

## Chapter 15

### LICENSES AND BUSINESS REGULATIONS\*

\* **Cross References:** Dog license tag, § 3-21; taxicab license, § 27-19 et seq.  
15-68

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#### 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, SHOWS AND EXHIBITIONS**

**Sec. 15-55. License, exception.**

No person shall operate or conduct an amusement ride, circus, carnival, show or exhibition without first obtaining a license therefor from the city clerk and paying the required nonrefundable application fee as set forth in section 21-13 as well as the required license fee as set forth in section 21-14. The provisions of this article shall not be applicable to any fair held under the direct management and supervision of any recognized agricultural association or society or the county of Midland at which agricultural or industrial products are principally exhibited.

**Cross References:** Amusement ride license, § 21-13 and 21-14.

(Ord. No. 371, 10-10-50; Ord. No. 578 § 1, 11-06-63; Ord. No. 1808 § 1, 03-05-18)

**Sed. 15-56. Amusement ride, circus, carnival, show, exhibition defined.**

As used in this article, amusement ride, circus, carnival, show or exhibition shall mean any amusement enterprise which is operated as part of the amusement attractions, ferris wheels, merry-go-rounds, or other similar or like mechanically operated devices are used, or where sideshows, concessions, games of skill or chance, animal exhibits or other similar or like amusements or entertainment are provided.

(Ord. No. 371, 10-10-50; Ord. No. 578, 11-06-63; Ord. No. 1808, 03-05-18)

### **Sec. 15-57. Investigation.**

The city clerk shall forward a copy of the license application to the chief of police, fire chief, planning director, chief building official and city engineer.

- (a) The chief of police, or its designee, shall review the proposed location, traffic pattern impact, time of operation, or other public safety concerns and shall furnish a written report to the city clerk accompanied by a recommendation as to whether the license should be granted or refused.
- (b) The fire chief, or its designee, shall inspect the proposed location to determine whether it is free from fire hazards, provides adequate type and placement of fire extinguishers and access to water supply and provides access for emergency vehicles. The fire chief shall also ensure that, where applicable, tent permits are obtained with payment of applicable fees as stated in the International Fire Code. The fire chief shall furnish a written report to the city clerk accompanied by a recommendation as to whether the license should be granted or refused.
- (c) The planning director, or its designee, shall review the application with the submitted site map to determine whether the proposed location and site setup meets all zoning, setback, parking, restroom facilities, trash receptacles, barricades, safety requirements and all other requirements as set forth by the planning director. The planning director shall furnish a written report to the city clerk, including but not limited to a temporary use permit, if required, and accompanied by a recommendation as to whether the license should be granted or refused.
- (d) The chief building official, or its designee, shall inspect the proposed location to determine whether there is accessible means of egress, to ensure that signage, electrical fixtures and wiring are in compliance with all rules and regulations and ensure that, where applicable, sign and electrical permits are obtained with payment of all applicable permit fees. The chief building official shall furnish a written report to the city clerk accompanied by a recommendation as to whether the license should be granted or refused.
- (e) The city engineer, or its designee, shall review the application with the submitted site map to determine whether the proposed location and site setup requires a street closure or barricaded crossing or parking spaces. If such needs are required, a temporary traffic control order will be written by the engineering department for the specific closures or barricading needed. The city manager will review the requested temporary traffic control order and, if appropriate, will sign the traffic control order and it will be routed to the appropriate departments for completion.

(Ord. No. 371, 10-10-50; Ord. No. 578 § 1, 11-06-63; Ord. No. 1808 § 1, 03-05-18)

### **Sec. 15-58. Health department approval.**

The applicant shall obtain written approval from the county health department that all food or beverage service operations at the proposed location have obtained any required licenses, have acceptable operating standards, have acceptable water sources with proper connections, wastewater disposal, where applicable, and, in general, meet all sanitation requirements.

(Ord. No. 371, 10-10-50; Ord. No. 578 § 1, 11-06-63; Ord. No. 1808 § 1, 03-05-18)

### **Sec. 15-59. Insurance or bond.**

A license to operate an amusement ride, circus, carnival, show or exhibition shall only be issued once the owner or operator has obtained and provided proof of security against the owner's or operator's liability insurance for injuries suffered by persons attending the amusement ride, circus, carnival, show or exhibition by one of the following methods:

- (a) by obtaining a policy of insurance, listing the city as an additional insured, in an amount not less than \$1,000,000.00 insuring the owner or operator against liability for injuries suffered by persons attending the amusement ride, circus, carnival, show or exhibition;
- (b) by obtaining a bond in an amount not less than \$1,000,000.00 with the aggregate amount of the surety and the bond not exceeding the face amount of the bond.

(Ord. No. 371, 10-10-50; Ord. No. 578 § 1, 11-06-63; Ord. No. 1808 § 1, 03-05-18)

### **Sec. 15-60. Access of officials for inspection, enforcement of article.**

Prior to issuance of a license and once setup is complete, a final onsite inspection of the location must occur by the fire chief, or its designee, and the chief building official, or its designee. Inspections must be scheduled a minimum of 24 hours in advance and will only occur Monday through Friday between the hours of 8:00 a.m. and 5:00 p.m. Once the onsite inspection has occurred and been approved, staff will notify the city clerk's office. No person licensed under or subject to the provisions of this article nor its agent or any

employee, shall deny any member of the city fire, city police or county health department, the city manager or its designees, access to the premises on which the license 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.

(Ord. No. 371, 10-10-50; Ord. No. 578 § 1, 11-06-63; Ord. No. 1808 § 1, 03-05-18)

**Sec. 15-61. Hours of operation.**

No person shall hold or operate an amusement ride, circus, carnival, show or exhibition between the hours of 10:00 p.m. and 8:00 a.m.

(Ord. No. 371, 10-10-50; Ord. No. 578 § 1, 11-06-63; Ord. No. 1808 § 1, 03-05-18)

**Sec. 15-62. Noise.**

An amusement ride, circus, carnival, show or exhibition must comply with sections 16-28 and 16-29 of the code.

(Ord. No. 371, 10-10-50; Ord. No. 578 § 1, 11-06-63; Ord. No. 1808 § 1, 03-05-18)

**Sec. 15-63. License to be displayed.**

All licenses granted pursuant to this article shall be prominently displayed on the premises for which they are issued, in such a manner that they are readily visible to the public.

(Ord. No. 371, 10-10-50; Ord. No. 578, 11-06-63; Ord. No. 1808, 03-05-18)

**Sec. 15-64. Inspection of amusement ride, circus, carnival, show or exhibition.**

The city manager, or its designee, may cause an inspection to be made of every amusement ride, circus, carnival, show or exhibition licensed in this article, including verification that each ride has a current year sticker issued by the state of Michigan certifying that the ride has been inspected, before it is operated for public use and periodically thereafter. If at any inspection, any structural weakness, defect or other unsafe condition is discovered, the city manager, or its designee, at its discretion, may either allow a reasonable period of time to correct a deficiency or violation, based on the severity of said deficiency or violation, or close down the operation, either in whole or part, of any amusement ride, circus, carnival, show or exhibition pending inspection by the appropriate agencies.

(Ord. No. 371, 10-10-50; Ord. No. 578 § 1, 11-06-63; Ord. No. 1808 § 1, 03-05-18)

**Sec. 15-65. Cash deposit required and forfeiture of deposit.**

No license shall be issued until a cash deposit is posted in the sum of one thousand dollars (\$1,000.00) to ensure that the applicant will comply with all of the laws of the state and this code in connection with the operation of amusement ride, circus, carnival, show or exhibition and that the applicant shall cease operation on or before the expiration of the license and shall remove all equipment, debris, litter and advertisements which are attributable to the operation of the amusement ride, circus, carnival, show or exhibition or its concessionaires. The cash deposit posted by an applicant under this article shall be forfeited if the applicant has not restored to its prior condition the area affected by the operation for which the deposit was posted, including the side, roads, rights-of-way and surrounding areas, both public and private, within 24 hours of the conclusion of the amusement ride, circus, carnival, show or exhibition or from the expiration of the license, whichever comes first.

(Ord. No. 371, 10-10-50; Ord. No. 578 § 1, 11-06-63; Ord. No. 1808 § 1, 03-05-18)

**Secs. 15-66--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.



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**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.

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**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\***

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\* **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.

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**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)\***

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\* **Cross References:** MCTV fines, fees and other charges, §§ 21-120, 21-121.

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**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 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) The "public access channel" 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 message board from the message board channel. 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) The "government access channel" 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) The second public access channel shall be known as the "message board channel" and shall be used primarily to cablecast the electronic message board. Public access programming that would have been cablecast on the public access channel but for scheduling constraints may also be cablecast on the message board channel.

(4) The educational access channel shall be used primarily to cablecast a message board and programming produced for the Midland Public Schools, as determined by the Midland Public Schools administration.

(Ord. No. 1384, § 1, 8-25-97; Ord. No. 1437, § 1, 3-8-99; Ord. No. 1793, § 1, 9-12-16)

**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 message board channel 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; Ord. No. 1793, § 1, 9-12-16)

**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 Manager 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; Ord. No. 1793, § 1, 9-12-16)

**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.

(Ord. No. 1476, § 1, 4-10-00; Ord. No. 1793, § 1, 9-12-16)

**Sec. 15-137. 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)