

## **TITLE XI: BUSINESS REGULATIONS**

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## CHAPTER 110: ADVERTISING

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### GENERAL PROVISIONS

#### **§ 110.01 STREET BANNERS**

The erection of temporary signs or banners for advertising purposes over or across any public street, alley, or public grounds, or any part thereof, is hereby prohibited except by express approval of the City Manager.

(Ord. 74, passed 6-1-61) Penalty, see § 10.99

### **BILL POSTING**

#### **§ 110.15 POSTING ON CITY PROPERTY**

No person shall paint, print, post, or in any way affix any picture, bill, banner, or advertising matter of any kind upon any post, hydrant, curb, sidewalk or other public improvement in any public ground or street or public building, structure or erection of any kind, belonging to the city, nor cause the same to be done, unless express consent therefor shall have been first granted by the City Council, nor upon any mast or pole in any street or alley, erected or used for supporting or conducting any wire or cable or incidental thereto, or upon any tree, lamp post or any structure or erection of any kind within the limits of any public street or ground in the city (whether the permission therefor has been granted by the owner or otherwise), except legal or official notices.

(Ord.74, passed 6-1-61) Penalty, see § 10.99

#### **§ 110.16 PROPERTY OWNER'S CONSENT**

No person shall hereafter paint, post or in any way affix any pictures, bills, signs, or advertising matter of any kind upon any post, fence, bill board, or sign board, or upon any building or erection or structure of any kind within the city, nor cause the same to be done, unless the building, lot or object upon which the

same may be placed is the property or under the control of the person or persons so doing or unless the consent of the owner or the person in control thereof shall be first obtained for advertising purposes, providing same shall comply with the Zoning Ordinance.  
(Ord. 74, passed 6-1-61) Penalty, see § 10.99

### **§ 110.17 SCATTERING BILLS**

No person shall scatter, place or throw any bills, leaflets, pamphlets or other advertising matter on the surface of any of the public streets, alleys, or on the public grounds of the city, not in the yards of private residences, nor in or on parked vehicles, nor cause the same to be done by another.  
(Ord. 74, passed 6-1-61) Penalty, see § 10.99

### **§ 110.18 BILL POSTING REFUSE**

No bill poster shall scatter, daub or leave any paste, glue or other like substance, used for affixing bills, upon any public sidewalk or pavement nor scatter or throw away any old bills or waste material, removed from bill boards, on the surface of any public street or alley nor on the surface of any private grounds, nor in the rear of any bill boards or sign boards.  
(Ord. 74, passed 6-1-61) Penalty, see § 10.99

### **§ 110.19 OBSCENE ADVERTISING**

- (A) No bill poster or other person shall post or distribute any bill or advertising containing pictures, illustrations or printed matter of any obscene nature.  
(Ord. 74, passed 6-1-61)
- (B) Material is obscene when the average person, applying contemporary community standards, would find that the work taken as a whole, appeals to the prurient interest; the work depicts or describes, in patently offensive way, sexual conduct specifically defined by the applicable law; and the work, taken as a whole, lacks serious literary artistic, political, or scientific value.  
Penalty, see § 10.99

### **§ 110.20 EXCLUSION**

Noncommercial handbills are exempt from the imposition of the regulations of this subchapter.

## CHAPTER 111: NONCHARITABLE AND CHARITABLE SOLICITATIONS

### SECTION

#### *Peddlers, Solicitors, and Itinerant Merchants*

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### **PEDDLERS, SOLICITORS, AND ITINERANT MERCHANTS**

#### **§ 110.01 DEFINITION**

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

**HAWKER, ITINERANT MERCHANT, PEDDLER, SOLICITOR, or TRANSIENT VENDOR.** Any person, either principal or agent, who goes house to house or from place to place in the city, soliciting and dickering to do business with customers he meets in his travel as opportunity for such business arises out of immediate circumstances, or who goes about indiscriminately selling or taking orders from anyone for goods, wares, merchandise and services; including pictures and photographs and the processing thereof; and including indiscriminate solicitation thereof by telephone and the subsequent house to house delivery and receipt of payment therefor.

(Ord. 72, passed 12-10-58)

## **§ 111.02 COMPLIANCE**

It shall be unlawful for any person, as defined in this subchapter, to engage in the business of hawker, peddler, itinerant merchant, transient vendor or solicitor, as herein defined, until the provisions of this subchapter have been complied with.

*(Ord. 72, passed 12-10-58) Penalty, see § 10.99*

## **§ 111.03 LICENSE REQUIRED**

The practice of going in and upon private and/or public residence properties in the city, by solicitors, peddlers, hawkers, itinerant merchants or transient vendors of merchandise, for the purpose of soliciting orders for the sale of goods, wares and merchandise, and/or selling or disposing of, and/or peddling by hawking the same, unless licensed under this subchapter, is hereby declared to be a nuisance and punishable as a misdemeanor.

*(Ord. 72, passed 12-08-58)*

## **§ 111.04 APPLICATION FOR LICENSE**

Every hawker, peddler, or solicitor, as defined in this subchapter, desiring to do business in the city shall make an application in writing to the City Clerk for a license to operate as a hawker, peddler, itinerant merchant, transient vendor or solicitor, and pay the fee therefor. The application for a license shall contain the following items, together with such additional information as the City Clerk may require for the determination of good reputation, health, and responsibility of the applicant:

- (A) The full name, permanent address, business address, local address, and age and occupation of the applicant at the time of filing the application.
- (B) The name of the person, firm or corporation represented, if any, together with the address of the central or district office of the same.
- (C) A list or general description of the article or articles to be sold, or offered for sale.
- (D) The length of time for which the license is desired.
- (E) The proposed method of delivery to buyers, whether by weight, measure, package or otherwise.
- (F) The proposed method of hawking or peddling, whether on foot, by handcar or pushcart, or vehicle.
- (G) A list of licenses which the applicant has held from the city or applications filed therefor within five years preceding this application.
- (H) A list of hawkers', peddlers', or solicitors' licenses issued to said applicant by the state, or cities therein.
- (I) The affidavit of the applicant to the truth of the information given in the application, signed by the applicant.

*(Ord. 72, passed 12-10-58)*

### **§ 111.05 CARRYING OF LICENSE**

Each licensee or solicitor shall carry his license at all times while he is engaged in the conduct of the business of hawking and peddling. Such licensee shall exhibit his license upon the request of any officer of the city, or of any police officer or of any other citizen. Refusal to exhibit a license shall be prima facie evidence of failure to obtain a license.

*(Ord. 72, passed 12-10-58) Penalty, see § 10.99*

### **§ 111.06 REFUSAL TO GRANT LICENSE**

The City Manager shall have the power to refuse to grant any license authorized under the terms of this subchapter whenever in his judgment it is for the best interests of the community to do so, having in mind the welfare, safety, and health of the city, and to revoke a license granted upon violation of any of the terms of this subchapter. In case the license is revoked for violation of the express conditions and regulations under which it was granted, the full amount of the fee paid therefor shall be forfeited to the city and no licensee shall have a right to a refund of any part of said fee.

*(Ord. 72, passed 12-10-58)*

### **§ 111.07 FEES**

The fees payable as provided for in § 111.02, for any license to be issued under the terms hereof, shall be established by the City Council resolution.

### **§ 111.08 EXCEPTIONS**

Nothing in this subchapter shall be held to apply to:

- (A) Any person, firm or corporation engaged in a business of supplying at fixed intervals, to regular customers, of certain types of goods or services over generally fixed routes;
- (B) Any recognized charitable, civic or religious organizations, provided permission has first been granted by the City Council;
- (C) The solicitation, selling and delivery from any established place of business within the city, defined to mean and include any room, building, shop or store, in, where, or from which a person transacted business during regular retail trade business hours within the city, in the selling, or offering for sale, of goods, wares and merchandise or services, for not less than six continuous months, immediately preceding the house to house selling and/or soliciting herein prohibited; or
- (D) Farmers and truck gardeners who themselves or through their employees, vend, sell, or dispose of products of their own farms and gardens only including berry pickers who sell berries of their own picking, also woodcutters who sell wood of their own cutting, also mechanics and artisans selling products of their own make and manufacture.

*(Ord. 72, passed 12-10-58)*

## **CHARITABLE SOLICITATIONS**

### **§ 111.15 PERMIT REQUIRED**

No person, corporation, or society of any kind, nature or description, either charitable or fraternal, their agents, representatives or employees, shall sell any newspapers, articles or things or solicit funds or secure subscriptions for the purpose thereof, the proceeds of which are to be used for any so-called charitable purpose, within the limits of the city, without first having secured from the City Council a permit in writing so to do. The City Manager may revoke the permit of any such person, society or corporation as in his opinion fails to comply with the provisions of this subchapter.

*(Ord. 73, passed 6-1-61)* Penalty, see § 10.99

### **§ 111.16 ISSUANCE OF PERMIT**

Application blanks for such permits shall be prepared by the City Clerk and furnished free to the applicants. There shall be no fee charged for the issuance or granting of such permit.

*(Ord. 73, passed 6-1-61)*

### **§ 111.17 MISREPRESENTATIONS**

No person, society or corporation, their agents, representatives or employees shall falsely or by misrepresentation of any kind, sell any newspaper, article or thing or secure subscriptions therefor, claiming the proceeds of which sale or subscriptions are to be used for any so-called charitable purpose.

*(Ord. 73, passed 6-1-61)* Penalty, see § 10.99

### **§ 111.18 NOTICE OF DENIAL**

If the city should deny or revoke a license or permit, it shall notify the petitioner in writing of the following:

- (A) The grounds and reasons for denial or revocation;
- (B) That the petitioner has the right to a hearing if the written request for such a hearing is received by the city within ten days after the service of the notice;
- (C) The earliest date the petitioner may reapply for a license or permit; and
- (D) That evidence of satisfying the previous grounds for denial or revocation may be considered upon reapplication.

## **TAG DAYS**

### **§ 111.30 DEFINITION**

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

TAG DAYS. The practice of soliciting donations in the public streets and ways for the purpose of raising money for community nonprofit organizations.

### **§ 111.31 NUMBER OF DAYS**

No more than ten tag days in each calendar year shall be permitted in the city, and in any event, no more than two in any given month, more than one on any given weekend.

### **§ 111.32 APPLICATION FOR PERMIT**

Applications for a permit to hold a Tag Day must be signed and submitted to the City Council on an application form provided by the city. If the applicant is a corporation, the application shall be accompanied by a certification signed by the appropriate officer or agent of the corporation indicating that the applicant's board of directors or trustees has authorized the application and has accepted full responsibility for the conduct of its solicitors.

Penalty, see § 10.99

### **§ 111.33 APPLICANT COVENANTS**

The issuance of a permit shall be conditional upon the applicant's agreement to the following covenants; said agreement shall be expressed in the application request and implied in the acceptance of the permit:

- (A) Applicant will indemnify the city and its officers, agents, employees, and Council members and hold them harmless from any and all loss or damage growing out of the activities of the applicant and its solicitors.
- (B) In the event of lawsuit against the city for alleged injury, loss or damage to any person or property directly or indirectly growing out of such solicitation activity, the applicant will file a timely appearance and appropriate defensive pleadings and will not permit entry of default judgment.
- (C) Nothing contained herein shall be construed to prohibit the city from entering an appearance in its own behalf through its own legal counsel in the event the City Council should consider it prudent to do so in order to protect the city's interests, and the costs incident to such action shall be borne by the applicant.
- (D) The charitable or civic applicant maintains at least \$500,000 in liability insurance.
- (E) All solicitors must be at least 18 years of age.
- (F) The solicitors must wear high visibility safety apparel that meets current American Standards promulgated by the International Safety Equipment Association.
- (G) The portion of roadway upon which the solicitation occurs is not a work zone and is within an intersection where traffic control devices are present.
- (H) Applicant is a charitable or civic organization qualified under IRC Code §501(c)(3) or (4), 26 USC 501, or a Veterans Organization that has tax exempt status under the IRS Code.



#### **§ 111.34 PROHIBITIVE AREAS**

- (A) No Tag Day solicitations shall be conducted on Sundays or national holidays.
- (B) During days when special events, parades or festivals are scheduled in the City, solicitations in the central business district during said special event, parade or festival and solicitations in the central business district are restricted to the adjacent sidewalks and parking lots. Penalty, see §10.99

#### **§ 111.35 INCORPORATED GUIDELINES AND TERMINATION**

- (A) The City Police Chief shall provide guidelines for the conduct of Tag Days which shall be complied with the by the applicant, the same being incorporated herein as a part of this subchapter. The guidelines shall be given with the permit issued by the City Council.
- (B) The City Council authorizes the Chief of Police, or his duly authorized agent, in his sole discretion, to stop any and all solicitation activities whenever the guidelines are not observed or unforeseen circumstances cause him or her to consider such activities to have become hazardous or dangerous to public health and safety.  
*(Ord. 16-03, Adopted 9-13-16), (Amended Ord. 17-04, Adopted 9-26-17)*

## CHAPTER 112: TELECOMMUNICATIONS

### SECTION

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### § 112.01 PURPOSE

The purposes of this chapter are to regulate access to and ongoing use of public right-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 (Public Act 48 of 2002) (“Act” or “the 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. 02-07, passed 10-22-02)*

### § 112.02 CONFLICT

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

*(Ord. 02-07, passed 10-22-02)*

### § 112.03 DEFINITIONS

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

**ACT.** The Metropolitan Extension Telecommunications Rights-of-Way Act (Public Act 48 of 2002), as amended from time to time.

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

**CITY.** The City of Whitehall.

**CITY COUNCIL.** The City Council or its designee. The section does not authorize delegation of any decision or function that is required by law to be made by the City Council.

**CITY MANAGER.** The City Manager or his or her designee.

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

**PERMIT.** 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.

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

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

**TELECOMMUNICATION FACILITIES** or **FACILITIES** 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 ancillary equipment and miscellaneous hardware used to provide federally licensed commercial mobile service as defined in § 332(d) of Part I of Title III of the Communications Act of 1934, Chapter 652, 48 Stat. 1064, 47 USC 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 § 102 of the Michigan Telecommunications Act, Public Acts 179 of 1991, being M.C.L.A. § 484.2102. Telecommunication provider does not include a person or an affiliate of the person when providing a federally licensed commercial mobile radio service as defined in § 332(d) of Part I of the Communications Act of 1934, Chapter 652, 48 Stat. 1064, 47 USC 332 and further defined as commercial mobile radio service in 47 CFR 20.3, or service provided by any wireless, two-way communications device. For the purpose of the Act and this chapter only, a provider also included 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. 02-07, passed 10-22-02)

#### § 112.04 PERMIT REQUIRED

- (A) *Permit required.* Except as otherwise provided in the Act, a telecommunications provider using or seeking to use public rights-of-way in the city for its telecommunications facilities shall apply for and obtain a permit pursuant to this chapter.
- (B) *Application.* Telecommunications providers shall apply for a permit on an application from approved by the MPSC in accordance with § 6(1) of the Act. A telecommunications provider shall file one copy with the City Attorney. Upon receipt, the City Clerk shall make three copies of the application and distribute a copy to each telecommunications franchisee. Applications shall be complete and include all information existing and proposed facilities in accordance with § 6(5) of the Act.
- (C) *Confidential information.* If a telecommunications provider claims that any portion of the route maps submitted by it as part of its application contain trade secret, proprietary or confidential information, which is exempt from the Freedom of Information Act, Public Acts 442 of 1976, being M.C.L.A. §§ 15.231 to 15.246, pursuant to § 6(5) of the Act, the telecommunications provider shall prominently so indicate on the face of each map.
- (D) *Application fee.* Except as otherwise provided by the Act, the application shall be accompanied by a one-time non-refundable application fee in the amount of \$500.
- (E) *Additional information.* The City Manager may request an applicant to submit such additional information which the City Manager deems reasonable necessary or relevant. The application 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 § 6(2) of the Act.
- (F) *Previously issued permits.* Pursuant to § 5(1) of the Act, authorizations or permits previously issued by the city under § 251 of the Michigan Telecommunications Act, Public Acts 179 of 1991, being M.C.L.A. § 484.2251 and authorizations or permits issued by the city to telecommunications providers prior to the 1995 enactment of § 251 of the Michigan Telecommunications Act but after 1985 shall satisfy the permit requirements of this chapter.
- (G) *Existing providers.* Pursuant to § 5(3) of the Act, within 180 days from 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 § 251 of the Michigan Telecommunications Act, Public Acts 179 of 1991, being M.C.L.A. §484.2251, shall submit to the city an application for a permit in accordance with the requirements of this chapter. Pursuant to § 5(3) of the Act, a telecommunications provider submitting an application under this subsection is not required to pay the \$500 application fee required under division (C) above. A provider under this division shall be given up to an additional 180 days to submit the permit application if allowed by the Authority, as provided in § 5(4) of the Act.  
(Ord. 02-07, passed 10-22-02)

## **§ 112.05 ISSUANCE OF PERMIT**

- (A) *Approval or denial.* The authority to approve or deny an application for a permit is hereby delegated to the City Manager. Pursuant to § 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 provider files an application for a permit under § 112.04(B) for access to a public right-of-way within the city. Pursuant to § 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 §§ 6(1), 6(2) and 15 of the Act.
- (C) *Conditions.* Pursuant to § 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 § 15(3) of the Act, and without limitation to division (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. 02-07, passed 10-22-02)

## **§ 112.06 CONSTRUCTION/ENGINEERING PERMIT**

A telecommunications provider shall not commence construction upon, over, across or under the public rights-of-way in the city without first obtaining a construction or engineering permit as required under "Table of Special Ordinances Table II: Franchise Ordinance Standards" of the City Code, as amended, for construction within the public rights-of-way. No fee shall be charged for such a construction or engineering permit.

(Ord. 02-07, passed 10-22-02)

## **§ 112.07 CONDUIT OR UTILITY POLES**

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

(Ord. 02-07, passed 10-22-02)

## **§ 112.08 ROUTE MAPS**

Pursuant to § 6(7) of the Act, a telecommunications provider shall, within 90 days after the substantial completion of construction of new telecommunications facilities in the 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 Commission determines otherwise, in accordance with § 6(8) of the Act.

(Ord. 02-07, passed 10-22-02)

### **§ 112.09 REPAIR OF DAMAGE**

Pursuant to § 15(5) of the Act, a telecommunications provider undertaking an excavation or construction or installing telecommunications facilities within a public right-of-way or temporarily obstructing a public right-of-way in the 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. 02-07, passed 10-22-02)*

### **§ 112.10 ESTABLISHMENT AND PAYMENT OF MAINTENANCE FEE**

In addition to the non-refundable application fee paid to the city set forth in § 112.04(D), 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 § 8 of the Act.

*(Ord. 02-07, passed 10-22-02)*

### **§ 112.11 MODIFICATION OF EXISTING FEES**

In compliance with the requirements of § 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 § 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 § 8 of the Act. The city shall provide each telecommunications provider affected by the fee with a copy of this chapter, in compliance with the requirement of § 13(4) of the Act. To the extent any fees are charged telecommunications providers in excess of the amounts permitted under the Act, or which are otherwise inconsistent with the Act, such imposition is hereby declared to be contrary to the city's policy and intent, and upon application by provider or discovery by the city, shall be promptly refunded as having been charged in error.

*(Ord. 02-07, passed 10-22-02)*

### **§ 112.12 SAVINGS CLAUSE**

Pursuant to § 13(5) of the Act, if § 8 of the Act is found to be invalid or unconstitutional, the modification of fees under § 112.11 shall be void from the date the modification was made.

### **§ 112.13 USE OF FUNDS**

Pursuant § 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 Public Acts 51 of 1951.

*(Ord. 02-07, passed 10-22-02)*

## **§ 112.14 ANNUAL REPORT**

Pursuant to § 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. 02-07, passed 10-22-02)*

## **§ 112.15 CABLE TELEVISION OPERATORS**

Pursuant to § 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. 02-07, passed 10-22-02)*

## **§ 112.16 EXISTING RIGHTS**

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

*(Ord. 02-07, passed 10-22-02)*

## **§ 112.17 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:

- (A) Exempting certain route maps from the Freedom of Information Act, Public Acts 442 of 1976, being M.C.L.A. §§ 15.231, 215.246, as provided in § 112.04(C);
- (B) Allowing certain previously issued permits to satisfy the permit requirements hereof, in accordance with § 112.04 (F);
- (C) 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 § 112.04(G);
- (D) Approving or denying an application for a permit within 45 days from the date a telecommunications provider files an application for a permit for access to and usage of a public right-of-way within the city, in accordance with § 112.05(A);
- (E) Notifying the MPSC when the city has granted or denied a permit, in accordance with §112.05(A);
- (F) Not unreasonably denying an application for a permit, in accordance with § 112.05(A);
- (G) Issuing a permit in the form approved by the MPSC, with or without additional or different permit terms, as provided in § 112.05(B);

- (H) Limiting the conditions imposed on the issuance of a permit to the telecommunications provider's access and usage of the public right-of-way, in accordance with § 112.05(C);
- (I) Not requiring a bond of a telecommunications provider which exceeds the reasonable cost to ensure that the public right-of-way is returned to its original condition during and after the telecommunication provider's access and use, in accordance with § 112.05(D);
- (J) Not charging any telecommunications providers any additional fees for construction or engineering permits; in accordance with § 112.06;
- (K) Providing each telecommunications provider affected by the city's right-of-way fees with a copy of this regulations, in accordance with § 112.11;
- (L) Submitting an annual report to the Authority, in accordance with § 112.14; and
- (M) Not holding a cable television operator in default for a failure to pay certain franchise fees, in accordance with § 112.15.  
(Ord. 02-07, passed 10-22-02)

#### **§ 112.18 RESERVATION OF POLICE POWERS**

Pursuant to § 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. 02-07, passed 10-22-02)

#### **§ 112.19 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 the City Code.  
(Ord. 02-07, passed 10-22-02)

#### **§ 112.99 PENALTY**

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 a restraining order to prevent continued violation of this chapter, and § 10.99. 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. 02-07, passed 10-22-02)



## CHAPTER 113: TAXICABS

### SECTION

#### *General Provisions*

#### § 113.01 DEFINITIONS

#### *Business Licenses and Driver Permits*

#### § 113.10 LICENSE REQUIRED; APPLICATION

#### § 113.11 LICENSE FEES

#### § 113.12 REVOCATION OF OR REFUSAL TO GRANT LICENSE

#### § 113.13 PERMIT REQUIRED TO OPERATE TAXICAB; APPLICATION; EXAMINATION

#### § 113.14 ISSUANCE OF PERMITS

#### § 113.15 DURATION OF PERMITS AND LICENSES

#### *Standards of Operation*

#### § 113.25 RULES AND REGULATIONS

#### § 113.26 FAILURE TO GIVE SERVICE

#### § 113.27 POSTING OF FARES

#### § 113.28 FAILURE TO PAY FARE

### GENERAL PROVISIONS

#### § 113.01 DEFINITIONS

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

**PERSON.** Any person, firm or corporation

**STREET.** Any street, alley, avenue, court, land, or public place in the city.

**TAXICAB.** Any motor vehicle engaged in the business of carrying persons for hire, whether the same is operated from a street stand or from a garage, where no regular or specified route is traveled, but passengers are taken to and from such places as they may designate; provided, that automobiles used exclusively as hearses, ambulances, hotel buses, or sight-seeing buses shall not be construed to be within the meaning hereof.

(Ord. 71, passed 7-30-47)

## **BUSINESS LICENSES AND DRIVER PERMITS**

### **§ 113.10 LICENSE REQUIRED; APPLICATION**

- (A) No person, either as principal, agent, or employee, shall run or operate any taxicab business on the streets of the city without having first obtained a license therefor, and no license certificate therefor shall be issued in any other than the following manner.
- (B) A person desiring a license to operate a taxicab business shall file with the City Manager an application therefor stating:
  - (1) The name, age, and residence of the person applying for such license, and what, if any, previous experience he has had in such business, and if he is himself to drive, he must secure a permit as in this chapter provided;
  - (2) The name, age and residence of the person to be in immediate charge of any such taxicab or taxicabs, if other than the person making application, who shall obtain a driver permit as hereinafter provided;
  - (3) The type of vehicles and their registration to be used.
- (C) The City Manager shall furnish the proper forms of application and the same shall be filed with him. He shall cause an investigation to be made of the fitness of the applicant as to character and ability and shall transmit the application with his recommendation to the City Council. If, in the opinion of the City Council, the person making the application is a proper person, both by experience and character they may authorize the granting of a license upon the payment of the license fee and filing of bond or policy of insurance as herein provided; such license to be issued by the City Clerk and received subject to the provisions of this chapter and all future amendments hereto.  
(Ord. 71, passed 7-30-47) Penalty, see § 10.99

### **§ 113.11 LICENSE FEES**

The license fees shall be established by City Council resolution.  
(Ord. 71, passed 7-30-47)

### **§ 113.12 REVOCATION OF OR REFUSAL TO GRANT LICENSE**

- (A) The license of any person driving a taxicab business shall automatically be revoked in the event that he pleads guilty to or is convicted of violating any ordinance or law relating to traffic and the use of the streets, or of being intoxicated while driving a taxicab, provided, such person may make application to the City Council for reinstatement and the action of the Council thereon shall be final.
- (B) A violation of any of the provisions of this chapter or of the traffic ordinance of the city or of the statutes of the state shall be sufficient grounds for the revocation of any license or permit issued hereunder and shall be considered sufficient ground for the refusal to grant a license or permit in the first instance.  
(Ord. 71, passed 7-30-47)

**§ 113.13 PERMIT REQUIRED TO OPERATE TAXICAB; APPLICATION; EXAMINATION**

- (A) No person authorized to operate a taxicab business shall employ a driver unless such driver shall have a permit as herein provided.
- (B) Applications for a permit to operate or drive a taxicab upon the city shall be made to the City Manager upon blanks furnished by him. Each applicant shall state his name, age, residence, and how long he has been engaged in driving an automobile. Each applicant shall be of good character and provide the names and addresses of three references.
- (C) The City Manager shall himself, or through the Chief of Police, make an examination as to whether said applicant is worthy, capable, and of good moral character and properly qualified by experience to operate and drive such automobile for hire. The examination shall be based on the knowledge of the then existing traffic ordinances and vehicle laws, and also upon rules and regulations prescribed by this chapter, in addition to a driving test to determine the applicant's ability to operate said vehicle, and if said applicant shall fail to pass the driving test or examination herein provided, no permit shall be granted him. Provided, however, he shall be given an opportunity for re-examination within three months from the date of the first test or examination. The City Council may, in its discretion, grant a permit based upon such application.  
(Ord. 71, passed 7-30-47) Penalty, see § 10.99

**§ 113.14 ISSUANCE OF PERMITS**

No permit to drive or operate any taxicab shall be granted to any person under the age of 21 years.  
(Ord. 71, passed 7-30-47)

**§ 113.15 DURATION OF PERMITS AND LICENSES**

All permits and licenses granted hereunder shall expire on June 30 next following.  
(Ord. 71, passed 7-30-47)

**STANDARDS OF OPERATION**

**§ 113.25 RULES AND REGULATIONS**

It shall be unlawful for any person to:

- (A) Drive any taxicab while under the influence of liquor or to drink any intoxicating liquors whatsoever while transporting passengers.
- (B) Procure or transport or to aid or abet in the procuring or transporting of any intoxicating liquor.
- (C) Allow any taxicab to be used for immoral purposes, or to procure or aid in procuring any person or persons for immoral purposes.

- (D) Operate any taxicab without displaying a copy of the “Business License and Driver’s Permit” in plain view of any passenger.
- (E) Fail, neglect or refuse to turn in to the Police Department, within 24 hours, all the lost articles found in the taxicab.
- (F) Drive or operate any taxicab upon any street unless the owner thereof shall have given, and there is in full force and effect at all times while such person is driving or operating such taxicab under a license from the City Council, a policy of insurance as security in the minimum of \$150,000, which policy shall insure to the benefit of any person or persons who may receive bodily injury or suffer death, or property damage, by reason of the negligence or misconduct of the driver, owner or operator of such taxicab; the said policy to be approved by the City Council and filed with the City Clerk. Provided, any person operating more than one taxicab, a policy in the sum of \$500,000 over and above any existing claim or liability covering the operating of all of the said cabs and increased or renewed from time to time as and if liability is asserted against such person or claim made by reason of said policy, shall be deemed a compliance with this provision.
- (G) Fail to notify the Police Department within one hour after any accident, giving the time and location of the accident, the name of any person injured, character of injuries so far as known, and in case of property damage, the amount of damage.  
(Ord. 71, passed 7-30-47) Penalty, see § 10.99

### **§113.26 FAILURE TO GIVE SERVICE**

It shall be unlawful for the driver of any taxicab not already engaged, to refuse or neglect when applied to, and tender of fare made, to convey any person or persons to any place or places within the city, and on the person or persons being placed in such conveyance, the same shall be driven by the most direct and safe route to the place to which such person or persons wish to go. Provided, this shall not be construed to require any taxicab driver to take as a passenger any person under the influence of liquor or to justify his assisting in the carrying of liquor in violation of any law or ordinance, or the use of his taxicab for immoral purposes.

(Ord. 71, passed 7-30-47) Penalty, see § 10.99

### **§113.27 POSTING OF FARES**

There shall also be posted by the owner or driver of such taxicab in a conspicuous place in the inside of such taxicab and in full view of each occupant thereof, printed in type not less than one-half inch in size, a card containing the rates of fares to be charged for the use thereof.

(Ord. 71, passed 7-30-47) Penalty, see § 10.99

### **§113.28 FAILURE TO PAY FARE**

Any person refusing to pay after having received the service shall be liable to punishment as provided in this chapter.

(Ord. 71, passed 7-30-47) Penalty, see § 10.99

## CHAPTER 114: YARD SALES AND GARAGE SALES

### SECTION

#### [§ 114.01 DEFINITIONS](#)

#### [§ 114.02 PERMITS AND FEES](#)

#### [§ 114.03 LICENSING](#)

#### [§ 114.04 INFORMATION TO BE FILED](#)

#### [§ 114.05 EXCEPTIONS](#)

#### [§ 114.06 TIME OF SALES](#)

#### [§ 114.07 ADVERTISING](#)

### § 114.01 DEFINITIONS

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

**GARAGE SALES.** Includes all sales entitled “garage sale”, “lawn sale”, “attic sale”, “rummage sale”, “flea market sale”, or any similar, casual sale of tangible personal property which is advertised by any means whereby the public at large is or can be made aware of the sale.

**GOODS.** Includes any goods, warehouse merchandise or other property capable of being the object of a sale regulated hereunder.

**PERSON.** Individuals, partnerships, voluntary associations and corporations.  
(Ord. 92-4, passed 9-22-92)

### § 114.02 PERMITS AND FEES

It shall be unlawful for any person to conduct a garage sale in the city without first filing with the City Clerk the information hereinafter specified and obtaining from the Clerk a license to do so, to be known as a “Garage Sale License”. The fee for such license shall be \$1.  
(Ord. 92-4, passed 9-22-92; Am. Ord. 93-3, passed 6-22-93) Penalty, see § 10.99

### § 114.03 LICENSING

- (A) A license shall be issued to any given commercial building or any given residential building only one time within a 12-month period, and no such license shall be issued for more than two consecutive calendar days.  
(Ord. 92-4, passed 9-22-92; Am. Ord. 93-3, passed 6-22-93) Penalty, see § 10.99

#### **§ 114.04 INFORMATION TO BE FILED**

The information to be filed with the Clerk, pursuant to this chapter, shall be as follows:

- (A) Name of person, firm, group, corporation, association, or organization conducting the sale.
- (B) Name of owner of the property on which the sale is to be conducted and consent of owner if applicant is other than the owner.
- (C) Location at which sale is to be conducted.
- (D) Number of days of sale.
- (E) Date, nature of any past sale.
- (F) Relationship or connection applicant may have had with any other person, firm, group, organization, association, or corporation conducting the sale and the date or dates of such sale.
- (G) Whether or not applicant has been issued any other vendor's license by any local, state or federal agency.
- (H) Sworn statement or affirmation by the person signing that the information therein given is full and true and known to him to be so.  
(Ord. 92-4, passed 9-22-92)

#### **§ 114.05 EXCEPTIONS**

The provisions of this chapter shall not apply to or affect the following persons of sales:

- (A) Persons selling goods pursuant to an order or process of a court of competent jurisdiction.
- (B) Persons acting in accordance with their powers and duties as public officials.
- (C) Any person selling or advertising for sale an item or items of personal property which are specifically named or described in the advertisement and which separate items do not exceed five in number.
- (D) Downtown sidewalk sales events for which City Council has given its approval to the downtown merchants as a group.
- (E) City wide garage/yard sale events for which and under such terms as the City Council may give its approval.  
(Ord. 92-4, passed 9-22-92; Am. Ord. 93-3, passed 6-22-93, Ord. 11-03, passed 3-8-11)

#### **§ 114.06 TIME OF SALES**

Permitted sales shall only be held between the hours of 8:00 a.m. to 5:00 p.m.; provided however, no such sale shall be permitted on any Sunday, holiday; and provided, further, that no public street or right-of-way shall be used for the conduct or for the advertisement of any such sale.

(Ord. 92-4, passed 9-22-92) Penalty, see § 10.99

**§ 114.07 ADVERTISING**

No advertising of a sale shall be done by posting of signs on telephone poles, power poles, trees, traffic signs or in any manner within the street rights-of-way.  
(Ord. 92-4, passed 9-22-92) Penalty, see § 10.99

## CHAPTER 115: SEXUALLY ORIENTED BUSINESSES

### SECTION

#### § 115.01 PURPOSE AND INTENT

#### § 115.02 DEFINITIONS

#### § 115.03 BUSINESS REQUIREMENTS

#### § 115.04 PROHIBITED CONDUCT; AIDING AND ABETTING

#### § 115.05 NUISANCE PER SE

#### § 115.99 PENALTY

### § 115.01 PURPOSE AND INTENT

The purpose and intent of this chapter is to regulate sexually oriented businesses and related activities to promote the health, safety, and welfare of patrons and employees of such businesses, and to promote the health, safety and welfare of the citizens of the city. The provisions of this chapter are not intended, nor shall they have the effect of, imposing a limitation or restriction on the content of any communicative materials including, but not limited to, sexually oriented materials that are protected by the First Amendment to the United States Constitution or by Article I, Section 5 of the Michigan Constitution of 1963. Additionally, it is not the intent of the provisions of this chapter, nor shall it have the effect of, restricting or denying access by adults to sexually oriented materials that are protected by said federal and state constitutions. Further, it is not the intent of the provisions of this chapter, nor shall it have the effect of, denying access by the distributors and exhibitors of sexually oriented entertainment to their target market. This chapter shall not be interpreted as intending to legitimize any activities which are prohibited by federal or state law, or by any other ordinance of the city.

*(Ord. 99-10, passed 10-26-99)*

### § 115.02 DEFINITIONS

The following words and terms, as used in this chapter, shall have the meaning indicated in this section.

**PERSON.** An individual, sole proprietorship, partnership, corporation, limited liability company, association, or such entity.

**PUBLIC NUDITY.** The knowing or intentional display of any individual's genitals, anus, or of a female's individual breast, in a public place, or at any other place for payment or promise of payment by any person. An individual's genitals or anus shall be considered to be displayed if it or they are visible, provided, however, an individual's genitals or anus shall not be considered to be displayed if they are covered by a fully opaque covering. A female's breast shall be considered to be displayed if the nipple or areola is visible, provided, however, a female's breast shall not be considered to be displayed if the nipple and/or areola are covered by a fully opaque covering. Payment or promise of payment include the payment of, or promise of payment of, any consideration or admission fee. Public nudity shall not include any of the following:

- (1) The exposure of a woman's breast while feeding a child, whether the nipple or areola is visible or incidental to the feeding.



- (2) Any materials which meets or satisfies the definition contained in M.C.L.A. §752.362, as amended.
- (3) Any sexually explicit visual material, as defined in M.C.L.A. §722.673, as amended.
- (4) Any display of an individual's genitals or anus, or of a female breast, which occurs as part of the regular curriculum of an educational institution that is funded, chartered, or recognized by the State of Michigan.

**PUBLIC PLACE.** Any real property, or appurtenance to real property, which is owned by the state, by any municipality of the State, a public agency, or any college or university of the State. The term includes, but is not limited to, a structure, enclosure and, facility or complex such as a court, mall, park, or other area, feature or element which is owned or operated by the State of Michigan, or any subordinate unit of the government, agency, commission, or instrumentality of the State. Public place shall also mean a business or an educational, refreshment, entertainment, recreation, health, transportation facility, or institution of any kind, whether licensed or not, whose goods, services, facilities, privileges, advantages or accommodations are extended, offered, sold, or otherwise made available to the public.

**SEXUALLY ORIENTED BUSINESS.** A business or commercial enterprise that conducts or engages in any of the activities hereinafter defined:

- (1) **ADULT ARCADE.** Any place to which the public is permitted or invited wherein coin operated, slug operated, electronically controlled, or mechanically controlled still or motion picture machines, projectors, or image producing or image projecting devices are maintained to show images to five or fewer persons per machine or device at any time, and where the images so projected, produced, or displayed are distinguished or characterized by the depiction or description of specified sexual activities or specified anatomical areas.
- (2) **ADULT BOOKSTORES or ADULT VIDEO STORES.** A commercial establishment that, as one of its business purposes or services, offers for sale or rental for any form of consideration, any or more of the following:
  - (a) Books, magazines, periodicals, or other printed matter or photographs, films, motion pictures, video cassettes or video reproductions, slides, or other visual representations or media which depict or describe specified sexual activities or specified anatomical areas; or
  - (b) Instruments, devices or paraphernalia that are designed for use in connection with specified sexual activities.

A commercial establishment may have other business purposes or services that do not involve the offering for sale or rental of the material identified in the subdivisions (a) or (b) above, and still be categorized as an Adult Bookstore or Adult Video Store. The sale or rental of such material shall be deemed to constitute a business purpose or service of an establishment if it comprises 40% or more of the floor area of visible inventory within the establishment.

- (3) **ADULT CABARET.** A nightclub, bar, restaurant, lounge, or similar commercial establishment that regularly features:
  - (a) Persons who appear in a state of nudity;
  - (b) Live performances that are characterized by the exposure of specified sexual activities or specified anatomical areas;

- (c) Films, motion pictures, video cassettes, slides, other photographic reproductions or visual media that are characterized by the depiction or description of specified sexual activities or specified anatomical areas; or
  - (d) Persons who engage in lewd, lascivious or erotic dancing or performances that are intended for the sexual interests or titillation of an audience or customers.
- (4) **ADULT MOTEL** or **ADULT HOTEL**. A motel, hotel, or similar commercial establishment that:
- (a) Offers accommodation to the public for any form of consideration and provides patrons with closed circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions or visual media that are characterized by the depiction or description of specified sexual activities or specified anatomical areas and has a sign visible from the public right-of-way that advertises the availability of any of the above;
  - (b) Offers a sleeping room for rent for a period of time that is less than 12 hours; or
  - (c) Allows a tenant or occupant of a sleeping room to offer it for rent or other consideration for a period of time that is less than 12 hours.
- (5) **ADULT MOTION PICTURE THEATER**. A commercial establishment which, for any form or consideration, regularly and primarily shows films, motion pictures, video cassettes, slides, or other photographic reproductions or visual media that are characterized by the depiction or description of specified sexual activities or anatomical areas.
- (6) **ADULT THEATER**. A theater, concert hall, auditorium, or similar commercial establishment that regularly features a person or persons who appear in state of nudity, or that regularly features live performances that are characterized by exposure of specified sexual activities or specified anatomical areas.
- (7) **ESCORT**. A person who, for consideration agrees or offers to act as companion, guide, or date of another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.
- (8) **ESCORT AGENCY**. A person or business establishment who furnishes, offers to furnish, or advertises to furnish escorts as one of its business purposes or services, for a fee, tip, or other consideration.
- (9) **NUDE MODEL STUDIO**. Any place where a person who displays specified anatomical areas is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons, who pay money or any form of consideration, but does not include an educational institution funded, chartered, or recognized by the state.

**SPECIFIED ANATOMICAL AREAS.**

- (1) Less than completely and opaquely covered human genitals, pubic region, buttock or anus; or female breast immediately below the top of areola; or
- (2) Human male genitals in a discernible turgid state, even if completely and opaquely covered.

**SPECIFIED SEXUAL ACTIVITIES.** Means and includes any of the following:

- (1) The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or breast;
- (2) Sex acts, normal or perverted, actual or simulated, including, but not limited to, intercourse, oral copulation, or sodomy;
- (3) Excretory functions as part of, or in connection with, any of the activities set forth in subdivisions (1), (2), and (3) above.  
(Ord. 99-10, passed 10-26-99)

### **§ 115.03 BUSINESS REQUIREMENTS**

- (A) No business operations shall be conducted except between the hours of 8:00 a.m. and 1:00 a.m.
- (B) No person younger than 18 years of age shall enter into or be permitted to remain on the premises of a sexually oriented business at any time the sexually oriented business is open for business.
- (C) A sexually oriented business which offers live entertainment shall provide;
  - (1) A dressing area for performers which has direct access to and from the dressing area and the performance area or stage so that the performer may enter the performance area or stage without entering the area from which the patrons view the performance. The dressing area must be separate from, and not freely accessible to, area of the business to which patrons or customers have ready access, and must contain hot and cold running water, toilet facilities, and must also be handicap accessible to the extent required by the Americans with Disabilities Act, as amended.
  - (2) A performance area or stage which is at least 12 inches above the area from which patrons view the performance.
  - (3) Signs must be posted which notify patrons of the sexually oriented business that contact between the patrons and any employee, owner, independent contractor, or performer who displays specified anatomical areas or who performs specified sexual activities is prohibited. At a minimum, two such signs must be displayed on the premises of the sexually oriented business. The required signs must be situated in the area of the sexually oriented business in which patrons are admitted to the sexually oriented business and in which patrons are served beverages, if any. The signs must be at least 24 inches by 36 inches in size and contain the following notice:

**NOTICE: Physical contact between the patrons and performers who display specified anatomical areas or who perform specified sexual activities is prohibited by Ordinance of the City of Whitehall. Violators will be prosecuted.**

The notice must be printed in bold face type which is at least 24 point in lettering size.

- (D) An employee, owner, independent contractor, or performer of any kind who displays specified anatomical areas or performs specified sexual activities shall not have any physical contact with a patron of the sexually oriented business in regards to, or the receipt of, tips or gratuities. Physical contact with patron includes, but is not limited to, any contact between the employee,

owner, independent contractor, or performer of the sexually oriented business and a patron in which the patron touches any part of the employee's, owners, independent contractor's, or performer's body.

- (E) A sexually oriented business shall meet all local, state and federal building code requirements. A sexually oriented business shall only be located in the city as provided for by the city Zoning Ordinance.
- (F) An operator of a sexually oriented business shall permit the City Zoning Administrator and his or her agents, including any law enforcement official or building inspector, to inspect the premises of a sexually oriented business for the purpose of insuring compliance with the requirements of this chapter, of any other city ordinances, or of any other law or regulation.
- (G) No employee, owner, independent contractor, or performer shall engage in any act of public nudity, unless that person is in or on the performance area or stage area.
- (H) No patrons shall be permitted to engage in any act of public nudity.  
(Ord. 99-10, passed 10-26-99) Penalty, see § 115.99

#### **§ 115.04 PROHIBITED CONDUCT; AIDING AND ABETTING**

No person shall operate a sexually oriented business in any manner which violates a provision of this chapter. No person shall aid, assist, abet, or encourage any other person to engage in or commit any act which violates a provision of this chapter.

(Ord. 99-10, passed 10-26-99) Penalty, see § 115.99

#### **§ 115.05 NUISANCE PER SE**

Any act which is a violation of this chapter is deemed to be a nuisance per se. Nothing in this chapter shall prohibit the city or any other interested party from seeking such relief as may be permitted by law or equity regarding the existence of a nuisance.

(Ord. 99-10, passed 10-26-99)

#### **§ 115.99 PENALTY**

Any person who violates a provision of this chapter shall be responsible for a municipal civil infraction, and upon an admission or determination of responsibility thereof, shall be subject to a fine of not more than \$500 plus court costs. Each day that a violation occurs shall be considered a separate violation. The issuance of a citation for municipal infraction shall not in any way limit the city in seeking enforcement of the provisions of this chapter including, but not limited to, requesting a civil restraining order from any court of competent jurisdiction.

(Ord. 99-10, passed 10-26-99)

## CHAPTER 116: ELECTRONIC REPORTING

### SECTION

#### § 116.01 PURPOSE AND INTENT

#### § 116.02 ELECTRONIC FILING REQUIRED

#### § 116.01 PURPOSE AND INTENT

The purpose of this article is to improve the system of reporting to law enforcement officials all items collected by pawn brokers, second hand dealers and precious metal/gem dealers for the purpose of aiding law enforcement in locating and retrieving stolen property.

#### § 116.02 ELECTRONIC FILING REQUIRED

Pursuant to state statutes, MCL §§ 445.404, 445.405, 446.205 and 445.484, second hand or junk dealers, pawnbrokers, and precious metal and gem dealers are all required to keep detailed records of all articles received during the course of business and to send a copy of all such records to local law enforcement.

All such required reports shall be submitted electronically using the services of an electronic reporting service company selected by the City. All such filings shall comply with all requirements regarding the specific information to be supplied and time frame for doing so, as outlined within the applicable state statute.

*(Ord. 12-06, passed 12-18-12)*

## CHAPTER 117: PAYMENT IN LIEU OF TAXES

#### § 117.01 PURPOSE

This ordinance authorizes and approves an annual service charge in lieu of taxes for residential housing developments that: (1) serve Low Income or Moderate Income Persons (as defined in the State Housing Development Authority Act, Act 346 of the Public Acts of Michigan of 1966 (1966 PA 346, as amended: MCL 125.1401 et seq), and this Ordinance); (b) are financed or assisted by USDA-RD or the Authority in accordance with Act 346; (c) are located within the City of Whitehall; and (d) comply with this Ordinance.

#### § 117.02 TITLE

This Ordinance shall be known and cited as the “City of Whitehall Payment in Lieu of Taxes Ordinance.”

### § 117.03 PREAMBLE

It is acknowledged that it is a proper public purpose of the State of Michigan and its political subdivisions to provide housing for low income citizens and to encourage the development of such housing by providing for a service charge in lieu of property taxes in accordance with act 346. The City is authorized by Act 346 and this Ordinance to establish or change the annual service charge to be paid in lieu of taxes by any and all classes of housing exempt from taxation under Act 346 at any amount it chooses not to exceed the taxes that would be paid but for Act 356. It is further acknowledged that housing for low income persons and families is a public necessity, and as the City will be benefitted and improved by such housing, the encouragement of the same by providing certain real-estate tax exemptions for such housing is a valid public purpose; further, that the continuance of the provisions of this Ordinance for tax exemption and the service charge in lieu of taxes during the period contemplated this Ordinance are essential to determination of economic feasibility of housing developments which are constructed and financed in reliance of such tax exemption.

The City acknowledges that TJ Whitehall Limited Dividend Housing Association Limited Partnership (the "Sponsor" as defined in section 4 of this Ordinance) has committed to rehabilitate, own and operate a housing development identified as "Whitehall apartments" on certain property located at 1123 E. Colby Street, Whitehall, Michigan, which is legally described in Section 4.G. of this Ordinance, to serve Low Income or Moderate Income Persons, and that the Sponsor has offered to pay and will pay to the city, on account of the Housing Development, an annual service charge for public services in lieu of all taxes.

### § 117.04 DEFINITIONS

The terms used within this Ordinance shall have the following meanings:

**"Act"** means the State Housing Development Authority Act, being Act 346 of the Public Acts of Michigan of 1966, (1966 PA 346, as amended; MCL 125.1401 et seq).

**"Annual Shelter Rents"** means the total actual collections during each calendar year from all occupants of a housing development representing rents or occupancy charges, which rental amounts shall be exclusive of charges for gas, electricity, heat or other utilities furnished to the occupants.

**"Authority"** means the Michigan State Housing Development Authority.

**"Class"** means the Housing Development known as Whitehall Apartments for Low Income or Moderate Income Persons.

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

**"Federally-Aided Mortgage"** means any of the following:

- a. A below market interest rate mortgage insured, purchased, or held by the Secretary of the Department of Housing and Urban Development (HUD) or United States Department of Agriculture-Rural Development (USDA-RD)
- b. A mortgage receiving interest reduction payments provided by the HUD or USDA-RD;
- c. A Housing Development to which the Authority allocates low income housing tax credits under Section 22b of the Act; or

- d. A mortgage receiving special benefits under other federal law designated specifically to develop low and moderate-income housing, consistent with the Act.

**“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 to improve the quality of the development as it relates to housing for persons of low income. For the purposes of this Ordinance, “Housing Development” means Whitehall Apartments located on the property legally described as:

(Legal Description Attached as Exhibit “A”)

**“Low Income or Moderate Income Persons”** means persons and families eligible to reside in the Housing Development as defined in the Act, as amended.

**“Sponsor”** means person(s) or entities which have applied to the authority for the Tax Credits to finance a Housing Development. For the purposes of this Ordinance, the Sponsor is TJ Whitehall Limited Dividend Housing Association Limited Partnership.

**“Tax Credits”** means the low income housing tax credits made available by the Authority to the sponsor for rehabilitation of the Housing Development by the Sponsor in accordance with the Low Income Housing Tax Credit Program administered by the Authority under Section 42 of the Internal Revenue code of 1986, as amended.

**“USDA-RD”** means the United States Department of Agriculture, Rural Services Division.

**“Utilities”** means fuel, water, sanitary sewer service and/or electrical services, which are paid by the Housing Development.

## **§ 117.05 CLASS OF HOUSING DEVELOPMENT**

This Ordinance shall apply only to the Housing Development to the extent that the Housing Development provides housing for Low Income and Moderate Income Persons and is financed or assisted by USDA-RD or the Authority pursuant to the Act.

## **§ 117.06 ESTABLISHMENT OF ANNUAL SERVICE CHARGE**

- A. The City acknowledges that the sponsor and USDA-RD and/or the Authority have established the economic feasibility of the Housing Development in reliance upon the enactment and continuing effect of this Ordinance and the qualification of the Housing Development for exemption from all ad valorem property taxes and payment of an annual service charge in lieu of ad valorem taxes in an amount established in accordance with this Section. In consideration of the Sponsor’s offer to rehabilitate, own and operate the Housing Development, the City agrees to accept payment of an annual service charge for public services in lieu of all ad valorem property taxes that would otherwise be assessed to the Housing Development under Michigan law.

- 1. Effective upon the adoption of this ordinance and subject to the receipt by the City of the “Notification of Exemption” (or such other similar notification) by the Sponsor and/or the Authority, the annual service charge shall be equal to twelve (12%) percent of Annual Shelter Rents.

- B. The Housing Development, and the property on which it is constructed, shall be exempt from all ad valorem property taxes from and after the commencement of rehabilitation of the Housing Development by the Sponsor under the terms of this Ordinance.

#### **§ 117.07 LIMITATION OF THE PAYMENT OF ANNUAL SERVICE CHARGE**

Notwithstanding Section 6, if any portion of the Housing Development is occupied by other than Low Income and Moderate Income Persons, the full amount of the taxes that would be paid on those units of the Housing Development if the Housing Development were not tax exempt shall be added to the service charge in lieu of taxes.

#### **§ 117.08 CONTRACTUAL EFFECT OF ORDINANCE**

Notwithstanding the provisions of Section 15(a) (5) of the Act to the contrary, and subject to the terms of this Ordinance including, but not limited to Section 11 herein, this Ordinance constitutes a contract between the City and the Sponsor to provide an exemption from ad valorem property taxes and to accept the payment of an annual service charge in lieu of such taxes, as previously described in this Ordinance. It is expressly recognized that the Authority and USDA-RD are third party beneficiaries to this Ordinance.

#### **§ 117.09 PAYMENT OF SERVICE CHARGE**

The annual service charge in lieu of taxes shall be payable to the City in the same manner as ad valorem property taxes are payable, to the City and distributed to the several units levying the general property tax in the same proportion as paid with the general property tax in the previous calendar year. The annual payment shall be paid on or may 1 of each year for the previous calendar year. Collection procedures shall be in accordance with the provisions of the General Property tax Act 91893 PA206, as amended; MCL 211.11, et seq.)

#### **§ 117.10 DURATION**

This Ordinance shall remain in effect for twenty-five (25) years or for so long as the Housing Development remains subject to a Federally Aided Mortgage and so long as the Housing Development submits the required annual notification of exemption pursuant to MCL 125.1415(a)(1), as amended, whichever occurs sooner. The term of this Ordinance shall commence upon the issuance of the Notification to Local Assessor of Exemption as issued by the Authority; provided, however, that if the improvements are not commenced within two (2) years of the effective date of this Ordinance, the Ordinance shall terminate.

#### **§ 117.11 FILING OF ANNUAL AUDIT**

The Sponsor, or its successor, shall file a copy of any and all annual audits required to be provided to the federal government, the State of Michigan, and/or the Authority simultaneously with the City. The audit shall include detail with respect to occupancy of the Housing Development, Annual Shelter Rents received from the Housing Development, and the cost for utilities during the audit period.

#### **§ 117.12 PUBLICATION; EFFECTIVE DATE**

This Ordinance shall become effective 15 days following its publication.



### **§ 117.13 SEVERABILITY**

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

### **§ 117.14 REPEAL**

All ordinances or parts of ordinances in conflict with this Ordinance are repealed to the extent of such inconsistency or conflict.

*(Ord. 18-02, passed 2-27-2018)*

## **CHAPTER 118: PROHIBITION OF MARIHUANA ESTABLISHMENTS**

### **§ 118.01 TITLE**

This ordinance shall be known and may be cited as the City of Whitehall's Prohibition of Marihuana Establishments Ordinance.

### **§ 118.02 DEFINITIONS**

Words used herein shall have the definitions as provided for in the Initiated Law 1 of 2018, as may be amended.

### **§ 118.03 NO MARIHUANA ESTABLISHMENTS**

The City of Whitehall hereby prohibits all marihuana establishments within the boundaries of the City pursuant to the Initiated Law of 2018, as may be amended.

### **§ 118.04 VIOLATIONS AND PENALTIES**

- A. Any person who disobeys, neglects, or refuses to comply with any provision of this ordinance or who causes, allows, or consents to any of the same shall be deemed to be responsible for the violation of this ordinance. A violation of this ordinance is deemed to be a nuisance per se.
- B. A violation of this ordinance is a municipal civil infraction, for which the fines shall not be less than \$100 nor more than \$500, in the discretion of the Court. The foregoing sanctions shall be in addition to the rights of the City to proceed at law or equity with other appropriate and proper remedies. Additionally, the violator shall pay costs which may include all expenses, direct and indirect, which the City incurs in connection with the municipal civil infraction.
- C. Each day during which any violation continues shall be deemed a separate offense.
- D. In addition, the City may seek injunctive relief against persons alleged to be in violation of this ordinance, and such other relief as may be provided by law.
- E. This ordinance shall be administered and enforced by the Ordinance Enforcement Officer of the City or by such other person(s) as designated by the City Council from time to time.

## **§ 118.05 SEVERABILITY**

The provisions of this ordinance are hereby declared to be severable. If any clause, sentence, word, section or provision is hereafter declared void or unenforceable for any reason by a court of competent jurisdiction, it shall not affect the remainder of such ordinance which shall continue in full force and effect.

## **§ 118.06 REPEAL**

All ordinance or parts of ordinances in conflict herewith are hereby repealed.

*(Ord. 18-07, passed 11/27/2018)*

## **CHAPTER 119: RENTAL PROPERTY**

### **§ 119.01 PURPOSE AND INTENT**

The City of Whitehall recognizes a compelling interest in establishing standards for safe residential rental structures and residential rental units in the City. This ordinance is designed to promote continued maintenance of safe rental properties.

### **§ 119.02 SCOPE**

This Article shall apply to any dwelling or part thereof, or any other structure or part thereof, which is occupied by persons other than the owner and the owner's immediate family, pursuant to any oral or written rental or lease agreement, or other valuable compensation for the purpose of residing therein or thereon. Rental units shall include, but not be limited to single family dwellings, multiple family dwellings or any structure, building or property used for residential dwelling purposes.

This Article shall not apply to hospitals; nursing homes; convalescent homes; foster homes; temporary group shelters provided by legal nonprofit agencies which are inspected, certified, and licensed by the State of Michigan; hotels and motels licensed and inspected by the State of Michigan; apartment complexes under the jurisdiction of a state or federal agency; or short term rental units defined as a unit with an intended duration of less than thirty consecutive days that is inspected by a state or nationally recognized association.

### **§ 119.03 REGISTRATION**

- (A) The owner of any rental unit existing as of the effective date of this ordinance, shall be responsible for the registration of each rental unit no later than ninety (90) days after the effective date of this ordinance.
- (B) The owner of any rental unit existing after the effective date of this ordinance shall be responsible for the registration of each rental unit prior to allowing occupancy of any new or converted rental dwelling unit.

- (C) A new owner of a registered rental unit shall be responsible for the submittal of a new registration within thirty (30) days of assuming ownership.
- (D) The owner of any rental unit shall be responsible for submitting any information changes to an existing registration form.
- (E) Registration forms will be provided by the City.
- (F) It shall be a violation for any owner or agent of the owner to provide inaccurate information for the registration of rental units or fail to provide required information.
- (F) A registration fee, as established from time to time by the City Council, shall be paid in full at the time of registration.

#### **§ 119.04 PENALTY**

Failure to register within the prescribed time period shall result in a penalty fee as established from time to time by the City Council.

#### **§ 119.05 SEVERABILITY**

Should any part of this ordinance be held invalid by a Court of Competent Jurisdiction, the remaining parts shall be severable and shall continue in full force and effect.  
*(Ord. 18-08, passed 12/18/2018)*