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CODE OF ORDINANCES

City of MIDLAND, MICHIGAN

Codified through
Ord. No. 1590, enacted Feb. 21, 2005.
Supplement No. 95

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CODE OF ORDINANCES CITY OF MIDLAND, MICHIGAN

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THE CHARTER and GENERAL ORDINANCES OF THE CITY

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ADOPTED, JUNE 1, 1970 EFFECTIVE, JUNE 15, 1970

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PUBLISHED BY ORDER OF THE CITY COUNCIL

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M	**MUNICIPAL CODE CORPORATION**
CC	**Tallahassee, Florida 1970 Reprinted 1991**

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

_____

JULIUS F. BLASY Mayor-Councilman

_____

GLENN A. ASADORIAN EARL D. MORRIS RICHARD H. MCCREADIE JAMES B. VANDERKELEN Councilmen

_____

FRED L. YOCKEY City Manager

_____

PATRICK H. HYNES City Attorney

_____

KEN W. LYBOLT City Clerk

PREFACE

The City Code is a complete codification of the ordinances of a general and permanent nature enacted by the City Council. The Code contains all ordinances of a general and permanent nature prescribed for and affecting the public as a whole, except zoning ordinances. Special ordinances or ordinances dealing with only a portion of the inhabitants of the City, or relating to special purposes, such as levying special assessments, vacating streets, making appropriations, etc., are not included herein. For a more complete listing of the types of ordinances not included, see Section 3 of the Adopting Ordinance.
The chapters of the Code have been conveniently arranged in alphabetical order and the various sections within each chapter have been appropriately catchlined to facilitate usage. Footnotes which tie related sections of the Code together and which refer to relevant state laws have been included.

The numbering system used in this Code is the same system used in many state and municipal codes. Each section number consists of two (2) component parts separated by a dash, the figure before the dash referring to the chapter number and the figure after the dash referring to the position of the section within the chapter. Thus, the first section of Chapter 1 is numbered 1-1 and the sixteenth (16th) section of Chapter 19 is 19-16. Under this system, each section is

identified with its chapter and at the same time, new sections may be inserted in their proper place simply by using the decimal system for amendments. By way of illustration: If new material consisting of three (3) sections that would logically come between Sections 4-4 and 4-5 is desired to be added, the new sections would be numbered 4-4.1, 4-4.2, 4-4.3. New chapters may be included by the addition of a fraction after the chapter number. Thus, if the new material is to be included between Chapters 12 and 13, it will be designated as Chapter 12 1/2. Care should be taken that the alphabetical arrangement of chapters is maintained when including new chapters. New articles and new divisions may be included in the same way, or, in the case of articles, may be placed at the end of the chapter embracing the subject, and, in the case of divisions, may be placed at the end of the article embracing the subject, the next successive number being assigned to the article or division.

A special feature of this Code is the looseleaf system of binding and supplemental servicing. With this looseleaf system, the Code will be kept up-to-date periodically. Upon the final passage of amendatory ordinances, they will be properly edited and the page or pages affected will be reprinted. These new pages will be distributed to the holders of the Codes with instructions for the manner of inserting the new pages and deleting the obsolete pages. Each such amendment, when incorporated into the Code, may be cited as a part thereof as provided in Section 6 of the Adopting Ordinance.

The successful maintenance of this Code up-to-date at all times will depend largely upon the holder of the volume. As revised sheets are received it will become the responsibility of the holder to have the amendments inserted according to the attached instructions. It is strongly recommended by the publishers that all such amendments be inserted immediately upon receipt to avoid misplacing them, and that all deleted pages be saved and filed for historical reference.
The general index of the Code has been prepared with the greatest of care. Each particular item has been placed under several headings, some of the headings being couched in lay phraseology, others in legal terminology, and still others in language generally used by city officials and employees. There are numerous cross references within the index itself which serve as guideposts to direct the user to the particular item in which he is interested.
The publication of this Code was under direct supervision of George R. Langford, President, and Ernest T. Buchanan, III, Editor, of the Municipal Code Corporation, Tallahassee, Florida. Credit is gratefully given to the other members of the publisher's staff for their sincere interest and able assistance throughout the project.

The publishers are most grateful to the City Manager, Fred L. Yockey, the City Clerk, Ken W. Lybolt, and the City Manager's Administrative Assistance, David W. Wirth, for their supervision, cooperation and interest during the progress of the work on this Code.
This Code is presented for the use and benefit of the citizens of the City of Midland, Michigan.

MUNICIPAL CODE CORPORATION Tallahassee, Florida
June 1970
Amended January 1994

ORDINANCE NO. 757
An Ordinance Adopting and Enacting a New Code of Ordinances of the City of Midland, Michigan; Establishing the Same; Providing for the Effective Date of Such Code and a Penalty for the Violation Thereof; Providing for the Manner of Amending Such Code; and Providing When This Ordinance Shall Become Effective.

The City of Midland Ordains:

Section 1. That the Code of Ordinances, consisting of Chapters 1 to 28, each inclusive, is hereby adopted and enacted as the "Midland City Code," and shall be treated and considered as a new and original comprehensive ordinance which shall supersede all other general and permanent ordinances passed by the City Council on or before September 26, 1969, except such as are by reference thereto saved from repeal or continued in effect.
(1) Affecting the boundaries of the City;
(2) Vacating, abandoning, or accepting any street, alley or easement;
(3) Relating to any specific local improvement;
(4) Authorizing, directing or ratifying any purchase or sale;
(5) Approving or accepting any subdivision or plat;
(6) Authorizing or directing the issuance of any bonds or other evidence of indebtedness;
(7) Authorizing or directing the making of any investment;
(8) Making or otherwise affecting any appropriations;
(9) Levying or otherwise affecting any taxes, not inconsistent herewith;
(10) Relating to franchises;
(11) Pertaining to zoning or rezoning;
(12) Regulating or restricting the flow of traffic or parking on particular streets or in particular locations in the City;
(13) Relating to airports, specifically including Ordinance Nos. 279 and 346;
(14) Relating to gas company permits, including Ordinance No. 475;
(15) Relating to public transportation, including Ordinance No. 308;
(16) Relating to plants and shrubs, including Ordinance No. 509;
(17) Relating to any municipal automobile parking system, including Ordinance No. 389;
(18) Relating to sewers and sewage disposal, including Ordinance Nos. 229, 243, 495, 517, 552 and 602;
(19) Relating to water, including Ordinance Nos. 323, 325, 326, 327, 330 and 331;
(20) Relating to electrical regulations, including Ordinance Nos. 507, 575 and 685;
(21) Ordinance No. 374.

Section 4. The repeal provided for by Section 1 hereof shall not be construed to revive any ordinance or part thereof that has been repealed by a subsequent ordinance which is repealed by this ordinance.

Section 5. Unless another penalty is expressly provided in said Code, or in any amendment thereof, a person convicted of a violation of any provision of said Code or the commission of any act declared to be a misdemeanor by said Code shall be punished by a fine, which fine shall not exceed five hundred dollars ($500.00), or by imprisonment for not more than ninety (90) days, or by both such fine and imprisonment. Each act or violation, and every day upon which such violation shall occur or continue shall constitute a separate offense.
Said Code may be enforced by suit for injunction, action for damages or any other legal process appropriate to enforcement thereof.

Section 6. That any and all additions and amendments to such Code when passed in such form as to indicate the intention of the Mayor and City Council to make the same a part thereof, shall be deemed to be incorporated in such Code so that reference to the "Midland City Code" shall be understood and intended to include such additions and amendments.

Section 7. That in case of the amendment of any section of such Code for which a penalty is not provided, the general penalty as provided in Section 5 of this ordinance and Section 1-11 of such Code shall apply to the section as amended; or, in case such amendment contains provisions for which a penalty, other than the aforementioned general penalty, is provided in

another section in the same chapter, the penalty so provided in such other section shall be held to relate to the section so amended, unless such penalty is specifically repealed therein.

Section 8. That a copy of such Code shall be kept on file in the office of the City Clerk preserved in looseleaf form, or in such other form as the City Clerk may consider most expedient; and shall be available for public inspection during regular working hours. Copies of such Code shall be printed and made available to the public at a reasonable charge as fixed by resolution of the Council. It shall be the express duty of the City Clerk, or someone authorized by him, to insert in their designated places all amendments or ordinances which indicate the intention of the City Council to make the same a part of such Code when the same have been printed or reprinted in page form, and to extract from such Code all provisions which may be from time to time repealed by the City Council. This copy of such Code shall be available for all persons desiring to examine the same.

Section 9. That it shall be unlawful for any person to change or amend, by additions or deletions, any part or portion of such Code, or to insert or delete pages, or portions thereof, or to alter or tamper with such Code in any manner whatsoever which will cause the law of the City of Midland to be misrepresented thereby. Any person violating this section shall be punished as provided in Section 5 of this ordinance.

Section 10. That all ordinances or parts of ordinances in conflict herewith are, to the extent of such conflict, hereby repealed.

Section 11. That this ordinance shall be published in the manner required by law and shall become effective ten days after the date of said publication.

Moved by Councilman Morris, supported by Councilman McCreadie, that the foregoing Ordinance No. 757 be adopted.

AYES: Asadorian, Blasy, McCreadie, Morris, VanderKelen
NAYS: None
ABSENT: None

Ordinance No. 757 declared adopted at a regular meeting of the Midland City Council held on June 1, 1970.

JULIUS F. BLASY Mayor

KEN W. LYBOLT City Clerk

I, K. W. Lybolt, City Clerk, City of Midland, County of Midland, State of Michigan, do hereby certify that the foregoing is a true and correct copy of an Ordinance adopted by a 5/0 yea vote of all the Councilmen present at a regular meeting of the City Council held Monday, June 1, 1970.

____ K. W. LYBOLT, City Clerk

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CODE OF ORDINANCES

Chapter 1

GENERAL PROVISIONS

Sec. 1-1. Short title.
This Code shall be known and may be cited as the "Code of Ordinances, City of Midland, Michigan." For the purposes hereof, it is referred to herein as "this Code."
Charter references: Codification of ordinances required not less than every ten years, § 6.8.
State law references: Codification of ordinances authorized, M.S.A., § 5.2084(2).

Sec. 1-2. Citation of provisions.
Each provision of this Code may be cited by its assigned section number, and no other citation of any provision shall be required for any purpose.

Sec. 1-3. Definitions and rules of construction.
In the construction of this Code, and of all ordinances, the following rules shall be observed, unless such construction would be inconsistent with the manifest intent of the council of the city.

Alley means any way or place which provides a secondary means of ingress and egress from property.

City means the City of Midland, Michigan.

Computation of time. In computing any period of time prescribed or allowed by this Code, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period is to be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday or legal holiday.

Council means the city council of the City of Midland.

County means Midland County.

Joint authority. All words giving a joint authority to three (3) or more persons or officers shall be construed as giving authority to a majority of such persons or officers.

Number and gender. Words of the singular number may extend to and embrace the plural number. Words of the plural number may include and be applied to the singular number. Words of the masculine gender may extend and apply to the feminine or neuter gender. Words of the neuter gender may extend and apply to the feminine or masculine gender.

Oath. The word "oath" includes an affirmation in all cases in which, by law, an affirmation may be substituted for an oath, and in such cases the words "swear" and "sworn" are equivalent to the words "affirm" and "affirmed."
Or, and. The word "or" may be read as "and" and the word "and" as "or," where the sense requires it.

Owner. The word "owner" applied to a building or land, shall include not only the owner of the whole, but any part owner, joint owner, tenant in common or joint tenant of the whole or a part of such building or land.

Person includes any individual; copartnership; association; unincorporated club; joint adventure; and corporation, and any other group or combination of persons, acting as a unit, and the individuals constituting the same and the fiduciary of any estate or trust.

Preceding, following. The words "preceding" and "following" means next before and next after, respectively.

State means the State of Michigan.

Streets and highways means any public highway and right-of-way in the city, without regard to how such street or highway may be designated or named, and shall be construed to mean the entire width of such street or highway and right-of-way thereof, unless the context shall indicate that a lesser portion of such highway is intended.

Tenant, occupant. The words "tenant" and "occupant" applied to a building or land, means any person who occupies the whole or a part of such building or land, whether alone or with others.

Tense. Except as otherwise specifically provided or indicated by the context, words indicating the present tense shall extend to and include the time of the happening of any act, event, or requirement for which provision is made in this Code.

Writing, written. The words "writing" and "written" include typewriting, printing on paper and any other mode of representing words and letters.

Sec. 1-4. Code to be liberally construed; severability.
It is the legislative intent of the council that all provisions of this Code be liberally construed to protect and preserve the peace, health, safety and welfare of the inhabitants of the city. Should any provision of this Code or part thereof be held unconstitutional, unenforceable or invalid, such holding shall not be construed as affecting the validity of any of the remaining provisions, and the remainder of this Code shall stand, notwithstanding the invalidity or unenforceability of any such provision thereof.

Sec. 1-5. Title of officer to include deputy or subordinate.
Whenever any officer of the city is assigned any duty, the title of the officer shall mean and include the officer or his deputy or authorized subordinate or agent.

Sec. 1-6. Headings, titles, catchlines not substantive.
All words and phrases which constitute the section, division, article and chapter titles of this Code are not to be considered as substantive for any purpose of construction or interpretation of this Code, but are for convenience only and shall not be available or used for any purpose or construction or interpretation of this Code or of any part or portion thereof.

Sec. 1-7. Titles for amendatory ordinances.
The title of each amendatory ordinance shall be substantially as follows:
(a) To amend any section:
AN ORDINANCE TO AMEND THE CODE OF ORDINANCES, CITY OF MIDLAND, MICHIGAN, BY AMENDING SECTION _____ (OR SECTIONS _____ AND _____) (OF ARTICLE) _____ OF CHAPTER _____ THEREOF.
(b) To insert a new section, division, article or chapter:
AN ORDINANCE TO AMEND THE CODE OF ORDINANCES, CITY OF MIDLAND, MICHIGAN, BY ADDING A NEW SECTION (_____ NEW SECTIONS, A NEW DIVISION, A NEW ARTICLE, OR A NEW CHAPTER, AS THE CASE MAY BE) WHICH NEW SECTION (SECTIONS, DIVISION, ARTICLE OR CHAPTER) SHALL BE DESIGNATED AS SECTION _____ (SECTIONS _____ AND _____) OR DIVISION _____ OR ARTICLE _____ OF CHAPTER _____ (OR PROPER DESIGNATION IF A DIVISION, ARTICLE OR CHAPTER IS ADDED) THEREOF.
(c) To repeal a section, division, article or chapter:
AN ORDINANCE TO AMEND THE CODE OF ORDINANCES, CITY OF MIDLAND, MICHIGAN, BY REPEALING SECTION _____ (SECTIONS _____ AND _____), DIVISION _____, ARTICLE _____, CHAPTER _____ OF SAID CODE.

Sec. 1-8. Incorporation of amendments to Code; effect of new ordinances.
All ordinances passed subsequent to this Code which amend, repeal or in any way affect this Code, may be numbered in accordance with the numbering system of this Code and printed for inclusion herein. In the case of repealed chapters, sections or subsections or any part thereof, by subsequent ordinances, such repealed portions may be excluded from the Code by omission from reprinted pages affected thereby. The subsequent ordinances as numbered and printed or omitted, in the case of repeal, shall be prima facie evidence of such subsequent ordinances until such time that this Code and subsequent ordinances numbered or omitted are readopted as a new code of ordinances.

Sec. 1-9. Effect of repeal of ordinances.
The repeal of an ordinance shall not revive any ordinances in force before or at the time the ordinance repealed took effect.
The repeal of an ordinance shall not affect any punishment or penalty incurred before the repeal took effect, nor any suit, prosecution or proceeding pending at the time of the repeal, for an offense committed under the ordinance repealed.

Sec. 1-10. Altering Code.
It shall be unlawful for any person to change or amend by addition or deletion, any part or portion of this Code, or to insert or delete pages, or portions thereof, or to alter or tamper with such Code in any manner whatsoever which will cause the law of the City of Midland to be misrepresented thereby.

Sec. 1-11. General penalty.
(a) Unless another penalty is expressly provided in this Code, or in any amendment thereof, a person convicted of a violation of any provision of this Code not constituting a civil infraction, as herein provided, shall be punished by a fine, which fine shall not exceed five hundred dollars ($500.00), or by imprisonment for not more than ninety (90) days, or by both such fine and imprisonment. Any provision of this Code which describes an act or omission which constitutes a civil infraction under the terms of the Michigan Vehicle Code (1949 PA 300, as amended, MCLA 257.1 et seq.; MSA 9.1801 et seq.) shall be processed as a civil infraction and any

person found to have committed a civil infraction may be ordered to pay a civil fine of not more than one hundred dollars ($100.00) and costs in accordance with Section 907 (MCLA 257.907; HSA 9.2607) of the Michigan Vehicle Code. Each act or omission constituting a violation or civil infraction, and every day upon which such violation or civil infraction shall occur or continue, shall constitute a separate offense.
(b) This Code may be enforced by suit for injunction, action for damages or any other legal process appropriate to enforcement thereof.
(Ord. No. 955, § 1, 7-16-79)
Charter references: General penalty for violation of municipal ordinance, § 6.3.
State law references: Penalties for violation of ordinances, M.S.A., § 5.2082.

Sec. 1-12. Punishment, correction of nuisances.
In the event that the doing of any act or the permitting of a condition to exist is declared to be a nuisance by any section of this Code, the doing of such act or the permitting of such condition to exist may be punished as provided in this chapter, in addition to, or as an alternate procedure to, injunctive relief in a court of competent jurisdiction, or the abatement of such nuisance by procedures provided and permitted in the city charter.

Sec. 1-13. Assessment for abating hazards or nuisances; notice; collection.
In the event it shall become necessary to abate a hazard or nuisance as described in section 14.2 of the Charter of the City of Midland or by any provision of this code, the city council shall determine what amount or part of each such expense shall be charged and the person, if known, against whom, and the premises upon which the same shall be levied as a special assessment. As often as the council shall deem it expedient, it shall require all of the several amounts so reported and determined and the several lots or premises and the persons chargeable therewith respective to be notified by the clerk either by registered mail sent to their last known address as shown on the assessment roll of the city or by publication. Such notice shall state the basis of the assessment, the cost thereof, and shall give a reasonable time, which shall not be less than thirty (30) days, in which payment shall be made. In all cases where payment is not made within the time limit, the same shall be reported by the clerk to the assessor who shall spread such amounts against the several persons or descriptions of real property chargeable therewith on the next roll for the collection of city taxes.
(Ord. No. 899, § 6, 3-14-77)

Sec. 1-14. Time limitation on contesting assessment.
Except and unless notice is given to the city council in writing of an intention to contest or enjoin the collection of any special assessment for the removal or abatement of any public hazard or nuisance within fifteen (15) days after the date of the resolution of the council determining the amount of such expense which shall be charged for the removal or abatement of any public hazard or nuisance, which notice shall state the grounds on which the proceedings are to be contested, no suit or action of any kind shall be instituted or maintained for the purpose of contesting or enjoining the collection of such special assessment.
(Ord. No. 899, § 7, 3-14-77)

Sec. 1-15. Aiding and abetting violations.
Whenever any act or omission to act is a violation of this Code, or of any rule or regulation adopted thereunder, any person who causes, secures, aids or abets such violation may be prosecuted, and any conviction thereof, shall be punished as if he had directly committed such violation.
(Ord. No. 899, § 7, 3-14-77)

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CODE OF ORDINANCES

Chapter 2

ADMINISTRATION*

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* State Law References: Public offices and officers, general duties, M.S.A., § 28-746 et seq.; public records generally, M.S.A., § 28.759 et seq.; uniform system of accounts, M.S.A., § 5.2073; annual financial report of city clerk, M.S.A., § 5.3188(10).

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ARTICLE I.

IN GENERAL

Sec. 2-1. Tax assessment day established.

The 31st day of December shall be the tax day in the city. The taxable status of persons and real and personal property shall be determined as of the tax day.

Sec. 2-2. Time for making tax assessment roll.

The city assessor shall, on or before the first Monday in March, make and complete the assessment roll.

State Law References: Time to complete assessment roll, M.S.A., § 7.24.

Sec. 2-3. Meetings of tax board of review.

The board of review shall meet for the purpose of reviewing and correcting the assessment roll at a public place and at such hours as may be designated by the city council by resolution. The first session shall convene on the second Monday in March of each year and shall continue in session from day to day for the purpose of considering and correcting the roll for three (3) days, and as much longer as may be necessary. In such cases where the assessed value is increased or any property added to the roll by the board, the secretary shall, forthwith, give notice to the owners thereof according to the last assessment roll of the city by first class mail placed in the Midland Post Office not later than midnight of the Thursday following the first meeting of the board. The second session of the board shall convene on the third Monday in March of each year and shall continue in session for one (1) day and as much longer as may be necessary. The review of assessments shall be completed on or before the first Monday in April.

Sec. 2-4. Precinct boundaries.

Precinct boundaries shall be established from time to time. Ordinances establishing precinct boundaries are hereby saved from repeal, and no provision of this Code or of the ordinance adopting this Code shall be constructed as repealing such ordinances.

Sec. 2-5. Reserved.

Editors Note: Ord. No. 948, § 1, adopted June 18, 1979, repealed former § 2-5 which pertained to a tax exemption for elderly citizens in Green Hill housing development and was derived from Ord. No. 892, § 1, adopted Aug. 9, 1976.

Secs. 2-6--2-13. Reserved.

ARTICLE II.

PURCHASES, CONTRACTS, SALES

Sec. 2-14. "Purchase, " "contracts" defined.

For the purposes of this article, *purchases* and *contracts* are defined as materials, equipment or labor or combinations thereof made as a single commitment but do not include the regular personal services of city employees or charges for noncapital, public utility expenditures.
(Ord. No. 1198, § 1, 9-24-90; Ord. No. 1302, § 1, 9-26-94)

Editors Note: Ord. No. 1302, § 1, adopted September 26, 1994, renumbered former § 2-15 as a new § 2-14.

Sec. 2-15. City manager's duty--Purchases, contracts under three thousand dollars.

The city manager, subject to budgetary appropriations, is authorized to make purchases and contracts in an amount not to exceed three thousand dollars ($3,000.00) without further approval of the city council. Such purchases or contracts may be made either with or without soliciting competitive prices, depending upon the judgment of the city manager.
(Ord. No. 938, § 1, 10-2-78; Ord. No. 1095, § 1, 9-9-85; Ord. No. 1198, § 1, 9-24-90; Ord. No. 1302, § 2, 9-26-94)

Editors Note: Ord. No. 1302, § 2, adopted September 26, 1994, renumbered form § 2-16 as a new § 2-15.

Sec. 2-16. Same--Purchases, contracts between three thousand dollars and ten thousand dollars.

The city manager, subject to budgetary appropriations, is authorized to make purchases and contracts in an amount estimated to exceed three thousand dollars ($3,000.00) but not to exceed ten thousand dollars ($10,000.00) without further approval of the city council. Such purchases or contracts shall require that the city manager solicit written price quotations. This provision shall not apply on purchases or contracts where, in the opinion of the city manager, written price quotations are impractical.
(Ord. No. 1302, § 3, 9-26-94)

Sec. 2-17. Same--Purchase, contracts between ten thousand dollars and twenty thousand dollars.

The city manager, subject to budgetary appropriations, is authorized to make purchases and contracts in an amount estimated to exceed ten thousand dollars ($10,000.00) but not to exceed twenty thousand dollars ($20,000.00) without further approval of the city council. Such purchases or contracts shall require that the city manager advertise for sealed proposals. This provision shall not apply on purchases or contracts where, in the opinion of the city manager, sealed proposals are impractical.
(Ord. No. 1302, § 4, 9-26-94)

Sec. 2-18. Same--Purchases, contracts above twenty thousand dollars.

Purchases or contracts estimated to exceed twenty thousand dollars ($20,000.00) shall require that the city manager advertise for sealed proposals. The award shall be made by official action of the city council. This provision shall not apply on purchases or contracts where, in the opinion of the city council as expressed by a four-fifths (4/5) vote, sealed proposals are impractical.
(Ord. No. 1095, § 2, 9-9-85; Ord. No. 1198, § 1, 9-24-90; Ord. No. 1302, § 5, 9-26-94)

Sec. 2-19. Securing professional services.

No sealed proposals shall be required for purchases or contracts for professional services.

Sec. 2-20. Purchases, contracts made with funds received as gifts.

With the approval of the city council, purchases may be made or contracts awarded for the furnishing of material, equipment, labor, or a combination thereof involving the expenditure of funds received as gifts, and therefore not public funds, without the necessity of soliciting competitive quotations or sealed bids by the city.

Sec. 2-21. When property may be sold.

Whenever any city property, real or personal, is not needed for corporate or public purposes, such property may be sold.

Sec. 2-22. Sale by city manager--Personal property valued under twenty thousand dollars.

Personal property not exceeding twenty thousand dollars ($20,000.00) may be sold for cash by the city manager after receiving competitive quotations therefor, for the best price obtainable unless it is determined by the city manager that competitive quotations are impractical or unwarranted, or may be traded to the vendor of new equipment replacing it. Personal property purchased in whole or in part for resale by the city is exempt from this section provided that city costs are fully recovered.
(Ord. No. 971, § 1, 2-4-80; Ord. No. 1313, § 1, 2-27-95)

Sec. 2-23. Same--Personal property valued in excess of twenty thousand dollars.

The sale or trade of personal property with a value in excess of twenty thousand dollars ($20,000.00) shall be determined by official action of the city council prior to advertising for sealed proposals. The sale or trade of personal property with a value in excess of twenty thousand dollars ($20,000.00) shall be awarded by official action of the city council on the basis of sealed proposals unless, by a four-fifths (4/5) vote of the council, sealed proposals are deemed impractical or unwarranted. Personal property purchased in whole or in part for resale by the city is exempt from this section provided that city costs are fully recovered.
(Ord. No. 971, § 1, 2-4-80; Ord. No. 988, § 1, 10-13-80; Ord. No. 1313, § 1, 2-27-95)

Sec. 2-24. Sale of personal property at auction.

In addition to the procedure set forth in this article for the sale of personal property, the council may authorize the sale of personal property at public auction.

Sec. 2-25. Real property.

Real property shall be sold or traded in the same manner as set forth in section 2-23 above, unless the council, by a four-fifths (4/5) vote, shall determine that it is clearly to the city's advantage to sell such property without competitive bid.

Sec. 2-26. Advertising for sealed proposals.

In advertising for sealed proposals, at least one publication shall be made in the local paper. Such advertisement shall reserve the right of the city to reject any or all bids, or waive any irregularities therein.

Sec. 2-27. Vendor suspension.

The purchasing agent, upon approval of the director of fiscal services, shall have the authority to suspend vendors whose performance of city contracts and purchase orders has been seriously deficient. Suspension shall include, but not be limited to, removal from the bidders list, nonconsideration of bids or quotes submitted, cancellation of awards and other procedures to prevent the suspended vendor from receiving city business.

The purchasing agent shall notify the vendor in writing of the vendor's suspension and the reason(s) thereof. The vendor may appeal the purchasing agent's decision to the city manager. The appeal must be made in writing and forwarded to the city manager within ten (10) business days of the written notification of suspension. If the vendor is not satisfied with the city manager's ruling, the vendor may submit a written appeal to the city council no later than four (4) weeks from the date of the city manager's ruling. City council shall not consider any appeals received after the expiration of the four week period.

The purchasing agent shall determine the suspension period, which shall not exceed one (1) year, and shall conduct a review of the situation that caused the suspension at the end of said period. The suspension period shall be included in the notice of suspension. A suspension may be lifted, modified or extended at the end of said period. If a remedy of the cause of suspension is implemented and determined acceptable to the purchasing agent prior to the end of said period, the purchasing agent shall forward a recommendation to the city manager to remove the vendor from the suspension list. The decision whether to remove the vendor from the suspension list shall be the sole discretion of the city manager and may not be appealed. A procedure for suspension of vendors, including a list of such business practices and deficiencies that may be considered as serious and cause for suspension, shall be created. Copies of this procedure and the list of vendors suspended shall be available through the purchasing office. (Ord. No. 1380, § 1, 6-2-97)

Secs. 2-28--2-36. Reserved.

ARTICLE III.

PERSONNEL RULES, REGULATIONS AND BENEFITS

DIVISION 1.

GENERALLY

Sec. 2-37. Definitions.

The following terms, when used in this article shall have the following meanings unless the context clearly requires otherwise: *Administrative officer* means the appointive authorities as established by the charter or by council resolution. *Competitive examination* signifies the process of determining the relative fitness of applicants for any positions subject to the provisions of this article, such examinations to include the consideration and rating of any test or tests held or other appropriate methods used to determine the relative fitness of applicants and

such examinations to be used in preparing appropriate employment lists for all positions or classes of positions subject to the provisions of this article. *Eligible* means any person whose name is on a re-employment or employment list for a given class of position. *Employment list* means a list of the names of the persons arranged in the order of merit and fitness as provided in the rules established under this article, who have been found qualified through suitable examinations for employment in positions of a specified class. *Position* means any office or place of employment in the city classified service such that the duties and responsibilities appertaining thereto are exercised by one person. *Probationary period* means a trial working period as set forth in the rules which is made a part of the selective process, during which the work and conduct of the employee shall be noted by the department head or his authorized representative and reported upon to determine whether such employee merits regular employment. *Public hearing* means an opportunity for any citizen or party interested to appear and be heard at reasonable length on the subject involved after public notice of at least five (5) days. *Public notice* means publication by posting in a prominent place in the building in which the city offices are housed which will be accessible to the public during the business hours. *Re-employment list* means a list of names of persons arranged in the order provided by rules established under this article who have occupied positions in the city classified service, who have been separated from the service and who are entitled to have their names certified to department heads, when vacancies in the class for which they are qualified are to be filled, ahead of those whose names are on the employment list for the class. *Service rating* means the evaluation of the efficiency and general worth of employees in positions subject to the provisions of this article, as determined by the department head or his authorized representative in the department in which the employee is working.

Sec. 2-38. Department of personnel--Established.

There is hereby established a department of personnel for the purpose of administering personnel matters.

Sec. 2-39. Same--Composition.

The department of personnel shall consist of:

(1) The merit system board.

(2) The director of personnel.

(3) Other appropriate officers and employees.

Sec. 2-40. City manager to serve as director of personnel.

The executive officer of the personnel department shall be designated as director of personnel. The city manager shall be director of personnel, and may delegate such duties as the charter of the city may provide.

Charter References: City manager to serve as personnel director, § 8.2(n).

Sec. 2-41. General duties of director of personnel.

The director of personnel shall be the executive officer of the department of personnel and shall initiate and direct the administrative work. It shall be his duty:

(1) To attend all regular and special meetings of the merit system board and to maintain a record of its official proceedings.

(2) To prepare and recommend rules and regulations to the merit system board for carrying out the provisions of this article. These rules and regulations shall cover the following phases of the personnel program:

(a) Preparation, installation and maintenance of a duties classification plan based on a study of the duties and responsibilities of all positions in the city classified service.

(b) Establishment of procedures governing application for employment.

(c) Public announcement of vacancies and competitive examinations.

(d) Preparation of examinations and the development of other measures designed to assist in passing on the qualifications of applicants for appointment to or promotion in the city classified service.

(e) Conduct of examinations.

(f) Establishment of employment and re-employment lists containing the names of persons eligible for appointment to the city classified service.

(g) Certification and appointment of persons from eligible lists to fill vacancies in the city classified service.

(h) Provisions for a probationary or working test period prior to obtaining regular status under the merit system of personnel management.

(i) Transfer of employees from one position to another either in the same department or in a different department.

(j) Promotion from a position of lesser responsibility to one of greater responsibility.

(k) Demotion from a position of greater responsibility to one of lesser responsibility.

(l) Standardization of hours of work.

(m) Attendance and leave regulations.

(n) Establishment, installation and maintenance of a system of service ratings covering the performance of employees.

(o) Establishment, installation and maintenance of a program of training courses for city employees.

(p) Establishment, installation and maintenance of a welfare program for city employees.

(q) Termination of employment due to lack of work or funds, suspension for disciplinary purposes, dismissals for just cause.

(r) Resignations and deaths.

(s) Certification for payrolls.

(t) Preparation, installation and maintenance of records and forms needed for analyzing the personnel situation.

(3) To administer such rules and regulations, to propose amendments thereto as the needs of the service may require.

Sec. 2-42. Personnel clerk; appointment, duties.

The director of personnel may appoint a personnel clerk to whom he may delegate the duty of acting in the capacity of a secretary and clerk for the merit system board. The clerk shall be the custodian of all personnel records and shall be the official upon or with whom all notices, requests for hearings, complaints or other official documents shall be served or filed. The duties of the office of personnel clerk may be combined with those of any other office in the event the work involved does not warrant, in the discretion of the director of personnel the creation of a special position.

Sec. 2-43. Preparation of salary schedule plan.

The director of personnel shall prepare or cause to be prepared a salary schedule plan for the positions in the city service, together with regulations for the administration of such plan. This suggested plan shall be submitted by the director of personnel to the city council for approval and shall, when adopted, constitute the official salary schedule plan for positions in the city service.

Sec. 2-44. Appropriations.

The city council shall make adequate provisions for finances to enable the department of personnel to properly carry out the purposes of this article. Appropriations thus made available shall be subject to administration by the city manager.

Secs. 2-45--2-50. Reserved.

DIVISION 2.

MERIT SYSTEM BOARD

Sec. 2-51. Created; qualifications; appointment.

A merit system board is hereby created. Such board shall consist of three (3) members, who shall be appointed by the city council. All members shall believe in the merit system for city employment.
(Ord. No. 851, § 1, 2-3-75)

Sec. 2-52. Term of office.

Members of the merit system board shall hold office for a term of three (3) years, or until a successor is appointed and has qualified.

Sec. 2-53. Members to serve without compensation.

All members of the merit system board shall serve without compensation.

Sec. 2-54. Political participation.

Members of the merit system board shall not hold any other public office or serve on any political committee or take part in the management of any political campaign.

Sec. 2-55. Internal organization; quorum.

The merit system board shall, at its organizational meeting, elect a chairman who shall serve for a one-year term. Two (2) members of the board shall constitute a quorum for the transaction of business. The merit system board shall determine its order of business for the conduct of its meetings.

Sec. 2-56. Filling vacancies.

Vacancies occurring in the merit system board shall be filled in the same manner as regular appointments for the unexpired term of office.

Sec. 2-57. Removal of members.

The city council may remove any member of the merit system board for malfeasance, misfeasance, removal from city, mental incompetency, physical disability, or other good cause, by an affirmative vote of three (3) members of the city council.

Sec. 2-58. Duties.

The merit system board shall have general supervision over the problems of administrative policy involved in the personnel matters prescribed in this article, and except for the purpose of inquiry, the merit system board and its members shall deal with the specified technical problems of administration solely through the director of personnel. It shall be the duty of the merit system board:

(a) To recommend to the city council, through the director of personnel, such rules and regulations as it may deem necessary for the administration of this article. No rule or any amendment or repeal thereof shall be effective until approved by the city council.

(b) To make investigations and recommendations either on complaint or on its own motion, concerning any matters touching the administration of this article.

(c) To sit as a body to hear appeals of any person in the city classified service relative to any proceedings or situation having a bearing on his employment status or conditions of employment under the provisions of this article.

(d) To make an annual report to the city council on the activities of the merit system board, together with recommendations concerning personnel policies.

(e) To consider such other matters as may be referred to the board by the director of personnel, or by the city council.

Sec. 2-59. City to cooperate with, furnish facilities for, merit system board.

The merit system board shall be provided with suitable quarters. All administrative officers of the city, during usual business hours, shall grant to the members of the board, the director of personnel and any employee of the merit system board designated by it or him free access to premises and records under their control and shall furnish him or them such facilities, assistance and information as he or they may require in carrying out his or their function.

Secs. 2-60--2-65. Reserved.

DIVISION 3.

PERSONNEL POLICIES, RULES AND REGULATIONS

Sec. 2-66. Merit system to be divided into two services.

The merit system of the city shall be divided into an unclassified service and a classified service.
Charter References: Persons declared city employees, § 3.5.

Sec. 2-67. Unclassified service.

The unclassified service of the city shall consist of the following:

(a) City manager.

(b) Administrative officers.

(c) Officers elected by popular vote and persons appointed to fill vacancies in such elective offices.

(d) Members of appointive commissions or boards.

(e) City attorney and assistant city attorneys.

(f) Members of boards and commissions required by law to be appointed by the city council.

(g) Employees whose positions are funded fifty (50) per cent or more by state or federal grants.

(h) Temporary seasonal employees.

(i) Co-ops, interns involved in training programs.
(Ord. No. 779, § 1, 7-6-71; Ord. No. 853, § 1, 2-3-75; Ord. No. 961, § 1, 10-15-79)

Sec. 2-68. Classified service.

The classified service of the city shall consist of the following:

(a) All persons holding offices and employment other than the offices set forth in section 2-67.

(b) In addition thereto, unskilled laborers for hire from time to time at an hourly wage shall be a part of the classified service for the following purposes only:

(1) For physical fitness.

(2) Records of those so employed shall be kept and a preference given to those heretofore employed, insofar as same is practical.

Sec. 2-69. Emergency appointments.

If necessary to prevent the stoppage of public business or inconvenience to the public, but not otherwise, temporary appointments may be made by the director of personnel of persons not on the eligible list, provided that no eligible list has been prepared for the position, or that those on the eligible list are not immediately available, or during the suspension of an employee, or pending final action on proceedings to review a suspension demotion or dismissal of an employee. Such temporary appointment shall not continue for a longer period than six (6) months, and no person shall be eligible to serve as a temporary appointee in any one or more positions for more than an aggregate period of six (6) months in any fiscal year. No credit shall be allowed in the giving of examinations for service rendered under a temporary appointment.

Sec. 2-70. Physical standards, examination.

All applicants for positions in the classified service of the city shall meet physical standards to be set by the merit system board. In the case of candidates taking original assembled or nonassembled examinations, such fitness shall be determined by means of medical examinations to be given by a medical doctor designated by the personnel director. Medical examination may be required of candidates taking promotional examinations when deemed advisable by the board.

Sec. 2-71. Abuses and frauds prohibited.

No person shall deceive or obstruct any person in respect to his or her right to participate in examinations under the provisions of this article, or falsely mark, grade, estimate or report upon the examination or standing of any person tested thereunder, or aid in so doing, or furnish to any person, except in answer to inquiries of the merit system board, any special information for the purpose of either improving or injuring the rating of any such person for appointment.

No applicant shall deceive the board for the purpose of improving his chances or prospects for appointment.

No person shall solicit, orally or by letter, and no public officer or employee shall receive or be in any manner concerned in the receiving or soliciting of any money or valuable thing from any officer or employee holding a position in the classified service for any political purpose.

No person shall use or promise to use his influence or official authority to secure any appointment or prospect of appointment to any position classified under this article as a reward for personal or partisan political service.

No public officer or employee shall by means of threats or coercion induce or attempt to induce any person holding a position in the classified service to resign his position or to take a leave of absence from duties or to waive any of his rights under this article.

Sec. 2-72. Merit system board records to be confidential.

All personnel records and forms, including roster cards showing the complete employment history of each officer and employee, and other required personnel records, shall be deemed confidential, and shall not be open to general public inspection.

Sec. 2-73. Merit system rules--To incorporate principle of merit and fitness.

The rules submitted by the merit system board shall be prepared so that the decisions on personnel matters shall be made solely on the basis of merit and fitness of the individual, and the various practices and procedures established thereunder which are to govern these decisions shall incorporate established professional standards and techniques which will serve to further that end.

Sec. 2-74. Same--Seniority, efficiency rules, regulations.

The merit system board shall make all necessary and proper rules and regulations in regard to rating of seniority and rating of efficiency.

Sec. 2-75. Promotion policy.

Insofar as practical and consistent with the best interests of the service, all vacancies in a higher position in the classified service shall be filled by promotion from within the classified service.

Sec. 2-76. Political, religious, racial discrimination prohibited.

No person in the city classified service or seeking admission thereto shall be appointed, demoted, or removed or be in any way favored or discriminated against because of race or national origin, or his political or religious opinions or affiliations.

Sec. 2-77. Political activity.

No person holding a position in the city classified service shall directly or indirectly use or seek to use his authority or official influence to control or modify the political action of any person, or during the hours of duty engage in any form of political activity nor at any other time take such part in political activities or political campaigns as to impair his usefulness in the position in which he is employed. Nothing in this section, however, shall be construed as prohibiting or preventing any such officer or employee from taking a legitimate interest as a citizen in his government or in casting his vote for the person of his choice.

Sec. 2-78. Classified employee to be removed, discharged or reduced only for cause; merit system board to establish rules.

No person or employee holding an office or position classified and graded under the classified service shall be removed, discharged or reduced except for just cause, which shall not include political or religious opinions or affiliations or race or national origin. The merit system board shall set forth in its rules such specific causes for removal, discharge or reduction as shall constitute just cause, provided, that the enumeration of such causes in the rules shall not be exclusive, nor prevent removal, discharge or reduction for other just causes shown to be detrimental to the service. Nothing in this section shall prevent the removal, layoff or reduction in classification of a classified employee in connection with a reduction in work force and the merit system rules shall provide for removal, layoff and recall in such cases.
(Ord. No. 853, § 2, 2-3-75)

Sec. 2-79. Procedure upon removal, discharge, reduction in position--Reasons for discharge to be furnished.

A person in the classified service who is removed, discharged or reduced in position shall be furnished by the administrative officer making the removal, discharge or reduction, with the reasons, in writing, for such action, and the effective date thereof. A copy of the same shall be immediately filed with the merit system board.

Sec. 2-80. Same--Notice of appeal; setting hearing.

Within ten (10) days after the effective date of any removal, discharge or reduction of any classified city employee, an appeal may be made to the merit system board in writing, by the employee so removed, discharged or reduced. The board, on receiving such notice of appeal, shall set a hearing of the reasons for removal, discharge or reduction, which date shall not be more than twenty (20) days after the effective date of removal, discharge or reduction. Notice of the time and place of such hearing shall be served personally or by registered mail upon the employee appealing, at least five (5) days before the date of hearing. Notice shall also be given the administrative officer making the removal, discharge or reduction.

Sec. 2-81. Same--Hearing on appeal.

The merit system board shall conduct the hearing of the appeal filed pursuant to section 2-80 at the time set, and may adjourn such hearing from time to time upon cause shown or upon its own motion, provided that such adjournments shall not exceed sixty (60) days from the effective date of removal, discharge or reduction.

The employee appealing shall have full opportunity to be heard and may be represented by counsel.

In the course of a hearing as herein provided for, any member of the board shall have the power to administer oaths and shall have the power to secure by subpoena both the attendance and testimony of witnesses and the production of books and papers relevant to such hearing. All evidence may, at the discretion of the board, be taken and transcribed.

Sec. 2-82. Same--Post hearing procedure.

The merit system board shall spread in its official minutes the facts contained in any appeal from a discharge, removal, or reduction, its findings of facts resulting from the hearing thereof, and its recommendation concerning the disposition of the appeal. It shall transmit a duplicate of

such minutes entry for filing with the city clerk for his records and shall also transmit a duplicate to the city manager.

The city manager shall, within ten (10) days therefrom, submit in writing his decision concerning the disposition of the appeal for filing with the city clerk, a copy of which he shall send to the merit system board.

If, as a result of the appeal, the merit system board finds that the employee has been discriminated against either in the original action or in the final decision by the city manager, because of any belief or associations, either religious or political, or on account of race or national origin, then the merit system board shall have the power to reinstate the employee to his original status held prior to the action necessitating the appeal. In all other cases the decision of the city manager shall be final.

Secs. 2-83, 2-84. Reserved.

DIVISION 4.

POLICE AND FIRE RETIREMENT SYSTEM

Sec. 2-85. Statement of purpose.

In accordance with the favorable vote by the electorate of the City of Midland on November 8, 1966, the Fire Fighters and Police Officers Retirement Act, being Act No. 345 of the Public Acts of Michigan of 1937, as amended, hereinafter referred to as the "act", is adopted as the City of Midland Police and Fire Fighter Retirement System. Said system shall hereafter be known as "The City of Midland Police and Fire Fighter Retirement System".
(Ord. No. 1423, § 1, 7-20-98)

Sec. 2-86. Conformity with applicable bargaining agreements.

The City of Midland Police and Fire Fighter Retirement System is hereby amended to the extent necessary to conform to the pension provisions provided in the existing applicable bargaining agreements and those agreements hereafter approved by the city council.
(Ord. No. 1423, § 1, 7-20-98)

Sec. 2-87. Retirement board created.

A retirement board, to be known as the Police and Fire Retirement Board, is hereby created. There shall be five members of the Police and Fire Retirement Board, whose membership shall consist of the following:

(1) The treasurer of the City of Midland;

(2) One (1) active member of the fire department elected by a majority vote of the members of the fire department;

(3) One (1) active member of the police department elected by a majority vote of the members of the police department; and

(4) Two (2) additional members who shall be appointed by the city manager.

(Ord. No. 1423, § 1, 7-20-98)

Sec. 2-88. Terms of office.

The terms of office for the members of the Police and Fire Retirement Board are as follows:

(1) The treasurer of the city shall serve throughout his or her term of office;

(2) The police and fire representatives shall each serve a four year term. However, in the event that the member is no longer an active employee of his or her respective department, that member's term shall automatically expire and a new member shall be elected as provided herein.

(3) The members appointed by the city manager shall serve at the will of the city manager.
(Ord. No. 1423, § 1, 7-20-98)

Sec. 2-89. Duties.

The retirement board shall:

(1) Make all rules and regulations necessary to insure the proper conduct of the business of the City of Midland Police and Fire Fighter Retirement System.

(2) Retain such legal, medical, actuarial, clerical or other services as may be necessary for the conduct of the affairs of the system.

(3) Cause such amounts as may be set forth in the act and the police and fire agreements to be deducted from the salaries of active members of the system and paid into the treasury of the system.

(4) Certify to the city council of the City of Midland the amount to be contributed by the city as provided for under the act.

(5) Cause the examination of every disability pensioner or beneficiary under the age of fifty-five (55) years to be made at least once a year for the first five (5) years following his or her retirement, and at least once every three (3) years thereafter, until he or she reaches age fifty-five (55).

(6) Meet at least once per month. Records of all board meetings shall be kept and all meetings shall be open to the public.

(7) Annually elect board officers as follows: one (1) member to be president, one (1) member to be vice-president, and one (1) member to be secretary.

(8) Disburse the pensions and other benefits payable under the act.
(Ord. No. 1423, § 1, 7-20-98)

Sec. 2-90. Members to serve without compensation.

No member of the board shall receive any compensation for his or her services as a board member.
(Ord. No. 1423, § 1, 7-20-98)

Sec. 2-91. Pension provisions.

All pension provisions under the act and those included in contracts between the City of Midland and City of Midland Police and Fire departments shall be followed. In the event that a provision of the act conflicts with a provision contained in a contract, the contract provision shall be controlling.
(Ord. No. 1423, § 1, 7-20-98)

Sec. 2-92. Pension benefits applicable to chief and captain positions.

The City of Midland Police and Fire Fighter Retirement System is hereby amended to provide post retirement pension adjustments for members who retire from the position of police chief, police captain and fire chief on or after the effective date of this division as follows:

(1) A member who is the police chief or police captain shall have his/her retirement benefits adjusted, as of the day following his/her effective retirement date, so that he/she shall receive pension benefits pursuant to the police command collective bargaining agreement.

(2) A member who is the fire chief shall have his/her retirement benefits adjusted, as of the day following his/her effective retirement date, so that he/she shall receive pension benefits pursuant to the fire fighters collective bargaining agreement.
(Ord. No. 1423, § 1, 7-20-98)

Sec. 2-93. Severability.

In the event any portion, section or subsection of this division shall be held invalid, that portion, section or subsection shall be eliminated from this division. Such invalidation shall not be construed to affect the validity of any other part or portion of this division or of this Code.
(Ord. No. 1423, § 1, 7-20-98)

ARTICLE IV.

MUNICIPAL PLANNING COMMISSION*

* Charter References: Council to maintain city planning commission; powers and duties of same, § 5.12; advisory commissions generally, § 5.13.
Cross References: *Subdivisions, Ch.* 23.
State Law References: M.S.A., § 5.2991 et seq.

Sec. 2-94. Creation of municipal planning commission.

The municipal planning commission is hereby created.
State Law References: *See M.S.A.* § 5.2992.

Sec. 2-95. Composition; appointment.

The commission shall consist of nine (9) members, who shall be appointed by the city council. One (1) person may be a member of the zoning board of appeals, and one (1) person may be a member of the city council.
(Ord. No. 1052, § 1, 7-25-83)
Cross References: Zoning board of appeals membership, § 2-130.

Sec. 2-96. Terms of office.

The terms of the members of the commission who represent the zoning board of appeals and the city council shall correspond to their tenure as a member of the zoning board of appeals and the city council respectively. The terms of the remaining members shall be three (3) years from July 1, 1947, or until a successor shall take office, except that the respective terms of three (3) of the members first appointed shall be for three (3) years, three (3) for two (2) years, and one for one year.

Sec. 2-97. Holding other municipal offices.

Members of the commission shall hold no other municipal office, except as set forth in this article.

Sec. 2-98. Members to serve without compensation.

All members of the commission shall serve without compensation.

Sec. 2-99. Removal of members.

Members of the commission may, after public hearing, be removed by the city council for inefficiency, neglect of duty, or malfeasance in office.

Sec. 2-100. Filling vacancies.

Vacancies in the commission occurring otherwise than through the expiration of term shall be filled for the unexpired term by the council.

Sec. 2-101. Chairman, meetings, rules, records.

The commission shall elect its chairman from amongst the appointed members and create and fill such other of its offices as it may determine. The term of chairman shall be one year, with eligibility for re-election. The commission shall hold at least one regular meeting in each month. It shall adopt rules for transaction of business and shall keep a record of its resolutions, transactions, findings, and determinations, which record shall be a public record.
State Law References: See M.S.A., § 5.2994.

Sec. 2-102. Source, limit on expenditures.

The expenditures of the commission, exclusive of gifts, shall be within the amounts appropriated for the purpose by the city council, which shall provide the funds, equipment, and accommodations necessary for the commission's work.

Sec. 2-103. Master plan for physical development of municipality--Adoption, contents, publication, alteration.

It shall be the function and duty of the commission to make and adopt a master plan for the physical development of the municipality, including any areas outside of its boundaries which, in the commission's judgment, bear relation to the planning of the municipality. The plan, with the accompanying maps, plats, charts, and descriptive matter shall show the commission's recommendations for the development of such territory, including, among other things, the general location, character, and extent of streets, viaducts, subways, bridges, waterways, flood plains, water fronts, boulevards, parkways, playgrounds and open spaces, the general location of public buildings and other public property, and the general location and extent of public utilities and terminals, whether publicly or privately owned or operated, for water, light, sanitation, transportation, communication, power, and other purpose; also the removal, relocation, widening, narrowing, vacating, abandonment, change of use or extension of any of the foregoing ways, grounds, open spaces, buildings, property, utilities or terminals; the general location, character, layout and extent of community centers and neighborhood units; and the general character, extent and layout of the replanning and redevelopment of blighted districts and slum areas; as well as a zoning plan for the control of the height, area, bulk, location and use of buildings and premises. As the work of making the whole master plan progresses, the commission may from time to time adopt and publish a part to cover one or more major sections or divisions of the municipality or one or more of the aforesaid or other functional matters to be included in the plan. The commission may from time to time amend, extend or add to the plan.

State Law References: See M.S.A., § 5.2996.

Sec. 2-104. Same--Surveys for basis, purpose.

In the preparation of the plan, the commission shall make careful and comprehensive surveys and studies of present conditions and future growth of the municipality and with due regard to its relation to the neighboring territory. The plan shall be made with the general purpose of guiding and accomplishing a coordinated, adjusted and harmonious development of the municipality and its environs which will, in accordance with present and future needs, best promote health, safety, morals, order, convenience, prosperity, and general welfare, as well as efficiency and economy in the process of development; including, among other things, adequate provision for traffic, the promotion of safety from fire and other dangers, adequate provision for light and air, the promotion of the healthful and convenient distribution of population, the promotion of good civic design and arrangement, wise and efficient expenditure of public funds, and the adequate provision of public utilities and other public requirements.

State Law References: See M.S.A., § 5.2997.

Sec. 2-105. Same--Adoption of whole or parts by resolution of planning commission, hearing, notice, certificates to council and register of deeds.

The commission may adopt the plan as a whole by a single resolution or may by successive resolutions adopt successive parts of the plan, said parts corresponding with major geographical sections or divisions of the municipality or with functional subdivisions of the subject matter of the plan, and may adopt any amendment or extension thereof or addition thereto. Before the adoption of the plan or any such part, amendment, extension, or addition the commission shall hold at least one public hearing thereon, notice of the time and place of which shall be given, not less than fifteen (15) days prior to such hearing, by one publication in a newspaper of general circulation in the municipality and in the official gazette, if any, of the municipality, and by registered United States mail to each public utility company and to each railroad company owning or operating any public utility or railroad within the geographical sections or divisions of the municipality affected. The adoption of the plan or of any such part or

amendment or extension or addition shall be by resolution of the commission carried by the affirmative votes of not less than six (6) members of the commission. The resolution shall refer expressly to the maps and descriptive and other matter intended by the commission to form the whole or part of the plan, and the action taken shall be recorded on the map and plan and descriptive matter by the identifying signature of the chairman and/or secretary of the commission. An attested copy of the plan or part thereof shall be certified to council and to the county register of deeds.

State Law References: See M.S.A., § 5.2998.

Sec. 2-106. Public works; approval by commission and council; plans for future.

Whenever the commission shall have adopted the master plan of the municipality or of one or more major sections or districts thereof, no street, square, park, or other public way, ground, or open space, or public building or structure, shall be constructed or authorized in the municipality or in such planned section and district until the location, character, and extent thereof shall have been submitted to and approved by the commission. In case of disapproval the commission shall communicate its reasons to council, which shall have the power to overrule such disapproval by a recorded vote of not less than two-thirds (2/3) of its entire membership. However, if the public way, ground, space, building, structure, or utility be one the authorization or financing of which does not under the law or charter provisions governing same, fall within the province of the municipal council, then the submission to the planning commission shall be by the board, commission, or body having such jurisdiction, and the planning commission's disapproval may be overruled by such board, commission or body by a vote of not less than two-thirds (2/3) of its membership. The failure of the commission to act within sixty (60) days from and after the date of official submission to the commission shall be deemed approval. For the purpose of furthering the desirable future development of the municipality under the master plan, the city planning commission, after the commission shall have adopted a master plan, shall prepare coordinated and comprehensive programs of public structures and improvements.

State Law References: See M.S.A., § 5.2999.

Sec. 2-107. Same--Rescission of action by legislative body, procedure.

Whenever the council shall have ordered the opening, widening or extension of any street, avenue or boulevard, or whenever the council shall have ordered that proceedings be instituted for the acquisition or enlargement of any park, playground, playfield or other public open space, such resolution shall not be rescinded until after the matter has been referred back to the city planning commission for a report and until after a public hearing shall have been held. The council shall have power to overrule the recommendation of the commission by a vote of not less than two-thirds (2/3) of its entire membership.

State Law References: See M.S.A., § 5.3000.

Sec. 2-108. Publicity and education.

The commission shall have the power to promote public interest in and understanding of the plan and to that end may publish and distribute copies of the plan or of any report and may employ such other means of publicity and education as it may determine.

The commission shall, from time to time, recommend to the appropriate public officials programs for public structures and improvements and for the financing thereof.

It shall be part of its duties to consult and advise with public officials and agencies, public utility companies, civic, educational, professional, and other organizations, and with citizens with relation to the protecting or carrying out the law.

State Law References: See M.S.A., § 5.3001.

Sec. 2-109. Acceptance of gifts.

The municipal planning commission shall have the right to accept and use gifts for the exercise of its functions.

Sec. 2-110. Information collection; entry on land.

All public officials shall, upon request, furnish to the commission, within a reasonable time, such available information as it may require for its work. The commission, its members, officers, and employees, in the performance of their functions, may enter upon any land and make examinations and surveys and place and maintain necessary monuments, and marks thereon.

Sec. 2-111. General powers of commission.

In general, the municipal planning commission shall have such powers as may be necessary to enable it to fulfill its functions, promote municipal planning, or carry out the purposes of this article.

Sec. 2-112. Planning commission to approve plats.

Whenever the planning commission shall have adopted that sort of a master plan relating to the major street system of the territory within its subdivision jurisdiction or part thereof, and shall have filed a certified copy of such plan in the office of the county register of deeds of the county, in which such territory or part is located, then no plat of a subdivision of land within such territory or part shall be filed or recorded until it shall have been approved by the planning commission and such approval entered in writing on the plat by the chairman or secretary of the commission.

State Law References: See M.S.A., § 5.3003.

Sec. 2-113. Regulations governing subdivision of lands; bond to secure improvements.

Before exercising the powers referred to in section 2-112 the planning commission shall adopt regulations governing the subdivision of land within its jurisdiction. Such regulations may provide for the proper arrangement of streets in relation to other existing or planned streets and to the master plan, for adequate and convenient open spaces for traffic, utilities, access of fire-fighting apparatus, recreation, light and air, and for the avoidance of congestion of population, including minimum width and area of lots.

Such regulations may include provisions as to the extent to which streets and other utility mains, piping, or other facilities shall be installed as a condition precedent to the approval of the plat. The regulations or practice of the commission may provide for a tentative approval of the plat previous to such installation; but any such tentative approval shall be revocable and shall not be entered on the plat. In lieu of the completion of such improvements and utilities prior to the final approval of the plat the commission may accept a bond with surety to secure to the municipality the actual construction and installation of such improvements or utilities at a time and according to specifications fixed by or in accordance with the regulations of the commission. The

municipality is hereby granted the power to enforce such bond by all appropriate legal and equitable remedies.

Cross References: *Subdivision, Ch.* 23.

State Law References: See M.S.A., § 5.3004.

Sec. 2-114. Subdivision regulations.

All subdivision regulations shall be published as provided by law for the publication of ordinances, and before adoption, a public hearing shall be held thereon. A copy of such regulations shall be certified by the planning commission to the recorders of the counties in which the municipality and territory are located.

Sec. 2-115. Approval or disapproval of plats; procedure; effect.

The planning commission shall approve, modify or disapprove a plat within sixty (60) days after the submission thereof to it; otherwise such plat shall be deemed to have been approved, and a certificate to that effect shall be issued by the commission on demand. However, the applicant for the commission's approval may waive this requirement and consent to an extension of such period. The ground of disapproval of any plat shall be stated upon the records of the commission. Any plat submitted to the commission shall contain the name and address of a person to whom notice of a hearing shall be sent; and no plat shall be acted on by the commission without affording a hearing thereon. Notice shall be sent to the said address by registered mail of the time and place of such hearing not less than five (5) days before the date fixed therefor. Similar notice shall be mailed to the owners of land immediately adjoining the platted land, as their names appear upon the plats in the county auditor's office and their addresses appear in the directory of the municipality or on the tax records of the municipality or county. Every plat approved by the commission shall, by virtue of such approval, be deemed to be an amendment of or an addition to or a detail of the municipal plan and a part thereof. Approval of a plat shall not be deemed to constitute or affect an acceptance by the public of any street or other open space shown upon the plat. The planning commission may, from time to time, recommend to council amendments of the zoning ordinance or map or additions thereto to conform to the commission's recommendations for the zoning regulations of the territory comprised within approval subdivisions. The commission shall have power to agree with the applicant upon use, height, area or bulk requirements or restrictions governing buildings and premises within the subdivision, provided such requirements or restrictions do not authorize the violation of the then effective zoning ordinance of the municipality. Such requirements or restrictions shall be stated upon that plat prior to the approval and recording thereof and shall have the same force of law and be enforceable in the same sanctions and penalties and subject to the same power of amendment or repeal as though set out as a part of the zoning ordinance or map of the municipality.

Cross References: Approval of plats, § 23-25 et seq.

State Law References: See M.S.A., § 5.3005.

Sec. 2-116. Succession to zoning commission.

The commission shall have all powers granted by law to the zoning commission of the municipality, and, from and after the creation of a planning commission in such municipality, all powers and records of the zoning commission shall be transferred to the planning commission, however, that in the event that the existing zoning commission shall be nearing the completion of its zoning plan, the council, may, by resolution, postpone the transfer of the zoning

commission's powers until the completion of such zoning plan, but such postponements shall not exceed a period of one year.

State Law References: See M.S.A., § 5.3002.

Secs. 2-117--2-129. Reserved.

ARTICLE V.

ZONING BOARD OF APPEALS*

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* Editors Note: For additional provisions relative to the zoning board of appeals, see Art. XXXIV of the city's zoning ordinance, being Ord. No. 727 as amended, which is on file in the office of the city clerk.

State Law References: See M.S.A., § 5.2935(a).

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Sec. 2-130. Membership; qualifications; appointment.

The zoning board of appeals shall consist of five (5) members who shall be appointed by the city council. The city council may also appoint not more than two (2) alternate members to act in accordance with procedures specified in the City of Midland zoning ordinance.
(Ord. No. 851, § 2, 2-3-75; Ord. No. 867, § 1, 8-11-75; Ord. No. 1036, § 1, 2-21-83)

Editors Note: In conjunction with § 2-130, see also § 34.1 of the city's zoning ordinance, Ord. No. 727, which is on file in the office of the city clerk.

Sec. 2-131. Terms of office.

The terms of office for members of the zoning board of appeals shall be three (3) years from July 1, 1949, or until the successor to any member shall take office, except that for the fiscal year of the city beginning July 1, 1983, the terms of the members shall be adjusted so that the term of one (1) of the members shall expire on June 30, 1984, the terms of two (2) of the members shall expire on June 30, 1985, and the terms of two (2) of the members shall expire on June 30, 1986. In the event any alternate members to the zoning board of appeals are appointed as provided in section 2-130, they shall be appointed for regular three-year terms.
(Ord. No. 1036, § 2, 2-21-83)

Sec. 2-132. Members to serve without compensation.

Members of the zoning board of appeals shall serve without compensation.

Sec. 2-133. Removal from office.

Members of the zoning board of appeals may, after public hearing, be removed by the city council for inefficiency, neglect of duty or malfeasance in office.

Sec. 2-134. Filling vacancies.

Vacancies in the zoning board of appeals occurring otherwise than through the expiration of a term shall be filled for the unexpired term by the council.

Sec. 2-135. Organization, procedure, jurisdiction, duties and powers.

The organization, procedure, jurisdiction, duties and powers of the board of appeals shall be provided in the Zoning Ordinance of the City of Midland.

Editors Note: *Ordinance No.* 727, the city zoning ordinance, is on file in the office of the city clerk.

Secs. 2-136--2-145. Reserved.

ARTICLE VI.

HOUSING COMMISSION*

* Charter References: Advisory commissions generally, § 5.13.
Cross References: Buildings and building regulations, Ch. 5; housing code, Ch. 12.
State Law References: See M.S.A., § 5.3011 et seq.

Sec. 2-146. Housing commission created.

Pursuant to Public Act 18 of the Extra Session of 1933, as amended, there is hereby created in and for the city a commission to be known as the Midland Housing Commission.

State Law References: See M.S.A., § 5.3011 et seq.

Sec. 2-147. Statutory powers of commission.

The Midland Housing Commission shall, in addition to those powers and duties set forth in this article, have all the powers and duties vested or permitted to be vested in housing commissions by Public Act 18 of the Extra Session of 1933, as amended, and any laws enacted which are supplemental thereto, it being the intention of this article to vest in the Midland Housing Commission all powers and duties permitted or required by law.

Sec. 2-148. Membership; appointment of members; term of office.

The housing commission shall consist of five (5) members to be appointed by the city manager. The term of office of members of the housing commission shall be five (5) years. Members of the first housing commission shall be appointed for the terms of one year, two (2) years, three (3) years, four (4) years and five (5) years, respectively, and annually thereafter one member shall be appointed for the term of five (5) years.

State Law References: See M.S.A., § 5.3014.

Sec. 2-149. Members to serve without compensation.

Members of the housing commission shall serve without compensation.

Sec. 2-150. Removal from office.

Members of the housing commission may be removed from office by the city manager.

Sec. 2-151. Appointments for unexpired terms.

Any vacancy in office in the housing commission shall be filled by the city manager for the remainder of the unexpired term.

Sec. 2-152. Meetings; rules of procedure; records; quorum; officers.

The housing commission shall meet at regular intervals, such meetings to be public. It shall adopt its own rules of procedure, and shall keep a record of the proceedings. Three (3) members shall constitute a quorum for the transaction of business. A president and vice-president shall be elected by the housing commission.

State Law References: See M.S.A., § 5.3015.

Sec. 2-153. Appointment of director of commission, other employees.

The housing commission may appoint a director, who may also serve as secretary, and, in accordance with the provisions of the charter and Code provisions relative to a merit system of personnel management, such other employees as it may deem necessary.

Sec. 2-154. Establishing duties, compensation of officers, employees.

The housing commission shall prescribe the duties of all of its officers and employees and may, with the approval of the city manager, fix their compensation.

Sec. 2-155. Operating funds.

Funds for the operation of the housing commission may be provided by the city council, but the housing commission shall, as soon as possible, reimburse the city for all money expended by it for the housing commission, from revenues received from the sale of bonds.

State Law References: See M.S.A., § 5.3016.

Sec. 2-156. Powers and duties.

The housing commission shall have the following enumerated powers and duties:

(a) To determine in what areas of the city it is necessary to provide proper sanitary housing facilities for families of low income and for the elimination of housing conditions which are detrimental to the public peace, health, safety, morals or welfare.

(b) To purchase, lease, sell, exchange, transfer, assign and mortgage any property, real or personal, or any interest therein, or acquire the same by gift, bequest or under the power of eminent domain; to own, hold, clear and improve property; to engage in or to contract for the design and construction, reconstruction, alteration, improvement, extension or repair of any housing project or part thereof; to lease or operate any housing project.

(c) To control and supervise all parks and playgrounds forming a part of such housing development, but may contract with existing departments of the city for operation or maintenance of either or both.

(d) To establish and revise rents of any housing project, but shall rent all property for such sums as will make them self-supporting, include all charges for maintenance and operation, for principal and interest on loans and bonds and for taxes.

(e) To rent only to such tenants as are unable to pay for more expensive housing accommodations.

(f) To call upon other departments for assistance in performance of its duties, but such departments shall be reimbursed for any added expense incurred therefor.

(g) It shall have such other powers relating to such housing facilities project as may be prescribed by ordinance or resolution of the city council or as may be necessary to carry out the purposes of this article.

State Law References: See M.S.A., § 5.3017.

Sec. 2-157. Conflicts of interest.

No member of the housing commission or any of its officers or employees shall have any interest directly or indirectly in any contract for property, materials or services to be acquired by the housing commission.

State Law References: See M.S.A., § 5.3018.

Sec. 2-158. Reports to city council.

The housing commission shall make an annual report of its activities to the city council, and shall make such other reports as the city council may from time to time require.

State Law References: See M.S.A., § 5.3019.

Sec. 2-159. Eminent domain; projects declared for public purposes.

The housing commission may recommend to the city council the institution and prosecution of proceedings under the power of eminent domain in accordance with the state law and the provisions of the city charter relative to condemnation. Housing projects contemplated by this article are hereby declared to be for public purposes within the meaning of the constitution, state laws and charter relative to the power of eminent domain.

State Law References: See M.S.A., § 5.3020.

Sec. 2-160. Slum clearance and housing projects declared to be for public purposes.

Slum clearance and housing projects contemplated by this article are hereby declared to be for public purposes within the meaning of the constitution, state laws and charter relative to the powers of the city.

Sec. 2-161. Deeds, contracts, leases and purchases.

All deeds, contracts, leases or purchases entered into by the housing commission shall be in the name of the city and shall be approved by the city council. Contracts for the purchase of necessary materials, leases with tenants, and options need not be so approved.

State Law References: See M.S.A., § 5.3021.

Sec. 2-162. Commission to have control of housing projects; purchases not required to be made through purchasing department.

The housing commission shall have complete control of the entire housing project, including the construction, maintenance and operation as fully and completely as if the housing commission

represented private owners. Contracts for construction or purchase of materials entered into by the housing commission shall not be required to be made through the city purchasing department.

State Law References: See M.S.A., § 5.3022.

Sec. 2-163. Claims.

All claims that may arise in connection with the housing projects shall be presented as are ordinary claims against the city; provided, that written notice of all claims based upon injury to persons or property must be served upon the city clerk within sixty (60) days from the happening of the injury, but the disposition thereof shall rest in the discretion of the housing commission, and the cost of investigation, attorneys' fees, all claims that may be allowed and final judgments obtained from such claims shall be paid only from the operating revenue of the housing project.

State Law References: See M.S.A., § 5.3023.

Sec. 2-164. Notes, bonds and other obligations or claims not debts or charges against city or members of commission.

The notes, bonds, or other obligations or any claims of whatever nature against the housing project shall not be debts or charges against the city, nor against any member of the housing commission, and no individual liability shall attach for any official act done by any member of such housing commission.

State Law References: See M.S.A., § 5.3024.

Sec. 2-165. Estimate of costs prior to purchase, improvements, operation, etc.

Whenever the housing commission shall determine to purchase, acquire, construct, improve, enlarge, extend, operate or repair any housing facility, it shall first cause an estimate to be made of the cost thereof, and the fact that such estimate has been made and the amount thereof shall appear in the ordinance authorizing and providing for the issuance of the bonds.

State Law References: See M.S.A., § 5.3025.

Sec. 2-166. Free services, etc., prohibited.

No free services or rental shall be furnished by any housing project to the city of any state agency or to any agency, instrumentality or person.

State Law References: See M.S.A., § 5.3035.

Sec. 2-167. Management of projects generally; minimum revenue to be produced by rentals.

The housing commission shall manage and operate its housing projects in an efficient manner so as to enable it to fix the rental for dwelling accommodations at the lowest possible rates consistent with its providing decent, safe and sanitary dwelling accommodations. The housing commission shall not construct or operate any such project for profit. To this end, the commission shall fix the rentals for dwellings in projects at no higher rates than it shall find to be necessary in order to produce revenues which, together with all other money, revenue, income and receipts from whatever sources derived available for such purposes, will be sufficient (a) to pay, as the same becomes due, the principal and interest on the bonds issued for such projects; (b) to meet the cost of, and to provide for, administration, operation and maintenance of the projects, including the cost of any insurance on the projects or on bonds issued therefor; (c) to

create, during not less than the six (6) years immediately succeeding its issuance of any bonds, a reserve sufficient to meet the largest principal and interest payments which will be due on such bonds in any one year thereafter and to maintain such reserve; and (d) (1) to make payments in lieu of taxes of at least five per cent (5%) of the shelter rentals of the project for any one year, which sum shall be paid to the city and other taxing units in proportion to the amount of taxes received for such unit in the year previous to the acquiring of the site for any housing project or (2) to pay to the city and other taxing units a sum annually in lieu of taxes equal to the amount of taxes received, prior to the acquiring of any such project site, from the assessment previously levied against such site.

State Law References: See M.S.A., § 5.3037.

Sec. 2-168. Records and accounts.

The housing commission shall install, maintain and keep proper books of record and account, separate entirely from other records and accounts of the city, in which full and accurate entries shall be made of all dealings or transactions of, or in relation to the properties, business and affairs of the project. The housing commission, not later than three (3) months after the close of any fiscal year, shall cause to be prepared a balance sheet and an income and surplus account, showing respectively, in reasonable detail, the financial condition of the project at the close of such preceding calendar, operating or fiscal year and the financial operations thereof during such year. Such balance sheets and income and surplus accounts shall, at all reasonable times during usual business hours, be open to examination and inspection by any taxpayer, renter of the property of the project or any holder or owner of bonds issued under the provisions of this article and Act No. 18 of the Public Acts of 1933, First Special Session, or anyone acting for or on behalf of such taxpayer, renter or bondholder.

State Law References: See M.S.A., § 3.3045.

Sec. 2-169. Regulations as to rentals and tenant selection.

In the operation or management of housing projects, the housing commission shall at all times observe the following duties with respect to rentals and tenant selection:

(a) It may rent or lease the dwelling accommodations therein only to persons of low income.

(b) It may rent or lease the dwelling accommodations therein only at rentals within the financial reach of such persons of low income.

(c) It may rent or lease to a tenant dwelling accommodations consisting of the number of rooms, but no greater number, which it deems necessary to provide safe and sanitary accommodations to the proposed occupants thereof, without overcrowding.

(d) It shall not accept any person as a tenant in any housing project if the persons who would occupy the dwelling accommodations have an aggregate annual net income in excess of any maximum allowed by the federal government pursuant to federal law or regulation in any contract for financial assistance.

(e) It shall prohibit subletting by tenants.

State Law References: See M.S.A., § 5.3054.

Sec. 2-170. Commission may designate certain persons to execute tenant leases for commission.

The housing commission may designate their housing managers, assistant housing managers, the superintendent and assistant superintendent of housing operations to execute tenant leases for the commission.

Sec. 2-171. Liberal construction of article.

This article, being necessary for and to secure the public peace, health, safety, convenience and welfare of the city and the people of the city, shall be liberally construed to effect the purposes thereof.

State Law References: *See M.S.A.* § 3050.

Sec. 2-172. Washington Woods area established as site for housing for the elderly.

The following described property, now owned by the City of Midland and held for municipal uses, is hereby established as a site for housing for the elderly:

Beginning 40 feet west of the northeast corner of southeast 1/4 of northwest 1/4 of Section 15, T14N R2E; south to point 795 feet north of east-west 1/4 line; W 741.57 feet, 50°-23' W 44.64 feet; N 38°-37' west to north 1/8 line; east to beginning,

Except south 30 feet, and also except that portion lying southwesterly of a line lying 60 feet northeasterly of and parallel with a line described as beginning 495.45 feet south 38°-37' E from intersection of northeasterly line of S. Saginaw Road and the west 1/8 line of said Section 15, thence north 51°-23' east 240 feet to beginning point of said line to be described, thence north 38°-37' west to north 1/8 line of said Section 15.

Nothing in this section shall prohibit the use of said property, not actually devoted to use as a site for housing for the elderly, for park and recreational purposes.
(Ord. No. 868, § 1, 8-5-75)

Secs. 2-173--2-180. Reserved.

ARTICLE VII.

RESERVED*

* Editors Note: Ord. No. 1307, § 1, adopted November 7, 1994, repealed Art. VII, §§ 2-181--2-184, in its entirety. Former Art. VII pertained to the community relations commission, and derived from the original code, Ord. No. 778, § 1, adopted July 6, 1971 and Ord. No. 851, § 3, adopted February 3, 1975.

Charter References: Advisory commissions generally, § 5.13.

Secs. 2-181--2-194. Reserved.

ARTICLE VIII.

RESERVED*

* Editors Note: Ord. No. 1305, § 1, adopted November 7, 1994, repealed Art. VIII, §§ 2-195--2-204, in its entirety. Former Art. VIII pertained to the beautification commission and derived from Ord. No. 851, § 4, adopted February 3, 1975; and Ord. No. 1227, § 1, adopted September 30, 1991.

Secs. 2-195--2-209. Reserved.

ARTICLE IX.

LOCAL OFFICERS' COMPENSATION COMMISSION*

* Charter References: Salary of members of council, § 4.3.

Sec. 2-210. Local officers' compensation commission--Creation; composition; qualifications; terms of office; time of appointment; vacancies; eligibility restriction.

A local officers' compensation commission is created which shall determine the salaries of the mayor and members of the city council. The commission shall consist of seven (7) members who are registered electors of the city, appointed by the mayor subject to confirmation by a majority of the members elected and serving on the city council. The terms of office of members of said commission shall be seven (7) years, except that of the members first appointed, one each shall be appointed for terms of one (1), two (2), three (3), four (4), five (5), six (6) and seven (7) years. All first members shall be appointed within thirty (30) days after the effective date of this article. Thereafter members shall be appointed before October 1 of the year of appointment. Vacancies shall be filled for the remainder of the unexpired term. No member or employee of the legislative, judicial or executive branch of any level of government or members of the immediate family of such member or employee shall be eligible to be a member of the commission.
(Ord. No. 832, § 1, 5-13-74)

Sec. 2-211. Determination of salaries; rejection by council; effective date; existing salary; expenses.

The commission shall determine the salaries of the mayor and councilmen, which determination shall be the salaries unless the city council, by resolution adopted by two-thirds (2/3) of the members elected to and serving on the council, reject them. The determinations of the commission shall be effective thirty (30) days following their filing with the city clerk unless rejected by the city council. In case of rejection, the existing salary shall prevail. Any expense allowance or reimbursement paid to elected officials in addition to salary shall be for expenses incurred in the course of city business and accounted for to the city.
(Ord. No. 832, § 1, 5-13-74)

Sec. 2-212. Meetings and time of determination; quorum, chairman; session days; compensation and expenses.

The commission shall meet for not more than fifteen (15) session days after September 15, in the year 1975, and every odd numbered year thereafter and shall make its determination within forty-five (45) calendar days of its first meeting. A majority of the members of the commission

constitute a quorum for conducting business of the commission. The commission shall take no action or make determinations without a concurrence of a majority of the members appointed and serving on the commission. The commission shall elect a chairman from among its members. "Session days" means any calendar day on which the commission meets and a quorum is present. The members of the commission shall receive no compensation, but they shall be entitled to their actual and necessary expenses incurred in the performance of their duties and shall not have the power to expend public funds.
(Ord. No. 832, § 1, 5-13-74)

Sec. 2-213. Change of procedure, time and method.

After one year following the effective date of this article, the procedure for establishing the compensation of elected officials may be changed by charter amendment or revision.
(Ord. No. 832, § 1, 5-13-74)

Sec. 2-214. Referendum or other petition; signatures of electors; conduct of election; effectiveness of determination.

Within sixty (60) days after the effective date of this article, a petition for a referendum on the ordinance adopting this article may be filed in accordance with the procedures provided in chapter 6 of the Midland City Charter by filing a petition with the city clerk containing the signatures of at least five per cent (5%) of the registered electors of the City of Midland on the effective date of this article, in which case the election shall be conducted in the same manner as an election on the charter amendment. If a petition for referendum is filed pursuant to the provisions of this section, any determination of the commission shall not be effective until the ordinance has been approved by the electors.
(Ord. No. 832, § 1, 5-13-74)

ARTICLE X.

UNEMPLOYMENT COMPENSATION SYSTEM*

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* Editors Note: Ord. No. 847, § 1, adopted Dec. 16, 1974, amended this Code by adding Art. X, §§ 2-215--2-233, as herein set out.

Sec. 2-215. Established.

There is hereby established an unemployment compensation system and benefit plan for employees of the city to be administered by the merit system board. This plan is established pursuant to Act No. 170 of the Public Acts of 1958, as amended, of the State of Michigan.
(Ord. No. 847, § 1, 12-16-74)

Sec. 2-216. Definitions.

Average weekly wage with respect to a base period of employment shall be the amount determined by dividing total wages paid by the city for credit weeks earned in the employment of the city by the number of such credit weeks chargeable to the city as employer.

Base period means the period of fifty-two (52) consecutive calendar weeks ending with the day immediately preceding the first day of an individual's benefit year.

Benefit year with respect to any individual means the period of fifty-two (52) consecutive calendar weeks beginning with the first calendar week with respect to which the individual who does not already have a benefit year in effect, files a claim for benefits under this article, provided that the individual has earned wages of at least twenty-five dollars and one cent ($25.01) in fourteen (14) or more calendar weeks within the base period. Each such week shall be a credit week.

Benefits means the money payments payable to an eligible and qualified individual, as provided in this article, with respect to unemployment.

Secretary-Clerk. All references to secretary-clerk herein shall refer to the secretary-clerk of the merit system board.

Unemployed. An individual shall be deemed unemployed with respect to any week during which he performs no services and with respect to which no remuneration is payable to him, or with respect to any week of less than full-time work if the remuneration payable to him is less than his weekly benefit rate.

Wages means remuneration paid for employment but shall not include any employee payment for life or health insurance, pension, equipment allowance or similar payment.
(Ord. No. 847, § 1, 12-16-74)

Sec. 2-217. Benefit rates.

Benefit payments shall begin with the effective date of unemployment and shall be calculated according to the following rules:

(a) The weekly benefit rate and amount of the weekly benefit payment shall be determined in accordance with all of the relevant provisions as set forth in Section 27 of the Michigan Employment Security Act, as amended, and as set forth in the MESA Weekly Benefit Rate Table in effect at the time an employee is laid off.

(b) The dependency class category of a laid-off employee shall be determined as stipulated and provided by the Michigan Employment Security Act, as amended. A dependent shall be defined by the Michigan Employment Security Act, as amended.

(c) Employees shall be entitled to three (3) weeks of benefits for each four (4) credit weeks earned working for the city, up to a maximum of twenty-six (26) weeks of benefits for thirty-five (35) earned credit weeks, provided that the claimant has worked at least thirty-five (35) weeks in the fifty-two (52) weeks preceding the week in which the claimant applied for benefits. The minimum duration shall not be less than ten and one-half (10 1/2) weeks if the claimant worked fourteen (14) weeks and earned at least twenty-five dollars and one cent ($25.01) in each week. An employee having worked thirty-four (34) credit weeks shall be entitled to the maximum benefits of twenty-six (26) weeks.

(d) Any change in the rate of regular benefits and their duration that would be mandatory to meet the requirements for equivalency with the Michigan Employment Security Act, as amended, shall become effective on the same day to change the method of determination of amounts of benefit payment as provided in this section.
(Ord. No. 847, § 1, 12-16-74; Ord. No. 849, § 1, 1-6-75; Ord. No. 870, § 1, 9-8-75)

Sec. 2-218. Authorization of payment.

Payment of unemployment benefits shall be based on a certification from the secretary-clerk to the finance director. Such certification shall contain all information necessary for payment. A record of the benefits received by each individual shall be maintained by the secretary-clerk.
(Ord. No. 847, § 1, 12-16-74)

Sec. 2-219. Employees covered.

Except as provided by section 2-220, employees covered by this unemployment compensation system shall consist exclusively of the employees in the classified and unclassified service of the City of Midland as defined by section 2-67 and section 2-68, parts (a) and (b) of the Code of Ordinances.
(Ord. No. 847, § 1, 12-16-74)

Sec. 2-220. Employees and persons not covered.

Employees not covered by this unemployment compensation system shall be:

(a) Persons providing contractual service to the city as specialists, independent contractors or employees thereof.

(b) Employees who are or were at the time of their employment by the city students enrolled on a regular basis in high school, college, graduate school or any other school in which their primary status is clearly that of a student or any person hired as students.

(c) Seasonal, temporary and part-time employees as defined by the rules of the merit system board, and employees who have not completed a required probationary period after entrance to city service.

(d) Employees whose services are performed under a federal or state program which derives at least fifty (50) per cent of its funds from federal or state sources specifically allocated to such program.

(e) Service by a student under the age of eighteen (18) regularly attending either a public or private school below the college level and the employment was part time or within the vacation period of the school or a part of the school curriculum.
(Ord. No. 847, § 1, 12-16-74)

Sec. 2-221. Eligibility for benefits.

A claimant to be eligible for benefits must be unemployed, as defined, and must make a claim for benefits in the manner prescribed by the secretary-clerk, and further must:

(a) Be able and available to perform full-time work which he is qualified to perform by past experience or training, and of a character generally similar to work for which he has earned wages; and

(b) Be in compliance with registration and reporting requirements; and

(c) *Be seeking work.*
(Ord. No. 847, § 1, 12-16-74)

Sec. 2-222. Disqualifications.

A claimant is disqualified from receiving benefits if the secretary-clerk finds that an individual is unemployed due to an ineligible termination or separation as specified in section 2-223, has left his work voluntarily, or has accepted permanent full-time work with another employer, or has failed without just cause to apply for available suitable work or has failed to accept suitable work when offered, or has failed when directed to return to his customary work.
(Ord. No. 847, § 1, 12-16-74)

Sec. 2-223. Ineligible terminations and separations.

An employee shall not be eligible for benefits under the unemployment compensation system established by this article if the unemployment shall result from:

(a) Retirement under the provisions of any plan now in effect for city employees or which may in the future be adopted.

(b) Discharge or suspension for misconduct connected with one's work, for intoxication while at work, for absence due to imprisonment, or for an act of assault, theft or sabotage connected with his work.

(c) Resignations, including resignations in lieu of discharge.

(d) Leaves of absence for any reason, whether voluntary or involuntary.

(e) Temporary separations made at the request of the employee.

(f) Participation or direct interest in a labor dispute, including any strike, work stoppages not authorized by the city, or other concerted action.
(Ord. No. 847, § 1, 12-16-74)

Sec. 2-224. Payment of and restrictions on benefits.

Benefits shall be paid weekly at a time and place fixed by the merit system board. All beneficiaries must report weekly to the merit board office on designated days for weekly benefit checks and determination of continuing eligibility. For continuing eligibility a beneficiary must be actively seeking work and must be registered with the Michigan Employment Security Commission. No beneficiary who shall refuse any reasonable bona fide offer of employment shall receive any benefits after such refusal.
(Ord. No. 847, § 1, 12-16-74)

Sec. 2-225. Rules and procedures.

Rules and procedures, including any necessary forms, may be established by the merit system board to administer the unemployment compensation system. Such rules and procedures shall be effective upon adoption by a majority affirmative vote of the merit system board. The secretary-clerk or his designee may bring suit in the name of the city to recover any moneys paid upon a fraudulent or untrue application or claim.

(Ord. No. 847, § 1, 12-16-74)

Sec. 2-226. Determinations.

The secretary-clerk or his designee shall promptly make a determination after an application for benefits is filed whether the claimant is a covered individual, eligible and qualified to draw benefits based upon the available information. The issuance of each benefit check shall be considered a determination that the claimant receiving the check was a covered individual eligible and qualified for benefits. Where a claimant refuses work or fails to apply for work or in any other way is or becomes disqualified or ineligible for benefits, the secretary-clerk or his designee shall promptly make a written determination of such disqualification or ineligibility and shall send the claimant notice thereof.
(Ord. No. 847, § 1, 12-16-74)

Sec. 2-227. Redeterminations.

Upon the written request of any claimant within fifteen (15) days following any determination or decision respecting qualification, eligibility or rate of benefits, the secretary-clerk or his designee shall promptly review the prior determination and, if necessary, may order a hearing thereon. Upon review, with or without hearing, the secretary-clerk or his designee shall issue a redetermination affirming, modifying or reversing the prior determination and stating the reasons therefor. Such redetermination shall be final unless an appeal is filed as provided in section 2-228 below.
(Ord. No. 847, § 1, 12-16-74)

Sec. 2-228. Appeals.

It shall be the duty of the merit system board to review redeterminations and decisions of the secretary-clerk pertaining to this unemployment compensation system, provided that a claim of appeal is filed within fifteen (15) days of such decision or redetermination. The time to file a claim of appeal shall not begin until an employee has been notified in writing of his right to appeal.
(Ord. No. 847, § 1, 12-16-74)

Sec. 2-229. Merit system board powers and duties.

The merit system board may on its own motion affirm, modify, set aside or reverse any decision or order on the basis of the evidence previously submitted in such case, or direct the taking of additional evidence, or may permit any of the parties to such decision or order to initiate further appeals before it. The merit system board shall promptly notify parties of its findings and decisions and its reasons therefor, but may omit the giving of any reasons if the previous order, decision or determination is affirmed without any alteration or modification.
(Ord. No. 847, § 1, 12-16-74)

Sec. 2-230. Procedure, reports, record of proceedings on appeal, transcripts of testimony.

The manner in which appeals to the merit system board shall be presented, the reports thereon required from the interested party or parties, and the procedure governing such appeals shall be in accordance with rules prescribed by the merit system board. A full and complete record shall be kept of all proceedings in connection with an appeal. Staff, space and such clerical service as is needed shall be provided by the secretary-clerk to the merit system board.

(Ord. No. 847, § 1, 12-16-74)

Sec. 2-231. Extension of time.

Whenever the last day of the period to apply for a redetermination or to appeal any decision, determination or redetermination falls on a Saturday, Sunday or legal holiday, such period shall run until the end of the next day which is not a Saturday, Sunday or holiday.
(Ord. No. 847, § 1, 12-16-74)

Sec. 2-232. Finances.

Financing shall be accomplished through the unemployment compensation system fund, herewith established to account for related revenue and expenditures, including payment of unemployment benefits. The city manager shall recommend to the city council annual appropriations to be made for this activity.
(Ord. No. 847, § 1, 12-16-74)

Sec. 2-233. False statements.

No person shall, with intent to deceive, make any false or untrue statements or reports. In lieu of criminal action based on any false or untrue statements or reports, the secretary-clerk may recommend disciplinary or other action to the controlling department, board or commission.
(Ord. No. 847, § 1, 12-16-74)

Secs. 2-234--2-239. Reserved.

ARTICLE XI.

GENERAL REQUIREMENTS FOR MEMBERS OF BOARDS AND COMMISSIONS*

* Editors Note: Ord. No. 880, §§ 1--4, adopted Feb. 3, 1975, amended this Code by adding Art. XI, §§ 2-240--2-243, as herein set out.

Sec. 2-240. Qualifications of members of boards and commissions.

No person shall be appointed to a board or commission established by the Charter or the Code of Ordinances of the city unless said person shall be, at the time of his appointment, a resident of the city, unless such requirement is specifically waived by a four-fifths vote of the city council.
(Ord. No. 850, § 1, 2-3-75)

Sec. 2-241. Maintenance of city residence by members of boards and commissions.

All members of boards and commissions created pursuant to the Charter of the city or the provisions of this Code shall hold office during the term for which they are appointed; provided, however, that should any member of any such board or commission cease to be a resident of the city, his position on said board or commission shall immediately be deemed vacant and he shall no longer serve on such board or commission, unless the council shall, by resolution of four-fifths of its members, continue such member for the balance of his term.
(Ord. No. 850, § 2, 2-3-75)

Sec. 2-242. Effect on prior appointments to boards and commissions.

The provisions of the foregoing two sections of this article shall be effective only as to appointments made after January 1, 1975.
(Ord. No. 850, § 3, 2-3-75)

Sec. 2-243. Regular attendance by members of boards and commissions.

The position of a member of any board or commission established by the Charter or the Code of Ordinances of the city that meets more often than quarterly shall be considered vacant if such members shall miss four (4) consecutive, regular held meetings of the board or commission. Notwithstanding the foregoing, the position of a member of any board or commission established by the Charter or Code of Ordinances of the city shall be considered vacant if such member shall miss more than twenty-five (25) percent of regular meetings scheduled in any fiscal year.
Exception: The Downtown Development Authority shall be exempt from this section.
(Ord. No. 850, § 4, 2-3-75; Ord. No. 1583, § 1, 07-19-04; Ord. No. 1606, § 1, 09-12-05)

Sec. 2-244. Expiration of term of office.

Notwithstanding any contrary provision or absence of provision concerning term of office in any ordinance creating a board or commission, any member of a board or commission established by the Code of Ordinances of the City shall hold office for the term established by the ordinance creating such board or commission, or until a successor is appointed by the city council.
(Ord. No. 1298, § 1, 6-27-94)

Secs. 2-245--2-249. Reserved.

ARTICLE XII.

RESERVED*

* Editors Note: Ord. No. 1309, § 1, adopted November 7, 1994, repealed Art. XII, §§ 2-250--2-259, in its entirety. Former Art. XII pertained to the historic advisory commission, and derived from Ord. No. 952, § 1, adopted July 16, 1979.

Secs. 2-250--2-259. Reserved.

ARTICLE XIII.

TAX EXEMPTION AND PAYMENT IN LIEU OF TAXES*

* Editors Note: Ord. No. 1541, § 1, adopted September 9, 2002, changed the title of art. XIII from Tax Exemption for Charter Square and Green Hill to Tax Exemption and Payment in Lieu of Taxes.

Sec. 2-260. Purpose.

It is acknowledged that it is a proper public purpose of the State of Michigan and its political subdivision to provide housing for its citizens of low and moderate income and to encourage the development of such housing by providing for a service charge in lieu of property taxes in accordance with the State Housing Development Authority Act of 1966 (1966 PA 346, as amended, MCLA 125.1401 et seq., MSA 116.114(1) et seq.). The city is authorized by said act to establish or change the service charge to be aid in lieu of taxes by any or all classes of housing exempt from taxation under the act at any amount it chooses, not to exceed the taxes that would be paid but for the act. It is further acknowledged that such housing for persons of low and moderate income is a public necessity; and as the city will be benefitted and improved by such housing, the encouragement of the same by providing certain real estate tax exemption therefor is a valid public purpose; further, that the continuance of the provisions of this article for tax exemption and the service charge in lieu of taxes during the periods hereinafter contemplated are essential to the determination of economic feasibility of housing developments which are constructed and financed in reliance thereon.
(Ord. No. 948, § 2, 6-18-79)

Sec. 2-260.1. Charter Square.

The city acknowledges that Charter Square Limited Dividend Housing Association (a sponsor, as defined herein) has offered, subject to receipt of a mortgage loan from the authority, to erect, own and operate a housing development identified as Charter Square on certain property located at:

Southeast of intersection of Jefferson and Wackerly Roads, Midland, Michigan, 48640; and further described as:

A parcel of land in the fractional northwest quarter of the fractional northwest one quarter of fractional Section 3, Township 14 North, Range 2 East, City of Midland, Midland County, Michigan, described as follows: Commencing on the west line of said fractional Section 3 at a point 370.00 feet, south 00 degrees 00 minutes 00 seconds west, from the northwest corner of Section 3; thence south 89 degrees 17 minutes 20 seconds east, parallel to the north line of said section, 895.00 feet; thence south 00 degrees 00 minutes 00 seconds west, parallel to said west section line, 621.16 feet to the so-called north one eighth line as defined prior deeds and evidenced by existing property corners; thence north 89 degrees 21 minutes 47 seconds west, on said so-called north one eight line of said section, 643.99 feet; thence north 00 degrees 00 minutes 00 seconds east, parallel to said west section line, 224.00 feet; thence north 89 degrees 21 minutes 47 seconds west, parallel to said north one eighth line, 251.00 feet to the west line of fractional Section 3; thence north 00 degrees 00 minutes 00 seconds east, on said west section line, 398.32 feet to the point of beginning, containing 11.48 acres of land and subject to highway use of that portion of the west 40 feet thereof lying adjacent to the west section line. in the city to serve, in part, elderly persons of low and moderate income, and that Charter Square Limited Dividend Housing Association has offered to pay the city on account of the elderly portion of said development an annual service charge for public services in lieu of all taxes.
(Ord. No. 948, § 2, 6-18-79)

Sec. 2-260.2. Green Hill.

The city further acknowledges that Green Hill Limited Dividend Housing Association (a sponsor, as defined herein) in reliance upon former section 2-5 of the Code of Ordinances of the City of Midland (Ordinance No. 892) which provided for tax exemption similar to that proposed herein

has, pursuant to a mortgage loan from the authority, erected, operated and maintained a housing development identified as Green Hill on certain property located at: 1010 Eastlawn, Midland, Michigan 48640 and further described as: A parcel of land, being a part of the Reinhart's Addition to the City of Midland, according to the plat thereof recorded in Liber A, Page 28 of Plats, Midland County Records, and also a part of the so-called west 7 1/2 acres of the east 22 1/2 acres of the northwest quarter of the southeast quarter of Section 15, Township 14 North, Range 2 East, City of Midland, Midland County, Michigan, described as follows: Commencing on the east and west quarter of said section at a point 1,989.53 feet, south 90 degrees 00 minutes 00 seconds west, of the east quarter corner of said section; thence south 00 degrees 52 minutes 00 seconds west, on a line which is parallel to and 180.00 feet, measured parallel to said east and west quarter line, west of the west line of Pleasant Acres Subdivision, according to the plat thereof recorded in Liber A, Page 75 of Plats, Midland County Records, 497.00 feet; thence north 89 degrees 08 minutes 00 seconds west, perpendicular to said west line of Pleasant Acres Subdivision, 165.28 feet; thence north 38 degrees 24 minutes 21 seconds west, parallel to the northeasterly line of the Wisconsin Street, right-of-way, 115.69 feet; thence south 51 degrees 35 minutes 39 seconds west, perpendicular to said northeasterly line, 68.00 feet; thence north 38 degrees 24 minutes 21 seconds west, parallel to said northeasterly line of Wisconsin Street, 220.00 feet to the northwesterly line of Lot 1 of Block A of said Reinhart's Addition; thence north 51 degrees 35 minutes 39 seconds east, on the northwesterly line of said Lot 1, 45.00 feet to the northwest corner of said Lot 1; thence south 38 degrees 24 minutes 21 seconds east, on the northeasterly line of said Lot 1, 48.62 feet to the common corner of Lots 29 and 1 of said Block A, said common corner being also located on the northwesterly line of vacated Dexter Court; thence north 30 degrees 49 minutes 15 seconds east, on the common line of said Lot 29 and said vacated Dexter Court, 16.75 feet to a point on the arc of a curve to the right a radius of 40.00 feet; thence northeasterly on the arc of said curve, being also the common line of said Lot 29 and said vacated Dexter Court, 15.32 feet to a point, said arc being subtended by a chord bearing north 41 degrees 28 minutes 48 seconds east, 15.23 feet to said point; thence north 00 degrees 53 minutes 39 seconds east, parallel to the east line of said Reinhart's Addition, 98.01 feet to the northeast corner of said Lot 29; thence north 90 degrees 00 minutes 00 seconds east, on the common line of Lots 28 and 9 of said Block A, 60.00 feet to the southwest corner of Lot 10 of said Block A; thence north 00 degrees 53 minutes 39 seconds east, on the west line of said Lot 10, 120.00 feet to the northwest corner of said Lot 10; thence north 90 degrees 00 minutes 00 seconds east, on the north line of said Block A, being a line which is parallel to and 40.00 feet, measured at right angles, south of the east and west quarter line of said section, 220.00 feet to the east line of said Reinhart's Addition to the City of Midland; thence north 00 degrees 53 minutes 39 seconds east, on said east line of said Reinhart's Addition, 40.00 feet to said east and west quarter line; thence north 90 degrees 00 minutes 00 seconds east, on the east and west quarter line of said section, 66.44 feet to the point of beginning, containing 3.37 acres of land and subject to highway use of that portion of the north 40 feet thereof, which lies adjacent to the east and west quarter line of said section. Also subject to existing easements for Consumers Power Company. Also subject to an existing utility easement for the City of Midland over vacated Dexter Court.

in the city to serve, in part, elderly persons of low and moderate income and that Green Hill Limited Dividend Housing Association has paid to the city on account of the elderly portion of said development an annual service charge for public services in lieu of all taxes as provided in former section 2-5 of the Code of Ordinances of the City of Midland (Ord. No. 892).
(Ord. No. 948, § 2, 6-18-79)

Sec. 2-260.3. Bracken Woods Apartments.

The city acknowledges that Bracken Woods Limited Dividend Housing Association Limited Partnership (a sponsor, as defined herein) has offered, subject to receipt of a mortgage loan from the authority, to erect, own, operate and maintain a housing development identified as Bracken Woods Apartments on certain property located at:

5301 Dublin Street, Midland, Michigan 48640;

and further described as:

The south 660 feet of the northeast 1/4 of the southeast 1/4 of Section 1, T14N, R1E, City of Midland, Midland County, Michigan. And also described as: Beginning at a point of the east line of Section 1, T14N, R1E, City of Midland, that is south 0 degrees 13 minutes 39 seconds west, 671.46 feet from the east 1/4 corner of Section 1; thence continuing south 0 degrees 13 minutes 39 seconds west, 660.00 feet; thence north 89 degrees 43 minutes 49 seconds west, 1324.37 feet; thence north 0 degrees 17 minutes 24 seconds east, 660.00 feet; thence south 89 degrees 43 minutes 49 seconds east, 1323.65 feet to the point of beginning. Reserving therefrom that part used, taken or deeded for Dublin Road, so-called. Containing 20.06 acres or 873,847 feet more or less.

in the city to serve low income persons, and that Bracken Woods Limited Dividend Housing Association Limited Partnership has offered to pay the city on account of said housing development an annual service charge for public services in lieu of all taxes.
(Ord. No. 1332, § 2, 11-20-95)

Sec. 2-260.4. Grove Street Commons I.

The city acknowledges that the Affordable Housing Alliance of Midland County, a 501(c)(3) Corporation (a sponsor, as defined herein) has offered, subject to an allocation of tax credit financing from the authority, under Section 42 of the Internal Revenue Code of 1986, as amended, to erect or operate and maintain a housing development identified as Grove Street Commons I, located on the following described property:

Lots 13 and 14, and the Southeast 1/2 of Lot 15 of Block 57 of Larkin's Addition to the City of Midland, recorded in Liber A, Page 26, of Midland County records, more particularly described as part of Section 16 and part of Section 21, T14N, R2E, City of Midland, Midland County, Michigan, beginning at the East corner of Block 57 of said Larkin's Addition to the City of Midland; thence N 46 degrees 02 minutes 23 seconds W, 150.00 feet; thence S 44 degrees 00 minutes 00 seconds W, 120.47 feet; thence S 46 degrees 05 minutes 15 seconds E, 150.00 feet; thence N 44 degrees 00 minutes 00 seconds E, 120.34 feet to the point of beginning.
(Ord. No. 1418, § 3, 7-13-98; Ord. No. 1463, § 1, 12-20-99)

Sec. 2-260.5. Grove Street Commons II.

The city acknowledges that the Affordable Housing Alliance of Midland County, a 501(c)(3) Corporation (a sponsor, as defined herein) has offered, subject to an allocation of tax credit financing from the authority, under Section 42 of the Internal Revenue Code of 1986, as amended, to erect or operate and maintain a housing development identified as Grove Street Commons II, located on the following described property:

Lots 10, 11, 12, and the Southeast 25 feet of Lot 9, Block 57 of Larkin's Addition to the City of Midland, recorded in Liber A, Page 26, of Midland County records, more particularly described

as part of Section 16 and part of Section 21, T14N, R2E, City of Midland, Midland County, Michigan, beginning at a point which is S 44 degrees 00 minutes 00 seconds W, 120.34 feet from the East corner of Block 57 of said Larkin's Addition to the City of Midland; thence S 44 degrees 00 minutes 00 seconds W, 120.34 feet; thence N 46 degrees 08 minutes 09 seconds W, 205.00 feet; thence S 44 degrees 00 minutes 00 seconds E, 120.51 feet; thence S 46 degrees 05 minutes 15 seconds E, 205.00 feet to the point of beginning.
(Ord. No. 1419, § 3, 7-13-98; Ord. No. 1464, § 1, 12-20-99)

Sec. 2-260.6. The Village At Joseph's Run.

The city acknowledges that Joseph's Village Limited Dividend Housing Association Limited Partnership (a sponsor, as defined herein) has offered, subject to allocation of tax credit financing from the authority, under Section 42 of the Internal Revenue Code, as amended, to erect or operate and maintain a housing development identified as The Village At Joseph's Run, located on the following described property:

Part of the South 1/2 of the North 1/2 of the Southwest 1/4, Section 34, T15N-R2W, Larkin Township, Midland County, Michigan, being further described as commencing at the Southwest corner of said section; thence N 00 degrees 30 feet 48 inches W, 1318.01 feet, along the West section line to the South 1/8 line; thence along said 1/8 line, N 89 degrees 54 feet 40 inches E, 1265.93, feet to the point of beginning; thence N 00 degrees 37 feet 19 inches W, 424.29 feet, to the centerline of Joseph Drive; thence along said centerline along a curve to the right 82.77 feet, having a radius of 1637.02 feet, and a central angle of 02 degrees 53 feet 49 inches, and a chord bearing and distance of N 88 degrees 27 feet 46 inches E, 82.76 feet; thence along said centerline of Joseph Drive N 89 degrees 54 feet 40 inches E, 1299.84 feet, to the North and South 1/4 line; thence along said 1/4 line S 00 degrees 37 feet 19 inches E, 426.39 feet, to the South 1/8 line; thence along said 1/8 line, S 89 degrees 54 feet 40 inches W, 1382.59 feet, to the point of beginning, containing 13.54 acres (net 12.49 acres) more or less, subject to any and all easements and/or right of way whether used, implied or of record.
(Ord. No. 1494, § 2, 2-19-01)

Sec. 2-260.7. Granite Club Acres #1.

The City acknowledges that the Affordable Housing Alliance of Midland County, a 501(c)(3) corporation (a Sponsor, as defined herein) has offered, subject to allocation of tax credit financing from the Authority, under Section 42 of the Internal Revenue Code, as amended, to erect or operate and maintain a housing development identified as Granite Club Acres #1, located on the following described property:

Part of the S 1/2 of the NW 1/4 of Section 24, T14N-R2E, City of Midland, Midland County, Michigan, being further described as commencing at the west 1/4 corner of said section; thence N 88(57'00" E, 2138.43 feet, along the east-west 1/4 line; thence N 00(33'05" E, 590.38 feet; thence N 88(57'00" E, 187.35 feet, to the point of beginning; thence continue N 88(57'00" E, 205.26 feet to the southwesterly railroad right-of-way line; thence along said southwesterly line, N 00(03'00" E, 21.01 feet; thence along the arc of a curve to the left, an arc distance of 184.35 feet, said curve having a radius of 778.31 feet, chord bearing and distance of N 06(44'09" W, 183.92 feet and a central angle of 13(34'15"; thence N 75(00'00" W, 152.11 feet; thence S 00(33'05" W, 95.23 feet; thence S 22(30'00" W, 91.93 feet; thence S 00(33'05" W, 66.63 feet, to the point of beginning, containing 0.92 acres, more or less.
(Ord. No. 1505, § 2, 4-23-01)

Sec. 2-260.8. Chippewassee Court Phase I.

The city acknowledges that the Affordable Housing Alliance Of Midland County, a 501(c)(3) corporation (a sponsor, as defined herein) has offered, subject to allocation of tax credit financing from the authority, under Section 42 of the Internal Revenue Code, as amended, to erect or operate and maintain a housing development identified as Chippewassee Court Phase I, located on the following described property:

Beginning at a point on the south line of Section 18, T14N, R2E, 137.10 feet west of the west 1/8 corner, thence north and parallel to the west 1/8 line 150.90 feet; thence west 97.45 feet; thence north 129.10 feet, more or less to the south line of Cone's Subdivision, thence west 274.6 feet along the south line of Cone's Subdivision; thence south 280 feet, more or less to the south line of Section 18; thence east along said line 372.9 feet to the place of beginning, being a part of the southwest 1/4 of the southwest 1/4 of Section 18, T14N, R2E, except beginning 137.10 feet west of the west 1/8 corner on the south line of Section 18, T14N, R2E, City of Midland, Midland County, Michigan; thence north and parallel to said 1/8 line 150.90 feet; thence west and parallel to said south section line 240 feet; thence south and parallel to said 1/8 line 150.90 feet; thence east 240 feet to the point of beginning.
(Ord. No. 1521, § 2, 1-28-02)

Sec. 2-260.9. Adams Acres Phase I.

The city acknowledges that the Adams Acres Limited Dividend Housing Association Limited Partnership, a 501(c)(3) corporation (a sponsor, as defined herein) has offered, subject to allocation of tax credit financing from the authority, under Section 42 of the Internal Revenue Code, as amended, to erect or operate and maintain a housing development identified as Adams Acres Phase I, located on the following described property:

Beginning at the northwest corner of lot 16, Adams Acres Subdivision No. 1, according to the plat thereof recorded in Liber D Of Plats, pages 25 and 26, Midland County records, Section 34, T14N, R2E, City Of Midland, Midland County, Michigan; thence south 114 feet to the south plat line of Adams Acres Subdivision No. 1; thence east along said south plat line 261.94 feet; thence north 47° 04' 51" east 165.74 feet; thence north 06° 18' 11" east 165.92 feet to the south line of lot 23 of said subdivision; thence north 00° 02' 03" east along a line ten (10) feet west of the east plat line of Adams Acres Subdivision No. 1 to the north line of lot 27; thence west along the north line of lot 27 to the east r/w line of Lee Street; thence southerly along the east and south r/w line of Lee Street to the point of beginning.
(Ord. No. 1541, § 3, 9-9-02)

Sec. 2-260.10. Chippewassee Court Phase II.

The City acknowledges that the Affordable Housing Alliance of Midland County, a 501(c)(3) corporation (a sponsor, as defined herein) has offered, subject to allocation of tax credit financing from the Authority, under Section 42 of the Internal Revenue Code, as amended, to erect or operate and maintain a housing development identified as Chippewassee Court Phase II, located on the following described property:

Commencing 1,437 feet east of the SW corner government lot 9, Section 18, thence north 264 feet, east 165 feet, south 264 feet, west 165 feet to the point of beginning and also beginning 45 feet east of the southwest corner of lot 169 of Cones Subdivision, then north 38 feet, west 165 feet, south 38 feet, east 65 feet to the point of beginning (parcel code 14-18-50-022); and also

beginning 1,602 feet east of the SW corner of government lot 9, Section 18, thence east 3.55 feet, north 264 feet, west 3.55 feet, south 264 feet to the point of beginning.
(Ord. No. 1557, § 2, 1-27-03)

Sec. 2-260.11. 606/608 Hemlock Street.

The City acknowledges that the Affordable Housing Alliance of Midland County, a 501(c)3 corporation (a sponsor, as defined herein) has offered, subject to allocation of tax credit financing from the authority, under Section 42 of the Internal Revenue Code, as amended, to erect or operate and maintain a housing development identified as 606/608 Hemlock Street located on the following described property:

South 36 feet OF LOTs 2 and the North 51.5 feet OF LOT 3 Block J Carter Subdivison.
(Ord. No. 1644, § 1, 11-19-07)

Sec. 2-260.12. 5004 Tucker Street.

The City acknowledges that the Affordable Housing Alliance of Midland County, a 501(c)3 corporation (a sponsor, as defined herein) has offered, subject to allocation of tax credit financing from the authority, under Section 42 of the Internal Revenue Code, as amended, to erect or operate and maintain a housing development identified as 5004 Tucker Street located on the following described property:

Beginning 173.5 feet East and 45 rods North OF Southwest corner OF southeast 1/4 of southwest 1/4 Section 4, East 123.5 feet, North 82.5 feet, West 123.5 Feet, South 82.5 feet to the beginning.
(Ord. No. 1644, § 1, 11-19-07)

Sec. 2-260.13. 1111 Franklin Street.

The City acknowledges that the Affordable Housing Alliance of Midland County, a 501(c)3 corporation (a sponsor, as defined herein) has offered, subject to allocation of tax credit financing from the authority, under Section 42 of the Internal Revenue Code, as amended, to erect or operate and maintain a housing development identified as 1111 Franklin Street located on the following described property:
Lot 12 Block 12 of Dow Chemical Company addition.
(Ord. No. 1685, § 1, 10-19-09)

Sec. 2-260.14. 4301 Hancock Drive.

The City acknowledges that the Affordable Housing Alliance of Midland County, a 501(c)3 corporation (a sponsor, as defined herein) has offered, subject to allocation of tax credit financing from the authority, under Section 42 of the Internal Revenue Code, as amended, to erect or operate and maintain a housing development identified as 4301 Hancock Drive located on the following described property:
Lot 195 of Adams Acres Subdivision No. 1.
(Ord. No. 1685, § 1, 10-19-09)

Sec. 2-260.15. 310 E. PINE STREET.

The City acknowledges that the Affordable Housing Alliance of Midland County, a 501(c)3 corporation (a sponsor, as defined herein) has offered, subject to allocation of tax credit financing from the authority, under Section 42 of the Internal Revenue Code, as amended, to erect or operate and maintain a housing development identified as 310 E. Pine Street located on the following described property:
Northwest 50 feet of the Northeast 100 feet of Lot 2 Block 65 Carpenters Division, Liber 565 Page 390.
(Ord. No. 1685, § 1, 10-19-09)

Sec. 2-260.16. 1414 Lincoln Street.

The City acknowledges that the Affordable Housing Alliance of Midland County, a 501(c)3 corporation (a sponsor, as defined herein) has offered, subject to allocation of tax credit financing from the authority, under Section 42 of the Internal Revenue Code, as amended, to erect or operate and maintain a housing development identified as 1414 Lincoln Street located on the following described property:
Beginning 339 feet East and 513 feet North of the Southwest Corner of Section 15 thence North 60 feet, East 120 feet, South 60 feet, West 120 feet to the point of beginning.
(Ord. No. 1685, § 1, 10-19-09)

Sec. 2-260.17. 1417 Mill Street.

The City acknowledges that the Affordable Housing Alliance of Midland County, a 501(c)3 corporation (a sponsor, as defined herein) has offered, subject to allocation of tax credit financing from the authority, under Section 42 of the Internal Revenue Code, as amended, to erect or operate and maintain a housing development identified as 1417 Mill Street located on the following described property:
Lot 38 of Highlandview Subdivision and beginning at the Southwest Corner of Lot 38, Southeast to Northwest Line of Mill Street, Northeast to South 1/8 Line of Section 16, West 66.29 feet to the point of beginning.
(Ord. No. 1685, § 1, 10-19-09)

Sec. 2-260.18. 2520 Charles Street.

The City acknowledges that the Affordable Housing Alliance of Midland County, a 501(c)3 corporation (a sponsor, as defined herein) has offered, subject to allocation of tax credit financing from the authority, under Section 42 of the Internal Revenue Code, as amended, to erect or operate and maintain a housing development identified as 2520 Charles Street located on the following described property:
East 42.67 feet of Lot 2 and West 42.67 feet of Lot 3 of Williams Subdivision.
(Ord. No. 1685, § 1, 10-19-09)

Sec. 2-260.19. 528 Cottonwood Street.

The City acknowledges that the Affordable Housing Alliance of Midland County, a 501(c)3 corporation (a sponsor, as defined herein) has offered, subject to allocation of tax credit financing from the authority, under Section 42 of the Internal Revenue Code, as amended, to erect or operate and maintain a housing development identified as 528 Cottonwood Street located on the following described property:
Lot 5 of Block I of Carter Subdivision.
(Ord. No. 1685, § 1, 10-19-09)

Sec. 2-261. Definitions.

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

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

(c) *Authority* means the Michigan State Housing Development Authority.

(d) *Contract rents* are as defined by the U.S. Department of Housing and Urban Development in regulations promulgated pursuant to the U.S. Housing Act of 1947, as amended by the Housing and Community Development Act of 1947. It is understood that such rents are meant to be the tenants' rental contributions plus any federal subsidies.

(e) *Elderly* shall mean a family wherein the head of the household is sixty-two (62) years of age or older or a single person who is sixty-two (62) years of age or older.

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

(g) *Low income persons* means persons and families eligible to move into a housing development financed by the authority.

(h) *Mortgage loan* means a loan made or to be made by the authority to sponsors for the construction and/or permanent financing of the housing developments.

(i) *Sponsor* means persons or entities which have applied to the authority for, or previously received from the authority, a mortgage loan to finance a housing development.

(j) *Utilities* means fuel, water, sanitary sewer service and/or electrical service, which are paid by the development.
(Ord. No. 948, § 2, 6-18-79; Ord. No. 1332, § 1, 11-20-95; Ord. No. 1418, § 1, 7-13-98; Ord. No. 1419, § 1, 7-13-98)

Sec. 2-262. Class of housing developments.

It is hereby determined that the class of housing developments to which the tax exemption shall apply, and for which a service charge shall be paid in lieu of such taxes, shall be that portion of a development which is for elderly persons or low-income persons and which is financed or assisted pursuant to the act. It is further determined that Grove Street Commons I, Grove Street Commons II, The Village At Joseph's Run, Granite Club Acres #1, Chippewassee Court Phase I, Chippewassee Court Phase II, Adams Acres Phase I, 606/608 Hemlock Street, 5004 Tucker Street, 1111 Franklin Street, 4301 Hancock Drive, 310 E. Pine Street, 1414 Lincoln Street, 1417 Mill Street, 2520 Charles Street and 528 Cottonwood Street and the elderly portions of Charter Square and Green Hill are of this class.

(Ord. No. 948, § 2, 6-18-79; Ord. No. 1332, § 1, 11-20-95; Ord. No. 1418, § 2, 7-13-98; Ord. No. 1419, § 2, 7-13-98; Ord. No. 1494, § 1, 2-19-01; Ord. No. 1505, § 1, 4-23-01; Ord. No. 1521, § 1, 1-28-02; Ord. No. 1541, § 2, 9-9-02; Ord. No. 1557, § 1, 1-27-03; Ord. No. 1644, § 1, 11-19-07; Ord. No. 1685, § 1, 10-19-09)

Sec. 2-263. Establishment of annual service charge for Charter Square.

The housing development identified as the elderly portion of Charter Square and the property on which it shall be constructed shall be exempt from all property taxes from and after the commencement of construction; provided, however, that the sponsor has complied with all requirements of the act concerning the obtaining of an exemption. The city, acknowledging that Charter Square Limited Dividend Housing Association and the authority have established the economic feasibility of the housing development in reliance upon the enactment and continuing effect of this article and the qualification of the housing development for exemption from all property taxes and a payment in lieu of taxes as established herein, and in consideration of the sponsor's offer, subject to receipt of a mortgage loan from the authority, to construct, own and operate said housing development, hereby agrees to accept payment of an annual service charge for public services in lieu of all property taxes. The annual service charge shall be equal to four (4) per cent of the contract rents less utilities.
(Ord. No. 948, § 2, 6-18-79)

Sec. 2-264. Establishment of annual service charge for Green Hill.

The housing development identified as the elderly portion of Green Hill and the property on which it is constructed shall be exempt from all property taxes from and after the effective date of this article; provided, however, that the sponsor has complied with all requirements of the act concerning the obtaining of an exemption. The city acknowledges that Green Hill Limited Dividend Housing Association and the authority have established the economic feasibility of the housing development in reliance upon the enactment of former section 2-5 of the Code of Ordinances of the City of Midland (Ordinance No. 892) and the qualification of the housing development for exemption from all property taxes and a payment in lieu of taxes as established therein. The annual service charge established hereunder differs from that provided in former section 2-5 of the Code of Ordinances of the City of Midland (Ordinance No. 892). For purposes of continuity and to avoid discrimination, Green Hill Limited Dividend Housing Association and the authority have agreed to accept the annual service charge provided for herein in lieu of that set forth in former section 2-5 of the Code of Ordinances of the City of Midland (Ordinance No. 892). The annual service charge beginning with the 1979 calendar year shall be equal to four (4) per cent of the contract rents less utilities.
(Ord. No. 948, § 2, 6-18-79)

Sec. 2-264.1. Establishment of annual service charge for Bracken Woods Apartments.

The housing development identified as the Bracken Woods Apartments and the property on which it is constructed shall be exempt from all ad valorem property taxes. The exemption shall begin in the first tax year after which an affidavit has been submitted by the sponsor to the city assessor. The affidavit shall be in the form as provided by the authority and shall be certified by the authority and filed before November 1 of the year preceding the year in which the exemption is to begin. The exemption shall remain in effect until the mortgage loan is repaid or for thirty-five (35) years, whichever occurs first; provided however, that the sponsor has met with all qualifications of the act concerning the obtaining of an exemption. The city acknowledges that Bracken Woods Apartments and the authority have established the economic feasibility of the

housing development in reliance upon the enactment and continuing effect of this article and the qualification of the housing development for exemption from all ad valorem property taxes and a payment in lieu of taxes as established herein, and in consideration of the sponsor's offer, subject to receipt of a permanent mortgage loan from the authority, to construct, own, operate and maintain said housing development, hereby agrees to accept payment of an annual service charge for public services in lieu of all ad valorem property taxes. The annual service charge shall be equal to four (4) per cent of all rental income less owner-paid utilities and vacancy losses.

Annual benefit of any tax exemption granted to the Bracken Woods Apartment housing development under this section shall be defined as the amount by which seventy-eight thousand dollars ($78,000.00) (indexed annually for the change in the U.S. Consumer Price Index and adjusted annually for additions and losses as defined in MCL 211.34d) exceeds the amount of the annual service charge for public services, and shall be allocated as follows:

1. The first twenty-one thousand one hundred fifty dollars ($21,150.00) of annual benefit shall be allocated to the sponsor for principal and interest payments on the mortgage.

2. All benefits in excess of twenty-one thousand one hundred fifty dollars ($21,150.00) shall be allocated by the sponsor exclusively to low income persons in the form of reduced housing charges, which shall be implemented beginning with the housing charge due for the month of January, 1996. For calendar year 1996, a total benefit of thirty-five thousand seven hundred twelve dollars ($35,712.00) shall be allocated among the various classes of apartments in the following manner:

a. Housing charges for one-bedroom apartments shall be reduced by twenty-three dollars ($23.00) per month.

b. Housing charges for two-bedroom apartments shall be reduced by twenty-seven dollars ($27.00) per month.

c. Housing charges for three-bedroom apartments shall be reduced by thirty-two dollars ($32.00) per month.

Housing charges shall continue to be reduced by said amounts for a consecutive seventeen-month period, until June 1997.

For calendar years after 1996, the annual reduction in housing charges shall be calculated by the sponsor and approved by the City of Midland finance department, and shall be allocated among the various classes of apartments (one-, two- and three-bedroom apartments) based on the relative percentage of total rental income generated by each individual class at full occupancy. Reduced housing charges shall be implemented annually beginning with the housing charge due for the month of June in the calendar year following the calendar year for which the service charge in lieu of taxes is determined and shall continue for a consecutive twelve-month period.

3. None of the annual benefit shall be retained or distributed to the sponsor in the form of limited dividend payments.

The sponsor shall make available to the City of Midland Finance Department all accounting records necessary to conduct an annual verification of compliance with the distribution of the annual benefit, including but not limited to any audits performed by the authority.
(Ord. No. 1332, § 2, 11-20-95)

Sec. 2-264.2. Establishment of annual service charge for Grove Street Commons I.

(a) *Annual service charge.* The housing development identified as Grove Street Commons I and the property on which it shall be constructed shall be exempt from all property taxes from and after the commencement of construction. The city, acknowledging that the sponsor and the authority have established the economic feasibility of the housing development in reliance upon the enactment and continuing effect of this section and the qualification of the housing development for exemption from all property taxes and a payment in lieu of taxes as established herein, and in consideration of the sponsor's offer, subject to receipt of an allocation of low-income housing tax credits under Section 42 of the Internal Revenue Code of 1986, as amended, to construct, own, and operate the housing development, agrees to accept payment of an annual service charge for public services in lieu of all property taxes. The annual service charge shall be equal to four (4) percent of the annual shelter rents less utilities.

(b) *Limitation on the payment of annual service charge.* Notwithstanding subsection (a), above, the service charge to be paid each year in lieu of taxes for the part of the housing development which is tax exempt and which is occupied by other than low-income persons or families shall be equal to the full amount of the taxes which would be paid on that portion of the housing development if the housing development were not exempt.
(Ord. No. 1418, § 3, 7-13-98)

Sec. 2-264.3. Establishment of annual service charge for Grove Street Commons II.

(a) *Annual service charge.* The housing development identified as Grove Street Commons II and the property on which it shall be constructed shall be exempt from all property taxes from and after the commencement of construction. The city, acknowledging that the sponsor and the authority have established the economic feasibility of the housing development in reliance upon the enactment and continuing effect of this section and the qualification of the housing development for exemption from all property taxes and a payment in lieu of taxes as established herein, and in consideration of the sponsor's offer, subject to receipt of an allocation of low-income housing tax credits under Section 42 of the Internal Revenue Code of 1986, as amended, to construct, own, and operate the housing development, agrees to accept payment of an annual service charge for public services in lieu of all property taxes. The annual service charge shall be equal to four (4) percent of the annual shelter rents less utilities.

(b) *Limitation on the payment of annual service charge.* Notwithstanding subsection (a), above, the service charge to be paid each year in lieu of taxes for the part of the housing development which is tax exempt and which is occupied by other than low-income persons or families shall be equal to the full amount of the taxes which would be paid on that portion of the housing development if the housing development were not exempt.
(Ord. No. 1419, § 3, 7-13-98)

Sec. 2-264.4. Establishment of annual service charge for The Village At Joseph's Run.

(a) *Annual service charge.* The housing development identified as The Village At Joseph's Run and the property on which it shall be constructed shall be exempt from all

property taxes from and after the commencement of construction. The city, acknowledging that the sponsor and the authority have established the economic feasibility of the housing development in reliance upon the enactment and continuing effect of the ordinance from which this section derives and the qualification of the housing development for exemption from all property taxes and a Payment In Lieu Of Taxes as established in the ordinance from which this section derives, and in consideration of the sponsor's offer, subject to receipt of an allocation of low-income housing tax credits under Section 42 of the Internal Revenue Code of 1986, as amended, to construct, own and operate the housing development, agrees to accept payment of an annual service charge for public services in lieu of all property taxes. The annual service charge shall be equal to four (4) percent of the annual shelter rents less utilities.

(b) *Limitation on the payment of annual service charge.* Notwithstanding subsection (a), the service charge to be paid each year in lieu of taxes for the part of the housing development which is tax exempt and which is occupied by other than low-income persons shall be equal to the full amount of taxes which would be paid on that portion of the housing development if the housing development were not exempt.
(Ord. No. 1494, § 3, 2-19-01)

Sec. 2-264.5. Establishment of Annual Service Charge For Granite Club Acres #1.

(a) *Annual service charge.* The housing development identified as Granite Club Acres #1 and the property on which it shall be constructed shall be exempt from all property taxes from and after the commencement of construction. The city, acknowledging that the sponsor and the authority have established the economic feasibility of the housing development in reliance upon the enactment and continuing effect of this ordinance and the qualification of the housing development for exemption from all property taxes and a payment in lieu of taxes as established in this article, and in consideration of the sponsor's offer, subject to receipt of an allocation of low-income housing tax credits under Section 42 of the Internal Revenue Code of 1986, as amended, to construct, own and operate the housing development, agrees to accept payment of an annual service charge for public services in lieu of all property taxes. The annual service charge shall be equal to four (4) percent of the annual shelter rents less utilities.

(b) *Limitation on the payment of annual service charge.* Notwithstanding subsection (a), the service charge to be paid each year in lieu of taxes for the part of the housing development which is tax exempt and which is occupied by other than low-income persons shall be equal to the full amount of taxes which would be paid on that portion of the housing development if the housing development were not exempt.
(Ord. No. 1505, § 2, 4-23-01)

Sec. 2-264.6. Establishment of annual service charge for Chippewassee Court Phase I.

(a) *Annual service charge.* The housing development identified as Chippewassee Court Phase I and the property on which it shall be constructed shall be exempt from all property taxes from and after the commencement of construction. The city, acknowledging that the sponsor and the authority have established the economic feasibility of the housing development in reliance upon the enactment and continuing effect of this section and the qualification of the housing development for exemption from all property taxes and a payment in lieu of taxes as established in this section, and in consideration of the sponsor's offer, subject to receipt of an allocation of low-income housing tax credits under Section 42 of the Internal Revenue Code of 1986, as amended, to construct, own and operate the housing development, agrees to accept payment of an annual service charge for public services in lieu of all property

taxes. The annual service charge shall be equal to four (4) percent of the annual shelter rents less utilities.

(b) *Limitation on the payment of annual service charge.* Notwithstanding subsection (a), the service charge to be paid each year in lieu of taxes for the part of the housing development which is tax exempt and which is occupied by other than low-income persons shall be equal to the full amount of taxes which would be paid on that portion of the housing development if the housing development were not exempt.
(Ord. No. 1521, § 2, 1-28-02)

Sec. 2-264.7. Establishment of annual service charge for Adams Acres Phase I.

(a) *Annual service charge.* The housing development identified as Adams Acres Phase I and the property on which it shall be constructed shall be exempt from all property taxes from and after the commencement of construction. The city, acknowledging that the sponsor and the authority have established the economic feasibility of the housing development in reliance upon the enactment and continuing effect of this section and the qualification of the housing development for exemption from all property taxes and a payment in lieu of taxes as established in this section, and in consideration of the sponsor's offer, subject to receipt of an allocation of low-income housing tax credits under Section 42 of the Internal Revenue Code of 1986, as amended, to construct, own and operate the housing development, agrees to accept payment of an annual service charge for public services in lieu of all property taxes. The annual service charge shall be equal to four (4) percent of the annual shelter rents less utilities.

(b) *Limitation on the payment of annual service charge.* Notwithstanding subsection (a), the service charge to be paid each year in lieu of taxes for the part of the housing development which is tax exempt and which is occupied by other than low-income persons shall be equal to the full amount of taxes which would be paid on that portion of the housing development if the housing development were not exempt.
(Ord. No. 1541, § 3, 9-9-02)

Sec. 2-264.8. Establishment Of Annual Service Charge For Chippewassee Court Phase II.

(a) Annual service charge. The housing development identified as Chippewassee Court Phase II and the property on which it shall be constructed shall be exempt from all property taxes from and after the commencement of construction. The City, acknowledging that the sponsor and the authority have established the economic feasibility of the housing development in reliance upon the enactment and continuing effect of this ordinance and the qualification of the housing development for exemption from all property taxes and a payment in lieu of taxes as established in this ordinance, and in consideration of the sponsor’s offer, subject to receipt of an allocation of low-income housing tax credits under Section 42 of the Internal Revenue Code of 1986, as amended, to construct, own and operate the housing development, agrees to accept payment of an annual service charge for public services in lieu of all property taxes. The annual service charge shall be equal to four percent (4%) of the annual shelter rents less utilities.

(b) Limitation on the payment of annual service charge. Notwithstanding subsection (A), the service charge to be paid each year in lieu of taxes for the part of the housing development which is tax exempt and which is occupied by other than low-income persons shall be equal to the full amount of taxes which would be paid on that portion of the housing development if the housing development were not exempt.
(Ord. No. 1557, § 2, 1-27-03)

Sec. 2-264.9. Establishment of annual service charge for 606/608 Hemlock Street.

(a) *Annual service charge*. The housing development identified as 606/608 Hemlock Street and the property on which it is located shall be exempt from all property taxes from and after the enactment of this ordinance and for the year subsequent to timely notification of exemption by the Michigan State Housing Development Authority. The City, acknowledging that the sponsor and the authority have established the economic feasibility of the housing development in reliance upon the enactment and continuing effect of this ordinance and the qualification of the housing development for exemption from all property taxes and a payment in lieu of taxes as established in this ordinance, and in consideration of the sponsor's offer, subject to receipt of an allocation of low-income housing tax credits under Section 42 of the Internal Revenue Code of 1986, as amended, to construct, own or operate the housing development, agrees to accept payment of an annual service charge for public services in lieu of all property taxes. The annual service charge shall be equal to four percent (4%) of the annual shelter rents less utilities.

(b) *Limitation on the payment of annual service charge*. Notwithstanding subsection (a), the service charge to be paid each year in lieu of taxes for the part of the housing development which is tax exempt and which is occupied by other than low-income persons shall be equal to the full amount of taxes which would be paid on that portion of the housing development if the housing development were not exempt.
(Ord. No. 1644, § 1, 11-19-07)

Sec. 2-264.10. Establishment of annual service charge for 5004 Tucker street.

(a) *Annual service charge*. The housing development identified as 5004 Tucker Street and the property on which it is located shall be exempt from all property taxes from and after the enactment of this ordinance and for the year subsequent to timely notification of exemption by the Michigan State Housing Development Authority. The City, acknowledging that the sponsor and the authority have established the economic feasibility of the housing development in reliance upon the enactment and continuing effect of this ordinance and the qualification of the housing development for exemption from all property taxes and a payment in lieu of taxes as established in this ordinance, and in consideration of the sponsor's offer, subject to receipt of an allocation of low-income housing tax credits under Section 42 of the Internal Revenue Code of 1986, as amended, to construct, own or operate the housing development, agrees to accept payment of an annual service charge for public services in lieu of all property taxes. The annual service charge shall be equal to four percent (4%) of the annual shelter rents less utilities.

(b) *Limitation on the payment of annual service charge*. Notwithstanding subsection (a), the service charge to be paid each year in lieu of taxes for the part of the housing development which is tax exempt and which is occupied by other than low-income persons shall be equal to the full amount of taxes which would be paid on that portion of the housing development if the housing development were not exempt.
(Ord. No. 1644, § 1, 11-19-07)

Sec. 2-264.11. Establishment of annual service charge for 1111 Franklin Street.

(a) *Annual service charge*. The housing development identified as 1111 Franklin Street and the property on which it is located shall be exempt from all property taxes from and after the enactment of this ordinance and for the year subsequent to timely notification of exemption by the Michigan State Housing Development Authority. The City, acknowledging that the sponsor

and the authority have established the economic feasibility of the housing development in reliance upon the enactment and continuing effect of this ordinance and the qualification of the housing development for exemption from all property taxes and a payment in lieu of taxes as established in this ordinance, and in consideration of the sponsor's offer, subject to receipt of an allocation of low-income housing tax credits under Section 42 of the Internal Revenue Code of 1986, as amended, to construct, own or operate the housing development, agrees to accept payment of an annual service charge for public services in lieu of all property taxes. The annual service charge shall be equal to four percent (4%) of the annual shelter rents less utilities.
(b) *Limitation on the payment of annual service charge*. Notwithstanding subsection (a), the service charge to be paid each year in lieu of taxes for the part of the housing development which is tax exempt and which is occupied by other than low-income persons shall be equal to the full amount of taxes which would be paid on that portion of the housing development if the housing development were not exempt.
(Ord. No. 1685, § 1, 10-19-09)

Sec. 2-264.12. Establishment of annual service charge for 4301 Hancock Drive.

(a) *Annual service charge*. The housing development identified as 4301 Hancock Drive and the property on which it is located shall be exempt from all property taxes from and after the enactment of this ordinance and for the year subsequent to timely notification of exemption by the Michigan State Housing Development Authority. The City, acknowledging that the sponsor and the authority have established the economic feasibility of the housing development in reliance upon the enactment and continuing effect of this ordinance and the qualification of the housing development for exemption from all property taxes and a payment in lieu of taxes as established in this ordinance, and in consideration of the sponsor's offer, subject to receipt of an allocation of low-income housing tax credits under Section 42 of the Internal Revenue Code of 1986, as amended, to construct, own or operate the housing development, agrees to accept payment of an annual service charge for public services in lieu of all property taxes. The annual service charge shall be equal to four percent (4%) of the annual shelter rents less utilities.
(b) *Limitation on the payment of annual service charge*. Notwithstanding subsection (a), the service charge to be paid each year in lieu of taxes for the part of the housing development which is tax exempt and which is occupied by other than low-income persons shall be equal to the full amount of taxes which would be paid on that portion of the housing development if the housing development were not exempt.
(Ord. No. 1685, § 1, 10-19-09)

Sec. 2-264.13. Establishment of annual service charge for 310 E. Pine Street.

(a) *Annual service charge*. The housing development identified as 310 E. Pine Street and the property on which it is located shall be exempt from all property taxes from and after the enactment of this ordinance and for the year subsequent to timely notification of exemption by the Michigan State Housing Development Authority. The City, acknowledging that the sponsor and the authority have established the economic feasibility of the housing development in reliance upon the enactment and continuing effect of this ordinance and the qualification of the housing development for exemption from all property taxes and a payment in lieu of taxes as established in this ordinance, and in consideration of the sponsor's offer, subject to receipt of an allocation of low-income housing tax credits under Section 42 of the Internal Revenue Code of 1986, as amended, to construct, own or operate the housing development, agrees to accept payment of an annual service charge for public services in lieu of all property taxes. The annual service charge shall be equal to four percent (4%) of the annual shelter rents less utilities.

(b) *Limitation on the payment of annual service charge*. Notwithstanding subsection (a), the service charge to be paid each year in lieu of taxes for the part of the housing development which is tax exempt and which is occupied by other than low-income persons shall be equal to the full amount of taxes which would be paid on that portion of the housing development if the housing development were not exempt.

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CODE OF ORDINANCES

Chapter 3

ANIMALS AND FOWL*

* **State Law References:** Cruelty to animals, M.S.A., §§ 28.161, 28.245.

Art. I. In General, §§ 3-1--3-15

Art. II. Dogs, §§ 3-16--3-33

ARTICLE I.

IN GENERAL
(Reserved)

Secs. 3-1--3-15. Reserved.

ARTICLE II.

DOGS*

ARTICLE III.
FARM ANIMALS

* **State Law References:** Dog law, M.S.A., §§ 12.511 et seq.; rabies control generally, M.S.A., § 14.311 et seq.

Sec. 3-16. Dog warden; designation; status.
The dog warden of the County of Midland is hereby designated as dog warden for the city. Such warden shall not be considered an employee of the city and shall receive no salary or benefits from the city.

Sec. 3-17. Running at large prohibited.
It shall be unlawful for any person to permit or allow any dog, whether licensed or unlicensed, to run at large or stray beyond the premises of such owner unless under reasonable control of some person.
State Law References: Similar provision, M.S.A., § 12.512.

Sec. 3-18. Howling dogs.

No person shall harbor or keep any dog which by loud or frequent or habitual barking, yelping or howling shall cause a serious annoyance to the neighborhood or to the people passing to and fro upon the streets.

Sec. 3-19. Dog odors.
No person shall harbor or keep any dog which shall create an unpleasant odor in the neighborhood.

Sec. 3-20. Acts, conditions declared nuisances.
All acts or conditions prohibited by this article are hereby declared to be nuisances, with the exception of the licensing and impoundment provisions of this article.

Sec. 3-21. License tag to be worn by dogs.
It shall be unlawful for any person to keep, possess, harbor or have the care or charge of any dog, age four (4) months or over within the city, unless such dog shall wear a collar to which is attached the license tax provided for by the state law.

Cross References: Licenses and business regulations, Ch. 15.
State Law References: Dog tags, M.S.A., § 12.512 et seq.

Sec. 3-22. Disposition of biting, rabid dogs.
It shall be the duty of any person harboring or owning a dog which has been attacked or bitten by another dog or other animal showing the symptoms of rabies, to immediately notify the dog warden or health department that he has such a dog in his possession. Whenever a dog is brought to the pound for having bitten a person, the dog warden may, if deemed necessary and advisable, and after holding such dog for sufficient length of time to meet the requirements of the health department for investigation, cause such a dog to be destroyed as a vicious dog.

Sec. 3-23. Warden authorized to pick up, impound dogs, police powers.
It shall be duty of the dog warden to enforce the provisions of this article. He is authorized to pick up and impound dogs at a dog pound. Such dog warden shall have all power and authority of a police officer of the city in the enforcement of this article.

Sec. 3-24. Warden to keep impoundment record.
The dog warden shall keep a record of the breed, sex, age, color, and markings of every dog impounded, together with the date and hour of such impounding.

Sec. 3-25. Weekly report to chief of police.
The dog warden shall make a weekly report to the chief of police showing the number and sex of all dogs impounded during the week in the city and the disposition of such dogs.

Sec. 3-26. When person presumed dog owner.
Every person in possession of any dog who shall allow such dog to remain about his premises for a period of five (5) days shall be deemed the owner thereof.

Sec. 3-27. Notice to owner of impoundment.
It shall be the duty of the dog warden, as soon as any dog may be received by him under the provisions of this article, to serve notice in writing upon the owner or owners of such dog, if such owner or owners be known. It shall be the duty of the dog warden to reasonably ascertain who the owner or owners of any impounded dog are.

Sec. 3-28. Disposition of impounded animals.

All dogs placed under the custody of the dog warden shall be kept by the dog warden for at least five (5) days, and if the owner or owners cannot then be ascertained, the dog shall be disposed of in the following manner:

(a) If the dog is diseased in the opinion of the dog warden and is not being held under the provisions of section 3-22, it shall be immediately disposed of by killing in a humane manner.

(b) If the dog appears to be a mixed breed, it may be held for sale for a period of five (5) days and if not sold then, be killed in a humane manner.

(c) If the dog appears to be a thoroughbred dog, it may be held for a period of one month, and if not sold within one month, it shall be killed in a humane manner.

Sec. 3-29. Redemption of impounded dogs.
Owners of all dogs impounded under the provisions of this article may claim such dogs by properly identifying themselves as the owner of such animal, and by paying the fees for boarding and impounding which have been duly established. In all cases a proper license shall be produced for such dog in the event that such dog is not already properly licensed.

Sec. 3-30. Unlawful for nonowner to claim dog.
It shall be unlawful for any person to claim or attempt to claim any dog under the provisions of this article when such person is not the legitimate owner of such dog.

Sec. 3-31. Records upon sale, return of dog.
The dog warden, when delivering a dog which has been impounded, to the owner or to a purchaser, shall make out a triplicate receipt describing the dog, stating the hour and date of its delivery, and stating whether the receipt is for the sale of a dog or for the keep of a dog. The dog warden shall keep one receipt, give one to the owner or purchaser, and return one copy and the funds collected to the county treasurer.

Sec. 3-32. Sale fee.
Fees for the sale of dogs taken up by the dog warden shall be determined by the dog warden, and shall be in addition to any impounding fee and any per day fee.

Sec. 3-33. Removal of dead dogs.
The dog warden shall upon notice, have the duty of immediately picking up any dead dog that may be found lying or abandoned upon any street or elsewhere within the city limits, and removing such dead dog to the dog pound.

Cross References: Garbage and trash, Ch. 10.

ARTICLE III.
FARM ANIMALS

Sec. 3-40. Animals—Keeping, Harboring, Breeding.
It shall be unlawful to keep, harbor or breed any farm animal as defined in the City of Midland Zoning Ordinance, being Ordinance No. 1585, except (1) farm animals kept in that portion of the city zoned for agricultural purposes, or (2) animals used in a parade or for providing rides on a temporary basis for which a permit has been issued, or (3) animals kept as part of a show or event at the Midland County Fairgrounds, or (4) miniature pigs subject to the provisions of Division 2 of this article.

Sec. 3-41. Definition—Miniature Pigs.
As used in this article a miniature pig shall mean a pig that does not exceed a weight of 40 pounds at maturity.

Sec. 3-42. License Required.
(a) All miniature pigs kept within the city shall be licensed annually by the City Clerk of the City of Midland within seven (7) days of the time the animal is taken to its place of residence. Said license shall apply to a specific miniature pig, the person responsible for harboring the miniature pig, and the specific premises where the miniature pig is kept. Said miniature pig license shall not be transferable from one animal to another, from one person to another, or from one premises to another. Application and renewal for licensure shall include all of the following:

1. A current health certificate from a licensed veterinarian which attests to the weight and general health of the animal.

2. Payment of an annual fee of $25.00.

(b) A miniature pig license shall continue to be valid until such time as:

1. The annual renewal fee is not timely paid in accord with the license application.
2. A current health certificate from a licensed veterinarian is not provided upon renewal.
3. The miniature pig is no longer maintained at the licensed location.
4. The licensee no longer resides at the location stated in the license.
5. The license is revoked.

Sec. 3-43. Running at large prohibited.
A miniature pig shall reside in the residence of the owner as a pet and shall not be kept outdoors with exception of periods for exercise and for elimination of waste. It shall be unlawful for the owner of any miniature pig to permit such animal to run at large. Any miniature pig shall be deemed to be running at large unless on a leash, under control of an accompanying person or confined within a motor vehicle, building, fence, or other enclosure of sufficient construction so as to prevent the miniature pig from escaping.

Sec. 3-44. Limitation.
It shall be unlawful for any person to maintain more than one miniature pig at one licensed premises. Each dwelling licensed to harbor a miniature pig may harbor only one miniature pig. All locations where miniature pigs are kept shall be maintained in a clean and sanitary condition.

Sec. 3-45. Breeding and health.
It shall be unlawful for any person to maintain a miniature pig, which (a) is not spayed or neutered upon reaching maturity, or (b) has not undergone a blood test to show the animal is free from pseudo rabies, or (c) is maintained as a food source.

Sec. 3-46. License suspension or revocation.
The City Clerk may suspend or revoke any license once granted, or deny annual renewal thereof, when any provision of this division has been violated. Prior to suspension or revocation of any license, or upon denial of an application for renewal thereof, written notice for such action shall be given to the owner of the miniature pig.

Sec. 3-47. Violations.
Violation of this article shall constitute a municipal civil infraction as provided in Chapter 34 of this Code of Ordinances and may result in revocation of the miniature pig license.

(Ord. No. 1711, § 1, 11-22-10)

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CODE OF ORDINANCES

Chapter 4

AVIATION*

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* Charter References: Authority of city to establish, own and operate airports, § 2.3.
State Law References: Aviation generally, M.S.A., Ch. 76; authority to acquire and operate airports, § 10.226; joint operation of airport facilities authorized, § 10.234.

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Art. I. In General, §§ 4-1--4-19

Art. II. Landing of Aircraft, §§ 4-20--4-23

ARTICLE I.

IN GENERAL

Sec. 4-1. Authority to purchase land, air rights.
The city council is hereby authorized to acquire, either exclusively or in conjunction with other governmental units or agencies of the State of Michigan and/or with agencies of the United States Government, land or interests in land or air rights over land either in or without the corporate limits of the city for the purpose of constructing exclusively or jointly-owned landing facilities for aircraft, or navigational aids for aircraft, or other appropriate facilities incidental to the operation of landing facilities and aids, or for the purpose of protecting the approaches to landing areas for aircraft either in or without the corporate limits of the city.

Sec. 4-2. Authority to enter into agreements.
The city council is hereby authorized to enter into agreements with other governmental units or agencies of the State of Michigan and/or with agencies of the United States Government, concerning the acquisition of jointly-owned airport land or air rights, and the manner in which title or lease thereto shall be held, and also in reference to the acquisition and maintenance of jointly-owned airport landing facilities and/or navigational aids to be constructed on jointly-owned property which may be acquired under the provisions of section 4-1.

Sec. 4-3. Establishment of operating agencies.
The city council is hereby authorized to establish, in conjunction with other governmental units of the State of Michigan, agencies to regulate and control jointly-owned aircraft landing facilities and/or navigational aids in accordance with the statutes of the State of Michigan. Such authority may be exercised by a contract with other governmental units of the State of Michigan. Such agencies shall have such authority as may by resolution be adopted from time to time by the city council and by the other governmental units of the State of Michigan.

Sec. 4-4. Appropriations.

The city council shall have authority to appropriate and apportion such sums of money as it deems necessary for the purposes of this chapter.

Sec. 4-5. Aviation advisory commission--Created; composition; qualifications.
There is hereby created an aviation advisory commission consisting of five (5) members. Two (2) of the members shall be active pilots basing their airplanes or flying airplanes based at the Jack Barstow Municipal Airport, and three (3) members shall be selected from the public at large.
(Ord. No. 851, § 5, 2-3-75; Ord. No. 1600, § 5-9-05)

Sec. 4-6. Same--Term of office.
Each member of the aviation advisory commission shall be appointed for a term of three (3) years, commencing July 1st, except that at the first appointment, one member shall be appointed to serve until July 1, 1965; one member to serve until July 1, 1966, and two (2) members to serve until July 1, 1967. The term of the Tri-City Airport Commission member shall correspond to his tenure as a member of that commission or until he is replaced by the city council.

Sec. 4-7. Same--Executive secretary.
The executive secretary of the aviation advisory commission shall be the airport manager, a city employee.

Sec. 4-8. Same--Duties.
It shall be the duty of the aviation advisory commission to:

(1) Submit to the city council for approval an outline of rules under which they will conduct business, including a definition of officers and their duties.

(2) Advise the city council regarding user charges and any other aviation costs that influence the use and development of the airport.

(3) Advise the city council on the creation of an airport development plan including runways, hangers, building construction and other improvements that may favorably affect the installation.

(4) Stimulate good housekeeping and improved maintenance of all grounds, buildings and other facilities.

(5) Promote the increased use of the airport in order that it may serve the city at large in an ever increasing degree.

Sec. 4-9. Airport facilities to be managed by city department.
Landing facilities and/or navigational aids at city airports owned exclusively by the city shall be operated and their business conducted as a city department subject to the provisions of section 2.3 of the city charter. Incident to the powers granted, the city council, in its discretion, shall have the right to provide for the operation of all or part of such facilities by rent or lease.

Sec. 4-10. Airport manager; appointment, duties.
The city manager shall appoint an airport manager. Such airport manager shall perform such duties as may be assigned to him by the city manager.
State Law References: Authority to employ airport manager, M.S.A., § 10.233.

Sec. 4-11. Rules, regulations governing aircraft use.
The city council shall establish by resolution such regulations relative to the general control, supervision and use of landing facilities and navigational aids, owned exclusively by the city or within the corporate limits of the city, and of aircraft operating over the city, or using such facilities and aids, as shall be deemed necessary or advisable. Such regulations shall include all rules and regulations made by the Michigan Aeronautics Commission and the United States Department of Transportation relative to airmen, aircraft, air traffic and airports. Local regulations shall not become effective until published in the official newspaper of the city and prominently displayed on the airport bulletin boards.

State Law References: Authority to adopt, amend airport ordinances, regulations, M.S.A., § 10.233.

Sec. 4-12. Unlawful to violate rules, regulations.
It shall be unlawful to violate any airport rule or regulation or to handle any aircraft or any property connected with landing facilities or navigational aids in violation of such regulations, or to refuse to comply therewith. Any person violating this section may be promptly removed from such property, or temporarily grounded upon the order of the airport manager or city manager, and may be deprived of further use of airport properties and facilities for such time as may be required to insure safeguarding such facilities and the public.

Sec. 4-13. Fixing rates, charges.
The city council shall fix by resolution all rates or charges for the use of the property or equipment of the city aircraft landing facilities, or incidental facilities, as shall be deemed advisable.

State Law References: Authority to determine airport charges, fees, M.S.A., § 10.233.

Sec. 4-14. Annual airport report.
The aviation advisory commission, the city manager and the airport manager shall annually prepare and submit to the city council a joint report for the twelve (12) months ending March 1st covering all aviation matters within their jurisdiction, except the annual financial statement and budget estimate. Such report shall be due on March 15th of each year, and shall include a statement of the general condition of the city landing facilities and navigational aids, an analysis of inspection reports, the amount of air traffic accommodated, a summary of accidents, the adequacy of existing facilities and aids, adequacy of existing fees and regulations, and similar matters, together with recommendations for any proposed changes, and such other matters as may be requested by the city council.

Secs. 4-15--4-19. Reserved.

ARTICLE II.

LANDING OF AIRCRAFT*

* Cross References: Use of the public right-of-way, § 22-1.

Sec. 4-20. Prohibition against landing in unauthorized places.
No person shall, except in an emergency, land an aircraft at any place within the city other than landing facilities as designated by the city, state or federal aviation agencies.
(Ord. No. 874, § 1, 11-3-75)

Sec. 4-21. Designation of heliports or helistops.
The aviation advisory commission may designate, with the approval of the council, private heliports or helistops complying with Chapter 6, paragraphs 25 through 31, of the Heliport Design Guide dated November, 1969, published by the Federal Aviation Administration of the United States Department of Transportation or any authorized amendment or supplement thereto. If such private heliport or helistop shall be located on a building or other structure, it shall comply with the city's building code.
(Ord. No. 874, § 2, 11-3-75)

Sec. 4-22. Off-heliport or helistop helicopter landings.
Notwithstanding the provisions of section 4-20 of this chapter, off-heliport or helistop helicopter landings may be made upon private and Midland Public Schools property with the consent of the owner or authorized representative thereof where said landing is made more than one hundred twenty-five (125) feet from the property line of any property owner whose prior consent has not been obtained to such operation. Such off-heliport landings shall not be conducted more than twice in any twenty-four hour period nor shall any property, not designated a heliport or helistop pursuant to the provisions of section 4-21 of this chapter, be continually used for helicopter landings.
(Ord. No. 874, § 3, 11-3-75; Ord. No. 1617 § 1, 05-22-06)

Sec. 4-23. Zoning ordinances not affected.
No provisions of this chapter shall be construed to alter or amend any provisions of the city's zoning ordinance and no use prohibited by the terms of said ordinance shall be deemed permitted by the provisions of this chapter.
(Ord. No. 874, § 4, 11-3-75)

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CODE OF ORDINANCES

Chapter 5

BUILDINGS AND BUILDING REGULATIONS*

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* Editors Note: Ord. No. 1512, §§ 1--8, adopted July 23, 2001, amended ch. 5 in its entirety, in effect repealing and reenacting ch. 5 to read as herein set out. Formerly, ch. 5 pertained to similar subject matter and derived from Ord. No. 848, § 1, adopted December 16, 1974; Ord. No. 973, §§ 1, 2, adopted March 17, 1980; Ord. No. 1049, § 1, adopted July 25, 1983; Ord. No. 1131, § 1, adopted July 27, 1987; Ord. No. 1164, § 1, adopted October 17, 1988; Ord. No. 1243, § 1, adopted July 13, 1992; Ord. No. 1250, § 1, adopted October 12, 1992; Ord. No. 1261, §§ 1, 2, adopted April 26, 1993; Ord. No. 1263, §§ 1, 2, adopted April 26, 1993; Ord. No. 1327, § 1, adopted October 30, 1995; Ord. No. 1336, § 1, adopted January 22, 1996; Ord. No. 1457, § 1, adopted July 26, 1999.

Charter References: Abatement of dilapidated, dangerous buildings, § 14.2.

Cross References: Housing commission, § 2-146 et seq.; zoning board of appeals, § 2-130 et seq.; fire prevention and protection, Ch. 8; housing code, Ch. 12; chief building official to enforce housing code, § 12-18; minimum space and location requirements for housing, § 12-81 et seq.; minimum standards for safe and sanitary maintenance for housing, § 12-99 et seq.; public improvements, Ch. 20; rates and charges, Ch. 21; permit fee for moving buildings, § 21-31; streets and sidewalks, Ch. 22; subdivisions, Ch. 23; water and sewer and sewerage disposal, Ch. 28; stormwater runoff and control, Ch. 29; downtown development authority, Ch. 30.

Art. I. Construction Board of Appeals, §§ 5-1--5-4

Art. II. Michigan Building Code, §§ 5-5, 5-6

Art. III. Michigan Mechanical Code, §§ 5-7, 5-8

Art. IV. Michigan Electrical Code, § 5-9

Art. V. Soil Erosion and Sedimentation Control, §§ 5-10--5-16

Art. VI. Michigan Plumbing Code, § 5-17

Art. VII. West Main Street Historic District, §§ 5-18--5-31

Art. VIII. Fees, § 5-32

Art. IX. Floodplain Management

ARTICLE I.

CONSTRUCTION BOARD OF APPEALS

Sec. 5-1. Construction board of appeals.

In compliance with the provisions of the Michigan Construction Code Act, PA 230 of 1972, as amended, a construction board of appeals shall be created. The construction board of appeals shall exercise those powers granted by state law.
(Ord. No. 1512, § 1, 7-23-01)

Sec. 5-2. Membership.

The construction board of appeals shall consist of seven (7) members. Members shall be appointed for two-year terms by the city manager. Members shall be qualified by experience or training to perform the duties of members of the board of appeals. To the extent possible, each construction discipline as well as at-large members shall represent the board as follows:

One (1) licensed residential contractor, or general contractor

One (1) licensed registered professional engineer, architect, or registered building inspector

One (1) licensed master electrician, or registered electrical inspector

One (1) licensed master plumber, or registered plumbing inspector

One (1) licensed mechanical contractor, or registered mechanical inspector

Two (2) citizens at-large

All members must have background in construction and a working knowledge of the codes being enforced.
(Ord. No. 1512, § 1, 7-23-01)

Sec. 5-3. Appeals.

If the enforcing agency refuses to grant an application for permit, or if the enforcing agency makes any other decision related to enforcement of the housing code or construction codes, an interested person, or the person's agent, may appeal in writing to the construction board of appeals.

The board of appeals shall hear the appeal and render and file its decision with a statement of reasons for the decision with the enforcing agency not more than thirty (30) days after submission of the appeal. Failure by the board to hear an appeal and file a decision within the time limit is a denial of the appeal for the purposes of authorizing the institution of an appeal to the Michigan Construction Code Commission. A copy of the decision and statement of the reasons for the decision shall be delivered or mailed, before filing, to the party making the appeal.
(Ord. No. 1512, § 1, 7-23-01)

Sec. 5-4. Procedures.

The construction board of appeals shall establish procedures for processing appeals and requests for variances. Applicants for permits should be made aware of their recourse and the steps to be taken to have their appeals or requests for variances heard.
(Ord. No. 1512, § 1, 7-23-01)

ARTICLE II.

MICHIGAN BUILDING CODE

Sec. 5-5. Adoption of Michigan Building Code by reference.

The Michigan Building Code, including appendices and references, promulgated under Public Act 230 of 1972, as amended, a complete copy of which is made available to the public at the office of the city clerk, is hereby adopted as the City Building Code by reference and made part of this chapter as if fully set out herein.
(Ord. No. 1512, § 2, 7-23-01)

Sec. 5-6. Prosecution previous to effective date.

Any prosecution arising from a violation of any ordinance or section of an ordinance repealed or amended in this article, which prosecution may be pending on July 31, 2001, or any prosecution which may be started within one year after July 31, 2001, in consequence of any violation of any ordinance or section of an ordinance repealed or amended in this chapter which violation was committed previous to July 31, 2001, shall be tried and determined exactly as if such ordinance or section of an ordinance had not been repealed or amended.
(Ord. No. 1512, § 2, 7-23-01)

ARTICLE III.

MICHIGAN MECHANICAL CODE

Sec. 5-7. Adoption of Michigan Mechanical Code by reference.

The Michigan Mechanical Code, including appendices and references, promulgated under Public Act 230 of 1972, as amended, a complete copy of which is made available to the public at the office of the city clerk, is hereby adopted as the City Mechanical Code by reference and made part of this chapter as if fully set out herein.
(Ord. No. 1512, § 3, 7-23-01)

Sec. 5-8. Prosecution previous to effective date.

Any prosecution arising from a violation of any ordinance or section of an ordinance repealed or amended in this article, which prosecution may be pending on July 31, 2001, or any prosecution which may be started within one year after July 31, 2001, in consequence of any violation of any ordinance or section of an ordinance repealed or amended in this chapter which violation was committed previous to July 31, 2001, shall be tried and determined exactly as if such ordinance or section of an ordinance had not been repealed or amended.
(Ord. No. 1512, § 3, 7-23-01)

ARTICLE IV.

MICHIGAN ELECTRICAL CODE

Sec. 5-9. Adoption of Michigan Electrical Code by reference.

The Michigan Electrical Code, including appendices and references, promulgated under Public Act 230 of 1972, as amended, a complete copy of which is made available to the public at the office of the city clerk, is hereby adopted as the City Electrical Code by reference and made part of this chapter as if fully set out herein.
(Ord. No. 1512, § 4, 7-23-01)

ARTICLE V.

SOIL EROSION AND SEDIMENTATION CONTROL

Sec. 5-10. Municipal enforcing agency.

The Planning & Community Development Department shall be the municipal enforcing agency responsible for the administration and enforcement of Part 91, Soil Erosion and Sedimentation Control (SESC), of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended or as may be amended in the future, (Part 91), within the City of Midland. The Administrative Rules promulgated under the authority of Part 91 are hereby incorporated by reference as well as any future rules as may be amended.
(Ord. No. 1512, § 5, 7-23-01; Ord. No. 1584, §1, 9-13-04)

Sec. 5-11. SESC Permits and submission of plans.

Before undertaking an earth change within the city involving one (1) or more acres of land or within five (500) feet of any lake or stream, a SESC permit shall be obtained. A SESC application and plan containing information specified in Rule 1703 of Part 91 shall be submitted to the city building department prior to receiving a SESC permit.

If a violation of Part 91 is observed in a situation where no SESC permit was required because the earth change was less than one (1) acre or farther than five hundred (500) feet from a stream or lake the SESC administrator has authority to require and issue a SESC permit.
(Ord. No. 1512, § 5, 7-23-01; Ord. No. 1584, §1, 9-13-04)

Sec. 5-12. Submission of plans.

The submitted plans along with the prescribed permit application shall be reviewed for conformance to Part 91 and the rules promulgated under Part 91. If the application and the plans are in conformance with Part 91 and the rules, a permit shall be issued upon payment of fees as detailed by Section 21-50 of this code. If an earth change activity covered under Part 91 and this ordinance is commenced without proper permit the fees shall be doubled.
(Ord. No. 1512, § 5, 7-23-01; Ord. No. 1584, §1, 9-13-04)

Sec. 5-13. Site Inspection.

The SESC Administrator designated by the Chief Inspector, shall have access at all reasonable times to any site upon which an “earth change” is in progress for purposes of determining whether the conditions called for in the permit are being complied with.
(Ord. No. 1512, § 5, 7-23-01; Ord. No. 1584, §1, 9-13-04)

Sec. 5-14. Enforcement.

Violations of Part 91 or a violation of a permit of an approved soil erosion and sedimentation control plan, the SESC administrator shall contact the "on site" responsible person, contractor or land owner in person or by telephone and inform them of the violations, and give them one (1) or two (2) days to comply, depending on violation, or SESC Administrator may issue a Civil Infraction, cease and desist, and or/ stop work order using procedure as provided in chapter 34 of this code and Part 91 to the land owner, contractor or on-site responsible person. A cease and desist order is a directive to discontinue or cease doing something that has resulted in a violation such as stopping earth work that resulted in a discharge of sediment or stopping earth work until a permit has been obtained. A stop work order directs all work on the site to be halted until violations are corrected. Once violations are corrected the SESC administrator will lift the cease and desist or stop work order.

The SESC administrator may also seek remedies in the courts pursuant to section 9121 and Part 91 of the Natural Resources and Environmental Protection Act. (Act 451 of 1994 as may be amended.
(Ord. No. 1512, § 5, 7-23-01; Ord. No. 1584, §1, 9-13-04)

Sec. 5-15. Appeal.

The procedure as provided in Section 5-27 Sec 204 of this Code shall be applicable to this article to consider appeals arising from any determination of the SESC administrator.
(Ord. No. 1512, § 5, 7-23-01; Ord. No. 1584, §1, 9-13-04)

ARTICLE VI.

MICHIGAN PLUMBING CODE

Sec. 5-17. Adoption of Michigan Plumbing Code by reference.

The Michigan Plumbing Code, including appendices and references, promulgated under Public Act 230 of 1972, as amended, a complete copy of which is made available to the public at the office of the city clerk, is hereby adopted as the City Plumbing Code by reference and made part of this chapter as if fully set out herein.
(Ord. No. 1512, § 6, 7-23-01)

ARTICLE VII.

WEST MAIN STREET HISTORIC DISTRICT

Sec. 5-18. Statement of purpose.

The purpose of this article is to:

(1) Safeguard the heritage of the city by preserving an area in the city that reflects elements of its history, architecture, archaeology, engineering or culture.

(2) Stabilize and improve property values in such areas and the surrounding areas.

(3) Foster civic beauty.

(4) Strengthen the local economy.

(5) Promote the use of historic districts for the education, pleasure, and welfare of the citizens of the city.
(Ord. No. 1512, § 7, 7-23-01)

Sec. 5-19. Definitions.

For the purposes of this article, the following terms, phrases and words shall have the meanings given in this section.

Alteration means work that changes the detail of a resource but does not change its basic size or shape.

Applicant means a person who owns property in the West Main Street Historic District.

Bureau means the Bureau of History of the Michigan Department of State.

Certificate of appropriateness means the written approval of a permit application for work that is appropriate and that does not adversely affect a resource.

Commission means a historic commission created pursuant to section 5-22.

Demolition means the razing or destruction, whether entirely or in part, of a resource and includes, but is not limited to, demolition by neglect.

Demolition by neglect means neglect in maintaining, repairing, or securing a resource that results in deterioration of an exterior feature of the resource or the loss of structural integrity of the resource.

Denial means the written rejection of a permit application for work that is inappropriate and that adversely affects a resource.

Exterior features means those features as described in the West Main Street Historic District Guidelines and Standards for Review.

Historic district means the West Main Street Historic District.

Historic district commission (HDC) means the City of Midland West Main Street Historic District Commission.

Historic preservation means the identification, evaluation, establishment, and protection of resources significant in history, architecture, archaeology, engineering, or culture.

Historic resource means a privately owned building, structure, site, object, feature, or open space that is significant in the history, architecture, archaeology, engineering, or culture of the City of Midland, Midland County, State of Michigan or of the United States.

Minor classes of work means that work as described in the West Main Street Historic District Guidelines and Standards for Review.

Notice to proceed means the written permission to issue a permit for work that is inappropriate and that adversely affects a resource, pursuant to a finding under section 5-25.

Open space means undeveloped land, a naturally landscaped area, or a formal or man-made landscaped area that provides a connective link or a buffer between other sources.

Ordinary maintenance means keeping a resource unimpaired and in good condition through ongoing minor intervention, undertaken from time to time, in its exterior condition. Ordinary maintenance does not change the external appearance of the resource except through the elimination of the usual and expected effects of weathering. Ordinary maintenance does not constitute work for purposes of this chapter.

Repair means to restore a decayed or damaged resource to a good or sound condition by any process. A repair that changes the external appearance of a resource constitutes work for purposes of this chapter.

Resource means privately owned historic or nonhistoric buildings, structures, objects, features, or open spaces located within the historic district. Publicly owned buildings, structures, open spaces, sidewalks and rights-of-way are not considered resources for the purposes of this chapter.

Work means construction, addition, alteration, repair, moving, excavation, or demolition.
(Ord. No. 1512, § 7, 7-23-01)

Sec. 5-20. West Main Street Historic District boundaries.

The following described area is hereby established as the West Main Street Historic District:

Lots 3, 4, 5 and 6 of Block 15, all of Block 16, excluding the right-of-way of the Pere Marquette Rail-Trail, all of Block 17, excluding the right-of-way of the Pere Marquette Rail-Trail, and including an area described as: Beginning at a point 57.5 feet southwest of the south corner of Lot 1 of Block 17; thence northeast 57.5 feet; thence northwest 166.58 feet along the southwesterly side of Lots 1, 2 and 3 of Block 17; thence southeasterly to the point of beginning, and all of Blocks 18, 80 and 81, and Lots 1, 2, 7 and 8, and the northeast 70 feet of Lots 3 and 4, Block 82, all a part of the Midland original plat.

After the effective date of this article, the city shall file a copy of this article, including a legal description of the West Main Street Historic District, with the Midland County Register of Deeds Office and shall cause each property located in the district to have recorded on its title a statement that the property is part of the West Main Street Historic District and is subject to rules and regulations adopted by the City of Midland.
(Ord. No. 1512, § 7, 7-23-01)

Sec. 5-21. Regulation of resources.

There shall be no construction, addition, alteration, repair, moving, excavation, or demolition of a resource within the West Main Street Historic District unless such action complies with the requirements set forth in this article.

The regulatory authority of the West Main Street Historic Commission (HDC) as created in section 5-22, extends only to the exterior features of a structure and does not apply to interior alterations so long as such alterations do not affect the exterior.

Nothing in this article shall be construed to prevent ordinary maintenance or repair of a resource within the West Main Street Historic District, or to prevent work on any resource under a permit issued by the chief building inspector or other duly delegated authority before this article was enacted.

Compliance with this article shall not relieve the applicant from complying with all applicable provisions of this article and any other ordinance, rule or statute.
(Ord. No. 1512, § 7, 7-23-01)

Sec. 5-22. Historic district commission.

(a) To execute the purpose of this article, there is hereby created a commission to be called the City of Midland West Main Street Historic District Commission (HDC).

(b) The HDC shall consist of seven (7) members who shall be residents of the city. Moving from the city shall cause the member's seat to become vacant. Each member shall be appointed by the city council for a three-year term of office; provided, however, that of the members first appointed, two (2) shall be appointed for a one-year term, two (2) shall be appointed for a two-year term, and three (3) shall be appointed for a three-year term. All first members shall be appointed within six (6) months after the effective date of this article. Thereafter, members shall be appointed before October 1 of the year of appointment and shall serve for a three-year term or until a successor is appointed. Vacancies shall be filled within sixty (60) calendar days and shall be for the remainder of the unexpired term.

(c) At least two (2) members of the HDC shall be appointed from a list of citizens submitted by one (1) or more duly organized local historic preservation organizations. The HDC shall include one (1) member, if available, who is a graduate of an accredited school of architecture who has two (2) years of architectural experience or who is an architect duly registered in this state. In the event that a person having the desired architect qualifications is not available to serve as a member of the HDC, the city council may appoint a person possessing those qualifications who is not a city resident to serve as a member of the HDC in an ex officio capacity. The term of this appointment shall be three (3) years or until such time that a successor is appointed or a qualified architect who is a city resident is appointed to the HDC.

(d) A majority of the members of the HDC shall have a clearly demonstrated interest in or knowledge of historic preservation. If proposed members meet the requirements for appointment, it is desirable that a majority of the West Main Street Historic District members consist of residents and/or property owners in the district.

(e) A member absent from four (4) consecutive regular meetings, or twenty-five (25) percent of such meetings in any fiscal year of the city, shall automatically be removed from HDC membership unless such absences are excused by the HDC and the reason therefore entered into the proceedings of the HDC.

(f) The HDC shall elect from its membership a chairman and a vice chairman whose terms of office shall be determined by the HDC. The chairman shall preside over the HDC and shall have the right to vote. The vice chairman shall, in the case of the absence or disability of the chairman, perform the duties of the chairman.

(g) The chief building official or his/her designated representative shall be an ex officio member without the right to vote and shall serve as secretary to the HDC. The secretary shall keep a record of all resolutions, proceedings, and actions of the HDC, and shall provide minutes of the meetings to the city council.

(h) The members of the HDC shall serve without compensation.

(i) Pursuant to notice and after having been given an opportunity to be heard, a member of the HDC may be removed for cause by the city council.
(Ord. No. 1512, § 7, 7-23-01)

Sec. 5-23. Meetings of the historic district commission.

(a) In addition to other meetings as required by this article, regular meetings of the HDC shall be held quarterly, with additional meetings scheduled as needed. Attendance of at least four (4) members of the HDC at a meeting shall constitute a quorum for the transaction of HDC business. All meetings of the HDC shall be open to the public, and any person or duly constituted representative shall be entitled to appear and be heard on any matter before a decision is made.

(b) The affirmative vote of four (4) members of the HDC shall constitute approval of plans before it for review or for adoption of any resolution, motion, or other action.

(c) Public notice of the time, date, and place of HDC meetings shall be given in the manner required by Act No. 267 of the Public Acts of 1967, as amended, being sections 15.261 to 15.275 of the Michigan Compiled Laws. The notice shall be posted in accord with the City of Midland notification procedures and shall be mailed by first class mail to each property owner in the historic district. A meeting agenda shall be a part of the notice and shall include a listing of each permit application to be reviewed or considered by the HDC.

(d) The HDC shall prepare an annual report of activities and shall submit special reports as requested by the city council.
(Ord. No. 1512, § 7, 7-23-01)

Sec. 5-24. Duties and powers of the historic district commission.

(a) The HDC shall submit to the city council for approval guidelines and standards for review of all plans for the construction, addition, alteration, repair, moving, excavation, or demolition of resources in the historic district which shall be named the West Main Street Historic District Guidelines and Standards for Review and which shall specify the minor classes of work for which certificates of appropriateness may be issued by the building official. Certificates of appropriateness and notices to proceed shall not be required for work in the historic district until such time that the guidelines and standards for review have been approved by city council. Thereafter, all amendments and additions to the guidelines and standards for review must be approved by city council prior to implementation.

(b) Except for minor classes of work for which certificates of appropriateness may be issued by the building official, the HDC shall review all applications for the construction, addition, alteration, repair, moving, excavation, or demolition of resources in the historic district and approve each application before a certificate of appropriateness for such work can be granted. In reviewing the application, the HDC shall follow the U.S. Secretary of the Interior's standards for rehabilitation and guidelines for rehabilitating historic buildings, as set forth in 36 CFR Part 67, or their equivalent, as approved or established by the Michigan Bureau of History of the Department of State, and shall also consider the following:

(1) The historical or architectural value and significance of the resource and its relationship to the historic value of the surrounding area;

(2) The relationship of the exterior architectural features of such resource to the remainder of the resource and to the surrounding area;

(3) The general compatibility of the exterior design, arrangement, texture, and materials proposed to be used;

(4) Other factors, such as aesthetic value, that the commission finds relevant.

(c) The HDC and the building official shall review and act only upon exterior features of a resource and shall not review and act upon any interior work unless the interior work will cause visible change to the exterior of the resource. The HDC and the building official shall not disapprove an application due to considerations not prescribed in subsection 5-24(b).

(d) In case of an application for work affecting an exterior feature of a resource or for the alteration, moving, or demolition of a resource that the HDC deems so valuable to the city that the loss thereof will adversely affect the public purpose of the city, the HDC shall endeavor to work out with the owner an economically feasible plan for preservation of the historic resource.

(e) If all efforts by the HDC to preserve a resource fail, and it is determined by the city council that public ownership is most suitable and it is considered to be in the public interest, the city council may acquire the resource using public funds, public or private gifts, grants, or proceeds from the issuance of revenue bonds.
(Ord. No. 1512, § 7, 7-23-01)

Sec. 5-25. Procedure for review of work.

(a) Nothing in this article shall be construed to prevent ordinary maintenance of a resource within the West Main Street Historic District or to prevent work on any resource under a permit issued by the building department, or another duly delegated authority, before this article was enacted.

(b) Prior to work on a property located within the West Main Street Historic District, an applicant shall contact the city building department to determine the procedure necessary for receiving approval for such work.

(c) Work that does not require a certificate of appropriateness, a building permit or a notice to proceed is not subject to the requirements of this article.

(d) Work that requires a certificate of appropriateness, a building permit or a notice to proceed is subject to the requirements of this article, as follows:

(1) *Certificate of appropriateness.* If the building official determines that a building permit is not required but that a certificate of appropriateness is necessary, an application for a certificate of appropriateness shall be filed with the building official. Applications for certificates of appropriateness for work not considered minor shall be forwarded to the HDC by the building official. A certificate of appropriateness for minor classes of work may be issued by the building official as provided in the guidelines and standards for review.

If the building official denies an application, a written record of the reasons for denial shall be forwarded to the applicant. The building official may suggest that changes be made to the application. The building official shall notify the applicant that the application may be resubmitted for review when the suggested changes have been made and that the applicant has the right to appeal to the city building board of appeals, the state historic preservation review board and to the Midland County Circuit Court. If the application is denied because the work is not appropriate, the applicant shall be so informed and shall be notified of the right to appeal to the building board of appeals for a notice to proceed.

(2) *Building permit and certificate of appropriateness.* If the building official determines that, in addition to an application for a certificate of appropriateness pursuant to subsection 5-25(d)(1), a building permit is required, applications for a building permit and a certificate of appropriateness shall be filed with the building official. The building official may issue a certificate as described in subsection 5-25(d)(1) or transmit the application to the HDC for review and approval. If the building official issues a certificate of appropriateness, the certificate shall be attached to the building permit. A building permit shall not be issued by the building official until a certificate of appropriateness is issued.

(e) (1) Within fifteen (15) working days of receipt of an application for a certificate of appropriateness for work not considered minor, the building official shall forward the application to the HDC. The HDC shall meet within ten (10) working days after receipt of the application and shall review the application according to the duties and powers specified herein. If the HDC determines that the application is incomplete, or that additional information is required before the application may be approved or disapproved, the HDC shall contact the applicant to request the necessary information. Thereafter, the HDC shall meet within ten (10) working days from the date of receipt of the additional information.

(2) Failure of the HDC to approve or disapprove a complete application within thirty (30) days from the date the application is submitted to the building official or fifteen (15) days after additional information is received by the HDC, whichever is later, unless otherwise mutually agreed upon by the applicant and HDC, shall be deemed to constitute approval, and the building official shall proceed to process the application without regard to a certificate of appropriateness issued by the HDC.

(3) If the application is approved, the HDC shall issue a certificate of appropriateness and transmit it to the building official. The building official shall attach the certificate of appropriateness to the building permit.

(4) After the certificate of appropriateness has been issued and, if required, a building permit granted, the building official shall inspect the work permitted in accord with the

certificate of appropriateness and shall take such action as necessary to ensure compliance with the approved plan.

(f) (1) If the application is not approved by the HDC, a written record of the reasons for denial shall be forwarded to the applicant and the building official. The HDC may suggest that changes be made to the application. The HDC shall notify the applicant that the application may be resubmitted for HDC review when the suggested changes have been made. A denial of an application for a certificate of appropriateness by the HDC shall be binding upon the building department.

(2) The denial of an application shall include a notice to the applicant of the right of appeal to the city building board of appeals, the state historic preservation review board and to the Midland County Circuit Court. If the application is denied by the HDC because the work is not appropriate, the applicant shall be so informed and shall be notified of the right to appeal to the building board of appeals for a notice to proceed.

(g) A fee shall not be levied for an application for a certificate of appropriateness; however, the applicable building permit fee shall be levied.

(h) Repairs, alterations and additions necessary for the preservation, restoration, rehabilitation or continued use of a building or structure may be made without conformance to all the requirements of the current Michigan Construction Code as adopted by ordinance by city council when authorized by the building official, provided:

(1) The building or structure has been designated by official action of the city council as having special historical or architectural significance.

(2) Any unsafe conditions as described in said construction code are corrected.

(3) The restored building or structure will be no more hazardous based on life safety, fire safety, and sanitation than the existing building.
(Ord. No. 1512, § 7, 7-23-01)

Sec. 5-26. Appeals.

(a) *Notice to proceed.* If an applicant has been denied a certificate of appropriateness for work not deemed appropriate, the applicant may appeal to the building board of appeals for a notice to proceed. Work within the historic district shall be permitted through the issuance of a notice to proceed if any of the following conditions prevail and if the proposed work can be demonstrated to the satisfaction of a majority of the building board of appeals members that the proposed work is necessary to substantially improve or correct any of the following conditions:

(1) The resource constitutes a hazard to the safety of the public or to the structure's occupants.

(2) The resource is a deterrent to a major improvement program that will be of substantial benefit to the community and the applicant proposing the work has obtained all necessary planning and zoning approvals, financing, and environmental clearances.

(3) Retaining the resource will cause undue financial hardship to the owner when a governmental action, an act of God, or other events beyond the owner's control created the hardship, and all feasible alternatives to eliminate the financial hardship, which may include offering the resource for sale at its fair market value or moving the resource to a vacant site within the historic district have been attempted and exhausted by the owner.

(4) Retaining the resource is not in the interest of the majority of the community.

Notwithstanding the aforementioned, a building permit may still be required.

(a)[b] *Appeal from a decision by the building official or HDC.* An applicant aggrieved by a decision of the building official or the HDC may file an appeal with the building board of appeals, as created under section 5-1 of the City of Midland Code of Ordinances, or the state historic preservation review board of the Michigan Historical Commission within the Department of State. The HDC shall forward a copy of the West Main Street Historic District Guidelines and Standards for Review approved by city council to the building board of appeals. The West Main Street Historic District Guidelines and Standards for Review shall be utilized by the building board of appeals in appeal decisions.

(b)[c] *Appeal from a decision by the building board of appeals.* An applicant who has appealed to the building board of appeals and is aggrieved by the decision of that board may file an appeal with the state historic preservation review board. The appeal shall be filed within sixty (60) days after the decision is furnished to the applicant by the building board of appeals.

(c)[d] *Appeal from a decision by the state historic preservation review board.* A permit applicant aggrieved by the decision of the state historic preservation review board may appeal the decision to the Midland County Circuit Court. Said applicant may only appeal to the circuit court after appealing to the state historic preservation review board.

(d)[e] *Appeal by non-applicant.* Any citizen or duly organized historic preservation organization in the city that is not an applicant that is aggrieved by a decision of the HDC may appeal the decision to the Midland County Circuit Court.
(Ord. No. 1512, § 7, 7-23-01)

Sec. 5-27. Demolition by neglect.

(a) *Commencement of proceedings.* The building official shall examine or cause to be examined every historic resource reported as threatened with demolition by neglect.

(b) *Notice and order.* The building official shall issue a notice and order directed to the owner of record of the historic resource stating the defects thereof. This notice may require the owner of the historic resource to commence the required alterations, repairs or improvements, and all such work shall be completed within such period of time as the building official shall determine to be reasonable to accomplish the work, which said period shall be stated in the notice.

(c) *Service of notice and order.* Service of the notice and order shall be made upon the owner either personally or by:

(1) Mailing a copy of such notice and order by certified mail, postage prepaid, return receipt requested, to each owner of the property as indicated by the records of the city assessor; or

(2) If no address so appears or is known to the building official, a copy of the notice and order shall be mailed to the owner of record at the address of the resource and a copy of the notice shall also be posted in a conspicuous place on the resource.

The failure of any such owner of record to receive such notice shall not affect the validity of any proceedings taken under this section. Service by certified mail in the manner herein provided shall be effective on the date of mailing. Proof of service of the notice and order shall be by affidavit sworn to by the person effecting service; declaring time, date and manner in which the service was made. The affidavit, together with any receipt card returned in acknowledgment of receipt by certified mail, shall be affixed to the copy of the notice and order retained by the building official.

(d) *Condemnation procedure.* If at the expiration of any time limit in the notice provided for in paragraph (b) of this section, the owner of record has not complied with the requirements thereof, the building official may recommend abatement in accordance with the following provisions:

(1) *Notice of public hearing.* Notwithstanding any other provisions of this article, when an exterior feature of a historic resource is found to have deteriorated or the structural integrity of a resource has been lost as a result of neglect in maintenance or repair, the building official, having ascertained that the time limit provided in the notice has expired and that the required work has not been completed, shall issue a notice to each owner of record in whose name the property appears on the last local tax assessment records to appear at a hearing before a hearings officer and show cause why the alterations, repairs or maintenance should not be made. Notice shall be given to the parties in the same manner as provided in paragraph (c) of this section to appear at the hearing on the date, time and place specified in the notice which shall not be less than ten (10) days after the mailing of the notice.

(2) *Hearings officer appointed.* The city council shall appoint a hearings officer to serve at its pleasure and to conduct a public hearing in order for the owner to show cause why the notice and order should not be complied with. The building official shall file a notice of the demolition by neglect with the hearings officer.

(3) *Procedures.* The following procedures shall govern the conduct of the public hearing by the hearings officer:

a. *Record.* A record of the entire proceeding shall be made by tape recording or by other means of permanent recording determined appropriate by the examiner. A transcript of the proceedings shall be made available to all parties upon request and upon payment of a fee prescribed thereof. The fee may be established by the hearings officer but shall not be greater than the cost involved.

b. *Certification.* In any proceedings under this section, a hearings officer has the power to administer oaths and affirmation, and to certify official acts.

c. *Reasonable dispatch.* A hearings officer shall proceed with reasonable dispatch to conclude any matter before him or her. Due regard shall be shown for the convenience and necessity of a party and his or her representative.

d. *Rules.* Hearings need not be conducted according to the technical rules relating to evidence.

e. *Oral evidence.* Oral evidence shall be taken only on oath or affirmation.

f. *Hearsay evidence.* Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence, but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions in courts of competent jurisdiction in this state.

g. *Admissibility of evidence.* Any relevant evidence shall be admitted if it is the type of evidence upon which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions in courts of competent jurisdiction of this state.

h. *Exclusion of evidence.* Irrelevant and unduly repetitious evidence shall be excluded.

i. *Rights of the parties.* Each party shall have the following rights, among others:

1. To call and examine witnesses on any matter relevant to the issues of the hearing;

2. To introduce documentary and physical evidence;

3. To cross-examine opposing witnesses on any matter relevant to the issue of the hearing;

4. To impeach any witness regardless of which party first called him or her to testify;

5. To refute the evidence against him or her; and

6. To represent himself or herself or to be represented by anyone of his or her choice who is lawfully permitted to do so.

j. *Inspection of premises.* The hearings officer may inspect any resource involved in the hearings proceedings.

k. *Judicial notice.* In reaching a decision, judicial notice may be taken, either before or after submission of the case for decision, of any fact of which judicial notice may be taken by the courts of this state or of official records of the board or departments and ordinances of the city or rules and regulations of the board. Parties present at the hearing shall be informed of the matters so noticed, and these matters shall be noted in the record.

(4) *Hearings officer's findings and order.* The hearings officer shall issue an order with written findings of fact based upon competent evidence and testimony determining whether

the historic resource in question has suffered demolition by neglect within the meaning of this section. If the hearings officer determines that the historic resource has suffered demolition by neglect, he or she shall establish a reasonable time by which the requirements of the order shall commence and shall be completed. The notice of the findings of fact and order shall be served upon the owner of record in the manner provided in paragraph (c) of this section.

(5) *Failure of the owner of record to appear or refusal to comply with order of hearings officer.* The following shall apply in the event that there is a failure to appear or refusal to comply with the order of the hearings officer:

a. If the owner of record fails to appear or neglects or refuses to comply with the order, the hearings officer shall file a report of his or her findings and a copy of his or her order with the city council and request that the necessary alterations, repairs or improvements be made. A copy of the findings of fact and order of the hearings officer shall be served on the owner of record in the manner prescribed in paragraph (c) of this section.

b. The city council shall fix a date for a hearing and for reviewing the findings of fact and order of the hearings officer and shall give notice to the owner of record in the manner prescribed in paragraph (c) of this section of the time and place of the hearing. At the hearing, the owner of record and/or his or her representative shall be given the opportunity to show cause why the building should not be altered, repaired or improved. After the close of the hearing, the city council shall either approve, disapprove or modify the order of the hearings officer.

c. Upon a finding by the city council that a historic resource is threatened by demolition by neglect, the city council may do the following:

1. Require the owner of the historic resource to repair all conditions contributing to demolition by neglect;

2. If the owner does not make the repairs within a reasonable time, the city council, upon obtaining an order from the Midland County Circuit Court, may direct its agents to enter the property and make repairs as are necessary to prevent demolition by neglect.

d. The costs of the work shall be a lien against the real property and shall be reported to the city assessor who shall assess the cost against the property on which the resource is located. The owner in whose name the property appears upon the last local tax assessment record shall be notified of the amount of such cost by first class mail at the address shown on the records. If he or she fails to pay the same within thirty (30) days after mailing by the assessor of the notice of the amount thereof, the assessor shall add the same to the next tax roll of the city and it shall be collected in the same manner and in all respects as provided by law for the collection of taxes by the city.

e. An owner of record aggrieved by any final decision or order of the city council under subparagraph (5)b. above may appeal the decision or order to the circuit court by filing a petition for an order of superintending control with that court within twenty-one (21) days from the date of the city council's decision.

(6) *Waiver provision.* The owner of record of any historic resource may at any time admit in writing that such resource has suffered demolition by neglect within the meaning of this section, waive notice, hearing, findings of fact, order and service of the order under this article

and court review of such order, and consent that said resource may be altered, repaired or improved, and the cost thereof charged against the property, in which event the hearings officer may have said resource altered, repaired or improved and the cost charged against said property in accordance with the provisions of this article.
(Ord. No. 1512, § 7, 7-23-01)

Sec. 5-28. Failure to obtain a permit.

When work has been performed on a historic resource without a permit and the HDC finds that the work does not qualify for a certificate of appropriateness, the HDC shall notify the city council of its findings. The city council may require an owner to restore the resource to the condition the resource was in before the inappropriate work was conducted or to modify the work so that it qualifies for a certificate of appropriateness.

If the owner does not comply with the restoration or modification requirement within a reasonable time, the city council may seek an order from the Midland County Circuit Court to require the owner to restore the resource to its former condition or to modify the work so that it qualifies for a certificate of appropriateness.

If the owner does not or cannot comply with the order of the court, and if the order of the court so provides, the city council or its agents may enter the property and conduct work necessary to restore the resource to its former condition or modify the work so that it qualifies for a certificate of appropriateness in accordance with the order of the court. The cost of the work shall be charged to the owner and may be levied by the city as a special assessment against the property.
(Ord. No. 1512, § 7, 7-23-01)

Sec. 5-29. Acceptance of gifts and grants.

The city may accept public or private gifts and state and federal grants for historic restoration purposes; provided, however, that such gifts and grants are not prohibited by the Charter of the city and are not used for the purpose of paying any fees or expenses arising out of any litigation. The city treasurer shall be custodian of funds received by the city for historic restoration purposes.
(Ord. No. 1512, § 7, 7-23-01)

Sec. 5-30. Penalties.

A person, individual, partnership, firm, corporation, organization, institution, or agency of government that violates this ordinance is responsible for a civil violation and may be fined not more than five thousand dollars ($5,000.00) and may be ordered by the court to pay the costs to restore or replicate a resource unlawfully constructed, added to, altered, repaired, moved, excavated, or demolished.
(Ord. No. 1512, § 7, 7-23-01)

Sec. 5-31. Severability.

In the event any portion, section or subsection of this article shall be held invalid, that portion, section or subsection shall be eliminated from this article. Such invalidation shall not be construed to affect the validity of any part or portion of this article or of the Code of Ordinances of the city.

(Ord. No. 1512, § 7, 7-23-01)

ARTICLE VIII.

FEES

Sec. 5-32. Fees.

Fees for Building, Plumbing, Mechanical, Electrical and Construction Board of Appeals applications shall be as described in Chapter 21 of Midland City Code of Ordinances.
(Ord. No. 1512, § 8, 7-23-01)

ARTICLE IX.

FLOODPLAIN MANAGEMENT

Sec. 5-33. Purpose. The purpose of this article is to participate in the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP) by complying with the program's applicable statutory and regulatory requirements for the purposes of significantly reducing flood hazards to persons, reducing property damage, reducing public expenditures, and providing for the availability of flood insurance and federal funds or loans within the corporate limits of the city of Midland.

Sec. 5-34. Declaration of Intent. The City of Midland shall, in the enforcement and administration of this ordinance, perform the following actions:

a. Obtain, review, and reasonably utilize flood elevation data available from federal, state, or other sources pending receipt of data from FEMA to identify the flood hazard area and areas with potential flooding.

b. Ensure that all permits necessary for development in floodplain areas have been issued, including a floodplain permit, approval, or letter of no authority from the Michigan Department of Environmental Quality under the floodplain regulatory provisions of Part 31, "Water Resources Protection," of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended.

c. Review all permit applications to determine whether the proposed building sites will be reasonably safe from flooding. Where it is determined that a proposed building will be located in a flood hazard area or special flood hazard area, the construction code act enforcing agent shall implement the applicable codes according to their terms.

d. Review all proposed subdivisions to determine whether such proposals are reasonably safe from flooding and to ensure compliance with all applicable floodplain management regulations.

e. Assist in the delineation of flood hazard areas; provide information concerning uses and occupancy of the floodplain or flood-related erosion areas; maintain flood proofing and lowest floor construction records; and cooperate with other officials, agencies, and persons for floodplain management.

f. Advise FEMA of any changes in community boundaries, including appropriate maps.

g. Maintain records of new structures and substantially improved structures concerning any certificates of flood proofing, lowest flood elevation, basements, flood proofing and elevations to which structures have been flood proofed.

h. Review, on an ongoing basis, all amended and revised FHBSs and Flood Insurance Rates Maps (FIRMs) and related supporting data and revisions thereof and revisions of 44 CFR, Part 60, Criteria for Land Management for Use, and to make such revisions in its floodplain management regulations as may be necessary to continue to participate in the program.

Sec. 5-35. Definitions. The NFIP requires that floodplain management regulations must be present and enforced in participating communities and utilize the following definitions which also apply for the purposes of this article:

Flood or Flooding means:

a. A general and temporary condition of partial or complete inundation of normally dry land areas from 1) The overflow of inland or tidal waters, 2) the unusual and rapid accumulation or runoff of surface waters from any source, or 3) mudflows; and

b. The collapse or subsidence of land along the short of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding, as defined in paragraph (a) (1) of this definition.

Flood Hazard Boundary Map (FHBM) means an official map of a community, issued by FEMA, where the boundaries of the flood, mudslide (i.e., mudflow) related erosion areas having special hazards have been designed as Zone A, M, and/or E. (This is to be included only if FEMA has issued a FHBM for the community.)

Floodplain means any land area susceptible to being inundated by water from any source (See definition of flooding).

Floodplain Management means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works and floodplain management regulations.

Floodplain Management Regulations means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a floodplain ordinance, grading ordinance and erosion control ordinance), and other applications of police power that provide standards for the purpose of flood damage prevention and reduction.

Structure means a walled and roofed building that is principally above ground, gas or liquid storage facility, as well as a mobile home or manufactured unit.
Sec. 5-36. Agency Designated. Pursuant to the provisions of the state construction code (The Stille-Derossett-Hale Single State Construction Code Act, Act No. 230 of the Public Acts of 1972, along with its authorization of the state construction code composed of the Michigan Residential Code and the Michigan Building Code), and in accordance with Section 8b(6) of Act

230, the Public Acts of 1972, as amended, the Building Official of the City of Midland is hereby designated as the enforcing agency to discharge the responsibility of the City of Midland under Act 230, of the Public Acts of 1972, as amended, State of Michigan. The City of Midland assumes responsibility for the administration and enforcement of said Act throughout its corporate limits.

Sec. 5-37. Code Appendix Enforced. Pursuant to the provisions of the state construction code, in accordance with Section 8b(6) of Act 230, of the Public Acts of 1972, as amended, Appendix G of the Michigan Building Code shall be enforced by the enforcing agency within the City of Midland.

Sec. 5-38. Designation of Regulated Flood Prone Hazard Areas. The Federal Emergency Management Agency (FEMA) Flood Insurance Study (FIS) Entitled County of Midland and dated May 4, 2009 and the Flood Insurance Rate Map(s) (FIRMS) panel number(s) of 26111C; 0162E, 0164E, 166E, 0168E, 0169E, 0188E, 0252E, 0256E, 0257E, 0276E, 0278E, 0279E and 0283E and dated May 4, 2009 are adopted by reference for the purposes of administration of the Michigan Construction Code, and declared to be a part of Section 1612.3 of the Michigan Building Code, and to provide the content of the “Flood Hazards” section of Table R301.2(1) of the Michigan Residential Code.
(Ord. No. 1677, § 9, 04-13-09)

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CODE OF ORDINANCES

Chapter 6

CEMETERIES*

Charter references: Authority of council to enact ordinances relative to establishment and maintenance of cemeteries, § 5.8.

State law references: Cemeteries, M.S.A., Ch. 55; burial, removal permit, M.S.A., §§ 14.226, 14.230.

Constitution reference– Authority of city to maintain, etc., cemeteries, Art. VII, § 23.

Sec. 6-1. City cemeteries designated.
The cemeteries established and maintained either within or without the city by the city of which plats are on file in the office of the city clerk, shall be known as the city cemeteries.

Sec. 6-2. City manager– General powers, duties.
The city manager, subject to the regulations of the city council, shall have the management, supervision, care and improvement of city cemeteries. It shall be his duty to employ such assistants or laborers as may be necessary to properly care for and improve such cemeteries.

Sec. 6-3. Same– Laying out lots, etc.; filing plats.
The city manager shall, if necessary, cause city cemetery grounds to be laid out in lots and walks, cause the lots to be numbered and the avenues and walks therein to be named, and plats thereof to be made. When approved by the city council, such plats shall be filed in the office of the city clerk.

Sec. 6-4. Council to fix lot price.
The city council shall fix the price of lots in the city cemeteries.

Sec. 6-5. Purchase of cemetery lot.
Any person desiring to purchase a lot in any city cemetery shall make application to the city clerk and, if such application shall be granted, the applicant shall pay the required amount for the lot selected to the treasurer, and upon filing a receipt therefor with the city clerk the deed to such lot shall be duly executed and delivered on behalf of the city.

Sec. 6-6. Duties of clerk, manager with respect to sales.
The city clerk shall attend to the selling of city cemetery lots. All deeds to lots shall be executed on behalf of the city by the city manager and the city clerk. The city clerk shall keep proper records in which the deeds to any such lots shall be recorded at length when duly executed and acknowledged according to law. The city clerk shall certify upon every such instrument the date of its registration.

Sec. 6-7. Recording fee.
Every person offering any conveyance of a city cemetery lot for record shall pay to the city clerk a recording fee of one dollar ($1.00), which sum shall be turned into the city treasury and credited to the cemetery fund.

Sec. 6-8. Lots held subject to provisions of chapter, other rules.
All city cemetery lots shall be held subject to this chapter, and such rules and regulations as may be from time to time adopted by the city council.

Sec. 6-9. Where interment to be performed.
No person shall inter or cause to be interred the remains of any deceased person anywhere in the city except in a city cemetery or in a cemetery controlled by a religious society or corporation organized and equipped for that purpose.

Sec. 6-10. Permit required for interment, disinterment, reinterment.
No remains of any body shall be interred in any public or private cemetery unless a burial permit is submitted by the funeral director to the sexton of the cemetery. No remains may be disinterred for reburial in another cemetery unless a "disinterment and reinterment permit" is submitted to the local sexton of the cemetery where the body is interred. A "disinterment and reinterment permit" is not required if the body is to be reburied in the same cemetery.

Sec. 6-11. Interment record to be kept.
The city manager shall cause to be kept a register of all interments made in any city cemetery. Each entry shall include the name of the deceased, age, and the date and place of interment.

Sec. 6-12. Manager to collect fees; paid into cemetery fund.
The city manager shall charge and collect on behalf of the city such fees for work performed in the city cemeteries as may be from time to time fixed by the city council. All such fees shall be paid into the city treasury, and credited to the cemetery fund.

Sec. 6-13. Digging, filling grave.
It shall be the duty of the city manager, when requested by a licensed funeral director having supervision of the burial of any deceased person entitled to burial within a city cemetery, to cause an employee of the city, within a reasonable time, to dig a grave of suitable dimensions and to cause the remains to be buried therein.

Sec. 6-14. Who may perform work in cemetery.
No person other than an employee of the city acting under the direction of the city manager shall dig or open any grave, nor shall any person grade or fill in any lot in any city cemetery unless such work be done under the supervision of the employee in charge of such cemetery.

Sec. 6-15. Trespassing, removing flowers, etc. from cemetery.
No person shall commit trespass or do any act upon the grounds of any city cemetery which shall amount to a desecration of such cemetery. No person shall pick or cut flowers or shrubs except on his own lot, or cut down or disturb any tree within any city cemetery without the permission of the city manager.

Sec. 6-16. Money for perpetual care to go into trust fund; taxation.
All sums of money which are paid into the city treasury for the perpetual care and preservation of cemetery lots, or any monuments, tombs, headstones, markers, urns or other property used in connection therewith shall constitute a trust fund which may be used by the city council as

provided in section 5.9 of the city charter for city purposes. If such funds are used, the city council shall annually place in the budget and raise by taxation four (4) per cent upon such trust fund which shall be used and expended seasonably each year so as to accomplish the purpose of those paying or giving money, and add to the appearance of said cemetery, and for no other purpose whatever.

Sec. 6-17. Cemetery board of trustees created; duties; officers.
The members of the city council, together with the city manager and the city treasurer, are hereby constituted a board of trustees of any cemetery trust funds paid into the city treasurer, including interest on investments. They shall be known as the "Trustees of the City of Midland Cemetery Trust Fund" and their duties shall be to supervise the investment of such funds and to see that the interest thereon is applied to the purpose for which it is intended. The mayor shall be the chairman and the city clerk shall be the clerk of such board of trustees.

Sec. 6-18. Cemetery trust fund internal control.
All sums used by the city from the cemetery trust funds shall be treated as loans from the trustees of the city cemetery trust fund, and shall be evidenced by nonnegotiable notes of the city duly executed in its behalf running to such board of trustees, payable on demand. Such notes, if not paid, shall be renewed at least once in every three (3) years. All such funds, until otherwise used in accordance with the provisions of this chapter, shall be kept by the treasurer in a bank account separate and apart from other city funds. The bond required of the treasurer shall cover all such funds. All investments, whether in notes of the city or otherwise, shall be made upon order of the city council by proper resolution. The city clerk shall keep an accurate record showing from whom such funds are received, the amounts thereof, in each instance, the amount of interest received and the purposes for which it is used.

Sec. 6-19. City council to make cemetery rules.
The city council shall from time to time by resolution make such rules and regulations for the burial of the dead, the care, management and protection of the grounds, monuments and appurtenances of the city cemeteries and for the public use and orderly conduct of persons visiting such cemeteries, as it may deem necessary.

Sec. 6-20. Cemetery rates, charges and fees.
The rates, charges and fees for cemetery spaces and services are as follows:

(1)	Purchase prices (single grave rates):		Resident	Non-Resident	
	a.	Adult space, standard section....	$ 525.00	$ 785.00	
	b.	Adult space, flush marker section....	460.00	690.00	
	c.	Infant space, Little Shepherd....	155.00	235.00	
	d.	Cremation space....	120.00	180.00	
(2)	Perpetual care (added to interment cost when not previously paid):				
	a.	Adult space, standard section....	175.00	262.50	
	b.	Adult space, flush marker section....	155.00	232.50	
	c.	Infant space, Little Shepherd....	52.50	80.00	
	d.	Cremation space....	40.00	60.00	
(3)	Interment/disinterment:		Regular Fee	After 4:00 pm	Saturday

	a.	Adult....	$ 485.00	575.00	830.00
	b.	Child (3÷– 5÷ length)....	345.00	435.00	690.00
	c.	Infant (2÷– 3÷ length)....	220.00	310.00	565.00
	d.	Inurnment (Cremation)....	125.00	215.00	470.00
(4)	Indigent grave space:				
	a.	Adult....			$ 80.00
	b.	Infant/child....			60.00
	c.	Any resident who is indigent will have one (1) grave space on a Terrace Lot available at a cost of eighty dollars ($80.00) for an adult and sixty dollars ($60.00) for an infant/child with waiver of the perpetual care fee. Indigent interment charges will prevail. Limitations on stone placement shall apply in accord with subsection 6-20(4)(d).			
	d.	Monuments or markers shall be permitted upon the graves of persons buried under special rates for indigent status if either of the following occurs:			
		1. A veterans marker is provided by the government, or			
		2. An additional payment to the city equal to the balance of cost for an adult space in a standard section for an adult, or the balance of cost for an infant space in Little Shepherd section for an infant, plus interment and perpetual care fees prevailing at the time of interment.			
(5)	Indigent interment/disinterment, adult or child				$200.00
(6)	Foundation fees:				
	a.	Minimum Charge (<300 sq. in.)....			$ 120.00
	b.	Cost/square inch (>300 sq. in.)....			0.40
	c.	Aprons cost/square inch....			0.15
	d.	Removals cost/square inch....			0.15
(7)	Deeds:				
	a.	Duplicate deeds....			$ 15.00
	b.	Transfer of deeds....			15.00

(Ord. No. 1377, § 1, 5-12-97; Ord. No. 1491, § 1, 11-13-00; Ord. No. 1545, § 1, 10-28-02)

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CODE OF ORDINANCES

Chapter 7

ENHANCED ACCESS TO PUBLIC RECORDS

Sec. 7-1. Purpose.
The purpose of this chapter is to establish a policy for enhanced access to public records in accordance with Act 462 of 1996 of the Public Acts of the State of Michigan.

Sec. 7-2. Definitions.
The following definitions shall apply to this chapter.
a. "Enhanced access" means a public record's immediate availability for public inspection, purchase, or copying by digital means. Enhanced access does not include the transfer of ownership of a public record.

b. "Geographic information system (GIS)" means an informational unit or network capable of producing customized maps based on a digital representation of geographical data.

c. "Operating expenses" includes, but is not limited to, the City's direct cost of creating, compiling, storing, maintaining, processing, upgrading, or enhancing information or data in a form available for enhanced access, including the cost of computer hardware and software, system development, employee time, and the actual cost of supplying the information or record in the form requested by the purchaser.

d. "Person" means that term as defined in section 2 of the Freedom of Information Act, 1976 PA 442, MCL 15.232.

e. "Public record" means that term as defined in section 2 of the Freedom of Information Act, 1976 PA 442, MCL 15.232.

f. "Reasonable fee" means a charge calculated to enable the City to recover over time only those expenses directly related to the City's provision of enhanced access.

g. " Software" means a set of statements or instructions that when incorporated in a machine-usable medium is capable of causing a machine or device having information processing capabilities to indicate, perform, or achieve a particular function, task, or result.

h. "Third party" means a person who requests access to a geographical information system or output from a geographical information system. However, a third party does not include a person for whom a fee authorized under this ordinance is waived in accordance with an intergovernmental agreement described in Section 7-3.

Sec. 7-3. Policy.

The City Manager may provide enhanced access for the inspection, copying, or purchasing of a public record that is not confidential or otherwise exempt by law from disclosure. Subject to

Section 7-4
A fee shall be charged in accordance with Section 21-160 for providing enhanced access and for providing access to either the City's geographic information system or the output from the City's geographic information system. Notwithstanding the foregoing, the City Manager may provide another public body, without charging a fee to that public body, if the access to or output from the geographic information system is provided in accordance with a written agreement that contains all of the following:

a. A statement specifying that the public body receiving access to or output from the geographic information system without charge is prohibited from providing access to the geographic information system output to a third party unless that public body does both of the following:

i. Collects from the third party a fee described in Section 21-160, or waives that fee in accordance with the written terms of the intergovernmental agreement.

ii. Conveys to the City that portion of any fee collected that is attributable to the operating expenses of the City from the geographic information system to the third party.

b. A statement specifying the public purpose for which access to or output from the City's geographic information system is being provided.

c. A statement specifying the portion of any fee collected under Section 21-160 and collected from a third party that the receiving public body shall convey to the City.

Sec. 7-4 Charges related to a public body for enhanced access.
A public body that receives access to or output from the City's geographic information system under an intergovernmental agreement described in Section 7-3 may collect from a third party to whom it provides access to the output from the City's geographic information system a reasonable fee that includes both of the following:

a. An amount that enables the City to recover over time its operating expenses directly related to providing access to or output from its system to a third party.

b. An amount that enables the receiving public body to recover over time its operating expenses directly related to providing to a third party access to or output from its system.
(Ord. No. 1667, § 1, 11-10-08)

* Editors Note: Ord. No. 1512, § 9, adopted July 23, 2001, repealed ch. 7, art. I--IV, in its entirety. Formerly, ch. 7 pertained to the electrical code and derived from Ord. No. 921, § 2, adopted November 7, 1977; Ord. No. 998, § 1, adopted May 11, 1981; Ord. No. 1262, §§ 1, 2, adopted April 26, 1993; Ord. No. 1469, § 1, adopted March 20, 2000.

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CODE OF ORDINANCES

Chapter 8

FIRE PREVENTION AND PROTECTION*

* Editors Note: Ord. No. 1364, §§ 1 and 2, adopted January 6, 1997, amended the Code by repealing former Ch. 8, §§ 8-1--8-4, and 8-24--8-39, and added a new Ch. 8, §§ 8-1--8-4, 8-10 and 8-11. Former Ch. 8, pertained to similar subject matter and derived from Ord. No. 781, adopted August 30, 1971; and Ord. No. 940, adopted October 30, 1978.

Charter References: Council authorized to adopt technical ordinances, by reference, § 6.6.

Cross References: Buildings and building regulations, Ch. 5; housing code, Ch. 12; exitways required in dwelling units, § 12-51; fire prevention at certain amusements, § 15-36; police and fire alarms, Ch. 31.

State Law References: Fire prevention generally, M.S.A., Ch. 26; authority of city to adopt fire prevention codes, § 5.2073(k); sale, display and use of fireworks prohibited, § 28.440(1).

Art. I. International Fire Code, §§ 8-1--8-2, 101.1 -105.8.5

Art. II. Amendments and Penalty, §§ 8-10, 108-1 - 109-3

ARTICLE I
INTERNATIONAL FIRE CODE

Sec. 8-1. Amendments to the International Fire Code adopted.
The International Fire Code and its future amendments were adopted on July 23, 2001 through the Michigan Building Code Section 5-5 of Article II of Chapter 5 of the City of Midland Code of Ordinances. Article I of this chapter sets out the International Fire Code local amendments. The numbering of Article I subsections conforms with the sections of the International Fire Code being amended for local regulation, compliance and enforcement.
(Ord. No. 1364, § 1, 1-6-97; Ord. No. 1719, § 1, 10-24-11)

Section 8-2. Changes in code.
The following sections and subsections of the International Fire Code are hereby amended or deleted as set forth and additional sections and subsections are added as indicated in this section. Subsequent section numbers used in this section shall refer to the like numbered sections of the International Fire Code.
(Ord. No. 1364, § 1, 1-6-97; Ord. No. 1719, § 1, 10-24-11)

Sec. 101.1 Title. Section amended to read as follows:

Sec. 101.1 Title.
These following regulations shall be known as the International Fire Code local amendments along with the International Fire Code, hereinafter referred to as “this code”.
(Ord. No. 1719, § 1, 10-24-11)

Sec. 102.6 Referenced codes and standards. Section amended to read as follows:
Sec. 102.6 Referenced codes and standards.
The codes and standards referenced in this code shall be those that are listed in Chapter 45 of the International Fire Code and such codes and standards shall be considered part of the requirements of this code to the prescribed extent of each such reference. Where differences occur between the provisions of this code and the referenced standards, the provisions which establish the higher standard for the promotion of the safety and welfare of the public, and the protection of the public, or as otherwise determined by State of Michigan law, shall apply.
(Ord. No. 1719, § 1, 10-24-11)

Sec. 103.1 General. Section amended to read as follows:
Sec. 103.1 General.
The fire department shall be responsible for fire control and suppression, fire prevention education, fire safety inspections and fire code enforcement of buildings and occupancies as related to the risk of fire, explosion or hazards related to materials storage and handling within the city of Midland. The Fire Prevention Division is established under the direction of the fire code official and shall be comprised of the Fire Marshal, its designee and/or others it deems necessary. The function of the division shall be the implementation, administration and enforcement of the provisions of this code. The division shall be tasked with reducing community fire risk through proactive measures, including education, fire safety inspections, plan review and code enforcement. The division shall operate under the supervision of the Fire Marshal as directed by the Fire Chief.
(Ord. No. 1719, § 1, 10-24-11)

Sec. 104.2.1 Inspections. After Section 104.2, add Section 104.2.1 as follows:
Sec. 104.2.1 Inspections.
The fire department is authorized to assess fire safety re-inspection fees as established in chapter 21 of the Code of Ordinances.
(Ord. No. 1719, § 1, 10-24-11)

Sec. 104.2.2 Services. After Section 104.2.1, add Section 104.2.2 as follows:
Sec. 104.2.2 Services.
The fire department is authorized to assess fees for services provided as established in chapter 21 of the Code of Ordinances. Services include, but are not limited to emergency responses, standby at downed power lines, standby at events, and training provided.
(Ord. No. 1719, § 1, 10-24-11)

Sec. 105.1.2 Types of permits. Section amended to read as follows:
Sec. 105.1.2 Types of permits.
There shall be three (3) types of permits as follows:
1. Operational Permit. An operational permit allows the applicant to conduct an operation or business for which a permit is required by Section 105.6 for either:
A. A prescribed period of time; or
B. Until renewed or revoked.
2. Construction Permit. A construction permit allows the applicant to install or modify systems and equipment for which a permit is required by Section 105.7.

3. Occupancy Permit. An occupancy permit allows the applicant to occupy existing premises for the purpose of conducting or operating a business for which a permit is required by Section 105.8 or for any residential use or purpose.
(Ord. No. 1719, § 1, 10-24-11)

Sec. 105.6 Required operational permits. Section amended to read as follows:
Sec. 105.6 Required operational permits.
The fire code official is authorized to issue operational permits for operations set forth in Sections 105.6.1 through 105.6.46.
(Ord. No. 1719, § 1, 10-24-11)

Sec. 105.6.13 Special events. Section amended to read as follows:
Sec. 105.6.13 Special events.
An operational permit is required to operate/conduct all special events, as defined in the Zoning Ordinance, including exhibits, crafts, and trade shows.
(Ord. No. 1719, § 1, 10-24-11)

Sec. 105.6.13.1 Permit fee. After Section 105.6.13, add Section 105.6.13.1 as follows:
Sec. 105.6.13.1 Permit fee.
Permit fees shall be established in chapter 21 of the Code of Ordinances.
(Ord. No. 1719, § 1, 10-24-11)

Sec. 105.6.14.1 Fireworks. After Section 105.6.13.1, add Section 105.6.14.1 as follows:
Sec. 105.6.14.1 Fireworks.
An operational permit is required for the public display and retail display and sale of fireworks. Application for permits shall be made in writing at least fifteen (15) days in advance of the date of the public display, retail display or sale of fireworks. The sale, possession, and distribution of fireworks for such display shall be lawful under the terms and conditions approved with the permit and for only that purpose and must fully comply with local, state and federal regulations. A permit granted hereunder shall not be transferable nor shall any such permit be extended beyond the time set forth therein unless approved by the fire code official.
(Ord. No. 1719, § 1, 10-24-11)

Sec. 105.6.14.2 Permit fee. After Section 105.6.14.1, add Section 105.6.14.2 as follows:
Sec. 105.6.14.2 Permit fee.
Permit fees shall be established in chapter 21 of the Code of Ordinances.
(Ord. No. 1719, § 1, 10-24-11)

Sec. 105.6.20 Hazardous materials. Section amended to read as follows:
Sec. 105.6.20 Hazardous materials.
An operational permit is required to store, transport on site, dispense, use or handle hazardous materials, as defined by the National Fire Protection Association, in excess of the most restrictive amounts listed in this code, the EPA's Emergency Planning and Community Right To Know regulations, and MIOSHA's Firefighter Right To Know regulations.
(Ord. No. 1719, § 1, 10-24-11)

Sec. 105.6.20.1 Required amounts for reporting. After Section 105.6.20, add Section 105.6.20.1 as follows:
Sec. 105.6.20.1 Required amounts for reporting.

Reportable quantities shall be considered the maximum amount of hazardous material on site at any given time. This amount shall be reported to the fire department in accordance with SARA Title III requirements.
(Ord. No. 1719, § 1, 10-24-11)

Sec. 105.6.20.2 Permit fees. After Section 105.6.20.1, add Section 105.6.20.2 as follows:
Sec. 105.6.20.2 Permit fees.
Permit fees shall be established in chapter 21 of the Code of Ordinances.
(Ord. No. 1719, § 1, 10-24-11)

Sec. 105.7.1.1 Installations. After Section 105.7.1, add Section 105.7.1.1 as follows:
Sec. 105.7.1.1 Installations.
Before any fire alarm, detection, control or suppression system is installed, expanded or modified in any way, a permit shall be obtained from the fire code official. This shall include any components connected to or controlled by the aforementioned systems. All work shall be performed by a qualified, properly licensed and/or certified installer, whose credentials shall be made available for examination by the fire code official on demand. Construction documents shall be reviewed and approved by the fire code official prior to issuance of the permit. Upon issuance, the permit shall be posted at the job site, both residential and commercial, in plain view. The fire code official is authorized to require construction documents in hard copy, a suitable electronic format, or both.
(Ord. No. 1719, § 1, 10-24-11)

Sec. 105.7.1.2 Permit fees. After Section 105.7.1.1, add Section 105.7.1.2 as follows:
Sec. 105.7.1.2 Permit fees.
Permit fees shall be established in chapter 21 of the Code of Ordinances.
(Ord. No. 1719, § 1, 10-24-11)

Sec. 105.7.3.1 Installations. After Section 105.7.3, add Section 105.7.3.1 as follows:
Sec. 105.7.3.1 Installations.
Before any fire alarm or detection system is installed, expanded or modified in any way, a permit shall be obtained from the fire code official. This shall include any components connected to or controlled by the aforementioned systems. All work shall be performed by a qualified, properly licensed and/or certified installer, whose credentials shall be made available for examination by the fire code official on demand. Construction documents shall be reviewed and approved by the fire code official prior to issuance of the permit. Upon issuance, the permit shall be posted at the job site, both residential and commercial, in plain view. The fire code official is authorized to require construction documents in hard copy, a suitable electronic format, or both.
(Ord. No. 1719, § 1, 10-24-11)

Sec. 105.7.14 Permit issuance. After Section 105.7.13, add Section 105.7.14 as follows:
Sec. 105.7.14 Permit issuance.
A permit granted hereunder shall not be transferable nor shall any permit be extended beyond the time set forth therein unless approved, in writing, by the fire code official. When work is started without a permit, the permit fee shall be doubled.
(Ord. No. 1719, § 1, 10-24-11)

Sec. 105.8 Required occupancy permit. After Section 105.7.14, add Section 105.8 as follows:
Sec. 105.8 Required occupancy permit.
The fire code official is authorized to issue or approve an occupancy permit for a business or residential use or purpose as set forth in Section 105.8.1 through 105.8.5.

(Ord. No. 1719, § 1, 10-24-11)

Sec. 105.8.1 Use group. After Section 105.8, add Section 105.8.1 as follows:
Sec. 105.8.1 Use group.
An occupancy permit is required for Use Groups A, B, F, H, I, M, R1, R2, R4, S and U.
(Ord. No. 1719, § 1, 10-24-11)

Sec. 105.8.2 Inventory statement. After Section 105.8.1, add Section 105.8.2 as follows:
Sec. 105.8.2 Inventory statement.
An inventory statement for the intended business shall be provided to the fire code official on request, prior to issuance of the occupancy permit. Inventory statements shall list products or commodities to be used, stored or produced on the premises, along with associated documentation as required by the fire code official.
(Ord. No. 1719, § 1, 10-24-11)

Sec. 105.8.2.1 Hazardous materials inventory statement. After Section 105.8.2, add Section 105.8.2.1 as follows:
Sec. 105.8.2.1 Hazardous materials inventory statement.
Where required by the fire code official, each application for a permit shall include a Hazardous Materials Inventory Statement (HMIS) in accordance with Section 2701.5.2.
(Ord. No. 1719, § 1, 10-24-11)

Sec. 105.8.3 Permit application. After Section 105.8.2.1, add Section 105.8.3 as follows:
Sec. 105.8.3 Permit application.
An occupancy permit application shall be filed with the fire code official prior to occupancy. The fire code official shall review the application, inventory statement (where required), and any associated documentation, and conduct any necessary inspections and meetings before an occupancy permit is issued in conjunction with the building department.
(Ord. No. 1719, § 1, 10-24-11)

Sec. 105.8.4 Site and building preparation. After Section 105.8.3, add Section 105.8.4 as follows:
Sec. 105.8.4. Site and building preparation.
As part of the occupancy permit, the intended occupancy shall meet the following requirements:

1. The building and any associated fire protection and life safety features shall comply with the requirements of this code.
2. Fire apparatus access roads and fire lanes shall be designated and posted in compliance with Section 503.
3. An address shall be posted in compliance with Section 505.
4. A building and/or tenant floor plan shall be provided to the fire code official in an approved format on request.
5. A Key Box (Knox Box) shall be installed as required by the fire code official in accordance with Section 506.
6. Fire department connections shall be equipped with Knox Plugs as required by the fire code official.

(Ord. No. 1719, § 1, 10-24-11)

Sec. 105.8.5 Notification of changes. After Section 105.8.4, add Section 105.8.5 as follows:
Sec. 105.8.5 Notification of changes.
Changes in occupancy or use shall be made to, and approved by the fire code official before such changes occur.

(Ord. No. 1719, § 1, 10-24-11)

ARTICLE II.
INTERNATIONAL FIRE CODE BOARD OF APPEALS

Sec. 8-10. International Fire Code Board of Appeals.
(Ord. No. 1364, § 2, 1-6-97; Ord. No. 1719, § 1, 10-24-11)

Sec. 108.1 Board of Appeals. Section amended to read as follows:
Sec. 108.1 Board of Appeals.
In order to hear and decide appeals of orders, decisions or determinations made by the fire code official relative to the application and interpretation of this code, there shall be and is hereby created a board of appeals.
(Ord. No. 1719, § 1, 10-24-11)

Sec. 108.1.1 Creation of; appointment. After Section 108.1, add Section 108.1.1 as follows:
Sec. 108.1.1 Creation of; appointment.
There is hereby established a fire board of appeals, hereinafter referred to as the board, which shall consist of four (4) members appointed by the city council. The fire code official shall serve as an ex-officio member of said board and shall have no vote on any matter before the board. The remaining three (3) members of the board shall consist of members who are qualified by experience and training to pass on matters pertaining to hazards of fire, explosions, hazardous conditions or fire protection systems and are not employees of the city.
(Ord. No. 1719, § 1, 10-24-11)

Sec. 108.1.2 Term of office. After Section 108.1.1, add Section 108.1.2 as follows:
Sec. 108.1.2 Term of office.
The term of office for members of the board shall be for three (3) years from March 1, 2012, or until the successor to any members shall take office, except that for the initial term the terms of the members shall be adjusted so that the term of one (1) member shall expire on June 30, 2012, the term of one (1) member shall expire on June 30, 2013, and the term of one (1) member shall expire on June 30, 2015. The term of the fire code official shall be for the tenure in office.
(Ord. No. 1719, § 1, 10-24-11)

Sec. 108.1.3 Internal management. After Section 108.1.2, add Section 108.1.3 as follows:
Sec. 108.1.3 Internal management.
The board shall elect its own chairman and adopt its own rules of procedures for conducting its business. The fire code official shall serve as permanent secretary for the board. All meetings shall be open to the public and operate under the Open Meetings Act (Act 267 of 1976) and shall follow Roberts Rules of Order as a guideline. The board shall keep a record of its proceedings, showing the action of the board and the vote of each member upon each appeal considered. The board shall render all decisions and findings in writing to the appellant with a duplicate copy to the fire code official. Three (3) voting members of the board shall constitute a quorum.
(Ord. No. 1719, § 1, 10-24-11)

Sec. 108.1.4 Removing from office; filling vacancies. After Section 108.1.3, add Section 108.1.4 as follows:

Sec. 108.1.4 Removing from office; filling vacancies.
Members of the board may be removed by the city council for inefficiency, neglect of duty, or malfeasance in office. Vacancies occurring otherwise than through the expiration of a term in office shall be filled for the unexpired term by the city council.
(Ord. No. 1719, § 1, 10-24-11)

Sec. 108.1.5 Members to serve without compensation. After Section 108.1.4, add Section 108.1.5 as follows:
Sec. 108.1.5 Members to serve without compensation.
All members of the board shall serve without compensation.
(Ord. No. 1719, § 1, 10-24-11)

Sec. 108.1.6 Liability of board and individual members. After Section 108.1.5, add Section 108.1.6 as follows:
Sec. 108.1.6 Liability of board and individual members.
In no case shall the board or any members thereof be liable for costs in any action or proceeding that may be commenced in pursuance of the provisions of this code.
(Ord. No. 1719, § 1, 10-24-11)

Sec. 108.1.7 Limitations on authority. After Section 108.1.6, add Section 108.1.7 as follows:
Sec. 108.1.7 Limitations on authority.
An application for appeal shall be based on a claim that the intent of this code has been incorrectly interpreted, the provisions of this code do not fully apply, or an equivalent method of protection or safety is proposed. The board shall have no authority to waive requirements of this code.
(Ord. No. 1719, § 1, 10-24-11)

Sec. 108.1.8 Submitting an appeal. After Section 108.1.7, add Section 108.1.8 as follows:
Sec. 108.1.8 Submitting an appeal.
An application for appeal must be submitted, in writing, within ten (10) business days of the date of issuance of the fire code official's issuance of order, infraction or other notice. Said appeal must include the name and all contact information; copy of the order, infraction or other notice; grounds for appeal; and, remedies sought.
(Ord. No. 1719, § 1, 10-24-11)

Sec. 109.3 Violation penalties. Section amended to read as follows:
Sec. 109.3 Violation penalties.
Persons who shall violate any provision of this code or shall fail to comply with any requirements thereof or who shall erect, install, alter, repair, service, test or do work in violation of the approved construction documents or directive of the fire code official, or of a permit or certificate used under provisions of this code, shall be responsible for a municipal civil infraction. Upon conviction of such infraction, such person shall be punished as provided in chapter 34 and fined according to chapter 21 of the Code of Ordinances. The imposition of one (1) municipal civil infraction fine for any violation shall not excuse the violation or permit to continue and all such persons shall be required to correct or remedy such violation or defects. Every day of noncompliance shall be deemed a separate violation.
(Ord. No. 1719, § 1, 10-24-11)

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CODE OF ORDINANCES

Chapter 9

FOOD AND FOOD PRODUCTS*

Cross references: Garbage, refuse and litter, Ch. 10; health, Ch. 11.

Art. I. In General, §§ 9-1– 9-15
Art. II. Food-handling Facilities, §§ 9-16– 9-35

ARTICLE I.

IN GENERAL

Secs. 9-1– 9-15. Reserved.

ARTICLE II.

FOOD-HANDLING FACILITIES*

State law references: General food standards, M.S.A., Ch. 90; pure food laws, Ch. 91; food defined, § 12.872; adulteration of food, § 28-81; authority of city to regulate meat, § 14.121 et seq.

Sec. 9-16. Definitions.
Food-handling facility means any structure, vehicle, device or place, or part thereof, where foods or beverages for direct human consumption without the necessity of prior cooking are prepared, or perishable or unpackaged foods or beverages are kept. Further, such foods or beverages must be offered for sale or delivery to the general public, or provided for a fee to a resident population. Such use may be either continuous or temporary.
State licensed food-handling facility means any food-handling facility having a license requiring an inspection for safe and sanitary conditions pursuant to state statute or regulation and usually administered by county departments of health.
Health officer means the director of the Midland City-County Health Department and his authorized staff.
(Ord. No. 886, § 2, 5-10-76)

Sec. 9-17. Application of article to food manufacturers.
The provisions of this article regarding licensing and scoring of food-handling facilities shall not apply to manufacturers of food, where such food is not handled by human hands, and is prepared and packed by machinery.
(Ord. No. 886, § 2, 5-10-76; Ord. No. 1011, § 1, 2-8-82)

Sec. 9-18. Powers of health officer.

The health officer shall have authority to carry out the provisions of this article.
(Ord. No. 886, § 2, 5-10-76)

Sec. 9-19. Business license.
Every person, before engaging in the operation of a food-handling facility within the city limits, except a state licensed food-handling facility, shall make application to the city clerk for a license, pursuant to the provisions of Chapter 15 of the Code of Ordinances. The application blank shall be sent to the city health officer, who shall inspect the applicant's place of business. If, upon inspection, the health officer approves the place of business, food-handling methods, and general sanitation requirements, the city clerk may issue a business license upon the payment of the food license fee required by section 21-36 of Chapter 21 of the Code of Ordinances.
(Ord. No. 886, § 2, 5-10-76)

Sec. 9-20. Suspension, revocation of license.
The health officer may suspend or revoke any food-handling facility license for failure of the licensee to comply with any of the requirements of this article.
(Ord. No. 886, § 2, 5-10-76)

Sec. 9-21. Score card for sanitary rating.
The health officer shall have the authority to formulate a score card for rating food-handling facilities as to the sanitary conditions existing at such a facility.
(Ord. No. 886, § 2, 5-10-76)

Sec. 9-22. Health officer empowered to enter for inspection.
The health officer shall have the power and right to enter upon and inspect the premises of each food-handling facility licensed under this article at all reasonable times. Each application for a license under this article shall constitute a consent to such entry and inspection by the licensee.
(Ord. No. 886, § 2, 5-10-76)

Sec. 9-23. Reinspection of licensed establishments.
A reinspection of any food-handling facility licensed under this article having had its license suspended or desiring to raise the score or rating shall be made by the health officer within ten (10) days of the receipt of a written statement from the license, stating that the conditions that were found to be at fault on the last inspection have been corrected.
(Ord. No. 886, § 2, 5-10-76)

Secs. 9-24– 9-26. Reserved.
Editor's note: Section 2 of Ord. No. 1011, enacted Feb. 8, 1982, repealed former §§ 9-24– 9-26, which pertained to food handlers' permit cards and derived from Ord. No. 886, § 2, enacted May 10, 1976.

Sec. 9-27. Health officer may require physical examination.
When required by the health officer, any food peddler or the manager or owner of a food-handling facility or the employees of such manager or owner, shall submit to a physical examination to determine freedom from communicable diseases.
(Ord. No. 886, § 2, 5-10-76)

Sec. 9-28. Condemning, seizing food or drink; samples; destruction.
The health officer is empowered to seize, condemn or exclude from sale, delivery or distribution in the city any spoiled, contaminated, adulterated food or drink or any food or drink unfit for

human consumption, or any food or drink which has been exposed to dust, flies, or vermin in violation of the terms of this article. The health officer is empowered to destroy or denaturize all food or drink condemned as unfit for human consumption and to issue an order or statement to the owner of such food or drink stating the reason therefore, and if done in good faith, such officer shall not be held for any damages, arising therefrom. Any food-handling facility licensed under this article shall, upon request, furnish free of charge a sample of food or drink, or meat, meat food product, fish, poultry or any material used in the preparation of these meats or foods, of sufficient quantity for examination or testing purposes.
(Ord. No. 886, § 2, 5-10-76)

Sec. 9-29. Sanitation requirements generally.
Except as otherwise specifically defined or described in this article, the provisions of the unabridged grading form of the 1962 Edition of the "United States Public Health Service Food Service Sanitation Ordinance and Code" are hereby adopted and incorporated herein by this reference. Rules and regulations contained in said code having application to food-service establishments shall apply to food-handling facilities. The applicable provisions of this code shall form the basis of the inspections and requirements cited in this article. Nothing in this section shall exempt the license applicant or holder from any other article or regulatory requirement of the city.
(Ord. No. 886, § 2, 5-10-76)

Sec. 9-30. Plan review of future construction.
When a food-handling facility is hereafter constructed of extensively remodeled, or when an existing structure is converted for use as a food-handling facility, properly prepared plans and specifications for such construction, remodeling or alteration showing layout, arrangement, and finish materials of work areas, and the location, size, and type of fixed equipment and facilities shall be submitted to the health authority for approval before such work is begun.
(Ord. No. 886, § 2, 5-10-76)

Sec. 9-31. When displayed meat is to be refrigerated.
No meat, meat food products, or any cut or chopped meats, shall be displayed or exhibited from any market except under properly enclosed refrigeration, with the exception of dried sausages, dried meats, canned meats, smoked and covered hams and bacons or other smoked meats.
(Ord. No. 886, § 2, 5-10-76)

Sec. 9-32. Refrigeration standards.
All fresh meat products, including fish and poultry, that are required to be kept under refrigeration shall be stored in a refrigerator lined with an impervious material and shall be properly connected to a sewer or provided with another approved method of drainage. The temperature of the refrigerator or refrigerated showcase shall not exceed forty-five (45) degrees Fahrenheit at any time. such owner or manager of a food-handling facility offering meat products requiring refrigeration shall provide such thermometers as may be necessary to indicate the temperature of any meat storage.
(Ord. No. 886, § 2, 5-10-76)

Sec. 9-33. Only inspected meat and meat products to be sold.
No person shall sell within the city or offer for sale, any fresh red meat, poultry, rabbit or such meat food product, for human consumption which has not been slaughtered in facilities inspected and passed by inspectors of either the United States Government, the State of Michigan or by the health officer.
(Ord. No. 886, § 2, 5-10-76)

Sec. 9-34. Bacterial counts.
The standard plate count of milk and milk products, except buttermilk, cultured buttermilk and sour cream, shall not exceed thirty thousand (30,000) per milliliter after pasteurization.
(Ord. No. 886, § 2, 5-10-76)

Sec. 9-35. Storage, delivery temperature.
All milk and milk products shall be stored and maintained at a temperature of forty (40) degrees Fahrenheit or lower, and delivered at a temperature not higher than fifty (50) degrees Fahrenheit.
(Ord. No. 886, § 2, 5-10-76)

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CODE OF ORDINANCES

Chapter 10

GARBAGE, REFUSE AND LITTER*

Cross references: Removal of dead dogs, § 3-33; fire prevention and protection, Ch. 8; food and food products, Ch. 9; health, Ch. 11; public yards and areas surrounding houses to be kept clean, § 12-110; garbage collection from rental housing units, § 12-121(g); junked, dismantled motor vehicles, § 13-21 et seq.; refuse collection fees, § 21-3 et seq.; sanitary landfill fees, § 21-34; use of public right-of-way, § 22-1.

State law references: Garbage disposal system authorized; annual tax levy for same, M.S.A., § 5.2681; littering, § 28.603(1) et seq.

Art. I. In General, §§ 10-1– 10-29
Art. II. Reserved, §§ 10-30– 10-39
Art. III. Solid Waste Regulation, §§ 10-40– 10-45

ARTICLE I.

IN GENERAL

Sec. 10-1. Short title.
This chapter shall be known and may be cited as the "City of Midland Antilitter Code."

Sec. 10-2. Definitions.
For the purposes of this chapter, the following terms, phrases, words and their derivations shall have the meanings given in this section:

Aircraft is any contrivance now known or hereafter invented, used or designated for navigation or for flight in the air. The word "aircraft" shall include helicopters and lighter-than-air dirigibles and balloons.

Authorized private receptacle is a litter storage and collection receptacle as required and authorized in the garbage collection regulations.

Bulky or heavy items are all individual wastes or filled containers weighing more than fifty (50) pounds or having any one (1) dimension greater than three (3) feet and which cannot be loaded into a city collection vehicle by hand. These wastes include, but are not limited to, appliances; furniture; mattresses; carpeting; moving boxes, lumber, drywall, windows, shingles and other building products; bathroom and kitchen fixtures; tires and wheels; scrap metal; asphalt; concrete and other masonry rubble; loose soil; tree stumps; logs; cut tree branches; and brush.

Commercial handbill is any printed or written matter, any sample or device, dodger, circular, leaflet, pamphlet, paper, booklet, or any other printed or otherwise reproduced originals or copies of any matter of literature:

(1) Which advertises for sale any merchandise, product, commodity or thing;

(2) Which directs attention to any business or mercantile or commercial establishment, or other activity, for the purpose of either directly or indirectly promoting the interest thereof by sales;

(3) Which directs attention to or advertises any meeting, theatrical performance, exhibition, or event of any kind, for which an admission fee is charged for the purpose of private gain or profit; but the terms of this clause shall not apply where an admission fee is charged or a collection is taken up for the purpose of defraying the expenses incident to such meeting, theatrical performance, exhibition, or event of any kind when either of the same is held, given or takes place in connection with the dissemination of information which is not restricted under the ordinary rules of decency, good morals, public peace, safety and good order; provided that nothing contained in this clause shall be deemed to authorize the holding, giving or taking place of any meeting, theatrical performance, exhibition, or event of any kind without a license where such exhibition is or may be required by any law of this state or under any ordinance of this city;

(4) Which, while containing reading matter other than advertising matter, is predominantly and essentially an advertisement and is distributed or circulated for advertising purposes or for the private benefit and gain of any person so engaged as advertiser or distributor.

Garbage is putrescible animal and vegetable wastes resulting from handling, preparation, cooking and consumption of food.

Handbill distributor shall mean and include any person engaging or engaged in the business for hire or gain of publishing and distributing commercial and noncommercial handbills, other than newspapers distributed to subscribers thereof, any person engaging or engaged in the business for hire or gain of distributing commercial or noncommercial handbills other than newspapers to subscribers thereof, and any person receiving compensation directly or indirectly for the distribution of such handbills.

Household refuse is all putrescible and nonputrescible solid wastes (except body waste, yard wastes, and bulky or heavy items), including garbage; paper; wrapping; cardboards; tin, glass, and plastic containers; bedding; clothing; crockery and similar materials generated by a private premise that can be placed in a container suitable for loading into a city collection vehicle by hand.

Litter is garbage, refuse, rubbish, bulky or heavy items, household refuse, recyclables, and yard wastes as defined in this section, and all other waste material which, if thrown or deposited as herein prohibited, tends to create a danger to public health, safety and welfare.

Newspaper is any newspaper of general circulation as defined by general law, any newspaper duly entered with the Post Office Department of the United States, in accordance with federal statute or regulation, and any newspaper filed and recorded with any recording officer as provided by general law; and, in addition thereto, shall mean and include any periodical or current magazine regularly published with not less than four (4) issues per year and sold to the public.

Noncommercial handbill is any printed or written matter, any sample, or device, dodger, circular, leaflet, pamphlet, newspaper, magazine, paper, booklet, or any other printed or otherwise reproduced originals or copies of any matter of literature not included in the definition of a "commercial handbill" or "newspaper."

Park is a park, reservation, playground, beach, recreation center or any other public area in the city, owned or used by the city and devoted to active or passive recreation.

Private premises is any dwelling, house, building, or other structure, designed or used either wholly or in part for private residential purposes, whether inhabited or temporarily or continuously uninhabited or vacant, and shall include any yard, ground, walk, driveway, porch, steps, vestibule or mailbox belonging or appurtenant to such dwelling, house, building or other structure.

Public place is any and all streets, sidewalks, boulevards, alleys or other public ways and any and all public parks, squares, spaces, grounds, and buildings.

Recyclable are those items of household refuse that can be collected separately for reuse or remanufacture. These items include newspapers; magazines; corrugated cardboard; aluminum; tin and aluminum food cans; No. 2 plastic containers and plastic milk jugs; and clear, green or brown glass containers.

Refuse is all putrescible and nonputrescible solid waste (except body waste), including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and solid market and industrial wastes.

Rubbish is nonputrescible solid wastes consisting of paper, wrapping, cigarettes, cardboards, tin cans, yard clippings, leaves, wood, glass, bedding, crockery and similar materials.

Vehicle is every device in, upon, or by which any person or property is or may be transported or drawn upon a highway including devices used exclusively upon stationary rails or tracks.
Yard wastes are grass clippings, garden wastes, leaves, twigs and trimmed branches two (2) inches and under in diameter that can be placed into a container suitable for loading into a city collection vehicle by hand.
(Ord. No. 807, § 1, 2-19-73; Ord. No. 1276, § 1, 9-20-93)

Sec. 10-3. Application of chapter.
The provisions of this chapter relating to collection shall not be applicable to any person, company or corporation who immediately destroys all garbage by cremation or some method otherwise satisfactory to the health officer.

Sec. 10-4. Preparation for collection.
Garbage and rubbish, but not including ashes shall be prepared for collection by placing the same in metal or plastic vessels or cans of such capacity as will afford storage capacity for all garbage and rubbish as shall be produced or accumulated on such premises.

Sec. 10-5. Obedience to garbage collection rules and regulations.
To be entitled to be served by the city garbage collection service, residents and businesses shall comply with all garbage collection rules and regulations issued by the city manager and approved by the city council. Such rules and regulations shall be published in the manner provided by the city charter for the publication of ordinances.

Sec. 10-6. Interfering with garbage collection system.
It shall be unlawful for any person to interfere with or hinder the collection of garbage or refuse.

Sec. 10-6.1. Anti-scavenging.
(a) Recyclables. It shall be unlawful for any person other than the owner or occupant of the premises from which containers or items are placed or an employee of the city or its designee to disturb, collect, remove, pick up or pick over, or cause to be disturbed, collected, removed, picked up or picked over, any recyclable after it has been placed in the public right-of-way fronting said premises for collection.

(b) Litter. It shall be unlawful for any person to cause any item, material, container, or the contents thereof, placed in the public right-of-way for collection, to be strewn or scattered upon sidewalks, alleys, streets or other public areas or private premises.

(c) Emergencies. When the city manager determines that the collection, removal, picking up or picking over of refuse materials by persons other than employees of the city or its designee could endanger the public's health or safety, the city manager is hereby authorized to declare that the city is under a "city emergency". The city manager shall cause notice of the city emergency, and notice of the end thereof, to be published by all means deemed appropriate.

After the notice of a city emergency has been published, it shall be unlawful for any person other than an employee of the city or its designee to disturb, collect, remove, pick up or pick over any containers, items or other materials after they have been placed in the public right-of-way for collection.
(Ord. No. 1359, § 1, 10-14-96)

Sec. 10-7. Litter disposal at approved locations.
No person shall dispose of litter except at locations which have been approved and supervised by the city.

Sec. 10-8. Litter in public places.
No person shall throw or deposit litter in or upon any street, sidewalk or public place within the city, except in public receptacles, in authorized private receptacles for collection, or in official sanitary landfills.

Sec. 10-9. To be placed so as to prevent scattering.
Persons placing litter in public receptacles or in authorized private receptacles shall do so in such a manner as to prevent it from being carried or deposited by the elements upon any street, sidewalk or other public place, or upon private property.

Sec. 10-10. Sweeping litter into gutter prohibited.
No person shall sweep into or deposit in any gutter, street or other public place within the city the accumulation of litter from any building or lot or from any public or private sidewalk or driveway. Persons owning or occupying property shall keep the sidewalk in front of their premises free of litter.

Sec. 10-11. Throwing litter from vehicles prohibited.
No person, while a driver or passenger in a vehicle, shall throw or deposit litter upon any street or other public place within the city, or upon private property nor shall any person drive or move any vehicle or truck within the city, the wheels or tires of which carry onto or deposit in any

street, alley or other public place, mud, dirt, sticky substances, litter or foreign matter of any kind.
Cross references: Traffic, Ch. 24.

Sec. 10-12. Truck loads not to cause litter.
No person shall drive or move any truck or other vehicle within the city unless such vehicle is so constructed or loaded as to prevent any load, contents or litter from being blown or deposited upon any street, alley or other public place.
Cross references: Traffic, Ch. 24.

Sec. 10-13. Dropping litter from aircraft.
No person in an aircraft shall throw out, drop or deposit within the city any litter, handbill or any other object.

Sec. 10-14. Litter in parks.
No person shall throw, deposit, or cause to be deposited litter in any park within the city, except in public receptacles, and in such a manner that the litter shall be prevented from being carried or deposited by the elements upon any part of the park or upon any street or other public place.

Where public receptacles are not provided, all such litter shall be carried away from the park by the person responsible for its presence and properly disposed of elsewhere.
Cross references: Parks and recreation, Ch. 17.

Sec. 10-15. Litter in lakes, fountains.
No person shall throw, deposit, or cause to be deposited litter in any fountain, pond, lake, stream, bay or any other body of water in a park or elsewhere within the city.

Sec. 10-16. Litter on occupied private property.
No person shall throw, deposit or cause to be deposited litter on any occupied private property within the city, whether owned by such person or not. The owner or person in control of private property may maintain authorized private receptacles for collection in such a manner that litter will be prevented from being carried or deposited by the elements upon any street, sidewalk or other public place or upon any private property.

Sec. 10-17. Owner to maintain premises free of litter.
The owner or person in control of any private property shall at all times maintain the premises free of litter. This section shall not prohibit the storage of litter in authorized private receptacles for collection.

Sec. 10-18. Litter on vacant lots.
No person shall throw, deposit, or cause to be deposited litter on any open or vacant private property within the city, whether owned by such person or not.

Sec. 10-19. Clearing of litter from open private property by city.
(a) Notice to remove.
The city manager or his duly authorized representative is hereby authorized and empowered to notify the owner of any open or vacant private property within the city, or the agent of such owner, to properly dispose of litter located on such owner's property which is dangerous to public health, safety or welfare. Such notice shall be by registered mail, addressed to said owner at his last known address.

(b) Action upon noncompliance.
Upon the failure, neglect or refusal of any owner or agent so notified, to properly dispose of litter dangerous to the public health, safety or welfare within five (5) days after receipt of written notice provided for in subsection (a) above, or within five (5) days after the date of such notice in the event the same is returned to the city post office department because of its inability to make delivery thereof, provided the same was properly addressed to the last known address of such owner, or agent, the city manager is hereby authorized and empowered to pay for the disposing of such litter, or to order its disposal by the city.

(c) Charge included in tax bill.
When the city has effected the removal of such dangerous litter or has paid for its removal, the actual cost thereof, plus accrued interest at the rate of six (6) percent per annum from the date of the completion of the work, if not paid by such owner prior thereto, shall be charged to the owner of such property on the next regular tax bill forwarded to such owner by the city, and said charge shall be due and payable by said owner at the time of payment of such bill.

(d) Recorded statement constitutes lien.
When the full amount due the city is not paid by such owner within thirty (30) days after the disposal of such litter, as provided for in subsections (a) and (b) above, then, the city manager shall cause to be recorded in the office of the city assessor a sworn statement showing the cost and expense incurred for the work, and the date the work was done. The recordation of such sworn statement shall constitute a lien and privilege on the property, and shall remain in full force and effect for the amount due in principal and interest, plus costs of court, if any, for collection, until final payment has been made. Said costs and expenses shall be collected in the manner fixed by law for the collection of taxes and further, shall be subject to a delinquent penalty of ten (10) percent in the event same is not paid in full on or before the date the tax bill upon which said charge appears becomes delinquent. Sworn statements recorded in accordance with the provisions hereof shall be prima facie evidence that all legal formalities have been complied with and that the work has been done properly and satisfactorily, and shall be full notice to every person concerned that the amount of the statement, plus interest, constitutes a charge against the property designated or described in the statement and that the same is due and collectible as provided by law.

Sec. 10-20. Throwing or distributing commercial and noncommercial handbills and unsolicited newspapers in public places.

No person, firm, organization, association or business shall throw or deposit or cause the throwing or depositing of any commercial or noncommercial handbill or unsolicited newspaper in or upon any sidewalk, street or other public place within the city. No person, firm, organization, association or business shall hand out or distribute or sell or cause the handing out, distributing or selling of any commercial handbill in any public place. It shall not be unlawful on any sidewalk, street or other public place within the city, however, for any person, firm, organization, association or business to hand out or distribute, without charge to the receiver thereof, any noncommercial handbill or newspaper to any person willing to accept it.
(Ord. No. 1147, § 1, 5-9-88)

Sec. 10-21. Commercial and noncommercial handbills and unsolicited newspapers– Placing on vehicles.

No person, firm, organization, association or business shall throw or deposit or cause the throwing or depositing of any commercial or noncommercial handbill or unsolicited newspaper in

or upon any vehicle. It shall not be unlawful in any public place within the city, however, for a person, firm, organization, association or business to hand out or distribute or cause the handing out or distributing, without charge to the receiver thereof, of a noncommercial handbill or newspaper to any occupant of a vehicle who is willing to accept the same.

Exception: Notwithstanding the foregoing, a noncommercial handbill relative to handicapped parking only, expressly approved by the city council which has the approval indicated on the handbill, shall not be subject to the prohibition contained in this section.
(Ord. No. 1147, § 1, 5-9-88; Ord. No. 1208, § 1, 2-4-91)

Sec. 10-22. Same– Depositing on uninhabited or vacant premises.
No person, firm, organization, association or business shall throw or deposit or cause the throwing or depositing of any commercial or noncommercial handbill or unsolicited newspaper in or upon any private premises which are temporarily or continuously uninhabited or vacant.
(Ord. No. 1147, § 1, 5-9-88)

Sec. 10-23. Same– Distributing at inhabited private premises.
No person, firm, organization, association or business shall throw, deposit or distribute or cause the throwing, depositing or distribution of any commercial or noncommercial handbill or unsolicited newspaper in or upon private premises which are inhabited, except by handing or transmitting any such handbill or unsolicited newspaper directly to the owner, occupant or other person then present in or upon such private property. In case of an inhabited private premises which is not posted as provided in section 10-24, however, such person, firm, organization, association or business, unless requested by anyone upon such premises not to do so, may place or deposit any such handbill or unsolicited newspaper in or upon such inhabited private premises, provided that such handbill or unsolicited newspaper shall be placed or deposited on said premises and at the main entrance thereof in such a manner so as to secure or prevent the same from being carried or deposited by the weather upon other places on said premises or on sidewalks, streets other public places or other private property, and provided further that mailboxes may not be used as a receptacle for the same when prohibited by federal postal law or regulations.

The provisions of this section shall not apply to the distribution of mail by the United States nor any agency thereof, nor to newspapers, except for unsolicited newspapers.
(Ord. No. 1147, § 1, 5-9-88)

Sec. 10-23.1. Distributing newspapers at inhabited private premises.
As to newspapers not subject to the provisions of section 10-23, they shall be placed or deposited upon inhabited private property and at the main entrance thereof, or such other place as shall have been agreed upon by the newspaper distributor and the owner or occupant, in such a manner so as to secure or prevent their being carried or deposited by the weather upon other places on said premises or on any street, sidewalk, other public place or other private property.
(Ord. No. 1147, § 1, 5-9-88; Ord. No. 1152, § 1, 6-6-88)

Sec. 10-24. Prohibiting distribution of handbills or unsolicited newspapers where properly posted.

No person, firm, organization, association or business shall throw, deposit or distribute or cause the throwing, depositing or distribution of any commercial or noncommercial handbill or unsolicited newspaper upon any private premises if requested by anyone on such premises not

to do so, or if there is placed on such premises in a conspicuous position near the entrance thereof, a sign bearing the words, "No Trespassing, " "No Peddlers or Agents, " "No Advertisements, " "No Unsolicited Newspapers, " or any similar notice, indicating in any matter that the occupants of such premises do not desire to have their right of privacy disturbed or to have any such handbill or unsolicited newspaper left upon such premises.
(Ord. No. 1147, § 1, 5-9-88)

Sec. 10-25. Violation of chapter declared nuisance.
In addition to the penalty described in section 1-11 for a violation of any provision of this Code, the violation of any provision of this chapter is hereby declared to be a nuisance. Such nuisance may be abated pursuant to the provisions of this Code or state law.
(Ord. No. 1147, § 1, 5-9-88)

Sec. 10-26. Name and address of distributor of handbills.
It shall be unlawful for any person to distribute, deposit, scatter, hand out or circulate any commercial handbill in any place, under any circumstances, which does not have printed on the cover, front or back, or on the first sheet if without cover, thereof, the name and address of the following:
(1) The person who printed, wrote, compiled or manufactured the same.

(2) The person who caused the same to be distributed.

(3) Any local agent of the person who printed, wrote, compiled or manufactured same, or any local agent of the person who caused the same to be distributed if that person resides or has his principal place of business outside the County of Midland.
(Ord. No. 807, § 2, 2-19-73)

Sec. 10-27. Licensing of handbill distributors.
(a) It shall be unlawful for any person to engage in the business of handbill distributor or for any person to distribute commercial or noncommercial handbills for compensation without first obtaining a handbill distributor's license from the city clerk.

(b) Any person desiring to obtain a handbill distributor's license shall make application to and receive from the city clerk a license in the manner and for the period prescribed by the terms of this section. Such applicant shall make written application to the city clerk upon a form or forms provided for such purpose by the city clerk. Such form shall contain, among other things that may be required, the applicant's name, a statement as to whether the applicant is an employee of a licensed handbill distributor, the business address of the applicant or his employer, the residence address of the applicant, a brief description of the nature of the business to be conducted by the applicant if the applicant is other than an employee of a licensed handbill distributor, a statement as to whether the applicant will have agents or employees engaged in distribution, the probable number of agents or employees to be engaged for distribution, together with a request for a license for the period for which the applicant seeks to engage in such business if the applicant is not an employee of a licensed handbill distributor. Such application shall be accompanied by the fee hereinafter provided for in this section.

(c) The city council may revoke any license obtained under an application containing a false or fraudulent statement or for violation of any of the terms of this chapter by the licensee or any agent or employee thereof. No license issued under this section shall be transferable; and if any such license shall be surrendered by the licensee named therein or shall be revoked for cause,

neither the licensee named in such license nor any other person shall be entitled to any part of such fee.

(d) License fees under the terms of this section shall be as follows:

- If as an employee of a licensed distributor only, a one-time charge of one dollar ($1.00).
- If other than an employee of a licensed distributor:
- For a period of one (1) year, the sum of twenty-five dollars ($25.00).
- For a period of three (3) months, the sum of ten dollars ($10.00).
- For a period of one (1) week, the sum of five dollars ($5.00).

(Ord. No. 807, § 2, 2-19-73)
Cross references: Licenses and business regulations generally, Ch. 15.

Secs. 10-28, 10-29. Reserved.

ARTICLE II.

RESERVED*

Editor's note: Ord. No. 1311, § 1, adopted November 7, 1994, repealed Art. II, § 10-30– 10-33, in its entirety. Former Art. II derived from Ord. No. 1174, § 2, adopted August 7, 1989, and pertained to the Midland solid waste advisory commission.
Charter references: City council, § 4.6 et seq.
Cross references: General requirements for members of boards and commissions, § 2-240 et seq.

Secs. 10-30– 10-39. Reserved.

ARTICLE III.

SOLID WASTE REGULATION

Sec. 10-40. Unlawful placement– Household refuse and yard waste.
It shall be unlawful for the owner or occupant or any person or persons, agent, firm or corporation having control or management of any lot, place or parcel of land within the city to permit or allow the presence of household refuse or yard waste within the public right-of-way contiguous to such parcel of land earlier than 6:00 p.m. on the day preceding the weekly scheduled collection day. It shall also be unlawful to permit or allow the presence of household refuse or yard waste in the traveled portion of a street or sidewalk; except that leaves may be placed in the street during the city's special fall collection program. It shall also be unlawful to place yard wastes in containers other than kraft paper compost bags or bins for automated collection as approved by the city's director of public services; except that leaves may be placed loose in the street during the city's special fall collection program.
(Ord. No. 1276, § 2, 9-20-93)

Sec. 10-41. Same– Stumps, logs, cut tree branches, cut brush and bulky or heavy items.
It shall be unlawful for the owner or occupant or any person or persons, agent, firm or corporation having control or management of any lot, place or parcel of land within the city to permit or allow the presence of stumps, logs, cut tree branches, cut brush, bulky or heavy items within the public right-of-way contiguous to such parcel of land earlier than the Saturday preceding the city's monthly scheduled collection day. It shall also be unlawful to permit or allow

the presence of stumps, logs, cut tree branches, cut brush, bulky or heavy items in the traveled portion of a street or sidewalk.
(Ord. No. 1276, § 2, 9-20-93)

Sec. 10-42. Abatement of nuisance by city– Household refuse or yard waste.
In the event the owner or occupant or any person or persons, agent, firm or corporation having control or management of any lot, place or parcel of land within the city fails, refuses or neglects to comply with the provisions of this article, the city and its authorized representatives are hereby empowered to remove and properly dispose of the improperly placed household refuse or yard waste. The first removal of the improperly placed household refuse or yard waste and the first posting of a notice of violation pursuant to section 10-44 at an individual premises shall be considered as an informational warning to the owner or occupant. Each subsequent violation at the same individual premises by the same owner or occupant shall mandate that all expenses incurred by the city in the abatement process described in this section, together with a ten-percent administrative charge (with a minimum charge of ten dollars ($10.00), be reimbursed by the owner or owners of such parcel of land to the city and, in cases where not paid, the city shall have a lien for the same in the manner hereinafter provided.
(Ord. No. 1276, § 2, 9-20-93)

Sec. 10-43. Same– Stumps, logs, cut tree branches, cut brush, bulky or heavy items.
In the event the owner or occupant or any person or persons, agent, firm or corporation having control or management of any lot, place or parcel of land within the city fails, refuses or neglects to comply with the provisions of this article, the city and its authorized representatives are hereby empowered to remove and properly dispose of the improperly placed stumps, logs, cut tree branches, cut brush, bulky or heavy items. The owner or occupant shall be given a seventy-two-hour period after the notice of violation is posted pursuant to section 10-44 to remove the improperly placed materials. If the materials are not removed within the seventy-two-hour period, then the city's director of public services shall direct city forces to remove the same. All expenses incurred by the city in the abatement process described in this section, together with a ten-percent administrative charge (with a minimum charge of fifty dollars ($50.00)) for improperly placed stumps, logs, cut tree branches, cut brush, bulky or heavy items, shall mandate that the city be reimbursed by the owner or owners of such parcel of land and, in cases where not paid, the city shall have a lien for the same in the manner hereinafter provided.
(Ord. No. 1276, § 2, 9-20-93)

Sec. 10-44. Specific notice by posting.
It is hereby made the duty of the city's public services division to post a notice of violation of the improperly placed household refuse, yard waste, stumps, logs, cut tree branches, cut brush, bulky or heavy items and to post a duplicate of such notice on an outside entry door of the contiguous premises.
(Ord. No. 1276, § 2, 9-20-93)

Sec. 10-45. Reimbursement to city; assessment of costs.
Whenever the city's public services division or its authorized representatives accomplish abatement of an existing violation pursuant to the provisions of this article, the city's director of public services is hereby authorized and directed to keep an accurate account of all expenses incurred, and, based on the same, to issue a certificate determining and certifying the costs involved for such work with respect to each parcel of property. The director is also authorized to add to such costs a ten-percent administrative charge to cover the cost of administering the work performed, overhead and other contingent expenses. The minimum charge for city forces to accomplish the abatement of household refuse or yard wastes shall be ten dollars ($10.00)

and the minimum charge for city forces to accomplish the abatement of stumps, logs, cut tree branches, cut brush, bulky or heavy items shall be fifty dollars ($50.00). Within ten (10) days after receipt of such certificate from the director of public services, the city finance director shall forward a statement of the total charges assessed on each parcel of property to the owner as shown by the last current assessment or tax roll, and such assessment shall be payable to the city treasurer within thirty (30) days from the date such statement was forwarded. If not paid within the prescribed thirty-day period, such statement shall be filed by the city finance director with the city assessor, and shall thereupon be assessed against the land in question and become a lien on such property. The amount so charged may be discharged at any time by the payment of the amount specified in the statement, together with interest at the rate of twelve (12) percent per annum compiled from the time of the filing of such statement with the city assessor by the city finance director.
(Ord. No. 1276, § 2, 9-20-93)

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CODE OF ORDINANCES

Chapter 11

HEALTH*

Cross references: Animals and fowl, Ch. 3; cemeteries, Ch. 6; food and food products, Ch. 9; garbage, refuse and litter, Ch. 10; junk, junkyards and secondhand dealers, Ch. 13; streets and sidewalks, Ch. 22; vegetation, Ch. 26; water, sewer and sewage disposal, Ch. 28.

Sec. 11-1. County health officer– Authorized to enforce municipal ordinances.
The health officer of the County of Midland is hereby designated as the health officer of the city, and he, his employees and representatives are hereby authorized to enforce those ordinances of the city requiring the services of the health officer.

Sec. 11-2. Same– Not city employees.
The county health officer, his employees and representatives, by reason of the designation and authorization in section 11-1 shall not be considered employees of the city.

Sec. 11-3. Council authorized to make budget appropriation for county health officer.
The city council is authorized to make budget appropriations to the county health officer in connection with his duties in the enforcement of the health ordinances of the city.
Charter references: Persons declared city employees, § 3.5.

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CODE OF ORDINANCES

Chapter 12

HOUSING CODE*

Cross references: Planning commission, § 2-94 et seq.; housing commission, § 2-146 et seq.; zoning board of appeals, § 2-130 et seq.; buildings and building regulations, Ch. 5; fire prevention and protection, Ch. 8; streets and sidewalks, Ch. 22; subdivisions, Ch. 23; water, sewers and sewage disposal, Ch. 28.

Art. I. In General, §§ 12-1– 12-15
Art. II. Administration, §§ 12-16– 12-43
Art. III. Minimum Equipment and Facilities Standards, §§ 12-44– 12-61
Art. IV. Minimum Standards for Light, Ventilation and Heating, §§ 12-62– 12-80
Art. V. Minimum Space, Use and Location Requirements, §§ 12-81– 12-98
Art. VI. Minimum Standards for Safe and Sanitary Maintenance, §§ 12-99– 12-119
Art. VII. Rental Units, §§ 12-120– 12-132
Art. VIII. Minimum Standards for Rooming Houses and Hotels, §§ 12-133– 12-151
Art. IX. Inspection of Dwellings, Dwelling Units or Habitable Rooms; Condemnation and Demolition of Unfit Dwellings, §§ 12-152– 12-164

ARTICLE I.

IN GENERAL

Sec. 12-1. Short title.
This chapter shall be known as the "Housing Code" of the City of Midland.

Sec. 12-2. Purpose.
The purpose of this chapter is to protect the health, safety and welfare of the people of the city by providing for a housing code establishing minimum housing standards, and to eliminate and prevent the development of slum conditions, determine and establish the responsibilities of owners and occupants of residential buildings, and provide for administration, enforcement and penalties.

Sec. 12-3. Copies on file.
Printed copies of the housing code as herein adopted and hereafter amended shall be kept in the office of the city clerk and made available for public use and inspection, and printed copies thereof shall be made available in the office of the city clerk for distribution to the public at all times.

Sec. 12-4. Conflict with ordinances, codes.
Where a provision of this chapter is found to be in conflict with a provision of any zoning, building, fire, safety or health ordinance or code of the city existing on July 10, 1967, the

provision which establishes the higher standard for the promotion of the health and safety of the people shall prevail. Where a provision of this chapter is found to be in conflict with a provision of any other ordinance or code of the city which establishes a lower standard for the promotion and protection of the health and safety of the people, the provisions of this chapter shall be deemed to prevail.

Sec. 12-5. Definitions.
For the purposes of this chapter, the following terms, phrases, words and their derivatives shall be construed as specified in this section.

Basement shall mean a portion of a building located partly underground, but having less than half its clear floor-to-ceiling height below the average grade of the adjoining ground.

Cellar shall mean a portion of a building located partly or wholly underground, and having half or more than half of its clear floor-to-ceiling height below the average grade of the adjoining ground.

Dwelling shall mean any building which is wholly or partly used or intended to be used for living or sleeping by human occupants.

Dwelling unit shall mean any room or group of rooms located within a dwelling and forming a single habitable unit with facilities which are used or intended to be used for living, sleeping, cooking and eating.

Habitable room shall mean a room or enclosed floor space used or intended to be used for living, sleeping, cooking or eating purposes, excluding bathrooms, water closet compartments, laundries, pantries, foyers, or communicating corridors, closets and storage space.

Hotel shall mean any building containing ten (10) or more rooms intended or designed to be used, or which are used, rented or hired out to be occupied, or which are occupied for sleeping purposes by guests.

Multiple dwelling shall mean any dwelling containing more than two (2) dwelling units.

Nondwelling structure shall mean any structure except a dwelling.

Nuisances. The following shall be defined as nuisances:
(a) Any public nuisance known at common law or in equity jurisprudence.

(b) Any attractive nuisance which may prove detrimental to children whether in a building, on the premises of a building, or upon an unoccupied lot. This includes any abandoned wells, shafts, basements, or excavations; abandoned refrigerators and motor vehicles; or any structurally unsound fences or structures, or any lumber, trash fences, debris, or vegetation which may prove a hazard for inquisitive minors.

(c) Whatever is dangerous to human life or is detrimental to health.

(d) Overcrowding a room with occupants.

(e) Insufficient ventilation or illumination.

(f) Inadequate or unsanitary sewerage or plumbing facilities.

(g) Uncleanliness.

(h) Whatever renders air, food, or drink unwholesome or detrimental to the health of human habitation.

Owner shall mean every person who is listed on the records in the office of the city assessor as owning a parcel of property on which any dwelling or dwelling unit is located.

Rooming house shall mean any dwelling, or that part of any dwelling containing one or more rooming units, in which space is let by the owner to three (3) or more persons who are not husband or wife, son or daughter, grandson or granddaughter, mother or father, or sister or brother of the owner or operator.

Rooming unit shall mean any room or group of rooms forming a single habitable unit used or intended to be used for living and sleeping, but not for cooking or eating purposes.

Standard room partition shall mean a partition extending from the floor to the ceiling, constructed with wood studs at least two (2) inches by four (4) inches (nominal dimensions) and covered on both sides with a suitable material not less than one-fourth (1/4) of an inch thick, except that wood studs two (2) inches by three (3) inches (nominal dimensions) may be used for interior nonbearing partitions.

Story shall mean that portion of a building included between the upper surface of any floor and the upper surface of the floor next above, except that the topmost story shall be that portion of a building included between the upper surface of the topmost floor and the ceiling or roof above. If the finished floor level directly above a basement or cellar is more than six (6) feet above grade, such basement or cellar shall be considered a story.

Substandard building. Any building or portion thereof, including any dwelling unit, guest room, or the premises on which the same is located, in which there exists any conditions to an extent that endangers the life, limb, health, property, safety, or welfare of the public or the occupants thereof, arising from any of the following: Inadequate sanitation, structural hazards, nuisance, hazardous wiring, hazardous plumbing, hazardous mechanical equipment, faulty weather protection, fire hazard, faulty materials or construction, hazardous or unsanitary premises, inadequate exits, inadequate fire protection, or improper occupancy.

Secs. 12-6– 12-15. Reserved.

ARTICLE II.

ADMINISTRATION

Sec. 12-16. Application of chapter.
The provisions of this chapter shall apply to all buildings used or designed or intended to be used for human habitation. Such occupancies and uses in existing buildings may be continued if such use or occupancy was legal at the time of adoption of this chapter; provided that such structures are not substandard and such continued use is not dangerous to life. The decision of the building official therein shall be subject to appeal to the appeal board as provided in this chapter.

Sec. 12-17. Alteration and relocations.
Existing buildings which are altered or enlarged shall be made to conform to this chapter insofar as the new work is concerned, and in accordance with the provisions of the building code as adopted by the city. Existing buildings which are moved or relocated shall be considered new buildings and shall comply with all the requirements of this chapter.

Sec. 12-18. Enforcing officer.
The enforcement officer of this chapter shall be the chief building official, who is hereby authorized and directed to enforce the provisions thereof, and the term building official as used in this chapter shall mean the chief building official or his duly designated and authorized representative.
Cross references: Buildings and building regulations, Ch. 5.

Sec. 12-19. Inspection authorized; access.
The building official is hereby authorized to make inspections to determine the condition of dwellings, dwelling units, lodging units, and premises located within the city in order that he may perform his duty of safeguarding the health and safety of the occupants of dwellings and the general public. For the purpose of making such inspections and to perform any duty imposed upon him by this chapter, the building official is hereby authorized according to law to enter, examine, and survey at all reasonable times all such premises. The owner or occupant of every dwelling unit, or the person in charge thereof shall give the building official free access to such dwelling at all reasonable times for the purpose of such inspection, examination, and survey.

Every occupant of a dwelling or dwelling unit shall give the owner thereof, or his agent or employee, access to any part thereof at all reasonable times for the purpose of making such inspection.

Sec. 12-20. Frequency of inspections.
The building official shall cause a periodic inspection to be made of every multiple dwelling or leased dwelling unit. Such inspection shall include a thorough examination of all parts of such dwelling and the premises connected therewith. The building official is also empowered to make similar inspections of all dwellings as frequently as may be necessary or convenient.

Sec. 12-21. Notice of violation– Generally.
Whenever the building official determines that there exists a violation of any provisions of this chapter, he shall give notice of such violation to the person responsible therefor and order compliance. Such notice and order shall:
(a) Be in writing.

(b) Include a list of violations referring to the sections of the code violated.

(c) Set a reasonable time, not to exceed ninety (90) days in any event, for the performance of any act it requires.

(d) Contain an outline of remedial action which, if taken, will effect compliance with the provisions of this chapter.

(e) Advise the owner or occupant of the procedure for appeal.

(f) Be served upon the owner or occupant by delivering it to him personally or by leaving the same at his residence, office or place of business with some person of suitable age and discretion who shall be informed of the contents thereof, or by mailing a copy thereof by certified mail to his last known address or if the person to be served is unknown, by posting said notice in some conspicuous place on the premises.

Sec. 12-22. Same– Duplicate notice.
Whenever the owner of a dwelling is notified by the building official of a violation for which he is responsible, a copy of the notice shall also be posted on the premises, delivered, or sent by ordinary mail to the occupants of the dwelling; and whenever an occupant is notified by the building official of a violation for which he is responsible, a copy of the notice shall also be delivered, or sent by ordinary mail to the owner of the dwelling. Failure to send such duplicate notice, however, shall not affect the validity of any proceeding against the owner or occupant.

Sec. 12-23. Removal of substandard buildings.
All buildings or portions thereof which are determined to be substandard as herein defined are hereby declared to be public nuisances and shall be abated by repair, rehabilitation, demolition, or removal in accordance with the procedure as specified in the building code of the city.
Cross references: Building code, Ch. 5.

Sec. 12-24. Emergency procedure.
Whenever the building official shall find an emergency existing which requires immediate action to protect the public health or safety, he shall, without notice or hearing, issue an order reciting the existence of such an emergency and requiring such action be taken as he deems necessary to meet the emergency. Notwithstanding any other provision of this chapter, such order shall be immediately effective and no person shall knowingly violate the provisions of such order.

Sec. 12-25. Order to vacate.
Where a notice of violation and order to comply has been issued as provided by this chapter, and upon reinspection at the end of the time specified for compliance it is found that the violation or violations have not been corrected, or at any time when required in accordance with the emergency procedure, the building official may order the dwelling or the parts thereof affected by the continued violations to be vacated in accordance with the following procedures:
(a) The vacation shall be within a reasonable time as determined by the building official, but not to exceed sixty (60) days.

(b) Vacated buildings shall have all outer doors, windows, or other openings securely boarded so as to prevent entry.

(c) The building shall be posted "Do Not Enter, Unsafe to Occupy."

(d) Such buildings shall not be used for human habitation until all violations have been corrected and a written determination obtained from the building official that the dwelling complies with the provisions of this chapter.

(e) If a dwelling or part thereof is not vacated within the time specified in the vacation order, the building official shall seek a court order in a court of competent jurisdiction for the vacation of such dwelling or part thereof, notwithstanding the fact that such disobedience may also be punishable by fine or imprisonment.

Sec. 12-26. Removal of notices.

No person shall interfere with, obstruct, mutilate, conceal, or tear down any official notice or placard posted by the building official, without his permission.

Sec. 12-27. Housing board of appeals– Created; purpose.
There is hereby created a housing board of appeals in order that the provisions of this chapter and of the Housing Law of Michigan, where applicable, may be properly and reasonably applied and that substantial justice will be done and unnecessary hardship relieved where it would result from the strict application of the provisions hereof and where the intent and spirit of the law and ordinance may be observed and obtained and the public safety secured.
Cross references: Housing commission, § 2-146 et seq.

Sec. 12-28. Same– Membership; appointment; term.
The housing board of appeals shall consist of five (5) members. One (1) member shall be a representative of the city-county health department and shall be appointed by the director of the city-county health department with the approval of the city council. One (1) member shall be the fire chief of the city. The balance of the members are to be appointed by and serve at the will of the city council. The chief building inspector shall be the permanent secretary to the board.
The term of the fire chief shall correspond to his tenure as the fire chief of the city. The term of the remaining members shall be three (3) years, except that the respective terms of two (2) of the members first appointed shall be for two (2) years and two (2) for three (3) years.

Sec. 12-29. Same– Meetings; quorum; record of proceedings.
The housing board of appeals shall meet at such times as such board may determine by general rule adopted. Such board shall adopt its own rules of procedure and keep a record of its proceedings, showing the action of the board and the vote of each member upon each question. Three (3) members shall constitute a quorum.

Sec. 12-30. Appeals to board; petition; fee.
Any person affected by any notice, order, decision or ruling of any official, issued in connection with the enforcement of this chapter, may request and shall be granted a hearing on the matter before the housing board of appeals.

The petition requesting a hearing shall be in writing, and shall specify the name, address and telephone number of the petitioner, and a brief statement of the grounds for appeal, and shall be accompanied by an appeal fee as specified in section 21-51. Such petition shall be filed within ten (10) days after the date the notice and order are served. Upon receipt of such a petition, the chief building official shall set a time for a hearing before the board and shall give the petitioner written notice thereof.
(Ord. No. 1321, § 1, 6-26-95)

Sec. 12-31. Variances.
Applications for variances shall be made in accordance with the same procedure as provided for appeals. Variances may be provided and authorized by the housing board of appeals as to any of the terms, provisions, or requirements of this chapter in accordance with the standards as provided in this chapter.

Sec. 12-32. Hearings before board.
Hearings shall be commenced within a reasonable time after a petition has been filed, and the petitioner shall be notified thereof. At such hearings, the petitioner shall be entitled to appear in person or by agent or attorney and to show cause why the matter appealed should be modified

or withdrawn or a variance granted. The failure of a petitioner or a representative to appear at a hearing shall constitute an abandonment of the petition.

Sec. 12-33. Decisions of board.
After a hearing the housing board of appeals shall sustain, modify or withdraw any notice and order appealed from depending upon its findings. If it clearly appears that, by reason of special conditions, undue hardship would result from the strict application of any section of this chapter, the housing board of appeals may permit a variance from the mandatory provisions thereof in such a manner that the public safety shall be secured, substantial justice done and the spirit of the provisions of this chapter upheld. All decisions to permit a variance under this section shall be by a majority vote of the total membership of the board.

Secs. 12-34– 12-43. Reserved.

ARTICLE III.

MINIMUM EQUIPMENT AND FACILITIES STANDARDS

Sec. 12-44. Compliance with standards.
No person shall occupy as owner-occupant or let to another for occupancy any dwelling or dwelling unit, for the purpose of living therein, which does not comply with the minimum standards for basic equipment and facilities as provided in this article.

Sec. 12-45. Kitchen sink.
Every dwelling unit shall contain a kitchen sink in good working conditions.

Sec. 12-46. Water closet and lavatory.
Every dwelling unit shall contain a room which affords privacy to a person within such room and which is equipped with a flush water closet, and a lavatory basin or washbowl in good working condition.

Sec. 12-47. Bathtub or shower.
Every dwelling unit shall contain a room which affords privacy to a person within such room and which is equipped with a bathtub or shower in good working condition.

Sec. 12-48. Water heating facilities.
Every kitchen sink, lavatory basin and bathtub or shower required by this chapter shall be properly connected with both hot and cold water lines. The hot water lines shall be connected with supplied water heating facilities which are properly installed, are maintained in safe and good working condition, and are capable of heating water to such a temperature as to permit an adequate amount of water to be drawn at every required kitchen sink, lavatory basin, and bathtub or shower at a temperature of not less than one hundred twenty degrees Fahrenheit (120° F.).

Sec. 12-49. Water and sewerage facilities.
All plumbing fixtures required by this chapter shall be properly connected to an approved water system and to an approved sewerage system.
Cross references: Water, sewers and sewage disposal, Ch. 28.

Sec. 12-50. Garbage and rubbish disposal.

Every dwelling unit shall have adequate garbage and rubbish storage containers. The containers shall consist of either watertight cans, not more than twenty (20) gallons in capacity, equipped with adequate handles or bails or approved plastic or paper refuse containers. In lieu of a garbage container, a dwelling unit may be equipped with an incinerator, provided it is properly vented into the chimney of the building and is capable of reducing garbage to ashes without causing an objectionable odor in the neighborhood, or a garbage disposal unit connected with an integral part of the sewerage system of the building, and capable of reducing all garbage deposited therein to particles no greater than one-half (1/2) inch in any dimension.
Cross references: Garbage, refuse and litter, Ch. 10.

Sec. 12-51. Exitways.
Every dwelling unit shall have access to one unobstructed exitway leading to a public street or alley. Where there are two (2) or more dwelling units located on the second story of a dwelling, or where there are more than two (2) stories in a dwelling, every floor above the first shall have a minimum of two (2) approved means of egress, two (2) of which shall be accessible to all occupants of the floor, and are accessible without passing through another dwelling unit.

EXCEPTION: A second story may be served by a single interior stairway if such stairway is enclosed by one-hour fire-resistive materials, and all doors opening into the stairway shall be self-closing class "B" fire doors or solid wood doors not less than one and three-eighths (1 3/8) inches thick at any point. This exception shall not apply in cases where the second story exceeds one thousand (1,000) square feet of habitable floor area.
Cross references: Fire prevention and protection, Ch. 8.

Secs. 12-52– 12-61. Reserved.

ARTICLE IV.

MINIMUM STANDARDS FOR LIGHT, VENTILATION AND HEATING

Sec. 12-62. Compliance with standards.
No person shall occupy as owner-occupant or let to another for occupancy any dwelling or dwelling unit, for the purpose of living therein, which does not comply with the minimum standards for light, ventilation, and heating set forth in this article.

Sec. 12-63. Windows.
Every habitable room shall have at least one window or skylight facing directly to the outdoors. The minimum total window area measured between stops, for every habitable room shall be ten (10) per cent of the floor area of such room. Whenever walls or other portions of structures face a window of any such room and such light obstructing structures are located less than three (3) feet from the window and shall extend to a level above that of the ceiling of the room, such a window shall not be deemed to face directly to the outdoors and shall not be included as contributing to the required minimum total window area. Whenever the only window in a room is a skylight type window in the top of such room, the total window area of such skylight shall equal at least fifteen (15) per cent of the total floor area of such room.

Sec. 12-64. Ventilation.
Every habitable room shall have at least one window or skylight which can be easily opened. The total openable window area shall be equal to at least forty-five (45) per cent of the minimum window area size or minimum skylight area size as required in section 12-63. An approved

system of mechanical ventilation or air conditioning may be used in lieu of openable windows. Such system shall provide not less than four (4) air changes per hour.

Sec. 12-65. Ventilation in bathrooms.
Every bathroom and water closet compartment shall comply with the light and ventilation requirements for habitable rooms as provided in this article, except that no window or skylight shall be required in bathrooms or water closet compartments which are equipped with a mechanical ventilating system to the outside air which is capable of completely changing the air in the room every five (5) minutes.

Sec. 12-66. Electrical service.
Every habitable room shall contain at least two (2) or more convenience outlets. Outlets shall be arranged so that no usable wall is more than six (6) feet from an outlet where structural obstacles do not make this impracticable. Every water closet compartment, bathroom, laundry room, furnace room and public hall shall contain at least one ceiling or wall type light fixture. At least one ceiling and/or wall type lighting fixture in each room must be switched by one or more wall switches, located at or near a door entering the room. Every outlet and fixture shall be properly installed and shall be maintained in good and safe working condition.
In all multiple dwellings, all subpanels and switching for full-time lighting shall be located in areas not accessible to the public.

Sec. 12-67. Lighting in public halls.
Every public hall and stairway in every multiple dwelling serving five (5) or more dwelling units, and in every rooming house or hotel serving ten (10) or more rooming units, shall be adequately lighted at all times. Every public hall and stairway in structures devoted solely to dwelling occupancy and serving less than the above number of dwelling or rooming units may be supplied with conveniently located light switches controlling an adequate lighting system which may be turned on when needed, instead of full-time lighting.

Sec. 12-68. Window screens.
Every window used for ventilation shall also be supplied with screen. Screens shall be in place by June 1 of each year and shall not be removed before October 1. Screens will not be required on windows in rooms above the fourth story. All screens shall not be less than number sixteen (16) wire mesh.

Sec. 12-69. Screens on basement windows.
Every basement or cellar window used for ventilation shall also be supplied with a screen or such other device as will effectively prevent the entrance of rodents.

Sec. 12-70. Heating facilities.
Every dwelling shall have heating facilities which are properly installed, are maintained in safe and good working condition, and are capable of safely and adequately heating all habitable rooms in every dwelling unit located therein to a temperature of at least seventy degrees Fahrenheit (70° F.), at a distance of three (3) feet above floor level when the outside temperature is zero degrees Fahrenheit (0° F.). Portable heating equipment employing a flame and heating equipment using gasoline or kerosene as fuel are prohibited.

Secs. 12-71– 12-80. Reserved.

ARTICLE V.

MINIMUM SPACE, USE AND LOCATION REQUIREMENTS

Sec. 12-81. Compliance with article.
No person shall occupy as owner-occupant or let to another for occupancy any dwelling or dwelling unit, for the purpose of living therein, which does not comply with the minimum standards for space, use, and location set forth in this article.

Sec. 12-82. Minimum floor area– Generally.
Every dwelling unit shall contain at least one hundred twenty-five (125) square feet of floor space for the first occupant thereof, and at least seventy-five (75) additional square feet of floor space for every additional occupant thereof. The floor space shall be calculated on the basis of total habitable room area.

Sec. 12-83. Same– Sleeping rooms.
Every room used for sleeping purposes shall have not less than ninety (90) square feet of superficial floor area. Where more than two (2) persons occupy a room used for sleeping purposes, the required superficial floor area shall be increased at the rate of fifty (50) square feet for each occupant in excess of two (2).

Sec. 12-84. Same– Single-family owner-occupied dwelling excepted.
The city council finds that healthful and sanitary conditions in relation to space generally prevail in single-family owner-occupied dwellings. Therefore, the provisions of sections 12-82 and 12-83 shall not apply to single-family owner-occupied dwellings. For the purpose of this section, a "single-family owner-occupied dwelling" shall mean a dwelling containing no more than one dwelling unit in which the owner thereof resides. A family as herein used shall mean an individual or two (2) or more persons related by blood or marriage, or a group of not more than five (5) persons (excluding servants) who need not be related by blood or marriage living together in a dwelling unit.

Sec. 12-85. Room arrangement.
No dwelling or dwelling unit containing two (2) or more sleeping rooms shall have such room arrangements that access to a bathroom or water closet compartment intended for use by occupants of more than one sleeping room can be had only by going through another sleeping room, nor shall room arrangements be such that access to a sleeping room can be had only by going through another sleeping room or water closet compartment.

Sec. 12-86. Minimum ceiling height.
At least one-half (1/2) of the floor area of every habitable room, bathroom, water closet compartment, and hallway shall have a ceiling height of not less than seven (7) feet. The floor area of that part of any habitable room where the ceiling height is less than five (5) feet shall not be considered as part of the floor area in computing the total floor area of the room for the purpose of determining the maximum permissible occupancy thereof.

Sec. 12-87. Cellar space not habitable.
No cellar space shall be used as a habitable room or dwelling unit. However, this section shall not prohibit a recreation room in a cellar as long as it is not used for sleeping purposes. Such room cannot be used in computing the total floor area of the dwelling for the purpose of determining the maximum permissible occupancy thereof.

Sec. 12-88. Basement dwelling units.
No basement space shall be used as a dwelling or rooming unit unless:

(a) The floor and walls are impervious to leakage of under-ground and surface run-off water.

(b) The total window area in each room is equal to at least ten (10) per cent of the floor area of the room as measured between stops, and is entirely above the grade of the ground adjoining such window area.

(c) The total openable window area in each room is equal to forty-five (45) per cent of the minimum window area, except where there is supplied a mechanical ventilation system to the outside air capable of completely changing the air in the room every fifteen (15) minutes.

(d) The ceiling height throughout the unit is at least seven (7) feet.

(e) It is separated from heating equipment, incinerators, or other equally hazardous equipment by a standard partition.

(f) Access can be gained to the unit without going through a furnace room.

(g) Two (2) independent means of egress are provided from every basement containing more than one dwelling unit or one rooming unit.

Secs. 12-89– 12-98. Reserved.

ARTICLE VI.

MINIMUM STANDARDS FOR SAFE AND SANITARY MAINTENANCE

Sec. 12-99. Compliance with article.
No person shall occupy as owner-occupant or let to another for occupancy any dwelling or dwelling unit, for the purpose of living therein, which does not comply with the minimum standards for safe and sanitary maintenance of dwellings and dwelling units set forth in this article.

Sec. 12-100. Foundation, walls, roof.
The foundation, exterior walls and roof shall be kept in sound condition and repair as follows:
(a) The foundation elements shall adequately support the dwelling at all points.

(b) Every exterior wall, including the skirting around the base of the dwelling shall be free of holes, breaks, loose or rotting boards or timber.

(c) The roof shall be tight and have no defects which will admit water.

Sec. 12-101. Walls, floors, partitions.
The interior walls, floors and ceilings shall be kept in sound condition and good repair as follows:
(a) The floor shall be free of holes, wide cracks, loose, warped or rotting boards.

(b) Interior walls and ceilings shall be free from holes and wide cracks.

(c) Room partitions shall be of standard construction.

(d) Every toilet room and bathroom floor surface shall be reasonably impervious to water and shall be capable of being maintained easily.

Sec. 12-102. Protection of exterior wood surfaces.
All exterior wood surfaces shall be reasonably protected from the elements and against decay, by paint or other approved protective coating applied in a workmanlike manner.

Sec. 12-103. Exterior openings.
Every window, exterior door and basement hatchway shall be weathertight, watertight, rodentproof, fully supplied with window panes without cracks or holes, and each sash, door or hatch shall fit tightly within its frame.

Sec. 12-104. Stairs, porches.
Every inside and outside stair, every porch and every appurtenance thereto shall be so constructed as to be safe to use and capable of supporting the load that normal use may cause to be placed thereon, and shall be kept in sound condition, good repair and in conformance with the following conditions:
(a) Every flight of stairs and every porch floor shall be free of holes, grooves and cracks which are large enough to constitute possible accident hazard.

(b) No flight of stairs shall have more than one inch of settlement from its intended position or shall be separated from its supporting structures.

(c) No flight of stairs or porch shall have rotting, loose or deteriorating supports.

(d) Every stair tread shall be strong enough to bear a live load of at least one hundred (100) pounds per square foot without danger of breaking.

(e) All stairways more than three (3) risers high shall be equipped with handrails not less than thirty (30) inches nor more than thirty-four (34) inches high, measured vertically from the nose of the tread to the top of the rail. Stairways more than forty-four (44) inches wide shall be equipped with two (2) handrails, one on each side. On exterior unenclosed stairways where only one handrail is required, it shall be placed on the outside edge of the stairway.

Sec. 12-105. Supplied facilities.
Every supplied plumbing fixture, piece of equipment or utility which is required under this chapter shall be so constructed or installed that it will function properly and shall be maintained in satisfactory working condition.

Sec. 12-106. Facilities not to be shut off.
No owner, operator or occupant shall cause any service, facility, equipment or utility which is required under this chapter to be removed from or shut off from or discontinued for any occupied dwelling let or occupied by him, except for such temporary interruption as may be necessary while actual repairs or alterations are being made.

Sec. 12-107. Floor surfaces.
Every water closet compartment, bathroom and kitchen floor surface shall be constructed and maintained so as to be water resistant and so as to permit the floor to be easily kept in a clean and sanitary condition.

Sec. 12-108. Chimneys and supplied smoke pipes.

Every chimney and every supplied smoke or vent pipe shall be adequately supported, reasonably clean and maintained in a reasonably good state of repair.

Sec. 12-109. Nondwelling structures and fences.
Every nondwelling structure and fence shall be kept in a reasonably good state of maintenance and repair or shall be removed.

Sec. 12-110. Cleanliness of public areas.
All public areas, yards and premises shall be kept in a reasonably clean and sanitary condition.
Cross references: Garbage, refuse and litter, Ch. 10.

Secs. 12-111– 12-119. Reserved.

ARTICLE VII.

RENTAL UNITS*

Cross references: Inspection of multiple dwellings, roominghouses; condemnation and demolition of unfit dwellings, § 12-152 et seq.

Sec. 12-120. Minimum basic requirements.
No dwelling or dwelling unit shall be rented, leased or otherwise offered or provided for occupancy unless such unit shall comply with the minimum standards for basic equipment and facilities as specified in this chapter, the minimum standards for light, ventilation, and heating as specified in this chapter, the minimum space, use, and location requirements as specified in this chapter and the minimum standards for safe and sanitary maintenance of dwellings and dwelling units as specified in this chapter.

Sec. 12-121. Responsibilities of owners.
Every owner shall:
(a) Not rent, lease or otherwise offer or provide for occupancy any dwelling or dwelling unit not meeting the minimum basic requirements as provided in section 12-120, except where a variance has been authorized pursuant to section 12-31.

(b) Shall be responsible for maintaining each dwelling or dwelling unit so as to meet the minimum basic requirements as provided in section 12-120; and if the owner is prevented from so doing by the actions of the tenant or lessee, it shall be the obligation of the owner to terminate the tenancy or the lease and evict the tenant.

(c) Be responsible for maintaining in a clean and sanitary condition the shared or public areas of the dwelling and premises of a dwelling containing more than two (2) dwelling units.

(d) Hang and remove all screens which have to be put in place from the outside on those dwelling units located above the first story, and on all windows of roominghouses or hotels.

(e) Not occupy or let to any other occupant any vacant dwelling unit unless it is clean, sanitary, fit for human occupancy and complies with all the applicable provisions of this chapter.

(f) Exterminate any insects, rodents or other pests in a dwelling or dwelling unit if the infestation is caused by his failure to maintain the dwelling or dwelling unit in a reasonably rodentproof and insectproof condition.

(g) Furnish and provide adequate rubbish and garbage disposal facilities as required by this chapter.
Cross references: Garbage, refuse and litter, Ch. 10.

Sec. 12-122. Responsibilities of occupants.
Every occupant shall:
(a) Not rent, lease or otherwise occupy any dwelling unit not meeting the minimum basic requirements as provided in section 12-120, except where a variance has been authorized as provided in section 12-31.

(b) Cooperate with and assist the owner so as to permit the owner to keep and maintain the dwelling or dwelling unit so as to meet the minimum basic requirements as provided in section 12-120, and if the occupant shall act so as to prevent such maintenance, such action shall be sufficient cause for the summary eviction of such tenant or lessee by the owner and the cancellation of his lease.

(c) Keep in a clean and sanitary condition that part of the premises which he occupies and controls.

(d) Dispose of all rubbish and garbage in a clean and sanitary manner by placing it in rubbish or garbage facilities and providing for its removal.

(e) Hang and remove all screens required for his dwelling unit by this chapter, except where the owner is expressly made responsible therefor.

(f) Keep all plumbing fixtures therein in a clean and sanitary condition and shall be responsible for the exercise of reasonable care in the proper use and operation thereof.

(g) Exterminate any insects, rodents or other pests infesting his dwelling unit unless the owner is required to exterminate them as provided in section 12-121 of this chapter.

(h) Sublet any portion of a dwelling unit which he occupies or controls in such a manner that such subletting violates or causes to be violated any of the provisions of this chapter.

(i) Comply with the provisions of this chapter after due and proper notice from the building official. The failure to do so on the part of an occupant of a dwelling unit shall be deemed sufficient cause for the summary eviction of such tenant or lessee by the owner and the cancellation of his lease.

Secs. 12-123– 12-132. Reserved.

ARTICLE VIII.

MINIMUM STANDARDS FOR ROOMING HOUSES AND HOTELS

Sec. 12-133. Generally.
Every rooming house and hotel shall comply with the minimum standards for dwellings and dwelling units set forth in this chapter in the following articles:
(a) Article IV on minimum standards for light, ventilation and heat;

(b) Article V on minimum standards for space, use and location;

(c) Article VI on minimum standards for safe and sanitary maintenance;

(d) Article VII on responsibilities of owners and occupants.

Sec. 12-134. Basic equipment.
Every rooming house and hotel shall be equipped with at least one flush water closet, one lavatory basin and one bathtub or shower for each eight (8) persons or fraction thereof within the rooming house or hotel, including members of the family of the owner or operator if they share the use of the facilities. The lavatory basin and bathtub or shower shall be connected to a hot water system as specified in section 12-48. In a rooming house or hotel in which both sexes are accommodated a minimum of two (2) flush water closets and lavatory basins located in separate rooms which are conspicuously marked shall be required. In a rooming house or hotel in which rooms are let only to males, flush urinals may be substituted for not more than one-half (1/2) of the required number of water closets. All the facilities required under this section shall be connected to an approved water and sewer system and shall be installed within one year from July 10, 1967.

Sec. 12-135. Location of toilets, baths.
Every flush closet, flush urinal, lavatory basin and bathtub or shower required by this chapter shall be located within the rooming house or hotel in a room or rooms which have all of the following characteristics:
(a) Afford privacy and are separate from the habitable rooms.

(b) Are accessible from a common hall and without going outside the rooming house or hotel.

(c) Are not more than one story removed from the rooming unit of any occupant intended to share the facilities.

Sec. 12-136. Shades, drapes, etc.
Every window or every room used for sleeping shall be supplied with shades, draw drapes or other devices or materials which, when properly used, will afford privacy to the occupant of the room.

Sec. 12-137. Bedding, bed linen, towels.
Where bedding, bed linen or towels are supplied, the owner shall maintain the bedding in a clean and sanitary manner, and he shall furnish clean bed linen and towels at least once each week and prior to the letting of any room to any occupant.

Sec. 12-138. Means of egress.
Rooming houses and hotels, occupied or containing accommodations for ten (10) or more persons on the second story, or which are more than two (2) stories in height, shall conform to the egress requirements for multiple dwellings contained in section 12-51.

Sec. 12-139. Sanitary maintenance by owner.
The owner of every rooming house or hotel shall keep all walls, floors and ceilings in a clean, safe and sanitary condition.

Sec. 12-140. Guest register.
The proprietor of every rooming house or hotel shall keep at all times in a convenient place a book or register wherein every person applying for accommodations must sign his name and

place of residence before such accommodations are furnished. Such book or register shall be available for inspection by the chief inspector at all times.

Sec. 12-141. Garbage and rubbish containers.
The owner of every rooming house and hotel where garbage or rubbish is produced shall provide adequate containers therefor as specified in section 12-50.

Secs. 12-142– 12-151. Reserved.

ARTICLE IX.

INSPECTION OF DWELLINGS, DWELLING UNITS OR HABITABLE ROOMS; CONDEMNATION AND DEMOLITION OF UNFIT DWELLINGS*

Editor's note: Ord. No. 752, §§ 1– 13, adopted March 30, 1970, amended the provisions from which Ch. 20 is derived by adding thereto §§ 1002.1– 1002.13, codified herein as Art. IX, §§ 12-152– 12-164, at the discretion of the editors. Said Ord. No. 752 is set out as enacted, including catchlines; however the editors have changed "ordinance" to "article" where appropriate and, as indicated above, the various sections of the ordinance have been renumbered to conform with the numbering system used in this Code. Prior to the adoption of Ord. No. 793, § 1, adopted May 15, 1972, the title of Art. IX was "Inspection of Multiple Dwellings or Rooming Houses; Condemnation and Demolition of Unfit Dwellings".

Sec. 12-152. Certain dwellings, dwelling units or habitable rooms– Time of registration; official.
(a) A registry of owners and premises shall be maintained by the building official.

(b) The owners of dwellings, dwelling units or habitable rooms which will be offered to let or to hire for more than six (6) months of a calendar year, shall register their names and places of residence or usual places of business and the location of the premises regulated by this article with the building official. The owners shall register prior to the day on which any part of the premises is offered for occupancy.

(c) If the premises are managed or operated by an agent, the agent's name and place of business shall be placed with the name of the owner in the registry.
(Ord. No. 752, § 1, 3-30-70; Ord. No. 793, § 1, 5-15-72; Ord. No. 1007, § 1, 10-19-81)

Sec. 12-153. Same– Biennial inspection; manner of inspection; entrance by permission; emergency entrance; fee.
(a) The building official shall inspect, on a periodic basis, dwellings, dwelling units and habitable rooms regulated by this article. In no event shall the period between inspections be longer than two (2) years.

(b) An inspection shall be conducted in the manner best calculated to secure compliance with the article and appropriate to the needs of the City of Midland. Inspections may be on one of the following bases:

(1) An area basis, such that all the regulated premises in a predetermined geographical area will be inspected simultaneously, or within a short period of time;

(2) A complaint basis, such that complaints of violations will be inspected within a reasonable time; or

(3) A recurrent violation basis, such that those premises which are found to have a high incidence of recurrent or uncorrected violations will be inspected more frequently.

(c) An inspector, or team of inspectors, may request permission to enter all premises regulated by this article at reasonable hours to undertake an inspection. Upon an emergency the inspector or team of inspectors shall have the right to enter at any time.

(d) The certification fee set forth in section 21-51 of this Code, to be paid by an applicant upon issuance of a certificate as provided in section 12-158 shall include the initial inspection and one reinspection made by the building official. A reinspection fee, equal to the fee paid by the applicant for the issuance of a certificate, may be assessed for each inspection or reinspection when such portion of work for which inspection is called is not complete or when corrections called for are not made. This provision is not to be interpreted as requiring reinspection fees the first time a dwelling unit is rejected for failure to comply with the requirements of the housing code, but as controlling the practice of calling for inspections before the corrections are made and the unit is ready for inspection or reinspection. The certificate provided herein shall expire two (2) years from the date of issuance and a new certificate shall be required and shall be issued after inspection of the premises by the building inspector and payment of a fee as set forth in section 21-51.

When the expired certificate is not renewed within the calendar month of its expiration date, the certification shall become delinquent and the owner shall be assessed a delinquency fee in addition to and equal to the fee for certification.

When the owner or agent fails to renew the certification within thirty (30) days after it becomes delinquent, an additional fee as prescribed in section 21-51 shall be assessed.

When the owner or agent fails to renew the certification within sixty (60) days after it becomes delinquent, as additional fee as prescribed in section 21-51 shall be assessed.

If the owner or agent fails to comply and is delinquent for more than sixty (60) days, an additional fee as prescribed in section 21-51 shall be assessed and the building official shall bring an action to enforce the provisions of this section, as provided for in section 12-161.

In the event that a certificate is suspended by the building official, as provided in section 12-159 of this article, the owner shall be required to pay a fee, as provided for in section 21-51 before the certificate is reinstated. In the event of the issuance of a temporary certificate, as provided in section 12-158, a fee as provided for in section 21-51, shall be paid by the owner prior to such issuance.
(Ord. No. 752, § 2, 3-30-70; Ord. No. 793, § 1, 5-15-72; Ord. No. 1009, § 2, 10-19-81; Ord. No. 1218, § 1, 6-17-91)

Sec. 12-154. Nonemergency, warrant, contents.
(a) In a nonemergency situation where the owner or occupant demands a warrant for inspection of the premises, the building official shall obtain a warrant from a court of competent jurisdiction. The city attorney shall prepare the warrant, stating the address of the building to be inspected, the nature of the inspection, and the reasons for the inspection. It shall be appropriate and sufficient to set forth the basis for inspection (e.g. complaint, area or recurrent violation basis) established in this article. The warrant shall also state that it is issued pursuant to this article. (Ordinance No. 752) and Act 286 of 1968.

(b) In the event of an emergency no warrant shall be required.
(Ord. No. 752, § 3, 3-30-70)

Sec. 12-155. Record of inspections; checklist of violations.
(a) The building official shall keep a record of all inspections.

(b) The building official shall make available to the general public a checklist of commonly recurring violations for use in examining premises offered for occupancy.
(Ord. No. 752, § 4, 3-30-70)

Sec. 12-156. Issuance of certificate of compliance; violation not to prevent issuance; health or safety hazard, nonissuance.
(a) Dwellings, dwelling units, or habitable rooms regulated by this article shall not be occupied unless a certificate of compliance has been issued by the building official. The certificate shall be issued only upon an inspection of the premises by the building official, except as provided in section 12-158. The certificate shall be issued within fifteen (15) days after written application therefor if the dwelling at the date of the application is entitled thereto.

(b) A violation of this article shall not prevent the issuance of a certificate, but the building official shall not issue a certificate when the existing conditions constitute a hazard to the health or safety of those who may occupy the premises.

(c) Inspections shall be made prior to first occupancy of dwellings, dwelling units, and habitable rooms regulated by this article, if the construction or alteration is completed and first occupancy will occur after the effective date of this article. Where first occupancy will occur before the effective date of this article, inspection shall be made within one (1) year after the effective date of this article. Upon finding that there is no condition that would constitute a hazard to the health and safety of the occupants, and that the premises are otherwise fit for occupancy, the certificate shall be issued. If the finding is of a condition that would constitute a hazard to health or safety, no certificate shall be issued, and an order to comply with the article shall be issued immediately and served upon the owner in accordance with section 12-159. On reinspection and proof of compliance, the order shall be rescinded and a certificate issued.
(Ord. No. 752, § 5, 3-30-70; Ord. No. 793, § 1, 5-15-72)

Sec. 12-157. Withholding certificate pending compliance, continued vacancy of unoccupied premises; vacation of occupied premises until compliance, conditions of issuance; suspension of certificate and vacation; suspended rentals, conditions; revival of rental obligation; disposition of rentals for period of suspension; termination prior to repairs; actions for rent and possession under certain conditions.
(a) When a certificate is withheld pending compliance, no premises which have not been occupied for dwelling or rooming purposes shall be so occupied, and those premises which have been or are occupied for dwelling or rooming purposes may be ordered vacated until reinspection and proof of compliance in the discretion of the building official.

(b) A certificate of compliance shall be issued on condition that the premises remain safe, healthful and in fit condition for occupancy. If upon reinspection the building official determines that conditions exist which constitute a hazard to health or safety, the certificate shall be immediately suspended as to affected areas, and the areas may be vacated as provided in subsection (a).

(c) The duty to pay rent in accordance with the terms of any lease or agreement or under the provisions of any statute or ordinance shall be suspended and the suspended rentals shall be paid into an escrow account as provided in subsection (d), during that period when the premises have not been issued a certificate of compliance, or when such certificate, once issued, has been suspended. This subsection does not apply until the owner has had a reasonable time after notice of violations to make application for a temporary certificate, as provided in section 12-158. Nor does this subsection apply where the owner establishes that the conditions which constitute a hazard to health or safety were caused by the occupant or occupants. The rent, once suspended shall again become due in accordance with the terms of the lease or agreement or statute from and after the time of reinstatement of the certificate, or where a temporary certificate has been issued, as provided in section 12-158.

(d) Rents due for the period during which rent is suspended shall be paid into an escrow account established by the building official to be paid thereafter to the landlord or for correcting the violation. The building official shall return any unexpended part of sums paid under this section, attributable to the unexpired portion of the rental period, where the occupant terminates his tenancy or right to occupy prior to the undertaking to repair.

(e) When the certificate of compliance has been suspended, or has not been issued, and the rents thereafter withheld are not paid into the escrow account, actions for rent and for possession of the premises for nonpayment of rent may be maintained, subject to such defenses as the tenant or occupant may have upon the lease or contract.
(Ord. No. 752, § 6, 3-30-70)

Sec. 12-158. Application for certificate of compliance; inspection and issuance procedures; conditions for issuance of temporary certificates; time for application; application by occupant in default of owner; fee.
(a) An owner shall apply for a certificate of compliance. Inspection and issuance of certificates shall be in accordance with the requirements of this article and with procedures established by the building official. The building official may authorize the issuance of temporary certificates without inspection for those premises in which there are no violations of record as of the effective date of this article, and shall issue such temporary certificates upon application in cases where inspections are not conducted within a reasonable time. Temporary certificates shall also be issued for premises with violations of record whether existing before or after the effective date of this article, when the owner can show proof of having undertaken to correct such conditions, or when the city has been authorized to make repairs, or when a receiver has been appointed, or when an owner rehabilitation plan has been accepted by the court.

(b) An application for a certificate shall be made when the owners, or any of them, enroll in the registry of owners and premises. If the owner fails to register, any occupant of unregistered or uncertified premises may make application.

(c) A fee as specified in section 21-51 shall be paid by the applicant at the time the certificate is issued. A certificate shall include only one (1) dwelling, dwelling unit or habitable room. Said fee and inspection required pursuant to this article shall be waived for any premises that has not been occupied subsequent to the issuance of a certificate of occupancy by the building official.

(d) Nonprofit housing owners may include all dwelling units within a single project under one (1) certificate, with the amount of the fee to be the actual cost to the city for the inspection-certification process as determined by the chief building inspector.

(Ord. No. 752, § 7, 3-30-70; Ord. No. 821, § 1, 7-30-73; Ord. No. 1040, § 1, 3-21-83; Ord. No. 1321, § 1, 6-26-95; Ord. No. 1435, § 1, 1-25-99)

Sec. 12-159. Recording of violation in registry; notice; contents; correction of violations; inspection.
(a) If, upon inspection, the premises or any part thereof are found to be in violation of any provision of this article, the violation shall be recorded by the building official in the registry of owners and premises.

(b) The owner, and in the discretion of the building official, the occupant, shall be notified in writing of the existence of the violation. The notice shall state the date of the inspection, the nature of the violation and the time within which the correction shall be completed.

(c) A violation which is determined by the inspector to constitute a hazard to the health or safety of the occupants, under circumstances where the premises cannot be vacated shall be ordered corrected within the shortest reasonable time and notice of having begun compliance shall be given the building official by the owner within three (3) days. All other violations shall be corrected within a reasonable time.

(d) The building official shall reinspect after such reasonable time for the purpose of ascertaining whether the violations have been corrected.
(Ord. No. 752, § 8, 3-30-70)

Sec. 12-160. Compliance by owner and occupant.
(a) The owner of premises regulated by this article shall comply with all applicable provisions of the article.

(b) The occupant of premises regulated by this article shall comply with provisions of the article specifically applicable to him.
(Ord. No. 752, § 9, 3-30-70)

Sec. 12-161. Actions.
(a) Action by building official on noncompliance. If the owner or occupant fails to comply with the order contained in the notice of violation, the building official may bring an action to enforce the provisions of this article and to abate or enjoin the violation.

(b) Action by owner or occupant; substitution or joinder. An owner or occupant of the premises upon which any violation exists may bring an action to enforce the provisions of this article in his own name. Upon application by the building official, or upon motion of the party filing the complaint, the building official may be substituted for, or joined with, the complainant in the discretion of the court.

(c) Injunctive or other relief. When the violation is uncorrected and creates an imminent danger to the health and safety of the occupants of the premises, the building official shall file a motion for a preliminary injunction or other temporary relief appropriate to remove such danger during the pendency of the action.

(d) Service of process. Owners and lienholders of record found by the complainant upon the exercise of reasonable diligence shall be served with a copy of the complaint and a summons.

(e) Orders and determinations of court; injunctions; necessary repairs; repair or removal by building official; conditions for assessment of repair cost to occupant and to owner The court, having obtained jurisdiction, shall make such orders and determinations as are consistent with the objectives of this article. The court may enjoin the maintenance of any unsafe, unhealthy or unsanitary condition, or any violations of this article, and may order the defendant to make repairs or corrections necessary to abate the conditions. The court may authorize the building official to make repairs or to remove the structure. When an occupant is not the cause of any unsafe, unhealthy or unsanitary condition, or any violation of this article and is the complainant, the court may authorize the occupant to correct the violation and deduct the cost thereof from the rent upon such terms as the court determines to be just. Whenever the court shall find that said occupant is the cause of any unsafe, unhealthy or unsanitary condition, or any violation of this article, then the court may authorize the owner to correct the violation and assess the cost thereof against the occupant or his security deposit.

(f) Conditions for removal of building. No building shall be removed unless the cost of repair of the building will be greater than the state equalized value of the building.

(g) Order approving costs of repair or removal; lien and priority; foreclosure; filing of order. When the expenses of repair or removal are not otherwise provided for, the court may enter an order approving the expenses and providing that there shall be a lien on the real property for the payment thereof. The order may establish the priority of the lien and may provide that it shall be a lien senior to all other liens, except taxes and assessments; except that a mortgage of record having a recording date prior to all other liens of record shall retain its first priority if, at the time of recording of such mortgage or at any time subsequent thereto, a certificate of compliance as provided for in this article is in effect on the subject property. The order may also specify the time and manner for foreclosure of the lien if not satisfied. A true copy of the order shall be filed in the office of the register of deeds for the county where the real property is located within ten (10) days after entry thereof in order to perfect the lien granted in the order.
(Ord. No. 752, § 10, 3-30-70)

Sec. 12-162. Receiver; bond and termination; purpose; duties; powers; expenses; contents and filing of court order.
(a) When a suit has been brought to enforce this article against the owner the court may appoint a receiver of the premises.

(b) When the court finds that there are adequate grounds for the appointment of a receiver, it shall appoint the city or a proper local agency or officer, or any competent person, as receiver. In the discretion of the court no bond need be required. The receivership shall terminate at the discretion of the court.

(c) The purpose of a receivership shall be to repair, renovate and rehabilitate the premises as needed to make the building comply with the provisions of this article and where ordered by the court, to remove a building. The receiver shall promptly comply with the charge upon him in his official capacity and restore the premises to a safe, decent and sanitary condition, or remove the building.

(d) Subject to the control of the court the receiver shall have full and complete powers necessary to make the building comply with the provisions of this article. He may collect rents, and other revenue, hold them against the claim of prior assignees of such rents, and other revenue, and apply them to the expenses of making the building comply with the provisions of this article. He may manage and let rental units, issue receivership certificates, contract for all

construction and rehabilitation as needed to make the building comply with the provisions of this article and exercise other powers the court deems proper to the effective administration of the receivership.

(e) When expenses of the receivership are not otherwise provided for, the court may enter an order approving the expenses and providing that there shall be a lien on the real property for the payment thereof. The provisions of subsection (g) of section 12-161 as to the contents and filing of an order are applicable to the order herein provided for.
(Ord. No. 752, § 11, 3-30-70)

Sec. 12-163. Conditions for action by occupant against owner for damages; injunctive and other relief; concurrent and consistent remedies.
(a) When the owner of a dwelling regulated by this article permits unsafe, unsanitary or unhealthful conditions to exist unabated in any portion of the dwelling, whether a portion designated for the exclusive use and occupation of residents or a part of the common areas, where such condition exists in violation of this article, any occupant, after notice to the owner and a failure thereafter to make the necessary corrections, shall have an action against the owner for such damages he has actually suffered as a consequence of the condition. When the condition is a continuing interference with the use and occupation of the premises, the occupant shall also have injunctive and other relief appropriate to the abatement of the condition.

(b) Remedies under this section shall be in addition to such other relief as may be obtained by seeking enforcement of the section authorizing suits by the building official. The remedies shall be concurrent. When several remedies are available hereunder, the court may order any relief not inconsistent with the objectives of the article and calculated to achieve compliance with it.
(Ord. No. 752, § 12, 3-30-70)

Sec. 12-164. Rights not limited by enumeration.
The enumeration of rights of action under this article shall not limit or derogate rights of action at common law.
(Ord. No. 752, § 13, 3-30-70)

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CODE OF ORDINANCES

Chapter 13

JUNK, JUNKYARDS, SECONDHAND DEALERS*

Cross references: Garbage, refuse and litter, Ch. 10; licenses and business regulations, Ch. 15; rates, charges and fees, Ch. 21.
State law references: Licensing and regulation of secondhand and junk dealers, M.S.A., §§ 19.711– 19.718, 19.740(1)– (6); penalty for violation, § 19.718.

Art. I. In General, §§ 13-1– 13-20

Art. II. Abandoned, Junked, Dismantled, Etc. Motor Vehicles, §§ 13-21– 13-26

ARTICLE I.

IN GENERAL

Sec. 13-1. Secondhand, junk dealer– Defined.
Any person, engaged in the business of purchasing, selling, exchanging, storing, or receiving secondhand articles of any kind, cast iron old iron, old steel, tool steel, aluminum, copper, brass, lead pipe or tools, or lighting and plumbing fixtures, is hereby defined to be a secondhand dealer or junk dealer. However, used car dealers are not included in this definition.

Sec. 13-2. Same– License required.
No person shall carry on the business of dealer in secondhand goods or junk dealer in the city without having first obtained a license therefor pursuant to chapter 15 of this Code.
Cross references: Licenses and business regulations, Ch. 15; secondhand, junk dealer's license fee, § 21-38.

Sec. 13-3. Same– License issuance; place of business.
Each secondhand or junk dealer's license issued shall designate the particular place in the city where the licensee, shall carry on such business. No person shall carry on such business in any place in the city other than the place designated in such license. For persons who do not have a regular place of business, a license may be issued to carry on the business of secondhand dealer or junk dealer either by horse and wagon, automobile or truck, or by pack.

Sec. 13-4. Sign stating name, occupation to be posted.
Each secondhand or junk dealer shall post in a conspicuous place in or upon his shop, store, wagon, automobile, truck or other place of business, a sign having his name and occupation legibly inscribed thereon.

Sec. 13-5. Junkyards, scrap heaps to be fenced.

Every tract of land upon which a junkyard business or scrap heap shall be conducted shall be surrounded completely on all sides by a continuous and sold fence, constructed of bricks, blocks, wood or other composition of sufficient durability and composition so that such fence shall completely obstruct and hide from view any part or parcel of land upon which such junkyard business or scrap heap is being conducted and operated. Such fence shall be at least eight (8) feet in height and shall be set back at least five (5) feet from the private property line of all sides of any such premises.

All such fences shall be completely painted and kept in good repair. This section shall apply to all junkyard and scrap heap businesses, including those already established.

Sec. 13-6. Placement of scrap heaps.
No scrap heaps of any material listed in section 13-1 shall be permitted to be placed or stand upon any portion of such premises between the private property line and the fence required by section 13-5, even though any such placement would be only temporary. No such material shall be allowed to be placed or stand upon any part or parcel of the public highway right-of-way abutting upon any such premises, even though such placement might be temporary.

Sec. 13-7. Preventing junk from falling on street.
No dealer in secondhand goods or junk, or junk peddler, or any agent or employee of such a dealer or peddler, shall load or drive any vehicle carrying secondhand goods or junk upon any street in such a manner that, by reason of the loading or manner of driving such vehicle, any junk or other article being hauled by such vehicle shall fall upon the street.
Cross references: Streets and sidewalks, Ch. 22; traffic, Ch. 24.

Sec. 13-8. Record of purchases, sales to be kept.
Each secondhand or junk dealer shall keep a separate book open to inspection by members of a police force in which shall be written in the English language at the time of the purchase or exchange of all articles, a description thereof, the name, description and residence of the person from whom the same was purchased and received, and the day and hour when such purchase or exchange was made. Each entry shall be numbered consecutively, commencing with number one.

Sec. 13-9. Purchase from minors under sixteen.
No dealer in secondhand goods or junk, or junk peddler, shall purchase secondhand goods or junk from any minor under the age of sixteen (16) years without first having obtained the written consent of a parent or guardian of such minor.

Sec. 13-10. Dealer to give vendor statement.
No dealer in secondhand goods or junk, or junk peddler, shall purchase secondhand goods or junk from any person without giving such person a written or printed statement setting forth the date, the name and address of the dealer or peddler and his dealer's license number, together with the description, weight and quantity of goods purchased and the amount paid therefor.

Secs. 13-11– 13-20. Reserved.

ARTICLE II.

ABANDONED, JUNKED, DISMANTLED, ETC. MOTOR VEHICLES*

Editor's note: Ord. No. 743, §§ 1– 6, adopted Dec. 22, 1969, was enacted as amending the provisions from which Art. II is derived. The effect of said amendment was to broaden the scope of the article by adding "abandoned and inoperable vehicles" to the provisions already established for dismantled, etc. vehicles and to broaden the scope of provisions codified as § 13-24 relative to storage in certain areas.

Sec. 13-21. Definitions.

Abandoned vehicles are hereby defined as motor vehicles left unattended on public property or on private property and not having a valid license.

Dismantled or partially dismantled motor vehicles are defined as motor vehicles from which some part or parts which are ordinarily a component of such motor vehicle has been removed or is missing.

Dwelling is any house, building, structure, tent, shelter, trailer or vehicle or portion thereof which is occupied in whole or in part as the home, residence, living or sleeping place, or which is intended to be occupied by one or more human beings either permanently or transiently.

Inoperable vehicles are hereby defined as vehicles that do not meet these minimum conditions: an engine that runs, four (4) wheels and four (4) pneumatic tires capable of holding air and a working battery, or that is not eligible for use in accordance with the requirements of the Michigan Vehicle Code, being Act 300 of 1949.

Motor vehicles are hereby defined as any wheeled vehicles which are self-propelled or intended to be self-propelled, not operating on rails.

(Ord. No. 743, § 3, 12-22-69)

Editor's note: The words, terms and phrases defined in § 13-21 have been alphabetized by the editors to facilitate reference and use.

Sec. 13-22. Construction of article.

This article shall not be construed as repealing any ordinance now in effect or hereafter made effective relating to rubbish, litter, garbage, refuse, trash, or junk, but shall be construed as supplementary to any such ordinance as well as any statutes of the State of Michigan relating thereto.

(Ord. No. 743, § 4, 12-22-69)

Sec. 13-23. Penalty for violation.

Any person, firm or corporation who shall violate or assist in the violation of any provision of this article shall be guilty of a misdemeanor punishable by a fine of not more than one hundred dollars ($100.00) or by imprisonment in the county jail for a period of not exceeding ninety (90) days, or both such fine and imprisonment. Every day that such violation shall continue shall constitute a separate and distinct violation under the provisions of this article.

(Ord. No. 743, § 6, 12-22-69)

Cross references: General penalty for violation of Code, § 1-11.

Sec. 13-24. Storage of abandoned, inoperable, dismantled or partially dismantled motor vehicles or parts thereof regulated.

It is hereby declared to be unlawful for any person, firm or corporation to store on, place on or permit to be stored or placed on or allowed to remain on any city street or public right-of-way or on any platted or unplatted parcel of land an abandoned, inoperable, dismantled or partially

dismantled motor vehicle or any parts of a motor vehicle, which platted or unplatted parcel of land is located in a Residential "A-1", Residential "A-2", Residential "B", Residential "C", Residential "D", Residential "D-2", Agricultural, Office Service-1, Office, Service-2, Business "A" and Business "B-1" District as set forth by the terms and the provisions of the Zoning Ordinance of the City of Midland being Ordinance No. 727 as now or hereafter amended, or upon which parcel of land there is a structure used in whole or in part as a dwelling, unless said abandoned, inoperable, dismantled or partially dismantled motor vehicle or parts of a motor vehicle shall be kept in a wholly enclosed garage or other wholly enclosed structure; provided, however, that any bona fide owner, co-owner, tenant or co-tenant may store, permit to be stored or allow to remain on the premises of which he is the owner, co-owner, tenant or co-tenant of any such abandoned, inoperable, dismantled or partially dismantled motor vehicle, for a period of not to exceed fourteen (14) days of such motor vehicle is registered in his, her or its name and provided further that any such owner, co-owner, tenant or co-tenant may in the event of hardship, upon payment of the fee hereinafter provided, secure a permit from the building inspector of the City of Midland to extend such period of fourteen (14) days for an additional period of not to exceed fourteen (14) days for any one such abandoned, inoperable, dismantled or partially dismantled motor vehicle if such motor vehicle is registered in his, her or its name; provided further, this article shall not be construed to permit parking or placing of abandoned, inoperable, dismantled or partially dismantled vehicles on any street area in the city or in any front yard, as now or here after defined by the Zoning Ordinance of the City of Midland.
(Ord. No. 743, § 1, 12-22-69)

Sec. 13-25. Issuance of permit; fee.
Upon application duly made by the registered owner of a motor vehicle and upon showing of hardship, the building inspector of the City of Midland is hereby authorized to issue the permits provided for in section 13-24 hereof. A fee of one dollar ($1.00) for each such permit issued shall be collected and shall be paid into the general fund.
(Ord. No. 743, § 2, 12-22-69)
Cross references: Similar provisions, § 21-39.

Sec. 13-26. Violation of article declared nuisance.
The presence of an abandoned, inoperable, dismantled or partially dismantled motor vehicle or parts of a motor vehicle on any street or public right-of-way or any platted or unplatted parcel of land in violation of the terms of this article is hereby declared to be a public nuisance per se. Any court of competent jurisdiction may order such nuisance abated and the owner guilty of maintaining a nuisance per se.
(Ord. No. 743, § 5, 12-22-69)

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CODE OF ORDINANCES

Chapter 14

LIBRARIES*

Editor's note: Prior to the reenactment of chapter 14 by Ord. No. 1501, adopted April 9, 2001, Ord. No. 1310, § 1, adopted November 7, 1994, repealed Ch. 14, §§ 14-1– 14-3, in its entirety. Former Ch. 14 pertained to the library, and derived from the original code and Ord. No. 851, § 7, adopted February 3, 1975.

State law references: Local libraries, M.S.A., Ch. 144; larceny from libraries, § 28.596; maliciously injuring or mutilating library books, § 28.623.

Art. 1. In General, §§ 14-1– 14-6

ARTICLE I.

IN GENERAL

Sec. 14-1. Library board– Created.

There is hereby established an advisory body to the city council to be known as the library board.

(Ord. No. 1501, § 1, 4-9-01)

Sec. 14-2. Same– Composition.

The board shall consist of seven (7) voting members appointed by the city council. The membership shall include the following representation: One (1) member shall be a resident of a township that contracts with the city for library services and one (1) shall be an administrator/employee from the midland public schools. The remaining five (5) members shall be residents of the city and serve as at-large representatives. The library director shall be an ex-officio member of the board with no voting privileges.

(Ord. No. 1501, § 1, 4-9-01)

Sec. 14-3. Same– Term of office.

Each member of the board shall be appointed for a term of three (3) years commencing on July 1 except that the members first appointed shall begin their terms immediately with three (3) of said members being appointed for terms ending June 30, 2004, two (2) of said members being appointed for terms ending June 30, 2003, and two (2) members being appointed for terms ending June 30, 2002.

(Ord. No. 1501, § 1, 4-9-01)

Sec. 14-4. Same– Organization, meetings.

The board shall select one of its voting members as chair and one for vice-chair for a one (1) year term. The ex-officio member shall be designated as secretary. The board may adopt such rules as it deems necessary for the transaction of its business. The board will meet as often as

necessary with at least one (1) meeting each calendar quarter and all of its meetings shall be open to the public.
(Ord. No. 1501, § 1, 4-9-01)

Sec. 14-5. Same– Duties.
The board will have the following duties.
(1) Advise the city council regarding written library user policies.

(2) Respond to requests from the library director.

(3) Study and provide recommendations to the city council on the development of library service plans.

(4) Encourage the use of the library among residents of the service area.

(5) Encourage suggestions and review comments from the public regarding library services.

(6) Report to the city council annually.

(7) Perform other such functions as the city council may direct.
(Ord. No. 1501, § 1, 4-9-01)

Sec. 14-6. Enactment of library rules.
The city council shall establish by resolution such rules and regulations relative to the general control, supervision and use of the library as shall be deemed necessary or advisable.
(Ord. No. 1501, § 1, 4-9-01)

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CODE OF ORDINANCES

Chapter 15

LICENSES AND BUSINESS REGULATIONS*

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* Cross References: Dog license tag, § 3-21; taxicab license, § 27-19 et seq. _____ 15-68

Art. I. In General, §§ 15-1--15-25

Art. II. Miscellaneous Licenses, §§ 15-26--15-68

Div. 1. Generally, §§ 15-26--15-54

Div. 2. Amusement Rides, Circuses, Carnivals, §§ 15-55--15-68

Art. III. Reserved, §§ 15-69--15-99

Art. IV. Solicitors, §§ 15-100--15-114

Art. V. Cable Communications, §§ 15-115--15-158

Div. 1. Franchise Procedure, §§ 15-115--15-129

Div. 2. Midland Community Television (MCTV), §§ 15-130--15-139

Div. 3. Rates, §§ 15-140--15-158

Art. VI. Telecommunications §§ 15-180--15-201

Art. VII. Alcoholic Beverage Licenses for Consumption on the Premises §§ 15-220--15-255

Div. 1. General Purpose and General Requirements

Div. 2. New Licenses

Div. 3. Renewal and Revocation of Licenses

ARTICLE I.

IN GENERAL

Sec. 15-1. License required.
No person shall engage or be engaged in the operation, conduct or carrying on of any trade, profession, business or privilege for which any license is required by any ordinance of the city without first obtaining a license from the city in the manner provided for in this chapter and the ordinance requiring such license.

Sec. 15-2. Conditions precedent to be met.
No license required by this Code shall be granted or delivered until the applicant therefor has complied with all the conditions precedent to its issue.

Sec. 15-3. License application; statements to be under oath.
Unless otherwise provided in any section of this Code or ordinance requiring a license, every person required to obtain a license from the city to engage in the operation, conduct or carrying on of any trade, profession, business or privilege shall make application for such license to the city clerk upon forms provided by the clerk. All statements required to be made as to facts which are required, or which are applicable to the granting of any license required by the city, shall be made under oath or affirmation.

Sec. 15-4. Investigation of application.
The city clerk, or issuing officer designated in any ordinance or section of this Code requiring a license, may refer any application for a license to the chief of police, the fire chief and the health officer or any other official of the city for an investigation and recommendation on matters pertaining to the public safety, health or welfare which are or may be involved in the exercise of the license applied for.

Sec. 15-5. Fingerprints, other information.
The city clerk, or other issuing officer, may require the giving of fingerprints and such other information as may be necessary to establish the identity of any applicant for a business license.

Sec. 15-6. When state license is required.
No license required by any city ordinance shall be issued to any person who is required to have license or permit from the State of Michigan until such person shall submit evidence that he has secured such state license or permit.

Sec. 15-7. Receipt for license fee.
The license issued by the city issuing authority designated in any ordinances or section of this Code requiring such license shall constitute a receipt for the license fee paid therefor.

Sec. 15-8. License term.
Regardless of license dates requiring an annual license, licenses shall begin on May 1 in each year and shall terminate on April 30 of the following year. Annual licenses issued after May 1 in any year shall terminate on April 30 of the following year. In all cases where the provisions of an ordinance or a provision of this Code permits the issuance of licenses for periods of less than one (1) year, the effective date of such licenses shall commence on the date of the issuance thereof.

Sec. 15-9. Persons exempt from fee by state, federal law.

No license fee shall be required from any person who is exempt from such fee by any provision of state or federal law. Such persons shall comply with all other provisions of this chapter and of the section requiring the license for which such fee is required.

Sec. 15-10. License to be carried on person or displayed.
No person to whom a license has been granted shall fail to carry such license upon his person when engaged in the operation, conduct or carrying on of the trade, profession, business or privilege for which the license was granted. However, where such trade, profession, business or privilege is operated, conducted or carried on at a fixed place or establishment, such license shall be exhibited at all times in some conspicuous place in such place or establishment. No person shall fail to produce any license granted by the city when requested to do so by any city police or health officer or by any person representing the issuing authority.

Sec. 15-11. Display of expired, duplicate license.
No person shall display any expired license or any license for which a duplicate has been issued.

Sec. 15-12. Transferability of license.
No license required by this Code issued by the city shall be transferable unless specifically authorized by the Code section or ordinance requiring it, and then, only in accordance with the provisions of that section or ordinance.

Sec. 15-13. License renewal.
Applications for the renewal of any license required by this Code or any city ordinance shall be considered to be and shall be treated in the same manner as an original application for such license.

Sec. 15-14. License suspension, revocation, nonrenewal.
Any license required by this Code or any city ordinance may be suspended or revoked, or the renewal thereof refused, for misrepresentation of any material fact in the application for such license, or for any good cause, by the city manager or by the officer of the city to whom application was required to be made to secure such license. The term "good cause," as used in this section, shall include any act, omission or the permitting of a condition to exist with respect to the license in question, which is:

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

(b) Unlawful or fraudulent in nature.

(c) A violation of the section under which the license was granted.

(d) Beyond the scope of the license issued.

(e) A fact, circumstance or condition which had it existed or been known to the issuing authority at the time the license was granted, would have been sufficient ground for the refusal thereof.

Sec. 15-15. Appeals.
An applicant for any license required by this Code or any city ordinance who has been refused such license for any reason by the authorized issuing officer or whose license has been suspended or revoked, unless an appeal is provided to another agency by the section requiring

such license or by state law, may appeal such refusal to the council by setting forth all the facts in a written petition and filing the same with the clerk. The council may act on such petition upon the facts set forth therein, or may grant a further hearing to the applicant. The decision of the council on such appeal shall be final.

Secs. 15-16--15-25. Reserved.

ARTICLE II.

MISCELLANEOUS LICENSES

DIVISION 1.

GENERALLY

Sec. 15-26. Application of article I of chapter.

The terms and provisions of article I of this chapter shall apply to all licenses enumerated in this article.

Sec. 15-27. Bowling alley license required.
No person shall operate any public bowling alley without first obtaining an annual license therefor.

Cross References: Bowling alley license fee, § 21-12.
State Law References: Bowling alleys, M.S.A., § 18.491 et seq.

Sec. 15-28. Other amusements on, adjacent to, bowling alley.
No public bowling alley licensee shall permit any other amusement to be conducted upon the premises occupied by him or it as a bowling alley, nor in any premises under his or its control immediately adjacent or connected thereto, unless a statement setting forth the nature of such amusement shall be on file in the office of the city clerk and a license granted therefor if such a license is required by this Code or any ordinance of the city.

Sec. 15-29. Admission of persons under seventeen.
No person under the age of seventeen (17) years who is not employed on the premises or engaged in bowling shall loiter in or about any bowling alley unless accompanied by his parent or guardian. No licensee or his agent shall permit anyone under seventeen (17) years of age to remain or loiter in or about any bowling alley unaccompanied by his parent or guardian.

State Law References: Minors in bowling alleys M.S.A., § 28.336.

Sec. 15-30. Pool hall license; required, investigation.
No person shall operate any place which is open to the public for the principal purpose of playing pool or billiards without first obtaining an annual license therefor. The city clerk shall refer the application for such license to the police chief for investigation.

Cross References: Pool hall license fee, § 21-11.
State Law References: Pool halls, M.S.A., 18.491 et seq.

Sec. 15-31. Obstructing pool table from view.
No pool or billiard licensee shall permit any pool or billiard tables to be obstructed from the public view.

Sec. 15-32. Other amusements adjacent to pool, billiard halls.
No pool or billiard licensee shall permit any other amusement to be conducted upon the premises occupied by him or it as a pool or billiard parlor, nor in any premises under his or its control immediately adjacent or connected thereto, unless a statement setting forth the nature of such amusement shall be on file in the office of the city clerk, and a license granted therefor if such a license is required by this Code or any ordinance of the city.

Sec. 15-33. Closing hours.
No pool or billiard licensee shall permit the use of any pool or billiard tables from twelve o'clock midnight on Saturday until one p.m. on Sunday, or on weekdays between twelve o'clock midnight and seven o'clock of the succeeding morning.

Sec. 15-34. Admission of persons under seventeen.
No person under the age of seventeen (17) years who is not employed on the premises or engaged in playing pool or billiards shall loiter in or about any pool or billiard room unless accompanied by his parent or guardian. No licensee or his agent shall permit anyone under seventeen (17) years of age to remain or loiter in or about any pool or billiard room unaccompanied by his parent or guardian.
State Law References: Minors in pool halls, M.S.A., 28.336.

Sec. 15-35. Public show exhibition license.
No person shall conduct or carry on any public show or exhibition, either outdoors or under canvas, except a circus or carnival licensed by section 15-59 without first obtaining a license.
Cross References: Public shows, exhibitions, license fee, § 21-13.

Sec. 15-36. Fire prevention; admission of firemen.
The fire chief may assign a member of the fire department to attend any such show or meeting licensed pursuant to this article for the purpose of enforcing all fire laws and ordinances. No person conducting any such meeting shall refuse such fireman admission.
Cross References: Fire prevention and protection, Ch. 8.

Sec. 15-37. Sewer connection builder's license--Required.
No person shall lay, alter, repair or do any kind of work connected with any sewer connection, or make any connections whatever with any sewer or house or building which is to be connected to the sewer system, in any street, alley or right-of-way of city, unless such person is licensed by the city as a sewer connection builder. Any person doing such work without such license shall be deemed guilty of a misdemeanor.

Sec. 15-38. Same--Application.
Any person desiring to do business as a sewer connection builder shall file in the office of the city clerk an application for a sewer connection builder's license. Such application shall give the name and place of business of the individual, firm or corporation asking to be licensed by the city, and shall state that the applicant is qualified by experience to engage in the work, and is willing to be governed in all respects by the rules and regulations which are or may be adopted by the city council.

Sec. 15-39. Same--Surety bond.
Each licensed sewer connection builder shall during the term of his sewer connection license, maintain a surety bond in the amount of five hundred dollars ($500.00). Such bond shall guarantee to the city that such builder will fulfill all requirements of law and make such payments to the city in connection therewith. Such surety bond shall serve as a guarantee that

any sewer connection built will remain in acceptable and useful condition for one year from the date such connection is made, and that any repair or replacement required to the connection within that period shall be paid by the connection builder who installed the connection originally.

Sec. 15-40. Same--Liability and property insurance; filing insurance certificates.
Each licensed sewer connection builder shall take out and maintain during the term of his license such public liability and property damage insurance as shall protect him and the city from claims for damages for personal injury, including wrongful death, as well as from claims for property damage, which may arise from his operations in sewer connection building within the city. Such policies shall name the City of Midland as additional assured. The amounts of such insurance shall be not less than fifty thousand dollars ($50,000.00) for injuries, including wrongful death, to any one person, and subject to the same limit for each person, in an amount not less than one hundred thousand dollars ($100,000.00) on account of one accident, and property damage insurance in an amount not less than ten thousand dollars ($10,000.00) including the hazards of excavation. Certificates of public liability and property damage insurance shall be filed with the city clerk before the license is granted and any work done.

Sec. 15-41. Same--Revocation of license.
The city council may on its own initiative for good cause, suspend or revoke any sewer connection builder's license issued under the provisions of this article. The finding of the city council in such matter shall be conclusive and final, and the reasons for such revocation or suspension shall be entered on the records of the council.

The city engineer may, for good cause, suspend any sewer connection builder's license granted under this article for a period of twenty-four (24) hours and cause such license to be delivered up to him, and he shall forthwith report in writing such action to the city manager and upon the approval of the city manager in writing, the license shall stand revoked or suspended until the next regular meeting of the city council. At such regular meeting of the city council, the holder of such license may appear before the council and be heard, and if the council, after hearing the facts shall deem it advisable, it may revoke or suspend the license permanently.

Sec. 15-42. Sidewalk builder's license--Required.
No person shall lay, construct or repair a sidewalk unless such person is licensed by the city as a sidewalk builder. It shall be unlawful to do such work without such a license.

Sec. 15-43. Same--Application information.
Any person desiring to do business as a sidewalk builder shall file in the office of the city clerk an application giving the following information:

(a) The name and place of business of the person, firm or corporation making such application.

(b) That the applicant is qualified by experience to engage in the work and willing to be governed in all respects by the rules and regulations which are or may be adopted by ordinance or resolution of the city council.

Sec. 15-44. Same--Information to be recorded.
On receiving a license as a sidewalk builder, the applicant therefor shall have recorded in the office of the city clerk his business address, his residence address, and the name under which the business is transacted. The license holder shall immediately notify the city clerk of any change in any such information.

Sec. 15-45. Same--Insurance for sidewalk builders.
Each licensed sidewalk builder shall take out and maintain during the term of his sidewalk builder's license such public liability and property damage insurance as shall protect him and the city from claims for damages for personal injury, including wrongful death, as well as from claims for property damage which may arise from his operations as a sidewalk builder within the city. Such policy shall name the City of Midland as an additional insured.

The amounts of such insurance shall be not less than fifty thousand dollars ($50,000.00) for injuries including wrongful death, to any one person, and subject to the same limit for each person in an amount not less than one hundred thousand dollars ($100,000.00) on account of one accident, and property damage insurance in an amount not less than ten thousand dollars ($10,000.00).

Certificates of public liability and property damage insurance shall be filed with the city clerk before the sidewalk builder's license is granted, and any work done.

Sec. 15-46. Tag Day license required for sale of patriotic emblems.
It shall be unlawful for any person, society of persons, individuals, organizations, firms or corporations to conduct a tag day or to offer for sale or receive anything for value for any emblem, badge, flower, flag or any symbol of patriotism, on the streets of the city or any other public place in the city, without first having obtained a license from the city council. Subsequent sales of goods by such persons or organization shall be subject to approval by the city clerk. No license shall be granted to each such person or organization for more than two (2) days in each year.

Sec. 15-47. Taxicab licenses.
Taxicab licenses shall be governed by the terms and provisions of chapter 27. Such licenses shall not be transferable.

Secs. 15-49--15-54. Reserved.

DIVISION 2.

AMUSEMENT RIDES, CIRCUSES, CARNIVALS

Sec. 15-55. Amusement ride license generally; exception.
No person shall operate any merry-go-round, ferris wheel, scenic railway or any other mechanical ride device without first obtaining a license therefor, unless such ride is a part of a circus or carnival for which a license has been obtained as provided in section 15-59 of this Code, or a children's amusement ride.
Cross References: Amusement ride license, § 21-15.

Sec. 15-56. Children's amusement ride--License.
No person shall operate any merry-go-round, airplane ride, miniature boat ride or other mechanical ride device of the size and nature limited to the use of children of the age not exceeding nine (9) years, without first obtaining a license therefor.
Cross References: Children's amusement ride license fee, § 21-16.

Sec. 15-57. Same--Inspection, insurance.

Inspection and insurance as required by sections 15-61 and 15-62 of this Code shall be required for amusement rides which by design and use is intended exclusively for use of children not exceeding nine (9) years of age.

Sec. 15-58. Same--Council may regulate by resolution.
The city council by resolution, may regulate amusement rides of the size and of a nature which are limited to the use of children not exceeding nine (9) years of age.

Sec. 15-59. Circus, carnival license.
No person shall conduct or operate any circus or carnival without first obtaining a license therefor. Such license shall include the right to operate devices described in section 15-55 above, incidental to such circus or carnival without the payment of additional fees.
Cross References: Circus, carnival license fee, § 21-14.

Sec. 15-60. Investigation of circus, carnival license applicant.
The city clerk shall refer each application for a circus or carnival license to the chief of police and the health officer for their investigation and recommendation.

Sec. 15-61. Inspection of circus, carnival devices and amusement rides.
The city manager may inspect or cause an inspection to be made of every device licensed under sections 15-55 and 15-59 of this Code before it is operated for public use and periodically thereafter, and if at any inspection, any structural weakness, defect or other unsafe condition is found, the city manager may suspend or revoke the license therefor.

Sec. 15-62. Insurance required.
Before any license shall be issued under sections 15-35, 15-55 and 15-59, the applicant therefor shall deposit with the city clerk a certificate of insurance in the amount of fifty thousand dollars ($50,000.00) for injury to one person, five hundred thousand dollars ($500,000.00) for one accident and five thousand dollars ($5,000.00) for property damage. Such certificate shall name the City of Midland as an additional assured.

Sec. 15-63. Licenses to be displayed.
All licenses granted pursuant to this article shall be prominently displayed on the premises for which they are issued, in such manner that they are readily visible to the public.

Sec. 15-64. Access of officials for inspection, enforcement of article.
No person licensed under or subject to the provisions of this article nor his or its agent or any employee, shall deny any member of the city fire, police or health departments, the city manager or his agent, access to the premises on which the amusement licensed by or subject to this article is conducted, maintained, operated, used or displayed for use for the purpose of inspection and for the enforcement of all laws and ordinances.

Secs. 15-65--15-68. Reserved.

ARTICLE III.

RESERVED*

* Editors Note: Former Art. III, §§ 15-69--15-95, which pertained to community antenna television systems, was repealed by § 1 of Ord. No. 1062, enacted Jan. 23, 1984. Since the adoption of this Code, the repealed provisions had been amended by Ord. No. 789, § 1,

enacted March 20, 1972; Ord. No. 966, § 1, enacted Dec. 3, 1979; Ord. No. 1016, § 1, enacted March 1, 1982; Ord. No. 1028, § 1, enacted Dec. 6, 1982; Ord. No. 1041, § 1, enacted March 21, 1983; and Ord. No. 1058, § 1, enacted Dec. 12, 1983.

Secs. 15-69--15-99. Reserved.

ARTICLE IV.

SOLICITORS*

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* Editors Note: Ord. No. 763 adopted Oct. 26, 1970 amended this Code by adding Art. IV, §§ 15-100--15-105. Said ordinance is set out herein as enacted, including article title, catchlines and numbering of sections.

Sec. 15-100. "Solicitor" defined.
The word "solicitor" as used in this article shall include any individual, whether a resident of the city or not, traveling either by foot, wagon, automobile, motor truck, or any other type of conveyance, from place to place, from house to house, or from street to street, taking or attempting to take orders for sale of goods, wares and merchandise, books or magazines, personal property of any nature whatsoever for future delivery, or for services to be furnished or performed in the future, whether or not such individual has, carries or exposes for sale a sample of the subject of such sale or whether he is collecting advance payments on such sales or not, and such definition shall include any person who, for himself, or for another person, hires, leases, uses, or occupies any building, structure, tent, railroad box car, boat, hotel room, lodging house, apartment, shop, or any other place within the city for the sole purpose of exhibiting samples and taking orders for future delivery. The word "solicitor" shall include the word "canvasser".
(Ord. No. 763, 10-26-70)

Sec. 15-101. License required.
No person shall engage in the business of solicitor within the city without first obtaining a license therefor from the city clerk. No such license shall be granted except upon certification of the chief of police.
(Ord. No. 763, 10-26-70)
Cross References: Solicitor's fee, § 21-49.

Sec. 15-102. License application.
The license application filed under the provisions of section 15-100 of this Code shall furnish the following information:

(a) Name and description of the applicant;

(b) Permanent home address and full local address of the applicant;

(c) A brief description of the nature of the business and the goods to be sold;

(d) If employed, the name and address of the employer, together with credentials establishing the exact relationship;

(e) The length of time for which the right to do business is desired;

(f) The place where the goods or property proposed to be sold or orders taken for the sale thereof, are manufactured or produced, where such goods or products are located at the time said application is filed, and the proposed method of delivery;

(g) A photograph of the applicant, taken within sixty (60) days immediately prior to the date of the filing of the application, which picture shall be two inches by two inches (2"×2") showing the head and shoulders of the applicant in a clear and distinguishing manner;

(h) A statement as to whether or not the applicant has been convicted of any felony, the nature of the offense, and the punishment assessed therefor.
(Ord. No. 763, 10-26-70)

Sec. 15-103. Fixed stands prohibited.
No licensee shall stop or remain in any one place upon any street, alley or public place, longer than necessary to make a sale to a customer wishing to buy.
(Ord. No. 763, 10-26-70)

Sec. 15-104. Practices prohibited.
No solicitor shall shout or cry out his goods or merchandise, nor blow any horns, ring any bell or use any other similar device to attract the attention of the public. No solicitor shall call upon residents in their homes after daylight hours unless previously invited to do so by the resident.
(Ord. No. 763, 10-26-70)

Sec. 15-105. Exempt persons.
Persons engaged in soliciting on foot in the neighborhood of their residence under the direct supervision of any nonprofit, education, fraternal, charitable or religious organization with headquarters or a local chapter in the Midland area shall be exempt from the requirements of this article.
(Ord. No. 763, 10-26-70)

Secs. 15-106--15-114. Reserved.

ARTICLE V.

CABLE COMMUNICATIONS

DIVISION 1.

FRANCHISE PROCEDURE*

* Editors Note: Section 1 of Ord. No. 1062, enacted Jan. 23, 1984 amended Ch. 15 by adding thereto a new Art. V, Div. 1, §§ 15-115--15-121. The provisions of said ordinance are included herein substantially as enacted, except that the word "ordinance" was changed to "division" where deemed necessary, and §§ 15-120 and 15-121 pertaining to severability and conflict with other provisions, have been omitted.

Sec. 15-115. Title.

This division of Article V of the Code of Ordinances of the City of Midland shall be known and may be cited as "The City of Midland Cable Communications Procedure Ordinance."
(Ord. No. 1062, § 1, 1-23-84)

Sec. 15-116. Declaration of purpose.
The purpose of the City of Midland Cable Communications Procedure Ordinance is to provide for regulation of cable communications service in the city in the interest of the public; to promote and encourage adequate, economical and efficient cable communications service to the residents of the city; and to provide for the furnishing of a cable communications system service to the residents of the city without unjust discrimination, undue preferences or advantages.
(Ord. No. 1062, § 1, 1-23-84)

Sec. 15-117. Definitions.
The following words, when used in this cable communications procedure division, shall have the following meanings, unless otherwise clearly apparent from the context:

Access channel shall mean any of the cultural access, sports access, educational access, government access, hospital access, leased access, public access, religious access and social services access channels or other access channels generally providing programs for noncommercial purposes other than those under control of a franchisee.

Basic service shall mean that group of channels or services delivered by a franchisee to subscribers and which may consist of satellite-delivered programming, automated programming, broadcast station programming, local programming and access programming covered by a regular monthly charge payable by all subscribers.

Cable system or *cable communications system* shall mean a system of antennae, coaxial cables, wires, wave guides or other conductors, equipment and facilities designed, constructed or used for the production of radio, television, optical or other signals, audio, video or other form of electronic or electric interception and receipt of television or radio signals directly or indirectly received off the air and the distribution or transmission to subscribers of such signals by means of cable, wire, frequency devices, optical fibers or other similar devices.

Cable communications service shall mean the business, in whole or in part, of receiving directly over the air, indirectly, from local sources or via satellite, and amplifying or otherwise modifying signals, transmitting programs by one (1) or more signals, sound signals, pictures, visual images, digital signals, telemetry, or any other type of closed circuit transmission by means of electrical or light impulses, whether or not directed to originating signals or receiving signals off the air or via satellite, and redistributing such signals by wire, cable or other means to members of the public.

City shall mean the City of Midland, Michigan, and all the territory within its territorial corporate limits.

Council is the city council of the City of Midland, Michigan.

Franchise or *franchise agreement* shall mean the separate agreement by which the franchise is granted to the grantee as authorized by the provisions of this division.

Grantee shall mean any person or company and parent company thereof granted a franchise in accordance with the provisions of this division.

Pay cable service or *pay TV* shall mean that group of optional channels or services other than those described as basic service which provide specialized programming or services for which a separate per program or per channel charge is made.

Person or *company* means and includes one (1) or more individuals, firms, corporations, associations, partnerships or organizations of any kind and any combination thereof.

Street shall mean the surface of, as well as the space above and below, any public street, road, highway, freeway, lane, path, public way or place, alley, court, sidewalk, boulevard, parkway drive or other easement, or any extension thereof, now or hereafter held by the city for any public purpose and shall include such other easements or rights-of-way or extension thereof as shall be now held or hereafter held by the city which shall, within their proper use and meaning, entitle the city or a franchisee to the use thereof for the purpose of installing or transmitting cable transmissions over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments and other property as may be ordinarily necessary and pertinent to a cable system.

Subscriber shall mean any person or entity who pays an installation charge and/or monthly fee to a cable system operator for connections to a cable system and for programs and services carried on and services provided by a cable system service of a franchisee.
(Ord. No. 1062, § 1, 1-23-84)

Sec. 15-118. Franchise--Required.

(a) No person shall use, occupy or traverse the city streets, alleys, lanes, avenues, boulevards, sidewalks, bridges, viaducts, rights-of-way or any other public place or public way in the city or any extensions thereof or additions thereto whether on, above or under the surface of the ground, for the purposes of installing, constructing, reconstructing, maintaining or operating a cable communications system or facilities therefor or for the purpose of furnishing a cable communications service, nor shall any person acquire ownership or control of a cable communications company in the city without such person having first obtained a franchise therefor from the city in the form of a franchise agreement between the city and the grantee.

(b) Such franchise shall contain certain specifications including, but not limited to, the following terms: duration of franchise; renewal of franchise; termination of franchise; transfer of franchise; regulation of rates; fees, reporting and records; penalties and procedures; insurance; construction, performance and other bonds; construction schedule and standards; access, local origination, pay and other programming; privacy; system maintenance; and operating practices.
(Ord. No. 1062, § 1, 1-23-84)

Sec. 15-119. Same--Application; contents; fees; issuance; and additional fees.

(a) The application for such franchise to install, construct, reconstruct, maintain or operate a cable communications system in the city or to furnish a cable communications system in the city or to furnish a cable communications service therein shall be made in writing to the city in such form as may be prescribed by council and shall include only such information requested by the council. The application shall be accompanied by a nonrefundable fee of three thousand five hundred dollars ($3,500.00), which fee shall be used to cover expenses, direct or indirect, incurred by the city in the preparation of this division, amendments to this division, development of requests for proposals or other application documents, the franchise agreement

and any amendments thereof, reviewing, investigating and evaluating the applications and proposals submitted.

(b) Upon the filing of such application and the payment of the fee as prescribed, the council shall consider the application in such a selection process as may be prescribed by council resolution and may request additional information as it may deem necessary to establish the legal, financial, technical and other qualifications of the applicant to provide a cable communications service in the city.

(c) If the council determines through its selection process that the applicant possesses the necessary qualifications, legal, financial, technical and otherwise reasonable to assure applicant's ability satisfactorily to install, construct, reconstruct, maintain and operate a cable communications system or to furnish a cable communications service to the public in the city, the council may direct its staff and/or agents to negotiate a franchise contract with such applicant. Upon approval of such franchise contract, the council may issue the applicant a nonexclusive franchise therefor in the city.
(Ord. No. 1062, § 1, 1-23-84)

Secs. 15-120--15-129. Reserved.

DIVISION 2.

MIDLAND COMMUNITY TELEVISION (MCTV)*

* Cross References: MCTV fines, fees and other charges, §§ 21-120, 21-121.

Sec. 15-130. Purpose of MCTV.

(a) The Midland Community Television (MCTV) studio has been established at the Grace A. Dow Memorial Library to provide production equipment and support services necessary for the creation of locally produced television programs.

(b) It is the purpose of MCTV to provide the people and organizations in the Midland area with an opportunity to be involved in using the television medium to inform, communicate, educate and entertain. It is also the purpose of MCTV to provide the Midland community with locally produced programs of public interest.

(c) The following television channels shall be operated by MCTV:

(1) *Channel 3.* This channel shall be known as the "public access channel" and shall be used solely to cablecast non-profit, non-commercial programming produced or sponsored by individuals or organizations in the Midland area. When the aforementioned programming is not scheduled, this channel may cablecast either an electronic message board to be known as the "public access electronic message board" or the Channel 15 electronic message board. The public access electronic message board shall be used solely for promotion of the public access channel and shall not be used for "for-profit" commercials or advertisements. Messages cablecast on the public access electronic message board may not contain any of the following:

a. Obscene material as the same is defined and regulated under Act No. 343 of the Public Acts of Michigan of 1984, being MCL 752.362 et seq.

b. Slanderous or libelous material.

(2) *Channel 5.* This channel shall be known as the "government access channel" and shall be used solely to cablecast non-profit, non-commercial programs produced or submitted by government agencies. When the aforementioned programming is not scheduled, this channel shall cablecast an electronic message board containing only government related messages submitted by government agencies to be known as the "government electronic message board." As determined by the city administration, electronic messages advising of emergencies, including but not limited to weather emergencies, shall take precedence over all other programming on this channel.

(3) *Channel 15.* This channel shall be used primarily to cablecast the electronic message board. Public access programming that would have been cablecast on Channel 3 but for scheduling constraints may also be cablecast on Channel 15.
(Ord. No. 1384, § 1, 8-25-97; Ord. No. 1437, § 1, 3-8-99)

Sec. 15-131. Program restrictions.
(a) No program, production or presentation shall be cablecast that contains any of the following:

(1) Information which relates directly or indirectly to a lottery, gift, enterprise or similar scheme, offering prizes dependent upon lot or chance.

(2) Obscene material as the same is defined and regulated under Public Act 343 of the Public Acts of the State of Michigan of 1984, being MCL 752.362 et seq.

(3) Slanderous or libelous material.

(b) Cablecasting of programs, productions or presentations shall be for noncommercial, nonprofit purposes only and accordingly, the following shall be excluded:

(1) Material, the primary purpose of which is to promote a commercial service, product, trade or business.

(2) Program material which identifies any product, service, trademark or brand name in a manner that is not reasonably related to the noncommercial use of such product, service, trademark or brand name, portrayed on the program material.

(3) Any solicitation for funds or other goods that would benefit the access user or his/her agent.
(Ord. No. 1384, § 1, 8-25-97)

Sec. 15-132. Channel 15 electronic message board restrictions.
(a) The electronic message board cablecast on Channel 15 is for informational purposes only and may be used for:

(1) The promotion of community activities, meetings or events by organizations or individuals.

(2) Editorial messages, the source of which shall be identified and included with the message.

(b) The electronic message board shall not be used for "for-profit" commercials or advertisements.

(c) No electronic message shall be cablecast that contains any of the following:

(1) Obscene material as the same is defined and regulated under Act No. 343 of the Public Acts of Michigan of 1984, being MCL 752.362 et seq.

(2) Slanderous or libelous material.
(Ord. No. 1384, § 1, 8-25-97; Ord. No. 1437, § 1, 3-8-99)

Sec. 15-133. Rules and procedures.
The city council shall establish by resolution such rules and procedures relative to the general administration, control, supervision and uses of MCTV facilities as shall be deemed necessary or advisable. Scheduling of cablecast time on any channels that may now or hereafter be designated as a government or school district channel by the city council of the City of Midland and any use of a MCTV access channel or channels, including the use of any MCTV studio or equipment, by the city council of the City of Midland or by the city manager or his or her designee may be exempt from all or part of these rules, as determined by the city manager or his designee. A copy of said rules and procedures shall be published and maintained in the office of the city clerk.
(Ord. No. 1384, § 1, 8-25-97; Ord. No. 1490, § 1, 11-13-00)

Sec. 15-134. Cable access advisory commission--Created.
There is hereby established an advisory body to the city council to be known as the cable access advisory commission, hereinafter to be known as the "commission," which shall act solely in an advisory capacity to the city council with regard to all aspects of public access cable service in the City of Midland.
(Ord. No. 1476, § 1, 4-10-00)

Sec. 15-135. Same--Membership.
Membership of the commission shall consist of five (5) voting members appointed by the city council. Three (3) members shall be current registered MCTV access users, one (1) member shall be a school representative as designated by the Midland Public Schools, and one (1) member shall be a citizen at large and must be a current cable television subscriber. Each member shall be a resident of the city. The person from the administrative staff of the city who has been designated by the city manager as the MCTV coordinator shall be an ex officio member of the commission but without the right to vote.
(Ord. No. 1476, § 1, 4-10-00; Ord. No. 1700, § 1, 5-24-10)

Sec. 15-136. Same--Term of members.
Each member of the commission shall be appointed for a term of three (3) years commencing on July 1 except that the members first appointed shall begin their terms immediately with three (3) of said members being appointed for terms ending June 30, 2003, two (2) of said members being appointed for terms ending June 30, 2002, and two (2) members being appointed for terms ending June 30, 2001.
(Ord. No. 1476, § 1, 4-10-00)

Same--Internal administration.

The commission shall select one of its voting members as chair and shall designate the ex-officio member as secretary. The commission may adopt such rules as it deems necessary for the transaction of its business. Any decision of the commission shall require the concurrence of three (3) members. The commission shall meet as often as necessary with at least one (1) meeting each calendar quarter and all of its meetings shall be open to the public.
(Ord. No. 1476, § 1, 4-10-00; Ord. No. 1700, § 1, 5-24-10)

Sec. 15-138. Same--Specific duties.
The commission shall have the following specific duties:

(1) Advise the city council regarding general policy matters related to the services provided to public access producers and viewers pursuant to the Code of Ordinances of the City of Midland.

(2) Encourage the use of public access channels among the widest range of institutions, groups, and individuals within the City of Midland.

(3) Make an annual report to the city which shall include, but not be limited to, a summary report on the utilization of any public access channels and a summary report of the commission's deliberations throughout the year.

(4) Request comments and encourage suggestions from the public regarding public access channels.

(5) Perform such other functions as the city council may direct.
(Ord. No. 1476, § 1, 4-10-00)

Sec. 15-139. Same--Finances.
The commission shall not have the power to expend public funds but may make recommendations to the city council for budget purposes.
(Ord. No. 1476, § 1, 4-10-00)

DIVISION 3.

RATES

Sec. 15-140. Definitions.

For purposes of this article *Act* shall mean the Communications Act of 1934, as amended (and specifically as amended by the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. 102-385), and as may be amended from time to time; *FCC* shall mean the Federal Communications Commission; *FCC rules* shall mean all rules of the FCC promulgated from time to time pursuant to the Act; *basic cable service* shall mean basic service as defined in the FCC rules, and any other cable television service which is subject to rate regulation by the city pursuant to the Act and the FCC rules; *associated equipment* shall mean all equipment and services subject to regulation pursuant to 47 CFR section 76.923; and an *increase in rates* shall mean an increase in rates or a decrease in programming or customer services. All other words and phrases used in this article shall have the same meaning as defined in the Act and FCC rules.
(Ord. No. 1275, § 1, 9-20-93)

Sec. 15-141. Purpose; interpretation.
The purpose of this article is to adopt regulations consistent with the Act and the FCC rules, with respect to basic cable service rate regulation; and prescribe procedures to provide a reasonable opportunity for consideration of the views of interested parties in connection with basic cable service rate regulation by the city. This article shall be implemented and interpreted consistent with the Act and FCC rules.
(Ord. No. 1275, § 1, 9-20-93)

Sec. 15-142. Rate regulations promulgated by FCC.
In connection with the regulation of rates for basic cable service and associated equipment, the city shall follow all FCC rules.
(Ord. No. 1275, § 1, 9-20-93)

Sec. 15-143. Filing; additional information; burden of proof.
(a) A cable operator shall submit its schedule of rates for the basic service tier and associated equipment or a proposed increase in such rates in accordance with the Act and the FCC rules. The cable operator shall include, as part of its submission, such information as is necessary to show that its schedule of rates or its proposed increase in rates complies with the Act and the FCC rules. The cable operator shall file ten (10) copies of the schedule or proposed increase with the city clerk. For purposes of this article, the filing of the cable operator shall be deemed to have been made when at least ten (10) copies have been received by the city clerk. The city council may, by resolution or otherwise, adopt rules and regulations prescribing the information, data and calculations which must be included as part of the cable operator's filing of the schedule of rates or a proposed increase.

(b) In addition to information and data required by rules and regulations of the city pursuant to subsection (a) above, a cable operator shall provide all information requested by the city manager in connection with the city's review and regulation of existing rates for the basic service tier and associated equipment or a proposed increase in these rates. The city manager may establish deadlines for submission of the requested information and the cable operator shall comply with such deadlines.

(c) A cable operator has the burden of proving that its schedule of rates for the basic service tier and associated equipment or a proposed increase in such rates complies with the Act and the FCC rules, including, without limitation, 47 USC section 543 and 47 CFR sections 76.922 and 76.923.
(Ord. No. 1275, § 1, 9-20-93)

Sec. 15-144. Proprietary information.
(a) If this article, any rules or regulations adopted by the city pursuant to section 15-143(a), or any request for information pursuant to section 15-143(b) requires the production of proprietary information, the cable operator shall produce the information. However, at the time the allegedly proprietary information is submitted, a cable operator may request that specific, identified portions of its response be treated as confidential and withheld from public disclosure. The request must state the reason why the information should be treated as proprietary and the facts that support those reasons. The request for confidentiality will be granted if the city determines that the preponderance of the evidence shows that nondisclosure is consistent with the provisions of the Freedom of Information Act, 5 U.S.C. section 552. The city shall place in a public file for inspection any decision that results in information being withheld. If the cable operator requests confidentiality and the request is denied, where the cable operator is proposing a rate increase, it may withdraw the proposal, in which case the allegedly proprietary

information will be returned to it; or the cable operator may seek review within five (5) working days of the denial in any appropriate forum. Release of the information will be stayed pending review.

(b) Any interested party may file a request to inspect material withheld as proprietary with the city. The city shall weigh the policy considerations favoring nondisclosure against the reasons cited for permitting inspection in light of the facts of the particular case. It will then promptly notify the requesting entity and the cable operator that submitted the information as to the disposition of the request. It may grant, deny or condition a request. The requesting party or the cable operator may seek review of the decision by filing an appeal with any appropriate forum. Disclosure will be stayed pending resolution of any appeal.

(c) The procedures set forth in this section shall be construed as analogous to and consistent with the rules of the FCC regarding requests for confidentiality, including, without limitation, 47 CFR section 0.459.
(Ord. No. 1275, § 1, 9-20-93)

Sec. 15-145. Public notice; initial review of rates.
Upon the filing of ten (10) copies of the schedule of rates or the proposed increase in rates pursuant to section 15-143(a) above, the city clerk shall publish a public notice in a newspaper of general circulation in the city which shall state that the filing has been received by the city clerk and, except those parts which may be withheld as proprietary, is available for public inspection and copying; and interested parties are encouraged to submit written comments on the filing to the city clerk not later than seven (7) days after the public notice is published. The city clerk shall give notice to the cable operator of the date, time, and place of the meeting at which the city council shall first consider the schedule of rates or the proposed increase. This notice shall be mailed by first class mail at least three (3) days before the meeting. In addition, if a written staff or consultant's report on the schedule of rates or the proposed increase is prepared for consideration of the city council, then the city clerk shall mail a copy of the report by first class mail to the cable operator at least three (3) days before the meeting at which the city council shall first consider the schedule of rates or the proposed increase.
(Ord. No. 1275, § 1, 9-20-93)

Sec. 15-146. Tolling order.
After a cable operator has filed its existing schedule of rates or a proposed increase in these rates, the existing schedule of rates will remain in effect or the proposed increase in rates will become effective after thirty (30) days from the date of filing under section 15-143(a) above unless the city council (or other properly authorized body or official) tolls the thirty-day deadline pursuant to 47 CFR section 76.933 by issuing a brief written order, by resolution or otherwise, within thirty (30) days of the date of filing. The city council may toll the thirty-day deadline for an additional ninety (90) days in cases not involving cost-of-service showings and for an additional one hundred fifty (150) days in cases involving cost-of-service showings.
(Ord. No. 1275, § 1, 9-20-93)

Sec. 15-147. Public notice; hearing on basic cable service rates following tolling of thirty-day deadline.
If a written order has been issued pursuant to section 15-146 and 47 CFR section 76.933 to toll the effective date of existing rates for the basic service tier and associated equipment or a proposed increase in these rates, the cable operator shall submit to the city any additional information required or requested pursuant to section 15-143 of this article. In addition, the city council shall hold a public hearing to consider the comments of interested parties within the

additional ninety-day or one hundred fifty-day period, as the case may be. The city clerk shall publish a public notice of the public hearing in a newspaper of general circulation within the city which shall state the date, time, and place at which the hearing shall be held; interested parties may appear in person, by agent, or by letter at such hearing to submit comments on or objections to the existing rates or the proposed increase in rates; and copies of the schedule of rates or the proposed increase in rates and related information, except those parts which may be withheld as proprietary, are available for inspection or copying from the office of the clerk. The public notice shall be published not less than fifteen (15) days before the hearing. In addition, the city clerk shall mail by first class mail a copy of the public notice to the cable operator not less than fifteen (15) days before the hearing.
(Ord. No. 1275, § 1, 9-20-93)

Sec. 15-148. Staff or consultant report; written response.
Following the public hearing, the city manager shall cause a report to be prepared for the city council which shall (based on the filing of the cable operator, the comments or objections of interested parties, information requested from the cable operator and its response, staff or consultant's review, and other appropriate information) include a recommendation for the decision of the city council pursuant to section 15-149. The city clerk shall mail a copy of the report to the cable operator by first-class mail not less than twenty (20) days before the city council acts under section 15-149. The cable operator may file a written response to the report with the city clerk. If at least ten (10) copies of the response are filed by the cable operator with the city clerk within ten (10) days after the report is mailed to the cable operator, the city clerk shall forward it to the city council.
(Ord. No. 1275, § 1, 9-20-93)

Sec. 15-149. Rate decisions and orders.
The city council shall issue a written order, by resolution or otherwise, which in whole or in part approves the existing rates for basic cable service and associated equipment or a proposed increase in such rates, denies the existing rates or proposed increase, orders a rate reduction, prescribes a reasonable rate, allows the existing rates or proposed increase to become effective subject to refund, or orders other appropriate relief, in accordance with the FCC rules. If the city council issues an order allowing the existing rates or proposed increase to become effective subject to refund, it shall also direct the cable operator to maintain an accounting pursuant to 47 CFR section 76.933. The order specified in this section shall be issued within ninety (90) days of the tolling order under section 15-146 in all cases not involving a cost-of-service showing. The order shall be issued within one hundred fifty (150) days after the tolling order under section 15-146 in all cases involving a cost-of-service showing.
(Ord. No. 1275, § 1, 9-20-93)

Sec. 15-150. Refunds; notice.
The city council may order a refund to subscribers as provided in 47 CFR section 76.942. Before the city council orders any refund to subscribers, the city clerk shall give at least seven (7) days' written notice to the cable operator by first class mail of the date, time, and place at which the city council shall consider issuing a refund order and shall provide an opportunity for the cable operator to comment. The cable operator may appear in person, by agent, or by letter at such time for the purpose of submitting comments to the city council.
(Ord. No. 1275, § 1, 9-20-93)

Sec. 15-151. Written decisions; public notice.
Any order of the city council pursuant to section 15-149 or section 15-150 shall be in writing, shall be effective upon adoption by the city council, and shall be deemed released to the public

upon adoption. The clerk shall publish a public notice of any such written order in a newspaper of general circulation within the city which shall summarize the written decision, and state that copies of the text of the written decision are available for inspection or copying from the office of the clerk. In addition, the city clerk shall mail a copy of the text of the written decision to the cable operator by first class mail.
(Ord. No. 1275, § 1, 9-20-93)

Sec. 15-152. Additional rules and regulations.
In addition to rules promulgated pursuant to section 15-143, the city council may, by resolution or otherwise, adopt rules and regulations for basic cable service rate regulation proceedings, including, without limitation, the conduct of hearings, consistent with the Act and FCC rules.
(Ord. No. 1275, § 1, 9-20-93)

Sec. 15-153. Failure to give notice.
The failure of the city clerk to give the notices or to mail copies of reports as required by this article shall not invalidate the decisions or proceedings of the city council.
(Ord. No. 1275, § 1, 9-20-93)

Sec. 15-154. Additional hearings.
In addition to the requirements of this article, the city council may hold additional hearings upon such reasonable notice as the city council, in its sole discretion, shall prescribe.
(Ord. No. 1275, § 1, 9-20-93)

Sec. 15-155. Additional powers.
The city shall possess all powers conferred by the Act, the FCC rules, the cable operator's franchise, and all other applicable law. The powers exercised pursuant to the Act, the FCC rules, and this article shall be in addition to powers conferred by law or otherwise. The city may take any action not prohibited by the Act and the FCC rules to protect the public interest in connection with basic cable service rate regulation.
(Ord. No. 1275, § 1, 9-20-93)

Sec. 15-156. Failure to comply; remedies.
The city may pursue any and all legal and equitable remedies against the cable operator, including, without limitation, all remedies under a cable operator's franchise with the city, for failure to comply with the Act, the FCC rules, any orders or determinations of the city pursuant to this article, any requirements of this article, or any rules or regulations promulgated hereunder. Subject to applicable law, failure to comply with the Act, the FCC rules, any orders or determinations of the city pursuant to this article, any requirements of this article, or any rules and regulations promulgated hereunder, shall also be sufficient grounds for revocation or denial of renewal of a cable operator's franchise.
(Ord. No. 1275, § 1, 9-20-93)

Sec. 15-157. Severability.
The various parts, sections, and clauses of this article are hereby declared to be severable. If any part, sentence, paragraph, section or clause is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the article shall not be affected thereby.
(Ord. No. 1275, § 1, 9-20-93)

Sec. 15-158. Conflicting provisions.

In the event of any conflict between this article and the provisions of any prior ordinance or any franchise, permit, consent agreement or other agreement with a cable operator, then the provisions of this article shall control.
(Ord. No. 1275, § 1, 9-20-93)

ARTICLE VI.

TELECOMMUNICATIONS

Sec. 15-180. Purpose.
The purposes of this ordinance are to regulate access to and ongoing use of public rights-of-way by telecommunications providers for their telecommunications facilities while protecting the public health, safety, and welfare and exercising reasonable control of the public rights-of-way in compliance with the Metropolitan Extension Telecommunications Rights-of-Way Oversight Act (Act No. 48 of the Public Acts of 2002) ("Act") and other applicable law, and to ensure that the City qualifies for distributions under the Act by modifying the fees charged to providers and complying with the Act.

Sec. 15-181. Conflict.
Nothing in this ordinance shall be construed in such a manner as to conflict with the Act or other applicable law.

Sec. 15-182. Terms Defined.
The terms used in this ordinance shall have the following meanings:

Act means the Metropolitan Extension Telecommunications Rights-of-Way Oversight Act (Act No. 48 of the Public Acts of 2002), as amended from time to time.

City means the City of Midland.

City Council means the City Council of the City of Midland or its designee. This Section does not authorize delegation of any decision or function that is required by law to be made by the City Council.

City Manager means the City Manager or his or her designee.

Permit means a non-exclusive permit issued pursuant to the Act and this ordinance to a telecommunications provider to use the public rights-of-way in the City for its telecommunications facilities.

All other terms used in this ordinance shall have the same meaning as defined or as provided in the Act, including without limitation the following:

Authority means the Metropolitan Extension Telecommunications Rights-of-Way Oversight Authority created pursuant to Section 3 of the Act.

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

Person means an individual, corporation, partnership, association, governmental entity, or any other legal entity.

Public Right-of-Way means the area on, below, or above a public roadway, highway, street, alley, easement or waterway. Public right-of-way does not include a federal, state, or private right-of-way.

Telecommunication Facilities or *Facilities* means the equipment or personal property, such as copper and fiber cables, lines, wires, switches, conduits, pipes, and sheaths, which are used to or can generate, receive, transmit, carry, amplify, or provide telecommunication services or signals. Telecommunication facilities or facilities do not include antennas, supporting structures for antennas, equipment shelters or houses, and any ancillary equipment and miscellaneous hardware used to provide federally licensed commercial mobile service as defined in section 332(d) of part I of title III of the communications act of 1934, chapter 652, 48 Stat. 1064, 47 U.S.C. 332 and further defined as commercial mobile radio service in 47 CFR 20.3, and service provided by any wireless, two-way communication device.

Telecommunications Provider, Provider and *Telecommunications Services* mean those terms as defined in Section 102 of the Michigan telecommunications act, 1991 PA 179, MCL 484.2102. Telecommunication provider does not include a person or an affiliate of that person when providing a federally licensed commercial mobile radio service as defined in Section 332(d) of part I of the communications act of 1934, chapter 652, 48 Stat. 1064, 47 U.S.C. 332 and further defined as commercial mobile radio service in 47 CFR 20.3, or service provided by any wireless, two-way communication device. For the purpose of the Act and this ordinance only, a provider also includes 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.

Sec. 15-183. Permit Required.

(a) *Permit Required*. Except as otherwise provided in the Act, a telecommunications provider using or seeking to use public rights-of-way in the City for its telecommunications facilities shall apply for and obtain a permit pursuant to this ordinance.

(b) *Application*. Telecommunications providers shall apply for a permit on an application form approved by the MPSC in accordance with Section 6(1) of the Act. A telecommunications provider shall file one copy of the application with the City Clerk, one copy with the City Manager, and one copy with the City Attorney. Upon receipt, the City Clerk shall make four (4) copies of the application and distribute a copy to the City Engineer, the Director of Planning & Community Development, the Director of Public Services, and the Utilities Director. Applications shall be complete and include all information required by the Act, including without limitation a route map showing the location of the provider's existing and proposed facilities in accordance with Section 6(5) of the Act.

(c) *Confidential Information.* If a telecommunications provider claims that any portion of the route maps submitted by it as part of its application contain trade secret, proprietary, or confidential information, which is exempt from the Freedom of Information Act, 1976 PA 442, MCL 15.231 to 15.246, pursuant to Section 6(5) of the Act, the telecommunications provider shall prominently so indicate on the face of each map.

(d) *Application Fee.* Except as otherwise provided by the Act, the application shall be accompanied by a one-time non-refundable application fee in the amount of $500.00.

(e) *Additional Information*. The City Manager may request an applicant to submit such additional information, which the City Manager deems reasonably necessary or relevant. The applicant shall comply with all such requests in compliance with reasonable deadlines for such additional information established by the City Manager. If the City and the applicant cannot agree on the requirement of additional information requested by the City, the City or the applicant shall notify the MPSC as provided in Section 6(2) of the Act.

(f) *Previously Issued Permits.* Pursuant to Section 5(1) of the Act, authorizations or permits previously issued by the City under Section 251 of the Michigan telecommunications act, 1991 PA 179, MCL 484.2251 and authorizations or permits issued by the City to telecommunications providers prior to the 1995 enactment of Section 251 of the Michigan telecommunications act but after 1985 shall satisfy the permit requirements of this ordinance.

(g) *Existing Providers*. Pursuant to Section 5(3) of the Act, within 180 days from November 1, 2002, the effective date of the Act, a telecommunications provider with facilities located in a public right-of-way in the City as of such date, that has not previously obtained authorization or a permit under Section 251 of the Michigan telecommunications act, 1991 PA 179, MCL 484.2251, shall submit to the City an application for a permit in accordance with the requirements of this ordinance. Pursuant to Section 5(3) of the Act, a telecommunications provider submitting an application under this subsection is not required to pay the $500.00 application fee required under subsection (d) above. A provider under this subsection shall be given up to an additional 180 days to submit the permit application if allowed by the Authority, as provided in Section 5(4) of the Act.

Sec. 15-184. Issuance of Permit.

(a) *Approval or Denial*. The authority to approve or deny an application for a permit is hereby delegated to the City Manager. Pursuant to Section 15(3) of the Act, the City Manager shall approve or deny an application for a permit within forty-five (45) days from the date a telecommunications provider files an application for a permit under Section 15-183(b) of this ordinance for access to a public right-of-way within the City. Pursuant to Section 6(6) of the Act, the City Manager shall notify the MPSC when the City Manager has granted or denied a permit, including information regarding the date on which the application was filed and the date on which permit was granted or denied. The City Manager shall not unreasonably deny an application for a permit.

(b) *Form of Permit*. If an application for permit is approved, the City Manager shall issue the permit in the form approved by the MPSC, with or without additional or different permit terms, in accordance with Sections 6(1), 6(2) and 15 of the Act.

(c) *Conditions.* Pursuant to Section 15(4) of the Act, the City Manager may impose conditions on the issuance of a permit, which conditions shall be limited to the telecommunications provider's access and usage of the public right-of-way.

(d) *Bond Requirement.* Pursuant to Section 15(3) of the Act, and without limitation on subsection (c) above, the City Manager may require that a bond be posted by the telecommunications provider as a condition of the permit. If a bond is required, it shall not

exceed the reasonable cost to ensure that the public right-of-way is returned to its original condition during and after the telecommunications provider's access and use.

Sec. 15-185. Construction/Engineering Permit.
A telecommunications provider shall not commence construction upon, over, across, or under the public rights-of-way in the City without first obtaining a construction or engineering permit as required under chapter 22 of this Code, as amended, for construction within the public rights-of-way. No fee shall be charged for such a construction or engineering permit.

Sec. 15-186. Conduit or Utility Poles.
Pursuant to Section 4(3) of the Act, obtaining a permit or paying the fees required under the Act or under this ordinance does not give a telecommunications provider a right to use conduit or utility poles.

Sec. 15-187. Route Maps.
Pursuant to Section 6(7) of the Act, a telecommunications provider shall, within 90 days after the substantial completion of construction of new telecommunications facilities in the City, submit route maps showing the location of the telecommunications facilities to both the MPSC and to the City. The route maps should be in electronic format unless and until the MPSC determines otherwise, in accordance with Section 6(8) of the Act.

Sec. 15-188. Repair of Damage.
Pursuant to Section 15(5) of the Act, a telecommunications provider undertaking an excavation or construction or installing telecommunications facilities within a public right-of-way or temporarily obstructing a public right-of-way in the City, as authorized by a permit, shall promptly repair all damage done to the street surface and all installations under, over, below, or within the public right-of-way and shall promptly restore the public right-of-way to its preexisting condition.

Sec. 15-189. Establishment and Payment of Maintenance Fee.
In addition to the non-refundable application fee paid to the City set forth in subsection 4(d) above, a telecommunications provider with telecommunications facilities in the City's public rights-of-way shall pay an annual maintenance fee to the Authority pursuant to Section 8 of the Act.

Sec. 15-190. Modification of Existing Fees.
In compliance with the requirements of Section 13(1) of the Act, the City hereby modifies, to the extent necessary, any fees charged to telecommunications providers after November 1, 2002, the effective date of the Act, relating to access and usage of the public rights-of-way, to an amount not exceeding the amounts of fees and charges required under the Act, which shall be paid to the Authority. In compliance with the requirements of Section 13(4) of the Act, the City also hereby approves modification of the fees of providers with telecommunication facilities in public rights-of-way within the City's boundaries, so that those providers pay only those fees required under Section 8 of the Act. The City shall provide each telecommunications provider affected by the fee with a copy of this ordinance, in compliance with the requirement of Section 13(4) of the Act. To the extent any fees are charged telecommunications providers in excess of the amounts permitted under the Act, or which are otherwise inconsistent with the Act, such imposition is hereby declared to be contrary to the City's policy and intent, and upon application by a provider or discovery by the City, shall be promptly refunded as having been charged in error.

Sec. 15-191. Savings Clause.

Pursuant to Section 13(5) of the Act, if Section 8 of the Act is found to be invalid or unconstitutional, the modification of fees under Section 11 above shall be void from the date the modification was made.

Sec. 15-192. Use of Funds.

Pursuant to Section 10(4) of the Act, all amounts received by the City from the Authority shall be used by the City solely for rights-of-way related purposes.

Sec. 15-193. Annual Report.

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

Sec. 15-194. Cable Television Operators.

Pursuant to Section 13(6) of the Act, the City shall not hold a cable television operator in default or seek any remedy for its failure to satisfy an obligation, if any, to pay after November 1, 2002, the effective date of this Act, a franchise fee or similar fee on that portion of gross revenues from charges the cable operator received for cable modem services provided through broadband internet transport access services.

Sec. 15-195. Existing Rights.

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

Sec. 15-196. Compliance.

The City hereby declares that its policy and intent in adopting this ordinance is to fully comply with the requirements of the Act, and the provisions hereof should be construed in such a manner as to achieve that purpose. The City shall comply in all respects with the requirements of the Act, including but not limited to the following:

(a) Exempting certain route maps from the Freedom of Information Act, 1976 PA 442, MCL 15.231 to 15.246, as provided in Section 4(c) of this ordinance;

(b) Allowing certain previously issued permits to satisfy the permit requirements hereof, in accordance with Section 4(f) of this ordinance;

(c) Allowing existing providers additional time in which to submit an application for a permit, and excusing such providers from the $500 application fee, in accordance with Section 4(g) of this ordinance;

(d) Approving or denying an application for a permit within forty-five (45) days from the date a telecommunications provider files an application for a permit for access to and usage of a public right-of-way within the City, in accordance with Section 5(a) of this ordinance;

(e) Notifying the MPSC when the City has granted or denied a permit, in accordance with Section 5(a) of this ordinance;

(f) Not unreasonably denying an application for a permit, in accordance with Section 5(a) of this ordinance;

(g) Issuing a permit in the form approved by the MPSC, with or without additional or different permit terms, as provided in Section 5(b) of this ordinance;

(h) Limiting the conditions imposed on the issuance of a permit to the telecommunications provider's access and usage of the public right-of-way, in accordance with Section 5(c) of this ordinance;

(i) Not requiring a bond of a telecommunications provider which exceeds the reasonable cost to ensure that the public right-of-way is returned to its original condition during and after the telecommunication provider's access and use, in accordance with Section 5(d) of this ordinance;

(j) Not charging any telecommunications providers any additional fees for construction or engineering permits, in accordance with Section 6 of this ordinance;

(k) Providing each telecommunications provider affected by the City's right-of-way fees with a copy of this ordinance, in accordance with Section 11 of this ordinance;

(l) Submitting an annual report to the Authority, in accordance with Section 14 of this ordinance; and

(m) Not holding a cable television operator in default for a failure to pay certain franchise fees, in accordance with Section 15 of this ordinance.

Sec. 15-197. Reservation of Police Powers.

Pursuant to Section 15(2) of the Act, this ordinance shall not limit the City's right to review and approve a telecommunication provider's access to and ongoing use of a public right-of-way or limit the City's authority to ensure and protect the health, safety, and welfare of the public.

Sec. 15-198. Severability.

The various parts, sentences, paragraphs, sections, and clauses of this ordinance are hereby declared to be severable. If any part, sentence, paragraph, section, or clause of this ordinance is adjudged unconstitutional or invalid by a court or administrative agency of competent jurisdiction, the unconstitutionality or invalidity shall not affect the constitutionality or validity of any remaining provisions of this ordinance.

Sec. 15-199. Authorized City Officials.

The City Manager or his or her designee is hereby designated as the authorized City official to issue municipal civil infraction citations (directing alleged violators to appear in court) or municipal civil infraction violation notices (directing alleged violators to appear at the municipal chapter violations bureau) for violations under this ordinance as provided by the City Code.

Sec. 15-200. Municipal Civil Infraction.

A person who violates any provision of this ordinance or the terms or conditions of a permit is responsible for a municipal civil infraction, and shall be subject to Section 34-6 of the City of Midland Code of Ordinances. Nothing in this Section shall be construed to limit the remedies available to the City in the event of a violation by a person of this ordinance or a permit.

Sec. 15-201. Repealer.
All ordinances and portions of ordinances inconsistent with this ordinance are hereby repealed.

(Ord. No. 1546, § 1, 10-28-02)

ARTICLE VII.

ALCOHOLIC BEVERAGE Licenses FOR CONSUMPTION ON THE PREMISES

DIVISION 1.

GENERAL PURPOSE AND GENERAL REQUIREMENTS

Sec. 15-220. Purpose.
The purpose of this article is to provide for the local regulation of alcoholic beverage licenses for consumption on the premises. Applicants for a liquor license are asking the people, through their duly constituted representatives, for a permit to conduct an alcoholic beverage establishment. No applicant, existing licensee, person or firm has any "right" to a license. As no one has a "right" to a license, any consideration given to applicants must be secondary to the requirements of the community-at-large. Alcoholic beverage licenses will be approved to foster economic growth of the City at large and to provide a service to the community. It should be generally interpreted that any applicant for a liquor license shall be seeking this license to be used in conjunction with some primary business activity other than the serving of beer, wine, or spirits. Some examples of this would include restaurants, hotels, motels, bowling alleys, etc. It shall, however, be the responsibility of the City Council to evaluate each application on an individual basis and to determine that each license is in the best interest of the City of Midland. Approval of any new or reclassification of existing alcoholic beverage licenses for consumption on the premises will be based upon the moral and business character of the prospective licensee, the ability of the establishment to be erected and operated within the limitations of State laws, and the current standards of existing municipal ordinances, except as hereafter specified.

Sec. 15-221. Definitions.
For the purposes of this chapter the following definitions are adopted:

(1) "Alcohol" means the product of distillation of fermented liquid, whether or not rectified or diluted with water, but does not mean ethyl or industrial alcohol, diluted or not, that has been denatured or otherwise rendered unfit for beverage purposes.

(2) "Class C License" means a place licensed by the liquor control commission to sell at retail beer, wine, mixed spirit drink, and spirits for consumption on the premises.

(3) "Class A Hotel" means a hotel licensed by the liquor control commission to sell beer and wine for consumption on the premises only, which provides for the rental of, and maintains the availability for rental of, not less than 25 bedrooms if located in a local governmental unit with a population of less than 175,000 or not less than 50 bedrooms if located in a local governmental unit with a population of 175,000 or more.

(4) "Class B Hotel" means a hotel licensed by the liquor control commission to sell beer, wine, mixed spirit drink, and spirits for consumption on the premises only, which provides for the

rental of, and maintains the availability for rental of, not less than 25 bedrooms if located in a local governmental unit with a population of less than 175,000 or not less than 50 bedrooms if located in a governmental unit with a population of 175,000 or more.

(5) "Liquor Control Commission" means the liquor control commission provided for and created in Section 209 of Public Act 58 of 1998.

(6) "License" means a contract between the liquor control commission and the licensee granting authority to that licensee to sell alcoholic liquor in the manner provided by the liquor control act.

(7) "Mixed spirit drink" means a drink produced and packaged or sold by a mixed spirit drink manufacturer or an outstate seller of mixed spirit drink which contains 10% or less alcohol by volume consisting of distilled spirits mixed with nonalcoholic beverages or flavoring or coloring materials and which may also contain 1 or more of the following:

a. Water.
b. Fruit juices.
c. Fruit adjuncts.
d. Sugar.
e. Carbon dioxide.
f. Preservatives.

(8) "Resort license" means a license that may be issued by the liquor control commission without regard to a limitation because of population that meets the applicable requirements in Section 531 of Public Act 58 of 1998.

(9) "Spirits" means a beverage that contains alcohol obtained by distillation, mixed with potable water or other substances, or both, in solution, and includes wine containing an alcoholic content of more than 21% by volume, except sacramental wine and mixed spirit drink.

(10) Tavern" means any place licensed by the liquor control commission to sell at retail beer and wine for consumption on the premises only.

Sec. 15-222. Liquor License Distribution.
In order that there may be a fair distribution of available licenses, the city will consider whether an applicant has a license in the Midland trading area or has an interest in a firm or corporation having such a license. The extent of such interest, the similarity of the facility involved, and the overall good of the community will be considered in deciding any application which may result in a single individual or firm having a substantial interest in more than one license in the area. Efforts will be made in securing a geographic distribution of available licenses so that the various commercial areas of the City will be properly accommodated. The location proposed by the applicant will be considered with this factor in mind.

Sec. 15-223. Application required; fee.
After filing an application with the liquor control commission, each applicant seeking any new, or a reclassification of an existing license, must submit an application to the City on forms that will be provided by the City Clerk. Such an application pertains to City of Midland approval only, and is in addition to the separate application required by the liquor control commission. An application fee of $250.00 shall be paid at the time the application is submitted. Reclassification of an existing license requiring a city application shall include:

(1) Transfer or change of ownership or stock interest at same location for a Class “C”, Hotel “B”, Resort, and Tavern license. The transfer in the aggregate to another person during any single licensing year of more than 10% of the outstanding stock of a licensed corporation or more than 10% of the total interest in a licensed limited partnership shall be considered to be a transfer requiring the prior approval of the City Council.

(2) New locations or new structures with same owner for a Class “C”, Hotel “B”, and Tavern license. A resort license may not be transferred to a new location.

(3) New locations or new structures with change of ownership or stock interest for a Class “C”, Hotel “B”, and Tavern license. A resort license may not be transferred to a new location. (Ord. No. 1552, § 1, 11-25-02; Ord. No. 1553, § 1, 12-09-02)

Sec. 15-224. Required information supplemental to application.
In addition to the City’s application, the applicant must submit to the office of the City Manager the following:

(1) A minimum of three written letters of character reference.

(2) A written statement showing history of business activity, if any.

(3) Show, by way of drawings and/or written documentation, where and how the proposed establishment will operate.

(4) Show that the establishment will conform to the current standards of existing building ordinances, and other municipal laws and regulations, and that all new applicants conform to the current zoning ordinance.

(5) Satisfactory evidence of having established or being prepared to establish the implementation of procedures to prevent alcohol abuse on its premises or related to its premises by instituting a program such as Training for Intervention Procedures by Servers of Alcohol (T.I.P.S.), Techniques of Alcohol Management (T.A.M.) or the Management/Server Alcohol Awareness Program.

(6) Satisfactory evidence to show the applicant has the financial ability to complete his project according to his plans and within a reasonable period of time.

(7) In the case of a new license, the applicant shall specify the type of license and if the establishment will require a permit for dance and entertainment.

(8) Any other information that may be requested by the City Manager that is pertinent to the proper consideration of the application.

If the above information is not received within sixty (60) days from date of the application, the application will automatically be returned to the applicant without further consideration. Receipt of the above information, however, is not a guarantee of acceptance.

When all of the above information has been submitted by the applicant, the City Manager will refer the application to the Chief of Police, Fire Chief, Building Department, Health Department, Planning Department and to such other officers or employees as the City Manager may desire,

who shall cause a thorough investigation to be made of the persons and premises. The findings and recommendations resulting from such investigations shall be reported by the City Manager to the City Council within ninety (90) days of receipt of the application.

Sec. 15-225. City Council approval – transfer or change of ownership or stock interest at same location.
If the city council is satisfied that the proposed owner or interest

(1) has the necessary qualified business character, based on references and evidence of business history, to successfully operate the business;

(2) has an interest in any other liquor license in the Midland trading area and considering the extent of such interest and the similarity of the facility involved, that the overall good of the community is not jeopardized;

(3) will likely operate a business which in terms of operations and facilities will constitute an asset to the City of Midland and the ownership would be in the best interest of the community;

(4) for a resort license, be in accord with Section 15-240;

(5) exhibits the necessary high moral character, based on references, public comments and lack of a significant history of criminal convictions, to conduct all aspects of the business within the law;

Factors which may be taken into account concerning lack of a significant history of criminal convictions may include one or more of the following:

a. period of time from the date of the conviction of the offense until the date of the application;

b. the comparative seriousness of the offense for which the applicant was convicted;

c. whether the offense for which the applicant was convicted involved the use of an alcoholic beverage or beverages;

d. the age of the applicant at the time of the conviction; or

e. the number of convictions.

then the City Council may adopt a resolution recommending approval by the liquor control commission.

Sec. 15-226. City Council Approval – New or altered facility with same owner.
If the City Council is satisfied that the new or altered facility will

(1) conform to all applicable requirements of State statute and local ordinances;

(2) constitute an asset to the City of Midland and be in the best interest of the community;

(3) for a new location, be in accord with Section 15-220;

(4) for a new location, will be a location which takes into consideration the policy on geographic distribution described in Section 15-222;

(5) for a Resort License, be in accord with Section 15-240

then the City Council may adopt a resolution recommending approval by the liquor control commission.

Sec. 15-227. City Council approval -- New locations or new structures with change of ownership or stock interest.
If the City Council is satisfied that the new or altered facility and the proposed owner or interest are in compliance with Sections 15-224, 15-225 and 15-226, then the City Council may adopt a resolution recommending approval by the liquor control commission.

Division 2.

NEW LICENSES

Sec. 15-235. New Licenses.
If the liquor control commission grants a new license to the city as a result of the federal decennial census or a special census, the city will be asked by the liquor control commission to recommend a liquor license applicant "above all others". Upon formal notification of the availability of a new license by the liquor control commission, the city manager shall inform the city council at a regular meeting of the city council. The City Council may hold the new license in abeyance or proceed with the following process to recommend an applicant above all others. During said regular city council meeting, the city council shall announce its intent to either hold the license in abeyance or proceed with this process to award the license

(1) The city manager shall notify all interested parties and publish a similar notification in a newspaper published or circulated within the city that will announce the availability of the new license and the date upon which applications for the new license will be made available. The notification shall include a deadline for application, which deadline shall not be less than ninety (90) days from the date of the availability of applications.

(2) Within sixty (60) days of the application deadline, the city manager shall complete the review of all applications and report the results of the review to the city council at the next available regular meeting of the city council following the completion of the city manager's review.

(3) Upon receiving the city manager's review of applicants, the city council shall schedule a public hearing at which time each applicant will be given an opportunity to make a presentation to the city council explaining why his/her application should be recommended to the liquor control commission above all others.

(4) Following the public hearing, the city council may adopt the resolution provided by the liquor control commission recommending that the license be issued to one applicant above all others, or its own resolution granting tentative approval in accord with Section 15-236.

Sec. 15-236. Tentative License Approval.

If the City Council is satisfied that the establishment for which a new license is requested will constitute an asset to the City of Midland and is in the best interest of the City of Midland, but desires additional assurance that the applicant will complete the project as represented to the city council, the city council may adopt a resolution granting tentative approval, subject to satisfaction of conditions stated in the resolution. After adoption of the resolution granting tentative approval, the city council shall not adopt the liquor control commission resolution until the conditions listed in the resolution granting tentative approval have been met, or the city council determines that the conditions are no longer necessary.

Sec. 15-237. Conditions of Tentative Approval.
Tentative approval shall not be transferable, and is valid for nine (9) months from date of adoption, after which time its continuance is subject to review by the City Council. The City Council may, by resolution, require an applicant having been granted tentative approval to furnish evidence, six months from the date of adoption of said tentative approval, that the applicant has made reasonable progress toward complying with the conditions upon which tentative approval was granted. In the event the applicant shall fail to present evidence of reasonable progress, the City Council may withdraw said tentative approval.

Sec. 15-238. Assurance of City Approval.
Tentative approval does not result in the issuance of a license, but does assure the applicant that the City Council will approve the applicant's license when the applicant's building, remodeling or other facilities have been completed as represented in the applicant's presentation to the City, and the applicant has complied with all terms of the tentative approval resolution.

Sec. 15-239. Final License Approval.
When the applicant's building or remodeling is completed and it is determined that the applicant has met all State regulations, current standards of existing City Building and Zoning Codes, Sanitary and Fire Regulations, representations made to the City by the applicant, and all terms of the tentative approval resolution, the City Council will adopt the liquor control commission's resolution recommending to the Commission that the license be issued to the applicant above all others. A copy of the resolution granting the City's final approval will be sent to the Commission for final action.

Sec. 15-240. Resort Licenses.
In regard to the new issuance of a resort license, the City Council may reject the license if the City Council has reason to believe that the existence of a resort license will prevent the City of Midland from obtaining additional Class "C" liquor licenses as the City becomes eligible through the normal quota procedure.

Approval by the City Council requires that all of the following criteria be fulfilled:

(1) The proposed licensed establishment is located in or in close proximity to a facility or facilities to which large numbers of tourists and visitors come each year for recreational, educational, or entertainment purposes.

(2) The primary purpose of the proposed licensed establishment is to attract and accommodate tourists and visitors and its primary business is not the sale of alcoholic liquor.

(3) The proposed licensed establishment shall serve food and have dining facilities to seat not less than 100 persons.

(4) The proposed licensed establishment shall offer one (1) of the following:

a. Some type of recreational or entertainment activity on the premises or, in the alternative, some type of recreational or entertainment activity which is available to the public in close proximity to the proposed licensed establishment.

b. Sleeping facilities, meeting or conference rooms, or convention facilities.

(5) In considering approvals of Resort Licenses, all other provisions of this article will be considered to the extent possible.

(6) Before a resort license can be recommended for approval, proof must be presented to the City Council that a resort condition exists.

Sec. 15-241. Waiver of Requirements.
The City Council reserves the right to waive any specific requirement herein that does not conflict with State or municipal regulations. The waiver of any requirement will be for hardship only and not be construed as granting favor in any way.

Division 3.

RENEWAL AND REVOCATION OF LICENSES.

Sec. 15-250. Annual Review of Licenses.

The City Manager shall cause an annual review of each licensee. All applicants and licensees should be aware that, once a license is received, compliance with all State and City regulations is necessary and that failure of such compliance can result in the City Council requesting the Commission not to renew or revoke said license.

Sec. 15-251. Nonconformance.
It is recognized the locations and establishments of licensees, lawfully existing in our City at the time of the adoption of this ordinance or hereafter approved may not conform to all of the current standards of the existing building, zoning and other municipal laws and regulations, as amended. It is not the general intent of this ordinance to now require such conformance, but rather to continue to recognize the non-conforming building and use rights of existing licensees at the time they are reviewed for the renewal of their licenses; provided, however, all applicants and licensees should be aware that the City Council may, at any time, amend this ordinance and require conformance with any part or all of such existing standards or any new standards created hereafter. This exception shall not apply to applicants for new licenses or reclassification of existing licenses except applicants for reclassification shall not be required to conform to current zoning requirements.

Sec. 15-252. Notification of Licensee.
The City Manager shall, at least sixty (60) days before a license is due for renewal or at any time in the case of a possible recommendation for revocation, inform the licensee of the City Manager's intent to recommend to the City Council that the City should or should not file an objection with the Commission concerning renewal or a recommendation of revocation; and, if an objection concerning renewal or a recommendation of revocation is to be recommended to the City Council, what corrective action the licensee must take to make such a recommendation

unnecessary. Such a recommendation by the City Manager shall not be considered the same as approval of the recommendation by the City Council.

Sec. 15-253. Basis of recommendation of non-renewal or revocation.
In connection with any recommendation made by the City Manager to the City Council pursuant to Section 15-250 concerning non-renewal or revocation of a liquor license and any subsequent decision by the City Council to recommend non-renewal or revocation of a liquor license to the Commission, both the City Manager and the City Council shall make said recommendations on the basis of whether any one or more of the following exists or has occurred:

(1) Maintenance of a nuisance upon the premises;

(2) Failure to comply with the requirements of the Michigan Liquor Control Act or the administrative rules of the Commission;

(3) Failure to comply with any federal law, state statute or city ordinance in the conduct of its business;

(4) Failure to comply with any of the other requirements of this ordinance;

(5) Failure to comply with any promises or statements made by the applicant for a license to the City Council at the time the liquor license was approved by the City Council or the failure to comply with any conditions imposed upon the applicant in connection with the approval of said license by the City Council; or

(6) A knowingly false statement made in the application for a liquor license or by the applicant or the applicant's agent or assign in the application, non-renewal or revocation procedure.

(7) Non-use of the liquor license for a consecutive period of time of three (3) or more years from the time the liquor license is first placed into escrow with the Liquor Control Commission. (The term "non-use" shall be interpreted to mean the absence of actual use or utilization of a specific Class "C" liquor license or a specific liquor license other than a Class "C" liquor license which also permits consumption of alcoholic beverages on the premises in connection with the actual operation of a primary business activity as the latter term is described in Section 15-220.) During the annual review, the City Manager shall notify each escrowed license holder that the escrowed license must be activated prior to the end of the third consecutive year the license is in escrow. If a license remains in escrow after two consecutive years, the City Manager shall initiate the revocation process in Section 15-254 six (6) months prior to the third consecutive anniversary of the date the license was placed in escrow by the Liquor Control Commission.

(8) Failure to have implemented procedures to prevent alcohol abuse on its premises or related to its premises by instituting a program such as Training for Intervention Procedures by Servers of Alcohol (T.I.P.S.), Techniques of Alcohol Management (T.A.M.) or the Management/Server Awareness Program.

(9) Non-payment of any taxes due the municipality on properties holding a liquor license.

Sec. 15-254. Notice of Show Cause Hearing.
In the event the City Manager makes a recommendation for non-renewal or revocation of a liquor license to the City Council and before any decision is made by the City Council on said recommendation, the City Council shall direct the City Manager to serve the license holder by

certified mail, with a notice of a show cause hearing to be held before the City Council, which notice shall contain the following:

(1) Notice of the show cause hearing as to why the recommendation of the City Manager for non-renewal or revocation of a liquor license should not be approved by the City Council and transmitted to the Commission as the City Council's recommendation for non-renewal or revocation.

(2) Reasons for the proposed action;

(3) Date, time and place of the hearing;

(4) Notification that the license holder may present evidence and testimony, question adverse witnesses and be represented by counsel.

Sec. 15-255. Show Cause Hearing.
At the date, time and place of the show cause hearing, the City Manager or members of his administrative staff shall present evidence to the City Council in support of his recommendation for non-renewal or revocation of the liquor license in question. The license holder and/or his representative will be afforded an opportunity to present evidence and testimony, question any adverse witnesses and to show cause why the City Council should not approve the recommendation of the City Manager.

Following the show cause hearing, the City Council shall make a determination as to whether to recommend non-renewal or revocation of the license in question and shall submit to the license holder and the Commission a written statement of its findings and determination in this respect. (Ord. No. 1552, § 1, 11-25-02)

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CODE OF ORDINANCES

Chapter 16

MISCELLANEOUS PROVISIONS AND OFFENSES*

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* Charter References: Council authorized to adopt any state law provision by reference, § 6.6; general procedure for abatement of nuisances, § 14.2; notice to city of injury caused by city's negligence to be given to city within sixty days of occurrence of injury, § 17.1.

Cross References: Nuisances for purpose of housing code, § 12-5.

Sec. 16-1. Public place defined.
The term "public place," as used in this chapter, shall mean any street, alley, park, public building, or any place of business, grounds, parking lot, or area of assembly in the city, which is open to or frequented by the public.

Sec. 16-2. Obstructing, hindering police officer.
Any person who shall obstruct, resist, hinder, or oppose any member of the police force, or any peace officer in the discharge of his duties as such shall be guilty of a misdemeanor.

Sec. 16-3. Indecent, obscene conduct in public place.
It shall be unlawful for any person to be engaged in any indecent or obscene conduct in any public place.

Sec. 16-4. Noisy, riotous behaviour.
Any person who shall make or assist in making any noise, disturbance or improper diversion, or any rout or riot, by which the peace and good order of the neighborhood is disturbed, shall be guilty of disorderly conduct.

Sec. 16-5. Disturbance in public places.
Any person who shall make or incite any disturbance or contention in any tavern, store, grocery, manufacturing establishment, or any other business place, or any street, lane, alley, highway, public building, grounds, or park, or at any election or other public meeting where citizens are peacefully and lawfully assembled or engaged in the pursuit of their occupation shall be guilty of a misdemeanor.

State Law References: Disturbing meetings, M.S.A., § 28.366 et seq.

Sec. 16-6. Unlawful assembly.
Any person who shall individually or with others, stand, loiter, stroll, sit, lie or collect in a group or crowd for any unlawful or mischievous purpose or without reasonable cause, which shall annoy, inconvenience, or interfere with others in any place in the city, public or private, and who shall refuse to leave such place upon request of any person having supervision thereof or of any member of the police force, or any other peace officer, shall be guilty of a misdemeanor.

Sec. 16-7. Obscene, vile language in public place.
Any person who shall utter vile, vulgar, or obscene language in any public place shall be guilty of a misdemeanor.
State Law References: Indecent language in the presence of women or children, M.S.A., § 28.569.

Sec. 16-8. Abusive, vulgar language over telephone.
Any person who telephones any other person or causes any other person to be telephoned and uses any vulgar, indecent, obscene, threatening, harassing or offensive language, or suggesting any lewd or lascivious act over any telephone, shall be guilty of a misdemeanor.

Sec. 16-9. Insulting, molesting another by word, sign, motion.
Any person who shall insult, accost or molest any person in any public place, either by word of mouth, sign or motion shall be guilty of a misdemeanor.
(Ord. No. 865, § 1, 7-28-75)

Sec. 16-10. Engaging in a fight.
Any person who shall engage in a fight in any public place shall be guilty of disorderly conduct.
State Law References: Assault and battery generally, M.S.A., § 28.276; committing mayhem, § 28.629.

Sec. 16-11. Jostling, roughly crowding persons.
It shall be unlawful for any person to be found jostling or roughly crowding people unnecessarily in a public place.

Sec. 16-12. Public intoxication and endangering the safety of a person or property or causing a public disturbance.
It shall be unlawful for any person who is intoxicated in a public place to endanger directly the safety of another person or of property or to act in a manner that causes a public disturbance.
(Ord. No. 925, § 1, 2-13-78)

Sec. 16-13. Throwing stone, missile, etc., at train, automobile, etc.
Any person who shall throw any object at any vehicle which is traveling, parked, or standing in any public place or in any driveway with the intent to cause injury, damage, or defacement thereto, or which action could be reasonably anticipated to have such effect, shall be guilty of a misdemeanor.
State Law References: Throwing stone or missile at train, automobile, etc., M.S.A., § 28.626.

Sec. 16-14. Destruction of property.
Any person who shall wilfully destroy, damage, or in any manner deface any property not his own; or any public school building or park, or any equipment or furnishings thereof or therein, or any public or private building or park, including any equipment, or furnishings thereof or therein, or any bridge, fire hydrant, alarm box, streetlight, street sign, parking meter, or shade tree belonging to the city or located in the public places of the city; or destroy, take or meddle with any property belonging to the city or remove any property from the building or place where it may be kept, placed, or stored, without authority from the city council or another authorized official custodian of such property shall be guilty of a misdemeanor.
State Law References: Malicious and wilful mischief and destruction, M.S.A., § 28.609 et seq.; malicious destruction of property by minors, § 27A.2913; wrongful removal of plants, § 27.2919.

Sec. 16-15. Discharging firearms, slingshots, bows and arrows.
It shall be unlawful for any person to fire or discharge, within the city, any air rifle, shotgun, rifle, revolver or other firearms, or any slingshot, or bow and arrows except on such places which have been approved by the city manager upon recommendation by the chief of police. This section shall not apply to any peace officer or to any member of the armed forces of the United States, on active duty.

State Law References: Firearms and weapons, M.S.A., § 28.419 et seq.

Sec. 16-16. Hunting, pursuing wild animals, birds, waterfowl, etc.
(a) It shall be unlawful for any person to hunt, pursue, worry or kill any wild animals, birds or waterfowl by any means whatsoever within the city or upon property owned by the city, wherever located, except that the foregoing shall not apply to:

(1) The use of live traps under the lawful authority of and supervision by either the city manager or the County of Midland Animal Control Center;

(2) Police officers acting in the line of duty; or

(3) Training or practicing a dog upon game birds and such animals as may be lawfully hunted with a dog during the periods established or authorized by state statute and any rules or regulations issued thereunder.

(b) Notwithstanding subsection (a), the City Manager may authorize the hunting of deer by bow and arrows on clearly defined land areas within the City of Midland provided that all of the following are obtained by the City Manager prior to granting authorization:

(1) a written request filed with the city manager by the owner of such land,

(2) inspection of the requested land area by the City of Midland and the Michigan Department of Natural Resources (MDNR),

(3) a favorable recommendation in writing by officials of the MDNR, and

(4) a favorable recommendation by the Chief of Police.

(Ord. No. 1032, § 1, 1-10-83; Ord. No. 1076, § 1, 10-1-84; Ord. No. 1204, § 1, 11-19-90; Ord. No. 1550, § 1; 11-11-02)

Sec. 16-17. Posting handbills, marking walls, etc.
It shall be unlawful to post handbills on or to, in any manner, mar or mark the walls of any public or private building, fence, tree or pole within the city.

Cross References: Posting signs or posters on or in streets or sidewalks, § 22-2.

Sec. 16-18. Spitting, placing offensive material in public places, carriers.
Any person who shall spit on the floor or seat of any public carrier, or any floor, wall, seat, or equipment of any place of public assemblage, or who shall place or cause to be placed any other offensive, deleterious, harmful, damaging, noxious, nauseous, or obnoxious material thereon or therein shall be guilty of a misdemeanor.

Sec. 16-19. Vagrancy.

It shall be unlawful for any person to be a vagrant.

Sec. 16-20. Begging in public place.
It shall be unlawful for any person to be found begging in a public place.

Sec. 16-21. Engaging in unlawful business, occupation.
It shall be unlawful for any person to engage in an illegal occupation or business.

Sec. 16-22. Loitering generally.
Any person who shall collect or stand in crowds, or arrange, encourage, or abet the collection of persons in crowds in any public place for any unlawful or mischievous purpose, or who shall loiter on any street or sidewalk or in any park or public building, or conduct himself in any public place so as to obstruct the free and uninterrupted passage of the public, create a disturbance by which the peace and good order of the neighborhood is disturbed or interfere with the peaceful and lawful conduct of any public or private business, and who shall fail to disperse upon request of a law enforcement officer of the city or state shall be guilty of a misdemeanor.
State Law References: Riot and unlawful assembly, M.S.A., § 28.789 et seq.

Sec. 16-23. Loitering in, near unlawful business.
It shall be unlawful for any person to knowingly loiter in or about any place where an illegal occupation or business is being conducted.

Sec. 16-24**. Loitering to solicit legal employment, or to become surety on bond.**
It shall be unlawful for any person to loiter in or about any police station, police headquarters building, county jail, hospital, court building or any other public building or place for the purpose of soliciting employment of legal services or the services of sureties upon criminal recognizances.

Sec. 16-25. Prostitution.
It shall be unlawful to be a prostitute.
State Law References: Houses of prostitution, M.S.A., § 28.131.

Sec. 16-26. Peeping tom.
It shall be unlawful to be a window peeper.

Sec. 16-27. Prowlers prohibited.
It shall be unlawful for any person to prowl about any public place, or any property not his own.

Sec. 16-28. Unreasonable, loud, etc., noises prohibited.
It shall be unlawful for any person to create, assist in creating, permit, continue or permit the continuance of any unreasonable, loud, disturbing or unnecessary noise in the city.

Sec. 16-29. Noises specifically forbidden.
The following acts are declared to be unlawful:

(a) For the operator of any vehicle to sound any horn or other warning device except when reasonably necessary for the prevention of accidents.

(b) For any person to operate a motor vehicle upon any street in the city unless such motor vehicle is equipped with a muffler in good working order and in constant operation to prevent unnecessary or unusual noise and annoying smoke.

(c) To operate any vehicle which by reason of any mechanical or other defect causes unnecessary noise.

(d) To use any gong or siren upon any vehicle other than police, fire or other emergency vehicles.

(e) To use any loudspeakers and amplifiers for advertising or other purposes. However, amplifiers and loudspeakers may be used in connection with municipal functions, civic and community functions, and holiday gatherings, upon securing the prior permission of the city council. Notwithstanding the foregoing, the city council may delegate to the director of parks and recreation the authority to grant permission to use amplified sound within the city parks pursuant to rules and regulations established under section 17-9 of this Code.

(f) To use any drum, bells or other nonamplified instrument or device for the purpose of attracting attention to or in conjunction with the street sale of merchandise if the creation of noise thereby shall be unreasonably disturbing to other persons in the vicinity.
(Ord. No. 887, § 1, 5-24-76; Ord. No. 1001, § 1, 6-15-81)
Cross References: Traffic, Ch. 24.

Sec. 16-30. Obscene literature, recordings, pictures and motion pictures.
Any person who knowingly either sells, lends, gives away, distributes, shows or transmits, or offers either to sell, lend, give away, distribute, show or transmit, or has in his possession with intent either to sell, lend, gives away, distribute, show or transmit or advertise in any manner, or who otherwise knowingly offers for either loan, gift, sale or distribution, any obscene, lewd, lascivious, filthy or indecent, sadistic or masochistic book, magazine, pamphlet, newspaper, story book, writing paper, pornographic record, picture, drawing, photograph, motion picture film, figure, image, wire or tape recording or any written, printed or recorded matter of an indecent character which may or may not require a mechanical or other means to be transmitted into auditory, visual or sensory representations of such character, shall be guilty of a violation of this Code.

For the purpose of this section, possession of six or more identical copies, or six or more articles of any obscene, lewd, lascivious, filthy or indecent book, magazine, pamphlet, newspaper, writing paper, pornographic records, picture, drawing, photograph, slide, motion picture film, figure, image, wire recorded matter of an indecent character, shall be prima facie evidence of possession with intent to sell, lend, give away, distribute, show or transmit the thing.
(Ord. No. 780, § 1, 8-30-71)

Sec. 16-31. Obscene literature, recording or image; impact upon average person of community.
The test to be applied in cases under sections 16-30 and 16-31 shall not be whether sexual desires or sexually improper thoughts would be aroused in those comprising a particular segment of the community, the young, the immature or the highly prudish, or would leave another segment, the scientific or highly educated or the so-called wordly wise men and sophisticated, indifferent and unmoved. But such test shall be the effect of the book, picture or other subject to complaint considered as a whole, not upon any particular class, but upon all those whom it is likely to reach, that is, its impact upon the average person in the community. The book, picture, or other subject of complaint must be judged as a whole in its entire context, not by considering detached or separate portions only, and by the standards of common conscience of the community of the contemporary period of the violation charged.
(Ord. No. 780, § 2, 8-30-71)

Sec. 16-32. Loitering in or about school buildings or on school grounds by nonstudents or other unauthorized persons during regularly scheduled school hours.
It shall be unlawful for any person to enter or remain in any public, private or parochial school building, or to enter or remain on the grounds or property of any public, private or parochial school during regularly scheduled school hours, except when in attendance as a regularly-enrolled student, as an administrator or employee, or when engaged in legitimate school business or pursuits.
(Ord. No. 927, § 1, 4-3-78)

Sec. 16-33. Willfully or maliciously making or causing noise or disturbance in school buildings or on school grounds by nonstudents or other unauthorized persons during regularly-scheduled school hours.

It shall be unlawful for any nonstudent or other unauthorized person to willfully or maliciously make or cause to be made during regularly-scheduled school hours any noise or disturbance in, on or in the close proximity of any school building or the grounds or property thereof by which the peace, quiet or good order of any public, private or parochial school is disturbed.
(Ord. No. 927, § 1, 4-3-78)

Sec. 16-34. Fireworks
(a) Definitions.

Consumer fireworks means fireworks devices that are designed to produce visible or audible effects by combustion, that are required to comply with the construction, chemical composition, and labeling regulations promulgated by the United States consumer product safety commission under 16 CFR parts 1500 and 1507, and that are listed in APA standard 87-1, 3.1.2, 3.1.3, or 3.5. Consumer fireworks does not include low-impact fireworks.

Display fireworks means large fireworks devices that are explosive materials intended for use in fireworks displays and designed to produce visible or audible effects by combustion, deflagration, or detonation, as provided in 27 CFR 555.11, 49 CFR 172, and APA standard 87-1, 4.1.

Firework or fireworks means any composition or device, except for a starting pistol, a flare gun, or a flare, designated for the purpose of producing a visible or audible effect by combustion, deflagration, or detonation. Fireworks consist of consumer fireworks, low-impact fireworks, articles pyrotechnic, display fireworks, and special effects.

Low-impact fireworks means ground and handheld sparkling devices as that phrase is defined under APA standard 87-1, 3.1, 3.1.1.1 to 3.1.1.8, and 3.5.

Novelties means that term as defined under APA standard 87-1, 3.2, 3.2.1, 3.2.2, 3.2.3, 3.2.4, and 3.2.5 and all of the following:

(1) Toy plastic or paper caps for toy pistols in sheets, strips, rolls, or individual caps containing not more than .25 of a grain of explosive content per cap, in packages labeled to indicate the maximum explosive content per cup.

(2) Toy pistols, toy cannons, toy canes, toy trick noisemakers, and toy guns in which toy caps as described in subparagraph (1) are used, that are constructed so that the hand cannot

come in contact with the cap when in place for the explosion, and that are not designed to break apart or be separated so as to form a missile by the explosion.

(3) Flitter sparklers in paper tubes not exceeding 1/8 inch in diameter.

(b) Prohibition on use of consumer fireworks.

No person shall ignite, discharge or use consumer fireworks within the city, except this prohibition shall not preclude any person from the ignition, discharge, and use of consumer fireworks on the day preceding, the day of, or the day after a national holiday consistent with Section 7(2) of Public Act 256 of 2011 and all other applicable local, state, or federal regulations. A person shall not ignite, discharge, or use consumer fireworks on public property, school property, church property, or the property of another person without that organization's or person's express permission. The ignition, discharge or use of consumer fireworks between the hours of 1:00 a.m. and 8:00 a.m. on the day preceding, the day of, or the day after a national holiday is strictly prohibited.

(c)

It shall be unlawful for any person, firm, partnership or corporation to offer for sale, expose for sale, keep with the intent to sell at retail, or sell at retail to any person who has not yet attained the age of eighteen (18) years of age any blank cartridge, toy pistol, toy cannon, toy cane or toy gun in which explosives are used; the type of unmanned balloon which requires fire underneath to propel the same; firecrackers, torpedoes, skyrockets, Roman candles, daygo bombs or other fireworks of like construction; or any fireworks containing any explosive or inflammable compound or any tablets or other devices commonly used and sold as fireworks, containing nitrates, chlorates, oxolates, sulfides of lead, barium, antimony, arsenic, mercury, nitroglycerin, phosphorous or any compound containing any of the same or other modern explosives.

(d)

Not included within the foregoing prohibition are model rockets and model rocket engines designed, sold and used for the purpose of propelling recoverable aero models. Also not included are sparklers containing not more than one hundred twenty-five ten thousandths (.0125) pounds of burning portion per sparkler, flitter sparklers in paper tubes not exceeding one-eighth (1/8) inch in diameter, toy snakes not containing mercury, if packed in cardboard boxes with not more than twelve (12) pieces per box for retail sale and if the manufacturer's name and the quantity contained in each box are printed thereon, toy pistols, toy canes, toy guns or other devices manufactured to utilize paper and/or plastic caps containing not more than twenty-five hundredths (.25) of a grain of explosive content per cap, or said paper and/or plastic caps themselves, the sale of which shall be permitted at all times.

(e) Enforcement.

The Fire Chief, his designees and/or sworn law enforcement officers are authorized to enforce the provisions of this ordinance.

(f) Severability.

The various parts, sections and clauses of this Ordinance are hereby declared to be severable. If any part, sentence, paragraph, section or clause is adjudged unconstitutional or invalid by a Court of competent jurisdiction, the remainder of the ordinance shall not be affected.

(g) Repeal.

All regulatory fireworks provisions contained in other city ordinances which are inconsistent with the provisions of this ordinance are repealed.

(Ord. No. 931, § 1, 5-24-78; Ord. No. 1730, § 1, 06-25-12; Ord. No. 1751, § 1, 09-30-13)

Sec. 16-35. Regulation of hours of businesses in the Neighborhood Commercial “NC” District.
No business establishment of any kind that is permitted to operate or is operating in a Neighborhood Commercial “NC” District pursuant to the provisions of the zoning ordinance of the City of Midland shall be open or operate between the hours of 11:00 p.m. and 7:00 a.m. unless otherwise exempt from restrictions on hours of operation by statutes or regulations of the State of Michigan.
(Ord. No. 941, § 1, 11-20-78; Ord. No. 1588, § 1, 02-21-05)

Sec. 16-36. Diving, jumping from bridges.
It shall be unlawful for any person to jump or dive from any bridge in the city. Signs shall be posted prohibiting jumping or driving on all bridges in the city. Notwithstanding the foregoing, the word "bridge" or "bridges" shall not be deemed to include a bridge or bridges located exclusively on private property.
(Ord. No. 1108, § 1, 7-14-86)

Sec. 16-37. Trespassing or unlawful entry upon lands or premises of another.
Any person who shall willfully enter upon the lands or premises of another without lawful authority, after having been forbidden so to do by the owner or occupant, agent or servant of the owner or occupant, or any person being upon the land or premises of another, upon being notified to depart therefrom by the owner or occupant or the agent of either, who, without lawful authority, neglects or refuses to depart therefrom, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by imprisonment in the county jail for not more than thirty (30) days or by a fine of not more than fifty dollars ($50.00), or both, in the discretion of the court. If it shall appear that the lands or premises in question have been conspicuously posted by a sign or signs approved by the City of Midland as to content, size and location which forbids trespassing in general, trespassing between certain specified times or entry upon said lands or premises when not engaged in lawful business with the owner or occupant, such a showing shall be prima facie evidence that a person found on the land or premises who is not engaged in lawful business with the owner or occupant is there without lawful authority and has been forbidden to enter or notified to depart as required by this section. For all purposes of this section, the term "engaged in lawful business" shall mean going to or from or presence inside a lawful business establishment located on said land or premises during the time that the business establishment is open for business.
(Ord. No. 1146, § 1, 5-9-88)

Sec. 16-38. Use of alcoholic beverages and drugs at open house parties.
(a) Definitions. For the purposes of this section, the following terms shall be defined as follows:

Adult means a person seventeen (17) years of age or older.

Alcoholic beverage means any alcoholic liquor as defined now and hereafter by the Public Acts of the State of Michigan. Currently, "alcoholic liquor" is defined by Section 436.2 of the Compiled Laws of the State of Michigan (MCLA 436.2; MSA 18.972).

Control means any form of authority, regulation, responsibility or dominion, including a possessory right.

Drug means a controlled substance as defined and described now or hereafter by the Public Acts of the State of Michigan. Currently, controlled substances are defined and described by Sections 333.7101 through 333.7501 of the Compiled Laws of the State of Michigan (MCLA 333.7101 through 333.7545; MSA 14.15(7101) through 14.15(7545)).

Minor means a person not legally permitted by reason of age to possess, consume or purchase alcoholic liquor as described now or hereafter by the Public Acts of the State of Michigan. Currently, such a person is described by Section 436.33b of the Compiled Laws of the State of Michigan (MCLA 436.33b; MSA 18.1004(2)).

Open house party means a social gathering at a residence or premises of persons in addition to the owner or those with rights of possession or their immediate family members.

Residence or premises means a motel room, hotel room, home, apartment, condominium or other dwelling unit, including the curtilage of the dwelling unit, or a hall, meeting room or other place of assembly, whether occupied as a dwelling or specifically for social functions, and whether owned, leased, rented or used with or without compensation.

(b) No adult who is both physically present and in control of any residence or premises shall allow an open house party to take place at the residence or premises if any alcoholic beverage or drug is possessed or consumed at the residence or premises by any minor where the adult knew or reasonably should have known that any alcoholic beverage or drug was in the possession of or being consumed by a minor at the residence or premises and where the adult failed to take reasonable steps to prevent the possession or consumption of the alcoholic beverage or drug at the residence or premises.

(c) The provisions of this section shall not apply to:

(1) The consumption, use or possession of alcoholic beverages by a minor in the presence of his or her:

a. Parent or legal guardian or a person placed in the position of a parent by such parent or legal guardian pursuant to Section 405 of Article 4 of Public Act 642 of the Public Acts of the State of Michigan of 1978, the Revised Probate Code, as amended (MCLA 700.405, MSA 27.5405);

b. Grandparent; or

c. Aunt or uncle who is not a minor.

(2) The consumption, use or possession of a drug by a minor pursuant to a lawful prescription for such drug.

(3) Religious observances or prescribed medical treatments.

(4) The possession by a minor of alcoholic beverages or lawfully prescribed drugs incidental to the lawful employment of such minor.

(d) Any person violating any provision of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars ($500.00) or by imprisonment for not more than ninety (90) days, or by both such fine and imprisonment.
(Ord. No. 1279, § 1, 10-18-93)

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CODE OF ORDINANCES

Chapter 17

PARKS AND RECREATION*

* Cross References: Littering in parks, § 10-14; trailer coaches parking in city parks, § 25-13.

State Law References: Playgrounds and recreation places, M.S.A., § 5.2421 et seq.

Constitution reference--Power of city to acquire, own, establish and maintain parks, Art. VII, § 23.

Art. I. In General, §§ 17-1--17-14

Art. II. Establishment of Certain Areas for Park and Recreational Purposes, §§ 17-15--17-82

ARTICLE I.

IN GENERAL

Sec. 17-1. Parks and recreation commission--Created; composition; qualifications of members.
There is hereby created an advisory parks and recreation commission. Such commission shall consist of a minimum of five (5) and/or a maximum of nine (9) members, who shall be qualified by experience and shall have evidenced interest in the development of park and recreation services for public use.
(Ord. No. 851, § 8, 2-3-75; Ord. No. 1516, § 1, 8-13-01)

Sec. 17-2. Same--Ex officio, nonvoting member.
The city council may add one (1) of its members as an ex officio, nonvoting member to the parks and recreation commission. The term of such member of the commission shall correspond to his tenure as a member of the city council.

Sec. 17-3. Same--Term of office; appointment.
Commissioners of the parks and recreation commission shall be appointed by the city council for a term of three (3) years commencing July 1, 1947, with vacancies occurring each year except, that for the first appointment, two (2) members shall be appointed for three (3) years, two (2) members for two (2) years and one (1) member for one (1) year. Additional exception: For the two members whose terms begin July 1, 2001 as a result of expanding the parks and recreation commission to nine members, one (1) member shall be appointed for a three (3) year term and one (1) member shall be appointed for a two (2) year term.
(Ord. No. 1517, § 1, 8-27-01)

Sec. 17-4. Same--Members to serve without compensation.
Members of the parks and recreation commission shall serve without compensation.

Sec. 17-5. Same--Meetings, chairman.
The parks and recreation commission shall meet monthly, with a minimum of six (6) meetings a year. Members shall elect a chairman at the first meeting after the first day of July each year.
(Ord. No. 1699, § 1, 5-24-10)

Sec. 17-6. Same--Duties.
It shall be the duty of the parks and recreation commission to consider and study the reasonable needs of recreational facilities and activities in which the city might properly participate, to formulate and to report to the city council estimates of public requirements for recreational facilities and for the costs thereof, and the amounts which might properly be appropriated by the city council to provide and maintain such recreational facilities.

Sec. 17-7. Director of parks and recreation--Appointment, duties.
A director of parks and recreation shall be appointed by the city manager. Such director shall be the executive officer in charge of the use and maintenance of parks, properties and buildings owned by the city, and assigned to the department of parks and recreation, and he shall be responsible for the recreation programs in buildings or on properties of other public or private institutions that may be used by the city through rental, lease or by gift.

Sec. 17-8. Same--To be secretary of parks and recreation commission.
The director of parks and recreation shall serve as secretary of the parks and recreation commission.

Sec. 17-9. Enactment of park rules; violation of same declared to be unlawful.
The city council shall establish by resolution such rules and regulations relative to the general control, supervision and use of city parks as shall be deemed necessary or advisable. It shall be unlawful for any person to do any act forbidden by park rules and regulations or to fail to perform any act required by park rules and regulations.
(Ord. No. 859, § 1, 5-21-75)

Secs. 17-10--17-14. Reserved.

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* Editors Note: Ord. No. 857, § 1, enacted May 21, 1975, amended this Code by adding Art. II, §§ 17-15--17-78, as herein set out.

Sec. 17-15. Kaufman Park established.
The following area is hereby established as Kaufman Park:
Lands dedicated for park purposes in the recorded plats of Foster Subdivision Nos. 1 and 2, Birchgrove Subdivision and Outlot A of Birchgrove Subdivision; ten and eight-tenths (10.8) acres more or less.
(Ord. No. 857, § 1, 5-21-75)

Sec. 17-16. Birchwood Park established.
The following described area is hereby established as Birchwood Park:

Lands dedicated for park purposes in the recorded plat of Birchwood Gardens Subdivision; one and six-tenths (1.6) acres more or less.
(Ord. No. 857, § 1, 5-21-75)

Sec. 17-17. Adams Park established.
The following described area is hereby established as Adams Park:

Beginning at the center post of Section 3, Township 14 North, Range 2 East, thence north along the north-south quarter line 665 feet; thence east 485 feet; thence south 665 feet; thence west 485 feet to beginning; seven and four-tenths (7.4) acres more or less.
(Ord. No. 857, § 1, 5-21-75)

Sec. 17-18. Mac Park established.
The following area is hereby established as Mac Park:

Lands dedicated for park purposes in the recorded plat of McMurty Subdivision; one and two-tenths (1.2) acres more or less.
(Ord. No. 857, § 1, 5-21-75)

Sec. 17-19. Siebert Park established.
The following described area is hereby established as Siebert Park:

Northeast quarter of southeast quarter of northwest quarter except south 75 feet. Beginning at northwest corner of southwest quarter of northeast quarter, east 418 feet, south 40 feet, south 45 degrees west 153.7 feet, southwesterly on curve to left west 100 feet radius 78.5 feet, south 247.2 feet, southwesterly on curve to right west 100 feet radius 78.5 feet, southwesterly 37.93 feet, west 223.92 feet, north 566.92 feet to beginning Section 4;

and

beginning at the northeast corner, Lot 1, Sylvan Acres Subdivision, north 55 feet to south line Chapel Lane, westerly and northerly along said line (also south line of Dilloway Drive) to the east line of Lot 3, Timber Top Acres extended northerly, south to the north line Timber Top Acres, east 220 feet, south 808 feet, west to northeast corner Dowling Subdivision, south 472 feet; east 382.5 feet, north 135 feet, east 20 feet, north 740.62 feet, east to a point of beginning Section 4; twenty-one and six-tenths (21.6) acres more or less.
(Ord. No. 857, § 1, 5-21-75)

Sec. 17-20. Glencoe Park established.
The following area is hereby established as Glencoe Park:

Lands dedicated for park purposes in the recorded plat of Marden's Plat; one and six-tenths (1.6) acres more or less.
(Ord. No. 857, § 1, 5-21-75)

Sec. 17-21. St. Mary's Park established.
The following area is hereby established as St. Mary's Park:

Lands dedicated for park purposes in the recorded plat of Greenmeadow Subdivision and Outlot A of St. Mary's Subdivision; five and seven-tenths (5.7) acres more or less.
(Ord. No. 857, § 1, 5-21-75)

Sec. 17-22. Lalkwood Park established.
The following area is hereby established as Lalkwood Park:

Lands dedicated for park purposes in the recorded plat of Lalkwood Manor; two and three-tenths (2.3) acres more or less.
(Ord. No. 857, § 1, 5-21-75)

Sec. 17-23. Huron Park established.
The following described area is hereby established as Huron Park:

Beginning at the intersection of the south one-eighth line and the west one-eighth line of Section 6, Township 14 North, Range 2 East; thence southerly along the west one-eighth line a distance of 315.58 feet, north 89 degrees 31 minutes west a distance of 800 feet, north 313.28 feet to the south one-eighth line, east along the south one-eighth line a distance of 799.97 feet to the place of beginning and the east 20 acres of the northwest quarter of southwest quarter, Section 6; twenty-five and nine-tenths (25.9) acres more or less.
(Ord. No. 857, § 1, 5-21-75)

Sec. 17-24. Sturgeon Creek Park established.
The following area is hereby established as Sturgeon Creek Park:

Lands dedicated for park purposes in the recorded plats of Blackhurst Subdivision, Sturgeon Creek Subdivision, Nurmi Estates No. 2 and Outlot A of Nurmi Estates No. 2; twenty-five and two-tenths (25.2) acres more or less.
(Ord. No. 857, § 1, 5-21-75)

Sec. 17-25. Valley Park established.
The following area is hereby established as Valley Park:

Lands dedicated for park purposes in the recorded plat of Orchard Subdivision; thirteen and fourteen hundredths (13.14) acres more or less.
(Ord. No. 857, § 1, 5-21-75)

Sec. 17-26. Garden Park established.
The following area is hereby established as Garden Park:

Lands dedicated for park purposes in the recorded plat of Garden Subdivision; three and eleven hundredths (3.11) acres more or less.
(Ord. No. 857, § 1, 5-21-75)

Sec. 17-27. Orchard Park established.
The following area is hereby established as Orchard Park:

Lands dedicated for park purposes in the recorded plat of Orchard Subdivision; one and three-tenths (1.3) acres more or less.
(Ord. No. 857, § 1, 5-21-75)

Sec. 17-28. Wheeler Park established.
The following area is hereby established as Wheeler Park:

Lands dedicated for park purposes in the recorded plat of North Park No. 3; five and four-tenths (5.4) acres more or less.
(Ord. No. 857, § 1, 5-21-75)

Sec. 17-29. Sunset Park established.
The following area is hereby established as Sunset Park:

Lands dedicated for park purposes in the recorded plat of Meadowbrook Woods Subdivision; six and two-tenths (6.2) acres more or less.
(Ord. No. 857, § 1, 5-21-75)

Sec. 17-30. Meadowbrook Park established.
The following area is hereby established as Meadowbrook Park:

Lands dedicated for park purposes in the recorded plats of Meadowbrook Woods Subdivision and Meadowbrook Woods Subdivision Nos. 2 and 3; seven and eight-tenths (7.8) acres more or less.
(Ord. No. 857, § 1, 5-21-75)

Sec. 17-31. Wyndemere Park established.
The following area is hereby established as Wyndemere Park:

Lands dedicated for park purposes in the recorded plats of Towsley's Addition, Meadowbrook Woods, Wyndemere Park Subdivision, and Linwood Subdivision; six and six-tenths (6.6) acres more or less.
(Ord. No. 857, § 1, 5-21-75)

Sec. 17-32. Devonshire Park established.
The following area is hereby established as Devonshire Park:

Lands dedicated for park purposes in the recorded plat of Towsley's Addition; one and eighty-five hundredths (1.85) acres more or less.
(Ord. No. 857, § 1, 5-21-75)

Sec. 17-33. Castle Park established.
The following area is hereby established as Castle Park:

Lands dedicated for park purposes in the recorded plat of Towsley's Addition; three-tenths (0.3) acre more or less.
(Ord. No. 857, § 1, 5-21-75)

Sec. 17-34. Barstow Woods Park established.
The following described area is hereby established as Barstow Woods Park:

Lands dedicated for park purposes in the recorded plat of Midland Manor No. 2 and lands described as beginning 50 feet south of the intersection of the east and south one-eighth lines of Section 9, Township 14 North, Range 2 East, thence east 203 feet more or less to U.S. 10 Highway, thence southeast along said highway 613 feet, thence southwest 500 feet, thence west 1,040 feet, thence north 850 feet, thence east 820 feet to place of beginning; twenty-four and nine-tenths (24.9) acres more or less.
(Ord. No. 857, § 1, 5-21-75)

Sec. 17-35. Ottawa Park established.
The following area is hereby established as Ottawa Park:

Lands dedicated for park purposes in the recorded plats of Northeast Park Addition and Northeast Park Addition No. 3; five and nine-tenths (5.9) acres more or less.
(Ord. No. 857, § 1, 5-21-75)

Sec. 17-36. Chatham Park established.
The following area is hereby established as Chatham Park:

Lands dedicated for park purposes in the recorded plat of Homestead Addition No. 3; one and eight-tenths (1.8) acres more or less.
(Ord. No. 857, § 1, 5-21-75)

Sec. 17-37. Oak Park established.
The following area is hereby established as Oak Park:

Lands dedicated for park purposes in the recorded plat of Forestlawn Addition; one and two-tenths (1.2) acres more or less.
(Ord. No. 857, § 1, 5-21-75)

Sec. 17-38. Lowell Park established.
The following area is hereby established as Lowell Park:

Lands dedicated for park purposes in the recorded plat of Homestead Addition No. 2, three and five-tenths (3.5) acres more or less.
(Ord. No. 857, § 1, 5-21-75)

Sec. 17-39. Gleanoak Park established.
The following area is hereby established as Genoak Park:

Lands dedicated for park purposes in the recorded plat of O'Brien Addition; one and two-tenths (1.2) acres more or less.
(Ord. No. 857, § 1, 5-21-75)

Sec. 17-40. Greenfield Park established.
The following area is hereby established as Greenfield Park:

Lands dedicated for park purposes in the recorded plat of Replat Homestead Addition No. 1; two and two-tenths (2.2) acres more or less.
(Ord. No. 857, § 1, 5-21-75)

Sec. 17-41. Longacres Park established.
The following area is hereby established as Longacres Park:

Lands dedicated for park purposes in the recorded plats of Baker's Second Addition and Campbell's City Plan Addition No. 2; three and two-tenths (3.2) acres more or less.
(Ord. No. 857, § 1, 5-21-75)

Sec. 17-42. Wallen Park established.

The following described area is hereby established as Wallen Park:

Lands dedicated for park purposes in the recorded plat of Kentwood Division No. 2 and Lots 16, 17, 18, 19 and 20 of Block O, Kentwood Subdivision No. 2; six and one-tenth (6.1) acres more or less.
(Ord. No. 857, § 1, 5-21-75)

Sec. 17-43. Plymouth Park established.
The following described area is hereby established as Plymouth Park:

Beginning on the north line, Section 10, Township 14 North, Range 2 East, 359.48 feet west of the northeast corner said section, thence south to the north line Morse Park Subdivision, thence west to the west line Morse Park Subdivision, thence south to the north line Johnson Runnells Subdivision, thence west to the east one-eighth line, thence north to the north line Section 10, thence east to point of beginning; forty (40) acres more or less.
(Ord. No. 857, § 1, 5-21-75)

Sec. 17-44. Burlington Park established.
The following described area is hereby established as Burlington Park:

Commencing at a point on the north one-eighth line of Section 11, Township 14 North, Range 2 East, City of Midland, Midland County, Michigan, said point being 833 feet east of the west line of said Section 11; thence east along the north one-eighth line 350 feet; thence north parallel to the west line of Section 11 a distance of 350 feet; thence west parallel to the north one-eighth line a distance of 350 feet; thence south parallel to the west line of Section 11, a distance of 350 feet to the place of beginning; two and eight-tenths (2.8) acres more or less.
(Ord. No. 857, § 1, 5-21-75)

Sec. 17-45. Hillgrove Park established.
The following described area is hereby established as Hillgrove Park:

Lands dedicated for park purposes in the recorded plat of Hillgrove Park Subdivision; four and four-tenths (4.4) acres more or less.
(Ord. No. 857, § 1, 5-21-75)

Sec. 17-46. Chestnut Hill Park established.
The following area is hereby established as Chestnut Hill Park:

Lands dedicated for park purposes in the recorded plats of Stumpfig Plat and Rapanos Park No. 1; four and two-tenths (4.2) acres more or less.
(Ord. No. 857, § 1, 5-21-75)

Sec. 17-47. Briarwood Park established.
The following area is hereby established as Briarwood Park:

Lands dedicated for park purposes in the recorded plat of Rapanos Park No. 2; seven and four-tenths (7.4) acres more or less.
(Ord. No. 857, § 1, 5-21-75)

Sec. 17-48. Stratford Woods Park established.
The following described area is hereby established as Stratford Woods Park:

All that part of the north half of the southeast quarter of Section 13, Township 14, Range 2 East, City of Midland, Midland County, Michigan, which lies westerly of a line 90 feet westerly of (measured at right angles) and parallel to a line described as: beginning at a point on the north line of said Section 13, which is north 89 degrees 50 minutes 50 seconds east a distance of 57.43 feet from the north quarter corner of said Section 13; thence south 27 degrees 44 minutes 50 seconds east a distance of 4,148.99 feet to the point of curvature of a 2,864.93 foot radius curve to the right (chord bearing south 19 degrees 16 minutes 20 seconds east); thence southeasterly along the arc of said curve 847.5 feet to the point of tangency of said curve and a point of ending, excepting therefrom the west 40 feet; fifty (50) acres more or less.
(Ord. No. 857, § 1, 5-21-75)

Sec. 17-49. Griese Park established.
The following area is hereby established as Griese Park:

Lands dedicated for park purposes in the recorded plat of George Rapanos Subdivision Nos. 1 and 2; one and seven-tenths (1.7) acres more or less.
(Ord. No. 857, § 1, 5-21-75)

Sec. 17-50. Ann M. Winger Park.
The following area, previously established as Gary Park is renamed "Ann M. Winger Park":

Lands dedicated for park purposes in the recorded plats of Andrews Subdivision and Parsons Subdivision; three and five-tenths (3.5) acres more or less.
(Ord. No. 857, § 1, 5-21-75; Ord. No. 1024, § 1, 8-9-82)

Sec. 17-51. Parkdale Park established.
The following area is hereby established as Parkdale Park:

Lands dedicated for park purposes in the recorded plat of Hauri Subdivision; one and five-tenths (1.5) acres more or less.
(Ord. No. 857, § 1, 5-21-75)

Sec. 17-52. Wyllys Park established.
The following area is hereby established as Wyllys Park:

Lands dedicated for park purposes in the recorded plat of Ronan's Addition; one and eight-tenths (1.8) acres more or less.
(Ord. No. 857, § 1, 5-21-75)

Sec. 17-53. Dartmouth Park established.
The following area is hereby established as Dartmouth Park:

Lands dedicated for park purposes in the recorded plat of Ronan's Addition; one and five-tenths (1.5) acres more or less.
(Ord. No. 857, § 1, 5-21-75)

Sec. 17-54. Washington Woods Park established.
The following described area is hereby established as Washington Woods Park:

Beginning 40 feet west of the northeast corner of southeast quarter of northwest quarter of Section 15, Township 14 North, Range 2 East; south to point 795 feet north of eastwest quarter line; west 741.57 feet, fifty degrees 23 minutes west 44.64 feet; north 38 degrees 37 minutes west to north one-eighth line; east to beginning, except south 30 feet, and also except that portion lying southwesterly of a line lying 60 feet northeasterly of and parallel with a line described as beginning 495.45 feet south 38 degrees 37 minutes east from intersection of northeasterly line of S. Saginaw Road and the west one-eighth line of said Section 15, thence north 51 degrees 23 minutes east 240 feet to beginning point of said line to be described, thence north 38 degrees 37 minutes west to north one-eighth line of said Section 15; ten (10) acres more or less.
(Ord. No. 857, § 1, 5-21-75)

Sec. 17-55. Virginia Park established.
The following area is hereby established as Virginia Park:

Lands dedicated for park purposes in the recorded plat of Pleasant Acres Subdivision; seven-tenths (0.7) acre more or less.
(Ord. No. 857, § 1, 5-21-75)

Sec. 17-56. Maryland Park established.
The following area is hereby established as Maryland Park:

Lands dedicated for park purposes in the recorded plat of Surath's City Plan No. 3; three and six-tenths (3.6) acres more or less.
(Ord. No. 857, § 1, 5-21-75)

Sec. 17-57. Parkwood Park established.
The following area is hereby established as Parkwood Park:

Lands dedicated for park purposes in the recorded plat of Parkwood Addition; three and seven-tenths (3.7) acres more or less.
(Ord. No. 857, § 1, 5-21-75)

Sec. 17-58. Lincoln Park established.
The following described area is hereby established as Lincoln Park:

The following described premises situated in the City of Midland, County of Midland, State of Michigan, to wit: Beginning 554 feet east and 33 feet north of the southwest corner of Section 15, Township 14 North, Range 2 East, thence north 120 feet, thence west 25 feet, thence north 60 feet, thence west 10 feet, thence north 120 feet, thence west 60 feet, thence north 60 feet, thence east 60 feet, thence north 120 feet, thence east 180 feet, thence south 120 feet, thence east 77 feet, thence south 210 feet, thence west 202 feet, thence south 150 feet, thence west 20 feet to the place of beginning; one and nine-tenths (1.9) acres more or less.
(Ord. No. 857, § 1, 5-21-75)

Sec. 17-59. Crane Park established.
The following described area is hereby established as Crane Park:

Lands dedicated for park purposes in the recorded plat of Golfside Addition; ninety-five hundredths (0.95) acre more or less.
(Ord. No. 857, § 1, 5-21-75)

Sec. 17-60. Currie-Bennett Park established.
The following described area is hereby established as Currie-Bennett Park:

Lands dedicated for park purposes in the recorded plat of Broadmoor Addition and Lot 14, Block G, Broadmoor Addition, except beginning at southwest corner, Lot 14, east 125.8 feet, north 138.75 feet, west to northwest line Lot 14, southwest to beginning; six and nine-tenths (6.9) acres more or less.
(Ord. No. 857, § 1, 5-21-75)

Sec. 17-61. Noeske Park established.
The following area is hereby established as Noeske Park:

Lands dedicated for park purposes in the recorded plat of Midland Manor No. 2; five-tenths (0.5) acre more or less.
(Ord. No. 857, § 1, 5-21-75)

Sec. 17-62. Dartmoor Park established.
The following area is hereby established as Dartmoor Park:

Lands dedicated for park purposes in the recorded plat of Midland Manor No. 2; five-tenths (0.5) acre more or less.
(Ord. No. 857, § 1, 5-21-75)

Sec. 17-63. Manor Park established.
The following area is hereby established as Manor Park:

Beginning 259.1 feet south of northeast corner of northwest quarter of northeast quarter of Section 16, southwesterly 312.5 feet to north corner of Lot 84, Midland Manor No. 2 southeasterly 307 feet to east one-eighth line, north along one-eighth line to beginning; one (1) acre more or less.
(Ord. No. 857, § 1, 5-21-75)

Sec. 17-64. Nelson Park established.
The following area is hereby established as Nelson Park:

Lands dedicated for park purposes in the recorded plat of Midland Manor No. 1; four-tenths (0.4) acre more or less.
(Ord. No. 857, § 1, 5-21-75)

Sec. 17-65. Allen Park established.
The following area is hereby established as Allen Park:

Lots 1, 2, 9 and 10, Block 6, Baker and Moss Subdivision; thirty-six hundredths (0.36) acre more or less.
(Ord. No. 857, § 1, 5-21-75)

Sec. 17-66. Central Park established.
The following described area is hereby established as Central Park:

Lots 9 through 24 and southeast half of vacated S. Erie Court and unplatted part of Section 16 bounded by Rodd Street, Collins Street, northwest line of George Street extended, and south line Central Park Addition; eighteen (18) acres more or less.
(Ord. No. 857, § 1, 5-21-75)

Sec. 17-67. Grove Park established.
The following described area is hereby established as Grove Park:

Blocks 63 and 64, Carpenter's Division and Carpenter and Hines Addition, Block 73, Carpenter's Addition, Lots 7 through 13, Block 73, Lots 1 and 2, Block 73, except the northeasterly 76 feet, and southwesterly 45.2 feet of Lots 16, 17 and 18, all in Block 73 of Carpenter and Hines Addition, including vacated McDonald Street and Pine Street adjacent to two said blocks; five and two-tenths (5.2) acres more or less.
(Ord. No. 857, § 1, 5-21-75)

Sec. 17-68. Fournie Park established.
The following area is hereby established as Fournie Park:

All Block 13, Dow Chemical Company Addition, except Lots 3 and 4 and including Lot 2, Block 19, Dow Chemical Company Addition; two and thirty-nine hundredths (2.39) acres more or less.
(Ord. No. 857, § 1, 5-21-75)

Sec. 17-69. Emerson Park established.
The following area is hereby established as Emerson Park:

That area in Sections 8 and 17 bounded by the Tittabawassee River, Currie Parkway, the southwesterly right-of-way line of C&O Railway and Cook Road; fifty (50) acres more or less.
(Ord. No. 857, § 1, 5-21-75)

Sec. 17-70. Revere Park established.
The following described area is hereby established as Revere Park:

That part of Section 17 bounded by Revere Street, West Park Drive, south and west lines of Parkside Addition, West Main Street, and south of a line beginning on northeast line West Main Street 56 feet southeast of intersection of West Main Street and east and west quarter line, north 58 degrees, east to west line of Parkside Addition, except beginning 429 feet west of southeast corner of Lot 1, Parkside Addition, thence southeasterly 245 feet, south 45 degrees 42 minutes east 136.9 feet, northeasterly on northwest line of Revere Street to intersection with West Park Drive, north 85 feet to beginning; three and eight-tenths (3.8) acres more or less.
(Ord. No. 857, § 1, 5-21-75)

Sec. 17-71. Currie Golf Course established.
The following described area is hereby established as Currie Golf Course:

That area in Sections 17 and 18 lying west of Tittabawassee River, north of M-20 right-of-way, and south of Currie Parkway, except Lots 10 and 11, Blocks 5, Lots 1 through 6, Block 6, and Lots 11 through 14, Block 7, in Sias Second Addition, and except beginning southwest corner Lot 11, Block 7, Sias Second Addition, thence westerly along south line Lot 11 extended 180 feet, northerly 240 feet, easterly to north-south quarter line, Section 17, south to point of beginning, and except street rights-of-way;

also

That area in Section 17 lying south and west of Tittabawassee River and north of Currie Parkway, except Block 4, Lots 7 and 8 and west 40 feet Lots 6 and 9, Block 5, Block 1 except Lots 1, 2, 3, and east 64 feet Lot 14, all in plat of Elmwood and except beginning northwest corner Lot 12, Block 1, Plat of Elmwood, north 75 degrees, east 166 feet, north 116 feet, west to east line Madison Street, south 185 feet to beginning, and except beginning at the north line Soper Street and west one-eighth line, north to a point 416.6 feet north of east-west quarter line, west 856.7 feet more or less, south to south line Prentiss Street, east 55 feet, south 105 feet, west 15 feet plus or minus, south to north line Soper Street, northeasterly to point of beginning;

also

Beginning northeast corner of southeast quarter Section 18, west to the north-south quarter line, south to the south one-eighth line, east 165 feet, south 160.22 feet, east 165 feet, south 82.5 feet, east 375 feet, southeasterly 483 feet, south 34.5 feet, east 195.83 feet, south 80 feet plus or minus, southeasterly 463.96 feet, southeasterly 382.52 feet, south to Currie Parkway, northeasterly to east section line to point of beginning, except beginning 445.5 feet south of east quarter post, west 577.5 feet, south 123.75 feet, west 577.5 feet, north to point of beginning, excepting all street rights-of-way; four hundred thirty (430) acres more or less.
(Ord. No. 857, § 1, 5-21-75)

Sec. 17-72. Chippewassee Park established.
The following described area is hereby established as Chippewassee Park:

That area of Sections 17 and 20 bounded by the Tittabawassee River, Chippewa River, the old channel of the Chippewa River and M-20 Highway right-of-way; thirty-five (35) acres more or less.
(Ord. No. 857, § 1, 5-21-75)

Sec. 17-73. St. Charles Park established.
The following described area is hereby established as St. Charles Park:

Lots 41, 42, 43 and 44, Assessors's Plat of the Fourth Ward; eight-tenths (0.8) acre more or less.
(Ord. No. 857, § 1, 5-21-75)

Sec. 17-74. Reserved.
Editors Note: Section 17-74, which pertained to Plumer Park and derived from Ord. No. 857, § 1, enacted May 21, 1975, has been deleted pursuant to the request of the city inasmuch as said park was sold on November 6, 1980.

Sec. 17-75. Waterworks Park established.
The following area is hereby established as Waterworks Park:

Lots 5, 6, 11, 12, 21 and 22, Plat of Melrose; twelve (12) acres more or less.
(Ord. No. 857, § 1, 5-21-75)

Sec. 17-76. City Forest established.
The following area is hereby established as the City Forest:

West half of northeast quarter; southeast quarter of northeast quarter; northwest quarter; east half of southwest quarter; southeast quarter, Section 29, Township 15 North, Range 2 East; containing five hundred twenty (520) acres, according to the returns of the surveyor general.
(Ord. No. 857, § 1, 5-21-75)

Sec. 17-77. Pine River Park established.
The following area is hereby established as Pine River Park:

The northeast quarter of Section 10; the east half of northwest quarter of Section 10; and the south half of Section 11; all in Township 13 North, Range 1 West, Porter Township, Midland County, Michigan, but specifically reserving to the grantor all mineral rights in the aforementioned property and the right to use said property in order to develop, mine and remove such minerals; five hundred sixty (560) acres more or less.
(Ord. No. 857, § 1, 5-21-75)

Sec. 17-78. River Bend Park established.
The following area is hereby established as River Bend Park:

A part of 5A in the southeasterly portion of Lot 1, Section 2, Township 14 North, Range 1 East, Homer Township, Midland County, Michigan, described as follows: Beginning of survey at the south one-eighth corner of the north and south quarter line of said Section 2; thence south 192.00 feet along said north and south quarter line; thence west 47.23 feet to place of beginning of land being described; thence south 7 degrees 58 minutes west 461.21 feet; thence northwesterly 496.33 feet to a point located 258.11 feet west of the place of beginning; thence east 258.11 feet to place of beginning; also all land to the edge of the Tittabawassee River which lies south of the north line of the above-described land extended to the river and west of the east line of the above-described land extended to the river, to be used for public park or recreational purposes only; one and thirty-seven hundredths (1.37) acres more or less.
(Ord. No. 857, § 1, 5-21-75)

Sec. 17-79. Thrune Park established.
The following area is hereby established as Thrune Park:

Lots 2 through 7 of Block 87 of the Original Plat of the City of Midland; being 0.99 acres more or less.
(Ord. No. 999, § 1, 5-11-81)

Sec. 17-80. Hart Park established.
The following described area is hereby established as Hart Park:

Lots 1, 2, 3 and 4, Block 78, Original Plat of Midland.
(Ord. No. 1193, § 1, 7-9-90)

Sec. 17-81. Pere Marquette Rail-Trail Park established.
The following described area is hereby established as the Pere Marquette Rail-Trail Park:

PARCEL I

All that certain land beginning at Grantor's Valuation Station 6059+20 being the west right-of-way line of Dublin Road, in the northeast 1/4 of the northeast 1/4 of Section 12, Town 14 North, Range 1 East, Homer Township, such beginning point being indicated on fragment print

of Grantor's Valuation Section Map 1-F(62), marked exhibit B-1, attached hereto (Exhibit B-1 is not attached herein, but is on file and available for inspection in the office of the city clerk); thence extending generally in a southeasterly direction through Section 12 in Town 14 North, Range 1 East, Homer Township, and through Sections 7, 8, 16, 17 and 21 in Town 14 North, Range 2 East, Midland Township, a total distance of 2.77 miles, more or less, to Grantor's Valuation Station 6205+45, more or less, being the east right-of-way line of Jerome Street, such ending point being indicated on fragment print of Grantor's Valuation Section Map 1-F(65), marked Exhibit B-2, attached hereto: All as shown in detail on Grantor's Valuation Section Map 1-F. Sheets 62 through 65, inclusive, incorporated herein by reference: Containing 33.07 acres, more or less; and being subject to all easements of record.

PARCEL II

All that part of the following described parcel of land lying easterly from the east line of the Westerly 20 feet of Lot B, Block 10, of the original plat of the City of Midland, Midland County, Michigan: Description of railroad right-of-way in Block 10 of the original plat of the City of Midland, Midland County, Michigan described as beginning at a point on the east right-of-way line of Benson St. at a point which is south 44 deg 41 min 55 sec west, 129.86 feet from the north corner of said Block 10; thence along said easterly right-of-way line south 44 deg 41 min 55 sec west, 74.17 feet; thence south 64 deg 37 min 49 sec east, 254.22 feet; thence south 58 deg 28 min 27 sec east, 190.94 feet; thence south 59 deg 27 min 50 sec east, 130.69 feet; thence south 55 deg 38 min 19 sec east, 188.00 feet; thence south 60 deg 36 min 50 sec east,272.59 feet to the southerly right-of-way line of Main Street; thence north 49 deg 50 min 49 sec west 451.00 feet along said southerly right-of-way line of said Main Street; thence north 59 deg 38 min 31 sec west, 129.01 feet; thence north 44 deg 41 min 55 sec east, 5.00 feet; thence north 53 deg 52 min 00 sec west, 25.00 feet; thence south 33 deg 03 min 31 sec west, 15.00 feet; thence north 57 deg 37 min 53 sec west, 50.00 feet; thence north 54 deg 51 min 23 sec west, 117.00 feet; thence north 63 deg 44 min 17 sec west, 252.87 feet to the point of beginning. Containing 1.30 acres, and being subject to any easements of record.

PARCEL III

A one hundred-foot wide strip of land lying fifty feet each side of the following described centerline: Beginning at a point on the west line of Section 7, Town 14 North, Range 2 east, City of Midland, Midland County, Michigan, said point being 521.92 feet south of the northwest corner of said section, and also being the centerline of the former C & O Railroad right-of-way; thence South 57 deg 13 min 40 sec east 7387.4 feet more or less along the centerline of said former railroad, to the section line common to Sections 7 and 8; thence south 57 deg 13 min 40 sec east 734 feet along said centerline; thence southeasterly along the arc of a 1 deg curve to the right having a chord bearing and distance of south 54 deg 51 min 10 sec east 475 feet, to the section line common to Sections 8 and 17 and to the point of ending of said one hundred-foot right-of-way and the point of beginning of a seventy-foot wide strip of land lying 35 feet each side of said centerline; thence proceeding southeasterly along the arc of said 1 deg curve to the right having a chord bearing and distance of south 54 deg 51 min 10 sec east 475 feet; thence south 52 deg 28 min 40 sec east 1620 feet more or less to the west line of the east 1/2 of the east 1/2 of the northeast 1/4 of the northwest 1/4 of section 17, to the point of ending of said seventy-feet wide right-of-way and the point of beginning of a one hundred-foot wide right-of-way lying fifty feet each side of said centerline; thence south 52 deg 28 min 40 sec east 12 feet more or less; thence southeasterly 992.6 feet along the arc of a 2 deg curve to the right having a chord bearing and distance of south 42 deg 33 min 10 sec east 987.6 feet; thence south 32

deg 37 min 40 sec east 1992 feet more or less to the northwesterly line of Lot 1 Block 79 of the Midland City original plat, and the point of ending of said one hundred-foot wide strip of land.

PARCEL IV

Also; a piece of land in Section 17, Town 14 North, Range East, City of Midland, Midland County, Michigan; bounded on the north by the northwesterly line of Lot 1, Block 79 of the Midland City original plat; bounded on the west by the Tittabawassee River; bounded on the south by the westerly right-of-way line of Jerome Street (Highway M-20); and bounded on the east by a line described as follows: Beginning at the intersection of the westerly right-of-way line of Jerome Street, with the southwesterly line of Block 15, of the Midland City original plat; thence north 46 deg 30 min west along the southwesterly line of Blocks 15 and 16, to a point on the southwesterly line of Lot 8, Block 16, said point being 43 feet northwesterly from the southeast corner of said Lot 8; thence north 33 deg 50 min west 79 feet more or less to the line common to Lots 6 and 7 of said Block 16; thence southwesterly 7 feet more or less along the line common to lots 6 and 7; thence north 31 deg west 194 feet more or less, to the northwesterly right-of-way line of Hubbard Street extended southerly; thence north 43 deg 30 min east 57.5 feet along the northwesterly right-of-way line of Hubbard Street extended, to the southeast corner of Lot 1, Block 17 of said plat; thence north 46 deg 30 min west 166 feet, along the southerly line of Lots 1, 2, and 3 of Block 17; thence north 33 deg 50 min west 76 feet, to the easterly right-of-way line of Auburn Street; thence south 43 deg 30 min; west 5 feet more or less, along the easterly right-of-way line of Auburn Street; thence north 32 deg 17 min west 191.9 feet; thence north 33 deg 50 min; west 252 feet more or less to the northwesterly line of lot 1, Block 79 of said subdivision, and the point of ending of said boundary line.

PARCEL V

Beginning at a point on the easterly right-of-way line of Jerome Street 171.65 feet southwesterly of the northeasterly corner of Block 5 of the original plat of the City of Midland; thence southeasterly 24.47 feet; thence southwesterly 65.75 feet; thence northwesterly to the east line of Jerome Street; thence northeasterly to the point of beginning.
(Ord. No. 1328, § 1, 10-30-95; Ord. No. 1354, § 1, 7-22-96)

Sec. 17-82. Theis Park established.
The following described area is hereby established as Theis Park:

Hillside Park lying within the recorded Plat of Hillside, part of the Southwest 1/4 of Section 15, Township 14 North, Range 2 East, City of Midland, Midland County, Michigan.
(Ord. No. 1478, § 1, 5-15-00)

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CODE OF ORDINANCES

Chapter 18

RESERVED*

Editor's note: Ord. No. 1512, § 10, adopted July 23, 2001, repealed ch. 18, art. I, II, in its entirety. Formerly, ch. 18 pertained to the plumbing code and derived from Ord. No. 1073, § 1, adopted August 27, 1984; Ord. No. 18-9, § 1, adopted July 26, 1993; Ord. No. 1268, § 1, adopted July 26, 1993.

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CODE OF ORDINANCES

Chapter 19

POLICE

Sec. 19-1. Police employment standards.
The minimum employment standards for law enforcement officers as established and adopted by the Michigan Law Enforcement Officers Training Council in accordance with Act No. 203, Public Acts of 1965 are hereby adopted. Recruitment and employment practices and standards shall be in compliance with existing Michigan statutes governing this activity.
State law references: M.S.A., § 4.450 et seq.

Sec. 19-2. Minimum personnel standards.
To be considered for appointment to the police department, an applicant shall meet the following qualifications.
(a) Citizenship. Be a citizen of the United States.

(b) Age. Minimum age of twenty-one (21) years.

(c) Education. Graduation from high school or equivalent. "Equivalent" is defined as having attained a passing score on the general education development test indicating high school graduation level.

(d) Fingerprints. Fingerprinting of applicants with a search of local, state and national fingerprint files to disclose any criminal record.

(e) Felony record. The applicant shall not have been convicted of a felony offense.

(f) Moral character. Good moral character as determined by a favorable report following a comprehensive background investigation covering school and employment records, home environment, personal traits and integrity. Consideration will be given to any and all law violations, including traffic and conservation law convictions as indicating a lack of good character.

(g) Health. Acceptable physical, emotional and mental fitness as established by a licensed physician following examination to determine the applicant is free from any physical, emotional or mental condition which might adversely affect his performance of duty as a police officer. The applicant shall possess normal hearing and normal color vision. He shall be free from any impediments of the senses. He must possess normal visual functions and visual acuity in each eye correctable to 20/20. The applicant must be physically sound; well developed physically, with height and weight in relation to each other and to age as indicated by accepted medical standards and in possession of his extremities. He shall be free from any physical defects, chronic diseases, organic diseases, organic or functional conditions, or mental instabilities

which may tend to impair efficient performance of duty to which might endanger the lives of others or himself if he lacks these qualifications.

A declaration of the applicant's medical history shall become a part of the background investigation. The information shall be available to the examining physician.

(h) Oral interview. An oral interview shall be held by the hiring authority or his representative to determine the applicant's acceptability for a police officer position and to assess appearance, background and ability to communicate.

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CODE OF ORDINANCES

Chapter 20

PUBLIC IMPROVEMENTS*

Editor's note: Ord. No. 899, § 1, adopted Mar. 14, 1977, repealed former Ch. 20, §§ 20-1– 20-14, 20-25– 20-57, 20-67– 20-72. Section 2 of said Ord. No. 899 adopted a new Ch. 20 to read as herein set out. Formerly Ch. 20 had pertained to public improvements and had been derived from: Ord. No. 744, § 1, enacted Jan. 5, 1970; Ord. No. 839, § 1, enacted July 29, 1974; Ord. No. 873, §§ 1– 3, enacted Oct. 20, 1975.
Charter references: Council authorized to perform public improvements, § 15.1; council authorized to defray cost of public improvements by special assessments on property especially benefited, § 14.1; city manager to manage and supervise all public improvements, § 8.2.
Cross references: Streets and sidewalks, Ch. 22; subdivisions, Ch. 23; water, sewer and sewage disposal, Ch. 28.
State law references: Advance planning of public improvements by municipal planning commission, M.S.A., § 5.2999.

Art. I. In General, §§ 20-1– 20-16

Art. II. Special Assessment Procedure Generally, §§ 20-17– 20-50

Art. III. Advance Financing of Improvements, §§ 20-51– 20-56

ARTICLE I.

IN GENERAL

Sec. 20-1. City to construct public improvements.
The city shall construct and repair, or cause to be constructed and repaired, all public works improvements deemed necessary for the public health, safety and welfare.
(Ord. No. 899, § 2, 3-14-77)

Sec. 20-2. Public works improvements defined.
The term "public works improvements" as used in this chapter shall include:
(1) Sidewalks.
(2) Streets.
(3) Pedestrian malls.
(4) Water systems.
(5) Sewer systems.
(6) Driveway culverts.
(7) Parking facilities.
(8) Drainage facilities.
(Ord. No. 899, § 2, 3-14-77)

Sec. 20-3. Financing improvements.
Construction of public works improvements of the city shall be financed by any method authorized by law including the methods described in Articles II and III of this chapter.
(Ord. No. 899, § 2, 3-14-77)

Sec. 20-4. Improvement costs absorbed by city.
In all public works improvement construction, the city shall pay from properly appropriated funds one hundred (100) per cent of the cost of:
(a) Intersection construction except water and sewer utilities, repair or regarding of manholes, moving of water hydrants, transplanting of trees or planting of new trees, moving of drainage structures or culverts and the cost of any frontage exempted by the provisions of Chapter 22 or otherwise. This subsection shall not apply to improvements installed to satisfy the obligation by statute, ordinance or otherwise of the proprietor of a subdivision.

(b) That part of the cost of a public improvement installed in excess of the need of the benefited district.
(Ord. No. 899, § 2, 3-14-77)

Sec. 20-5. Cost items in public works improvements.
The cost and expense of a public improvement may be made up of the following items:

- Labor.
- Material.
- Equipment expense.
- General engineering expense.
- Legal expense.
- Administrative expense.
- Land acquisition expense.
- Publication expense.

(Ord. No. 899, § 2, 3-14-77)

Secs. 20-6– 20-16. Reserved.

ARTICLE II.

SPECIAL ASSESSMENT PROCEDURE GENERALLY

Sec. 20-17. Special assessment procedure.
Proceedings for the making of public works improvements within the city proposed to be financed in whole or in part by special assessment may be commenced by resolution of the council on its own initiative or by an initiatory petition signed by one (1) or more property owners interested in obtaining the construction of a public works improvement and having the cost of same specially assessed in the district benefited by said improvement. Such initiatory petitions for special assessment projects shall in no event be mandatory upon the city council. The city manager or city clerk shall report the receipt of initiatory petitions to the city council.
(Ord. No. 899, § 2, 3-14-77)

Sec. 20-18. City manager's survey and report.
Before the city council shall consider the construction of any public works improvement to be specially assessed against property benefited thereby, such improvement shall be referred by

resolution to the city manager who shall be directed to prepare a report which shall include estimates of the expense thereof, an estimate of the life of the improvement, a description of the district or districts benefited, and plans, diagrams and specifications, when in his opinion practicable, to enable the council to decide the cost, extent and necessity of the improvement proposed and what part or proportion thereof should be paid by special assessments upon property especially benefited and what part, if any, should be paid by the city at large.
(Ord. No. 899, § 2, 3-14-77)

Sec. 20-19. Contents of resolution requiring public hearing on necessity.
After the city manager has presented the report required by section 20-18, and the council has reviewed such report, a resolution may be passed:
(1) Determining the apparent necessity of the improvement.

(2) Setting forth the nature thereof.

(3) Prescribing what part or proportion of the cost of such improvement shall be paid by special assessment upon the property especially benefited, a determination of benefits received by affected properties and what part, if any, shall be paid by the city at large.

(4) Designating the limits of the special assessment district to be affected.

(5) Designating whether such project is to be assessed according to frontage or other basis of determining benefit.

(6) Placing the complete information on file in the office of the city clerk where the same may be found for examination.

(7) Directing the clerk to publish a notice of public hearing on the proposed improvement, at which time and place opportunity will be given interested persons to be heard.
In no case shall the city council determine to proceed with the making of any public works improvement to be financed by special assessments against benefited property until the hearing on necessity provided for in this article.
(Ord. No. 899, § 2, 3-14-77)

Sec. 20-20. Publication of notice of hearing.
A notice of hearing required by section 20-19 shall be made by one publication in a newspaper published or circulated within the city at least one week prior to the holding of the hearing on necessity, and a notice of said hearing shall be mailed by first-class mail to persons proposed to be affected by special assessment ten (10) days prior to the holding of said hearing. The hearing required by section 20-19 will be held at any regular or special meeting of the city council.
(Ord. No. 899, § 2, 3-14-77)

Sec. 20-21. Objection to improvement.
If, at or prior to such meeting of the city council required by section 20-19, property owners of property located in the special assessment district whose property in the aggregate was assessed at fifty (50) per cent or more of the total assessed value of the privately-owned real property located therein in accordance with the last preceding general assessment roll, or in case of paving or similar improvements fifty (50) per cent of the frontage to be assessed for any such improvement, shall object in writing to the proposed improvement, the improvement shall

not be made by proceedings authorized by this article without a four-fifths affirmative vote of the members of the city council.
(Ord. No. 899, § 2, 3-14-77)

Sec. 20-22. Hearings on necessity.
At the public hearing on necessity of the proposed improvement, all persons interested shall be given an opportunity to be heard. After this the city council may modify the scope of the public improvement in such manner as they shall deem to be in the best interest of the city as a whole. If it appears that the extent of the public improvement should be increased or enlarged or additions made to the special assessment district, then another hearing shall be had pursuant to notice prescribed in section 20-19.
(Ord. No. 899, § 2, 3-14-77)

Sec. 20-23. Resolution approving project and directing preparation of special assessment roll.
If, after the hearing required by section 20-19 or further hearings held in accordance with the provisions of section 20-22, the determination of the city council shall be to proceed with any public improvement, a resolution shall be passed approving said improvement according to any plans, diagrams and specifications then on file in the office of the city clerk, the assessment district and detailed estimates of cost, and directing the assessor to prepare a special assessment roll in accordance with the council's determination and to report the same to the council for confirmation.
(Ord. No. 899, § 2, 3-14-77)

Sec. 20-24. Deviation from plans, diagrams and specifications.
After the adoption of the resolution provided for in section 20-23, the character and extent of the proposed public improvement shall not be substantially altered without the authority of the city council by resolution. A copy of the resolution authorizing such changes or alterations shall be certified by the clerk and shall be attached to any original plans, diagrams or specifications on file in his office. In no case shall the city council enlarge a public improvement project financed pursuant to this article after the determination of the council required by section 20-23 unless the cost of such enlargement is borne by the city at large.
(Ord. No. 899, § 2, 3-14-77)

Sec. 20-25. Limitations on preliminary expenses.
No contract or expenditure, except for the legal, notification and publication costs and the cost of preparing plans, diagrams, specifications and estimates of cost, shall be made for any improvement until a special assessment roll to defray the cost of same shall have been confirmed.
(Ord. No. 899, § 2, 3-14-77)

Sec. 20-26. Special assessment roll.
The assessor shall make a special assessment roll of all lots and parcels of land within the designated district benefited by any proposed improvement and shall assess to each lot or parcel of land the amount benefited thereby. The amount spread in each case shall be based upon the detailed estimate of the city manager as approved by the city council.
(Ord. No. 899, § 2, 3-14-77)

Sec. 20-27. Assessor to file assessment roll.
When the assessor shall have completed the assessment roll required by section 20-26, he shall file the same with the city clerk for the presentation to the council for review and certification by it.

(Ord. No. 899, § 2, 3-14-77)

Sec. 20-28. Acceptance of special assessment roll; notice of hearing on objections.
Upon receipt of a special assessment roll, the city council, by resolution, shall accept such assessment roll and order it to be filed in the office of the city clerk for public examination, shall fix the time and place the council will meet to review such special assessment roll, and direct the clerk to publish a notice of a public hearing for the purpose of giving an opportunity for interested persons to be heard. Such notice shall be made by one publication at least one week prior to the holding of such meeting. A notice of said hearing shall be mailed by first-class mail to persons proposed to be specially assessed ten (10) days prior to the holding of said hearing.
(Ord. No. 899, § 2, 3-14-77)

Sec. 20-29. When hearing on objections may be held; objections.
The hearing required by section 20-28 may be held at any regular, adjourned or special meeting of the city council. At this meeting all interested persons or parties shall present their objections, if any, to the assessments against them.
(Ord. No. 899, § 2, 3-14-77)

Sec. 20-30. Assessor to be present at special assessment review meetings of city council.
The city assessor shall be present at every meeting of the city council at which a special assessment is to be considered.
(Ord. No. 899, § 2, 3-14-77)

Sec. 20-31. Changes and corrections in assessment roll.
The city council shall meet at the time and place designated for the review of any special assessment roll pursuant to section 20-28 and at such meeting, or proper adjournment thereof, shall consider all objections thereto. The council may correct such roll as to any special assessment or description of any lot or parcel of land in other errors appearing therein; or it may, by resolution, annul such assessment roll and the same proceedings shall be followed in making a new roll as in the making of the original roll.
(Ord. No. 899, § 2, 3-14-77)

Sec. 20-32. Resolution confirming assessment roll.
If, after hearing all objections to any special assessment roll and making a record of such changes as the city council deems justified, the council determines that it is satisfied with said special assessment roll and that assessments are in proportion to benefits received, it shall thereupon pass a resolution reciting such determinations, confirming such roll, placing it on file in the office of the city clerk, and directing the clerk to attach his warrant to a certified copy within ten (10) days, therein commanding the assessor to spread the various sums and amount appearing thereon on a special assessment roll or upon the tax rolls of the city for the full amounts or in annual installments as directed by the council. Such roll shall have the date of confirmation endorsed thereon and shall from that date be final and conclusive for the purpose of the improvement to which it applied, subject only to adjustment to conform to the actual cost of the improvement as provided in this article.
(Ord. No. 899, § 2, 3-14-77)

Sec. 20-33. When special assessments are due and payable.
All special assessments, except such installments thereof as the city council shall make payable at a future time, shall be due and payable upon confirmation of the special assessment roll.
(Ord. No. 899, § 2, 3-14-77)

Sec. 20-34. Payment of special assessments.
The council may provide for the payment of special assessments in annual installments. Such annual installments shall not exceed twenty (20) in number, the first installment being due upon confirmation of the roll and the deferred installments being due annually thereafter. Provided, however, the council may, in its discretion, spread upon and make a part of each annual city tax roll thereafter the annual installments heretofore mentioned; provided further, that the first annual installment may be spread the next year following the confirmation of said roll. Interest shall be charged on all deferred installments at a rate not to exceed the legal interest rate permitted by law, payable annually; provided, however, after the council has confirmed the roll, the city treasurer shall notify by mail each property owner on said roll that said owner shall have thirty (30) days from the date of such notification to pay said assessment in full and without interest or penalty. Upon the expiration of the thirty-day period, the roll shall be closed for collection and forwarded to the city assessor for spreading said roll on all unpaid assessments in conformity with the council resolution. Following said thirty-day period, the property owner may pay all of his assessment at any time but shall be required to pay interest thereon to the due date of the next installment. Failure on the part of the city treasurer to give said notice or of such owner to receive said notice shall not invalidate any special assessment roll of the city or any assessment thereon nor excuse the payment of said interest.
(Ord. No. 899, § 2, 3-14-77)

Sec. 20-35. Lien; status as debt; collection.
After the date of confirmation of a special assessment roll, the full amount of the assessment and all interest thereon shall constitute a lien upon the premises subject thereto and that amount shall also be a debt of the person to whom assessed until paid and, in case of delinquency, may be collected as delinquent city property taxes or by a suit against the person in the name of the city.
(Ord. No. 899, § 2, 3-14-77)

Sec. 20-36. Procedure for collection from assessment roll.
When any special assessment shall be confirmed and be payable, the city council shall direct the assessment made in the special assessment roll to be collected directly therefrom or from the general tax rolls. Thereupon the city clerk shall attach his warrant to a certified copy of such special assessment roll, therein commanding the city treasurer to collect from each of the persons assessed in such roll the amount of money assessed to and set opposite his name therein. Upon receiving any assessment roll and warrant pursuant to this section, the city treasurer shall proceed to collect the amounts assessed therein.
(Ord. No. 899, § 2, 3-14-77)

Sec. 20-37. Collection fees.
From such date after confirmation as shall be fixed by the city council, the collection fees shall be collected on delinquent special assessments and upon delinquent installments of such special assessments as are provided by the city charter to be collected on delinquent city taxes. Such delinquent special assessments shall be subject to the same penalties and the lands upon which the same are a lien shall be subject to sale therefor the same as are delinquent city taxes and the lands upon which they constitute a lien.
(Ord. No. 899, § 2, 3-14-77)

Sec. 20-38. Compiling actual costs; additional assessments; refund.
The city manager shall, within sixty (60) days after the completion of each public works improvement, compile the actual cost thereof and certify the same to the city council. When any special assessment roll shall prove insufficient to meet the costs of the improvement for which it

was made, the council may make an additional pro rata assessment. Should the assessment prove larger than necessary by an amount of five (5) per cent or more, the council shall make a refund of the excess thereof pro rata according to assessments.
(Ord. No. 899, § 2, 3-14-77)

Sec. 20-39. Special assessment accounts.
Monies raised by special assessment to pay the cost of any public works improvement shall be held in a special fund to pay such cost or to repay any money borrowed therefor. Each special assessment account must be used only for the improvement project for which the assessment was levied, except any excess not refundable under the provisions of section 20-38 shall be paid to the fund from which the city's share of the cost of the improvement was drawn.
(Ord. No. 899, § 2, 3-14-77)

Sec. 20-40. Time limitation on contesting assessment.
Except and unless notice is given to the city council in writing of an intention to contest or enjoin the collection of any special assessment for the construction of any public improvement within fifteen (15) days after the date of the resolution of the council confirming the assessment roll for such improvement, which notice shall state the grounds on which the proceedings are to be contested, no suit or action of any kind shall be instituted or maintained for the purpose of contesting or enjoining the collection of such special assessment.
(Ord. No. 899, § 2, 3-14-77)

Sec. 20-41. Procedure upon successful contest of assessment.
When the city council shall deem any special assessment invalid or defective for any reason whatever, or if any court of competent jurisdiction shall have adjudged such assessment to be illegal for any reason whatever, in whole or in part, the council shall have power to cause a new assessment to be made for the same purpose for which the former assessment was made, whether the improvement or any part thereof has been completed and whether any part of the assessment has been collected or not. All proceedings on such reassessment and for the collection thereof shall be made in the manner as provided for the original assessment. If any portion of the original assessment shall have been collected and not refunded, it shall be applied upon the reassessment, and the reassessment shall, to that extent, be deemed satisfied. If more than the amount reassessed shall have been collected, the balance shall be refunded to the person making such payment.
(Ord. No. 899, § 2, 3-14-77)

Sec. 20-42. Combination of improvement projects.
The city council may combine several improvement districts into one project for purpose of effecting a saving in the costs. However, for each district there shall be established a separate account to cover the cost of the same.
(Ord. No. 899, § 2, 3-14-77)

Secs. 20-43– 20-50. Reserved.

ARTICLE III.

ADVANCE FINANCING OF IMPROVEMENTS

Sec. 20-51. Generally.

Except as otherwise provided herein, proceedings for the construction of public works improvements to be financed in advance shall be initiated and continued in the manner set forth in, and subject to, the provisions of Article II of this chapter.
(Ord. No. 899, § 2, 3-14-77)

Sec. 20-52. Deposit of total cost of project a prerequisite to approval.
After determining the estimated cost and the proportion thereof of public improvement projects to be defrayed by the city at large, the council may order any public improvement, not included in the current year's construction program, to be made or constructed when such project has been petitioned for by all of the owners of property within the district to be affected or which shall constitute a special assessment district for the payment of the cost of such improvement. However, prior to the commencement of work on the improvement petitioned for, one hundred (100) percent of the total estimated cost and expense of such improvement according to the estimates of the cost thereof and the special assessment roll based thereon shall have been deposited with the city treasurer by the property owners within the district to be affected or constituting such special assessment district.
(Ord. No. 899, § 2, 3-14-77)

Sec. 20-53. Marking assessments as paid.
In all cases where the total cost of any public improvement has been deposited with the city treasurer prior to commencement of work thereon pursuant to section 20-52, the assessment roll and each assessment appearing thereon shall immediately, upon confirmation of such roll, be marked paid.
(Ord. No. 899, § 2, 3-14-77)

Sec. 20-54. Return of excess funds; city's share of costs.
In doing any work authorized and financed under the provisions of this article, the city engineer shall keep an accurate record of the cost and expense thereof and, upon completion of the work, shall report such costs and expenses to the council which shall thereupon authorize and direct that the amount, if any, of such money so deposited with the city treasurer which is in excess of the actual cost and expense of the improvements made, shall be repaid by the city treasurer to those persons making such deposit, pro rata according to the several amounts deposited by them. The council shall report to the city treasurer the city's share, if any, of the cost and expense of such improvements as determined by the council under the provisions of Article II of this chapter.
(Ord. No. 899, § 2, 3-14-77)

Sec. 20-55. Repayment of city's share of improvement.
On or before three (3) years following the fiscal year during which any improvement project is completed, the council may direct that repayment of the city's share shall be made in one lump sum or in annual equal installments not to exceed ten (10) years to the person or persons making such deposits. Repayment of the city's share may be further delayed if, in the opinion of the council, the property has not sufficiently been developed to warrant the repayment.
(Ord. No. 899, § 2, 3-14-77)

Sec. 20-56. When water or sewer system improvement is petitioned by persons owning less than all property in district.
Sections 20-51 through 20-55 shall also apply in the case when a water system or sewer system improvement shall be petitioned by a person or persons owning less than all of the property in such district. In that event one hundred (100) percent of the total estimated cost and expense shall be deposited with the city treasurer. Any property owner not having participated in

the one hundred (100) percent deposit who shall later make a connection to a water main or sanitary sewer within the district shall pay a connection fee, in addition to the standard tap-in fees, equal to one-half (1/2) the cost of construction of an eight-inch water main in the case of a water main connection, or one-half (1/2) the cost of a ten-inch sanitary sewer in the case of a sanitary sewer connection, indexed to the year of construction using The Engineering News Record, "The Construction Cost Index," and calculated by; the city engineer on a front foot basis, before such connection is made. The property owner may choose to pay this fee in five (5) installments, the first installment being due at the time of connection, and the deferred installments being due annually thereafter, with interest accumulating at the rate of the most recent rate established by the city council for annual payments of special assessments. In such event, this charge shall constitute a lien on the premises subject thereto. Such addition to the standard tap-in fee shall be paid by the city to the person or persons having made the one hundred (100) percent deposit referred to herein.
(Ord. No. 899, § 2, 3-14-77; Ord. No. 1503, § 1, 4-9-01)

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CODE OF ORDINANCES

Chapter 21

RATES, CHARGES AND FEES

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ARTICLE I.

IN GENERAL

Sec. 21-1. Short title.

This chapter shall be known and may be cited as the "General Rate Code of the City of Midland."

Sec. 21-2. Scope; intent; conflicting provisions.
It is the purpose of this chapter to establish certain rates required for various licenses, permits and fees in the city. It is not intended to repeal, abrogate, annul or in any way impair or interfere with existing provisions of other laws or ordinances, except those specifically repealed by this chapter. Where this chapter imposes rates other than are imposed or required by existing provisions of law, ordinance, resolution, contract or deed, the provisions of this chapter shall control.

Sec. 21-3. Refuse collection fees repealed.
(Ord. No. 742, § 1, 12-15-69; Ord. No. 889, § 1, 6-21-76; Ord. No. 910, § 1, 7-25-77; Ord. No. 1005, § 1, 8-24-81; Ord. No. 1051, § 1, 7-25-83; Ord. No. 1091, § 1, 7-1-85; Ord. No. 1173, § 1, 6-19-89; Ord. No. 1207, § 1, 12-17-90; Ord. No. 1220, § 1, 6-24-91; Ord. No. 1241, § 1, 6-15-92; Ord. No. 1265, § 1, 6-14-93; Ord. No. 1691, § 1, 3-8-10)
Cross References: Garbage, refuse and litter, Ch. 10.

Sec. 21-4. Yard waste collection fees.
(a) Roll-out container. An annual total fee of thirty-five dollars ($35.00) shall be charged to the owners or occupants of each premises requesting city collection of yard waste contained in the owners' or occupants' roll-out yard waste container(s).

An annual fee shall be charged to the owners or occupants of each premises requesting city collection of yard waste contained in the owners' or occupants' roll-out yard waste container(s) as follows:

(1) Thirty-five dollars ($35.00) for the first roll-out container;
(2) Fifteen dollars ($15.00) for each additional roll-out container.

This fee must be paid to the city prior to the beginning of the city's collection service.

(b) Kraft paper yard waste bag collection sticker. A yard waste collection sticker must be affixed to each individual kraft paper yard waste bag that is placed at the curb for collection by the city. The fee for each yard waste collection sticker shall be thirty-five cents ($0.35).

(c) If residents with a roll-out container choose to set additional yard waste out in kraft paper bags, they must also affix a $0.35 collection sticker to each bag.

(d) Waiver. Yard waste collection fees (whether for containers or yard waste bags) shall be waived during the three-week spring and fall cleanup periods, as such periods are designated by the director of public services. Notwithstanding the foregoing, yard waste collection fees may be waived during the fall leaf collection program upon approval by the city manager.

(Ord. No. 1290, § 1, 4-25-94; Ord. No. 1329, § 1, 10-30-95;; Ord. No. 1691, § 2, 3-8-10)

Secs. 21-5, 21-6. Reserved.

Sec. 21-7. Subdivision fees required.
As authorized under Section 241 and 246 of Act No. 288 or the Public Acts of 1967 and as provided in the subdivision chapter of this Code a proprietor submitting a plat for approval shall be required to deposit the following nonrefundable fees with the city. Until such fees are paid, the plat shall not be considered or reviewed.
Cross References: Subdivisions, Ch. 23.

Sec. 21-8. Preliminary plat examination, inspection fee.
When the preliminary plat is submitted to the city clerk, the proprietor shall deposit a fee which shall be in addition to the filing and recording fee. Such fee shall be for the examination and inspection of the plat of the land proposed to be subdivided, and related expenses, and shall be seventy-five dollars ($75.00).
(Ord. No. 1015, § 1, 3-1-82; Ord. No. 1223, § 1, 7-29-91)
Cross References: Preliminary plat, §23-10 et seq.

Sec. 21-9. Final plat fees.
When the final plat is submitted to the city clerk, the proprietor shall deposit with the plat a fee of twenty dollars ($20.00) which shall be in addition to any other fee required.
Cross References: Final plat § 23-16 et seq.

Sec. 21-10. Public property vacation fee.
The fee required to accompany a petition seeking vacation of public grounds pursuant to the subdivision chapter shall be four hundred dollars ($400.00).
(Ord. No. 1015, § 2, 3-1-82; Ord. No. 1223, § 2, 7-29-91; Ord. No. 1589, § 1, 02-21-05)
Cross References: Vacation of property, § 23-87.

Sec. 21-11. Pool hall license fee.
The annual fee for a pool or billiard license shall be twenty-five dollars ($25.00).
Cross References: Pool hall license, § 15-30.

Sec. 21-12. Bowling alley license fee.
The annual fee for a public bowling alley license shall be five dollars ($5.00).
Cross References: Bowling alley license required, § 15-27.

Sec. 21-13. Public show, exhibition license fee.
The fee for any public show or exhibition license, either outdoors or under canvas, shall be one hundred dollars ($100.00) per day.
Cross References: Public show, exhibition license, § 15-35.

Sec. 21-14. Circus carnival license fee.
The fee for a circus or carnival license shall be one hundred dollars ($100.00) per day.
Cross References: Circus, carnival license, § 15-59.

Sec. 21-15. Amusement ride license fee.
The fee for any amusement ride license required by section 15-55 shall be twenty-five dollars ($25.00) for each device for each day the same is to be operated, but shall not exceed a total of one hundred dollars ($100.00) per day.
Cross References: Amusement ride license, § 15-55.

Sec. 21-16. Children's amusement ride license fee.

The fee for a license for each amusement ride which is by size and design limited to the use of children not exceeding nine (9) years of age shall be five dollars ($5.00) per year.

Cross References: Children's amusement ride license, § 15-56.

Sec. 21-17. Reserved.

Editors Note: Ord. No. 1321, adopted June 26, 1995, repealed § 21-17 in its entirety. Former § 21-17 pertained to a fee for electrician's license, and derived from Ord. No. 920, § 1, adopted Oct. 31, 1977.

Sec. 21-18. Electrical permit fee schedule.

The fees required under Chapter 7 of this Code for the inspection of all installations of electrical wiring apparatus or equipment shall be as set forth herein:

Permit Issuance Fee:

For issuing each permit $20.00

For issuing each supplemental permit 10.00

For each annual permit 1200.00

System Fee Schedule (Note: The following are in addition to the permit issuing fees):

New Residential Buildings:

For new multifamily residential buildings (apartments and condominiums) having three (3) or more living units including the area of basements, garages, carports and other noncommercial automobile storage areas constructed at the same time, per square foot 0.02

For new single- and two-family residential buildings including the area of basements, garages, carports and other minor accessory buildings constructed at the same time, per square foot 0.02

Note: For other types of residential occupancies and alterations, additions and modifications to existing residential buildings, use the Unit Fee Schedule.

Private Swimming Pools:

For new private, residential, in-ground swimming pools for single-family, multifamily occupancies including a complete system of necessary branch circuit wiring, bonding, grounding, underwater lighting, water pumping and other similar electrical equipment related to the operation of a swimming pool, each 20.00

Note: For other types of swimming pools, therapeutic whirlpools, spas and alterations to existing swimming pools, use Unit Fee Schedule.

Residential Appliances:

For fixed residential appliances or receptacle outlets for same, including wall-mounted electric ovens; counter-mounted cooking tops; electric ranges, self-contained room, console or through-wall air conditioners; space heaters; food waste grinders; dishwashers; washing machines;

water heaters; clothes dryers; or other motor-operated appliances not exceeding one horsepower (hp) in rating, each 4.00

Note: For other types of air conditioners and other motor-driven appliances having larger electrical ratings, see Power Apparatus.

Nonresidential Appliances:

For nonresidential appliances and self-contained factory wired, nonresidential appliances not exceeding one horsepower (hp), kilowatt (kw), or kilovolt ampere (kva), in rating including medical and dental devices; food, beverage and ice cream cabinets; illuminated show cases; drinking fountains; vending machines; laundry machines; or other similar types of equipment, each 4.00

Note: For other types of air conditioners and other motor-driven appliances having larger electrical ratings, see Power Apparatus.

Power Apparatus:

For motors, generators, transformers, rectifiers, synchronous converters, capacitors, industrial heating air conditioners and heat pumps, cooking or baking equipment and other apparatus, as follows: (rating in horsepower (hp), kilowatts (kw), kilovolt-amperes (kva), or kilovolt-amperes-reactive (kvar):

Up to and including 1, each 4.00

Over 1 and not over 10, each 6.00

Over 10 and not over 50, each 10.00

Over 50 and not over 100, each 20.00

Over 100, each 30.00

Notes:

(1)
For equipment or appliances having more than one motor, transformer, heater, etc., the sum of the combined ratings may be used.

(2)
These fees include all switches, circuit breakers, contractors, thermostats, relays and other directly related control equipment.

Busways:

For trolley and plug-in type busways, each 50 feet or fraction thereof 8.00

Note: An additional fee will be required for lighting fixtures, motors and other appliances that are connected to trolley and plug-in type busways. No fee is required for portable tools.

Signs, Outline Lighting and Marquees:

For signs, outline lighting systems or marquees supplied from one branch circuit, each 10.00

For additional branch circuits within the same sign, outline lighting system or marquee, each 4.00

Services:

For services of 600 volts or less and not over 100 amperes in rating, each 15.00

For services of 600 volts or less and over 100 amperes to 600 amperes in rating, each 25.00

For services over 600 volts or over 600 to 800 amperes in rating, each 50.00

For services over 600 volts or 800 amperes in rating, each 100.00

Miscellaneous Apparatus, Conduits and Conductors:

For electrical apparatus, conduits and conductors for which a permit is required but for which no fee is herein set forth 8.00

For service move or repair 8.00

Note: This fee is not applicable when a fee is paid for one or more services, outlets, fixtures, appliances, power apparatus, busways, signs or other equipment.

Fire alarm systems 50.00

Energy retrofit (includes but is not limited to the following: temp control devices, ballast replacement, relamp/building of fixtures, replacement of energy control/temperature control equipment, etc.) 50.00

Other Inspections and Fees:

(1)
Inspections outside of normal business hours (minimum charge--two (2) hours) per hour 30.00

(2)
Re-inspection fee assessed under provisions of section 21-30, per hour 30.00

(3)
Inspections for which no fee is specifically indicated (minimum charge--one-half (1/2) hour), per hour 30.00

(4)
Additional plan review required by changes, additions or revisions to approved plans (minimum charge--one-half (1/2) hour), per hour 30.00

Carnivals and Circuses:

Carnivals, circuses, or other traveling shows or exhibitions utilizing transportable-type rides, booths, displays and attractions:

For electric generators and electrically driven rides, each 10.00

For mechanically driven rides and walk through attractions or displays having electric lighting, each 5.00

For a system of area and booth lighting, each 5.00

Note: For permanently installed rides, booths, displays and attractions, use Unit Fee Schedule.

Temporary Power Service:

For a temporary service power pole or pedestal including all pole or pedestal-mounted receptacle outlets and appurtenances, each 15.00

For a temporary distribution system and temporary lighting and receptacle outlets for construction sites, decorative light, Christmas trees sales lots, firework stands, etc., each 15.00

Unit Fee Schedule (Note: The following are in addition to the permit issuing fee):

Receptacle, Switch and Lighting Outlets:

For receptacle, switch, lighting or other outlets at which current is used or controlled, except services, feeders and meters:

First 20, each 10.00

Additional fixtures, each 0.50

For pole or platform-mounted lighting fixtures, each 0.50

For theatrical-type lighting fixtures or assemblies, each 0.50

Other Fees:

Annual registration fee of a Class I electrical contractor's license 15.00
(Ord. No. 920, § 1, 10-31-77; Ord. No. 1002, § 1, 6-29-81; Ord. No. 1217, § 1, 6-17-91; Ord. No. 1321, § 2, 6-26-95)

Sec. 21-19. Building permit fees.
Residential--One- and two-family dwellings:

The building permit fees required by the building code shall be determined in accordance with the following schedule:

Total Valuation of Project	Fee
$1.00 to $500.00	$20.00
501.00 to 2,000.00	$20.00 for the first $500.00, plus $2.00 for each additional $100.00 or fraction thereof, to and including $2,000.00
2,001.00 to 25,000.00	$50.00 for the first $2,000.00, plus $6.50 for each additional $1,000.00 or fraction thereof, to and including $25.000.00
25,000.01 to 50,000.00	$199.50 for the first $25,000.00, plus $4.50 for each additional $1,000.00 or fraction thereof, to and including $50,000.00
50,000.01 to 100,000.00	$312.00 for the first $50,000.00, plus $3.00 for each additional $1,000.00 or fraction thereof, to and including $100,000.00
100,000.01 to 500,000.00	$462.00 for the first $100,000.00, plus $2.50 for each additional $1,000.00 or fraction thereof, to and including $500,000.00
500,000.01 and up	$1,462.00 for the first $500,000.00, plus $2.00 for each additional $1,000.00 or fraction thereof

Building permit fees--Commercial, including multifamily:

The building permit fees required by the building code shall be determined in accordance with the following schedule:

Total Valuation of Project	Fee
$1.00 to $2,000.00	$45.00
$2,000.01 to $25,000.00	$45.00 for the first $2,000.00 plus $9.00 for each additional $1,000.00 or fraction thereof, to and including $25,000.00
$25,000.01 to $50,000.00	$252.00 for the first $25,000.00 plus $6.50 for each additional $1,000.00 or fraction thereof, to and including $50,000.00
$50,000.01 to $100,000.00	$414.50 for the first $50,000.00 plus $4.50 for each additional $1,000.00 or fraction thereof, to and including $100,000.00
$100,000.01 to $500,000.00	$639.50 for the first $100,000.00 plus $3.50 for each additional $1,000.00 or fraction thereof, to and including $500,000.00
$500,000.01 to $1,000,000.00	$2,039.50 for the first $500,000.00 plus $3.00 for each additional $1,000.00 or fraction thereof, to and including $1,000,000.00
$1,000,000.01 and up	$3,539.50 for the first $1,000,000.00 plus $2.00 for each additional $1,000.00 or fraction thereof

Other Inspections and Fees:

A. Inspections outside of normal business hours (minimum charge: two (2) hours), per hour* $30.00

B. Reinspection fee assessed under provisions of Section 305(g), each* 30.00

C. Inspections for which no fee is specifically indicated (minimum charge: one-half (1/2) hour), per half-hour* 20.00

D. Initial permit application fee, per plan, or the cost of the permit, whichever is less (Note: This fee is nonrefundable and shall be applied to the cost of the permit) 50.00

E. Plan review including changes, additions or revisions to approved plans (minimum charge: one-half (1/2) hour), per half-hour* 20.00

F. Complex plan review as determined by building official . . . . . Actual city cost incurred

G. Annual industrial building permit, per year 2,400.00

H. Annual registration fee of building contractor license, per year 15.00

*or the total hourly cost to the jurisdiction whichever is the greatest. This cost shall include supervision, overhead, equipment, hourly wages and fringe benefits of the employees involved. (Ord. No. 1266, § 1, 6-28-93; Ord. No. 1321, § 2, 6-26-95)

Secs. 21-20--21-24. Reserved.
Editors Note: Ord. No. 920, § 2, adopted Oct. 31, 1977, repealed §§ 21-19--21-24, pertaining to electrical fees for permits, wiring and a service change charge, derived from provisions enacted with the adoption of this Code.

Sec. 21-25. Reserved.

Sec. 21-26. Plumbing permit fees.
The plumbing permit fees required by the plumbing code shall be as follows:

Permit Issuance:

(1) For issuing each permit $20.00

(2) For issuing each supplemental permit 10.00

Unit Fee Schedule (in addition to (1) or (2) above):

(1) For each plumbing fixture or trap or set of fixtures on one trap (including water, drainage piping, and backflow protection therefor) 5.00

(2) For each building sewer and each trailer park sewer 15.00

(3) Rainwater systems, per drain (inside building) 5.00

(4) For each cesspool (where permitted) 20.00

(5) For each private sewage disposal system 40.00

(6) For each water heater and/or vent 10.00

(7) For each gas piping system of 1 to 5 outlets 6.00

(8) For each gas piping system over 5 outlets, per outlet 1.00

(9) For each industrial waste pretreatment interceptor, including its trap and vent, excepting kitchen-type grease interceptors functioning as fixture traps 8.00

(10) For installation, alteration, or repair of water piping and/or water treating equipment, each 7.00

(11) For repair or alteration of drainage or vent piping, each fixture 7.00

(12) For each lawn sprinkler system on any one meter, including backflow protection devices therefor 7.00

(13) For atmospheric-type vacuum breakers not included in item 2:

1 to 5 . . . . . 7.00

Over 5, each 1.00

(14) For each backflow protective device other than atmospheric-type vacuum breakers:

2 inches and smaller 7.00

Over 2 inches 15.00

(15) Annual permits as authorized by section 18-10 . . . . . 1200.00

Other Inspections and Fees:

(1) Inspections outside of normal business hours (minimum charge--two hours), per hour 30.00

(2) Reinspection fee assessed under provisions of Section 305(h), each reinspection 30.00

(3) Inspections for which no fee is specifically indicated (minimum charge--one-half hour), per hour 30.00

(4) Additional plan review required by changes, additions or revisions to approved plans (minimum charge--one-half hour), per hour 30.00

(5) Annual registration fee of plumbing contractor's license 15.00
(Ord. No. 954, § 1, 7-16-79; Ord. No. 1053, §1, 8-8-83; Ord. No. 1217, § 1, 6-17-91; Ord. No. 1321, § 2, 6-26-95)

Sec. 21-27. Street and right-of-way work permit fees.

The fee for each permit required by this article for performing work in the street shall be as follows:

Street opening permit . . . . . $ 50.00

Driveway approach and curb cut permit:

Commercial driveways 100.00

All others 10.00

Annual public utility permit 2,000.00

Public utilities performing major construction or repairs of utility services must secure a street opening permit for each project that requires street openings or right-of-way disturbance pursuant to section 22-38 of this Code regardless of acquisition of an annual permit.
(Ord. No. 774, § 1, 4-19-71; Ord. No. 1414, § 2, 6-22-98)

Editors Note: Prior to its reenactment by Ord. No. 1414, § 21-27, which pertained to replacement fees, was repealed by § 2 of Ord. No. 1053, enacted Aug. 8, 1983.

Sec. 21-28. Reserved.

Editors Note: Ord. No. 1053, § 2, enacted Aug. 8, 1983, repealed § 21-28, which pertained to additional permits. Said section is reserved for future use.

Sec. 21-29. Zoning fees.

(a) Site plan review fee. The fee required to be paid pursuant to the provisions of Section 27.07 of Ordinance No. 1595 for site plan review and approval shall be one hundred fifty dollars ($150.00).

(b) Planned unit development fee. The fee required pursuant to the provisions of Section 31.02 of Ordinance No. 1585 for a planned unit development application shall be two hundred twenty-five dollars ($225.00).

(c) Zoning board of appeals application fee. The fee required pursuant to the provisions of Section 29.05 of Ordinance No. 1585 for a zoning board of appeals application shall be one hundred twenty five dollars ($125.00).

(d) Zoning amendment fee. The fee required pursuant to the provisions of Section 30.04 of Ordinance No. 1585 for the purposes of obtaining a zoning text or map amendment shall be three hundred twenty-five dollars ($325.00).

(e) Conditional use permit fee. The fee required pursuant to the provisions of Section 28.04 of Ordinance No. 1585 for the purposes of obtaining a conditional use permit shall be two hundred twenty-five dollars ($225.00).

(f) Sign permit fee. The fee required pursuant to the provisions of Section 31.02 of Ordinance No. 1585 for the purposes of obtaining a sign permit shall be:

For each wall, roof, or projecting sign thirty dollars ($30.00).
For each ground sign thirty dollars ($30.00).
For each temporary sign, requiring a sign permit thirty dollars ($30.00).

(g) Zoning ordinance fee. The fee required to obtain a written black and white copy of the zoning ordinance book shall be twenty-seven dollars ($27.00).

(h) Zoning map fee. The fee required to obtain a 36 inch by 52 inch color zoning map shall be five dollars ($5.00).

(Ord. No. 746, § 1, 1-26-70; Ord. No. 1015, § 3, 3-1-82; Ord. No. 1039, § 1, 3-14-83; Ord. No. 1223, § 3, 7-29-91; Ord. No. 1589, § 2, 02-21-05)

Sec. 21-30. Voluntary building certification fee.
A fee of fifty dollars ($50.00) per inspection shall be required for all voluntary or nonrequired inspections of a building, which will include one reinspection after the completion of any work necessary to meet requirements of the building code. For additional reinspections, an additional fee of fifteen dollars ($15.00) per inspection shall be required.
(Ord. No. 986, § 1, 9-29-80)

Sec. 21-31. Moving building permit fee.
The fee for a permit to move a building shall be twenty-five dollars ($25.00).
(Ord. No. 1414, § 1, 6-22-98)
Cross References: Building code regulations regarding relocation of buildings, § 5-37.

Sec. 21-32. Swimming pool permit fees.
The permit fees for securing a swimming pool construction permit shall be as follows:

(1) *In-ground swimming pools.* The fees for in-ground swimming pools shall be computed as provided for in sections 5-30 and 5-32 of this Code.

(2) *Aboveground swimming pools.* The fees for aboveground, portable pools, not exempted from permit requirements in section 5-29 of this Code, shall be twenty dollars ($20.00) for the initial installation.
(Ord. No. 1003, § 1, 6-29-81)
Cross References: Swimming pool permits, § 5-109.

Sec. 21-33. Mechanical permit fees.
The permit fees required under the mechanical code (section 5-95 of this Code) shall be as follows:

Permit Issuance:

(1) For the issuance of each permit $20.00

(2) For issuing each supplemental permit 10.00

Unit Fee Schedule:

(1) For the installation or relocation of each forced-air or gravity-type furnace or burner, appliance, up to and including 100,000 Btu/h 9.00

(2) For the installation or relocation of each forced-air or gravity-type furnace or burner, appliance over 100,000 Btu/h 11.00

(3) For the installation, or relocation of each floor furnace, including vent 9.00

(4) For the installation or relocation of each suspended heater, recessed wall heater or floor-mounted unit heater 9.00

(5) For the installation, or relocation or replacement of each appliance vent or chimney or vent damper installed and not included in an appliance permit 15.00

(6) For the repair of, alteration of, or addition to each heating appliance, refrigeration unit, or each heating, cooling, absorption or evaporative cooling system, including installation of controls regulated by this Code 9.00

(7) For the installation or relocation of each boiler or compressor to and including 3 horsepower, or each absorption system to and including 100,000 Btu/h 9.00

(8) For the installation or relocation of each boiler or compressor over 3 horsepower to and including 15 horsepower, or each absorption system over 100,000 Btu/h to and including 500,000 Btu/h 15.00

(9) For the installation or relocation of each boiler or compressor over 15 horsepower to and including 30 horsepower, or each absorption system over 500,000 Btu/h to and including 1,000,000 Btu/h 20.00

(10) For the installation or relocation of each boiler or compressor over 30 horsepower to and including 50 horsepower, or for each absorption system over 1,000,000 Btu/h to and including 1,750,000 Btu/h 25.00

(11) For the installation or relocation of each boiler or refrigeration compressor over 50 horsepower, or each absorption system over 1,750,000 Btu/h 40.00

(12) For each air-handling unit to and including 10,000 cubic feet per minute 6.00

Note: This fee shall not apply to an air-handling unit which is a portion of a factory-assembled appliance, cooling unit, evaporative cooler, or absorption unit for which a permit is required elsewhere in this Code.

(13) For each air-handling unit over 10,000 cubic feet, per minute 10.00

(14) For each evaporative cooler other than portable type 6.00

(15) For each ventilation fan connected to a single duct 5.00

(16) For each ventilation system which is not a portion of any heating or air conditioning system authorized by a permit 6.00

(17) For the installation of each hood which is served by mechanical exhaust, including the ducts for such hood 6.00

(18) For ducts, air distribution assemblies, etc. to conditioned space per square foot 0.01

(19) For the installation or relocation of each commercial or industrial-type incinerator 40.00

(20) For the installation or relocation of solid fuel burning stoves or appliances 9.00

(21) For the installation of each vent restrictor or damper 6.00

(22) For each appliance or piece of equipment regulated by this Code but not classed in other appliance categories, or for which no other fee is listed in this Code 6.00

(23) When chapter 22 is applicable (see Section 103), permit fee for fuel-gas piping shall be as follows:

For each gas-piping system of 1 to 5 outlets 6.00

(24) Annual permit (as authorized by section 5-95) 1200.00

Other Inspections and Fees:

(1) Inspections outside of normal business hours (minimum charge--2 hours), per hour 30.00

(2) Reinspection fee assessed under provisions of Section 305(f), each 30.00

(3) Annual registration fee of mechanical contractor's license 15.00
(Ord. No. 1053, § 3, 8-8-83; Ord. No. 1217, § 1, 6-17-91; Ord. No. 1321, § 2, 6-26-95)
Cross References: Mechanical code, § 5-80 et seq.

Sec. 21-34. Sanitary landfill disposal fees.
(a) *Landfill disposal fees.* Before being permitted to dispose of refuse, all vehicles seeking to discharge refuse at the city's sanitary landfill shall present the proper identification to the landfill attendant indicating that the refuse was generated within the City of Midland or Midland County and pay the attendant a fee as follows:

Type of Refuse		Disposal Fee
(1)*	Refuse (except tires) delivered in a passenger car, furnished camper, pickup, panel van, or trailer, Residential only.	No Charge

	* One load per month per address of three cubic yards or less of refuse (except tires) and yard waste may be disposed at no charge to the resident, which shall be compensated by the city's general fund. One appliance may be included as part of the three free yards. Additional loads and refuse in excess of three yards shall be charged according to the disposal fee schedule.	
(2)	General refuse (per cubic yard)	5.50
(3)	Construction and Demolition material; Foundry Sand (per cubic yard)	10.00
(4)	Packer vehicles (per cubic yard) city/contractors	8.50
(5)	Tires (per each):	
	Passenger car tire	5.00
	Truck tire	10.00
	Heavy equipment tire	15.00
(6)	Yard waste (per cubic yard)	3.00
(7)	Appliances (per each)	7.00
(8)	Contaminated soil/asbestos (per cubic yard)	12.00
(9)	Fee for sharps containers (per each)	3.00
(10)	Wastewater and water sludges/street dirt (per cubic yard)	10.00
(11)	Bulk medical waste (includes compacted)	10.00
(12)	Scrap metal (excludes appliances)	3.00

(b) The disposal fees above shall be doubled for refuse collected outside Midland County, but authorized by the city manager to be disposed at the city's landfill, or for local units of government in Midland County not having a solid waste disposal agreement with the city.

(c) *Landfill disposal fee calculation.* The landfill disposal fee is based upon the generating location of the refuse, the type of material and the size of the load, as determined by landfill personnel.

(d) *Construction and Demolition material.* Construction and demolition material are hereby defined as broken concrete, brick, masonry, pavement, roofing, drywall, wood, paneling, used building materials and other materials designated by the utilities director or his agent.

(e) *Yard waste*. Yard waste is hereby defined as grass clippings, leaves, brush, garden waste, trees and branches smaller than 12 inches in diameter and 8 feet long.

(f) *Landfill disposal fee billing administration.* Regular landfill users with an account in good standing shall be issued charge cards and shall be billed monthly for their disposal fees. A penalty of two (2) percent of the bill, with a minimum of five dollars ($5.00), shall be added to bills not paid to the city treasurer within thirty (30) days of the date of the billing. Access to the landfill for disposal shall be prohibited if the bill remains unpaid for more than sixty (60) days of the date of billing. To regain access to the landfill all outstanding invoices (including those less than 60 days old) shall be paid in full. Customers with an account not in good standing shall pay cash, certified check or money order for each load.

(Ord. No. 767, § 1, 1-18-71; Ord. No. 890, § 1, 6-21-76; Ord. No. 909, § 1, 7-25-77; Ord. No. 990, § 1, 11-17-80; Ord. No. 1050, § 1, 7-25-83; Ord. No. 1092, § 1, 7-1-85; Ord. No. 1133, § 1, 7-27-87; Ord. No. 1159, § 1, 8-8-88; Ord. No. 1172, § 1, 6-19-89; Ord. No. 1206, § 1, 12-17-90; Ord. No. 1219, § 1, 6-17-91; Ord. No. 1240, § 1, 6-15-92; Ord. No. 1267, § 1, 6-28-93; Ord. No. 1564, § 1, 6-23-03; Ord. No. 1569, § 1, 11-10-03)

Sec. 21-35. Repealed.
(Ord. No. 1195, § 1, 8-6-90; Ord. No. 1564. § 1, 6-23-03)

Sec. 21-35.1. Reserved.
Editors Note: Former § 21-35.1 pertained to spring cleanup fee waiver, was repealed by § 1 of Ord. No. 1194, adopted Aug. 6, 1990, and originated from Ord. No. 900, adopted Mar. 14, 1977.

Sec. 21-36. Food service establishment license fee.
The fee for a food service establishment license, or for any food related business defined in section 9-16, shall be five dollars ($5.00) per year.
Cross References: Business license for food establishments, § 9-19.

Sec. 21-37. Milk and milk products delivery vehicle license fee.
The milk and milk products delivery vehicle license fee shall be seven dollars ($7.00) per vehicle.

Sec. 21-38. Secondhand, junk dealer license fee.
The fee for each secondhand and junk dealer's license shall be twenty-five dollars ($25.00) per year.
(Ord. No. 770, § 1, 3-1-71)
Cross References: Junk dealer's license required, § 13-2.

Sec. 21-39. Dismantled motor vehicles permit fee.
A fee of one dollar ($1.00) shall be charged for each permit required by section 13-25 of this Code to keep a dismantled or partially dismantled motor vehicle on any premises.
Cross References: Similar provisions, § 13-25.

Sec. 21-40. Sidewalk construction permit fee.
The fee for a sidewalk construction permit shall be twenty-five dollars ($25.00).
(Ord. No. 1414, § 1, 6-22-98)

Sec. 21-41. Sidewalk builder's license fee.
Each applicant for a sidewalk builder's license shall pay an annual fee of five dollars ($5.00).

Sec. 21-42. Sewer connector's license fee.
Each applicant for a sewer connector builder's license shall pay an annual fee of five dollars ($5 00).
Cross References: Deposit required for street cut permit, § 22-42.

Sec. 21-43. Sewer connection fees.

(a) There are hereby established two (2) separate classifications of sewer connection permits:

(1) For the discharge of domestic wastes, not including intercepted groundwaters or stormwaters from roofs, building drains, window well drains, patio drains, truck docks or parking lots, into designated sanitary sewers.

(2) For the discharge of intercepted groundwaters or stormwaters from roofs, yards, building drains, window well drains, patio drains, truck docks or parking lots into designated storm sewers.

(b) A sewer connection permit shall be issued upon payment of the following applicable fee:

(1) For the discharge of domestic wastes into designated sanitary sewers, a sewer connection permit shall not be granted until the applicant has paid the proper fee established in accordance with the following schedule of fees and classification of property:

a. For property which has previously paid a special assessment, the permit fee shall be one hundred twenty dollars ($120.00).

b. For property which has previously constructed at private expense a sewer accepted and used by the city as a public sewer, the permit fee shall be one hundred twenty dollars ($120.00).

c. For property which has, previous to the adoption of this chapter, made a connection to any existing city sewer, the permit fee shall be one hundred twenty dollars ($120.00).

d. For each property which has not borne the expense of the construction of sewer mains, a permit shall not be granted until a permit fee, the sum of which is equal to one-half (1/2) of the per-foot cost of a ten-inch sewer indexed to the year of connection using *The Engineering News Record*, "The Construction Cost Index," and calculated by the city engineer on a front foot basis, is paid. An additional charge shall be made for a six-inch connection line from the sewer main to the property line of the property to be served, if the sewer has or will be constructed by the city. Said additional charges shall be the city's actual construction or contract costs. The property owner may choose to pay this fee in five (5) installments, the first installment being due at the time of connection, and the deferred installments being due annually thereafter, with interest accumulating at the rate of the most recent rate established by the city council for annual payments of special assessments. In such event, this charge shall constitute a lien on the premises subject thereto, and that amount shall also be a debt to the person to whom assessed until paid.

Annually, the city engineer shall notify the director of fiscal services of any such charges due. The director of fiscal services shall forward a statement of the total charges assessed on each parcel of property to the owner, as shown by the last current assessment or tax roll, and said assessment shall be payable to the city treasurer within thirty (30) days from the date said statement was forwarded. If not paid within the prescribed thirty-day period, such statement shall be filed by the director of fiscal services with the city assessor and shall thereupon be assessed against the land in question and become a lien on such property, in accordance with the City of Midland charter. The amount so charged may be discharged at any time by the payment of the amount specified in the statement, together with the accrued interest compiled from the time of filing said statement with the city assessor.

(2) For the discharge of intercepted groundwaters or stormwaters into designated storm sewers, a storm sewer connection permit shall not be granted until the applicant has paid the proposed fee established in accordance with the following schedule of fees and classification of property:

a. For property for which the connection of a downspout, weep tile, footing drain, sump pump discharge or any other conduit that carries the discharge of stormwater or intercepted groundwater to a designated storm sewer was completed after October 26, 1987, the permit fee shall be one hundred twenty dollars ($120.00).

b. For property with downspout, weep tile, footing drain, sump pump discharge or any other conduit that carries the discharge of stormwater or intercepted groundwater connected to a sanitary sewer prior to October 27, 1987, and for which the connection was eliminated and a subsequent connection to a designated storm sewer is requested, a permit fee shall not be levied.

(3) The combined permit fee for each property for which a sanitary sewer connection permit and a storm water connection permit is obtained at the same time and for which the inspection of both connections are to be completed at the same time shall be one hundred sixty-five dollars ($165.00).
(Ord. No. 679, § 1, 10-23-67; Ord. No. 864, § 1, 6-30-75; Ord. No. 1132, § 1, 7-27-87; Ord. No. 1151, § 1, 6-6-88; Ord. No. 1259, § 1, 3-15-93; Ord. No. 1324, § 1, 8-28-95; Ord. No. 1415, § 1, 6-22-98; Ord. No. 1422, § 1, 7-13-98; Ord. No. 1424, § 1, 9-14-98; Ord. No. 1436, § 1, 2-8-99)
Cross References: Sewer connection charges, § 28-162 et seq.

Sec. 21-44. Reserved.
Editors Note: Ord. No. 1349, § 1, adopted June 10, 1996, amended the Code by deleting § 21-44 in its entirety. Former § 21-44 pertained to bicycle registration fees, and carried no history note.

Sec. 21-45. Trailer coach parking permit fee.
A fee for a trailer coach parking, use and occupancy permit shall be two dollars ($2.00).
Cross References: Trailer coach permit issuance, § 25-7.

Sec. 21-46. Taxicab driver's certificate of fitness fee.
The fee for a taxicab driver's certificate of fitness shall be the sum of one dollar ($1.00).
Cross References: Taxicab driver's certificate of fitness required, § 27-31.

Sec. 21-47. Taxicab license fee.
A fee of five dollars ($5.00) per year shall be collected for each taxicab licensed under this Code.
Cross References: Taxicab license permit, § 27-19.

Sec. 21-48. Reserved.
Editors Note: Ord. No. 858, § 1, adopted May 21, 1975, amended this Code by repealing former § 21-48 relative to cable antenna television permit fee. Said section was derived from Ord. No. 789, § 1, adopted March 20, 1972.

Sec. 21-49. Solicitor's fee.
The fee for a solicitor's license shall be twenty dollars ($20.00) per year.
(Ord. No. 764, 10-26-70)

Sec. 21-50. Erosion and sedimentation control permit fees.

At the time of filing an application for a permit under Article V of Chapter 5, a nonrefundable fee of ten dollars ($10.00) per acre of site area involved will be charged for plan review and site inspections, with a minimum fee of ten dollars ($10.00) for such review and inspection.
(Ord. No. 848, § 2, 12-16-74)

Sec. 21-51. Rental dwelling certification fees and penalties.
The fees for certification, inspection, reinspection, delinquencies and housing board of appeals shall be as follows:

For certifying each rental dwelling $20.00

For each reinspection per unit as provided in section 12-31(a) 20.00

For each delinquent certification, per unit 20.00

For each delinquency over 30 days, per unit 40.00

For each delinquency over 60 days, per unit 60.00

Note: Fees for delinquencies are in addition to the fees for certifying.

For reinstating a suspended certificate 20.00

For issuing a temporary certificate 20.00

Housing board of appeals 25.00
(Ord. No. 1218, § 2, 6-17-91; Ord. No. 1321, § 2, 6-26-95)

Secs. 21-52--21-59. Reserved.

Sec. 21-60. Penalty for failure to renew on time.
Any annual occupation or business license required by this Code, except those relating to construction, not renewed by the expiration date, shall be renewed upon payment of a fee double the established fee in addition to meeting the other established conditions of a license renewal.
(Ord. No. 770, § 2, 3-1-71)

Secs. 21-61--21-69. Reserved.

ARTICLE II.

PARKS AND RECREATION FEES

DIVISION 1.

CIVIC ARENA

Sec. 21-70. Civic Arena Fees
The fees for use of the Civic Arena and its facilities are as follows:

Rates during the season (September through May)

(1)	Individual Ice Skater – Adult	$ 5.00	per session
(2)	Individual Ice Skater – Youth & Senior	$ 4.00	per session
(3)	Skating Pass (20 admissions) – Adult	$ 85.00	per pass
(4)	Skating Pass (20 admissions) – Youth & Senior	$ 70.00	per pass
(5)	Skate Rental	$ 3.00	per session
(6)	Skate Sharpening		
	Hockey	$ 5.00	
	Figure/Goalie	$ 6.00	
	New/Rusty/Poor Condition	$ 8.00	
(7)	Drop-In Program		
	Hockey (Noon)	$ 8.00	
	Hockey (Prime)	$ 10.00	
	Speed Skating	$ 12.00	
	Figure Skating	$ 12.00	
(8)	Conference Room Rental	$ 15.00	per hour
(9)	special events and programs	variable rates	per event
(10)	Hourly ice rental rates: During the months of September through May		

	Monday	Tuesday	Wednesday	Thursday	

City Hall ♦ 333 West Ellsworth Street ♦ Midland, Michigan 48640-5132 ♦ 989.837.3300 ♦ 989.835.2717 Fax ♦ www.midland-mi.org

CODE OF ORDINANCES

Chapter 22

STREETS AND SIDEWALKS*

Charter references: Authority of council to establish, etc., streets and sidewalks, § 5.4; ordinances granting franchisee right to use streets, etc., § 6.7; city manager to have charge of construction, repair, etc., of streets and sidewalks, § 8.2; use of streets by public utilities, § 15.11; notice to city of claim for injury arising from street defects, § 17.2.
Cross references: Buildings and building regulations, Ch. 5; fire prevention and protection, Ch. 8; junk, junkyards, secondhand dealers, Ch. 13; public improvements, Ch. 20; rates, charges, and fees, Ch. 21; subdivisions, Ch. 23; water, sewers and sewage disposal, Ch. 28; stormwater runoff regulation, Ch. 29; downtown development authority, Ch. 30.
State law references: Removing obstructions and encroachments on highways, M.S.A., § 27A.2937.
Constitution reference– Right of city to reasonable control of highways, streets, etc.; consent of city required for use of highways, streets, etc., by public utility, Art. VII, § 29.

Art. I. In General, §§ 22-1– 22-15

Art. II. Sidewalks, §§ 22-16– 22-37

Art. III. Streets, §§ 22-38– 22-69

Art. IV. Addresses, §§ 22-70, 22-71

ARTICLE I.

IN GENERAL

Sec. 22-1. Use of public right-of-way.
(a) Any use or activity within the public right-of-way shall first require permission from the city council, either directly or as delegated by ordinance, except:

(1) The regular movement of vehicles and pedestrians when conforming to applicable traffic regulations.

(2) Landscaping and landscape maintenance not constituting a traffic hazard as determined by the city's traffic engineer.

(3) Picketing, either for economic or political purposes, when conducted in conformance with Chapter 16 of this Code.

(4) Any work by public employees or persons under contract to a public agency.

(5) The proper placement of refuse for collection by city forces.

(6) United States Postal Service boxes, or individual mailboxes for mail delivered by the postal service, when any such box is kept in good condition and does not constitute a traffic hazard as determined by the city's traffic engineer.

(7) Receptacles for newspapers only when attached to a support with a mailbox.

(8) Public utility facilities and operations when in accord with a state or city franchise, applicable plats, and this chapter.

(b) Contractors' trailers, reasonable quantities of material for adjacent construction, and certain structures and/or appendages thereto may be located within the public right-of-way in accord with Chapters 44 and 45 of the Uniform Building Code as adopted by this Code.

(c) The city council hereby delegates the review and approval of requests for neighborhood block parties to the city engineer who may issue a traffic control order permitting such activity. (Ord. No. 1123, § 2, 4-13-87)

Editor's note: Ord. No. 1123, adopted April 13, 1987, repealed § 22-1 and added a new § 22-1 as herein included. Former § 22-1 concerned uses of streets and sidewalks for merchandise and construction materials.
Cross references: Dogs at large, § 3-17; removal of dead dogs, § 3-33; landing of aircraft, § 4-20 et seq.; building code, § 5-16 et seq.; food-handling facilities, § 9-16 et seq.; garbage, refuse and litter, Ch. 10; junk dealers' place of business, § 13-3; abandoned motor vehicles, § 13-24; miscellaneous licenses, § 15-26 et seq.; solicitors, § 15-100 et seq.; miscellaneous provisions and offenses, Ch. 16; uniform traffic code, § 24-11 et seq.; trees and shrubs, § 26-32 et seq.; vehicles for hire, Ch. 27.

Sec. 22-2. Signs, posters, etc., in or on public right-of-way.
(a) It shall be unlawful to print, paint, place, install or otherwise affix any sign, poster or advertisement upon the pavement or sidewalk, or in the outlawn or parkway area adjacent to any public street or right-of-way, or upon any post, tree or other object located on any public street or right-of-way in the city. However, the city council may, by resolution, authorize the placing of signs, posters or advertisements in such places, when, in the opinion of the city council, such signs, posters or advertisements are of public or civic interest. For purposes of this section, the phrase "public or civic interest" includes real estate open house and builders' parade of homes directional signs; provided, however, that real estate open house directional signs shall only be permitted in the public right-of-way for a period of no more than twelve (12) consecutive hours and builders' parade of homes directional signs shall only be permitted in a public right-of-way no more than four (4) times per calendar year and for a period of no more than seventy-two (72) consecutive hours. Additionally, real estate open house and builders' parade of homes directional signs must meet the following requirements:

(1) The maximum size of each sign shall be six (6) square feet.

(2) The maximum height of each sign shall be thirty-six (36) inches above the elevation of the crown of the roadway.

(3) At any given time, no more than one (1) sign will be permitted at any corner of an intersection.

As to any other type of sign determined by the city council to be of public or civic interest, any restrictions on the size, height and number of such signs shall be set forth in the authorizing resolution.

Any sign permitted in a public right-of-way shall not obstruct or otherwise interfere with vehicular or pedestrian traffic.

(b) Reflective address signs.

(1) Reflective address signs shall not be attached to any tree in the city's right-of-way.

(2) Reflective address signs may be attached to mailboxes and mailbox posts. This placement is the preferred location.

(3) Permanently installed reflective address signs may be located in the public right-of-way or dedicated public easement, but not closer than two (2) feet from the curb or designated shoulder area.

Permanently installed reflective address sign posts shall not exceed a dimension of four (4) inches by four (4) inches and the posts shall not exceed a height of four (4) feet above ground level.

(4) Not more than one (1) reflective address sign designating a residence shall be placed on any single family residential lot or public right of way abutting a single family residential lot. Placement on corner lots shall be in the right of way area adjacent to the street designating the address.

(5) Reflective address signs shall be no larger than two (2) square feet in total sign area.
(Ord. No. 1123, § 3, 4-13-87; Ord. No. 1333, § 1, 12-18-95; Ord. No. 1518, § 1, 10-8-01)

Editor's note: At the request of the city, the zoning ordinance, Ord. No. 727, is not included in this Code but is on file in the office of the city clerk. Article 31 of the zoning ordinance pertains to signs.
Cross references: Tree and shrub protection, § 26-36.

Sec. 22-3. Driving, walking on new pavement, sidewalks, etc.
No person shall go upon nor drive, or cause to be driven, any vehicle or animal upon any new pavement, sidewalk, curbing, gutter, or other construction work until such work has been completed, and any street closing sign or barricade posted or placed thereon has been removed by the proper authority.

Sec. 22-4. Utility street boxes.
No water or other public utility shut-off boxes or curb meter boxes shall be covered or obstructed in building or repairing any street area.
Cross references: Water generally, § 28-12 et seq.

Sec. 22-5. Parade permit required.

It shall be unlawful for any person to conduct or participate in a parade of any kind or character on any of the streets or in any of the public places of the city without first obtaining a permit from the city council.
Cross references: Licenses and business regulations, Ch. 15.

Sec. 22-6. Placing or depositing snow, ice or slush on sidewalks.
It shall be unlawful for any person to place or deposit, or cause to be placed or deposited, snow, ice or slush on any sidewalk in the city. As used in this section, the word "person" shall mean every natural person, firm, copartnership, association or corporation and their legal successors but shall not include the city or an employee of the city operating within the scope of his duties. For all purposes of this section, the person in ownership or control of the private property, contiguous to the sidewalk where the placing or depositing of snow, ice or slush has occurred, shall be deemed prima facie responsible for these unlawful acts.
(Ord. No. 1143, § 2, 2-29-88)

Sec. 22-7. City engineer to enforce chapter; injunctive relief.
The city engineer shall enforce this chapter and shall be authorized to make application in the proper court for a writ of injunction restraining any person from violating any of the provisions of this chapter.
(Ord. No. 1143, § 1, 2-29-88)

Secs. 22-8– 22-15. Reserved.

ARTICLE II.

SIDEWALKS*

Editor's note: Ord. No. 1509, § 1, adopted July 9, 2001, amended Art. II in its entirety, in effect repealing and reenacting Art. II to read as herein set out. Formerly, Art. II pertained to similar subject matter and derived from Ord. No. 899, § 4, adopted March 14, 1977; Ord. No. 974, § 2, adopted March 17, 1980; Ord. No. 1345, § 1, adopted March 18, 1996. Prior to the adoption of Ord. No. 1509, Ord. No. 899, § 3, adopted Mar. 14, 1977, repealed former Art. II, §§ 22-16– 22-24, 22-27, relative to sidewalks, derived from: Ord. No. 839, § 2, enacted July 29, 1974; Ord. No. 896, §§ 1, 2, enacted Nov. 1, 1976. Section 4 of said Ord. No. 899 added a new Art. II in lieu thereof, to read as herein set out.

DIVISION 1.
IN GENERAL
Sec. 22-16. Construction of sidewalks and assessment procedures.
The city manager shall prepare and submit to the council annually on or before the first day of March a description of all locations not having sidewalks on both sides of improved city streets. Said list shall estimate the cost to the city and the cost to the landowner to install sidewalks at each location, together with any comments concerning said location which the city manager desires to make. The council shall thereafter initiate an annual sidewalk program encompassing as many of these locations as it may determine should be included for the construction of sidewalks on either or both sides of these streets in accordance with the special assessment procedures of chapter 20 of the Code of Ordinances.
(Ord. No. 1509, § 1, 7-9-01)

Editor's note: Prior to the reenactment of § 22-16 by Ord. No. 1509, Ord. No. 974, § 1, adopted March 17, 1980, repealed § 22-16 which pertained to streets exempt from sidewalk construction requirements and was derived from Ord. No. 899, § 4, adopted March 14, 1977.

Sec. 22-17. Sidewalk construction standards; permit.
All sidewalks shall be constructed in strict conformity with grades and specifications pertaining thereto adopted or approved by the city engineer. No sidewalk shall be constructed by a property owner or sidewalk builder hired by a property owner until a written permit for such work shall have been obtained from the city engineer and the required fee has been paid.
(Ord. No. 1509, § 1, 7-9-01)

Sec. 22-18. City engineer to set sidewalk line, grade; keep records.
Wherever sidewalks are ordered constructed on any street or any part thereof, or where a permit has been issued for the construction of a sidewalk, it shall be the duty of the city engineer to indicate the sidewalk line and grade by setting stakes. A record of such information shall be kept in the city engineer's office.
(Ord. No. 1509, § 1, 7-9-01)

Sec. 22-19. Doors, gratings, etc., in sidewalks.
No person shall place any door in any sidewalk unless the design and specifications therefor shall be approved by the city engineer. No open iron grating or other open devices, nor any device containing glass, shall be placed in or used as the surface of any sidewalk unless such device conforms to the specifications provided by the city engineer.
(Ord. No. 1509, § 1, 7-9-01)

Sec. 22-20. Sidewalk construction; initiation and costs.
Sidewalk construction may be initiated under the provisions of article II or article II of chapter 20 or upon the written request of the property owner to the city engineer. The cost of construction, except as otherwise provided in chapter 20, shall be as follows:

(1) Where a lot has multiple frontages and cannot be divided into one (1) or more additional lots, the property owner shall pay all of the costs of construction on the narrow side and all of the cost on any additional required sidewalk.

(2) Where a property owner has on his own initiative applied for a permit to construct or have constructed a sidewalk and the provisions of subsection 22-20(1) apply, no permit shall be issued unless sufficient funds for city reimbursement are available. Reimbursement shall be made by the city upon certification of satisfactory completion by the city engineer. Reimbursement shall be at one-half the actual cost of the additional construction but in no case shall exceed one-half (1/2) the rate contained in the most recent city awarded contract for sidewalk construction.
(Ord. No. 1509, § 1, 7-9-01)

Sec. 22-21. Sidewalk construction– Who may perform.
The owner of property adjacent to a proposed sidewalk may contract with a licensed sidewalk builder to have such sidewalk laid and constructed or such owner may construct any such sidewalk upon obtaining the permit required in section 22-17. This right may also be granted within time periods as defined under sidewalk proceedings under chapter 20.
(Ord. No. 1509, § 1, 7-9-01)

Sec. 22-22. License for sidewalk builders.

Any person in the business of sidewalk builder, including construction and repair, shall comply with the licensing provisions of chapter 15 of this Code and pay the required license fee.
(Ord. No. 1509, § 1, 7-9-01)

Sec. 22-23. Sidewalk repair defined.
The term "sidewalk repair" as used in this article and chapter 20 shall include any reconstruction work of existing defective sidewalks including replacement, relaying, patching, filling to grade or grading that may be required to bring the existing sidewalk to a condition satisfactory for public use.
(Ord. No. 1509, § 1, 7-9-01)

Sec. 22-24. Initiating sidewalk repair.
The repair of any public sidewalk may be initiated by a request of the owner or owners of the property affected to the city engineer, by the city engineer, or by a resolution adopted by the city council ordering the work done.
(Ord. No. 1509, § 1, 7-9-01)

Sec. 22-25. Budget restrictions.
Before any sidewalk repairs are ordered or approved by the city engineer, there first shall be sufficient funds available in the annual city budget for sidewalk repair.
(Ord. No. 1509, § 1, 7-9-01)

Sec. 22-26. Sidewalk repairs to be by city.
Sidewalk repairs which are ordered shall be made by the city, either by force account or by contract, unless the city engineer shall provide that the work may be done by an abutting owner. The cost thereof, including engineering and inspection, shall be borne by the city; except in cases where the city engineer shall permit repair work to be done by an abutting owner, he shall determine the reasonable cost thereof to be borne by the city which shall be reimbursed to said abutting owner.
(Ord. No. 1509, § 1, 7-9-01)

Sec. 22-27. Sidewalk defects caused by negligence.
The city shall have the right, through the city engineer, to order a sidewalk repaired by persons who have caused the repair to be necessary or make the repair and bill the cost thereof to such persons. Such repairs are those caused by excavating under or adjacent to the sidewalk, caused by placing weight upon the sidewalk greater than its design capacity, or caused by defective sidewalk construction performed by the adjacent property owner or his agents.
(Ord. No. 1509, § 1, 7-9-01)

Secs. 22-28– 22-32. Reserved.

DIVISION 2.

DOWNTOWN STREETSCAPE

Sec. 22-33. Downtown Development Authority District Public Sidewalk Use Policy.
In the interest of promoting business by increasing activity and improving the general business climate in the Downtown Development Authority District, that being the area specified in chapter 30, section 30-5, the City of Midland may issue revocable permits to businesses within the district who apply for a permit to operate an exterior establishment as an extension of, or compatible with, the existing business on a portion of a public sidewalk. This language shall not

be construed as to require sidewalk occupancy permits for entities participating in periodic, district-wide events such as those sponsored by the Downtown Development Authority or Downtown Business Association.1 Exterior activities are limited to activities carried on by the existing business. A permit may be issued under the following terms and conditions:

1Uses of public right-of-way in the downtown remain subject to provisions of chapter 22 of the Midland Code of Ordinances. Permits for such activities as parades and block parties remain required.

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(1) Administration– Such permits shall be issued by the City Manager, or his designee.
a. Permits will be issued when the city is able to determine that the requested public sidewalk use permit will not:
1. Unreasonably interfere with the use of the street for pedestrian or vehicular travel.
2. Unreasonably interfere with the view of, access to, or use of property adjacent to said street.
3. Unreasonably interfere with street cleaning or snow removal activities.
4. Cause damage to the street, trees, benches, landscaping, or other objects lawfully located within the street right-of-way.
5. Cause a violation of any state or local laws.
6. Be principally used for off-premises advertising.
7. Be attached to, or reduce the effectiveness of or access to, any utility pole, sign, or other traffic control device.
8. Reduce pedestrian travel area of any sidewalk to less than five (5) feet in width.
9. Hinder safe pedestrian use of sidewalks or safe ingress or egress to any building.
b. Applications to alter existing streetscape elements in order to better accommodate private use of public sidewalk shall be reviewed by the departments of engineering, public utilities, and public works. Upon receiving a report outlining departmental reviews, the Downtown Development Authority shall offer a recommendation regarding approval of the application to the city council. Expenses associated with requested changes shall be borne by the applicant.
(2) Sale of food and beverages– To secure a public sidewalk use permit for the sale of food and/or beverages in an area located on a public sidewalk, the following conditions must be met:
a. Areas of the sidewalk licensed for the consumption of alcohol shall be enclosed by a structure approved by the Downtown Development Authority. The purpose of this structure shall be to delineate the private use area from the public access area of the sidewalk. Said structure shall be aesthetically compatible with the streetscape and area buildings. The structure will be removable to accommodate efficient snow removal activity but yet of sufficient construction so as to prevent relocation by patrons or pedestrians.
b. Sidewalk areas used for the sale and/or consumption of food and/or beverages shall be kept in a clean and orderly manner and shall, at a minimum:
1. Be provided with adequate solid waste receptacles so as to allow for the convenient disposal of waste materials associated with the private use of the sidewalk space.
2. Tables, chairs, and other appurtenances of the food and/or beverage consumption area shall be placed in such a manner so as not to hinder safe pedestrian use of the sidewalk and shall not block ingress or egress to any building.
(3) Insurance requirements– Prior to the issuance of a sidewalk occupancy permit, the applicant must supply the city with a certificate of liability insurance in an amount to be determined by the city. The certificate of insurance must be in effect for at least the period that the permit will be issued. In addition, the applicant shall indemnify and hold harmless the city from all claims or damages incident to the creation and operation of an outside establishment.
(4) Effective dates and hours of operation– All permits shall specify the dates and duration of the permitted sidewalk occupancy, and the permits shall be valid for only the specified period. Permits may not be granted for a period in excess of twelve (12) months. All permits shall

specify the hours during which the permitted sidewalk occupancy may occur during any given day of the valid permit period.
(5) Revocation– All permits issued under this article are subject to immediate revocation by the city manager, or his designee, for failure to comply with any or all provisions of this article.
(Ord. No. 1509, § 1, 7-9-01)

Secs. 22-34– 22-37. Reserved.

ARTICLE III.

STREETS

Sec. 22-38. Permit required for street, driveway work or excavation; exception.
No person shall make any opening or excavation in or under any street, or construct or change any driveway approach, or do any work under or within the limits of any street, without first obtaining a permit therefor from the city engineer. No permit shall be required for the installation of public utility pole lines, nor for work done at the direction of the city either by contract or by employees of the city.

Sec. 22-39. Permits for public utilities.
Any public utility operating in the state under the jurisdiction and control of the Michigan Public Service Commission, its successors or assigns, upon written application on a form furnished by the city, and upon filing an annual bond and the payment of an annual fee shall be granted a permit for the installation, replacement or repair of any underground facilities in a public street for a period of one year from the date thereof. No annual permit, however, shall authorize any major construction or major repairs of utility services in or under the city streets for which a separate permit must be secured as provided in section 22-38. Any public utility which has not procured an annual permit may be issued permits without deposits and shall pay the regular permit fee and surface replacement cost on a monthly basis.

Sec. 22-40. Weekly reports from public utilities.
Every public utility performing any work by authority of any annual street permit, at the end of each week, or, whenever required by the city engineer, shall file a written report with the city engineer on a form provided by him, showing all work performed by it within the city during the previous period of time, and shall pay the city for the actual cost to the city of replacing the surface of any street to its original condition for street openings made by such public utilities.

Sec. 22-41. Reserved.
Editor's note: Ord. No. 1414, § 2, adopted June 22, 1998, renumbered the former § 22-41 as § 21-27.

Sec. 22-42. Deposit for street cut permit.
When any street cut is to be made, the city engineer shall estimate the cost of replacing the street surface previous to the issue of any permit required by this article. Applicants for such permits shall deposit a sum equal to the engineer's estimate with the city treasurer. Such deposit shall be used by the city in making any necessary replacements to the street surface. The application blank shall provide that any balance of the deposit over and above the actual cost of the work shall be refunded to the applicant, and that the applicant agrees to pay any additional sum in the event the actual cost exceeds the amount of the deposit.

Sec. 22-43. Plans, specifications to be approved by city engineer; emergency exception.

No permit required by this article shall be granted until the plans and specifications for the work proposed to be done shall have been approved by the city engineer. In case of an emergency occurring after office hours, at night, Sunday or legal holidays, when an immediate excavation may be necessary for the protection of public or private property, such shall be reported to the police department which shall grant permission to make the necessary excavation upon the express condition that an application be made for a permit on or before noon of the next business day.

Sec. 22-44. Bond, insurance required for permit– Generally.
No permit required by this article shall be granted for doing any work until a bond and a policy of insurance have been filed with the city engineer, except as otherwise provided.

(a) The bond shall be in the sum of one thousand dollars ($1,000.00), and shall be conditioned to pay all damages to the streets of the city or any sewer, water main or extension, or utility facility beneath the surface thereof, and for the faithful performance of the provisions of this chapter.

(b) The insurance required shall be such public liability and property damage insurance as shall protect the applicant and the city from claims for damages for personal injury, including wrongful death, as well as claims for property damage. Such policy shall name the City of Midland as an additional assured. The amounts of such insurance shall not be less than one hundred thousand dollars ($100,000.00) for injuries, including wrongful death to any one person, and subject to the same limit for each person in an amount not less than three hundred thousand dollars ($300,000.00) on account of one accident, and property damage insurance in an amount not less than ten thousand dollars ($10,000.00).

Sec. 22-45. Same– For large corporations.
Any corporation having net assets in the amount of five million dollars ($5,000,000.00) over and above all liabilities may obtain the permit required by this article without complying with the bond and insurance requirements set forth in section 22-44 by furnishing, at the time of application for permit, a financial statement and an indemnification certificate holding the city harmless against all claims of public liability and property damage.

Sec. 22-46. Same– Public utilities.
Any public utility applying for an annual or specific permit under section 22-39 shall file a bond in the penal sum of five thousand dollars ($5,000.00) conditioned upon the faithful performance of the provisions of this chapter, and so long as such bond shall be in effect, no other bond shall be required from such utility. Such utility shall provide, however, the policy of insurance required by section 22-44.

Sec. 22-47. Bond, insurance not required for residential curb cuts, driveway approach construction.
No bond or insurance shall be required in connection with residential curb cut and driveway approach construction.
(Ord. No. 774, § 2, 4-19-71)

Amendment note– Prior to amendment by Ord. No. 774, § 2, § 22-47 provided that bond or insurance was not required for curb cuts or drive approach construction.

Sec. 22-48. Permit display.

All permits required by this article shall be prominently displayed or made readily available at the place where any work regulated by this chapter is being performed.

Sec. 22-49. Inspection; permit suspension, revocation.
The city engineer shall inspect all work done under any permit issued pursuant to this article. The city engineer may, for cause, suspend any permit, and may cause such permit to be revoked where either the workmanship or materials used do not conform to the plans and specifications approved upon the issuance of the permit, or when the terms of any permit or of this chapter are violated. No person shall perform any work authorized by any permit or cause any such work to be performed while the permit is suspended.

Sec. 22-50. Lights, barricades, detour signs; notice to fire department.
All openings and obstructions in any street, lane or alley must be guarded at all times with sufficient barriers, and during the night, openings and obstructions shall be indicated by lights and such other precautions as shall be necessary to guard the public against accidents. Necessary traffic detour signs shall be erected. When a street is completely barricaded, the contractor shall notify the fire department immediately of such barricade.

Sec. 22-51. Backfill generally.
All excavations made in either a paved or an unpaved street, unless specifically exempted by the city engineer, shall be backfilled as quickly as possible with sand. The backfill shall be compacted by mechanical methods or by satisfactory flooding with water and shall be brought to the level of the existing street surface. Upon completion, the person making such excavation shall notify the superintendent of public works, who shall then be responsible for future maintenance of such area and for the replacement of the original surface.

Sec. 22-52. Excavations between curb and property line, etc.; backfill.
Whenever any person makes an excavation between the street curb or street line and the sidewalk line or property line, the trench shall be backfilled by mechanical tamping, or by flooding with water, and all excess excavated material shall be removed immediately from the site. When the excavation is an improved area, black dirt shall be placed in the upper portion of the trench, and either sod or grass seed shall be placed thereon as required by the city engineer. The person making such cut shall be responsible for the replacement of any future settlement of the trench within this area for a period of one year.

Sec. 22-53. Pipe culverts.
All pipe culverts shall be laid, constructed and repaired by the city, except as otherwise provided herein.

Sec. 22-54. Culverts for private driveways.
Culverts may be ordered under private driveway approaches where deemed necessary by resolution of the city council. All pipe culverts for private driveway approaches laid, constructed and repaired, shall be of corrugated iron pipe, cast-iron pipe or concrete culvert pipe.
The cost of a ten (10) inch pipe and materials necessary to install culvert shall be paid for by the owner. If a size larger than ten (10) inches is required, the city shall pay the difference in cost between the larger size required and the cost of a ten (10) inch culvert. The city shall pay the cost of all labor required to install culvert.

Sec. 22-55. Reserved.
Editor's note: Ord. No. 775, § 1, adopted April 26, 1971 repealed former § 22-55 pertaining to the promulgation and approval of additional construction standards.

Sec. 22-55.1. Definitions.
(a) Buffer area means a portion of a highway right-of-way adjacent to a pavement that serves as a physical barrier between highway and activity on private property.

(b) Circle driveway means a private driveway that enters and leaves private property at two (2) points within the same frontage.

(c) Clear vision area means land acquired or used by the agency having jurisdiction over a highway for the purpose of maintaining unobstructive vision.

(d) Commercial driveway means a driveway serving a commercial establishment, industry, governmental or educational institution, hospital, church, apartment building or other large traffic generator.

(e) Department means the engineering department of the City of Midland.

(f) Directional driveway means a driveway designed so that traffic leaving the highway is separated from traffic entering the highway with some turning movements prohibited.

(g) Divided driveway means a driveway designed so that traffic leaving the highway is separated from traffic entering the highway.

(h) Dual service driveway means two (2) adjacent commercial driveways designated to facilitate traffic movement from a highway to a single private property by use of either driveway and a return to the highway by use of the other driveway.

(i) Field entrance means a driveway serving a farmyard, cultivated or uncultivated filed, timber land or undeveloped land not used for industrial, commercial or residential purposes.

(j) Frontage means a private property line that abuts a highway right-of-way.

(k) Limited access means a highway right-of-way in respect to which owners or occupants of abutting lands and other persons having no legal right of access to or from the highway except at designated access points, determined by the public authority having jurisdiction over the highway.

(l) Residential driveway means a driveway serving a private home.

(m) Right-of-way means a boundary between private property and public land under legal control of the agency having jurisdiction of the highway.

(n) Utility structure driveway means a driveway serving a utility structure such as a pumphouse or substation which operates automatically and requires only occasional access.
(Ord. No. 775, § 2, 4-26-71)

Amendment note– Ord. No. 775, § 2, amended this Code by adding §§ 22-55.1– 22-55.3.

Sec. 22-55.2. Adoption of state rules and regulations; exceptions; incorporation by reference.
For the purpose of carrying out the city's responsibilities as defined in Article III of Chapter 22 of the Midland Code of Ordinances, Part 2, Driveway Permits, except Rules 26 and 27 thereof,

and Part 3, Driveway Design Standards, including figures and tables contained therein of the Rules and Regulations of the Michigan Department of State Highways filed with the secretary of state on June 30, 1970, under authority conferred upon the department of state highways by Section 5 of Act 200 of the Public Acts of 1969, are hereby adopted by reference and made a part of the Code of Ordinances of the City of Midland.
(Ord. No. 775, § 2, 4-26-71)
Note: See amendment note following § 22-55.1.

Sec. 22-55.3. Provisions applicable where driveway permit denied under state rules and regulations.
For any driveway permit which may be denied by the city engineering department under these rules and regulations [see section 22-55.2], the provisions of section 15-15 of the Midland Code of Ordinances, relating to appeals, shall govern.
(Ord. No. 775, § 2, 4-26-71)
Note: See amendment note following § 22-55.1.

Sec. 22-56. Removal of street material.
No person shall remove any dirt, gravel or stone from the traveled portion of any street, except upon receiving a permit issued by the city engineer.

Sec. 22-57. Protection of streets, signs, barricades.
No person shall wilfully move, alter, deface, injure or destroy any part or accessory of any street or alley, or any sign or barricade erected or placed to protect, warn or guide the public.

Sec. 22-58. Changing street names– Initiating proceedings; petition.
Proceedings for the change of name of streets in the city may be commenced by resolution of the council on its own initiative, or by an initiatory petition signed by the owners of property located on the street desiring a name change. The council shall determine by resolution the cost involved in the change of name, and petitions shall be accompanied by a deposit to cover said costs.

Petitions shall be addressed to the council and filed with the city clerk. All petitions shall be on forms furnished by the city.

Sec. 22-59. Same– Preparation for hearing.
The matter of change of name of any city street shall be referred by the council to the planning commission for consideration and recommendation. Upon receipt of recommendation from the planning commission, the council shall by resolution cause a public hearing to be held not less than two (2) weeks from the date of such resolution. Notice of such hearing shall be made by one publication in a newspaper circulated in the city at least one week prior to the holding of the hearing.

Sec. 22-60. Same– Hearing; result of hearing; when costs refunded.
At the public hearing on the proposed change of name, all persons interested shall be given an opportunity to be heard. In the event the change of name is adopted, a certified copy of such resolution shall be forwarded by the city clerk to the auditor general and recorded with the register of deeds. In the event the change of name does not result, refunds of the required costs shall be made to the person making the original deposit.

Sec. 22-61. Street construction costs.

The cost of constructing streets which are ordered by resolution of the city council shall be billed and assessed as follows:
(1) Where a lot has multiple frontage and cannot be divided into one or more additional lots, the property owner shall be assessed all of the cost of construction on the narrow side and one-half of the cost on any additional required street except in the case of property in any subdivision platted on or after April 24, 1956, the entire cost of construction shall be assessed against the property owner.

(2) Street construction may be under the provisions of Article II of Chapter 20 or under the provisions for advance financing by property owners contained in Article III of Chapter 20.
(Ord. No. 899, § 5, 3-14-77)

Sec. 22-62. Property not having previously paid for public street improvements.
For property which has not borne the expense of adjacent public street improvements, the city engineer shall not approve a driveway permit, a storm sewer connection, or a new street connection to said public street improvements until a payment is made by the owner of said property at a rate equal to one-half (1/2) the cost of construction of a twenty-eight-foot-wide street, indexed to the year of connection using The Engineering News Record, "The Construction Cost Index," and calculated by the city engineer on a front foot basis. The property owner may choose to pay this fee in five (5) installments, the first installment being due at the time of connection, and the deferred installments being due annually thereafter, with interest accumulating at the rate of the most recent rate established by the city council for annual payments of special assessments. In such event, this charge shall constitute a lien on the premises subject thereto, and that amount shall also be a debt to the person to whom assessed until paid.

Annually, the city engineer shall notify the director of fiscal services of any such charges due. The director of fiscal services shall forward a statement of the total charges assessed on each parcel of property to the owner, as shown by the last current assessment or tax roll, and said assessment shall be payable to the city treasurer within thirty (30) days from the date said statement was forwarded. If not paid within the prescribed thirty-day period, such statement shall be filed by the director of fiscal services with the city assessor and shall thereupon be assessed against the land in question and become a lien on such property, in accordance with the City of Midland charter. The amount so charged may be discharged at any time by the payment of the amount specified in the statement, together with the accrued interest compiled from the time of filing said statement with the city assessor.
(Ord. No. 1229, § 1, 11-1-91; Ord. No. 1325, § 1, 8-28-95)

Secs. 22-63– 22-69. Reserved.

ARTICLE IV.

ADDRESSES

Sec. 22-70. Addresses.
Addresses within the city shall be assigned by the city.
(Ord. No. 1561, § 1, 6-23-03)

Sec. 22-71. Municipal civil infraction.
Owners of property having an address not assigned by the city are responsible for a municipal civil infraction, and shall be subject to section 34-5 of this Code. Nothing in this section shall be

construed to limit the remedies available to the city in the event of a violation by a person of this article.
(Ord. No. 1561, § 1, 6-23-03)

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CODE OF ORDINANCES

Chapter 23

SUBDIVISIONS*

* Editors Note: Section 1 of Ord. No. 1110, adopted July 28, 1986, amended Ch. 23 to read as herein set forth. Prior to such amendment, Ch. 23 contained subdivision regulations which were adopted with the adoption of this Code.

Cross References: Planning commission, § 2-94 et seq.; buildings and building regulations, Ch. 5; fire prevention and protection, Ch. 8; garbage, refuse and litter, Ch. 10; housing code, Ch. 12; public improvements, Ch. 20; subdivision fees, § 21-7 et seq.; streets and sidewalks, Ch. 22; water, sewers and sewage disposal, Ch. 28; stormwater runoff regulation and control, Ch. 29; downtown development authority, Ch. 30.

State Law References: Subdivision control act of 1967, M.S.A., § 26:430(101) et seq.; municipal planning commission act, M.S.A., § 5.2991 et seq.

Art. I. In General, §§ 23-1--23-9

Art. II. Plat Review Procedures, §§ 23-10--23-23

Art. III. Design Standards, §§ 23-24--23-34

Art. IV. Administration and Enforcement, §§ 23-35--23-44

Art. V. Repealed

Art. VI. Repealed

Art. VII. Repealed

ARTICLE I.

IN GENERAL

Sec. 23-1. Short title.
This chapter shall be known and may be cited as the "City of Midland Subdivision Control Ordinance."
(Ord. No. 1110, § 1, 7-28-86, Ord. No. 1603, § 1, 7-11-05)

Sec. 23-2. Purpose.
This ordinance, the adopted zoning ordinance, and the adopted ordinance to regulate division of land, shall be considered the ordinances referred to in section 105(b) of public act 591 of 1996,

which have been adopted in part to carry out the provisions of said act 591. These regulations are adopted for the following additional purposes:
1. To provide for the orderly development of the City in furtherance of the Master Plan and consistent with the Zoning Ordinance.
2. To achieve efficient use of the land and a quality living environment.
3. To provide for adequate light, air, and privacy, to minimize danger from fire, flood, and other dangers, and to promote the health, safety and welfare of the general public.
4. To protect the character and social and economic stability of all parts of the City.
5. To encourage the orderly and beneficial development of the City through appropriate control of the timing and sequence of development.
6. Protection of sensitive environmental areas.
7. To protect and conserve the value of land, buildings, and improvements by minimizing conflicts among land uses.
8. To guide public and private policy making and actions in order to achieve adequate and efficient transportation, water, sewerage, parks, playgrounds, open space, police and fire protection, and other public facilities and services.
9. To coordinate land use with street and highway development in the interest of minimizing traffic congestion; accommodating vehicular, pedestrian and other non-motorized transportation; and, providing for the proper location of streets and buildings.

10. To establish reasonable standards for design of subdivisions in order to further the orderly layout and use of land, and to ensure proper survey, legal description, and placement of monuments on subdivided land.
11. To assure the adequacy of drainage facilities and to encourage the wise use and management of natural resources so as to preserve the integrity and stability of the City in addition to protecting the public health, safety and general welfare.
12. To promote subdivision design that conserves energy, in part by creating a network of connected streets and by avoiding excessively long dead end or cul-de-sac streets.
13. To promote subdivision design that is harmonious with the natural character and natural features of the land, including woodlands, wetlands, water courses, natural drainage courses and stream channels, wildlife habitats, and other valuable natural assets.
(Ord. No. 1110, § 1, 7-28-86, Ord. No. 1603, § 1, 7-11-05)

Sec. 23-3. Scope.
1. These regulations apply to all subdivisions, created after the effective date of this ordinance, that are located within the boundaries of the City of Midland, except that proposed subdivisions that have been granted tentative or final preliminary plat approval shall continue to be reviewed under the requirements in place prior to adoption of this ordinance.
2. No land may be subdivided through the use of any legal description other than with reference to a plat or land division approved by the City in accordance with this ordinance.
3. No building permit or certificate of occupancy shall be issued for any parcel or plat of land created by subdivision after the effective date of this ordinance that is not in conformity with the provisions of this ordinance. After the effective date of this ordinance, no construction of any public or private improvements shall take place or be commenced for the purposes of creating a subdivision except in conformity with these regulations.
(Ord. No. 1110, § 1, 7-28-86, Ord. No. 1603, § 1, 7-11-05)

Sec. 23-4. Vested Rights.
Except as otherwise provided in this Ordinance, no vested rights shall accrue to the developer or proprietor of any subdivision *solely* as a result of tentative or final preliminary plat approval.

Furthermore, tentative preliminary plat approval provides no rights or authority to begin improvements or construction related to subdivision development.
(Ord. No. 1110, § 1, 7-28-86, Ord. No. 1603, § 1, 7-11-05)

Editors Note: At the request of the city, the zoning ordinance, Ord. No. 727, is not included in this code but is available in the office of the city clerk.

Sec. 23-5. Rules of Construction.
The following rules of construction shall apply to this ordinance:
1. The particular shall control the general.
2. Words used in the present tense shall include the future.
3. Words used in the singular number shall include the plural and the plural shall include the singular, unless the context clearly indicates the contrary.
4. The word "shall" is always mandatory and not discretionary. The word "may" is permissive.
5. The masculine gender includes the feminine and neuter.
6. All measurements shall be to the nearest integer, unless otherwise specified herein.
7. The phrase "used for" includes "arranged for", "designed for", "intended for", "occupied for", and "maintained for".
8. The word "building" includes the word "structure". The word "build" includes the words "erect" and "construct". A "building" or "structure" includes any part thereof.
9. The word "person" includes an individual a corporation, a partnership, an incorporated association, or any similar entity.
10. Whenever a word or term defined hereinafter appears in the text of this Ordinance, its meaning shall be construed as defined herein. Words or terms not herein defined shall have the meaning customarily assigned to them, or as found in the most recent available version of American Heritage Dictionary.
11. Unless the context clearly indicates the contrary, where a regulation involves two or more items, conditions, provisions, or events connected by the conjunction "and", "or", or "either/or", the conjunction shall be interpreted as follows:
a. "And" indicates that all the connected items, conditions, provisions, or events shall apply.
b. "Or" indicates that the connected items, conditions, provisions, or events may apply singularly or in any combination.
c. "Either/or" indicates that the connected items, conditions, provisions or events shall apply singularly but not in combination.
12. Catch words and catch lines shall in no way by their presence or absence limit or affect the meaning of this Ordinance.
13. Unless the context clearly indicates to the contrary, where an illustration accompanies any item within this Ordinance, the written text shall have precedence over said illustrations.
14. A “building” or “structure” includes any part thereof.
15. Where a specific agency, department, law, or rule is referred to in this Ordinance, such reference shall include any successor agency, department, law or rule.
(Ord. No. 1110, § 1, 7-28-86, Ord. No. 1603, § 1, 7-11-05)

State Law References: Subdivision Control Act of 1967, M.S.A., § 26.430(101) et seq.; municipal planning commission act, M.S.A., § 5.2991 et seq.

Sec. 23-6. Definitions.
The following definitions shall apply in the interpretation and enforcement of this Subdivision Control Ordinance:

Abutting: Two or more lots, uses, or parcels having a common border, or being separated from such a border by a right-of-way, alley, or easement.

Accessible: A parcel is accessible if it meets one or both of the following requirements:

a. The parcel has an area where a driveway provides vehicular access to an existing road or street and meets all applicable location standards of the Michigan Department of Transportation, Midland or Bay County Road Commission or City of Midland pursuant to Michigan Public Act 200 of 1969, as amended, or has an area where a driveway can provide vehicular access to an existing road or street and meet all such applicable location standards.

b. The parcel is served by an existing easement that provides vehicular access to an existing road or street and meets all applicable location standards of the Michigan Department of Transportation, Midland or Bay County Road Commission or City of Midland pursuant to Michigan Public Act 200 of 1969, as amended, or can be served by a proposed easement that will provide vehicular access to an existing road or street and that will meet all such applicable location standards.

Adjacent: Lots are adjacent when at least one boundary line of one lot touches a boundary line or lines of another lot.

Adjoining: For the purposes of giving proper public notice as required in this ordinance, "adjoining" shall include adjacent property and properties across the street from the property being developed.

Alley: A public or private right-of-way primarily designed to serve as secondary access to the side or rear of those properties whose principal frontage is on another street. An alley is not intended for general traffic circulation.

Applicant: The owner of land proposed to be subdivided or the owner's representative who shall have express written authority to act on behalf of the owner.

Appropriate Road Agency: The road agency having jurisdiction over the road, street, or highway being referenced.

As-Built Plans: Construction plans that have been revised upon completion of construction to illustrate the actual location and details of improvements.

Attorney, City: The City Attorney is the person or firm appointed by the City Council to advise the City Council, other boards and commissions, and City staff on legal matters.

Berm: A continuous, raised earthen mound with flattened top and sloped sides, capable of supporting live landscaping materials, and with a height and width that complies with the requirements of this or other applicable ordinances.

Block: An area of land within a subdivision that is entirely bounded by streets, highways, or ways, except alleys, or a combination of streets, highways, or ways and rivers, streams, railroad right-of-way or the exterior boundary or boundaries of the subdivision.

Block Length: The distance between intersections of through streets, such distance being measured along the longest street bounding the block and from right-of-way line to right-of-way line of the two intersection streets.

Bond: Any form of a surety bond in an amount and form satisfactory to the City of Midland.

Buffer: An area occupied by trees, shrubs, fences, and/or berms, designed to separate conflicting uses or limit the view and/or travel of sound between adjacent sites (see also Greenbelt). A buffer is often located along a property line. Plantings may consist of natural vegetation or trees and shrubs planted in accordance with a landscape plan.

Buildable Area: Generally, the area of a lot which is defined by the minimum setback requirements within which building construction is permitted by the terms of this Ordinance.

Buildable Area, Net: The portion of a site that is not encumbered by Michigan Department of Environmental Quality (MDEQ)-regulated wetlands (except as specifically noted), steep slopes, street rights-of-way, easements, structures or lots, or other existing or proposed features that would prevent construction of a building or use of the site for a use permitted in the district in which the site is located.

Building: Any structure, either temporary or permanent, having a roof or other covering and used or built for the shelter or enclosure of persons, animals, property, or materials of any kind. When any portion thereof is completely separated from every other part by division walls without openings extending from the ground up, each such portion shall be deemed a separate building. A building shall not include structures such as signs, fences, or smokestacks. Also defined in the Michigan Building Code.

Building Line or Setback Line: A line that is parallel to the front street right of way line, between which line and the front street right-of-way line no part of a building shall project, except as otherwise provided by this ordinance.

Building Official: The officer or other designated authority charged with the administration and enforcement of this code, or a duly authorized representative.

Capital Improvements Program: A proposed schedule of all future projects listed in order of construction priority together with cost estimates and the anticipated means of financing each project.

Caption: The name by which the plat is legally and commonly known.

Centerline Offset of Adjacent Intersections: The gap between the centerlines of streets that intersect a common street from opposite or the same sides.

City: The City of Midland, Michigan.

Clerk: The City Clerk of the City of Midland.

Commercial Development: A planned commercial center providing building areas, parking areas, service areas, screen planting, turning movement, and safety lane improvements.

Commission or Planning Commission: The Planning Commission of the City of Midland.

Common Open Space: Land within or related to a development, not individually owned or dedicated for public use, which is designed and intended for the common use or enjoyment of the residents of the development. It may include complementary structures and improvements (see also Private Open Space).
Construction Plans: The drawings accompanying a subdivision plat that show the specific location and design of improvements to be installed in the subdivision.

Contiguous: See Adjacent.

Conventional Development: Development other than Planned Unit Development.

Council or City Council: The City Council of the City of Midland.

Crosswalk or Pedestrian Walkway: A parcel of land, at least ten (10) feet in width, dedicated to public use, which crosses a block to facilitate pedestrian access.

Cul-de-Sac: A local street with only one outlet and having a turnaround for safe and convenient reversal of traffic movement.

Culvert: A structure designed to convey a water course under a street or sidewalk, where the culvert is not incorporated in a closed drainage system.

Date of Filing: The date on which a plat is submitted to the City Clerk in a form that complies with all of the application data requirements in this ordinance for review in accordance with procedures outlined in this ordinance.

Dedication: A conveyance of land by a private owner in the nature of a gift or grant and an acceptance of that land by or on behalf of the public.

Density: The number of dwelling units per acre of land.

a. Gross Density: The number of units per acre of total land being developed.

b. Net Density: The number of units per acre of land devoted to residential use, exclusive of road rights of-way, parks, utility easements (if the easements are not useable for recreation purposes), and other areas not used for residential purposes.

Design Standards: Standards that set forth specific improvement requirements.

Detention Basin: A man-made or natural water collection facility designed to restrict the flow of stormwater to a prescribed maximum rate (as established in Chapter 29 of the City of Midland Code of Ordinances), and to concurrently drain the excess waters that accumulate behind the outlet.

Developer: The legal or beneficial owner or owners of land proposed to be subdivided, or the owner's representative (see also Proprietor).

Development: The construction of a new building, reconstruction of an existing building, or improvement of a structure on a parcel or lot, the relocation of an existing building to another lot, or the improvement of open land for a new use.

Divided Street: A street having an island or other barrier separating moving lanes.

Division: The partitioning or splitting of a parcel or tract of land for the purposes of sale, or lease of more than one (1) year, or of building development, that results in one (1) or more parcels of less than forty (40) acres or the equivalent, and that satisfies the requirements of Sections 108 and 109 of Public Act 288 of 1967, as amended. A Division does not include a property transfer between two (2) or more adjacent parcels, if the property taken from one (1) parcel is added to an adjacent parcel, and a division is not subject to the platting requirements of said Public Act 288.

Drainage: The removal of surface water or groundwater from land by ditches, swales, drains, grading, or other means.

Drainage System: The natural and man-made system through which water flows from the land.

Driveway: A private lane designed primarily for use by vehicles that connect a single building lot or parcel with a street.

Easement: A legal agreement that conveys the right of a specific non-owner to use part of a parcel or land for a specific purpose. Typical easements include the right of the owner of a piece of land with no public street frontage to use a specific strip of another person's land to reach the public street (e.g., a private street easement) or the right of the City to run a water main or sewer main across a specific strip of an owner's land.

Engineer or City Engineer: The staff engineer or consulting engineer designated by the City Council to advise the City administration, City Council, and Planning Commission on drainage, grading, paving, storm water management and control, utilities, and other related site engineering and civil engineering issues.

Escrow: A deed, a bond, money, or interest in a piece of property temporarily deposited with a neutral third party, called the escrow agent, by the agreement of two parties.

Fence: An artificially constructed unroofed barrier of wood, masonry, stone, wire, metal, or similar manufactured material, used to prevent or control entrance, confine within, or mark a boundary.

Finished Grade: See Grade, Finished.

Floodplain: That land which can be expected to be inundated with water during times of flooding and that is delineated on the Flood Boundary and Floodway Map prepared by the Federal Emergency Management Agency (FEMA), as may be supplemented, amended, or revised from time-to-time.

Frontage: See Lot Frontage.

Governing Body: The City Council of the City of Midland, Michigan.

Grade: The term "grade" shall mean the ground elevation established for the purpose of regulating the number of stories or height of a building. The building grade shall be the level of the ground adjacent to the walls of the structure if the finished grade is level. If the ground is not entirely level, the grade shall be determined by lowest points within the area between the building and the lot line or, where the lot line is more than six (6) feet from the building, between the building and a point six (6) feet from the building.

Grade, Finished: For the purposes of this ordinance, the elevation of the surface of the ground, paving, sidewalks or other surface upon completion of excavation, filling and land balancing related to subdivision construction.

Greenbelt: A strip of land of definite width and location reserved for the planting of a combination of shrubs, trees, and ground cover to serve as an obscuring screen or buffer for noise or visual enhancement, in accordance with the requirements of this ordinance.

Half Street: A street containing less than the required right-of-way width.

Household: Any person or persons who reside or intend to reside in the same housing unit.

Impervious Surface: A surface that has been compacted or covered with a layer of material so that it is highly resistant to infiltration by water.

Improvements: Grading, street surfacing, curbs and gutters, sidewalks, cross-walks, water mains, fire hydrants, sanitary sewers, storm sewers, drains, culverts, bridges and other additions to the natural state of land which increases its value, utility, habitability, and use as a subdivision.

Island: In street design, a raised area, usually curbed, placed to guide traffic and separate lanes, or used for landscaping, signs, or lighting.

Land Division Act: Michigan Public Act 288 of 1967, as amended (known as the Subdivision Control Act prior to enactment of Michigan Public Act 591 of 1996).

Level of Service: A qualitative measure describing traffic operational conditions; Level of Service is generally described in terms of speed and travel time, delay, freedom to maneuver, traffic interruptions, comfort and convenience, and safety.

Loop Street: A street or road that has its only ingress and egress at two points on the same collector street.

Lot: A measured portion of a parcel or tract of land, which is described and fixed in a recorded plat.

Lot, Corner: A lot abutting on and at the intersection of two or more streets provided that the streets intersect at an angle of not more than one hundred thirty-five (135) degrees.

Where a lot is on a curve, if the tangents through the extreme point of the street lines of such lot make an interior angle of not more than one hundred thirty-five (135) degrees, it shall be considered a corner lot. In the case of a corner lot with a curved street line, the corner is that point on the street lot line nearest to the point of intersection of the tangents described above. A tangent is a straight line extended from the outer edges of a curve which intersect to form a corner.

Lot Area: The total horizontal area within the lot lines of the lot, exclusive of any abutting public street rights-of-way or private road easements, or the area of any lake. The net lot area shall be used in determining compliance with Minimum Lot Area standards.

Lot Depth: The horizontal distance between the front and rear lot lines, measured along the median between the side lot lines.

Lot, Flag: A lot which is located behind other parcels or lots fronting on a public street, but which has a narrow extension to provide access to the public street. The extension, which provides access to the buildable portion of the lot, shall comply with the lot width standards for the district in which the lot is located.

Lot Frontage: The length of the front lot line measured along the street right-of-way or easement line.

Lot Line: The fixed boundaries of a lot described by a survey and recorded in a plat.

a. Front Lot Line: The lot line separating said lot from the street. In the case of a corner lot, the line separating the narrowest side of a lot from the street.

b. Rear Lot Line: Ordinarily, that lot line which is opposite and most distant from the front lot line. In the case of irregular, triangular, wedge-shaped, or lots that are pointed at the rear, the rear lot line shall be an imaginary line parallel to the front lot line, not less than ten (10) feet in length, lying farthest from the front lot line and wholly within the lot.

c. Side Lot Line: Any lot line other than the front or rear lot lines. A side lot line separating a lot from a street right-of-way is a side street lot line. A side lot line separating a lot from another lot or lots is an interior side lot line.

Lot, Reverse Frontage: A through lot that is not accessible from one of the parallel or nonintersecting streets upon which it fronts (see definition of Lot, Through).

Lot, Through (or Double Frontage Lot): A lot, other than a corner lot, that fronts upon two (2) more-or-less parallel streets or upon two (2) streets that do not intersect at the boundaries of the lot. In the case of a row of double frontage lots, one (1) street shall be designated as the front street for all lots in the plat.

Lot Width: The straight line distance between the side lot lines, measured at the two points where the minimum front yard setback line intersects the side lot lines.

Maintenance Guarantee: Any security which may be required and accepted by City of Midland to ensure that necessary improvements will function as required for a specific period of time.

Master Plan: A comprehensive, long-range plan adopted and amended from time to time by the Planning Commission and/or City Council that is intended to serve as a guide for growth and development of the City. The plan consists of maps, text, tables, and graphics with recommendations concerning land use, economic development, housing, recreation and open space, transportation and community facilities.

Median: That portion of a divided street or highway that separates lanes of traffic proceeding in opposite directions.

MDOT: Michigan Department of Transportation (or its successor department or agency).

Mulch: A layer of wood chips, dry leaves, straw, hay, plastic, or other materials placed on the surface of the soil around plants to retain moisture, prevents weeds from growing, hold soil in place, or aid plant growth.

MDCIS: Michigan Department of Consumer and Industry Services (or its successor department or agency).

MDEQ: Michigan Department of Environmental Quality (or its successor department or agency).

Natural Resources: Natural resources shall include land, soils, wetlands, floodplains, surface and ground water, topography, trees and other types of vegetative cover, subsurface strata, geologic formations, animal life, and naturally occurring substances and living organisms that can be useful to people. Natural resources are of two types: renewable (e.g., plants and trees) and nonrenewable (e.g., mineral resources).

Offset: The distance between the centerline of the subject driveway and the centerlines of driveways on the opposite side of the street.

Off-Site: Any premises not located within the area of the property to be subdivided, whether or not in the common ownership of the applicant for subdivision approval.

Off-Street Parking: Parking that is not located within a street or street right-of-way or private road easement, such as parking in a parking lot, parking structure, or private driveway.

On-Street Parking: Parking that is located on a dedicated street right-of-way or private road easement.

Open Space: Any parcel or area of land or water that is generally free of structures and that is set aside, dedicated, designated or reserved for public or private use or enjoyment or for the use and enjoyment of owners and occupants of land adjoining or neighboring such open space. Open space may be provided for recreation, resource protection, aesthetics, or other purposes.

Outlot: When included within the boundary of a recorded plat, means a lot set aside for purposes other than those for the rest of the lots in the plat. For example, land set aside for a future street would typically be set aside in an outlot.

Parcel: A continuous area, tract, or acreage of land that has not been divided or subdivided according to the provisions of this ordinance, has frontage on a public or private street and can be described as provided for in the Land Division Act.

Parent Parcel or Parent Tract: A parcel or tract lawfully in existence on the effective date of Public Act 591 of 1996.

Performance Guarantee: A financial guarantee to ensure that all improvements, facilities, or work required by this Ordinance will be completed in compliance with the Ordinance, regulations, and approved plans and specifications of the development.

Person: Any individual, trustee, executor, fiduciary, corporation, firm, partnership, association, organization, or other legal entity acting as a unit.

Pervious Surface: A surface that permits full or partial absorption of storm water.

Planned Unit Development: A planning or construction project involving the use of special zoning requirements and review procedures that are intended to provide design and regulatory flexibility.

Planning and Community Development Director: The staff planner or consulting planner designated by the City Council to advise the City administration, City Council, and Planning Commission on planning, zoning, land use, subdivision, housing and other related planning and development matters.

Plat: A map or chart of a subdivision of land, prepared in conformance with the Land Division Act.

a. Sketch Plan. An optional plan for initial review by City Staff, drawn to scale, that shows the proposed layout of streets, lots and other features in relation to existing conditions on the site and on adjoining sites and also showing general subdivision information.

b. Preliminary Plat: A map showing all salient features of a proposed subdivision submitted to the City for the purposes of preliminary consideration, and prepared in accordance with this ordinance and the Land Division Act. The preliminary plan review process is separated into "tentative" and "final" preliminary plat review.

c. Final Plat: A map of a subdivision of land prepared in a form that is ready for approval and recording in accordance with the requirements of this ordinance and the Land Division Act.

Preliminary Plat Approval: The conferral of certain rights prior to final approval after specific elements of a development plan has been agreed upon by the Planning Commission, City Council and the applicant.

Private Road: A road that is privately owned and maintained and has not been accepted for maintenance or ownership by the City of Midland or the Midland or Bay County Road Commission.

Proprietor: A natural person, firm, association, partnership, corporation or combination of any of them, which may hold a recorded or non-recorded ownership interest in land on which a subdivision plat is proposed. Sometimes also referred to herein as the "Developer."

Public Sewer: A sewerage system as defined in Michigan Public Act 98 of 1913, as amended.

Public Utility: Any persons, firm, corporation, municipal department, or board, duly authorized to furnish under federal, state, or local regulations a service which is of public consequence and need. The principal distinctive characteristics of a public utility are that:

a. because of the nature of its business, it has characteristics of natural monopoly, and

b. it provides a service to an undefined public (or portion of the public) which has a legal right to demand and receive its services. Services for the purpose of this ordinance include gas, electricity, steam, water, sewage, transportation, telephone, and cable television.

Public Walkway: A right-of-way dedicated for the purpose of a pedestrian access.

Record Drawings: Construction plans that have been revised upon completion of construction to illustrate the recorded location and details of improvements.

Re-plat: The process of changing, or the map or plat which changes, the boundaries of a recorded subdivision plat or part thereof. The legal dividing of an outlot within a recorded subdivision plat without changing the exterior boundaries of the outlot is not a re-plat.

Retaining Wall: A structure erected between lands at different levels to protect structures and/or prevent the washing down or erosion of earth from the upper levels.

Retention Basin: A pond, pool, or basin used for the long-term storage of water runoff.

Right-of-Way: A strip of land reserved and dedicated for a street, alley, walkway, or other public purpose, and which may be occupied by public utilities, such as electric transmission lines, gas pipelines, cable television lines, fiber optics lines, water mains, sanitary sewers, storm sewer mains, shade trees, or other utility uses. Rights-of-way established and shown on the final plat are to be distinct and separate from the lots or parcels adjoining such rights-of-way, and are not to be included in the dimensions or areas of such lots or parcels. Nothing in this definition or ordinance is intended to prevent the establishment of separate easements for utilities.

Right-of-Way Lines: The lines that form the boundaries of a right-of-way.

Screen: A structure or plantings consisting of fencing, berms, and/or evergreen trees or shrubs providing a continuous obstruction reaching 100% obscuration of view within a site or property to a height of six feet with landscaping must reach this standard within three years of planting.

Sedimentation: The movement of soil that has been transported from its site of origin by water, ice, wind, gravity, or other means as a product of erosion.

Setback: The distance between a front, side or rear lot line and the nearest supporting member of a structure on the lot. The *minimum required setback* is the minimum distance between a front, side or rear lot line and the nearest supporting member of a structure in order to conform to the required yard setback provisions of the Zoning Ordinance.

Shade Tree: A tree in a public place, street, easement, or right-of-way adjoining a street (also referred to as Street Tree; see also Canopy Tree).

Shoulder, Street: The portion of the street right-of-way between the edge of the traffic lane and the intersection of the shoulder slope and side slope planes. The shoulder facilitates street drainage and provides space for emergency stops and maintenance operations.

Sidewalk: A concrete path provided for pedestrian use and commonly located at the side of a street within the right-of-way.

Sight Zone (Vehicular): Any area located two and a half (2.5) feet above average grade to a height of ten (10) feet:

a. Street Corners: the triangle formed by legs measured twenty (20) feet on each side of a street corner lot, measured on the property or lot line.

b. Driveways: the right triangles formed on each side of driveways, measured ten (10) feet along the property or lot line on one leg, and along the outside edge of the driveway for the other leg.

Sketch Plan: A sketch prepared prior to the preliminary plat to enable the subdivider to achieve an understanding of the City's desired form of the plat and the objectives of the regulations contained in this ordinance.

Slope, Steep: A slope with a moderate or a high erosion hazard (often 7% or greater) as defined in the Michigan Soil Erosion and Sedimentation Control Guidebook. Percent slope shall be computed by dividing the change in elevation by the horizontal distance, times 100.

Storm Water Retention: See Retention Basin.

Street Classifications: The classification of streets described in the Thoroughfare Plan as follows:

a. Major Thoroughfare. Major thoroughfares are intended to serve the major centers of activity, the highest traffic volume corridors, and the longest trips. Major thoroughfares serve major traffic movements within the City.

b. Minor (Secondary) Thoroughfare. Minor thoroughfares interconnect with the major thoroughfare system and provide trips of moderate length with a lower level of traffic mobility. Minor thoroughfares place more emphasis on land access than major thoroughfares.

c. Collector Streets. Collector streets provide access to abutting properties and traffic circulation within residential, commercial, industrial, and agricultural areas. The purpose of a collector street is to collect traffic throughout the City and channel it to the thoroughfare system.

d. Local Streets. Local streets primarily provide direct access to abutting land and to collector streets and thoroughfares.

Stub Street: A portion of a street for which an extension has been proposed.

Subdivision Control Act: Michigan Public Act No. 288 of 1967, as amended, now known as the Land Division Act as a result of enactment of Michigan Public Act 591 of 1996.

Subdivide, Subdivision: The partitioning or splitting of a parcel or tract of land for the purpose of sale, or lease of more than one (1) year, or of building development that results in one (1) or more parcels of less than 40 acres or the equivalent, and that is not exempted from the platting requirements specified in Public Act 288 of 1967, as amended. Subdivide or subdivision does not include a property transfer between two (2) or more adjacent parcels, if the property taken from one (1) parcel is added to an adjacent parcel.

Surveyor: A person who, by reason of knowledge of law, mathematics, physical sciences, and techniques of measuring acquired by professional education and practical experience, is licensed to engage in the practice of professional surveying and / or engineering.

Topographical Map: A map prepared by a professional surveyor showing existing physical characteristics, with contour lines at sufficient intervals to permit determination of proposed grades and drainage.

Tract: Two (2) or more parcels that share a common property line and are under the same ownership.

Variance: A modification of the literal provisions of the Zoning Ordinance granted by the Zoning Board of Appeals when strict enforcement of the Zoning Ordinance would cause practical difficulties owing to circumstances unique to the individual property on which the variance is granted.

Vested Right: The right to initiate or continue the establishment of a use that will be contrary to a restriction or regulation coming into effect when the project associated with the use is completed.

Zoning Ordinance: The City of Midland Zoning Ordinance.

(Ord. No. 1110, § 1, 7-28-86, Ord. No. 1603, § 1, 7-11-05)

Secs. 23-7--23-9. Reserved.

Section 2. Article II of Chapter 23 is hereby amended to read as follows:

ARTICLE II.

PLAT REVIEW PROCEDURES

Sec. 23-10. Summary of Review Procedures.
The plat review process shall consist of the following steps :
1. Optional sketch plan review, involving a preliminary review by City Staff but no formal action. The purpose of sketch plan review is to provide the proprietor with information needed to complete the plat, to explain applicable standards and regulations, and to acquaint the City with the proposed plat. Comments made during sketch plan review about the proposed plat shall not be binding on the City or the proprietor (see Section 23-15).
2. Tentative preliminary plat review, involving review and action to recommend approval or denial of the plat by the Planning Commission within sixty (60) days from the date of filing,

followed by review and action to approve or deny the plat by the City Council within ninety (90) days from the date of filing (see Section 23-16). When all information required by this and other ordinances has been submitted, tentative and final preliminary plat approval may be granted concurrently.

3. Final preliminary plat review, involving review by outside agencies (State and Midland and Bay County agencies) prior to action by the City Council. The City Council shall approve or deny the final preliminary plat within twenty (20) days from the date of filing (see Section 23-17). When all information required by this and other ordinances has been submitted, tentative and final preliminary plat approval may be granted concurrently.

4. Final plat review, involving review and action to approve or deny the plat by the City Council within twenty (20) days of the date of filing (see Section 23-19).

(Ord. No. 1110, § 1, 7-28-86, Ord. No. 1603, § 2, 7-11-05)

Cross References: Preliminary plat inspection fee, § 21-8.

Sec. 23-11. Extension of Review Deadlines.

Deadlines for the City to take action on a preliminary or final plat, as specified in the Land Division Act and reiterated in this ordinance, may be extended by mutual written consent of the proprietor and the City. A waiver of the review deadlines may be required to permit concurrent processing of related review applications. In the absence of written consent for such a waiver, denial of a plat shall be considered appropriate if the proprietor has been unable to complete submittal requirements and/or bring the plat into compliance with Ordinance regulations within the review deadline.

(Ord. No. 1110, § 1, 7-28-86, Ord. No. 1603, § 2, 7-11-05)

Sec. 23-12. Coordination of Development Options with Subdivision Approval.

1. Rezoning. Since proper zoning is required as a condition of plat approval, whenever a development option involves rezoning of the land or application of municipal zoning to the land, approval of the rezoning shall be required prior to any formal action by the City to approve or deny the tentative preliminary plat.

2. Issuance of Permits. Within the subdivision, no certificates of occupancy shall be issued until the City has granted final plat approval and the final plat has been properly recorded.

(Ord. No. 1110, § 1, 7-28-86, Ord. No. 1603, § 2, 7-11-05)

Sec. 23-13. Pre-application Review Meeting.

Pursuant to Section 111(3) of the Land Division Act, a proprietor may request that a pre-application review meeting take place by submitting a written request to the chairperson of the county plat board and submitting copies of a concept plan for the preliminary plat to the municipality and to each officer or agency entitled to review the preliminary plat under sections 113 to 118 of the Land Division Act. A pre-application review meeting shall take place not later than 30 days after the written request and concept plan are received. The meeting shall be attended by the proprietor, representatives of each officer or agency entitled to review the preliminary plat under section 113, 114, and 118 of the Land Division Act, and a representative of the municipality. Representatives of each agency entitled to review the preliminary plat under sections 115 to 117 of the Land Division Act shall be informed of the meting and may attend. The purpose of the meeting is to conduct an informal review of the proprietor's concept plan for the preliminary plat.

(Ord. No. 1110, § 1, 7-28-86, Ord. No. 1603, § 2, 7-11-05)

Cross References: Approval of plat by planning commission, § 2-115.

Sec. 23-14. Pre-application conference.

Prior to submitting an application for plat approval, the proprietor may meet with City staff to achieve an understanding of subdivision regulations and procedures.
(Ord. No. 1110, § 1, 7-28-86, Ord. No. 1603, § 2, 7-11-05)

Sec. 23-15. Sketch Plan Review.
1. Purpose. Pursuant to Section 107(1) of the Land Division Act, a proprietor may submit a proposed plat for sketch plan review. The purposes of the sketch plan review are as follows:

a. To determine if the land is appropriately zoned.

b. To acquaint City Staff with the proposed plat.

c. To inform the proprietor of the procedures for approval of the plat.

d. To inform the proprietor of applicable City ordinances and regulations related to subdivision and improvement of land, including the Subdivision Control Ordinance, Zoning Ordinance, and engineering design and construction standards.

e. To inform the proprietor generally about requirements regarding layout of streets, street improvements, and relationship of subdivision streets to the overall City street network and to major thoroughfares.

f. To inform the proprietor generally about the requirements for and/or availability of public facilities and services, including water, drainage, sanitary sewers and waste water treatment, fire and police protection, recreation and open space, and schools.

g. To determine the impact of floodplains and wetlands on the use of land and design of the plat.

h. To identify woodlands, topography, watercourses, and other natural features that should be protected.

i. To inform the proprietor about development options that would achieve the planning goals of the City while satisfying the proprietor's objectives.

j. To provide the proprietor with any other information to aid in the preparation of the preliminary plat.

2. Information Required. The sketch plans should illustrate in conceptual form the proposed subdivision and existing features on the site and on surrounding properties that may affect the design of the subdivision. Accordingly, the following information should be provided for sketch plan review:

a. The name, mailing address, and telephone of the proprietor(s).

b. The name, mailing address, and telephone of the professional person(s) responsible for the subdivision design, for the design of public improvements, and for surveys.

c. The name, mailing address, and telephone of the legal owner(s) or agent(s) of the property.

d. The proprietor's interest in the property.

e. Location of the property by section, town and range, or by other legal description along with a vicinity map showing the general relationship of the proposed subdivision to the surrounding area.

f. Existing conditions and characteristics of the site and adjacent land, including:

(1) Approximate boundaries of woodlands, wetlands, floodplains, and watercourses.

(2) The approximate location and intended future use of existing structures on the site.

(3) Existing land use on surrounding properties.

(4) Location of existing easements on the site.

g. The proposed approximate layout of streets, blocks, and lots.

h. The approximate location, dimensions, and area of all parcels of land proposed to be set aside for park or playground use or other public use or for use by property owners in the proposed subdivision.

3. Sketch Plan Review Procedures.

a. Copies. The proprietor shall submit a minimum of five (5) copies of each sketch plan design to the City.

b. Comments. City staff may offer comments following a meeting with the proprietor and/or the proprietor's agent or consultant. Comments and suggestions made during sketch plan review about the proposed plat shall not be binding on the City or the proprietor.
(Ord. No. 1110, § 1, 7-28-86, Ord. No. 1603, § 2, 7-11-05)

Sec. 23-16. Tentative Preliminary Plat Review.
1. Purpose. Preliminary plat review provides for formal application by a proprietor for City approval of a subdivision plat as described in this ordinance and the Land Division Act. Preliminary plat review also provides the City with the opportunity to review a proposed plat to determine whether it is in compliance with City ordinances and regulations, and to approve or deny the plat on the basis of that determination.

Preliminary plat review involves two steps:

a. Tentative preliminary plat review. This step includes review of all of the salient features of a proposed subdivision, except detailed engineering and approvals from other authorities.

b. Final preliminary plat review. This step includes review of engineering plans and requires approvals from other authorities.

2. Submittal Requirements. The preliminary plat submitted for tentative approval shall show all of the significant features of the proposed subdivision to allow the City to determine whether the proposal is in compliance with this and other applicable ordinances. The lack of

information related to any item specified herein, or improper information supplied by the applicant, may be cause for denial of a tentative preliminary plat.

The following information shall be provided for tentative preliminary plat review:

a. Application. A completed application for tentative preliminary plat review shall be submitted on a form supplied by the City, which shall contain the following information:

(1) The name, mailing address, and telephone of the proprietor(s).

(2) The name, mailing address, and telephone of the professional person(s) responsible for the subdivision design, for the design of public improvements, and for surveys.

(3) The name, mailing address, and telephone of the legal owner(s) or agent(s) of the property. The citation of the last instrument conveying title to each parcel of property in the proposed subdivision shall be provided.

(4) The proprietor shall submit a completed Stormwater Runoff Regulation and Control affidavit of disclosure of property interest to the City of Midland.

b. Tentative Preliminary Plat. The tentative preliminary plat, sealed by the professional surveyor who prepared the plat, shall be submitted to the Director of Planning and Community Development, along with the completed application and the fee authorized by the City Council. The date of submittal shall be recorded on the plat, on the application, and on supporting documentation. These materials must be submitted at least twenty-eight (28) days prior to the Planning Commission meeting where review is desired.

The applicant shall submit eight (8) copies of the tentative preliminary plat on paper at least twenty-four (24) inches by thirty-six (36) inches, drawn at a scale of not more than two hundred (200) feet to one (1) inch, and two (2) copies of the tentative preliminary plat on eleven (11) inch by seventeen (17) inch paper. The plat shall provide a scale, north arrow, and date of original submittal and dates of any revisions. The sheets shall be numbered in sequence if more than one (1) sheet is used.

c. Tentative Preliminary Plat -- Existing Conditions. The tentative preliminary plat shall include one or more sheets containing the following information, at minimum, regarding existing conditions:

(1) Location of the property by section, town and range, or by other legal description.

(2) An area map showing the general relationship of the proposed subdivision to the surrounding area, to nearby community facilities, such as parks, schools, bicycle paths, existing and planned open space, and to shopping centers.

(3) Boundary of the proposed subdivision and the location of any easements with dimensions of the overall property and of the individual easements.

(4) The location of the following features located adjacent to and within three hundred (300) feet of the proposed subdivision and across abutting streets:

i. Property lines of adjacent land.

ii. The name, location, and right-of-way width of any existing public, private, or platted streets, roads, highways, or railroads.

iii. Existing permanent structures. The plans shall clearly indicate any existing structures to be removed.

(5) A site analysis consisting of maps and written analysis which identify, describe, and quantify the following features, at minimum:

i. Boundaries and character of any water bodies, watercourses, wetlands and 100-year floodplain datum. Wetland boundaries shall be determined by a qualified wetlands consultant.

ii. Existing stormwater drainage patterns, systems, and structures, including approximate locations of farm field drain tiles, if known.

iii. Sight zone and horizontal curve limitations along existing and proposed streets.

iv. Topographic relief of the site and within two hundred (200) feet of the site at two (2) foot contour intervals, referenced to U.S.G.S. elevation datum.

v. Other features uniquely affecting the site.

(6) Zoning classification of the proposed subdivision and all adjoining properties.

(7) Locations and sizes of all existing sanitary and storm sewers, existing county and private drains, cross culverts under existing streets, and other underground structures within the subdivision site or immediately adjacent to it.

(8) Locations of other above- or below-ground utilities within the subdivision site or immediately adjacent to it, including but not limited to gas, electric, telephone, and cable television utilities.

d. Tentative Preliminary Plat -- Proposed Improvements. The tentative preliminary plat shall contain the following information regarding proposed improvements, at minimum:

(1) Name of the proposed subdivision. The proposed name shall not duplicate the name of any plat previously recorded unless the proposed subdivision is an addition contiguous to a plat with the same name or the proposed subdivision is a part of a previously approved plat of the same name.

(2) Layout, right-of-way width, typical cross-section, and names of proposed public or private streets or roads.

(3) The locations, width, and type of construction of any sidewalks, bicycle paths, and multi-use paths.

(4) The location, width, and purpose of any proposed easements.

(5) The location, approximate dimensions, and approximate area of all proposed lots. Lots shall be numbered consecutively beginning with lot number one (1).

(6) The tentative preliminary plat shall have a table that provides the following information for each lot: lot area (in square feet), street frontage, and lot width measured at the front setback line.

(7) The location, approximate dimensions, approximate area, and proposed use of all parcels of land proposed to be set aside for park or playground use or other public use, or for the use of property owners in the proposed subdivision. The conditions, if known, of any such dedication, reservation, or conservation easement shall be specified.

(8) Where a proprietor proposes to subdivide land in phases, the tentative preliminary plat shall include a general layout for the entire development. The initial phase and the method of temporary construction and permanent access to subsequent phases shall be clearly identified.

(9) An indication of the ownership and existing and proposed uses of any parcels identified as "excepted" on the tentative preliminary plat. If the proprietor has an ownership interest in any excepted parcel, the tentative preliminary plat shall indicate how this parcel could be developed in accordance with the requirements of the existing zoning district in which it is located and in a manner that is compatible with and relates to the proposed plat in terms of utilities, streets, and land uses.

(10) A legend indicating the total acreage contained within the plat and acreage and the percentage of total acreage of the plat in lots, street allowances, and in public uses such as parks, playgrounds, schools, etc., if any.

e. Tentative Preliminary Plat -- Other Submittals. The following additional information shall be provided, unless otherwise indicated, with the application for tentative preliminary plat review:

If the intended use of the proposed plat is not entirely residential single family then a written statement specifying the intended use shall be submitted. The location and size of proposed multiple family dwellings, shopping centers, churches, commercial or industrial facilities shall be noted.

3. Planning Commission Review Procedures.

a. Application Review. Upon receipt of the tentative preliminary plat, the Planning and Community Development Director or his/her designee shall check it for completeness. If required data specified in this ordinance has been omitted, the proprietor shall be notified of the additional data required and that the application will be delayed until the required data are received. <u>The “date of filing” shall be considered the date on which a plat containing all required data is received by the City</u>.

b. Placement on Planning Commission Agenda. When the information is complete, the public hearing for the proposed tentative preliminary plat shall held at the first opportunity possible, but not less than fifteen (15) days from the date of submission. Copies of the proposed plat shall be distributed to appropriate City staff and consultants to obtain planning, preliminary engineering and public safety review.

c. Notice of Public Hearing. Prior to action on the tentative preliminary plat by the Planning Commission, notice shall be published in the local newspaper and sent to all property owners

within three hundred (300) feet of the boundary of the proposed subdivision, based on the most current assessment records on file with the City. Such notice shall be mailed at least fifteen (15) days prior to the Planning Commission meeting. The notice shall explain that a subdivision has been proposed, give the location and general information, and note the time and place where the public can attend the public hearing when the subdivision proposal will be discussed.

d. Planning Commission Review. The Planning Commission shall review the tentative preliminary plat with respect to the requirements of this ordinance, the Zoning Ordinance, and other applicable ordinances and standards.

e. Planning Commission Recommendation. The Planning Commission shall recommend approval, conditional approval, or denial of the proposed tentative preliminary plat, as indicated below.

(1) Conditional approval shall be granted only if the proprietor has waived the review deadlines in writing, pursuant to Section 23-11, in which case the tentative preliminary plat shall not be forwarded to the City Council until said conditions have been properly addressed on a revised tentative preliminary plat and with supporting documentation. At its discretion, the Planning Commission may waive its right to review the revised plat in lieu of administrative review by City staff or Planning and Community Development Director.

(2) Upon determination that the tentative preliminary plat does not comply with the standards and regulations in this ordinance and other applicable ordinances, standards, and plans, the Planning Commission shall recommend denial. The reasons for recommending denial shall be forwarded to the City Council and proprietor.

(3) Upon determining that the tentative preliminary plat is in compliance with the standards and regulations in this ordinance and other applicable ordinances, standards, and plans, the Planning Commission shall recommend approval, and the Planning and Community Development Director or his/her designee shall make a notation to that effect on the tentative preliminary plat. The Planning and Community Development Director or his/her designee shall keep one copy of the approved tentative preliminary plat on file.

4. City Council Review Procedures.

a. Notification of Planning Commission Action. The City Council shall not receive or take action on a preliminary plat until it has received the review and recommendations from the Planning Commission.

b. Review Deadline. Following receipt of the Planning Commission's action, the City Council shall take action on the preliminary plat within sixty (60) days of the date of filing of the tentative preliminary plat with the City Planning and Community Development Department if a pre-application review meeting was conducted in accord with section 111(3) of the Land Division Act or within ninety (90) days is such meeting was not conducted, unless the proprietor has waived the review deadlines in writing, pursuant to Section 23-11.

c. City Council Action. The City Council shall approve, conditionally approve, or deny the proposed plat, as follows:

(1) Conditional approval shall be granted only if the proprietor has waived the review deadlines in writing, pursuant to Section 23-11. The proprietor may re-submit the plat to the

City Council for approval after the conditions have been properly addressed. At its discretion, the City Council may waive its right to review the revised plat in lieu of administrative review by the Planning and Community Development Director or his/her designee.

(2) Upon determination that the preliminary plat does not comply with the standards and regulations in this ordinance and other applicable ordinances, standards, and plans, the City Council shall deny the tentative preliminary plat.

(3) Upon determining that the preliminary plat is in compliance with the standards and regulations in this ordinance and other applicable ordinances, standards, and plans, the City Council shall approve the tentative preliminary plat.

d. Notification. The proprietor shall be promptly notified in writing of approval or denial, and the reasons if the plat was denied. One copy of the approved or denied plat shall become a matter of the permanent records of the Planning and Community Development Department and the Building Department. One copy appropriately designated “Approved” or “Denied” shall be transmitted to the proprietor.

e. Effect of Approval.

(1) Approval of the tentative preliminary plat by the City Council shall confer upon the proprietor for a period of one (1) year from the date of approval, approval of lot sizes, lot orientation, and street layout. The one (1) year period may be extended if applied for in writing by the proprietor prior to the expiration date and granted by the City Council in writing. If the extension is granted, the City Clerk shall notify the other approving authorities.

(2) Tentative approval of the preliminary plat shall not grant to the proprietor rights to begin installation or construction of improvements.

f. Concurrent Final Preliminary Plat Review. Final Preliminary Plat review may be considered concurrently if all of the provisions of Section 23-17 are met.
(Ord. No. 1110, § 1, 7-28-86, Ord. No. 1603, § 2, 7-11-05)

Sec. 23-17. Final Preliminary Plat Review.

1. Submittal Requirements. The final preliminary plat, sealed by the engineer or professional surveyor who prepared the plat, shall be submitted to the Director of Planning and Community Development. The date of submittal shall be recorded on the plat, on the application, and on supporting documentation. These materials must be submitted at least twenty-one (21) days prior to the Planning Commission meeting where review is desired.

Fourteen (14) copies of the final preliminary plat shall be on paper that is at least twenty-four (24) inches by thirty-six (36) inches, and shall be drawn at a scale of not more than two hundred (200) feet to one (1) inch, and five (5) copies of the final preliminary plat shall be on paper that is eleven (11) by seventeen (17) inches. The plat shall provide a scale, north arrow, and date of original submittal and dates of any revisions. The sheets shall be numbered in sequence if more than one (1) sheet is used. Digital copies of the plat shall be provided to the City if available.

2. Final Preliminary Plat -- Required Information. The final preliminary plat submittal shall contain all of the information required for the tentative preliminary plat listed in Section 23-17, plus the following information:

a. Copies of proposed restrictive or protective covenants and deed restrictions (required to determine compliance with this ordinance, the zoning ordinance, and other applicable ordinances and regulations). The covenants shall indicate that maintenance of private improvements illustrated on the approved final plat and in supporting documentation shall be a continuing responsibility of the subdivision association and individual owners of lots on which the improvements are located.

b. A written explanation of any proposed restrictions on construction traffic.

c. Preliminary engineering plans shall be provided as follows:

(1) The preliminary engineering plans shall be submitted in sufficient detail to enable the Planning Commission, City Council, City Engineer, and other reviewing authorities to make a preliminary determination that the proposed improvements comply with applicable regulations and standards of the City and other agencies.
(2) At minimum, the preliminary engineering plans shall show the general locations of and provide preliminary specifications for sewage disposal systems, water supply systems (including fire hydrants), stormwater retention and drainage systems in compliance with all applicable requirements in Chapter 29 of the City of Midland Code of Ordinances (Stormwater Runoff Regulation and Control), site grading, street lighting, and sidewalks. Stormwater runoff calculations shall be provided to analyze the adequacy of proposed drainage facilities.

d. A detailed drawing to scale of any proposed entry features including specifications and locations of walls, fences, landscaping, signs, and lighting.

e. The proprietor shall submit a list of all agencies to which the proprietor has sent copies of the final preliminary plat, certifying that the list shows all authorities listed in this sub-section. The proprietor shall also submit copies of the final preliminary plat bearing the necessary approvals of all authorities as required by the Land Division Act and this ordinance, including:

(1) Midland and Bay County Road Commission.

(2) Midland and Bay County Drain Commissioner.

(3) Michigan Department of Transportation, if any of the proposed subdivision abuts a state trunk line highway, or includes streets or roads that connect with or lie within the right-of-way of state trunk line highways.

(4) Michigan Department of Environmental Quality, if the land proposed to be subdivided abuts a lake or stream, or abuts an existing or proposed channel or lagoon affording access to a lake or stream where public rights may be affected, or contains regulated wetlands, or lies wholly or in part within a flood plain of a river, stream, creek or lake.

(5) Midland and Bay County Health Department, if public water or sanitary sewers are not available and accessible to the land proposed to be subdivided, and for appropriate comment on matters under the Health Division's jurisdiction.

(6) The plat shall also be submitted to the county plat board and public utilities serving the area.

3. Conformance to Tentative Preliminary Plat. The final preliminary plat shall conform substantially to the tentative preliminary plat as approved. In determining whether the final preliminary plat satisfies this requirement, the City Council shall consider the following:

a. A final preliminary plat shall be considered *no longer substantially conforming* to the tentative preliminary plat if any of the following revisions have been made, provided that the City Council may exercise discretion in applying these criteria where changes to the plat beyond the limits described below were required by an outside agency having jurisdiction over some portion of the plat.

(1) An increase in the number of lots.

(2) Realignment of proposed streets and intersections.

(3) Change in the basic layout of the subdivision relative to roads and lots.

(4) Deletion of sidewalks, bicycle paths or nature trails.

b. A final preliminary plat shall still be considered *substantially conforming* to the tentative preliminary plat if any of the following revisions have been made, provided that the City Council may determine that several of the following revisions implemented in combination may be deemed no longer substantially conforming.

(1) Decrease in the number of lots without changing the basic layout.

(2) Revisions to horizontal or vertical alignment of streets to satisfy City Engineering standards, provided that such revisions do not affect the overall arrangement of streets.

(3) Adjustment to lot lines or setbacks due to a more precise wetland or floodplain boundary where such an adjustment has an insignificant impact on lot area, setbacks, or buffer zone requirements.

(4) Change in location of monuments or lot markers to correct surveying errors.

(5) Increase in the amount of landscaping.

(6) The addition of sidewalks, bicycle paths, and nature trails.

(7) A change in entranceway design that still meets ordinance requirements.

(8) Minor relocation of a stormwater detention or retention basin. A minor relocation could include but is not limited to:

i. Moving any bank of the basin less than ten (10) feet.

ii. An increase in the volume or surface coverage of the basin by less than twenty five percent (25%)

4. Review Procedures.

a. Application Review. Upon receipt of the final preliminary plat, the Planning and Community Development Director or his/her designee shall check it for completeness. Should any of the required data specified in this ordinance be omitted, the proprietor shall be notified of the additional data required and that the application will be delayed until the required data are received. The "date of filing" shall be considered the date on which a plat containing all required data is received by the City.

b. Placement on City Council Agenda. When the information is complete, the proposed final preliminary plat shall be submitted for consideration at the next available regular City Council meeting.

c. Distribution for Review. Copies of the plat shall be distributed to the Planning Commission and appropriate City staff and consultants to obtain planning, engineering, and public safety review and to determine if the final preliminary plat conforms substantially to the approved tentative preliminary plat. The Planning Commission shall review the final preliminary plat and make a recommendation to approve, approve with conditions, or deny the plat.

d. Review Deadline. The City Council shall take action on the final preliminary plat at its next regular meeting or within twenty (20) days of the date of filing the plat with the City, unless the proprietor has waived the review deadlines in writing, pursuant to Section 23-11.

e. City Council Action. The City Council shall approve, conditionally approve, or disapprove the proposed final preliminary plat, as follows:

(1) Conditional approval shall be granted only if the proprietor has waived the review deadlines in writing, pursuant to Section 23-11. The proprietor may re-submit the plat to the City Council for approval after the conditions have been properly addressed. At its discretion, the City Council may waive its right to review the revised plat in lieu of administrative review by the Planning and Community Development Director.

(2) Upon determination that the final preliminary plat does not comply with the standards and regulations in this ordinance and other applicable ordinances, standards, and plans, the City Council shall deny the final preliminary plat.

(3) Upon determining that the final preliminary plat is in compliance with the standards and regulations in this ordinance and other applicable ordinances, standards, and plans, the City Council shall approve the final preliminary plat.

f. Notification. The proprietor shall be promptly notified in writing of approval or denial, and the reasons if the plat was denied. One copy of the approved or denied plat shall become a matter of the permanent records of the Planning and Community Development Department and the Building Department. One copy appropriately designated "Approved" or "Denied" shall be transmitted to the proprietor.

e. Effect of Approval. Approval of the final preliminary plat by the City Council shall confer upon the proprietor for a period of two (2) years from the date of approval, the conditional right that the general terms and conditions under which preliminary approval was granted will not be changed. The two (2) year period may be extended if applied for in writing by the proprietor prior to the expiration date and granted by the City Council in writing. If the extension is

granted, the City Clerk (or Planning and Community Development Director if so designated by the Clerk) shall notify the other approving authorities.

(Ord. No. 1603, § 2, 7-11-05)

Sec. 23-18. Completion of Subdivision Improvements.
1. Condition of Final Plat Approval. The proprietor shall be required to complete all of the following improvements at his/her expense and without reimbursement from any public agency or any improvement district (except as may be permitted by state law), and in accordance with the conditions and specifications contained in this ordinance, except as provided in Section 23-18(3) before the final plat is approved by the City.

Where applicable, the proprietor shall dedicate these improvements to the City or other applicable governmental unit, free and clear of all liens and encumbrances on the dedicated property and public improvements. These improvements shall be completed in accordance with the approved final preliminary plat, the approvals of other authorities, the regulations in this ordinance (particularly Article 4.00), and the requirements of other applicable ordinances, laws and regulations. Improvements shall be subject to inspection by the City Engineer and other authorities having jurisdiction over such improvements. Required improvements include, where applicable:

a. Monuments. Monuments shall be set in accordance with Michigan Public Act 288 of 1967, as amended (the Land Division Act), and the rules of the Michigan Department of Consumer and Industry Services.

b. Streets.

c. Utility lines.

d. Storm drainage.

e. Water supply system.

f. Sanitary sewer system.

g. Sidewalks.

h. Required Landscaping.

i. Soil Erosion and Sedimentation Control Measures.

j. Other Improvements. Other improvements proposed by the proprietor and made a part of the approved final preliminary plat; including, but not limited to improvements in common areas, bicycle paths, sidewalks and crosswalks, playground or recreation facilities, creation of conservation easements, etc.

2. Construction Plans and Specifications. No installation or construction of any improvements shall be made before construction/engineering plans and specifications have been approved by the City Engineer and by other authorities that have jurisdiction over the improvements.

3. Alternative to Completing Improvements -- Subdivision Improvement Agreement. In lieu of completion of all required improvements prior to approval of the final plat, the City Council may permit the proprietor to enter into a Subdivision Improvement Agreement by which the proprietor covenants to complete all required public improvements no later than two (2) years following the date on which the final plat is signed by the City. The Subdivision Improvement Agreement shall provide for the following:

a. Performance Guarantee. The proprietor shall agree to furnish a performance guarantee in an amount not to exceed 110 percent of the cost of installation of the improvements. The performance guarantee shall be in a form specified in Section 23-39. A performance guarantee shall not be required by the City for improvements covered by a performance guarantee required by another agency.

b. Subdivision Improvement Agreement. The Subdivision Improvement Agreement shall provide that the covenants contained in the agreement shall run with the land and bind all successors, heirs and assignees of the proprietor. The Subdivision Improvement Agreement shall be authorized by the City Council and recorded pursuant to applicable state and local laws and ordinances.

c. Completion of Improvements. Upon substantial completion of all required improvements, the proprietor shall notify the City Engineering Department in writing of the completion or substantial completion of improvements. The City Engineer shall inspect all improvements identified in the notice that are under the jurisdiction of the City.

d. Approval of Improvements. The City Engineer shall either approve, partially approval, or reject the improvements and shall notify the proprietor in writing of the contents of the report and the action taken no later than thirty (30) days after receipt of the notice from the proprietor of the completion of the improvements.

e. Partial Approval. Where partial approval is granted, the proprietor shall be released from all liability except for that portion of improvements not yet approved.

4. Review of Construction Plans and Specifications. Review of the construction plans and specifications by the City shall be initiated by submitting the plans and specifications in the form and quantity and according to the process specified by the Engineering Department.

a. Required Plans. Plans and specifications shall be submitted for all proposed improvements including, where applicable: sanitary sewers; public water; storm sewers; sidewalks; bicycle paths; soil erosion and sedimentation control measures; site grading (including all information required by the City Engineer); and streets (including street and paving cross-sections and profiles). Cost estimates for each such improvement shall be included.

b. Review by Other Authorities -- Proprietor's Responsibility. It shall be the responsibility of the proprietor to obtain review and approval of construction plans and specifications for public improvements that are under the jurisdiction of authorities other than the City. Evidence of all approvals required from other authorities shall be submitted in the form specified by the City prior to issuance of any permits for construction.

5. Inspections. No work on water mains, sanitary sewers, storm drains and retention basins, and paving shall proceed without prior notification of the City Engineering Department to allow the City to schedule inspections, as deemed necessary. The contractor or proprietor shall

contact the City Engineering Department at least forty-eight (48) hours prior to the start of construction to arrange for the inspection and to deposit the required inspection fee.

Work installed without required inspections may not be accepted for dedication to the City and may not be allowed to connect to the public system and/or be issued a certificate of occupancy.

6. Escrow Deposits for Seasonal Improvements. If certain improvements cannot be completed because of the season of the year, the City Building Official may issue a Certificate of Occupancy, provided there is no danger to health, safety or general welfare, upon accepting a cash escrow deposit or certified letter of credit for the full cost of the uncompleted improvements. All required seasonal improvements for which escrow funds have been accepted shall be installed by the proprietor within a period of nine (9) months from the date of deposit and issuance of the Certificate of Occupancy. If the improvements have not been properly installed at the end of this time period, the Building Official shall give notice to the proprietor that the improvements shall be installed within two (2) weeks. If the improvements are not properly installed after two (2) weeks, the Building Official may request the City Council to authorize proceeding to contract out the work for installation of the improvements for a cost not to exceed the amount of the escrow deposit. At the time of issuance of the certificate of occupancy for which escrow monies are being deposited, the proprietor shall file a notarized statement from the purchaser or purchasers of the premises authorizing the City to install the improvements at the end of the nine (9) month period if the improvements have not been properly installed by the proprietor.

7. Final Inspections and Acceptance.

a. Final Inspection and Tests. Prior to acceptance of public facilities or utilities for use and maintenance by the City or other public entity having jurisdiction, all improvements shall have been completed and equipment removed from the site, and the final inspection and all required tests shall be completed. Any tests which fail shall be repeated after repairs have been made. Any portions of the work found to be unacceptable shall be repaired or replaced prior to acceptance.

b. As-Built Drawings. As-built (record) drawings and associated computer aided drawing files showing the final locations and grades of all utilities and other improvements shall be submitted to the City for review and acceptance.

(Ord. No. 1110, § 1, 7-28-86, Ord. No. 1603, § 2, 7-11-05)
Cross References: Final plat fee, § 21-9.

Sec. 23-19. Final Plat Approval.
1. Submittal Requirements. The following information shall be included on the proposed final plat submitted to the City, along with the completed application, the review fee authorized by Chapter 21. These materials shall be submitted at least twenty-one (21) days prior to the City Council meeting at which review is desired.

a. The final plat shall be prepared and submitted in a form that is consistent with the requirements in the Land Division Act, Michigan Public Act 288 of 1967, as amended by Michigan Public Act 591of 1996, as amended.

b. The final plat shall conform substantially to the final preliminary plat as approved. In determining whether the final plat satisfies this criterion, the City Council shall use the criteria set forth in Section 23-17(3).

c. The proprietor shall submit an abstract of title, a policy of title insurance, or an attorney's title opinion based on the abstract of title, in accordance with Section 245 of Michigan Public Act 288 of 1967, as amended.

d. All easements and utility agreements shall be executed by the City and/or appropriate utility authority and the subdivider, setting forth the terms of utility arrangements and the use and/or development of any land reserved for the use of the public and/or future subdivision property owners.

e. The proprietor shall submit, where applicable, recorded copies of the declaration of covenants and restrictions, conservation easements, and deeds of any common areas to homeowners associations.

2. Submittal to Approving Authorities. The proprietor shall submit the final plat and as-built engineering plans, where required for approval, to obtain final approval signatures on the final plat Mylar as required by Section 142 of the Land Division Act, Michigan Public Act 288 of 1967, as amended.

3. Initial Review. Upon receipt of the final plat, the City Staff shall check the plat for completeness. Should any of the required data specified in this ordinance be omitted, the proprietor shall be notified of the additional data required and that review will be delayed until the required data are received. <u>The date of filing shall be considered the date on which a plat containing all required data is received by the City</u>.

4. Placement on City Council Agenda. When the information is complete, the proposed final plat shall be submitted for consideration at the next available regular City Council meeting.

5. Distribution for Review. Copies of the final plat shall be distributed to the Planning and Community Development Director and the City Engineer for review. The Director of Planning and Community Development and the City Engineer shall determine if the final plat is in compliance with the approved final preliminary plat and with plans for utilities and other improvements.

6. City Council Action. Within twenty (20) days of the date of filing, the City Council shall review the proposed final plat to determine conformance with the Land Division Act, this ordinance, the preliminary plat, and any conditions of approval attached to the preliminary plat. The City Council may approve or deny the final plat as follows:

a. Upon determination that the final plat does not comply with the standards and regulations in this ordinance and other applicable ordinances and laws, the City Council shall deny the final plat.

b. Upon determining that the final plat is in compliance with the standards and regulations in this ordinance and other applicable ordinances and laws, the City Council shall approve the final plat and direct the City Clerk to sign the plat. The City Clerk shall forward all copies of the plat to the clerk of the County Plat Board.
(Ord. No. 1603, § 2, 7-11-05)

Sec. 23-20. Building Permits and Certificates of Occupancy.
1. Proposals to construct residential or non-residential structures shall comply with the review and permit requirements in the adopted Building Code and Zoning Ordinance.

2. When a Subdivision Improvement Agreement and performance guarantee have been required for a subdivision, no certificate of occupancy for any building in the subdivision shall be issued prior to the completion of the required public improvements and the acceptance of dedication of those improvements by the City or other authority having jurisdiction.

Building permits may be issued in a proposed subdivision subject to the following conditions:

a. The final plat shall have been approved by the City Council

b. Structures shall be constructed only on proposed lots, in accord with all terms and conditions or regulations which would be in effect if the final plat was recorded.

c. No structure shall be occupied until the final plat is recorded. A temporary certificate of occupancy may be issued when, due to the season, final lot improvements, paving or sidewalk cannot be completed.

(Ord. No. 1603, § 2, 7-11-05)

Secs. 23-21--23-23. Reserved.

Section 3. Article III of Chapter 23 is hereby amended to read as follows:

ARTICLE III.

DESIGN STANDARDS

Sec. 23-24. Objectives.
The design standards in this Article are intended to achieve an arrangement of lots, streets and utilities that accomplish the following objectives:

1. A development pattern consistent with that described in the City Master Plan;

2. Respect for the natural features on the site, and preservation of significant environmental resources;

3. Minimize negative impacts on adjacent properties, both during and after construction;

4. Promote continuity in the public street and utility systems;

5. Help ensure adequate accessibility for emergency vehicles;

6. Provide links to non-motorized facilities and links between open space, whether public or private; and

7. Help ensure consistency with standards of the other agencies which review the proposed subdivision.
(Ord. No. 1110, § 1, 7-28-86, Ord. No. 1603, § 3, 7-11-05)

Sec. 23-25. Preservation of Natural Features.
To the extent feasible, the subdivision shall be designed to preserve the natural character and natural features of the land, including woodlands, wetlands, water courses, natural drainage courses and stream channels, wildlife habitats and other valuable natural assets. In order to accomplish these objectives, dedication of easements, creation of protective barriers, and similar measures should be considered. In addition, the following standards shall be met.

1. Wetlands. The design of subdivisions shall comply with the Natural Resource and Environmental Protection Act (Michigan Public Act 451 of 1994, as amended). Wetlands shall be delineated by a qualified wetland consultant and shown on the preliminary plat (see requirements for a wetland within a lot and water features setback in Section 23-26).

2. Floodplains. Portions of plats located within any area of Special Flood Hazard shall be subject to the provisions of Section 60.3(d) of the Rules and Regulations of the National Flood Insurance Program (44 CFR 59, etc., formerly 1901).
(Ord. No. 1110, § 1, 7-28-86, Ord. No. 1603, § 3, 7-11-05)

Sec. 23-26. Lots.
Lots within subdivisions shall conform to the following standards:

1. General Lot Arrangement.

a. Every lot in a subdivision or site condominium shall front on and have direct access to a public or private street.

b. Residential lots abutting major or minor thoroughfares on the City Street Plan shall be platted using a public secondary access street parallel to the thoroughfare providing access to the lot(s).

c. Lots shall have a front-to-front relationship across all streets where possible.

d. Through or double frontage lots are prohibited, except as permitted in item 23-26(1)(b), above.

e. Lots facing a three-way intersection (T-intersection) should be aligned to prevent on-coming headlight glare into the building envelope of the living area.

f. Blocks shall generally be designed with tiers of two lots placed back to back, except where lots back onto a thoroughfare, railroad, natural feature, storm water detention feature or subdivision boundary.

2. Lot Sizes and Shapes.

a. Lot area and width. Each lot shall comply with the minimum area and width requirements of the Zoning Ordinance for the district in which the subdivision is proposed (unless approved as part of an Open Space Plan or Planned Unit Development).

b. Lot depth. The minimum lot depth for residential lots shall meet minimum requirements established by the City of Midland Zoning Ordinance.

c. Area calculation of ponds and lakes. Areas of the subdivision plat that contain ponds, lakes, storm water detention features or similar bodies of water shall not be platted as subdivision lots nor calculated as a portion of the minimum lot area required by the Zoning Ordinance.

d. Lots occupied by wetlands. A portion of each lot may be occupied by wetlands provided that, if wetlands are present on the lot, the proprietor can demonstrate that adequate buildable area will exist on each lot without intruding into the required setbacks, including the required wetland or water features setback.

e. Area in floodplain. Land in the 100 year floodplain shall be developed in accord with the Michigan Construction Code and the National Flood Insurance Program.

f. Depth-to-width ratio. Narrow, deep lots shall be avoided. A depth-to-width ratio of 2.5 to 1 shall be considered a maximum, except where the proprietor demonstrates that a deeper lot will protect natural resources, such as woodlands, wetlands, or wildlife habitat.

g. Building setbacks. Lots shall be of sufficient size and proportion to accommodate the minimum required building setbacks listed in the Zoning Ordinance for the district in which the subdivision is located.

h. Nonresidential lots. Lots intended for purposes other than residential use shall be specifically designated for such purposes, and shall have adequate provision for off-street parking, setbacks and other requirements, including such uses being permitted in the applicable zoning district, in accordance with the Zoning Ordinance.
(Ord. No. 1110, § 1, 7-28-86, Ord. No. 1603, § 3, 7-11-05)

Sec. 23-27. Streets.
The provisions of this Ordinance shall be the minimum requirements for streets and intersections.

1. Compliance with Applicable Standards. The standards of this section are intended to comply with the applicable public street standards of the City of Midland, Midland and Bay County Road Commission and the Michigan Department of Transportation. The City reserves the right to adopt written standards which are more restrictive, upon a determination that the additional regulations meet special needs or goals in the City which may not be appropriate on a county-wide basis.

2. Conformance with City Master Plan. The layout of the street system shall conform to the goals, policies, street functional classification system, alignment and minimum rights-of-way recommended in the transportation element of the City Master Plan.

3. Relationship to Natural Features and Grades. Streets shall be aligned to maximize the preservation of natural features and existing grades to the extent feasible.

4. Continuity of Street System. The arrangement of streets shall provide for the continuation of existing streets from adjoining areas into new subdivisions. Where adjoining vacant areas are zoned or planned for development similar to the proposed subdivision, streets shall be extended to the boundary line of the parcel to make provision for the future street connections. Where stub streets have been provided on adjoining property, the arrangement of streets in the proposed subdivision or site condominium shall align and connect with the existing stub streets to achieve street system continuity. The proprietor shall demonstrate that the proposed stub street is a reasonable location for extension into the adjacent lands, in consideration of such factors as grades, water bodies, wetlands and lot configuration. In determining the need for such connections, the City shall consider the need for adequate access and response time for emergency vehicles, the impacts such connections may have on reducing congestion along thoroughfares, the projected traffic volumes and the compatibility with adjacent developments.

An improved temporary cul-de-sac built to specifications of the City of Midland Engineering Department shall be provided if any lots front solely on the stub street; if no lots front solely on the stub street, then a T-turnaround shall be permitted, subject to approval by the City Engineer. A sign shall be placed at the end of the stub street or cul-de-sac with a sign face on both sides stating "Future Street Extension".

5. Collector and Local Streets. The proposed subdivision street layout shall be designed to discourage through traffic and excessive speeds. This shall be accomplished by incorporating offset street intersections within the subdivision, curvilinear street alignments, and discontinuities in the street pattern where appropriate. In general, straight sections of streets shall not exceed 1,320 feet in length, except that at subdivision entrances the straight sections of subdivision street that intersect thoroughfares shall generally not exceed 660 feet in length. These restrictions shall not prevent continuation of streets to adjoining properties where deemed desirable by the City.

6. Half Streets. Half streets shall be prohibited. Wherever a half street exists adjacent to the parcel to be subdivided, the other half shall be platted, dedicated and recorded to make a complete street.

7. Minimum and Maximum Length for Blocks. Blocks, or the length of any street constructed for any phase of a subdivision, shall not be less than two hundred seventy (270) feet long, nor longer than 1,320 feet measured from centerline to centerline of the intersections at each end of the block, except that the City Council, upon recommendation from the Planning Commission, may approve a plat which varies from these dimensions upon consideration of any or all of the following:

a. Documented evidence that significant natural features will be preserved or stub street to connect to vacant land are being provided which will result in a conforming condition in the future; and

b. Recommendations from the Police, Fire, Department of Public Services and City Engineering departments that the shorter or longer block length will not create a threat to public safety or the delivery of services.

The minimum block length dimensions do not apply to approved stub streets.

8. Cul-De-Sac and Dead-End Streets: Dead-end streets are prohibited, except those designed as permanent cul-de-sacs or those required for future access to adjacent unplatted property. Cul-de-sac streets shall be no longer than one thousand (1,000) feet unless:

A. Reviewed by the Engineering, Fire, Planning, and Public Services Departments; and

B. Approved, with or without conditions, by the City Council.

On street parking within a cul-de-sac turnaround shall be prohibited.

9. Minimum Right-of-Way Widths. The minimum street right-of-way (r.o.w.) width for subdivisions shall be as follows:

a. Parkway - 150 feet

b. Major Thoroughfare - to 100 feet

c. Minor Thoroughfare - 80 to 100 feet

d. Collector Street - 80 feet

e. Local Street - 60 feet

f. Cul-de-sac – 60 feet

g. Cul-de-sac turnaround - 50 foot radius

h. Private street - 40 feet

A greater right-of-way may be required by the City in consideration of the intensity of development, the expected traffic volumes, the need for additional area for utilities or grading or to accommodate planned or expected street cross sections, and the expected traffic volumes and characteristics associated with the types of uses which may access the street based on the zoning. If the City Council deems that right-of-way in excess of one hundred (100) feet is necessary, it shall enter into an agreement to purchase the land within ninety (90) days of submission of the final preliminary plat to the City.

10. Spacing of Intersections Along Major and Minor Thoroughfares or Collector Streets. Streets intersecting a thoroughfare or collector street shall be spaced at least eight hundred (800) feet from the intersection of another platted street on the same side of the street. Intersections shall be aligned with public streets or private roads across the street, or offset at least two hundred fifty (250) feet from such streets or roads, measured between centerlines. Lesser intersection spacing or offsets may be approved where there are existing conditions which make compliance with spacing requirements impossible or where adequate sight distance would not be compromised.

11. Design at Entrances. Boulevard entrances to subdivisions are permitted by the City, subject to approval by the appropriate road agency.

12. Internal Street Offsets. Three-way intersections ("T" type intersections) are encouraged within the plat, rather than four-way intersections. No more than two (2) streets shall cross at any intersection. Street intersections within a plat shall be offset at least one hundred twenty five (125) feet, measured between centerlines. Lesser offsets may be approved where less than ten (10) lots or units are served by the intersection or where significant natural features would be preserved that would otherwise be destroyed.

13. Street Geometrics. Street geometrics, including horizontal curves, tangents between reverse curves, sight distance at intersections, street gradients, and vertical alignment at intersections, shall comply with the standards of the appropriate road agency as well as the following regulations.

a. Horizontal curves shall have the following minimum center line radii:

(1) Local streets - 200 feet

(2) Collector streets - 300 feet

(3) Major streets - 475 feet

(4) Tangents at least one hundred (100) feet long shall be provided between reverse curves on collector streets, and at least two hundred and fifty (250) feet long on major streets.

b. Street grades shall not be greater than six percent (6%) or less than 0.4 percent (0.4%).

14. Intersection Angles. Streets shall be laid out to intersect as nearly as possible to ninety (90) degrees; in no case shall the intersection be less than eighty (80) degrees.

15. Street Names. Street names shall be sufficiently distinct from existing street names to avoid confusion, particularly for emergency service providers.

16. Signs. The City of Midland shall place street name signs on public streets and at the intersection of public and private streets. The proprietor shall be responsible for placement of street name signs at all private street intersections in accordance with the requirements of the City of Midland. The proprietor shall also be responsible for placement of pavement markings and regulatory street signs (such as no parking signs, stop or yield signs, speed limit signs, and warning signs) as requested or required by the appropriate road agency. All regulatory signs shall be in conformance with the Michigan Manual of Uniform Traffic Control Devices.

17. Stormwater Drainage. Curbs and gutters are required for all public streets in Midland. Open drainage along private roads may be permitted by the City, except where curbs and gutters are required by the City of Midland. Drainage design and construction shall be in accordance with the specifications of the appropriate road agency.

18. Street Construction Requirements. All streets and appurtenances thereto shall be constructed in accordance with the specifications of the City of Midland or the appropriate road agency.

19. Phasing. Each phase of the plat shall be designed to meet the street requirements above, regardless of whether future phases are constructed.

(Ord. No. 1110, § 1, 7-28-86, Ord. No. 1603, § 3, 7-11-05)

Sec. 23-28. Sidewalks.

1. Sidewalks are required on both sides of all public and private streets. The Planning Commission may waive the sidewalk requirement along private streets if an alternate pedestrian circulation system that provides access to all parts of a development is provided. The alternate pedestrian circulation system may incorporate hard surfaced and non-hard surfaced paths, provided that such pathways provide access to all parts of a development.

2. Pedestrian through-block connectors may be required in the middle of any block over 1,320 feet in length to obtain satisfactory pedestrian circulation within the subdivision, to provide access to parks or open space, to provide links with an adjacent development, and/or to provide access to a center of activity. Where such pedestrian through-block connectors are required a ten (10) foot wide easement, a dedicated right-of-way or other means of securing the land for the connector shall be required. The City may require placement of a fence to ensure the pedestrian connection location is visible and to protect the adjacent property owners.

3. Any yard which abuts a pedestrian easement shall provide the required minimum building setback, as applicable, from the easement.

4. All sidewalks shall be concrete, have a minimum width of four (4) feet on local streets and five (5) feet on major streets, and be constructed in accordance with City engineering standards.

5. Grades shall be clearly illustrated on the plans to insure proper connection to sidewalks on adjacent lands.

6. Sidewalks shall be installed by the proprietor within the dedicated street right-of-way, except that placement within private access easements may be permitted where grades or other factors prevent placement within the street right-of-way.

(Ord. No. 1110, § 1, 7-28-86, Ord. No. 1603, § 3, 7-11-05)

Sec. 23-29. Landscaping.

The selection, size, spacing and planting of all landscaping within a subdivision shall comply with the Zoning Ordinance and the following standards:

1. Subdivision Entrances. Subdivision entrances may include landscaping, lighting, identification signs, wrought iron fences or other architectural features. All such features shall comply with the City of Midland Zoning Ordinance. Details of the entranceway may be submitted at any stage in the plat review process.

2. Required Landscape Greenbelt. When a subdivision borders on a state highway, county primary road or street classified as a major or minor thoroughfare in the City Master Plan, and wherever a rear yard abuts a public or private road, a minimum twenty (20) foot wide landscape greenbelt shall be provided. This buffer zone may include trees, shrubs, berms, walls or a combination designed in accordance with the landscape standards described in the City of Midland Zoning Ordinance. Existing natural features shall be retained wherever possible to promote a natural appearance and to protect the existing ecosystem within the greenbelt.

(Ord. No. 1603, § 3, 7-11-05)

Sec. 23-30. Easements and Reserve Strips.

1. Drainageways. Easements for drainageways, detention and retention ponds and other parts of the stormwater management system shall be provided, as required by the City Engineering Standards and Midland and Bay County Drain Commissioner.

2. Municipal Services. The City may require easements to provide access for municipal water and sewer facilities, and to insure the extension of such services to adjoining lands.

3. Reserve Strips. Privately held reserve strips controlling access to streets shall be prohibited.
(Ord. No. 1603, § 3, 7-11-05)

Sec. 23-31. Utilities.
It is the purpose of this section to establish and define the public improvements that shall be provided by the proprietor, at his/her expense with or without reimbursement from any public agency or improvement district, as conditions for final plat approval.

1. Wastewater Treatment.

a. When a proposed subdivision is located within the service area of a public sanitary sewer system with adequate capacity, a sanitary sewer system consisting of appropriate sewer lines, lift stations, and other sanitary sewer system appurtenances shall be provided by the proprietor. This system shall meet all requirements of governmental agencies that have jurisdiction.

b. In areas outside of the public sanitary sewer service area septic tanks and disposal fields may be utilized so long as they comply with all applicable requirements of Midland and Bay County and the State of Michigan.

2. Water Supply.

a. When a proposed subdivision is located within the service area of a public water system with adequate capacity, a water distribution system consisting of appropriate water distribution mains, fire hydrants, and other water system appurtenances shall be provided by the proprietor. This system shall meet all requirements of governmental agencies that have jurisdiction.

b. In areas outside of the public water system service area, individual wells or on-site community wells may be permitted. Individual and community wells shall comply with the applicable requirements of Midland and Bay County, the State of Michigan and the City.

3. Storm Drainage.

a. An adequate storm and surface water drainage system that meets all requirements of the City and the Midland or Bay County Drain Commissioner shall be required. The storm drainage system, which may consist of storm sewers, drain inlets, manholes, culverts, bridges, sedimentation basins, sump pumps, and natural and constructed components, shall be subject to City Engineer and, when applicable, Drain Commissioner approval.

If the City or the County Drain Commissioner accepts or requires storm water retention or detention ponds, the ponds shall be designed in accordance with the regulations found in

Chapter 29 of the City of Midland Code of Ordinances; Stormwater Runoff Regulation and Control.

b. A subdivision grading plan shall be submitted prior to final plat approval. The grading plan and the plan for managing storm water flow shall be designed to not adversely affect neighboring properties and natural features, or worsen downstream flooding and water quality. Lots shall be laid out so as to provide positive drainage away from all buildings and individual lot drainage shall be coordinated with the general storm drainage pattern for the area. Drainage shall be designed to avoid increased flow of storm water from one lot onto adjacent lots.

4. Soil Erosion and Sedimentation Control.

a. In the event that any subdivider or proprietor intends to make changes in the contour of any land proposed to be subdivided, developed, or changed in use by razing, excavating, removal or destruction of the natural topsoil, trees, or other vegetative covering thereon, the property owner or his/her agent shall first apply to the City of Midland for approval of a plan for soil erosion and sedimentation control.

b. Only a temporary certificate of occupancy shall be issued until final grading of the lot has been completed in accordance with the approved final plat,

5. Telephone, Electric and Other Cable Services. Telephone, electric, and other cable services shall be placed underground throughout the subdivision, except as follows:

a. Wires, cables, poles and associated equipment constituting primary transmission lines, and the above-ground installation of such facilities in or through residential subdivisions is hereby expressly authorized.

b. Surface equipment associated with an underground distribution system such as, but not limited to, surface mounted transformers, power terminal pedestals, meters and meter boxes, concealed wires, street lights and street poles.

c. The City Council, upon recommendation from the Planning Commission, may waive or modify this requirement where it finds that underground utilities would be impractical.

Telephone, electric and other cable services shall also comply with the following requirements:

a. All such services shall be located in the public street right-of-way or in a private easement, which shall generally be located at the front of each lot.

b. If located in a public street right-of-way, the location and installation of such services shall be planned so as to not conflict with other utilities.

c. All such services shall be installed in accordance with standards promulgated by the Michigan Public Services Commission and other agencies having jurisdiction.

6. City Payment. The City shall pay for that part of required facilities, the size of which exceed that normally required to serve the subdivision under consideration, as determined by the City Engineer.
(Ord. No. 1603, § 3, 7-11-05)

Secs. 23-32--23-34. Reserved.

Section 4. Article IV of Chapter 23 is hereby amended to read as follows:

ARTICLE IV.

ADMINISTRATION AND ENFORCEMENT

Sec. 23-35. Compliance.
1. No subdivision plat required by the Land Division Act (Michigan Public Act 288 of 1967, as amended) shall be admitted to the public land records of the County or received or recorded by the County Register of Deeds, until such subdivision plat has received final approval by the City Council. No public board, agency, commission, official or other authority shall proceed with the construction of or authorize the construction of any of the public improvements required by this Ordinance unless such public improvements have been accepted or otherwise permitted in accordance with the terms of this Ordinance. No public board, agency, commission, official or other authority shall issue building or occupancy permits for structures on lands subject to this Ordinance where the subdivider has not complied with the requirements set forth herein.

2. Continued Maintenance. Maintenance of private improvements illustrated on the approved final preliminary plat and final plat and in supporting documentation shall be a continuing responsibility of the subdivision association and individual owners of lots on which the improvements are located.
(Ord. No. 1110, § 1, 7-28-86, Ord. No. 1603, § 4, 7-11-05)

Sec. 23-36. Interpretation, Conflict, and Severability.
1. Interpretation. In their interpretation and application, the provisions of this ordinance shall be held to be the minimum requirements.

2. Conflict. Where the conditions imposed by any provisions of this ordinance are either more or less restrictive than comparable conditions imposed by any other provisions of this ordinance or of any other applicable law, ordinance, resolution, rule or regulation of any kind, the regulations which are more restrictive and impose higher standards or requirements shall govern.

3. Separability. If any provision of this Code or its application to any person or circumstances is held invalid or unconstitutional, the invalidity or unconstitutionally shall not affect other provisions or applications of this Code that can be given effect without the invalid or unconstitutional provision or application, and to such end, the provisions of this Code shall be severable. If any provision of this Code or its application to any person or circumstance is held to be over broad, that provision or application will nevertheless be enforced to the fullest extent permitted by law.
(Ord. No. 1110, § 1, 7-28-86, Ord. No. 1603, § 4, 7-11-05)

Sec. 23-37. Fees.
The proprietor shall be responsible for payment of all fees, based on the fee established by the City Council in Chapter 21 of the City of Midland Code of Ordinances.
(Ord. No. 1110, § 1, 7-28-86, Ord. No. 1603, § 4, 7-11-05)

Sec. 23-38. Waivers.
1. Application For Waiver. Applications for a waiver from specific provisions of this Ordinance may be made in writing by the proprietor prior to approval of the final preliminary plat. The application shall be supplemented with maps, plans, and other data which may aid the Planning Commission and City Council in their analysis of the proposed waiver.

2. Planning Commission Recommendation. The Planning Commission may recommend that the City Council grant a waiver from the provisions of this Ordinance on a finding that undue hardship or practical difficulties would result from strict compliance with specific provisions or requirements of the Ordinance, provided that the waiver does not pertain to requirements of the Zoning Ordinance that are under the jurisdiction of the Zoning Board of Appeals. In making the finding required herein the Planning Commission and City Council shall take into account the nature of the proposed use of land, the existing use of land in the vicinity, the number of persons to reside or work in the proposed subdivision, and the probable effect of the proposed subdivision upon traffic conditions in the vicinity. No waiver shall be recommended unless the Planning Commission finds, after a public hearing that:

a. There are such special circumstances or conditions affecting said property so that the strict application of the provisions of this Ordinance would clearly be impractical or unreasonable.

b. The granting of the waiver will not be detrimental to the public welfare or injurious to other property in the area.

c. Such variance or waiver will not violate the provisions of the Land Division Act (Michigan Public Act 288 of 1967, as amended) or create a violation of the City Zoning Ordinance.

d. Such waiver will not have the effect of nullifying the intent and purpose of this Ordinance and the Master Plan of the City.

In recommending approval of a waiver request, the Planning Commission may suggest requirements or conditions that will, in its judgment, secure the objectives and requirements of this ordinance.

3. City Council Action. After receiving the Planning Commission's recommendation, the City Council shall make a decision on the waiver request. In making its decision, the City Council may establish requirements, time constraints or conditions that will, in its judgement, secure substantially the objectives and requirements of this Ordinance. The City Council shall state the reasons for its finding or decisions as part of its official records.

4. City Council Decision is Final. The City Council shall have the final authority on waivers from or modifications to the standards of this Ordinance. Appeals of the City Council decisions shall be to a court of law.
(Ord. No. 1110, § 1, 7-28-86, Ord. No. 1603, § 4, 7-11-05)

Sec. 23-39. Vacation of Public Property by City Council.
When the City Council shall deem it advisable to vacate, discontinue, or abolish any street, alley, public ground, or any part thereof in a subdivision, or upon petition received by the City Clerk requesting such vacation, discontinuance or abolition, and containing the names of the petitioner, his address, a description of the property proposed to be vacated, and the reasons

therefore, together with the names of all owners of property abutting on that property proposed to be vacated, or whose access to their property would be prohibited thereby, the Council shall:
1. Adopt a resolution referring the matter to the Planning Commission, the City Engineer, and other City departments, as appropriate, for their report and recommendation.
2. Upon receipt of the recommendations, declare, by resolution, the intent to take such action as they may deem advisable and, in the same resolution, shall appoint a time not less than four (4) weeks thereafter when they will meet and hear objections thereto.
3. Cause a notice of hearing with a copy of the resolution to be published once each week for not less than three (3) weeks before the time appointed for such meeting in a newspaper of general circulation in the City, and cause a copy of such notice and resolution to be sent by certified mail to each owner of property abutting the property proposed to be vacated, or whole access to their property would be prohibited thereby.
4. Receive objections to such proposed action either orally at such hearing on in writing filed with the City Clerk prior thereto.
5. Either at the same meeting at which such hearing is held, or at any sub-sequent meeting, adopts a resolution vacating, abolishing, or discontinuing such property, or any portion thereof, on any such conditions as they may deem advisable, or refuse to take such action. Upon receipt of any objections to such proposed action either orally at such meeting on in writing prior thereto, the street, alley, or other public ground or any part thereof shall not be vacated, abolished or discontinued except by concurring vote of four fifths (4/5) of the Councilmen elect. Before any petition seeking vacation of public grounds, or any portion thereof, shall be received by the City Clerk, it must be accompanied by the fee prescribed in Chapter 21 of this code to defray the costs of administration and publication.
(Ord. No. 1110, § 1, 7-28-86, Ord. No. 1603, § 4, 7-11-05)

Sec. 23-40. Property Division.
1. Division of Land. The division of any land, whether unplatted or a part of a recorded plat, is prohibited unless approved by the Planning Director of his designee following an application to the City Planning Department. The application shall be filed with the City Planning Department and shall state the reason for the proposed division. The division shall not create a land parcel that is not in accord with the minimum lot area and dimensions standards for the zoning classification of said parcel. The division of any unplatted land or platted lot which results in a smaller area than required by the zoning classification of said land may be permitted only for the purpose of adding to an existing parcel or lot, but no parcel or lot, whether reduced as a result of the division or combined with another parcel or lot, shall be less than the minimum lot area and dimensions standards for the zoning classification of said parcel(s) or lot(s). The division of any platted or unplatted land into more than four (4) parcels, each of which is ten (10) acres or less, shall only be permitted in accord with the Michigan Land Division Act (Act 288 of 1967 as amended).
2. Width to Depth Ratio. The division of a parcel that results in a parcel which does not meet a 1:4 width to depth ratio may be approved based on the following standards:
a. There are exceptional topographical or physical conditions with respect to the parcel, and/or;
b. The land division will result in a parcel that is compatible with surrounding parcels.
3. Building Permit. No building permit shall be issued unless the division has been approved in accord with this section.
4. Certificate of Occupancy. No certificates of occupancy shall be issued until the approved division has been properly recorded.
(Ord. No. 1110, § 1, 7-28-86, Ord. No. 1603, § 4, 7-11-05)

Sec. 23-41. Performance Guarantee.
Whenever the City Council permits or requires a performance guarantee as security for required improvements, the performance guarantee shall be in the form of a bank letter of credit, bond, certified check or cash escrow. Any such security shall be in an amount equal to one hundred ten percent (110%) of the estimated cost of completion of the required public improvements. The issuer of the letter of credit or the escrow agent, as applicable, shall be acceptable to the City.

1. Bank Letter of Credit. If the proprietor posts a bank letter of credit as security, the credit shall:

a. Be irrevocable,

b. Be for a term sufficient to cover the completion, maintenance, and warranty periods specified in this ordinance or in other ordinances or regulations for the specific improvement, and

c. Require only that the City present the credit with a sight draft and an affidavit signed by an authorized representative of the City attesting to the municipality's right to draw funds under the letter of credit.

2. Cash Escrow or Certified Check. If the proprietor posts a cash escrow or certified check as security, the escrow instructions shall provide that:

a. The proprietor shall have no right to a return of any of the funds except as provided herein, and

b. The escrow agent shall have a legal duty to deliver the funds to the City whenever an authorized representative of the City presents an affidavit to the agent attesting to the City's right to receive funds whether or not the proprietor protests the right.

3. Release or Reduction of Security.

a. Certificate of Satisfactory Completion. The City Council shall not accept dedication of required improvements, or release or reduce the amount of any security posted by the subdivider until the City Engineer has submitted a certificate stating that all required improvements have been satisfactorily completed and until (1) the applicant's engineer or surveyor has certified to the City Engineer, through submission of a detailed "as-built" survey plat of the subdivision, indicating location, dimensions, materials and other information required as may be required by the City Engineer, that the layout of the line and grade of all public improvements is in accordance with approved construction plans for the subdivision, and (2) a title insurance policy has been furnished to and approved by the City Attorney indicating that the improvements have been completed, are ready for dedication to the City or other agency having jurisdiction and are free and clear of any and all liens and encumbrances. Upon such approval and recommendation by the City Engineer and City Attorney, the City Council may accept the improvements for dedication in accordance with the established procedure.

b. Reduction of Escrowed Funds and Security. If the security posted by the subdivider was a cash escrow, the amount of that escrow shall be reduced upon actual acceptance of the dedication of public improvements and then only to the ratio that the cost of the public improvement for which dedication was accepted bears to the total cost of public

improvements for the subdivision. In no event shall a cash escrow be reduced below twenty-five percent (25%) of the principal amount. Funds held in the escrow account shall not be released to the subdivider, in whole or in part, except upon express written instructions of the City Attorney. At the end of the maintenance and warranty periods, all escrowed funds, if any, shall be released to the subdivider. If the security provided by the subdivider was a letter of credit, the City Attorney shall execute waivers of the municipality's right to draw funds under the credit upon actual acceptance of the dedication of public improvements and then only to the ratio that the cost of the public improvement for which dedication was accepted bears to the total cost of public improvements for the subdivision. In no event shall waivers be executed that would reduce the security below twenty-five percent (25%) of the original amount.
(Ord. No. 1110, § 1, 7-28-86, Ord. No. 1603, § 4, 7-11-05)

Sec. 23-42. Enforcement.
1. Enforcement. Enforcement of this Ordinance shall be chiefly the responsibility of the Planning and Community Development Director, or his/her designee, who shall have the authority to enforce this Ordinance in accordance with requirements and procedures set forth herein.

2. Authorized City Official. The Planning and Community Development Director, or his/her designee are hereby designated as authorized City Officials to investigate alleged violations of this ordinance and to take appropriate action. Such action may include an order to correct the violation, issuance of an appearance ticket pursuant to Michigan Public Act 147 of 1968, as amended, or other actions as provided for by state law and City ordinances.
(Ord. No. 1110, § 1, 7-28-86, Ord. No. 1603, § 4, 7-11-05)

Sec. 23-43. Penalties and Sanctions.
1. Misdemeanor. Any violation of this Ordinance shall constitute a misdemeanor. Any person who is convicted shall be subject to punishment by a fine not exceeding five hundred dollars ($500.00) or by imprisonment not exceeding ninety (90) days for each offense, or both, at the discretion of the Court. Each day a violation occurs or continues shall constitute a separate offense.

Furthermore, any property owners, surveyor, engineer, builder, contractor, agent, or other person who commits, participates in, assists in, or maintains any violation of the Ordinance may each be found guilty of a separate offense and may be subject to the penalties provided herein. The cost of prosecution shall also be assessed against the violator.

2. Continuing Violations. Each act of violation and every day upon which such violation shall occur shall constitute a separate offense or infraction. Abatements shall not be considered as payment or part of a violation's penalty.
(Ord. No. 1110, § 1, 7-28-86, Ord. No. 1603, § 4, 7-11-05)

Sec. 23-44. Other Remedies.
In addition to all other remedies, including the penalties provided in Section 23-43 of this ordinance, the City may commence and prosecute appropriate actions in the Circuit Court for the County of Bay and/or Midland or any other court having jurisdiction to restrain or prevent any noncompliance with or violation of any of the provisions of this ordinance, or to correct, remedy or abate such noncompliance or violation.
(Ord. No. 1110, § 1, 7-28-86, Ord. No. 1603, § 4, 7-11-05)

Section 5. Article V of Chapter 23 is hereby repealed.

(Ord. No. 1246, § 1, 8-10-92; Ord. No. 1538, § 1, 6-10-02; Ord. No. 1603, § 5, 7-11-05)

Section 6. Article VI of Chapter 23 is hereby repealed.
(Ord. No. 1246, § 1, 8-10-92; Ord. No. 1538, § 1, 6-10-02; Ord. No. 1603, § 6, 7-11-05)

Section 7. Article VII of Chapter 23 is hereby repealed.
(Ord. No. 1246, § 1, 8-10-92; Ord. No. 1538, § 1, 6-10-02; Ord. No. 1603, § 7, 7-11-05)

Section 8. All other subdivision regulations heretofore adopted by the Planning Commission and/or City Council and all amendments thereto, are hereby specifically repealed as of the effective date of this ordinance. All other ordinances conflicting or inconsistent with the provisions of this ordinance, to the extent of such conflict or inconsistency only, are hereby repealed.
(Ord. No. 1603, § 8, 7-11-05)

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CODE OF ORDINANCES

Chapter 24

TRAFFIC*

Charter references: Notice to city of injury caused by negligence to be given to city within 60 days of occurrence of injury, § 17.1; notice to city of claim for injury arising from street defects, § 17.2.
Cross references: Throwing litter from vehicles, § 10-11; truck loads not to cause litter, § 10-12; preventing junk from falling on streets, § 13-7; junked, dismantled motor vehicles, § 13-21 et seq.; noisy vehicles, sounding of horns, § 16-29; driving or walking on new pavement, § 22-3; downtown development authority, Ch. 30.
State law references: Michigan Vehicle Code, M.S.A., § 9.1801 et seq.; municipal authority, § 9.2306.

Art. I. In General, §§ 24-1– 24-10

Art. II. Uniform Traffic Code, §§ 24-11– 24-23

Art. III. Auto Parking System, §§ 24-24– 24-39

Art. IV. Parking Violations Bureau, §§ 24-40– 24-57

Art. V. Impoundment of Vehicles, §§ 24-58

Art. VI. Michigan Motor Vehicle Code, §§ 24-59– 24-61

ARTICLE I.

IN GENERAL

Secs. 24-1– 24-10. Reserved.

ARTICLE II.

UNIFORM TRAFFIC CODE*

Editor's note: Former Art. II, §§ 24-11 through 24-13, relative to the Uniform Traffic Code, was derived from the original codification of this Code and Ord. No. 768, § 1, adopted Feb. 1, 1971. Said Article was repealed in its entirety by Ord. No. 939, § 1, adopted Oct. 30, 1978, which ordinance also enacted a new Art. II, §§ 24-11 through 24-13 as herein set forth.

Sec. 24-11. Amendments to Uniform Traffic Code adopted.

The Uniform Traffic Code was adopted on October 30, 1978 under Chapter 24, Article II of the City of Midland Code of Ordinances. Since that date amendments have occurred to the Uniform Traffic Code, all of which were promulgated by the Director of Department of State Police effective January 27, 1981 and published in the quarterly supplement number 5 to the 1979 edition of the Michigan Administrative Code in accordance with 1956 P.A. 262 are hereby adopted by reference amending and adding similarly numbered sections of said Uniform Traffic Code to the City of Midland Code of Ordinances including subsections to the current Article II, Chapter 24-11 and further to adopt by the ordinance from which this section derives future amendments as may occur to the Uniform Traffic Code as if fully recited herein.
(Ord. No. 939, § 1, 10-30-78; Ord. No. 1485, 8-14-00; Ord. No. 1504, 4-9-01)

Sec. 24-12. References in code.
References in the Uniform Traffic Code for Michigan cities, townships and villages to "governmental unit" shall mean the City of Midland.
(Ord. No. 939, § 1, 10-30-78)

Sec. 24-13. Changes in code.
The following sections and subsections of the Uniform Traffic Code for cities, townships and villages are hereby amended or deleted as set forth and additional sections and subsections are added as indicated in this section. Subsequent section numbers used in this section shall refer to the like numbered sections of the Uniform Traffic Code.

Sec. 2.25a. After Section 2.25 add Section 2.25a as follows:

Sec. 2.25a. City manager to be traffic engineer.
References in the Uniform Traffic Code for Michigan cities, townships and villages to the "traffic engineer" shall mean the city manager.
(Ord. No. 939, § 1, 10-30-78)

Sec. 2.36c. After Section 2.36b add Section 2.36c as follows:

Sec. 2.36c. Regulation of operation, parking and speed of motor vehicles on property of the school district for the City of Midland.

(1) Any person who shall drive or operate a motor vehicle on any property owned or otherwise used by the school district for the City of Midland, except on established and designated roads and automobile parking areas, shall be guilty of a misdemeanor.

(2) Any person who shall park or cause to be parked a motor vehicle upon any property owned or otherwise used by the school district for the City of Midland not designated and established as a motor vehicle parking area shall be guilty of a misdemeanor.

(3) Any person who operates a motor vehicle upon property owned or otherwise used by the school district for the City of Midland in a careless or negligent manner shall be guilty of a misdemeanor.

(4) The penalty for violation of this section shall be as provided by Section 9.3 of the Uniform Traffic Code.
(Ord. No. 939, § 1, 10-30-78)

Sec. 2.36d. After Section 2.36c add Section 2.36d as follows:

Sec. 2.36d. Fire routes.
The traffic engineer is hereby authorized to designate fire routes upon streets or highways or parts of streets or highways and prohibit standing or parking thereon upon certification by the fire chief that such streets or highways or parts of streets or highways are especially required for use in attending fires.
(Ord. No. 939, § 1, 10-30-78)

Sec. 2.48a. After Section 2.48 add Section 2.48a as follows:

Sec. 2.48a. One-way streets.
The traffic engineer is hereby authorized to determine and designate streets or highways or parts of streets or highways upon which vehicular traffic shall proceed in one direction and maintain appropriate markings, signs, barriers, or other devices to give notice thereof.
(Ord. No. 939, § 1, 10-30-78)

Sec. 3.12. Enforcing violations on private roads and private property. Section amended to read as follows:

Sec. 3.12. Enforcing violations on private roads and private property.
Notwithstanding any other provision of law, a police officer may enter upon a private road or other private property to enforce violations of this code, and a city employee assigned for the purpose of issuing parking violations by the city manager may enter upon a private road or other private property for the purpose of issuing notices of parking violations.
(Ord. No. 976, § 1, 5-5-80)

Sec. 5.98b. After Section 5.98a, add Section 5.98b as follows:

Sec. 5.98b. Removal of disabled vehicle.
When a vehicle becomes stalled, or for any reason cannot be moved by its own power, and in consequence obstructs a highway, the owner or operator shall cause the prompt removal of the same by towing or otherwise.
(Ord. No. 935, § 1, 10-30-78)

Sec. 8.13a. After Section 8.13 add Section 8.13a as follows:

Sec. 8.13a. Parking between sidewalk and curb.
No person shall drive upon, park or stand any vehicle between the curb or curb line and the lot line nearest the street, said area being commonly known as the lawn extension or outlawn, whether or not any sidewalk or curb is actually in place on such street, except when authorized by official signs.
(Ord. No. 939, § 1, 10-30-78)

Sec. 8.17a. After Section 8.17 add Section 8.17a as follows:

Sec. 8.17a. Regulation of central business district loading zones.
No person shall be allowed to double-park a commercial vehicle for loading or unloading purposes in the Central Business District (defined as the area bounded by the Tittabawassee River; Jerome, Ellsworth and Cronkright Streets) except in accordance with the following restrictions:

(a) Each loading or unloading operation shall be continuous, and such activity shall not cease for more than ten (10) minutes.

(b) Any loading or unloading operation shall not be permitted on weekdays between the hours of 4:00 p.m. and 6:00 p.m. on all streets in the Central Business District, and, in addition, shall not be permitted from 11:30 a.m. to 1:00 p.m. on Main, Ashman and Rodd Streets in the Central Business District.

(c) Double-parked commercial vehicles at any one time in a single block of a street in the Central Business District shall be in the same traffic lane.

(d) Notwithstanding any of the foregoing, if a loading zone is available or becomes available during loading or unloading within one hundred (100) feet of the door or entrance where the loading or unloading is taking place or is to take place, a commercial vehicle shall not be permitted to double-park and must use said loading zone.
(Ord. No. 939, § 1, 10-30-78; Ord. No. 1485, 8-14-00; Ord. No. 1504, 4-9-01)

Sec. 8.17b. After Section 8.17a, add Section 8.17b as follows:

Sec. 8.17b. Additional regulation of Main Street loading zones.
No person shall park a commercial vehicle of over one ton carrying capacity as rated by the manufacturer or over seventeen (17) feet long (measurement to be overall length including both the commercial vehicle and its load) on Main Street, between George Street and Fitzhugh Street in the city, except for loading and unloading purposes and then not to exceed thirty (30) minutes continuous time.
(Ord. No. 939, § 1, 10-30-78)

Sec. 8.21a. After Section 8.21, add Section 8.21a as follows:

Sec. 8.21a. Separate violations for metered parking zone violations or overtime parking violations beyond one hour or fraction thereof.
Whenever a vehicle is parked in a metered parking zone for a longer period of time than is permitted by Section 8.21 above, or is parked at a place beyond the time limits prescribed by official signs as described in Section 8.10(r) above, the traffic ticket or other notice of violation issued for such violation shall indicate in writing the time at which such violation is alleged to have occurred. If the vehicle is not moved within one hour from the time the original traffic ticket or other notice of violation was issued, a second traffic ticket or other notice of violation shall again indicate in writing the time at which it was issued. Thereafter, successive traffic tickets or other notices of violation of like nature shall be issued for each hour the vehicle remains parked in violation of this section.
(Ord. No. 939, § 1, 10-30-78)

Sec. 8.25. After Section 8.24 add Section 8.25 as follows:

Sec. 8.25. Power to establish parking lots.
The city may establish parking lots on property owned or leased by the city. The council may, by resolution, fix the regulations, control and maintenance of said parking lots and determine the rate to be charged the public for the use of the same.
(Ord. No. 939, § 1, 10-30-78)

Sec. 8.25a. After Section 8.25 add Section 8.25a as follows:

Sec. 8.25a. Regulation of parking lots.
No person shall park, stand, stop or operate a vehicle contrary to any posted regulations in any public parking grounds operated or maintained by the city.
(Ord. No. 939, § 1, 10-30-78)

Sec. 8.26. After Section 8.25a add Section 8.26 as follows:

Sec. 8.26. Parking in parks, footwalks, etc.
No person shall park, stand or stop a vehicle on the footwalks, bridge paths, sidewalks, grass plots or planted places of any park or boulevard, except in such areas as may be designated for the parking of automobiles, nor shall any motor vehicle be driven over any lawn, grass plot, bridle path, walkway, or pedestrian trails in any park.
(Ord. No. 939, § 1, 10-30-78)

Sec. 8.27. After Section 8.26 add Section 8.27 as follows:

Sec. 8.27. Authority to purchase parking meters.
The city is hereby vested with the authority to enter into a contract for the purchase and installation of parking meters and to provide payment therefore exclusively from the receipts obtained by the city from their operation, and such means of payment shall be in addition to any other purchasing powers heretofore granted the city by its charter or by the laws of the State of Michigan. The city is also authorized, at its discretion, to sell or otherwise dispose of parking meters no longer deemed necessary by the traffic engineer. Sale of such meters will be done in compliance with section 2.22 of the Code of Ordinances.
(Ord. No. 939, § 1, 10-30-78; Ord. No. 1504, 4-9-01)

Sec. 8.27a. After Section 8.27 add Section 8.27a as follows:

Sec. 8.27a. Destruction of parking meters.
It shall be unlawful for any unauthorized person to tamper with, open, willfully break or destroy any parking meter.
(Ord. No. 939, § 1, 10-30-78)

Sec. 8.28. After Section 8.27a add Section 8.28 as follows:

Sec. 8.28. Parking on streets between 3:00 a.m. and 6:00 a.m. prohibited.
Unless given a special police permit, no person shall park a vehicle between the hours of 3:00 a.m. to 6:00 a.m. on the streets in the city.
(Ord. No. 939, § 1, 10-30-78)

Sec. 9.4a. After Section 9.4 add Section 9.4a as follows:

Sec. 9.4a. Current regulations.
All intersection stops and yield right-of-way requirements, regulations on stopping, standing or parking; prima facie speed limits; one-way streets, roadways and alleys; crosswalks; restricted turns; through streets; angle parking zones; all-night parking restrictions; curb-loading zones; public carrier stands; parking meter zones and spaces; weight restrictions; no-passing zones; traffic-control devices and traffic-control orders heretofore established and effective on the effective date of the code shall be deemed established hereunder, and shall remain effective until rescinded or modified as herein provided.

(Ord. No. 939, § 1, 10-30-78)

Secs. 24-14– 24-23. Reserved.

ARTICLE III.

AUTO PARKING SYSTEM

Sec. 24-24. System designated.
All street parking spaces where parking fees or charges are collected by means of parking meters, and all off-street parking lots and facilities acquired by the city, shall be maintained and operated by the city as one separate municipal system on a public utility basis, to be known as the City of Midland Automobile Parking System, hereinafter referred to as "the system," and shall include all parking meters, lots, buildings, facilities, equipment or accessories used or useful in connection therewith.

Sec. 24-25. City manager to run system.
The system shall be and remain under the management, supervision and control of the city manager, who may employ or designate such person or persons, or such board or commission, in such capacity or capacities as he deems advisable, to carry on the efficient management and operation of the system. The city manager may make such rules, orders and regulations as he deems advisable and necessary to assure the efficient management and operation of the system, subject, however, to the rights, powers and duties in respect thereto which are reserved by law to the city council.

Sec. 24-26. Fiscal year.
The system shall have an operating or fiscal year commencing on July 1st and ending on June 30th of each year.

Sec. 24-27. Fees and charges.
The parking fees, rates and charges to be collected for the use of street parking spaces by means of parking meters of the system and for off-street parking shall be as established pursuant to city ordinance. Any such ordinance shall contain appropriate penalties for nonpayment of such rates or charges, or for violation of time restrictions.

Sec. 24-28. Purpose of rates and charges.
Rates and charges for the use of the facilities of the system shall be in such amount as to produce revenues sufficient to provide the following in relation to the system:

(1) Pay all operation and maintenance expenses of the system.

(2) Pay the principal and interest on all bonds or other evidences of indebtedness of the city issued for the purposes of the system or any additional parking facilities therefor.

(3) Provide for a reasonable reserve for other needed additions and improvements to the system, including the acquisition of additional parking facilities and traffic control equipment or devices.

Sec. 24-29. Certain funds established; operation of same.

The revenues of the system are hereby ordered to be set aside as collected and deposited in a bank duly qualified to do business in Michigan, in an account to be designated Automobile Parking System.

A budget, showing in detail the estimated costs of administration, operation and maintenance of the system for the next ensuing operating year, shall be prepared simultaneously with the general city budget and approved by the city council.
(Ord. No. 1485, 8-14-00; Ord. No. 1504, 4-9-01)

Sec. 24-30. Records to be kept; annual operating statement; annual audit.
The city manager shall cause to be maintained and kept, proper books of record and account, in which shall be made full and correct entries of all transactions relating to the system. Not later than four (4) months after the close of each fiscal year, the city manager shall cause to be prepared, a statement in reasonable detail, showing the cash income and disbursements of the system at the beginning and close of the operating year and such other information as may be necessary to enable any taxpayer of the city or user of the service furnished to be fully informed as to all matters pertaining to the financial operation of the system during such year. Such annual statement shall be filed in the office of the city clerk, where it shall be open to public inspection. Such books of record and account shall be audited annually by a certified public accountant, to be designated by the city council, and a certified copy of such audit shall be filed with the city clerk.
(Ord. No. 1403, § 1, 1-26-98)

Sec. 24-31. Fines.
Fees for violations of this section shall be imposed as provided in Chapter 21, Article 8.
(Ord. No. 1485, 8-14-00; Ord. No. 1504, 4-9-01)

Secs. 24-32– 24-39. Reserved.

ARTICLE IV.

PARKING VIOLATIONS BUREAU

Sec. 24-40. Parking violations bureau established; treasurer to supervise.
Pursuant to Section 8395 of the Revised Judicature Act, State of Michigan, being MCL Section 600.8395, a parking violations bureau, for the purpose of accepting civil infraction admissions in parking violation cases occurring within the city and for collecting and retaining civil fines and costs as prescribed by this article, is hereby established. The parking violations bureau shall be under the supervision and control of the city treasurer.
(Ord. No. 1403, § 2, 1-26-98)
Charter references: Council authorized to established traffic violations bureau, § 9.14.
State law references: Parking violations bureau authorized, M.S.A., § 27A.8395.

Sec. 24-41. Duties of treasurer.
The city treasurer shall, subject to the approval of the city council, establish a convenient location for the parking violations bureau, appoint qualified city employees to administer the bureau, and adopt rules and regulations for the operation thereof.

Sec. 24-42. Disposition of violations.
Any violation not scheduled in section 21-130 shall be disposed of by the parking violations bureau. The fact that a particular violation is scheduled shall not entitle the alleged violator to

disposition of the violation at the bureau and, in any case, the person in charge of such bureau may refuse to dispose of such violation, in which case any person having knowledge of the facts may make a sworn complaint before any court having jurisdiction of the offense as provided by law.
(Ord. No. 1403, § 2, 1-26-98)

Sec. 24-43. Settling violations.
No violation may be settled at the parking violations bureau, except at the specific request of the alleged violator. No penalty for any violation shall be accepted from any person who denies having committed the offense, and in no case shall the person who is in charge of the bureau determine, or attempt to determine, the truth or falsity of any fact or matter relating to such alleged violation. No person shall be required to dispose of a parking violation at the parking violations bureau and all persons shall be entitled to have any such violation processed before a court having jurisdiction thereof if they so desire. The unwillingness of any person to dispose of any violation at the parking violations bureau shall not prejudice him or in any way diminish the rights, privileges and protection accorded to him by law.

Sec. 24-44. Ticket issuance; information on ticket.
The issuance of a traffic ticket, or notice of violation by a police officer of the city or by a city employee assigned for the purpose of issuing parking violations by the city manager, shall be deemed an allegation of a parking violation. Such traffic ticket or notice of violation shall indicate the length of time in which the person to whom such ticket was issued must respond before the parking violations bureau. It shall also indicate the address of the bureau, the hours during which the bureau is open, the amount of the penalty scheduled for the offense for which the ticket was issued, and shall advise that a warrant for the arrest of the person to whom the ticket was issued will be sought if such a person fails to respond within the time limit.
(Ord. No. 939, § 2, 10-30-78)

Sec. 24-45. Dismissal of parking violation without penalty.
If, after investigation, any police officer assigned by the police chief or the city treasurer or any employee assigned by the treasurer, shall certify that because of a defective parking meter, improper or missing sign, stolen vehicle, or that if all material facts had been known at the time, the parking violation should not have been issued; or, that the parking violation notice is incomplete in a material detail, erroneous, issued to a vehicle licensed out of state, is the responsibility of a nonresident of the state, or that it is not feasible to determine the identity of the violator, the violation may be disposed of by the parking violations bureau without penalty, and the certificate attesting such facts shall be attached to the notice of violation.
(Ord. No. 1403, § 2, 1-26-98)

Sec. 24-46. When complaint shall be sworn for parking offenders.
Quarterly during each year, all parking violations which have been issued for more than thirty (30) days and which have not been disposed of at the parking violations bureau, shall be delivered by the bureau to the police department. If more than two (2) parking violations against a vehicle remain undisposed of at the bureau, notices shall be delivered by the bureau to the police department without waiting for the end of the quarter. Upon receipt of any such undisposed of parking violation, the police department shall have any person having knowledge of the facts make a sworn complaint before any court having jurisdiction of the offense as provided by law.

Sec. 24-47. Collection of penalties.

The parking violations bureau is authorized to collect any penalties due hereunder in any appropriate manner, including but not limited to the use of a third party or agency, provided that any agreement for such collection services is approved by the city council.
(Ord. No. 1403, § 3, 1-26-98)

Sec. 24-48. Right to appeal.
Parking violations may be appealed to the parking violations bureau by the alleged violator. Appeals may be filed on forms available at the parking violations bureau located at the city treasurer's office. The appeal shall be reviewed pursuant to section 24-45. The alleged violator shall be notified in writing of the decision regarding the appeal.
(Ord. No. 1403, § 4, 1-26-98)

Secs. 24-49– 24-57. Reserved.

ARTICLE V.

IMPOUNDMENT OF VEHICLES*

Editor's note: Prior to its reenactment by Ord. No. 1403, § 5, adopted Jan. 26, 1998, Art. V, §§ 24-58– 24-71, was repealed in its entirety by Ord. No. 1349, § 1, adopted June 10, 1996. The former Art. V pertained to bicycles, and derived from Ord. No. 1104, adopted April 7, 1986.

Sec. 24-58. Procedure for impoundment of vehicles.
The impounding of vehicles shall be done in accordance with the Uniform Traffic Code section 2.5 or when any vehicle is identified and located whose owner has failed to answer six (6) or more parking violation notices or citations regarding illegal parking.
No person shall willfully interfere with the removal of a vehicle impounded, or being impounded, pursuant to this article. No person shall remove or attempt to remove an impounded vehicle from storage except in accordance with the procedure established by this article.
(Ord. No. 1403, § 5, 1-26-98; Ord. No. 1485, 8-14-00; Ord. No. 1504, 4-9-01)

ARTICLE VI.

MICHIGAN MOTOR VEHICLE CODE

Sec. 24-59. Code adopted.
The Michigan Motor Vehicle Code, 1949 PA 300, MCL 257.1 to 257.923 and as subsequently amended, is adopted by reference.
(Ord. No. 1543, § 1, 9-23-02)

Sec. 24-60. Reference in code.
References in the Michigan Motor Vehicle Code to "local authorities" shall mean the city.
(Ord. No. 1543, § 1, 9-23-02)

Sec. 24-61. Penalties.
The penalties provided by the Michigan Motor Vehicle Code are adopted by reference, provided, however, that the city may not enforce any provision of the Michigan Motor Vehicle Code for which the maximum period of imprisonment is greater than ninety-three (93) days.
(Ord. No. 1543, § 1, 9-23-02)

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CODE OF ORDINANCES

Chapter 25

TRAILER COACHES

Sec. 25-1. Trailer coach defined.
For the purpose of this chapter, a trailer coach is hereby defined and declared to be any vehicle used or so constructed as to permit its being used as a dwelling or sleeping place, which is or may be mounted on wheels, and is or may be propelled either by its own power or by another vehicle to which it may be attached.
State law references: Similar provisions, M.S.A., § 9.1874.

Sec. 25-2. Prohibited parking and uses.

(a) No person shall park or cause to be parked any trailer coach overnight on any street, alley, highway, or other public place.

(b) No trailer coach shall be used or occupied, unless there is a clear unoccupied space of at least ten (10) feet on all sides thereof.

(c) No person shall park or permit the parking of any occupied trailer coach, or use or occupy or permit the use or occupancy of any trailer coach on any site, lot, field, or tract of land not specifically licensed as a trailer coach park, for any period longer than seventy-two (72) hours, except as provided in this chapter.
(Ord. No. 1590, § 1, 2-21-05)

Sec. 25-3. Parking on dwelling premises.
Not more than one trailer coach may be parked, used and occupied on the premises of any dwelling except as set forth in this chapter, and then only if the occupants of the trailer coach have free access to and the unlimited use of the sanitary facilities of the dwelling on such premises and the occupant or owner of such trailer coach secures a permit as provided in this chapter.

Sec. 25-4. Permit to park on dwelling lot– Information required.
Application for a permit to park, use, and occupy a trailer coach on the premises of a dwelling shall be made to the building official of the city, and shall state the address of the dwelling, the name of the owner or occupant in control thereof, the name and address of the owner or operator and license number of such trailer coach. The consent in writing of the owner or occupant in control of the dwelling premises to such parking, use and occupancy and to the use of the sanitary facilities as required by this chapter shall accompany the application, or be endorsed thereon.

Sec. 25-5. Same– Limit on issuance.

Not more than one trailer coach parking permit shall be issued for any one trailer coach or to any one trailer coach operator or occupant in any one twelve (12) months' period. The owner or occupant of the land upon which a trailer coach is parked, used and occupied shall not be permitted to have more than one trailer coach upon such land in any one twelve (12) months' period.

Sec. 25-6. Same– Inspection; approval.
Upon the filing of the application required by this chapter, the building inspector shall cause an inspection to be made of the dwelling premises and trailer coach set forth in the application, and if he finds that adequate facilities are afforded on the premises for the disposal of waste and excreta, and if it appears that the parking, use and occupancy of such trailer coach complies with the statutes of the state and ordinances of the city, he shall approve such application.

Sec. 25-7. Same– Permit issuance; fee.
Upon approval by the building inspector and payment of a fee to the city clerk as required by chapter 21 of this Code, the clerk shall issue a permit, which shall limit the time of trailer coach parking, use and occupancy to a period of not longer than six (6) weeks from the date of the application therefor.
Cross references: Trailer coach parking permit fees, § 21-45.

Sec. 25-8. Permit display required.
Every trailer coach parking permit shall be displayed in or on the trailer coach for which it was issued on the side nearest to a public street in such manner as to be readily noticeable at all times.

Sec. 25-9. Occupancy limit for sleeping purposes.
No parked trailer coach shall be occupied for sleeping purposes by a greater number of persons than such vehicle is designed and arranged to accommodate.

Sec. 25-10. Removal of wheels; elevating, stabilizing coach.
No person shall remove or cause to be removed the wheels or tires from any trailer coach, except for the purpose of repair, nor shall any person elevate, block or stabilize any trailer coach other than with jacks designed, provided and intended for that purpose.

Sec. 25-11. Spilling, draining liquid waste.
No person shall spill or drain any waste water or liquid waste of any kind from any trailer coach upon the ground, or upon any paved area.

Sec. 25-12. Entry for inspection.
The health officer or his authorized representative, or any member of the police department shall have the authority to enter and inspect at any reasonable time any of the premises upon which a trailer coach is parked, used or occupied for the purpose of ascertaining that the owner, operator or occupant thereof is complying with all statutes, ordinances and rules and regulations governing such trailer coaches.

Sec. 25-13. Parking exception for established city parks.
Notwithstanding the prohibitions contained in section 25-2(a) and (d) of this chapter, the director of parks and recreation may grant permission to park, or cause to be parked, completely self-contained trailer coaches requiring no utility connections or the use of any public facilities other than for parking in areas of established city parks which are designated for this purpose under and regulated by the park rules and regulations established pursuant to section 17-9 of the

Code of Ordinances; provided, however, that all of the other applicable and noninconsistent requirements of Chapter 25 of this Code shall continue to apply.
(Ord. No. 1166, § 1, 5-23-84; Ord. No. 1128, § 1, 7-13-87)

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CODE OF ORDINANCES

Chapter 26

VEGETATION

Art. I. Weeds, §§ 26-1--26-13

Art. II. Dutch Elm Disease, §§ 26-14--26-31

Art. III. Trees and Shrubs Generally, §§ 26-32--26-47

ARTICLE I.

WEEDS*

* Editors Note: Section 1 of Ord. No. 1014, enacted Feb. 22, 1982, repealed former Art. I, §§ 26-1--26-3, and § 2 of said ordinance enacted, in lieu thereof, a new Art. I as herein set forth. Former Art. I contained provisions relative to weeds and harmful plants, which derived from the adoption of this Code and Ord. No. 885, § 1, enacted May 10, 1976.

Section 3 of Ord. No. 1014 provided that said ordinance shall take effect at 12:01 a.m. on March 1, 1982.

Charter References: Abatement of uncontrolled noxious weeds, § 14.2.

Sec. 26-1. Unlawful to permit growth of noxious, poisonous or injurious weeds.
It shall be unlawful for the owner or occupant or any person or persons, agent, firm or corporation having control or management of any lot, place or parcel of land within the city to permit or allow the presence thereon, or on any portion thereof, of noxious weeds of any kind, including Canada thistle (Circium arvense), dodders (any species of Cuscuta), mustards (charlock, black mustard and Indian mustard, species of Brassica or Sinapis), wild carrot (Daucus carota), bindweed (Convolvulus arvensis), hoary alyssum (Berteroa incana), ragweed (Ambrosia elatior) and poison ivy (Rhus radicans), poison sumac (Rhus vernix), hitchhiker or devils pitchfork (Bidens species), sow thistle (Sonchus species), climbing nightshade or European bittersweet (Solanum dulcamara), goldenrod, or any other varieties, species or plants designated by the city forester as poisonous or injurious. The presence of such weeds upon any lot or parcel of land within the city limits is hereby declared to be a public nuisance.
(Ord. No. 1014, § 2, 2-22-82)

Sec. 26-2. Duty of owner, occupant, etc., to cut noxious, poisonous or injurious weeds; exceptions.

(a) It is hereby made the duty of the owner or occupant or any person or persons, agent, firm or corporation having control or management of any lot, place, area or parcel of land within the city upon which noxious, poisonous or injurious weeds as described in section 26-1 hereof are found growing or standing, to destroy or cause the same to be destroyed in such manner as shall effectually prevent such weeds from perpetuating themselves. Control shall be at such times as may be necessary in order to prevent such noxious, poisonous or injurious weed from going to seed. No owner or occupant or any person or persons, agent, firm or corporation having control or management of property in this city shall knowingly suffer any noxious, poisonous or injurious weeds as described in section 26-1 hereof to grow upon said land in noncompliance with this section or shall permit such weeds to ripen so as to cause or present a danger of the spreading of such weeds.

(b) Notwithstanding the foregoing, lands more than one hundred (100) feet from a lot line of occupied residential or commercial property shall be exempt from the provisions of this section.
(Ord. No. 1014, § 2, 2-22-82)

Sec. 26-3. Other weeds, grass and brush.
(a) Height limit. It shall be unlawful for the owner or occupant or any person or persons, agent, firm or corporation having control or management of any lot, place, area or parcel of land within the city to permit or allow the presence thereon of weeds, grass or brush exceeding a height of ten (10) inches above ground level when such growth is within one hundred (100) feet of a lot line of occupied residential or commercial property and the same are hereby declared to be a public nuisance. It shall be the duty of every owner or occupant, or every person or persons, agent, firm or corporation in charge of such property upon which any said above-mentioned weeds, grass or brush is permitted to remain to cause the same to be cut down, destroyed and/or removed.

(b) Exceptions. Notwithstanding the foregoing, the following lands shall be exempt from the provisions of this section, provided that the owner of the land petitions for exemption from the provisions of this section in writing to the department of parks and recreation of the City of Midland:

(1) Undeveloped wooded areas where tree growth is in excess of ten (10) feet in height.

(2) Undeveloped parcels of four and one-half (4 ½) acres or more in non-subdivision areas.

(3) Lands where less than fifty (50) per cent of the lots are occupied.

(4) Lands where occupied lots have been developed without removing the original natural cover.

(5) Defined natural preserves.

(c) Appeals. In the event the department of parks and recreation shall deny a petition for exemption from the provisions of this section, the petitioner may appeal the decision in writing to the building board of appeals established under Chapter 5 of the Code of Ordinances of the City of Midland, and the board shall, after hearing the evidence on any such appeal, either affirm, modify or reverse the decision of the department of parks and recreation and its decision shall have the same effect as if it were the decision of the department of parks and recreation.

(Ord. No. 1014, § 2, 2-22-82; Ord. No. 1697, § 1, 5-10-10)

Sec. 26-4. Abatement of nuisance by city.
In addition to the penalties set out in this article that in the event the owner or occupant, or any person or person, agent, firm or corporation having control or management of any lot, place or parcel of land within the city fails, refuses or neglects to comply with the provisions of this article, the city and its authorized representatives are hereby empowered, upon the giving of notice, to enter upon such land for the purpose of accomplishing abatement of the violation by spraying, cutting and/or other methods deemed acceptable by the department of parks and recreation of the city. The fee shall be a minimum of $200.00 per abatement. If the cost of an abatement fee shall exceed the $200.00 minimum, the actual cost of the abatement shall be applied. All expenses incurred by the city in the performance of this work shall be reimbursed by the owner or occupant, or person or persons, agent, firm or corporation having control or management of such land or lots, and in cases where not paid, the city shall have a lien for the same in the manner hereinafter provided or pursue other collection remedies.
(Ord. No. 1014, § 2, 2-22-82; Ord. No. 1697, § 1, 5-10-10)

Sec. 26-5. General notice by publication.
It is hereby made the duty of the department of parks and recreation of the city to give general notice to every owner or occupant, or any person or persons, agent, firm or corporation having control or management of any land wherein noxious, poisonous or injurious weeds or any weeds, grass or brush exceeding a height of ten (10) inches are growing, standing or present, to cut down, destroy and/or remove the same. Such general notice shall be made by publication in a newspaper of general circulation in the city at least twice in each calendar year, once during the first half of the month of May and again during the last half of the month of June of each calendar year, and shall read substantially as follows:

City of Midland Notice of the Weed Ordinance Provisions

TO: All owners or occupants, or persons, agents, firms or corporations having control or management of any lot, place or parcel of land within the City of Midland.

Notice is hereby given that in accordance with Article I of Chapter 26 of the Code of Ordinances of the City of Midland, all noxious, poisonous or injurious weeds, or other weeds, grass or brush exceeding a height of ten (10) inches upon any property in the City of Midland shall be cut down, destroyed and/or removed.

In the event the owner or occupant, or any person or persons, agent, firm or corporation having control or management of any lot, place or parcel of land within the City of Midland shall fail, refuse or neglect to comply with the above-mentioned ordinance, a municipal civil infraction may be issued. Further, the City of Midland or its authorized representatives shall cause said noxious, poisonous or injurious weeds, grass or brush exceeding a height of ten (10) inches to be cut down, destroyed and/or removed. The expenses incurred by the City in the cutting, destruction or removal of the same will be levied and collected against such property in the manner provided by law and this article.

Certain exemptions from the requirements of the ordinance relating to area, distances, size of growth or lack of development are specifically set forth in the ordinance and may be applicable; but any owner or occupant or person or persons, agent, firm or corporation having control or management of property in the City of Midland who seeks such an exemption must petition the Department of Parks and Recreation of the City of Midland for this purpose in writing.

_____ Department of Parks and Recreation City of Midland
(Ord. No. 1014, § 2, 2-22-82; Ord. No. 1697, § 1, 5-10-10)

Sec. 26-6. Specific notice by certified mail.
(a) In addition to the general notice requirements set forth in section 26-5, it is hereby made the duty of the department of parks and recreation to give a specific notice in writing, by first class mail to the owner or occupant, or any person or persons, agent, firm or corporation having control or management of any lot, place or parcel of land within the city wherein noxious, poisonous or injurious weeds or any weeds, grass or brush exceeding a height of ten (10) inches is growing, standing or present, to cut down or remove the same within a period of seven (7) consecutive calendar days, which notice shall read substantially as follows:

Name and Address

Description

Notice of the Weed Ordinance Provisions

According to the assessment records of this City, you appear to be the owner or occupant of the above-described property which is subject to the provisions of the aforementioned ordinance.

Notice is hereby given that in accordance with Article I of Chapter 26 of the Code of Ordinances of the City of Midland all noxious, poisonous or injurious weeds or other weeds, grass or brush exceeding a height of ten (10) inches growing, standing or living upon any property in the City of Midland shall be cut down, destroyed or removed, as the case may be, on or before the ____ day of _____, 20_____.

In the event of failure to comply with this notice on or before the date set forth above, in accordance with the provisions of this ordinance, a municipal civil infraction may be issued. Further, the City shall cause said noxious, poisonous or injurious weeds or other weeds, grass or brush exceeding a height of ten (10) inches to be cut down, destroyed and/or removed. The expense incurred by the City in the cutting, destruction or removal of same will be levied and collected against such property in the manner provided by law.

Certain exemptions from the requirements of the ordinance relating to area, distances, size of growth or lack of development are specifically set forth in the ordinance and may be applicable; but any owner or occupant or person or persons, agent, firm or corporation having control or management of property in the City of Midland who seeks such an exemption must petition the Department of Parks and Recreation of the City of Midland for this purpose in writing.

_____, 20_____.

_____ Department of Parks and Recreation City of Midland
(Ord. No. 1014, § 2, 2-2-82; Ord. No. 1697, § 1, 5-10-10)

Sec. 26-7. Reimbursement to city; assessment of costs.
Whenever the department of parks and recreation or its authorized representatives shall enter upon any parcel of land in order to accomplish abatement of an existing violation pursuant to provisions of this article, the director of the department of parks and recreation is hereby authorized and directed to keep an accurate account of all expenses incurred, and based upon

the same to issue a certificate determining and certifying the costs involved for such work with respect to each parcel of property. Within ten (10) days after receipt of said certificate, the city finance director will forward a statement of total charges assessed on each parcel of property to the owner as shown by the last current assessment or tax roll, and said assessment shall be payable to the city treasurer within thirty (30) days from the date said statement was forwarded. If not paid within the prescribed thirty-day period, such statement shall be filed by the city finance director with the city assessor and shall thereupon be assessed against the land in question and become a lien on such property in accordance with the City Charter of Midland or the City has the right to initiate other collection efforts as it deems appropriate.
(Ord. No. 1014, § 2, 2-22-82; Ord. No. 1697, § 1, 5-10-10)

Secs. 26-8. Penalty.

(a) Any owner or occupant, or person or persons, agent, firm or corporation having control or management of any lot, place, or parcel of land within the City of Midland who shall violate any of the provisions of this Code hereby adopted or fails to comply therewith, may be responsible for a municipal civil infraction. Upon being found responsible of such violation, such owner or occupant, or person or persons, agent, firm or corporation having control or management of any lot, place, or parcel of land within the City of Midland shall be assessed a fine as provided in Chapter 34 of the Code of Ordinances. The imposition of one (1) municipal civil infraction fine for any violation shall not excuse the violation or permit it to continue and all such owner or occupant, or person or persons, agent, firm or corporation having control or management of any lot, place, or parcel of land within the City of Midland shall be required to correct or remedy such violations or defects within a reasonable time.

(b) The imposition of the above fine shall not be held to prevent the enforced removal of prohibited conditions. Further violations subject the owner or occupant, or person or persons, agent, firm or corporation having control or management of any lot, place, or parcel of land within the City of Midland to subsequent civil infraction violations.
(Ord. No. 1697, § 1, 5-10-10

Secs. 26-9--26-13. Reserved.

ARTICLE II.

DUTCH ELM DISEASE

Sec. 26-14. Infected trees, or potential harborage declared nuisances.
Any elm tree infected with the fungus Ceratostomella ulmi, Dutch elm disease, so-called, or any dead or dying elm tree, or stored elm logs, or elmwood, which could harbor or became a breeding place for the American or European bark beetle, the two known carriers of the Dutch elm disease, is hereby declared to be a public nuisance, and it shall be unlawful for any person to maintain such on their property after proper notification as provided in the State of Michigan Department of Agriculture, Regulation No. 613 as amended.

Sec. 26-15. Removal of infected trees or harborages on public land.
Any tree or elmwood as described in section 26-14 of this Code located on public lands within the limits of the city shall be removed at the expense of the city.

Sec. 26-16. Entry on private property.

The director of parks and recreation, his authorized employees or agents, may enter upon private property for the purpose of carrying out the terms of this article.

Sec. 26-17. Treatment of infected trees, vegetation.

When any aboveground parts of trees or vegetation on private land are found to be infected with Dutch elm disease after determination of Dutch elm infection by a designated laboratory, the director of parks and recreation shall, by written notice, give the owner of the property upon which such tree or vegetation exists a definite time, but not less than ten (10) days, to remove, treat, and dispose of all infected aboveground parts of such tree or vegetation. Disposal should be by fire or other methods approved by the parks and recreation department. If the work is not satisfactorily completed in the prescribed time, the director of parks and recreation, authorized city employees, or authorized agents may enter upon the property, and remove, treat, and destroy the infected tree or wood, by fire or other approved methods in an area so designated by the city for this purpose, at the total expense of the owner of such property.

Sec. 26-18. Removal of dead branches, trees, harborages.
After inspection of private property, the director of parks and recreation shall require, by written notice, the removal of dead or dying limbs of elm trees, or of dead elm trees or of elmwood stored on the property. When such notice is given, the owner will be given a reasonable and definite time to comply with the order, but not less than ten (10) days. If the work is not satisfactorily completed within that time, the director of parks and recreation, authorized city employees, or authorized agents may enter upon the property, make the necessary trimming or removals, property treat the wood and bark and make proper disposal of the same, at the total expense of the owner of such property.

Sec. 26-19. Lawn repair; expense.
If requested by the owner of property upon which work is done pursuant to sections 26-17 and 26-18 of this chapter, the city shall repair any damage that may occur to the lawn as a result of trimming, treating or tree removal. Such repair shall be at the expense of the owner of such property.

Sec. 26-20. Collection of costs.
The cost of trimming, treating, removal, and lawn repair pursuant to sections 26-17 and 26-18 of this Code, plus overhead shall be billed to the owner of such property. If the bill is not fully paid by April 1st of the following year, a ten per cent (10%) penalty may be added and it may be placed on the tax roll as a lien upon the property and collected in the same manner as other city taxes are collected.

Sec. 26-21. Treatment in event of epidemic or insect invasion.
In the event of an epidemic of tree disease or of insect invasion, any owner of any property within the city on which is growing any tree, plant or shrub, may be compelled to spray or treat such tree, plant or shrub upon the order of the director of parks and recreation, in accordance with the statutes of this state. In the event that such owner does not comply with such order, the city may cause such spraying or treating to be done at the expense of such owner, and collected as set forth in section 26-20 of this Code.

Secs. 26-22--26-31. Reserved.

ARTICLE III.

TREES AND SHRUBS GENERALLY

Sec. 26-32. Definitions.
The following definitions shall apply in the interpretation of this article:

Director. The word "Director" shall mean the Director of Parks and Recreation or his designated representative.

Highway. The word "highway" shall include all land lying between the property lines on either side of all public streets, boulevards and alleys.

Park. The word "park" shall include all public parks having individual names, and all areas owned by the city, or to which the public has free access.

Private trees. The words "private trees" shall include all trees located on private property.

Public trees. The words "public trees" shall include all trees located on highways or in public parks.

Roadway. The word "roadway" shall mean that part of the highway located within the curb lines which is used for vehicular travel and, where there are no curbs, that part of the highway which is used for vehicular travel, but which also includes the shoulders.
(Ord. No. 1253, § 1, 11-23-92)

Sec. 26-33. Enforcement of article.
The department of parks and recreation, under the direction of the city manager, shall be responsible for enforcing the provisions of this article.

Sec. 26-34. Promulgation of rules and regulations; obedience to same.
The Director shall make such rules and regulations supplementary to this article and not in conflict herewith, as he may from time to time deem necessary. No person shall fail to obey any rule or regulation effective hereunder.

Sec. 26-35. Control of public trees.
The Director shall have control over all trees located within the highways and parks in the city and the planting, care and removal thereof, subject to the regulations contained in this article.

Sec. 26-36. Tree or shrub protection, generally.
No person shall break, injure, mutilate, kill or destroy any tree or shrub, or set any fire within ten (10) feet of any tree, or permit any fire, or the heat thereof, to injure any portion of any tree. No toxic chemicals or other injurious materials shall be allowed to seep, drain or be emptied on, near or about any tree. No electric wires or any other lines or wires shall be permitted to come in contact with any tree or shrub in any manner that shall cause damage thereto, and no person shall attach any electric insulation to any tree. No person shall use any tree as an anchor except by special written permit from the Director, and no material shall be fastened to or hung on any tree. All persons having under their care, custody or control, facilities which may interfere with the trimming or removal of any tree, shall after notice thereof by the Director, promptly abate such interference in such manner as shall permit the trimming or removal of such tree by the Director.

Sec. 26-37. Protecting public trees on construction jobs.

In the erection, alteration, repair, or removal of any building or structure, the owner or owners thereof shall place or cause to be placed such guards around all nearby public trees, as will effectively prevent injury to such trees.

Sec. 26-38. Planting specifications--Highways and parks.
In all planting of trees in the highways, such trees shall be spaced not less than forty (40) feet apart, except when an existing tree has been approved for removal within two (2) years from date of the planting of the new tree. In no case shall a tree be planted less than thirty (30) feet from an existing tree in the highway.

No tree shall be planted in highways between the curb and the sidewalk, less than three (3) feet from the sidewalk, except where outlawns are less than six (6) feet in width, trees may be located two (2) feet six (6) inches from the sidewalk. No trees shall be planted on outlawns which are less than four (4) feet in width from the curb to the sidewalk. No trees shall be planted nearer to an intersection than twenty-five (25) feet from the intersection of the curb lines.

Sec. 26-39. Reserved.
Editors Note: Ordinance No. 1252, § 1, adopted November 16, 1992, deleted § 26-39. Formerly, such section pertained to planting specifications on private property and derived from the original Code.

Sec. 26-40. Cost of transplanting trees, planting trees necessitated by street construction.
In all street construction, the city shall pay the entire cost of transplanting of trees and planting of new trees.

Sec. 26-41. Removal of plantings which are a traffic hazard.
Any plantings, either public or private, now standing, which are a hazard in the opinion of the police department, shall be removed.

Sec. 26-42. Vision clearance for corner lots.
On any corner lot, no plantings higher than thirty-six (36) inches above the elevation of the crown of the roadway, except trees with a minimum clearance of eight (8) feet as measured from the elevation of the crown of the roadway to the lowest branch, shall be erected or maintained within an area determined by an imaginary line connecting points on the lot lines, between the highway and the corner lot, twenty (20) feet distant from the intersection of the corner property lines of the corner lot. These standards may be waived upon a determination by the director of parks and recreation, the city police chief, and the city engineer that the conditions present are not hazardous to pedestrian or vehicular traffic.
(Ord. No. 1252, § 2, 11-16-92)

Sec. 26-43. Trees to be kept trimmed; removal of public trees.

(a) *Private trees.* Any tree, bush, or shrub growing on private property, but so located as to extend its branches over an adjoining highway, shall be so trimmed by the owner of the property (or his or her agent) on which the tree, bush, or shrub is located so that there shall be a clear height, located within the parameters of the highway, unobstructed by any branches, of eight (8) feet above the surface of any public sidewalk and fifteen (15) feet above the surface of the roadway, and such owner (or his or her agent) shall also remove all dead branches or stubs on such trees, bushes, or shrubs which, as determined by the director, have become a menace to any traveler on an adjoining highway. The director is authorized to have removed any part of any trees, bushes, or shrubs which encroach into the highway as directed

above, and shall bill the property owner for the cost of said work. Failure to pay for said work on the part of any property owner shall cause said charge to become a lien on the property, and said amount shall be added to the tax bill for that property.

(b) *Public trees.* The director is hereby authorized to remove any trees or shrubs, or any portion thereof, growing on any highway, park or public place of the city, when such tree or shrub is interfering with fire hydrants, sewer and water mains, visibility along any portion of a public highway, traffic control devices, construction of highways and sidewalks, the free passage of vehicular traffic, and the free passage of pedestrian traffic wholly outside that portion of any highway used for vehicular traffic.
(Ord. No. 1252, § 2, 11-16-92)

Sec. 26-44. Removal of public trees and stumps.
Public trees may be removed only by those having authority from the director. Public trees will be removed only upon written authorization of the director and will be removed only where, in the opinion of the director, trees are undesirable or noxious. Public trees and stumps will not be removed for the installation of new driveways unless a permit for such construction has been issued by the city engineer. When public trees and stumps are removed for improvement of commercial property, a charge for the cost of the removal shall be made to the person affected. There shall be no charge for the removal of public trees in residential areas if such is approved by the director. Public trees and stumps may be removed at the owner's request and expense, by persons other than employees of the city, but only if the person to do the removing has the specific approval of the director. Any trees so removed must be removed six (6) inches or more below grade and removed from the public right-of-way at once. The tree holes shall be filled with suitable fill to the surrounding grade. Public trees shall not be removed which lift concrete sidewalk or driveway. This defect may be remedied by lifting sidewalk, removing roots, and replacing walk. Public trees will not be removed for the sole reason that the tree roots are clogging sewers.
(Ord. No. 839, § 3, 7-29-74)

Sec. 26-45. Public utilities--General responsibilities for opening street, repairing leaks.
The opening of any highway within six (6) feet of any public tree or shrub shall have the approval of the director.

If any leaks in gas lines or mains occur within forty (40) feet of a public tree, it shall be the duty of the owners of said lines to immediately repair such leaks in a manner which will give a minimum possibility of recurrence, and to replace any trees damaged by the leaks or removal of the lines.

Sec. 26-46. Same--Erection of poles.
Before any utility poles or other similar utility structures are erected on highways or park property, the director shall be consulted. The director reserves the right to regulate the height of those structures if they relate to the natural growth of existing or contemplated trees.

Sec. 26-47. Same--Tree trimming.
If the trimming of public trees necessary to accommodate utility wires is excessive in the opinion of the director, the public utility corporation doing such trimming will be required to re-locate the wires, increase the height of the pole, or employ other means not injurious to the trees.

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CODE OF ORDINANCES

Chapter 27

VEHICLES FOR HIRE*

* Charter References: Franchises generally, § 15.5.
Cross References: Police, Ch. 19; license and business regulations, Ch. 15; rates, charges, and fees, Ch. 21; traffic, Ch. 24.

Art. I. (Reserved), §§ 27-1--27-10

Art. II. Taxicabs, §§ 27-11--27-50

Div. 1. Generally, §§ 27-11--27-18

Div. 2. License, §§ 27-19--27-29

Div. 3. Drivers, §§ 27-30--27-43

Div. 4. Fares, §§ 27-44--27-50

ARTICLE I.

(RESERVED)

Secs. 27-1--27-10. Reserved.

ARTICLE II.

TAXICABS

DIVISION 1.

GENERALLY

Sec. 27-11. Definitions.

As used in this article:

City manager shall mean the city manager or his authorized representative.

Driver shall mean any person who may operate a taxicab for hire and engage in carrying passengers along the public highway and streets along the limits of the city.

Owner shall mean any person, firm, or corporation holding record title to a taxicab as indicated in the office of the Secretary of State of the State of Michigan.

Taxicab shall mean any motor vehicle that is held out to the public as being for hire for the purpose of conveying persons along the public highway and streets of the city.

Sec. 27-12. Taxicab stands.
The city council may, by resolution, provide for taxicab stands, their regulations and fees. It shall be unlawful for any owner or driver of any taxicab to use any parking space as a taxicab stand other than those provided for by council resolution.

Sec. 27-13. Physical condition of taxicabs.
All vehicles used for taxicabs or for the purpose of conveying passengers for hire, must be kept in a safe, clean, and sanitary condition, and must be properly equipped with brakes, lights, and warning signals in accordance with the motor vehicle laws of the State of Michigan and ordinances of the city. The city manager or his authorized representative shall make inspections at least annually of all taxicabs to ascertain that this section is being followed.

Secs. 27-14--27-18. Reserved.

DIVISION 2.

LICENSE*

_____
* Cross References: License and business regulations, Ch. 15.
_____

Sec. 27-19. Required.
It shall be unlawful for any driver or owner to operate a taxicab within the limits of the city without having secured from the city clerk, a license for each such taxicab.
Cross References: Taxicab license fee, § 21-47.

Sec. 27-20. Application.
Application for a taxicab license shall be made in writing, and shall contain a statement of the name and address of the applicant, the number of vehicles to be operated, the number of drivers to be employed, and such other information as may be required by the city manager.

Sec. 27-21. Same--Prerequisites to issuance.
Before the city shall issue any taxicab license under this article, each applicant shall exhibit proof that an insurance policy, as required by this article, has been filed with the city clerk, that the license fee has been paid to the city treasurer, that the police department has certified that such taxicab is fully equipped with regard to brakes, horns, lights and other requirements of the law, and that all other provisions of this article have been complied with.

Sec. 27-22. Insurance.
It shall be unlawful for any driver or owner of any taxicab to operate the same as a taxicab, unless there shall have been filed with the city clerk an insurance policy for each such taxicab prepaid for the period of its taxicab license. Such policy shall be issued by a responsible insurance company and providing indemnity for the insured of not less than twenty-five thousand dollars ($25,000.00) for injury to, or death of, one person, and one hundred thousand

dollars ($100,000.00) for injury to, or death of, more than one person, resulting from a single accident, and a further amount of not less than twenty-five thousand dollars ($25,000.00) on account of property damage to property owners, for any one accident and resulting from the negligent operation, maintenance, or use of any such taxicabs.

Each such insurance policy shall contain a clause obligating the insurer to give the city clerk, by registered mail, at least fifteen (15) days' written notice before the cancellation, expiration, lapse or other termination of such insurance. It shall be unlawful for any taxicab to operate as such after any insurance policy on such cab shall have expired or lapsed or been cancelled. A placard indicating the fact that such taxicab is insured for the amounts required herein shall be posted in a conspicuous place in each such taxicab.

Sec. 27-23. Applicants to meet all qualifications; moral character.
No taxicab license shall be issued by the city manager except to an applicant who is of good moral character and who is qualified as set forth in this article, to engage in the taxicab business.

The city manager may authorize any person to engage in a taxicab business upon proper application and payment of fees as provided in this article.

Sec. 27-24. Revocation.
Whenever any holder of any taxicab license, or any agents, servants or employees of any licensee shall cease to possess the character and qualities provided for as requisite to the issuance of such license, or whenever such holder, agents, servants or employees of such licensee shall violate this chapter or any other ordinances of the city or any state law, then the city manager is hereby empowered to revoke such license.

Secs. 27-25--27-29. Reserved.

DIVISION 3.

DRIVERS

Sec. 27-30. Driver register required.
Each person licensed under this chapter shall keep a register showing the name and address of every driver of a taxicab in his employ. A copy of such register shall be filed with the city manager with changes and additions that may occur from time to time.

Sec. 27-31. Certificate of fitness--Required.
No person licensed under this chapter, nor any person employed by any licensee under this chapter, shall operate any taxicab in the city, who has not first applied for and received from the city manager, a certificate of fitness to drive a public passenger vehicle.
Cross References: Taxicab driver's certificate of fitness fee, § 21-46.

Sec. 27-32. Same--Application.
Any person desiring to secure a certificate of fitness shall make application in writing to the city manager. Such application shall give the name and address of the applicant, the name of and the length of service with his present employer, information as to previous employment, and names of at least two (2) responsible citizens of the city as references. Such applicant shall also be fingerprinted, and shall furnish a legible photo of the size and appearance as shall be determined by the city manager.

Sec. 27-33. Same--Not to be issued to convicted felons.
No certificate of fitness shall be issued by the city manager to any person who has been convicted of a felony.

Sec. 27-34. Same--Issuance.
A certificate of fitness shall be issued by the city manager to any person of good moral character who shall satisfy the city manager that he has the necessary physical faculties and the ability to drive a motor vehicle on the streets of the city in a safe and efficient manner.

Sec. 27-35. Same--Revocation.
Any certificate of fitness may be revoked by the city manager for violation by the holder thereof of any ordinance of the city, or of any state law, or whenever the holder of such certificate shall cease to possess the character and qualifications provided for in this chapter, as requisite to the issuance of such certificate.

Sec. 27-36. Certificate to be carried.
Any person receiving a certificate of fitness as a driver shall carry such certificate while engaged in the operation of any taxicab, and shall exhibit such certificate whenever requested to do so by any passenger or any police officer.

Sec. 27-37. Conduct of driver.
It shall be unlawful for any driver or person in charge of a taxicab to conduct himself in other than a gentlemanly manner while so occupied.

Secs. 27-38--27-43. Reserved.

DIVISION 4.

FARES

Sec. 27-44. Establishing fares, charges; rate variance declared unlawful.
Within thirty (30) days following the effective date of this section, every person, firm or corporation holding a license issued pursuant to this chapter shall file with the city clerk a statement of the fares and charges in effect on the date of enactment of this section for the use of taxicabs for hire. Thereafter, fares and charges may be added, changed or deleted by the licensee by filing with the city clerk, a schedule of such new fares and charges at least ten (10) days before the effective date of any change in fares or charges. It shall be unlawful for any owner or driver to make any different charge than that filed by the licensee with the city clerk and in effect.
(Ord. No. 837, § 1, 7-15-74)

Sec. 27-45. Rates to be posted in cabs; receipts to be furnished.
It shall be the duty of the owner or operator to post a schedule of charges within each taxicab corresponding to the statement of fares and charges filed with the city clerk and in effect so that any passenger or passengers being conveyed may readily read such fares or charges. A driver shall furnish a receipt for fare upon payment of same at the request of any passenger.
(Ord. No. 837, § 2, 7-15-74)

Sec. 27-46. Advertisement of different rates declared unlawful.

It shall be unlawful for any owner or driver of any taxicab to advertise any schedule of rates to the public if such schedule differs from the rates determined by the council.

Sec. 27-47. Receipt to be furnished on demand.
It shall be the duty of all owners or drivers of any taxicabs to furnish a receipt for the amount of the fare upon demand by any passenger.

Sec. 27-48. Taxi meters--Generally.
Each taxicab shall be equipped with an accurate and dependable taxi meter designed or intended to measure the distance traveled, register the time the vehicle is in waiting, and to record the charge or fare therefor. Such taxi meter must be placed as to be readily visible to passengers and should be maintained in good operating condition at all times. The city manager may cause to be examined, inspected, and sealed all taxi meters periodically as he shall deem necessary.

Sec. 27-49. Same--Physical condition of meter.
It shall be unlawful for the owner or person in charge of any taxicab to use, or permit its use, until the taxi meter has been examined and sealed by the city manager, or to use such vehicle when the taxi meter has been condemned by the city manager.

Sec. 27-50. Reserved.

Editors Note: Ord. No. 837, § 3, enacted July 15, 1974, repealed § 27-50 pertaining to the establishment of a zone rate system and requiring that taxicabs be equipped with a readily visible zone map.

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CODE OF ORDINANCES
Chapter 28

WATER, SEWERS AND SEWAGE DISPOSAL*

* Charter References: Authority of city to use and control streams and water-courses, § 2.2; city authorized to own and operate water and sewer system, § 16.1; city manager to manage and supervise all city utilities, and to have charge of construction and repair of sewers, § 8.2.

Constitution reference--Authority of city to own and operate water and sewage disposal facilities, Art. VII, § 24.

Cross References: Buildings and building regulations, Ch. 5; garbage, refuse and litter, Ch. 10; housing code, Ch. 12; public improvements, Ch. 20; rates, charges and fees, Ch. 21; streets and sidewalks, Ch. 22; water and sewer system in subdivisions, § 23-196; subdivisions, Ch. 23; stormwater runoff regulation and control, Ch. 29.

Art. I. In General, §§ 28-1--28-11

Art. II. Water, §§ 28-12--28-97

Div. 1. Generally, §§ 28-12--28-35

Div. 2. Filtered Service and Extensions, §§ 28-36--28-44

Div. 3. Rates, Charges, Billing, §§ 28-45--28-66

Div. 4. Reserved, §§ 28-67--28-97

Art. III. Sewers and Sewage Disposal, §§ 28-98--28-238

Div. 1. Generally, §§ 28-98--28-145

Div. 2. Sewer Board of Appeals, §§ 28-146--28-160

Div. 3. Rates, §§ 28-161--28-175

Div. 4. Connections, §§ 28-176--28-205

Div. 5. Wastewater Contribution Permits, §§ 28-206--28-225

Div. 6. Industrial Pretreatment Program, §§ 28-226--28-238

ARTICLE I.

IN GENERAL

Sec. 28-1. Extending water, sewer service beyond corporate limits.
It shall be unlawful for any person who purchases water from the city, or is serviced by city sewer mains, to extend water or sewer service to facilities located outside of the corporate limits of the city without the express approval of the city council. The superintendent of water shall enforce this section and shall be authorized to make application in the proper court for writ or injunction restraining any person from violating this section.

Charter References: City authorized to sell and deliver water and sewer service outside corporate limits, § 16.1.

Constitution reference--Authority of city to deliver water and provide sewage disposal service outside of corporate limits, Art. VII, § 24.

Sec. 28-2. Findings--Water.

(a) *Necessity for potable water.* The city council has previously found, and currently reaffirms that the businesses, industries, governmental and charitable agencies and residents located in the city need to have potable and otherwise usable water.

(b) *Availability of potable water.* The city council further has previously found, and currently reaffirms, that the supply of potable water available from private wells within the city is insufficient to assure that all businesses, industries, governmental and charitable agencies, and residents will have sufficient potable water available for their use and other water necessary for industrial and fire prevention and control unless the city offers water to all properties located within the city.

(c) *Method for measuring use--water supply services.* Based on advice of its engineers, the city council has previously found, and currently reaffirms, that the most precise method, given available technology, of measuring the use of the water supply from the system by any user is by a meter or meters installed and controlled by the city.

(d) *Continuation of service.* The city council has previously found, and further currently reaffirms that, in order to provide and continue to provide clean potable and other usable water to all customers of the system, in quantities necessary for all varieties of use, it is necessary from time to time to install improvements, enlargements, extensions and repairs to the system.

(e) *Purpose of charges.* The charges and fees for the use of and connection to the system are hereby established for the purpose of recovering the cost of acquisition, construction, reconstruction, maintenance, repair, and operation of the system and to comply with federal and state safe drinking water acts and related regulations, to provide for the payment of principal of and interest on any bonds authorized to be issued as and when the same become due and payable, to create a bond and interest redemption fund therefor, to provide a fund for reasonable and necessary improvements to the system, to provide a fund for equipment replacement and to provide for such other funds as are necessary to meet contractual obligations of the city. Such charges and fees shall be made in accordance with the purposes herein described as well as the following:

(1) All premises connected directly or indirectly to the system, except as hereinafter provided, shall be charged and shall make payments to the city in amounts computed on the basis of this chapter.

(2) The charges, rates and fees for water service by the system are established herein to adequately provide for bond requirements and to ensure that the system does not operate at a deficit.

(3) The system staff or designated parties shall periodically review the charges, rates, fees, rules and regulations of the system, which review shall be completed not less than one (1) time per fiscal year. Results of the review shall be reported to the city council with recommendations for any adjustments.

(4) The charges, rates and fees shall be set so as to recover costs from users in reasonable proportion to the cost of serving those users.

(f) *Proportionality, fairness, and benefits of charges, rates and fees.* The city council has previously found and further currently reaffirms that the fairest and most reasonable method of providing for the operation, maintenance, repair, replacement and improvement of the system is to charge each user, based in all cases on amount of use, for the costs of: (i) retiring debt secured by the net revenues of the system issued to pay for improvements and replacements to the system; (ii) ongoing repair, replacement and improvement and budgeted as part of the annual costs of the system; and (iii) operation, administration and maintenance costs of the system.

The city has investigated several methods of apportioning the costs of the water service provided by the system. Based on its investigation and on the advice of its engineers, the city council has previously found, and currently reaffirms, that to ensure the stability and viability of the system for the benefit of its users, the fairest and most accurate way to apportion the costs of operation, maintenance, replacement and improvement of the system is to charge each user: (i) a connection fee and a capital charge for water service when such user's property is first connected to the system; (ii) a commodity rate for the use of water; (iii) a readiness-to-serve charge; and (iv) other charges and costs for services which are equivalent to the cost of providing such services. The city council has previously found, and currently reaffirms that the rates and charges currently in effect accurately apportion the fixed and variable costs of the system among the users of the system and that the commodity rate and the readiness-to-serve charges each provide actual benefits to such users in the form of ready access to water service that would be unavailable if such charges were not charged.

In addition to the findings set forth above, the city council has previously found and currently reaffirms that the capital charge reflects the depreciated capital costs of the system, previously paid by the city and the system, less grants, attributable to each new user and that the opportunity to connect to the system provides actual benefits to each new user equal to or greater than the amount of such charges.

Furthermore, the city council has previously found and currently reaffirms that the charges imposed by the system are sufficient to meet the short-term capital improvement needs of the system.

(g) *Design life of improvements.* Based on the advice of its engineers, the city council has previously found and currently reaffirms that any improvements to or capital

expenditures for the system paid for by rates and charges did not, at the time such improvements were constructed and financed, have an expected design life that would exceed the term of the respective bonds issued to finance such improvements or capital expenditures.

(h) *Charges for non-residents.*

Contracts for water service. The city has previously entered, and may continue to enter, into contracts with municipalities adjacent to the city, to provide service to users of the water supply system located in those municipalities. Rates and charges billed for use by the residents of those municipalities shall be in accordance with the applicable contract.

Charges for service to customers outside city where no other contract compensates the city for indirect costs. The city has previously found, and hereby ratifies and confirms, that the total direct and indirect costs of providing service to customers outside the city jurisdiction, where no other contract exists with the governmental units where those customers are located, equals at least 1.75 times the rates and charges imposed for direct services and debt service cost to customers located in the city. Indirect costs include payment for capital improvements, extraordinary repairs and replacements for the water supply system benefiting all users of the system and paid for by customers served within the corporate limits of the city or the corporate limits of other municipalities which have entered into contracts with the city for such costs, funding depreciation of the improvements to the water supply system, and fire and police or other protection for the water supply system paid by city taxpayers or by the governmental units with which the city has contracts for water supply.
(Ord. No. 1513, § 1, 7-23-01)

Sec. 28-3. Establishment of the water distribution system.
Based on the findings and for the purposes set forth in section 28-2, the city has previously established and hereby re-establishes the water distribution system, consisting of all water mains, pumping and storage facilities, pressure systems, wells, connections, service pipes, meters, and all other appurtenances to the system.
(Ord. No. 1513, § 1, 7-23-01)

Sec. 28-4. Findings-Sewer.

(a) *Necessity for sewage disposal.* The city council has previously found, and currently reaffirms, that the use of septic tanks, privies, privy vaults, cesspools, or similar private sewage disposal facilities, may be deleterious to the health, safety and welfare of the businesses, industries, governmental and charitable agencies, and residents of the city and that the health, safety and welfare of the businesses, industries, governmental and charitable agencies and residents is enhanced by the creation of a public sewer system and wastewater treatment plant, with regulation by the city of pollutants and other harmful materials according to state and federal standards.

(b) *Method for measuring use--sewage disposal services.* Based on advice of its engineers, the city council has previously found, and currently reaffirms, that the most practical, cost effective and accurate method, given available technology, of measuring the use of the system's sewers by any user is by the meter or meters used to measure water usage.

(c) *Continuation of service.* The city council has previously found, and further currently reaffirms that, in order to provide and continue to provide for the safe and uninterrupted removal and treatment of sewage, pollutants and other harmful materials, it is

necessary from time to time to install improvements, enlargements, extensions and repairs to the system's sewers and sewer service pipes.

(d) *Purpose of charges.* The charges and fees for the use of and connection to the system are hereby established for the purpose of recovering the cost of acquisition, construction, reconstruction, maintenance, repair, and operation of the system and to comply with federal and state safe drinking water acts and related regulations, to provide for the payment of principal of and interest on any bonds authorized to be issued as and when the same become due and payable, to create a bond and interest redemption fund therefor, to provide a fund for reasonable and necessary improvements to the system, to provide a fund for equipment replacement and to provide for such other funds as are necessary to meet contractual obligations of the city. Such charges and fees shall be made in accordance with the purposes herein described as well as the following:

(1) All premises connected directly or indirectly to the system, except as hereinafter provided, shall be charged and shall make payments to the city in amounts computed on the basis of this chapter.

(2) The charges, rates and fees for sewer service by the system are established herein to adequately provide for bond requirements and to ensure that the system does not operate at a deficit.

(3) The system staff or designated parties shall periodically review the charges, rates, fees, rules and regulations of the system, which review shall be completed not less than one (1) time per fiscal year. Results of the review shall be reported to the city council with recommendations for any adjustments.

(4) The charges, rates and fees shall be set so as to recover costs from users in reasonable proportion to the cost of serving those users.

(e) *Proportionality, fairness, and benefits of charges, rates and fees.* The city council has previously found and further currently reaffirms that the fairest and most reasonable method of providing for the operation, maintenance, repair, replacement and improvement of the system is to charge each user, based in all cases on amount of use, for the costs of: (i) retiring debt secured by the net revenues of the system issued to pay for improvements and replacements to the system; (ii) ongoing repair, replacement and improvement and budgeted as part of the annual costs of the system; and (iii) operation, administration and maintenance costs of the system.

The city has investigated several methods of apportioning the costs of the sewage disposal service provided by the system. Based on its investigation and on the advice of its engineers, the city council has previously found, and currently reaffirms, that to ensure the stability and viability of the system for the benefit of its users, the fairest and most accurate way to apportion the costs of operation, maintenance, replacement and improvement of the system is to charge each user: (i) a connection fee and a capital charge for sewer service when such user's property is first connected to the system; (ii) a commodity rate for the use of sewer services; (iii) a readiness-to-serve charge; and (iv) other charges and costs for services which are equivalent to the cost of providing such services. The city council has previously found, and currently reaffirms that the rates and charges currently in effect accurately apportion the fixed and variable costs of the system among the users of the system and that the commodity rate and

the readiness-to-serve charges each provide actual benefits to such users in the form of ready access to sewer service that would be unavailable if such charges were not charged.

In addition to the findings set forth above, the city council has previously found and currently reaffirms that the capital charge reflects the depreciated capital costs of the system, previously paid by the city and the system, less grants, attributable to each new user and that the opportunity to connect to the system provides actual benefits to each new user equal to or greater than the amount of such charges.

Furthermore, the city council has previously found and currently reaffirms that the charges imposed by the system are sufficient to meet the short-term capital improvement needs of the system.

(f) *Design life of improvements.* Based on the advice of its engineers, the city council has previously found and currently reaffirms that any improvements to or capital expenditures for the system paid for by rates and charges did not, at the time such improvements were constructed and financed, have an expected design life that would exceed the term of the respective bonds issued to finance such improvements or capital expenditures.

(g) *Charges for non-residents.*

Contracts for sewage disposal services. The city has previously entered, and may continue to enter, into contracts with municipalities adjacent to the city to provide sewage disposal services in those municipalities. Rates and charges billed for use by the residents of those municipalities shall be in accordance with the applicable contract.

Charges for service to customers outside city where no other contract compensates the city for indirect costs. The city has previously found, and hereby ratifies and confirms, that the total direct and indirect costs of providing sewage disposal service to customers outside the city jurisdiction, where no other contract exists with the governmental units where those customers are located, equals at least 1.75 times the rates and charges imposed for direct services and debt service cost to customers located in the city. Indirect costs include payment for capital improvements, extraordinary repairs and replacements for the sewage disposal system benefiting all users of the system and paid for by customers served within the corporate limits of the city or the corporate limits of other municipalities which have entered into contracts with the city for such costs, funding depreciation of the improvements to the sewage disposal system, and fire and police or other protection for the sewage disposal system paid by city taxpayers or by the governmental units with which the city has contracts for sewage disposal services.
(Ord. No. 1513, § 1, 7-23-01)

Sec. 28-5. Establishment of the sewage disposal system.
Based on the findings and for the purposes set forth in section 28-4, the city has previously established and hereby re-establishes the sewage disposal system, consisting of all sewers, interceptors, pipes, treatment facilities and all other appurtenances to the system.
(Ord. No. 1513, § 1, 7-23-01)

Secs. 28-6--28-11. Reserved.

ARTICLE II.

WATER

DIVISION 1.

GENERALLY

Sec. 28-12. Definitions.
When used in this article, the following terms shall be construed as defined in this section, unless a different definition shall be adopted for any division of this article:

Backflow. Any water entering the public water supply provided by the city due to a reversal of flow.

City treasurer. The duly appointed officer of the city, or his authorized representative.

Cross connection. A connection or arrangement of piping or appurtenances through which backflow could occur.

Domestic customer. An individual customer with his own service and external shutoff who is served water for domestic purposes only. This does not include a business, corporation, partnership, etc., which is using water or reselling water to renters or when more than one apartment, business, etc., is served from one meter.

Operation and maintenance. The labor, material, and other costs incurred by the performance of operation and maintenance of a water system.

Readiness-to-serve charge. A charge approximately equal to the proportional fixed costs of the city's water system attributable to each user.

Superintendent of water. That duly appointed officer of the city, or his authorized representative.

Water connection or *service.* A tap into a water main.

Water extension. That part of the consumer's water supply system extending from the end of the water connection into the premises served and ending at the city's water meter.

Water main. That portion of the water distribution system lying in the public right-of-way and of a size adequate to serve more than one (1) customer.
(Ord. No. 824, § 1, 8-27-73; Ord. No. 1012, § 1, 2-15-82; Ord. No. 1513, § 1, 7-23-01)

Sec. 28-13. Where mains are installed; grant of easement.
All water mains shall be installed in public rights-of-way. However, where it is deemed necessary by the water department that certain water mains be installed in private property, the property owner shall grant an easement to the city for the purposes of meter reading, inspection and maintenance of water mains.

Sec. 28-14. Structure to have individual connection.
Every dwelling, building or structure furnished city water shall have its individual water connection.

Sec. 28-15. Elimination of cross connections required; adoption of water supply cross connection rules.

Cross connections of the filtered and unfiltered public water systems provided by the city with any other water supply system shall not be permitted.

The city hereby adopts by reference the water supply cross connection rules of the Michigan Department of Public Health being 325.431 to R 325.440 of the Michigan Administrative Code.

It shall be the duty of the superintendent of water to cause inspections to be made of all properties served by the public water supply where cross connections are deemed possible. The frequency of inspections and reinspections based on potential health hazards involved shall be as established by the superintendent of water and as approved by the Michigan Department of Public Health.

The superintendent of water shall have the right to enter at any reasonable time any property served by connection to public water system of the city for the purpose of inspecting the piping system or systems thereof for cross connections. On request, the owner, lessee or occupants of any property so served shall furnish to the inspection agency any pertinent information regarding the piping system or systems on such property. The refusal of such information or refusal of access, when requested, shall be deemed prima facie evidence of the presence of cross connections.

The superintendent of water is hereby authorized and directed to discontinue water service after reasonable notice to any property wherein any cross connection or other violation of this section exists, and to take other precautionary measures deemed necessary to eliminate any danger of contamination of the public water supply system. Water service to such property shall not be restored until the water connection or cross connection has been eliminated.

Potable supply made available on the properties served by the public water supply shall be protected from possible contamination as specified by this section and by the State and City of Midland Plumbing Codes. Any water outlet which could be used for potable or domestic purposes and which is not supplied by the potable system must be labeled in a conspicuous manner as: "WATER UNSAFE FOR DRINKING."

This section does not supersede the State Plumbing Code or City of Midland Plumbing Code, that being Chapter 18 of the Midland Code of Ordinances, but shall be considered supplementary to them.
(Ord. No. 824, § 2, 8-27-73)

Sec. 28-16. Connection installation.
Water connections shall be installed upon the prepayment of the estimated cost of construction.

Sec. 28-17. Permission to construct extension.
Permission to construct a water extension shall be implied with the purchase of each water connection.

Sec. 28-18. No branches or connections allowed off extension.
There shall be no branches or connections off the extension pipe connecting the water supply main with the water meter.

Sec. 28-19. Structures and customers to have water meter and outside shutoff valve.

Every dwelling, building or structure furnished city water shall have its own water meter and outside shutoff valve. Every customer furnished city water shall have their own water meter and outside shutoff valve.
(Ord. No. 1012, § 1, 2-15-82)

Sec. 28-20. Place for meter installation; when city provides same; charges.

(a) Customers shall provide a suitable place for meter installation.

(b) In event of the failure or refusal of a customer to provide a suitable place, or if in the judgment of the water department damage may result to the meter through frost or other agency, the city may provide a suitable place for installation and charge the customer an additional fifty dollars ($50.00) or actual labor and material costs, whichever is greater. The amount of such charge may be assessed against the customer in the next ensuing quarter, and be collected in the same manner as other water charges.
(Ord. No. 1012, § 1, 2-15-82)

Sec. 28-21. Interfering, tampering with meters; ownership.
No person other than an authorized employee of the city shall break or injure the seal on, or change the location of, or alter or interfere in any way with any water meter. All meters are property of the city.
(Ord. No. 1120, § 1, 3-23-87)

Sec. 28-22. Expense of negligent injury to be borne by occupant of premises.
Whenever a water meter is injured because of any act or negligence on the part of the owner or occupant of the premises where such meter is installed, the expense of the city caused thereby shall be charged to and collected from such owner or occupant in the same manner as other water charges.
(Ord. No. 1012, § 1, 2-15-82)

Sec. 28-23. Who may turn on and off service.
No person, other than an authorized employee of the city, shall turn on or off any water service, except that a licensed plumber may turn on a water service for testing an extension system, after which the plumber shall immediately turn the water service off.

Sec. 28-24. Mayor's declaration of water emergency.
At such time as the mayor shall determine that water consumption within the city has or is about to exceed the supply available to the city for its uses on a continuing basis, he may declare that a water emergency exists.

Sec. 28-25. Water uses prohibited during water emergency.
When the mayor has declared that a water emergency exists, the use and withdrawal of water by any person from the city water distribution system for any of the following purposes is hereby prohibited:

(a) Watering of yards. The sprinkling, watering or irrigation of shrubbery, trees, lawns, grass, ground covers, plants, vines, gardens, vegetables, flowers and any other vegetation.

(b) Cleaning outdoor surfaces. The washing of sidewalks, driveways, filling station aprons, porches, patios and other outdoor hard surface areas.

(c) Swimming pools. Swimming and wading pools not employing a filter and recirculating system.

(d) Escape through defective plumbing. The escape of water through defective plumbing, which shall mean the knowing permission for defective plumbing to remain out of repair.

Sec. 28-26. Declaration of existence, termination of emergency.
When the mayor shall have declared that a water emergency exists, notice thereof shall be given by releasing such declaration to the official newspaper and to all radio stations maintaining studios within the city. Such notice shall advise of the time of commencement of such emergency and that such emergency shall continue until notice of termination is given by the mayor through the same media.

Sec. 28-27. Termination of emergency.
When the mayor shall determine that the conditions which caused the declaration of a water emergency no longer exists, he shall so declare and give notice of such determination as provided in section 28-26.

Sec. 28-28. Penalty for violation of water emergency regulations.
Any person who shall knowingly, during any water emergency, use or withdraw water from the city water distribution system for any of the purposes prohibited in section 28-25, shall be guilty of a misdemeanor, and shall be subject to a fine of not to exceed twenty-five dollars ($25.00) for each violation and, in addition, if he refuses to discontinue such violation, be subject to the discontinuance of water service during the continuance of such emergency.

Sec. 28-29. Rule making by council.
The city council may, by resolution, adopt such rules and regulations as it may deem necessary to administer the terms of this article.

Secs. 28-30--28-35. Reserved.

DIVISION 2.

FILTERED SERVICE AND EXTENSIONS

Sec. 28-36. Installation of service, extension to property line.

The water department shall, where a filtered water main is adjacent to the property of a customer, install water service and extension from the main to the customer's property line.

Sec. 28-37. City meters to be used.
Meters to be used in the installation of the filtered service and extension pursuant to section 28-36 shall be only those which are obtained from the water department.

Sec. 28-38. Cost of filtered service, extension and installation.
The cost of the installation of a filtered water service and extension shall be determined as follows:

(a) The installation from the main to the curb box, which shall be located on the street side of the sidewalk line, shall include the tapping of the main, the furnishing and installing

of all necessary valves, pipe and fittings from the main to the curb box plus the cost of the meter and the meter fittings. The cost thereof, payable in advance, shall be according to the following schedule if the service is applied for between April 1 and November 30:

3/4" service $470.00

1 " service 550.00

1 1/4" service 625.00

1 1/2" service 815.00

2 " service 975.00

(b) If the service installation is installed by customer request between December 1 and March 31, an additional charge of seventy-five dollars ($75.00) shall be added to the service connection fee.

(c) In addition to the service connection fee set forth in paragraph (a) above, a one-time water system capital charge shall be paid in advance of connection in accord with the following schedule:

3/4" service . . . . . $ 800.00

1 " service 1,040.00

1 1/4" service 1,200.00

1 1/2" service 1,280.00

2 " service 2,080.00

3 " service 8,000.00

4 " service 10,400.00

6 " service 15,200.00

8 " service 21,600.00
(Ord. No. 908, § 1, 7-25-77; Ord. No. 947, § 1, 6-18-79; Ord. No. 1012, § 1, 2-15-82; Ord. No. 1120, § 1, 3-23-87; Ord. No. 1271, § 1, 9-13-93; Ord. No. 1277, § 1, 9-20-93)

Sec. 28-39. Property not having previously paid for a water main.
For property which has not borne the expense of the construction of water mains, a water connection permit shall not be granted until a payment is made by the owner of said property at a rate equal to one-half (1/2) the cost of construction of an eight-inch water main, indexed to the year of construction using *The Engineering News Record*, "The Construction Cost Index," and calculated by the city engineer on a front foot basis, is paid. The property owner may choose to pay this fee in five (5) installments, the first installment being due at the time of connection, and the deferred installments being due annually thereafter, with interest accumulating at the rate of the most recent rate established by the city council for annual

payments of special assessments. In such event, this charge shall constitute a lien on the premises subject thereto, and that amount shall also be a debt to the person to whom assessed until paid.

Annually, the city engineer shall notify the director of fiscal services of any such charges due. The director of fiscal services shall forward a statement of the total charges assessed on each parcel of property to the owner, as shown by the last current assessment or tax roll, and said assessment shall be payable to the city treasurer within thirty (30) days from the date said statement was forwarded. If not paid within the prescribed thirty-day period, such statement shall be filed by the director of fiscal services with the city assessor and shall thereupon be assessed against the land in question and become a lien on such property, in accordance with the City of Midland charter. The amount so charged may be discharged at any time by the payment of the amount specified in the statement, together with the accrued interest compiled from the time of filing said statement with the city assessor. An additional charge, payable at the time of connection, shall be made for the connection line from the water main to the property line of the property to be served, as provided for in section 28-38.
(Ord. No. 908, § 2, 7-25-77; Ord. No. 1258, § 1, 3-15-93; Ord. No. 1326, § 1, 8-28-95)

Secs. 28-40--28-44. Reserved.

DIVISION 3.

RATES, CHARGES, BILLING*

* Editors Note: Ord. No. 1513, § 1, adopted July 23, 2001, amended div. 3 in its entirety, in effect repealing and reenacting div. 3 to read as herein set out. Formerly, div. 3 pertained to unfiltered service and extensions and derived from original codification.

Sec. 28-45. City may establish water rates.
The city may classify the users of water service according to the quantities and types of water supplied, and charge such rates to users in each class in proportion to the costs of providing water service to, and according to the benefits received by, such classes of users.
(Ord. No. 1513, § 1, 7-23-01)

Sec. 28-46. Reserved.

Sec. 28-47. Meters to be used to measure quantity; remote type meters required.
Where water rates are based on quantities supplied, the quantities shall be determined and measured by city water meters. The superintendent of water may require installation of remote type reading meters if the water department is unable to enter a structure to read a customer's water meter, whenever meter replacement is required and for new water service installations.
(Ord. No. 1513, § 1, 7-23-01)

Sec. 28-48. City may estimate consumption when meter fails or when unable to read meter.
In the event that a water meter shall fail to register properly, or the city is unable to gain entry to read the meter, the city is empowered to estimate the quantity of water used on the basis of information available and bill accordingly.
(Ord. No. 1513, § 1, 7-23-01)

Sec. 28-49. Right of entry for inspection, meter reading.

All water service contracts entered into shall give the city's authorized agent authority to enter upon the consumer's premises for the purpose of reading or inspecting a water meter or any piping connected with the consumer's water system.
(Ord. No. 1513, § 1, 7-23-01)

Sec. 28-50. Deposit for filtered water service; refund.

(a) *Deposit required.* Before any premises may be served with water or sewerage service, a deposit of not less than thirty-five dollars ($35.00) and not more than the amount of an estimated bill for six (6) months' filtered water and sewerage usage for the applicable service, as estimated by the water department, shall be required from all applicants for service when the applicant is not the owner of the premises where the service is provided.

(b) *Interest on security deposits.* The water department will apply interest to the deposit accounts of all users with security deposits over fifty dollars ($50.00). For deposits exceeding fifty dollars ($50.00), interest at the rate of four (4) percent per annum shall be credited to the customer's account, said interest to be computed annually on all sums that have remained on deposit for six (6) months and to be credited semiannually. Accrued interest due shall be paid at the time the deposit is refunded.

(c) Notification necessary to waive lien. When a tenant is responsible for payment of water and/or sewer bills and a lease has been executed containing a provision that the lessor not be liable for water and/or sewer charges, then it shall be the responsibility of the lessor to so notify the water department office with an appropriate affidavit signed by both parties requesting a waiver or lien.

The affidavit must state: "Tenant is totally responsible for all charges for water and/or sewer service furnished to the said premises by the City of Midland. Tenant understands that no service shall be commenced to the above address until there has been deposited with the city a sum sufficient to cover twice the average quarterly bill with a one hundred ten dollars ($110.00) minimum, and a copy of the lease including the affidavit furnished to the city. Tenant further understands that payment of charges for water and/or sewer service may be enforced by discontinuing the services to the premises." The affidavit shall state the expiration date of the lease. Upon receipt of such notification, the city will waive its lien pursuant to Public Act 178 of the Public Acts of the State of Michigan, of 1939, as amended, and the water and sewer bills to the lessee within the term of the lease shall not be a lien against the property. Upon expiration of the lease, a new affidavit must be submitted to retain the lien waiver. Without such notification, water and/or sewer bills will be a lien against the property served regardless of any lease provisions between the parties. The water and/or sewer bills shall be in the name of the premises except as provided by this section concerning tenants.

(d) *Security deposits in lieu of lien.* When the water department has received and approved a request from the property owner for a waiver of lien, then a cash deposit will be required of the lessee as security for payment of all water and/or sewer charges. Said cash deposit shall be equal to two (2) times the estimated quarterly bill for water and/or sewer charges, but in no case, less than one hundred ten dollars ($110.00).

Sec. 28-51. When two customers are served by one connection.

In the event one water connection serves two (2) or more customers, the water meter or meters shall be in the name of one individual or organized group of individuals contracting with the city for service, and such individual or organized group of individuals shall be responsible for all water service charges.
(Ord. No. 1513, § 1, 7-23-01)

Sec. 28-52. Filtered water rate generally.
The city's methodology of adjusting water rates shall be in accordance with the cost of service water and sewer rate study prepared by the city's consultant, presented to and approved by the council in 1993 and shall be in conformity with the findings set forth in section 28-2 of this chapter.
All filtered water bills shall be calculated according to the following:
(1) For each one thousand (1,000) gallons used per quarter: $1.32
(2) In addition to the rate set forth in this section for the use of water, there shall be a readiness-to-serve charge per quarter on each metered service as follows:

Metered Service	Amount
5/8" – 3/4”	$35.55
1"	$46.22
1- 1/2"	$56.88
2"	$92.43
3"	$355.50
4"	$462.15
6"	$675.45
8"	$959.85

(3) Gross rates shall be ten (10) percent greater than the above schedule of rates and shall be charged for water service paid for after the date shown on the bills.

(Ord. No. 1513, § 1, 7-23-01; Ord. No. 1581, § 1, 6-28-04; Ord. No. 1619, § 1, 6-26-06; Ord. No. 1635, § 1, 06-25-07 ; Ord. No. 1659, § 1, 06-23-08; Ord. No. 1681, § 1, 06-22-09; Ord. No. 1707, § 1, 06-28-10; Ord. No. 1716, § 1, 06-27-11; 1731, § 1, 06-25-12; 1748, § 1, 06-24-13)

Sec. 28-53. Rate for filtered water used in construction when meter cannot be used.

(a) For construction work where, due to weather or other conditions, it is impracticable to furnish a temporary meter connection, a minimum charge of forty dollars ($40.00) per service connection shall be made. Water used should be metered or may be estimated by the water department, and the charges shall be one dollar and ten cents ($1.10) per one thousand (1,000) gallons for water used over the first one thousand (1,000) gallons.

(b) Where it is determined by the water department that it is desirable to allow temporary water use from a fire hydrant, permission may be given in writing by the water department. A forty dollar ($40.00) minimum charge per service connection shall be paid in advance; and an additional charge of one dollar and ten cents ($1.10) per one thousand (1,000) gallons used, either metered or estimated by the water department, shall be made if the amount of water to be used is estimated to be greater than one thousand (1,000) gallons.
(Ord. No. 1513, § 1, 7-23-01)

Sec. 28-54. Use of water from fire hydrant without permission.
It shall be unlawful for any person to use water from a fire hydrant without obtaining permission from the superintendent of water or his designated representative.
(Ord. No. 1513, § 1, 7-23-01)

Sec. 28-55. Filtered water used for private fire defense.
For water service for private fire defense to private consumers through service connections, filtered water rates shall be determined in accordance with the size of the fire connection as follows:

6" connections, per quarter . . . . . $ 41.50

8" connections, per quarter 66.40
(Ord. No. 1513, § 1, 7-23-01)

Sec. 28-56. Quarterly assessment, collection.
Charges for filtered water consumed inside and outside the city shall be assessed and collected in four (4) quarterly periods, or more often if circumstances require.
(Ord. No. 1513, § 1, 7-23-01)

Sec. 28-57. Reading, billing date, remote reading registers.

(a) Water meters shall be read as nearly as possible within twenty (20) days of the end of each quarter, and the water charge shall be billed to the customers within forty (40) days of the end of each quarter.

(b) The customer may at his option, request to have a water meter with a remote reading register installed so that the meter may be read from outside the building. The superintendent of water may require a remote reading meter register for new services, or whenever meter replacement is required, or when unable to gain entry to read the meter.

(c) In the event of a discrepancy between the readings on the water meter and the remote register, the consumption as shown on the water meter shall be used in calculating the billing or as otherwise provided for in this chapter.
(Ord. No. 1513, § 1, 7-23-01)

Sec. 28-58. Computation of monthly billing.
Water service billed monthly shall be computed so that the total cost per quarter shall be the same as if billed quarterly.
(Ord. No. 1513, § 1, 7-23-01)

Sec. 28-59. Payment of bills, charges, etc.
Payment of all water and sewer bills, charges, fees and deposits for water service shall be made to the city treasurer.
(Ord. No. 1513, § 1, 7-23-01)

Sec. 28-60. When water bills are due and payable.
All water bills shall be due and payable at the office of the city treasurer in the city hall on or before the date shown on the bill which shall be not less than fifty (50) nor more than sixty (60) days after the end of the quarter for which such bills are issued.
(Ord. No. 1513, § 1, 7-23-01)

Sec. 28-61. When water service may be discontinued.
The city may discontinue water service for failure to comply with all ordinances, rules or regulations of the city relating to water use or for nonpayment of water rates and charges. When a water bill remains unpaid for more than thirty (30) days after its due date, water services to the premises shall be discontinued until such account is paid.
(Ord. No. 1513, § 1, 7-23-01)

Sec. 28-62. Enforcement of collection of water charges by assumpsit.
The payment of the charges for services and for filtered water supplied may be enforced by an action of assumpsit instituted in the name of the city against such user.
(Ord. No. 1513, § 1, 7-23-01)

Sec. 28-63. Unpaid filtered water charges to be a lien; collection.
By Section 21 of Act 94, Michigan Public Acts of 1933, as amended, bills for water service shall constitute a lien on the premises affected. The city shall certify those rates and charges delinquent for six (6) months or more to the city tax assessing officer, who shall enter the amount of the delinquent rates and charges on the tax roll against the premises to which the service was rendered, and shall collect the rates and charges and enforce the lien in the same manner as provided for the collection of ad valorem property taxes assessed upon the same roll, or as otherwise provided by this chapter.
(Ord. No. 1513, § 1, 7-23-01)

Sec. 28-64. Reinstating water service; charge.
Water service which has been discontinued for the nonpayment of water bills or charges due the city shall not be reinstated except upon the prepayment of a service charge of twelve dollars and fifty cents ($12.50). There shall be an additional charge for reinstating service during other than normal working hours, based on the costs incurred. The service charge shall be added to the water bill.
(Ord. No. 1513, § 1, 7-23-01)

Sec. 28-65. City to assume no responsibility for leaks in service beyond the meter.
The city will assume no responsibility for excessive water bills caused by a leak in the water service beyond the water meter.
(Ord. No. 1513, § 1, 7-23-01)

Sec. 28-66. City to pay for water.
The city shall pay, out of the appropriate general funds, the reasonable cost and value of the filtered water services rendered to, and the water supplied to, the city by the city water system, on the basis of the schedule of rates and amounts of water used by the several city departments.
(Ord. No. 1513, § 1, 7-23-01)

DIVISION 4.

RESERVED*

* Editors Note: Ord. No. 1513, § 2, adopted July 23, 2001, repealed div. 4, §§ 28-62--28-86, in its entirety. Formerly, div. 4 pertained to rates, charges, and billing, and derived from Ord. No. 786, § 1, 2, adopted January 10, 1972; Ord. No. 863, §§ 1--5, adopted June 2, 1975; Ord. No. 933, §§ 1--5, adopted June 12, 1978; Ord. No. 947, § 2, adopted June 18, 1979; Ord. No.

964, § 1, adopted November 9, 1979; Ord. No. 1012, §§ 1, 2, adopted February 15, 1982; Ord. No. 1099, § 1, adopted February 24, 1986; Ord. No. 1120, § 1, adopted March 23, 1987; Ord. No. 1183, §§ 1--4, adopted October 30, 1989; Ord. No. 1201, § 1, adopted October 29, 1990; Ord. No. 1210, § 1, adopted February 18, 1991; Ord. No. 1225, § 1, adopted August 26, 1991; Ord. No. 1271, §§ 2, 3, adopted September 13, 1993; Ord. No. 1296, § 1, adopted June 27, 1994; Ord. No. 1320, § 1, adopted June 12, 1995; Ord. No. 1352, § 1, adopted June 24, 1996; Ord. No. 1381, § 1, adopted June 16, 1997; Ord. No. 1416, § 1, adopted June 22, 1998; Ord. No. 1453, § 1, adopted June 21, 1999.

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Secs. 28-67--28-97. Reserved.

ARTICLE III.

SEWERS AND SEWAGE DISPOSAL*

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* Editors Note: Ord. No. 1087, §§ 1, 2, adopted June 3, 1985, repealed former Art. III, pertaining to sewers and sewage disposal, and enacted in lieu thereof a new Art. II as herein set out. Former Art. III, was derived from the following ordinances:

Ord. No.	Section	Date	Ord. No.	Section	Date
786	3, 4	1-10-72	984	1	9-8-80
863	6, 7	6-2-75	1012	1	2-15-82
933	6	6-12-78	1056	1	11-21-83
947	3	6-18-79	1059	1	12-19-83
964	2	11-9-79			

DIVISION 1.

GENERALLY

Sec. 28-98. Purpose and policy.
This article of the Code sets forth uniform requirements for direct and indirect discharges into the wastewater collection and treatment system of the City of Midland.

The objectives of this article are:

(1) To prevent the introduction of pollutants into the municipal wastewater system which will interfere with the operation of the system or contaminate the resulting sludge;

(2) To prevent the introduction of pollutants into the municipal wastewater system which will pass through inadequately treated to the receiving waters or otherwise be incompatible with the collection and/or treatment facilities;

(3) To enable the recycling and reclaiming of wastewaters and sludges from the system;

(4) To provide for equitable distribution of the costs incurred by the municipal wastewater system; and

(5) To generally govern the use of the City of Midland Sewerage System.

This article provides for the regulation of direct and indirect discharges to the municipal wastewater system through the issuance of permits to certain nondomestic users and through enforcement of general requirements for other users, authorizes monitoring and enforcement activities, requires user reporting, and provides for the setting of fees for the equitable distribution of costs for operation and maintenance of the POTW system and associated programs thereof.

This article shall apply to the City of Midland and to persons outside the city who are, by contract or agreement with the city, users of the city POTW. Except as otherwise provided herein, the director of utilities of the city shall administer, implement and enforce the provisions of this article.

It is the intent of this article and the divisions therein to protect and ensure the efficient operation of the POTW, and assure, to the highest degree possible, the public health, safety and welfare of the citizens of the City of Midland. It is not the intent of this article to conflict with any federal or state laws presently in force, and in the event any division or section of this article is determined to be legally unsupportable or in conflict with any laws and regulations of the federal or state governments or any administrative agency thereof, the remainder of this article shall not be deemed to be void.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-99. Sewer district encompassing city established.
A compulsory sewer district which shall include the entire City of Midland is hereby established.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-100. Extending sewer service beyond corporate limits.
It shall be unlawful for any party to extend sewer service to facilities outside of the corporate limits of the city without the express approval of the city council. The director of utilities shall enforce this section and shall be authorized to make application in the proper court for writ or injunction restraining any person from violating this section.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-101. Management of sewer system.
The wastewater system of the city shall be and remain under the management, supervision and control of the city manager, who may employ or designate such person or persons in such capacity or capacities as he deems advisable to carry out the efficient management and operation of the system. The director of utilities, subject to the approval of the city manager, may make such rules, orders or regulations as he deems advisable and necessary to assure the efficient management and operation of the system, and to provide equitable charges for the services thereof, subject, however, to the rights, powers, and duties in respect thereto which are reserved by law to the city council.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-102. Definitions.
When used in this article, the following terms shall be construed as defined in this section, unless a different definition shall be adopted for any division of this chapter.

Act or *"the act".* The Federal Water Pollution Control Act (P.A. 92-500), also known as the Clean Water Act, as amended, 33 U. S.C. 1251, et seq.

Biochemical oxygen demand (BOD). The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure, five (5) days at twenty (20) degrees centigrade expressed in terms of weight and concentration (milligrams per liter (mg/l)), as determined by "Standard Methods."

Board. Sewer board of appeals.

Building sewer. A sewer conveying wastewater from the premises of a user to the public sewer, and not owned or maintained by the City of Midland.

Categorical standards. National categorical pretreatment standards or pretreatment standard.

City. The City of Midland or the city council of Midland.

Code. City of Midland Code of Ordinances.

Combined sewer. A sewer intended to serve as a sanitary sewer and a storm sewer.

Compatible pollutant. Materials of acceptable concentration designated by biochemical oxygen demand, pH, fecal coliform bacteria, suspended solids, phosphorus or other pollutants as designated by the director of utilities.

Cooling water. The water discharged from any use such as air conditioning, cooling or refrigeration, and to which the only pollutant added is heat.

Department. City of Midland utilities department generally and wastewater division specifically.

Direct discharge. The discharge of treated or untreated wastewater directly into the waters of the State of Michigan, without first having been treated by the POTW.

Director. The director of utilities for the City of Midland, or his duly authorized representative(s).

Director of utilities. The person designated by the city manager to supervise the operation of the publicly owned treatment works and who is charged with certain duties and responsibilities by this chapter, or his duly authorized representative(s).

Discharge. Spilling, leaking, seeping, pumping, pouring, emitting, emptying, dumping or depositing.

Domestic user. Those users that discharge normal domestic waste from residential living units and resulting from the day-to-day activities usually considered to be carried out in a domicile. Discharges from other users to be considered normal domestic waste shall be of the same nature and strength and have the same flow rate characteristics thereof.

Environmental Protection Agency or *EPA.* The U.S. Environmental Protection Agency, or where appropriate the term may also be used as a designation for the administrator or other duly authorized official of said agency.

Fats, oil and greases. Organic compound derived from animal and / or plant sources that contain multiple carbon chain triglyceride molecules. These substances are detectable and measurable using analytical test procedures established in the United States Code of Federal Regulations 40 CFR 136 as may be amended from time to time. All are sometimes referred to as “grease” or “greases”.

Garbage. The wastes from the preparation, cooking and dispensing of food or from handling, storage and sale of produce.

Grab sample. A sample which is taken from a waste stream on a one-time basis with no regard to the flow in the waste stream and without consideration of time.

Ground water. The water beneath the surface of the ground, whether or not flowing through known or definite channels.

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

Incompatible pollutants. All pollutants not defined as compatible.

Indirect discharge. The discharge or the introduction of nondomestic pollutants from any source regulated under Section 307(b) or (c) of the act (33 U.S.C. 1317), into and through the POTW.

Interference. The inhibition or disruption of the POTW treatment processes or operations which contributes to a violation of any requirement of the city's NPDES permit. The term includes prevention of sewage sludge use or disposal by the POTW in accordance with Section 405 of the act.

National categorical pretreatment standard or *pretreatment standard.* Any regulation containing pollutant discharge limits promulgated by the EPA in accordance with Section 307(b) and (c) of the act (33 U.S.C. 1347) which applies to a specific category of industrial users.

National pollutant discharge elimination system (NPDES). A national permit program established by the Federal Water Pollution Control Act Amendment of 1972 (Public Law 92-500) requiring all municipalities, industries and commercial enterprises that discharge to surface watercourses to have NPDES permits approved by the U.S. EPA and in Michigan the Water Resources Commission by December 31, 1974.

National prohibitive discharge standard or *prohibitive discharge standard.* Any regulation developed under the authority of Section 307(b) of the act and 40 CFR, Section 403.5.

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

New sources. Any source, the construction of which is commenced after the publication of proposed regulations prescribing a new source performance standard which will be applicable to such source, if standard is thereinafter promulgated in accordance with Section 306(a) of the Clean Water Act.

Nondomestic user. Those users discharging other than normal domestic waste.

Normal domestic waste. User discharges to the City of Midland POTW in which concentrations of suspended solids, five-day BOD, and phosphorus are three hundred (300), three hundred fifty (350), and thirteen (13), respectively, at the point of discharge to the POTW.

Oil. Oil of any kind, in any form including, but not limited to, petroleum, fuel oil, sludge and oil refuse, gasoline, grease, and oil mixed with waste.

Other waste. Garbage, refuse, decayed wood, bark and other wood debris, wastes from industrial processes, and other substances which are not included within the definition of pollutant.

Operation and maintenance. The labor, material, and other costs incurred by the performance of operation and maintenance of a sewer system.

Owner. The owners or owner of the freehold of the premises or lesser estate therein, a mortgage or vendee in possession, an assignee of rents, receiver, executor, trustee, lessee or any other person, firm or corporation directly or indirectly in control of a building, structure or real property, or his duly authorized agent.

Party (person). Any individual, partnership, copartnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity or any other legal entity, or their legal representatives, agents or assigns. The masculine gender shall include the feminine, the singular shall include the plural where indicated by the context.

Permittee, permit holder. Any person who owns, operates, possesses or controls an establishment or plant being operated under a valid wastewater contribution permit to discharge waste in to the city POTW.

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

Phosphorus (total). As defined and determined by "Standard Methods."

Pollutant. Any dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, oils, biological materials, radioactive materials, heat, wrecked or discharged equipment, rock, sand, cellar dirt and industrial, municipal and agricultural waste discharged into water.

Pollution. The placing of any noxious or deleterious substance in any waters of the state in quantities which are or may be potentially harmful or injurious to human health or welfare, animal or aquatic life, or property, or unreasonably interfere with the enjoyment of life or property, including outdoor recreation.

POTW treatment plant. That portion of the POTW designed to provide treatment to wastewater.

Pretreatment or *treatment.* The reduction of the amount of pollutants, the elimination of pollutants, the alteration of the nature of pollutants, or the alteration of the nature of pollutant properties in wastewater to a less harmful state prior to or in lieu of discharging or otherwise introducing such pollutants into a POTW. The reduction or alteration can be obtained by physical, chemical or biological processes, or process changes by other means, except as prohibited by 40 CFR, Section 403.6(d).

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

Private sewage disposal system. A system for pretreatment of sewage by any means, designed to treat wastewater prior to discharge to the POTW.

Public sewer. A sewer that is owned and maintained by the City of Midland.

Publicly owned treatment works (POTW). A treatment works as defined by Section 212 of the act (33 U. S.C. 1292) which is owned in this instance by the city. This definition includes any sewers that convey wastewater to the POTW treatment plant, except those pipes, sewers or other conveyances connected to a facility providing pretreatment or a building sewer. For the purposes of this article, "POTW" shall also include any sewers that convey wastewaters to the POTW from persons outside the city who are, by contract or agreement with the city, users of the city's POTW.

Readiness-to-serve charge. A charge approximately equal to the proportional fixed costs of the city's water system attributable to each user.

Sanitary sewer. A sewer intended to carry only sanitary or sanitary and industrial wastewaters from residential and commercial buildings, industrial plants, or institutions.

Shall is mandatory; *may* is permissive.

Standard methods. The most recent edition of "Standard Methods for the Examination of Water and Wastewater," published by the American Public Health Association, the American Water Works Association, and the Water Pollution Control Association, a copy of which is on file in the office of the director.

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

State. State of Michigan.

Storm sewer. A sewer intended to carry only storm waters, surface runoff, street wash water, sub-soil drainage, and noncontact cooling water.

Storm water. Any flow occurring during or following any form of natural precipitation and resulting therefrom.

Surcharge. As applies to this chapter, that charge levied on users of the POTW resulting from user contributions of nondomestic waste to the POTW or a charge to the user by the city to recover costs, of and by the city, for accepting and treating a user contribution in lieu of user pretreatment of nondomestic waste.

Surface waters. Water upon the surface of the earth, whether contained in bounds created naturally or artificially, or diffused.

Suspended solids. The total suspended matter that floats on the surface of, or is suspended in, water, wastewater or other liquids, and which is removable by laboratory filtering as determined by "Standard Methods."

Toxic pollutant. Any pollutant or combination of pollutants that are determined to be toxic or are listed as toxic in regulations promulgated by the administrator of the environmental protection agency under the provision of the CWA 307a) or other acts.

User. Any person, establishment, or owner who discharges any domestic or nondomestic sewage or waste into the POTW system of the city or any system connected thereto.

User charge. A charge levied on the users of the POTW for the normal cost of operation, maintenance and replacement of such works.

Wastewater. The liquid and water-carried wastes from dwellings, commercial buildings, industrial facilities, and institutions, together with any ground water, surface water, and storm water that may be present, whether treated or untreated, which is discharged into the POTW.

Wastewater contribution permit. As set forth in this chapter, a permit issued by the city to nondomestic users of the POTW.

Watercourse. A channel in which a flow of water occurs, either continuously or intermittently.

Waters of the state. All streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through, or border upon the state or any portion thereof.
(Ord. No. 1087, § 1, 6-3-85; Ord. No. 1514, § 1, 7-23-01; Ord. No. 1665, § 1, 8-11-08)

Sec. 28-103. Abbreviations.

BOD--Biochemical oxygen demand

mg/l--Milligrams per liter

POTW--Publicly owned treatment works

SWDA--Solid Waste Disposal Act

NPDES--National pollution discharge elimination system

CFR--Code of Federal Regulations

CWA--Clean Water Act

SWRC--State Water Resources Commission (Michigan)

EPA--Environmental Protection Agency (Federal)

PERM--Program for Effective Residuals Management (MDNR)

MDNR--Michigan Department of Natural Resources
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-104. Waste deposits.
It shall be unlawful for any person to place or deposit, or permit to be deposited, in an unsanitary manner upon any public or private property within the City of Midland or in any area under the jurisdiction of the said City of Midland, any human or animal excrement, garbage or other objectionable waste or wastes either in volumes or concentrations which will adversely effect said properties.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-105. Sewage disposal method required.
All places within the city where people reside, are employed, or congregate shall be provided with a sanitary method for the disposal of sewage. It shall be the duty of the property owner to provide such sanitary method.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-106. Sewage to be disposed of in approved device.
It shall be unlawful for any person within the city to throw out, deposit or in any other way dispose of sewage, other than into a sanitary water closet, properly constructed septic tank, or other sanitary toilet device approved by the city engineer.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-107. When connection to sewer required.
Whenever any dwelling, store, hotel, restaurant or any other building where restrooms, lavatories, urinals or closets are maintained, is located on streets where public sewers are accessible to the property on which such dwelling, store, hotel, restaurant or other building is erected, such dwelling, store, hotel restaurant or other building shall make connection with the city sewer system and shall thereafter use such system for the disposal of all human wastes, and all septic tanks, vaults, and cesspools shall be cleaned out and filled with sand or other suitable material.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-108. Where sewers are installed; grant of easement.
All sewer mains shall be installed in public rights-of-way. However, where it is deemed necessary that certain sewer mains be installed on private property, the property owner shall grant an easement to the city for the purposes of inspection and maintenance of sewer mains.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-109. Notice that connection is to be made; billing; appeal.
When a public sanitary sewer is installed and is accessible to an unsewered property, the city's building official shall (in writing) notify the property owner of record (as determined from records in the city assessor's office) that the sewer is accessible and that connection to the public sewer shall be made within a period not to exceed one year. In addition, the owner shall be notified that, because the public sanitary sewer is available for connection by any dwelling, store, hotel, or restaurant (or any other building where lavatories, urinals and closets exist for the disposal of human wastes), a sewage bill shall be charged as though the property were connected to the public sanitary sewer. The bill for same shall be calculated according to the rates division of this article. The sewage bill shall commence when connection is made, or one year after the public sanitary sewer is available. Hardship cases may be appealed to the sewer board of appeals.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-110. Injuring, depositing prohibited substances in sewers.
No person shall injure, break, or remove any portion of any manhole, catch basin or any part of the POTW, or throw or deposit or cause to be thrown or deposited in any sewer opening or receptacle connecting with the sewer system, any unground garbage, offal, dead animals, vegetable parings, ashes, cinders, rags, newspaper, or any other matter or thing whatsoever except feces, urine and the necessary tissue paper, except through contract, agreement or approval of the director of utilities. The discharge of any substances into the sewer system which are liable to injure the sewers, endanger the public safety and health, or inhibit efficient operation of the treatment works or the flow of sewage is prohibited.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-110.1. Stormwater and groundwater prohibited in sanitary sewer, building sanitary sewer or lateral sewer.

After October 26, 1987, any new installation of a downspout, weep tile, footing drain, sump pump discharge or any other conduit that carries storm or groundwater shall not be allowed to discharge into the sanitary sewer, building sanitary sewer or lateral sewer.
(Ord. No. 1139, § 1, 10-19-87; Ord. No. 1151, § 2, 6-6-88; Ord. No. 1424, § 2, 9-14-98)

Sec. 28-110.2. Downspout, roofing drain, yard drain, truck dock and parking lot drain connection to sanitary sewer, building sanitary sewer or lateral sewer prohibited.

The purpose of this section is to diminish the threat to the health, safety and welfare of the people of the City of Midland who may be affected by flood or other damage caused by the accumulation of storm water and groundwater draining from downspouts, roofing drains, yard drains, truck docks and parking lot drains directly into the sanitary sewer system and to reduce economic losses to individuals and the community at large.

After November 30, 1998, it shall be unlawful to discharge stormwater or groundwater directly into a City of Midland sanitary sewer, building sanitary sewer or lateral sewer from downspouts, roofing drains, yard drains, truck docks and/or parking lot drains constructed or installed prior to October 26, 1987, unless:

(1) A waiver has been granted in accordance with section 28-112; or

(2) The city engineer has determined that the following two (2) conditions exist:

a. The discharge of stormwater or groundwater cannot be redirected to a storm sewer due to the unavailability of a storm sewer; and

b. The discharge of stormwater or groundwater cannot be retained entirely on permeable lawn area located on the same property that contains the downspouts, roofing drains, yard drains, truck docks and/or parking lot drains that are connected to the sanitary sewer system.

For purposes of this division, yard drains shall be defined as drains located within the lawn area and shall not include patio drains, basement walkout drains or other drains associated with residential buildings.
(Ord. No. 1424, § 3, 9-14-98; Ord. No. 1425, § 1, 9-28-98; Ord. No. 1438, § 1, 3-8-99)

Sec. 28-111. Order to disconnect.

(a) In the event that, after November 30, 1998, a downspout, roofing drain, yard drain, truck dock or parking lot drain remains connected to a City of Midland sanitary sewer, building sanitary sewer or lateral sewer, the utilities director shall issue an order to disconnect to the owner of the property on which the drain is located.

(b) Service of the order shall be made upon the owner of the property either personally or by:

(1) Mailing a copy of such order by certified mail, postage prepaid, return receipt requested, to each owner of the property as indicated by the records of the city assessor; or

(2) If no address is specified in the assessor's records or is otherwise known to the utilities director, a copy of the order shall be mailed to the owner of record at the building address and a copy of the order shall also be posted in a conspicuous place on the building.

The failure of any such owner of record to receive a copy of the order shall not affect the validity of any proceedings taken under this division. Service by certified mail in the manner herein provided shall be effective on the date of mailing. Proof of service of the order shall be by affidavit sworn to by the person effecting service; declaring time, date and manner in which the service was made. The affidavit, together with any receipt card returned in acknowledgment of receipt by certified mail, shall be affixed to the copy of the order which shall be retained by the utilities director.

(c) An order to disconnect shall specify the property at issue and shall require:

(1) That all downspouts located on the property shall be disconnected from all City of Midland sanitary sewers, building sanitary sewers or lateral sewers within thirty (30) days of the issuance of said order; or

(2) That all roofing drains, yard drains, truck dock and parking lot drains shall be disconnected from all City of Midland sanitary sewers, building sanitary sewers or lateral sewers within sixty (60) days of the issuance of said order.

(d) An order to disconnect shall notify the owner of the property that a waiver of the order to disconnect may be obtained by appealing to the building board of appeals as provided in section 28-113. A copy of said section shall be attached to the order.
(Ord. No. 1424, § 4, 9-14-98; Ord. No. 1425, § 1, 9-28-98)
Editors Note: Ord. No. 1424, § 4, adopted Sept. 14, 1998, repealed the former § 28-111 and enacted a new § 28-111 as set out herein. The former § 28-111 pertained to critical accumulation area defined and derived from Ord. No. 1087, § 1, adopted June 3, 1985.

Sec. 28-112. Waivers.
A waiver of an order to disconnect may be obtained for the following reasons:

(1) Economic hardship.

(2) Contractor availability or other construction constraints.

A waiver may be granted for any period of time; provided, however, that under no circumstance shall a waiver be granted for a total waiver period greater than one (1) year.
(Ord. No. 1424, § 4, 9-14-98)

Editors Note: Ord. No. 1424, § 4, adopted Sept. 14, 1998, repealed the former § 28-112 and enacted a new § 28-112 as set out herein. The former § 28-112 pertained to resolution ordering downspout disconnection in critical accumulation area and derived from Ord. No. 1087, § 1, adopted June 3, 1985.

Sec. 28-113. Appeals.
Any owner of property subject to an order to disconnect may appeal the issuance of said order to the City of Midland building board of appeals, as created under chapter 5, section 5-27 of the City of Midland Code of Ordinances. The board shall hold public hearings to consider such appeals. The board is authorized to investigate all appeals and to grant waivers of orders to disconnect. The running of the period to disconnect specified in subsections 28-111(c)(1) and (2) shall be suspended until such time that a decision regarding the appeal is rendered by the board.

All appeals shall be in writing and shall be filed with the chief building official. An appeal shall state the reason(s) why the property owner has requested the waiver. If the waiver has been requested due to economic hardship, the property owner shall provide to the board written documentation regarding the hardship. A fee as established in chapter 21 of said Code shall accompany each appeal.
(Ord. No. 1424, § 4, 9-14-98)

Editors Note: Ord. No. 1424, § 4, adopted Sept. 14, 1998, repealed the former § 28-113 and enacted a new § 28-113 as set out herein. The former 28-113 pertained to appeal from downspout disconnection resolution and derived from Ord. No. 1087, § 1, adopted June 3, 1985.

Sec. 28-113.1. Penalties.
Any person who violates section 28-110.2 and who has failed to comply with an order issued pursuant to subsection 28-111(c), and from which no appeal has been taken, shall be responsible for a municipal civil infraction. Upon conviction of such infraction, such person shall be punished as provided in chapter 34 and fined according to section 21-101 of chapter 21 of the Code of Ordinances. The imposition of one (1) municipal civil infraction fine for any violation shall not excuse the violation or permit it to continue and all such persons shall be required to correct or remedy such violation or defects. Every day of noncompliance shall be deemed a separate violation. Imposition of the fine specified in section 21-101 of chapter 21 shall not be held to prevent the enforced removal of the sanitary sewer connection.
(Ord. No. 1424, § 5, 9-14-98)

Sec. 28-113.2. Council review.
At the last city council meeting held in May, 1999, the city council shall review section 28-112, Waivers, and the data compiled by the building board of appeals as a result of the appeals filed with that board pursuant to section 28-113.
(Ord. No. 1424, § 5, 9-14-98)

Sec. 28-114. Toilets, septic tanks, etc., not to be a nuisance.
The owner or occupant of any premises within the city shall not use, maintain, or permit the use of, therein or thereon, a toilet (permanent or portable), septic tank, drain field or drain that is a menace to the health or safety of individuals or the public. Any sewer, septic tank, tile field or drain not maintained so that sewage or sewage effluent shall flow into a road right-of-way, a

ditch, a stream, or so that sewage or sewage effluent accumulates on the surface of the ground within two hundred (200) yards of a dwelling, establishment or highway shall be deemed to be a public health nuisance.
(Ord. No. 1087, § 1, 6-3-85)
State Law References: M.S.A., Sec. 14.433(1)--14.433(4).

Sec. 28-115. Toilets to be kept in sanitary condition.
It shall be the lawful duty of the occupants of each premises to see that all toilets, urinals, or other toilet devices upon such premises are kept in sanitary condition at all times.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-116. Cleaning, disposing of contents of toilets, septic tanks.
The manner and method of cleaning and disposing of the contents of all toilets and septic tanks shall be under the direction of the director of utilities.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-117. Director of utilities to give notice to correct unsanitary condition.

The director of utilities shall, in writing, notify the owner or occupant of any premises when it is determined that a toilet, septic tank, drain field or drain on such premises is being used or maintained in such manner as to be injurious to public health. In such notice, the director shall specify the particulars in which such toilet, septic tank, drain field or drain is being used or maintained in a manner injurious to the public health, and what shall be done to relieve and remove such condition. Such notice shall further specify a reasonable time, which shall be fixed by the director, within which such conditions shall be corrected.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-118. Ordering unsanitary condition corrected; noncompliance; cost when city acts.
When, in the judgment of the director of utilities, a drain, drain field or septic tank needs cleaning, the director may lawfully order the owner thereof to have such drain, drain field or septic tank cleaned. The failure of such owner to have the drain, drain field or septic tank cleaned within ten (10) days of the date of the order may result in the city having it cleaned or take other action as determined necessary. The cost of cleaning the drain, drain field or septic tank shall be charged against the owner of the property by the city.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-119. Abuse of, injury to toilet, septic tank, drain.
It shall be unlawful for anyone to abuse or misuse any toilet, septic tank or drain property.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-120. Only licensed waste system cleaners permitted.
Only waste system cleaners licensed by the State of Michigan and recognized by the city shall be permitted to clean toilets, septic tanks or cesspools.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-121. Site for unloading waste transport vehicles.
The city shall cause a waste disposal site to be constructed and maintained for the purpose of receiving collected and transported wastes. The city manager or his designate is hereby authorized to establish rules and regulations regarding the use of such site. The site shall receive only approved wastes delivered by tank truck or other authorized means.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-122. Handling, transporting and disposal of sanitary waste by waste system cleaners.
Wastes collected by any waste system cleaner shall be collected and transported in such a manner as to prevent spilling. Such waste hauled for dumping at the city's designated waste disposal site shall be collected and transported in watertight, covered metal tanks on vehicles registered with, certified and licensed by the State of Michigan. The method of collection, transport and disposal, and the content of wastes for disposal at the waste disposal site, shall be subject to the approval of the director of utilities.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-123. Hauled wastes to be disposed of at approved site.
It shall be unlawful for any person to dispose of collected and transported wastes within the city except at the established waste disposal site.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-124. Collected and transported waste disposal; permit and fee required.
Before wastes from any septic tank or any other waste collection device are transported for disposal at the city waste disposal site, the person cleaning or having such tank or device cleaned shall apply for and receive a disposal permit (waste disposal ticket). The permit shall be issued upon the payment of a fee, in the amount of seventy-eight dollars ($78.00) minimum per truckload or seventy-eight dollars ($78.00) per one thousand (1,000) gallons of waste or part thereof, whichever is greater, for each such load transported to the waste disposal site. Before unloading, each permit shall be presented to the city employee on duty at the waste disposal site.
(Ord. No. 1087, § 1, 6-3-85; Ord. No. 1120, § 1, 3-23-87; Ord. No. 1661, § 1, 06-23-08)

Sec. 28-125. Site to be used only when city employee is on duty.
It shall be unlawful for any person to use the city waste disposal site except when an employee of the city is on duty at such site and available to supervise unloading activities.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-126. Use of site by nonresidents of city.
It shall be unlawful for any person to dispose of collected wastes from outside the boundaries of the city at the waste disposal site without the written authorization of the director of utilities.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-127. Violation of collected waste disposal provisions.
Any person who shall violate sections 28-119 through 28-125 of this Code shall be punished pursuant to section 1-11 of this Code, and the court shall prohibit any such violator the use of the waste disposal site for a period of not less than thirty (30) days nor more than six (6) months.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-128. Water pollution.
It shall be unlawful to discharge, either directly or indirectly, to any natural outlet, surface water, drainage ditch, storm sewer, sanitary sewer, or combined sewer within the City of Midland or in any area under the jurisdiction of the said City of Midland, any sanitary sewage, industrial waste, other polluted waters or pollutants, except where suitable treatment is provided in accordance with the standards established by the SWRC.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-129. General discharge prohibitions.
No user shall contribute or cause to be contributed, directly or indirectly, any pollutant or wastewater which will interfere with the operation or performance of the POTW. These general prohibitions apply to all such users of the POTW whether or not the user is subject to national categorical pretreatment standards or any other national, state or local pretreatment standards or requirements. A user may not contribute the following substances to the POTW:

(1) Any liquids, solids or gases which by reason of their nature or quantity are, or may be, sufficient either alone or by interaction with other substances to cause fire or explosion or be injurious in any other way to the POTW or to the operation of the POTW, or a hazard to public health. At no time shall two (2) successive readings on an explosion hazard meter at the point of discharge into the system (or at any point in the system) be more than five (5) percent nor any single reading over twenty (20) percent of the lower explosive limit (LEL). Prohibited materials include, but are not limited to: gasoline, kerosene, naphtha, benzene, toluene, xylene, ethers, alcohols, ketones, aldehydes, peroxides, chlorates, perchlorates, bromates, carbides, hydrides, and sulfides.

(2) Solid or viscous substances which may cause obstruction to the flow in a sewer or interference with the operation of the wastewater treatment facilities such as, but not limited to: grease, garbage with particles greater than one-half (1/2) inch in any dimension, animal guts or tissues, paunch manure, bones, hair, hides or fleshings, entrails, whole blood, feathers, ashes, cinders, sand, spent lime, stone or marble dust, metal, glass, straw, shavings, grass clippings, rags, spent grains, spent hops, waste paper, wood, plastics, gas, tar, asphalt residues, residues from refining or processing of fuel or lubricating oil, mud or glass grinding or polishing wastes.

(3) Any wastewater having a pH less than 5.0 or greater than 11.0, or wastewater having any other corrosive property capable of causing damage or hazard to structures, equipment, and/or personnel of the POTW.

(4) Any wastewater containing toxic pollutants in sufficient quantity, either singly or by interaction with other pollutants, to injure or interfere with any wastewater treatment process, constitute a hazard to humans or animals, create a toxic effect in the receiving waters of the POTW due to pass-through, or to exceed the limitation set forth in a categorical pretreatment standard. A toxic pollutant shall include but not be limited to any pollutant identified pursuant to Section 307(a) of the act.

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

(6) Any substance which may cause the POTW's effluent or any other product of the POTW such as residues, sludges, or scums, to be unsuitable for discharge, disposal, reclamation, and/or reuse or to interfere with the treatment or reclamation process.

(7) Any substances which will cause the POTW to violate its NPDES and/or state disposal system permit (PERM).

(8) Any wastewater with objectionable color not removed in the treatment process such as, but not limited to, dye wastes and vegetable tanning solutions.

(9) Any wastewater having a temperature which will inhibit biological activity in the POTW treatment plant resulting in interference, but in no case wastewater with a temperature at the introduction into the POTW which exceeds forty (40) degrees centigrade (one hundred and four (104) degrees Fahrenheit).

(10) Any pollutants, including oxygen demanding pollutants (BOD, etc.), released at a flow rate and/or pollutant concentration which will cause or is deemed to cause interference to the POTW. In no case shall a slug load have a flow rate or contain concentration or quantities of pollutants that exceed for any time period longer than fifteen (15) minutes, more than five (5) times the average twenty-four-hour concentration, quantities, or flow during normal operation.

(11) Any wastewater containing any radioactive wastes or isotopes of such halflife or concentration as may exceed limits established by the director in compliance with applicable state or federal regulations.

(12) Any wastewater which causes a hazard to human health or life or creates a public nuisance. When the director determines that a user(s) is contributing to the POTW any of the above enumerated substances in such amounts as to interfere with the operation of the POTW, the director shall:

(a) Advise the user(s) of the impact of the contribution on the POTW; and

(b) Require the user to obtain, maintain and comply with a wastewater contribution permit.

(13) No user shall allow wastewater discharge concentration of grease to exceed 100 milligrams per liter as defined by EPA test method 1664. Request to use any other analytical method must be approved by the wastewater superintendent.
(Ord. No. 1087, § 1, 6-3-85; Ord. No. 1665, § 1, 8-11-08)

Sec. 28-130. Comprehensive review of sanitary sewer system and storm sewer system.
In connection with the submittal of the city's application for renewal of its National Pollution Discharge Elimination System (NPDES) permit, but not less frequently than every five (5) years, the city manager shall submit a report to the city council which shall include a comprehensive review of the city's sanitary and storm sewer systems including, but not limited to, their capacity, growth, ordinances, operations and maintenance. This report shall be submitted to the city council at its regularly scheduled meeting immediately prior to the due date of the city's NPDES renewal application.
(Ord. No. 1433, § 1, 12-21-98)

Secs. 28-131--28-145. Reserved.

DIVISION 2.

SEWER BOARD OF APPEALS

Sec. 28-146. Composition; appointment.
There is hereby established a sewer board of appeals, hereinafter referred to as the board, which shall consist of five (5) members appointed by the city council. One member shall represent the Midland City-County Health Department, one member shall be the director of

utilities or his designated agent for the city, and three (3) members shall be citizens at large, residents of the city.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-147. Term of office.
The term of office for members of the board shall be for three (3) years.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-148. Ex officio members.
The member of the board representing the Midland City-County Health Department, and the director of utilities or his designated agent, shall serve as ex officio members.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-149. Internal management.
The board shall elect its own chairman and adopt its own rules of procedure. The director of utilities or his designated agent shall serve as permanent secretary for such board. The board shall keep a record of its proceedings, showing the action of the board and the vote of each member upon each appeal considered.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-150. Removing from office; filling vacancies.
Members of the board may, after public hearing, be removed by the city council for inefficiency, neglect of duty, or malfeasance in office. Vacancies occurring otherwise than through the expiration of a term in office shall be filled for the unexpired term by the city council.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-151. Members to serve without compensation.
All members of the sewer board of appeals shall serve without compensation.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 20-152. Liability of board and individual members.
In no case shall the sewer board of appeals or any members thereof be liable for costs in any action or proceeding that may be commenced in pursuance of the provisions of this chapter.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-153. Appeals to the sewer board.
Provision is hereby made whereby users (whether current or future) of the POTW and subject to this chapter may appeal rules, regulations, limitations, notices of violation, penalties and fines stipulated and issued by the city. In this connection:

(1) Where the appellant alleges that there exists a reasonable excuse for not connecting to the sewage facilities or for not paying sewage treatment fees or otherwise not complying with any of the requirements of Division 1, 3 and 4 of this article, the sewer board of appeals shall hear and decide the appeal. It shall be the duty of the appellant to show just cause why such sewer should not be connected, sewage treatment fees not paid, or why any of the requirements of Divisions 1, 3 and 4 of this article should not apply. After hearing these appeals and reviewing the material presented, the board shall rule on the appeal. A decision of the board on these appeals shall be made and be final. The secretary of the board shall notify the appellant, in writing, and record the board's decision.

(2) Where the appellant alleges that there exists a reasonable excuse for not complying with orders, citations, rules, regulations or limitations as provided by Divisions 5 and 6 of this article or for not paying any fines, penalties or reimbursements to the city resulting from noncompliance with orders, citations, rules, regulations or limitations as provided by this article, the sewer board of appeals shall hear the appeal. It shall be the duty of the appellant to show just cause why such orders, citations, rules, regulations and/or limitations should not apply and why fines, penalties and/or charges levied by the city upon the appellant should not be paid. After hearing these appeals and reviewing the material presented, the board will issue a recommendation (in writing) to the city council where a decision shall be made. The recommendation from the board shall discuss the appeal and indicate the vote on the recommendation to the city council. The city council shall review the board's recommendation and rule on the appeal. A decision of the city council on these appeals shall be made and be final. The city clerk shall notify the appellant in writing of the city council's decision.
(Ord. No. 1087, § 1, 6-3-85)

Secs. 28-154--28-160. Reserved.

DIVISION 3.

RATES

Sec. 28-161. City may establish sewer rates.
The city may classify the users of sewage disposal service according to the quantities and types of water used by such users, and charge such rates to users in each class in proportion to the costs of providing sewage disposal service to, and according to the benefits received by, such classes of users.
(Ord. No. 1514, § 1, 7-23-01)
Editors Note: Ord. No. 1514, § 1, adopted July 23, 2001, amended § 28-161 in its entirety, in effect repealing and reenacting § 28-161 to read as herein set out. Formerly, § 28-161 pertained to the purpose of sewer rates, charges, and derived from Ord. No. 1087, § 1, adopted June 3, 1985.

Sec. 28-162. Reserved.
Editors Note: Ord. No. 1514, § 1, adopted July 23, 2001, repealed the former § 28-162, which pertained to the levy of sewer charges and derived from Ord. No. 1087, § 1, adopted June 3, 1985.

Sec. 28-163. Amount of sewer charge.
The city's methodology of adjusting sewer rates shall be in accordance with the cost of service water and sewer rate study prepared by the city's consultant, presented to and approved by the council in 1993 and shall be in conformity with the findings set forth in Section 28-4 of this chapter.
The charges for sewer service shall be calculated according to the following schedule:
(1) There shall be a readiness-to-serve charge per quarter on each metered water service as follows:

Metered Service	Amount
5/8" – 3/4"	$43.68
1"	$56.78
1 – 1/2"	$69.89

2"	$113.57
3"	$436.80
4"	$567.84
6"	$829.92
8"	$1,179.36

(2) In addition to the readiness-to-serve charge set forth in subsection (1) of this section, there will be an additional charge for sewer service, which will be calculated as follows:
For each 1,000 gallons of water used per quarter: $2.08
However, bills for sewer services for two (2) summer quarters for domestic customers, schools and churches shall be based on the average consumption during two (2) winter quarters. In cases where there is no previous consumption upon which to base bills for sewer services in the summer quarters, twenty-five thousand (25,000) gallons or actual consumption, whichever is the least, shall be used.

(Ord. No. 1087, § 1, 6-3-85; Ord. No. 1100, § 1, 2-24-86; Ord. No. 1119, § 1, 3-9-87; Ord. No. 1140, § 1, 1-23-87; Ord. No. 1183, § 5, 10-30-89; Ord. No. 1202, § 1, 10-29-90; Ord. No. 1226, § 1, 8-26-91; Ord. No. 1242, § 1, 6-29-92; Ord. No. 1272, § 1, 9-13-73; Ord. No. 1297, § 1, 6-27-94; Ord. No. 1353, § 1, 6-24-96; Ord. No. 1417, § 1, 6-22-98; Ord. No. 1454, § 1, 6-21-99; Ord. No. 1480, § 1, 6-26-00; Ord. No. 1514, § 1, 7-23-01; Ord. No. 1539, § 1, 6-24-02; Ord. No. 1563, § 1, 6-23-03; Ord. No. 1582, § 1, 6-28-04, Ord. No. 1602, § 1, 6-27-05; Ord. No. 1618, § 1, 6-26-06; Ord. No. 1636, § 1, 6-25-07; Ord. No. 1660, § 1, 06-23-08; Ord. No. 1682, § 1, 06-22-09; Ord. No. 1708, § 1, 06-28-10; Ord. No. 1732, § 1, 06-25-12; Ord. No. 1750, § 1, 06-24-13)

Sec. 28-164. How sewer charge determined.
The quantity of water used in or on the premises as measured by the city water meters shall be the basis for the sewer bill except where the premises are not connected to the city water system. In such cases the city council may order a water meter installed at the property owner's cost and such meter, which shall be owned and maintained by the city, shall be used to measure the amount of water used from a private source, or a quarterly charge may be fixed by resolution of the city council. If any premises is a user of water from both types of water sources, the bills for sewer services shall be based on a combination of water use and/or fixed charges as determined by the city council.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-165. Preparation, collection of sewer bills.
The bills for sewer services shall be prepared by the water department and collected at the same time and in the same manner as provided for water bills.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-166. Late payment.
The bill for water and sewer services shall be prepared so as to indicate a net charge for both services, computed in accordance with the provisions of this chapter. A gross charge which shall be ten (10) percent greater than the net charge shall become due and payable if the bill remains unpaid after the due date shown on the bill.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-167. Enforcement of payment of sewer bill.

The water department is hereby authorized to enforce the payment of sewer service bills by shutting off the user's water supply, or an action by assumpsit may be instituted by the city against such user. Moreover, by Section 21 of Act 94, Michigan Public Acts of 1933, as amended, bills for sewer services shall constitute a lien on the premises affected. The city shall certify those rates and charges delinquent for six (6) months or more to the city tax assessing officer, who shall enter the amount of the delinquent rates and charges on the tax roll against the premises to which the service was rendered, and shall collect the rates and charges and enforce the lien in the same manner as provided for the collection of ad valorem property taxes assessed upon the same roll, or as otherwise provided by this chapter.
(Ord. No. 1514, § 1, 7-23-01)

Editors Note: Ord. No. 1514, § 1, adopted July 23, 2001, amended § 28-167 in its entirety, in effect repealing and reenacting § 28-167 to read as herein set out. Formerly, § 28-167 pertained to similar subject matter and derived from Ord. No. 1087, § 1, adopted June 2, 1985.

Sec. 28-168. Sewer districts for meter reading, billing, and administrative purposes.
The city shall be divided into sewer districts the boundaries of which may be changed as required by the water department for meter reading, billing, or other administrative purposes. Meter readings, billing dates, and summer and winter quarters shall be according to the following schedule in the respective districts:

District	*Meter Read In*	*Approximate Period Covered*	*Bill Mailing Date*	*Type Quarter*
No. 1	January	October--November--December	February 1st	Winter
	April	January--February--March	May 1st	Winter
	July	April--May--June	August 1st	Summer
	October	July--August--September	November 1st	Summer
No. 2	February	November--December--January	March 1st	Winter
	May	February--March--April	June 1st	Winter
	August	May--June--July	September 1st	Summer
	November	August--September--October	December 1st	Summer
No. 3	December	September--October--November	January 1st	Winter
	March	December--January--February	April 1st	Winter
	June	March--April--May	July 1st	Summer
	September	June--July--August	October 1st Summer	

(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-169. Records, books of sewer rates; annual statement.
The city manager shall cause to be maintained and kept, proper books of record and account in which shall be made full and correct entries of all transactions relating to sewer rates and charges. Not later than three (3) months after the close of the fiscal year, the city manager shall cause to be prepared a detailed statement showing the cash income and disbursements at the beginning and close of the operating year, as may be necessary to enable any taxpayer to be fully informed as to all matters pertaining to the financial operation during such year. Such annual statement shall be filed in the office of the city clerk where it shall be open to public inspection.
(Ord. No. 1087, § 1, 6-3-85)

Secs. 28-170--28-175. Reserved.

DIVISION 4.

CONNECTIONS

Sec. 28-176. City sewer inspector designated; enforcement of division.
The city engineer is designated as city sewer inspector. The city engineer shall, under the direction of the city manager, administer the provisions of this division. The city engineer is hereby authorized to make application in the proper court for a writ of injunction restraining any person from violating any of the provisions of this division.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-177. Authorizing sewer connection work; fees and billing.
All sewer connections made within the city may be constructed by force account by the department of public works upon authorization by resolution of the city council. All permit fees as prescribed in this division shall be added to the actual cost of the construction of the sewer connection and the total amount shall be billed to the property for which the connection is being built. The city engineer shall complete all records and compute all costs and transmit to the city finance department the necessary information for billing.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-178. Sewer connection--Permit required.
No connection with any sewer within the city shall be made by any person until a written permit for making a connection shall have been obtained from the city engineer. Every connection with any such sewer made without permission or in any manner not herein prescribed for such connection shall subject the person making such connection and the owner or owners of the premises for which such connection is made to punishment according to this Code.
(Ord. No. 1087, § 1, 6-3-85)
Cross References: Sewer connector's license fee, § 21-42.

Sec. 28-179. Same--Application.
Application for permits to connect to the sewer system must be made in writing by the owner, or his authorized agent, of the property to be sewered or drained. Such application shall give the exact location of the property, number of lot, number of feet of frontage, schematic of buildings to be connected, the name of the owner, the name of the licensed sewer builder employed to do the work, and shall be made on blanks furnished for this purpose by the city engineer.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-180. Same--Save harmless provision.
The sewer connection permit shall be granted upon the express condition that the owner for whose benefit the connection is made shall, on behalf of himself, his heirs or assigns, hold the city harmless for any loss or damage that may in any way result from or be caused by the making of any such connection.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-181. Same--Deposits.
In addition to the permit fees required by section 21-43 of this Code, the following deposits shall be made to the city treasurer's office before a sewer connection permit is granted:

(1) Where the proposed sewer connection is to be constructed in a street or alley upon which pavement exists, the sewer connection builder shall deposit with the city treasurer the estimated cost and expense of replacing such pavement to its original condition, and the builder shall be refunded or billed any difference as finally determined when the pavement has been replaced by the city.

(2) Where the sewer connection is to be constructed in a street or alley upon which a gravel surface now exists, the sewer connection builder shall deposit with the city treasurer a sum (to be determined by the director of public works) which is determined to be the cost to the city of replacing the gravel surface to its original condition. However, the city engineer may determine that the gravel surface will not be required due to the immediate paving of the street, and in this case no fee will be required of the sewer connection builder.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-182. Sewer connection charges.
Sewer connection charges shall be made in accordance with the provisions of Chapter 21, entitled "Rates, Charges and Fees," of this Code.

In addition to any other sewer connection charges, a one-time sewer system Capital Charge shall be paid in advance of connection in accordance with the following schedules.

Metered Service	Amount
5/8" – 3/4"	$3,250.00
1"	4,225.00
1 – 1/2"	5,200.00
2"	8,450.00
3"	32,500.00
≥ 4"	42,250.00

For residential new construction:

	Amounts / Effective Dates			
Metered Service	10/1/2013	1/1/2015	1/1/2016	1/1/2017
5/8" – 3/4"	$812.50	$1,625.00	$2,437.50	$3,250.00
1"	$1,056.25	$2,112.50	$3,168.75	$4,225.00

Cross References: Sewer connection fees, § 21-43.

(Ord. No. 1087, § 1, 6-3-85; Ord. No. 1278, § 1, 9-20-93; Ord. No. 1749, § 1, 6-24-13; Ord. No. 1753, § 1, 9-30-13)

Sec. 28-183. Connections to sewer system to be performed in accordance with division.
All connections of sewers, drains or plumbing work from houses, stores, plants, or other structures on private property with the sewer system of the city shall be made in accordance with the provisions of this division.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-184. Compliance with Chapter 22 of Code.
Persons constructing sewer connections shall comply with all applicable provisions of Chapter 22 entitled "Streets and Sidewalks," of this Code.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-185. Separate sewer connection to each lot.
Each lot shall have a separate sewer connection.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-186. Notice to be given before pavement is opened.
At least twenty-four (24) hours notice must be given at the office of the city engineer of any sewer connection by the owner or builder before any street or public way shall be opened for the purpose of laying a sewer connection or repairing same.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-187. Connections to be made at Y's or stubs.
All connections with the sewer system must be made at Y branches or stubs wherever possible. In the event that it is necessary to make such connections with the sewer at a point where the Y or stub has not been provided, the connection shall be made in accordance with specifications in the city engineer's office, and with the approval of the city engineer.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-188. Inspection of connection; rejection of work.
The city engineer shall be given notice when any sewer connection work is ready for inspection. All work must be left uncovered and convenient for examination until inspected and approved. Such inspection shall include all necessary measurements so that a complete record can be made of the work. If the city engineer determines that any work constructed does not conform with this division, the sewer connection builder shall remove and replace any such rejected work and shall make all work meet the requirements of this division to the full satisfaction of the city engineer.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-189. Inspection upon completion of backfill.
Upon completion of the backfill and before the sewer connection builder has removed his barricades and left the site of the work, he shall notify the department of public works office of such completion. The condition of the street, parkway area and sidewalk area shall be then inspected by the director of public works or his authorized agent.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-190. Work done on private property to be city inspected.
Any sewer connection work on private property must be done under the inspection of the city.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-191. When utility main obstructs sewer connection.
In case a water, gas or other conduit or obstruction shall come in the way of a sewer connection, the question of passing over or under the same shall be determined by the city engineer.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-192. When sewer connection obstructs utility main.
In case a sewer connection shall come in the way of an existing water main, gas main or other obstruction, the question of passing over or under the same shall be determined by the city engineer. In no case shall a sewer connection builder be allowed to decide the question.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-193. Sewer connection work to cause no inconvenience.
At all times, sewer connection work shall be done so as to cause the least inconvenience to property owners and the general public.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-194. Street improvements to be planned to avoid harm to sewer.
Any person making any kind of an improvement in the public streets or alleys upon which sewers and sewer connections have been laid shall so plan and execute their work that no injury will occur to any public sewer or any sewer connection.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-195. Construction and performance standards generally.
All sewer connections, backfilling of trenches, protection of existing structures, replacement of site to original conditions, and other items connected therewith shall be done in full accordance with the rules and regulations of the state plumbing board insofar as they apply.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-196. Owner liability and maintenance of lines and connection.
Liability for and maintenance and repair of the building sewer from the points between the structure serviced and the connection to the public sewer shall be the responsibility of the owner of record.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-197. Compliance with division; penalty.
No connection with any sewer shall be made except as provided in this division, and any person who shall make, permit or cause to be made a connection with such sewer in a manner contrary to the provisions of this division, or who shall fail, refuse or neglect, within ten (10) days after being notified by the city engineer that any connection is unlawfully made, to remove any sewer connection which is constructed contrary to the provisions of this division, or shall otherwise violate any of the provisions of this division, shall be guilty of a misdemeanor.
(Ord. No. 1087, § 1, 6-3-85)

Secs. 28-198--28-205. Reserved.

DIVISION 5.

WASTEWATER CONTRIBUTION PERMITS

Sec. 28-206. Identification and monitoring of POTW users.
The city shall distinguish between domestic and nondomestic users of the POTW. Identification, surveillance, monitoring, and governing of those users classified as nondomestic that discharge to the POTW or waters under jurisdiction of the city is hereby provided for through a permitting procedure. Nondomestic users subject to this division will be classified as having compatible or incompatible pollutants for purposes of the required wastewater contribution permit. Users classified as domestic users are not required to secure a wastewater contribution permit.
(Ord. No. 1087, § 2, 6-3-85)

Sec. 28-207. Nondomestic user compliance with entire division.
All users identified and classified as nondomestic are required to comply with all provisions set forth in this division.
(Ord. No. 1087, § 2, 6-3-85)

Sec. 28-208. Director of utilities to administer nondomestic discharges.
The director of utilities shall administer the wastewater contribution permit program for the City of Midland. The director or his designated agent shall enforce rules, regulations and restrictions, have the right of entry to any property or buildings having connection to the POTW, discontinue either water or sewer service for cause, issue or modify wastewater contribution permits, or take other actions necessary to carry out the intent of this division.
(Ord. No. 1087, § 2, 6-3-85)

Sec. 28-209. City's right of revision.
The city reserves the right to revise any section, word or phrase in this division or any wastewater contribution permit issued to ensure the intent of all portions of this division.
(Ord. No. 1087, § 2, 6-3-85)

Sec. 28-210. Accidental discharges.
As applies to this article, accidental discharges by nondomestic users, that are by nature of volume and/or concentration injurious to the POTW, the public health or the waters of the state, must be reported to the director as soon as discovered and immediate action taken to cease, clean up, and correct the accidental discharge.
(Ord. No. 1087, § 2, 6-3-85)

Sec. 28-211. Review of accidental discharges.
The director shall review incidents of accidental discharge to determine severity, cause, and preventive measures required to ensure against future occurrence. The review process shall address any appropriate actions against the discharger including, but not limited to, service discontinuance (water and/or sewer), fines or penalties, and/or judicial proceedings. Any costs incurred by the city for this review including city personnel time and benefits, laboratory costs, equipment rental, etc., may be charged to the discharger of concern.
(Ord. No. 1087, § 2, 6-3-85)

Sec. 28-212. Nondomestic discharge limitations.
When the user's discharge exceeds the pollutant concentrations set forth for "normal domestic waste" (three hundred (300) mg/l BOD, three hundred fifty (350) mg/l suspended solids and thirteen (13) mg/l phosphorus) or is otherwise incompatible, the user may be subject to a surcharge with terms stated as conditions or requirements of the user's wastewater contribution permit.
(Ord. No. 1087, § 2, 6-3-85)

Sec. 28-213. National categorical pretreatment standards.
National categorical pretreatment standards as promulgated by the U.S. E.P.A. pursuant to the act shall be met by all dischargers of regulated industrial categories.
(Ord. No. 1087, § 2, 6-3-85)

Sec. 28-214. State requirements.
Requirements and limitations set by the Michigan Water Resources Commission shall be met by all dischargers subject to such standards in any instance in which those state standards are more stringent than federal or local requirements and limitations.
(Ord. No. 1087, § 2, 6-3-85)

Sec. 28-215. Dilution.
No discharger shall increase the use of potable, process of ground waters (or any mix thereof) in any way or mix separate waste streams for the purpose of diluting a discharge to the POTW as a partial or complete substitute for adequate pretreatment of discharges to achieve compliance with requirements of limitations set forth in this division.
(Ord. No. 1087, § 2, 6-3-85)

Sec. 28-216. Supplemental limitations (discharge requirements).
No user shall discharge wastewater containing concentrations of toxic pollutants found to interfere with or pass through the POTW operation or interfere with the recycling or disposal of the wastewater bio-solids product (sludge). The following is a list of toxic pollutants of concern and the maximum allowable discharge limits for those pollutants, which is applicable to all users of the POTW:

Toxic Pollutant Name	*Maximum Allowable User Discharge Concentration*
Arsenic	1.4 mg/l
Cadmium	0.1 mg/l
Chromium (total)	2.1 mg/l
Copper	1.4 mg/l
Cyanide	1.1 mg/l
Lead	1.1 mg/l
Mercury	1.3 ng/l
Molybdenum	1.0 mg/l
Nickel	0.8 mg/l
Zinc	0.5 mg/l

The city reserves the right to amend the foregoing list as appropriate to protect the public health, safety and welfare of the citizens of the City of Midland.

Any discharge of mercury at or above 1.3 ng/l may require that a user develop, submit, and implement a Mercury Reduction Plan as approved by the City. Such plan shall include a written commitment by the user to reduce the concentration of mercury in the user's wastewater discharge. The user must submit to the City of Midland utilities department a semiannual report on the status of the mercury reduction effort. The mercury sampling procedures, preservation and handling, and analytical protocol for compliance monitoring shall be in accordance with EPA method 1631.

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The city reserves the right to amend the foregoing list as appropriate to protect the public health, safety and welfare of the citizens of the City of Midland.
(Ord. No. 1087, § 2, 6-3-85; Ord. No. 1662, § 1, 06-23-08)

Secs. 28-217--28-225. Reserved.

DIVISION 6.

INDUSTRIAL PRETREATMENT PROGRAM

Sec. 28-226. Industrial pretreatment program required.
The city hereby undertakes an industrial pretreatment program. Said program is initiated to control nondomestic user discharge contributions by prohibiting incompatible discharges by requiring pretreatment of incompatible discharges prior to discharge, or by entering in to agreements or contracts with nondomestic users whereby the city's wastewater treatment facilities would treat said contributions.
(Ord. No. 1087, § 2, 6-3-85)

Sec. 28-227. Cost recovery of industrial pretreatment program.
The director of utilities may cause a fee schedule to be developed that will allow the equitable recovery of cost from the users subject to the industrial pretreatment program. The fee schedule may address, but not be limited to, the following:

(1) The initial cost of starting industrial pretreatment program;

(2) Ongoing operation costs of the program;

(3) Discharger-specific monitoring, inspection and surveillance costs;

(4) Other fees deemed as necessary.
(Ord. No. 1087, § 2, 6-3-85)

Sec. 28-228. Permit-based program.
It is the intent of this division that the industrial pretreatment program be administered on a permit basis. Permits will be issued to nondomestic users based on criteria developed by the director of utilities.
(Ord. No. 1087, § 2, 6-3-85)

Sec. 28-229. Appeals by nondomestic users.
Nondomestic users, having been so classified by the director and subject to industrial pretreatment program criteria, may appeal (to the sewer board of appeals) the classification assignment or administrative orders issued pursuant to the enforcement of this article.
(Ord. No. 1087, § 2, 6-3-85)

Sec. 28-230. Confidentiality of information.
Unless requested by the user in writing to the director of utilities, all information gathered in the identification and control process of discharges in the city's POTW will be public information. Data describing characteristics of wastes discharged to the POTW shall be considered public information.

(Ord. No. 1087, § 2, 6-3-85)

Sec. 28-231. Wastewater contribution permits.
All nondomestic users of the POTW shall apply for a wastewater contribution permit. Additionally:

(1) Permit application. Written application for a wastewater contribution permit shall be made to the director within one hundred and twenty (120) days of promulgation of this article for current nondomestic users or thirty (30) days prior to issuance of a sewer connection permit for new sources. Specific data required by the application shall at minimum include:

(a) Site name, address, phone, contact person, sic code.

(b) Owner name, address.

(c) Site activity, hours of operation.

(d) Site plan, materials to be used, anticipated discharge volumes, and concentrations of nondomestic pollutants.

(2) Permit duration. Unless so specified by individual permit conditions, no wastewater contribution permit shall be valid for more than five (5) years, at which time reapplication shall be required.
(Ord. No. 1087, § 2, 6-3-85)

Sec. 28-232. Nondomestic user requirements.
It shall be the responsibility of the director to establish conditions, duration, and reporting and monitoring requirements of wastewater contribution permits. Requirements and limitations of and for the user shall be developed by the director and so stated within the body of the permit. Generally:

(1) Within one hundred and twenty (120) days of the promulgation of this article, all nondomestic users of the POTW shall submit a baseline report indicating the nature and concentration of all prohibited or regulated substances contained in its discharge and the average and maximum daily discharge volume in gallons.

(2) After review of baseline reports received from nondomestic users and notification of the user that the user is in violation of this article, within ninety (90) days of notification noncomplying users shall submit a plan to correct, through additional operation and maintenance procedures and/or pretreatment practices (reduction or elimination of prohibited or regulated substances prior to discharge to the POTW) necessary to bring the discharger into compliance with applicable treatment standards or requirements and/or provisions of this article. Monthly progress reports addressing efforts by the user to comply shall be submitted to the city until compliance is achieved.

(3) Periodic monitoring reports shall be submitted by all nondomestic users of the POTW required to obtain and maintain a wastewater contribution permit. Frequency and submittal dates will be set by the city. Nondomestic users subject to categorical pretreatment standards are required at least biannually to submit compliance and monitoring reports to the city.

(4) Permitted nondomestic uses shall cause all discharge data and records to be kept for a period of no less than three (3) years.
(Ord. No. 1087, § 2, 6-3-85)

Sec. 28-233. Discharger notification.
The director shall notify users in writing in the following cases:

(1) When any user is or becomes classified as a nondomestic user. The director shall state why the user is classified as nondomestic and further that the user must make application for a wastewater contribution permit.

(2) When any user violates or is otherwise in noncompliance with provisions of this article, the director shall state the violation or noncompliance and the corrective and/or preventive steps the user must take to cease said violation to comply.

(3) When, for any reason, a duly issued wastewater contribution permit holder is found to be in noncompliance with conditions or requirements of said permit. The director shall state the violation and require the user to respond to the notification within a reasonable period of time. A written response shall include, but not be limited to, reason(s) noncompliance occurred, steps taken to remedy the noncompliance act or a schedule indicating when corrective actions will be completed and compliance expected, and preventive steps to ensure against future of violation or noncompliance.

(4) When new standards, regulations and/or requirements shall apply to uses of the POTW. It shall be understood that user classification and permit conditions or requirements may need to be amended due to new legislation at the federal, state or city level. As the city is notified of or receives newly promulgated requirements, limitation or standards of the Clean Water Act, Resource Conservation and Recovery Act or other duly processed state or federal acts, the director shall cause users of the POTW to be formally aware of said newly promulgated requirements, limitations or standards. The director shall state the effect on POTW users, include a copy of the document(s) as received by the city from the duly authorized regulatory agency, and require the user to confirm receipt of said notification.

(5) When the user by action or inaction is subject to enforcement action by the city. The director shall state the violation requiring enforcement action, the enforcement action being pursued, and further actions that may be taken to correct said user action (violation or noncompliance) or inaction (negligence, violation or noncompliance).
(Ord. No. 1087, § 2, 6-3-85)

Sec. 28-234. Discharger responsibility.
It shall be the responsibility of all nondomestic users to comply with all sections of this article. In addition to the previously stated sections generally outlining user rights and responsibilities, the user by terms and conditions of the wastewater contribution permit may be required to:

(1) Provide monitoring facilities for inspection and sampling of the user's wastewater contribution.

(2) Provide operation data to the city to assess potential problems and/or determine cause of POTW interference, injury, or upset for which the user may be liable to any or all actions stated in section 28-211.

(3) Provide the director or his designated agent the right of entry to property or buildings having connection to the city POTW. This right of entry authorizes the director to conduct sampling and inspection, examination, and/or copying of the user's records as specifically pertains to the user's discharge characteristics.
(Ord. No. 1087, § 2, 6-3-85)

Sec. 28-235. Permit transfer.
Rights, regulations, agreements or understandings of the wastewater contribution permits are not transferable from a permittee to another party without the express and written consent of the city, nor shall any permit holder allow additions to his wastewater contribution flows or concentrations by another user without written approval of the director.
(Ord. No. 1087, § 2, 6-3-85)

Sec. 28-236. Compliance/enforcement record keeping.
The director shall cause to be kept a summary of user compliance, noncompliance, violation, monitoring and sampling activities in a manner that will facilitate including said activities with periodic reports submitted by the city to its regulators.

(1) All records and reports shall be kept on file for the three (3) most previous years.

(2) The city had the authority to annually publish through local media channels all violations requiring enforcement action. Said public notice shall include the penalized user's name (commercial or private), location, cause for the penalty and the penalty issued.
(Ord. No. 1087, § 2, 6-3-85)

Sec. 28-237. Penalties for violation or noncompliance of division or permit.
When, in the opinion of the director, any user has falsified information, or when noncompliance or violation of this division or the user's wastewater contribution permit or any other rules, regulations or schedules pertaining thereto has occurred, the city may terminate water and/or sewer service, institute civil or criminal action for falsification of information, noncompliance or violation of wastewater contribution permits, and recover costs incurred by the city during any or all of the aforementioned enforcement actions, or pursue any or all of the following:

(1) Suspension of water and/or sewer service may be a remedy or penalty for violation or noncompliance in the following cases:

Case 1. Where a user's discharge is determined by the city to create an imminent endangerment to human health or welfare, immediate discontinuance of water and/or sewer service or permit suspension shall be instituted.

Case 2. Where a user's discharge is determined by the city to present an endangerment to the environment or to the POTW operation, discontinuance of water and/or sewer service or permit suspension may be instituted, after said user has been notified and allowed a reasonable time (not to exceed forty-eight (48) hours) to respond.

(2) Where just cause can be demonstrated by the city, nondomestic user wastewater contribution permits may be revoked and all understandings repealed when violation or noncompliance of the permit or this division so warrants.

(3) Provision is hereby made whereby a nondomestic user notified of violation and/or noncompliance, and under penalty or citation for violation and/or noncompliance, has the right to appeal said penalty or citation to the sewer board of appeals.

(4) Users which experience an operational upset placing the user in a temporary state of violation or noncompliance with this division or his wastewater contribution permit shall:

(a) Inform the director within twenty-four (24) hours of finding said upset, orally or by written report.

(b) Where the original notification of upset was of a verbal nature, a written report shall be submitted within five (5) calendar days. Written reports shall include:

1. Description of the upset, cause thereof and the impact on the discharger's compliance status;

2. Duration of upset and/or noncompliance including dates, times, and, if continuing, an expected date/time by which compliance can be reasonably expected to occur;

3. All corrective steps taken to achieve compliance after the upset, and preventive steps to ensure against future occurrence of upset and/or noncompliance.

(c) A documented and verified operating upset shall be an affirmative defense by the user for any enforcement action against the discharger, except where gross negligence on the user's part is proven.

(5) The city has the authority to assess monetary penalties of up to three hundred dollars ($300.00) per violation per day to deter violations of or noncompliance with this division and/or a user's wastewater contribution permit.
(Ord. No. 1087, § 2, 6-3-85)

Sec. 28-238. Recovery of cost by city for enforcement actions.
The city is authorized to recover whatever the actual costs may be to enforce the provisions of the industrial pretreatment program as set forth in this division from violators of this division.
(Ord. No. 1087, § 2, 6-3-85)

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CODE OF ORDINANCES

Chapter 28

WATER, SEWERS AND SEWAGE DISPOSAL*

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* Charter References: Authority of city to use and control streams and water-courses, § 2.2; city authorized to own and operate water and sewer system, § 16.1; city manager to manage and supervise all city utilities, and to have charge of construction and repair of sewers, § 8.2.

Constitution reference--Authority of city to own and operate water and sewage disposal facilities, Art. VII, § 24.

Cross References: Buildings and building regulations, Ch. 5; garbage, refuse and litter, Ch. 10; housing code, Ch. 12; public improvements, Ch. 20; rates, charges and fees, Ch. 21; streets and sidewalks, Ch. 22; water and sewer system in subdivisions, § 23-196; subdivisions, Ch. 23; stormwater runoff regulation and control, Ch. 29.

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Div. 6. Industrial Pretreatment Program, §§ 28-226--28-238

ARTICLE I.

IN GENERAL

Sec. 28-1. Extending water, sewer service beyond corporate limits.
It shall be unlawful for any person who purchases water from the city, or is serviced by city sewer mains, to extend water or sewer service to facilities located outside of the corporate limits of the city without the express approval of the city council. The superintendent of water shall enforce this section and shall be authorized to make application in the proper court for writ or injunction restraining any person from violating this section.

Charter References: City authorized to sell and deliver water and sewer service outside corporate limits, § 16.1.

Constitution reference--Authority of city to deliver water and provide sewage disposal service outside of corporate limits, Art. VII, § 24.

Sec. 28-2. Findings--Water.

(a) *Necessity for potable water.* The city council has previously found, and currently reaffirms that the businesses, industries, governmental and charitable agencies and residents located in the city need to have potable and otherwise usable water.

(b) *Availability of potable water.* The city council further has previously found, and currently reaffirms, that the supply of potable water available from private wells within the city is insufficient to assure that all businesses, industries, governmental and charitable agencies, and residents will have sufficient potable water available for their use and other water necessary for industrial and fire prevention and control unless the city offers water to all properties located within the city.

(c) *Method for measuring use--water supply services.* Based on advice of its engineers, the city council has previously found, and currently reaffirms, that the most precise method, given available technology, of measuring the use of the water supply from the system by any user is by a meter or meters installed and controlled by the city.

(d) *Continuation of service.* The city council has previously found, and further currently reaffirms that, in order to provide and continue to provide clean potable and other usable water to all customers of the system, in quantities necessary for all varieties of use, it is necessary from time to time to install improvements, enlargements, extensions and repairs to the system.

(e) *Purpose of charges.* The charges and fees for the use of and connection to the system are hereby established for the purpose of recovering the cost of acquisition, construction, reconstruction, maintenance, repair, and operation of the system and to comply with federal and state safe drinking water acts and related regulations, to provide for the payment of principal of and interest on any bonds authorized to be issued as and when the same become due and payable, to create a bond and interest redemption fund therefor, to provide a fund for reasonable and necessary improvements to the system, to provide a fund for equipment replacement and to provide for such other funds as are necessary to meet contractual obligations of the city. Such charges and fees shall be made in accordance with the purposes herein described as well as the following:

(1) All premises connected directly or indirectly to the system, except as hereinafter provided, shall be charged and shall make payments to the city in amounts computed on the basis of this chapter.

(2) The charges, rates and fees for water service by the system are established herein to adequately provide for bond requirements and to ensure that the system does not operate at a deficit.

(3) The system staff or designated parties shall periodically review the charges, rates, fees, rules and regulations of the system, which review shall be completed not less than one (1) time per fiscal year. Results of the review shall be reported to the city council with recommendations for any adjustments.

(4) The charges, rates and fees shall be set so as to recover costs from users in reasonable proportion to the cost of serving those users.

(f) *Proportionality, fairness, and benefits of charges, rates and fees.* The city council has previously found and further currently reaffirms that the fairest and most reasonable method of providing for the operation, maintenance, repair, replacement and improvement of the system is to charge each user, based in all cases on amount of use, for the costs of: (i) retiring debt secured by the net revenues of the system issued to pay for improvements and replacements to the system; (ii) ongoing repair, replacement and improvement and budgeted as part of the annual costs of the system; and (iii) operation, administration and maintenance costs of the system.

The city has investigated several methods of apportioning the costs of the water service provided by the system. Based on its investigation and on the advice of its engineers, the city council has previously found, and currently reaffirms, that to ensure the stability and viability of the system for the benefit of its users, the fairest and most accurate way to apportion the costs of operation, maintenance, replacement and improvement of the system is to charge each user: (i) a connection fee and a capital charge for water service when such user's property is first connected to the system; (ii) a commodity rate for the use of water; (iii) a readiness-to-serve charge; and (iv) other charges and costs for services which are equivalent to the cost of providing such services. The city council has previously found, and currently reaffirms that the rates and charges currently in effect accurately apportion the fixed and variable costs of the system among the users of the system and that the commodity rate and the readiness-to-serve charges each provide actual benefits to such users in the form of ready access to water service that would be unavailable if such charges were not charged.

In addition to the findings set forth above, the city council has previously found and currently reaffirms that the capital charge reflects the depreciated capital costs of the system, previously paid by the city and the system, less grants, attributable to each new user and that the opportunity to connect to the system provides actual benefits to each new user equal to or greater than the amount of such charges.

Furthermore, the city council has previously found and currently reaffirms that the charges imposed by the system are sufficient to meet the short-term capital improvement needs of the system.

(g) *Design life of improvements.* Based on the advice of its engineers, the city council has previously found and currently reaffirms that any improvements to or capital

expenditures for the system paid for by rates and charges did not, at the time such improvements were constructed and financed, have an expected design life that would exceed the term of the respective bonds issued to finance such improvements or capital expenditures.

(h) *Charges for non-residents.*

Contracts for water service. The city has previously entered, and may continue to enter, into contracts with municipalities adjacent to the city, to provide service to users of the water supply system located in those municipalities. Rates and charges billed for use by the residents of those municipalities shall be in accordance with the applicable contract.

Charges for service to customers outside city where no other contract compensates the city for indirect costs. The city has previously found, and hereby ratifies and confirms, that the total direct and indirect costs of providing service to customers outside the city jurisdiction, where no other contract exists with the governmental units where those customers are located, equals at least 1.75 times the rates and charges imposed for direct services and debt service cost to customers located in the city. Indirect costs include payment for capital improvements, extraordinary repairs and replacements for the water supply system benefiting all users of the system and paid for by customers served within the corporate limits of the city or the corporate limits of other municipalities which have entered into contracts with the city for such costs, funding depreciation of the improvements to the water supply system, and fire and police or other protection for the water supply system paid by city taxpayers or by the governmental units with which the city has contracts for water supply.
(Ord. No. 1513, § 1, 7-23-01)

Sec. 28-3. Establishment of the water distribution system.
Based on the findings and for the purposes set forth in section 28-2, the city has previously established and hereby re-establishes the water distribution system, consisting of all water mains, pumping and storage facilities, pressure systems, wells, connections, service pipes, meters, and all other appurtenances to the system.
(Ord. No. 1513, § 1, 7-23-01)

Sec. 28-4. Findings-Sewer.

(a) *Necessity for sewage disposal.* The city council has previously found, and currently reaffirms, that the use of septic tanks, privies, privy vaults, cesspools, or similar private sewage disposal facilities, may be deleterious to the health, safety and welfare of the businesses, industries, governmental and charitable agencies, and residents of the city and that the health, safety and welfare of the businesses, industries, governmental and charitable agencies and residents is enhanced by the creation of a public sewer system and wastewater treatment plant, with regulation by the city of pollutants and other harmful materials according to state and federal standards.

(b) *Method for measuring use--sewage disposal services.* Based on advice of its engineers, the city council has previously found, and currently reaffirms, that the most practical, cost effective and accurate method, given available technology, of measuring the use of the system's sewers by any user is by the meter or meters used to measure water usage.

(c) *Continuation of service.* The city council has previously found, and further currently reaffirms that, in order to provide and continue to provide for the safe and uninterrupted removal and treatment of sewage, pollutants and other harmful materials, it is

necessary from time to time to install improvements, enlargements, extensions and repairs to the system's sewers and sewer service pipes.

(d) *Purpose of charges.* The charges and fees for the use of and connection to the system are hereby established for the purpose of recovering the cost of acquisition, construction, reconstruction, maintenance, repair, and operation of the system and to comply with federal and state safe drinking water acts and related regulations, to provide for the payment of principal of and interest on any bonds authorized to be issued as and when the same become due and payable, to create a bond and interest redemption fund therefor, to provide a fund for reasonable and necessary improvements to the system, to provide a fund for equipment replacement and to provide for such other funds as are necessary to meet contractual obligations of the city. Such charges and fees shall be made in accordance with the purposes herein described as well as the following:

(1) All premises connected directly or indirectly to the system, except as hereinafter provided, shall be charged and shall make payments to the city in amounts computed on the basis of this chapter.

(2) The charges, rates and fees for sewer service by the system are established herein to adequately provide for bond requirements and to ensure that the system does not operate at a deficit.

(3) The system staff or designated parties shall periodically review the charges, rates, fees, rules and regulations of the system, which review shall be completed not less than one (1) time per fiscal year. Results of the review shall be reported to the city council with recommendations for any adjustments.

(4) The charges, rates and fees shall be set so as to recover costs from users in reasonable proportion to the cost of serving those users.

(e) *Proportionality, fairness, and benefits of charges, rates and fees.* The city council has previously found and further currently reaffirms that the fairest and most reasonable method of providing for the operation, maintenance, repair, replacement and improvement of the system is to charge each user, based in all cases on amount of use, for the costs of: (i) retiring debt secured by the net revenues of the system issued to pay for improvements and replacements to the system; (ii) ongoing repair, replacement and improvement and budgeted as part of the annual costs of the system; and (iii) operation, administration and maintenance costs of the system.

The city has investigated several methods of apportioning the costs of the sewage disposal service provided by the system. Based on its investigation and on the advice of its engineers, the city council has previously found, and currently reaffirms, that to ensure the stability and viability of the system for the benefit of its users, the fairest and most accurate way to apportion the costs of operation, maintenance, replacement and improvement of the system is to charge each user: (i) a connection fee and a capital charge for sewer service when such user's property is first connected to the system; (ii) a commodity rate for the use of sewer services; (iii) a readiness-to-serve charge; and (iv) other charges and costs for services which are equivalent to the cost of providing such services. The city council has previously found, and currently reaffirms that the rates and charges currently in effect accurately apportion the fixed and variable costs of the system among the users of the system and that the commodity rate and

the readiness-to-serve charges each provide actual benefits to such users in the form of ready access to sewer service that would be unavailable if such charges were not charged.

In addition to the findings set forth above, the city council has previously found and currently reaffirms that the capital charge reflects the depreciated capital costs of the system, previously paid by the city and the system, less grants, attributable to each new user and that the opportunity to connect to the system provides actual benefits to each new user equal to or greater than the amount of such charges.

Furthermore, the city council has previously found and currently reaffirms that the charges imposed by the system are sufficient to meet the short-term capital improvement needs of the system.

(f) *Design life of improvements.* Based on the advice of its engineers, the city council has previously found and currently reaffirms that any improvements to or capital expenditures for the system paid for by rates and charges did not, at the time such improvements were constructed and financed, have an expected design life that would exceed the term of the respective bonds issued to finance such improvements or capital expenditures.

(g) *Charges for non-residents.*

Contracts for sewage disposal services. The city has previously entered, and may continue to enter, into contracts with municipalities adjacent to the city to provide sewage disposal services in those municipalities. Rates and charges billed for use by the residents of those municipalities shall be in accordance with the applicable contract.

Charges for service to customers outside city where no other contract compensates the city for indirect costs. The city has previously found, and hereby ratifies and confirms, that the total direct and indirect costs of providing sewage disposal service to customers outside the city jurisdiction, where no other contract exists with the governmental units where those customers are located, equals at least 1.75 times the rates and charges imposed for direct services and debt service cost to customers located in the city. Indirect costs include payment for capital improvements, extraordinary repairs and replacements for the sewage disposal system benefiting all users of the system and paid for by customers served within the corporate limits of the city or the corporate limits of other municipalities which have entered into contracts with the city for such costs, funding depreciation of the improvements to the sewage disposal system, and fire and police or other protection for the sewage disposal system paid by city taxpayers or by the governmental units with which the city has contracts for sewage disposal services.
(Ord. No. 1513, § 1, 7-23-01)

Sec. 28-5. Establishment of the sewage disposal system.
Based on the findings and for the purposes set forth in section 28-4, the city has previously established and hereby re-establishes the sewage disposal system, consisting of all sewers, interceptors, pipes, treatment facilities and all other appurtenances to the system.
(Ord. No. 1513, § 1, 7-23-01)

Secs. 28-6--28-11. Reserved.

ARTICLE II.

WATER

DIVISION 1.

GENERALLY

Sec. 28-12. Definitions.
When used in this article, the following terms shall be construed as defined in this section, unless a different definition shall be adopted for any division of this article:

Backflow. Any water entering the public water supply provided by the city due to a reversal of flow.

City treasurer. The duly appointed officer of the city, or his authorized representative.

Cross connection. A connection or arrangement of piping or appurtenances through which backflow could occur.

Domestic customer. An individual customer with his own service and external shutoff who is served water for domestic purposes only. This does not include a business, corporation, partnership, etc., which is using water or reselling water to renters or when more than one apartment, business, etc., is served from one meter.

Operation and maintenance. The labor, material, and other costs incurred by the performance of operation and maintenance of a water system.

Readiness-to-serve charge. A charge approximately equal to the proportional fixed costs of the city's water system attributable to each user.

Superintendent of water. That duly appointed officer of the city, or his authorized representative.

Water connection or *service.* A tap into a water main.

Water extension. That part of the consumer's water supply system extending from the end of the water connection into the premises served and ending at the city's water meter.

Water main. That portion of the water distribution system lying in the public right-of-way and of a size adequate to serve more than one (1) customer.
(Ord. No. 824, § 1, 8-27-73; Ord. No. 1012, § 1, 2-15-82; Ord. No. 1513, § 1, 7-23-01)

Sec. 28-13. Where mains are installed; grant of easement.
All water mains shall be installed in public rights-of-way. However, where it is deemed necessary by the water department that certain water mains be installed in private property, the property owner shall grant an easement to the city for the purposes of meter reading, inspection and maintenance of water mains.

Sec. 28-14. Structure to have individual connection.
Every dwelling, building or structure furnished city water shall have its individual water connection.

Sec. 28-15. Elimination of cross connections required; adoption of water supply cross connection rules.

Cross connections of the filtered and unfiltered public water systems provided by the city with any other water supply system shall not be permitted.

The city hereby adopts by reference the water supply cross connection rules of the Michigan Department of Public Health being 325.431 to R 325.440 of the Michigan Administrative Code.

It shall be the duty of the superintendent of water to cause inspections to be made of all properties served by the public water supply where cross connections are deemed possible. The frequency of inspections and reinspections based on potential health hazards involved shall be as established by the superintendent of water and as approved by the Michigan Department of Public Health.

The superintendent of water shall have the right to enter at any reasonable time any property served by connection to public water system of the city for the purpose of inspecting the piping system or systems thereof for cross connections. On request, the owner, lessee or occupants of any property so served shall furnish to the inspection agency any pertinent information regarding the piping system or systems on such property. The refusal of such information or refusal of access, when requested, shall be deemed prima facie evidence of the presence of cross connections.

The superintendent of water is hereby authorized and directed to discontinue water service after reasonable notice to any property wherein any cross connection or other violation of this section exists, and to take other precautionary measures deemed necessary to eliminate any danger of contamination of the public water supply system. Water service to such property shall not be restored until the water connection or cross connection has been eliminated.

Potable supply made available on the properties served by the public water supply shall be protected from possible contamination as specified by this section and by the State and City of Midland Plumbing Codes. Any water outlet which could be used for potable or domestic purposes and which is not supplied by the potable system must be labeled in a conspicuous manner as: "WATER UNSAFE FOR DRINKING."

This section does not supersede the State Plumbing Code or City of Midland Plumbing Code, that being Chapter 18 of the Midland Code of Ordinances, but shall be considered supplementary to them.
(Ord. No. 824, § 2, 8-27-73)

Sec. 28-16. Connection installation.
Water connections shall be installed upon the prepayment of the estimated cost of construction.

Sec. 28-17. Permission to construct extension.
Permission to construct a water extension shall be implied with the purchase of each water connection.

Sec. 28-18. No branches or connections allowed off extension.
There shall be no branches or connections off the extension pipe connecting the water supply main with the water meter.

Sec. 28-19. Structures and customers to have water meter and outside shutoff valve.

Every dwelling, building or structure furnished city water shall have its own water meter and outside shutoff valve. Every customer furnished city water shall have their own water meter and outside shutoff valve.
(Ord. No. 1012, § 1, 2-15-82)

Sec. 28-20. Place for meter installation; when city provides same; charges.

(a) Customers shall provide a suitable place for meter installation.

(b) In event of the failure or refusal of a customer to provide a suitable place, or if in the judgment of the water department damage may result to the meter through frost or other agency, the city may provide a suitable place for installation and charge the customer an additional fifty dollars ($50.00) or actual labor and material costs, whichever is greater. The amount of such charge may be assessed against the customer in the next ensuing quarter, and be collected in the same manner as other water charges.
(Ord. No. 1012, § 1, 2-15-82)

Sec. 28-21. Interfering, tampering with meters; ownership.
No person other than an authorized employee of the city shall break or injure the seal on, or change the location of, or alter or interfere in any way with any water meter. All meters are property of the city.
(Ord. No. 1120, § 1, 3-23-87)

Sec. 28-22. Expense of negligent injury to be borne by occupant of premises.
Whenever a water meter is injured because of any act or negligence on the part of the owner or occupant of the premises where such meter is installed, the expense of the city caused thereby shall be charged to and collected from such owner or occupant in the same manner as other water charges.
(Ord. No. 1012, § 1, 2-15-82)

Sec. 28-23. Who may turn on and off service.
No person, other than an authorized employee of the city, shall turn on or off any water service, except that a licensed plumber may turn on a water service for testing an extension system, after which the plumber shall immediately turn the water service off.

Sec. 28-24. Mayor's declaration of water emergency.
At such time as the mayor shall determine that water consumption within the city has or is about to exceed the supply available to the city for its uses on a continuing basis, he may declare that a water emergency exists.

Sec. 28-25. Water uses prohibited during water emergency.
When the mayor has declared that a water emergency exists, the use and withdrawal of water by any person from the city water distribution system for any of the following purposes is hereby prohibited:

(a) Watering of yards. The sprinkling, watering or irrigation of shrubbery, trees, lawns, grass, ground covers, plants, vines, gardens, vegetables, flowers and any other vegetation.

(b) Cleaning outdoor surfaces. The washing of sidewalks, driveways, filling station aprons, porches, patios and other outdoor hard surface areas.

(c) Swimming pools. Swimming and wading pools not employing a filter and recirculating system.

(d) Escape through defective plumbing. The escape of water through defective plumbing, which shall mean the knowing permission for defective plumbing to remain out of repair.

Sec. 28-26. Declaration of existence, termination of emergency.
When the mayor shall have declared that a water emergency exists, notice thereof shall be given by releasing such declaration to the official newspaper and to all radio stations maintaining studios within the city. Such notice shall advise of the time of commencement of such emergency and that such emergency shall continue until notice of termination is given by the mayor through the same media.

Sec. 28-27. Termination of emergency.
When the mayor shall determine that the conditions which caused the declaration of a water emergency no longer exists, he shall so declare and give notice of such determination as provided in section 28-26.

Sec. 28-28. Penalty for violation of water emergency regulations.
Any person who shall knowingly, during any water emergency, use or withdraw water from the city water distribution system for any of the purposes prohibited in section 28-25, shall be guilty of a misdemeanor, and shall be subject to a fine of not to exceed twenty-five dollars ($25.00) for each violation and, in addition, if he refuses to discontinue such violation, be subject to the discontinuance of water service during the continuance of such emergency.

Sec. 28-29. Rule making by council.
The city council may, by resolution, adopt such rules and regulations as it may deem necessary to administer the terms of this article.

Secs. 28-30--28-35. Reserved.

DIVISION 2.

FILTERED SERVICE AND EXTENSIONS

Sec. 28-36. Installation of service, extension to property line.

The water department shall, where a filtered water main is adjacent to the property of a customer, install water service and extension from the main to the customer's property line.

Sec. 28-37. City meters to be used.
Meters to be used in the installation of the filtered service and extension pursuant to section 28-36 shall be only those which are obtained from the water department.

Sec. 28-38. Cost of filtered service, extension and installation.
The cost of the installation of a filtered water service and extension shall be determined as follows:

(a) The installation from the main to the curb box, which shall be located on the street side of the sidewalk line, shall include the tapping of the main, the furnishing and installing

of all necessary valves, pipe and fittings from the main to the curb box plus the cost of the meter and the meter fittings. The cost thereof, payable in advance, shall be according to the following schedule if the service is applied for between April 1 and November 30:

3/4" service $470.00

1 " service 550.00

1 1/4" service 625.00

1 1/2" service 815.00

2 " service 975.00

(b) If the service installation is installed by customer request between December 1 and March 31, an additional charge of seventy-five dollars ($75.00) shall be added to the service connection fee.

(c) In addition to the service connection fee set forth in paragraph (a) above, a one-time water system capital charge shall be paid in advance of connection in accord with the following schedule:

3/4" service . . . . . $ 800.00

1 " service 1,040.00

1 1/4" service 1,200.00

1 1/2" service 1,280.00

2 " service 2,080.00

3 " service 8,000.00

4 " service 10,400.00

6 " service 15,200.00

8 " service 21,600.00
(Ord. No. 908, § 1, 7-25-77; Ord. No. 947, § 1, 6-18-79; Ord. No. 1012, § 1, 2-15-82; Ord. No. 1120, § 1, 3-23-87; Ord. No. 1271, § 1, 9-13-93; Ord. No. 1277, § 1, 9-20-93)

Sec. 28-39. Property not having previously paid for a water main.
For property which has not borne the expense of the construction of water mains, a water connection permit shall not be granted until a payment is made by the owner of said property at a rate equal to one-half (1/2) the cost of construction of an eight-inch water main, indexed to the year of construction using *The Engineering News Record*, "The Construction Cost Index," and calculated by the city engineer on a front foot basis, is paid. The property owner may choose to pay this fee in five (5) installments, the first installment being due at the time of connection, and the deferred installments being due annually thereafter, with interest accumulating at the rate of the most recent rate established by the city council for annual

payments of special assessments. In such event, this charge shall constitute a lien on the premises subject thereto, and that amount shall also be a debt to the person to whom assessed until paid.

Annually, the city engineer shall notify the director of fiscal services of any such charges due. The director of fiscal services shall forward a statement of the total charges assessed on each parcel of property to the owner, as shown by the last current assessment or tax roll, and said assessment shall be payable to the city treasurer within thirty (30) days from the date said statement was forwarded. If not paid within the prescribed thirty-day period, such statement shall be filed by the director of fiscal services with the city assessor and shall thereupon be assessed against the land in question and become a lien on such property, in accordance with the City of Midland charter. The amount so charged may be discharged at any time by the payment of the amount specified in the statement, together with the accrued interest compiled from the time of filing said statement with the city assessor. An additional charge, payable at the time of connection, shall be made for the connection line from the water main to the property line of the property to be served, as provided for in section 28-38.
(Ord. No. 908, § 2, 7-25-77; Ord. No. 1258, § 1, 3-15-93; Ord. No. 1326, § 1, 8-28-95)

Secs. 28-40--28-44. Reserved.

DIVISION 3.

RATES, CHARGES, BILLING*

* Editors Note: Ord. No. 1513, § 1, adopted July 23, 2001, amended div. 3 in its entirety, in effect repealing and reenacting div. 3 to read as herein set out. Formerly, div. 3 pertained to unfiltered service and extensions and derived from original codification.

Sec. 28-45. City may establish water rates.
The city may classify the users of water service according to the quantities and types of water supplied, and charge such rates to users in each class in proportion to the costs of providing water service to, and according to the benefits received by, such classes of users.
(Ord. No. 1513, § 1, 7-23-01)

Sec. 28-46. Reserved.

Sec. 28-47. Meters to be used to measure quantity; remote type meters required.
Where water rates are based on quantities supplied, the quantities shall be determined and measured by city water meters. The superintendent of water may require installation of remote type reading meters if the water department is unable to enter a structure to read a customer's water meter, whenever meter replacement is required and for new water service installations.
(Ord. No. 1513, § 1, 7-23-01)

Sec. 28-48. City may estimate consumption when meter fails or when unable to read meter.
In the event that a water meter shall fail to register properly, or the city is unable to gain entry to read the meter, the city is empowered to estimate the quantity of water used on the basis of information available and bill accordingly.
(Ord. No. 1513, § 1, 7-23-01)

Sec. 28-49. Right of entry for inspection, meter reading.

All water service contracts entered into shall give the city's authorized agent authority to enter upon the consumer's premises for the purpose of reading or inspecting a water meter or any piping connected with the consumer's water system.
(Ord. No. 1513, § 1, 7-23-01)

Sec. 28-50. Deposit for filtered water service; refund.

(a) *Deposit required.* Before any premises may be served with water or sewerage service, a deposit of not less than thirty-five dollars ($35.00) and not more than the amount of an estimated bill for six (6) months' filtered water and sewerage usage for the applicable service, as estimated by the water department, shall be required from all applicants for service when the applicant is not the owner of the premises where the service is provided.

(b) *Interest on security deposits.* The water department will apply interest to the deposit accounts of all users with security deposits over fifty dollars ($50.00). For deposits exceeding fifty dollars ($50.00), interest at the rate of four (4) percent per annum shall be credited to the customer's account, said interest to be computed annually on all sums that have remained on deposit for six (6) months and to be credited semiannually. Accrued interest due shall be paid at the time the deposit is refunded.

(c) Notification necessary to waive lien. When a tenant is responsible for payment of water and/or sewer bills and a lease has been executed containing a provision that the lessor not be liable for water and/or sewer charges, then it shall be the responsibility of the lessor to so notify the water department office with an appropriate affidavit signed by both parties requesting a waiver or lien.

The affidavit must state: "Tenant is totally responsible for all charges for water and/or sewer service furnished to the said premises by the City of Midland. Tenant understands that no service shall be commenced to the above address until there has been deposited with the city a sum sufficient to cover twice the average quarterly bill with a one hundred ten dollars ($110.00) minimum, and a copy of the lease including the affidavit furnished to the city. Tenant further understands that payment of charges for water and/or sewer service may be enforced by discontinuing the services to the premises." The affidavit shall state the expiration date of the lease. Upon receipt of such notification, the city will waive its lien pursuant to Public Act 178 of the Public Acts of the State of Michigan, of 1939, as amended, and the water and sewer bills to the lessee within the term of the lease shall not be a lien against the property. Upon expiration of the lease, a new affidavit must be submitted to retain the lien waiver. Without such notification, water and/or sewer bills will be a lien against the property served regardless of any lease provisions between the parties. The water and/or sewer bills shall be in the name of the premises except as provided by this section concerning tenants.

(d) *Security deposits in lieu of lien.* When the water department has received and approved a request from the property owner for a waiver of lien, then a cash deposit will be required of the lessee as security for payment of all water and/or sewer charges. Said cash deposit shall be equal to two (2) times the estimated quarterly bill for water and/or sewer charges, but in no case, less than one hundred ten dollars ($110.00).

Sec. 28-51. When two customers are served by one connection.

In the event one water connection serves two (2) or more customers, the water meter or meters shall be in the name of one individual or organized group of individuals contracting with the city for service, and such individual or organized group of individuals shall be responsible for all water service charges.
(Ord. No. 1513, § 1, 7-23-01)

Sec. 28-52. Filtered water rate generally.
The city's methodology of adjusting water rates shall be in accordance with the cost of service water and sewer rate study prepared by the city's consultant, presented to and approved by the council in 1993 and shall be in conformity with the findings set forth in section 28-2 of this chapter.
All filtered water bills shall be calculated according to the following:
(1) For each one thousand (1,000) gallons used per quarter: $1.32
(2) In addition to the rate set forth in this section for the use of water, there shall be a readiness-to-serve charge per quarter on each metered service as follows:

Metered Service	Amount
5/8" – 3/4"	$35.55
1"	$46.22
1- 1/2"	$56.88
2"	$92.43
3"	$355.50
4"	$462.15
6"	$675.45
8"	$959.85

(3) Gross rates shall be ten (10) percent greater than the above schedule of rates and shall be charged for water service paid for after the date shown on the bills.

(Ord. No. 1513, § 1, 7-23-01; Ord. No. 1581, § 1, 6-28-04; Ord. No. 1619, § 1, 6-26-06; Ord. No. 1635, § 1, 06-25-07 ; Ord. No. 1659, § 1, 06-23-08; Ord. No. 1681, § 1, 06-22-09; Ord. No. 1707, § 1, 06-28-10; Ord. No. 1716, § 1, 06-27-11; 1731, § 1, 06-25-12; 1748, § 1, 06-24-13)

Sec. 28-53. Rate for filtered water used in construction when meter cannot be used.

(a) For construction work where, due to weather or other conditions, it is impracticable to furnish a temporary meter connection, a minimum charge of forty dollars ($40.00) per service connection shall be made. Water used should be metered or may be estimated by the water department, and the charges shall be one dollar and ten cents ($1.10) per one thousand (1,000) gallons for water used over the first one thousand (1,000) gallons.

(b) Where it is determined by the water department that it is desirable to allow temporary water use from a fire hydrant, permission may be given in writing by the water department. A forty dollar ($40.00) minimum charge per service connection shall be paid in advance; and an additional charge of one dollar and ten cents ($1.10) per one thousand (1,000) gallons used, either metered or estimated by the water department, shall be made if the amount of water to be used is estimated to be greater than one thousand (1,000) gallons.
(Ord. No. 1513, § 1, 7-23-01)

Sec. 28-54. Use of water from fire hydrant without permission.
It shall be unlawful for any person to use water from a fire hydrant without obtaining permission from the superintendent of water or his designated representative.
(Ord. No. 1513, § 1, 7-23-01)

Sec. 28-55. Filtered water used for private fire defense.
For water service for private fire defense to private consumers through service connections, filtered water rates shall be determined in accordance with the size of the fire connection as follows:

6" connections, per quarter . . . . . $ 41.50

8" connections, per quarter 66.40
(Ord. No. 1513, § 1, 7-23-01)

Sec. 28-56. Quarterly assessment, collection.
Charges for filtered water consumed inside and outside the city shall be assessed and collected in four (4) quarterly periods, or more often if circumstances require.
(Ord. No. 1513, § 1, 7-23-01)

Sec. 28-57. Reading, billing date, remote reading registers.

(a) Water meters shall be read as nearly as possible within twenty (20) days of the end of each quarter, and the water charge shall be billed to the customers within forty (40) days of the end of each quarter.

(b) The customer may at his option, request to have a water meter with a remote reading register installed so that the meter may be read from outside the building. The superintendent of water may require a remote reading meter register for new services, or whenever meter replacement is required, or when unable to gain entry to read the meter.

(c) In the event of a discrepancy between the readings on the water meter and the remote register, the consumption as shown on the water meter shall be used in calculating the billing or as otherwise provided for in this chapter.
(Ord. No. 1513, § 1, 7-23-01)

Sec. 28-58. Computation of monthly billing.
Water service billed monthly shall be computed so that the total cost per quarter shall be the same as if billed quarterly.
(Ord. No. 1513, § 1, 7-23-01)

Sec. 28-59. Payment of bills, charges, etc.
Payment of all water and sewer bills, charges, fees and deposits for water service shall be made to the city treasurer.
(Ord. No. 1513, § 1, 7-23-01)

Sec. 28-60. When water bills are due and payable.
All water bills shall be due and payable at the office of the city treasurer in the city hall on or before the date shown on the bill which shall be not less than fifty (50) nor more than sixty (60) days after the end of the quarter for which such bills are issued.
(Ord. No. 1513, § 1, 7-23-01)

Sec. 28-61. When water service may be discontinued.
The city may discontinue water service for failure to comply with all ordinances, rules or regulations of the city relating to water use or for nonpayment of water rates and charges. When a water bill remains unpaid for more than thirty (30) days after its due date, water services to the premises shall be discontinued until such account is paid.
(Ord. No. 1513, § 1, 7-23-01)

Sec. 28-62. Enforcement of collection of water charges by assumpsit.
The payment of the charges for services and for filtered water supplied may be enforced by an action of assumpsit instituted in the name of the city against such user.
(Ord. No. 1513, § 1, 7-23-01)

Sec. 28-63. Unpaid filtered water charges to be a lien; collection.
By Section 21 of Act 94, Michigan Public Acts of 1933, as amended, bills for water service shall constitute a lien on the premises affected. The city shall certify those rates and charges delinquent for six (6) months or more to the city tax assessing officer, who shall enter the amount of the delinquent rates and charges on the tax roll against the premises to which the service was rendered, and shall collect the rates and charges and enforce the lien in the same manner as provided for the collection of ad valorem property taxes assessed upon the same roll, or as otherwise provided by this chapter.
(Ord. No. 1513, § 1, 7-23-01)

Sec. 28-64. Reinstating water service; charge.
Water service which has been discontinued for the nonpayment of water bills or charges due the city shall not be reinstated except upon the prepayment of a service charge of twelve dollars and fifty cents ($12.50). There shall be an additional charge for reinstating service during other than normal working hours, based on the costs incurred. The service charge shall be added to the water bill.
(Ord. No. 1513, § 1, 7-23-01)

Sec. 28-65. City to assume no responsibility for leaks in service beyond the meter.
The city will assume no responsibility for excessive water bills caused by a leak in the water service beyond the water meter.
(Ord. No. 1513, § 1, 7-23-01)

Sec. 28-66. City to pay for water.
The city shall pay, out of the appropriate general funds, the reasonable cost and value of the filtered water services rendered to, and the water supplied to, the city by the city water system, on the basis of the schedule of rates and amounts of water used by the several city departments.
(Ord. No. 1513, § 1, 7-23-01)

DIVISION 4.

RESERVED*

* Editors Note: Ord. No. 1513, § 2, adopted July 23, 2001, repealed div. 4, §§ 28-62--28-86, in its entirety. Formerly, div. 4 pertained to rates, charges, and billing, and derived from Ord. No. 786, § 1, 2, adopted January 10, 1972; Ord. No. 863, §§ 1--5, adopted June 2, 1975; Ord. No. 933, §§ 1--5, adopted June 12, 1978; Ord. No. 947, § 2, adopted June 18, 1979; Ord. No.

964, § 1, adopted November 9, 1979; Ord. No. 1012, §§ 1, 2, adopted February 15, 1982; Ord. No. 1099, § 1, adopted February 24, 1986; Ord. No. 1120, § 1, adopted March 23, 1987; Ord. No. 1183, §§ 1--4, adopted October 30, 1989; Ord. No. 1201, § 1, adopted October 29, 1990; Ord. No. 1210, § 1, adopted February 18, 1991; Ord. No. 1225, § 1, adopted August 26, 1991; Ord. No. 1271, §§ 2, 3, adopted September 13, 1993; Ord. No. 1296, § 1, adopted June 27, 1994; Ord. No. 1320, § 1, adopted June 12, 1995; Ord. No. 1352, § 1, adopted June 24, 1996; Ord. No. 1381, § 1, adopted June 16, 1997; Ord. No. 1416, § 1, adopted June 22, 1998; Ord. No. 1453, § 1, adopted June 21, 1999.

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Secs. 28-67--28-97. Reserved.

ARTICLE III.

SEWERS AND SEWAGE DISPOSAL*

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* Editors Note: Ord. No. 1087, §§ 1, 2, adopted June 3, 1985, repealed former Art. III, pertaining to sewers and sewage disposal, and enacted in lieu thereof a new Art. II as herein set out. Former Art. III, was derived from the following ordinances:

Ord. No.	Section	Date	Ord. No.	Section	Date
786	3, 4	1-10-72	984	1	9-8-80
863	6, 7	6-2-75	1012	1	2-15-82
933	6	6-12-78	1056	1	11-21-83
947	3	6-18-79	1059	1	12-19-83
964	2	11-9-79			

DIVISION 1.

GENERALLY

Sec. 28-98. Purpose and policy.
This article of the Code sets forth uniform requirements for direct and indirect discharges into the wastewater collection and treatment system of the City of Midland.

The objectives of this article are:

(1) To prevent the introduction of pollutants into the municipal wastewater system which will interfere with the operation of the system or contaminate the resulting sludge;

(2) To prevent the introduction of pollutants into the municipal wastewater system which will pass through inadequately treated to the receiving waters or otherwise be incompatible with the collection and/or treatment facilities;

(3) To enable the recycling and reclaiming of wastewaters and sludges from the system;

(4) To provide for equitable distribution of the costs incurred by the municipal wastewater system; and

(5) To generally govern the use of the City of Midland Sewerage System.

This article provides for the regulation of direct and indirect discharges to the municipal wastewater system through the issuance of permits to certain nondomestic users and through enforcement of general requirements for other users, authorizes monitoring and enforcement activities, requires user reporting, and provides for the setting of fees for the equitable distribution of costs for operation and maintenance of the POTW system and associated programs thereof.

This article shall apply to the City of Midland and to persons outside the city who are, by contract or agreement with the city, users of the city POTW. Except as otherwise provided herein, the director of utilities of the city shall administer, implement and enforce the provisions of this article.

It is the intent of this article and the divisions therein to protect and ensure the efficient operation of the POTW, and assure, to the highest degree possible, the public health, safety and welfare of the citizens of the City of Midland. It is not the intent of this article to conflict with any federal or state laws presently in force, and in the event any division or section of this article is determined to be legally unsupportable or in conflict with any laws and regulations of the federal or state governments or any administrative agency thereof, the remainder of this article shall not be deemed to be void.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-99. Sewer district encompassing city established.
A compulsory sewer district which shall include the entire City of Midland is hereby established.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-100. Extending sewer service beyond corporate limits.
It shall be unlawful for any party to extend sewer service to facilities outside of the corporate limits of the city without the express approval of the city council. The director of utilities shall enforce this section and shall be authorized to make application in the proper court for writ or injunction restraining any person from violating this section.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-101. Management of sewer system.
The wastewater system of the city shall be and remain under the management, supervision and control of the city manager, who may employ or designate such person or persons in such capacity or capacities as he deems advisable to carry out the efficient management and operation of the system. The director of utilities, subject to the approval of the city manager, may make such rules, orders or regulations as he deems advisable and necessary to assure the efficient management and operation of the system, and to provide equitable charges for the services thereof, subject, however, to the rights, powers, and duties in respect thereto which are reserved by law to the city council.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-102. Definitions.
When used in this article, the following terms shall be construed as defined in this section, unless a different definition shall be adopted for any division of this chapter.

Act or *"the act".* The Federal Water Pollution Control Act (P.A. 92-500), also known as the Clean Water Act, as amended, 33 U. S.C. 1251, et seq.

Biochemical oxygen demand (BOD). The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure, five (5) days at twenty (20) degrees centigrade expressed in terms of weight and concentration (milligrams per liter (mg/l)), as determined by "Standard Methods."

Board. Sewer board of appeals.

Building sewer. A sewer conveying wastewater from the premises of a user to the public sewer, and not owned or maintained by the City of Midland.

Categorical standards. National categorical pretreatment standards or pretreatment standard.

City. The City of Midland or the city council of Midland.

Code. City of Midland Code of Ordinances.

Combined sewer. A sewer intended to serve as a sanitary sewer and a storm sewer.

Compatible pollutant. Materials of acceptable concentration designated by biochemical oxygen demand, pH, fecal coliform bacteria, suspended solids, phosphorus or other pollutants as designated by the director of utilities.

Cooling water. The water discharged from any use such as air conditioning, cooling or refrigeration, and to which the only pollutant added is heat.

Department. City of Midland utilities department generally and wastewater division specifically.

Direct discharge. The discharge of treated or untreated wastewater directly into the waters of the State of Michigan, without first having been treated by the POTW.

Director. The director of utilities for the City of Midland, or his duly authorized representative(s).

Director of utilities. The person designated by the city manager to supervise the operation of the publicly owned treatment works and who is charged with certain duties and responsibilities by this chapter, or his duly authorized representative(s).

Discharge. Spilling, leaking, seeping, pumping, pouring, emitting, emptying, dumping or depositing.

Domestic user. Those users that discharge normal domestic waste from residential living units and resulting from the day-to-day activities usually considered to be carried out in a domicile. Discharges from other users to be considered normal domestic waste shall be of the same nature and strength and have the same flow rate characteristics thereof.

Environmental Protection Agency or *EPA.* The U.S. Environmental Protection Agency, or where appropriate the term may also be used as a designation for the administrator or other duly authorized official of said agency.

Fats, oil and greases. Organic compound derived from animal and / or plant sources that contain multiple carbon chain triglyceride molecules. These substances are detectable and measurable using analytical test procedures established in the United States Code of Federal Regulations 40 CFR 136 as may be amended from time to time. All are sometimes referred to as “grease” or “greases”.

Garbage. The wastes from the preparation, cooking and dispensing of food or from handling, storage and sale of produce.

Grab sample. A sample which is taken from a waste stream on a one-time basis with no regard to the flow in the waste stream and without consideration of time.

Ground water. The water beneath the surface of the ground, whether or not flowing through known or definite channels.

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

Incompatible pollutants. All pollutants not defined as compatible.

Indirect discharge. The discharge or the introduction of nondomestic pollutants from any source regulated under Section 307(b) or (c) of the act (33 U.S.C. 1317), into and through the POTW.

Interference. The inhibition or disruption of the POTW treatment processes or operations which contributes to a violation of any requirement of the city's NPDES permit. The term includes prevention of sewage sludge use or disposal by the POTW in accordance with Section 405 of the act.

National categorical pretreatment standard or *pretreatment standard.* Any regulation containing pollutant discharge limits promulgated by the EPA in accordance with Section 307(b) and (c) of the act (33 U.S.C. 1347) which applies to a specific category of industrial users.

National pollutant discharge elimination system (NPDES). A national permit program established by the Federal Water Pollution Control Act Amendment of 1972 (Public Law 92-500) requiring all municipalities, industries and commercial enterprises that discharge to surface watercourses to have NPDES permits approved by the U.S. EPA and in Michigan the Water Resources Commission by December 31, 1974.

National prohibitive discharge standard or *prohibitive discharge standard.* Any regulation developed under the authority of Section 307(b) of the act and 40 CFR, Section 403.5.

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

New sources. Any source, the construction of which is commenced after the publication of proposed regulations prescribing a new source performance standard which will be applicable to such source, if standard is thereinafter promulgated in accordance with Section 306(a) of the Clean Water Act.

Nondomestic user. Those users discharging other than normal domestic waste.

Normal domestic waste. User discharges to the City of Midland POTW in which concentrations of suspended solids, five-day BOD, and phosphorus are three hundred (300), three hundred fifty (350), and thirteen (13), respectively, at the point of discharge to the POTW.

Oil. Oil of any kind, in any form including, but not limited to, petroleum, fuel oil, sludge and oil refuse, gasoline, grease, and oil mixed with waste.

Other waste. Garbage, refuse, decayed wood, bark and other wood debris, wastes from industrial processes, and other substances which are not included within the definition of pollutant.

Operation and maintenance. The labor, material, and other costs incurred by the performance of operation and maintenance of a sewer system.

Owner. The owners or owner of the freehold of the premises or lesser estate therein, a mortgage or vendee in possession, an assignee of rents, receiver, executor, trustee, lessee or any other person, firm or corporation directly or indirectly in control of a building, structure or real property, or his duly authorized agent.

Party (person). Any individual, partnership, copartnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity or any other legal entity, or their legal representatives, agents or assigns. The masculine gender shall include the feminine, the singular shall include the plural where indicated by the context.

Permittee, permit holder. Any person who owns, operates, possesses or controls an establishment or plant being operated under a valid wastewater contribution permit to discharge waste in to the city POTW.

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

Phosphorus (total). As defined and determined by "Standard Methods."

Pollutant. Any dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, oils, biological materials, radioactive materials, heat, wrecked or discharged equipment, rock, sand, cellar dirt and industrial, municipal and agricultural waste discharged into water.

Pollution. The placing of any noxious or deleterious substance in any waters of the state in quantities which are or may be potentially harmful or injurious to human health or welfare, animal or aquatic life, or property, or unreasonably interfere with the enjoyment of life or property, including outdoor recreation.

POTW treatment plant. That portion of the POTW designed to provide treatment to wastewater.

Pretreatment or *treatment.* The reduction of the amount of pollutants, the elimination of pollutants, the alteration of the nature of pollutants, or the alteration of the nature of pollutant properties in wastewater to a less harmful state prior to or in lieu of discharging or otherwise introducing such pollutants into a POTW. The reduction or alteration can be obtained by physical, chemical or biological processes, or process changes by other means, except as prohibited by 40 CFR, Section 403.6(d).

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

Private sewage disposal system. A system for pretreatment of sewage by any means, designed to treat wastewater prior to discharge to the POTW.

Public sewer. A sewer that is owned and maintained by the City of Midland.

Publicly owned treatment works (POTW). A treatment works as defined by Section 212 of the act (33 U. S.C. 1292) which is owned in this instance by the city. This definition includes any sewers that convey wastewater to the POTW treatment plant, except those pipes, sewers or other conveyances connected to a facility providing pretreatment or a building sewer. For the purposes of this article, "POTW" shall also include any sewers that convey wastewaters to the POTW from persons outside the city who are, by contract or agreement with the city, users of the city's POTW.

Readiness-to-serve charge. A charge approximately equal to the proportional fixed costs of the city's water system attributable to each user.

Sanitary sewer. A sewer intended to carry only sanitary or sanitary and industrial wastewaters from residential and commercial buildings, industrial plants, or institutions.

Shall is mandatory; *may* is permissive.

Standard methods. The most recent edition of "Standard Methods for the Examination of Water and Wastewater," published by the American Public Health Association, the American Water Works Association, and the Water Pollution Control Association, a copy of which is on file in the office of the director.

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

State. State of Michigan.

Storm sewer. A sewer intended to carry only storm waters, surface runoff, street wash water, sub-soil drainage, and noncontact cooling water.

Storm water. Any flow occurring during or following any form of natural precipitation and resulting therefrom.

Surcharge. As applies to this chapter, that charge levied on users of the POTW resulting from user contributions of nondomestic waste to the POTW or a charge to the user by the city to recover costs, of and by the city, for accepting and treating a user contribution in lieu of user pretreatment of nondomestic waste.

Surface waters. Water upon the surface of the earth, whether contained in bounds created naturally or artificially, or diffused.

Suspended solids. The total suspended matter that floats on the surface of, or is suspended in, water, wastewater or other liquids, and which is removable by laboratory filtering as determined by "Standard Methods."

Toxic pollutant. Any pollutant or combination of pollutants that are determined to be toxic or are listed as toxic in regulations promulgated by the administrator of the environmental protection agency under the provision of the CWA 307a) or other acts.

User. Any person, establishment, or owner who discharges any domestic or nondomestic sewage or waste into the POTW system of the city or any system connected thereto.

User charge. A charge levied on the users of the POTW for the normal cost of operation, maintenance and replacement of such works.

Wastewater. The liquid and water-carried wastes from dwellings, commercial buildings, industrial facilities, and institutions, together with any ground water, surface water, and storm water that may be present, whether treated or untreated, which is discharged into the POTW.

Wastewater contribution permit. As set forth in this chapter, a permit issued by the city to nondomestic users of the POTW.

Watercourse. A channel in which a flow of water occurs, either continuously or intermittently.

Waters of the state. All streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through, or border upon the state or any portion thereof.
(Ord. No. 1087, § 1, 6-3-85; Ord. No. 1514, § 1, 7-23-01; Ord. No. 1665, § 1, 8-11-08)

Sec. 28-103. Abbreviations.

BOD--Biochemical oxygen demand

mg/l--Milligrams per liter

POTW--Publicly owned treatment works

SWDA--Solid Waste Disposal Act

NPDES--National pollution discharge elimination system

CFR--Code of Federal Regulations

CWA--Clean Water Act

SWRC--State Water Resources Commission (Michigan)

EPA--Environmental Protection Agency (Federal)

PERM--Program for Effective Residuals Management (MDNR)

MDNR--Michigan Department of Natural Resources
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-104. Waste deposits.
It shall be unlawful for any person to place or deposit, or permit to be deposited, in an unsanitary manner upon any public or private property within the City of Midland or in any area under the jurisdiction of the said City of Midland, any human or animal excrement, garbage or other objectionable waste or wastes either in volumes or concentrations which will adversely effect said properties.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-105. Sewage disposal method required.
All places within the city where people reside, are employed, or congregate shall be provided with a sanitary method for the disposal of sewage. It shall be the duty of the property owner to provide such sanitary method.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-106. Sewage to be disposed of in approved device.
It shall be unlawful for any person within the city to throw out, deposit or in any other way dispose of sewage, other than into a sanitary water closet, properly constructed septic tank, or other sanitary toilet device approved by the city engineer.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-107. When connection to sewer required.
Whenever any dwelling, store, hotel, restaurant or any other building where restrooms, lavatories, urinals or closets are maintained, is located on streets where public sewers are accessible to the property on which such dwelling, store, hotel, restaurant or other building is erected, such dwelling, store, hotel restaurant or other building shall make connection with the city sewer system and shall thereafter use such system for the disposal of all human wastes, and all septic tanks, vaults, and cesspools shall be cleaned out and filled with sand or other suitable material.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-108. Where sewers are installed; grant of easement.
All sewer mains shall be installed in public rights-of-way. However, where it is deemed necessary that certain sewer mains be installed on private property, the property owner shall grant an easement to the city for the purposes of inspection and maintenance of sewer mains.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-109. Notice that connection is to be made; billing; appeal.
When a public sanitary sewer is installed and is accessible to an unsewered property, the city's building official shall (in writing) notify the property owner of record (as determined from records in the city assessor's office) that the sewer is accessible and that connection to the public sewer shall be made within a period not to exceed one year. In addition, the owner shall be notified that, because the public sanitary sewer is available for connection by any dwelling, store, hotel, or restaurant (or any other building where lavatories, urinals and closets exist for the disposal of human wastes), a sewage bill shall be charged as though the property were connected to the public sanitary sewer. The bill for same shall be calculated according to the rates division of this article. The sewage bill shall commence when connection is made, or one year after the public sanitary sewer is available. Hardship cases may be appealed to the sewer board of appeals.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-110. Injuring, depositing prohibited substances in sewers.
No person shall injure, break, or remove any portion of any manhole, catch basin or any part of the POTW, or throw or deposit or cause to be thrown or deposited in any sewer opening or receptacle connecting with the sewer system, any unground garbage, offal, dead animals, vegetable parings, ashes, cinders, rags, newspaper, or any other matter or thing whatsoever except feces, urine and the necessary tissue paper, except through contract, agreement or approval of the director of utilities. The discharge of any substances into the sewer system which are liable to injure the sewers, endanger the public safety and health, or inhibit efficient operation of the treatment works or the flow of sewage is prohibited.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-110.1. Stormwater and groundwater prohibited in sanitary sewer, building sanitary sewer or lateral sewer.

After October 26, 1987, any new installation of a downspout, weep tile, footing drain, sump pump discharge or any other conduit that carries storm or groundwater shall not be allowed to discharge into the sanitary sewer, building sanitary sewer or lateral sewer.
(Ord. No. 1139, § 1, 10-19-87; Ord. No. 1151, § 2, 6-6-88; Ord. No. 1424, § 2, 9-14-98)

Sec. 28-110.2. Downspout, roofing drain, yard drain, truck dock and parking lot drain connection to sanitary sewer, building sanitary sewer or lateral sewer prohibited.

The purpose of this section is to diminish the threat to the health, safety and welfare of the people of the City of Midland who may be affected by flood or other damage caused by the accumulation of storm water and groundwater draining from downspouts, roofing drains, yard drains, truck docks and parking lot drains directly into the sanitary sewer system and to reduce economic losses to individuals and the community at large.

After November 30, 1998, it shall be unlawful to discharge stormwater or groundwater directly into a City of Midland sanitary sewer, building sanitary sewer or lateral sewer from downspouts, roofing drains, yard drains, truck docks and/or parking lot drains constructed or installed prior to October 26, 1987, unless:

(1) A waiver has been granted in accordance with section 28-112; or

(2) The city engineer has determined that the following two (2) conditions exist:

a. The discharge of stormwater or groundwater cannot be redirected to a storm sewer due to the unavailability of a storm sewer; and

b. The discharge of stormwater or groundwater cannot be retained entirely on permeable lawn area located on the same property that contains the downspouts, roofing drains, yard drains, truck docks and/or parking lot drains that are connected to the sanitary sewer system.

For purposes of this division, yard drains shall be defined as drains located within the lawn area and shall not include patio drains, basement walkout drains or other drains associated with residential buildings.
(Ord. No. 1424, § 3, 9-14-98; Ord. No. 1425, § 1, 9-28-98; Ord. No. 1438, § 1, 3-8-99)

Sec. 28-111. Order to disconnect.

(a) In the event that, after November 30, 1998, a downspout, roofing drain, yard drain, truck dock or parking lot drain remains connected to a City of Midland sanitary sewer, building sanitary sewer or lateral sewer, the utilities director shall issue an order to disconnect to the owner of the property on which the drain is located.

(b) Service of the order shall be made upon the owner of the property either personally or by:

(1) Mailing a copy of such order by certified mail, postage prepaid, return receipt requested, to each owner of the property as indicated by the records of the city assessor; or

(2) If no address is specified in the assessor's records or is otherwise known to the utilities director, a copy of the order shall be mailed to the owner of record at the building address and a copy of the order shall also be posted in a conspicuous place on the building.

The failure of any such owner of record to receive a copy of the order shall not affect the validity of any proceedings taken under this division. Service by certified mail in the manner herein provided shall be effective on the date of mailing. Proof of service of the order shall be by affidavit sworn to by the person effecting service; declaring time, date and manner in which the service was made. The affidavit, together with any receipt card returned in acknowledgment of receipt by certified mail, shall be affixed to the copy of the order which shall be retained by the utilities director.

(c) An order to disconnect shall specify the property at issue and shall require:

(1) That all downspouts located on the property shall be disconnected from all City of Midland sanitary sewers, building sanitary sewers or lateral sewers within thirty (30) days of the issuance of said order; or

(2) That all roofing drains, yard drains, truck dock and parking lot drains shall be disconnected from all City of Midland sanitary sewers, building sanitary sewers or lateral sewers within sixty (60) days of the issuance of said order.

(d) An order to disconnect shall notify the owner of the property that a waiver of the order to disconnect may be obtained by appealing to the building board of appeals as provided in section 28-113. A copy of said section shall be attached to the order.
(Ord. No. 1424, § 4, 9-14-98; Ord. No. 1425, § 1, 9-28-98)
Editors Note: Ord. No. 1424, § 4, adopted Sept. 14, 1998, repealed the former § 28-111 and enacted a new § 28-111 as set out herein. The former § 28-111 pertained to critical accumulation area defined and derived from Ord. No. 1087, § 1, adopted June 3, 1985.

Sec. 28-112. Waivers.
A waiver of an order to disconnect may be obtained for the following reasons:

(1) Economic hardship.

(2) Contractor availability or other construction constraints.

A waiver may be granted for any period of time; provided, however, that under no circumstance shall a waiver be granted for a total waiver period greater than one (1) year.
(Ord. No. 1424, § 4, 9-14-98)

Editors Note: Ord. No. 1424, § 4, adopted Sept. 14, 1998, repealed the former § 28-112 and enacted a new § 28-112 as set out herein. The former § 28-112 pertained to resolution ordering downspout disconnection in critical accumulation area and derived from Ord. No. 1087, § 1, adopted June 3, 1985.

Sec. 28-113. Appeals.
Any owner of property subject to an order to disconnect may appeal the issuance of said order to the City of Midland building board of appeals, as created under chapter 5, section 5-27 of the City of Midland Code of Ordinances. The board shall hold public hearings to consider such appeals. The board is authorized to investigate all appeals and to grant waivers of orders to disconnect. The running of the period to disconnect specified in subsections 28-111(c)(1) and (2) shall be suspended until such time that a decision regarding the appeal is rendered by the board.

All appeals shall be in writing and shall be filed with the chief building official. An appeal shall state the reason(s) why the property owner has requested the waiver. If the waiver has been requested due to economic hardship, the property owner shall provide to the board written documentation regarding the hardship. A fee as established in chapter 21 of said Code shall accompany each appeal.
(Ord. No. 1424, § 4, 9-14-98)

Editors Note: Ord. No. 1424, § 4, adopted Sept. 14, 1998, repealed the former § 28-113 and enacted a new § 28-113 as set out herein. The former 28-113 pertained to appeal from downspout disconnection resolution and derived from Ord. No. 1087, § 1, adopted June 3, 1985.

Sec. 28-113.1. Penalties.
Any person who violates section 28-110.2 and who has failed to comply with an order issued pursuant to subsection 28-111(c), and from which no appeal has been taken, shall be responsible for a municipal civil infraction. Upon conviction of such infraction, such person shall be punished as provided in chapter 34 and fined according to section 21-101 of chapter 21 of the Code of Ordinances. The imposition of one (1) municipal civil infraction fine for any violation shall not excuse the violation or permit it to continue and all such persons shall be required to correct or remedy such violation or defects. Every day of noncompliance shall be deemed a separate violation. Imposition of the fine specified in section 21-101 of chapter 21 shall not be held to prevent the enforced removal of the sanitary sewer connection.
(Ord. No. 1424, § 5, 9-14-98)

Sec. 28-113.2. Council review.
At the last city council meeting held in May, 1999, the city council shall review section 28-112, Waivers, and the data compiled by the building board of appeals as a result of the appeals filed with that board pursuant to section 28-113.
(Ord. No. 1424, § 5, 9-14-98)

Sec. 28-114. Toilets, septic tanks, etc., not to be a nuisance.
The owner or occupant of any premises within the city shall not use, maintain, or permit the use of, therein or thereon, a toilet (permanent or portable), septic tank, drain field or drain that is a menace to the health or safety of individuals or the public. Any sewer, septic tank, tile field or drain not maintained so that sewage or sewage effluent shall flow into a road right-of-way, a

ditch, a stream, or so that sewage or sewage effluent accumulates on the surface of the ground within two hundred (200) yards of a dwelling, establishment or highway shall be deemed to be a public health nuisance.
(Ord. No. 1087, § 1, 6-3-85)
State Law References: M.S.A., Sec. 14.433(1)--14.433(4).

Sec. 28-115. Toilets to be kept in sanitary condition.
It shall be the lawful duty of the occupants of each premises to see that all toilets, urinals, or other toilet devices upon such premises are kept in sanitary condition at all times.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-116. Cleaning, disposing of contents of toilets, septic tanks.
The manner and method of cleaning and disposing of the contents of all toilets and septic tanks shall be under the direction of the director of utilities.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-117. Director of utilities to give notice to correct unsanitary condition.

The director of utilities shall, in writing, notify the owner or occupant of any premises when it is determined that a toilet, septic tank, drain field or drain on such premises is being used or maintained in such manner as to be injurious to public health. In such notice, the director shall specify the particulars in which such toilet, septic tank, drain field or drain is being used or maintained in a manner injurious to the public health, and what shall be done to relieve and remove such condition. Such notice shall further specify a reasonable time, which shall be fixed by the director, within which such conditions shall be corrected.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-118. Ordering unsanitary condition corrected; noncompliance; cost when city acts.
When, in the judgment of the director of utilities, a drain, drain field or septic tank needs cleaning, the director may lawfully order the owner thereof to have such drain, drain field or septic tank cleaned. The failure of such owner to have the drain, drain field or septic tank cleaned within ten (10) days of the date of the order may result in the city having it cleaned or take other action as determined necessary. The cost of cleaning the drain, drain field or septic tank shall be charged against the owner of the property by the city.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-119. Abuse of, injury to toilet, septic tank, drain.
It shall be unlawful for anyone to abuse or misuse any toilet, septic tank or drain property.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-120. Only licensed waste system cleaners permitted.
Only waste system cleaners licensed by the State of Michigan and recognized by the city shall be permitted to clean toilets, septic tanks or cesspools.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-121. Site for unloading waste transport vehicles.
The city shall cause a waste disposal site to be constructed and maintained for the purpose of receiving collected and transported wastes. The city manager or his designate is hereby authorized to establish rules and regulations regarding the use of such site. The site shall receive only approved wastes delivered by tank truck or other authorized means.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-122. Handling, transporting and disposal of sanitary waste by waste system cleaners.
Wastes collected by any waste system cleaner shall be collected and transported in such a manner as to prevent spilling. Such waste hauled for dumping at the city's designated waste disposal site shall be collected and transported in watertight, covered metal tanks on vehicles registered with, certified and licensed by the State of Michigan. The method of collection, transport and disposal, and the content of wastes for disposal at the waste disposal site, shall be subject to the approval of the director of utilities.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-123. Hauled wastes to be disposed of at approved site.
It shall be unlawful for any person to dispose of collected and transported wastes within the city except at the established waste disposal site.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-124. Collected and transported waste disposal; permit and fee required.
Before wastes from any septic tank or any other waste collection device are transported for disposal at the city waste disposal site, the person cleaning or having such tank or device cleaned shall apply for and receive a disposal permit (waste disposal ticket). The permit shall be issued upon the payment of a fee, in the amount of seventy-eight dollars ($78.00) minimum per truckload or seventy-eight dollars ($78.00) per one thousand (1,000) gallons of waste or part thereof, whichever is greater, for each such load transported to the waste disposal site. Before unloading, each permit shall be presented to the city employee on duty at the waste disposal site.
(Ord. No. 1087, § 1, 6-3-85; Ord. No. 1120, § 1, 3-23-87; Ord. No. 1661, § 1, 06-23-08)

Sec. 28-125. Site to be used only when city employee is on duty.
It shall be unlawful for any person to use the city waste disposal site except when an employee of the city is on duty at such site and available to supervise unloading activities.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-126. Use of site by nonresidents of city.
It shall be unlawful for any person to dispose of collected wastes from outside the boundaries of the city at the waste disposal site without the written authorization of the director of utilities.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-127. Violation of collected waste disposal provisions.
Any person who shall violate sections 28-119 through 28-125 of this Code shall be punished pursuant to section 1-11 of this Code, and the court shall prohibit any such violator the use of the waste disposal site for a period of not less than thirty (30) days nor more than six (6) months.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-128. Water pollution.
It shall be unlawful to discharge, either directly or indirectly, to any natural outlet, surface water, drainage ditch, storm sewer, sanitary sewer, or combined sewer within the City of Midland or in any area under the jurisdiction of the said City of Midland, any sanitary sewage, industrial waste, other polluted waters or pollutants, except where suitable treatment is provided in accordance with the standards established by the SWRC.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-129. General discharge prohibitions.
No user shall contribute or cause to be contributed, directly or indirectly, any pollutant or wastewater which will interfere with the operation or performance of the POTW. These general prohibitions apply to all such users of the POTW whether or not the user is subject to national categorical pretreatment standards or any other national, state or local pretreatment standards or requirements. A user may not contribute the following substances to the POTW:

(1) Any liquids, solids or gases which by reason of their nature or quantity are, or may be, sufficient either alone or by interaction with other substances to cause fire or explosion or be injurious in any other way to the POTW or to the operation of the POTW, or a hazard to public health. At no time shall two (2) successive readings on an explosion hazard meter at the point of discharge into the system (or at any point in the system) be more than five (5) percent nor any single reading over twenty (20) percent of the lower explosive limit (LEL). Prohibited materials include, but are not limited to: gasoline, kerosene, naphtha, benzene, toluene, xylene, ethers, alcohols, ketones, aldehydes, peroxides, chlorates, perchlorates, bromates, carbides, hydrides, and sulfides.

(2) Solid or viscous substances which may cause obstruction to the flow in a sewer or interference with the operation of the wastewater treatment facilities such as, but not limited to: grease, garbage with particles greater than one-half (1/2) inch in any dimension, animal guts or tissues, paunch manure, bones, hair, hides or fleshings, entrails, whole blood, feathers, ashes, cinders, sand, spent lime, stone or marble dust, metal, glass, straw, shavings, grass clippings, rags, spent grains, spent hops, waste paper, wood, plastics, gas, tar, asphalt residues, residues from refining or processing of fuel or lubricating oil, mud or glass grinding or polishing wastes.

(3) Any wastewater having a pH less than 5.0 or greater than 11.0, or wastewater having any other corrosive property capable of causing damage or hazard to structures, equipment, and/or personnel of the POTW.

(4) Any wastewater containing toxic pollutants in sufficient quantity, either singly or by interaction with other pollutants, to injure or interfere with any wastewater treatment process, constitute a hazard to humans or animals, create a toxic effect in the receiving waters of the POTW due to pass-through, or to exceed the limitation set forth in a categorical pretreatment standard. A toxic pollutant shall include but not be limited to any pollutant identified pursuant to Section 307(a) of the act.

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

(6) Any substance which may cause the POTW's effluent or any other product of the POTW such as residues, sludges, or scums, to be unsuitable for discharge, disposal, reclamation, and/or reuse or to interfere with the treatment or reclamation process.

(7) Any substances which will cause the POTW to violate its NPDES and/or state disposal system permit (PERM).

(8) Any wastewater with objectionable color not removed in the treatment process such as, but not limited to, dye wastes and vegetable tanning solutions.

(9) Any wastewater having a temperature which will inhibit biological activity in the POTW treatment plant resulting in interference, but in no case wastewater with a temperature at the introduction into the POTW which exceeds forty (40) degrees centigrade (one hundred and four (104) degrees Fahrenheit).

(10) Any pollutants, including oxygen demanding pollutants (BOD, etc.), released at a flow rate and/or pollutant concentration which will cause or is deemed to cause interference to the POTW. In no case shall a slug load have a flow rate or contain concentration or quantities of pollutants that exceed for any time period longer than fifteen (15) minutes, more than five (5) times the average twenty-four-hour concentration, quantities, or flow during normal operation.

(11) Any wastewater containing any radioactive wastes or isotopes of such halflife or concentration as may exceed limits established by the director in compliance with applicable state or federal regulations.

(12) Any wastewater which causes a hazard to human health or life or creates a public nuisance. When the director determines that a user(s) is contributing to the POTW any of the above enumerated substances in such amounts as to interfere with the operation of the POTW, the director shall:

(a) Advise the user(s) of the impact of the contribution on the POTW; and

(b) Require the user to obtain, maintain and comply with a wastewater contribution permit.

(13) No user shall allow wastewater discharge concentration of grease to exceed 100 milligrams per liter as defined by EPA test method 1664. Request to use any other analytical method must be approved by the wastewater superintendent.
(Ord. No. 1087, § 1, 6-3-85; Ord. No. 1665, § 1, 8-11-08)

Sec. 28-130. Comprehensive review of sanitary sewer system and storm sewer system.
In connection with the submittal of the city's application for renewal of its National Pollution Discharge Elimination System (NPDES) permit, but not less frequently than every five (5) years, the city manager shall submit a report to the city council which shall include a comprehensive review of the city's sanitary and storm sewer systems including, but not limited to, their capacity, growth, ordinances, operations and maintenance. This report shall be submitted to the city council at its regularly scheduled meeting immediately prior to the due date of the city's NPDES renewal application.
(Ord. No. 1433, § 1, 12-21-98)

Secs. 28-131--28-145. Reserved.

DIVISION 2.

SEWER BOARD OF APPEALS

Sec. 28-146. Composition; appointment.
There is hereby established a sewer board of appeals, hereinafter referred to as the board, which shall consist of five (5) members appointed by the city council. One member shall represent the Midland City-County Health Department, one member shall be the director of

utilities or his designated agent for the city, and three (3) members shall be citizens at large, residents of the city.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-147. Term of office.
The term of office for members of the board shall be for three (3) years.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-148. Ex officio members.
The member of the board representing the Midland City-County Health Department, and the director of utilities or his designated agent, shall serve as ex officio members.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-149. Internal management.
The board shall elect its own chairman and adopt its own rules of procedure. The director of utilities or his designated agent shall serve as permanent secretary for such board. The board shall keep a record of its proceedings, showing the action of the board and the vote of each member upon each appeal considered.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-150. Removing from office; filling vacancies.
Members of the board may, after public hearing, be removed by the city council for inefficiency, neglect of duty, or malfeasance in office. Vacancies occurring otherwise than through the expiration of a term in office shall be filled for the unexpired term by the city council.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-151. Members to serve without compensation.
All members of the sewer board of appeals shall serve without compensation.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 20-152. Liability of board and individual members.
In no case shall the sewer board of appeals or any members thereof be liable for costs in any action or proceeding that may be commenced in pursuance of the provisions of this chapter.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-153. Appeals to the sewer board.
Provision is hereby made whereby users (whether current or future) of the POTW and subject to this chapter may appeal rules, regulations, limitations, notices of violation, penalties and fines stipulated and issued by the city. In this connection:

(1) Where the appellant alleges that there exists a reasonable excuse for not connecting to the sewage facilities or for not paying sewage treatment fees or otherwise not complying with any of the requirements of Division 1, 3 and 4 of this article, the sewer board of appeals shall hear and decide the appeal. It shall be the duty of the appellant to show just cause why such sewer should not be connected, sewage treatment fees not paid, or why any of the requirements of Divisions 1, 3 and 4 of this article should not apply. After hearing these appeals and reviewing the material presented, the board shall rule on the appeal. A decision of the board on these appeals shall be made and be final. The secretary of the board shall notify the appellant, in writing, and record the board's decision.

(2) Where the appellant alleges that there exists a reasonable excuse for not complying with orders, citations, rules, regulations or limitations as provided by Divisions 5 and 6 of this article or for not paying any fines, penalties or reimbursements to the city resulting from noncompliance with orders, citations, rules, regulations or limitations as provided by this article, the sewer board of appeals shall hear the appeal. It shall be the duty of the appellant to show just cause why such orders, citations, rules, regulations and/or limitations should not apply and why fines, penalties and/or charges levied by the city upon the appellant should not be paid. After hearing these appeals and reviewing the material presented, the board will issue a recommendation (in writing) to the city council where a decision shall be made. The recommendation from the board shall discuss the appeal and indicate the vote on the recommendation to the city council. The city council shall review the board's recommendation and rule on the appeal. A decision of the city council on these appeals shall be made and be final. The city clerk shall notify the appellant in writing of the city council's decision.
(Ord. No. 1087, § 1, 6-3-85)

Secs. 28-154--28-160. Reserved.

DIVISION 3.

RATES

Sec. 28-161. City may establish sewer rates.
The city may classify the users of sewage disposal service according to the quantities and types of water used by such users, and charge such rates to users in each class in proportion to the costs of providing sewage disposal service to, and according to the benefits received by, such classes of users.
(Ord. No. 1514, § 1, 7-23-01)
Editors Note: Ord. No. 1514, § 1, adopted July 23, 2001, amended § 28-161 in its entirety, in effect repealing and reenacting § 28-161 to read as herein set out. Formerly, § 28-161 pertained to the purpose of sewer rates, charges, and derived from Ord. No. 1087, § 1, adopted June 3, 1985.

Sec. 28-162. Reserved.
Editors Note: Ord. No. 1514, § 1, adopted July 23, 2001, repealed the former § 28-162, which pertained to the levy of sewer charges and derived from Ord. No. 1087, § 1, adopted June 3, 1985.

Sec. 28-163. Amount of sewer charge.
The city's methodology of adjusting sewer rates shall be in accordance with the cost of service water and sewer rate study prepared by the city's consultant, presented to and approved by the council in 1993 and shall be in conformity with the findings set forth in Section 28-4 of this chapter.
The charges for sewer service shall be calculated according to the following schedule:
(1) There shall be a readiness-to-serve charge per quarter on each metered water service as follows:

Metered Service	Amount
5/8" – 3/4"	$43.68
1"	$56.78
1 – 1/2"	$69.89

2"	$113.57
3"	$436.80
4"	$567.84
6"	$829.92
8"	$1,179.36

(2) In addition to the readiness-to-serve charge set forth in subsection (1) of this section, there will be an additional charge for sewer service, which will be calculated as follows:
For each 1,000 gallons of water used per quarter: $2.08
However, bills for sewer services for two (2) summer quarters for domestic customers, schools and churches shall be based on the average consumption during two (2) winter quarters. In cases where there is no previous consumption upon which to base bills for sewer services in the summer quarters, twenty-five thousand (25,000) gallons or actual consumption, whichever is the least, shall be used.

(Ord. No. 1087, § 1, 6-3-85; Ord. No. 1100, § 1, 2-24-86; Ord. No. 1119, § 1, 3-9-87; Ord. No. 1140, § 1, 1-23-87; Ord. No. 1183, § 5, 10-30-89; Ord. No. 1202, § 1, 10-29-90; Ord. No. 1226, § 1, 8-26-91; Ord. No. 1242, § 1, 6-29-92; Ord. No. 1272, § 1, 9-13-73; Ord. No. 1297, § 1, 6-27-94; Ord. No. 1353, § 1, 6-24-96; Ord. No. 1417, § 1, 6-22-98; Ord. No. 1454, § 1, 6-21-99; Ord. No. 1480, § 1, 6-26-00; Ord. No. 1514, § 1, 7-23-01; Ord. No. 1539, § 1, 6-24-02; Ord. No. 1563, § 1, 6-23-03; Ord. No. 1582, § 1, 6-28-04, Ord. No. 1602, § 1, 6-27-05; Ord. No. 1618, § 1, 6-26-06; Ord. No. 1636, § 1, 6-25-07; Ord. No. 1660, § 1, 06-23-08; Ord. No. 1682, § 1, 06-22-09; Ord. No. 1708, § 1, 06-28-10; Ord. No. 1732, § 1, 06-25-12; Ord. No. 1750, § 1, 06-24-13)

Sec. 28-164. How sewer charge determined.
The quantity of water used in or on the premises as measured by the city water meters shall be the basis for the sewer bill except where the premises are not connected to the city water system. In such cases the city council may order a water meter installed at the property owner's cost and such meter, which shall be owned and maintained by the city, shall be used to measure the amount of water used from a private source, or a quarterly charge may be fixed by resolution of the city council. If any premises is a user of water from both types of water sources, the bills for sewer services shall be based on a combination of water use and/or fixed charges as determined by the city council.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-165. Preparation, collection of sewer bills.
The bills for sewer services shall be prepared by the water department and collected at the same time and in the same manner as provided for water bills.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-166. Late payment.
The bill for water and sewer services shall be prepared so as to indicate a net charge for both services, computed in accordance with the provisions of this chapter. A gross charge which shall be ten (10) percent greater than the net charge shall become due and payable if the bill remains unpaid after the due date shown on the bill.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-167. Enforcement of payment of sewer bill.

The water department is hereby authorized to enforce the payment of sewer service bills by shutting off the user's water supply, or an action by assumpsit may be instituted by the city against such user. Moreover, by Section 21 of Act 94, Michigan Public Acts of 1933, as amended, bills for sewer services shall constitute a lien on the premises affected. The city shall certify those rates and charges delinquent for six (6) months or more to the city tax assessing officer, who shall enter the amount of the delinquent rates and charges on the tax roll against the premises to which the service was rendered, and shall collect the rates and charges and enforce the lien in the same manner as provided for the collection of ad valorem property taxes assessed upon the same roll, or as otherwise provided by this chapter.
(Ord. No. 1514, § 1, 7-23-01)

Editors Note: Ord. No. 1514, § 1, adopted July 23, 2001, amended § 28-167 in its entirety, in effect repealing and reenacting § 28-167 to read as herein set out. Formerly, § 28-167 pertained to similar subject matter and derived from Ord. No. 1087, § 1, adopted June 2, 1985.

Sec. 28-168. Sewer districts for meter reading, billing, and administrative purposes.
The city shall be divided into sewer districts the boundaries of which may be changed as required by the water department for meter reading, billing, or other administrative purposes. Meter readings, billing dates, and summer and winter quarters shall be according to the following schedule in the respective districts:

District	*Meter Read In*	*Approximate Period Covered*	*Bill Mailing Date*	*Type Quarter*
No. 1	January	October--November--December	February 1st	Winter
	April	January--February--March	May 1st	Winter
	July	April--May--June	August 1st	Summer
	October	July--August--September	November 1st	Summer
No. 2	February	November--December--January	March 1st	Winter
	May	February--March--April	June 1st	Winter
	August	May--June--July	September 1st	Summer
	November	August--September--October	December 1st	Summer
No. 3	December	September--October--November	January 1st	Winter
	March	December--January--February	April 1st	Winter
	June	March--April--May	July 1st	Summer
	September	June--July--August	October 1st Summer	

(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-169. Records, books of sewer rates; annual statement.
The city manager shall cause to be maintained and kept, proper books of record and account in which shall be made full and correct entries of all transactions relating to sewer rates and charges. Not later than three (3) months after the close of the fiscal year, the city manager shall cause to be prepared a detailed statement showing the cash income and disbursements at the beginning and close of the operating year, as may be necessary to enable any taxpayer to be fully informed as to all matters pertaining to the financial operation during such year. Such annual statement shall be filed in the office of the city clerk where it shall be open to public inspection.
(Ord. No. 1087, § 1, 6-3-85)

Secs. 28-170--28-175. Reserved.

DIVISION 4.

CONNECTIONS

Sec. 28-176. City sewer inspector designated; enforcement of division.
The city engineer is designated as city sewer inspector. The city engineer shall, under the direction of the city manager, administer the provisions of this division. The city engineer is hereby authorized to make application in the proper court for a writ of injunction restraining any person from violating any of the provisions of this division.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-177. Authorizing sewer connection work; fees and billing.
All sewer connections made within the city may be constructed by force account by the department of public works upon authorization by resolution of the city council. All permit fees as prescribed in this division shall be added to the actual cost of the construction of the sewer connection and the total amount shall be billed to the property for which the connection is being built. The city engineer shall complete all records and compute all costs and transmit to the city finance department the necessary information for billing.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-178. Sewer connection--Permit required.
No connection with any sewer within the city shall be made by any person until a written permit for making a connection shall have been obtained from the city engineer. Every connection with any such sewer made without permission or in any manner not herein prescribed for such connection shall subject the person making such connection and the owner or owners of the premises for which such connection is made to punishment according to this Code.
(Ord. No. 1087, § 1, 6-3-85)
Cross References: Sewer connector's license fee, § 21-42.

Sec. 28-179. Same--Application.
Application for permits to connect to the sewer system must be made in writing by the owner, or his authorized agent, of the property to be sewered or drained. Such application shall give the exact location of the property, number of lot, number of feet of frontage, schematic of buildings to be connected, the name of the owner, the name of the licensed sewer builder employed to do the work, and shall be made on blanks furnished for this purpose by the city engineer.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-180. Same--Save harmless provision.
The sewer connection permit shall be granted upon the express condition that the owner for whose benefit the connection is made shall, on behalf of himself, his heirs or assigns, hold the city harmless for any loss or damage that may in any way result from or be caused by the making of any such connection.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-181. Same--Deposits.
In addition to the permit fees required by section 21-43 of this Code, the following deposits shall be made to the city treasurer's office before a sewer connection permit is granted:

(1) Where the proposed sewer connection is to be constructed in a street or alley upon which pavement exists, the sewer connection builder shall deposit with the city treasurer the estimated cost and expense of replacing such pavement to its original condition, and the builder shall be refunded or billed any difference as finally determined when the pavement has been replaced by the city.

(2) Where the sewer connection is to be constructed in a street or alley upon which a gravel surface now exists, the sewer connection builder shall deposit with the city treasurer a sum (to be determined by the director of public works) which is determined to be the cost to the city of replacing the gravel surface to its original condition. However, the city engineer may determine that the gravel surface will not be required due to the immediate paving of the street, and in this case no fee will be required of the sewer connection builder.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-182. Sewer connection charges.
Sewer connection charges shall be made in accordance with the provisions of Chapter 21, entitled "Rates, Charges and Fees," of this Code.

In addition to any other sewer connection charges, a one-time sewer system Capital Charge shall be paid in advance of connection in accordance with the following schedules.

Metered Service	Amount
5/8" – 3/4"	$3,250.00
1"	4,225.00
1 – 1/2"	5,200.00
2"	8,450.00
3"	32,500.00
≥ 4"	42,250.00

For residential new construction:

	Amounts / Effective Dates			
Metered Service	10/1/2013	1/1/2015	1/1/2016	1/1/2017
5/8" – 3/4"	$812.50	$1,625.00	$2,437.50	$3,250.00
1"	$1,056.25	$2,112.50	$3,168.75	$4,225.00

Cross References: Sewer connection fees, § 21-43.

(Ord. No. 1087, § 1, 6-3-85; Ord. No. 1278, § 1, 9-20-93; Ord. No. 1749, § 1, 6-24-13; Ord. No. 1753, § 1, 9-30-13)

Sec. 28-183. Connections to sewer system to be performed in accordance with division.
All connections of sewers, drains or plumbing work from houses, stores, plants, or other structures on private property with the sewer system of the city shall be made in accordance with the provisions of this division.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-184. Compliance with Chapter 22 of Code.
Persons constructing sewer connections shall comply with all applicable provisions of Chapter 22 entitled "Streets and Sidewalks," of this Code.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-185. Separate sewer connection to each lot.
Each lot shall have a separate sewer connection.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-186. Notice to be given before pavement is opened.
At least twenty-four (24) hours notice must be given at the office of the city engineer of any sewer connection by the owner or builder before any street or public way shall be opened for the purpose of laying a sewer connection or repairing same.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-187. Connections to be made at Y's or stubs.
All connections with the sewer system must be made at Y branches or stubs wherever possible. In the event that it is necessary to make such connections with the sewer at a point where the Y or stub has not been provided, the connection shall be made in accordance with specifications in the city engineer's office, and with the approval of the city engineer.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-188. Inspection of connection; rejection of work.
The city engineer shall be given notice when any sewer connection work is ready for inspection. All work must be left uncovered and convenient for examination until inspected and approved. Such inspection shall include all necessary measurements so that a complete record can be made of the work. If the city engineer determines that any work constructed does not conform with this division, the sewer connection builder shall remove and replace any such rejected work and shall make all work meet the requirements of this division to the full satisfaction of the city engineer.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-189. Inspection upon completion of backfill.
Upon completion of the backfill and before the sewer connection builder has removed his barricades and left the site of the work, he shall notify the department of public works office of such completion. The condition of the street, parkway area and sidewalk area shall be then inspected by the director of public works or his authorized agent.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-190. Work done on private property to be city inspected.
Any sewer connection work on private property must be done under the inspection of the city.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-191. When utility main obstructs sewer connection.
In case a water, gas or other conduit or obstruction shall come in the way of a sewer connection, the question of passing over or under the same shall be determined by the city engineer.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-192. When sewer connection obstructs utility main.
In case a sewer connection shall come in the way of an existing water main, gas main or other obstruction, the question of passing over or under the same shall be determined by the city engineer. In no case shall a sewer connection builder be allowed to decide the question.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-193. Sewer connection work to cause no inconvenience.
At all times, sewer connection work shall be done so as to cause the least inconvenience to property owners and the general public.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-194. Street improvements to be planned to avoid harm to sewer.
Any person making any kind of an improvement in the public streets or alleys upon which sewers and sewer connections have been laid shall so plan and execute their work that no injury will occur to any public sewer or any sewer connection.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-195. Construction and performance standards generally.
All sewer connections, backfilling of trenches, protection of existing structures, replacement of site to original conditions, and other items connected therewith shall be done in full accordance with the rules and regulations of the state plumbing board insofar as they apply.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-196. Owner liability and maintenance of lines and connection.
Liability for and maintenance and repair of the building sewer from the points between the structure serviced and the connection to the public sewer shall be the responsibility of the owner of record.
(Ord. No. 1087, § 1, 6-3-85)

Sec. 28-197. Compliance with division; penalty.
No connection with any sewer shall be made except as provided in this division, and any person who shall make, permit or cause to be made a connection with such sewer in a manner contrary to the provisions of this division, or who shall fail, refuse or neglect, within ten (10) days after being notified by the city engineer that any connection is unlawfully made, to remove any sewer connection which is constructed contrary to the provisions of this division, or shall otherwise violate any of the provisions of this division, shall be guilty of a misdemeanor.
(Ord. No. 1087, § 1, 6-3-85)

Secs. 28-198--28-205. Reserved.

DIVISION 5.

WASTEWATER CONTRIBUTION PERMITS

Sec. 28-206. Identification and monitoring of POTW users.
The city shall distinguish between domestic and nondomestic users of the POTW. Identification, surveillance, monitoring, and governing of those users classified as nondomestic that discharge to the POTW or waters under jurisdiction of the city is hereby provided for through a permitting procedure. Nondomestic users subject to this division will be classified as having compatible or incompatible pollutants for purposes of the required wastewater contribution permit. Users classified as domestic users are not required to secure a wastewater contribution permit.
(Ord. No. 1087, § 2, 6-3-85)

Sec. 28-207. Nondomestic user compliance with entire division.
All users identified and classified as nondomestic are required to comply with all provisions set forth in this division.
(Ord. No. 1087, § 2, 6-3-85)

Sec. 28-208. Director of utilities to administer nondomestic discharges.
The director of utilities shall administer the wastewater contribution permit program for the City of Midland. The director or his designated agent shall enforce rules, regulations and restrictions, have the right of entry to any property or buildings having connection to the POTW, discontinue either water or sewer service for cause, issue or modify wastewater contribution permits, or take other actions necessary to carry out the intent of this division.
(Ord. No. 1087, § 2, 6-3-85)

Sec. 28-209. City's right of revision.
The city reserves the right to revise any section, word or phrase in this division or any wastewater contribution permit issued to ensure the intent of all portions of this division.
(Ord. No. 1087, § 2, 6-3-85)

Sec. 28-210. Accidental discharges.
As applies to this article, accidental discharges by nondomestic users, that are by nature of volume and/or concentration injurious to the POTW, the public health or the waters of the state, must be reported to the director as soon as discovered and immediate action taken to cease, clean up, and correct the accidental discharge.
(Ord. No. 1087, § 2, 6-3-85)

Sec. 28-211. Review of accidental discharges.
The director shall review incidents of accidental discharge to determine severity, cause, and preventive measures required to ensure against future occurrence. The review process shall address any appropriate actions against the discharger including, but not limited to, service discontinuance (water and/or sewer), fines or penalties, and/or judicial proceedings. Any costs incurred by the city for this review including city personnel time and benefits, laboratory costs, equipment rental, etc., may be charged to the discharger of concern.
(Ord. No. 1087, § 2, 6-3-85)

Sec. 28-212. Nondomestic discharge limitations.
When the user's discharge exceeds the pollutant concentrations set forth for "normal domestic waste" (three hundred (300) mg/l BOD, three hundred fifty (350) mg/l suspended solids and thirteen (13) mg/l phosphorus) or is otherwise incompatible, the user may be subject to a surcharge with terms stated as conditions or requirements of the user's wastewater contribution permit.
(Ord. No. 1087, § 2, 6-3-85)

Sec. 28-213. National categorical pretreatment standards.
National categorical pretreatment standards as promulgated by the U.S. E.P.A. pursuant to the act shall be met by all dischargers of regulated industrial categories.
(Ord. No. 1087, § 2, 6-3-85)

Sec. 28-214. State requirements.
Requirements and limitations set by the Michigan Water Resources Commission shall be met by all dischargers subject to such standards in any instance in which those state standards are more stringent than federal or local requirements and limitations.
(Ord. No. 1087, § 2, 6-3-85)

Sec. 28-215. Dilution.
No discharger shall increase the use of potable, process of ground waters (or any mix thereof) in any way or mix separate waste streams for the purpose of diluting a discharge to the POTW as a partial or complete substitute for adequate pretreatment of discharges to achieve compliance with requirements of limitations set forth in this division.
(Ord. No. 1087, § 2, 6-3-85)

Sec. 28-216. Supplemental limitations (discharge requirements).
No user shall discharge wastewater containing concentrations of toxic pollutants found to interfere with or pass through the POTW operation or interfere with the recycling or disposal of the wastewater bio-solids product (sludge). The following is a list of toxic pollutants of concern and the maximum allowable discharge limits for those pollutants, which is applicable to all users of the POTW:

Toxic Pollutant Name	*Maximum Allowable User Discharge Concentration*
Arsenic	1.4 mg/l
Cadmium	0.1 mg/l
Chromium (total)	2.1 mg/l
Copper	1.4 mg/l
Cyanide	1.1 mg/l
Lead	1.1 mg/l
Mercury	1.3 ng/l
Molybdenum	1.0 mg/l
Nickel	0.8 mg/l
Zinc	0.5 mg/l

The city reserves the right to amend the foregoing list as appropriate to protect the public health, safety and welfare of the citizens of the City of Midland.

Any discharge of mercury at or above 1.3 ng/l may require that a user develop, submit, and implement a Mercury Reduction Plan as approved by the City. Such plan shall include a written commitment by the user to reduce the concentration of mercury in the user's wastewater discharge. The user must submit to the City of Midland utilities department a semiannual report on the status of the mercury reduction effort. The mercury sampling procedures, preservation and handling, and analytical protocol for compliance monitoring shall be in accordance with EPA method 1631.

_____

The city reserves the right to amend the foregoing list as appropriate to protect the public health, safety and welfare of the citizens of the City of Midland.
(Ord. No. 1087, § 2, 6-3-85; Ord. No. 1662, § 1, 06-23-08)

Secs. 28-217--28-225. Reserved.

DIVISION 6.

INDUSTRIAL PRETREATMENT PROGRAM

Sec. 28-226. Industrial pretreatment program required.
The city hereby undertakes an industrial pretreatment program. Said program is initiated to control nondomestic user discharge contributions by prohibiting incompatible discharges by requiring pretreatment of incompatible discharges prior to discharge, or by entering in to agreements or contracts with nondomestic users whereby the city's wastewater treatment facilities would treat said contributions.
(Ord. No. 1087, § 2, 6-3-85)

Sec. 28-227. Cost recovery of industrial pretreatment program.
The director of utilities may cause a fee schedule to be developed that will allow the equitable recovery of cost from the users subject to the industrial pretreatment program. The fee schedule may address, but not be limited to, the following:

(1) The initial cost of starting industrial pretreatment program;

(2) Ongoing operation costs of the program;

(3) Discharger-specific monitoring, inspection and surveillance costs;

(4) Other fees deemed as necessary.
(Ord. No. 1087, § 2, 6-3-85)

Sec. 28-228. Permit-based program.
It is the intent of this division that the industrial pretreatment program be administered on a permit basis. Permits will be issued to nondomestic users based on criteria developed by the director of utilities.
(Ord. No. 1087, § 2, 6-3-85)

Sec. 28-229. Appeals by nondomestic users.
Nondomestic users, having been so classified by the director and subject to industrial pretreatment program criteria, may appeal (to the sewer board of appeals) the classification assignment or administrative orders issued pursuant to the enforcement of this article.
(Ord. No. 1087, § 2, 6-3-85)

Sec. 28-230. Confidentiality of information.
Unless requested by the user in writing to the director of utilities, all information gathered in the identification and control process of discharges in the city's POTW will be public information. Data describing characteristics of wastes discharged to the POTW shall be considered public information.

(Ord. No. 1087, § 2, 6-3-85)

Sec. 28-231. Wastewater contribution permits.
All nondomestic users of the POTW shall apply for a wastewater contribution permit. Additionally:

(1) Permit application. Written application for a wastewater contribution permit shall be made to the director within one hundred and twenty (120) days of promulgation of this article for current nondomestic users or thirty (30) days prior to issuance of a sewer connection permit for new sources. Specific data required by the application shall at minimum include:

(a) Site name, address, phone, contact person, sic code.

(b) Owner name, address.

(c) Site activity, hours of operation.

(d) Site plan, materials to be used, anticipated discharge volumes, and concentrations of nondomestic pollutants.

(2) Permit duration. Unless so specified by individual permit conditions, no wastewater contribution permit shall be valid for more than five (5) years, at which time reapplication shall be required.
(Ord. No. 1087, § 2, 6-3-85)

Sec. 28-232. Nondomestic user requirements.
It shall be the responsibility of the director to establish conditions, duration, and reporting and monitoring requirements of wastewater contribution permits. Requirements and limitations of and for the user shall be developed by the director and so stated within the body of the permit. Generally:

(1) Within one hundred and twenty (120) days of the promulgation of this article, all nondomestic users of the POTW shall submit a baseline report indicating the nature and concentration of all prohibited or regulated substances contained in its discharge and the average and maximum daily discharge volume in gallons.

(2) After review of baseline reports received from nondomestic users and notification of the user that the user is in violation of this article, within ninety (90) days of notification noncomplying users shall submit a plan to correct, through additional operation and maintenance procedures and/or pretreatment practices (reduction or elimination of prohibited or regulated substances prior to discharge to the POTW) necessary to bring the discharger into compliance with applicable treatment standards or requirements and/or provisions of this article. Monthly progress reports addressing efforts by the user to comply shall be submitted to the city until compliance is achieved.

(3) Periodic monitoring reports shall be submitted by all nondomestic users of the POTW required to obtain and maintain a wastewater contribution permit. Frequency and submittal dates will be set by the city. Nondomestic users subject to categorical pretreatment standards are required at least biannually to submit compliance and monitoring reports to the city.

(4) Permitted nondomestic uses shall cause all discharge data and records to be kept for a period of no less than three (3) years.
(Ord. No. 1087, § 2, 6-3-85)

Sec. 28-233. Discharger notification.
The director shall notify users in writing in the following cases:

(1) When any user is or becomes classified as a nondomestic user. The director shall state why the user is classified as nondomestic and further that the user must make application for a wastewater contribution permit.

(2) When any user violates or is otherwise in noncompliance with provisions of this article, the director shall state the violation or noncompliance and the corrective and/or preventive steps the user must take to cease said violation to comply.

(3) When, for any reason, a duly issued wastewater contribution permit holder is found to be in noncompliance with conditions or requirements of said permit. The director shall state the violation and require the user to respond to the notification within a reasonable period of time. A written response shall include, but not be limited to, reason(s) noncompliance occurred, steps taken to remedy the noncompliance act or a schedule indicating when corrective actions will be completed and compliance expected, and preventive steps to ensure against future of violation or noncompliance.

(4) When new standards, regulations and/or requirements shall apply to uses of the POTW. It shall be understood that user classification and permit conditions or requirements may need to be amended due to new legislation at the federal, state or city level. As the city is notified of or receives newly promulgated requirements, limitation or standards of the Clean Water Act, Resource Conservation and Recovery Act or other duly processed state or federal acts, the director shall cause users of the POTW to be formally aware of said newly promulgated requirements, limitations or standards. The director shall state the effect on POTW users, include a copy of the document(s) as received by the city from the duly authorized regulatory agency, and require the user to confirm receipt of said notification.

(5) When the user by action or inaction is subject to enforcement action by the city. The director shall state the violation requiring enforcement action, the enforcement action being pursued, and further actions that may be taken to correct said user action (violation or noncompliance) or inaction (negligence, violation or noncompliance).
(Ord. No. 1087, § 2, 6-3-85)

Sec. 28-234. Discharger responsibility.
It shall be the responsibility of all nondomestic users to comply with all sections of this article. In addition to the previously stated sections generally outlining user rights and responsibilities, the user by terms and conditions of the wastewater contribution permit may be required to:

(1) Provide monitoring facilities for inspection and sampling of the user's wastewater contribution.

(2) Provide operation data to the city to assess potential problems and/or determine cause of POTW interference, injury, or upset for which the user may be liable to any or all actions stated in section 28-211.

(3) Provide the director or his designated agent the right of entry to property or buildings having connection to the city POTW. This right of entry authorizes the director to conduct sampling and inspection, examination, and/or copying of the user's records as specifically pertains to the user's discharge characteristics.
(Ord. No. 1087, § 2, 6-3-85)

Sec. 28-235. Permit transfer.
Rights, regulations, agreements or understandings of the wastewater contribution permits are not transferable from a permittee to another party without the express and written consent of the city, nor shall any permit holder allow additions to his wastewater contribution flows or concentrations by another user without written approval of the director.
(Ord. No. 1087, § 2, 6-3-85)

Sec. 28-236. Compliance/enforcement record keeping.
The director shall cause to be kept a summary of user compliance, noncompliance, violation, monitoring and sampling activities in a manner that will facilitate including said activities with periodic reports submitted by the city to its regulators.

(1) All records and reports shall be kept on file for the three (3) most previous years.

(2) The city had the authority to annually publish through local media channels all violations requiring enforcement action. Said public notice shall include the penalized user's name (commercial or private), location, cause for the penalty and the penalty issued.
(Ord. No. 1087, § 2, 6-3-85)

Sec. 28-237. Penalties for violation or noncompliance of division or permit.
When, in the opinion of the director, any user has falsified information, or when noncompliance or violation of this division or the user's wastewater contribution permit or any other rules, regulations or schedules pertaining thereto has occurred, the city may terminate water and/or sewer service, institute civil or criminal action for falsification of information, noncompliance or violation of wastewater contribution permits, and recover costs incurred by the city during any or all of the aforementioned enforcement actions, or pursue any or all of the following:

(1) Suspension of water and/or sewer service may be a remedy or penalty for violation or noncompliance in the following cases:

Case 1. Where a user's discharge is determined by the city to create an imminent endangerment to human health or welfare, immediate discontinuance of water and/or sewer service or permit suspension shall be instituted.

Case 2. Where a user's discharge is determined by the city to present an endangerment to the environment or to the POTW operation, discontinuance of water and/or sewer service or permit suspension may be instituted, after said user has been notified and allowed a reasonable time (not to exceed forty-eight (48) hours) to respond.

(2) Where just cause can be demonstrated by the city, nondomestic user wastewater contribution permits may be revoked and all understandings repealed when violation or noncompliance of the permit or this division so warrants.

(3) Provision is hereby made whereby a nondomestic user notified of violation and/or noncompliance, and under penalty or citation for violation and/or noncompliance, has the right to appeal said penalty or citation to the sewer board of appeals.

(4) Users which experience an operational upset placing the user in a temporary state of violation or noncompliance with this division or his wastewater contribution permit shall:

(a) Inform the director within twenty-four (24) hours of finding said upset, orally or by written report.

(b) Where the original notification of upset was of a verbal nature, a written report shall be submitted within five (5) calendar days. Written reports shall include:

1. Description of the upset, cause thereof and the impact on the discharger's compliance status;

2. Duration of upset and/or noncompliance including dates, times, and, if continuing, an expected date/time by which compliance can be reasonably expected to occur;

3. All corrective steps taken to achieve compliance after the upset, and preventive steps to ensure against future occurrence of upset and/or noncompliance.

(c) A documented and verified operating upset shall be an affirmative defense by the user for any enforcement action against the discharger, except where gross negligence on the user's part is proven.

(5) The city has the authority to assess monetary penalties of up to three hundred dollars ($300.00) per violation per day to deter violations of or noncompliance with this division and/or a user's wastewater contribution permit.
(Ord. No. 1087, § 2, 6-3-85)

Sec. 28-238. Recovery of cost by city for enforcement actions.
The city is authorized to recover whatever the actual costs may be to enforce the provisions of the industrial pretreatment program as set forth in this division from violators of this division.
(Ord. No. 1087, § 2, 6-3-85)

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CODE OF ORDINANCES

Chapter 30

DOWNTOWN DEVELOPMENT AUTHORITY*

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* Editors Note: Ord. No. 1184, enacted Dec. 11, 1989, adopted a tax increment financing plan and Development Plan No. 1 pertaining to the downtown development authority; a copy of such ordinance is on file and available for inspection in the city clerk's office.

Note: Ordinance No. 1231, adopted Dec. 16, 1991, amended the tax increment financing plan and Development Plan No. 1 pertaining to the downtown development authority as set out in §§ 30-1--30-11, a copy of such ordinance is on file and available for inspection in the city clerk's office.

Note: Ordinance No. 1611, adopted Feb. 20, 2006, amended the tax increment financing plan and Development Plan No. 1 pertaining to the downtown development authority as set out in §§ 30-1--30-11, a copy of such ordinance is on file and available for inspection in the city clerk's office.

Cross References: Municipal planning commission, § 2-94 et seq.; zoning board of appeals, § 2-130 et seq.; housing commission, § 2-146 et seq.; buildings and building regulations, Ch. 5; fire prevention and protection, Ch. 8; housing code, Ch. 12; public improvements, Ch. 20; streets and sidewalks, Ch. 22; subdivisions, Ch. 23; traffic, Ch. 24; water, sewers and sewage disposal, Ch. 28; stormwater runoff regulation and control, Ch. 29.

Sec. 30-1. Title.
This chapter shall be known and may be cited as the “Economic Development Ordinance.”

Section 2. Section 30-2 through Section 30-11 are hereby designated as Article I, which reads as follows:

ARTICLE I. DOWNTOWN DEVELOPMENT AUTHORITY
(Sections 30-2 through 30-11 remain unchanged by this reference)
(Ord. No. 1657, § 1, 05-12-08; Ord. No. 1093, § 1, 7-1-85)

Sec. 30-2. Definitions.
The terms used herein shall have the same meaning as given them in Public Act 197 of the Public Acts of the State of Michigan of 1975, as amended, or as hereinafter in this section provided unless the context clearly indicates to the contrary. As used in this chapter:

(a) *Act 197* means Public Act of the Public Acts of the State of Michigan of 1975 as now in effect or hereinafter amended.

(b) *Authority* means the City of Midland Downtown Development Authority created by this chapter.

(c) *Board* or *board of directors* means the board of directors of the authority, the governing body of the authority.

(d) *Chief executive officer* means the city manager of the city.

(e) *Council* or *city council* means the city council of the city.

(f) *Development area* means that area to which a development plan is applicable.

(g) *Development plan* means that information and those requirements for a development as are set forth in Section 17 of Act 197.

(h) *Development program* means the implementation of the development plan.

(i) *Downtown district* means the downtown district designated herein or as hereinafter amended.
(Ord. No. 1093, § 1, 7-1-85)

Sec. 30-3. Declaration of purpose.
The city council hereby determines that it is necessary for the best interests of the city to create a public body corporate in the form of the authority to assist the city in halting property value deterioration and increasing property tax valuation where possible in the business district of the city and to aid the city in eliminating the causes of that deterioration and in promoting economic growth by the creation of said authority pursuant to Act 197.
(Ord. No. 1093, § 1, 7-1-85)

Sec. 30-4. Creation of authority.
There is hereby created pursuant to Act 197 a downtown development authority for the city. The authority shall be a public body corporate and shall be known and exercise its powers under the title of the "City of Midland Downtown Development Authority." The authority may adopt a seal, may sue and be sued in any court of this state, and shall possess all of the powers necessary to carry out the purpose of its incorporation as provided herein and in Act 197. The enumeration of a power herein or in Act 197 shall not be construed as a limitation upon the general powers of the authority.
(Ord. No. 1093, § 1, 7-1-85)

Sec. 30-5. Description of downtown district.
The downtown district in which the authority shall exercise its powers as provided by Act 197 shall consist of the property in the city described as follows:

That area located of LAND SITUATED IN THE CITY OF MIDLAND, MIDLAND COUNTY MICHIGAN BEING FURTHER DESCRIBED AS BEGINNING AT THE INTERSECTION OF THE CENTERLINE OF JEROME STREET WITH THE CENTERLINE OF BUTTLES STREET, CARPENTER AND HINES ADDITION RECORDED IN LIBER A OF PLATS, PAGE 25, MIDLAND COUNTY RECORDS; THENCE SOUTHEASTERLY ALONG THE CENTERLINE OF BUTTLES STREET TO THE INTERSECTION OF SAID CENTERLINE WITH THE CENTERLINE OF CRONKRIGHT STREET; THENCE SOUTHWESTERLY ALONG THE CENTERLINE OF CRONKRIGHT STREET TO THE CENTERLINE OF POSEYVILLE ROAD (WESTBOUND ONE-WAY); THENCE SOUTHWESTERLY ALONG THE CENTERLINE OF POSEYVILLE ROAD TO THE INTERSECTION OF SAID CENTERLINE WITH THE

CENTERLINE OF EAST MAIN STREET; THENCE SOUTHEASTERLY ALONG THE CENTERLINE OF EAST MAIN STREET TO THE INTERSECTION OF SAID CENTERLINE WITH THE CENTERLINE OF STATE STREET; THENCE NORTHEASTERLY ALONG THE CENTERLINE OF STATE STREET, MAP OF LARKIN'S ADDITION TO MIDLAND CITY, RECORDED IN LIBER A OF PLATS, PAGE 26, MIDLAND COUNTY RECORDS, TO REFERENCE POINT "A", SAID POINT BEING THE INTERSECTION OF SAID CENTERLINE WITH THE NORTHWESTERLY EXTENSION OF THE NORTHEASTERLY LINE OF BLOCK 70 OF SAID PLAT; THENCE CONTINUING NORTHEASTERLY ALONG THE CENTERLINE OF STATE STREET TO THE INTERSECTION OF SAID CENTERLINE WITH NORTHEASTERLY LINE OF THE SOUTHWESTERLY 1/2 OF BLOCK 57 OF SAID PLAT EXTENDED SOUTHEASTERLY; THENCE NORTHWESTERLY ALONG SAID NORTHEASTERLY LINE EXTENDED THROUGH SAID BLOCK 57 AND BLOCK 57 OF CARPENTER AND HINES ADDITION RECORDED IN LIBER A OF PLATS, PAGE 25, MIDLAND COUNTY RECORDS AND BLOCK 57 MAP OF CARPENTER'S DIVISION OF MIDLAND RECORDED IN LIBER C OF PLATS, PAGE A, MIDLAND COUNTY RECORDS, TO THE SOUTHEASTERLY RIGHT-OF-LINE OF GEORGE STREET; THENCE NORTHWESTERLY CROSSING GEORGE STREET AND CONTINUING NORTHWESTERLY ALONG THE NORTHEASTERLY LINE OF THE SOUTHWESTERLY 1/2 OF BLOCK 58, MAP OF CARPENTER'S DIVISION OF MIDLAND, TO THE SOUTHEASTERLY RIGHT-OF-WAY LINE OF CRONKRIGHT STREET; THENCE NORTHWESTERLY CROSSING CRONKRIGHT STREET AND CONTINUING NORTHWESTERLY ALONG THE NORTHEASTERLY LINE OF THE SOUTHWESTERLY 1/2 OF BLOCK 59 IN SAID PLAT TO THE SOUTHEASTERLY RIGHT-OF-WAY LINE OF TOWNSEND STREET; THENCE NORTHWESTERLY CROSSING TOWNSEND STREET AND CONTINUING NORTHWESTERLY ALONG THE NORTHEASTERLY LINE OF THE SOUTHWESTERLY 1/2 OF BLOCK 60 IN SAID PLAT TO THE CENTER OF SAID BLOCK; THENCE NORTHEASTERLY ALONG THE SOUTHEASTERLY LINE OF LOT 3 IN SAID BLOCK AND THE NORTHEASTERLY EXTENSION THEREOF TO THE CENTERLINE OF GROVE STREET IN SAID PLAT; THENCE NORTHWESTERLY ALONG SAID CENTERLINE TO THE INTERSECTION OF SAID CENTERLINE WITH THE NORTHEASTERLY EXTENSION OF THE SOUTHEASTERLY LINE OF LOT 3, BLOCK 44, OF AFOREMENTIONED CARPENTER AND HINES ADDITION; THENCE SOUTHWESTERLY ALONG SAID LINE TO THE CENTER OF SAID BLOCK 44; THENCE NORTHWESTERLY ALONG THE NORTHEASTERLY LINE OF THE SOUTHWESTERLY 1/2 OF SAID BLOCK TO THE SOUTHEASTERLY RIGHT-OF-WAY LINE OF GORDON STREET; THENCE NORTHWESTERLY CROSSING GORDON STREET AND CONTINUING NORTHWESTERLY ALONG THE NORTHEASTERLY LINE OF THE SOUTHWESTERLY 1/2 OF BLOCK 44 1/2 IN SAID PLAT TO THE SOUTHEASTERLY RIGHT-OF-WAY LINE OF FITZHUGH STREET; THENCE NORTHWESTERLY CROSSING FITZHUGH STREET AND CONTINUING NORTHWESTERLY ALONG THE NORTHEASTERLY LINE OF THE SOUTHWESTERLY 1/2 OF BLOCK K IN SAID PLAT AND THE NORTHWESTERLY EXTENSION THEREOF TO THE CENTERLINE OF JEROME STREET PER SAID RECORDED PLAT; THENCE SOUTHWESTERLY ALONG SAID CENTERLINE TO THE POINT OF BEGINNING. ALSO BEGINNING AT THE AFOREMENTIONED REFERENCE POINT "A"; THENCE SOUTHEASTERLY ALONG THE NORTHWESTERLY EXTENSION OF THE NORTHEASTERLY LINE OF BLOCK 70, MAP OF LARKIN'S ADDITION TO MIDLAND CITY, RECORDED IN LIBER A OF PLATS, PAGE 26, MIDLAND COUNTY RECORDS, TO THE NORTHERLY CORNER OF SAID BLOCK; THENCE S47°14'05"E 580.53 FEET; THENCE S47°10'05"E 886.15 FEET; THENCE S43°00'00"W 458.26 FEET; THENCE N51°59'28"W 134.20 FEET; THENCE N53°17'45"W 84.00 FEET; THENCE N57°30'38"W 124.00 FEET; THENCE N59°36'47"W 379.00 FEET; THENCE N62°22'00"W 127.42 FEET; THENCE N64°21'35"W 89.08 FEET; THENCE N65°14'57"W 578.34 FEET; THENCE NORTH TO THE

AFOREMENTIONED INTERSECTION OF EAST MAIN STREET WITH THE CENTERLINE OF STATE STREET; THENCE NORTHEASTERLY ALONG THE CENTERLINE OF STATE STREET TO REFERENCE POINT "A" AND THE POINT OF BEGINNING.

(Ord. No. 1093, § 1, 7-1-85; Ord. No. 1315, § 1, 4-10-95; Ord. No. 1495, § 1, 3-5-01; Ord. No. 1610, § 1, 2-20-06; Ord. No. 1733, § 1, 7-9-12)

Sec. 30-6. Board of directors.

(a) The authority shall be under the supervision and control of a board consisting of the chief executive officer of the city and eight (8) members. Beginning in 1991, a ninth member shall be added to the board. Beginning in 1992, a tenth and an eleventh member shall be added to the board, and beginning in June, 1993, a twelfth member shall be added to the board. The members shall be appointed by the chief executive officer subject to approval by the council. Not less than a majority of the members shall be persons having an interest in property located in the downtown district. Of the members first appointed, an equal number of the members shall be appointed for one (1) year, two (2) years, three (3) years and four (4) years. The initial term of the ninth member shall expire May 1, 1995. The initial term of the tenth member shall expire May, 1994, and the initial term of the eleventh member shall expire May, 1996. The term of the twelfth member shall expire May, 1997. A member shall hold office until the member's successor is appointed. Thereafter, each member shall serve for a term of four (4) years. An appointment to fill a vacancy shall be made by the chief executive officer of the city for the unexpired term only. Members of the board shall serve without compensation, but shall be reimbursed for actual and necessary expenses. The chairperson of the board shall be elected by the board.

(b) Before assuming the duties of office, a member shall qualify by taking and subscribing to the constitutional oath of office.

(c) The business which the board may perform shall be conducted at a public meeting of the board held in accordance with Public Act 267 of the Public Acts of the State of Michigan of 1976, as amended. Public notice of the time, date and place of the meeting shall be given in the manner required by Act 267. The board shall adopt rules consistent with Act 267 governing its procedure and the holding of regular meetings, subject to the approval of the council. Special meetings may be held when called in the manner provided in the rules of the board.

(d) Pursuant to notice, and after having been given an opportunity to be heard, a member of the board may be removed for cause by the council. Removal of a member is subject to review by the circuit court.

(e) All expense items of the authority shall be publicized monthly and the financial records shall always be open to the public.

(f) In addition to the items and records prescribed in subsection (e) set forth above, a writing prepared, owned, used, in the possession of, or retained by the board in the performance of an official function shall be made available to the public in compliance with Public Act 442 of the Public Acts of the State of Michigan of 1976, as amended.
(Ord. No. 1093, § 1, 7-1-85; Ord. No. 1211, § 1, 3-4-91; Ord. No. 1237, § 1, 5-4-92; Ord. No. 1264, § 1, 5-24-93)

Sec. 30-7. Powers of the authority.

The authority shall have all the powers enumerated or implied by law in Act 197; providing, however, that in the event the authority decides to employ an executive director, that the employment and compensation of the executive director shall be subject to the approval of the council. In the event a director is employed, he shall post a bond in the penal amount of one hundred thousand dollars ($100,000.00).
(Ord. No. 1093, § 1, 7-1-85)

Sec. 30-8. Fiscal year.
The fiscal year of the authority shall begin on July first of each year and end on June thirtieth of the following year or such other fiscal year as may hereinafter be adopted by the city.
(Ord. No. 1093, § 1, 7-1-85)

Sec. 30-9. Adoption of budget.
The board shall annually prepare a budget and shall submit it to the council on the same date that the proposed budget for the city is required by the city charter to be submitted to the council. The board shall not finally adopt a budget for any fiscal year until the budget has been approved by the city council. The board may, however, temporarily adopt a budget in connection with the operation of any improvements which have been financed by revenue bonds where required to do so by the ordinance authorizing the revenue bonds. For the first fiscal year of the authority, the board shall prepare a budget by October 1, 1985, which will be subject to approval by the council.
(Ord. No. 1093, § 1, 7-1-85)

Sec. 30-10. Financial reports.
The authority shall submit financial reports to the council on a quarterly basis with the first report to be furnished by the end of September, the second report by the end of December, the third report by the end of March, and the fourth report by the end of June of every calendar year. The financial reports shall be in sufficient detail so as to fully inform the council as to the financial activities of the authority during each of the quarters.
(Ord. No. 1093, § 1, 7-1-85)

Sec. 30-11. Audit.
The authority shall be audited annually by the same independent auditors auditing the city, and copies of the audit report shall be filed with the council.
(Ord. No. 1093, §, 7-1-85)

ARTICLE II. CORRIDOR IMPROVEMENT AUTHORITY

Sec. 30-13. Adopted.
The Corridor Improvement Authority Act (Public Act 280 of the Public Acts of the State of Michigan of 2005, as amended) is hereby adopted as the corridor improvement authority ordinance and made a part of this chapter as if fully set out herein, except such portions as are amended or deleted by the provisions of this division.
(Ord. No. 1657, § 3, 05-12-08)

Sec. 30-14. Purpose and intent.
The purpose of this division is to provide for the establishment of a corridor improvement authority; to prescribe the powers and duties of the authority; to correct and prevent deterioration in business districts; to encourage historic preservation; to authorize the acquisition and disposal of interest in real and personal property; to authorize the creation and

implementation of development plans and development areas in the districts; to promote the economic growth of the districts; to create a board; to prescribe the powers and duties of the board; to authorize the levy and collection of taxes; to authorize the issuance of bonds and other evidences of indebtedness; to authorize the use of tax increment financing; to prescribe powers and duties of certain state officials; to provide for rule promulgation; and to provide a means through which the council may exercise the authority and discharge the responsibilities vested in it by this division and Public Act 280 of the Public Acts of the State of Michigan of 2005, as amended.

The city is strongly committed to the revitalization and redevelopment of commercial properties that have historically developed along the city's major arterial roadways ("commercial corridors"). The council believes that revitalization and redevelopment of existing commercial corridors in maturing communities is preferable to the negative effects associated with the continual consumption of vacant land for commercial purposes in growth communities.

There presently exist within the city a number of commercial corridors which could greatly benefit from the new Corridor Improvement Authority Act, Act 280 of PA 2005 (the "Act"), through analysis, short- and long-term planning, construction, renovation, repair, remodeling, rehabilitation, restoration, preservation and reconstruction of buildings and facilities. Tax incremental financing is one of many tools available to finance these activities under the Act.

The council, having heard and considered testimony regarding the public need and potential benefits that are to be realized through the Act; and, having determined that it is necessary for the best interests of the public to redevelop and promote economic growth within commercial corridors; resolves to proceed with the creation and provide for the operation of a corridor improvement authority ("authority") within the city pursuant to and in accordance with the provisions of the Act.
(Ord. No. 1657, § 3, 05-12-08)

Sec. 30-15. Creation of authority.
There is created pursuant to this division a corridor improvement authority for the city. The authority shall be known and exercise its powers under the name "Corridor Improvement Authority of the City of Midland". The authority shall possess all of the powers provided within this division and Public Act 280 of the Public Acts of the State of Michigan 2005, as amended. The enumeration of a power in this division or in the Act shall not be construed as a limitation upon the general powers of the authority.
(Ord. No. 1657, § 3, 05-12-08)

Sec. 30-16. Board.
a) Except as otherwise provided in the Act, the authority shall be under the supervision and control of a seven (7) member board consisting of the city manager or his or her designee and six (6) members appointed by the city manager subject to approve by the council. Not less than a majority of the members shall be persons having an ownership or business interest in property located in the development area. At least one (1) of the members shall be a resident of the development area or of an area within one-half mile of any part of the development area. The board shall elect a chairperson from among its members.

Of the members first appointed, two (2) members shall be appointed for a term of one (1) year, two (2) members for a term of two (2) years, one (1) member for a term of three (3) years, and one (1) member for a term of four (4) years. After the initial appointment, each member shall serve for a term of four (4) years. A member shall hold office until the member's successor is

appointed. An appointment to fill a vacancy shall be made by the city manager for the unexpired term only. After having been given notice and an opportunity to be heard, a member of the board may be removed for cause by the council.
b) Before assuming the duties of office, a member shall quality by taking and subscribing to the constitutional oath of office.
c) The business which the board may perform shall be conducted at a public meeting of the board held in accordance with the Open Meetings Act, Public Act 267 of the Public Acts of the State of Michigan of 1976, as amended. Public notice of the time, date and place of the meeting shall be given in the manner required by Act 267. The board shall adopt rules consistent with Act 267 governing its procedure and the holding of regular meetings, subject to the approval of the council. Special meetings may be held when called in the manner provided in the rules of the board.
d) A writing prepared, owned, used, in the possession of, or retained by the board in the performance of an official function is subject to the Freedom of Information Act, Public 442 of the Public Acts of the State of Michigan of 1976, as amended.
e) Members of the board shall serve without compensation, but shall be reimbursed for actual and necessary expenses.
f) All expense items of the authority shall be publicized monthly and the financial records shall always be open to the public.
(Ord. No. 1657, § 3, 05-12-08)

Sec. 30-17. Powers of authority.
The board may do any of the following:
a) Prepare an analysis of economic changes taking place in the development area.
b) Study and analyze the impact of metropolitan growth upon the development area.
c) Plan and propose the construction, renovation, repair, remodeling, rehabilitation, restoration, preservation, or reconstruction of a public facility, an exiting building, or a multiple-family dwelling unit which may be necessary or appropriate to the execution of a plan which, in the opinion of the board, aids in the economic growth of the development area.
d) Plan, propose, and implement an improvement to a public facility within the development area to comply with the barrier-free design requirements of the state construction code promulgated under the Stile-De-Rossett-Hale singe state construction code act, 1972 PA 230, MCL 125.1501 to 125.1531.
e) Develop long-range plans, in cooperation with the agency that is chiefly responsible for planning in the municipality, designed to halt the deterioration of property values in the development area and to promote the economic growth to the development area, and take steps as may be necessary to persuade property owners to implement the plans to the fullest extent possible.
f) Implement any plan of development in the development area necessary to achieve the purposes of this act in accordance with the powers of the authority granted by this act.
g) Make and enter into contracts necessary or incidental to the exercise of its powers and the performance of its duties.
h) Acquire by purchase or otherwise, on terms and conditions and in a manner the authority considers proper or own, convey, or otherwise dispose of, or lease as lessor or lessee, land and other property, real or personal, or rights or interests in the property, that the authority determines is reasonably necessary to achieve the purposes of this act, and to grant or acquire licenses, easements, and options.
i) Improve land and construct, reconstruct, rehabilitate, restore and preserve, equip, improve, maintain, repair and operate any building, including multiple-family dwellings, and any necessary or desirable appurtenances to those buildings, within the development area for the use, in whole or in part, of any public or private person or corporation or a combination thereof.

j) Fix, charge, and collect fees, rents, and charges for the payment of revenue bonds issued by the authority.
k) Lease, in whole or in part, any facility, building, or property under its control.
l) Accept grants and donations of property, labor, or other things of value from a public or private source.
m) Acquire and construct public facilities.
n) Conduct market research and public relations campaigns, develop, coordinate, and conduct retail and institutional promotions, and sponsor special events and related activities.
o) Contract for broadband service and wireless technology service in a development area.
(Ord. No. 1657, § 3, 05-12-08)

Sec. 30-18. Description of the development area.
The development area in which the board shall exercise its powers as provided by Act 280 of the Public Acts of the State of Michigan of 2005, as amended, shall consist of the property in the city described as follows:

A parcel of the land in Sections 9, 10, 15, 16 and 22, T. 14 N. – R. 2 E., City of Midland, Midland County, Michigan, described as follows:
To fix the point of beginning commence at a point on the South line of Section 15, said point being the intersection of the West 1/8 line of said Section 15 and said South Section line, said point also being the intersection of East Patrick Road (so-called) and Bayliss Street (so-called); thence North, on said West 1/8 line, 33.00 feet; thence East, 32.00 feet to the East right-of-way of said Bayliss Street and the point of beginning of this description;
thence North, on said East right-of-way line, 99.00 feet; thence East, 50.00 feet; thence North, 1.00 feet; thence East, 50.00 feet; thence North, 450.00 feet; thence West, 100.00 feet to said East right of way line of Bayliss Street so-called;
thence North, on said East line, 77.00 feet; thence East, 566.55 feet; thence North, 500.00 feet; thence East, 501.35 feet; thence South, 126.95 feet; thence East 240.00 feet to the centerline of Washington Street (so-called), said centerline also being the North and South 1/4 line of said Section 15;
thence North, on said North and South 1/4 line, 361.39 feet to the intersection of the centerlines of said Washington Street and Michigan Street (so-called);
thence Northwesterly, on the centerline of said Michigan Street, to the intersection of said centerline of Michigan Street and the South right-of-way of Eastlawn Drive (so-called);
thence East, on said South right-of-way of Eastlawn Drive, to a point on the Westerly right-of-way of South Saginaw Street (so-called), said point also being the Northeasterly corner of Lot 1, Block 2, of recorded Plat of Assessor's Plat Of Eastlawn Addition;
thence Northwesterly, on said Westerly right-of-way of said South Saginaw Street to a point, said point being 209.95 feet, measured along said Westerly right-of-way, Southeasterly of the Easterly corner of Lot 1 of recorded Replat of Keppel's Addition;
thence Southwesterly, 120.00 feet, to the Southerly extension and a line common to Lots 1 through 13 of said Replat of Keppel's Addition;
thence Northwesterly, on said Southerly extension and line common to Lots 1 through 13, to the North line of said Replat of Keppel's Addition; thence East, on said North line, 17.13 feet;
thence Northwesterly to the centerline of Dartmouth Drive (so-called); thence Southwesterly, on said centerline of Dartmouth Drive, to the Southerly extension of the Southwesterly right of way line of Bayliss Street (so-called);
thence Northwesterly, on said Southerly extension and right-of-way line of Bayliss Street (so-called), 198.49 feet;
thence West, 179.89 feet; thence North, 60.00 feet; thence West, to the Easterly right-of-way line of Jefferson Avenue (so-called);

thence North, on said Easterly right-of-way of Jefferson Avenue (so-called), to the centerline of Rodd Street (so-called); thence Southwesterly, on the centerline of Rodd Street (so-called), to the centerline of Nickles Street (so-called);
thence Northwesterly, on said centerline of Nickles Street (so-called), to the centerline of Ashman Street (so-called); thence Northeasterly, on said centerline of Ashman Street, to the centerline of Mertz Street (so-called);
thence Northwesterly, on said centerline of Mertz Street, to the Southwesterly extension of the South line of the recorded plat of Edgewood Park Subdivision;
thence Northeasterly, on said Southwesterly extension and said South line of said plat of Edgewood Park Subdivision, to the Northwesterly corner line of Lot 6, of the recorded plat of Patterson's Addition;
thence Northeasterly, on the Northwesterly line of Lots 6, 7 and 8 of said Patterson's Addition, to the Northeasterly line of Lot 4 of said subdivision;
thence Northwesterly, on said Northeasterly line of Lot 4 and the Northeasterly line of Lots 12 and 7 and their extension in the recorded plat of Edgewood Park Subdivision, to the Northerly right-of-way of Manor Drive (so-called); thence Northeasterly, on said Northerly right-of-way, to a point 150.00 feet Southwesterly of the intersection of the Northerly right-of-way of Manor Drive and the Westerly right-of-way of North Saginaw Road;
thence Northwesterly, from said point, 120.00 feet; thence Northeasterly, to the centerline of North Saginaw Road (so-called);
thence Southeasterly, on said centerline of North Saginaw Road, to the intersection with the Southwesterly extension of North Line of Lot 11 in the recorded Plat of Mol Subdivision;
thence Northeasterly, on said Southwesterly extension and the North line of said Lot 11, 184.35 feet, to the Northeasterly line of said Lot 11;
thence Southeasterly, on said Northeasterly line of said Lot 11 and 12 of said subdivision, 203.08 feet, to the Northwesterly line of Lot 13 of said subdivision;
thence Northeasterly, on said Northwest line of said Lot 13, to the intersection with Vail Court (so-called) right-of-way;
thence Southeasterly, on said right-of-way line, 34.65 feet, to the East line of said Lot 13; thence South, on the East line of said Lot 13, 125.20 feet, to the South line of said Plat of Mol Subdivision;
thence East, on said South Subdivision line and its Easterly extension, to the center line of Jefferson Avenue (so-called) and the Section line common to Sections 9 and 10;
thence South, on said Section line, to the Westerly extension of the South line of Lot 8 of the recorded plat Assessor's Plat No. 3; thence East, on said Westerly extension and the South line of said Lot 8 and its Easterly extension to the centerline of relocated Cambridge Street (so-called);
thence Southerly, on said centerline of Cambridge Street, to the South line of Section 10 and the centerline of Ashman Street, (so-called);
thence East, on said centerline, to the intersection with the Northerly extension of the East line extended of Lot 4 of the recorded plat of Streuer's Addition No. 3; thence South, on said Northerly extension and said East line, to the Northeast line of Lot 24 of said subdivision; thence Southeasterly, on said Northeast line of said Lot 24 and its Southeasterly extension, to the centerline of Edwin Street (so-called);
thence Southwesterly, on said centerline of Edwin Street, to the centerline of Cambridge Street (so-called); thence Southeasterly, on the centerline of Cambridge Street, to the centerline of Washington Street (so-called), said centerline also being the North and South 1/4 line of said Section 15;
thence South, on said centerline of Washington Street (so-called) to the intersection of the Northwesterly extension of the Southwesterly right-of-way line of Wisconsin Road (so-called);

thence Southeasterly on said Northwesterly extension and said Southwesterly line, to the East line of Reinhart's Addition; thence South, on said East line, 41.73 feet; thence Southeasterly, 166.44 feet; thence South, to the North right-of-way line of East Haley Street (so-called); thence East, on said North right-of-way, to the centerline of Virginia Street (so-called);
thence South, on the centerline of said Virginia Street and its Southerly extension, to a point on the East line of the recorded subdivision of Woodworth Addition, said point being 153.00 feet South of the Northeast corner of said subdivision;
thence East, to a point on the West line of the recorded plat of Parkwood Addition, said point being, 120.00 feet South of the Northwest corner of Lot 51 of said Parkwood Addition plat;
thence South, on said West line, to the Southerly line of Lot 52, said Southerly line of Lot 52, also being the Northeasterly line of Lot 90 of said plat; thence Southeasterly, on a line common to Lots 52 through 56 and 86 through 90 of said plat, 357.07 feet to the mid point of the Northeasterly line of said Lot 86;
thence Southwesterly, on a line which is parallel with and 30.00 feet, measured at right angles, Northwesterly of the Southeasterly line, of said Lot 86, and its Southwesterly extension to the centerline of vacated Colorado Street (so-called);
thence Southeasterly, on said centerline of vacated Colorado Street to the centerline of the existing right of way of said Colorado Street; thence continuing Southeasterly on said centerline, to the centerline of Walsh Street (so-called);
thence South, on said centerline of Walsh Street, to the South right of way line of East Patrick Road (so-called); thence East, on said South line to the Southwesterly right of way line of the "off ramp" of West Bound Highway M-20 / US 10;
thence Southeasterly on said Southwesterly right of way of said "off ramp" to the North line of said West Bound Highway M-20 / US 10;
thence West on said North line to a point, 348.48 feet West of the East 1/8 line of Section 22;
thence North, to the North right-of-way of said East Patrick Road; thence West, on said North line to the point of beginning.
(Ord. No. 1657, § 3, 05-12-08)

Sec. 30-19. Director's bond.
In the event the board elects to employ a director as authorized by Section 9(1) of the Act, the director, before entering upon the duties of office, shall, in addition to any other requirements of law, post a bond in the penal sum of $10,000.00, payable to the authority for the use and benefit of the authority, which shall be approved by the board and filed with the city clerk. The premium on the bond furnished by the director shall be considered an operating expense of the authority, payable from funds available to the authority for expenses of operation.
(Ord. No. 1657, § 3, 05-12-08)

Sec. 30-20. Filing ordinance with secretary of state.
The City of Midland Corridor Improvement Authority Ordinance and any amendments shall be filed with the Secretary of State promptly after adoption.
(Ord. No. 1657, § 3, 05-12-08)

Sec. 30-21. Fiscal year.
The fiscal year of the authority shall begin on July first of each year and end on June thirtieth of the following year or such other fiscal year as may hereinafter be adopted by the city.
(Ord. No. 1657, § 3, 05-12-08)

Sec. 30-22. Adoption of budget.
The board shall annually prepare a budget and shall submit it to the council on the same date that the proposed budget for the city is required by the city charter to be submitted to the

council. The board shall not finally adopt a budget for any fiscal year until the budget has been approved by the council. The board may, however, temporarily adopt a budget in connection with the operation of any improvements which have been financed by revenue bonds for approval. The board shall not adopt a budget for any fiscal year until the council has approved the budget.
(Ord. No. 1657, § 3, 05-12-08)

Sec. 30-23. Termination.
Upon completion of its purposes for which it is organized, the authority shall be dissolved by ordinance of the council. The property and assets of the authority remaining after the satisfaction of the obligations of the authority shall revert to the city.

Section 3. All other provisions of the Code of Ordinances not specifically amended shall remain in full force and effect.
(Ord. No. 1657, § 3, 05-12-08)

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CODE OF ORDINANCES

Chapter 31

POLICE AND FIRE ALARMS*

Editor's note: Ord. No. 1378, § 1, adopted June 2, 1997, substantially amended and renumbered the provisions of former sections 31-2, 31-5– 31-10, to read as herein set out. Provisions which originated with Ord. No. 1215, § 1, adopted May 13, 1991, have retained the reference to this ordinance in the parenthetical history note at the end of each section.
Cross references: Fire prevention and protection, Ch. 8; destruction of property, § 16-14; police, Ch. 19.

Sec. 31-1. Purpose.
This chapter is enacted to provide minimum standards and regulations applicable to breaking and entering, holdup and fire alarm systems, alarm businesses and alarm users. Both society in general and public safety in particular will be aided by providing a useful and usable system of private security or fire response which properly balances quick response by the police and fire departments with minimization of police officer or fire officer time spent on alarms which are false or otherwise not the intended function of such systems.
(Ord. No. 1215, § 1, 5-13-91)

Sec. 31-2. Definitions.
Within this chapter, the following terms, phrases and words and their derivations have the meanings given herein.
(a) Alarm business means any business in which the owners or employees engage in the activity of altering, installing, leasing, maintaining, repairing, replacing, selling or servicing alarm system(s).
(b) Alarm system means any mechanical or electrical equipment designed and arranged to immediately signal or otherwise notify the occurrence or potential occurrence of a fire, breaking and entering or robbery, including, but not limited to, local and other alarms employing an audible signal and/or a flashing light or beacon designed to signal persons outside the premises. Excluded from this definition and from the scope of this chapter are alarms and alarm systems used solely to alert or signal persons within the premises in which the alarm system is located.
(c) Answering service refers to a telephone answering service which receives, on a generally continuous or ongoing basis through trained or other employees, emergency signals from alarm systems and thereafter immediately relays the alarm, signal or message or the fact of the alarm, signal or message by any means or form including, but not limited to, by live voice to the communication or alarm center of the police and/or fire department.
(d) Automatic dialing device means an alarm system which, over regular telephone lines and by direct connection or otherwise, automatically sends a pre-recorded voice message or coded signal indicating the existence of the emergency situation that the alarm system is designed to detect.

(e) Breaking and entering alarm system means an alarm system signaling an entry or attempted entry into the area protected by the system.
(f) Direct connection means an alarm system which has the capability of transmitting system signals to and then receiving them at the city police department or fire department.
(g) False alarm means an alarm notification summoning the city police or fire department to the location of an alarm activation in which the responding police officer or fire personnel finds no evidence of the crimes of breaking and entering, attempted breaking and entering, robbery or attempted robbery or fire emergency. False alarm does not include an alarm activation signal caused by extraordinary extremes of weather such as high winds, lightning storms or other systematic electric disturbances or such extraordinary but identifiable cause which, in the opinion of the police chief, or fire chief, cannot be attributed to an intentional or negligent act of the subscriber.
(h) Interconnect means the connection of an alarm system to a voice grade telephone line, either directly or through a mechanical device that utilizes a standard telephone, for the purpose of using the telephone line to transmit an emergency message or alarm upon the activation of the alarm system.
(i) Modified central station means a location to which remote alarm and supervisory signaling devices are connected and in which operators supervise the circuits.
(j) Fire chief means the chief of the city fire department or his/her designated representative.
(k) Police chief means the chief of the city police department or his/her designated representative.
(l) Primary trunk line means a telephone line leading directly into the communication center of the police or fire department that is for the purpose of handling emergency calls on a person-to-person basis, which is identified as such by a specific emergency number or numbers listed in the telephone directory issued by the telephone company, and which covers the service area within the police and fire departments' jurisdiction.
(m) Subscriber means a person who buys, leases, or otherwise obtains a right to utilize an alarm system or related service(s) and thereafter contracts with, hires or retains an alarm business to monitor and/or service the same.
(Ord. No. 1215, § 1, 5-13-91; Ord. No. 1378, § 1, 6-2-97)
Sec. 31-3. Administrative rules.
The police chief and fire chief shall each promulgate such written rules as may be necessary for the implementation of this chapter and its intent as to their respective departments. Such rules shall require the prior approval of the city manager and shall be open to inspection by the public.
(Ord. No. 1215, § 1, 5-13-91)
Sec. 31-4. Automatic dialing devices prohibited.
(a) No person shall interconnect any automatic dialing device to the city police or fire department's primary trunk line.
(b) The police chief and fire chief may each approve a direct telephone line to provide live voice communication installation between a modified central station or an answering service to his or her respective department but only if the full costs thereof shall be borne by the party or parties requesting the same.
(c) Except for city-owned buildings, no alarm system shall be operated or programmed to initiate, transmit, or deliver by automatic means to the police and/or fire department an alarm notification described as a "panic," "disturbance," "police alert," "fire alert," "medical emergency," or other similar automatic alert. (Ord. No. 1215, § 1, 5-13-91)

Sec. 31-5. Direct connections to police and fire departments.
Direct connections to City of Midland police and fire departments shall not be permitted.
(Ord. No. 1215, § 1, 5-13-91; Ord. No. 1378, § 1, 6-2-97)
Sec. 31-6. Testing.

(a) No alarm system designed to transmit emergency messages directly to the police or fire department shall be tested or demonstrated without first notifying the police or fire dispatcher and receiving permission.
(b) No alarm system relayed through any intermediary service to the police or fire department shall be tested to determine police or fire response without first notifying the police or fire dispatcher and receiving permission.
(Ord. No. 1215, § 1, 5-13-91; Ord. No. 1378, § 1, 6-2-97)

Sec. 31-7. Notification of disruption.
When an alarm business' service to its subscriber(s) is disrupted for any reason by the alarm business, or the alarm business becomes aware of such disruption, it shall promptly notify its subscriber(s) by telephone that protection is no longer being provided. If, however, the alarm business has written instructions from its subscriber(s) not to make such notification by telephone during certain hours, the alarm business may comply with such instruction(s).
(Ord. No. 1215, § 1, 5-13-91; Ord. No. 1378, § 1, 6-2-97)

Sec. 31-8. False alarm response fee.
A fee for a violation of this chapter shall be imposed as provided in Chapter 21, Article 6.
(Ord. No. 1378, § 1, 6-2-97)

Sec. 31-9. Disconnection of alarm device or system.
(a) The police chief and fire chief are each authorized to require an alarm business to disconnect any subscriber of an alarm system to his or her respective department when such devices(s) or system produces, in the sole judgment of the chief involved, an excessive number of false alarms; provided, however, such authority to require disconnection shall not extend to city owned buildings.
(b) Disconnection for excessive false alarms shall not be ordered unless the requirements set forth in this subsection have been complied with:
(1) Five (5) false alarms for which a fee has been imposed have been responded to in any calendar year and a warning letter has been sent to the subscriber after the fourth false alarm.
(2) The subscriber is placed on a probationary period for six (6) months and has been so notified in writing.
(3) Three (3) false alarms for which a fee has been imposed have been responded to during such probationary period.
(c) The police chief or fire chief may suspend the disconnection during the six-month period if the subscriber provides to either chief convincing proof, to his or her sole satisfaction, that effective and permanent corrective action has been taken.
(d) The subscriber to an alarm system which has been ordered disconnected by either the fire or police chief has the right to appeal such action in writing to the city manager.
(e) Notwithstanding any other provision of this section, disconnection shall be ordered in the event any subscriber is more than ninety (90) days delinquent from the date of the invoice in paying in full any police or fire department response fees, except where a fire alarm system is required by Chapter 8 of the Code of Ordinances of the City of Midland.
(Ord. No. 1215, § 1, 5-13-91; Ord. No. 1378, § 1, 6-2-97)

Sec. 31-10. Liability for expense of false alarm response.
(a) Person responsible. The subscriber of an alarm system is liable for the expense of a false alarm response by any member of the police or fire department.
(b) Charge against person. The expense of a false alarm response shall be a charge against a subscriber and shall be construed as a civil liability only. The charge constitutes a debt owed by

that subscriber to the city and is due and collectible by the city in the same manner as in the case of an obligation under an express or implied contract.
(c) Cost recovery schedule. The city council shall, by ordinance, adopt a schedule of fees for a false alarm response. Such schedule shall be available to the public from the city clerk.
(d) Billing. The director of fiscal services or his or her designees, shall, within ten (10) days of receiving notification from the police or fire department of a false alarm response, submit a bill for the fee by first class mail or personal service to the subscriber for the expenses enumerated in this chapter. The bill(s) shall require full payment within thirty (30) days from the date of service.
(e) Failure to pay. Any failure by the subscriber to pay for the expense of a false alarm response within thirty (30) days of the service of a bill shall be considered in default. In case of default, the city may commence civil suit to recover such expenses plus any costs allowed by law.
(f) New alarm systems. In the event that the police chief or fire chief is notified of the date of the installation of a new alarm system, the fees imposed by this section may be waived by the chief for not more than ninety (90) days beginning with the date of installation.
(Ord. No. 1378, § 1, 6-2-97)

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CODE OF ORDINANCES

Chapter 32

ETHICS

Sec. 32-1. Public policy.
It is hereby declared to be the policy of the city that all public officials and employees must avoid conflicts between their private interests and those of the general public whom they serve. To enhance the faith of the people and the integrity and impartiality of all public officials and employees of the city, it is necessary that adequate rules be provided for separating their roles as private citizens from their roles as public servants. Where government is based on the consent of the governed, every citizen is entitled to have complete confidence in the integrity of his or her government. Each individual official, employee, or advisor of government must help to earn, and must honor that trust by his or her own integrity and conduct in all official duties and actions.
(Ord. No. 1337, § 1, 1-22-96)

Sec. 32-2. Definitions.
Whenever used in this chapter, the following terms shall have the following meanings:

City means the City of Midland.

Compensation means any money, thing of value or other compensatory or pecuniary benefit received or to be received in return for, or as reimbursement for, services rendered or to be rendered.

Controlling authorities means those persons identified in section 32-5 to whom inquiries must be directed.

Decision making means exercising public power to adopt ordinances, regulations or standards, rendering quasi-judicial decisions, establishing executive policy, or rendering a governmental decision as that term is defined in Section 2a [MSA 4.1700(72a); MCLA 15.342a] of Public Act 196 of the Public Acts of the State of Michigan of 1973, as amended [MSA 4.1700(71) et seq; MCLA 15.341 et seq.].

Economic interest means any interest valued or capable of valuation in monetary terms.

Employee means an individual employed by the city, whether part-time or full-time, but excludes elected officials and city contractors.

Gift means anything of value given without consideration or expectation of return.

Official means any person holding any elected office of the city or any appointed, non-employee member of any city board or commission.

Official duties or Official action means a decision, recommendation, approval, disapproval, or other action or failure to act which involves the use of discretionary authority.

Person means any individual, entity, corporation, partnership, firm, association, union, trust, estate, and any parent or subsidiary of any of the foregoing, whether or not operated for profit.

Relative means a person who is related to an official or employee as spouse or as any of the following, whether by blood or by adoption: parent, child, brother or sister, aunt or uncle, niece or nephew, grandparent, grandchild, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepfather or stepmother, stepson or stepdaughter, stepbrother or stepsister, half-brother or half-sister.
(Ord. No. 1337, § 1, 1-22-96)

Sec. 32-3. Code of ethics.
(a) Gift, compensation or economic interest. No official or employee of the city shall solicit, accept or receive, directly or indirectly, any gift, compensation or anything of an economic interest, whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form, under any circumstance in which it can reasonably be inferred that any of the foregoing is intended to influence him or her in the performance of his or her official duties or is intended as a reward for any official action on his or her part.
(b) Preferential treatment. No official or employee of the city shall use, or attempt to use, his or her position to unreasonably secure, request or grant, any privileges, exemptions, advantages, contracts, or preferential treatment for himself or herself, a relative or any other person.
(c) Use of information. No official or employee of the city who acquires information in the course of his or her official duties, which information by law or policy is not available at the time to the general public, shall use such information to further the private economic interests of himself or herself, a relative or any other person.
(d) Full disclosure. No official or employee of the city shall participate, as an agent or representative of the city, in approving, disapproving, voting, abstaining from voting, recommending or otherwise acting upon any matter in which he or she or a relative has a direct or indirect economic interest without disclosing the full nature and extent of the interest. Such a disclosure must be made before the time to perform his or her duty or concurrently with the performance of the duty. If the official or employee is a member of a decision-making or advising body, he or she must make disclosure to other members of the body on the official record. Otherwise, a disclosure will be appropriately addressed by an appointed official or employee to the city manager or by an elected official to the general public. In the case of the city manager and the city attorney, he or she shall make such a disclosure to the mayor.
No official or employee or relative shall engage in any business transaction whereby the official or employee or relative may benefit financially from confidential information which the official or employee has obtained or may obtain by reason of that position or authority.
(e) Doing business with the city. No official, employee or relative shall engage in any business with the city, directly or indirectly, without filing a complete written disclosure statement for each business activity having an economic interest to any of the foregoing. Such a disclosure shall be made on an annual basis or prior to any decision-making not previously disclosed by an annual disclosure.
(f) Use of city property. No official or employee of the city shall, directly or indirectly, use or permit a relative or other persons to use city property of any kind for his or her private economic interest or that of a relative or other person. City officials or employees shall strive to protect and conserve all city property including equipment and supplies entrusted or issued to them.
(Ord. No. 1337, § 1, 1-22-96)

Sec. 32-4. Intention of code.
It is the overall intention of section 32-3 above that officials and employees and their relatives shall avoid any action, whether or not specifically prohibited by section 32-3, which might result in, or create the appearance of:
(1) Using public employment or office for his or her economic interest;
(2) Giving or accepting preferential treatment to or from any person;
(3) Impeding city efficiency or economy;
(4) Losing independence or impartiality of action;
(5) Making a city decision outside official channels;
(6) Affecting adversely the confidence of the public or integrity of the city government; or
(7) Giving or accepting preferential treatment in the use of city property.

Section 32-3 is intended to be both preventative and punitive. It should not be construed to interfere or abrogate in any way with the provisions of any Michigan Statutes, the city Charter, the Code of Ordinances of the city, the rules and regulations of the merit system board or any collectively bargained agreement.
In addition, section 32-3 is not intended to prevent any official or employee of the city from receiving compensation for work performed on his or her own time as a private citizen which does not involve city business. Nor is section 32-3 intended to apply to contributions to political campaigns which are governed by state or federal law.
(Ord. No. 1337, § 1, 1-22-96)

Sec. 32-5. Violation, enforcement and advisory opinions.
(a) All matters concerning the code of ethics set forth in section 32-3 shall be directed to one (1) of the two (2) following controlling authorities depending upon the employment status of the city official or employee involved:
(1) Elected and appointed officials of the city to the mayor, city manager and city attorney. In matters concerning the mayor, city manager or city attorney, the mayor pro-tem will assume the controlling authority position in place of the affected official.
(2) Employees, full- and part-time, of the city to the city manager and city attorney.
(b) The above-listed authorities, when requested, shall take appropriate action on the basis of consensus upon any complaint or request for information concerning the code of ethics of the city. The appropriate action to be taken in any individual case shall be at the discretion of the controlling authority involved, which may include but is not limited to any of the following:
(1) Referral of the matter to a higher authority.
(2) Pursuing further investigation by the controlling authority.
(3) Recommending appropriate disciplinary action, including removal from office, appointed position or employment, in accordance with the city Charter, the city Code of Ordinances, the regulations or policies of the city or the requirements of any collectively bargained agreement.
(4) Deeming no action to be required.
(5) Pursuing such other course of action which is reasonable, just and appropriate under the circumstances.
(c) The above listed controlling authorities may render written advisory opinions, when deemed appropriate, interpreting the code of ethics as set forth in section 32-3 above, subject to the following:
(1) Request for opinions shall be in writing.
(2) Advisory opinions may include guidance to any employee or official on questions as to:
a. Whether an identifiable conflict exists between his or her personal interest or obligations and his or her official duties.

b. Whether his or her participation in his or her official capacity would involve discretionary judgment with a significant affect on the disposition of the matter in conflict.
c. What degree his or her personal interest exceeds that of other persons who belong to the same economic group or general class.
d. What effect his or her participation would have on the confidence of the people in the impartiality of their city officials and employees.
e. Whether a disclosure of his or her personal interests would be advisable and, if so, how such disclosure should be made so as to safeguard the public interest.
f. Whether it would operate in the best interest of the city for him or her to withdraw or abstain from participation or to direct or pursue another course of action in the matter.
(d) Notwithstanding the foregoing, section 32-5 shall be considered as only supplementary to Rule XII, Section D, of the merit system board rules and regulations as to all matters concerning employees of the city.
(Ord. No. 1337, § 1, 1-22-96)

Sec. 32-6. Adoption of principles and guidelines concerning public service ethics.
(a) The Summary– Principles of Public Service Ethics published by the Josephson Institute (Government Ethics Center), copyright 1990, hereinafter referred to as the "summary," is hereby incorporated by reference and adopted as a guideline for all public officials and employees of the city to aid in the performance of their duties.
(b) The adoption of the summary is intended to be utilized only as a guideline and, except as the language found in the summary may be useful to the controlling authorities in fulfilling their responsibilities as set forth in section 32-4, the summary shall not be considered as a part of the code of ethics set forth in section 32-3. To the extent that the language found in the summary may differ from the language found in sections 32-1 through 32-5, the language of the latter shall be controlling.
(Ord. No. 1337, § 1, 1-22-96)

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CODE OF ORDINANCES

Chapter 33

INTOXICATING LIQUOR AND/OR CONTROLLED SUBSTANCE EMERGENCY RESPONSE

Sec. 33-1. Purpose.
The city finds that a significant number of traffic arrests and traffic accidents in the city involve drivers who were operating a motor vehicle while under the influence of an intoxicating liquor or a controlled substance, or a combination of an intoxicating liquor and a controlled substance. In addition, the city finds that there is a greater likelihood of personal injury and property damage in traffic accidents involving drivers who were operating a motor vehicle while under the influence of an intoxicating liquor or a controlled substance, or a combination of an intoxicating liquor and a controlled substance. As a result, an additional operational and financial burden is placed upon the city's police, fire fighting and rescue services by persons who violate a city ordinance and/or state law while under the influence of an intoxicating liquor or a controlled substance, or a combination of an intoxicating liquor and a controlled substance, and that it is necessary to recover these increased emergency response costs.
(Ord. No. 1350, § 1, 6-24-96)

Sec. 33-2. Definitions.
When used in this chapter, the following terms shall have the following meanings:

Emergency response:
(1) The providing, sending and/or utilizing of police, fire fighting, emergency medical and/or rescue services by the city to an incident resulting in an accident involving one (1) or more motor vehicles operated by one (1) or more drivers who were under the influence of an intoxicating liquor or a controlled substance, or a combination of an intoxicating liquor and a controlled substance; or

(2) The providing, sending and/or utilizing of police, fire fighting, emergency medical and/or rescue services by the city to an incident resulting in a traffic stop and arrest by a police officer of a driver who was operating a motor vehicle while under the influence of an intoxicating liquor and/or controlled substance, or a combination of an intoxicating liquor and a controlled substance.
(Ord. No. 1350, § 1, 6-24-96; Ord. No. 1646, 12-17-07)

Sec. 33-3. Liability for expense for emergency response.
(a) Person responsible. A person is liable for an emergency response fee if, while under the influence of an intoxicating liquor or a controlled substance, or a combination of an intoxicating liquor and a controlled substance, such person's operation of a motor vehicle proximately causes any incident resulting in an emergency response.

(b) Presumptions.

(1) For the purposes of this chapter, a person is under the influence of an intoxicating liquor or a controlled substance, or a combination of an intoxicating liquor and a controlled substance, when his or her physical or mental abilities are impaired to a degree that he or she no longer has the ability to operate a motor vehicle with the caution characteristic of a sober person of ordinary prudence. Further, it shall be presumed that a person was operating a motor vehicle while under the influence of an intoxicating liquor if a chemical analysis of his or her blood, urine or breath indicates that the amount of alcohol in his or her blood was in excess of seven one hundredths (0.07) of one percent.

(2) For the purposes of this chapter, it shall be presumed that a person was operating a commercial motor vehicle while under the influence of an intoxicating liquor if a chemical analysis of his or her blood, urine or breath indicates that the amount of alcohol in his or her blood was in excess of four one hundredths (0.04) of one percent.

(3) For the purposes of this chapter, it shall be presumed that a person who is less than twenty-one (21) years of age and or who operates a motor vehicle was under the influence of an intoxicating liquor if a chemical analysis of his or her blood, urine or breath indicates that the amount of alcohol in his or her blood was in excess of two one hundredths (0.02) of one percent.

(c) Charge against person. An emergency response fee shall be a charge against the person responsible for the emergency response under this chapter and shall be construed as a civil liability only. The charge constitutes a debt owed by that person to the city and is due to and collectible by the city in the same manner as in the case of an obligation under an express or implied contract. This chapter shall not be construed to conflict, contravene, enlarge or reduce criminal liability or responsibility.

(d) Emergency response fee. The city council shall, by ordinance, adopt an emergency response fee.

(e) Billing. The director of fiscal services, or his or her designee, shall, within ten (10) days of receiving notice of the disposition of the case from the court, submit a bill for these costs by first class mail or personal service to the person liable for the emergency response fee as enumerated under this chapter. The bill(s) shall require full payment within thirty (30) days from the date of billing.

(f) Failure to pay. Any failure by the person responsible to pay an emergency response fee within thirty (30) days of the service of a bill shall be considered a default. In case of default, the city may commence a civil suit to recover such expense plus any costs allowed by law.
(Ord. No. 1350, § 1, 6-24-96; Ord. No. 1656, 12-17-07)

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CODE OF ORDINANCES

Chapter 34

MUNICIPAL CIVIL INFRACTIONS

Sec. 34-1. Definitions.
As used in this chapter:

(a) *Act* means Act No. 236 of the Public Acts of 1961, as amended.

(b) *Authorized city official* means a police officer or other personnel of the city, authorized by this Code or any ordinance to issue municipal civil infraction citations or municipal infractions violation notices. The following persons other than police officers are also authorized city officials authorized to issue municipal civil infraction citations or notices: The chief building inspector, the city engineer, the fire chief, the director of community development and planning, the director of public services and their authorized representatives.

(c) *City* means the City of Midland.

(d) *Municipal civil infraction* means an act or omission that is prohibited by any ordinance of the City of Midland, but which is not a crime under such ordinance, and for which civil sanctions, including without limitation, fines, damages, expenses and costs, may be ordered, as authorized by Chapter 87 of the Act. A municipal civil infraction is not a lesser included offense of any ordinance violation that is a criminal offense.

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

(f) *Municipal civil infraction citation* means a written complaint or notice prepared by an authorized city official, directing a person to appear in court regarding the occurrence or existence of a municipal civil infraction violation by the person cited.
(Ord. No. 1362, § 1, 1-6-97; Ord. No. 1424, § 6, 9-14-98; Ord. No. 1451, § 1, 5-17-99)

Sec. 34-2. Municipal civil infraction action; commencement.
A municipal civil infraction action may be commenced upon the issuance by an authorized city official of a municipal civil infraction citation directing the alleged violator to appear in court.
(Ord. No. 1362, § 1, 1-6-97)

Sec. 34-3. Municipal civil infraction citations; issuance and service.
Municipal civil infraction citations shall be issued and served by authorized city officials as follows:

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

(2) The place for appearance specified in a citation shall be the 75th District Court.

(3) Each citation shall be numbered consecutively and shall be in a form approved by the state court administrator. The original citation shall be filed with the district court. Copies of the citation shall be retained by the city and issued to the alleged violator as provided by Section 8705 of the Act.

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

(5) An authorized city official who witnesses a person committing a municipal civil infraction shall prepare and subscribe, as soon as possible and as completely as possible an original and three copies of either a municipal civil infraction citation or a municipal civil infraction violation notice.

(6) An authorized city official may issue a citation to a person if:

a. Based on an investigation, the official has reasonable cause to believe that the person is responsible for a municipal civil infraction; or

b. Based upon investigation of a complaint by someone who allegedly witnessed the person commit a municipal civil infraction, the official has reasonable cause to believe that the person is responsible for a municipal civil infraction and if the city attorney approves in writing the issuance of the citation.

(7) Municipal civil infraction citations shall be served by an authorized city official as follows:

a. Except as provided by subsection 34-3(2)b. below, an authorized city official shall personally serve a copy of the citation upon the alleged violator.

b. If the municipal civil infraction action involves the use of occupancy of land, a building, or other structure, a copy of the citation does not need to be personally served upon the alleged violator, but may be served upon an owner or occupant of the land, building or structure by posting the copy on the land or attaching the copy to the building or structure. In addition, a copy of the citation shall be sent by first-class mail to the owner of the land, building or structure of the owner's last known address.
(Ord. No. 1362, § 1, 1-6-97)

Sec. 34-4. Municipal civil infraction citations; contents.

(a) A municipal ordinance citation shall contain the name of the city, the name and address of the alleged violator, the municipal civil infraction alleged, the place where the alleged violator shall appear in court, the telephone number of the court, and the time at or by which the appearance shall be made.

(b) Further, the citation shall inform the alleged violator that he or she may do one (1) of the following:

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

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

(3) Deny responsibility for the municipal civil infraction by doing either of the following:

a. Appearing in person for an informal hearing before a judge or district court magistrate, without the opportunity of being represented by an attorney, unless a formal hearing before a judge is requested by the city.

b. Appearing in court for a formal hearing before a judge, with the opportunity of being represented by an attorney.

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

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

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

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

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

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

(d) The citation shall contain a notice in boldfaced type that the failure of the alleged violator to appear within the time specified in the citation or at the time scheduled for a hearing or appearance is a misdemeanor and will result in entry of a default judgment against the alleged violator on the municipal civil infraction.
(Ord. No. 1362, § 1, 1-6-97)

Sec. 34-5. Municipal civil infractions.
A violation of any of the following provisions of the City of Midland Code of Ordinances shall be a municipal civil infraction:
(1) Chapter 8, International Fire Code.
(2) The city zoning ordinance.

(3) Chapter 29, Stormwater Runoff Regulation and Control.
(4) Section 22-2 of Article I of Chapter 22, Sign placement in the city right of way areas.
(5) Article VI of Chapter 15, Telecommunications.
(6) Article IV, Chapter 22, Addresses.
(7) Article V, Chapter 5, Soil Erosion and Sedimentation Control.
(8) Rules and Regulations of the Jack Barstow Municipal Airport.
(9) Cemetery Rules
(10) Article I of Chapter 26, Weeds.
(11) Article III of Chapter 3.

(Ord. No. 1362, § 1, 1-6-97; Ord. No. 1370, § 1, 3-17-97; Ord. No. 1424, § 6, 9-14-98; Ord. No. 1425, § 1, 9-28-98; Ord. No. 1451, § 1, 5-17-99; Ord. No. 1519, § 1, 10-8-01; Ord. No. 1547, § 1, 10-28-02, Ord. No. 1562 § 1, 6-23-03; Ord. No. 1584 § 2, 9-13-04; Ord. No. 1628, § 1, 2-12-07; Ord. No. 1634, § 1, 6-11-07; Ord. No. 1638, § 1, 7-23-07; Ord. No. 1696, § 1, 5-10-10; Ord. No. 1711, § 2, 11-22-10; Ord. No. 11721, § 1, 10-24-11)

Sec. 34-6. General penalties and sanctions for violations of ordinances; continuing violations.

(a) Unless a violation of an ordinance is specifically designated in the ordinance as a municipal civil infraction, the violation shall be deemed to be a misdemeanor.

(b) The sanction for an ordinance violation which is a municipal civil infraction shall be a civil fine in the amount as provided by said ordinance, plus any costs, damages, expenses and other sanctions, as authorized under Chapter 87 of the Act, and other applicable laws.

(1) Unless an ordinance specifically provides for a particular fine for a municipal civil infraction violation, the civil fine for a violation shall not be less than fifty dollars ($50.00) plus costs and other sanctions, for each infraction.

(2) Increased civil fines may be imposed for repeated violations of any ordinance. As used in this section, "repeat offense" means a second (or any subsequent) municipal civil infraction violation of the same requirement or provision

a. committed by a person within any twelve-month period (unless some other period is specifically provided in the ordinance); and

b. for which the person admits responsibility or is determined to be responsible.

Unless otherwise specifically provided by any ordinance for a particular municipal civil infraction, the increased fine for a repeat offense shall be as follows:

a. The fine for any offense which is a first repeat offense shall be not less than two hundred fifty dollars ($250.00), plus costs.

b. The fine for any offense which is a second repeat offense or any subsequent repeat offense shall be not less than five hundred dollars ($500.00), plus costs.

(c) Each day in which any ordinance violation continues constitutes a separate offense and shall be subject to penalties or sanctions as a separate offense.

(d) The fines authorized under this section shall be in addition to any other remedy provided by law or ordinance and shall not diminish or impair the ability of the city to seek alternative or additional recourse or remedy for a violation of the provisions of the City of Midland Code of Ordinances, or this chapter.
(Ord. No. 1362, § 1, 1-6-97)

Sec. 34-7. Severability.
Any and all sections, terms, provisions and/or clauses herein shall be deemed independent and severable. Should any court of competent jurisdiction hold any section, term or provision or clause void and/or invalid, all remaining sections, terms, provisions and/or clauses not held void and/or invalid shall continue in force and effect.
(Ord. No. 1362, § 1, 1-6-97)

Sec. 34-8. Repealer.
All ordinances or parts thereof in conflict herewith are hereby repealed and shall be of no further force and effect.
(Ord. No. 1362, § 1, 1-6-97)

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CODE OF ORDINANCES

Chapter 35

EMERGENCY MANAGEMENT

Sec. 35-1. Adopted.
The Emergency Management Act (Public Act 390 of the Public Acts of the State of Michigan of 1976, as amended) is hereby adopted as the city emergency management ordinance and made a part of this chapter as if fully set out herein, except such portions as are amended or deleted by the provisions of this chapter.
(Ord. No. 1465, § 1, 1-10-00)

Sec. 35-2. Title.
This chapter shall be known and may be cited as the "City of Midland Emergency Management Ordinance."
(Ord. No. 1465, § 1, 1-10-00)

Sec. 35-3. Purpose.
The purpose of this chapter is to provide for the planning, mitigation, preparedness, response and recovery from natural and human-made disasters within the City of Midland by being part of the County of Midland's emergency management program; to appoint the county emergency management coordinator as the City of Midland's municipal emergency management coordinator; to provide a means for coordinating resources of the city with those of the county; to appoint an emergency management liaison to work with the emergency management coordinator; and to provide a means through which the city council may exercise the authority and discharge the responsibilities vested in it by this ordinance and Act No. 390 of the Public Acts of the State of Michigan of 1976, as amended.
(Ord. No. 1465, § 1, 1-10-00; Ord. No. 1637, § 1, 7-9-07)

Sec. 35-4. Definitions.
The terms used herein shall have the same meaning as given them in Act No. 390 of the Public Acts of the State of Michigan of 1976, as amended, or as hereinafter in this section provided unless the context clearly indicates to the contrary. As used this chapter:

Act means Public Act 390 of the Public Acts of the State of Michigan of 1976, as now in effect or hereinafter amended.

Chief executive official means the city manager of the city.

City or municipality means City of Midland.

Council or *city council* means the city council of the city.

County means the County of Midland.

Disaster means an occurrence or threat of widespread or severe damage, injury or loss of life or property resulting from a natural or human-made cause, including but not limited to fire, flood, snowstorm, ice storm, tornado, windstorm, oil spill, water contamination, utility failure, hazardous peacetime radiological incident, major transportation accident, hazardous materials incident, epidemic, air contamination, blight, drought, infestation, explosion, or hostile military action or paramilitary action, or similar occurrences resulting from terrorist activities, riots, or civil disorders.

Disaster relief force means all agencies of county and city government, private and volunteer personnel, public officers and employees, and all other persons or groups of persons identified in the Midland County emergency operations plan as having duties to perform or those called into duty or working at the direction of a party identified in the plan to perform a specific disaster or emergency related task during a local state of emergency.

District coordinator means the Michigan Department of State Police emergency management and homeland security division district coordinator who serves as liaison between the office of emergency management and the Michigan Department of State Police, emergency management and homeland security division in all matters pertaining to emergency and disaster situations.

Emergency management liaison means the person designated by the council to assist the municipal emergency management coordinator in coordinating the emergency management activities within the city.

Emergency management program means the program established to coordinate planning, mitigation, preparedness, response and recovery activities for emergency, disaster and homeland security situations within a given geographic area made up of one (1) or several political subdivisions. Such a program has an appointed emergency management coordinator and meets the program standards and requirements as established by the department of state police, emergency management and homeland security division. The Midland County Office of Emergency Management conducts this program.

Emergency operations plan means the plan developed and maintained by the county for the purpose of responding to emergency or disaster situations by identifying and organizing the disaster relief force.

Governor's state of disaster means an executive order or proclamation by the governor that implements the emergency response and recovery aspects of the Michigan emergency management plan and applicable local plans of the county or city programs affected.

Governor's state of emergency means an executive order or proclamation by the governor that implements the emergency response and recovery aspects of the Michigan emergency management plan and applicable local plans of the county or city programs affected.

Heightened state of alert means an executive order or proclamation by the Governor that authorizes the Governor to safeguard the interests of the State, to prevent or respond to acts of terrorism, or to facilitate the apprehension of terrorists, for a specific period of time, using powers provided in Act 390 of 1976 as amended, when good cause for such an order or proclamation exists.

Local state of emergency means a declaration that activates the response and recovery aspects of any and all applicable local or interjurisdictional emergency operations plans and authorizes the furnishing of aid, assistance, and directives under those plans.

Municipal emergency management coordinator means the person designated by the council to coordinate all matters pertaining to emergency management within the city.

National Incident Management System (NIMS) means a core set of doctrine, concepts, principles, terminology and organizational processes as established by the United States department of homeland security to enable effective, efficient and collaborative incident management at all levels of government.

Office of emergency management means the County of Midland office of emergency management.
(Ord. No. 1465, § 1, 1-10-00; Ord. No. 1637, § 1, 7-9-07)

Sec. 35-5. Municipal emergency management coordinator--Appointment.
The Midland County emergency management coordinator is hereby appointed as the municipal emergency management coordinator for the city. In addition to acting on behalf of, and at the direction of, the chairman of the county board of commissioners, the municipal emergency management coordinator shall also act on behalf of, and at the direction of, the city manager.
(Ord. No. 1465, § 1, 1-10-00; Ord. No. 1637, § 1, 7-9-07)

Sec. 35-6. Same--Duties.
The municipal emergency management coordinator shall comply with the standards and requirements as established by the department of state police, emergency management and homeland security division, under the authority of the act, in accomplishing the following:

(a) Direct and coordinate the development of the County of Midland/City of Midland emergency operations plan.

(b) Specify departments or agencies which must provide an annex to the plan or otherwise cooperate in its development.

(c) Identify departments and agencies to be included in the County of Midland/City of Midland emergency operations plan as part of the disaster relief force.

(d) Develop and maintain data on available resources.

(e) Coordinate the recruitment, appointment, and utilization of volunteer personnel.

(f) Assure the emergency management program meets eligibility requirements for state and federal aid.

(g) Coordinate and/or conduct training and exercise programs for the disaster relief force within the county and test the adequacy of the emergency operations plan.

(h) Through public information programs, educate the population of the city of actions necessary for the protection of life and property in an emergency or disaster.

(i) Assist in the development of mutual aid agreements.

(j) Assist the city in the development of standard operating procedures which are consistent with the emergency operations plan.

(k) Oversee the implementation of all functions necessary during an emergency or disaster in accordance with the emergency operations plan.

(l) Coordinate emergency management activities with all municipalities in Midland County, surrounding counties and municipalities, and the state.

(m) Coordinate all preparedness activities including establishing and maintaining an emergency coordinating center as necessary.

(n) Identify mitigation opportunities within the City and encourage the implementation of mitigation measures where feasible.
(Ord. No. 1465, § 1, 1-10-00; Ord. No. 1637, § 1, 7-9-07)

Sec. 35-7. Emergency management liaison; appointment, duties.
The city manager, or his designee, shall perform the duties of the emergency management liaison for the purpose of assisting the municipal emergency management coordinator in coordinating the emergency management activities within the city. The city manager shall appoint a minimum of two (2) city employees as successors to the position of the city liaison, the names of which along with the line of succession shall be provided to the municipal emergency management coordinator. The duties of the liaison are as follows:

(a) Coordinate municipal emergency management activities with those of the county and adjacent jurisdictions.

(b) Assist the municipal emergency management coordinator in the development of the emergency operations plan and the incorporation of city resources in the plan.

(c) Identify city resources and agencies to be included in the emergency operations plan as part of the disaster relief force.

(d) Identify city resources and forward information to the municipal emergency management coordinator.

(e) Coordinate the recruitment, appointment, and utilization of volunteer resources within the city.

(f) Assist the municipal emergency management coordinator with administering training programs.

(g) Coordinate city participation in exercises conducted by the county.

(h) Assist in the development of mutual aid agreements.

(i) Assist in educating the population of the city of actions necessary for the protection of life and property in an emergency or disaster.

(j) Identify and collect damage assessment information within the city and forward to the county.

(k) Develop standard operating procedures for disaster response that are consistent with the emergency operations plan.
(Ord. No. 1465, § 1, 1-10-00)

Sec. 35-8. Review of emergency operations plan and municipal emergency management coordinator.

The city manager shall review effectiveness of the County of Midland/City of Midland emergency operations plan as the plan relates to the city at least once every four (4) years. He shall make recommendations to the municipal emergency management coordinator of any changes that may be needed. After this review and incorporation of necessary changes, the city council shall certify the plan to be current and adequate for the City of Midland.

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