

# TITLE 6: BUSINESS REGULATIONS

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## CHAPTER 60: ADVERTISING

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### § 60.01 STREET BANNERS

- (A) 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.
- (B) Penalty

Section	Description – Civil Infractions	First Offense	Second Offense	Third Offense
60.01	Street Banners	\$25.00	\$50.00	\$100.00

(Ord. 74, passed 6-1-61)

**§ 60.02 POSTING ON CITY PROPERTY**

(A) 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.

(B) Penalty

Section	Description – Civil Infractions	First Offense	Second Offense	Third Offense
60.02	Posting on City Property	\$25.00	\$50.00	\$100.00

*(Ord. 74, passed 6-1-61)*

**§ 60.03 PROPERTY OWNER’S CONSENT**

(A) 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.

(B) Penalty

Section	Description – Civil Infractions	First Offense	Second Offense	Third Offense
60.03	Posting on Private Property	\$25.00	\$500.00	\$100.00

*(Ord. 74, passed 6-1-61)*

**§ 60.04 SCATTERING BILLS**

(A) 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.

(B) Penalty

Section	Description – Civil Infractions	First Offense	Second Offense	Third Offense
60.04	Scattering Bills	\$25.00	\$50.00	\$100.00

*(Ord. 74, passed 6-1-61)*

**§ 60.05 BILL POSTING REFUSE**

(A) 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.

(B) Penalty

Section	Description – Civil Infractions	First Offense	Second Offense	Third Offense
60.05	Bill Posting Refuse	\$25.00	\$50.00	\$100.00

*(Ord. 74, passed 6-1-61)*

**§ 60.06 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.

(C) Penalty

Section	Description – Civil Infractions	First Offense	Second Offense	Third Offense
60.06	Obscene Advertising	\$25.00	\$50.00	\$100.00

**§ 60.07 EXCLUSION**

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

## CHAPTER 61: NONCHARITABLE AND CHARITABLE SOLICITATIONS

### SECTION

§ 61.01	DEFINITION
§ 61.02	COMPLIANCE
§ 61.03	LICENSE REQUIRED
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§ 61.18	INCORPORATED GUIDELINES AND TERMINATION

### § 61.01 DEFINITION

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

**ITINERANT MERCHANT.** Hawker, peddler, solicitor, transient vendor or 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 their 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)*

### § 61.02 COMPLIANCE

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

(B) Penalty

Section	Description – Civil Infraction	First Offense	Second Offense	Third Offense
61.02	Compliance	\$25.00	\$50.00	\$100.00

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

**§ 61.03 LICENSE REQUIRED**

(A) No person shall engage in the business of peddling or soliciting without first obtaining a license.

(B) Penalty

Section	Description – Civil Infraction	First Offense	Second Offense	Third Offense
61.03	License Required	\$25.00	\$50.00	\$100.00

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

**§ 61.04 APPLICATION FOR LICENSE**

Every, peddler, or solicitor, as defined in this section, 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 soliciting
- (F) 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)

**§ 61.05 CARRYING OF LICENSE**

(A) Each licensee or solicitor shall carry their license at all times while he is engaged in the conduct of the business of hawking and peddling. Such licensee shall exhibit their 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.

(B) Penalty

Section	Description – Civil Infraction	First Offense	Second Offense	Third Offense
61.05	Carrying of License	\$25.00	\$50.00	\$100.00

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

**§ 61.06 REFUSAL TO GRANT LICENSE**

The City Manager shall have the power to refuse to grant any license authorized under the terms of this section whenever in their 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 section. 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)*

**§ 61.07 FEES**

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

**§ 61.08 EXCEPTIONS**

Nothing in this section 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;
- (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.

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

**§ 61.09 CHARITABLE SOLICITIONS PERMIT REQUIRED**

- (A) 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 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 their opinion fails to comply with the provisions of this section.

(B) Penalty

Section	Description – Civil Infraction	First Offense	Second Offense	Third Offense
61.09	Permit Required	\$25.00	\$50.00	\$100.00

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

**§ 61.10 ISSUANCE OF PERMIT**

Application blanks for such permits shall be prepared by the City Clerk. There shall be no fee charged for the application or granting of such permit.

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

**§ 61.11 MISREPRESENTATIONS**

- (A) 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.

(B) Penalty

Section	Description – Civil Infraction	First Offense	Second Offense	Third Offense
61.11	Misrepresentations	\$100.00	\$200.00	\$300.00

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

**§ 61.12 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.

**§ 61.13 DEFINITION, TAG DAYS**

For the purpose of this section, 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.

**§ 61.14 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.

**§ 61.15 APPLICATION FOR PERMIT**

(A) 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.

(B) Penalty

Section	Description – Civil Infraction	First Offense	Second Offense	Third Offense
61.15	Tag Day Permit Required	\$25.00	\$50.00	\$100.00

**§ 61.16 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 in 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.



**§ 61.17 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.
- (C) Penalty

Section	Description – Civil Infraction	First Offense	Second Offense	Third Offense
61.17	Prohibitive Areas	\$25.00	\$50.00	\$100.00

**§ 61.18 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 section. The guidelines shall be given with the permit issued by the City Council.
- (B) The City Council authorizes the Chief of Police, or their duly authorized agent, in their 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 62: TELECOMMUNICATIONS**

**SECTION**

- § 62.01 PURPOSE**
- § 62.02 CONFLICT**
- § 62.03 DEFINITIONS**
- § 62.04 PERMIT REQUIRED**
- § 62.05 ISSUANCE OF PERMIT**
- § 62.06 CONSTRUCTION/ENGINEERING PERMIT**
- § 62.07 CONDUIT OR UTILITY POLES**
- § 62.08 ROUTE MAPS**
- § 62.09 REPAIR OF DAMAGE**
- § 62.10 ESTABLISHMENT AND PAYMENT OF MAINTENANCE FEE**
- § 62.11 MODIFICATION OF EXISTING FEES**
- § 62.12 SAVINGS CLAUSE**
- § 62.13 USE OF FUNDS**
- § 62.14 ANNUAL REPORT**
- § 62.15 CABLE TELEVISION OPERATORS**
- § 62.16 EXISTING RIGHTS**
- § 62.17 COMPLIANCE**
- § 62.18 RESERVATION OF POLICE POWERS**
- § 62.19 AUTHORIZED CITY OFFICIALS**
- § 62.20 PENALTY**

## § 62.01 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)*

## § 62.02 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)*

## § 62.03 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 their 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:

- (A) A cable television operator that provides a telecommunications service.
- (B) Except as otherwise provided by the Act, a person who owns telecommunication facilities located within a public right-of-way.
- (C) A person providing broadband internet transport access service.  
(Ord. 02-07, passed 10-22-02)

#### **§ 62.04 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 section 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)

#### **§ 62.05 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)

### **§ 62.06 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. No fee shall be charged for such a construction or engineering permit.

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

### **§ 62.07 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)*

### **§ 62.08 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)*

### **§ 62.09 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)*

### **§ 62.10 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)*

### **§ 62.11 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)*

## **§ 62.12 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.

## **§ 62.13 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)*

## **§ 62.14 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)*

## **§ 62.15 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)*

## **§ 62.16 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)*

## **§ 62.17 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 § 62.04(C);
- (B) Allowing certain previously issued permits to satisfy the permit requirements hereof, in accordance with § 62.04 (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 § 62.04(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 § 62.05(A);
- (E) Notifying the MPSC when the city has granted or denied a permit, in accordance with §62.05(A);
- (F) Not unreasonably denying an application for a permit, in accordance with § 62.05(A);
- (G) Issuing a permit in the form approved by the MPSC, with or without additional or different permit terms, as provided in § 62.05(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 § 62.05(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 § 62.05(D);
- (J) Not charging any telecommunications providers any additional fees for construction or engineering permits; in accordance with § 62.06;
- (K) Providing each telecommunications provider affected by the city's right-of-way fees with a copy of this regulations, in accordance with § 62.11;
- (L) Submitting an annual report to the Authority, in accordance with § 62.14; and
- (M) Not holding a cable television operator in default for a failure to pay certain franchise fees, in accordance with § 62.15.  
(Ord. 02-07, passed 10-22-02)

## **§ 62.18 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)

## § 62.19 AUTHORIZED CITY OFFICIALS

The City Manager or their 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)*

## § 62.20 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 § 11.00. 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 63: YARD SALES AND GARAGE SALES

## SECTION

- § 63.01 DEFINITIONS
- § 63.02 PERMITS AND FEES
- § 63.03 LICENSING
- § 63.04 INFORMATION TO BE FILED
- § 63.05 EXCEPTIONS
- § 63.06 TIME OF SALES
- § 63.07 ADVERTISING

## § 63.01 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 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)*

## § 63.02 PERMITS AND FEES

- (A) 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.



(B) Penalty

Section	Description – Civil Infraction	First Offense	Second Offense	Third Offense
63.02	Permit Required	\$25.00	\$50.00	\$100.00

(Ord. 92-4, passed 9-22-92; Am. Ord. 93-3, passed 6-22-93)

**§ 63.03 LICENSING**

(A) A license shall be issued to any given commercial building or any given residential building only two times within a 12-month period and no such license shall be issued for more than two consecutive calendar days. (Am. Ord. 21-01, passed 6-8-21)

(B) Penalty

Section	Description – Civil Infraction	First Offense	Second Offense	Third Offense
63.03	License Required	\$25.00	\$50.00	\$100.00

(Ord. 92-4, passed 9-22-92; Am. Ord. 93-3, passed 6-22-93)

**§ 63.04 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)

**§ 63.05 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)

**§ 63.06 TIME OF SALES**

- (A) Permitted sales shall only be held between the hours of 8:00 a.m. to 5:00 p.m.; 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.
- (B) Penalty

Section	Description – Civil Infraction	First Offense	Second Offense	Third Offense
63.06	Time Restrictions	\$25.00	\$50.00	\$100.00

(Ord. 92-4, passed 9-22-92)

**§ 63.07 ADVERTISING**

- (A) 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.
- (B) Penalty

Section	Description – Civil Infraction	First Offense	Second Offense	Third Offense
63.07	Advertising Restrictions	\$25.00	\$50.00	\$100.00

(Ord. 92-4, passed 9-22-92)

## CHAPTER 64: SEXUALLY ORIENTED BUSINESSES

### SECTION

- § 64.01 PURPOSE AND INTENT
- § 64.02 DEFINITIONS
- § 64.03 BUSINESS REQUIREMENTS
- § 64.04 PROHIBITED CONDUCT; AIDING AND ABETTING
- § 64.05 NUISANCE PER SE
- § 64.06 PENALTY

#### § 64.01 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)*

#### § 64.02 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 NUDDITY.** The knowing or intentional live display of a human genital organ or anus with less than a fully opaque covering or a female's breast with less than a fully opaque covering of the nipple and areola. Nudity, as used in this section, does not include a woman's breastfeeding of a baby whether or not the nipple or areola is exposed during or incidental to the feeding.

**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:

- (A) **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.
- (B) **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:
  - (1) 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
  - (2) 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.

- (C) **ADULT CABARET.** A nightclub, bar, restaurant, lounge, or similar commercial establishment that regularly features:
  - (1) Persons who appear in a state of nudity;
  - (2) Live performances that are characterized by the exposure of specified sexual activities or specified anatomical areas;
  - (3) 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
  - (4) 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.
- (D) **ADULT MOTEL or ADULT HOTEL.** A motel, hotel, or similar commercial establishment that:
  - (1) 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;

- (2) Offers a sleeping room for rent for a period of time that is less than 12 hours; or
  - (3) 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.
- (E) **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.
  - (F) **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.
  - (G) **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.
  - (H) **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.
  - (I) **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.**

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

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

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

**§ 64.03 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 their 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 § 11.00

#### **§ 64.04 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)*

#### **§ 64.05 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)*

#### **§ 64.06 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 65: ELECTRONIC REPORTING

### SECTION

- § 65.01 PURPOSE AND INTENT
- § 65.02 ELECTRONIC FILING REQUIRED

#### § 65.01 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.

#### § 65.02 ELECTRONIC FILING REQUIRED

- (A) 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.
- (B) 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.
- (C) Penalty

Section	Description – Civil Infraction	First Offense	Second Offense	Third Offense
65.02	Electronic Reporting	\$25.00	\$50.00	\$100.00

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

## CHAPTER 66: PAYMENT IN LIEU OF TAXES

### SECTION

- § 66.01 PURPOSE
- § 66.02 TITLE
- § 66.03 PREAMBLE
- § 66.04 DEFINITIONS
- § 66.05 CLASS OF HOUSING DEVELOPMENT
- § 66.06 ESTABLISHMENT OF ANNUAL SERVICE CHARGE
- § 66.07 LIMITATION OF THE PAYMENT OF ANNUAL SERVICE CHARGE
- § 66.08 CONTRACTUAL EFFECT OF ORDINANCE
- § 66.09 PAYMENT OF SERVICE CHARGE
- § 66.10 DURATION
- § 66.11 FILING OF ANNUAL AUDIT
- § 66.12 PUBLICATION; EFFECTIVE DATE



**§ 66.01 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.

**§ 66.02 TITLE**

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

**§ 66.03 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 an 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.

**§ 66.04 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.

#### **§ 66.05 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.

#### **§ 66.06 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.

#### **§ 66.07 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.

#### **§ 66.08 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.

#### **§ 66.09 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.)

#### **§ 66.10 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.

**§ 66.11 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.

**§ 66.12 PUBLICATION; EFFECTIVE DATE**

This Ordinance shall become effective 15 days following its publication.

**§ 66.13 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 or provision so declared to be unconstitutional or invalid.

**§ 66.14 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 2-27-18)*

**CHAPTER 67: RENTAL PROPERTY**

**SECTION**

- § 67.01 PURPOSE AND INTENT**
- § 67.02 SCOPE**
- § 67.03 REGISTRATION**
- § 67.04 PENALTY**
- § 67.05 SEVERABILITY**
- § 67.06 ADOPTION OF THE INTERNATIONAL PROPERTY MAINTENANCE CODE**
- § 67.07 TITLE**
- § 67.08 APPLICABILITY**
- § 67.09 MUNICIPAL POLICE POWERS**
- § 67.10 AMENDMENTS, DELETIONS AND ADDITIONS TO THE INTERNATIONAL PROPERTY MAINTENANCE CODE**
- § 67.11 PENALTIES**
- § 67.12 SAVINGS CLAUSE**
- § 67.13 INCONSISTENT ORDINANCES REPEALED**

**§ 67.01 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.

## **§ 67.02 SCOPE**

This Article shall apply to any non-owner occupied dwelling or part thereof, or any other structure or part thereof, 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.

*(Am. Ord. 23-01, passed 1/24/23)*

## **§ 67.03 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.
- (G) A registration fee, as established from time to time by the City Council, shall be paid in full at the time of registration.
- (H) A registration. And thus, the right to rent property may be denied or revoked by the City for nonpayment of city utility bills, nonpayment of property taxes, or zoning violations.  
*(Am. Ord 21-01, passed 6-8-21)*

## **§ 67.04 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.

Rental Registration Fee and Rental Inspection Fee shall constitute a lien on the property and improvements, effective at the same times and enforceable in the same manner as general property taxes.

*(Am. Ord 22-01, passed 1-25-22)*

**§ 67.05 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)

**§ 67.06 ADOPTION OF THE INTERNATIONAL PROPERTY MAINTENANCE CODE**

At least one (1) copy of the IPMC is on file in the office of the Clerk of the City of Whitehall, being respectively marked and designated as “The 2015 International Property Maintenance Code,” as amended, and its incorporated standards and codes. The IPMC is hereby adopted as the Property Maintenance Code of the City of Whitehall, State of Michigan, save and except those portions such as are hereinafter deleted or amended for the control of buildings and structures. This herein provided; and each and all of the regulations, revisions, penalties, conditions and terms of said International Property Maintenance Code are hereby referred to, adopted and made a part hereby, as though fully set out in this Ordinance.

**§ 67.07 TITLE**

These regulations shall be known as the Property Maintenance Code of the City of Whitehall, hereinafter referred to as Property Code.

**§ 67.08 APPLICABILITY**

The provisions of the Property Maintenance Code of the City of Whitehall shall apply to both private and public property as required to register as rental property under Ordinance Number 18-08 (City of Whitehall Code of Ordinances at Section 119.01 et seq). It shall apply to all such structures and other occupancies except as otherwise specified.

**§ 67.09 MUNICIPAL POLICE POWERS**

This act shall be deemed an exercise of the police powers of the City of Whitehall for the preservation and protection of the public health, peace, safety and welfare and all of the provisions of the Property Maintenance Code of the City of Whitehall shall be liberally construed for that purpose.

**§ 67.10 AMENDMENTS, DELETIONS AND ADDITIONS TO THE INTERNATIONAL PROPERTY MAINTENANCE CODE**

Amendments to 2015 IPMC

- Section 101.1      Insert City of Whitehall
- Section 101.2      Removed nonresidential and replaced with “rental”
- Section 103.5      Insert “As adopted by Whitehall City Council”
- Section 111.2      Changed 3 to 5 members
- Section 111.2.1    Deleted
- Section 111.2.2    Deleted “annually”
- Section 111.3      Replaced chairman with secretary
- Section 111.4      Replaced min 2/3 to majority

Section 111.5 Deleted Postponed hearing  
 Section 112.4 Added “as adopted by Whitehall City Council”  
 Section 302.4 Added “six (6) inches”  
 Section 304.14 Added dates May – November 1  
 Section 602.3 Added dates October 1 to May 1  
 Section 602.4 Added dates October 1 to May 1  
 (Am. Ord 22-05, Passed 10/25/2022)

**§ 67.11 PENALTIES**

Any person who shall violate any of the provisions of the Code hereby adopted; or shall fail to comply therewith; or shall violate or fail to comply with any order made thereunder; or shall build or maintain said premises in violation of any details, statements, specifications, or plans submitted or approved thereunder; or shall operate not in accordance with the provisions of any certificate, permit, or approval issued thereunder, and from which no appeal has been taken; or who shall fail to comply with such an order as affirmed or modified by the inspector or by a court of competent jurisdiction within the time fixed herein shall severally for each and every violation and noncompliance, respectively, be guilty of a civil infraction punishable by a fine of not more than Five Hundred Dollars (\$500). The imposition of a penalty for any such violation shall not excuse the violation nor shall the violation be permitted to continue. All such persons shall be required to correct or remedy such violations or defects within a reasonable time, and when not otherwise specified, the application of the above penalty shall not be held to prevent the enforced removal of prohibited conditions. Each day that a violation continues after service of notice of violation shall be deemed a separate offense.

**§ 67.12 SAVINGS CLAUSE**

Nothing in this Ordinance or in the Property Maintenance Code of the City of Whitehall hereby adopted shall be construed to affect any suit or proceeding pending in any Court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or ordinance hereby repealed as cited in Section 2 of this Ordinance; nor shall any just or legal right or remedy of any character be lost, impaired or affected by this Ordinance.

**§ 67.13 INCONSISTENT ORDINANCES REPEALED**

All ordinances and parts of ordinances in conflict are hereby repealed.  
 (Ord. 19-01, Passed 3-12-2019, Ord. 20-04, Passed 11-24-2020)

## CHAPTER 68: MEDICAL MARIHUANA FACILITIES

### SECTION

- § 68.01 PURPOSE AND INTENT
- § 68.02 DEFINITIONS
- § 68.03 MMFLA OPT-IN PROVISION
- § 68.04 PERMIT REQUIRED FOR MMFLA ACTIVITY
- § 68.05 MMFLA LOCATION REQUIREMENTS
- § 68.06 PERMIT REVOCATION AND REVIEW
- § 68.07 REVOCATION OF PERMIT
- § 68.08 SEVERABILITY
- § 68.09 ADOPTION

#### § 68.01 PURPOSE AND INTENT

It is the intent of this ordinance to give effect to the intent of the Medical Marihuana Facilities Licensing Act, PA 281 of 2016, MCL 33.27101, et seq, (the MMFLA), and not to determine and establish an altered policy with regard to medical marihuana. It is the intent of this Ordinance to give effect to the intent of the Michigan Medical Marihuana Act, Initiated Act 1 of 2008, MCL 333.26421, et seq., (the MMMA) as approved by the electors. The purpose of this ordinance is to serve and protect the health, safety and welfare of the general public and establish a set of rules and regulations which are fair and equitable for those interested in establishing a Marihuana Facility pursuant to the MMFLA.

The City of Whitehall does not intend that registration and regulation under this Ordinance be construed as finding such business and activities are legal under Federal Law. By requiring registration and compliance with the requirements as provided in this Ordinance, the City of Whitehall intends to protect, to every extent possible the public health, safety and welfare of the residents of and visitors to the City of Whitehall from harm that may result from the activity from persons who unilaterally or on the advice from their attorney determine that they may legally operate a business involved in the cultivation, possession, use, manufacture, distribution, transport, processing or dispensing of marihuana.

Nothing in this Ordinance is intended to grant, nor shall it be construed as granting, immunity from criminal prosecution for cultivation, possession, use, manufacture, distribution, transport, processing or dispensing of marihuana not in compliance with the Acts or this Ordinance. This Ordinance is enacted pursuant to statutory authority granted by State Law and Constitution authorizing the City of Whitehall to adopt licensing ordinances and regulations securing the public health, safety, and general welfare.

#### § 68.02 DEFINITIONS

**APPLICANT** means a person who applies for a license under this section. If an entity applies for a license, the term includes an officer, director, managerial employee or has a direct or indirect ownership interest in the applicant.

**GROWER** means an MMFLA licensee that is a commercial entity located in this state that cultivates, dries, trims, cures or packages marihuana for sale to a Processor or Provisioning Center.

**MARIHUANA FACILITY** means a location at which a license holder is licensed to operate under the MMFLA.



**MARIHUANA-INFUSED PRODUCT** means a topical formulation, tincture, beverage, edible substance, or similar product containing any usable marihuana that is intended for human consumption in a manner other than smoke inhalation.

**MMFLA** means the Medical Marihuana Facilities Licensing Act, PA 281 of 2016, MCL 333.27101, et seq.

**MMMA** means the Michigan Medical Marihuana Act, Initiated act 1 of 2008, MCL 333.26421, et seq.

**MMMA CAREGIVER FACILITY** means any building(s) or structure(s) located on non-residential property that is utilized by one or more than one primary caregiver engaged in the medical use of marihuana pursuant to the MMMA.

**PERMIT** means a permit issued by the City under this section, which shall be valid for one year, subject to renewal.

**PRIMARY CAREGIVER OR CAREGIVER** means a person as defined by the MMMA.

**PROCESSOR** means an MMFLA licensee that is a commercial entity located in this state that purchases marihuana from a Grower and that extracts resin from the marihuana or creates a marihuana-infused product for sale and transfer in package form to a Provisioning Center.

**PROVISIONING CENTER** means an MMFLA licensee that is a commercial entity located in this state that purchases marihuana from a Grower or Processor and sells, supplies, or provides marihuana to registered qualify patients, directly or through the patients' registered primary caregivers. Provisioning Center includes any commercial property where marihuana is sold at retail to registered qualifying patients or registered primary caregivers. A noncommercial location used by a primary caregiver to assist a qualifying patient connected to the caregiver through the department's marihuana registration process in accordance with the MMMA is not a Provisioning Center for purposes of the MMFLA or this section.

**QUALIFYING PATIENT OR PATIENT** means a person defined by the MMMA.

**REGISTRY IDENTIFICATION CARD** means the document as defined by the MMMA.

**SAFETY COMPLIANCE FACILITY** means an MMFLA licensee that is a commercial entity that receives marihuana from a Marihuana Facility or registered primary caregiver, tests it for contaminants and for tetrahydrocannabinol and other cannabinoids, returns the test results, and may return the marihuana to the Marihuana Facility.

**SECURE TRANSPORTER** means an MMFLA licensee that is a commercial entity located in the state that transports marihuana, with or without storage, between Marihuana Facilities for a fee.

**STATE OPERATING LICENSE** means a license that is issued under the MMFLA that allows the licensee to operate a Marihuana Facility.

All other terms used in this section have the same definitions ascribed to them in the MMFLA or MMMA.

### **§ 68.03 MMFLA OPT-IN PROVISION**

Pursuant to Section 205(1) of the MMFLA, the City will authorize Permits for the following types of Marihuana Facilities: Growers; Processors; Provisioning Centers; Safety Compliance Facilities; and Secure Transporters. The City hereby declines to authorize and hereby prohibits any and all onsite consumption of

product of any type, any and all designated consumption establishments (as established by LARA) and/or any authority to approve any temporary or permanent marihuana event (as established by LARA).

**§ 68.04 PERMIT REQUIRED FOR MMFLA ACTIVITY**

- (A) Any person or entity that wishes to operate as a Marihuana Facility in the City shall obtain a Permit and must obtain a State Operating License prior to opening or operating.
- (B) The application and inspection fee for the Permit required by this section shall be as set from time to time for the City by resolution.
- (C) In addition to an annual reapplication and inspection fee, which shall be set, from time to time, by the City by resolution, the City may assess an annual fee of no more than \$5,000 to help defray the administrative and enforcement costs associated with the operation of the Marihuana Facilities operating in the City.
- (D) No permit issued under this section shall be transferable.
- (E) The City may limit the number of Permits issued under this section and may revise this limit from time to time.
- (F) A person or entity that receives a Permit under this section shall display its Permit and, when issued, its State Medical Marihuana Facility License in plain view clearly visible to City officials and State Medical Marihuana Licensing Board authorized agents.
- (G) No person or entity that opened or operated a facility doing business or purporting to do business as a Marihuana Facility prior to the adoption of this ordinance shall be considered a lawful use.
- (H) No application shall be approved unless same includes the safeguards, plans and protocols as follows:
  - (1) A marihuana grower shall comply at all times with the Acts and Administrative Rules as they may be promulgated and amended from time to time by LARA.
  - (2) A marihuana grower shall have at all times a valid license from the State Licensing Board created by the Act.
  - (3) Growers may only transfer plants, seeds, and other product to other facilities as set forth in the Act and are prohibited from any other transfers and enabling regulations issued by LARA and under no other circumstances.
  - (4) All marihuana plants must be contained within the Grow Facility in an enclosed, restricted, locked facility that prevents access by other persons than those allowed and otherwise meet all state requirements.
  - (5) Any artificial lighting must be shielded to prevent glare, must not be visible from adjacent properties, the street or public rights of way.

- (6) All activity shall be conducted so as not to create a permit trespass, spillage of glare, dust, sound, noise, vibrations, fumes, odors, or light, onto neighboring properties, adjacent streets or public rights of way.
- (7) All activities shall be conducted so as not be visible in any way from neighboring properties, adjacent streets or public rights of way. An approved plan for elimination of dust, glare, and odor is required with application.
- (8) Marihuana Growers, other than Microbusinesses, shall be limited to the industrial district of the City of Whitehall. The industrial zoned areas of the City of Whitehall are hereby declared to be exempt from the 1,000-foot minimum distance for K-12 schools to accommodate same. Said minimum distance shall be no less than 500 feet.
- (9) Waste disposal plan. A plan must be approved for the disposal of waste, chemicals and unused plant material. Further, a list shall be submitted with the application of all chemicals used in growing, processing and testing of plants or products and how they are to be disposed of must be included. The plan must also show how the disposal of marihuana plants and byproduct will be executed.
- (10) There shall be no limits on the number of licenses granted in each category except for provisioning centers. There shall only be 3 permits allowed for provisioning centers.
- (11) All applications shall contain and be subject to the following:
  - The applicant agrees to allow the Whitehall Police Department access to all facets of the business permitted herein for the purpose of assessing compliance with all facets of the permit requested herein.
- (12) If more qualified applications are received than available permits within the first 30-days of this ordinance's passage or at any time thereafter, the permits shall be awarded by lottery held at the discretion of the City Clerk in consultation with the City Manager. Renewals shall take precedence over new applicants.

**§ 68.05 MMFLA LOCATION REQUIREMENTS**

- (A) Growers, Processors and Safety Compliance Facilities, as permitted only in the industrial zones of the City of Whitehall.
- (B) Provisioning Centers are to be located in the City of Whitehall Central and General Business Districts by right.
- (C) The Marihuana Facility shall meet all applicable written and duly promulgated standards of the City and, prior to opening, Applicants shall demonstrate to the City that the location meets the rules and regulations promulgated by the State Medical Marihuana Facilities Licensing Board.

**§ 68.06 PERMIT REVOCATION AND REVIEW**

A Permit granted under this section may be revoked or not renewed for any of the following reasons:

- (A) Any fraud or misrepresentations contained in the Permit application;
- (B) Any knowing violation of this ordinance;
- (C) Loss of the Applicant's State Medical Marihuana Facility License;
- (D) Failure of the Applicant to obtain a State Medical Marihuana Facility License within a reasonable time after obtaining a Permit under this section; or
- (E) Conducting business in an unlawful manner or in such a way as to constitute a menace to the health, safety, or general welfare of the public;
- (F) The violation of any of the conditions of issuance or continuation of a certificate of registration;
- (G) Fraud, misrepresentation or any false statement made in the operation of the business;
- (H) Failure to pay personal property taxes, or timely file documentation or returns required for such taxes; and failure to pay City property taxes; and failure to pay any outstanding amounts owed the City (such as fees for inspections or property services, water or sewer bills, municipal civil infraction fines applicable to the business or its premises, current special assessment, installments, etc.).
- (I) Failure to pay registration fees imposed pursuant to this chapter and resolution of the City Council.
- (J) Failure or inability of an applicant to meet and satisfy any of the requirements and provisions of this chapter.
- (K) Failure to allow inspection of the business premises or hazardous material storage records at a reasonable time.

**§ 68.07 REVOCATION OF PERMIT**

- (A) A permit authorized from the above section may be revoked or not renewed for any of the following reasons:
  - (1) Any fraud or misrepresentations contained in the permit application.
  - (2) Any known violation of this Ordinance or the Act or the rules and regulations issued by LARA.
  - (3) Any loss of the applicants State licenses.
  - (4) Failure of the applicant to obtain a State license within a reasonable time of obtaining a permit under this section. Operating the business in an unlawful manner in such a way as to constitute a problem to the health, safety, or general welfare of the public.

- (5) The violation of any issuance or continuation of a certificate registration or permit.
- (6) Fraud, misrepresentation or any false statement made in the operation of the business.
- (7) Failure to pay personal property taxes or timely documents or returns for such tax purposes.
- (8) Failure to pay any City taxes, including but not limited to property taxes.
- (9) Failure to pay any outstanding amounts owed to the City such as for inspections, property services or water/sewer bills, municipal or civil infractions, fines applicable to the business or its premises, special assessments, etc.
- (10) Failure to pay registration fees in pursuant to this chapter and resolution of the City.
- (11) Failure and inability of applicant to meet and satisfy any requirements and provisions of this chapter.
- (12) Failure to allow inspection of the business premises or hazardous material storage records within a reasonable time.

(B) Procedure of Revocation

- (1) The zoning administrator will issue a notice to the licensee through certified mail, that the City intends to revoke the license
- (2) The licensee may request a hearing before the City Council to show cause as to why the license should not be revoked within 14 days of delivery of the notice.
- (3) If a hearing is timely requested then the City Administrator shall inform the licensee and the City Council of the time and place of the hearing.
- (4) The licensee may present evidence and reasons arguing why the license should not be revoked.
- (5) The City Council shall either revoke the license or allow the license to continue.
- (6) Nothing in this Ordinance shall be deemed to prohibit the City from imposing other penalties authorized by its code or other Ordinances including filing above nuisance actions or other legal proceedings in a Court of competent jurisdiction.

(C) Civil infraction

- (1) Any firm, person, corporation who violates any of the provisions of this Ordinance shall be deemed to be responsible for municipal civil infractions as defined by Michigan Statutes which shall be punishable by a civil fine for each violation according to the schedule set forth herein, along with costs which may include all expenses, direct or indirect, the City incurs connected with the municipal civil infraction. A violator of this Ordinance will also be

subject to such additional sanctions and judicial orders as are authorized under Michigan Law. Each day that a violation continues to exist shall constitute a separate violation of this Ordinance.

- (2) The City Zoning Administrator, Whitehall Police Department and/or their designee, may issue appearance tickets, citations for violations of this Ordinance. The provision of this Ordinance may also be imposed by suit for injunctive relief.
- (3) Civil fines for municipal infractions shall be revised by the City Council by resolution from time to time.

#### **§ 68.08 SEVERABILITY**

Any section of this Ordinance is considered to be severable and if any clause, sentence, word, section, or provision is declared void by a clear and competent Court of jurisdiction, this shall not affect any portion of this Ordinance other than the said part or portion thereof.

#### **§ 68.09 ADOPTION**

This Ordinance is to become effective after publication.  
*(Ord. 19-04, passed 10/22/2019)*

## CHAPTER 69: PERMITTING RECREATIONAL MARIHUANA ESTABLISHMENTS

§ 69.01	PURPOSE AND INTENT
§ 69.02	DEFINITIONS
§ 69.03	RECREATIONAL MARIHUANA OPT-IN PROVISION
§ 69.04	PERMIT REQUIRED FOR RECREATIONAL MARIHUANA ACTIVITY
§ 69.05	RECREATIONAL MARIHUANA LOCATION REQUIREMENTS
§ 69.06	APPLICATION PROCEDURE
§ 69.07	PERMIT REVOCATION AND REVIEW
§ 69.08	PROCEDURE FOR REVOCATION OR SUSPENSION

### § 69.01 PURPOSE AND INTENT

It is the intent of this ordinance to opt-in to the Michigan Regulation and Taxation of Marihuana Act, being Initiated Law 1 of 2018, (MCS Sections 333.27951 through 333.27967).

### § 69.02 DEFINITIONS

Words used in this Ordinance will have the meaning as defined in the Michigan Regulation and Taxation of Marihuana Act, being Initiated Law 1 of 2018, (MCS Sections 333.27951 through 333.27967), as may be amended.

### § 69.03 RECREATIONAL MARIHUANA OPT-IN PROVISION

Pursuant to Section 6 of the Michigan Regulation and Taxation of Marihuana Act, being Initiated Law 1 of 2018, (MCS Sections 333.27951 through 333.27967), the City will authorize Permits for marihuana establishments.

### § 69.04 PERMIT REQUIRED FOR RECREATIONAL MARIHUANA ACTIVITY

- (A) Any person or entity that wishes to operate as a marihuana establishment pursuant to the Michigan Regulation and Taxation of Marihuana Act, being Initiated Law 1 of 2018, (MCS Sections 333.27951 through 333.27967), in the City will obtain a Permit from the City and must obtain a State Operating License before opening or operating.
- (B) The application and inspection fee for the Permit required by this section will be set from time to time by the City by resolution.
- (C) In addition to an annual reapplication and inspection fee, the City may assess an annual fee of no more than \$5,000.00 to help defray the administrative and enforcement costs associated with the operation of the marihuana establishments operating in the City.
- (D) No Permit issued under this section shall be transferrable. A change in ownership interest of a business entity, in whole or in part, constitutes a transfer. This includes, without limitation, the transfer to another person any outstanding stock in a corporation that holds a Permit or any amount of interest in a limited liability company, partnership, or limited partnership that holds a Permit. Each Permit is personal and exclusive to the person or entity to which it is issued.
- (E) All Permits issued under this section may be renewed annually and subject to an annual inspection and renewal fees, which the City sets from time to time by City resolution.

- (F) The City may issue any number of Permits subject to the requirements provided for in the City's Zoning Ordinance.
- (G) A person or entity that receives a Permit under this section will display its Permit and, when issued, its State License in plain view clearly visible to City officials and State authorized agents.
- (H) No person or entity that opened or operated a facility doing business or purporting to do business as a marihuana establishment before the adoption of this ordinance will be considered a lawful use.

**§ 69.05 RECREATIONAL MARIHUANA LOCATION REQUIREMENTS**

- (A) Marihuana establishments are permitted in those zones and subject to requirements provided for in the City's Zoning Ordinance.
- (B) The marihuana establishments will meet all applicable written and duly promulgated standards of the City and, before opening, Applicants will demonstrate to the City that the location meets the rules and regulations promulgated by the State, if any.

**§ 69.06 APPLICATION PROCEDURE**

- (A) All Applicants for Permits required by this section will file an application with the clerk. This application will be signed by the Applicant if an individual, or by all partners if a partnership, by a managing member if a limited liability company, or by the president of a corporation.
- (B) The Applicant may be requested to provide any information required by the Michigan Regulation and Taxation of Marihuana Act, being Initiated Law 1 of 2018, (MCS Sections 333.27951 through 333.27967).
- (C) The Permit may be approved if the Applicant meets all City requirements unless a due diligence investigation discloses tangible evidence that the conduct of the Applicant's business would pose a substantial threat to the public health, safety, or general welfare.

**§ 69.07 PERMIT REVOCATION AND REVIEW**

- (A) A Permit granted under this section may be revoked or not renewed for any of the following reasons:
  - (1) Any fraud or misrepresentations contained in the Permit application;
  - (2) Any violation of a City ordinance;
  - (3) Loss of the Applicant's State Recreational Marihuana Facility License;
  - (4) Failure of the Applicant to obtain a State Recreational Marihuana Facility License within a reasonable time after obtaining a Permit under this section;
  - (5) Conducting business in an unlawful manner or in a way that constitutes a menace to the health, safety, or general welfare of the public;
  - (6) The violation of any of the conditions of issuance or continuation of a Permit;



- (7) Fraud, misrepresentation or any false statement made in the operation of the business;
- (8) Failure to pay real property taxes or personal property taxes, or timely file documentation or returns required for such taxes;
- (9) Failure to pay any outstanding amounts owed the City (such as fees for inspections or property services, water or sewer bills, municipal civil infraction fines applicable to the business or its premises, current special assessment, installments, etc.);
- (10) Failure to pay registration fees imposed pursuant to this chapter and resolution of the City Council;
- (11) Failure or inability of an Applicant to meet and satisfy any of the requirements and provisions of this chapter;
- (12) Failure to allow inspection of the business premises at a reasonable time; or
- (13) Failure to allow inspection of hazardous material storage records at a reasonable time.

**§ 69.08 PROCEDURE FOR REVOCATION OR SUSPENSION**

- (A) Written notice of suspension or revocation by the city clerk stating the cause will be personally delivered or mailed to the address as shown in the application.
- (B) Any person whose Permit, Certificate, or Registration is revoked or suspended, or any person whose application is denied, will have the right to a hearing by a hearing officer that is appointed by the city manager, provided a written request is filed with the city clerk within ten days following the mailing of a notice of revocation or suspension, or within ten days following the denial of the application. The hearing will be public, a record will be made and preserved, and the person or Applicant will have the right to counsel. The hearing will be held within 30 days of the filing of the request.
- (C) The city manager may reverse or affirm any determination to deny, revoke, or suspend the issuance of a Permit, Certificate, or Registration. No person may carry on or operate a business establishment or any business activity during any time when the Permit, Certificate, or Registration for such activity or business has been suspended, revoked, or denied, except that the filing of an appeal to the city manager or, subsequently, to a court having jurisdiction, will act to stay a suspension or revocation – except in the event a condition threatening the life, health, or safety of any person exists in the business establishment or is involved in the business activity. The action of the city manager and his reasons will be stated in writing.
- (D) Any person aggrieved after decision by the city manager or designee will have the right of review in the circuit court for the county. The circuit court will review the determination made by the city manager or designee de novo on the record, not more than 21 days after the city manager’s final action, and either reverse or affirm by remand for further proceedings, retaining jurisdiction in its discretion.

## CHAPTER 610: BUSINESS REGISTRATION

### §610.01 PURPOSE

The purpose of this Article is to assist the City and local Authorities with information to provide adequate police and fire protection, equal and equitable property taxation, efficiency and economy in furnishing public utility services, comprehensive and informed planning and zoning for uses of land and structures, and a registry of businesses operating in the City for the general information of the public and for the promotion of the City.

### §610.02 DEFINITIONS

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

*Business* is a trade, occupation, profession, work, commerce, or other activity owned or operated for profit by a person within the City. Home occupations; political, charitable, and religious establishments or agencies; political subdivisions of the United States, State of Michigan, or Muskegon County; and rental properties are excluded from the provisions of this Ordinance.

### §610.03 REGISTRATION

No person may commence, continue, or materially change the operations or ownership of a business within the City without having first registered with the City Clerk and shall maintain registration in current effect during any business operation or activity. The owner or operator of a business shall make every effort to notify the City upon the cessation of business operations without penalty for failure to do so.

### §610.04 PROCEDURE

The owner or operator of a business shall submit a registration application to the City Clerk on a form provided by the City. A fee shall, as established by the City Council, accompany the application. Upon filing of a properly completed application and payment in full of any fee, the City Clerk shall issue a Registration Certificate to commence or continue the business providing the business complies with the terms of this Article and all other applicable City ordinances and regulations.

### §610.05 CONDITIONS

A Registration Certificate shall not be issued where the existing or proposed business would be illegal under any law or ordinance of the United States, State of Michigan, Muskegon County, or the City of Whitehall. Registration Certificates may not be transferred to any other person. The City shall have the right to inspect the business premises to verify compliance with this Article.

**§610.06 QUALIFICATIONS**

The City Clerk shall not issue a Registration Certificate and the City Council may revoke a Registration Certificate upon determination that any of the following exists:

- A. Violation of any zoning ordinance that has not been remedied within six months of notification by the City provided, however, that upon a timely request and for good cause shown, this deadline may be extended;
- B. Maintenance of a nuisance on the property;
- C. Failure to comply with the requirements of any federal, state or local codes, ordinances, laws, or administrative rules;
- D. Violation of any law or ordinance in the conduct of the business;
- E. Failure to comply with any promise or representation made by the applicant or with any condition imposed upon the applicant as a basis for approval;
- F. A person who does not own the premises for which the registration is sought does not have a lease for the full period for which the Registration Certificate is to be issued;
- G. Fraud, misrepresentation, or any false statement made in the application, or
- H. Any other relevant factor deemed appropriate.

**§610.07 NOTICE**

Any person denied a registration or subject to a revocation shall be notified by registered mail within five days of the non-issuance or revocation. The notification shall state the reasons for the non-issuance or revocation and the right to appeal.

**§610.08 APPEAL**

Any person denied a registration or subject to a revocation shall have the right to appeal to the City Council. A written appeal must be received by the City within five business days of the date of notification. The appeal shall be heard by the City Council at a regularly scheduled meeting within 20 business days of receiving the appeal.

**§610.09 DISPLAY**

All Registration Certificates shall be prominently displayed in the business to which it has been issued.

**§610.10 PENALTIES**

Each day on which a violation of this Article shall continue shall constitute a separate offense.

Section	Description – Civil Infraction	First Offense	Second Offense	Third Offense
610	Business Registration	\$25.00	\$50.00	\$100.00

*(Ord. 22-08, Passed 11/9/22)*