordinance. As used in this section, the term "repeat offense" means a second (or any subsequent) municipal civil infraction violation of the same requirement or provision committed by a person within any six-month period, unless some other period is specifically provided by this article or any ordinance, and for which the person admits responsibility or is determined to be responsible. Unless otherwise specifically provided by this article or any ordinance for a particular

municipal civil infraction violation, the increased fine for a repeat offense shall be as follows:

- a. The fine for any offense which is a first repeat offense shall be no less than \$100.00, plus costs.
- b. The fine for any offense which is a second repeat offense or any subsequent repeat offense shall be no less than \$250.00, plus costs.

(d) A violation includes any act which is prohibited, or made or declared to be unlawful, or an offense by this article or any ordinance, and any omission or failure to act where the act is required by this article or any ordinance.

(e) Each day on which any violation of this article or any ordinance continues constitutes a separate offense and shall be subject to penalties or sanctions as a separate offense.

(f) In addition to any remedies at law, the city may bring an action for an injunction or other process against a person to restrain, prevent or abate any violation of this article or any city ordinance.

(Ord. No. 94-8, § 1(9.160), 8-15-94; Ord. No. 18-2, 5-14-18)

Sec. 58-243. Authorized city officials.

The following employees and/or officials of the city are hereby designated as the authorized city officials to issue municipal civil infraction citations, directing alleged violators to appear in court, or municipal civil infraction violation notices, directing alleged violators to appear at the city municipal ordinance violations bureau, as provided by this article:

- (1) City building inspector;
 - (2) Fire chief;
 - (3) Sworn, full-time firefighters acting on the directive of the fire chief;
 - (4) City code enforcement officer;
 - (5) Police chief; and
 - (6) Sworn, full-time police officers.
- (Ord. No. 94-8, § 1(9.161), 8-15-94; Ord. No. 18-2, 5-14-18)

Sec. 58-244. Municipal civil infraction action; commencement.

A municipal civil infraction action may be commenced upon the issuance by an authorized city official of a municipal civil infraction citation directing the alleged violator to appear in court or a municipal civil infraction violation notice directing the alleged violator to appear at the city municipal ordinance violations bureau. (Ord. No. 94-8, § 1(9.162), 8-15-94)

Sec. 58-245. Municipal civil infraction citations—Issuance and service.

Municipal civil infraction citations shall be issued and served by authorized city officials as follows:

- (1) The time for appearance specified in a citation shall be within a reasonable time after the citation is issued which shall not exceed 15 calendar days following such issuance.
- (2) The place for appearance specified in a citation shall be the county district court.
- (3) Each citation shall be numbered consecutively and shall be in a form approved by the state court administrator. The original citation shall be filed with the district court. Copies of the citation shall be retained by the city and issued to the alleged violator, as provided by section 8705 of the act.
- (4) A citation for a municipal civil infraction signed by an authorized city official shall be treated as made under oath if the violation alleged in the citation occurred in the presence of the official signing the complaint and if the citation contains the following statement immediately above the date and signature of the official: "I declare under the penalties of perjury that the statements above are true to the best of my information, knowledge and belief."
- (5) An authorized city official who witnesses a person commit a municipal civil infraction shall prepare and subscribe, as soon

as possible and as completely as possible, an original and required copies of a citation.

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

- a. Based upon investigation, the official has reasonable course to believe that the person is responsible for a municipal civil infraction; or
- b. Based upon investigation of a complaint by someone who allegedly witnessed the person commit a municipal civil infraction, the official has reasonable course to believe that the person is responsible for an infraction and if the prosecuting attorney or city attorney approves in writing the issuance of the citation.

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

- a. Except as provided by subsection (7)b of this section, an authorized city official shall personally serve a copy of the citation upon the alleged violator.
- b. If the municipal civil infraction action involves the use or occupancy of land, a building, or other structure, a copy of the citation does not need to be personally served upon the alleged violator, but may be served upon an owner or occupant of the land, building, or structure, by posting a copy of the citation on the land or attaching the copy to the building or structure. In addition, a copy of the citation shall be sent by first class mail to the owner of the land, building, or structure at the owner's last known address.

(Ord. No. 94-8, § 1(9.163), 8-15-94)

Sec. 58-246. Same—Contents.

(a) A municipal ordinance citation shall contain the name and address of the alleged violator, the municipal civil infraction alleged, the place where

the alleged violator shall appear in court, the telephone number of the court, and the time at or by which the appearance shall be made.

(b) Further, the citation shall inform the alleged violator that he may do one of the following:

- (1) Admit responsibility for the municipal civil infraction by mail, in person, or by representation, at or by the time specified for appearance.
- (2) Admit responsibility for the municipal civil infraction, with explanation, by mail, in person, or by representation, at or by the time specified for appearance.
- (3) Deny responsibility for the municipal civil infraction by doing either of the following:
 - a. Appearing in person for an informal hearing before a judge or district court magistrate, without the opportunity of being represented by an attorney, unless a formal hearing before a judge is requested by the city.
 - b. Appearing in court for a formal hearing before a judge, with the opportunity of being represented by an attorney.

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

- (1) If the alleged violator desires to admit responsibility, with explanation, in person or by representation, the alleged violator must apply to the court in person, by mail, by telephone, or by representation within the time specified for appearance and obtain a scheduled date and time for an appearance.
- (2) If the alleged violator desires to deny responsibility, the alleged violator must apply to the court in person, by mail, by telephone, or by representation within the time specified for appearance and obtain a scheduled date and time to appear for a hearing, unless a hearing date is specified on the citation.

- (3) A hearing shall be an informal hearing unless a formal hearing is requested by the alleged violator or the city.
- (4) At an informal hearing the alleged violator must appear in person before a judge or district court magistrate, without the opportunity of being represented by an attorney.
- (5) At a formal hearing the alleged violator must appear in person before a judge with the opportunity of being represented by an attorney.

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

(Ord. No. 94-8, § 1(9.164), 8-15-94)

Sec. 58-247. Municipal ordinance violations bureau.

(a) *Established.* The city hereby establishes a municipal ordinance violations bureau, or bureau, as authorized under section 8396 of the act to accept admissions of responsibility for municipal civil infractions in response to municipal civil infraction violation notices issued and served by authorized city officials, and to collect and retain civil fines and costs, as prescribed by this article or any ordinance.

(b) *Location; supervision; employees; rules and regulations.* The bureau shall be located at the city municipal offices and shall be under the supervision and control of the city manager. The city manager, subject to the approval of the city council, shall adopt rules and regulations for the operation of the bureau and appoint any necessary, qualified city employees to administer the bureau.

(c) *Disposition of violations.* The bureau may dispose only of municipal civil infraction violations for which a fine has been scheduled and for which a municipal civil infraction violation notice, as compared with a citation, has been issued.

The fact that a fine has been scheduled for a particular violation shall not entitle any person to dispose of the violation at the bureau. Nothing in this article shall prevent or restrict the city from issuing a municipal civil infraction citation for any violation or from prosecuting any violation in a court of competent jurisdiction. No person shall be required to dispose of a municipal civil infraction violation at the bureau and may have the violation processed before a court of appropriate jurisdiction. The unwillingness of any person to dispose of any violation at the bureau shall not prejudice the person or in any way diminish the person's rights, privileges, and protection accorded by law.

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

(e) *Municipal civil infraction violation notices.* Municipal civil infraction violation notices shall be issued and served by authorized city officials under the same circumstances and upon the same persons as are citations, as provided for in section 58-245. In addition to any other information required by this article or any ordinance, the notice of violation shall indicate the time by which the alleged violator must appear at the bureau, the methods by which an appearance may be made, the address and telephone number of the bureau, the hours during which the bureau is open, the amount of the fine scheduled for the alleged violation, and the consequences for failure to appear and pay the required fine within the required time.

(f) *Appearance; payment of fines and costs.* An alleged violator receiving a municipal civil infraction violation notice shall appear at the bureau and pay the specified fine and costs at or by the time specified for appearance in the municipal

civil infraction violation notice. An appearance may be made by mail, in person, or by representation.

(g) *Procedure where admission of responsibility not made, or fine not paid.* If an authorized city official issues and serves a municipal ordinance violation notice and if an admission of responsibility is not made and the civil fine and costs, if any, prescribed by the schedule of fines for the violation are not paid at the bureau, a municipal civil infraction citation may be filed

with the district court, and a copy of the citation may be served by first class mail upon the alleged violator at the alleged violator's last known address. The citation filed with the court does not need to comply in all respects with the requirements for citations as provided by sections 8705 and 8709 of the act, but shall consist of a sworn complaint containing the allegations stated in the municipal ordinance violation notice and shall fairly inform the alleged violator how to respond to the citation. (Ord. No. 94-8, § 1(9.165), 8-15-94)

Sec. 58-248. Schedule of civil fines established.

(a) A schedule of civil fines payable to the bureau for admissions of responsibility by persons served with municipal ordinance violation notices is hereby established. The fines for the violations listed in this subsection shall be as follows:

<i>Identification within Code</i>	<i>Offense (Violation)</i>	<i>Fine</i>
Sections 22-308—22-310	Failure to comply with any provision of sections 22-308—22-310	\$ 25.00
	First repeat offense	100.00
	Second (or any subsequent) repeat offense	250.00
Section 38-56 et seq.	Failure to comply with any provision of section 38-56 et seq.	100.00
	First repeat offense	300.00
	Second (or any subsequent) repeat offense	500.00
Section 38-71 et seq.	Failure to comply with any provision of section 38-71 et seq.	25.00
	First repeat offense	100.00
	Second (or any subsequent) repeat offense	250.00
Section 42-51 et seq.	Failure to comply with any provision of section 42-51 et seq.	25.00
	First repeat offense	100.00
	Second (or any subsequent) repeat offense	250.00
Section 50-4	Failure to comply with any provision of section 50-4	25.00
	First repeat offense	100.00
	Second (or any subsequent) repeat offense	250.00

<i>Identification within Code</i>	<i>Offense (Violation)</i>	<i>Fine</i>
Section 58-116	Failure to comply with any provision of section 58-116	25.00
	First repeat offense	100.00
	Second (or any subsequent) repeat offense	250.00
Section 58-211 et seq.	Failure to comply with any provision of section 58-211 et seq.	25.00
	First repeat offense	100.00
	Second (or any subsequent) repeat offense	250.00
Sections 70-4—70-8	Failure to comply with any provision of sections 70-4—70-8, inclusive	25.00
	First repeat offense	100.00
	Second (or any subsequent) repeat offense	250.00
Section 78-28, UTC section 2.5	Failure to comply with any provision of section 2.5 of the UTC adopted by section 78-26 and amended by section 78-28	25.00
	First repeat offense	100.00
	Second (or any subsequent) repeat offense	250.00
Section 86-56 et seq.	Failure to comply with any provision of section 86-56 et seq.	25.00
	First repeat offense	100.00
	Second (or any subsequent) repeat offense	250.00

(b) A copy of the schedule, as from time to time amended, shall be posted at the bureau. (Ord. No. 94-8, § 1(9.166), 8-15-94; Ord. No. 96-1, § 3, 2-5-96; Ord. No. 96-2, § 2, 4-15-96; Ord. No. 06-8, § 1, 8-31-06; Ord. No. 18-2, 5-14-18)

Chapters 59—61

RESERVED

Chapter 62

SOLID WASTE*

Article I. In General

- Sec. 62-1. Purpose of chapter.
- Sec. 62-2. Definitions.
- Sec. 62-3. Supervision and enforcement of chapter.
- Sec. 62-4. Penalty for violation of chapter.
- Sec. 62-5. Additional remedies.
- Sec. 62-6. Rules and regulations for implementation of chapter to be adopted.
- Secs. 62-7—62-30. Reserved.

Article II. Collection and Disposal

- Sec. 62-31. Containment.
- Sec. 62-32. Collection and transportation.
- Sec. 62-33. Disposal.
- Sec. 62-34. Fees and rates.

*Cross references—Administration, ch. 2; environment, ch. 38.

ARTICLE I. IN GENERAL

Sec. 62-1. Purpose of chapter.

The purpose of this chapter is to do the following: define solid waste and its varied components; regulate the handling, collection, and disposal of all forms of solid waste within the city; authorize the city council to contract for the collection, disposal and/or recycling and composting of solid waste materials; establish rules and regulations relative to the collection, separation, and ultimate disposal of solid waste materials; provide for a method of fixing rates; prohibit the unauthorized collection or disposal of solid waste within the City of Dowagiac; and provide penalties for the violation of this chapter.

(Ord. No. 94-7, § 1, 8-15-94)

Sec. 62-2. 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:

Compostables means yard refuse materials which, when subjected to oxygen, sunlight, and water, rapidly decompose into dirt-like mulch. This includes leaves, grass clippings, weeds, and chipped brush.

Construction refuse means the waste materials resulting from the construction, reconstruction, demolition, alteration, repair, or remodeling of buildings or structures.

Disposal means the situation or result whereby solid waste has reached its ultimate and final location in an as yet decomposed or unaltered state. Disposal methods can include, but are not limited to, burial, incineration, composting and recycling.

Garbage means solid organic matter and its natural moisture content, except liquids, including, but not limited to, waste resulting from the handling, preparation and cooking of food.

Industrial refuse means the waste material resulting from industrial and/or manufacturing operations or processes.

Recyclables means all those solid waste materials which, by nature of their physical or chemical makeup, can be economically recycled. These include, but are not limited to, newsprint, paper, cardboard, glass, tin, aluminum, motor oil, plastics, and other synthetics and resin-based polymers.

Refuse means all other solid waste not included in the definitions of the terms "garbage," "yard refuse," "construction refuse," and "industrial refuse." It includes, but is not limited to, discarded waste materials from households, stores, and businesses, including cans, bottles, boxes, containers, packaging materials, rags, carpet, items of apparel, rubber, plastics and other synthetics, auto parts, and other similar discarded offensive materials and trash.

Solid waste means all of the foregoing categories of waste materials as defined in this section.

Yard refuse means combustible and/or compostable materials consisting of small tree branches, twigs, grass and shrub clippings, weeds, leaves, and general yard and garden waste materials. Firewood shall not be considered or deemed yard refuse.

(Ord. No. 94-7, § 1(2.3), 8-15-94)

Cross reference—Definitions generally, § 1-2.

Sec. 62-3. Supervision and enforcement of chapter.

(a) Solid waste management services shall be under the supervision of the city manager or his duly authorized designee.

(b) The enforcement of the provisions of this chapter shall be the responsibility of the city manager or his duly authorized designee.

(Ord. No. 94-7, § 1(2.9), 8-15-94)

Sec. 62-4. Penalty for violation of chapter.

Any person who shall violate any of the provisions of this chapter or rules and regulations promulgated under this chapter, or amendments thereto, or who fails to perform any act required under this chapter or does any prohibited act, is responsible for a municipal civil infraction and subject to a civil fine of not less than \$25.00, plus costs and other sanctions for each infraction.

Repeat offenses under this chapter shall be subject to increased fines as provided by section 58-242. Each day that an offense shall continue shall constitute a separate violation of this chapter.

(Ord. No. 94-7, § 1(2.10), 8-15-94)

Sec. 62-5. Additional remedies.

Violation of this chapter may be restrained by a court of equity by issuance of an injunction for each and every violation under this chapter in such manner and on such terms as a court of equity shall determine. Any person deemed in violation and subject to injunction for such violation shall be further responsible for and pay all reasonable costs and attorney's fees incurred by the city in securing compliance with this chapter and such amount shall be added to the billing made to the property from which the waste shall have emanated. If not paid within three months after such billing, such costs and attorney's fees may be specially assessed against such property as authorized by section 62-34(e).

(Ord. No. 94-7, § 1(2.11), 8-15-94)

Sec. 62-6. Rules and regulations for implementation of chapter to be adopted.

Rules and regulations may be adopted by resolution of the city council in the implementation of this chapter.

(Ord. No. 94-7, § 1(2.7), 8-15-94)

Secs. 62-7—62-30. Reserved.

ARTICLE II. COLLECTION AND DISPOSAL

Sec. 62-31. Containment.

(a) *Required.* After August 16, 1994, it shall be unlawful for any person to deposit or place any solid waste within any alley, street, park, right-of-way, river, creek, pond or body of water, or other public place within the city; nor shall any person deposit or place any solid waste upon private property, whether owned by such person or not, within the established limits of the city, unless the solid waste shall be enclosed or con-

tained within a suitable receptacle, vessel, or container approved for such use by the city manager or his designee; provided, however, that any person can maintain aggregated compostables in an unenclosed pile or heap, as long as such pile or heap is maintained within the rear yard, or rear one-third of any off-street side yard, of the property involved and poses no health, safety or fire hazard to owners, occupants or the public at large.

(b) *Containers.* Any such receptacle, vessel, or container shall be of suitable and appropriate size, material, and configuration so as to allow efficient handling by the designated collection agent. Such receptacle, vessel, or container shall be made accessible to the collecting agent when called for. No person, except for such proper purposes of collection, shall in any manner interfere with such receptacle, vessel, or container or with the contents of such container.

(c) *Prohibited wastes.* It shall be unlawful for any person to place in any such receptacle, vessel, or container, any liquid, materials, or excrement, which by their nature should properly be deposited in the sanitary sewer system.

(Ord. No. 94-7, § 1(2.4), 8-15-94)

Sec. 62-32. Collection and transportation.

(a) *Authority for operation and control; contracting.* The exclusive authority for the operation, regulation, and control of the collection and transportation of solid waste within the city shall be vested in the city council. It shall be unlawful for any person to engage in the business for profit of collecting and transporting solid waste materials within the city without formal approval of the city council or its duly authorized agent. The city council is hereby authorized and empowered to enter into a suitable contract with an appropriate person for all or such part of the solid waste collection, transportation, recycling, composting, separation, or transfer activities in the city which they deem necessary and in the best interest of the public health, safety, welfare, and general convenience. In no event shall any contract to any person for the collection, transportation, recycling, composting, separation, or transfer of solid waste materials within the city be for a longer

period than three years, and shall be subject to termination at any time for breach of such contract or other just cause.

(b) *Contract conditions.* Any contract executed by the city for the collection and transportation of combined garbage and refuse shall incorporate the following conditions, and such conditions shall become part of every contract so executed as if specifically included therein.

- (1) The contractor shall provide sufficient vehicles so as to make a combined garbage and refuse pickup within the city at least once each week in all residential areas. The city maintains the right and option to contract for, either jointly or separately, or to grant an exclusive or nonexclusive license or franchise for the combined garbage and refuse pickup for all nonresidential areas within the city as necessary.
- (2) The contractor shall use only compacting, loader-type trucks for garbage and refuse pickup, and/or properly enclosed trucks or trailers for compostable and/or recyclable pickup, in order to prevent the littering of garbage, refuse or other solid waste materials on the public streets and highways.
- (3) The contractor shall obtain and carry throughout the life of his contract with the city public liability insurance with limits for personal injury and property damage at a level consistent with legal requirements and appropriate to current market conditions and demands, as determined by the city manager.
- (4) The contractor shall keep his vehicles in a neat and clean condition at all times, free from unsightly or unhealthy filth or obnoxious odors.
- (5) The contractor and his agents and employees shall, so far as practicable, handle the receptacles with due care so as not to damage them or to cause undue noise or the scattering of garbage or refuse materials.
- (6) The contractor shall establish and maintain a consistent schedule for the collection and pickup of combined garbage and refuse.

(7) The contractor may refuse to collect any of the following:

- a. Liquid waste;
- b. Hot ashes or other heated materials;
- c. Dead animals, animal waste, or human waste; and
- d. Explosives, dangerous chemicals and other hazardous, toxic, or radioactive materials.

(Ord. No. 94-7, § 1(2.5), 8-15-94)

Sec. 62-33. Disposal.

(a) *According to section provisions.* It shall be unlawful for any person to dispose of any garbage or refuse, including industrial refuse, in the city except as provided in this section.

(b) *Permit required.* It shall be unlawful for any person to dispose of any construction refuse in the city unless such refuse is disposed of in accordance with the provisions of an approved permit issued for such disposal by the state or the county, or the properly designated agency of either, which permit shall be approved by the city manager or his designee.

(c) *Incineration, cremation or open burning; state permit or license required.* It shall be unlawful for any person to dispose of any solid waste via incineration, cremation, or open burning in the city, unless such incineration, cremation, or open burning is accomplished in accordance with the provisions of an approved permit or license issued for same by the state, and providing such process produces no air pollution in excess of state, county, or local standards. The permit shall require that any resultant ash or residue is properly and promptly transported to and disposed of in a manner and at a site properly sanctioned and licensed therefor.

(d) *Compostables; noncompostable organics.* Compostables may be disposed of in the city if contained within a rear yard compost pile, bin, or processor, or deposited into a city-approved municipal or private compost site. Noncompostable organics, including tree branches, may be dis-

posed of at a site and in a manner prescribed by the rules and regulations established pursuant to section 62-6.

(Ord. No. 94-7, § 1(2.6), 8-15-94)

Sec. 62-34. Fees and rates.

(a) *Charged to customers.* The cost to provide collection, separation, transportation and disposal of solid waste materials in the city, including the costs associated with recycling and/or composting, as well as the administrative/billing costs associated therewith, shall be chargeable to the residents of the city and paid to the city at rates to be fixed by a resolution of the city council at such times and in such manner as shall be provided by such resolution.

(b) *Established according to amount and quality; environmental impact.* Rates and/or fees are to be established giving due consideration to the amount or quantity and the type or quality of solid waste materials collected. Environmental impacts are also to be considered when fee or rate schedules are to be enacted. Fees and/or rates may be altered from time to time to reflect changes in costs or conditions.

(c) *Billing.* The billing for solid waste management services shall be under the supervision of the finance director. Bills for the ongoing collection of solid waste shall be included on the monthly bills for those premises receiving water, sewer, and/or electric service. Where the premises served do not receive or utilize water, sewer, or electric service from the city, the finance director shall cause the bill for refuse and garbage collection to be sent directly to the owner of such premises.

(d) *Fund established for management of solid waste.* All fees and/or charges collected under this article shall be paid into a fund established to defray or subsidize any or all costs associated with the management of solid waste.

(e) *Unpaid bills to constitute lien.* Any billing for refuse and garbage collection or other solid waste management service, including any applicable penalties or interest thereon, shall be a lien on the premises for which the services have been provided. Any amount which remains unpaid past the due date established for such billing shall be

deemed delinquent and subject to penalty and interest charges in accordance with established city utility billing policy. If all or a part of the delinquency remains outstanding for three months or more following the due date, as determined annually on April 1 of each year, it shall be the duty of the city treasurer to certify all such delinquent accounts to the city tax assessor who shall assess the delinquent amount against the premises served in accordance with section 5(c) of Act No. 345 of the Public Acts of Michigan of 1978 (MCL 123.311 et seq., MSA 5.2725(11) et seq.), as amended.

(f) *Additional remedies.* In addition to any other remedy at law or equity, and in addition to its right to specially assess premises served, the city shall have the right to discontinue, subject to any limitation or prohibition of state or federal law, all utility services, including solid waste disposal, water and sewer, and/or electric, to any premises if any utility bill therefor shall not be paid within 30 days after the due date of such bill. Utility service so discontinued shall not be restored until all sums due and owing shall be paid, together with such reconnect charges as may be authorized by this Code or any rule or regulation promulgated under this Code.

(Ord. No. 94-7, § 1(2.8), 8-15-94)

Chapters 63—65

RESERVED

CD63:1

Chapter 66

SPECIAL ASSESSMENTS*

- Sec. 66-1. Definitions.
- Sec. 66-2. General authority for assessments.
- Sec. 66-3. Initiation of proceedings—By petition of property owners.
- Sec. 66-4. Same—By city council.
- Sec. 66-5. City manager's investigation and report.
- Sec. 66-6. Tentative determinations by council; direction to prepare assessment roll.
- Sec. 66-7. Filing of assessment roll; fixing time for and giving notice of public hearing.
- Sec. 66-8. Conduct of hearing; second hearing required for certain changes.
- Sec. 66-9. Action by council following public hearing; finality of assessment roll.
- Sec. 66-10. Required vote in case of objections.
- Sec. 66-11. Creation of lien; due date; installment payments.
- Sec. 66-12. Collection.
- Sec. 66-13. Fees and interest.
- Sec. 66-14. Additional assessments.
- Sec. 66-15. Refunds.
- Sec. 66-16. Division of lots after confirmation of assessment.
- Sec. 66-17. Assessment defects.
- Sec. 66-18. Additional procedure.
- Sec. 66-19. Single lot assessments—Generally.
- Sec. 66-20. Same—Use for recovery of cost of abating public nuisances and hazards.

*Cross references—Administration, ch. 2; streets, sidewalks and other public places, ch. 70.

State law references—Notices and hearings, MCL 211.741 et seq., MSA 5.3534(1) et seq.; deferment for older persons, MCL 211.761 et seq., MSA 5.3536(1) et seq.; powers re special assessments, MCL 117.4a, 117.4b, 117.4d, 117.5, MSA 5.2074, 5.2075, 5.2077, 5.2084.

Sec. 66-1. Definitions.

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

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

Public improvement means any public work or public improvement for which any part of the cost is to be assessed against one or more lots or parcels to be specially benefitted thereby.

(Code 1972, § 1.211)

Cross reference—Definitions generally, § 1-2.

Sec. 66-2. General authority for assessments.

The entire cost and expense or any part of all public improvements may be defrayed by special assessment upon the lands specially benefitted by the improvement in the manner provided in this chapter and chapter 10 of the city Charter.

(Code 1972, § 1.212)

Sec. 66-3. Initiation of proceedings—By petition of property owners.

Initiation of public improvements may be by petition to the city council, signed by property owners whose property is subject to being benefitted. Such petition shall be printed on forms approved by the city attorney and shall set forth the location, extent and character of the desired public improvement. All petitions for public improvements shall be referred to the city manager for report and recommendation. After receiving the city manager's report and recommendation, the city council shall proceed in the same manner as provided in section 66-4 for public improvements initiated by the city council.

(Code 1972, § 1.213)

Sec. 66-4. Same—By city council.

Proceedings for making public improvements and defraying the entire cost or any part thereof by special assessment may be initiated by resolution of the city council.

(Code 1972, § 1.214)

Sec. 66-5. City manager's investigation and report.

(a) Whenever the city council shall determine to make any public improvement and defray the entire cost and expense of such public improvement, or any part thereof, by special assessment, the council shall, by resolution, direct the city manager to make an investigation of the proposed public improvement and report his findings to the council.

(b) The city manager's report referred to in subsection (a) of this section shall include an analysis of the estimated cost of the proposed public improvement and plans and specifications for the public improvement. There shall also be included recommendations as to the following:

- (1) The portion of the cost to be borne by the special assessment district and the portion, if any, to be borne by the city at large;
- (2) The extent of the improvement and boundaries of the district;
- (3) The number of installments in which assessments may be paid; and
- (4) Any other facts or recommendations which will aid the council in determining whether the improvement shall be made and how the same shall be financed.

(Code 1972, § 1.215)

Sec. 66-6. Tentative determinations by council; direction to prepare assessment roll.

Upon receipt of the report of the city manager referred to in section 66-5, if the council shall determine to proceed with the improvement, it shall, by resolution, order the city manager's report to be filed with the city clerk. In addition, by such resolution, the council shall tentatively determine to proceed with the public improve-

ment, tentatively determine the necessity of such improvement and set forth the nature of the improvement, tentatively designate the limits of the special assessment district to be affected and describe the lands to be assessed, tentatively determine the part or proportion of the cost of the public improvements to be paid by the lands specially benefitted thereby and the part or proportion, if any, to be paid by the city at large for benefit to the city at large, shall direct the city assessor to make a special assessment roll of the part or proportion of the cost to be borne by the lands specially benefitted according to the benefits received and to report the same to the council. (Code 1972, § 1.216)

Sec. 66-7. Filing of assessment roll; fixing time for and giving notice of public hearing.

(a) When the special assessment roll has been reported to the council, it shall order the special assessment roll filed in the office of the city clerk for public examination, along with the report of the city manager required to be made pursuant to this chapter, and shall fix a date, time and place when the council shall meet to finally determine the necessity of the improvement, composition of the district and to review the roll and to hear complaints. The city manager's report and the assessment roll shall be open to public inspection for a period of seven days before the hearing required by this section. The city clerk shall give notice of the hearing by the council to determine the necessity for the improvement, composition of the district and review the special assessment roll and to hear complaints, by publication at least once in a newspaper printed and circulated in the city at least ten days prior to the time of the meeting, and shall further cause notice of the meeting to be mailed by first class mail to each property owner in the special assessment district, as shown by the current assessment rolls of the city, at least ten days prior to the time of the hearing, the notice to be mailed to the addresses shown on the current assessment rolls of the city. Such notice shall state that the plans, estimates of cost and special assessment rolls are on file with the city clerk.

(b) Appearance and protest at such hearing is required in order to appeal the amount of the special assessment to the state tax tribunal. Appearance and protest may be made by any affected owner or party in interest and/or his agent and may be accomplished either in person or by letter received in advance of the scheduled hearing.

(Code 1972, § 1.217)

Sec. 66-8. Conduct of hearing; second hearing required for certain changes.

The council shall meet and hear objections to a proposed public improvement to the special assessment district, and the special assessment roll therefor at the time and place appointed or at an adjourned meeting thereof and shall consider any objections thereto. The council may revise, correct or amend the plans, estimates of cost, special assessment district and special assessment roll. If any changes are made which result in additions to the special assessment district or increases in the special assessment roll, then a second hearing shall be held with respect to the changes, and notice of such hearing shall be given in the same manner as required for the first hearing.

(Code 1972, § 1.218)

Sec. 66-9. Action by council following public hearing; finality of assessment roll.

After the hearing, or second hearing, if required, as provided for in section 66-8, the council may, by resolution, determine to proceed with the public improvement, determine the necessity of such improvement and set forth the nature of such improvement, designate the limits of the special assessment district to be affected and describe the lands to be assessed, finally determine the part or proportion of the cost of the public improvement to be paid by the lands specially benefitted thereby and the part of portion, if any, to be paid by the city at large for the benefit to the city at large. The council may also confirm the special assessment roll with such corrections as it may have made, if any, or may refer it back to the city assessor for revision, or may annul it or any proceedings in connection therewith. The city clerk shall endorse the date of confirmation upon

each special assessment roll. Such roll shall be, upon ratification and confirmation, final and conclusive.

(Code 1972, § 1.219)

Sec. 66-10. Required vote in case of objections.

If at or prior to the hearing by the city council, the owners of more than one-half of the property to be assessed shall object in writing to the improvement, assessment shall not be made without an affirmative vote of five members of the council.

(Code 1972, § 1.220)

Sec. 66-11. Creation of lien; due date; installment payments.

All special assessments contained in any special assessment roll, including any part to be paid in installments, shall, from the date of confirmation of such roll, constitute a lien upon the respective lots or parcels of land assessed and, until paid, shall be a charge against the respective owners of the several lots and parcels of land and a debt to the city from the persons to whom they are assessed. Such lien shall be of the same character and effect as the lien created by the Charter for city taxes and shall include accrued interest and fees. No judgment or decree nor act of the council vacating a special assessment shall destroy or impair the lien of the city upon the premises assessed for such amount of the assessment as may be equitably charged against the same or as, by a regular mode of proceedings, might be lawfully assessed thereon. All special assessments shall become due upon confirmation of the special assessment roll or in annual installments, not to exceed 20 in number, as the council may determine at the time of confirmation, and, if in annual installments, the council may determine the first installment to be due upon confirmation or upon any other date the council may prescribe, and the subsequent installments annually thereafter. Deferred installments shall bear interest at such rate as the council may prescribe.

(Code 1972, § 1.221)

Sec. 66-12. Collection.

Whenever any special assessment roll shall be confirmed and be payable, the council shall direct the city clerk to transmit the assessment roll to the city treasurer for collection. The city treasurer shall mail statements of the several assessments to the respective owners of the several lots and parcels of land assessed, as indicated by the records of the city assessor, stating the amount of the assessment and the manner in which it may be paid; provided, however, that failure to mail any such statement shall not invalidate the assessment or entitle the owner to an extension of time within which to pay the assessment. The whole or any part of such assessment may be paid in full at any time after the date of confirmation of the special assessment roll until such time as the council shall prescribe, without interest or penalty. Each special assessment shall be collected by the city treasurer with the same rights and remedies as provided in the Charter for the collection of taxes, except as otherwise provided in this section. All collection fees shall belong to the city and be collectible in the same manner as the collection fee for city taxes.

(Code 1972, § 1.222)

Sec. 66-13. Fees and interest.

After the expiration of the period provided for in section 66-12 for payment without interest or fees, any installment may be discharged by paying the face amount thereof together with fees and interest thereon from the date of confirmation to the date of payment.

(Code 1972, § 1.223)

Sec. 66-14. Additional assessments.

Should the assessments on any special assessment roll, including the amount assessed to the city at large, prove insufficient for any reason to pay the cost of the improvement for which they were made, then the council may make additional pro rata assessments to supply the deficiency against the city and the several lots and parcels of land in the same ratio as the original assessments, but the total amount assessed against any lot or parcel of land shall not exceed the value of the benefits received from the improvement.

(Code 1972, § 1.224)

Sec. 66-15. Refunds.

Should the special assessment or the proceeds of sale of any special assessment bonds prove larger than necessary to meet the costs of the improvement or to meet the principal and interest requirements of any special assessment bonds and expenses incidental thereto, the excess shall be placed in the city treasury. If more than five percent, the excess shall be returned pro rata according to assessments, except as otherwise specifically provided. No refunds may be made which contravene the provisions of any evidence of indebtedness secured in whole or in part by such special assessments.

(Code 1972, § 1.225)

Sec. 66-16. Division of lots after confirmation of assessment.

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

(Code 1972, § 1.226)

Sec. 66-17. Assessment defects.

Whenever the council deems any special assessment invalid or defective, or whenever a court adjudges an assessment to be illegal in whole or in part, the council may cause a new assessment to be levied for the same purpose, whether or not the improvement or any part of such improvement has been completed, or any part of the special assessment collected. All proceedings on such reassessment and for the collection of the reassessment shall be conducted in the same manner as provided for the original assessment. If any portion of the original special assessment is collected and not refunded, it shall be applied

upon the reassessment, and the reassessment shall, to that extent, be deemed satisfied. If more than the amount reassessed is collected, the balance shall be refunded to the person making such payment. If in any action it shall appear that, by reason of any irregularities or informalities the assessment has not been properly made against the person assessed or upon such lot or premises sought to be charged, the court may nevertheless, on satisfactory proof charge against the person assessed or the lot or premises in question, render judgment for the amount properly chargeable against such person or upon such lot or premises. (Code 1972, § 1.227)

Sec. 66-18. Additional procedure.

In any case where the provisions of this chapter may prove to be insufficient to carry into full effect the making of any improvement or the special assessment for such improvement, the city council shall provide any additional steps or procedure required to effect the improvement by special assessment in the resolution declaring the determination of the city council to make such improvement in the first instance.

(Code 1972, § 1.228)

Sec. 66-19. Single lot assessments—Generally.

(a) When any expense shall be incurred by the city upon or in respect to any separate or single lot, parcel of land or premises, which, by the provisions of this Code, the council is authorized to charge and collect as a single lot special assessment against the same, and which is not of that class of special assessments required to be made pro rata upon several lots or parcels of land in a special assessment district, an account of the labor or services for which such expense was incurred, verified by the officer or person performing the labor or services, or causing the same to be done, shall be reported to the city council in a manner it prescribes. The accounting reported to the council shall include a description of the lot or premises on or in respect to which the expense was incurred, the name of the owner or person chargeable therewith, and the cost of labor or services performed. The provisions of the preceding sections of this chapter with reference to pro

rata special assessments generally and the proceedings necessary to be had before making the improvement shall not apply to single lot assessments contemplated in this section.

(b) The city council, after review of the single lots assessment account, shall determine what amount or part of every such reported expense shall be charged, and the premises upon which the same shall be charged, and the premises upon which the same shall be levied as a single lot special assessment. As often as the city council may deem it expedient, it shall require all of the several amounts so reported and determined and the several lots or premises chargeable therewith respectively to be reported by the city clerk to the city assessor, who shall spread such amounts against the real property chargeable therewith on the next tax roll for the collection of general city taxes.

(Code 1972, § 1.229)

Sec. 66-20. Same—Use for recovery of cost of abating public nuisances and hazards.

When any lot, building or structure, because of the accumulation of refuse or debris, the uncontrolled growing of weeds, age or dilapidation, or because of any other condition or happening becomes a public hazard or nuisance which is detrimental to the health or safety of the inhabitants of the city or of those residing or habitually going near such lot, building or structure, the council may order such hazard or nuisance abated, and the cost of such abatement assessed against the lot, premises or description of real property upon which such hazard or nuisance was located as a single lot assessment.

(Code 1972, § 1.230)

Chapters 67—69

RESERVED

Chapter 70

STREETS, SIDEWALKS AND OTHER PUBLIC PLACES*

Article I. In General

- Sec. 70-1. Definitions.
- Sec. 70-2. Excavations—Barricades and lights.
- Sec. 70-3. Same—Sheeting and bracing.
- Sec. 70-4. Street litter—Sweepings.
- Sec. 70-5. Same—Yard waste and household debris.
- Sec. 70-6. Same—Materials hauled by trucks.
- Sec. 70-7. Snow and ice—Piling on sidewalk or street.
- Sec. 70-8. Same—Piling on lawn extension.
- Sec. 70-9. Additional regulations.
- Sec. 70-10. Removal of encroachment.
- Sec. 70-11. Temporary street closings.
- Secs. 70-12—70-30. Reserved.

Article II. Streets

- Sec. 70-31. Damage and obstruction.
- Sec. 70-32. Permits and bonds.
- Sec. 70-33. Street openings; permit required; cash deposit; insurance.
- Sec. 70-34. Emergency openings.
- Sec. 70-35. Backfilling.
- Sec. 70-36. Utility poles.
- Sec. 70-37. Maintenance of installations.
- Secs. 70-38—70-60. Reserved.

Article III. Curb Cuts

- Sec. 70-61. Permit and construction requirements.
- Secs. 70-62—70-80. Reserved.

Article IV. Sidewalks

- Sec. 70-81. Purpose of article.
- Sec. 70-82. Definitions.
- Sec. 70-83. Prohibited surfaces.
- Sec. 70-84. Prohibited uses.
- Sec. 70-85. Pedestrian passage.
- Sec. 70-86. Sidewalk specifications and requirements.
- Sec. 70-87. Removal of snow and ice.
- Sec. 70-88. Municipal authority and liability.

*Cross references—Administration, ch. 2; cable communications, ch. 26; special assessments, ch. 66; subdivisions, ch. 74; traffic and vehicles, ch. 78; utilities, ch. 82; zoning, ch. 94.

ARTICLE I. IN GENERAL

Sec. 70-1. Definitions.

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

Department means the department of engineering of the city.

Engineer means the city engineer.

Street means all of the land lying between property lines on either side of all streets, alleys and boulevards in the city, and includes lawn extensions and sidewalks and the area reserved therefor where the same are not yet constructed. (Code 1972, § 4.1)

Cross reference—Definitions generally, § 1-2.

Sec. 70-2. Excavations—Barricades and lights.

All openings, excavations and obstructions shall be properly and substantially barricaded and railed off, and at night shall be provided with prescribed warning lights. Warning lights perpendicular to the flow of traffic shall not be more than three feet apart, and parallel to the flow of traffic not over 15 feet apart.

(Code 1972, § 4.28)

Sec. 70-3. Same—Sheeting and bracing.

All openings and excavations shall, where necessary, be properly and substantially sheeted and braced as a safeguard to workers and to prevent cave-ins or washouts which would tend to injure the thoroughfare or subsurface structure of the street.

(Code 1972, § 4.29)

Sec. 70-4. Street litter—Sweepings.

No person shall sweep or cause to be swept, any dirt or litter of any kind or type whatsoever out of or off of any building or private property and into any public sidewalk, parkway, alley or roadway of the city.

(Code 1972, § 4.41)

Sec. 70-5. Same—Yard waste and household debris.

No person shall place or cause to be placed in or on any public sidewalk, or on any pavement, gutter, drain, ditch, alley or roadway in the city, any grass clippings, leaves, lawn rakings, tree or bush trimmings, tree trunks, stumps, ashes, soil, dirt or household debris, unless specifically approved by the engineer.

(Code 1972, § 4.42)

Sec. 70-6. Same—Materials hauled by trucks.

No person shall drop, leave or scatter on any sidewalk, park, alley or roadway within the city any coal, sand, dirt, gravel, brick, scrap materials or any other material or substance that is being hauled or carried about in a truck, trailer, wagon or cart or any other vehicle.

(Code 1972, § 4.43)

Sec. 70-7. Snow and ice—Piling on sidewalk or street.

No person owning or occupying any premises within the city, or in control of any such premises, shall plow, shovel, brush, move, deposit or heap up any snow or ice from any such premises upon any sidewalk, sidewalk space or alley; upon the part of any public street which is customarily used or suitable for use by vehicular traffic; upon any other public space; or suffer or permit any snow or ice from any such premises to be moved, deposited, plowed, shoveled, brushed or heaped up upon any such area.

(Code 1972, § 4.44)

Sec. 70-8. Same—Piling on lawn extension.

No person shall cause, suffer or permit any snow or ice removed from the adjoining premises to be heaped up upon the part of any street between the sidewalk and the gutter within 50 feet of any street intersection or corner, to a height in excess of three feet; and, whenever any snow or ice removed from the adjoining premises shall be heaped up to a height in excess of three feet at any such place, it shall be the duty of the owner or occupant of the adjoining premises, or other person having the custody or control of the adjoining premises, to remove such part of such

snow or ice as will result in compliance with this section within 12 hours after being notified by the police department or street department to effect such removal. It shall not be a defense that heaping up of snow in excess of the height mentioned in this section is partly caused by the natural fall of snow, or by acts or omissions of the city or other public authorities in the course of snow removal.

(Code 1972, § 4.45)

Sec. 70-9. Additional regulations.

The city manager may make additional regulations pertaining to openings and excavations in the streets, curb cuts, street obstructions, and house moving, which regulations shall be subject to the approval of the city council. No person shall fail to comply with any such regulations.

(Code 1972, § 4.51)

Sec. 70-10. Removal of encroachment.

Encroachments and obstructions in the street may be removed and excavations refilled, and the expense of such removal or refilling shall be charged to the abutting landowner when made or permitted by him or suffered to remain by him, otherwise than in accordance with the terms and conditions of this chapter. The procedure for collection of such expenses shall be as prescribed in chapter 66 of this Code.

(Code 1972, § 4.52)

Sec. 70-11. Temporary street closings.

The engineer shall have authority to temporarily close any street, or portion of such street, when he shall deem such street to be unsafe or temporarily unsuitable for use for any reason. He shall cause suitable barriers and signs to be erected on the street, indicating that the street is closed to public travel. When any street or portion of a street shall have been closed to public travel, no person shall drive any vehicle upon or over the street except as such closure may be necessary incidentally to any street repair or construction work being done in the area closed to public

travel. No person shall move or interfere with any sign or barrier erected pursuant to this section without authority from the engineer.

(Code 1972, § 4.53)

Secs. 70-12—70-30. Reserved.

ARTICLE II. STREETS

Sec. 70-31. Damage and obstruction.

(a) No person shall make any excavation in or cause any damage to any street in the city, except under the conditions and in the manner permitted in this chapter. No person shall place any article, thing or obstruction in any street, except under the conditions and in the manner permitted in this chapter, but this provision shall not be deemed to prohibit such temporary obstructions as may be incidental to the expeditious movement of articles and things to and from abutting premises, to the lawful parking of vehicles within the part of the street reserved for vehicular traffic, nor to any sign or other material object erected or maintained for public health and safety purposes by the city.

(b) No person shall suspend anything above any sidewalk or street area unless expressly authorized by this Code, provided that the city council, when in its opinion public safety requires, may authorize the erection of fire escapes or similar devices by resolution. This section shall not apply to awnings or marquees when no part is less than seven feet above the sidewalk grade.

(Code 1972, § 4.2)

Sec. 70-32. Permits and bonds.

(a) Where permits are authorized in this chapter, they shall be obtained upon application to the engineer, upon such forms as he shall prescribe, and there shall be a charge of \$5.00 for each such permit, except as otherwise provided by resolution of the council. Such permit shall be revocable by the engineer for failure to comply with this chapter, rules and regulations adopted pursuant to this chapter, and the lawful orders of the engineer or his duly authorized representative, and shall be valid only for the period of time endorsed thereon. Application for a permit under

the provisions of this chapter shall be deemed an agreement by the applicant to promptly complete the work permitted; observe all pertinent laws and regulations of the city in connection therewith; repair all damage done to the street surface and installations on, over or within such street, including trees; and protect and save harmless the city from all damages or actions at law that may arise or may be brought on account of injury to persons or property resulting from the work done under the permit or in connection therewith. Where liability insurance policies are required to be filed in making application for a permit, they shall be in not less than the following minimum amounts, except as otherwise specified in this chapter:

- (1) On account of injury to, or death of, any person in any one accident \$100,000.00
- (2) On account of any one accident resulting in injury to, or death of, more than one person 1,000,000.00
- (3) On account of damage to property in any one accident 25,000.00

(b) A duplicate executed copy or photostatic copy of the original of such insurance policy, approved as to form by the city attorney, shall be filed with the city clerk.
(Code 1972, § 4.3)

Sec. 70-33. Street openings; permit required; cash deposit; insurance.

No person shall make any excavation or opening in or under any street without first obtaining a written permit from the engineer. No permit shall be granted until the applicant shall file a liability insurance policy as required by section 70-32.
(Code 1972, § 4.4)

Sec. 70-34. Emergency openings.

The engineer may, if the public safety requires immediate action, grant permission to make a necessary street opening in an emergency, pro-

vided that a permit shall be obtained on the following business day and the provisions of this chapter shall be complied with.
(Code 1972, § 4.5)

Sec. 70-35. Backfilling.

All trenches in a public street or other public place, except by special permission, shall be backfilled in accordance with regulations adopted pursuant to this chapter. Any settlement shall be corrected within 48 hours after notification to do so.
(Code 1972, § 4.6)

Sec. 70-36. Utility poles.

Utility poles may be placed in such streets as the engineer shall prescribe and shall be located thereon in accordance with the directions of the engineer. Such poles shall be removed or relocated as the engineer shall from time to time direct. Where utility easements exist at the rear of lots, poles shall be located in such easements, if feasible, in the opinion of the engineer.
(Code 1972, § 4.8)

Sec. 70-37. Maintenance of installations.

Every owner of, and every person in control of, any estate hereafter maintaining a sidewalk vault, coal hole, manhole, or any other excavation, or any post, pole, sign, awning, wire, pipe, conduit or other structure in, under, over or upon, any street which is adjacent to or a part of his estate, shall do so only on condition that such maintenance shall be considered as an agreement on his part with the city to keep the same and the covers thereof, and any gas and electric boxes and tubes thereon, in good repair and condition at all times during his ownership or control thereof, and to indemnify and save harmless the city against all damages or actions at law that may arise or be brought by reason of such excavation or structure being under, over, in or upon the street, or being unfastened, out of repair or defective during such ownership or control.
(Code 1972, § 4.9)

Secs. 70-38—70-60. Reserved.

ARTICLE III. CURB CUTS

Sec. 70-61. Permit and construction requirements.

No opening in or through any curb or any street shall be made without first obtaining a written permit from the engineer. Curb cuts and sidewalk driveway crossings to provide access to private property shall comply with the following:

- (1) No single curb cut shall be less than ten feet.
- (2) The minimum distance between any curb cut and a public crosswalk shall be five feet.
- (3) The minimum distance between curb cuts, except those serving residential property, shall be 25 feet.
- (4) The necessary adjustments to utility poles, light standards, fire hydrants, catch basins, street or railway signs, signals, or other public improvements or installations shall be accomplished without cost to the city.

(Code 1972, § 4.16)

Secs. 70-62—70-80. Reserved.

ARTICLE IV. SIDEWALKS

Sec. 70-81. Purpose of article.

The purpose of this article is to establish regulations and standards governing the construction, maintenance, and repair of sidewalks in the city, and to provide for and establish the method by which the maintenance and improvement is to be funded and carried out.

(Ord. No. 93-7, § 1(4.71), 7-19-93)

Sec. 70-82. Definitions.

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

City engineer means the appointed or contracted engineer employed by and working on behalf of the city.

Director means the appointed director of the department of public services for the city.

Flag means a singularly consistent and undifferentiated section of poured concrete sidewalk between seams or expansion joints; typically five times five feet square.

Frontage means the cumulative contact of abutting property with a street which offers unobstructed access to the property.

Lot means the contiguous land in the same ownership which is not divided by any public street or alley, including any part thereof subject to any easement for any purpose other than a public street or alley.

Owner means the legally defined property owner of a lot having frontage along a city street.

Property means any parcel, lot, or tract of land occupied or intended to be occupied by a principal building.

Sidewalk means a concrete pedestrian pathway within the dedicated public right-of-way of a city street or alley.

Street means an established vehicular travel way, open and accessible to the public, that is improved with concrete, asphalt, or same hard-surfaced pavement.

(Ord. No. 93-7, § 1(4.72), 7-19-93)

Cross reference—Definitions generally, § 1-2.

Sec. 70-83. Prohibited surfaces.

No door shall be placed in any sidewalk unless the design and specifications therefor shall be approved by the department. No open iron grating or other open devices, nor any device containing glass, shall be placed in or used as the surface of any sidewalk.

(Code 1972, § 4.7)

Sec. 70-84. Prohibited uses.

No person shall place any merchandise, material or sign on any sidewalk or any merchandise or material within any street area, except that a reasonable quantity of material may be stored within such area for a period not exceeding 90 days upon a permit issued by the department. Such goods or material shall be barricaded in a

manner prescribed by the department, and the granting of such authority shall be conditioned upon obtaining a permit from the engineer and posting a cash deposit and filing an insurance policy as required by section 70-32.

(Code 1972, § 4.24)

Sec. 70-85. Pedestrian passage.

At least five feet of sidewalk space shall be kept clean and clear for the free passage of pedestrians, and, if the building operations are such that such free passageway is impracticable, a temporary plank sidewalk with substantial railings or sidewalk shelter, built in accordance with chapter 18 of this Code, shall be provided around such obstruction.

(Code 1972, § 4.25)

Sec. 70-86. Sidewalk specifications and requirements.

(a) *New sidewalk construction.* The construction of concrete sidewalks, meeting the construction standards and specifications set forth in subsection (d) of this section, as currently existing or hereafter amended, shall be required along the entire paved public street frontage of any lot or property wherein a new principal building is erected in the city. This section shall apply to all zoning districts in the city, except the A residence district and the IP district. A property owner may, by means of written correspondence to the director, request that the city arrange for, contract out, or complete the construction of new sidewalks as required in this section. The option to honor such request shall be at the sole discretion of the city, as represented by its city manager, or his designee, and shall require the requesting property owner to make payment arrangements satisfactory to the city prior to the commencement of any sidewalk construction activities under this article. One hundred percent of all costs associated with new sidewalk construction, as required under this article, whether completed by the property owner, city, or agents or employees of either shall be paid by and exist as a legal obligation of the property owner. If existing infrastructure, natural impediments, or topography would make construction of a sidewalk impractical, and the city concurs in such a determination, the owner

shall be required to provide the sidewalk in an alternative onsite route which adequately provides a proper connection to the existing city sidewalk system. If a connection to the then existing city system does not exist within 500 linear feet of the nearest lot line of the property in question, the city shall waive this requirement in conformance with subsection (b) of this section.

(b) *Waiver of sidewalk requirement.* The city may waive the requirement to construct new sidewalks when the presence of natural and physical impediments in combination with a lack of private off-site connection to the existing sidewalk system join to cause such construction to be impractical. Authority to grant such waivers shall be vested in the city council and may be granted by resolution following a formal written request, filed by the property owner, with the office of the city clerk.

(c) *Replacement of existing sidewalk.* Replacement of an existing sidewalk shall take place as follows:

- (1) *Determination and notice.* Upon receipt of a report by the city manager, indicating a sidewalk is unsafe for use and requires repair or reconstruction for the public safety and welfare, the city council, by resolution, may determine to reconstruct or repair the sidewalk and direct the city manager to proceed with the required work, using either city employees or contracted labor. Following approval, by resolution, of the determination, the city clerk shall cause notice to be provided to the owner of property possessed of frontage along an area where the sidewalk is to be repaired or reconstructed. The notice is to be by first class mail addressed to the last known address of the owner as shown by the latest confirmed tax assessment roll, or if the owner or his address is unknown, by delivering the notice and leaving the notice with a person of suitable age and discretion at the premises. If such person is not found, such notice shall be posted in a conspicuous place on the premises. The notice shall list and detail the estimated costs to be incurred for repair or reconstruction which shall be charged against the abutting front-

age property and owner of the property in accordance with the provisions of section 66-19 and subsection (c)(2) of this section, and shall list any and all city-owned or -controlled trees to be removed as part of the work. The notice shall be mailed or delivered not less than 30 days in advance of the date the repair or reconstruction work is to commence.

(2) *Costs.* Costs shall be based on the following:

a. The costs incurred for the city council-authorized repair or reconstruction of unsafe or hazardous sidewalks, excluding those traversing private driveways, in the city, in compliance with the provisions set forth in this section, shall be based as follows:

1. No less than 25 percent of the cost of repair or reconstruction, when performed or contracted by the city, shall be charged against the property abutting such sidewalk and the owner of the property in accordance with the provisions of section 66-19.
2. The remaining costs of the repairs, which shall not exceed 75 percent of the total, shall be provided by the city, the state, the United States, or some combination thereof, as the then existing funding opportunities may allow, and as finally administered by the city.
3. If the unsafe or hazardous condition of the sidewalk to be repaired is a direct causal result of the growth or prominent presence of tree roots extending from city-owned trees or trees growing in city-owned or controlled rights-of-way, as determined by the city engineer; and if, at the determination of the same city engineer, it is necessary to remove the offending tree or tree roots in order to facilitate the repair and reconstruction

and ensure the longterm integrity thereof, no portion of the cost of removing the tree or tree roots shall be charged against the property abutting or the owner of the property.

4. Property owners seeking to maintain the health and vitality of city-owned or controlled offending trees, which could continue to damage the contiguous section of any reconstructed sidewalk, may request, by formal written correspondence to the director, that the city not remove the offending trees in question prior to the repair or reconstruction of unsafe contiguous sidewalk sections. In this event, the property owner shall be responsible for, and his property charged against, 100 percent of the total costs incurred to repair or reconstruct the unsafe sidewalk. This option shall not be available for trees which, because of significant levels of rot, infestation, disease, lack of living matter, or impending threat to safety or property, shall be determined by the city forester to constitute a nonviable tree.

- b. The costs incurred for the city council-authorized repair or reconstruction of unsafe or hazardous sidewalks which traverse private driveways in the city, in compliance with the provisions set forth in this section, shall be based as follows: Fifty percent of the total shall be provided by the city, state or United States, or some combination thereof, as the then existing funding opportunities may allow, and as finally administered by the city; while the remaining 50 percent of the total shall be charged against the property abutting such sidewalk and the owner thereof in accordance with the provisions of section 66-19.
- c. The costs incurred for the city council-authorized repair or reconstruction of

sidewalks in the city, other than those deemed unsafe or hazardous, in compliance with the provisions set forth in this section, shall be based as follows: 100 percent of the total shall be provided by the city, state, or United States, or some combination thereof, as the then existing funding opportunities may allow, and as finally administered by the city, unless all or some portion thereof is defrayed according to the provisions of chapter 66 of this Code.

- d. Property owners who receive notice of required repairs or reconstruction to abutting sidewalks deemed unsafe or hazardous, may choose to make the necessary repairs or accomplish the required reconstruction through their own efforts or that of contracted agents if the work fully complies with the requirements and specifications as contained in the city engineering design specifications and as set forth in this section. Further, all costs of repairs or reconstruction shall be the sole responsibility of the property owner under this option, and all work must be completed to the satisfaction of the director within the 30-day notice period set forth in subsection (c)(1) of this section. This right of election to make or contract for necessary repairs or replacement shall not apply to any situation in which the city manager, or his designee shall determine that immediate repair or replacement by the city is required for public safety. In any other case, the city may require a property owner electing to perform or have performed such repairs to post notice to the public of any safety hazards and/or to prevent access to unsafe sidewalk areas pending repair or reconstruction as the city manager, or his designee, shall determine.
- (3) *Specific criteria for sidewalk replacement.* Sidewalks shall be deemed hazardous or unsafe when one or more of the following conditions, as determined by survey inspection of the city engineer, are present:
- a. *Edge misalignment.* The edge of one flag is higher or lower than the edge of the adjacent flag for part of the full width of the sidewalk. An edge misalignment of one inch or more at any point shall constitute a hazardous or unsafe walk.
 - b. *Spalling, rough surfaces, or large holes.* Spalled or rough surfaces marked with potholes three-quarters of an inch and deeper, cover ten percent or more of the surface area. The presence of large holes, asphalt caps or overlays, or missing sections, is discovered.
 - c. *Poor drainage.* The presence of standing water over areas or sections of the sidewalk for long periods is discovered.
 - d. *Cracks.* Cracked flags, if there is one-quarter inch or more of separation, or the cracked area covers more than ten percent of the flag. Also, separation of one inch or more between flags is determined.
 - e. *Slope.* There is a longitudinal slope greater than one inch per linear foot of sidewalk. A transverse slope greater than three-quarters of an inch per linear foot exists across the width of the sidewalk.
- (4) *General criteria.* The city shall maintain the discretionary authority to determine the necessity of sidewalk replacement whether deemed hazardous or unsafe or not. However, those sidewalks or sections of sidewalks so designated shall be subject to the costs provisions established in subsection (c)(2) of this section. The city shall attempt to replace or reconstruct unsafe or hazardous sidewalks on a prioritized basis, from highest degree of hazard to least, as funding allows.
- (d) *Construction standards and specifications.* Construction standards and specifications shall be as follows:
- (1) Sidewalks shall be constructed of poured concrete, five feet wide, four inches thick,

over no less than two inches of compacted sand containing a minimum of 500 pounds of air entrained, Portland cement per cubic yard. Sidewalks traversing driveways shall be poured to a depth of six inches thick. Sidewalks may be constructed of alternate materials and/or exceed the dimensions or requirements stated in this section when approved by the city council as part of downtown or other public improvement, beautification, or restoration projects.

- (2) All city sidewalks shall be constructed or replaced in accordance with the specifications established, and as from time to time amended, by the city of engineering design specifications and in compliance with any further requirements or details as established by the city engineer.
- (Ord. No. 93-7, § 1(4.73), 7-19-93)

Sec. 70-87. Removal of snow and ice.

(a) *Clearance requirements.* The occupant of every lot or property abutting or adjoining any sidewalk within the city, or the owner of such lot or property, if not occupied, shall clear all ice and snow from sidewalks adjoining or abutting such lot or property within the time required in this section, unless the city, by resolution of its city council, shall assume such duties. The city may, by resolution, from time to time update or amend its policy of sidewalk clearance to include any or all sidewalks, or portions of sidewalks, or to exclude such sidewalks based on the then existing financial conditions and public safety requirements facing the city. When any snow shall fall or drift upon any sidewalk, the owner or occupant of the lot or property adjacent to the sidewalk shall remove such snow as shall have fallen or accumulated during the night time by 7:00 p.m. Snow falling or drifting during daylight hours shall be removed before 7:00 p.m. the following day. When any ice shall form on any sidewalk, the owner or occupant of the lot or property adjoining or abutting shall, if practical, immediately remove the ice. When immediate removal is impractical, the owner or occupant shall immediately cause sand or salt to be spread upon the ice in such a manner and in such quantity as to prevent the sidewalk

from becoming slippery and dangerous to pedestrians and shall remove the ice as soon thereafter as shall be practical.

(b) *Failure to clear.* If, in the absence of a formally adopted city policy to provide such services, any occupant or owner shall neglect or fail to clear ice and snow from the sidewalk adjoining or abutting his lot or property within the time limit required in this section, or shall otherwise permit ice and snow to accumulate on such sidewalk, he shall be guilty of a violation of this article and in addition, the director may cause such ice or snow to be cleared and the expense of removal, together with an expense for administrative overhead equal to 20 percent of the expense, shall become a debt to the city from the occupant or owner of such lot or property and shall be charged against the premises adjoining or abutting such sidewalk and the owner of the sidewalk in accordance with the provisions of section 66-19.

(Ord. No. 93-7, § 1(4.74), 7-19-93)

Sec. 70-88. Municipal authority and liability.

(a) *Authority.* Under specific authority granted by its city Charter in section 2.2(3)(iii), the city maintains the right to require the owners of real property to build and maintain public sidewalks in the area of street immediately adjacent to such property and, upon the failure of any owner to do so, construct and/or maintain such sidewalk and assess the cost thereof against such property as a special assessment. At the same time, the city Charter in section 2.2(4), authorizes the city to undertake any public work or make any public improvement or any repair or replacement thereof, either directly or by contract with public bodies or private persons. In combination, these two separate Charter provisions allow the city to compel the repair or replacement of sidewalks through either private or municipal efforts, and with the expenses incurred therefor to be attributable to either the municipality or, in whole or in part, the property owner, by way of special assessment.

(b) *Liability.* Nothing set forth in this section, either expressed or implied, shall abrogate, negate, alter, or limit any or all rights, protection, or

indemnification accorded the city in its role as a municipality of the state, under the cumulative legal doctrine generally referred to as, "governmental immunity"; or under any and all of the laws, statutes, regulations, or ordinances of the state and city, as from time to time amended.
(Ord. No. 93-7, § 1(4.75), 7-19-93)

Chapters 71—73

RESERVED

Chapter 74

SUBDIVISIONS*

Article I. In General

- Sec. 74-1. Short title.
- Sec. 74-2. Authority.
- Sec. 74-3. Scope and purpose.
- Sec. 74-4. Administration.
- Sec. 74-5. Definitions.
- Sec. 74-6. Additional definitions.
- Sec. 74-7. Validity.
- Sec. 74-8. Penalties.
- Sec. 74-9. Controlling provisions.
- Secs. 74-10—74-30. Reserved.

Article II. Preliminary Plat

- Sec. 74-31. Tentative preliminary plat.
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- Secs. 74-33—74-50. Reserved.

Article III. Final Plat

- Sec. 74-51. Application.
- Sec. 74-52. Review process.
- Sec. 74-53. Review standards.
- Secs. 74-54—74-70. Reserved.

Article IV. Required Improvements/Engineering and Design

- Sec. 74-71. Design standards and requirements.

***Editor's note**—Ord. No. 05-4, § 1, adopted May 10, 2005, amended the Code by the addition of a new Ch. 95, however, at the discretion of the editor, with the concurrence of the city, said provision have been redesignated as superseding the former provisions of Ch. 74. Former Ch. 74, §§ 74-1—74-6, 74-26—74-32, 74-56, 74-76, pertained to similar subject matter, and derived from Code 1972, §§ 5.232—5.237, 5.241—5.249.

Cross references—Administration, ch. 2; buildings and building regulations, ch. 18; environment, ch. 38; streets, sidewalks and other public places, ch. 70; utilities, ch. 82; zoning, ch. 94.

State law reference—Subdivision control act, MCL 560.101 et seq.

ARTICLE I. IN GENERAL

Sec. 74-1. Short title.

This chapter shall be known and may be cited as the "Subdivision Control Ordinance of the City of Dowagiac."

(Ord. No. 05-4, § 1(95-1), 5-10-05)

Sec. 74-2. Authority.

The regulations of this chapter are adopted pursuant to the statutory authority of Act No. 288 of the Michigan Public Acts of 1967, as amended, the Land Division Act.

(Ord. No. 05-4, § 1(95-2), 5-10-05)

Sec. 74-3. Scope and purpose.

(a) The approvals and requirements of this chapter shall be satisfied prior to the construction or installation of any subdivision within the City of Dowagiac. The approvals and requirements of this chapter shall be satisfied prior to the replatting of any subdivision.

(b) The purpose of this chapter is to provide regulations dealing with the subdivision or platting of land within the City of Dowagiac and to further promote and protect the public health, safety, and general welfare of the people of the city by providing for the orderly development of land within the city.

(Ord. No. 05-4, § 1(95-3), 5-10-05)

Sec. 74-4. Administration.

(a) This chapter shall be administered by the planning commission, city manager, and city council in accordance with the procedures set forth herein and the Land Division Act, as amended. The rules, regulations, and standards imposed by this chapter shall be considered to be the minimum requirements for the protection of the public health, safety, and general welfare of the citizens of the city; and in interpreting and applying them, primary consideration shall be given to these factors.

(b) The city council may establish by resolution inspection fees, inspection requirements, specification standards, and administrative procedures as provided by law and such shall be deemed to be requirements of this chapter.

(Ord. No. 05-4, § 1(95-4, 95-12), 5-10-05)

Sec. 74-5. Definitions.

The definitions of the Land Division Act, as amended, are hereby included and made a part of this chapter. Additional definitions are noted in the following section.

(Ord. No. 05-4, § 1(Art. II), 5-10-05)

Sec. 74-6. Additional definitions.

Act means the Land Division Act, being Act 288 of the Michigan Public Acts of 1967, as amended.

Applicant means the proprietor as defined by the Land Division Act of 1967, as amended.

As-built plans means revised construction plans drawn in accordance with all approved field changes.

Block means property abutting one side of a street and lying between the two nearest intersecting streets; or between the nearest such street and railroad right-of-way, unsubdivided acreage, river or live stream; or between any of the foregoing and any other barrier to the continuity of development.

City attorney means the legal counsel for the City of Dowagiac.

City engineer means the professional consulting engineer for the City of Dowagiac.

City planner means the professional planning staff or consultant for the City of Dowagiac.

Clerk means the City of Dowagiac Clerk.

Commission means the City of Dowagiac Planning Commission.

Council means the City of Dowagiac City Council.

Easement means a grant by the owner of the property of the use of a strip of land by the public, a corporation, or persons, for specific uses and

purposes, to be designated as a "public" or "private" easement, depending on the nature of the use.

Improvements means grading, street surfacing, curbs, gutters, sidewalks, sanitary sewers, storm drainage systems, culverts, bridges, utilities, and other additions to the natural state of land, which increases its value, utility, or habitability.

Master plan means the City of Dowagiac Master Plan.

Natural features and amenities means, but is not limited to, lakes, ponds, watercourses, floodplains, woodlands, and topography of the land.

Soil Erosion and Sedimentation Control Act means Act 347 of the Michigan Public Acts of 1972, as amended.

Street means any street, avenue, boulevard, road, lane, parkway, viaduct, alley, or other way which is an existing state, county, or municipal roadway; or a street or way shown in a plat heretofore approved pursuant to law or approved by official action; or a street or way on a plat duly filed and recorded in the office of the county register of deeds. A "street" includes a right-of-way dedicated to public use.

Zoning administrator means the person responsible for enforcement and administration of the City of Dowagiac Zoning Ordinance.

Zoning ordinance means the Zoning Ordinance of the City of Dowagiac.
(Ord. No. 05-4, § 1(95-5), 5-10-05)

Sec. 74-7. Validity.

If any section, subsection, sentence, clause, or phrase of this chapter is for any reason held to be unconstitutional or invalid such decision shall not affect the remaining portions of this chapter.
(Ord. No. 05-4, § 1(95-13), 5-10-05)

Sec. 74-8. Penalties.

(a) Any violation of any provision of this chapter is hereby declared to be a nuisance, per se. A violation of this chapter is municipal civil infraction, for which the fine shall be not less than

\$100.00 nor more than \$500.00 for the first offense and not less than \$500.00 nor more than \$1,000.00 for subsequent offenses, in the discretion of the court, and in addition to all other costs, damages, and expenses provided by law.

(b) For purposes of this section "subsequent offense" means a violation of the provisions of this chapter committed by the same person within 12 months of a previous violation of the same provision of this chapter for which said person admitted responsibility or was adjudicated to be responsible; provided however, that offenses committed on subsequent days within a period of one week following the issuance of a citation for a first offense shall all be considered separate first offenses. Each day during which any violation continues shall be deemed a separate offense.
(Ord. No. 05-4, § 1(95-14), 5-10-05)

Sec. 74-9. Controlling provisions.

In the event of any conflict between this chapter and other city ordinances, this chapter shall control.
(Ord. No. 05-4, § 1(95-15), 5-10-05)

Secs. 7-10—7-30. Reserved.

ARTICLE II. PRELIMINARY PLAT

Sec. 74-31. Tentative preliminary plat.

- (a) *Application.*
 - (1) An application for a tentative preliminary plat approval shall be submitted to the clerk at least 30 days prior to the next regularly scheduled meeting of the commission.
 - (2) The application shall consist of the following materials. Applications which do not have all of the materials noted below shall be considered incomplete and shall not be accepted.
 - a. A completed application form, supplied by the city.
 - b. An application fee which may be set by the council by resolution from time to time.

- c. Ten copies of a tentative preliminary plat drawing at a scale of not more than one inch equals 100 feet that complies with the act and shows, at a minimum, the following:
1. A scaled location map showing the location of the proposed preliminary plat within the city relative to streets, section lines watercourses, and other subdivisions within one mile of the proposed plat.
 2. The zoning classification of adjoining lands and names of adjoining subdivisions, including future phases of any proposed subdivision, or the owners and addresses of abutting parcels of land, if not within a subdivision.
 3. The names, right-of-way, and pavement widths of adjoining and proposed streets, including the location of all driveways on adjoining streets within 100 feet of the proposed plat.
 4. Exterior dimensions of the parcel or parcels being subdivided.
 5. The location, type, and dimensions of any easements, streets alleys, or other public ways crossing the parcel or parcels being subdivided, if any.
 6. The locations and nature of any natural features and amenities.
 7. The locations, size, and dimensions of proposed lots.
 8. The location, dimension, and use of any land set aside for public or private use, other than that proposed for the plat, if any.
 9. The location and dimensions of proposed drainage and utility easements.
 10. The location and size of all existing and proposed drainage ways and underground or above ground utilities.
 11. Site topography at two-foot intervals.
 12. The date of preparation, and the names of the plat, applicant, and the firm or individual preparing the plat.
 13. Scale, north arrow, permanent parcel number, and legal description.
 14. The buildable area of each lot, defined by the required front, side and rear year setbacks.
- (b) *Review process.*
- (1) *City manager review.*
 - a. The city manager shall receive and check for completeness the tentative preliminary plat as required under subsection (a)(2) herein. If complete and substantially in conformance with applicable municipal requirements, the city manager shall place the proposal on the agenda of the next regular commission meeting.
 - b. The city manager shall transmit a copy of the tentative preliminary plat to the city engineer, zoning administrator, and city planning for their technical review and recommendation.
 - (2) *Planning commission review.*
 - a. The commission shall conduct at least one public hearing for the purpose of receiving public comments on the proposed plat. Notification of the public hearing shall be the same as that required for special land uses in the zoning ordinance.
 - b. Following the public hearing the commission shall recommend to the council approval, denial, or approval with conditions. The commission shall state its reasons for such recommen-

dation. The minutes containing the record of the public hearing and the commission's recommendation shall be forwarded to the council and to the applicant prior to the council's consideration of the plat.

- c. The planning commission shall consider the applicable requirements of the city zoning ordinance and the engineering and design standards of section 74-71.
- d. The planning commission shall make its recommendation within 60 days of the application being filed.

(3) *City council review.*

- a. The council shall not consider the preliminary plat until receiving the recommendation of the commission.
- b. The council shall consider the preliminary plat at its next regularly scheduled meeting after receiving the recommendation of the commission. If the recommendation is not received within 60 days, a recommendation of approval shall be presumed.
- c. The council shall grant tentative approval, approval with conditions, or denial of the preliminary plat within 90 days of filing with the clerk, stating its reasons in writing for such approval, approval with conditions, or denial. Such reasons shall be based upon the standards of subsection (c) below and shall be submitted to the applicant.

(c) *Review standards.* The commission and council shall grant tentative preliminary plat approval upon reaching the following findings:

- (1) That the proposed lots comply with the requirements of the City of Dowagiac Zoning Ordinance.
- (2) That the design of the streets within the plat provide adequate and safe circulation with the plat and that sufficient consider-

ation has been given to providing access to adjacent vacant parcels within the same zoning district.

- (3) That lots are oriented to ensure safety of access to any street, to take best advantage of existing topography, and to preserve existing natural features and amenities.
- (4) That the plat conforms to the requirements of this chapter and any other applicable city laws or ordinances. A finding of compliance with city laws and ordinances does not preclude the applicant's need to also comply with applicable county, state or federal laws. Should the commission or council be aware of noncompliance with such county, state or federal laws, approval may be withheld.
- (5) That the council has received the recommendation of the commission regarding the tentative preliminary plat.

(d) *Approval.*

- (1) Tentative preliminary plat approval by the council shall confer upon the applicant approval of the lot sizes, lot orientation, and street layout of the proposed plat for a period of one year.
- (2) A tentative preliminary plat approval may be extended by the council if such extension is applied for in writing prior to the expiration of the tentative plat approval period and is supported by reasonable evidence justifying the extension.
- (3) Following tentative approval of the tentative preliminary plat, the applicant shall submit copies of such preliminary plat for the approval of the authorities note in the Land Division Act.

(Ord. No. 05-4, § 1(95-6), 5-10-05)

Sec. 74-32. Final preliminary plat.

(a) *Application.*

- (1) An application for a final preliminary plat shall be submitted to the clerk at least 20 days prior to the next regularly scheduled meeting of the council.

(2) The application shall consist of the following materials. Applications which do not have all of the materials notes below shall be considered incomplete and shall not be accepted.

- a. The requirements of subsection 74-31(a)(2) herein.
- b. Proof of approval of the plat from each of the authorities having jurisdiction as required by the Land Division Act, Sections 112—119. These proofs of approval shall include copies of all permits as may be required and issued by these authorities.

(b) *City council review.*

- (1) The council shall consider the final preliminary plat at its next regularly scheduled meeting after the filing of the application, or within 20 days, whichever occurs first.
- (2) The council shall grant final approval, approval with conditions, or denial of the final preliminary plat, stating in writing its reasons for such approval, approval with conditions, or denial.
- (3) Final approval shall be based upon the standards of subsection (c) below and the decision of the council shall be submitted to the applicant in writing.

(c) *Review standards.* The council shall grant final preliminary plat approval upon making the following findings:

- (1) That the final preliminary plat substantially conforms to the tentative preliminary plat approval, including any conditions placed on such approval.
- (2) That all required reviews have been completed and appropriate documentation of such approvals is provided.
- (3) That the plat conforms to the requirements of this chapter and any other applicable federal, state, or local laws or ordinances.

(d) *Approval.*

- (1) Final preliminary plat approval shall confer upon the applicant for a period of two years from the date of approval, the conditional right that the general terms and conditions under which final preliminary plat approval was granted will not be changed.
- (2) A final preliminary plat approval may be extended by the council for up to an additional two-year period if such extension is applied for in writing prior to the expiration of the tentative plat approval period and is supported by reasonable evidence justifying the extension.

(Ord. No. 05-4, § 1(95-7), 5-10-05)

Secs. 74-33—74-50. Reserved.

ARTICLE III. FINAL PLAT

Sec. 74-51. Application.

(a) An application for a final plat approval shall be submitted to the clerk at least 20 days prior to the next regularly scheduled meeting of the council.

(b) The application shall consist of the following materials. Applications which do not have all of the materials noted below shall be considered incomplete and shall not be accepted.

- (1) One mylar copy, one digital copy and three paper copies of the final plat, as required by the act.
- (2) Two paper copies of as-built plans for all completed improvements.
- (3) An abstract of the title certified to date, or, at the option of the applicant, a policy of title insurance for examination in order to ascertain whether or not the proper parties have signed the final plat.
- (4) Certification of a qualified individual indicating that construction of improvements has been satisfactorily completed, including evidence of inspections.

- (5) Cost estimates for any improvements that have not been completed.
(Ord. No. 05-4, § 1(95-8), 5-10-05)

Sec. 74-52. Review process.

(a) The council shall consider the final plat at its next regularly scheduled meeting or within twenty days after the filing of the application, whichever occurs first.

(b) The council shall grant final plat approval provided that the standards of section 74-53 below are met.

(c) In lieu of completion of all or portion of all improvements and with the specific consent of the council, final plat approval may be granted provided that as a condition of such approval, the applicant shall deposited with the city a true copy of an agreement showing that the applicant has deposited with a bank or other agent acceptable to the city, cash, certified check, irrevocable bank letter or credit, bond or other form of surety in an amount sufficient to guaranty the city the satisfactory construction, installation, completion and dedication of required improvements.

- (1) The amount of such deposit shall represent 100 percent of the estimated construction costs of completion of the required improvements, as determined by the city engineering. The applicant shall be responsible for providing a cost estimate to the city engineer for review.
- (2) Such deposit shall comply with all statutory requirements and shall be satisfactory to the city attorney as to form, sufficiency and manner of execution, as set forth in this chapter.
- (3) The city shall not accept dedication of required improvements, nor release nor reduce the guaranty or surety until:
 - a. The applicant has certified in a manner approved by the city attorney that the improvements have been completed and are free and clear of all liens and encumbrances;

- b. The city engineer has certified that the required improvements have been satisfactorily completed as required by the ordinances; and
- c. The applicant shall have provided certification indicating that construction of required improvements has been satisfactorily completed. This certification shall include evidence of inspections as required by the Land Division Act.

- (4) The guaranty or surety shall be reduced and refunded upon actual completion of required improvements and then only to the ratio that the completed improvement bears to the total improvements for the plat. In no event shall the surety be reduced below ten percent of the principal amount before final acceptance of all improvements by the council.
- (5) The city building inspector shall not issue building permits for construction of buildings or structures as regulated by the city's building code, except for signs permitted by the zoning ordinance, until all requirements have been completed.

(Ord. No. 05-4, § 1(95-9), 5-10-05)

Sec. 74-53. Review standards.

The city council shall grant final plat approval upon reaching the following findings:

- (1) That the final plat substantially conforms to the preliminary plat approval, including any conditions placed on such approval.
- (2) That all required reviews have been completed and appropriate documentation of such approvals is provided.
- (3) That the plat conforms to the requirements of this chapter and all other applicable city law or ordinances. A finding of compliance with city laws and ordinances does not preclude the applicant's need to also comply with applicable county, state or federal laws. Should the commission be

aware of noncompliance with such county, state or federal laws, approval may be withheld.

- (4) That construction of all improvements as required by the ordinance has been completed and financed, or a bond submitted in accordance with the provisions of subsection 74-52(c).

(Ord. No. 05-4, ;S; 1(95-10), 5-10-05)

Secs. 74-54—74-70. Reserved.

ARTICLE IV. REQUIRED IMPROVEMENTS/ENGINEERING AND DESIGN

Sec. 74-71. Design standards and requirements.

(a) *Street and access.*

- (1) All streets and driveways within the plat, and improvements to streets adjoining the plat, shall be constructed to the standards required by the city, unless more stringent requirements are contained herein.
- (2) Any plat shall be designed so that no lots have direct access to public street outside of the proposed plat. Access to lots within the plat shall only be provided by streets proposed as part of the plat. The council, upon recommendation of the planning commission, may grant direct access to such others streets provided that all of the following conditions are met:
- a. The proposed plat contains fewer than five lots.
 - b. The proposed plat has less than 400 feet of frontage on such street.
 - c. No practical alternative exists for access due to a physical on the site.
- (3) Offsetting streets at an intersection are prohibited unless the centerlines thereof are offset a minimum of 125 feet.
- (4) Block lengths shall not exceed 1,400 feet in length unless waived by the city council, after receiving a recommendation from

the planning commission and city engineer, based on a finding that at least one of the following conditions exist:

- a. That topography or other significant natural features preclude access to any other public street or adjoining property on which a public street may be conducted. Such significant natural features shall be clearly identified and marked on the proposed plat.
 - b. That not allowing a longer block would result in inefficient use of land. Alternate development plans demonstrating that no other development is feasible shall be submitted by the applicant and reviewed by the city council prior to confirming this finding.
 - c. That other methods of access are available such that emergency vehicles are assured a safe and unimpeded route of travel to the properties located within the block. Such access shall be reviewed by the fire chief and a recommendation forwarded to the planning commission.
- (5) Dead end streets or cul-de-sacs shall not exceed 800 feet in length from the nearest public street right-of-way from which access is gained, as measured along the centerline of the subdivision street to the furthest point of the cul-de-sac or dead end.
- a. The maximum length of a proposed dead end street or cul-de-sac may be exceeded if the city council, after recommendation of the planning commission, finds that at least one of the following conditions exists:
 1. That topography or other significant natural features preclude access to any other public street or adjoining property on which a public street may be constructed. Such significant

natural features shall be clearly identified and marked on the proposed plat.

2. That not allowing a longer dead end street or cul-de-sac would result in inefficient use of land. Alternate development plans demonstrating that no other development is feasible shall be submitted by the applicant and reviewed by the city council prior to confirming this finding.
 3. That other methods of access are available such that emergency vehicles are assured a safe and unimpeded route of travel to the properties served by the dead end street or cul-de-sac. Such access shall be reviewed by the fire chief and a recommendation forwarded to the planning commission.
- b. The city council, upon a finding that at least one of the above conditions exist, shall establish the maximum length of the proposed dead end street or cul-de-sac.
- (6) Streets shall be constructed with the standard, six-inch concrete curb and gutter. A concrete, rolled curb and gutter may be constructed with the approval of the city council, after receipt of a recommendation by the planning commission.
- (b) *Utilities.*
- (1) Public sanitary sewer and/or water shall be extended at the applicant's expense to serve the proposed plat where an appropriate connection is available within 500 feet of the boundary of such plat.
 - (2) Where such connections are not available the applicant may either pay for the extension of such utilities, or provide suitable private utility systems, subject to the approval of the Cass County Health Department.
 - (3) All other utilities shall be installed underground at the applicant's expense. All

such utilities shall be placed within private easements provided to such utility agencies, or within dedicated public rights-of-ways, as permitted by the agencies governing such rights-of-way.

- (4) All utilities shall conform to the construction standards of the City of Dowagiac or other appropriate agency or ordinance.
- (c) *Sidewalks.*
- (1) Sidewalks shall be required on both sides of any street serving the plat or any lot with the plat. Sidewalks may only be waived by the council in the following circumstances at their discretion:
 - a. Where no other public sidewalks are available on any adjoining street within 500 feet of the boundary of the proposed plat.
 - b. On cul-de-sac streets within such plat that are less than 500 feet in length.
 - c. Where the council determines that sidewalks are impractical due to physical limitations of the property.
 - (2) Sidewalks and pedestrian crosswalks shall be constructed according to the city's standards.
- (d) *Storm drainage.*
- (1) All storm drainage systems shall be designed, constructed, and maintained to the standards required by the City of Dowagiac, the Michigan Department of Environmental Quality, and any applicable city ordinance. Sufficient easements shall be provided for construction and maintenance of such drainage systems.
 - (2) The applicant shall demonstrate their intention to comply with the Soil Erosion and Sedimentation Control Act and provide a general description of the manner in which they intend to meet the requirement of that act.

(e) *Existing natural features and amenities.*

- (1) To the extent possible, existing natural features and amenities shall be preserved or where appropriate, replaced with the plat.
- (2) Where such features are required to be removed or altered or part of the plat design, the applicant shall certify to the council:
 - a. That the properties of the land which is part of the plat are such that no practical alternative designed to possible that would preserve such features.
 - b. That the removal or alteration of such features will not have an adverse effect on adjacent properties with respect to drainage, views, or other significant environmental effect.
 - c. That the removal or alteration of such features complies with all applicable federal state, and local laws and ordinances.
 - d. That financial considerations alone are not used to justify the removal or alteration of such features.
- (3) The council may require the installation of street trees or other landscaping or other action or compensate for the removal or alteration of natural features or amenities or to provide screening from adjacent properties or streets where deemed appropriate.

(f) *Street lighting.*

- (1) Street lighting shall be required.
- (2) Street lighting shall be installed in accordance with the standards of the City of Dowagiac or other appropriate agency or utility, provided however, in no case shall the spacing between lights be less than 300 feet.
- (3) Alternative street lighting, such as decorative lamps or other similar design may be installed, if approved by the council,

upon determination that lighting levels will be equivalent to standard street light.

- (4) The applicant shall enter into a special assessment agreement with the city for purpose of maintaining and operating the street lighting system. The agreement shall include all properties within the subdivision and shall cover all expenses associated with annual maintenance and operation of the system.

(g) *Lots.*

- (1) Every lot shall have frontage on a public, dedicated street and each lot shall meet the requirements of the City of Dowagiac Zoning Ordinance as to lot width and area.
- (2) Every lot shall contain sufficient buildable area to permit construction of a principal building in compliance with the requirements of the zoning ordinance.
- (3) Where there is a question about sufficient buildable area due to factors such as soil formations, flood conditions, high water table, or similar conditions, the planning commission shall withhold approval of such lots until a sufficient buildable area is provided. This may be accomplished through the combining with other lots or other such design which shall provide sufficient buildable area without the necessity of a zoning variance.
- (4) Corner lots in subdivisions located within any residential zoning district shall be platted at least ten feet wider than the minimum width required by the zoning ordinance.
- (5) Excessive lot depth in relation to width shall be avoided. A depth-to-width ratio not to exceed 3:1 shall be the maximum allowed.

(Ord. No. 05-4, § 1(95-11), 5-10-05)

Chapters 75—77

RESERVED

Chapter 78

TRAFFIC AND VEHICLES*

Article I. In General

Secs. 78-1—78-25. Reserved.

Article II. Uniform Traffic Code

Sec. 78-26. Code amendments and revisions adopted.
Sec. 78-27. References in the code.
Sec. 78-28. Notice to be published.
Sec. 78-29. Penalties.
Secs. 78-30—78-50. Reserved.

Article III. Stopping, Standing and Parking

Division 1. Generally

Sec. 78-51. Automobile parking system—Supervision.
Sec. 78-52. Same—Rates.
Sec. 78-53. Parking in designated areas.
Sec. 78-54. Garage and nonmetered lot parking; payment prior to removal.
Sec. 78-55. Metered parking.
Sec. 78-56. Vehicle abandonment; impoundment; release; charges; disposition of vehicles; violation.
Sec. 78-57. Presumption from ownership.
Secs. 78-58—78-70. Reserved.

Division 2. Parking Violations Bureau

Sec. 78-71. Established; supervision and control.
Sec. 78-72. Location; rules.
Sec. 78-73. Authority for processing and disposition of violations.
Sec. 78-74. Disposition generally.
Sec. 78-75. Notice of violation.
Sec. 78-76. Schedule I, Uniform Traffic Code violations.
Sec. 78-77. Schedule II, Uniform Traffic Code violations.
Sec. 78-78. Schedule III, Uniform Traffic Code violations.
Sec. 78-79. Notice of overtime, illegal or double parking; payment of fine.
Secs. 78-80—78-100. Reserved.

Article IV. Railroads

Sec. 78-101. Crossing street; movement timings.
Secs. 78-102—78-120. Reserved.

***Cross references**—Administration, ch. 2; police regulations and civil infractions, ch. 58; streets, sidewalks and other public places, ch. 70.

State law references—Michigan Vehicle Code, MCL 257.1 et seq.; regulation by local authorities, MCL 257.605, 257.606, 257.610.

DOWAGIAC CODE

Article V. Bicycles

- Sec. 78-121. Definitions.
- Sec. 78-122. In central business district.
- Sec. 78-123. Responsible use.
- Sec. 78-124. Speed limit.
- Secs. 78-125—78-140. Reserved.

Article VI. Michigan Vehicle Code

- Sec. 78-141. Code, amendments and revisions adopted.
- Sec. 78-142. Reference in the code.
- Sec. 78-143. Notice to be published.
- Sec. 78-144. Penalties.

ARTICLE I. IN GENERAL**Secs. 78-1—78-25. Reserved.****ARTICLE II. UNIFORM TRAFFIC CODE*****Sec. 78-26. Code amendments and revisions adopted.**

The Uniform Traffic Code for cities, townships and villages as promulgated by the Director of the Michigan Department of State Police pursuant to the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.201 to 24.328 and made effective October 30, 2002, and all future amendments and revisions of the Uniform Traffic Code when they are promulgated and effective in this state are incorporated and adopted by reference. (Ord. No. 03-10, § 1, 1-21-04)

Sec. 78-27. References in the code.

References in the Uniform Traffic Code for cities, townships and villages to a "governmental unit" shall mean the City of Dowagiac. (Ord. No. 03-10, § 2, 1-21-04)

Sec. 78-28. Notice to be published.

The city clerk shall publish the ordinance from which this article derives in the manner required by law and shall publish, at the same time, a notice stating the purpose for the Uniform Traffic Code for cities, townships and villages and the fact that a complete copy of the code is available to the public at the office of the clerk for inspection. (Ord. No. 03-10, § 3, 1-21-04)

Sec. 78-29. Penalties.

The penalties provided by the Uniform Traffic Code for cities, townships and villages are adopted by reference. (Ord. No. 03-10, § 4, 1-21-04)

***Editor's note**—Ord. No. 03-20, §§ 1—4, adopted Jan. 21, 2004, did not specifically amend the Code and has been included herein as superseding the provisions of former §§ 78-26—78-29, relative to the Uniform Traffic Code, which derived from Ord. No. 00-6, § 1, adopted July 27, 2000.

State law reference—Authority to adopt Uniform Traffic Code, MCL 257.951 et seq.

Secs. 78-30—78-50. Reserved.**ARTICLE III. STOPPING, STANDING AND PARKING****DIVISION 1. GENERALLY****Sec. 78-51. Automobile parking system—Supervision.**

The automobile parking system of the city shall be under the supervision and direction of the city manager. (Code 1972, § 2.141)

Sec. 78-52. Same—Rates.

The rates for parking in off-street parking lots and structures, operated as a part of the automobile parking system, shall be established by resolution of the city council from time to time upon recommendation of the city manager. Such rates need not be uniform throughout the system, but shall be based upon demand for parking in the area which the lot or structure serves and such other considerations as the council shall deem pertinent. (Code 1972, § 2.142)

Sec. 78-53. Parking in designated areas.

No person shall park any motor vehicle in any parking lot or structure other than within the boundaries of the space designated as allocated for the parking of a single motor vehicle, by appropriate lines or other markings. Any person parking any motor vehicle in any parking lot or structure otherwise than as prescribed in this section, shall be guilty of a violation of this article. (Code 1972, § 2.143)

Sec. 78-54. Garage and nonmetered lot parking; payment prior to removal.

Every person who parks a motor vehicle in any nonmetered parking lot or garage of the automobile parking system shall pay the rates duly established for such parking before removing the vehicle from the parking lot or structure. (Code 1972, § 2.144)

Sec. 78-55. Metered parking.

Along city streets with designated spaces for parking and parking meters and in parking lots of the city automobile parking system, where parking charges are collected by means of parking meters installed adjacent to the parking spaces in the lots, no person shall:

- (1) Park a motor vehicle in any metered space without placing a United States coin of proper denomination in the meter in accordance with the regulations posted on the meters during the hours the regulations require the payment of parking charges.
- (2) Permit a motor vehicle in his custody, or owned by him, to remain in any metered zone except while lawful parking time appears on the meter regulating the space occupied by such motor vehicle.
- (3) Deface, injure, open or tamper or attempt to deface, injure, open or tamper with any parking meter installed on any public street or any such parking lot, except as authorized by the city manager.

(Code 1972, § 2.145)

Sec. 78-56. Vehicle abandonment; impoundment; release; charges; disposition of vehicles; violation.

Any motor vehicle parked for over 24 consecutive hours in any parking lot or structure of the system, shall be deemed abandoned and may be removed by the city and impounded. Any motor vehicle otherwise parked in violation of this article, may be removed by the city from the parking lot or structure in which it is parked and impounded. Any vehicle so impounded by the city shall not be released to the owner until all parking charges, storing and towing charges shall have been paid by the owner. The procedure for disposing of impounded vehicles shall be as specified in this chapter. The abandonment of a vehicle as defined in this section shall constitute a violation of this article.

(Code 1972, § 2.146)

Sec. 78-57. Presumption from ownership.

In any proceeding for violation of the provisions of this article relating to parking, proof that the particular vehicle described in the complaint was parked in violation of this article, together with proof that the defendant named in the complaint was at the time of such parking the registered owner of such vehicle, shall constitute in evidence a presumption that the registered owner of such vehicle was the person who parked or placed such vehicle at the point where, and for the time during which, such violation occurred.

(Code 1972, § 2.147)

Secs. 78-58—78-70. Reserved.

DIVISION 2. PARKING VIOLATIONS BUREAU

Sec. 78-71. Established; supervision and control.

Pursuant to section 8395 of the Revised Judicature Act, Act No. 154 of the Public Acts of Michigan of 1968 (MCL 600.8395), as amended, a parking violations bureau, for the purpose of handling alleged parking violations within the city, is hereby established. The parking violations bureau shall be under the supervision and control of the city manager.

(Ord. No. 94-10, § 1(10.31), 11-7-94)

Sec. 78-72. Location; rules.

The city manager shall, subject to the approval of the city council, establish a convenient location for the parking violations bureau, appoint qualified city employees to administer the bureau and adopt rules and regulations for the operation of the parking violations bureau.

(Ord. No. 94-10, § 1(10.32), 11-7-94)

Sec. 78-73. Authority for processing and disposition of violations.

The parking violations bureau shall have authority to process and dispose of any and all violations written subject to, and included under section 78-77. Violations written subject to, and included under section 78-77 may also be pro-

cessed through and disposed of at the court of record having competent jurisdiction thereover, according to the terms and conditions described in section 78-74. The parking violations bureau shall have no authority over, nor exercise any control or discretion with regard to, the processing or disposition of violations committed and included under section 78-77 or 78-79.

(Ord. No. 94-10, § 1(10.33), 11-7-94)

Sec. 78-74. Disposition generally.

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

(Ord. No. 94-10, § 1(10.34), 11-7-94)

Sec. 78-75. Notice of violation.

The issuance of a traffic ticket or notice of violation by a police officer or parking violations officer of the city shall be deemed an allegation of

a parking violation. Such traffic ticket or notice of violation shall indicate the length of time in which the person to whom the same was issued must respond before the parking violations bureau. It shall also indicate the address of the bureau, the hours during which the bureau is

open, the amount of the penalty scheduled for the offense for which the ticket was issued, and it must advise that a warrant for the arrest of the

person to whom the ticket was issued will be sought if such person fails to respond within the time limited.
(Ord. No. 94-10, § 1(10.35), 11-7-94)

Sec. 78-76. Schedule I, Uniform Traffic Code violations.

The following is schedule I of the Uniform Traffic Code:

<i>Offense</i>	<i>UTC Section</i>	<i>1972 Code (Illustrative purposes only, not part of ordinance amendment)</i>	<i>Within 48 hours</i>	<i>Within seven days</i>	<i>Thereafter</i>
Parking too far from curb	(8.1, 8.2)	\$2.00	\$4.00	\$ 7.00	\$14.00
Angle parking violations	(8.3)	2.00	4.00	7.00	14.00
Obstructing traffic (Ord. No. 94-10, § 1(10.36), 11-7-94)	(8.5)	5.00	9.00	13.00	17.00

Sec. 78-77. Schedule II, Uniform Traffic Code violations.

The following is schedule II of the Uniform Traffic Code:

<i>Offense</i>	<i>UTC Section</i>	<i>1972 Code (Illustrative purposes only, not part of ordinance amendment)</i>	<i>Within 48 hours</i>	<i>Within seven days</i>	<i>Thereafter</i>
Prohibited parking (signs unnecessary)	(8.10)				
(1) On sidewalk		\$ 5.00	\$ 9.00	\$13.00	\$17.00
(2) In front of drive		5.00	9.00	13.00	17.00
(3) Within intersection		10.00	14.00	18.00	22.00
(4) Within 15 feet of hydrant		5.00	9.00	13.00	17.00
(5) On crosswalk		5.00	9.00	13.00	17.00
(6) Within 20 feet of crosswalk or 15 feet of corner lot lines		5.00	9.00	13.00	17.00

<i>Offense</i>	<i>UTC Section</i>	<i>1972 Code (Illustrative purposes only, not part of ordinance amendment)</i>	<i>Within 48 hours</i>	<i>Within seven days</i>	<i>Thereafter</i>
(7) Within 30 feet of street side traffic sign or signal		5.00	9.00	13.00	17.00
(8) Within 50 feet of railroad crossing		5.00	9.00	13.00	17.00
(9) Within 20 feet of fire station entrance		5.00	9.00	13.00	17.00
(10) Within 75 feet of fire station entrance on opposite side of street (signs required)		5.00	9.00	13.00	17.00
(11) Obstructing traffic		5.00	9.00	13.00	17.00
(12) No parking 2:00 a.m. to 6:00 a.m. (November through March, inclusive; signs required) during any period when snow removal/plowing is ongoing and/or anticipated. No parking Central Business District, 3:00 a.m. to 6:00 a.m. (November through March, inclusive)		5.00	9.00	13.00	17.00
(13) Double parking		5.00	9.00	13.00	17.00
(14) On bridge or viaduct or within tunnel		10.00	14.00	18.00	22.00
(15) Within 200 feet of accident where police in attendance		3.00	4.00	7.00	10.00
(16) In front of theater		3.00	4.00	7.00	10.00
(17) Blocking emergency exit		5.00	9.00	13.00	17.00
(18) Blocking fire escape		5.00	9.00	13.00	17.00
In prohibited zone (signs required)	(8.10(r))	3.00	4.00	7.00	10.00
Overtime (signs required) two-hour parking		2.00	4.00	7.00	10.00

<i>Offense</i>	<i>UTC Section</i>	<i>1972 Code (Illustrative purposes only, not part of ordinance amendment)</i>	<i>Within 48 hours</i>	<i>Within seven days</i>	<i>Thereafter</i>
In alley	(8.13)	3.00	4.00	7.00	10.00
Unattended vehicle	(5.58)		9.00	13.00	17.00
Lawn extension parking	(8.26)		9.00	13.00	17.00
(19) In prohibited zone (signs required)					
(20) Overtime (signs required) three-hour parking					

(Ord. No. 94-10, § 1(10.37), 11-7-94; Ord. No. 97-1, § 1, 2-21-97; Ord. No. 99-7, § 1, 11-30-99; Ord. No. 99-7, § 1, 11-30-99; Ord. No. 10-5, § 1, 8-24-10)

Sec. 78-78. Schedule III, Uniform Traffic Code violations.

The following is schedule III of the Uniform Traffic Code:

<i>Offense</i>	<i>UTC Section</i>	<i>1972 Code (Illustrative purposes only, not part of ordinance amendment)</i>	<i>Within 48 hours</i>	<i>Within seven days</i>	<i>Thereafter</i>
Parking for prohibited purpose	(8.14)				
(1) Displaying vehicle for sale		\$3.00	\$4.00	\$ 7.00	\$10.00
(2) Working on or repairing vehicle		3.00	4.00	7.00	10.00
(3) Displaying advertising		3.00	4.00	7.00	10.00
(4) Selling merchandise		3.00	4.00	7.00	10.00
(5) Storage over 48 hours		5.00	9.00	13.00	17.00
Wrong side boulevard roadway	(8.15)	2.00	4.00	7.00	10.00
Loading zone violation	(8.16, 8.17)	2.00	4.00	7.00	10.00
Bicycle parking violations	(6.17)	2.00	4.00	7.00	10.00
(Ord. No. 94-10, § 1(10.38), 11-7-94)					

Sec. 78-79. Notice of overtime, illegal or double parking; payment of fine.

Prior to the filing of a complaint for overtime parking, illegal parking, or double parking, except in the case of repeated offenders, the police department of the city shall first deposit on the automobile illegally parked, overtime parked or double parked, a notice stating that if a specified sum as provided in this division shall be deposited with the traffic violations bureau of the city or in receptacles designated by the chief of the traffic violations bureau within 72 hours after the placing of the notice on the motor vehicle, no complaint will be made by the police department for illegal parking, overtime parking, or double parking.

(Code 1972, §§ 10.38, 10.39; Ord. No. 94-10, § 1(10.39), 11-7-94)

Secs. 78-80—78-100. Reserved.

ARTICLE IV. RAILROADS

Sec. 78-101. Crossing street; movement timings.

No engine, locomotive, car or train of cars on any railroad located or partially located within the city shall move or be moved across any highway within the city at the same time or within three minutes of another engine, locomotive, car, or train of cars on a railroad having moved or been moved across the same highway or street crossing within the city limits. Any engineer, conductor or person having charge of any such engine, locomotive, car or train of cars on a railroad within the city who shall cause such movement in violation of this section shall be guilty of a violation of this article, punishable by a fine of not more than \$100.00 and by imprisonment in the county jail for a period of not to exceed 90 days, or both.

(Code 1972, § 10.62)

Secs. 78-102—78-120. Reserved.

ARTICLE V. BICYCLES

Sec. 78-121. Definitions.

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

Bicycle means any nonmotorized wheeled vehicle used to transport a person by means of muscular power, propelled solely by the effect of its rider. For purposes of this article, the term "bicycle" shall include the separate terms "unicycle," "tricycle," "tandem bicycle," "scooter," and "pedicab."

(Ord. No. 93-11, § 1(10.41), 10-4-93)

Cross reference—Definitions generally, § 1-2.

Sec. 78-122. In central business district.

No person shall use, operate or permit the use or operation of any bicycle on any public sidewalk in the central business district of the city. For purposes of this article, the central business district of the city shall include, and be limited to, the following boundaries:

- (1) South Front Street from its Division Street intersection to its Park Place intersection.
- (2) Pennsylvania Avenue from its Division Street intersection to its Main Street intersection.
- (3) Commercial Street from its West Division Street intersection to Depot Drive.
- (4) Beeson Street from its South Front Street intersection to its Depot Drive intersection.
- (5) Depot Drive from its intersection at Park Place to its Division Street intersection.

(Ord. No. 93-11, § 1(10.42), 10-4-93)

Sec. 78-123. Responsible use.

The use and operation of any bicycle is hereby permitted on all other public sidewalks, streets and other public ways within the city; provided, however, that any person who shall use, operate or permit to be used or operated any bicycle on any street, sidewalk, parking lot or other public way shall do so in a safe and prudent manner so

as not to cause or be likely to cause harm or the imminent threat of harm to any person or property.

(Ord. No. 93-11, § 1(10.43), 10-4-93)

sion of the Michigan Vehicle Code for which the maximum period of imprisonment is greater than 93 days.

(Ord. No. 03-9, § 4, 1-21-04)

Sec. 78-124. Speed limit.

No bicycle shall be operated or be permitted to operate on public sidewalks within the city at speeds in excess of ten miles per hour. Persons operating or permitting the operation of bicycles in excess of this limit shall be in violation of the provisions of this article.

(Ord. No. 93-11, § 1(10.44), 10-4-93)

Secs. 78-125—78-140. Reserved.

ARTICLE VI. MICHIGAN VEHICLE CODE

Sec. 78-141. Code, amendments and revisions adopted.

The Michigan Vehicle Code, 1949 PA 300, MCL 257.1 to 257.923, and all future amendments and revisions to the Michigan Vehicle Code when they are effective in this state are incorporated and adopted [herein] by reference.

(Ord. No. 03-9, § 1, 1-21-04)

Sec. 78-142. Reference in the code.

References in the Michigan Vehicle Code to "local authority" shall mean the City of Dowagiac.

(Ord. No. 03-9, § 2, 1-21-04)

Sec. 78-143. Notice to be published.

The city clerk shall publish the ordinance from which this article derives in the manner required by law and shall publish, at the same time, a notice stating the purpose for the Michigan Vehicle Code and the fact that a complete copy of the code is available to the public at the office of the clerk for inspection.

(Ord. No. 03-9, § 3, 1-21-04)

Sec. 78-144. Penalties.

The penalties provided by the Michigan Vehicle Code are adopted [herein] by reference, provided, however, that the city may not enforce any provi-

Chapters 79—81

RESERVED

Chapter 82

UTILITIES*

Article I. In General

- Sec. 82-1. Definitions.
- Sec. 82-2. Interpretation and enforcement.
- Sec. 82-3. Application for service/service use change/resale of service.
- Sec. 82-4. Outstanding utility bills.
- Sec. 82-5. City liability.
- Sec. 82-6. Customer's liability.
- Sec. 82-7. Service deposits.
- Sec. 82-8. Budget plan.
- Sec. 82-9. Automatic payment plan.
- Sec. 82-10. Field service work; general fees.
- Sec. 82-11. Billing/payment procedures.
- Sec. 82-12. Collection.
- Sec. 82-13. Disconnect procedures.
- Sec. 82-14. Restoration of service.
- Sec. 82-15. Access to premises.
- Sec. 82-16. Selection of equipment.
- Sec. 82-17. Approval of equipment.
- Sec. 82-18. Extra expense due to overtime and adverse conditions.
- Sec. 82-19. Overcharges, undercharges and adjustments to customer accounts.
- Sec. 82-20. Meters—Size; location; protection.
- Sec. 82-21. Additional meters.
- Sec. 82-22. Remote water/wastewater meter readers.
- Sec. 82-23. Automatic account transfers for rental units.
- Sec. 82-24. Landlord/tenant policy for rental properties.
- Sec. 82-25. Underground facilities on customer's premises.

Article II. City Water Utility

- Sec. 82-26. Definitions
- Sec. 82-27. Water connections.
- Sec. 82-28. Turning on water service.
- Sec. 82-29. Water meters.
- Sec. 82-30. Access to meters.
- Sec. 82-31. Reimbursement for damaged meters.
- Sec. 82-32. Meter failure.
- Sec. 82-33. Hydrant use.
- Sec. 82-34. Regulation of water service.
- Sec. 82-35. Additional regulations.
- Sec. 82-36. Injury to facilities.
- Sec. 82-37. Cross-connections.
- Sec. 82-38. Administrative liability.
- Secs. 82-39—82-60. Reserved.

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- Sec. 82-61. Purpose of article.

*Cross references—Administration, ch. 2; buildings and building regulations, ch. 18; cable communications, ch. 26; fire prevention and protection, ch. 42; streets, sidewalks and other public places, ch. 70; subdivisions, ch. 74; zoning, ch. 94.

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- Sec. 82-62. Definitions.
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ARTICLE I. IN GENERAL

Sec. 82-1. Definitions.

The following words, terms and phrases, shall have the meanings ascribed to them except where the context clearly indicates a different meaning:

City means City of Dowagiac and the departments thereof.

Commodity charge means a charge or charges based on the quantity of electric or water measured or estimated as passing to the premises of the customer or sewage measured or estimated as passing from the premises of the customer.

City construction cost means the cost of labor, equipment rental, and materials plus 15 percent plus any contractual costs.

Cross connection means a connection or arrangement of piping or appurtenances through which water of questionable quality, wastes or other contaminants, can enter the public water supply system.

Customer means any person, party, company or institution which is supplied with a service by a utility.

Customer's water service means any water supply piping from the city provided curb stop to the building plumbing.

Department means the department of public services of the city.

Disconnect notice means that from which is mailed to delinquent utility customers informing them of the amount due, future service charges and pending disconnection of utility services if payment is not received by the date and time specified within the notice.

Finalled account means a utility account that has been billed for services through the last (final) day of use by the customer of account.

Lien customer means a customer for whom a lien on the premises to which utility services are supplied is available to the city as provided in subsection 82-12(a).

Low-income energy assistance funding factor means a nonbypassable surcharge approved by the Michigan Public Service Commission as authorized by 2013 PA 95, MCL 460.9t on each retail billing meter payable monthly by every customer receiving retail electric service.

Non-lien customer means a customer for whom a lien on the premises to which utility services are supplied is not available to the city as provided in subsection 82-12(a).

Non-lien deposit means a cash deposit required for a non-lien customer in an amount not less than two times the average monthly utility bills for the prior 12 full months during which utility services were furnished or supplied to the premises for which application is being made or, in the case of new premises, in an amount not less than two times the estimated average monthly utility bills.

Potable water means a water supply that does not contain contamination or infectious material and is considered satisfactory for drinking.

Premises means a parcel of land and the buildings upon it.

Service means the equipment used to deliver and measure the commodity delivered to the customer.

Tampering means the unauthorized alteration of a water or electric meter or other related facilities to obtain utility service or to circumvent the measurement of actual utility consumption, excluding vandalism or accidental damage.

Utilities means all city-owned electric, water/or and sewer facilities and city departments organized to deliver respective commodities and associated services.

Utility cash deposit means cash deposited by a customer as a condition of providing electric, water and/or sewer to a customer. (Ord. No. 05-6, § 1, 5-10-05; Ord. No. 19-2, § 1, 5-28-19)

Sec. 82-2. Interpretation and enforcement.

All city utilities shall be under the management, supervision and control of the city manager,

who may employ or designate such person or persons in such capacity or capacities as deemed advisable to carry out the efficient management and operation of the city utilities system. The city manager may make and issue rules and regulations concerning the utilities, not inconsistent herewith. Such rules and regulations shall be effective upon approval by the city council. The rules and regulations now in effect shall continue until changed in accordance with this section. Failure of the city to enforce any requirement of its rules and regulations shall not be deemed a waiver of its right to do so. Copies of these rules, regulations and rates are available at the city offices at 241 South Front Street, Dowagiac, Michigan, and are open to public inspection.

(Ord. No. 05-6, § 1, 5-10-05)

Sec. 82-3. Application for service/service use change/resale of service.

(a) A written agreement may be required from each customer before service will be commenced. A copy of the agreement will be furnished to the customer upon request.

(b) Prospective customers shall be responsible for ascertaining from the city whether the proper type and size of service delivery equipment is available at a particular location when planning the purchase and/or installation of any service connection utility equipment.

(c) All rates for utility services are based upon the furnishing of each customer service at a single point, from which point the total requirements of each separate premise of the customer will be supplied unless otherwise agreed upon by the department and other authorities.

(d) In no case will services be connected to another or commodities transmitted off the premises to which it is delivered. Services taken at different premises shall be separately measured and billed.

(e) It is the responsibility of the customer to promptly notify the city of any change in commodity use which will affect the basic rate applicable to such use. No retroactive charges or

credits will be made due to the difference in charges under different rates if either the city or the customer selects a different rate.

(f) No customer shall resell city delivered commodity to others. The renting of a premises, with the cost of some or all city delivered commodity included in the rental as an incident of tenancy, will not be considered a resale of such services as defined herein.

(Ord. No. 05-6, § 1, 5-10-05)

Sec. 82-4. Outstanding utility bills.

The city may refuse making utility services available to anyone who has outstanding or delinquent utility accounts or merchandise bills with the utility or the city.

(Ord. No. 05-6, § 1, 5-10-05)

Sec. 82-5. City liability.

(a) City utility services are subject to shutdowns, variations and interruptions necessitated by improvements, repairs and/or operation of the system. Whenever possible, notice of intent to temporarily discontinue service will be given to the customer. The city shall not be liable for loss or damage because of temporary interruption in service or because of inadequate or excessive quantity or quality due to events of nature, public enemy, accidents, labor disputes, normal maintenance, or acts of civil or military authorities. Further, the city shall not be liable for damages in case such supply should be interrupted due to causes or conditions beyond the city's reasonable control, including extraordinary repairs, breakdowns, or injury to the machinery, transmission lines, distribution lines, or other facilities in the city, or acts of the city taken to prevent or limit the extent or duration of interruptions or disturbances of service to the city's system.

(b) The city takes no responsibility for lost, delayed, damaged or misdirected mail, either to the customer or to the city. All city customers will be notified of their current billing status by means of a statement form mailed through the United States Postal Service after the billing date for each monthly cycle. All delinquent customers will be notified of the amount in

arrears by means of a final notice mailed approximately seven days prior to the scheduled date of disconnect. Services are established upon signed order of the customer.

(c) No officer, agent, or employee of the city shall render themselves as personally liable for any damages that may occur to any person as a result of any action required or permitted in the discharge of their duties under and in the enforcement of city utility operations.
(Ord. No. 05-6, § 1, 5-10-05)

Sec. 82-6. Customer's liability.

(a) In the event of loss or damage to the property of the city through misuse, or the negligence of the customer or the employees of the same, the cost of the necessary repairs or replacement thereof shall be paid to the city by the customer.

(b) The customer shall be responsible to assure that no one makes any internal or external adjustments to or otherwise interferes with or breaks the seals of meters or other equipment of the city installed on the customer's premises.

(c) The city shall have the right at all reasonable hours to enter the premises of the customer for the purpose of installing, reading, maintaining, removing, testing, replacing or otherwise disposing of its service apparatus and property.
(Ord. No. 05-6, § 1, 5-10-05)

Sec. 82-7. Service deposits.

The city shall require a utility cash deposit as a condition of providing electric, water and/or sewer to a customer according to the following terms and conditions:

- (1) *Level I deposit.* All applicants for a new service must pay the cash deposit amounts as indicated below before the city makes any new utility service available to the applicant. All lien customers shall receive a 50 percent discount on the deposit required if a letter of credit is provided to the city from a previous utility company

stating that all payments have been current for the last six months with no penalties.

If an applicant for a new service has any outstanding bills with the city as defined in section 82-4, "outstanding utility bills", all such outstanding bills must be paid in full before the city will accept any deposits for application for a new utility service or will make any new utility service available to the applicant. Once these bills are paid in full, the applicant must pay the deposit amounts stated below to obtain utility service. A deposit discount will not be provided.

The following level I deposits shall be required from customers as specified in addition to the deposits required from customers who fall under subsections (2) or (3) of this section:

- a. A deposit of \$120.00 shall be required for all lien customers having only electric service.
- b. A deposit of \$200.00 shall be required for all lien customers having electric and water and/or sewer services.
- c. A deposit of \$80.00 shall be required for all lien customers having only water and/or sewer services.
- d. A non-lien deposit shall be required for all non-lien customers. The city shall calculate or estimate the amount of the required non-lien deposit according to the definition of non-lien deposit in section 82-1.
- e. In the event of a disconnection of a customer's electric, water or sewer service, upon the first disconnection, an additional deposit amount of \$50.00 shall be required for reconnection. A second disconnection shall require an additional deposit amount of \$75.00 for reconnection. A third disconnection shall require an additional deposit amount of \$100.00, prior to reconnection. All increased deposit amounts shall be in addition to the deposits required under

subsections (1)a.—d. of this section, but in no case shall the total deposit for a customer under level I exceed \$1,000.00.

- f. A deposit of \$80.00 shall be required for all "renting" customers having only water and/or sewer services.
- g. In the event of a disconnection of a renters electric, water or sewer service, upon the 1st disconnection, an additional deposit amount of \$50.00 shall be required for reconnection. A 2nd disconnection shall require an additional deposit amount of \$75.00 for reconnection. A 3rd disconnection shall require an additional deposit amount of \$100.00, prior to reconnection. In no case shall the total deposit for all renting customers exceed \$455.00. All increased deposit amount shall be in addition to the required renter service deposit.

Upon closing or the finaling of an account, all remaining deposit amounts shall be returned to the customer in accordance with subsection (4)c. of this section.

- (2) *Level II deposit.* Under certain conditions a level II deposit of \$50.00 shall be required in addition to any other utility deposits. A level II deposit is required in order to apply for a new utility service or to avoid immediate disconnection. A level II deposit will be required under the following conditions:
 - a. The customer has requested service under a new utility account and the same customer is responsible for a previous city utility account which has been delinquent for a period of 20 days (i.e., old account must be paid plus level II deposit in order to obtain a new service or to avoid disconnection).
 - b. The customer misrepresented his or her identity.
 - c. The customer requested service at a household in which an unpaid util-

ity bill exists that was incurred by another household member who still resides at that same household.

- (3a) *Level III deposit.* Under certain conditions, a level III deposit of \$100.00 shall be required in addition to any other utility deposits. A level III deposit is required in order to apply for a new utility service or to avoid immediate disconnection. In order to obtain a new service, be reconnected or to avoid immediate service disconnection, a level III deposit must be paid. A level III deposit will be required if the customer or applicant in an unauthorized manner, used, diverted or interfered with (tampered or vandalized) the service of any city utility within the last six years.
- (3b) *Level IV deposit:* Under certain conditions, a level IV deposit of \$200.00 shall be required in addition to any other utility deposits. A level IV deposit will be required for a new service if the customer or applicant has left an outstanding bill which was recovered through placement of a utility lien.
- (4) *Deposits—General conditions.* A deposit that is required pursuant to these rules shall be subject to all of the following terms and conditions:
 - a. Deposits for service shall draw no interest.
 - b. Before the city applies any deposit against a customer's account or returns any deposit to a customer, it shall have a reasonable time in which to read the meters and to ascertain that the obligations of the customer have been fully performed.
 - c. If the city has not already returned the deposit and service has been discontinued, the deposit will be applied to any unpaid bills and charges. The city may apply the deposit against any existing arrearage. The balance of the deposit, if any, shall be returned to the customer.

- d. The city reserves the right to transfer any amounts outstanding on any finalled accounts of a given customer to any active accounts of that same customer if not paid in full by the due date of the finalled account.
- e. In cases of bankruptcies, deposits will be credited to any outstanding account balances as of the court file date. New deposits may be required for post-petition balances according to the above and in conformance with bankruptcy laws.
- f. If an applicant for service cannot provide positive identification (a valid driver's license or a state-issued I.D. card), then a level I deposit with no discount shall be required. Other items such as federal food stamp cards, voter registration cards, credit cards, discount club membership cards, machine-made I.D. cards, etc., shall not be considered positive identification.
- g. If an applicant for service cannot provide positive identification (a valid driver's license or a state-issued I.D. card), then a level I deposit with no discount shall be required. Other items such as federal food stamp cards, voter registration cards, credit cards, discount club membership cards, machine-made I.D. cards, etc., shall not be considered positive identification.
- h. All applicants having only sewer service must have the service placed in the owner's name.
- i. Once a "non-renter" has established a current payment history with the city, a deposit will not be required should the applicant request utility service at a new location. Should the applicant subsequently be disconnected for a violation of any utility ordinance they will be required to pay any deposits as required of an applicant without acceptable credit

history. Further, their utilities will not be turned on until all amounts, including the deposits required, have been paid in full.

(Ord. No. 05-6, § 1, 5-10-05; Ord. No. 07-5, § 1, 5-30-07; Ord. No. 08-4, § 1, 5-13-08; Ord. No. 10-1, § 1, 6-15-10; Ord. No. 10-2, § 1, 6-15-10; Ord. No. 10-6, § 1, 11-23-10; Ord. No. 16-5, § 1, 7-28-16; Ord. No. 19-2, § 2, 5-28-19)

Sec. 82-8. Budget plan.

(a) All utility customers of the City of Dowagiac shall have the option of joining the city's utility budget plan. The city will calculate the average utility billing during the prior 12 months billing history. In cases where no prior history exists, the city will estimate the budget payment based upon average usage.

(b) Forms for the city's budget plan are available at the city's utilities office. Only those customer's whose current utility accounts are paid in full, shall be eligible to pay under the utility budget plan. Budget payments will be due on the tenth of each month.

(c) Any late or missed budget payments will result in the voiding of the budget agreement. If it shall be necessary to void the budget agreement, arrearages on the account will be subject to normal disconnect procedures. If a customer's budget plan becomes void for nonpayment, that customer will not be eligible for a new budget plan until the customer has maintained an account on a current basis for 12 consecutive months.

(d) All accounts operating under the budget plan will be reviewed once per year or earlier if there is a rate or unexpected usage change. If an account under the budget plan has a balance greater than twice the monthly budget, it will be reviewed and adjusted accordingly.

The city reserves the right to terminate from the budget plan any and all parties who do not comply with the terms of the written budget plan agreement.

(Ord. No. 05-6, § 1, 5-10-05; Ord. No. 10-7, § 1, 11-23-10)

Sec. 82-9. Automatic payment plan.

The city shall make available to its customers an automatic payment plan for payment of utilities. It authorizes the city to monthly deduct a customer's payment from the bank account of the customer's choice. Interested customers must submit a completed written agreement to the utility. All accounts must be current and arrearages paid at the time of the first direct charge. The city reserves the right to terminate from this plan any and all parties who do not comply with the terms of the written agreement. Any account which incurs two returned electronic funds transfer transactions in a 12-month period may be removed from the plan and may be ineligible for reinstatement. Automated payment plans shall terminate upon receipt of notice to discontinue service.
(Ord. No. 05-6, § 1, 5-10-05)

Sec. 82-10. Field service work; general fees.

Field service work fees are assessed to offset expenses to the city in furnishing services requested or caused by the customer. Customer requested field service work not specifically mentioned in any field service fee schedule may be charged on a time and material basis plus 15 percent. Regular hours of work for service performed by the city involving turn on/off activity is from 8:30 a.m. to 4:00 p.m. excluding weekends and holidays.

- (1) *Field service fees for customer requested turn-on/turn-off.* The following charges are for the turn-on and turn-off of utility services requested by a customer for purposes other than opening or closing an account.

<i>Field Service Action*</i>	<i>During Regular Working Hours</i>	<i>Other Hours - Residential</i>	<i>Other Hours - Non-Residential</i>
Turn-off	No Charge	110.00	Greater of 110.00 or Time and Materials plus 15%
Turn-on	No Charge	110.00	Greater of 110.00 or Time and Materials plus 15%
Electric Turn-on at Pole	50.00	140.00	Greater of 150.00 or Time and Materials plus 15%

*All turn-offs and turn-ons (during regular working hours) in excess of the first two/day, shall be billed at \$25.00/action.

- (2) *Field service fees for department requested turn-on/turn-off.* A \$10.00 administrative fee shall be added to the customer's account when payment in full is not received prior to the date of disconnection specified in the disconnection notice. If disconnection occurs due to fraudulent

reasons, non-payment, obstruction to meter access or any other violation of this ordinance, the following fees must be paid, in addition to any overdue amount and the administrative fee, prior to the utilities being reconnected:

<i>Field Service Action*</i>	<i>During Regular Working Hours</i>	<i>Other Hours - Residential</i>	<i>Other Hours - Non-Residential</i>
Turn-off	0.00	110.00	Greater of \$110.00 or Time and Materials plus 15%

<i>Field Service Action*</i>	<i>During Regular Working Hours</i>	<i>Other Hours - Residential</i>	<i>Other Hours - Non-Residential</i>
Turn-on	25.00	110.00	Greater of \$110.00 or Time and Materials plus 15%
Electric Turn-off at Pole	50.00	140.00	Greater of \$150.00 or Time and Materials plus 15%

- (3) *NSF check fee.* A fee of \$25.00 will be charged to cover the cost associated with the processing a customer's check which was returned from a bank due to insufficient funds or no account, excluding bank error.
- (4) *Non-compliance charges.* Any user who is found to willfully or negligently fail to comply with any provision of this ordinance or any prohibition, limitation, or requirement contained herein, shall be subject to the payment of a charge equal to all fines, penalties or judgments levied against the city by any federal, state or county agency as well as all costs incurred by the city which were a result of the violation. This charge may be levied in addition to any other remedy contained in this ordinance and must be made before service is commenced. Further, any person violating this section shall, upon conviction thereof, be punished as prescribed in section 58-242 of this Code.
- (5) *Tampering fee.* Any customer who tampers with the city's facilities will pay the cost of repairs, a level III deposit and a tampering charge of \$50.00. These charges must be paid in full in order to avoid immediate disconnection or to re-connect a service.
- (6) *Meter testing fee.* The city tests its meters at intervals for the mutual protection of the customer and the city, but the city will also test any meter upon request of the customer, provided that the city is not required to make such a test more often than once in 12 months. A minimum fee of \$25.00 must be paid in advance for

any customer requesting a meter test. If actual testing costs exceed \$25.00, the customer will be billed the actual costs plus 15 percent. Should the test indicate that the meter error is outside the limits prescribed by the department, the customer will be refunded any meter test fees he has remitted to the city and his account will be adjusted in accordance with subsection 82-19(e).

(Ord. No. 05-6, § 1, 5-10-05; Ord. No. 07-5, § 1, 5-30-07)

Sec. 82-11. Billing/payment procedures.

(a) Every effort will be made to read the customer's meter every month. Occasionally however, some meters cannot be read due to extreme weather conditions, emergencies, watchdogs or other circumstances. In these cases an estimated reading will be made by the department based upon the customer's previous usage. When an actual reading is obtained for the next billing period, the utility bill will be adjusted to reflect the total consumption for the period between actual readings. If a credit resulting from a high estimate remains on a utility bill, the credit will be applied to the next regularly scheduled utility bill.

(b) Bills for electric, water and sewer service charges will be provided monthly and are due on the tenth of the month following the month of billing. Failure to receive a bill will not entitle a customer to forego any charge for nonpayment within the time specified. If a customer does not pay the bill by the due date, a one-time late payment penalty of eight percent of the current arrears, excluding any sales tax, will be assessed and a disconnect notice will be mailed approximately seven day[s] thereafter. The disconnect notice will provide no less than 14 days

after the due date to pay the bill and will indicate the amount due to avoid disconnection and the scheduled disconnect date. If the customer does not pay the amount due on said notice by the date and time indicated on the disconnect notice, the customer's account will be subject to disconnection the following day.

(c) Any customer unable to pay a utility bill prior to the disconnect date may request a ten-day extension by signing a written agreement prior to the scheduled disconnect date. The ten-day extension shall be effective on the day before the stated disconnect date. Only two extension agreements will be granted in any calendar year. Failure to pay the amount due in full within the ten-day extension will result in immediate disconnection.

(d) Services established are to be in the name of the legal occupant of the property, i.e. the owner, legal tenant (see section on service deposits) or a guardian or personal representative if the owner or tenant should be incapacitated. Any service set in the name(s) of a person(s) who becomes deceased is required to be changed to the name of the legal occupant of the property. Any service not corrected, after notification by the city, may be subject to disconnection. In order for the service to be reestablished, any amounts due after the date on which the original party becomes deceased must be paid in full.

(e) The customer remains responsible for the payment of all bills rendered until he or she orders the service to be discontinued (finalled) and the city has had reasonable time to affect such discontinuance.

(Ord. No. 05-6, § 1, 5-10-05; Ord. No. 08-4, § 1, 5-13-08; Ord. No. 09-5, § 1, 10-27-09)

Sec. 82-12. Collection.

(a) Pursuant to section 21 of 1933 PA 94, MCL 141.121, the charges for electric, water and/or sewer service are hereby made a lien on all premises served thereby. Whenever any such charges against such premises shall be delinquent for six months as of March 31 of each year, the city manager shall report the delinquencies to the council at its first meeting in April. Thereupon, the council shall order publication in a newspaper

of general circulation in the city of notice that all unpaid such utility charges not paid by April 30 will be spread on the city's tax roll against the premises to which such utility services were supplied or furnished. If such utility charges not paid by April 30, the city manager shall report to the tax assessing officer of the city, the fact of such delinquency, whereupon such charges shall be entered upon the next tax roll by the tax assessing officer as a charge against such premises to which such utility services were supplied or furnished, and the charges shall be collected and the lien enforced in the same manner as provided or the collection of taxes assessed upon the roll and the enforcement of the lien for the taxes. Such lien against the premises may be avoided by compliance with subsection (b) of section 82-24 when a tenant is responsible for payment of such charges.

(b) In addition to the other remedies provided, and under the provisions of section 21 of 1933 PA 94, MCL 141.121, the city shall have the right to discontinue the supply of electric, water and sewage disposal services to any premises for the nonpayment of any utility charges when due. Electric, water and sewage disposal services so discontinued shall not be restored until all sums due and owing shall be paid, including but not limited to reconnection service charges, any non-compliance charges, tampering charges, and the utility deposits required under subsections (1)-(3) of section 82-7.

(Ord. No. 05-6, § 1, 5-10-05; Ord. No. 07-5, § 1, 5-30-07; Ord. No. 10-4, § 1, 7-13-10; Ord. No. 19-2, § 3, 5-28-19)

Sec. 82-13. Disconnect procedures.

City council will by resolution adopt disconnect procedures for the utilities and make printed copies of said disconnection procedures available to the public at city hall during regular business hours.

(Ord. No. 05-6, § 1, 5-10-05; Ord. No. 06-5, § 1, 4-25-06; Ord. No. 09-4, § 1, 10-13-09)

Sec. 82-14. Restoration of service.

The city shall restore discontinued service when the cause of the discontinuation has been

settled or satisfactory credit arrangements have been made. The city shall make an effort to restore service on the day on which restoration is requested. If the city is unable to restore service on the day requested, then restoration shall be made as soon as reasonably possible.
(Ord. No. 05-6, § 1, 5-10-05)

Sec. 82-15. Access to premises.

(a) The city's authorized agents shall have access to all premises to install, inspect, read, repair or remove its meters and other utility property and/or to inspect wiring, piping, appliances, fixtures, water shut-off valves and water services located within or outside the street right-of-way, or any other devices that are in any way connected with the city utility system. Not allowing the city employees or agents access to premise may subject the property or other premises owned by the same party concerned to disconnection of service.

(b) In cases of rental properties, it shall be the responsibility of the property owner to effect proper entrance for city personnel to discontinue or maintain any services. Failure to provide this access may result in such services being continued with the property owner liable for payment from the date of the tenant's service being discontinued.

(c) The customer shall keep the immediate area and access area in and around the city's equipment clean and free of debris. Meters not accessible to be read will be estimated.
(Ord. No. 05-6, § 1, 5-10-05)

Sec. 82-16. Selection of equipment.

Before purchasing equipment for use in connection with the utility system, the customer should secure from the city the characteristics of the service available (i.e. service voltage, water pressure, etc.) for such use and should acquaint himself or herself with the rules and regulations governing the use and installation of such equipment.
(Ord. No. 05-6, § 1, 5-10-05)

Sec. 82-17. Approval of equipment.

The city reserves the right to approve or disapprove for use in connection with the utility system, any plumbing, wiring, equipment, appliances, fixtures, motors or any other devices that are presently in use or that are offered for use in connection therewith. Should any of the same be disapproved, their use shall be disconnected at once, either permanently, or until corrective measures have been taken. Failure to comply with orders to discontinue the use of or to apply corrective measures to disapproved equipment shall be deemed just cause for the discontinuance of all service until compliance is completed.
(Ord. No. 05-6, § 1, 5-10-05)

Sec. 82-18. Extra expense due to overtime and adverse conditions.

A charge may be made when extraordinary expense is incurred by the city in performing customer services on account of overtime rates for other than regular working hours, or on account of unfavorable weather conditions, snow and ice accumulations, curb boxes buried or filled through no action of the city, and for similar reasons.
(Ord. No. 05-6, § 1, 5-10-05)

Sec. 82-19. Overcharges, undercharges and adjustments to customer accounts.

(a) No credit will be allowed unless all city requirements have been adhered to and the validity of such a credit or refund is supported by a clear record. No refund will be made to any account after six months following discontinuance of service. No credit or refund will be made in a net amount of less than \$2.00.

(b) When an account has been overcharged due to a billing or metering error, the city shall refund or credit the amount of the overcharge for the period of the billing error up to three years immediately preceding discovery of the billing or metering error.

(c) If an account has been undercharged due to a billing or metering error, the city may bill the customer for the amount of the undercharge

for the 12-month period immediately preceding discovery of the billing or metering error. If the undercharge involves meter tampering or fraud, the city will charge the customer for the amount of the undercharge. The city shall offer the customer payment arrangements for the amount of the undercharge.

(d) Adjustments of bills may be allowed in cases of substantiated and unusual usage, broken water lines, and other such extraordinary situations as determined by the utility department. Written requests for bill adjustments due to water leaks will only be considered if received within 90 days of the due date of the bill containing the reported high usage. Adjustments for water leaks shall be limited to the most recent four months of billings associated with water leaks.

(e) When a meter is tested and found to have error outside the accuracy limits as recommended by the department, the city shall adjust the customer's utility charges and the consumption registered by the amount of error for the period of the error not to exceed the time limits stated in part (d) of this section. When a meter is stopped, slow, or fast, the adjustment shall be based on consumption during a corresponding period not to exceed six months either prior or subsequent to meter failure. The city shall not charge the customer's account additional amounts where the customer has notified the city in writing of the problem, and the city has allowed the stopped or slow meter to remain in service. (Ord. No. 05-6, § 1, 5-10-05)

Sec. 82-20. Meters—Size; location; protection.

All meters and metering equipment and water/wastewater meters used in regular service, shall be owned and maintained by the city, which will determine, given the proper information, the size, type, location and suitability of the equipment. Meter locations shall be provided on the customer's premises as directed by the city. Customers' meters are not allowed to be located on city poles unless by special permission. The customer/property owner shall provide, as directed by and free of expense to the city, close to the

point of the service entrance, a suitable space for the installation of the city's metering equipment and shall, at all times, keep the area about, over and under this equipment free and clear so that easy access may be had by city authorized persons. The customer/property owner shall protect the city's metering equipment from damage and, in the case of water/wastewater meters, from freezing, and shall permit no person other than an agent of the city or a person authorized by the city to remove, inspect or tamper with the same. Any person damaging, tampering with or removing any type of metering device of the city will be held responsible for the repair(s) or replacement of such device. (Ord. No. 05-6, § 1, 5-10-05)

Sec. 82-21. Additional meters.

Meters may be installed in any building where water-only use is desired. Such meters must be installed on the supply side of the main water and/or sanitary sewer meter serving such customers. With city approval, these meters will be furnished by the city, provided that the minimum rate for the size meter furnished is charged and the meter is not in excess of six inches. All piping costs for additional meters shall be borne by the customer. (Ord. No. 05-6, § 1, 5-10-05)

Sec. 82-22. Remote water/wastewater meter readers.

The city will normally attempt to incorporate a remote reader on most accounts. It shall be the intention of the city to install remote readers in all customer existing premises where access to the water/wastewater meter is difficult or where, in the department's opinion, entering the premises may cause disruption to the customer or his or her business operations or that are a detriment to the city or the customer. All such installations will be performed by city personnel at city expense. (Ord. No. 05-6, § 1, 5-10-05)

Sec. 82-23. Automatic account transfers for rental units.

Owners of rental properties who do not wish any interruption in utility services to their

property when vacated by tenants may request that when a tenant orders service out of his or her name, the service is automatically transferred to the property owner, and the normal service charge is billed to the property owner. This automatic account transfer will not take place if the property owner has outstanding amounts owed, in excess of 45 days from original billing date, on the property involved.
(Ord. No. 05-6, § 1, 5-10-05)

Sec. 82-24. Landlord/tenant policy for rental properties.

(a) A tenant may apply to be a customer for utility service at a rental property by signing the utility service deposit card, or other form provided by the city, and paying the service deposits required under section 82-7. When a tenant applies for service on a rental property, either written (rent receipt, lease agreement) or oral confirmation by the rental property owner, landlord or manager may be required to ensure that the applicant is a legal tenant of the property. Upon acceptance by the city of the application and payment by the tenant of required deposits, the city will read the meters within three business days. Effective when the city reads the meters, the tenant will be the customer for the utility service at the rental property, and the prior customer shall be responsible for payment of the charges incurred prior to the reading of the meter.

(b) To avoid having a tenant's delinquent utility charges assessed as a lien against the premises, the city must receive notice in the form available from the city entitled "Affidavit of Tenant Responsibility for City of Dowagiac Utility Charges and Third Party Authorization Form," or other form provided by the city, the affidavit portion of which must be signed by the rental property owner, landlord or manager, and the signature notarized, and must include as an attachment a true copy of the signed lease, if there is one, of the affected rental property. The lease must contain language that the tenant is responsible for payment of the utility bills. Upon the receipt by the city of the notice including the signed and notarized affidavit which includes a true copy of the signed lease, the tenant shall be

responsible for payment of a utility deposit or deposits, including the non-lien deposit required for all non-lien customers, in accordance with section 82-7. The notice is effective only when the tenant becomes the customer for the utility service at the rental property as provided in subsection 82-24(a), including the reading of the meters by the city, and the city has received any additional deposits due under section 82-7.

(c) During any period when a notice as provided in subsection 82-7(a) is not in effect, then the lien provided in subsection 87-12(a) applies, and pursuant to subsection 87-12(a) any utility charges delinquent for six months or more may be placed on the property tax bill for the premises to which the services were supplied or furnished.

(d) Landlords are responsible for:

- (1) Whenever a current tenant covered by a notice renews the lease or a new tenant moves into the rental property, providing a new notice including the new affidavit of tenant responsibility for city of dowagiac utility charges and third party authorization form, or other form provided by the city, the affidavit portion of which must be signed by the rental property owner, landlord or manager, and the signature notarized and must include as an attachment a true copy of the signed new or renewed lease of the affected rental property which contains language that the tenant is responsible for the utility bills.
- (2) Informing the city utilities department to take the property's utilities out of their name.
- (3) If available, providing the city with the forwarding address of the tenant.
- (4) Notifying city before tenant has moved out to review utility balance of tenant.

(e) Tenants are responsible for:

- (1) Paying the required deposit if the city has received the required notice.
- (2) Providing a correct forwarding address.

(3) Setting up any service to the property. (Ord. No. 05-6, § 1, 5-10-05; Ord. No. 08-4, § 1, 5-13-08; Ord. No. 10-3, § 1, 6-15-10; Ord. No. 16-6, § 1, 8-10-16; Ord. No. 19-2, § 4, 5-28-19)

Editor's note—Ord. No. 4, § 1, effective May 13, 2008, changed the title of § 82-24 from rental properties to landlord/tenant policy for rental properties.

Sec. 82-25. Underground facilities on customer's premises.

The owner, developer or customer requesting underground utility service shall provide adequate sub-grade (within three inches of final grade) prior to the installation of all underground utilities. Permanent survey markers indicating property lines must be installed and maintained by the customer. Any subsequent rebuilding or relocation required due to change in grade or other alterations will be done at the customer's expense.

(Ord. No. 05-6, § 1, 5-10-05)

ARTICLE II. CITY WATER UTILITY*

Sec. 82-26. Definitions

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

Corporation stop means the point at which the service tap connects to the water main.

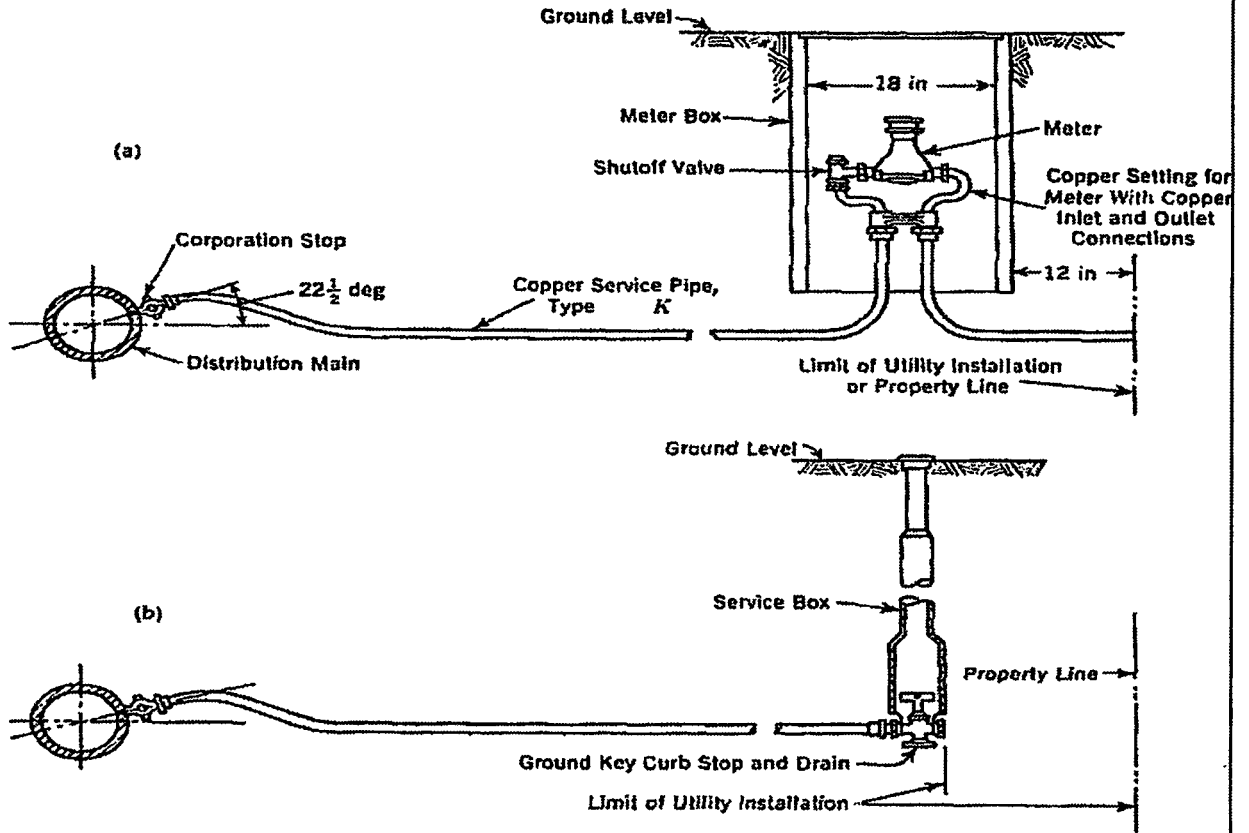
Cross connection means any arrangement of piping or other connections, breaks or injury to the water system through which water, including water of questionable quality, wastes or other contaminants, can enter the public water supply system.

Department means the Department of Public Services of the City of Dowagiac.

***Editor's note**—Ord. No. 05-7, § 1, adopted May 10, 2005, repealed the former Art. II, §§ 82-26—82-40, and enacted a new Art. II as set out herein. The former Art. II pertained to similar subject matter and derived from Code 1972, §§ 2.41—2.55.

Reduced pressure backflow preventer means a device to eliminate the potential for backflow or back siphonage of non-potable water into the municipal water supply.

Service tap means that part of the service from the water distribution main to the point of connection with the customer site piping at or near the property line.



SERVICE TAP

Tampering means the unauthorized alteration of a water meter or other plumbing facilities to obtain water or to circumvent the measurement of actual water consumption, excluding vandalism or other types of accidental damage.

Water connection means that part of the water distribution system for which the owner is responsible. It extends from the service tap to the connection at the owner's premises.

Water curb stop is part of the service tap that includes a shut-off valve and valve box installed by the department behind the curb and at the customer end of the service tap.

Water main means that part of the water distribution system located within the easement

lines or streets and designed to supply more than one water connection. It is inclusive of water supply piping and connections and the curb stop normally located at the owner's property line. (Ord. No. 05-7, § 1, 5-10-05)

Sec. 82-27. Water connections.

An application for a water connection shall be made to the department on forms prescribed and furnished by the department. No unauthorized person shall uncover, make any connections with or opening onto, use, alter, tamper, or disturb any public water main or appurtenance thereof without first obtaining a written permit from the director of the department of public services. The

applicant for a water permit shall notify the city when the water connection is ready for inspection and connection to the public water main. Water meters shall be installed in accordance with the rules and regulations of the department and the manufacturer's installation instructions. All meters shall be the property of the city. The responsibility for the installation and maintenance of the water connection from the end of the service tap to the owner's premises, including department-supplied meter settings, shall be that of the owner served. (Ord. No. 05-7, § 1, 5-10-05)

Sec. 82-28. Turning on water service.

Only an authorized employee of the department shall turn on or off any water service, except that a licensed plumber may turn on a water service for testing his work (then it must immediately be turned off) or upon receiving a written order from the department; provided, that upon written permit from the department, water may be turned on for construction purposes only, prior to the granting of a certificate of occupancy for the premises, and upon payment of the charges applicable thereto. Any other turn-on or turn-off shall be considered tampering under the provisions of this article.

(Ord. No. 05-7, § 1, 5-10-05)

Sec. 82-29. Water meters.

All premises using water shall be metered, except as otherwise provided in this Code. The appropriate meter size shall be determined by the department to adequately serve the premises. No person except a department employee shall break or damage the seal or change the location of, alter, bypass, or interfere in any way with any water meter. Any such unauthorized work on a meter shall be considered tampering under the provisions of this Code.

(Ord. No. 05-7, § 1, 5-10-05)

Sec 82-30. Access to meters.

The department shall have the right to shut off the supply of water to any premises where the department is not able to obtain access to the meter. Any qualified employee of the department shall, at all reasonable hours, have the right to

enter the premises where such meters are installed for the purpose of reading, testing, removing, or inspecting same and no person shall hinder, obstruct, or interfere with such employee in the lawful discharge of his duties in relation to the care and maintenance of such water meter.

(Ord. No. 05-7, § 1, 5-10-05)

Sec. 82-31. Reimbursement for damaged meters.

Any damage which a meter may sustain, resulting from tampering or carelessness of the owner, agent, or tenant or from neglect of either of them to properly secure and protect the meter, as well as any damage which may be wrought by frost, hot water, or steam backing from a boiler, shall be paid by the owner of the property to the city on presentation of a bill therefor; and in cases where the bill is not paid, the water shall be shut off and shall not be turned on until all charges have been paid to the city. This section shall not limit the city from seeking reimbursement from damages through other additional remedies.

(Ord. No. 05-7, § 1, 5-10-05)

Sec. 82-32. Meter failure.

If any meter shall fail to register properly, the department shall estimate the consumption on the basis of former consumption and bill according to section 82-19.

(Ord. No. 05-7, § 1, 5-10-05)

Sec. 82-33. Hydrant use.

No person, except an authorized employee of the city in the performance of his duties, shall open or use any fire hydrant except in case of emergency, without first securing a written permit from the department and paying such charges as may be prescribed.

(Ord. No. 05-7, § 1, 5-10-05)

Sec. 82-34. Regulation of water service.

The city manager, subject to approval by the city council may regulate, limit or prohibit the use of water for any purpose. Such regulations shall restrict less essential water uses to the extent deemed necessary to assure an adequate supply for essential domestic and commercial needs, for

fire fighting, and to effectuate emergency repairs to the water or sewer system. For non-emergency conditions (water storage tank maintenance, main maintenance, water treatment plant repairs, etc.), no such regulation, limitation or prohibition shall be effective until 24 hours after the publication thereof in a newspaper of general circulation in the city. For emergency conditions (i.e., water shortage due to major fire, water contamination, etc.), immediate action may be taken by the city manager to limit the use of water at different locations throughout the city. Any person violating such rule or regulation shall, upon conviction thereof, be punished as prescribed in section 58-242 of this Code.

(Ord. No. 05-7, § 1, 5-10-05)

Sec. 82-35. Additional regulations.

The water system shall be under the management, supervision and control of the city manager, who may employ or designate such person or persons in such capacity or capacities as deemed advisable to carry out the efficient management and operation of the water system. The city manager may make and issue rules and regulations concerning the water system, connection thereto, meter installation and maintenance, hydrants and water mains and the appurtenances thereto, not inconsistent herewith. Such rules and regulations shall be effective upon approval by the city council. The rules and regulations now in effect shall continue until changed in accordance with this section.

(Ord. No. 05-7, § 1, 5-10-05)

Sec. 82-36. Injury to facilities.

No person, except an authorized employee of the city in the performance of his duties, shall break, damage, destroy, uncover, deface or tamper with any structure, appurtenance or equipment which is a part of the city water distribution system. Any person violating this section shall, upon conviction thereof, be punished as prescribed in section 58-242 of this Code.

(Ord. No. 05-7, § 1, 5-10-05)

Sec. 82-37. Cross-connections.

(a) *State department of public health regulations adopted by reference.* The provisions of the Water Supply Cross-Connection Rules of the Michigan Department of Public Health are hereby adopted by reference.

(b) *Inspections.* The department may cause inspections to be made of all properties served by the public water supply where cross-connections with the public water supply is deemed possible.

(c) *Right of entry for inspection.* The authorized employee or agent of the department shall have the right to enter at any reasonable time any property served by a connection to the public water supply system of the City of Dowagiac for the purpose of inspecting the piping system or systems thereof for cross-connections. On request, the owner or occupants of any property so served shall furnish to the department or its designee any pertinent information regarding the piping system or systems on such property. The refusal of such information or refusal of access, when requested, shall be deemed evidence of the presence of cross-connections.

(d) *Discontinuance of service; restoration.* The department is authorized and directed to discontinue water service to any property wherein any connection in violation of this section exists, and to take such other precautionary measures deemed necessary to eliminate any danger of contamination of the public water supply system. Water service to such property shall not be restored until the cross-connection has been eliminated in compliance with the provisions of this section.

(e) *Labeling of water not provided by public water supply.* The potable water supply made available on the properties served by the public water supply shall be protected from possible contamination as specified by this section and by the state plumbing code. Any water outlet which could be used for potable or domestic purposes and which is not supplied by the potable system must be labeled in a conspicuous manner as:

WATER UNSAFE FOR DRINKING.

(f) *Penalty for violation of this section.* Any person or customer found guilty of violating any of the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished as prescribed in section 58-242 of this Code. Each day upon which a violation of the provisions of this section shall occur shall be deemed a separate and additional violation of this section.

(Ord. No. 05-7, § 1, 5-10-05)

Sec. 82-38. Administrative liability.

No officer, agent, or employee of the city shall render themselves as personally liable for any damages that may occur to any person as a result of any action required or permitted in the discharge of their duties under and in the enforcement of this article.

(Ord. No. 05-7, § 1, 5-10-05)

Secs. 82-39—82-60. Reserved.**ARTICLE III. SEWERS****DIVISION 1. GENERALLY****Sec. 82-61. Purpose of article.**

It is the declared purpose of this article to establish standards to prevent the pollution of the waters of the United States and the groundwaters of the state; to preserve and maintain the sewage system of the city; to provide for the control or prohibition of pollutants to the city sewage system; to prevent the introduction of pollutants into the city sewage system which will interfere with the operation of it, including interference with its use or disposal of residuals; to prevent the introduction of pollutants into the city sewage system which will pass through the treatment plant or otherwise be incompatible with such treatment processes; to improve opportunities to recycle and reclaim municipal and industrial wastewaters and residuals; and to establish the authority and control necessary to carry out the efficient management and operation of the city sewage system. (Code 1972, § 2.161)

Sec. 82-62. Definitions.

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

Act means the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq., 86 State. Pub. L. 92-500.

ASTM means the American Society of Testing Materials.

Biochemical oxygen demand (BOD₅) means the amount of oxygen consumed during the biochemical oxidation of wastewater, as measured under standard laboratory procedures in five days at 20 degrees Celsius, expressed in milligrams per liter.

Building sewer means that part of a drainage system which extends from the end of a building drain and conveys its discharges to a public sewer, private sewer, or sewage disposal system or other point of disposal.

Bypass means the intentional diversion of waste streams from any portion of an industrial users treatment facility as defined in 40 CFR 403.17. Industrial users shall comply with all parts of 40 CFR 403.17 (53 FR 40615, October 17, 1988).

Cesspool, septic tank or privy means an individual, privately owned system for the disposal of sewage other than a public sewer.

CFR means title 40 of the Code of Federal Regulations.

Chemical oxygen demand means the amount of oxygen required to chemically oxidize organic and inorganic constituents of wastewater, as measured under standard laboratory procedures, expressed in milligrams per liter.

Director means the director of the city department of public services, or his deputy, agent, or representative.

Domestic wastewater (wastes) means liquid wastes from the noncommercial preparation, cooking, and handling of food or wastes containing human excrement and similar matter from the sanitary conveniences of dwellings, commercial buildings, industrial facilities and institutions.

Federal Water Pollution Control Act means the Federal Water Pollution Control Act of 1948, as amended by Public Law 92-500 (1972) and Public Law 95-217 (also known as the Clean Water Act of 1977).

Industrial user means a source that introduces pollutants to the sewage system from any nondomestic source regulated under section 307(b), (c), or (d) of the Federal Water Pollutant Control Act and this article.

Industrial waste means any solid, liquid, or gaseous waste resulting from any industrial manufacturing trade, or business process, as distinct from domestic or sanitary waste, or from the development, recovery, or processing of natural resources.

Interference means the inhibition or disruption of the city sewage system, including treatment processes or operations, or its sludge processes, use, or disposal, which is a cause or significantly contributes to a violation of any requirement of the city's National Pollutant Discharge Elimination System permit or other state or federal laws and regulations.

National pretreatment standard means any federal regulation containing pollutant discharge limits promulgated by the U.S. Environmental Protection Agency which applies to specific category of industrial users.

New source means any building, structure, facility or installation of which the construction commenced after the publication of proposed Pretreatment Standards under section 307(c) Federal Water Pollution Control Act, (33 USC 1317) shall be classified as a new source, provided that the construction is a site at which no other source is located, the process or production equipment that causes the discharge of pollutants at an existing source is totally replaced, or the production or wastewater generating processes are substantially independent of an existing source at the same site.

Noncontact cooling water means water used for cooling purposes which does not come into direct contact with any raw material, intermediate product, waste product, or finished product.

Nondomestic wastewater (wastes) means all liquid or water carried wastes other than domestic wastewater.

Pass-through means a discharge which exits the POTW into waters of the state in quantities or concentrations which, alone or in conjunction with a discharge from other sources, causes a violation of any requirement of the POTW's NPDES permit, including an increase in the magnitude or duration of a violation.

Person means any individual, firm, company, partnership, corporation, association, group, or society, and includes the state and agencies, districts, commissions, and political subdivisions created by or pursuant to state law.

pH means the logarithm (base 10) of the reciprocal of the concentration of hydrogen ions expressed in moles per liter of solution.

Pollutants means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water, onto soil or emitted into the air.

Private sewage disposal system means any approved system for the disposal of domestic wastewater which is privately owned and maintained.

Pretreatment means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing pollutants into the city sewage system.

Public sewer means any sewer in which all owners of abutting properties have equal rights and is owned and/or controlled by the city.

Publicly owned treatment works (POTW) means a treatment works as defined by section 212 of the Federal Water Pollution Control Act including any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage and industrial waste. The system includes sewers, pipes, and equipment used to convey wastewater to the treatment facility. The

term also includes the municipality as defined in section 502(4) of the Federal Water Pollution Control Act, which has jurisdiction over indirect discharges to, and the discharges from, such a treatment works.

Resource Conservation and Recovery Act means the Resource Conservation and Recovery Act of 1976 (Public Law 94-580).

Sewage (wastewater) means any liquid, water-carried, or gaseous industrial or domestic waste from dwellings, commercial buildings, industrial facilities, and institutions which is contributed into or permitted to enter the sewage system.

Sewage system means all publicly owned facilities for collecting, pumping, treating, and disposing of sewage.

Shall/may. Shall is mandatory. May is permissive.

Significant industrial user means:

- (1) All industrial/commercial users subject to categorical pretreatment standards under 40 CFR 403.6 and 40 CFR chapter I, subchapter N.
- (2) Industrial/commercial users that discharge an average of 25,000 gallons per day or more of process wastewater to the POTW (excluding sanitary, noncontact cooling, and boiler blowdown wastewater).
- (3) Industrial/commercial users contributing a process waste stream which makes up five percent or more of the average dry weather hydraulic or organic capacity of the POTW.
- (4) Industrial/commercial users designated as a significant user by the POTW on the basis that the industrial/commercial user has a reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standards or requirements in accordance with 40 CFR 403.8(f)(6).
- (5) The POTW may at any time, on its own initiative or in response to a petition received from an industrial/commercial user or POTW, and in accordance with 40 CFR 403.8(f)(6), determine that such industrial/

commercial user is not a significant user based upon a finding that it has no reasonable potential for adversely affecting the POTW's operation or violating any pretreatment standards or requirements.

Significant noncompliance means a violation which remains uncorrected 45 days after notification of noncompliance, which involves a failure to accurately report noncompliance, or which resulted in the POTW exercising its emergency authority under 40 CFR 403.8(f)(1)(vi)(B).

Slug means any discharge of water, sewage, or industrial waste which, in concentration of any given constituent or in quantity of flow, exceeds for any period of duration more than five times the average 24-hour concentration or flow during normal operations.

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

User means any person who discharges or causes or permits the discharge of wastewater into the city sewage system.

Wastes means any useless or discarded substance, matter, or material in any form.

Wastewater. See definition of the term "sewage." (Code 1972, § 2.166)

Cross reference—Definitions generally, § 1-2.

Sec. 82-63. Other applicable laws, rules and regulations.

Where provisions of any applicable local, state, or federal law, rule or regulation impose greater restrictions or higher standards than those restrictions and standards contained in this article or any rules and regulations adopted pursuant to this article, then the provisions of such law, rule, or regulation shall control.
(Code 1972, § 2.267)

Sec. 82-64. Design.

The size, slope, alignment, materials of construction of a building sewer and the methods to be used in excavating, placing of pipe, jointing, testing, and backfilling the trench, shall conform to the requirements of the applicable city building and plumbing codes or other applicable rules or regulations of the city. Where connections are made to sewer main wyes or tees, only approved joint materials shall be used. Residential building sewers shall have an inside diameter of not less than four inches. All other classes of building sewers shall have an inside diameter of not less than six inches in diameter. Whenever possible, the building sewer shall be brought to the building at an elevation below the basement floor so that gravity service can be provided.

(Code 1972, § 2.181)

Sec. 82-65. Separate sewers required for each home or building; exception.

Each home or building sewer shall have an independent building sewer and connection to the public sewer unless written permission is obtained from the director. Owners of homes or buildings with existing joint building sewers shall maintain, replace, and operate the sewers at no cost to the city. The director may require owners of homes and buildings with joint building sewers to be connected to the public sewer with an independent building sewer, when deemed necessary.

(Code 1972, § 2.182)

Sec. 82-66. Use of old building sewers.

Old building sewers may be used in connection with new buildings only when found by examination and testing by the city to meet the requirements of this article.

(Code 1972, § 2.183)

Sec. 82-67. Lift devices.

In all buildings where any building drain is too low to permit gravity flow to the building sewer, sewage carried by such building drain shall be lifted by a means approved by the director and discharged to the building sewer. Where such lift

devices are provided, they shall be maintained and operated by the owner at no expense to the city.

(Code 1972, § 2.184)

Sec. 82-68. Safeguarding excavations and restoration.

All excavations in the public right-of-way and on private property for the purpose of installing building sewers, manholes, and related appurtenances as well as connections to the public sewer shall be adequately guarded with barricades and lights so as to protect the public from hazards. Streets, sidewalks, parkways and other public property disturbed in the course of work shall be restored in a manner satisfactory to the city within one week after the work has been completed, and at no expense to the city.

(Code 1972, § 2.185)

Secs. 82-69—82-80. Reserved.

DIVISION 2. ADMINISTRATION AND ENFORCEMENT

Sec. 82-81. Administrative liability.

No officer, agent, or employee of the city shall render themselves as personally liable for any damages that may occur to any person as a result of any action required or permitted in the discharge of their duties under and in the enforcement of this article.

(Code 1972, § 2.272)

Sec. 82-82. Authority and protection of inspectors.

(a) Authorized representatives of the city and state or federal agencies exhibiting proper credentials and identification shall be permitted to enter the premises of any user of the sewage system at reasonable times, during emergencies, or during regular business hours for the purpose of inspection, observation, measurement, sampling, copying of records retained for the purpose of complying with the requirements of this article, and testing in accordance with the provisions of this article. The representatives shall have no author-

ity to inquire into any processes that do not have a direct bearing on the kind and source of discharge to the sewage system.

(b) While on the premises of any user, the authorized representatives of the city shall observe all reasonable safety rules applicable to the premises. The user shall be held harmless for injury or death to the city employees, and the city shall indemnify the user against loss or damage to its property by city employees and against liability claims and demands for personal injury or property damage asserted against the user and growing out of such activity, except to the extent caused by negligence or failure of the user to maintain safe conditions.

(Code 1972, §§ 2.171, 2.172)

Sec. 82-83. Building sewer permit and inspections—Generally.

No unauthorized person shall uncover, make any connections with or opening into, use, alter, or disturb any public sewer or appurtenance thereof without first obtaining a written permit from the director. No permit may be issued unless there is capacity available in all downstream sewers, lift stations, force mains, and the wastewater treatment plant for the proposed discharge. The applicant for a building sewer permit shall notify the city when the building sewer is ready for inspection and connection to the public sewer. The connection shall be made under the supervision of the city building inspector or his representative.

(Code 1972, § 2.177)

Sec. 82-84. Same—Classes; application.

There shall be two classes of building sewer permits: (1) for residential and or domestic wastewater discharges, and (2) for services to commercial or industrial establishments producing nondomestic wastewaters. The owner or his representative shall make application on special forms provided for by the city. All applicants for building sewer permits shall, when required by the director or city building inspector, submit plans and specifications for all proposed construction, includ-

ing plumbing, within such building or premises, and other information deemed pertinent by the director or city building inspector.
(Code 1972, § 2.178)

Sec. 82-85. Same—Fees.

A building sewer permit and inspection fee shall be adopted and amended from time to time by city council resolution and shall be charged to each applicant for a sewer permit.
(Code 1972, § 2.180)

Sec. 82-86. Discharge permits.

(a) *Application forms.* All significant industrial users shall be required to obtain a nondomestic user discharge permit from the city wastewater treatment plant (control authority) superintendent prior to discharging of any wastewater. Permit application forms may be obtained by calling or writing to address below:

Wastewater Treatment Plant
203 Chestnut Street
Dowagiac, MI 49047
(616) 782-2195, ext. #39

(b) *Existing industrial users.* Any significant industrial user which discharges nondomestic waste into the sanitary sewer system prior to the effective date of the ordinance from which this chapter is derived and who wishes to continue such discharges in the future shall, within 90 days after such date, obtain from the city a nondomestic user discharge permit and shall not cause or allow discharges to continue 180 days from and after such effective date except in accordance with a permit issued by the superintendent.

(c) *New industrial users.* Any significant industrial user proposing to begin or recommence discharging nondomestic wastes into the sanitary system must obtain a nondomestic user's discharge permit prior to beginning or recommencing such discharge. A permit application form must be filed at least 90 days prior to the anticipated start-up date.
(Code 1972, § 2.179)

Sec. 82-87. Notification of violation.

Whenever the city finds that any user has violated or is violating this article, or any prohibition, limitation, or requirement contained in this article, that user shall be served a written notice stating the nature of the violation, the date and time it occurred, and the section of this article under which the violation is charged. Such user shall be given ten working days to provide a written response to the notice specifying the cause of the violation, measures that will be undertaken to correct the violation and, if required, a timetable to achieve compliance.
(Code 1972, § 2.239)

Sec. 82-88. Termination of service.

(a) The city shall immediately and effectively terminate the sewer service of any user, after informal notice, to halt or prevent the discharge of pollutants to the sewage system which reasonably appears to present or may present an imminent endangerment to human health or welfare, an endangerment to the environment or which threatens to interfere with the operation of the sewage system. Any user who has been issued a notice of violation from the city and does not take measures to correct the cause of the violation in a timely fashion or allows the violation to continue may be served with a written notice stating that the water and/or sewer service to the premises where the violation has occurred shall be terminated.

(b) All costs incurred by the city for the termination of the services, in accordance with the provisions of this section, shall be borne by the user causing or allowing the violation.
(Code 1972, § 2.240)

Sec. 82-89. Legal action.

If any user is found to be violating or in violation of the provisions of this article, the city attorney may commence an action for appropriate legal and/or equitable relief in the county circuit court. The city shall have the right to recover reasonable attorney's fees, court costs, court reporter's fees, and other expenses of litigation by

appropriate suit at law against the user found to have violated this article or the orders, rules and regulations issued under this article.
(Code 1972, § 2.241)

Sec. 82-90. Continuing offense.

Each and every day in which any violation shall occur or continue shall constitute a separate and distinct offense.
(Code 1972, § 2.242)

Sec. 82-91. Separate offense.

Each violation at the same location or by the same user shall constitute a separate offense.
(Code 1972, § 2.243)

Sec. 82-92. Penalty charges.

(a) Any user who is found to have willfully or negligently failed to comply with any provision of this article or any prohibition, limitation, or requirement contained in this article, shall be subject to payment of a penalty charge to the city to cover all fines or penalties levied against the city by any state or federal agency, as well as all costs incurred by the city which were a result of the violation. The payment of such penalty may be levied in addition to any other remedy contained in this article.

(b) The city shall have the authority to impose civil and/or criminal penalties for any violation of the ordinance, permit, and orders issued under this article, the amount not to exceed the maximum allowable under state law, (e.g. \$1,000.00) per day for each violation by industrial users.
(Code 1972, § 2.244)

Sec. 82-93. Falsifying information.

Any falsification of information required by the city in accordance with the provisions of this article shall constitute a violation, and the city shall take appropriate actions as contained in this article.
(Code 1972, § 2.245)

Sec. 82-94. Annual publication of violations.

A list of all industrial users which were the subject of enforcement proceedings pursuant to

this article during the 12 months preceding January shall be published by the city in the city's largest daily newspaper. The list shall include a summary of the enforcement actions taken against users whose violations remained uncorrected 45 or more days after notification of noncompliance, or which have exhibited a pattern of noncompliance over that 12-month period, or which involve failure to accurately report noncompliance.
(Code 1972, § 2.246)

Sec. 82-95. Affirmative defense.

Industrial users shall have an affirmative defense in any action brought against them alleging a violation of the general prohibitions established in this article, the user's permit or 40 CFR 403.5(a)(1), (b)(3), (b)(4), and (b)(5), (52 FR 1600, January 14, 1987). No affirmative defense shall be allowed pertaining to surcharging for extra strength wastewater.
(Code 1972, § 2.247)

Sec. 82-96. Appeals—Informal hearing.

(a) An informal hearing conducted before the city manager may be requested, in writing, by any user to appeal any written notice or action issued to the user by the director pursuant to this article. Such request shall be made within 14 days after the receipt of written notice or action. A hearing shall be scheduled by the city manager within a reasonable amount of time but not exceeding 30 days.

(b) The user shall present arguments or evidence to show why such written notice or action by the city should be reversed or modified.

(c) Within 14 days after the hearing, the city manager shall render a written decision determining whether the written notice or action shall be reversed, modified, or enforced.
(Code 1972, § 2.251)

Sec. 82-97. Same—Formal hearing.

Any user that has received a written notice or action issued by the director and has appealed the notice or action to the city manager may request a formal hearing with the city council to appeal the decision of the city manager. A hearing shall be

scheduled within a reasonable amount of time but not exceeding 45 days. The hearing shall follow consistent procedures, and minutes of the proceedings shall be kept. The decision of the city council shall be determined by a simple majority vote. Such decision shall be rendered in writing within 14 days after the hearing and shall be sent to the user by certified mail.
(Code 1972, § 2.252)

Secs. 82-98—82-110. Reserved.

DIVISION 3. PRIVATE SEWAGE DISPOSAL

Sec. 82-111. Permitted only where public sewer unavailable.

No person shall construct or maintain any privy, privy vault, septic tank, cesspool, or other facilities intended or used for the ultimate disposal of sewage except where a public sewer is not available.
(Code 1972, § 2.190)

Sec. 82-112. Permit.

No person shall commence construction of a private sewage disposal system without first obtaining a permit from the city and, when necessary, from any other county, state, or federal agency. Application for a permit shall be made by the owner or his representative during normal city business hours and on forms provided by the city. All applicants for such permits shall, when required by the director, submit plans, specifications, and other information deemed necessary by the city.
(Code 1972, § 2.191)

Sec. 82-113. Inspection.

The applicant for a permit for a private sewage disposal system shall notify the city when work commences on the construction of the system. The city shall be allowed to inspect the work at any stage of construction. The applicant shall notify the city when the work is ready for final inspection and before any underground portions are

covered. The inspection shall be made within five days of the receipt by the city of the request for an inspection.

(Code 1972, § 2.192)

Sec. 82-114. Design of system.

The type, capacities, location, and layout of a private sewage disposal system shall comply with all recommendations of the city. No permit shall be issued for any private disposal system employing subsurface soil absorption facilities where the area of the lot is less than 8,712 square feet. No septic tank or cesspool shall be allowed to discharge to any public sewer or natural outlet.
(Code 1972, § 2.193)

Sec. 82-115. Discontinuance of system upon availability of public sewer.

The owner of a premises served by a private sewage disposal system situated on land abutting or fronting on any street, alley, or easement in which a public sewer has been installed shall connect the premises to the public sewer within 60 days after the sewer is available for use. The owner shall clean the sludge out and fill in the private sewage disposal system with clean bank run gravel or granular materials.
(Code 1972, § 2.194)

Sec. 82-116. Operation and maintenance of systems.

The owner shall operate and maintain the private sewage disposal system in a sanitary manner at all times and at no expense to the city.
(Code 1972, § 2.195)

Sec. 82-117. Additional requirements.

No statement contained in this division shall be construed to interfere with any additional requirements that may be imposed by the city, county, or federal agency with respect to private sewage disposal systems.
(Code 1972, § 2.196)

Secs. 82-118—82-130. Reserved.

DIVISION 4. SEWER USE

Sec. 82-131. General use regulations.

(a) No person shall maliciously, willfully, or negligently break, damage, destroy, deface, tamper with, or alter any structure, property, appurtenance, equipment, or any other item which is part of the city sewage system.

(b) Persons connecting to the sewage system shall not discharge or cause to be discharged any stormwater, surface water, groundwater, roof runoff, subsurface drainage, or noncontact cooling water.

(c) Persons with existing connection to the sewage system shall not discharge or cause to be discharged any stormwater, surface water, groundwater, roof runoff, subsurface drainage, or noncontact cooling water which would result in an increase in the volume of such waters presently discharged. No new connections to the sewage system shall be allowed for the discharge of such waters.

(d) No person shall discharge sewage, industrial wastes, or other wastes to the sewage system without having first complied with the terms of this article.

(Code 1972, § 2.201)

Sec. 82-132. Sewer stoppages.

(a) Whenever a stoppage of a sewer occurs, the user affected shall notify the city unless the stoppage is located on private property. The user shall first determine if the stoppage is not located on private property before notifying the city. The user shall be responsible for expenses incurred by the city when the city is called out to remove a stoppage, and it is subsequently determined that the stoppage was located on private property.

(b) The city shall be responsible to remove a stoppage when it is located in the city's sewer main or the sewer lateral installed by the city from the sewer main to the public right-of-way line (property boundary line) or limits of an easement granted to city for the purpose of the installation, construction, and maintenance of a sewer main. The user shall be responsible to remove stoppages, at no expense to the city, when such

stoppage is located between the public right-of-way line or easement limit and the building being served.

(Code 1972, § 2.202)

Sec. 82-133. Notification of industrial users.

The director shall notify those industrial users that are subject to applicable National Pretreatment Standards and any applicable requirements under section 204(b) and 405 of Federal Water Pollution Control Act, as amended, and subtitles D and E of the Resource Conservation and Recovery Act, as amended.

(Code 1972, § 2.203)

Sec. 82-134. Prohibited discharges—Generally.

No person shall introduce any pollutant into the city sewage system that will pass through or cause interference with the operation or performance of the city sewage treatment system. These general prohibitions apply to all industrial users introducing pollutants into the sewage system whether or not the source is subject to other national pretreatment standards or any other local, state, or national pretreatment requirements.

(Code 1972, § 2.204)

Sec. 82-135. Same—Special.

No person shall discharge or cause to be discharged into the sewage system any of the following:

- (1) Any substances which, by reason of their nature or quantity, may create a fire or explosion hazard or be injurious to the POTW or the operation of the POTW including, but not limited to, waste streams with a closed cup flashpoint of less than 140 degrees Fahrenheit or 60 degrees Celsius, using the test methods specified in 40 CFR 261.21 (52 FR 1600, January 14, 1987).
- (2) Pollutants in an amount which cause or may cause corrosive structural damage to the sewage system.

- (3) Solid or viscous materials in amounts which cause or may cause obstruction to the flow resulting in interference to the sewage system.
- (4) Any pollutant released in a discharge at a flow rate and/or pollutant concentration which causes or may cause interference with the sewage system.
- (5) Heat in amounts which inhibits or may inhibit biological activity in the sewage treatment system resulting in interference or heat in such quantities that causes or may cause the temperature at the sewage treatment plant to exceed 40 degrees Celsius (104 degrees Fahrenheit).
- (6) Sewage which causes or may cause restriction of hydraulic capacity in the sewage system.
- (7) Sewage which causes or may cause damage or loss of durability to structures in the sewage system.
- (8) Sewage which may result in toxic gases, fumes, or vapors in a quantity capable of causing health and safety problems to POTW workers or the general public.
- (9) Sewage which exhibits a pH of less than 6.5 or greater than 9.5 standard units.
- (10) Any waters for the purpose of diluting nondomestic discharges which otherwise would not be in conformance with any local, state, or national pretreatment standard.
- (11) Material in sufficient amounts which cause or may cause objectionable coloration or odors in the sewage system.
- (12) Any radioactive wastes or isotopes of such concentration as may exceed limits established by the state and/or national regulations.
- (13) Sewage which causes or may cause the city wastewater treatment plant to violate the provisions of its NPDES permit.
- (14) Petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin in amounts that will cause interference or pass through.

(15) Wastewater trucked or hauled except at points designated by the control authority. (Code 1972, § 2.205)

Sec. 82-136. National discharge limitations.

No person shall discharge or cause to be discharged into the sewage system any pollutants in amounts exceeding standards promulgated by the administrator of the U.S. Environmental Protection Agency, pursuant to section 307(a) of the Federal Water Pollution Act. (Code 1972, § 2.206)

Sec. 82-137. Supplemental discharge limitations.

(a) No person shall discharge or cause to be discharged into the sewage system any wastewater containing concentrations of pollutants that pass through or interfere with the operation of the wastewater treatment plant and the disposal of treatment process residuals.

(b) System-wide, supplemental local limits on the maximum concentration, or mass limitations of pollutants allowed in wastewater discharged to the city sewage system are listed below. The amendment or modification of such supplemental limits may be adopted by resolution of the city council following approval by the state department of natural resources.

Concentration of Local Limits:

<i>Parameter</i>	<i>Daily Maximum Limit (mg/l)</i>	<i>Monthly Average Limit (mg/l)</i>
1. Arsenic (T)	2.30	1.15
2. Cadmium (T)	1.40	0.70
3. Chromium (T)	6.00	3.00
4. Copper (T)	7.00	3.50
5. Silver (T)	0.43	0.43
6. Lead (T)	3.00	1.50
7. Mercury (T)	<0.0002	<0.0002
8. Nickel (T)	8.00	4.00
9. Zinc (T)	5.40	2.70
10. Phenols (T)	10.00	10.00
11. Cyanide (T)	3.00	1.50
12. Total toxic organics	4.57	—
13. pH 6.5 su min. 9.5 su max.		

Mass Local Limits for Conventional Pollutants:

	<i>Maximum lbs.-per- day</i>
14. Biochemical oxygen demand (BOD)	560
15. Total suspended solids (TSS)	485
16. Phosphorus (T)	26
17. Nitrogen, ammonia (T)	13
18. Oil and grease (T)	100

Categorical pretreatment standards may be adjusted to reflect the presence of pollutants in the industrial users intake water in accordance with 40 CFR 403.15.

(Code 1972, § 2.207; Ord. No. 95-10, § 1, 10-16-95)

Sec. 82-138. Extra strength waste discharge limitations.

(a) No user shall discharge or cause to be discharged into the sewer system domestic or nondomestic waste containing any substance or exhibiting any characteristics above the limitations set forth below without obtaining written approval from the city allowing the user to pay a surcharge fee for treatment of extra strength waste, in addition to regular charges for use of the sewer system. Surcharges shall be calculated using treatment plant or end-of-pipe flows and averages of analysis. Surcharge fees are listed below. The surcharge range may not be amended without pre-approval of the state department of natural resources and then only by adopted amendment of the ordinance from which these provisions are derived. The surcharge fees may, however, be amended by the adopted resolution of the city council.

<i>Parameter</i>	<i>Surcharge Range (mg/l)</i>	<i>Surcharges (per pound)</i>
BOD	Above 250	\$0.104
COD	Above 500	0.081
TSS	Above 250	0.103
O&G	Above 125	0.614
Phosphorus (T)	Above 15	1.890
Ammonia Nitrogen	Above 15	0.614

Note: Industrial users contributing extra strength wastewater for the parameters above, which causes or has the ability to cause POTW inhibition or pass through, shall receive from the control authority a restricted limit for the specific parameter causing the problem.

(b) Setting of restricted limits shall be governed by the POTW design headworks loadings. Industrial users shall be allotted a specified amount of conventional pollutants (pounds), which shall be indicated in their permit. Should POTW loadings indicate design capacity is being reached, more restrictive limits shall be instituted. The POTW design headwork loadings are listed below. No user alone or in conjunction with others shall cause the headworks of the plant to exceed the headworks loadings. No surcharge agreement can allow the violation of a pretreatment standard or requirement.

<i>Parameter</i>	<i>Headworks Loading (mg/l)</i>	<i>Headworks Loading (pounds)</i>
Design Flow	BOD 250	5,213
2.5 MGD	COD 500	10,425
	TSS 250	5,213
	O&G 100	2,085
	Phos. (T) 15	313
	Ammonia 10	209
	nitrogen	

(Code 1972, § 2.208; Ord. No. 95-10, § 2, 10-16-95; Ord. No. 03-6, § 1, 6-10-03)

Sec. 82-139. Special agreements.

Nothing in this division shall be construed as preventing any special agreement or arrangement between the city and any user of the sewage system whereby sewage of unusual strength or character is accepted into the system and specially treated subject to any payments or user charges as may be applicable. Such agreement shall be prepared by the director and approved by the city council and shall comply with the provisions of 40 CFR 403.7 (Removal Credits). (Code 1972, § 2.209)

Sec. 82-140. Control of discharges.

If any industrial user discharges pollutants that do not meet the requirements set forth in this division or, which in the judgment of the director may have deleterious effects upon the sewage system, receiving water, create a hazard to life and/or property, or otherwise constitute a public nuisance, the director shall:

- (1) Prohibit the discharge of such pollutants.

- (2) Require pretreatment to reduce or eliminate the discharge of such pollutants.
- (3) Require control over the quantities and rates of discharge.
- (4) Require the user to make in-plant modifications to reduce or eliminate the discharge of such pollutants.
- (5) Require the user which causes the discharge of such pollutants to compensate the city for any additional expenses not covered by existing sewer charges that are incurred by the city for special handling, treatment, and/or disposal of wastewaters or residuals emanating from the city sewage system.
- (6) Take such other remedial action as may be deemed necessary to achieve the purpose of this division.

(Code 1972, § 2.210)

Sec. 82-141. Compliance monitoring.

(a) Monitoring, including flow measurement, sampling and analysis of nondomestic discharges for the purpose of determining compliance with this division, may be required by the director for any user discharging pollutants into the sewage system.

(b) Upon the effective date of a federal categorical standard, or in the case of a new source, the industrial user shall provide monitoring to measure flow and amount of pollutants for each regulated process in accordance with 40 CFR 403.12, as amended.

(c) The frequency of monitoring shall be prescribed in the applicable pretreatment standard, 40 CFR 403.12, as amended, or by the director.

(d) All analysis shall be performed in accordance with procedures established by the EPA contained in 40 CFR 136 and amendments thereto, with the current edition of Standard Methods for the Examination of Water and Wastewater, published by the American Public Health Association, or the most current edition of the Annual Book of ASTM Standards relating to water. Analysis of those pollutants not covered by these publications

shall be performed in accordance with procedures approved, specified, or established by the director.

(e) Sampling for the determination of compliance with this division shall be performed in accordance with methods specified by the EPA and/or the director.

(f) From time to time the city may carry out monitoring of users to determine, independent of information supplied by the industrial user, compliance or noncompliance with this division. All monitoring, except when conducted by the city, shall be the responsibility of the industrial user at no expense to the city. Self-monitoring shall be carried out by the user or by an independent firm under contract with the user.

(g) To ensure the correctness of the monitoring required under this article, the director may require that the user's in-house laboratory or the independent laboratory contracted by the user obtain certification from the city to perform the required monitoring. Such certification is to be maintained on an annual basis or as often as deemed necessary by the director.

(Code 1972, § 2.211)

Sec. 82-142. Monitoring facilities.

The director may require any user to install a monitoring structure and measuring and sampling devices to facilitate the observation, sampling, and measurement of the quantity, composition and concentrations of discharges to the sewage system. Such structures shall be constructed in accordance with plans approved by the director and installed at a location designated by the director. Such structure and devices shall be constructed and installed at the user's expense and shall be maintained by the user so as to be safe and accessible at all times.

(Code 1972, § 2.212)

Sec. 82-143. Compliance inspections.

(a) The director or his authorized representative shall have the right to enter any premises of any industrial user in which a discharge source or treatment system is located in or in which records

are required to be kept in accordance with this division or 40 CFR 403.12(m) to ensure compliance with this article.

(b) Such inspections shall be conducted at frequencies determined by the director during normal business hours.

(Code 1972, § 2.213)

Sec. 82-144. Confidential information.

All information and data submitted to the city by the user or obtained by the city through inspections and monitoring shall be held in strict confidence if it relates to trade secrets or is information which, if disclosed, would tend to injure the competitive position of the user, except where disclosure is required by law. Information related to discharges to the sewage system shall not be treated as confidential, and all information not confidential will be accessible to the public.

(Code 1972, § 2.214)

Sec. 82-145. Reporting and recordkeeping.

(a) The director shall require all industrial users to submit a report on forms provided by the city which shall include information on the concentrations and quantity of pollutants and sewage discharged or proposed to be discharged to the sewage system, together with a list of all chemicals or substances that are present or likely to be present in the discharge. The director may also require additional information from users as deemed necessary as to materials or substances which may cause an interference with the sewage system or pass through the treatment plant. The city shall have the right to copy user records.

(b) The following reporting requirements shall be in addition to those required above for those industrial users subject to pretreatment standards and requirements.

- (1) *Baseline report.* New sources (and existing sources that become industrial users subsequent to promulgation of categorical standards), shall submit a baseline report as required in 40 CFR 403.12(b).
- (2) *Compliance report.* Within 90 days following the date for final compliance with applicable categorical pretreatment standards or in the case of a new source following commencement of the introduction of wastewater into the sewage system, any industrial user subject to pretreatment standards and requirements shall submit a report with the information required by 40 CFR 12(d), as amended.
- (3) *Periodic compliance reports.* Any industrial user subject to a categorical pretreatment standard, after the compliance date of such pretreatment standard or, in the case of a new source, after commencement of the discharge into the sewage system, shall submit the reports required by 40 CFR 403.12(e), as amended.
- (4) *Notification of changes and discharges.* All industrial users shall promptly notify the wastewater superintendent in advance of substantial changes in volume or character of discharges.

(c) Any industrial user, subject to the reporting requirements established in this section, shall be required to retain for a minimum of three years any records of monitoring activities and results, whether or not such monitoring activities are required by this section, and shall make such records available for inspection and copying by the director, or any state or federal agency. This period of retention shall be extended during the course of any unresolved litigation regarding the industrial user or city or when requested by the director or any state or federal agency.
(Code 1972, § 2.215)

Sec. 82-146. Standards modification.

The city reserves the right to amend this article to ensure compliance by the city with applicable state and federal laws and regulations.
(Code 1972, § 2.216)

Sec. 82-147. Notice of slug loading.

All industrial users shall notify the wastewater plant superintendent immediately of any discharge of prohibited pollutants, as defined in 40 CFR 403.5(b).
(Code 1972, § 2.217)

Sec. 82-148. Operating upsets.

Any user which experiences an upset in operations which places the user in a temporary state of noncompliance with this article shall notify the director immediately upon the first awareness of the commencement of the upset. No upset shall be discharged and no bypass shall be allowed unless it complies with the provisions defined in 40 CFR 403.16(a) and/or 40 CFR 403.17(a). Where such information is given orally, a written followup report on forms supplied by the city shall be submitted by the user to the city within five days.
(Code 1972, § 2.218)

Sec. 82-149. Hazardous waste report.

An industrial user shall notify the POTW, the EPA Regional Waste Management Division Director, and state hazardous waste authorities, in writing, of any discharge into the POTW of a substance which, if otherwise disposed of, would be hazardous waste under 40 CFR 281. The written notification shall include the EPA hazardous waste number, and the type of discharge (continuous, batch, or other). Industries shall also comply with 40 CFR 403.12(p)(1)(2)(3)(4) (FR DOC 90-16525 July 23, 1990).
(Code 1972, § 2.219)

Secs. 82-150—82-160. Reserved.

DIVISION 5. PRETREATMENT

Sec. 82-161. Plan required.

Any user required to provide pretreatment of its discharges to the sewage system to meet applicable national pretreatment standards and/or the requirements of division 4 of this article shall prepare a plan to achieve compliance with such standards and requirements. Such plan shall be submitted to the director within a reasonable

period of time, as specified by the city, and shall include all information requested by the city. The plan shall be prepared in accordance with good engineering practice and shall identify what measures shall be implemented by the user to ensure compliance.

(Code 1972, § 2.223)

Sec. 82-162. Compliance schedule.

Any user required to provide pretreatment or implement other measures to achieve compliance with national pretreatment standards or the requirements of division 4 of this article shall prepare a schedule of compliance for the completion and operation of pretreatment facilities and/or measures that will be implemented to achieve compliance. The city shall have the right to modify the schedule to ensure that compliance is achieved in a timely fashion.

(Code 1972, § 2.224)

Sec. 82-163. Plans and specifications; preparation by authorized, licensed person.

When required, all plans and specifications for pretreatment facilities or for the expansion or modification of the facilities shall be prepared by a person licensed to do such work in accordance with applicable state or federal law.

(Code 1972, § 2.225)

Sec. 82-164. Certification of operator of facilities.

When required by the city, the supervision, control, and operation of pretreatment facilities provided by a user shall be by a person certified by the state to operate industrial wastewater facilities.

(Code 1972, § 2.226)

Sec. 82-165. Maintenance of facilities.

Pretreatment facilities shall be maintained continuously by the user in satisfactory and effective operation at no expense to the city.

(Code 1972, § 2.227)

Sec. 82-166. New source compliance deadline.

New sources shall install and have in operating condition and shall start up all pollution control equipment required to meet applicable pretreatment standards before beginning to discharge. Within the shortest feasible time, not to exceed 90 days, from commencement of discharge, new sources must meet all applicable pretreatment standards (53 FR 40610, October 17, 1988).

(Code 1972, § 2.228)

Sec. 82-167. Adjustment of standards.

Categorical pretreatment standards may be adjusted by the control authority to reflect the presence of pollutants in the industrial users intake water in accordance with 40 CFR 403.15(a), (b)(1), (b)(2), (b)(3), (b)(4), and (c) (53 FR 40614, October 17, 1988).

(Code 1972, § 2.229)

Secs. 82-168—82-180. Reserved.

DIVISION 6. SPILL PREVENTION AND CONTAINMENT

Sec. 82-181. Accidental discharges.

Every use of the sewage system shall provide, when required by the director, protection from accidental discharge into the sewage system of materials that cause or may cause interference with the sewage system or pass through of the wastewater treatment plant.

(Code 1972, § 2.232)

Sec. 82-182. Spill prevention plans.

All major industrial users shall be required to prepare spill prevention plans which describe how the user intends to prevent a spill from occurring and what actions will be undertaken if a spill occurs. The spill prevention plan submittal shall provide at a minimum the following:

- (1) Identification of the type of materials used or stored on the site.
- (2) Identification of potential spill situations.

- (3) A description of existing and/or proposed containment structures used to prevent a spill from reaching the sewage system.
- (4) A description of existing and/or proposed onsite materials to be used to prevent a spill from reaching the sewer system.
- (5) A description of the procedures that will be used to prevent a spill and/or accidental discharge from entering the sewage system, including instructions for notifying appropriate authorities.
- (6) A description of the emergency cleanup procedures.
- (7) A description of the type of surveillance the user intends to employ at the site in order to detect and prevent pollutant discharges.

(Code 1972, § 2.233)

Sec. 82-183. Containment facilities.

(a) Every user of the sewage system shall provide facilities to contain spillage from storage areas or tanks. The containment shall be constructed of earth, steel, concrete, or solid masonry designed to be liquidtight and to withstand a full hydrostatic head. The containment structure shall have a capacity to hold at least 150 percent of the tank volume or, in the case of multiple tanks within one contained area, 150 percent of the largest tank volume.

(b) Plans and specifications for all containment facilities shall be submitted to the director for approval. The director may require any user to take interim measures for emergency containment if circumstances so require.

(Code 1972, § 2.234)

Secs. 82-184—82-195. Reserved.

DIVISION 7. FEES, RATES AND CHARGES

Sec. 82-196. Established.

Fees, rates, and charges for the connection to and use of the sewage system shall be established and amended from time to time by the city.

(Code 1972, § 2.257)

Sec. 82-197. Determination of sewer usage charges.

(a) All users shall have approved meters on the public water supply which subsequently discharges to the sewage system. Those users with private (well) supplies shall have approved meters on them when required by the director.

(b) The city may require certain users to install flow meter devices on their sewer services to measure the actual volume of their discharges to the sewage system. Such devices shall be installed and maintained by the user at no expense to the city and be of a type approved by the city.

(c) The city shall have the right to require the user to have the flow measuring device calibrated at any time to ensure its accuracy.

(Code 1972, § 2.258)

Sec. 82-198. Industrial pretreatment program charges.

Fees, rates and charges for the recovery of costs of the operation of the industrial pretreatment program may be established and amended from time to time by the city. All industrial users shall be subject to the charges and shall be based on metered water usage and/or actual cost of services provided and shall be in addition to all other usage charges.

(Code 1972, § 2.259)

Sec. 82-199. Charges for high strength waste.

All industrial users discharging sewage that exceeds the limitations as contained in division 3 of this article, may be required to pay a surcharge to recover the added cost for treatment. Such charges shall be established and amended from time to time by the city.

(Code 1972, § 2.260)

Secs. 82-200—82-220. Reserved.

ARTICLE IV. WATER/SEWER PROVISIONS AND RATES*

Sec. 82-221. Definitions.

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

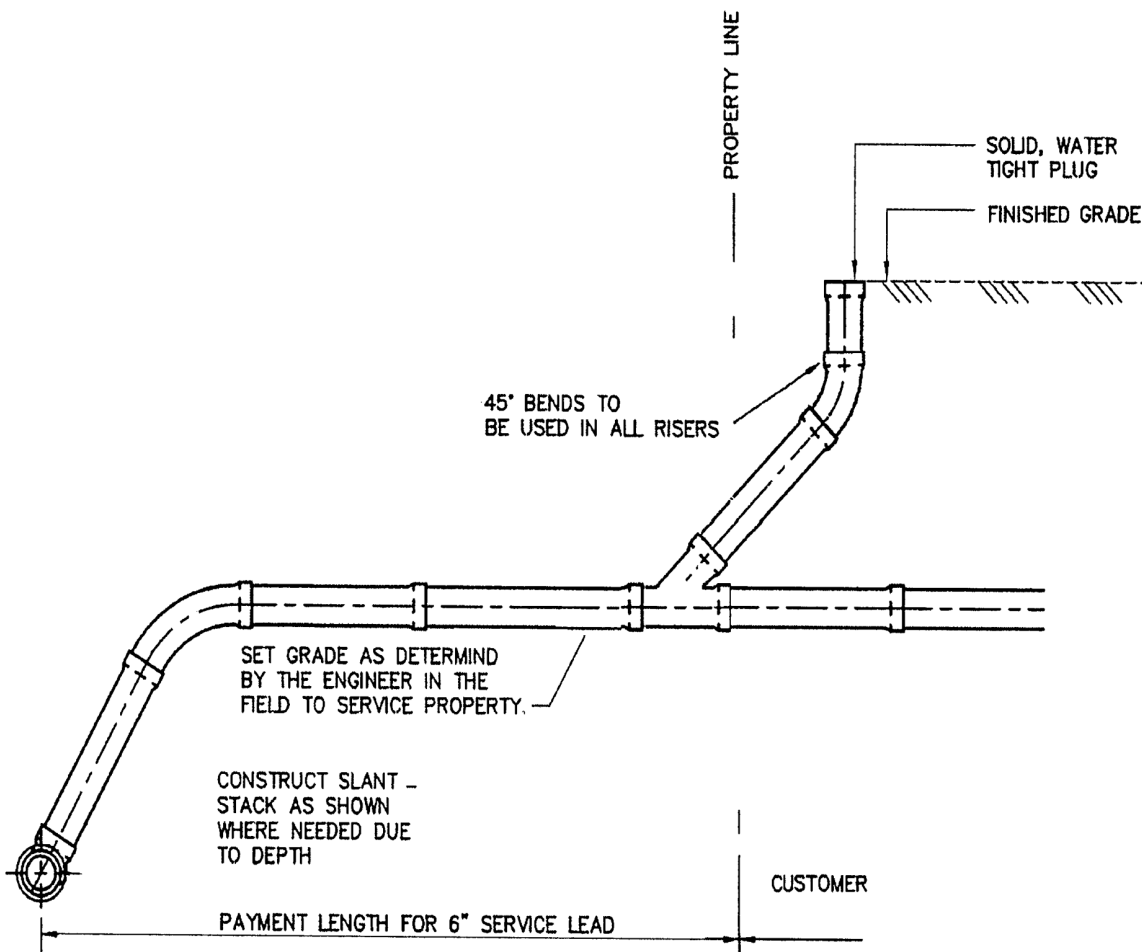
***Editor's note**—Ord. No. 05-8, § 1, adopted May 10, 2005, repealed the former Art. IV, §§ 82-221—82-232, and enacted a new Art. IV as set out herein. The former Art. IV pertained to similar subject matter and derived from Code 1972, §§ 2.121—2.132, Ord. No. 94-12, § 1, adopted Dec. 19, 1994; Ord. No. 99-1, § 1, adopted May 4, 1999; Ord. No. 00-3, § 1, adopted May 12, 2000; Ord. No. 01-4, § 1, adopted June 15, 2001; Ord. No.

Building sewer means that part of the sewer collection system connecting the sewer main with the premises, from the clean-out or property line to the building served.

Commodity charge means a charge or charges based on the quantity of water measured or estimated as passing to the premises of the customer or sewage measured or estimated as passing from the premises of the customer.

Department means the Department of Public Services of the City of Dowagiac.

02-5, § 1, adopted May 17, 2002; Ord. No. 03-6, § 1, adopted June 10, 2003; Ord. No. 04-2, § 1, adopted May 5, 2004. Ord. No. 14-2, § 1, adopted Jan. 27, 2014, amended the title of Art. IV to read as herein set out.



Lateral means that part of the sewer collection system extending from the sewer main to the owner's property line and located within the public right-of-way.

Person means any individual, firm, association, public or private corporation or public agency or instrumentality.

Premises means each lot or parcel of land, building or part thereof, having any connection to the water distribution system or the sewage disposal system of the city.

Readiness-to-serve charge means a charge based on meter size, which does not vary with usage.

Sewer clean-out means a riser installed by the owner at the property line and is used for cleaning purposes.

Sewer main means that part of the sewer collection system located within an easement or a public right-of-way and designed to supply more than one sewer connection. In includes manholes, wye connections and vertical risers.

Sewer surcharge means those extra charges levied against a sewer customer because of extra-strength substances contained in its wastewater.

Sewer vertical riser means a municipal cleanout on main sewer.

Tampering means the unauthorized alteration of a water meter or other plumbing facilities to obtain water or to circumvent the measurement of actual water consumption, excluding vandalism.

Wye means the connection between the service lateral and the sewer main.
(Ord. No. 05-8, § 1, 5-10-05)

Sec. 82-222. Fixing rates.

The rates to be charged for water and sewage disposal service furnished by the system shall be as prescribed by the city council. No rates other than the rates as set forth or determined pursuant to this chapter shall be charged.
(Ord. No. 05-8, § 1, 5-10-05)

Sec. 82-223. Water rates and service fees.

Charges for water service to each premises connected to the water system of the city shall be measured by a meter. All metered water shall be charged at a two-part rate consisting of a "readiness-to-serve charge" plus a "commodity charge". Water rates and service fees shall be as follows:

- (1) *Readiness-to-serve charge.* There shall be charged for water service within the city a "readiness-to-serve" charge in the following amounts:

<i>Meter size (inches)</i>	<i>All users monthly charge</i>
$\frac{5}{8}$	\$14.35
$\frac{3}{4}$	16.74
1	21.06
1½	27.28
2	44.00
3	168.35
4	212.80
6	322.28
8	572.95

Outside the corporate limits of the city, the readiness-to-serve charge shall be 200 percent of the rate as established for use within the corporate limits of the city. If deemed to be in the best interest of the utility, council may on a case-by-case basis waive the 200 percent ready to serve rated for four-inch or larger meter customers outside of the corporate limits.

When more than one meter is used, the total readiness-to-serve charge shall be the sum of the charges for the meters.

When a single large meter is used to serve apartment houses or multiple dwellings, a multiple dwelling charge in addition to the readiness-to-serve charge for the meter size shall be applied and the charge shall be 20 percent of the readiness-to-serve charge for the meter installed for each unit over four. Any self-contained living quarters for a single family is a unit.

The readiness to serve charge contributes to paying the cost necessary to keep the

water system in good operating condition and other overhead costs and is the amount of the minimum bill.

- (2) *Commodity charge.* There shall be levied a commodity charge inside the corporate limits of the city in the following amounts:

<i>Monthly usage (gallons)</i>	<i>All users (dollars per 100 gallons)</i>
0—40,000	\$0.288
Over 40,000	0.226

Outside the corporate limits of the city, the commodity charge shall be 200 percent of the rate as established for the use within the corporate limits of the city.

- (3) *Fire protection rates.* The charges for automatic sprinkler services or hose connections for fire protection purposes only shall be:

<i>Meter size (inches)</i>	<i>All users monthly charge</i>
Less than 4-inch meter	\$20.77
4-inch meter	26.26
6-inch meter	42.23
8-inch meter	52.80
10-inch meter	62.01
12-inch meter	69.06

- (4) *Tapping of water mains.* Following receipt in full of the tap-in fees in subsection (5) of this section, the department and/or its agents shall be responsible for the provision of any and all service taps to water mains within the city's public distribution system. The service taps or connections shall include all materials and labor, including any and all costs associated therewith, required to install the service connection from the water main to the property line up to and including a cumulative length of 66 feet. For required extensions beyond 66 feet, the city shall impose and collect a charge equal to the complete and total cost of actual labor, equipment, and materials incurred, plus 15 percent, for that portion of the service connection in excess of 66 feet. This cost

allocation shall apply to all water service connections without regard to meter or service diameter size. All required water meters shall be provided by the city and shall be and remain the property of the city.

- (5) *Tap-in fees.* There is hereby imposed a tap-in fee, as established and detailed in the schedule of this subsection, which shall be charged against each new connection constructed to serve premises not previously connected to the city water distribution system. The tap-in fee shall cover the cost of water meter and main tapping, as outlined in subsection (4) of this section, as well as provide compensation to the water fund and system users in exchange for a representative share in the cumulative past capital investment, including debt service, in facilities serving the system users. A tap-in fee shall not be imposed on, nor applicable to, any premises connected to existing municipally-owned and operated water distribution systems or components or extensions thereof. However, the construction of dedicated, second-service connections, such as lines for fire suppression service or lawn sprinkling, to premises already connected to existing municipal water systems, shall be subject to the imposition of tap-in fees as detailed and scheduled in this subsection:

Tap-In Fees For Water Connections

<i>Service line (inches)</i>	<i>Meter equivalent factor</i>	<i>Tap fee*</i>
5/8	1.0	\$ 500.00*
3/4	1.1	550.00*
1	1.4	700.00*
1 1/2	1.8	900.00
2	2.9	1,450.00
3	5.5	2,750.00
4	8.0	4,000.00
6	12.0	6,000.00

<i>Service line (inches)</i>	<i>Meter equivalent factor</i>	<i>Tap fee*</i>	<i>Meter size (inches)</i>	<i>Monthly charge (bills due on and after 3-10-19)</i>	<i>Monthly charge (bills due on and after 3-10-20)</i>
8 and larger		Time and material costs plus 15% with minimum fee equal to 6-inch tap	1½	37.74	45.28
			2	60.81	72.96
			3	230.63	276.73
			4	293.53	352.20
			6	440.30	528.31

*For detached, single-family residential dwellings, customers may sign a tap-in fee payment agreement for water connections of one-inch or less service diameter. The agreement shall allow payment of the fee due, without interest, if paid in equal monthly installments over a period not to exceed 12 months.

(Ord. No. 05-8, § 1, 5-10-05; Ord. No. 06-4, § 1, 4-25-06; Ord. No. 07-4, § 1, 5-30-07; Ord. No. 08-7, § 1, 11-14-08; Ord. No. 10-8, § 1, 11-23-10; Ord. No. 16-4, § 1, 4-12-16; Ord. No. 17-2, § 1, 7-10-17; Ord. No. 19-3, § 1, 6-24-19)

Sec. 82-224. Sewer rates and service fees.

Charges for sewer service to each premise connected to the sewer system of the city shall be as follows:

- (1) *Readiness-to-serve charge.* The readiness to serve charge is utilized to cover expenditures to maintain the sewer collection system and other overhead costs and is the amount of the minimum bill. This charge is based on the actual size of the water meter or equivalent size of a sewer meter:

Inside the corporate limits of the city

Readiness-to-Serve Charge

<i>Meter size (inches)</i>	<i>Monthly charge (bills due on and after 3-10-19)</i>	<i>Monthly charge (bills due on and after 3-10-20)</i>
5/8	\$ 20.96	\$25.15
3/4	23.07	27.68
1	29.35	35.22

Outside the corporate Limits of the city

Readiness-to-Serve Charge

<i>Meter size (inches)</i>	<i>Monthly charge (bills due on and after 3-10-19)</i>	<i>Monthly charge (bills due on and after 3-10-20)</i>
5/8	\$47.50	\$50.30
3/4	52.27	55.37
1	66.51	70.44
1&frac;12	85.51	90.55
2	137.79	145.92
3	522.60	553.46
4	665.14	704.40
6	997.71	1,056.62

When more than one meter is used, the total readiness-to-serve charge shall be a sum of the charges for all meters.

- (2) *Commodity charge.* The commodity charge is based on the amount of water used for customers inside and outside the corporate limits of the city and will be \$0.434 per 100 gallons (effective on bills due on and after March 10, 2019) and \$0.464 per 100 gallons (effective on bills due on and after March 10, 2020). The commodity charge covers expenditures for wastewater treatment and other overhead costs.

- (3) *Special rate A—Residential users of sewer only inside city limits.* A charge of \$47.49 per month shall be assessed to all residential properties inside the city limits using sewer service only. Any multiple residential users or commercial or industrial users of sewer and not water

under rate A shall be charged a rate determined by the city engineer and reported to the city council by the city manager. In no event shall the rate be less than would be charged under this section. This rate is effective on bills due on and after March 10, 2019. The rate of \$56.98 will be effective on bills due on and after March 20, 2020.

- (4) *Special rate B—residential users of sewer only outside city limits.* A charge of \$56.68 per month shall be assessed to all residential properties outside the city limits, using sewer service only. Any multiple residential users or commercial or industrial users of sewer and not water under rate B shall be charged a rate determined by the city engineer and reported to the city council by the city manager. In no event shall the rate be less than would be charged under this section. This rate is effective on bills due on and after March 10, 2019. The rate of \$68.01 will be effective on bills due on and after March 20, 2020.
- (5) For our two utility customers that have a flat sewer rate (\$507.29 and \$327.23) those rates will be increased. New rates are \$617.47 and \$398.30. These rates are effective on bills due on and after March 10, 2019. The rates of \$740.85 and \$477.89 respectively will be effective on bills due on and after March 10, 2020.
- (6) *Special rate C—Special rates.* Special rates may be set by resolution of the city council. Special rates shall be based upon the rates as set forth in this chapter; and, insofar as possible, shall be in relation to the use of the water on the premises.
- (7) *Tapping of sewer mains.* Following receipt in full of the tap-in fees in subsection (8) of this section, the department and/or its agents shall be responsible for the provision of any and all service taps to sewer mains within the city's public distribution system. The service taps or connections shall include all materials and labor, including any and all costs associated

therewith, required to install the service connection from the sewer main to the property line up to and including a cumulative length of 66 feet. For required extensions beyond 66 feet, the city shall impose and collect a charge equal to the complete and total cost of actual labor, equipment, and materials incurred, plus 15 percent, for that portion of the service connection in excess of 66 feet. This cost allocation shall apply to all sewer service connections without regard to service diameter size.

- (8) *Tap-in fees.* There is hereby imposed a tap-in fee, as established and detailed in the schedule of this subsection, which shall be charged against each new connection constructed to serve premises not previously connected to the city sanitary sewer collection system. The tap-in fee shall cover the cost of main tapping as well as provide compensation to the sewer fund and system users in exchange for a representative share in the cumulative past capital investment, including debt service, in facilities serving the system users. A tap-in fee shall not be imposed on, nor applicable to, any premises connected to existing municipally-owned and operated sanitary sewer collection systems or components or extensions thereof.

Tap-in fees for sewer connections

<i>Service line (inches)*</i>	<i>Meter equivalent factor</i>	<i>Tap fee*</i>
5/8	1.0	1,000.00**
3/4	1.1	1,100.00**
1	1.4	1,400.00**
1 1/2	1.8	1,800.00
2	2.9	2,900.00
3	5.5	5,500.00
4	8.0	8,000.00
6	12.0	12,000.00

<i>Service line (inches)*</i>	<i>Meter equivalent factor</i>	<i>Tap fee*</i>
8 and larger		Time and material costs plus 15% with minimum fee equal to 6-inch tap

*Sanitary sewer tap-in fees are based on water service diameters used, unless the actual sewer service diameter is smaller than the corresponding water service; in such cases, the actual sanitary sewer service diameters are used to identify and calculate tap-in fee.

**For detached, single-family residential dwellings, customers may sign a tap-in fee payment agreement for sewer connections installed in conjunction with water connections of one-inch or less service diameter. The agreement shall allow payment of the fee due, without interest, if paid in equal monthly installments over a period not to exceed 12 months.

The city sewer department and/or its agents shall be responsible for the inspection and approval of any and all service taps to sanitary sewer mains within the city-owned public collection and treatment system. The costs of service taps or connections shall include all materials and labor, including any and all costs associated therewith, required to install the service connection from the sanitary sewer main and/or riser from the main, to the property line up to and including a cumulative length of 66 feet. All costs associated with the installation and construction of portions or components of a connection; which extend beyond the 66-foot limit, shall be the exclusive responsibility of the developer/applicant.

(Ord. No. 05-8, § 1, 5-10-05; Ord. No. 06-4, § 1, 4-25-06; Ord. No. 07-4, § 1, 5-30-07; Ord. No. 08-5, § 1, 5-28-08; Ord. No. 10-9, § 1, 11-23-10; Ord. No. 12-4, § 1, 7-10-12; Ord. No. 14-2, § 1, 1-27-14; Ord. No. 16-3, § 1, 4-12-16; Ord. No. 17-1, § 1, 7-10-17; Ord. No. 19-1, § 1, 1-28-19)

Sec. 82-225. Special meters.

(a) Lawn and garden sprinkling may be provided without sewer charges if a separate water meter is installed by the department at

the request of the customer. The customer will be responsible for making all plumbing changes or alterations necessary to install the separate line from the lateral to the spigots to be utilized. A meter set in series for subtraction purposes will not be permitted.

(b) The plumbing to and from the sprinkling meter will be inspected by the department prior to the installation of new meter. Any subsequent alterations to the plumbing connected to the lawn sprinkling meter shall not be made without the prior approval of the department.

(c) The sprinkling meter will not be assessed any water readiness to serve charges. Water consumption charges for such meter will be calculated independently of any other metered supply and cannot be combined with other metered consumption for purposes of volume or step rate reductions.

(d) The city reserves the right to discontinue any lawn sprinkling or gardening meter when, in the judgment of the city, such meter is being utilized for other water supply purposes or to circumvent the payment of sewer charges. In that event a retroactive bill, including sewer charges, will become due and payable for the period the lawn sprinkling meter was used for other purposes up to a maximum of three years.

(e) The installation of, or the removal of, said meter will be subject to the turn-on and turn-off charges as provided in subsection 82-10(1).
(Ord. No. 05-8, § 1, 5-10-05)

Sec. 82-226. Non-compliance charges.

Any user who is found to willfully or negligently fail to comply with any provision of this article or any prohibition, limitation, or requirement contained herein, shall be subject to the payment of a charge by the city to cover all fines, penalties or judgments levied against the city by any federal, state or county agency as well as all costs incurred by the city which were a result of the violation. This charge may be levied in addition to any other remedy contained in this article and must be made before service is commenced.

(Ord. No. 05-8, § 1, 5-10-05)

Sec. 82-227. Injury to facilities.

No person, except an authorized employee of the city in the performance of his duties, shall break, damage, destroy, uncover, deface or tamper with any structure, appurtenance or equipment which is a part of the city water distribution system. Any person violating this section shall, upon conviction thereof, be punished as prescribed in section 58-242 of this Code.

(Ord. No. 05-8, § 1, 5-10-05)

Secs. 82-228—82-259. Reserved.

ARTICLE V. ELECTRIC PROVISIONS AND RATES*

Sec. 82-260. Definitions.

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

Department means the Department of Public Services (DPS) of the City of Dowagiac.

Electric service connection means the service conductors from the city's facilities to and including the splices, if any, connecting to the service-entrance conductors for the customer's building or other structure.

Kilovolt-ampere (kVA) means a unit of apparent electric power in thousand volt-amperes.

Kilovar-hour (kVARh) means a unit of reactive energy equal to one kilovar used for one hour.

Kilowatt (kW) means a unit of electric power in thousand watts.

Kilowatt-hour (kWh) means a unit of electric energy equal to one kilowatt used for one hour.

Lumen means a unit of light intensity equal to the illumination of one foot candle over an area of one square foot.

***Editor's note**—Ordinance No. 06-3, § 1, adopted April 25, 2006, amended the Code by changing the title of Art. V from "Electric and Electric Rates" to "Electric Provisions and Rates".

Person means any individual, firm, association, public or private corporation, or public agency.

Power factor means the ratio of kilowatts to kilovolt-amperes.

Power quality means the ability of electrical equipment to operate in a satisfactory manner, given proper care and maintenance. The load should be designed for compatibility with the electrical system.

Primary voltage means a nominal electric distribution voltage. (Typically 2400 volts or higher.)

Premises means each lot or parcel of land, building or part thereof served by a connection to the electric distribution system.

Secondary voltage means a nominal electric service voltage. Typically lower than 600 volts.

Tampering means the unauthorized alteration of an electric meter or other electric facilities to obtain electric service or to circumvent the measurement of actual electric consumption, excluding vandalism.

(Ord. No. 05-9, § 1, 5-10-05)

Sec. 82-261. Use of service.

Service may be taken from the municipal electric utility system as long as all applicable ordinances of the city, The National Electric Code, and all rules and regulations of the department are fully complied with.

(Ord. No. 05-9, § 1, 5-10-05)

Sec. 82-262. Application for service.

(a) A written agreement may be required from the customer before service will be commenced. A copy of the agreement will be furnished to the customer upon request.

(b) When the customer requires delivery of energy; which does not conform to any of the present electric rate schedules, a special agreement will be prepared by the city.

(c) When the customer desires delivery of energy at more than one point, a separate agreement may be required for each separate point of

delivery. Service delivered at each point of delivery will be billed separately under the applicable rate.

(d) Prospective customers shall be responsible for ascertaining from the city whether the proper type and size of service is available at a particular location when planning the purchase and/or installation of any electric equipment.

(Ord. No. 05-9, § 1, 5-10-05)

Sec. 82-263. City liability.

(a) The city agrees to use reasonable diligence in providing a regular and uninterrupted supply of power, but does not guarantee a constant supply of power, or the maintenance of unvaried frequency or voltage, and will not be liable for damages to the customer by reason of any failure in respect thereof.

(b) The customer shall take and use power in such a manner so as not to cause a disturbance or voltage fluctuation on the utility supply system or systems of any third party. The customer shall take remedial measures at his or her own expense by way of installing suitable apparatus or otherwise, as may be necessary, to reduce any disturbance, fluctuations or interference to a level deemed tolerable by the city.

(c) Unless otherwise provided in a contract between the city and customer, the point at which the city delivers service to the customer, to be known as "delivery point", shall be the point at which the customer's facilities are connected to the city's facilities (diagrams available from department). The city shall not be liable for any loss, injury, or damage resulting from the customer's use of his equipment or occasioned by the energy furnished by the city beyond the delivery point.

(d) The customer shall provide and maintain suitable protective devices on his equipment to prevent any loss, injury, or damage that might result from single-phasing conditions or any other fluctuation or irregularity in the supply of energy. The city shall not be liable for any loss, injury, or damage resulting from a single-phasing condition or any other fluctuation or

irregularity in the supply of energy, which could have been prevented by the use of such protective devices.

(e) The city will provide and maintain the necessary lines, service connections, transformers, meters, and other apparatus; which may be required for the proper measurement of and protection to its service. All such apparatus shall be and remain the property of the city. The city may enter into service contracts, which allow a customer to own and maintain its own apparatus. (Ord. No. 05-9, § 1, 5-10-05)

Sec. 82-264. Use of energy by customer.

(a) The schedule of electric rates for electric energy given herein is classified by the character of use of such energy and is not available for service except as provided therein.

(b) With particular reference to commercial or industrial service, it shall be understood that the city may change the customer to another rate schedule adopted as part of this article and applicable to the customer's requirements.

(c) A customer may request to change from one rate schedule to another; however, if such change is approved, the city shall not be required to change or maintain transmission, switching, or transformation equipment (either for voltage or form of current change) different from or in addition to that generally furnished to other customers receiving electrical supply under the terms of the rate schedule elected by the customer. The customer will not be permitted to change from that rate to another rate until 12 months have elapsed.

(d) The customer's apparatus or appliances must be compatible with the type of service and equipment provided by the city. Electric power may not be used in a manner in which will cause voltage fluctuations or disturbances in the city's transmission or distribution system. The city shall be the sole judge as to the suitability of apparatus or appliances that are or will be detrimental to its general service.

(e) No attachment of any kind whatsoever may be made to the city's lines, poles cross-arms, structures, or other facilities without the express written consent of the city.

(f) All apparatus used by the customer shall be of such type as to secure the highest practical commercial efficiency, power factor, and the proper balancing of phases as determined by the city. Motors which are frequently started or motors arranged for automatic control must be of a type to give maximum starting torque with minimum current flow and must be equipped with controlling devices approved by the city. The customer agrees to notify the city of any increase or decrease in his connected electrical load.

(g) The city will not supply service to the customers who have other sources of electrical energy supply except with the express written consent of the city.

(h) The customer shall not be permitted to operate his own generating equipment in parallel with the city's service except on written consent of the city.

(Ord. No. 05-9, § 1, 5-10-05)

Sec. 82-265. Rate selection.

The rate under which a customer will be billed is determined pursuant to the availability clauses of the city's electric rate schedules.

(Ord. No. 05-9, § 1, 5-10-05)

Sec. 82-266. Power cost adjustment factor.

The city may incorporate a power cost adjustment factor (PCAF) to the base rates. The adjustment will be determined by the amount wholesale power supply costs differ from base rates.

(Ord. No. 05-9, § 1, 5-10-05)

Sec. 82-266.1 Low-income energy assistance surcharge.

The city manager may opt out of the low-income energy assistance fund created under 2013 PA 95, MCL 460.9t by electing to not collect a low-income energy assistance funding factor by filing a notice with the Michigan Public Service Commission by July 1 of any year. If the city manager does not opt out, a low-income energy

assistance funding factor surcharge shall be included as a separate line item on each customer's monthly bill and adjusted annually on the billing month as approved by the Michigan Public Service Commission.

(Ord. No. 19-2, § 5, 5-28-19)

Editor's note—Ord. No. 19-2, § 5, adopted May 28, 2019, set out provisions intended for use as § 82-266a. To preserve the style of this Code, and at the editor's discretion, these provisions have been included as § 82-266.1.

Sec. 82-267. Residential (domestic use) service.

(a) Individual residences shall be served individually with single-phase service. Customers may not take service for two or more separate residences through a single point of delivery under any rate, regardless of common ownership of the several residences, except that in the case of an apartment house with a number of individual apartments, the landlord shall have the choice of:

- (1) Providing separate wiring for each apartment within 90 days of city notification so the city may supply each apartment separately under the residential rate; or
- (2) Purchasing the entire service through a single meter under the appropriate general service rate without sub-metering the service to the apartments.

(b) Where a single-family house is converted to include separate living quarters or dwelling units for more than one family, or where two or more families occupy a single-family house with separate cooking facilities, the owner may, instead of providing separate wiring for each dwelling unit, take service through a single meter under the applicable general service rate.

(c) The residential rate shall cease to apply to that portion of a residence which becomes regularly used for business, professional, institutional, or gainful purposes, or which requires three-phase service. Under these circumstances, the customer shall have the choice of:

- (1) Separating the wiring within 90 days of city notification so the residential portion of the premises is served through a

separate meter under the residential rate, and the other uses as enumerated above are served through a separate meter or meters under the appropriate general service rate; or

- (2) Taking the entire service under the general service rate.

(d) Detached building(s) actually appurtenant to the residence, such as a garage, may be served by an extension of the customer's residence wiring through the residence meter.
(Ord. No. 05-9, § 1, 5-10-05)

Sec. 82-267.1. Inspection.

(a) It is in the interest of a customer to properly install and maintain all wiring and electrical equipment and at all times be responsible for its character and condition. The city will not inspect a customer's electrical equipment and in no event shall the city be responsible for that equipment. An electrical inspection certificate signed by the city electrical inspector is required for all temporary and permanent services. The certificate must contain the inspector's name, customer's name and service address, and date of approval.

(b) It is in the interest of the customer that all wiring be installed in accordance with the National Electrical Code (NEC) and any additions or alterations thereof installed in accordance with the current edition of the NEC. The customer shall be responsible to maintain his wiring and equipment and shall also be responsible for the character and condition thereof.

(c) Inspection of electrical wiring and equipment in commercial, industrial, apartment, and public buildings will be performed by the city electrical inspector for compliance with the NEC.

- (d) The city reserves the right to:
- (1) Withhold furnishing service to new or existing installation(s) until an electrical wiring certificate has been issued by the city electrical inspector, and;
 - (2) Discontinue service to any building or installation when it is determined that

electrical wiring or equipment of said building or installation is unsafe or improperly installed.

(e) The city shall not be responsible for any actions as a result of a waiver of any of the above requirements.

(Ord. No. 05-9, § 1, 5-10-05)

Sec. 82-268. Limitation of service.

The city reserves the right to determine its ability to serve any loads which may be offered for connection to the system. Each application which may require the installation of additional lines and transformers or the enlargement of existing lines and transformers, or which involves the connection of out-of-the-ordinary use devices, will be a matter for special consideration.

(Ord. No. 05-9, § 1, 5-10-05)

Sec. 82-269. Power quality.

(a) The load of any three-phase service shall be reasonably balanced between phases by the customer.

(b) The service connections, transformers, and appliances must be suitable for operation with the character of service supplied by the city, and shall not be detrimental to the same. The electric power must also be used in such a manner so as not to cause non-provided for voltage fluctuations or disturbances of the city's transmission or distribution system. The city will be the sole judge as to the suitability of all apparatus or appliances and as to whether the operation of such apparatus or appliances is or will be detrimental to the city's system.

(Ord. No. 05-9, § 1, 5-10-05)

Sec. 82-270. Location of city's equipment.

The city will extend its lines to serve customers for year-round service under applicable electric rates subject to the following conditions:

- (1) Extensions hereunder shall be built by the city or electrical contractors in accordance with its construction standards and shall be a single-phase unless the city elects to build poly-phase lines.

- (2) In those cases where it is not feasible or practical to construct lines on public rights-of-ways and it is necessary to secure permits or easements, the applicants shall secure the same at no cost to the city. The city may assist in obtaining easements and rights-of-ways on private property or tree-trimming permits before construction shall commence. The city shall be under no obligation to construct lines in the event the necessary rights-of-ways, easements, or tree-trimming permits cannot be obtained.

(Ord. No. 05-9, § 1, 5-10-05)

Sec. 82-271. Protection of equipment.

All property of the city that is placed in or upon a customer's premise and is used in supplying service shall be under the customer's protection. The cost of any loss or damage to such property excluding normal wear and tear shall be payable by the customer.

No attachment of any kind whatsoever may be made to the city's lines, poles, cross arms, structures, or other facilities without the express written consent of the city.

If the city deems that potential problems may arise due to a customer's operations, the city may require the customer to install certain protective devices in order to maintain the integrity and reliability of the city's electrical distribution system.

(Ord. No. 05-9, § 1, 5-10-05)

Sec. 82-272. Meter sockets (base).

Where required, meter sockets provided by the customer shall be UL listed and labeled in accordance with the NEC and approved the department. Repairs to these sockets are the sole responsibility of the customer. If repairs cannot restore socket to its standard condition, the customer will be notified in writing to replace the damaged meter socket within 30 days or service will be disconnected.

(Ord. No. 05-9, § 1, 5-10-05)

Sec. 82-273. Meter seals.

The breaking of seals by other than authorized persons or tampering with the city's meters and measuring devices is prohibited. Where the city detects that the physical facilities of the city have been tampered with so as to cause an unauthorized use of electric energy, or loss of meter registration, the department may at any time without notice, discontinue the supply of electric energy to the customer and remove its meter and other apparatus until such time as the customer has corrected the condition to the satisfaction of the department and has paid all penalties and fees associated with tampering. Such tampering could result in criminal actions, depending upon applicable state laws.

(Ord. No. 05-9, § 1, 5-10-05)

Sec. 82-274. Resale of energy.

All service supplied by the city is for a customer's use within or upon its premises and for the purposes designated in the application. No customer shall be allowed to resell capacity, energy, or auxiliary services to others. Furthermore, a customer shall not extend service from one location to another by crossing rights-of-way, public streets, roads, alleys, or property owned by others. For the purposes of this section, the renting of a premise with the cost of service included in the rental as an incident of tenancy will not be considered a resale of energy.

(Ord. No. 05-9, § 1, 5-10-05)

Sec. 82-275. Multiple dwelling units served with one meter.

The city shall bear no responsibility or liability for interruptions in service where more than one dwelling unit is supplied by one electric meter and service is in the name of only one of the two, or more, tenants. In addition, the city shall bear no responsibility or liability for interruptions in service to units, metered separately, where the discontinuance of one unit affects all or part of other units.

(Ord. No. 05-9, § 1, 5-10-05)

Sec. 82-276. Electric line construction policy/installation costs.

(a) *Service connection.* The city will furnish and install, at its expense, the overhead service connection extending from the city's service pole

to the customer's point of attachment as designated by the city. Service connections may be placed underground at the option of a developer or customer.

When a customer requests a service connection, the city will designate the location of its service connection and metering equipment.

The city shall have the right to construct its poles, lines, conduits and circuits on the customer's property and to place its transformers and other apparatus on the customer's property. The customer shall provide suitable space for the installation of the necessary measuring instruments at a point designated by the city and that will protect the equipment from damage.

Before overhead or underground service will be extended, the owner, developer, or customer requesting electric service shall provide adequate sub-grade (within three inches of final grade) prior to the installation of any lines, transformers, or other apparatus. Permanent survey markers indicating property lines must be installed and maintained by the customer. Any subsequent rebuilding or relocation of the city's facilities required due to change in grade or property lines shall be done at the customer's expense.

The customer's inside wiring must be grounded in accordance with the requirements of the National Electric Code and any city and state regulations. Service will not be connected if it is determined that the inside wiring does not meet the specifications.

When a customer desires energy to be delivered at a point or in a manner other than that designated by the city's electric department, the customer shall pay all of the additional costs, which shall include labor, equipment rental and materials plus overhead. The city shall install, own, and maintain the service line from the property line to the point of attachment to the customer's facilities.

(b) *Line extensions.* The city will install its distribution facilities within public rights-of-way. In those cases where it is not feasible or practical to place these facilities within the public rights-of-way, and it is necessary to secure rights-of-way and/or tree trimming permits

on private property, the applicant or applicants must secure these agreements without cost to the city or assist the city in obtaining the necessary agreements before construction will begin. The city is under no obligation to construct facilities if the necessary rights-of-way and/or tree trimming permits cannot be obtained. The customer shall grant to the city any easement(s) reasonably necessary for the supplying of electrical service.

(c) *Overhead extensions.* When application is made for an overhead electric service which requires the extension of the city's existing distribution lines, the city will make such extensions at its own expense for the first 200 feet. Customers requiring an extension beyond the initial 200 feet up to the drop line shall pay all of the additional costs which shall include labor, equipment rental and materials plus 15 percent.

(d) *Underground extensions.* Extension of electric distribution lines may be placed underground at the option of a developer or customer. If a developer or customer requests an underground extension, the city shall be responsible for the first 200 feet. Customers requiring an underground extension beyond the initial 200 feet up to the drop line shall pay all of the additional costs, which shall include labor, equipment rental and materials plus 15 percent.

(e) *Underground extension—New residential subdivisions.* For all new residential subdivisions, the electric distribution facilities will be constructed by the city underground within the public right-of-way, whenever possible. The owner or developer shall grant to the city any easement the city determines to be reasonably necessary for the supplying of electrical service.

(f) *Customer—Requested replacement of existing overhead facilities.* At the customer's request, existing overhead distribution and service facilities may be replaced with underground facilities. In such cases, the customer shall pay a non-refundable contribution to the city for the construction cost incurred as specified in this article. In addition, the customer or customers must also pay to the city the cost of removing the overhead facilities less any salvage value.

(g) *Relocation of city's facilities at customer's request.* When a customer requests that the city relocate its facilities, which are located on the customer's premise, the customer shall reimburse the city for the entire construction cost incurred to make such changes. During an addition or remodeling of an existing building, the meter shall be moved to a suitable location designated by the city. The location must be outside of the building, and easily accessible by city personnel, and the cost of moving the meter shall be borne by the customer.

(h) *Temporary services.* Customers desiring lighting and/or secondary power for less than 12 months for purposes such as, but not limited to, construction jobs, fairs, carnivals, fruit stands, Christmas tree stands, traveling shows, outdoor/indoor entertainment, etc., shall pay the construction cost of installing and removing all the facilities necessary to supply the temporary service. The temporary service will be constructed by the customer in accordance with the city's construction standards, and the location of the service will be determined by the city. If it is within 100 feet of a distribution line, the minimum service charge for a temporary service shall be \$150.00. The customer shall be charged a fee equal to all construction costs beyond the initial 100 feet as defined under overhead and underground extensions.

(i) *Construction service.* When application is made for electric service to a construction site that requires the extension of the city's existing distribution or secondary lines, the city will make such extensions up to one pole span. Customers requiring the extension of the lines beyond one pole span will be charged additional costs which shall include labor, equipment rental and materials plus 15 percent.
(Ord. No. 05-9, § 1, 5-10-05)

Sec. 82-277. Non-compliance charges.

Any user who is found to willfully or negligently fail to comply with any provision of this article or any prohibition, limitation, or requirement contained herein, shall be subject to the payment of a charge by the city to cover all fines, penalties or judgments levied against the city by any

federal, state or county agency as well as all costs incurred by the city which were a result of the violation. This charge may be levied in addition to any other remedy contained in this article and must be made before service is commenced.

(Ord. No. 05-9, § 1, 5-10-05)

Sec. 82-278. Injury to facilities.

No person, except an authorized employee of the city in the performance of his duties, shall break, damage, destroy, uncover, deface or tamper with any structure, appurtenance or equipment which is a part of the city electric distribution system. Any person violating this section shall, upon conviction thereof, be punished as prescribed in section 58-242 of this Code.

(Ord. No. 05-9, § 1, 5-10-05)

Sec. 82-279. Electric rates.

(a) *Residential electric service.* Available to customers desiring service for all usual domestic purposes through one meter to a single occupancy or individual dwelling unit. This rate is not available for commercial or industrial use.

- (1) *Nature of service:* alternating current, single-phase, three wire, 60 Hertz, at approximately 120/240 volts.
- (2) *Monthly rate:* effective on bills due on and after August 10, 2019.

Monthly service charge	
(minimum monthly charge)	\$13.30
Energy charge per kWh	0.11525

This rate is subject to the transmission cost adjustment charge.

(b) *General service.* Available to general service customers not specified in other city rate schedules, with normal monthly maximum demands less than 35 Kw, desiring service for general lighting and/or power purposes. Customers may continue to qualify for this service under this rate until their 12-month average demand is greater than or equal to 35 Kw.

- (1) *Nature of service:* alternating current, single-phase, three wire, 60 Hertz, at approximately 120/240 volts. The

particular nature of the voltage in each case will be determined by the Department of Public Services (DPS).

- (2) *Monthly rate:* effective on bills due on and after August 10, 2019.

Monthly service charge (minimum monthly charge) \$20.43
 Energy charge per kWh 0.14439

This rate is subject to the transmission cost adjustment charge.

(c) *Public service.* Available to all federal, state, and local governmental authorities for the supply of electric energy to public buildings, public schools, or other facilities that are supported by public tax levies.

- (1) *Nature of service:* alternating current, 60 Hertz, single-phase or three-phase. The particular nature of the voltage in each case will be determined by the DPS.
- (2) *Monthly rate:* effective on bills due on and after August 10, 2019.

Monthly service charge (minimum monthly charge) \$16.21
 Energy charge per kWh 0.13634

This rate is subject to the transmission cost adjustment charge.

Public school system customers at a single location with loads in excess of an average of 300 kW demands over a 12-month period can be provided service under the large general service rate. (The 12-month period can be excluded for new public school facilities with expected demands in excess of 300 kW.)

(d) *Municipal water service.* Available to all municipally owned and operated waterworks systems and sewage disposal systems, including booster pumps and lift stations.

- (1) *Nature of service:* alternating current, 60 Hertz, single-phase or three-phase. The particular nature of the voltage in each case will be determined by the DPS.
- (2) *Monthly rate:* effective on bills due on and after August 10, 2019.

Monthly service charge (minimum monthly charge) \$17.56
 Energy charge per kWh 0.11593

This rate is subject to the transmission cost adjustment charge.

(e) *Large general service.* Available to any general service customer having a demand of 35 KW or more for general lighting and power purposes. Customers may continue to qualify for this rate until their 12-month average demand drops below 35 kW. This rate is available to public school system customers at a single location with demands in excess of 300 kW over a 12-month period.

- (1) *Nature of service:* alternating current, 60 Hertz, single-phase or three-phase for both primary and secondary services. The particular nature of the voltage in each case will be determined by the DPS.
- (2) *Monthly rate:* effective on bills due on and after August 10, 2019.

<i>per kwh</i>	<i>0—100,000</i>	<i>100,001— 250,000</i>	<i>250,001— 400,000</i>	<i>400,001— 550,000</i>	<i>550,001— 999,999</i>
LGS					
Monthly service charge	\$ 134.56				
Demand charge per KW	\$ 15.28	\$ 15.28	\$ 15.28	\$ 15.28	\$ 15.28
Energy charge per kWh	\$0.06787	\$0.06640	\$0.06481	\$0.06173	\$0.06013

LGS discount (Eq supplied by customer)

<i>per kwh</i>	0—100,000	100,001— 250,000	250,001— 400,000	400,001— 550,000	550,001— 999,999
Monthly service charge	\$ 164.91				
Demand charge per KW	\$ 14.52	\$ 14.52	\$ 14.52	\$ 14.52	\$ 14.52
Energy charge per kWh	\$0.06719	\$0.06560	\$0.06400	\$0.06093	\$0.05945

*LGS discount rate (equipment supplied by customer):

Available to customers who furnish and maintain complete substation equipment, including any and all transformers, and/or switches, and/or other apparatus necessary to take entire service at primary distribution voltage.

(3) *Monthly billing demand.* Energy supplied hereunder will be delivered through not more than one single-phase and/or one poly-phase meter. Customers demand shall be taken monthly to be the highest registration of a 15-minute integrating demand meter or indicator, or the highest registration of a thermal-type meter.

(4) *Power factor adjustment (PFA).* Customers with a monthly maximum demand of 100 kW or more will be subject to a power factor adjustment. The PFA is based on the maintenance by the customer of an average monthly power factor of 85 percent. If the average monthly power factor, as registered by the city's metering devices, is other than 85 percent, the monthly demand charge will be multiplied by a constant as determined by the following formula:

$$\text{Constant} = .9510 + ((.1275) \times (\text{RKVAH}/\text{kWh})^2)$$

Customers with a PFA will have their demand charge accordingly debited or credited and shall continue with the PFA until their 12-month average demand drops below 100 kW.

(f) *Security lights.* Available to all customers desiring security light (yard light) service providing application is made and a "protective or yard light agreement" is signed by the customer.

Monthly rate, effective on bills due on and after August 10, 2019:

175 Mercury Vapor	\$14.92
250 Mercury Vapor	18.39
400 Mercury Vapor	27.78
1000 Mercury Vapor	57.23
150 High Pressure Sodium	14.92
400 High Pressure Sodium	42.42

(g) *Transmission cost adjustment charge (TCA).* The current electric rate charged to customers includes a base amount for transmission services. With the formation of the independent system operator additional ancillary service charges are billed to the city. Ancillary service charges can vary each month and can be difficult to predict with certainty. To ensure customers are charged the cost of service and the financial integrity of the electric system is maintained, charges for "ancillary" transmission services will be passed through to customers through a transmission cost adjustment charge (TCA) based on the formula listed below:

Example formula for transmission cost adjustment (TCA)

	<i>Example calculation</i>	<i>Line</i>	<i>Notes</i>
Transmission costs	\$27,078.18	A	Ancillary service charges for transmission

	<i>Example calculation</i>	<i>Line</i>	<i>Notes</i>
Reconciliation from previous month		B	The city may periodically reconcile transmission recovery with rates
Total transmission costs to be recovered	\$27,078.18	C	(A+B)
Divided by kWh purchased	6,450,000	D	Actual kWh energy purchased by city
Transmission costs per kWh	\$0.004198	E	Transmission cost per kWh (C/D)
Less base TCA	0.00238	F	Base TCA
Transmission adjustment per kWh	0.00182	G	Transmission costs per kWh less base (E-F)
Losses	0.00013	H	Transmission costs per kWh times loss factor of .07 (G × .07)
Transmission cost adjustment	0.00195	I	Transmission cost adjustment charged to customer on next month's bill (G+H)

(h) *Economic development rate.* In an effort to promote job creation, community investment and long-term electric rate stability, the city manager shall be empowered to establish a temporary economic development rate for large utility customers for a period of up to six months. The rate cannot be less than the city's actual cost to purchase power plus ten percent. The justification will be based on a combination of factors including job creation and/or job retention and new investment in the community consistent with the criteria for tax abatements. Once a large utility customer has received this temporary rate, it shall not be eligible for the economic development rate for three years. The city manager shall document the rationale and communicate the rationale to city council.

(i) *Energy optimization rate (EOP).* Pursuant to requirements imposed by the State of Michigan and authorized by the Michigan Public Service Commission the following energy optimization rates shall be in effect:

Effective on bills due on and after August 10, 2019

Residential meter \$0.0025 per kWh

Secondary meter 18.91 per meter per month

Primary meter 572.38 per meter per month

(j) *Fuel adjustment charge.* Bills will be increased or decreased to offset fuel charge adjustments billed to the city by the supplier. Whenever the energy charge of the wholesale purchased power invoice to the city contains a fuel adjustment debit or credit per kwh, there shall be a corresponding increase or decrease per kwh for all kwh included in the customer's billing.

(Ord. No. 05-9, § 1, 5-10-05; Ord. No. 06-3, § 1, 4-25-06; Ord. No. 07-3, § 1, 3-30-07; Ord. No. 3, § 1, 4-15-08; Ord. No. 09-2, § 1, 6-9-09; Ord. No. 09-3, § 1, 8-25-09; Ord. No. 10-10, § 1, 11-23-10; Ord. No. 11-7, § 1, 7-28-11; Ord. No. 12-3, § 1, 7-10-12; Ord. No. 13-1, § 1, 3-29-13; Ord. No. 14-1, § 1, 1-27-14; Ord. No. 16-2, § 1, 4-12-16; Ord. No. 17-3, § 1, 8-28-17; Ord. No. 19-4, § 1, 6-24-19)

Chapters 83—85

RESERVED

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CD83:1

Chapter 86

VEGETATION*

Article I. In General

Secs. 86-1—86-25. Reserved.

Article II. Trees

- Sec. 86-26. Definitions.
- Sec. 86-27. Applicability of article.
- Sec. 86-28. Creation of tree board membership.
- Sec. 86-29. Term of office compensation.
- Sec. 86-30. Powers and duties.
- Sec. 86-31. Operation of board.
- Sec. 86-32. Interference with board prohibited.
- Sec. 86-33. Review by city council.
- Sec. 86-34. Authority of director.
- Sec. 86-35. Permit requirement.
- Sec. 86-36. Street tree species to be planted.
- Sec. 86-37. Spacing.
- Sec. 86-38. Distance from street corners, fire hydrants, traffic signs, utilities, curbs and sidewalks.
- Sec. 86-39. Public tree care.
- Sec. 86-40. Emergencies.
- Sec. 86-41. Tree topping.
- Sec. 86-42. Pruning corner clearance.
- Sec. 86-43. Pruning, electric line and equipment clearance.
- Sec. 86-44. Removal of dead or diseased trees on private property.
- Sec. 86-45. Removal of stumps.
- Sec. 86-46. Protection of trees.
- Sec. 86-47. Insurance requirements.
- Sec. 86-48. Arborist on city projects.
- Sec. 86-49. Penalty.
- Secs. 86-50—86-55. Reserved.

Article III. Weeds

- Sec. 86-56. Penalty for violation of article.
- Sec. 86-57. Growth.
- Sec. 86-58. Duty of occupant or owner.
- Sec. 86-59. Abatement by city upon failure of owner or occupant.
- Sec. 86-60. Collection of costs from owner.
- Sec. 86-61. Publication of notice of requirements.

*Cross references—Environment, ch. 38; parks and recreation, ch. 54.

State law reference—Control and eradication of noxious weeds, MCL 247.61 et seq., MSA 9.631(1) et seq.

ARTICLE I. IN GENERAL

Secs. 86-1—86-25. Reserved.

ARTICLE II. TREES*

Sec. 86-26. Definitions.

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

Arboriculture or tree preservation means and includes the treating, spraying, pruning, maintaining and any other care or work intended for the strengthening of trees, and the removal and prevention of tree pests, blights and diseases of any and all kinds.

Certified arborist means a person in possession of a current International Society of Arboriculture Certification.

Community forest means all street, public and park trees as a total resource; the sum of all trees within the City of Dowagiac.

Director of public services or director means the Director of Public Services of the City of Dowagiac.

Diseased trees means those trees that may constitute a hazard to life and property or harbor insects or disease which represent a potential threat to other trees within the city.

Large trees means those attaining a height of 60 feet or more with a mature spread of 40 feet or more.

Medium trees means those attaining a height of 20 to 40 feet with a mature spread of 30 feet or more.

Park trees means trees, shrubs, bushes and all other woody vegetation in public parks having individual names and all areas owned by the city, or to which the public has free access as a park.

***Editor's note**—Ord. No. 07-1, § 1, adopted Jan. 13, 2007, repealed the former Art. II, §§ 86-26—86-33, and enacted a new Art. II as set out herein. The former Art. II pertained to similar subject matter and derived from Code 1972, §§ 3.31(1)—(4), 3.32—3.37.

Person means any person, firm, partnership, association, corporation, company or organization of any kind.

Property line shall mean the outer edge of a street or highway right-of-way.

Pruning means the removal of plant stems, dead or alive, in a careful and systematic manner so as not to damage other parts of the plant or the tree as a whole.

Public health nuisance means any tree with an infectious disease or insect problem, dead or dying trees, a tree or limb(s) that obstruct street light, traffic signs, obstruction of critical views of oncoming traffic, the free passage of pedestrians or vehicles; or a tree that is dangerous or prejudicial to the public health and safety.

Public place means any public street, public highway, public parks or any property owned by the city or other properties owned by the state or federal government.

Small trees means those attaining a height of no more than 20 feet with a mature spread of 20 feet or more.

Street trees means trees, shrubs, bushes, and all other woody vegetation on land lying between property lines on either side of all streets, avenues or right-of-ways within the city.

Topping means the severe cutting-back of limbs to stubs larger than three inches in diameter within the tree's crown to such a degree so as to remove the normal canopy and disfigure the tree.

Tree means a woody plant, which at maturity will be at least 12 feet high.

Tree lawn means that part of a street or highway, not covered by sidewalk or other paving lying between the property line and that portion of the street or highway usually used for vehicular traffic. The grassy area of the right-of-way located between the sidewalk and the roadway along streets with closed curbed and guttered storm drainage systems. Right-of-ways with open storm drain ditches are not classified as tree lawns.

Tree removal means the complete removal of a tree including the grinding of the stump and the cleanup of all debris.

(Ord. No. 07-1, § 1, 1-13-07)

Sec. 86-27. Applicability of article.

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

(Ord. No. 07-1, § 1, 1-13-07)

Sec. 86-28. Creation of tree board membership.

There is hereby created and established a city tree board which shall consist of five members, citizens and residents of this city, who shall be appoint by city council. The members shall be comprised of the members of the cemetery board.

(Ord. No. 07-1, § 1, 1-13-07)

Sec. 86-29. Term of office compensation.

(a) The term of the five-person city tree board to be appointed by the city council shall be that two of the members shall be appointed for one year, two members for two years and one member for three years; thereafter, members shall be appointed for a term of three years. In the event that a vacancy shall occur during the term of any member, his successor shall be appointed for the unexpired portion.

(b) Members of the board shall serve without compensation.

(Ord. No. 07-1, § 1, 1-13-07)

Sec. 86-30. Powers and duties.

It shall be the responsibility of the city tree board to study, investigate and counsel; develop or update and administer a written plan for the care, preservation, pruning, planting, replanting, removal or disposition of trees and shrubs in parks, along streets and in other public areas. The plan will be presented to the city council and upon their acceptance and approval shall constitute the official comprehensive city tree plan. The board, when requested by city council, shall con-

sider, investigate, make finding, report and recommend upon any special matter of question coming within the scope of its work.

(Ord. No. 07-1, § 1, 1-13-07)

Sec. 86-31. Operation of board.

The city tree board shall choose its own officers, make its own rules and regulations and keep minutes of its proceedings. A majority of the members shall be a quorum for the transaction of its business.

(Ord. No. 07-1, § 1, 1-13-07)

Sec. 86-32. Interference with board prohibited.

It shall be unlawful for any person to prevent, delay, or interfere with the city tree board or any of its agents, while engaging in and about the planting, cultivating, mulching, pruning, spraying or removing of any street trees, park trees or trees on private property, as authorized in this article.

(Ord. No. 07-1, § 1, 1-13-07)

Sec. 86-33. Review by city council.

The city council shall have the right to review the conduct, acts and decisions of the city tree board. Any person may appeal from any ruling or order of the board to the city council, who may hear the matter and make final decision.

(Ord. No. 07-1, § 1, 1-13-07)

Sec. 86-34. Authority of director.

The director is hereby given day-to-day authority, control, supervision and direction of all trees which now or which may hereafter exist upon any public place in this city, and over all trees which exist upon any private property in this city when, in his opinion, such trees constitute a menace to public property, public safety or public welfare of this city. The director is also given authority and control in connection with the issuing of permits hereinafter provided for. In the exercise of any or all of the powers herein granted, the director shall have the authority to delegate all or such part of his power and duties with respect to supervision

and control of trees to his subordinates and assistants in the employ of the city as he may from time to time determine.

(Ord. No. 07-1, § 1, 1-13-07)

Sec. 86-35. Permit requirement.

Any property owner desiring to plant or remove a street tree or other tree in the public right-of-way (other than pruning per section 86-41 or section 86-42) is required to submit an application to the city for approval.

Any public servant or employee performing normal duties shall not require a permit.

No person shall plant, remove, destroy, cut, prune, fertilize, treat, break, climb, injure or spray any tree existing on any public place in this city or authorize or procure any person to do so or remove or tamper with any device whatsoever either to such tree or to any device placed for the protection of the tree or authorize or cause the same to be done, except having first obtained written permission from the director or his designee to do so.

(Ord. No. 07-1, § 1, 1-13-07)

Sec. 86-36. Street tree species to be planted.

The City of Dowagiac shall maintain a list of recommended trees for planting in public areas. This list shall be available to residents of the city upon request to aid in the selection of trees for private properties. The list of recommended trees shall be updated periodically to reflect new developments or species that affect the population of the community forest.

(Ord. No. 07-1, § 1, 1-13-07)

Sec. 86-37. Spacing.

The spacing of street trees will be in accordance with the three species size classes referred to in section 86-35, and no trees may be planted closer together than the following: small trees, 30 feet; medium trees, 40 feet; and large trees, 50 feet; except in special plantings designed and approved by the board.

(Ord. No. 07-1, § 1, 1-13-07)

Sec. 86-38. Distance from street corners, fire hydrants, traffic signs, utilities, curbs and sidewalks.

(a) No street tree shall be planted closer than 35 feet of any street corner, measured from the point of nearest intersecting curbs or curb lines. No street tree shall be planted closer than ten feet of any fire hydrant or three feet from any traffic sign.

(b) No street tree other than those species listed as small trees in section 86-35 may be planted under or within ten lateral feet of any overhead utility wire, or over or within five lateral feet of any underground water line, or over or within ten lateral feet of any underground sewer line, transmission line or other utility.

(c) Street trees may be planted in the tree-lawn where there is more than six feet between the edge of the sidewalk and the curb of the street or from the curb of the street to the outer edge of the right-of-way if no sidewalk exists. Street trees shall be planted no closer than three feet from any street. The director or his designee may grant exceptions to this standard.

(Ord. No. 07-1, § 1, 1-13-07)

Sec. 86-39. Public tree care.

(a) The city shall have the right to plant, prune, maintain, and remove trees, plants and shrubs within the right-of-way or bounds of all streets, alleys, avenues, lanes, squares and public grounds or any that extend into the right-of-way, as may be necessary to insure public safety or to preserve or enhance the symmetry and beauty of the public grounds.

(b) The director or his designee may remove or cause or order to be removed, any tree or part thereof which is in an unsafe condition or which by reason of its nature is injurious to sewers, electric power lines, gas lines, water lines or other public improvements or is affected with any injurious fungus, insect or other pest.

(c) Pruning of trees shall be in conformance with American National Standards Institute (ANSI) pruning standards as published by the National Standards of International Society of Arboriculture (ISA).

(Ord. No. 07-1, § 1, 1-13-07)

Sec. 86-40. Emergencies.

In case of emergencies, such as windstorms, ice storms, floods, major interruptions of utility service or other disasters, any requirement of this chapter, which would hamper private or public work to restore order to the city, shall be waived during the emergency work so as to prevent injury or damage to the public. Within 48 hours, the city manager shall be notified of the location(s) and nature of any emergency maintenance affecting public trees. This shall not be interpreted to be general waiver of the intent of this article.

(Ord. No. 07-1, § 1, 1-13-07)

Sec. 86-41. Tree topping.

It shall be unlawful as a normal practice for any person, firm or city department to top any street tree, park tree or other trees on public property without prior written approval of the director or his designee. Trees severely damaged by storms or other causes or certain trees under utility wires or other obstructions where other pruning practices are impractical may be exempted from this section at the determination of the director or his designee.

(Ord. No. 07-1, § 1, 1-13-07)

Sec. 86-42. Pruning corner clearance.

(a) Every owner of any tree overhanging any street or right-of-way within the city shall prune the branches so that the branches shall not obstruct the light from any street lamp or obstruct the view of any street intersection, and so that there shall be a clear space of ten feet above the surface of the sidewalk and 18 feet above the surface of the street. The owners shall remove all dead, diseased or dangerous trees or broken or decayed limbs, which constitute a menace to the safety of the public.

(b) The city may, in the interest of public health and safety, prune any tree that overhangs into any street or right-of-way within the city.

(c) The city shall have the right to prune any tree or shrub on private property when it interferes with the proper spread of light along the street from a streetlight, hinders sidewalk snow

removal operations or interferes with visibility of any traffic-control device, sign or sight triangle at intersections.

(Ord. No. 07-1, § 1, 1-13-07)

Sec. 86-43. Pruning, electric line and equipment clearance.

Tree limbs that grow near high voltage electrical lines, conductors or equipment shall be maintained clear of such lines, conductors or equipment by the electric utility company or its designated agent in compliance with any applicable franchise agreements. A utility trimming policy must be reviewed with the city prior to any trimming by the utility company.

The city understands the need for safe and reliable electricity. However, unnecessary, arboriculturally incorrect and/or extreme clearances obtained by outside utilities whose facilities pass through the city are not acceptable. For these reasons before any outside utility begins their normal line clearance work within the city they must obtain a permit from the director or his designee. The permit will be valid for one year from the date of issuance, permitting the utility to trim, brace, remove or perform other such acts with respect to street trees as may be necessary to maintain a safe operation of its business. Any utility company issued any such permit shall keep the director or his designee currently informed as to the place and nature of all work being performed with respect to any street trees. A representative of the director will inspect the work on a regular basis. Any violation of the Tree Ordinance of the City of Dowagiac, which had or is occurring, will be handled as described in section 1-16 of this Code.

(Ord. No. 07-1, § 1, 1-13-07)

Sec. 86-44. Removal of dead or diseased trees on private property.

(a) The city shall have the right to cause the removal of any dead or diseased trees or part thereof on private property within the city, when the trees constitute a hazard to life or property or harbor insects or disease, which constitute a potential threat to other trees within the city.

(b) The city tree board will notify in writing the owners of such trees. Removal shall be done by the owners at their own expense within 60 days after the date of service of notice.

(c) In the event of failure of owners to comply with the provisions, the city shall have the authority to remove the trees and charge the cost of removal to the owner's property tax notice. (Ord. No. 07-1, § 1, 1-13-07)

Sec. 86-45. Removal of stumps.

All stumps of street and parks trees shall be removed to a depth of no less than six inches below the surface of the ground so that the top of the stump shall not project above the surface of the ground. (Ord. No. 07-1, § 1, 1-13-07)

Sec. 86-46. Protection of trees.

(a) *Abuse of trees.* No person shall intentionally, in any public place, damage, cut, carve, transplant or remove any tree, attach any rope, wire, nails, advertisements, posters or other contrivance to any tree, allow any gaseous liquid or solid substance which is harmful to such trees to make contact with them, or set fire or permit any fire to burn when such fire or the heat thereof will injure any portion of any tree covered under this article.

No person shall place or maintain upon the ground in any public place any stone, concrete, or brick or other impervious material or substance in such a manner as may obstruct the free access of air and waters to the roots of any tree upon any public place in the city without first having obtained written permission from the director or his designee. Unless otherwise provided for there shall be maintained about the base of the trunk of each such tree at least nine square feet of open ground for a tree three inches in diameter and for every two inches of increase of such diameter, there shall be an increase of at least one square foot of open ground.

(b) *Protection of public trees.*

(1) In order to maintain the overall forest, reasonable efforts shall be made to replace trees that are removed and to protect quality trees that are endangered.

(2) Trees removed by decision of the city tree board or by natural causes shall be replaced somewhere in the forest on a one-for-one basis within one year. The location and species of any replacement tree shall be determined by the city tree board.

(3) Trees shall be protected as much as possible from damage during erection, alteration or removal of any building or structure, sidewalk repair, utility work above and below ground and other similar activities. The zone of protection shall include the ground beneath the canopy of the tree.

(4) All moving of trees upon any public place in the city made necessary by the moving of a building or structure or any other private enterprise shall be done under the supervision of the director or his designee and at the expense of the applicant or person seeking the removal of such tree. (Ord. No. 07-1, § 1, 1-13-07)

Sec. 86-47. Insurance requirements.

Before any company performs any work within the city, they shall first file evidence of possession of liability insurance in the minimum amounts of \$1,000,000 for bodily injury or death and \$1,000,000 for property damage indemnifying the city or any person injured or damaged resulting from the pursuit of such endeavors as herein described.

The insured shall name the City of Dowagiac as an additional insured on the insurance certificate.

(Ord. No. 07-1, § 1, 1-13-07)

Sec. 86-48. Arborist on city projects.

Any person or firm to engage in the business or occupation of pruning, treating, or removing street or park trees within the city shall certify to the director of public services that they have the equipment and training necessary to safely conduct said activities.

(Ord. No. 12-1, § 1, 1-10-2012)

Editor's note—Ord. No. 12-1, § 1, adopted Jan. 10, 2012, changed the title of § 86-48 from arborist certification to arborist on city projects.

Sec. 86-49. Penalty.

Any person violating any provision of this article shall constitute a violation of this Code, punishable as provided in section 1-16. (Ord. No. 07-1, § 1, 1-13-07)

Secs. 86-50—86-55. Reserved.

ARTICLE III. WEEDS

Sec. 86-56. Penalty for violation of article.

The fact that grass or noxious weeds are cut by the city and the cost of the cutting charged to or paid by the owner shall not excuse the owner from responsibility for the violation thereby abated. Failure to cut grass or noxious weeds by the owner as required in this article shall constitute a violation of this Code, punishable as provided in section 1-13, regardless of whether such grass and noxious weeds are cut subsequent to the commission of such violation. (Code 1972, § 9.46)

Sec. 86-57. Growth.

No person occupying any premises and no person owning any unoccupied premises shall permit or maintain on any such premises any growth of noxious weeds; nor any growth of grass or other rank vegetation to a greater height than 12 inches on the average; nor any accumulation of dead weeds, grass or brush. The term "noxious weeds" shall include Canada thistle (*Cirsium arvense*), dodders (any species of *Cuscuta*), mustards (charlock, black mustard and Indian mustard, species of *Brassica* or *Sinapis*), wild carrot (*Daucus carota*), bindweed (*Convolvulus arvensis*), perennial sowthistle (*Sonchus arvensis*), hoary alyssum (*Berteroa incana*), ragweed (*ambrosia elatior* 1.), poison ivy (*rhus toxicodendron*) and poison sumac (*toxicodendron vernix*). (Code 1972, § 9.41)

Sec. 86-58. Duty of occupant or owner.

It shall be the duty of the occupant of every premises and the owner of unoccupied premises within the city, to cut and remove or destroy by

lawful means all noxious weeds and grasses as often as may be necessary to comply with the provisions of section 86-57. (Code 1972, § 9.42)

Sec. 86-59. Abatement by city upon failure of owner or occupant.

If any person shall fail to comply with the provisions of section 86-58, by failing to remove or destroy by lawful means all noxious weeds and grasses at such times and in such manner as may be necessary to effectuate compliance with the provisions of section 86-57, the city manager shall cause all such grass and noxious weeds to be cut or destroyed upon the lands of the person not complying with the provisions of this article. An accurate account of all expense incurred with respect to each parcel of land entered upon in carrying out the provisions of this article shall be kept. (Code 1972, § 9.43)

Sec. 86-60. Collection of costs from owner.

A copy of the account of the costs incurred on each of the several descriptions or parcels of property, shall be transmitted to the city treasurer. The city treasurer shall add to all the accounts 50 percent of the amount of all such expenditures to cover the costs of publication, overhead and other expenses, and collect the total amount as provided in chapter 66 of this Code. (Code 1972, § 9.44)

Sec. 86-61. Publication of notice of requirements.

The city clerk shall, on or before June 15 of each year give notice of the requirements and provisions of sections 86-57—86-60 by publishing a notice of such requirements once a week for two successive weeks in a newspaper of general circulation in the city. (Code 1972, § 9.45)

Chapters 87—89

RESERVED

Chapter 90

WATERWAYS

Article I. In General

Secs. 90-1—90-25. Reserved.

Article II. Watercraft

- Sec. 90-26. Definitions.
- Sec. 90-27. Penalty for violation of article.
- Sec. 90-28. Speed limit.

ARTICLE I. IN GENERAL

Secs. 90-1—90-25. Reserved.

ARTICLE II. WATERCRAFT**Sec. 90-26. Definitions.**

All words and phrases used in this article shall be construed and have the same meanings as those words and phrases defined in Act No. 303 of the Public Acts of Michigan of 1967 (MCL 281.1001 et seq., MSA 18.1287(1) et seq.), as amended.

(Code 1972, § 3.141)

Cross reference—Definitions generally, § 1-2.

Sec. 90-27. Penalty for violation of article.

Violations of this article may be punished by a fine not to exceed \$100.00, together with costs of prosecution, or imprisonment in the County Jail or such other place of detention as the court may prescribe, for a period not to exceed 90 days, or such fine, costs of prosecution, and imprisonment, at the discretion of the court.

(Code 1972, § 3.143)

Sec. 90-28. Speed limit.

It shall be unlawful for any person to operate a vessel, boat, or other watercraft on the waters of the Mill Pond in the city in such a manner as to exceed a slow, no wake speed.

(Code 1972, § 3.142)

Chapters 91—93

RESERVED

Chapter 94

ZONING*

Sec. 94-1. Adopted by reference.

***Editor's note**—Ord. No. 05-1, § 1, adopted Jan. 11, 2005, repealed the former Ch. 94, §§ 94-1—94-528, and enacted a new Ch. 94. Said ordinance provided that "by action of the city council, the zoning ordinance will be removed from this Code and become a stand-alone ordinance for the city". The former Ch. 94 pertained to similar subject matter. For a complete derivation of the former provisions, see the Code Comparative Tables.

Cross references—Administration, ch. 2; buildings and building regulations, ch. 18; community development, ch. 30; fire prevention and protection, ch. 42; streets, sidewalks and other public places, ch. 70; subdivisions, ch. 74; utilities, ch. 82.

State law reference—Authority to regulate land use, MCL 125.581 et seq., MSA 5.2931 et seq.

Sec. 94-1. Adopted by reference.

The Zoning Ordinance for the City of Dowagiac is adopted by reference by the city as if fully set out herein.

(Ord. No. 05-1, § 1, 1-11-05)

CODE COMPARATIVE TABLE

1972 CODE

This table gives the location within this Code of those sections of the 1972 Code, as updated through June 1993, which are included herein. Sections of the 1972 Code, as supplemented, not listed herein have been omitted as repealed, superseded, obsolete or not of a general and permanent nature. For the location of ordinances adopted subsequent thereto, see the table immediately following this table.

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2.166	82-62	3.141	90-26
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2.180	82-85	4.2—4.6	70-31—70-35
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CODE COMPARATIVE TABLE

ORDINANCES

This table gives the location within this Code of those ordinances adopted since the 1972 Code, as updated through June 1993, which are included herein. Ordinances adopted prior to such date were incorporated into the 1972 Code, as supplemented. This table contains some ordinances which precede June 1993, but which were never included in the 1972 Code, as supplemented, for various reasons. Ordinances adopted since June 1993, and not listed herein, have been omitted as repealed, superseded or not of a general and permanent nature.

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Editor's note—The Michigan Statutes Annotated are obsolete and will no longer be updated. References to MSA will be removed from the Code text as pages are supplemented.

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*Note—The adoption, amendment, repeal, omissions, effective date, explanation of numbering system and other matters pertaining to the use, construction and interpretation of this Code are contained in the adopting ordinance and preface which are to be found in the preliminary pages of this volume.

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