

**THE CODE FOR THE
CITY OF NEW BUFFALO**

GENERAL ORDINANCES

PUBLISHED BY ORDER OF THE CITY COUNCIL

CITY OF NEW BUFFALO

BERRIEN COUNTY, MICHIGAN

Ordinance 101 (effective April 18, 1995) and ordinances adopted since.

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Chapter 1 - GENERAL PROVISIONS

Section 1-1. How code designated and cited.

The ordinances embraced in this Chapter and the following Chapters and Sections shall constitute and be designated "The Code of the City of New Buffalo, Michigan" and may be so cited. The Code may also be cited as "New Buffalo City Code," or the "Code of Ordinances."

Section 1-2. Rules of construction.

In the construction of this Code, and other ordinances of the City, the following rules shall be observed, unless such interpretation and construction would be inconsistent with the manifest intent of the City Council:

Charter. The Charter of the City of New Buffalo.

City. The City of New Buffalo.

City Council. The word "Council" or the words "City Council" mean the legislative body of the City of New Buffalo.

Computation of Time. The time within which an act is to be done, as provided in this Code or in any order issued pursuant to this Code, when expressed in days, shall be computed as prescribed by state statute.

County. The word "County" means the County of Berrien.

Gender. Words importing masculine gender shall apply to females and to firms, associations, partnerships, and corporations.

Joint Authority. All words purporting to give joint authority to three (3) or more public officers or other persons shall be construed as giving such authority to a majority of such officers or other persons unless it is otherwise expressly declared in the Code, Section, ordinance, or resolution granting the authority.

Month. The word "month" shall be construed to mean a calendar month.

Number. Words in either the singular or the plural numbers shall include either or both numbers and may apply in any instance to a particular person or persons.

Oath; Affirmation; Sworn; Affirmed. The word "oath" shall be construed to include the word "affirmation" in all cases where by law an affirmation may be substituted for an oath; and in like cases, the word "sworn" shall be construed to include the word "affirmed."

Officers. The several officers' titles mean such officers of the City.

Owner. The word "owner" applied to a building or land, shall include any part owner, land contract vendee, joint owner, tenant in common, tenant in partnership, joint tenant, or tenant by the entirety, of the whole or of a part of such building or land.

Person. The word "person" includes firms, joint adventures, partnerships, corporations, clubs, and all associations or organizations of natural persons, either incorporated or unincorporated, howsoever operating or named, and whether acting by themselves or by a servant, agent, or fiduciary, and includes all legal representatives, heirs, successors, and assigns thereof.

Preceding; Following. The words "preceding" and "following" mean next before and next after, respectively.

Property. The word "property" shall include real and personal property.

Public Place. The words "public place" means any street, alley, park, cemetery, public building, any place of business or assembly, parking lot, parking area, or any other premises open to the public or frequented by the public.

Seal. In all cases in which the seal of any court or public office shall be required to be affixed to any paper issuing from such court or office, the word "seal" shall be construed to mean the impression of such seal on such paper alone, as well as the impression of such seal affixed thereto by means of a wafer or wax.

Shall; May. The word "shall" means imperative or mandatory; the word "may" means permissive.

Signature; Subscription. The words "signature" and "subscription" include a mark when the person cannot write.

State. The word "state" means the State of Michigan.

Sundays; Legal Holidays. Whenever any act required to be done pursuant to the provisions of this Code or any ordinance falls on a Sunday or legal holiday, that act shall be performed on the next succeeding business day.

Tense. Words used in the present or past tense shall be construed as including the future as well as the present or past.

Time. Whenever time is referred to, it means Eastern Standard Time or Eastern Daylight Savings Time of the time officially in force in the city.

Week. The word "week" shall be construed to mean seven (7) days.

Written; In Writing. The words "written" or "in writing" may include any form or reproduction or expression of language.

Year. The word "year" shall be construed to mean a calendar year; and the word "year" alone shall be equivalent to the words "year of our Lord."

Section 1-3. Catch lines of Sections, etc.

The key words used as catch lines for Chapters, Articles, Divisions, Sections and subsections are inserted for convenience and to facilitate the use of the same. Such words shall not be construed to limit or effect the meaning of any of the provisions of this Code.

Section 1-4. Effect of repeal.

The repeal of any provision of this Code or any ordinance, or part thereof, shall not release or relinquish any penalty, forfeiture, or liability incurred under such provision of this Code, ordinance, or any part thereof, unless the repealing ordinance shall so expressly provide, and such provision of this Code, ordinance, or any part thereof shall be treated as still remaining in force for the purpose of instituting or sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture, or liability.

Whenever any provision of this Code or any ordinance, or any part thereof, is repealed by a subsequent ordinance, such provision of this Code, ordinance, or any part thereof so repealed shall not be revived by the repeal of such subsequent repealing ordinance.

Section 1-5. Severability of parts of code.

If any part of this Code or the application thereof to any person or circumstance shall be found to be invalid by any court, such invalidity shall not effect the remaining parts or applications of this Code which can be given effect without the invalid part or application; provided, that such remaining parts are not determined by the court to be inoperable, and to this end this Code is declared to be severable.

Section 1-6. Violations as municipal civil infractions; penalties.

Whenever in this Code or in any other ordinance of the City, any act is prohibited or is made or declared to be unlawful, an offense, or a municipal civil infraction, or the doing of any act is required or the failure to do any act is declared to be unlawful, an offense, or a municipal civil infraction, the violation of any provision of this Code or any other ordinance of the City shall be punished by a fine not exceeding fifty dollars (\$50.00) for a first offense. A second offense, where no specific penalty is provided therefore, of same shall be punishable by a fine not exceeding one-hundred fifty dollars (\$150.00), and a third or subsequent offense, where no specific penalty is provided therefore, shall be punishable by a fine not exceeding five-hundred dollars (\$500.00).

Should any fine for a municipal civil infraction not be paid within the required time period, or should any municipal civil infraction not be resolved by the Ordinance Violations Bureau, as established in Section 2-5 of this Code, or a court of competent jurisdiction within the required time period, such violation shall become a misdemeanor and subject to the provisions of Section 1-7 of this Code.

Except where otherwise provided, all violations of any provision within this Code or any other ordinance of the City shall be deemed a municipal civil infraction, and everyday any violation of this Code or any other ordinance of the City shall continue shall constitute a separate offense. A copy of the schedule of fines, as may be established from time to time by resolution of the City Council, shall be posted at the Ordinance Violations Bureau as established in Section 2-5 of this Code.

Section 1-7. Violations as misdemeanors; penalties.

Whenever in this Code or in any other ordinance of the City, any act is prohibited or is made or declared to be unlawful, an offense, or a misdemeanor, and is specifically deemed a misdemeanor by a provision within this Code or any other ordinance of the City, or the doing of any act is required or the failure to do any act is declared to be unlawful, an offense, or a misdemeanor, and is specifically deemed a misdemeanor by a provision within this Code or any other ordinance of the City, where no specific penalty is provided thereof, the violation of any provision of this Code or any other ordinance of the City shall be punished by a fine not less than one-hundred dollars (\$100.00) and not exceeding five hundred dollars (\$500.00), or imprisonment for a term not exceeding ninety (90) days, or by both such fine and imprisonment, in the discretion of a court of competent jurisdiction. Except where otherwise provided, every day any violation of this Code or any other ordinance of the City shall continue shall constitute a separate offense.

Section 1-8. Recovery of costs for prosecution.

In addition to all other penalties, the City may bring an action for costs of enforcement and prosecution expense upon the person or entity that has violated this Code or any other ordinance of the City. Such action shall be a civil action in a court of competent jurisdiction. The action shall be entitled in the name of the City and shall be against the person or entity that has allegedly violated the Code or any other ordinance of the City.

Should the City receive a judgment and should the judgment not be satisfied within sixty (60) days of service upon the defendant, the City may, upon thirty (30) days written notice, submit a copy of said judgment to both the City Treasurer and County Treasurer for said costs to be added to the tax bill of the defendant. The cost of enforcement and prosecution shall be the actual amount of attorney fees and costs of enforcement. An itemized bill of fees and costs given under oath shall be prima facie evidence of the attorney fees and costs.

Chapter 2 - ADMINISTRATION

ARTICLE I. ORDINANCE VIOLATIONS BUREAU

Section 2-1. Definitions.

As used in this Chapter:

- A. "Act" means Act 236 of the Public Acts of 1961, as amended.
- B. "Authorized City official" means the Ordinance Enforcement Officer, Chief of Police, police officer, or other personnel of the City authorized by this Code or any other ordinance to issue municipal civil infraction citations or municipal civil infraction notices.
- C. "Bureau" means the City of New Buffalo Ordinance Violations Bureau as established by this Chapter.
- D. "Municipal civil infraction action" means a civil action in which the defendant is alleged to be responsible for a municipal civil infraction.
- E. "Municipal civil infraction citation" means a written complaint or notice, prepared by an authorized City official, directing a person to appear in court regarding the occurrence or existence of a municipal civil infraction violation by the person cited.
- F. "Municipal civil infraction violation notice" means a written notice, prepared by an authorized City official, directing a person to appear at the Ordinance Violations Bureau and to pay the fine and costs, if any, prescribed for the violation by the schedule of civil fines adopted by the City, as authorized under Sections 8396 and 8707(6) of the Act.

Section 2-2. Municipal civil infraction; commencement.

A municipal civil infraction action may be commenced upon the issuance by an authorized City official of:

- A. A municipal civil infraction citation directing the alleged violator to appear in court; or
- B. A municipal civil infraction violation notice directing the alleged violator to appear at the Ordinance Violations Bureau.

Section 2-3. Municipal civil infraction citations; issuance and service.

Municipal civil infraction citations shall be issued and served by authorized City official as follows:

- A. The time for appearance specified in a citation shall be within a reasonable time after the citation is issued.
- B. The place for appearance specified in a citation shall be a district court of competent jurisdiction.
- C. Each citation shall be numbered consecutively and shall be in a form approved by the State Court Administrator. The original citation shall be filed with the district court of competent jurisdiction. Copies of the citation shall be retained by the City and issued to the alleged violator as provided by Section 8705 of the Act.
- D. A citation for a municipal civil infraction signed by an authorized City official shall be treated as made under

oath if the violation alleged in the citation occurred in the presence of the official signing the complaint and if the citation contains the following statement immediately above the date and signature of the official: "I declare under the penalties of perjury that the statements above are true to the best of my information, knowledge, and belief."

- E. An authorized City official who witnesses a person commit a municipal civil infraction shall prepare and subscribe, as soon as possible and as completely as possible, an original and required copies of a citation.
- F. An authorized City official may issue a citation to a person if
 - 1. Based upon investigation, the official has reasonable cause to believe that the person is responsible for a municipal civil infraction; or
 - 2. Based upon investigation of a complaint by someone who allegedly witnessed the person commit a municipal civil infraction, the official has reasonable cause to believe that the person is responsible for an infraction, and if the prosecuting attorney, the City Attorney, or the Deputy City Attorney approves in writing the issuance of a citation.
- G. Municipal civil infraction citations shall be served by an authorized City official as follows:
 - 1. Except as provided by Section 2-3 (G) (2), an authorized City official shall personally serve a copy of the citation upon the alleged violator.
 - 2. If the municipal civil infraction action involves the use or occupancy of land, a building, or other structure, a copy of the citation does not need to be personally served upon the alleged violator, but may be served upon an owner or occupant of the land, building, or structure by posting the copy on the land or attaching the copy to the building or structure. In addition, a copy of the citation shall be sent by first class mail to the owner of the land, building, or structure at the owner's last known address.

Section 2-4. Municipal civil infraction citations; contents.

- A. A municipal ordinance citation shall contain the name and address of the alleged violator, the municipal civil infraction alleged, the place where the alleged violator shall appear in court, the telephone number of the court, and the time at or by which the appearance shall be made.
- B. Further, the citation shall inform the alleged violator that he or she may do one of the following:
 - 1. Admit responsibility for the municipal civil infraction by mail, in person, or by representation, at or by the time specified for appearance.
 - 2. Admit responsibility for the municipal civil infraction "with explanation" by mail by the time specified for appearance, or in person, or by representation.
 - 3. Deny responsibility for the municipal civil infraction by doing either of the following:
 - a. Appearing in person for an informal hearing before a judge or district court magistrate, without the opportunity of being represented by an attorney, unless a formal hearing before a judge is requested by the City.
 - b. Appearing in court for a formal hearing before a judge, with the opportunity of being represented by an attorney.
- C. The citation shall also inform the alleged violator of all of the following:
 - 1. That if the alleged violator desires to admit responsibility "with explanation" in person or by representation,

- the alleged violator must apply to the court in person, by mail, by telephone, or by representation within the time specified for appearance and obtain a scheduled date and time for appearance.
2. That if the alleged violator desires to deny responsibility, the alleged violator must apply to the court in person, by mail, by telephone, or by representation within the time specified for a scheduled date and time to appear for a hearing, unless a hearing date is specified on the citation.
 3. That a hearing shall be an informal hearing unless a formal hearing is requested by the alleged violator or the City.
 4. That at an informal hearing the alleged violator must appear in person before a judge or district court magistrate, without the opportunity of being represented by an attorney.
 5. That at a formal hearing the alleged violator must appear in person before a judge with the opportunity of being represented by an attorney
- D. The citation shall contain a notice in boldfaced type that the failure of the alleged violator to appear within the time specified in the citation or at the time scheduled for a hearing or appearance is a misdemeanor and will result in entry of a default judgment against the alleged violator on the municipal civil infraction.

Section 2-5. Municipal Ordinance Violations Bureau.

- A. Bureau established. The City hereby establishes a Municipal Ordinance Violations Bureau ("Bureau") as authorized under Section 8396 of the Act to accept admissions of responsibility for municipal civil infractions in response to a municipal civil infraction violation notice issued and served by authorized City officials, and to collect and retain civil fines and costs as prescribed by the Code or any other City ordinance.
- B. Location: supervision. employees: rules and regulations. The Bureau shall be located at City Hall, and shall be under the supervision and control of the City Clerk and/or City Treasurer. The Clerk and/or Treasurer, subject to the approval of the City Manager and confirmation by the City Council, shall adopt rules and regulations for the operation of the Bureau and appoint any necessary qualified City employees to administer a bureau.
- C. Disposition of violations. The Bureau may dispose only of municipal civil infraction violations for which a fine has been scheduled and for which a municipal civil infraction violation notice has been issued. The fact that a fine has been scheduled for a particular violation shall not entitle any person to dispose of the violation at the Bureau. Nothing in this Chapter shall prevent or restrict the City from issuing a municipal civil infraction citation for any violation or from prosecuting any violation in a court of competent jurisdiction. No person shall be required to dispose of a municipal civil infraction at the Bureau and may have the violation processed before a court of appropriate jurisdiction. The unwillingness of any person to dispose of any violation at the Bureau shall not prejudice the person or in any way diminish the person's rights, privileges, and protection accorded by law.
- D. Bureau limited to accepting admissions of responsibility. The scope of the Bureau's authority shall be limited to accepting admissions of responsibility for municipal civil infractions and collecting and retaining civil fines and costs as a result of those admissions. The Bureau shall not accept payment of a fine from any person who denies having committed the offense or who admits responsibility only with explanation, and in no event shall the Bureau determine, or attempt to determine, the truth or falsity of any fact or matter relating to an alleged violation.
- E. Municipal civil infraction violation notices. Municipal civil infraction violation notices shall be issued and served by authorized City officials under the same circumstances and upon the same persons as provided for citations as provided in Sections 2-2 (f) and (g) of this Chapter. In addition to any other information required by this Code or other ordinance of the City, the notice of violation shall indicate the time by which the alleged violator must appear at the Bureau, the methods by which an appearance may be made, the address and telephone number of the Bureau, the hours during which the Bureau is open, the amount of the fine scheduled

for the alleged violation, and the consequences for failure to appear and pay the required fine within the required time.

- F. Appearance. payment of fines and costs. An alleged violator receiving a municipal civil infraction violation notice shall appear at the Bureau and pay the specified fine and costs at or by the time specified for appearance in the municipal civil infraction violation notice. An appearance may be made by mail, in person, or by representation.
- G. Procedure where admission of responsibility not made or fine not paid. If an authorized City official issues and serves a municipal ordinance violation notice and if an admission of responsibility is not made and the civil fine and costs, if any, prescribed by the schedule of fines for the violation are not paid at the Bureau, a municipal civil infraction citation may be served by first class mail upon the alleged violator at the alleged violator's last known address. The citation filed with the court does not need to comply in all particulars with the requirements for citations as provided by Section 8705 and 8709 of the Act, but shall consist of a sworn complaint containing the allegations stated in the municipal ordinance violation notice and shall fairly inform the alleged violator how to respond to the citation.

ARTICLE II. ORDINANCE ENFORCEMENT OFFICER

Section 2-6. Office established.

There is hereby established the office of Ordinance Enforcement Officer for the City.

Section 2-7. Appointment of Ordinance Enforcement Officer.

The City Manager is hereby authorized to appoint any person or persons to the office of Ordinance Enforcement Officer for such term or terms as may be necessary, with such appointment to be confirmed by resolution of the City Council, as provided in Section 4.1 (b) of the City Charter.

Section 2-8. Duties of Ordinance Enforcement Officer.

The Ordinance Enforcement Officer is hereby authorized to enforce the Code and all ordinances of the City, whether heretofore or hereinafter enacted, and whether such Code and ordinances specifically designate a different official to enforce the same or do not designate and particular enforcement officer. Where a particular officer is so designated in any such Code or ordinance, the authority of the Ordinance Enforcement Officer to enforce the same shall be in addition and supplementary to the authority granted such other specific officer. The Code and ordinance enforcing authority of other officers specifically designated in any Code or ordinance shall continue in full force and effect and shall in no way be diminished or impaired by the terms of this Article.

Section 2-9. Appearance tickets, etc.

The Code and ordinance enforcement duties herein authorized shall include among other things the following: investigation of Code and ordinance violations; serving appearance tickets as authorized by Public Act 147 of the Public Acts of 1968, as amended; serving notice of violations; appearance in court and other judicial or quasi judicial proceedings to assist in the prosecution of Code and ordinance violations; serving municipal civil infraction violation notices and municipal civil infraction violation citations as provided in Article I of this Chapter; and such other Code and ordinance enforcing duties as may be designated by the City Manager.

Section 2-10. Authority of Ordinance Enforcement Officer.

The Ordinance Enforcement Officer is hereby declared to be a peace officer under the authority of Michigan Public Act 246 of the Public Acts of 1945, as amended; Act 181 of the Public Acts of 1951, as amended; and Act 50 of the Public Acts of 1919, as amended.

ARTICLE III. PLANNING COMMISSION.

Section 2-11. Created; name.

There is hereby created a Planning Commission to be known as the "City of New Buffalo Planning Commission."

Section 2-12. Composition; appointment, qualifications, terms, and compensation of members; filling vacancies.

The Planning Commission shall consist of nine (9) members, and shall represent, insofar as possible, different professions or occupations, and shall be appointed by the Mayor subject to the approval of the City Council. City Council members, the City Manager, or other elected officials and/or employees of the City shall not be members of the Planning Commission. Members of the Planning Commission shall serve as such with compensation at a rate as may be set from time to time by resolution of the City Council for each regular or special meeting and public hearing of the Commission. One (1) member may also be a member of the Zoning Board of Appeals. The term of each member shall be three (3) years from and after the first (1st) Friday in May of the year of appointment. All members shall hold office until their successors are appointed and any vacancies in such Commission shall be filled by appointment by the Mayor, subject to approval by the City Council.

Section 2-13. Officers; meetings; rules; records; quorum.

The Planning Commission shall elect a chairperson from among its members and fill such other offices as it may create from time to time. The chairperson shall hold office for one (1) year and be eligible for reelection. The Planning Commission shall hold at least one (1) regular meeting each month and shall adopt rules for the transaction of its business and keep a record of its proceedings, which record shall be a public record. A majority of members shall constitute a quorum for the transaction of business.

Section 2-14. Employees, etc.; expenditures.

The Planning Commission may appoint such employees as it deems necessary for its work and it may contract with planners, engineers, architects, and consultants for such services as it may require. The expenditures of the Planning Commission, exclusive of gifts, shall be within the amounts appropriated for the purpose by the City Council.

Section 2-15. Adoption of master plan.

It shall be the function and duty of the Planning Commission to make and adopt a master plan for the physical development of the City, including any areas outside its boundaries which, in the Commission's judgment, bear relation to the planning of the City.

Section 2-16. Powers and duties generally.

The Planning Commission shall have such powers and duties as are set forth in the provisions of Act 285 of the Public Acts of 1931, as amended (Michigan Statutes Annotated, section 5.2991, et seq.) as well as such additional powers and duties as may be conferred or imposed upon it from time to time by the laws of the state, including, but not by way of limitation:

- A. Preparation of a zoning plan for the control of the height, area, bulk, location, and use of buildings and premises.
- B. Preparation of comprehensive surveys and studies of present conditions and future growth of the City.

- C. Formal adoption of the master plan, in whole or in part.
- D. Recommendation for approval of streets, parks, other public ways, grounds, open spaces, and public buildings or structures.
- E. Recommending programs for public structures and improvements and for the financing thereof.
- F. Publication and distribution of copies of the plan and any reports of such Commission.
- G. Approval of plats and subdivisions prior to the filing or recording and adoption of regulations governing the subdivision of land within the jurisdiction of such Commission.
- H. In general, such powers as may be necessary to enable the Planning Commission to fulfill its function.
- I. After adoption of the master plan, certification of plats as set forth in Act 222, Public Acts of 1943, as amended (Michigan Statutes Annotated, Section 5.3007 (1) et seq.).

ARTICLE IV. CIVIL SERVICE SYSTEM.

Section 2-17. Civil Service Board - Created.

Pursuant to the provisions of Section 1.6 of the City Charter, a Civil Service Board for the City is hereby created.

Section 2-18. Same - Composition; appointment of members.

The Civil Service Board created under the provisions of this Article shall consist of three (3) electors of the City appointed by the Mayor and confirmed by the City Council.

Section 2-19. Same - Qualifications of members.

The members of the Civil Service Board may not during tenure of their office hold any other public office in the City, nor may any member be a close relative of any City Council member or City officer or City employee.

Section 2-20. Same - Terms of members.

One (1) member of the Civil Service Board shall be appointed for a term of two (2) years, one (1) member for a term of four (4) years, and one (1) member for a term of six (6) years, whose terms of office shall begin on May 6, 1963. On the first (1st) Monday of May of each odd numbered year thereafter, one (1) member shall be appointed for a term of six (6) years, each member to serve until their successor is appointed and qualified.

Section 2-21. Same - Compensation of members.

The members of the Civil Service Board shall serve without compensation.

Section 2-22. Same - Chairperson; rules.

The Civil Service Board shall choose from among its members a chairperson and shall establish its own rules for the conduct of meetings and hearings.

Section 2-23. Same - Meetings generally.

The Civil Service Board shall normally convene only when called upon by the Mayor or City Council to hold public hearings relating to the suspension, disciplining, demotion, or discharge of a City officer or employee.

Section 2-24. Same - Powers.

The Civil Service Board shall have the power to hold public hearings, summon and hear witnesses, examine public records and documents, conduct investigations, and otherwise ascertain the truth and validity of charges brought against City officers and employees. The final determination of the Civil Service Board following investigation and hearing of charges against officers and employees shall be final.

[Editor's note: Ord. 108 (effective 11/27/1996) removed the Public Works Superintendent from Section 2-25 below; however, Ord. 120 (effective 2/16/1999) repealed Ord. 108 in its entirety.]

Section 2-25. Eligibility for civil service status - Generally.

All full-time and regular officers and employees of the City, excluding the City Manager, who are not subject to any bargaining unit agreement, are eligible for civil service, including, but not limited to, the City Clerk, the City Treasurer, the Chief of Police, the Public Works Superintendent, the Water Superintendent, and the Parks Superintendent.

Section 2-26. Same - Probationary period.

Every officer or employee of the City eligible for civil service shall, after selection for appointment, serve a probationary period of at least six (6) months prior to becoming eligible for civil service status. At the end of the six (6) month probationary period, the City Manager may in his/her discretion:

- A. Terminate the employment of the individual probationer;
- B. Extend the period of probation; provided, however, that the period of probation in no event shall exceed two (2) years;
- C. Grant the employee civil service status to be confirmed by resolution of the Council with a majority of the members voting affirmatively.

No officer or employee of the City shall be eligible to hold office or employment with the City except as defined by the requirements of the City Charter.

Section 2-27. Tenure of employment contingent on good behavior, etc.; procedure for lay-off, reduction, or dismissal.

The tenure of everyone holding office or employment under civil service status shall be only during good behavior and efficient service, and any such person may be laid off, reduced in rank or pay, or discharged by the City Manager for incompetence, inefficiency, dishonesty, drunkenness, immoral conduct, insubordination, discourteous treatment of the public, neglect of duty or any other failure of good behavior, or any other acts of misfeasance, malfeasance, or nonfeasance in office; provided, however, that no person holding office or employment shall be reduced in pay or position, laid-off, discharged, or otherwise discriminated against except in accordance with the procedure outlined below; provided, however, that salaries of City officers and employees may be reduced as part of a general reduction of salaries paid by the City; and provided, that employees may be laid off as part of a general lay-off by the City; provided, that reductions of pay or lay-offs are not discriminatory or punitive.

No officer or employee of the City shall be laid-off, reduced in rank or pay, or discharged until they shall have been furnished with a written statement of the charges and the reasons for such actions. If the person sought to be laid-off, reduced in rank or pay, or discharged shall demand it in writing within ten (10) days after being given such notice, the Civil Service Board shall grant them a public hearing. Such hearing shall be held within twenty (20) days of the employee's request for the hearing. At the public hearing of charges against an officer or employee of the City before the Civil Service Board the burden shall be upon the appointing officer or body that has taken the punitive action to justify the charges or actions taken against the officer or employee of the City.

At any such public hearing before the Civil Service Board, the officer or employee of the City against whom the punitive action is being taken shall have the right to be represented by counsel and to present their case to the Board.

In the event the Civil Service Board, after due investigation and deliberation, and within five (5) days following the conclusion of the hearings, shall find that the charges and actions brought against an officer or employee are not justified or are not sustained, then such officer or employee shall continue in regular employment with their previous rank and pay.

ARTICLE V. LOCAL OFFICERS COMPENSATION COMMISSION.

Section 2-28. Local Officers Compensation Commission; creation; composition; population; qualifications; terms of office; time of appointment; vacancies; eligibility restriction.

A Local Officers Compensation Commission is hereby created which shall determine the salaries of each elected official of the City. The Commission shall consist of five (5) members who shall be registered electors of the City, appointed by the Mayor subject to confirmation by a majority of the members elected and serving on the City Council. The term of office shall be five (5) years, except that of the members first appointed, one (1) each shall be appointed for terms of one (1), two (2), three (3), four (4) and five (5) years. All first members shall be appointed within thirty (30) days after the effective date of this Chapter. Thereafter, members shall be appointed before the first (1st) of October of the year of appointment. Vacancies shall be filled for the remainder of the unexpired term. No member or employee of the legislature, judicial, or executive branch of any level of government or members of the immediate family of such member or employee shall be eligible to be a member of the Commission.

Section 2-29. Determination of salaries; rejection by legislative resolution; effective date; existing salary; expenses.

The Commission shall determine the salary of each elected official of the City. The determination shall be the salary of each elected official of the City unless the City Council by resolution adopted by two-thirds (2/3) of its members rejects it. The determination of the Commission shall be effective thirty (30) days following its filing with the City Clerk unless rejected by the legislative body. In case of rejection, the existing salary shall prevail. Any expense allowance or reimbursement paid to elected officials in addition to salary shall be for expenses incurred in the course of City business and accounted for to the City.

Section 2-30. Meetings and time of determination; quorum; chairperson; session days; compensation and expenses.

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

Section 2-31. Open Meetings Act; compliance.

The business which the Commission may perform shall be conducted at a public meeting of the Commission held in compliance with Act No. 267 of the Public Acts of 1976, as amended, being Section 15.261 to 15.275 of the Michigan Compiled Laws. Public notice of the time, date and place of the meeting of the Commission shall be given in the manner required by Act 267 of the Public Acts of 1976, as amended.

Section 2-32. Freedom of Information Act; compliance.

A writing prepared, owned, used, in the possession of, or retained by the Commission in the performance of an official function shall be made available to the public in compliance with Act No. 442 of the Public Acts of 1976, as

amended, being Sections 15.231 to 15.246 of the Michigan Compiled Laws.

Section 2-33. Implementation by resolution; change of procedure; time and method.

After one (1) year following the date the requirements of Sections 2-18 through 2-23 go into effect, the procedure for establishing the compensation of elected officials may be changed by amendment or revision to the City Charter.

ARTICLE VI. LAND DIVISION

[Editor's note: Prior to Ord. 109 being adopted in 1997, Ord. 107 was adopted in 1996 (effective 11/27/1996) adding a new Article VI to Chapter 2 to create an Assistant to the City Manager position and to eliminate the Public Works Superintendent position; however, Ord. 120 (effective 2/16/1999) repealed this ordinance in its entirety.]

Section 2-34. Purpose [Ord. 109, 6/2/1997]

The purpose of this ordinance is to carry out the provisions of the State Land Act (1967 PA 288, as amended, formerly known as the Subdivision Control Act), to prevent the creation of parcels of property which do not comply with applicable ordinances and said Act, to minimize potential boundary disputes, to maintain orderly development of the community, and otherwise provide for the health, safety and welfare of the residents and property owners of the City by establishing reasonable standards for prior review and approval of land divisions within the City.

Section 2-35. Definitions [Ord. 109, 6/2/1997]

For purposes of this ordinance, certain terms and words used herein shall have the following meaning:

- A. "Applicant" - a natural person, firm, association, partnership, corporation or combination of any of them that holds an ownership interest in land whether recorded or not.
- B. "Divided" or "Division" - the partitioning or splitting of a parcel or tract of land by the proprietor thereof or by his or her heirs, executors, administrators, legal representatives, successors or assigns, for the purpose of sale or lease of more than one year, or of building development that results in one or more parcels of less than 40 acres or the equivalent, and that satisfies the requirements of Sections 108 and 109 of the State Land Division Act.
- C. "Exempt split" or "exempt division" - the partitioning or splitting of a parcel or tract of land by the proprietor thereof, or by his or her heirs, executors, administrators, legal representatives, successors or assigns, that does not result in one or more parcels of less than 40 acres or the equivalent; provided all resulting parcels are accessible for vehicular travel and utilities from existing public roads through existing adequate roads or easements, or through areas owned by the owner of the parcel that can provide such access.
- D. "Forty acres or the equivalent" - either 40 acres, a quarter-quarter section containing not less than 30 acres, or a government lot containing less than 30 acres.

Section 2-36. Prior Approval Requirement For Land Divisions [Ord. 109, 6/2/1997]

Land in the City shall not be divided without the prior review and approval of the City assessor, building inspector and zoning enforcement officer, or other official designated by the governing body, in accordance with this ordinance and the State Land Division Act; provided that the following shall be exempted from this requirement:

- A. A parcel proposed for subdivision through a recorded plat pursuant to the City's Subdivision Control Ordinance and the State Land Division Act.
- B. A lot in a recorded plat proposed to be divided in accordance with the City's Subdivision Control Ordinance and the State Land Division Act.
- C. An exempt split as defined in this Ordinance.

Section 2-37. Application For Land Division Approval [Ord. 109, 6/2/1997]

An applicant shall file all of the following of with the City building inspector and zoning enforcement officer or other official designated by the City for review and approval of a proposed land division before making any division either by deed, land contract, lease for more than one year, or for building development:

- A. A completed application form on such form as may be provided by the City.
- B. Proof of fee ownership of the land proposed to be divided.
- C. A survey map of the land proposed to be divided, prepared pursuant to the survey map requirements of 1970 PA 132, as amended (MCL 54.211) by a land surveyor licensed by the State of Michigan, and showing the dimensions and legal descriptions of the existing parcel and the parcels proposed to be created by the division(s), the location of all existing structures and other land improvements, and the accessibility of the parcels for vehicular traffic and utilities from existing public roads. In lieu of such survey map, at the applicant's option, the applicant may waive the 30 day statutory requirement for a decision on the application until such survey map and legal description are filed with the City, and submit a tentative preliminary parcel map drawn to scale of not less than that provided for on the application form including an accurate legal description of each proposed division, and showing the boundary lines, dimensions, and the accessibility of each division from existing or proposed public roads for automobile traffic and public utilities, for preliminary review, approval, and/or denial by the locally designated official prior to a final application under Section V. The City building inspector and zoning enforcement officer or other official designated by the City, may waive the survey map requirement where the foregoing tentative parcel map is deemed to contain adequate information to approve a proposed land division considering the size, simple nature of the divisions, and the undeveloped character of the territory within which the proposed divisions are located. An accurate legal description of all the proposed divisions, however, shall at all times be required.
- D. Proof that all standards of the State Land Division Act and this Ordinance have been met. (See checklist accompanying this ordinance).
- E. The history and specifications of any previous divisions of land of which the proposed division was a part sufficient to establish the parcel to be divided was lawfully in existence as of March 31, 1997, the effective date of the State Land Division Act.
- F. Proof that all due and payable taxes or installments of special assessments pertaining to the land proposed to be divided are paid in full.
- G. If transfer of division rights are proposed in the land transfer, detailed information about the terms and availability of the proposed division rights transfer.
- H. Unless a division creates a parcel which is acknowledged and declared to be "not buildable" under Section VIII of this Ordinance, proof that all divisions shall result in "buildable" parcels containing sufficient "buildable" area outside of unbuildable wetlands, flood plains and other areas where buildings are prohibited therefrom, and with sufficient area to comply with all required setback provisions, minimum floor areas, off-street parking spaces, on-site sewage disposal and water well locations (where public water and sewer service is not available), and maximum allowed area coverage of buildings and structures on the site.
- I. The fee to cover the costs of review of the application and administration of this ordinance and the State Land Division Act may be established by resolution of the City.

Section 2-38. Procedure for Review of Applications for Land Division

Approval [Ord. 109, 6/2/1997]

Upon receipt of a complete land division application package, the City assessor or other designee shall within 30 days:

1. Approve the application.
2. Approve with reasonable conditions to assure compliance with applicable ordinances and the protection of public health, safety and general welfare.
3. Disapprove the land division. The City shall promptly notify the applicant of the decisions and the reasons for any denial. If the application package does not conform to this and all other applicable ordinance requirements and the State Land Division Act, the assessor or other designee shall return the same to the applicant for completion and refile in accordance with this Ordinance and the State Land Division Act.

Section 2-39. Standards for Approval of Land Divisions [Ord. 109, 6/2/1997]

A proposed land division shall be approved if the following criteria are met:

- A. All the parcels to be created by the proposed land division(s) fully comply with the applicable lot (parcel), yard and area requirements of the applicable zoning ordinance, including, but not limited to, minimum lot (parcel) frontage/width, minimum road frontage, minimum lot (parcel) area, minimum lot width to depth ratio, and maximum lot (parcel) coverage and minimum set-backs for existing buildings/structures.
- B. The proposed land division(s) comply with all requirements of the State Land Division Act and this ordinance.
- C. All parcels created and remaining have existing adequate accessibility, or an area available therefore, to a public road for public utilities and emergency and other vehicles not less than the requirements of the applicable zoning ordinance, major thoroughfare plan, road ordinance or this ordinance. In determining adequacy of accessibility, any ordinance standards applicable to plats shall also apply as a minimum standard whenever a parcel or tract is proposed to be divided to create 4 or more parcels.
- D. The ratio of depth to width of any parcel created by the division does not exceed a four to one ratio exclusive of access roads, easements, or non-buildable parcels created under Section VIII of this ordinance and parcels added to contiguous parcels that result in all involved parcels complying with said ratio. The permissible depth of a parcel created by a land division shall be measured within the boundaries of each parcel from the center of the road right of way to the most remote boundary line point of the parcel from the point of commencement of the measurement. The permissible minimum width shall be as defined in the applicable zoning ordinance.

Section 2-40. Allowance for Approval of Other Land Divisions [Ord. 109, 6/2/1997]

Notwithstanding disqualification from approval pursuant to this ordinance, a proposed land division which does not fully comply with the applicable lot, yard, accessibility and area requirements of the applicable zoning ordinance or this ordinance may be approved in any of the following circumstances:

- A. Where the applicant executes and records an affidavit or deed restriction with the County Register of Deeds, on a form acceptable to the City, designating the parcel as "not buildable". Any such parcel shall also be designated as "not buildable" in the City records, and shall not thereafter be the subject of a request to the Zoning Board of Appeals for variance relief from the applicable lot and/or area requirements, and shall not be developed with any building or above ground structure exceeding four feet in height.
- B. Where, in circumstances not covered by paragraph A above, the Zoning Board of Appeals has, previous to this ordinance, granted a variance from the lot, yard, ratio, frontage and/or area requirements with which the parcel failed to comply.

- C. Where the proposed land division involves only the minor adjustment of a common boundary line or involves a conveyance between adjoining properties which does not result in either parcel violating this ordinance, any applicable zoning ordinance, or the State Land Division Act.

Section 2-41. Consequences of Noncompliance with Land Division Approval Requirement [Ord. 109, 6/2/1997]

Any parcel created in noncompliance with this ordinance shall not be eligible for any building permits, or zoning approvals, such as special land use approval or site plan approval, and shall not be recognized as a separate parcel on the assessment roll. In addition, violation of this ordinance shall subject the violator to the penalties and enforcement actions set forth in Section X of this ordinance, and as may otherwise be provided by law.

Section 2-42. Penalties and Enforcement [Ord. 109, 6/2/1997]

Any person who violates any of the provisions of this ordinance shall be deemed guilty of a misdemeanor and shall be punished by a fine of not more than \$100.00 or by imprisonment in the County jail for not to exceed 90 days or by both such fine and imprisonment. Any person who violates any of the provisions of this ordinance shall also be subject to a civil action seeking invalidation of the land division and appropriate injunctive or other relief.

Section 2-43. Severability [Ord. 109, 6/2/1997]

The provisions of this ordinance are hereby declared to be severable and if any clause, sentence, word, section or provision is declared void or unenforceable for any reason by any court of competent jurisdiction, it shall not affect any portion of this ordinance other than said part or portion thereof.

Section 2-44. Repeal [Ord. 109, 6/2/1997]

All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed, except that this ordinance shall not be construed to repeal any provision in the City zoning ordinance, the City Subdivision Control Ordinance, or the City Building Code.

ARTICLE VII. FINANCE

Section 2-45. Purchase and Sale of Property-Dollar Value Limitations.

[Formerly Ord. 151, 5/24/2005; Ord. 197, 12/19/2012]

- A. Comparative prices shall be obtained for the purchase or sale in an amount not in excess of Five Thousand Dollars (\$5,000) of all materials, supplies and public improvements, except:
 - 1. In the employment of professional services.
 - 2. When the City Manager shall determine that no advantage to the City would result.
- B. For purchases in excess of Five Thousand Dollars (\$5,000), sealed bids shall be obtained and shall be approved by the City Council, except that where the City Council shall determine that the public interest will be best served by joint purchase with or purchase from another unit of government.
- C. Any contract or agreement in an amount of Ten Thousand Dollars (\$10,000) or more, made with form or terms other than the standard City purchase order form, shall, before execution, be submitted to the attorney and his opinion obtained with respect to its form and legality.
- D. Before any contract, agreement, or purchase order which obligates the City to pay an amount in excess of Two Thousand Five Hundred Dollars (\$2,500) is executed, the Treasurer of the City shall first verify that a budgeted appropriation has been made for the payment thereof, or that sufficient funds will be available if it be for a purpose being financed by the issuance of bonds, by special assessments, or for some other purpose being chargeable to a budget appropriation.

ARTICLE VIII. CODE OF ETHICS

Section 2-46. Title. [Ord. 169, 9/8/2009]

This ordinance shall be known as the "Code of Ethics for Public Servants of the City of New Buffalo" ("the Code").

Section 2-47. Definitions. [Ord. 169, 9/8/2009]

Whenever in this ordinance the following terms are used, they shall have the meanings described to them in this section:

"Business entity": A business entity includes a corporation, a partnership, sole proprietorship, joint venture, unincorporated association, trust, or other business form.

"City": The City of New Buffalo, a Michigan municipal corporation.

"Interest": Any right, title or share in something, either personal, financial, legal or equitable, which is owned, held or controlled, in whole or in part, directly or indirectly, by a public servant.

"Public Servant": The Mayor, Member of the City Council, Officers, and any person elected or appointed to any public body of the City.

"Public Body": The City Council, and any board, authority, commission, committee, department, office or other agency of the City, and includes the City.

Section 2-48. Intent and Purpose. [Ord. 169, 9/8/2009]

The citizens of New Buffalo are entitled to have fair, ethical and accountable local government that has earned the public's full confidence for integrity.

Furthermore, the effective functioning of democratic government request that public officials and employees comply with both the letter and spirit of the laws and policies affecting the operations of government; public officials shall be independent, impartial and fair in their judgment and actions; public office shall be used for the public good, not for personal gain; and public deliberations and processes shall be conducted openly, unless excepted by the Open Meetings Act, in an atmosphere of respect and civility.

It is the intent of this Code that a public servant, regardless of whether specifically prohibited by this Code, shall avoid any action which might result in or create the appearance of:

- (1) Using public office or employment for private gain;
- (2) Giving improper preferential treatment to any person or organization;
- (3) Impeding government operations;
- (4) Making a government decision outside of official channels as defined in the Open Meetings Act, Public Act 267 of 1976 (MCL 15.261, et. seq.);
- (5) Adversely affecting the confidence of the public in the integrity of the City.

It is not the intent of this Code to in any way limit the right or ability of any public servant to exercise his or her discretion in making legitimate policy decisions which are within their discretion so long as such action does not

provide a special benefit to that person, relieve the public servant of a particular duty, or treat that person differently than other similarly situated City residents.

Section 2-49. Fair and Equal Treatment. [Ord. 169, 9/8/2009]

No public servant shall request, use or permit the use of any consideration, treatment, advantage or favor beyond that which is the general practice to grant or make available to the public at large. All public servants shall treat all citizens of the City with courtesy, impartiality, fairness and equality under the law.

Section 2-50. Use of Public Property. [Ord. 169, 9/8/2009]

No public servant shall request, use or permit the use of any publicly owned or publicly supported property, vehicle, equipment, material, labor or service, or money, for the personal convenience or the private advantage of self or of any other person. This requirement shall not be deemed to prevent any public servant from requesting, using or permitting the use of such publicly owned or publicly supplied property, vehicle, equipment, material, labor or service which is made available by general practice, to the public at large, or which is provided, as a matter of public policy for the use of public servants in the conduct of official business, as approved consideration for their services to the City.

Section 2-51. Matters Requiring Disclosure of Conflicts of Interest, Actual and Potential. [Ord. 169, 9/8/2009]

The following disclosure requirements are established to avoid both actual and potential conflict between the private self-interest and the public interest of public servants:

- (1) Self Interest: No public servant, either on his or her behalf or on behalf of any other person, shall have an interest in any business transaction with any public body of the City, unless the person shall first make full public disclosure of the nature of such interest;
- (2) Disclosure and Disqualification: Whenever the Performance of official duties shall require a public servant to deliberate and vote on any matter involving his or her financial or personal interest, that person shall publicly disclose the nature and extent of such interest and is disqualified from participating in the deliberations and voting on the matter;
- (3) Dual Employment: No public servant shall engage in employment with, or render services for, any person or entity, which has business transactions with any public body of the City, without first making full public disclosure of the nature and extent of the employment or services;
- (4) Dual Representation: A public servant shall make full public disclosure of business involving the City when attempting to use his or her official position to secure special privileges or exemptions for self or others.

Section 2-52. Prohibited Conduct. [Ord. 169, 9/8/2009]

All public servants are prohibited from engaging in the following conduct:

- (1) Divulging confidential information to any person not authorized to obtain such information;
- (2) Benefiting financially from confidential information;
- (3) Representing his or her individual opinion as that of the City;
- (4) Misusing City personnel resources, property, funds or assets for personal gain;

- (5) Soliciting or accepting a gift or loan of money, goods, services or other things of value which tend to influence the manner in which the public servant performs his or her official duties;
- (6) Engaging in any transaction which may cause the public servant to derive a personal profit or gain directly or indirectly as a result of his or her official position;
- (7) Engaging in employment or rendering services that are incompatible or in conflict with the discharge of his or her official duties or that tend to impair his or her independence of judgment;
- (8) Participating in contracts, loans, grants, rate-fixing, or issuing permits involving a business entity in which he or she has a substantial interest; however this provision shall not apply in the following circumstances:
 - (a) contracting with the City where:
 - (i) the contract is awarded pursuant to sealed bids;
 - (ii) the public servant is not involved directly or indirectly or otherwise refrains from participation in the decision on the award of the contract; and,
 - (iii) the City Council, after reviewing the circumstances, determines the award of the contract would be in the best interest of the City.
 - (b) Where the interest of the public servant in the business entity involves the holding of less than one percent of the securities in a publicly traded business or less than five percent of any privately or closely held business and where the public servant will not have any involvement in the transaction on behalf of the contracting business entity.

Section 2-53. Public Disclosure, Contents. [Ord. 169, 9/8/2009]

Whenever a public disclosure is required by this ordinance, it may be made orally on the record at a meeting of the public body involved, or in a writing filed with the Clerk, in which case it shall be made a part of the record of a regular City Council meeting, and in either event shall include:

- (1) The identity of all persons involved in the interest;
- (2) The source and amount of income derived from the interest that may be considered as resulting from employment, investment or gift. The person required to file a disclosure statement in accordance with the provisions of this ordinance must verify, in writing, under penalty of perjury, the information in the statement is true and complete as far as he or she knows.

Section 2-54. Duties of the Clerk. [Ord. 169, 9/8/2009]

The Clerk shall examine all disclosure statements filed pursuant to this ordinance and report irregularities immediately to the person filing the statement, to the City Manager, and the City Attorney. Acceptance of a statement by the Clerk shall not constitute approval of the statement.

The Clerk shall maintain a current list of all disclosure statements required to be available for public disclosure. The Clerk shall preserve all disclosure statements for at least four (4) years after the date on which they are filed. The Clerk shall make available to the public all statements that are required to be available for inspection during regular business hours.

Section 2-55. Advisory Opinions. [Ord. 169, 9/8/2009]

Preserving the integrity of the City of New Buffalo is important to all officers and officials of the City. Fairness, honesty, evenhandedness, and sincerity, a kind that transcends both the law and the values of individuals are achieved by observing an overriding set of ethical standards. Integrity is also preserved by recognizing, at times, complaints of questionable actions of City officers and officials and others need to be handled with the same fairness, honesty, evenhandedness and sincerity. A City's reputation and its overall success are securely linked. The City of New Buffalo's reputation, obviously, is based on more than the collective reputations of its employees and officials. The City's reputation depends on how people perceive that the city, whatever the issue or set of circumstances, will act with integrity. Preserving the integrity of the City may result in official action to enforce and punish violations of the Ethical Standards of Conduct.

1. Controlling Authorities

All matters concerning the Code of Conduct shall be directed to one of two controlling authorities depending upon employment status of the person or group involved. The request may be made by the individual or any City candidate, officers, or officials. There are two different controlling authorities depending upon whose request, act or action the controlling authority is reviewing.

- A) Requests to investigate or take action to enforce the Code of Conduct regarding elected and appointed City officers and officials or candidates for elective or appointive office shall go to the Mayor, City Council and City Attorney.
 - i) Should the request involve a member of the City Council, that member shall not be a part of the controlling authority.
- B) Requests to investigate or take action to enforce the Code of Conduct regarding employees of the City shall go to the City Manager and City Attorney.
 - i) Should the request involve the City Manager or the City Attorney, the Council shall name a replacement to serve on the controlling authority for that request.

2. Authority to Render Advisory Opinions

The above listed authorities may issue written advisory opinions, when deemed appropriate, interpreting the Code of Conduct ordinances as set forth herein. Any City officer or official may seek guidance from the controlling authority upon written request on questions directly relating to the propriety of their conduct as officers and officials. Each written request and advisory opinion shall be confidential unless released by the requester.

3. Authority to Punish Violations

The above listed authorities shall take appropriate action upon any complaint, request for information, or otherwise resolve matters concerning the Code of Conduct ordinance for the City of New Buffalo. Except for direct references provided by City Charter or labor agreements controlling any action either authority above make take or except as either may establish an action that either authority may take, both authorities are herein empowered to take and enforce actions, as they deem appropriate. The appropriate action to be taken in any individual case shall be at the sole discretion of the controlling authority involved which may include but is not necessarily limited to any of the following:

- A) Referral of the matter to a higher authority.
- B) Pursuing further investigation by the controlling authority.

- C) Deeming no action to be required.
- D) Pursuing such other course of action which is reasonable, just and appropriate under the circumstances.
- E) Taking appropriate disciplinary action, including declaring a forfeiture of office and removal from office, appointed position or employment whether or not the removal of office is directly referenced by City Charter or by labor agreement but is referenced by this ordinance.
 - i) If the violation is for an offense also contained in the City Charter and is one which the Charter determines is punished by removal, the process for removal is the same as contained in the City Charter.
 - ii) If the violation is for an offense also contained in labor agreements between the City and its employees, then the process for removal is the same as contained in the labor agreements.
 - iii) If the violation is for an offense contained in this ordinance and for which the controlling authority recommends the forfeiture and removal from office, whether elective or appointive or from a position as an employee, then the process contained herein is the process that is followed.

Section 2-56. Delivery of Copies of Ethics Code to Public Servants. [Ord. 169, 9/8/2009]

The City Clerk shall deliver a copy of this ordinance to each public servant as soon as practicable after the enactment of this ordinance, and to each new public servant at the time of employment or taking office. Each such person shall sign and return an acknowledgement of receipt of a copy of this ordinance.

Section 2-57. Violations. [Ord. 169, 9/8/2009]

1. Determination to Proceed

Should a violation be found, the controlling authority shall make a determination to proceed. In addition, any City candidate, officers or officials of the City of New Buffalo may request that the controlling authority review, investigate and recommend action regarding alleged violations of the City of New Buffalo Code of Ethics. Such requests shall be in writing. The controlling authority may decide to review, investigate and recommend action regarding alleged violations of the City of New Buffalo Code of Ethics on their own determination or at the request of other persons. All decisions to review, investigate and recommend action shall first be made in writing.

2. Duty of Due Care

The controlling authority shall be entitled to proceed as it deems necessary and appropriate. The controlling authority shall conduct itself in a manner so as to be thorough, complete and proceed in a reasonable and prudent manner protecting the rights of individuals and the City.

3. Disciplinary Procedures for Violations

Any candidate, officers or officials, for whom the controlling authority recommends disciplinary action, shall be entitled to a hearing before the controlling authority as set forth below.

- A) The controlling authority shall notify, in writing, the affected candidate, officers or officials of the charges that the controlling authority is basing its recommendation of disciplinary action.
- B) The candidate, officers or officials shall have the opportunity to a hearing before the controlling authority.

- C) The candidate, officers or officials shall notify the controlling authority, in writing, that it wishes to be present at a hearing and whether or not legal counsel will attend as well as any witnesses the candidate, officers or officials plans to call.
- D) The hearing shall be scheduled within 30 days of the notification of the recommendation for disciplinary action. The hearing shall be open to the public unless the candidate, officers or officials requests to have the hearing closed to the public.
- E) Transcripts or Minutes of the hearing shall be kept and held by the City Attorney for at least 12 months after which they may be destroyed.
- F) Following the hearing, the controlling authority shall decide to:
 - 1) Hold the recommendation for further review and investigation,
 - 2) Amend its previous recommendation and determine disciplinary action,
 - 3) Reject its previous recommendation altogether and take new action or determine to take no punitive action, or
 - 4) Proceed with its previous recommendation and take punitive action.
- G) Any punitive action recommended by the controlling authority shall be forwarded to the City Council which shall vote on the recommendation for punitive action at its next regularly scheduled meeting of the City Council. At that meeting the City Council, less any member for whom the punitive action is recommended, a majority of those members remaining shall vote to accept, to reject or to send the recommendation back to the controlling authority.
- H) If the recommendation of either the controlling authority or the City Council is to result in further review and investigation of the controlling authority, the process described above shall begin anew.
- I) If the recommendation of the controlling authority is accepted by the City Council, its effect is binding and immediate and the candidate, officers or officials has been cleared of the charges, or has been deemed guilty of a violation of the Code of Ethics offending all persons, the City Council, boards and commissions of the City of New Buffalo.
- J) If a violation of the Code of Ethics is found by the City Council, the Council may recommend an appropriate penalty ranging from a written admonishment, dismissal from office, or employment or a misdemeanor punishable by a fine of not more than Five Hundred Dollars (\$500.00), in the discretion of the Court. The penalty or penalties imposed are not exclusive remedies under this ordinance and any and all statutory and Charter penalties or forfeitures may also be enforced, as well as referral of the matter to the Berrien County Prosecutor or Michigan Attorney General. Any person convicted under the provisions of this ordinance shall be deemed guilty of misconduct.

Section 2-58. Validity. [Ord. 169, 9/8/2009]

The invalidity of any section, sentence, clause or other part, or parts, of this ordinance shall not affect the validity of any other part of this ordinance which can be given effect without such invalid part or parts.

Sections 2-59 through 2-61. Reserved.

ARTICLE IX. ASSISTANT CITY MANAGER

Section 2-62. Assistant City Manager –created; duties and responsibilities.

[Ord. 200, 2/6/2013]

- A. Pursuant to the City Charter, there is hereby created the position of Assistant City Manager.
- B. The Assistant City Manager shall be an administrative officer of the City, per the requirements of the City Charter, as amended.
- C. The City Manager may prescribe such duties and responsibilities to the Assistant City Manager which are not inconsistent with the City Charter or with any ordinance or resolution adopted concerning such duties and authorities under authority of the City Charter.
- D. This Article shall not be misconstrued to diminish the duties or responsibilities of the office of City Manager, as established by the City Charter, as amended.

Sections 2-63 through 2-70. Reserved. [Ord. 200, 2/6/2013]

ARTICLE X. RECREATIONAL FACILITIES DEPARTMENT

Section 2-71. Recreational Facilities Department – Creation and Supervision.

[Ord. 195, 5/31/2012]

- A. Pursuant to the City Charter, there is hereby created a Recreational Facilities Department.
- B. As directed by the City Manager, the head of such department shall be the Recreational Facilities Superintendent.
- C. The Recreational Facilities Superintendent shall have the power to hire and discharge the employees of his or her department upon the advice and consent of the City Manager, subject to the provisions of any merit or civil service system.
- D. The Recreational Facilities Superintendent shall not be construed to be an administrative officer as defined in the City Charter.

Section 2-72. Same – function; duties, authorities, and responsibilities of the officers. [Ord. 195, 5/31/2012]

- A. The function of the Recreational Facilities Department is to provide for the operation and maintenance of City owned or controlled parks, recreational facilities, and other facilities as assigned by the City Manager, to enable the public to enjoy recreational amenities and opportunities, while striving to enhance those facilities.
- B. The duties, authorities and responsibilities of the officers of the Recreational Facilities Department commiserate with the function of said department.
- C. The City Manager may prescribe such duties and responsibilities of the officers of the Recreational Facilities Department which are not inconsistent with the City Charter, these ordinances, or resolution adopted concerning such duties and authorities under the authority of the City Charter.

Sections 2-73 through 2-80. Reserved. [Ord. 195, 5/31/2012]

ARTICLE XI. STREET DEPARTMENT

Section 2-81. Street Department – Creation and Supervision. [Ord. 195, 5/31/2012]

- A. Pursuant to the City Charter, there is hereby created a Street Department.
- B. As directed by the City Manager, the head of such department shall be the Street Department Superintendent.
- C. The Street Department Superintendent shall have the power to hire and discharge the employees of his or her department upon the advice and consent of the City Manager, subject to the provisions of any merit or civil service system, or any collective bargaining agreement.
- D. The Street Department Superintendent shall not be construed to be an administrative officer as defined in the City Charter.

Section 2-82. Same – function; duties, authorities, and responsibilities of the officers. [Ord. 195, 5/31/2012]

- A. The function of the Street Department is to provide for the maintenance of City street and alley rights-of-way, including, but not limited to, Complete Streets infrastructure (motorized and non-motorized transportation,) the stormwater management system, sanitary sewer collection system, urban forestry program, decorative street lighting program, Street Department facilities, and City vehicles and equipment.
- B. The duties, authorities and responsibilities of the officers of the Street Department are commiserate with the function of said department.
- C. The City Manager may prescribe such duties and responsibilities of the officers of the Street Department which are not inconsistent with the City Charter, these ordinances, or resolution adopted concerning such duties and authorities under the authority of the City Charter.

Sections 2-83 through 2-90. Reserved. [Ord. 195, 5/31/2012]

ARTICLE XII. WATER DEPARTMENT

Section 2-91. Water Department – Creation and Supervision. [Ord. 195, 5/31/2012]

- A. Pursuant to the City Charter, there is hereby created a Water Department.
- B. As directed by the City Manager, the head of such department shall be the Water Department Superintendent.
- C. The Water Department Superintendent shall have the power to hire and discharge the employees of his or her department upon the advice and consent of the City Manager, subject to the provisions of any merit or civil service system, or any collective bargaining agreement.
- D. The Water Department Superintendent shall not be construed to be an administrative officer as defined in the City Charter.

Section 2-92. Same – function; duties, authorities, and responsibilities of the officers. [Ord. 195, 5/31/2012]

- A. The function of the Water Department is to serve as a public utility by efficiently operating a water filtration plant, water distribution system, and water billing system to provide municipal water in said department's service area, with such water meeting or exceeding State of Michigan standards for quality, and to provide a sufficient quantity of water to meet the City's goals for (1) fire protection purposes and (2) projected future needs.
- B. The duties, authorities and responsibilities of the officers of the Water Department are commiserate with the function of said department.
- C. The City Manager may prescribe such duties and responsibilities of the officers of the Water Department which are not inconsistent with the City Charter, these ordinances, or resolution adopted concerning such duties and authorities under the authority of the City Charter.

Chapter 3 - ALCOHOLIC BEVERAGES

Section 3-1. Purchase, possession, or transportation by minors.

A person less than twenty-one (21) years of age shall not purchase alcoholic liquor, consume alcoholic liquor in a licensed premises, possess alcoholic liquor or transport or have under their control in any motor vehicle any alcoholic liquor, unless such person is employed by a licensee of the Liquor Control Commission, a common carrier designated by the Commission, or an agent of the Liquor Control Commission and is transporting or having the alcoholic liquor in a motor vehicle under the person's control during regular working hours and in the course of the person's employment.

A person less than twenty-one (21) years of age who violates this section is liable for the following civil fines:

- A. For the first violation a fine of not more than twenty-five dollars (\$25.00).
- B. For a second violation a fine of not more than fifty dollars (\$50.00), or participation in substance abuse prevention services, or both.
- C. For a third or subsequent violation a fine of not more than one-hundred dollars (\$100.00), or participation in substance abuse prevention services, or both.

Section 3-2. Giving or furnishing to minors.

Any person who willfully gives or furnishes any alcoholic beverages including wine or beer to a minor {any person under twenty-one (21) years of age} except upon authority of and pursuant to prescription of a duly licensed physician, shall be guilty of a misdemeanor, punishable as provided in Section 3-5 of this Chapter.

Section 3-3. Minors under seventeen (17) in places where liquor, etc., is sold, etc.

No minor child under seventeen (17) years of age shall be permitted to remain in any dance hall, saloon, barroom, or any place where any spirituous or intoxicating liquor, or any wine or beer, or any beverage liqueur or liquors containing any spirituous or intoxicating liquor, beer, or malt liquor is sold, given away, or furnished for a beverage, unless such minor is accompanied by a parent or guardian. Any proprietor, keeper, or manager of any such place who shall permit such minor child to remain in any such place, and any person who shall encourage or induce in any way such minor child to enter such place or to remain therein shall be deemed guilty of a misdemeanor, punishable as provided in Section 3-5 of this Chapter.

Section 3-4. Fraudulent identification.

A person who furnishes fraudulent identification to a person less than twenty-one (21) years of age, or a person less than twenty-one (21) years of age who uses fraudulent identification to purchase alcoholic liquor, is guilty of a misdemeanor. The court shall order the Secretary of State to suspend, for a period of ninety (90) days, the operator or chauffeur license of a person who is convicted or using fraudulent identification in violation of this Section and the operator or chauffeur license of that person shall be surrendered to the court. This provision is in addition to any penalties imposed under Section 3-5 of this Chapter.

Section 3-5. Violations and penalties.

Violation of any of the provisions of this Chapter shall be deemed a misdemeanor except where otherwise provided, punishable by a fine not to exceed one-hundred dollars (\$100.00), or imprisonment for ninety (90) days, or both, in the discretion of a court of competent jurisdiction; provided, that in the case of any minor who is less than seventeen (17) years of age and who has violated the provisions of this Chapter, such minor shall be punished in accordance with the statutes of the state relating to criminal acts of persons less than seventeen (17) years of age.

Chapter 4 - ANIMALS AND FOWL

Section 4-1. Permitting animals or fowl to run at large.

- A. No owner or person having charge of cattle, horses, dogs, cats, turkeys, chickens, pigeons, or domesticated pets, animals, or fowl shall permit or allow the same to run or to be at large in any of the streets, alleys, parks or public places of the City. For this purposes of this Chapter, "run at large" is defined as allowing said animal or fowl to wander, rove, roam, or ramble at will, free from restraint.
- B. Non-domesticated or wild animals shall not be kept, maintained, or harbored within the City limits. Cattle, horses, turkeys, chickens, pigeons, and like animals and fowl are not domesticated animals.

Section 4-2. Cruelty to animals - Generally.

It shall be unlawful for any person to overdrive, overload, torture, torment, deprive of necessary sustenance, whether feed or water, or unnecessarily or cruelly beat, whip, or maltreat or needlessly mutilate, kill, or cruelly expose to inclement weather, or cause or procure to be overdriven, overloaded, tortured, tormented, or deprived of necessary sustenance, whether food or water, or to be unnecessarily or cruelly beaten, whipped, or maltreated, or unnecessarily exposed to inclement weather, as aforesaid, any domestic or non-domesticated animal.

Section 4-3. Same - Abandoning, etc., domestic animals.

It shall be unlawful for any person, who is the owner and proper custodian of any domestic animal, to abandon the same within the City.

Chapter 5 - BUILDING AND CONSTRUCTION

ARTICLE I. CONSTRUCTION CODES

Section 5-1. Building code agency designated.

Pursuant to the provisions of Section 9 of Act 230 of the Public Acts of 1972, as amended (Compiled Laws of 1948, Section 125.1509), the Building Inspector of the City is hereby designated as the enforcing agency to discharge the responsibilities of the City under Act 230 of the Public Acts of 1972, State of Michigan, as amended. The City hereby assumes responsibility for the administration and enforcement of said act throughout its corporate limits.

[Editor's note: Ord. 161 (above) concerning designating an enforcing agency for the State Construction Code was not adopted when it was considered in 2006; thus leaving the current wording above.]

[Editor's note: Ord. 162 (below) concerning adoption of the State Construction Code and penalties for same did not designate where in the Code of Ordinances such sections should be added. For the convenience of the reader, the editor has added Ord. 162 Sec. 1 as Sec. 5-1.1 and Ord. 162 Sec. 2 as Sec. 5-1.2 below as the most logical location.]

Section 5-1.1 Adoption of State Code. [Ord. 162, 11/14/2006]

The City of New Buffalo hereby adopts the provisions of the State Construction Code Act, Act No. 230 of the Public Acts of 1972, as amended.

Section 5-1.2 Penalties. [Ord. 162, 11/14/2006]

- A. Except as provided in subsection 3 of this ordinance, a person or corporation, including an officer, director, or employee of a corporation, or a governmental official or agent charged with the responsibility of issuing permits or inspecting buildings or structures, who does any of the following is guilty of a misdemeanor punishable by a fine of not more than \$500.00 or imprisonment for not more than 90 days, or both:
1. Knowingly violates this act or the code or a rule for the enforcement of this act or code.
 2. Knowingly constructs or builds a structure or building in violation of a condition of a building permit.
 3. Knowingly fails to comply with an order issued by an enforcing agency, a construction board of appeals, a board, or the commission pursuant to this act.
 4. Knowingly makes a false or misleading written statement, or knowingly omits required information or a statement in an inspection report, application, petition, request for approval, or appeal to an enforcing agency, a construction board of appeals, a board, or the commission.
 5. Knowingly refuses entry or access to an inspector lawfully authorized to inspect any premises, building or structure pursuant to this act.
 6. Unreasonably interferes with an authorized inspection.
 7. Knowingly issues, fails to issue, causes to be issued or assists in the issuance of a certificate, permit or license in violation of this act or a rule promulgated under this act or other applicable laws.
 8. Having a duty to report violations of this act or a rule promulgated under this act or other applicable laws, knowingly conceals a violation.

With respect to subsection (1)(c), a person is guilty of a separate offense for each day that the person fails to comply with a stop construction order validly issued by an enforcing agency and for each week that the person fails to comply with any other order validly issued by an enforcing agency. With respect to subsection (1)(a) or (d), a person is guilty of a separate offense for each knowing violation of this act or a rule promulgated under this act and for each false or misleading written statement or omission of required information or statement knowingly made in an application, petition, request for approval or appeal to an enforcing agency, a construction board of appeals, a board or the commission. With respect to subsection (1)(b), a person is guilty of a separate offense for each knowing violation of a condition of a building permit.

- B. If a governmental subdivision has the responsibility of administering and enforcing this act and prosecutes a violation of this act, the governmental subdivision may retain a fine imposed upon conviction. If a governmental subdivision has the responsibility of administering and enforcing this act, the governmental subdivision may by ordinance designate a violation described in subsection (1) or (2) as a municipal civil infraction and provide a civil fine for the violation. The governmental subdivision may retain the civil fine imposed upon judgment.

[Ord. 162, Section 3: All ordinances inconsistent with the provisions of this ordinance are hereby repealed.]

Section 5-2. Electrical code agency designated.

Pursuant to the provisions of Act 230 of the Public Acts of 1972, as amended, and of the Michigan Electrical Code which consists of the National Electrical Code, with amendments and deletions, the Electrical Inspector appointed by the City is hereby designated as the enforcing agency to discharge the responsibilities of the City under Act 230 of the Public Acts of 1972, State of Michigan, as amended. The City hereby assumes responsibility for the administration and enforcement of said Michigan Electrical Code throughout its corporate limits.

Section 5-3. Mechanical code agency designated.

Pursuant to the provisions of the Building Officials and Code Administrators International, Inc., Basic Building Code (BOCA), including all amendments and supplements thereto, the Mechanical Inspector appointed by the City is hereby designated as the enforcing agency to discharge the responsibilities of the City under the aforesaid Act and Code. The City hereby assumes responsibility for the administration and enforcement of said Act throughout its corporate limits.

Section 5-4. Plumbing code agency designated. [Ord. 174, 2/19/2008]

Pursuant to the provisions of the Michigan Plumbing Code, in accordance with Section 8b (6) of Act 230 of the Public Acts of 1972, as amended, the plumbing inspector of the City of New Buffalo is hereby designated as the enforcing agency to discharge the responsibilities of the City of New Buffalo under Act 230 of the Public Acts of 1972, as amended, pertaining to the plumbing installations. The City of New Buffalo hereby assumes responsibility for the administration and enforcement of said Act throughout its corporate limits.

ARTICLE II. PROPERTY MAINTENANCE CODE.

Section 5-5. Adoption of Property Maintenance Code. [Ord. 142, 4/16/2003; Ord. 179, 9/22/2008]

That a certain document, three copies of which are on file in the office of the City Clerk of the City of New Buffalo, Michigan, being marked and designated the International Property Maintenance Code 2006 as published by the International Code Council, Inc., and as amended, be and is hereby adopted by reference as the Property Maintenance Code of the City of New Buffalo, in the State of Michigan; for the control of buildings and structures are herein provided; and each and all of the regulations, provisions, penalties, conditions and terms of said Property Maintenance Code are hereby referred to, adopted, and made a part hereof, as if fully set out in this ordinance, with the additions, insertions, deletions, and changes, if any, prescribed below.

- Section 101.1. Insert: City of New Buffalo
- Section 103.6. Insert: Appeals \$100.00
- Section 302.3. Amend to remove the word "sidewalks".
- Section 303.2. Amend to insert the word "Substantial" prior to peeling, flaking of paint ...
- Section 303.14. Insert: April 1 to October 31
- Section 304.3. Amend to insert word "Substantial" prior to peeling, flaking of paint ...
- Section 305.2.1. Amend to read, "The owner of every occupied premise shall use covered containers for rubbish, and the owner of the premises shall be responsible for the removal of rubbish not included under the City trash and rubbish removal contract"
- Section 602.3. Insert: October 1 to April 30
- Section 602.4. Insert: October 1 to April 30

ARTICLE III. SOIL EROSION AND SEDIMENTATION CONTROL.

Section 5-6. Agency designation. [Ord. 137, 7/30/2002]

The Water Department and the GRSD Sewer Authority shall be the municipal enforcing agencies responsible for the administration and enforcement of Part 91, Soil Erosion and Sedimentation Control of the Natural Resources and Environmental Protection Act, 1994, PA 451, as amended (part 91), within the City of New Buffalo. The Administrative Rules promulgated under authority of Part 91 are hereby incorporated by reference.

Section 5-7. Reserved.

Section 5-8. When plan required.

Before ground breaking of any construction project in the City involving one (1) or more acres of land or within five-hundred (500) feet of any lake or stream, an erosion and sedimentation control plan shall be submitted to the Building Inspector in accordance with the rules of the state Department of Water Resources Commission herein above adopted.

Section 5-9. Review of plans.

Upon payment of the necessary fees to the City, in accordance with fee schedule to be determined by the City Council, as amended from time to time by resolution, the submitted plans shall be reviewed and approved and a permit shall be issued, provided the plans meet with the standards of the Berrien County Soil Conservation District, which have been adopted by reference, to prevent soil erosion at all major construction sites within the City in excess of one (1) acre (except isolated single family dwellings) and within five-hundred (500) feet of any lake or stream.

Section 5-10. Inspections.

The Water Department and /or the GRSD Sewer Authority shall inspect a proposed construction site prior to the commencement of construction, during the course of construction, and at the completion of the construction project. Said officer shall have the authority and duty to issue cease and desist orders whenever a violation is observed of the rules set forth in the Soil Erosion and Sedimentation Control Act.

Section 5-11. Bond provisions.

A grading permit shall not be issued unless the permittee shall first post with the Water Department and/or the GRSD Sewer Authority a bond executed by the owner and a corporate surety with authority to do business within this state as a surety. The bond shall be in a form approved by the City Attorney payable to the City and in the amount of the estimated total cost of all temporary or permanent soil erosion control measures. The total cost shall be estimated by the Water Department or the GRSD Sewer Authority. The bond shall include penalty provisions for failure to complete the work on schedule as specified on the grading permit. In lieu of the surety bond, the applicant may file with the City a cash bond or an instrument of credit approved by the City Attorney in the amount equal to that which would be required for the surety bond. Every bond and instrument of credit shall include and every cash deposit shall be made on the condition that the permittee shall comply with all of the provisions of this Article and all of the terms and conditions of the grading permit and shall complete all of the work contemplated under the grading permit within the time limit specified in the grading permit or if no time limit is specified, within one-hundred eighty (180) days after the date of the issuance of the grading permit.

Section 5-12. Appeals.

Any aggrieved party may appeal the order, requirement, decision, or determination of the said Water Department or GRSD Sewer Authority. Such appeal shall be filed with the Zoning Board of Appeals which is hereby designated and authorized to hear and decide such appeals under this Chapter where it is alleged by the aggrieved party that there is error in any order, requirement, decision, or determination made by the said Water Department or GRSD Sewer Authority in the carrying out of the provisions of this Chapter. Such appeal shall be filed with the Zoning Board of Appeals within ten (10) days of the date of such order, requirement, decision, or determination so appealed. Such appeal may be taken by any person, firm, or corporation aggrieved or by any governmental officer, department, board, or bureau affected by the decision of the Water Department or GRSD Sewer Authority. Such appeal shall be taken by filing a notice of appeal with the Zoning Board of Appeals on appropriate forms provided by the City, payment of the required fee, and shall specify the grounds for such appeal. The City shall forthwith transmit all papers constituting the records of such appeal to the Board. The Board may require the applicant to furnish such information as may be reasonably required to said Board for the proper consideration of the matter. Upon a hearing by the Board, any person or party may appear in person, or by agent, or by attorney.

**ARTICLE IV. STANDARDS FOR THE DESIGN AND CONSTRUCTION OF
PUBLIC WORKS PROJECTS.**

Section 5-13. Standards Adopted. [Ord. 133, 9/18/2001]

All construction and/or replacement of public works in the City of New Buffalo, including, but not limited to, streets, curbs, alleys, sidewalks, street lights, storm sewers, and water lines shall be subject to the design and construction standards set forth in this ordinance hereafter known as Appendix No. 1.

ARTICLE V. MISCELLANEOUS PROVISIONS.

Section 5-14. Hours of Construction. [Ord. 150, 3/23/2005]

All construction within the corporate limits of the City of New Buffalo will be performed between the hours of 7:00 AM and 7:00 PM, local time, on weekdays and between the hours of 7:00 AM and 5:00 PM, local time, on Saturdays. There will be no construction on Sundays. These time restrictions apply to outside contractors only. They shall not apply to the following:

- A. A property owner working personally on their property,
- B. Construction that is totally inside an enclosed structure or building,
- C. Emergency repairs,
- D. Highway, street, and utility maintenance and construction, and
- E. Necessary excavations or repairs of bridges, streets or highways, or any public utility installation by or on behalf of the City, or any public utility or any agency of the State during the night or on Sunday, when the public safety, welfare and convenience necessitates the performance of the work at such time.

ARTICLE VI. FLOODPLAIN MANAGEMENT PROVISIONS

Section 5-15. Agency Designated. [Ord. 158, 4/19/2006]

Pursuant to the provisions of the state construction code, in accordance with Section 8b(6) of Act 230, of the Public Acts of 1972, as amended, the Building Official of the City of New Buffalo is hereby designated as the enforcing agency to discharge the responsibility of the City of New Buffalo under Act 230, of the Public Acts of 1972, as amended, State of Michigan. The City of New Buffalo assumes responsibility for the administration and enforcement of said Act through out its corporate limits.

Section 5-16. Code Appendix Enforced. [Ord. 158, 4/19/2006]

Pursuant to the provisions of the state construction code, in accordance with Section 8b(6) of Act 230, of the Public Acts of 1972, as amended, Appendix G of the Michigan Building Code shall be enforced by the enforcing agency within the City of New Buffalo.

Section 5-17. Designation of Regulated Flood Prone Hazard Areas. [Ord. 158, 4/19/2006]

The Federal Emergency Management Agency (FEMA) Flood Insurance Study (FIS) Entitled The Berrien County Flood Insurance Study and dated April 17, 2006 and the Flood Insurance Rate Map(s) (FIRMS) panel number(s) of 26021C0317C, 26021C0319C, 26021C0336C, and 26021C0338C and all dated April 17, 2006 are adopted by reference and declared to be a part of Section 1612.3 of the Michigan Building Code.

[Ord. 158, Section 2: All ordinances inconsistent with the provisions of this ordinance are hereby repealed.]

Chapter 6 - FIRE PREVENTION CODE

ARTICLE I. FIRE PREVENTION CODE.

Section 6-1. Purposes of code.

This Chapter shall provide the City with rules and regulations to improve public safety by promoting the control of fire hazards; regulating the installation, use, and maintenance of equipment; regulating the use of structures, premises, and open areas; providing for the abatement of fire hazards; establishing the responsibilities and procedures for code enforcement; and setting forth the standards for compliance and achievement of these objectives.

Section 6-2. Code designated. [Ord. 166, 5/22/2007]

This Chapter shall be known as the City of New Buffalo Fire Prevention Code. This Chapter adopts NFPA 1, Fire Prevention Code, of the National Fire Protection Association, and its incorporated standards and codes as published in the National Fire Codes of the National Fire Protection Association and listed in Annex A of the NFPA Fire Prevention Code and being particularly the 2006 edition thereof, save and except those portions such as are hereinafter deleted, modified, or amended from time to time.

The same are hereby adopted and incorporated as fully as if set out at length herein. Not less than one (1) copy of the adopted issue of NFPA 1, Fire Prevention Code, of the National Fire Protection Association, and the adopted standards and codes of the National Fire Codes shall be filed in the office of the Fire Chief and the provisions thereof shall be controlling within the limits of the City.

Section 6-3. Unlawful to violate provisions of code, etc.

It shall be unlawful for any person to violate this Chapter, to permit or maintain such a violation, to refuse to obey any provision thereof, or to fail or refuse to comply with any such provision or regulations except as variation may be allowed by the action of the Fire Chief in writing. Proof of such unlawful act or failure shall be deemed prima facie evidence that such act is that of the owner or other person in control of the premises. Prosecution or lack thereof of either the owner, occupant, or the person in charge shall not be deemed to relieve any of the others.

Section 6-4. Enforcing officer designated, etc.

The Fire Chief of the City of New Buffalo Fire Department shall be responsible for the enforcement of the Fire Prevention Code. The Fire Chief may detail qualified members of the Fire Department as inspectors as shall from time to time be necessary.

Section 6-5. Duties of the Fire Chief and inspectors.

It shall be the duty of the Fire Chief and his inspectors designated by the Chief, to enforce all laws and ordinances of the City, covering the following:

- A. The prevention of fires.
- B. The storage, sale, and use of combustible, flammable, or explosive materials.
- C. The installation and maintenance of automatic and other fire alarm systems and fire extinguishing equipment.

- D. The maintenance and regulation of fire escapes.
- E. The means and adequacy of exit in case of fire from factories, schools, hotels, lodging houses, asylums, hospitals, churches, halls, theaters, amphitheaters, and all other places in which numbers of persons work, live, or congregate, from time to time, for any purpose.
- F. The investigation of the cause, origin, and circumstances of fires.
- G. The maintenance of fire cause and loss records.

They shall have such other powers and perform such other duties as are set forth in other Sections of this Chapter, and as may be conferred and imposed from time to time by law. The Fire Chief may delegate any powers or duties under this Chapter to a qualified officer of the Fire Department.

Section 6-6. Procedures generally.

The Fire Chief shall prepare instructions for the enforcement of this Chapter by the Chief and his/her designated inspectors, and forms for their use in the reports required by this Chapter.

Section 6-7. Fire investigation.

The Fire Chief or his/her designated inspector shall investigate the cause, origin, and circumstances of every fire occurring in the City by which property has been destroyed or damaged and, so far as possible, shall determine whether the fire is the result of carelessness or design. Such investigation shall begin immediately upon the occurrence of a such a fire. The Fire Chief shall take charge immediately of the physical evidence, shall notify the proper authorities designated by law to pursue the investigation of such matters, and shall further cooperate with the authorities in the collection of evidence and in the prosecution of the case. Every fire shall be reported in writing to the Fire Chief and the City Manager within fourteen (14) days after the occurrences of same by the Fire Department officer responsible for the preparation of the report. Such report shall be in such form as shall be prescribed by the Fire Chief, and shall contain a statement of all facts relating to the cause, origin, and circumstances of such fire, the extent of the damage thereof, and the insurance upon such property, and such other information as may be required, including the injury, death, or rescue of persons.

Section 6-8. Inspection for permits.

Before permits may be issued as required by this Chapter, the Fire Chief or his/her designated inspector shall inspect and approve the receptacles, processes, vehicles, buildings, and storage places to be used for any such purposes.

Section 6-9. Periodic inspection of premises.

The Fire Chief shall inspect or cause to be inspected all premises on a periodic basis, and shall make such orders as may be necessary for the enforcement of the laws and ordinances governing the same and for safeguarding of life and property from fire.

Section 6-10. Removal and abatement of violations and unsafe practices; notice to owner or occupant.

Whenever any inspector, as defined above, shall find in any building, or upon any premises or other places, combustible or explosive matter or dangerous accumulations of rubbish or unnecessary accumulation of waste paper, boxes, shavings, or any highly flammable materials especially liable to fire, and which is so situated as to endanger property; or shall find obstructions to or on fire escapes, stairs, passageways, doors, or windows, liable to

interfere with the operations of the Fire Department or egress of occupants in case of fire, the inspector shall order the same to be removed or remedied, and such order shall forthwith be complied with by the owner or occupant of such premises or buildings, subject to the appeals procedure provided for in the Fire Prevention Code. Any owner or occupant failing to comply with such order within a reasonable period after the service of the said order shall be liable to penalties as hereinafter provided.

The service of any such order may be made upon the occupant of the premises to whom it is directed, either by delivering a copy of same to such occupant personally, or leaving it with any person in charge of the premises, or, in the case no such person is found on the premises, by affixing a copy thereof in a conspicuous place on the door to the entrance of said premises. Whenever it may be necessary to serve such an order upon the owner of premises, such order may be served either by delivering to and leaving with the said person a copy of the said order, or, if such owner is absent from the jurisdiction of the officer making the order, by mailing such copy by certified mail to the owner's last known post office address.

Section 6-11. Fire reports and records.

The Fire Chief shall compile and keep a record of all fires and of all the facts concerning the same, including injuries, deaths, rescue of persons, statistics as to the extent of such fires and the damage caused thereby, and whether such losses were covered by insurance, and if so, in what amount. Such record shall be made daily from the reports made by the inspectors of the Fire Department under the provisions of this Chapter. All such records shall be public.

Section 6-12. Annual report.

The Fire Chief shall make an annual report of the activities of the Fire Department and shall transmit this report to the City Manager for forwarding to the City Council. The report shall contain all proceedings under the Fire Prevention Code with such statistics as the Fire Chief may wish to include therein, or such statistics as may be required by the City Manager and/or the City Council.

Section 6-13. Amendments to fire prevention code.

The Fire Chief shall also recommend any amendments to the Fire Prevention Code or this Chapter, or other ordinances that shall be desirable.

Section 6-14. Applicability of code to public and private property.

The provisions of the Fire Prevention Code shall apply equally to both public and private property, and it shall apply to all structures and their occupancies, except as otherwise specified.

Section 6-15. Exercise of police powers.

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

Section 6-16. Penalties for violation.

Any person who shall violate any of the provisions of this Chapter, the Fire Prevention Code hereby adopted; or shall fail to comply therewith; or shall fail to comply with any order made thereunder; or shall build in violation of any details, statements, specifications, or plans submitted or approved hereunder; or shall operate not in accordance with the provisions of any certificate, permit, or approval issued thereunder, and from which no appeal has been taken; or who shall fail to comply with such order as affirmed or modified by the Fire Chief or by a court of

competent jurisdiction within the time fixed herein shall severally for each and every violation and noncompliance, respectively, be guilty of a misdemeanor and subject to the provisions of Section 1-7 of this Code.

The imposition of any penalty for any violation shall not excuse the violation nor shall the violation be permitted to continue. All such persons shall be required to correct or remedy such violations or defects within a reasonable time, and when not otherwise specified, the application of the above penalty shall not be held to prevent the enforced removal of prohibited conditions.

Section 6-17. Board of appeals established.

A Board of Appeals is hereby established to sit in judgment on matters concerning the Fire Prevention Code and its enforcement. The Board of Appeals shall be the City Council.

Section 6-18. Appendixes adopted.

The following Appendixes of NFPA 1, Fire Prevention Code of the National Fire Protection Association are hereby included as part of this jurisdiction's Fire Prevention Code save and except those portions that are deleted, modified, or amended by this Chapter. The same are hereby adopted and incorporated as fully as if set out at length herein.

Appendix B: Fire Safety Regulations.

Appendix E: General Authority to Combat Fires and Related Emergencies.

Appendix G: Code Violations.

Appendix H: Establishing a Permit System.

Appendix I: Certificates of Fitness.

Section 6-19. Permit fee schedule.

Fees for permits, certificates, approvals, and other functions performed under this Chapter shall be established from time to time by resolution of the City Council and shall be made payable to the City. Such fees shall accompany each application for such permit, approval, certificate, or other fee-related Code provision.

Section 6-20. Conflicting or inconsistent ordinances.

All formal ordinances or parts thereof conflicting or inconsistent with the provisions of this Chapter or the Fire Prevention Code hereby adopted are hereby repealed.

ARTICLE II. FIRE LANE DESIGNATION AND REGULATIONS.

Section 6-21. Blocking of fire lanes prohibited.

No person, firm, or corporation shall park, store, or cause to be located upon a fire lane any motor vehicle, machine, boat or other substantial object on or within the limits of a "fire lane," whether said fire lane is public or private, so as to block or partially block or impede full access to said fire lane by firefighting, ambulance, or similar emergency vehicles.

Section 6-22. Definition of fire lanes. [Ord. 136, 7/16/2002]

"Fire Lane" shall be defined as any public right-of-way or private street or roadway so designated by the City Council. All fire lanes shall have a minimum width of eighteen (18) feet, and the exact location of the fire lane upon the designated public right-of-way shall be determined by the Fire Chief, as deemed necessary for the efficient and effective operation of fire apparatus.

Section 6-23. Designation of fire lanes.

The following are hereby designated as "fire lanes" in the City:

- A. The lane running from Water Street northerly on the east side of the New Buffalo Yacht Club.
- B. The lane running from Water Street northerly on the east side of the Snug Harbor Marina Store.
- C. The lane running from Water Street northerly at the Snug Harbor Boat Launch.
- D. The lanes designated on Fire Lane Map #1, Harbor Pointe.
- E. The lanes designated on Fire Lane Map #2, Lake Michigan Yacht Club.
- F. The lanes designated on Fire Lane Map #3, Dunewood.
- G. The lanes designated on Fire Lane Map #4, Harbor Landing.
- H. The lanes designated on Fire Lane Map #5, Moorings-South Cove.
- I. The lanes designated on Fire Lane Map #6, Warwick Shores.

The official Fire Lane Map shall be on file in the office of the City Clerk and be open for public inspection during normal business hours.

Section 6-24. Definition of tow-away zone.

"Tow-away Zone" means a zone where parking, stopping, or standing is not permitted as indicated by proper signs, and where vehicles parked in violation of the signs are towed away to keep the roadway clear for traffic movement.

Section 6-25. Designation of tow-away zones.

All fire lanes so designated by this Chapter are hereby designated as tow-away zones. In addition to the above provided penalties, the City may tow or caused to be towed any motor vehicle, machine, boat, or other substantial object blocking or partially blocking or impeding full access to any designated fire lane. The owner of any such motor vehicle, etc., shall be responsible for any and all towing related costs.

ARTICLE III. FIRE SERVICE CHARGES

Section 6-26. Fire Service Charges. [Ord. 157, 4/19/2006]

The following charges will be based on a time per-hour: firefighter, equipment (\$250.00/hr/truck) and the fair value of material used, and shall hereafter be due payable to the New Buffalo City Fire Department from a recipient of any services from the New Buffalo City Fire Department.

Charges set out in this section and any exemptions may be determined and adjusted from time to time by resolution of the New Buffalo City Council and such adjustments shall not require a formal amendment to this ordinance.

Section 6-27. Time for payment. [Ord. 157, 4/19/2006]

All the foregoing charges shall be due and payable to the New Buffalo City Fire Department within 30 days after the date service is rendered.

Section 6-28. Exemptions. [Ord. 157, 4/19/2006]

The following properties and services shall be exempt from the foregoing charges:

- A. Fire involving City buildings, grounds and/or property.
- B. Fire service provided outside the jurisdiction of the City under a mutual aid contract with an adjoining municipality.
- C. Fire service provided to property belonging to a New Buffalo City taxpayer (which covers their fire and rescue services.)

Section 6-29. Collection of Charges. [Ord. 157, 4/19/2006]

The New Buffalo City Fire Department is hereby delegated the authority and responsibility for billing and collecting charges and may proceed in District Court to collect any monies remaining unpaid and shall pursue any and all other remedies provided by law for the collection of said charges.

All funds collected shall be deposited in the general fund of the City.

Section 6-30. Non-exclusive Charge. [Ord. 157, 4/19/2006]

The foregoing rates and charges shall not be exclusive of the charges that may be made by the New Buffalo City Fire Department for the cost and expense of maintaining a fire department but shall be supplemental thereto.

Charges may additionally be collected by New Buffalo City through general taxation procedures provided by law or by a special assessment established as provided by law.

General fund appropriations may be made to cover such additional cost and expenses.

[Ord. 157, Section 3: Should any provision or part of the within ordinance be declared by any court of competent jurisdiction to be invalid or unenforceable, the same shall not affect the validity or enforceability of the balance of this ordinance which shall remain in full force and effect.]

Chapter 7 - HARBOR

ARTICLE I. HARBOR COMMISSION

Section 7-1. Commission created.

There is hereby created a Harbor Commission for the City.

Section 7-2. Composition; appointments; filling vacancies. [Ord. 183, 12/6/2011; Ord. 195, 5/31/2012]

- A. **Composition** – The Harbor Commission shall consist of five (5) members, who shall be resident electors of the City. The following individuals are ineligible to serve as members: City Council members, the City Manager, Recreational Facilities Superintendent, or any other elected official and/or employee of the City.
- B. **Appointments** – Appointments made to the Harbor Commission shall provide for staggered terms of office. Appointments to fill expired positions on such commission shall be for a period of three (3) years, and shall be made by the Mayor with the consent of the majority of the City Council at the regular organizational meeting of the City Council following the regular City election.
- C. **Alternate Members** – The Mayor with the consent of the majority of the City Council may appoint up to two (2) alternate members, who shall have the same membership requirements as regular Harbor Commission members. Alternate members have voice and vote on the Harbor Commission in the event a regular Harbor Commission member is absent. At the time of appointment as alternate members, the City Council shall designate one alternate to serve first in the event of an absence during a meeting, with the other alternate member serving if the first alternate member is unavailable, or in the event of a second absence during a meeting.
- D. **Filling Vacancies** – Appointments to fill vacancies on the Harbor Commission shall be for a period of time equivalent to the unexpired term of that office. Appointments to fill such vacancies shall be made by the Mayor with the consent of the majority of the City Council, but shall be made within sixty (60) days of the date such vacancy occurs.

Section 7-3. Compensation of members.

The members of the Harbor Commission shall serve without compensation.

Section 7-4. Organization; officers; quorum.

The members of the Harbor Commission shall within twenty (20) days after their appointment in the first instance, and thereafter annually within twenty (20) days following the regular organizational meeting of the City Council following the regular City election, organize and elect one (1) of their members chairperson, one (1) of their members vice chairperson, and one (1) of their members or another person not serving on the Commission as secretary. The Harbor Commission may select other such officers as it may deem advisable and expedient. A majority of the Harbor Commission shall constitute a quorum for the transaction of business.

Section 7-5. Meetings; rules of procedure.

The Harbor Commission shall establish by general rule the time and place for holding all regular and special meetings of such board and the manner of giving notice thereof. The Harbor Commission is also authorized to establish by general rule procedures for the transaction of business of such Commission.

Section 7-6. Removal of members.

The City Council shall have power and authority to remove any member of the Harbor Commission for malfeasance, misfeasance, misconduct, or neglect of duty after having given such member notice and an opportunity to be heard.

Section 7-7. Powers and duties - Policies, rules, and regulations concerning harbor.

The Harbor Commission shall study and make recommendations to the City Council concerning policies, rules, regulations, and ordinances dealing with the management, government, maintenance, operation, and use of the harbor, waterways, channels, municipal docks, or other navigational facilities which are under the control of the City. The reasonableness and necessity of any such policies, rules, regulations, or ordinances shall be determined by the City Council after a review thereof. All such policies, rules, regulations, and ordinances, after adoption and publications by the City Council shall be enforced by the appropriate City officials in like manner as any other provision of this Chapter or other ordinance of the City.

Section 7-8. Same - Budget.

On or before the organizational meeting of the City Council following the regular City election in each year, the Harbor Commission shall submit to the City Council a proposed budget showing in detail the amount of money which, according to the judgment of the Harbor Commission, may be necessary for harbor purposes, and the supervision, maintenance and operation thereof during the fiscal year, which fiscal year shall correspond to that of the City. The proposed budget submitted and recommended by the Harbor Commission may be increased, modified, or adopted by the City Council in its sole discretion as the City Council may deem advisable and expedient.

ARTICLE II. REGULATIONS.

Section 7-9. Harbor - Definition.

The Harbor of New Buffalo shall consist of all the body of water off the shores of Lake Michigan extending one-half (1/2) mile lakeward between the Easterly and Westerly boundary limits of the City of New Buffalo and the waters of the Galien River within the City limits.

Section 7-10. Rules and regulations.

- A. The City hereby adopts by reference Sections 2 through 8, 31 through 33, 36, 61, 62, 71 through 101, 151, 161 through 166, and 191, inclusive of the Michigan Marine Safety Act of 1967, that being Act No. 303 of the Public Acts of 1967, as amended. The purpose of said regulations are to provide for rules relative to the operation of vessels and motorboats, the carrying of equipment on such waters and to the use of waters for boating, to prescribe the duties and responsibilities of owners and operators of vessels and motorboats. A complete copy of said regulations shall be kept in the office of the City Clerk and/or Chief of Police and shall be there available for public use and inspection.
- B. All swimming within the confines of the breakwater and in the Galien River up to the easterly boundary of the City limits is hereby prohibited.
- C. All jumping and diving off of or from the North Whittaker Street bridge is hereby prohibited.

Section 7-11. Wharves, docks, and bulkhead walls.

Every owner, lessee, or person in possession of premises immediately adjacent to or abutting the harbor shall at all times keep the wharves, docks, and bulkhead walls on such premises in good repair and safe condition.

Section 7-12. No-wake speed; swimming; anchoring vessels.

- A. On the waters of the Galien River, the channels and canals connected thereto, and the New Buffalo Harbor Sections 3, 4, 9, and 10, T8S, R3W, City of New Buffalo, Berrien County, it is unlawful for the operator of a vessel to exceed a slow, no wake speed.
- B. On the waters of the Galien River, the channels and canals connected thereto, and the New Buffalo Harbor, Sections 3,4,9, and 10, T8S, R3W, City of New Buffalo, Berrien County, it is lawful for a person to swim only in a area designated as a bathing area, pursuant to Section 141 or Act No. 303 of the Public Acts of 1967, as amended being Section 281.1141 of the Michigan Compiled Laws.
- C. On the navigable waters of the entrance channel to the New Buffalo Harbor, Section 4, and 9, T8S, R3W, City of New Buffalo, Berrien County, it is unlawful to anchor or moor a vessel, unless a special exception permit has been granted by the City Council, upon recommendation from the Harbor Commission.

Section 7-13. Fueling of vessels at transient marina prohibited.

It shall be unlawful for any entity, public or private, to install and/or operate a fueling station, including underground and/or aboveground fuel storage tanks, fuel pumps, and other related equipment, at the City's municipal transient marina. It shall also be unlawful for any person with watercraft moored at the municipal transient marina to have their vessel refueled by any possible means while said watercraft is moored at the municipal transient marina. This Section shall apply only to the municipal transient marina, and any watercraft moored therein, and to waterfront property within New Buffalo Harbor bordering the area legally described and established as the federal channel, but to no other properties within New Buffalo Harbor.

ARTICLE III. EMERGENCY HARBOR DREDGING FUND.

Section 7-14. Fund created. [Ord. 181, 3/17/2009]

A fund within the system of accounts for the City, entitled the "Emergency Harbor Dredging Fund," is hereby established.

Section 7-15. Purpose. [Ord. 181, 3/17/2009]

The purpose of this fund is to provide money for the dredging of the federal channel of the New Buffalo Harbor, on an emergency basis and not to supplant the regular maintenance dredging performed by the United States Army Corps of Engineers.

Section 7-16. Sources of revenue. [Ord. 181, 3/17/2009]

Revenue for this fund shall be derived from the fee schedule in Section 7-17 and the annual contributions in Section 7-18.

Section 7-17. Fee schedule. [Ord. 181, 3/17/2009]

The initial fee schedule shall be one dollar (\$1.00) from each daily public boat launch pass and five dollars (\$5.00) from each yearly public boat launch pass. This fee schedule may be altered by a resolution of the City Council, after receiving a recommendation from the Harbor Commission.

Section 7-18. Annual contributions. [Ord. 181, 3/17/2009]

The initial annual contribution from each slip in the harbor shall be ten dollars (\$10.00). This contribution amount may be altered by a resolution of the City Council, after receiving a recommendation from the Harbor Commission.

Section 7-19. Fund dedicated. [Ord. 181, 3/17/2009]

All revenues collected shall be deposited in the dedicated fund and shall be used for no other purpose than emergency harbor dredging of the federal channel.

Section 7-20. Use of funds collected. [Ord. 181, 3/17/2009]

Monies from the fund may be utilized for emergency dredging after the recommendation made by the Harbor Commission and approved by the City Council.

Section 7-21. Suspension of collection. [Ord. 181, 3/17/2009]

Upon recommendation by the Harbor Commission and approval by the City Council, collection of funds may be suspended for any one (1) fiscal year and subsequently reinstated as the need arises.

Section 7-22. Discontinuing fund. [Ord. 181, 3/17/2009]

Upon recommendation of the Harbor Commission, the City Council may discontinue the Emergency Harbor Dredging Fund. Upon discontinuation of the Fund as provided herein, any funds remaining in the Emergency Harbor Dredging Fund account shall be dispersed as follows:

- A. Funds received from the City public boat launch facility as described in Section 7-17 shall be applied to the Park Fund; and
- B. Funds received from boat slip contributions as described in Section 7-18 shall be refunded to each contributor.

ARTICLE IV. COMMERCIAL BOAT LAUNCHING FACILITY RULES

Section 7-23. In General. [Ord. 130, 4/17/2001]

Any business or person using New Buffalo Boat Facilities as part of his or her business (hereinafter commercial operation), shall, in addition to the previous sections and all other rules pertaining to recreational boat users, be subject to the following additional rules and regulations.

Section 7-24. Application for usage of Municipal Boat Launches for Commercial Use. [Ord. 167, 3/28/2007]

Each and every time a commercial operator uses a municipal boat launching facility, he/she shall have a numbered ticket slip and/or Commercial Haulers Pass for each individual vessel that is launched and/or removed at a municipal boat launch or facility.

Ticket slips and passes will be provided by the City. Ticket slips and passes must be completely and correctly filled out, including but not limited to, the model of the watercraft, its size (footage and weight), the date, the time and the signature of the commercial operator's representative launching and/or hauling the craft, and the signature of the attendant on duty. Completed ticket slips and passes must be given to attendant or deposited into the drop box located at the attendant's booth. Passes are valid only for the date printed. No other materials may be used for recording commercial usage of the municipal boat launch or facility. Commercial operators will be charged \$100.00 for each ticket that is not completely filled out.

Section 7-25. Commercial Rates. [Ord. 130, 4/17/2001]

Commercial rates for launching and/or removal shall be established yearly by the City Council. Rates will be billed on a monthly basis for Commercial Operators who have opened up an account with the City. Failure to pay within 30 days of billing will result in a loss of privileges of use of all municipal facilities. Transient users or commercial operators who do not have an account with the City must pay in cash in advance of using the municipal boat launch.

Section 7-26. Weight restrictions. [Ord. 145, 5/18/2004]

No vessel shall be launched and/or removed from the boat launch in excess of 32,000 lbs. (thirty-two thousand pounds), including the weight of the trailer.

Section 7-27. Hours and Manners of Launch. [Ord. 167, 3/28/2007]

- A. No vessel shall be launched and/or removed that is not legally registered or documented.
- B. No oversized vessel, as defined by state law (8 feet 6 inch width), shall be launched and/or removed by any commercial operator on Saturday, Sunday or holidays.
- C. Launching and/or removal of oversized vessels by any commercial operators are to be completed between 9:00 a.m. and one hour prior to sunset Monday through Thursday and between 9:00 a.m. and 3:00 p.m. on Fridays.
- D. Launching and/or removal of non-oversized vessels on Saturdays, Sundays or holidays by any commercial operators, shall be limited to vessels legally registered and will be limited to six per day. Commercial Boat Haulers Pass, along with the numbered ticket slip, must be completed and given to the attendant on duty. Hours are limited to 8:00 a.m. to 11:00 a.m. and/or 3:00 p.m. to 6:00 p.m. Michigan time.
- E. All vessels shall be launched and/or removed only at the places designated for such purpose. The docking or mooring of vessels to the launching ramps is strictly prohibited. Parking of motor vehicles and/or trailers on the

launching ramps is prohibited. No vessels shall be removed from trailers and staged in the parking lot. All vessels using a slip at the transient marina must pay the fee for that slip.

Section 7-28. Release of Liability. [Ord. 130, 4/17/2001]

Anyone who utilizes or authorizes someone to utilize municipal facilities shall sign a waiver of liability, exempting the City from liability for property damage or personal injury resulting from the use of such facilities. Failure to execute a waiver will not constitute an assumption of liability by the City. The City assumes no liability for property damage, or personal injury resulting from the use of municipal facilities.

Section 7-29. Penalties. [Ord. 130, 4/17/2001]

Any person or business which shall refuse, fail or neglect to comply with this ordinance shall be deemed guilty of a violation of this Code. The appropriate City officials shall have the power to do any and/or all of the following:

- A. Seize and remove any vessel at the boat launch or removal site or any other municipal pier, dock, or wharf and shall cause said vessel to be placed in storage. The vessel shall not be released until the expense and charges for moving, docking and/or storage, along with the appropriate fees and fines, are paid to the City by the owner or person lawfully in charge of said vessel.
- B. Make a prompt complaint to the proper court for any violation of the provisions of this chapter and aid in the prosecution thereof. Violations of this section are deemed a misdemeanor and may be punished by a fine not to exceed five hundred dollars (\$500.00) together with costs of prosecution or imprisonment in the County jail.
- C. Terminate launching and removal privileges at municipal facilities for that specific commercial operator and/or his/her successors in interest.
- D. The fines shall be a minimum of \$100.00 for the first offense and \$200.00 for the second offense.

Section 7-30. Exceptions. [Ord. 130, 4/17/2001]

Special permission for exceptions to these rules and regulations may be granted by the Recreational Facilities Superintendent except for the weight restrictions. Such permission must be written on the ticket for the watercraft in question and be initialed by the Recreational Facilities Superintendent or an authorized representative.

Section 7-31. Severability. [Ord. 130, 4/17/2001]

This section and the various parts, sections, sub-sections, provisions, and clauses are severable. If any part of this section is found to be invalid, or unconstitutional, it is hereby declared that the remainder of this section shall not be affected thereby.

ARTICLE V. LAUNCHING OF WATERCRAFT AT PUBLIC BOAT LAUNCH FACILITY.

Section 7-32. Launching Rules and Regulations. [Ord. 168, 3/28/2007]

- A. No vessel shall be launched and/or removed that is not legally registered or documented.
- B. It shall be unlawful for any person to launch or remove any watercraft at the public boat launch facility by any means other than by winching or floating. It is expressly prohibited to launch and/or remove watercraft by use of inboard or outboard motors.
- C. In addition to penalties provided for in Section 1-6 of this Code, anyone who shall violate this subsection B of this section shall, upon conviction, be prohibited from use of the public boat launch facility for a period of one (1) year.
- D. Motorized watercraft and sailboats shall not be launched or removed at any other place within the public boat launch facility or City Park except for the public boat launching facility, except that non-motorized canoes, kayaks, rafts or other non-motorized watercraft may be put into the Galien River or Lake Michigan at any accessible site within the City Park.
- E. Personal watercraft, as defined in Michigan statute, shall be allowed to be moored or parked temporarily for no more than two hours at personal watercraft designated areas only.

Chapter 8 - HAWKING AND PEDDLING

Section 8-1. Council approval required. [Ord. 194, 4/20/2011]

No person shall engage in the business of hawking, peddling, or vending any goods, wares, hardware, toilet articles, patent medicines, merchandise, fruits, vegetables, or foodstuffs, or services from door to door, or from upon the streets, alleys, and public places unless specifically authorized by resolution of the City Council, or its designee.

Section 8-2. Application. [Ord. 194, 4/20/2011]

Any person desiring to obtain approval to engage in the business of hawking or peddling as provided in Section 8-1 shall make a written application thereof to the City Clerk. The application for approval under the provisions of this Chapter shall contain the following items, together with additional information as the City Clerk may require:

- A. Full name and business address of the organization filing the application.
- B. List and general description of the articles to be sold or offered for sale.
- C. Proposed methods of conduction of the sale, delivering products to buyers.
- D. Dates and times of operation for which approval is desired.

Section 8-3. Registration Process. [Ord. 194, 4/20/2011]

Upon City Council approving an application on or before the next regularly scheduled council meeting for a person or business to engage in the business of hawking or peddling as provided in Section 8-1, any and all individuals engaged in hawking and peddling under the approved application shall register with the City Clerk and provide the following information:

- A. A copy of their driver(s) license or comparable State Identification Card with photo identification.

Section 8-4. Restrictions. [Ord. 194, 4/20/2011]

No person engaged in the business of hawking or peddling shall begin their activities within the City of New Buffalo:

- A. Before 9:00 a.m. nor after 8:00 p.m.
- B. On any Sunday.
- C. At any location that is posted as prohibiting solicitation.

Section 8-5. Persons peddling, meats, fish, etc.; prohibited. [Ord. 194, 4/20/2011]

No person shall engage in the business of hawking or peddling or vending any frozen, fresh, or raw meats or poultry, salt or smoked or cured meats or poultry, fish, or other seafood for human consumption from door to door or from the streets, alleys, or public places for any purpose whatsoever. This Section shall not apply to any vendor offering prepared foods for consumption by any method as part of any festival or fair approved by the Council, provided said vendor is recognized and so permitted by the health department and approved by the organization conducting and sponsoring the festival or fair.

Section 8-6. Exemptions. [Ord. 194, 4/20/2011]

This Chapter shall not apply to any vendor offering goods or wares by any methods as part of any festival or fair approved by the Council, provided said vendor is recognized and approved by the organization conducting and sponsoring the festival or fair.

Section 8-7. Repeal. [Ord. 194, 4/20/2011]

All other ordinances, and/or parts of ordinances in conflict with the provisions of this ordinance, except as herein provided, are hereby repealed only to the extent necessary to give this ordinance full force and effect.

Section 8-8. Severability. [Ord. 194, 4/20/2011]

If any Section, subsection, clause, phrase, or portion of this ordinance, or any application thereof, is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion, or application thereof, shall be deemed a separate, distinct and independent provisions, and such holding shall not affect the validity of the remaining portion thereof.

Section 8-9. Savings Clause. [Ord. 194, 4/20/2011]

The repeal or amendment herein shall not abrogate or affect any offense or act committed or done, or any penalty or forfeiture incurred, or any pending litigation or prosecution of any right established or occurring prior to the effective date of this Ordinance, as amended.

Section 8-10. Effective Date. [Ord. 194, 4/20/2011]

This ordinance shall take full force and effect immediately upon publication.

Chapter 9 - LICENSES GENERALLY

ARTICLE I. IN GENERAL

Section 9-1. Licensees for businesses not subject to personal property tax Required. [Ord. 104, 9/17/1996]

It shall be unlawful for any person to conduct a business within the City without first having obtained a license therefore in the manner set forth in this Chapter. Every business in the City shall be required to furnish information concerning ownership, emergency contacts and other life safety information, such as but not limited to hazardous materials storage, as specified upon an application provided by the City; such information which shall be kept on file with emergency services providers of the City.

Section 9-2. Same – Businesses Defined. [Ord. 104, 9/17/1996]

Businesses covered by this ordinance will be all establishments located within the Central Business District, General Commercial District, Waterfront Marina District and General Industrial District providing products or services to the general public. Establishments that have received special use permits to operate in areas other than those stated above are also required to obtain a business license.

Section 9-3. Same - Application. [Ord. 104, 9/17/1996]

Application for a license under the provisions of this Chapter shall be made to the City Clerk prior to the first (1st) of July of any year.

Section 9-4. Same - Fee. [Ord. 104, 9/17/1996]

The license fee for the operation of any business subject to the provisions of this Chapter shall be the sum of twenty-five dollars (\$25.00) per year.

Section 9-4. Same - Violations. [Ord. 104, 9/17/1996]

Violations for operation of a non-licensed business subject to the provisions of this Chapter shall be fined in the amount of twenty-five dollars (\$25.00) per occurrence.

ARTICLE II. TAXICAB LICENSES AND REGULATIONS

Section 9-5. Definitions. [Formerly Ord. 172, 11/13/2007; Ord. 205, 8/14/2013]

The following words and phrases, when used in this Chapter, shall, for the purpose of this Chapter, have the meanings respectively ascribed to them in the Section, except where the context clearly indicates a different meaning.

- A. Taxicab or Taxi. The term "taxicab" or "taxi" shall mean and include a motor vehicle designed to carry-fifteen (15) passengers or less, excluding the driver, operating on the public streets, alleys and quasi-public places of the City, and accepting passengers for transportation for hire on call or demand, between such points as may be directed by the passenger or passengers.
- B. License. A taxicab license issued by the City Council licensing the operation of a taxicab.
- C. For Hire. The term "for hire" when used in this Chapter, shall mean for remuneration or reward of any kind, paid or promised, either directly or indirectly.
- D. Driver. Any person who drives a taxicab.
- E. Owner. Any person, firm, partnership or corporation who either owns, or is the lessee of, or is the purchaser under contract of a motor vehicle used as a vehicle for hire under the provisions of this chapter.
- F. Rate Card. The card clearly describing the schedule of fares charged for taxicab use, which is displayed within each taxicab for which a license has been issued.
- G. Stand. A space reserved upon the public streets for the specific use of taxicabs.
- H. Cruising. The movement of unoccupied taxicabs over the public streets in search of, or soliciting, prospective passengers; except that an unoccupied taxicab proceeding to answer a telephone call for taxicab service from an intending passenger, and a taxicab returning by the most direct route, after having discharged a passenger or passengers, to the garage where said taxicab is housed, or to a taxicab stand, shall not be considered cruising.
- I. Applicant. Any person, partnership, association or corporation applying for a license hereunder, or any person applying for a driver's permit hereunder, as the case may be.
- J. Driver's permit. A permit issued by the Chief of Police permitting the holder thereof to drive a taxicab.

Section 9-6. License. [Formerly Ord. 172, 11/13/2007; Ord. 205, 8/14/2013]

No person shall operate, or cause to be operated, any vehicle for hire in the City, without first having obtained a business license from the City Clerk authorizing such operation. The licensee must be the owner or lessee of all vehicles for hire operated under its authority.

Section 9-7. Application for license. [Formerly Ord. 172, 11/13/2007; Ord. 205, 8/14/2013]

- A. Any person desiring a license to operate a taxicab on the streets of the City shall file with the City Clerk a sworn application therefore, on forms to be furnished by the City, which application shall contain the following:
 - 1. The name, age, residence and present occupation of the person applying for such license. If the applicant is a partnership, partners shall be given, and if the applicant is a corporation, the names, addresses and occupations of all officers and directors thereof shall be given along with the articles of incorporation.
 - 2. The make, body-style, year, serial and engine number, state license plate number, seating capacity, and

weight of the taxicab for which such license is being applied.

3. Whether there are any unpaid or un-bonded judgments of record against the applicant and, if so, the title of all actions and the amount of all judgments unpaid or un-bonded, and the court in which the same were rendered.
4. The experience of the applicant, both in the City and elsewhere, in the operation of taxicabs or other common carriers.
5. Whether or not the applicant for such license, or if a partnership or corporation, any of the partners, officers or directors thereof, has ever been charged with, convicted of or pled guilty to any felony, crime, or misdemeanor, and, if so, the date, nature of the offense, and the court in which such charge was made, conviction was obtained or plea of guilty was entered.
6. The place or places within the City, or elsewhere, where the person applying for such license purposes to establish his office, and from which he proposes to operate such taxicab.
7. The number of taxicabs for which the applicant holds licenses at the date of application.
8. Such other information as the Chief of Police may, at his/ her discretion, require.

Section 9-8. Inspection of applicant's vehicle. [Formerly Ord. 172, 11/13/2007; Ord. 205, 8/14/2013]

- A. Prior to the issuance of a license for a vehicle for hire, that vehicle must have been thoroughly inspected within the past 15 days by an automobile mechanic licensed by the State of Michigan. The applicant must present to the City a certificate from the mechanic who performed the inspection certifying that the vehicle is in full compliance with all relevant requirements of the Michigan Vehicle Code. The certificate may be on a form approved by the City. It shall be unlawful for an applicant to submit a fraudulent documentation certifying compliance with the Michigan Vehicle Code, and it shall be unlawful for any person to knowingly make a false statement, written or otherwise, concerning such compliance.
- B. Every vehicle for hire owner shall regularly inspect and maintain each said vehicle to ensure that each said vehicle is in a safe, clean and sanitary condition.
- C. Every vehicle for hire is subject to inspection by the Chief of Police and/or his designee to ensure that each said vehicle is in a safe, clean and sanitary condition.

Section 9-9. Processing applications. [Formerly Ord. 172, 11/13/2007; Ord. 205, 8/14/2013]

The City Clerk shall transmit each application for a license to the Chief of Police, who shall cause an investigation to be made of the character, fitness and qualifications of the person applying for such license. The Chief of Police shall thereupon transmit such application and inspection report, together with his recommendation thereon, to the City Council.

Section 9-10. Granting licenses. [Formerly Ord. 172, 11/13/2007; Ord. 205, 8/14/2013]

If the City Council shall determine, with the advice of the Chief of Police, that the person applying for such license is a suitable person, and the taxicab proposed to be licensed is a suitable vehicle for such purpose, it may grant a license therefor, to be issued upon the filing of the policy of insurance hereinafter required.

Section 9-11. Number of licenses. [Formerly Ord. 172, 11/13/2007; Ord. 205, 8/14/2013]

The City Council shall from time to time set by resolution the maximum number of licenses that may be issued by

the City for taxicabs. At the direction of the City Council, or on his or her own initiative, the Chief of Police shall prepare a report for consideration by City Council for this purpose. Such report shall assess if the number of licensed taxicabs is sufficient to adequately serve the needs of the public in the City, or when, in the judgment of the Chief of Police, the use of the streets of the City by additional taxicabs would interfere with the public use of the streets or congest traffic.

Section 9-12. Required construction and equipment. [Formerly Ord. 172, 11/13/2007; Ord. 205, 8/14/2013]

- A. It shall be unlawful for any vehicle for hire owner to cause or allow a vehicle for hire to be operated if it is not in full compliance with the requirements of this chapter of this code and the provisions of the State Motor Vehicle Code. In addition, each vehicle for hire shall conform to the following:
1. All vehicles for hire shall have at least four doors, all of which shall be lockable from the inside; both the passenger compartment and the driver compartment of said vehicle must be accessible from the outside by at least two of the four doors.
 2. Every vehicle for hire shall be equipped with a working heater.
 3. Every vehicle for hire shall be equipped with a speedometer properly installed, maintained in good working order and exposed to view. No vehicle for hire shall be operated, by an owner or his or her agent, while such speedometer is out of repair or disconnected.
 4. Every taxicab shall be equipped with a taximeter properly installed, maintained in good working order and exposed to view. No taxicab shall be operated by an owner or driver while such taximeter is out of repair or disconnected.
 5. Every taxicab shall be equipped with a card frame, furnished by the owner, for the proper display of the driver's identification card. The card frame shall be placed in the front of the taxicab and shall face the passenger and be so located as to be, at all times, in plain view of such passenger.
 6. Owners of taxicabs shall furnish an appropriate rate card for each taxicab. Such rate card shall be affixed to each taxicab in such a manner as to be visible from the passenger compartment. No person shall alter, deface or remove such rate card.

Section 9-13. Issuance of license. [Formerly Ord. 172, 11/13/2007; Ord. 205, 8/14/2013]

Licenses granted by the City Council shall be issued by the City Clerk upon payment of the fees hereinafter required, provided that no license shall be issued until the applicant has deposited with the City the policy of liability insurance hereinafter required and until the said policy has been found by the Chief of Police to comply with the terms of this ordinance.

Section 9-14. Property right. [Formerly Ord. 172, 11/13/2007; Ord. 205, 8/14/2013]

No person shall have a property right in any taxicab license issued by the City Council, nor shall any person have an unqualified right to obtain a taxicab license. Neither the refusal of the City Council to issue any such license, nor the revocation of any such license, shall result in any right of action or claim against the City on behalf of any such applicant or licensee.

Section 9-15. License fee. [Formerly Ord. 172, 11/13/2007; Ord. 205, 8/14/2013]

The owner of each taxicab for which a license is granted shall pay to the City a fee for an amount which shall be set from time to time by resolution of the City Council before a license therefor shall be issued. All licenses issued hereunder shall expire at midnight on December 31 following the issuance thereof.

Section 9-16. Licenses non-transferable. [Formerly Ord. 172, 11/13/2007; Ord. 205, 8/14/2013]

Licenses issued hereunder shall be non-transferable. Any transfer or attempted transfer thereof to any other person shall automatically revoke the license.

Section 9-17. Transfer of license to another vehicle. [Formerly Ord. 172, 11/13/2007; Ord. 205, 8/14/2013]

The owner of any taxicab for which a license has been granted must have the license transferred to another vehicle by filing with the City Clerk a request therefor, giving the make, year, body style, serial and engine number, state license plate number, seating capacity and weight of the vehicle to which he proposes to have such license transferred, provided that no transfer of a license shall be made until the Chief of Police has notified the City Clerk that the new vehicle is a proper vehicle for taxicab purposes, and provided further that no transfer of a license shall be made unless the original taxicab upon which such license was issued shall be actually retired from taxicab service.

Section 9-18. Change of ownership. [Formerly Ord. 172, 11/13/2007; Ord. 205, 8/14/2013]

Change of ownership or title to any taxicab or taxicabs shall automatically revoke any license or licenses previously granted for the operation of such taxicab or taxicabs, and the purchaser thereof shall not operate such taxicab or taxicabs until he has applied for and been granted a license under the terms of this Chapter and has complied with all terms of this Chapter.

Section 9-19. Suspension or revocation of licenses. [Formerly Ord. 172, 11/13/2007; Ord. 205, 8/14/2013]

Licenses may be suspended or revoked by the City Council at any time in case:

- A. The City Council finds that the information contained in the application for such taxicab license was false or misleading.
- B. The City Council finds that the owner, or any driver in his employ, has failed to operate the taxicab or taxicabs so licensed in accordance with provisions of this ordinance.
- C. The owner shall cease to operate any taxicab for a period of thirty (30) consecutive days without having obtained permission for cessation of such operation from the City Council.
- D. The City Council finds that the taxicab or taxicabs so licensed are operated at a rate of fare other than that-stated on their rate card.
- E. The City Council finds that the owner or any driver in his employ has violated any provision of the Uniform Traffic Code of the City while operating a taxicab licensed hereunder.

Section 9-20. Insurance policy required. [Formerly Ord. 172, 11/13/2007; Ord. 205, 8/14/2013]

No license shall be issued until the person applying therefor shall obtain and file with the City a policy of liability insurance issued by a responsible insurance company authorized to do business in the State of Michigan, providing insurance coverage for each taxicab for which a license is applied.

Section 9-21. Provisions of policy. [Formerly Ord. 172, 11/13/2007; Ord. 205, 8/14/2013]

Such policy of insurance shall insure the applicant against liability for personal injury or injuries to a passenger or passengers in such taxicab, or to a member or members of the general public, resulting from an accident or accidents in which such taxicab may be involved through the recklessness or negligence of its driver, operator, or owner, as well as against any damage to property.

Section 9-22. Limits of policy. [Formerly Ord. 172, 11/13/2007; Ord. 205, 8/14/2013]

Such policy shall provide minimum insurance protection for each taxicab in the amount of three-hundred thousand dollars (\$300,000.00) for injury to or death of one (1) person and one-million dollars (\$1,000,000.00) for injury to or death of more than one (1) person resulting from a single accident, and five-hundred thousand dollars (\$500,000.00) for damage to property (including personal belongings or baggage of passengers) as a result of one (1) accident. The policy limits may be changed by the City Council from time to time by resolution.

Section 9-23. Bankruptcy or insolvency. [Formerly Ord. 172, 11/13/2007; Ord. 205, 8/14/2013]

Such policy of insurance shall provide for continuing liability thereunder to the full amount thereof, notwithstanding any recovery thereon, and that the insolvency or bankruptcy of the insured shall not release the company.

Section 9-24. Notice of cancellation. [Formerly Ord. 172, 11/13/2007; Ord. 205, 8/14/2013]

Such policy shall further provide that it shall not be canceled, surrendered or revoked by either party except after five (5) days written notice to the City, furnished by the insurance company issuing such policy.

Section 9-25. Effect of cancellation or termination of policy. [Formerly Ord. 172, 11/13/2007; Ord. 205, 8/14/2013]

The cancellation, surrender or other termination of any insurance policy issued and filed with the City in compliance herewith shall automatically terminate the license of all taxicabs covered by such insurance policy unless another policy complying herewith shall be in effect and deposited with the City at the time of such cancellation or termination.

Section 9-26. Necessity for compliance. [Formerly Ord. 172, 11/13/2007; Ord. 205, 8/14/2013]

It shall be unlawful for any person to operate, or cause or permit to be operated, any taxicab on the streets of the City without having fully complied with the terms hereof this Chapter.

Section 9-27. Driver's permit. [Formerly Ord. 172, 11/13/2007; Ord. 205, 8/14/2013]

No person shall drive a taxicab on the streets of the City without having first obtained a driver's permit in accord with this chapter, nor shall any owner permit a taxicab to be operated by anyone who does not hold a City driver's permit.

Section 9-28. Application for driver's permit. [Formerly Ord. 172, 11/13/2007; Ord. 205, 8/14/2013]

- A. Any person desiring to drive a taxicab upon the streets of the City shall file with the City Clerk, on forms to be furnished by the City, a sworn application for a driver's permit, showing the following information:
1. Places of residence for five years prior to the date of the application.
 2. Copy of current state issued driver's license.
 3. Place of birth.
 4. Whether the applicant is a citizen of the United States.
 5. Previous employment for five years prior to the date of the application.

6. Whether applicant has ever been convicted of a felony or misdemeanor.
 7. Whether applicant has previously been licensed as a vehicle for hire or taxicab driver, and if so, whether applicant's vehicle for hire or taxicab driver's license has ever been suspended or revoked and for what cause, and whether any state motor vehicle operator's permit or license issued to applicant has ever been suspended or revoked, and for what cause.
 8. Such other information as the City Council may, in its discretion, require.
 9. Such application and statement shall be signed and sworn to by the applicant, and any false statement made by the applicant in applying for the license shall invalidate any vehicle for hire driver's license issued to him or her.
- B. Applicant must agree to be finger printed.
- C. Each application filed under this section shall have attached thereto two recent photographs of the applicant 2"x2" in size.

Section 9-29. General qualifications of applicant. [Formerly Ord. 172, 11/13/2007; Ord. 205, 8/14/2013]

- A. Each applicant for a vehicle for hire driver's license must meet the following requirements:
1. Be at least 18 years of age, with good eyesight and not subject to any infirmity of body which might render him or her unfit for the safe operation of a vehicle for hire.
 2. Possess a valid non probationary state issued chauffeur's license allowing applicant to operate a taxi.
 3. Be able to read, write and speak the English language.
 4. Be clean in appearance and person.

Section 9-30. Granting of driver's permit and fee. [Formerly Ord. 172, 11/13/2007; Ord. 205, 8/14/2013]

- A. The City Council shall establish, by resolution or motion, driver's permit fees in such amounts as they shall deem appropriate from time-to-time to defray the costs of investigation and issuance of these licenses. No such permit shall be issued unless and until the prescribed fee therefor has been paid.
- B. All permits issued hereunder shall expire at midnight on December 31 following the issuance thereof.
- C. Upon the filing of an application for a driver's permit, the City Clerk shall transmit the same to the Chief of Police who shall cause an investigation to be made of the character and fitness of such applicant. If, in the opinion of the Chief of Police, the applicant is a proper person to receive a driver's permit, he shall approve the issuance thereof, provided however, that no driver's permit shall be issued to any person who has not attained the full age of eighteen (18) years and who does not hold a state issued chauffeur's license allowing applicant to operate a taxi.
- D. The Chief of Police may refuse to authorize the issuance or renewal of a vehicle for hire driver's license in the case of an application from any person:
1. Whose state automobile operator's or chauffeur's license or vehicle for hire driver's license has been revoked or suspended within two years prior to the date of application.
 2. Who has been convicted of a felony or any misdemeanor relevant to one's fitness to operate a vehicle for hire.

3. Who has been convicted of driving an automobile resulting in death to any person.
4. Who has been convicted of a drinking/driving offense.
5. Who has failed to comply with the requirements of this chapter.
6. Who, for any other reason is unfit to drive a vehicle for hire.

E. An applicant refused under this section may appeal within 10 days to the City Council.

Section 9-31. Issuance of driver's permit. [Formerly Ord. 172, 11/13/2007; Ord. 205, 8/14/2013]

The Chief of Police shall issue to the applicant a driver's permit. Such permit shall be conspicuously displayed inside the vehicle at all times when he/she is engaged in driving a taxicab.

Section 9-32. Renewal of driver's permit. [Formerly Ord. 172, 11/13/2007; Ord. 205, 8/14/2013]

The Chief of Police may renew driver's permits from year to year. A driver applying for a renewal of his driver's permit shall make application therefor on a form furnished by the City Clerk and shall file the same with the Clerk, who shall transmit it to the Chief of Police, who shall make an investigation, and if he is satisfied that the applicant's driver's permit should be renewed, shall endorse his approval upon such application and shall issue the renewal.

Section 9-33. Reserved. [Formerly Ord. 172, 11/13/2007; Ord. 205, 8/14/2013]

Section 9-34. Transfer of driver's permit prohibited. [Formerly Ord. 172, 11/13/2007; Ord. 205, 8/14/2013]

Driver's permits issued hereunder shall be non-transferable. It shall be unlawful for any person holding a driver's permit to transfer, or attempt to transfer, such driver's permit or any badge or card issued hereunder, to any other person; and it shall be unlawful for any person holding such driver's permit to knowingly permit any other person to have the same or the badge thereof in his possession; and it shall be unlawful for any person to wear or have in his possession while operating a taxicab in the City, a driver's permit, or any badge or card, issued to any other person.

Section 9-35. Revocation of driver's permit. [Formerly Ord. 172, 11/13/2007; Ord. 205, 8/14/2013]

- A. The Chief of Police shall have power to revoke any driver's permit issued under the terms herein in the following cases:
1. In the event the holder thereof shall be convicted of or plead guilty to any violation of this ordinance or of the Uniform Traffic Code of the City or any traffic ordinance of any municipal corporation or of any statute or penal law of the State of Michigan, whether in relation to the operation of motor vehicles or otherwise.
 2. In the event the holder thereof shall be involved in any accident causing injury to or death of any person, or injury to or destruction of any property.
 3. Whenever, in the opinion of the Chief of Police, the holder thereof shall, by their conduct, demonstrate that the best interests of the public health, safety and welfare require that his driver's permit be revoked.

Section 9-36. Delegation of duty. [Formerly Ord. 172, 11/13/2007; Ord. 205, 8/14/2013]

The Chief of Police shall have authority to delegate any of the duties imposed upon him or her with respect to the investigation of and issuance of driver's permits to employees of the Police Department of the City of New Buffalo.

Section 9-37. Reserved. [Formerly Ord. 172, 11/13/2007; Ord. 205, 8/14/2013]**Section 9-38. Taxicab clearly marked.** [Formerly Ord. 172, 11/13/2007; Ord. 205, 8/14/2013]

Taxicabs shall be clearly and permanently marked to show that they are taxicabs; magnetic signs do not qualify.

Section 9-39. Reserved . [Formerly Ord. 172, 11/13/2007; Ord. 205, 8/14/2013]**Section 9-40. Compliance with laws and ordinances.** [Formerly Ord. 172, 11/13/2007; Ord. 205, 8/14/2013]

Each taxicab licensed hereunder shall be operated in accordance with the laws of this state and the Code and ordinances of the City and with due regard for the safety, comfort, and convenience of passengers and for the safety of the general public. No taxicab shall be operated at a rate of speed greater than that established by state law or by the Code and ordinances of the City.

Section 9-41. Report of accidents. [Formerly Ord. 172, 11/13/2007; Ord. 205, 8/14/2013]

All accidents arising from or in connection with the operation of taxicabs which result in death of or injury to any person, or in damage to any property, shall be reported within twelve (12) hours from the time of occurrence to the City's Police Department. Such accidents must also be reported in a manner consistent with State of Michigan law.

Section 9-42. Dress. [Formerly Ord. 172, 11/13/2007; Ord. 205, 8/14/2013]

Drivers of taxicabs shall be clean in dress and in person at all times while operating a taxicab.

Section 9-43. Lost articles. [Formerly Ord. 172, 11/13/2007; Ord. 205, 8/14/2013]

Every driver of a taxicab shall search the interior of such taxicab at the termination of each trip for any article of value which may be left in such taxicab by a passenger. Any article found therein shall immediately be returned to the passenger owning it, if they be known; otherwise it shall be deposited with the owner of the taxicab at the conclusion of the driver's tour of duty. A report of the finding and deposit of such article shall be made by the owner within twenty-four (24) hours thereafter to the City's Police Department.

Section 9-44. Cruising regulated. [Formerly Ord. 172, 11/13/2007; Ord. 205, 8/14/2013]

No driver shall cruise in search of passengers except on streets within and along the central business district, general commercial district, waterfront marina, and general industrial; and whenever a taxicab becomes unoccupied outside the cruising area its driver shall proceed at once by the most direct route to the garage where the vehicle is housed or to the taxicab stand customarily occupied by such taxicab or a permitted cruising area.

Section 9-45. Solicitation of other common carrier passenger prohibited.

[Formerly Ord. 172, 11/13/2007; Ord. 205, 8/14/2013]

No owner or driver of a taxicab shall solicit or permit the solicitation of the patronage of persons assembled at the terminal of any common carrier or mass transportation vehicle, when such persons have assembled for the purpose of using the service of said common carrier or mass transportation vehicle. Nothing herein contained shall be

construed to prohibit or interfere with response to any call for a taxicab made by signal from a pedestrian.

Section 9-46. Passengers. [Formerly Ord. 172, 11/13/2007; Ord. 205, 8/14/2013]

- A. No driver or owner of a taxicab shall refuse or neglect to convey any orderly person or persons upon request by signal or telephone call, unless the taxicab is previously engaged. When a taxicab has been engaged by a passenger, no additional passengers shall be received therein except with the express consent of the first passenger.
- B. Drivers shall not receive or discharge passengers in the roadway, but shall pull up to the right-hand sidewalk as nearly as possible, or in the absence of a sidewalk, to the extreme right-hand side of the road and there receive or discharge passengers. Passengers shall not be discharged into traffic lanes.

Section 9-47. Drivers drinking, smoking on duty prohibited. [Formerly Ord. 172, 11/13/2007; Ord. 205, 8/14/2013]

- A. No taxicab driver shall drink beer, wine, spirits or other alcoholic beverages or liquors while on duty.
- B. No driver shall have in his or her possession a lighted cigarette, cigar or pipe while any passenger is within that driver's vehicle for hire.

Section 9-48. Immorality. [Formerly Ord. 172, 11/13/2007; Ord. 205, 8/14/2013]

No owner or driver of a taxicab shall use, or permit the use of, any taxicab for immoral or illegal purposes.

Section 9-49. Taxicab stands. [Formerly Ord. 172, 11/13/2007; Ord. 205, 8/14/2013]

The City Council shall have power to establish such taxicab stands as in their judgment are necessary for the proper service of the public. The City Council shall have power to change the location of, or to abolish, any taxicab stand established under the terms hereof. Such stands are for exclusive use by City of New Buffalo Taxicab License holders on a first come, first serve basis.

Section 9-50. Penalty for violation. [Formerly Ord. 172, 11/13/2007; Ord. 205, 8/14/2013]

Any violation of any provision of this article shall be a misdemeanor, punishable by not more than 90 days in jail and/or a \$500 fine and may include the revocation or suspension of any license or permit.

ARTICLE III. GARAGE SALE LICENSES

Section 9-51. Definitions. [Ord. 126, 1/11/2000]

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

- A. Garage Sales: Includes all sales entitled garage sale, lawn sale, attic sale, rummage sale, estate sale, flea market sale, or any similar, casual sale of tangible personal property which is advertised by any means whereby the public at large is or can be made aware of the sale.
- B. Goods: Includes any goods, warehouse merchandise or other property capable of being the object of a sale regulated hereunder.
- C. Person: Individuals, partnerships, voluntary associations and corporations.

Section 9-52. Permits and Fees. [Ord. 126, 1/11/2000]

It shall, be unlawful for any person to conduct a garage sale at a single family residence or a duplex unit in the City without first filing with the City Clerk the information specified in Section 9-54 and obtaining from the Clerk a license to do so, to be known as a "Garage Sale License." The fee for such license shall be \$1.00.

Section 9-53. Licensing. [Ord. 126, 1/11/2000]

A garage sale license shall be issued to any one household unit no more than 2 times within a calendar year and shall be issued for no more than 3 consecutive calendar days. Each license issued under this article must be prominently displayed on the premises upon which the garage sale is conducted throughout the entire period of the licensed sale.

Section 9-54. Information to be filed. [Ord. 126, 1/11/2000]

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

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

Section 9-55. Exceptions. [Ord. 126, 1/11/2000]

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

- A. Persons selling goods pursuant to an order or process of a court of competent jurisdiction.
- B. Persons acting in accordance with their powers and duties as public officials.
- C. Any person selling or advertising for sale an item or items of personal property which are specifically named or described in the advertisement and in which separate items do not exceed five in number.

Section 9-56. Time of Sales. [Ord. 126, 1/11/2000]

Permitted sales shall only be held between the hours of 8:00 a.m. and 5:00 p.m. No public street or right-of-way shall be used for the conduct of any such sale.

Section 9-57. Advertising. [Ord. 126, 1/11/2000]

No advertising of a sale shall be done by posting of signs on telephone poles, power poles, trees, traffic signs or in any manner within the street rights-of-way.

ARTICLE IV. PAWNBROKERS.

Section 9-58. Definition. [Ord. 170, 6/12/2007]

As used in this Article, "pawnbrokers" means those individuals identified in Section 3 of Act No. 469, of the Public Acts 2002, being cited as M.C.L.A. § 446.203.

Section 9-59. Licensing and Bond. [Ord. 170, 6/12/2007]

- A. A person, corporation, or firm shall not carry on the business of pawnbroker in the City without first having obtained a license as authorized by Act No. 469, of the Public Acts 2002, being cited as M.C.L.A. § 446.201 et seq.
 - (1) A license fee that shall be required to be paid to the City in order to acquire a pawnbroker license pursuant to this chapter shall be set by a resolution of the City Council (between \$50.00 and \$500.00).;
- B. As set forth in § 2 of Act 469 of Public Acts 2002, before issuance of the license, the applicant shall pay to the City Treasurer an annual license fee in the amount determined under subsection (A)(1) and give a bond to the City in its corporate name, in the penal sum of \$3,000.00, with at least 2 sureties, conditioned for the faithful performance of the duties and obligations pertaining to the conduct of the business and for the payment of all costs and damages incurred by any violation of this act. The governmental unit shall approve the bond.

Section 9-60. Reporting Procedures. [Ord. 170, 6/12/2007]

- A. A pawnbroker shall comply with all of the requirements of Act No. 231 of the Public Acts of 1945, as amended, being cited as M.C.L.A. § 445.451 et seq., and Act No. 469 of the Public Acts 2002, being cited as M.C.L.A. § 446.201 et seq.
- B. Every pawnbroker, except those exempted by operation of Section 9-60, Subsection A, shall, within 48 hours, transmit to the Chief of Police by means of electronic transmission through a modem or similar device or by delivery of a computer disk, in such a format that the data are capable of direct electronic entry into the City's computerized systems for identifying pawned property, all transactions in which the pawnbroker received used goods the preceding day by pawn, trade, purchase, or consignment. A transaction reported by electronic transmission under this subsection shall not be reported on paper forms unless the City Manager so requests.
- C. When reporting, a thumbprint of the persons pawning property shall be electronically scanned and transmitted to the Chief of Police in the same manner as Subsection B.
- D. A pawnbroker need not report electronically transactions taking place at a business location where the number of pawn transactions in each 90 day period does not exceed ten. A pawnbroker reasonably believing a location at which he or she conducts a pawn shop qualifies under this subsection for exemption from computerized reporting and wishing to be exempt from the requirements of Subsection A herein shall sign, under penalty of perjury, a declaration to the effect in a form developed by the Chief of Police or the Chief of Police's designee, and once the declaration is signed, so long as the volume of transactions does not exceed ten each 90 day period, pawn transactions taking place at that pawnshop need not be reported electronically, but shall be reported on paper forms.
- E. If a licensee under this chapter or any of his or her employees is found guilty of violating any of the provisions of this chapter, the Chief of Police shall report such violation to the City Clerk. The City Clerk shall:
 - (1) Notify the City Manager and the licensee and provide the licensee notice that the City intends to revoke his or her license; and,
 - (2) Shall provide the licensee an opportunity for a hearing before the City Clerk. If the City Clerk determines that the licensee has been found guilty of violating any of the provisions of this chapter, the City Manager

shall then revoke the license. The violator, upon such revocation, shall not be issued a license as a pawnbroker for a period of one year from the date of the revocation.

Section 9-61. Penalty. [Ord. 170, 6/12/2007]

Any person violating any of the provisions of this chapter shall be held responsible for a municipal civil infraction and prosecuted in accordance with the Municipal Civil Infractions Ordinance. The fine for violation of a municipal civil infraction under this chapter shall be \$100; the second violation, \$250; and the third or any subsequent violation within any one calendar year, \$500.

Chapter 10 - MOTOR VEHICLES AND TRAFFIC

ARTICLE I. IN GENERAL

Section 10-1. Uniform Traffic Code Adopted [Ord. 127, 5/17/2000]

Pursuant to the authority granted by the City of New Buffalo by MCL 117.3; MSA 5.2073, as amended, the Michigan Vehicle Code (MCL 257.1; MSA 9.1801 through and including MCL 257.923; MSA 9.2623, as may be amended from time to time by the State of Michigan) is adopted by reference and made part of this Chapter as if fully set forth herein.

A. Purpose.

The purpose of the Michigan Vehicle Code is to provide for the registration, titling, sale, transfer and regulation of certain vehicles operated upon the public highways of this state or any other place open to the general public or generally accessible to motor vehicles and distressed vehicles; to provide for the examination, licensing and control of operators and chauffeurs; to provide for the giving of proof of financial responsibility and security by owners and operators of vehicles; to provide for the regulation and use of streets and highways; to provide penalties and sanctions for a violation of the Code; to provide for civil liability of owners and operators of vehicles and to provide for the enforcement of the Code; and to provide for the creation of and to prescribe the powers and duties of certain state and local agencies. Complete printed copies of the Michigan Vehicle Code shall be kept at the office of the City Clerk available for inspection by and distribution to the public at all times. References in the Michigan Vehicle Code to "state" shall mean the City of New Buffalo. Section numbers of the Michigan Vehicle Code shall also apply to violations of this City ordinance, except that City ordinance violations shall bear the prefix "F10" instead of "257."

B. Evidence of insurance; produce upon request; driver's license suspension (MCL 257.328).

1. The owner of a motor vehicle who operates or permits the operation of the motor vehicle upon the streets of the City or the operator of the motor vehicle shall produce, pursuant to subsection (2), upon request of a police officer, evidence that the motor vehicle is insured under Chapter 31 of Act No. 218 of the Public Acts of 1956, as amended, being sections 500.3101 through 500.3179 of the Michigan Compiled Laws. An owner or operator of a motor vehicle who fails to produce evidence under this subsection when requested to produce that evidence is responsible for a civil infraction.
2. A certificate of insurance, if issued by an insurance company, which certificate states that security which meets the requirements of sections 3101 and 3102 of Act No. 218 of the Public Acts of 1956, as amended, being sections 500.3101 and 500.3102 of the Michigan Compiled Laws, is in force and shall be accepted as prima facie evidence that insurance is in force for the motor vehicle described in the certificate of insurance until the expiration date shown on the certificate. The certificate, in addition to describing the motor vehicles for which insurance is in effect, shall state the name of each person named on the policy, policy declaration, or a declaration certificate whose operation of the vehicle would cause the liability coverage of that insurance to become void.
3. If an owner of a motor vehicle is determined to be responsible for a violation of subsection (1), the court in which the civil infraction determination is entered may require the person to surrender his or her operator's or chauffeur's license unless proof that the vehicle has insurance meeting the requirements of section 3102 of Act No. 218 of the Public Acts of 1956, as amended, is submitted to the court. If the court requires the license to be surrendered, the court shall order the Secretary of State to suspend the person's license and shall forward the surrendered license and a certificate of civil infraction to the Secretary of State. Upon receipt of the certificate of civil infraction and the surrendered license, the Secretary of State shall suspend the person's license beginning with the date on which a person is determined to be responsible for the civil

infraction for a period of thirty (30) days or until proof of insurance which meets the requirements of section 3102 of Act No. 218 of the Public Acts of 1956, as amended, is submitted to the Secretary of State, whichever occurs later. If the license is not forwarded, an explanation of the reason why it is not forwarded shall be attached. A person who submits proof of insurance to the Secretary of State under this subsection shall pay a service fee of ten dollars (\$10.00) to the Secretary of State. The person shall not be required to be examined as set forth in section 320c of the Michigan Motor Vehicle Code.

4. An owner or operator of a motor vehicle who knowingly produces false evidence under this section is guilty of a misdemeanor, punishable by imprisonment for not more than ninety (90) days, or a fine of not more than five-hundred dollars (\$500,00), or both.
5. Points shall not be entered on a driver's record for a violation of this section.
6. This section does not apply to the owner or operator of a motor vehicle that is registered in a state other than this state or a foreign country or province.

C. Mandatory child restraints (MCL 257.710d).

1. Except as provided in this section, or as otherwise provided by law, a rule promulgated pursuant to Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 through 24.315 of the Michigan Compiled Laws, or federal regulations, each driver transporting a child in a motor vehicle shall properly secure each child in a child restraint system as follows:
 - a. Any child less than one (1) year of age in a child restraint system which meets the standards prescribed in 49 CFR 571.213.
 - b. Any child one (1) year of age or more but less than four (4) years of age, when transported in the front seat, in a child restraint system which meets the standards of 49 CFR 571.213.
 - c. Any child one (1) year of age or more but less than four (4) years of age, when transported in the rear seat, in a child restraint system which meets the standards of 49 CFR 571.213, unless the child is secured by a safety belt provided in the motor vehicle
2. This section does not apply to a nonresident driver transporting a child in this state or to any child being nursed.
3. This section does not apply if the motor vehicle being driven is a bus, school bus, taxicab, moped, motorcycle, or other motor vehicle not required to be equipped with safety belts under section 710b of the Michigan Motor Vehicle Code or federal law or regulations.
4. A person who violates this section is responsible for a civil infraction.
5. Points shall not be assessed under section 320a of the Michigan Motor Vehicle Code for a violation of this section. An abstract required under section 732 of the Michigan Motor Vehicle Code shall not be submitted to the Secretary of State regarding a violation of this section.
6. The Secretary of State may exempt by rules promulgated pursuant to Act No. 306 of the Public Acts of 1969, as amended, a class of children from the requirements of this section, if the Secretary of State determines that the use of the child restraint system required under subsection (1) is impractical because of physical unfitness, a medical problem, or body size. The Secretary of State may specify alternate means of protection for children exempted under this subsection.

D. Mandatory safety belt use; exemptions (MCL 257.710e).

1. This section shall not apply to a driver or passenger of

- a. A motor vehicle manufactured before January 1, 1965.
 - b. A bus.
 - c. A motorcycle.
 - d. A moped.
 - e. A motor vehicle if the driver or passenger possesses a written verification from a physician that the driver or passenger is unable to wear a safety belt for physical or medical reasons.
 - f. A motor vehicle which is not required to be equipped with safety belts under federal law. A commercial or United States postal service vehicle which makes frequent stops for the purpose of pickup or delivery of goods or services.
 - g. A motor vehicle operated by a rural carrier of the United States postal service while serving his or her rural postal route.
2. This section shall not apply to a passenger of a school bus.
3. Each driver and front seat passenger of a motor vehicle operated on a street or highway in the City shall wear a properly adjusted and fastened safety belt, except that a child less than four (4) years of age shall be protected as required in Section 10-1 (L) of Chapter 10 of the New Buffalo City Code.
- Each driver of a motor vehicle transporting a child four (4) years of age or more but less than sixteen (16) years of age in the front seat of the motor vehicle shall secure the child in a properly adjusted and fastened safety belt.
4. Enforcement of this section shall be accomplished only as a secondary action when a driver of a motor vehicle has been detained for a suspected violation of another section of this Code or another act.
5. Failure to wear a safety belt in violation of this section may be considered evidence of negligence and may reduce the recovery for damage arising out of the ownership, maintenance, or operation of a motor vehicle. However, such negligence shall not reduce the recovery for damages by more than five percent (5%).
6. A person who violates this section is responsible for a civil infraction.
7. Points shall not be assessed under section 320a of the Michigan Motor Vehicle Code for a violation of this section.
8. This section shall not apply after April 1, 1989, if, on that date or at any time thereafter, the United States government requires the installation of passive passenger restraints in new automobiles, whether that requirement is by statute, administrative rule, court decision, or any other way.
- E. Pursuant to the authority granted the City of New Buffalo by MCL 257.951, the Uniform Traffic Code for Cities, Townships and Villages promulgated by the Director of the Michigan Department of State Police and made effective November, 2003, including the penalties provided in that Uniform Traffic Code, is adopted by reference and made a part of this Article. References in the Uniform Traffic Code to a "governmental unit" shall mean the City of New Buffalo. [Ord. 146, 9/14/2004]

The purpose of the Uniform Traffic Code is to provide for the regulation of motor vehicle and other traffic within the City of New Buffalo, consistent with and supplementary to the Michigan Vehicle Code previously adopted by the City, and to provide for the enforcement of the Code and penalties and sanctions for violations of the Code. Complete printed copies of the Uniform Traffic Code shall be kept at the office of the City Clerk, available for inspection by the public. The Uniform Traffic Code has its own numbering system, and all citations for violations of the Code issued by the police or other departments of the City shall refer to the appropriate section number of the Uniform Traffic Code. [Ord. 146, 9/14/2004]

[Ord. 146, Section 2: Any subsections or provisions of the Code of Ordinances of the City of New Buffalo conflicting with the Uniform Traffic Code are repealed.]

ARTICLE II. TRUCK TRAFFIC

Section 10-2. Definitions.

- A. Person. Person is defined as any individual, firm, partnership or corporation.
- B. Through Truck Traffic. Through truck traffic shall mean any delivery truck, common carrier, tractor trailer, van, tow truck, or dump truck which is used or employed by its operator or owner as a vehicle by which products, goods, commodities, or raw materials are transported from an origin or place other than within the corporate limits of the City or the Township of New Buffalo to a place or destination other than within the corporate limits of the City or the Township of New Buffalo.
- C. Local Truck Traffic. Local truck traffic shall mean any delivery truck, common carrier, tractor trailer, van, tow truck, or dump truck which is used or employed by its operator or owner as a vehicle by which products, goods, commodities, or raw materials are transported either from an origin or place within the corporate limits of the City and the Township of New Buffalo to a place or destination within or without the corporate limits of the City and the Township of New Buffalo or are transported from an origin or a place outside the corporate limits of the City and the Township of New Buffalo to a place or destination within the corporate limits of the City and the Township of New Buffalo.

Section 10-3. Prohibitions.

- A. Through truck traffic is expressly prohibited upon any street within the corporate limits of the City.
- B. Local truck traffic is specifically restricted to the following streets within the corporate limits of the City:
 - 1. Whittaker Street from south City limits.
 - 2. Marquette Drive from east City limits.
 - 3. Detroit Street from the west City limits.
 - 4. Madison Street from west City limits.
 - 5. Jefferson Street from east City limits.
 - 6. Clay Street from east City limits.
 - 7. Bell Avenue from east City limits.

Local truck traffic is prohibited upon any street within the corporate limits of the City, except as listed above.

Section 10-4. Exceptions.

The provisions of this Article are not intended to restrict in any manner emergency use of streets by through or local truck traffic other than those listed in this Article, nor are they intended to restrict casual use by retail or wholesale establishments or moving companies when use of a street by a truck is necessitated for pickups and deliveries to a location in the City.

Section 10-5. Authority to require weighing of vehicle.

A police officer or a duly authorized agent of the Department of State Highways and Transportation or a County Road Commissioner having reason to believe that the weight of a vehicle and load is unlawful may require the driver to stop and submit to a weighing of the vehicle all as provided in Section 724, Chapter VI of Act 300 of 1949, as amended, of the Michigan Vehicle Code.

Section 10-6. Penalties.

Any person who violates a prohibition or limitation established pursuant to this Article is responsible for a civil infraction as that term is defined in the Michigan Vehicle Code and as further defined in the Uniform Traffic Code for Cities, Townships, and Villages, which traffic code has heretofore been adopted by reference as the traffic code for the City.

ARTICLE III. PARKING VIOLATIONS BUREAU

Section 10-7. Creation.

It is hereby created for the City a Parking Violations Bureau, pursuant to Act No. 154 of the Public Acts of 1968, as amended.

Section 10-8. Powers, duties, and membership.

The Parking Violations Bureau shall be in the charge of the Chief of Police. The Bureau shall enforce, as hereinafter provided, all non-moving traffic and/or parking violations as civil infractions within the City and other regulations allowed by law. Each Patrol Officer and Reserve Officer of the Police Department shall be members of the Parking Violations Bureau to act in the absence of the Chief of Police, and so shall any other employees of the City as designated in writing by the City Manager. Such members shall be known as Parking Enforcement Officials of the Parking Violations Bureau. The City Clerk and City Treasurer, along with their duly appointed designees, shall be members of the Parking Violations Bureau to act as the Treasurer and/or Clerk of said Bureau in the absence of the Chief of Police or any other Parking Enforcement Official for the collection of fines and penalties.

Section 10-9. Resolution of violations.

Said Bureau is hereby authorized to grant any person charged with a civil infraction of any non-moving traffic and/or parking violation the option of either paying said Bureau the fines and penalties hereinafter provided for such violations, or of answering to a complaint before the magistrate or any court having competent jurisdiction. It shall not be mandatory for the Bureau to grant any person receiving a citation the optional choice provided above.

Section 10-10. Delinquent violations.

If any person shall receive a citation for a non-moving traffic and/or parking violation and neglects and/or refuses to pay the fine or penalty herein provided at the said Bureau, then it shall be the duty of the person in charge of such Bureau, or some other officer having knowledge of the facts to forthwith make complaint before any court having competent jurisdiction, and to bring the violator before the court to answer the said complaint.

Section 10-11. Fines and penalties.

The schedule of fines for a non-moving traffic and/or parking violation within the City shall be as determined from time to time by resolution of the City Council. The Council may also set from time to time the length of time a violation shall be considered a civil infraction, and at which point any unresolved violation may become a criminal misdemeanor subject to the provisions of Section 1-7 of this Code.

Section 10-12. Receipt and accounting of fines and penalties.

It shall be the duty of the Parking Violations Bureau to keep a full and complete and accurate account of all violations settled before it, and of all monies received by it and it shall deposit all such monies with the City Treasurer within a timely fashion, with an exact copy or carbon copy of the receipt given to the violator for any sum paid, and in all cases it shall be the duty of the officer receiving any sums to give the violator a receipt.

ARTICLE IV. PARKING AND STORING OF MOTOR VEHICLES

Section 10-13. Parking and storing of vehicles on rights-of-way.

No person, firm, or corporation shall park or store on any public right-of-way within the City any motor vehicles which are either not in operating condition or not in operating use for a period of more than seven (7) days.

Section 10-14. Presumption.

The failure to move such motor vehicle from any such location as provided in Section 1013 above, for a period of more than seven (7) days, shall be presumed to be in violation of this Article.

Section 10-15. Additional remedies.

In the event of the violation of Section 10-13 above, the City may cause the said vehicle to be towed away and impounded and released only upon the payment of the towage charges and storage charges in the amount of one dollar (\$1.00) for each twenty-four (24) hour period said vehicle is so impounded pursuant to this Article, in addition to any other penalty that may be imposed upon a violation of this Article.

ARTICLE V. MOBILE HOMES, TRAILERS AND RECREATIONAL VEHICLES.

Section 10-16. Definitions. [Ord. 131, 6/12/2001]

The following words and phrases, when used in this Article, shall have the meaning respectively ascribed to them:

Mobile home shall mean "mobile home" as defined in the "mobile home commission act," (MCL 125.1101 et seq., MSA 19.855 (1) et seq.).

Recreational vehicles shall include:

- 1) Boats and boat trailers which shall include boats, floats and rafts, plus the normal equipment to transport the same on the highway;
- 2) Folding tent trailer which is a folding structure, mounted on wheels and designed for travel and vacation use;
- 3) Motorized home which is a portable dwelling designed and constructed as an integral part of a self-propelled vehicle;
- 4) Pickup camper which is a structure designed primarily to be mounted on a pickup or truck chassis and with sufficient equipment to render it suitable for use as a temporary dwelling for travel, recreational and vacation uses;
- 5) Travel trailer which is a vehicular, portable structure built on a chassis, designed to be used as a temporary dwelling for travel, recreational and vacation uses, permanently identified "travel trailer" by the manufacturer or a movable or portable dwelling, eight (8) feet or less in width by thirty-three (33) feet or less in length constructed to be towed on its own chassis and connected to utilities and designed without a permanent foundation for year-round living;
- 6) Utility trailer which is a vehicle used to transport motorcycles, snowmobiles, go-carts or stock cars.

Section 10-17. Public parking. [Ord. 131, 6/12/2001]

No person shall park or permit the parking of any mobile home or recreational vehicle upon any public highway, street, alley, park or other public place within the City. Emergency or temporary parking or stopping is permitted on any street, alley or highway for not longer than one hour subject to any other and further prohibitions, regulations or limitations imposed by the traffic and parking regulations for that street, alley or highway.

Section 10-18. Parking outside of licensed park. [Ord. 131, 6/12/2001]

No person shall park or permit the parking of any unoccupied mobile home or recreational vehicle outside of a duly licensed mobile home park, except the parking of unoccupied mobile homes or recreational vehicles in any accessory private garage building, or in any rear yard, is permitted providing no living quarters shall be maintained or any business practiced in such trailers; provided, however, that nothing herein contained shall be construed to hinder or prevent any person from engaging in the business of handling mobile homes or recreational vehicles for sale or resale or for storage, subject to such regulations as may be prescribed by this Code relative to zoning or regulation of such business.

Section 10-19. Permit for temporary occupancy. [Ord. 131, 6/12/2001]

A permit for the occupancy of a mobile home or recreational vehicle may be granted for a period of time not exceeding four (4) weeks, on a residence lot in conjunction with an occupied permanent residence, provided that the occupant of such mobile home or recreational vehicle be a friend or a relative of the occupant of such permanent residence and be a visiting guest and not a guest for hire. Written consent shall be obtained from and signed by the occupant of the main dwelling on such residence lot, giving consent for the use of the sanitary facilities of such main dwelling. Such permits shall be secured from the Chief of Police or his/her designee. Application for such permit shall be made within twenty-four (24) hours after placing such mobile home or recreational vehicle on such premises on such forms as shall be prescribed by the Chief of Police. Such permit shall limit the duration of stay to a period of time not to exceed four (4) weeks.

Section 10-20. Enforcement. [Ord. 131, 6/12/2001]

Any violation of this article shall be a civil infraction punishable in accordance with Section 1-6 of the Code of Ordinances. In addition to the penalty applicable to a violation of this Code, any person parking, occupying or using any mobile home or recreational vehicle parked in violation of this article or any person maintaining or operating any mobile home or trailer camp in violation of this article or in violation of any regulation of the City or of any statute of the state pertaining to mobile home or trailer camps shall be guilty of maintaining a nuisance per se and upon application by the City to any court of competent jurisdiction the maintenance of such nuisance may be restrained and enjoined.

In the event of the violation of this Code, the City may cause the mobile home or recreational vehicle to be towed away and impounded and released only upon the payment of the towing and storage charges by the owner of the mobile home or recreational vehicle. These charges would be in addition to any other penalty that may be imposed for a violation of this article.

Chapter 11 - RESERVED

Section 11-1 through Section 11-X. Reserved. [Ord. 201, 3/20/2013]

Chapter 12 - NOISE, NUISANCE, PROHIBITED ACTS AND OTHER MISCELLANEOUS PROVISIONS

ARTICLE I. IN GENERAL

Section 12-1. Purpose. [Ord. 202, 3/20/2013]

The purpose of Chapter 12 of the City of New Buffalo Code of Ordinances is to maintain the present tradition of this community regarding noise and nuisances. It is meant to exempt certain activities which are currently acceptable and eliminate the need for those activities to seek permits. This Chapter is not meant to advance nor inhibit religion and is enacted to avoid the excessive government entanglement that issuing permits would entail with those activities which are currently acceptable in the community.

The City of New Buffalo encourages a lively social environment, economically viable downtown with a wide variety of uses in a pedestrian-oriented setting and peaceful and pleasant residential areas.

Sections 12-2 through Section 12-5. Reserved. [Ord. 202, 3/20/2013]

ARTICLE II. NOISE

Section 12-6. Definitions. [Ord. 202, 3/20/2013]

For the purpose of this article, the following items have the meaning ascribed to them as hereinafter defined, unless where otherwise expressly stated or where the context clearly defines a different meaning.

Commercial area means a district that has been assigned a zoning designation of CBD, GCD, WM or I-1 in accordance with Appendix A of this Code.

Construction means any site preparation, assembly, erection, substantial repair, alteration, demolition or similar action, for or of private rights-of-way, structures, buildings, utilities or similar property.

Continued duration means fifteen (15) or more minutes.

Emergency means any occurrence or set of circumstances involving actual or imminent physical trauma or property damage which demands immediate action.

Emergency work means any work performed for the purpose of preventing or alleviating the physical trauma or property damage threatened or caused by an emergency.

Fireworks means any composition or device, except for a starting pistol, a flare gun, or a flare, designed for the purpose of producing a visible or audible effect by combustion, deflagration, or detonation. Fireworks consist of consumer fireworks, low-impact fireworks, articles pyrotechnic, display fireworks, and special effects, as defined under Michigan Fireworks Safety Act, Act 256 of 2011 as amended.

Frequently means one (1) or more times in every thirty-minute period for at least four (4) out of five (5) successive periods.

Motor vehicle means every vehicle that is self-propelled, but for purposes of the Michigan Motor Vehicle Code, Chapter 4 of Act 300 of 1949, as amended, motor vehicle does not include industrial equipment such as a forklift, a front-end loader, or other construction equipment that is not subject to registration under this act. Motor vehicle does not include an electric patrol vehicle being operated in compliance with the electric patrol vehicle act, as amended. Motor vehicle does not include an electric personal assistive mobility device.

Motorcycle means every motor vehicle having a saddle or seat for the use of the rider and designed to travel on not more than 3 wheels in contact with the ground but excluding a tractor.

Muffler or sound dissipative device means a device for abating the sound of escaping gases of an internal combustion engine, or for abating sound transmitted in a duct, chase, pipe or other opening.

Noise means any sound which annoys or disturbs a reasonable person or which causes or tends to cause an adverse psychological or physiological effect on humans.

Noise disturbance means any sound which endangers or injures the safety or health of persons or animals; or would be unreasonably loud and disturbing to the average member of the community of normal sensitivities under the circumstances; that is louder than and would disrupt any part of a normal conversation between two (2) people or endangers or injures persons or real property.

Person means any individual, association, partnership, or corporation, and includes any officer, employee, department, agency or instrumentality of a state or any political subdivision of a state.

Powered model vehicle means any self-propelled airborne, waterborne, or land borne plane, vessel, or vehicle, which is not designed to carry persons, including, but not limited to, any model airplane, boat, car or rocket.

Public right-of-way means any street, avenue, boulevard, highway, sidewalk or alley or similar place which is owned or controlled by a governmental entity.

Public space means any real property, buildings or structures thereon which are owned or controlled by a governmental entity.

Real property boundary means an imaginary line along the ground surface, and its vertical extension, which separates the real property owned by one person from that owned by another person, but not including intra-building real property divisions.

Residential area means a district that has been assigned a zoning designation of district R in accordance with Appendix A of this Code.

Sound means an oscillation in pressure, particle displacement, particle velocity or other physical parameter in a medium with internal forces that causes compression and rarefaction of that medium, and is the objective cause of hearing. The description of sound may include any characteristic of such sound, including duration, level and frequency.

Vessel means every description of watercraft, other than a seaplane, used or capable of being used as a means of transportation on water irrespective of the method of operation or propulsion.

Weekday means any day Monday through Friday which is not a legal U.S. holiday.

Section 12-7. Prohibited acts. [Ord. 202, 3/20/2013]

A. *In general.* No person shall make, continue, or cause to be made or continued, or allow anyone or anything under his or her control to make or cause any noise disturbance. The following acts, among others not herein listed, and the causing thereof, are declared to be in violation of this article, but said enumeration shall not be deemed to be exclusive, namely:

1. Operating, playing or permitting the operation or playing of any radio, television, phonograph, drum, musical instrument, sound amplifier, or similar device which produces, reproduces, or amplifies sound:
 - a. Between the hours of 12:00 midnight and 7:00 a.m. the following day, or at any other time, inside or outside of a building or structure, in such a manner as to create a noise disturbance across a real property boundary at twenty five (25) feet in a residential area and two hundred (200) feet in a commercial area except for special events open to the public and for which the New Buffalo City Council has approved; or
 - b. In such a manner as to create a noise disturbance at twenty five (25) feet from such device, when operated in or on a motor vehicle on a public right-of-way or public space, or in a vessel on public waters; or
 - c. In such a manner as to create a noise disturbance to any person other than the operator of the device, when operated by any passenger on a common carrier.
2. Owning, possessing or harboring any animal or bird which frequently or for continued duration, howls, barks, meows, squawks, or makes other sounds which create a noise disturbance across a residential real property boundary at twenty five (25) feet.

3. Operating or permitting the operation of any tools or equipment used in construction, drilling, or demolition work by the property owner or tenet:
 - a. Between the hours of 10:00 p.m. and 7:00 a.m. the following day such that the sound there from creates a noise disturbance across a residential real property boundary at twenty five (25) feet, except for emergency work.
 4. Repairing, rebuilding, modifying, or testing any motor vehicle, motorcycle, or vessel in such manner as to cause a noise disturbance across a residential real property boundary at twenty five (25) feet.
 5. Operating or permitting the operation of powered model vehicles so as to create a noise disturbance across a residential real property boundary at twenty five (25) feet or in a public space between the hours of 11:00 p.m. and 7:00 a.m. the following day.
 6. Operating or permitting the operation of any mechanically powered saw, drill, sander, grinder, lawn or garden tool, snow blower, or similar device used outdoors in residential areas, by property owner or tenant, between the hours of 10:00 p.m. and 7:00 a.m. the following day so as to cause a noise disturbance across a residential real property boundary at twenty five (25) feet.
 7. Playing or permitting the playing of basketball, hockey or other recreation outdoors in residential areas between the hours of 10:00 p.m. and 7:00 a.m. the following day so as to cause a noise disturbance across a residential real property boundary at twenty five (25) feet.
 8. The sounding of any horn or signaling device on any automobile, motorcycle, vessel or other vehicle on any street, public water or public place of the City, except as a danger warning.
 9. Yelling, shouting, hooting, whistling or singing on any public street, particularly between the hours of 10:00 p.m. and 7:00 a.m. the following day, or at any time or place so as to annoy, disturb the quiet, comfort or repose of persons in any office, or in any dwelling, hotel or other type of residence, or of any persons in the vicinity.
 10. The discharge into the open air of the exhaust of any steam engine, stationary internal combustion engine, vessel or motor vehicle, except through a muffler or other device which will effectively prevent loud or explosive noises there from.
 11. The use or operation upon any street, alley or public place of a sound truck, amplifier or loud speaking device of any kind.
- B. *Rebuttal presumption.* If any vehicle is witnessed to have violated the provisions subsections A(1)(b)., A(8) or A(10) of this section and the identity of the operator is not otherwise apparent, it shall be a rebuttable presumption that the person or persons in whose name such vehicle is registered committed the violation. If the vehicle which is involved in the violation is registered in the name of a rental or leasing company and the vehicle is rented or leased to another person at the time of the violation, the rental or leasing company may rebut the presumption by providing the peace officer or prosecuting authority with a copy of the rental or lease agreement in effect at the time of violation. No prosecuting authority may bring any legal proceedings against a rental or leasing company under this section unless prior written notice of the violation has been given to that rental or leasing company by registered mail at the address appearing on the registration and the rental or leasing company has failed to provide the rental or lease agreement copy within fifteen (15) days of receipt of such notice.

- C. At any time the City Manager/ Zoning Administrator, Code Enforcement Officer, Police Chief and/or any duly sworn or appointed officers under their direction may ask that the noise disturbance be reduced in volume or to cease. Failure to comply will be deemed a violation of this article and shall be subject to Section 12-9 and 12-10 of this article.

Section 12-8. Exceptions. [Ord. 202, 3/20/2013]

- A. The following acts are declared exempted from the operation of sections 12-7, namely:
1. The operation of emergency and police vehicles responding to calls for service, and the operation of emergency equipment thereto;
 2. The conduct of any police, military, city, administration, or emergency services exercise, simulation or training;
 3. Highway, street, and utility maintenance and construction;
 4. Necessary excavations or repairs of bridges, streets or highways, or any public utility installation by or on behalf of the City, or any public utility or any agency of the State, when the public safety, welfare and convenience necessitates the performance of the work at such time.
 5. The conduct of any parade, march, carnival, circus, show, fair, festival, bazaar or special event having obtained the required approval, subject to any terms set forth, by the New Buffalo City Council, and otherwise complying with the provisions of this Code.

Section 12-9. Seizure of evidence. [Ord. 202, 3/20/2013]

The City of New Buffalo Police Department shall have the authority to seize as evidence any device which produces, reproduces, or amplifies sound, or which is operated, permitted to operate, played or used by any person to violate Section 12-7.

Section 12-10. Penalty for division. [Ord. 202, 3/20/2013]

- A. A person who violates any section of this division shall be guilty of a Civil Infraction and shall be subject to the following penalties which shall be assessed in addition to any other lawful sentence that the sentencing court may impose:
1. Notwithstanding the civil fines schedule set forth in Section 1-6 of the City Code of Ordinances, violation of this Chapter shall be punishable by a civil fine of \$150.00 (if first offense), \$500.00 (if second offense), or \$1500.00 (if third offense), plus costs and all other remedies available pursuant to the City Code of Ordinances or by statute.
 2. The cost of enforcement and prosecution shall be the actual amount of attorney fees and costs of enforcement. An itemized bill of fees and costs given under oath shall be prima facie evidence of the attorney fees and costs.
 3. In addition, as an alternate remedy, the City shall have the authority to proceed in any Court of competent jurisdiction to obtain an injunction, restraining order, or other appropriate remedy to compel compliance with this ordinance. Election of one of the foregoing remedies shall not preclude the application of other remedies.

Sections 12-11 through Section 12-16. Reserved. [Ord. 202, 3/20/2013]

ARTICLE III. NUISANCE

Section 12-17. Definition. [Ord. 202, 3/20/2013]

A nuisance shall be deemed whatever annoys, injures, or endangers the safety, health, comfort, repose or tranquility of the public; offends public decency; interferes with or obstructs and renders dangerous any street, highway, lake, river or stream; or in any way renders the public insecure in life and property. All such conditions are hereby declared to be public nuisances.

Section 12-18. Public nuisance prohibited. [Ord. 202, 3/20/2013]

It shall be unlawful for any owner, land contract vendee, vendor or lessee, or occupant of any premises to maintain a public nuisance on either public or private property anywhere in the City.

Section 12-19. Nuisance parties. [Ord. 202, 3/20/2013]

It shall be unlawful for anyone in the City of New Buffalo to have a nuisance party. A nuisance party is a gathering of people on property that results in any of the following occurring at the site of the gathering, on neighboring property or on an adjacent public property or street:

1. Unlawful sale, furnishing, possession or consumption of alcoholic beverages;
2. Violation of any of the provisions of Article II of this chapter (noise);
3. Fighting;
4. Property damage;
5. Littering;
6. Outdoor urination or defecation in a place open to public view;
7. The standing or parking of vehicles in a manner that obstructs the free flow of traffic;
8. Conduct that threatens injury to persons or damage to property;
9. Unlawful use or possession of marijuana or any drug or controlled substance;
10. Trespassing; or
11. Indecent exposure.

A. *Nuisance parties prohibited.* It shall be unlawful for any person having the right to possession of any premises, whether individually or jointly with others, to cause or permit a gathering on the premises to become a nuisance party.

B. *Police order to disperse.* Any duly sworn law enforcement officials are authorized to order those attending a nuisance party to disperse. It shall be considered a violation of this section for any person not domiciled at the site of the nuisance party to fail or refuse to leave the premises immediately after being ordered to leave by any duly sworn law enforcement official.

C. *Penalty.* A person(s) who violates section 12-19 either by direct violation, or by giving permission to, or allowing by silent consent, or allowing by not prohibiting, or allowing by failure to exercise control of a nuisance party shall be guilty of a Civil Infraction and shall be subject to the following penalties which shall be assessed in addition to any other lawful sentence that the sentencing court may impose:

1. Notwithstanding the civil fines schedule set forth in Section 1-6 of the City Code of Ordinances, violation of this Chapter shall be punishable by a civil fine of \$150.00 (if first offense), \$500.00 (if second offense), or \$1500.00 (if third offense), plus costs and all other remedies available pursuant to the City Code of Ordinances or by statute.

2. The cost of enforcement and prosecution shall be the actual amount of attorney fees and costs of enforcement. An itemized bill of fees and costs given under oath shall be prima facie evidence of the attorney fees and costs.
3. A person who violates Section 12-19(A)(2) may also be subject to Sections 12-9 and 12-10 of this Chapter.
4. In addition, as an alternate remedy, the City shall have the authority to proceed in any Court of competent jurisdiction to obtain an injunction, restraining order, or other appropriate remedy to compel compliance with the within ordinance. Election of one of the foregoing remedies shall not preclude the application of other remedies.

Section 12-20. Certain public nuisances enumerated. [Ord. 202, 3/20/2013]

The following acts, equipment, apparatus, and structures are hereby declared to be public nuisances per se, however, this enumeration shall not be deemed to be exclusive:

- A. *Storing, etc. vehicles.* The storing or parking of any motor vehicle, or body or chassis of a motor vehicle, not bearing a currently valid motor vehicle license registration plate; or which is being dismantled for its parts; or which has main component parts missing or unattached, or any licensed or unlicensed semi-trailer, whether attached to a tractor or not, excluding facilities licensed by the state for such use and located in an appropriately zoned district, is hereby declared to be a nuisance and prohibited, unless such vehicle, body or chassis is enclosed in a building or other enclosure so as not to be visible from surrounding property, and the owner or occupant of any property upon which such parking or storage exists shall be deemed to have permitted the same; provided, however, that a reasonable number of such vehicles, excluding semi-trailers, may be kept for sixty (60) days on the premises of businesses regularly engaged in body and vehicle repairs.

The maximum number of such vehicles which is considered reasonable shall be determined by the gross square footage of the building housing such a business at a rate of one (1) such vehicle for each one thousand (1,000) square feet of gross area of the building housing such a business. However, in no event will more than three (3) vehicles be permitted. Vehicles in excess of the number which has been found to be reasonable and any semi-trailers shall be removed within fifteen (15) days after the personal delivery or mailing of notice by certified mail to the person, firm, or corporation which owns or operates said premises, or a violation of this Chapter shall exist.

- B. *Owners and occupants responsible for premises being kept clean. etc.* All persons who own, manage, lease, rent, or occupy any premises whatsoever shall be equally responsible for keeping such premises in a clean and habitable condition and shall take all necessary precautions to prevent any nuisance as herein declared, or condition detrimental to public health from arising thereon, and particularly to take all reasonable precautions to prevent the throwing, placing, depositing, or leaving on any street, highway, alley, public place, or on any private place or premises any garbage, refuse, papers, tin cans, bottles, glass, rubbish, ashes, junk, inoperable machinery, or abandoned household goods or effects, where such throwing, placing, or depositing is likely to be dangerous or detrimental to public health, or likely to cause sickness or attract flies, insects, or rodents. Every person shall comply with such rules and regulations for the storage, collection, and pickup of garbage as may be established and published by the City Council from time to time.
- C. *Fires and burning.* No person shall kindle any fire within the City, except within a fire resistant fireplace, stove, or barbecue grill. The burning of refuse, garbage, rubbish, yard waste, or other similar materials (as defined within Section 15-2 of this Code) in open barrels, containers, enclosures, or upon any open space is expressly prohibited, excluding wood or charcoal which is to be used exclusively within a fire resistant fireplace, stove, or barbecue grill.
- D. *Littering of streets, parks, playgrounds, etc.* The littering of public streets, alleys, roadways, parking areas, playgrounds, school and church yards, cemeteries, parks, beaches, camping areas, or other public places is hereby expressly prohibited. No person shall throw, place, deposit, or leave any garbage, refuse, papers, tin cans, bottles, glass, rubbish, ashes, junk, inoperable machinery, or abandoned household goods or effects in any of the aforementioned places or in any public place, except in trash containers expressly provided for that purpose.

- E. *Smoke, soot, cinders, noxious acids, fumes, fly ash, and gases prohibited.* No person shall permit or cause the escape of such quantities of smoke, soot, cinders, noxious acids, fly ash, fumes, and gases in such place or manner as to be detrimental to any person or to the public or to endanger the health, comfort, or safety of any such person or of the public or in such manner as to cause or have a tendency to cause injury or damage to property or business.
- F. *Blocking of streets and sidewalks.* Any use of the public streets or sidewalks which causes large crowds to gather or obstructs the free use of the streets or sidewalks, without first obtaining a permit from the City Council as prescribed in Chapter 13 of this Code, shall be deemed a public nuisance.
- G. *Dangerous or damaged structures, excavations, ponds, or pools of water.* All buildings, walls, and other structures which have been damaged by fire, decay, or otherwise, and all excavations remaining unfilled or uncovered for a period of thirty (30) days or longer, and all pools of stagnant water which are situated so as to endanger the safety of the public and to attract or endanger children are deemed to be a public nuisance.
- H. *Open storage.* The open storage of building materials, supplies, construction machinery, and equipment of any kind or sort whatsoever on any occupied or unoccupied lot in a residential zone is prohibited, except as may be permitted during a specified construction period as shown by a valid and existing building permit given for the erection, alteration, or repair of a building on the site where such materials and equipment are stored. The open storage of goods, supplies, furnishings, furniture, except for lawn or patio furniture during the season, household or household goods and effects whatever kind is also declared to be a nuisance and expressly prohibited on any occupied or unoccupied lot in a residential zone.
- I. *Unfinished buildings or structures.* It shall be unlawful to permit any unfurnished building or structure for which certificate of occupancy and compliance has not been given wherein construction, alteration, or repair was begun under a valid building permit, or where such construction, alteration, or repair was begun in an unauthorized manner or where such structures were moved upon the premises, to stand unfinished or uncompleted where such use shall constitute a menace to public health and safety or create an unreasonable detraction from the quality of the neighborhood so as to result in blight, deterioration, and the depressing of property values in the vicinity.
- J. *Owner, etc., to keep dwelling, etc., inhabitable condition, etc.* Every building, dwelling, or structure, including garages and outbuildings, shall be kept by the owner, land contract vendee, or occupant thereof in a clean, neat, sanitary, structurally sound, and habitable condition in order to prevent the premises from becoming a nuisance. It shall be unlawful for any such owner, land contract vendee, or occupant to allow a building to become abandoned and dilapidated by improper maintenance, or permit weeds or other vegetation to grow, and trash, rubbish, or refuse to accumulate on the property. Such owner or occupant shall be responsible for maintaining suitable and safe means of ingress and egress, for preventing fire hazards, for adequate sanitary facilities on the premises, for preventing overcrowding and for providing proper ventilation and light. Whenever such dwelling shall be deemed uninhabitable, or unusable as hereinafter provided, it shall thereupon be deemed a public nuisance.
- K. *Maintenance of vacant commercial, etc., buildings.* The owner, land contract vendee, or other person legally responsible shall have the duty to maintain any empty, unused, or unrented commercial or industrial buildings in a neat, clean, and structurally sound manner to prevent the premises from becoming a nuisance. Such vacant buildings shall have all windows glazed or neatly boarded up and shall be kept securely locked at all times. It shall be the owner's responsibility to keep the building free from all signs and posters not specifically authorized by such owner.
- L. *Other nuisances.* All other acts, equipment, apparatus, or structures that may be deemed to be a nuisance by virtue of interference with public health, safety, moral and general welfare, which shall disturb the peace, comfort, or tranquility of any person or the public, or interfere with the use, enjoyment, and benefit of property so as to depress property values and result in blight, deterioration or interfere with the normal conduct of business, shall be deemed a public nuisance. [Formerly Ord. 135, 2/13/2002]

Casinos or other gaming establishments are deemed to be public nuisance as previously defined in this paragraph. Gaming establishments as those selling Michigan State Lottery, church or other non-profit organizations fund-raising events as Las Vegas style gaming are not deemed to be public nuisances as previously defined. [Formerly Ord. 117, 8/18/1998]

- M. *Waste collection hours.* Waste collection service activities, including obtaining and removing waste, garbage, rubbish, trash, bulk waste, and/ or recyclable materials from dumpsters, cans, bins, receptacles, and/ or similar containers, or bulk waste within a container or not, shall be an unlawful public nuisance when such activity is not conducted between the hours of 7:00 AM and 6:00 PM, Eastern Time. [Formerly Ord. 187, 11/25/2008]
- N. *Yard care hours for contractors.* All yard care performed by contractors which is not performed between the hours of 7:00 AM and 7:00 PM Eastern Time on weekdays and between the hours of 7:00 AM and 5:00 PM Eastern Time on Saturdays shall be an unlawful public nuisance. All yard care performed by contractors on Sundays shall be an unlawful public nuisance. For the purposes of this subsection yard care shall include all activities related to the planting, maintaining, trimming, cutting, gathering, and/ or removing of live, dead, or pieces of vegetative matter, including but not limited to grass, trees, shrubs, bushes, flowers, weeds, and noxious vegetation. [Formerly Ord. 188, 2/17/2009]

Section 12-21. Procedure for abatement - Service of certain notices. [Ord. 202, 3/20/2013]

Notice regarding the abatement of any nuisance prohibited by this Chapter, the expense of which, if performed by the City, may be assessed against the premises under the provisions of this Chapter, shall be served:

- A. By delivering the notice to the owner, land contract vendee, vendor, lessee or occupant, or other person legally responsible personally or by leaving the same at their residence, office, or place of business with some person of suitable age and discretion; or
- B. By mailing such notice by certified or registered mail to the owner of record at their last known address; or
- C. If the owner is unknown, by posting such notice in some conspicuous place on the premises at least ten (10) days before the action concerning which the notice is given is required or is to occur.

Section 12-22. Same - Dangerous and uninhabitable structures. [Ord. 202, 3/20/2013]

- A. *Condemnation after investigation. Report, recommendation, notice and hearing.* The City Council may, after investigation and a report and recommendation made by either the City Manager, Fire Chief, Building Inspector, Ordinance Enforcement Officer, or County sanitarian, or any or all of such officials, and after notice to the owner or land contract vendee, vendor or lessee, and after holding a public hearing thereon, condemn dangerous or uninhabitable structures by giving notice to the owner or land contract vendee of the land upon which structure is located, specifying in what respects such structure is a public nuisance and requiring such owner to alter, repair, tear down, or remove the same and clear and clean up the site within such reasonable time, not exceeding ninety (90) days, as may be necessary to do, or have done, the work required by such notice. Such notice shall also provide a reasonable time within which such work shall be commenced.
- B. *Unlawful to occupy condemned premises.* It shall be unlawful for any person to occupy or use premises condemned by the City Council until the same is put into a safe, structurally sound, sanitary, and habitable condition.
- C. *Abatement.* If, at the expiration of the time limit in the notice relating to dangerous or uninhabitable structures, the owner or land contract vendee has not complied with the requirements thereof, or in any case where the owner of the land or of the building or structure itself is not known or cannot be located after a diligent search

the City Council may order such nuisance abated either by the proper department of the City or by contract with a private person qualified to do such work, and the cost of such abatement may be assessed against the lot, premises, or description of real property upon which such hazard or nuisance was located.

Section 12-23. Same - Other nuisances generally. [Ord. 202, 3/20/2013]

- A. Notice shall be required, as provided by Section 11-4, only in those cases where the cost of abating the nuisance is to be assessed against the owner of the lot or premises where such nuisance is located for failure to comply with the notice and order of abatement.
- B. No public hearing shall be required unless private property is to be condemned, razed, and removed from the lot or premises upon which a public nuisance exists.

Section 12-24. Additional Remedies. [Ord. 202, 3/20/2013]

The City Council and the duly authorized attorney for the City may prosecute violators under the provisions of this Chapter, order the abatement of such nuisances, and for failure to comply with such order, after a public hearing thereon, the City may cause the nuisance to be removed and assess the costs thereof against the owner, vendee, vendor, lessee or occupant of the premises, or proceed in any court of competent jurisdiction for an injunction, mandamus, abatement, or any other appropriate action for the enforcement of this Chapter. The City Council and the duly authorized attorney for the City, or any owners of property affected by a public nuisance, may institute injunction, mandamus, abatement, or any other appropriate action or proceedings to prevent, enjoin, or abate any unlawful nuisance. Should the City receive an Order of Demolition of a dangerous and uninhabitable structure, the City may place a lien on the property for its actual costs of removal, plus actual attorney fees and costs. Such a lien would be placed on the next tax bill for the property as a special assessment. The rights and remedies provided herein are cumulative and in addition to all other remedies provided by law.

Section 12-25 through Section 12-30. Reserved. [Ord. 202, 3/20/2013]

ARTICLE IV. MISCELLANEOUS

Section 12-31. Barbed wire fences, etc. [Ord. 202, 3/20/2013]

It shall be unlawful for any person to erect or place any part of any fence composed in whole or in part of barbed wire or thorn hedge within two (2) feet of any sidewalk lying in any street, alley, or highway, or being the owner or occupant thereof, knowingly to permit any such fence, or any part thereof, to be placed, erected, maintained, or to encroach by growth or decay or otherwise, within such distance of two (2) feet of any such sidewalk, or knowingly to allow any part of any fence owned or occupied by them to overhang or encroach upon any such sidewalk.

Section 12-32. Curfew – Person (s) under seventeen (17) years age. [Formerly Ord. 129, 11/21/2000; Ord. 202, 3/20/2013]

It shall be unlawful for any person under the age of seventeen (17) to be on any public street or in any public place in the City during the hours 11:00 P.M. to 6:00 A.M. unless accompanied by their parent or guardian or without having in their possession a written permit signed by their parent or guardian stating the place (s) and time (s) they are allowed to go.

Section 12-33. Disorderly persons generally. [Ord. 202, 3/20/2013]

No person shall, within the City, be a disorderly person as defined by Act 328 of the Public Acts of 1931, as amended.

Section 12-34. Driving, etc., along shores of Lake Michigan. [Ord. 202, 3/20/2013]

Except as otherwise expressly provided in this Section, it shall be unlawful for any person to drive, propel, locate, or in any manner permit the location, driving, or propulsion of any power or motor driven vehicle along the shores of Lake Michigan. The lake shores of Lake Michigan are hereby defined to be that land which lies northerly of the northerly line of any property platted or unplatted to the water's edge of Lake Michigan and bounded to the east and west by the corporate lines of the City.

It is provided, however, that any such power or motor driven vehicle may traverse along the forbidden area above described if such vehicle is specifically permitted to do so by a permit issued by the Chief of Police of the City, or is a vehicle involved in the performance of duties and/or projects for a department or duly authorized representative of the City.

Section 12-35. Fireworks and explosives - Exploding without permit. [Ord. 202, 3/20/2013]

No person shall, within the City, explode any fireworks or explosives without a written permit from the City Manager.

Section 12-36. Liquor - Consuming or offering prohibited in certain places. [Ord. 202, 3/20/2013]

No person shall, within the City, consume alcoholic liquor, or offer alcoholic liquor to another person, on any street, sidewalk, alley, public building, public park, public beach, school grounds, church property, or in any automobile while parked or being driven on any street in the City.

Section 12-37. Nude swimming or bathing. [Ord. 202, 3/20/2013]

No person shall, in the City, swim or bathe nude in any public place.

Section 12-38. Resisting, obstructing, etc., City officers; rescuing persons apprehended for violations. [Ord. 202, 3/20/2013]

If any person shall assault or resist the Chief of Police, police officer, or any other City officer, or shall hinder or obstruct any such officer while in the discharge of their official duty, or shall rescue or attempt to rescue any person apprehended by any such officer for violating any provision of this Code or any ordinances of the City, the City Charter, or any state or federal law, such person shall be guilty of a misdemeanor and subject to the penalties as prescribed by Section 1-7 of this Code.

Section 12-39. Weapons - Discharging firearm or air rifle. [Ord. 202, 3/20/2013]

No person shall, in the City, discharge any firearm or air rifle.

Section 12-40. Riding bicycle or skateboard on sidewalk. [Formerly Ord. 128, 11/21/2000; Ord. 202, 3/20/2013]

It shall be unlawful for any person to operate or utilize any bicycle, unicycle, skateboard, scooter, roller skates, roller blades, or other similar device on the sidewalks of the City within the following designated area: Whittaker Street and Buffalo Street within the City limits. This prohibition shall apply to sidewalks on both sides of the aforementioned streets as well as the other public areas located therein.

Section 12-41. Marijuana prohibited. [Formerly Ord. 134, 1/22/2002; Ord. 202, 3/20/2013]

It shall be unlawful for any person to use, possess, sell, offer to sell or be under the influence of marijuana. For the purposes of this Section, "marijuana" shall have the same definition as that set forth in Article 7 of Act 368 of the Public Acts of 1978 (MCL 333.7106(3)), as amended. Any person who violates this section shall be guilty of a misdemeanor, punishable as provided in Section 1-7 of this Code.

Section 12-42. Drug paraphernalia [Formerly Ord. 140, 11/27/2002; Ord. 202, 3/20/2013]**A. Purpose**

This ordinance is enacted for the purpose of protecting public health, safety and general welfare of persons and property within the City of New Buffalo, pursuant to the authority granted by State Law and City Charter and Public Health Code (MCL 333.7453), by prohibiting the sale or dispensation of drug paraphernalia used, designed, marketed or intended for use with a controlled substance or substances without an appropriate license from the State of Michigan within the City of New Buffalo, and to provide penalties for the violation thereof.

B. Definitions

Drug Paraphernalia: means any items, equipment, product or material of any kind which is used, designed, marketed or intended for use with a controlled substance.

Controlled Substance: is defined as set forth in the "Controlled Substances Act of the State of Michigan" found at MCL Sec. 333.7101 etc., as amended.

Used, designed, marketed or intended for use with a controlled substance: means that at the time the drug paraphernalia is sold, displayed or otherwise dispensed, the drug paraphernalia either: was primarily designed, adapted or marketed because of its objective physical features, for use with a controlled substance; or was intended by the party selling or dispensing the same for use with a controlled substance.

C. Regulation

Any party who sells, offers, gives, or otherwise dispenses any drug paraphernalia shall be guilty of a misdemeanor. This regulations section shall not apply to parties licensed by the State of Michigan to engage in the activities herein prohibited.

D. Penalties

Unless otherwise stated, any violation of this ordinance shall be punishable as a Misdemeanor. The penalty for a misdemeanor violation shall be a fine not to exceed Five Hundred (\$500.00) Dollars, (plus costs of prosecution) and/or by imprisonment in the County jail for not to exceed ninety (90) days, or both such fine and imprisonment. Each day that a violation continues to exist shall constitute a separate offense.

In addition, as an alternate remedy, the City shall have the authority to proceed in any Court of competent jurisdiction to obtain an injunction, restraining order, or other appropriate remedy to compel compliance with the within ordinance. Election of one of the foregoing remedies shall not preclude the application of other remedies.

E. Severability

Should any part of this ordinance be declared unconstitutional, illegal, or of no force or effect by a Court of competent jurisdiction, such portion thereof shall not be deemed to affect the validity of any other part or portion thereof.

Section 12-43. Structures and gates. [Formerly Ord. 115, 3/31/1998; Ord. 202, 3/20/2013]

It shall be unlawful for a person, firm, corporation, association or partnership to establish, maintain or operate, on a private road, any structure, gate or other device for the purpose of impeding access to, egress from, or use by a motor vehicle on said road.

This ordinance shall not apply to any structure, gate or other device erected for the purpose of impeding access to, egress from, or use by a motor vehicle, on a private road which is in lawful existence prior to the adoption of this ordinance.

Section 12-44. Loitering. [Formerly Ord. 153, 11/15/2005; Ord. 202, 3/20/2013]

A. In this section the following words and phrases shall have the meanings respectively ascribed to them:

1. Loitering shall mean remaining idle in essentially one location and shall include the concept of spending time idly; to be dilatory; to linger; to stay; to saunter; to delay; to stand around and shall also include the colloquial expressing "hanging around."
2. Public place shall mean any place to which the general public has access and a right of resort for business, entertainment or other lawful purpose, but does not necessarily mean a place devoted solely to the uses of the public. It shall also include the front or immediate area of any store, shop, restaurant, tavern or other place of business and also public grounds, areas or parks.

B. It shall be unlawful for any person to loiter, loaf, wander, stand or remain idle either alone or in consort with others in a public place in such manner so as to:

1. Obstruct any public street, public highway, public sidewalk or any other public place or building by hindering or impeding or tending to hinder or impede the free and uninterrupted passage of vehicles, traffic or pedestrians

2. Commit in or upon any public street, public highway, public sidewalk or any other public place or building any act or thing which is an obstruction or interference to the free and uninterrupted use of property or with any business lawfully conducted by anyone in or upon or facing or fronting on any such public street, public highway, public sidewalk or any other public place or building, all of which prevents the free and uninterrupted ingress, egress and regress, therein, thereon and thereto.
 3. Obstruct the entrance to any business establishment, without so doing for some lawful purpose, if contrary to the expressed wish of the owner, lessee, managing agent or person in control or charge of the building or premises.
- C. When any person causes or commits any of the conditions in this section, a police officer or any law enforcement officer shall order that person to stop causing or committing such conditions and to move on or disperse. Any person who fails or refuses to obey such orders shall be guilty of a violation of this section.

Section 12-45. Parental responsibility. [Formerly Ord. 154, 11/15/2005; Ord. 202, 3/20/2013]

A. Definitions. As used in this ordinance:

1. *Delinquent Acts* means those acts which violate the laws of the United States, or the statutes of the State of Michigan or the Ordinances of the City of New Buffalo, or those acts which would cause or tend to cause the minor to come under the jurisdiction of the juvenile division of the Probate Court as defined by law. but does not include traffic violations.
2. *Minor* means any person under the age of eighteen (18) years residing with a parent.
3. *Parent* means mother, father, legal guardian and any other person having the care or custody of a minor or any person acting in the parent's stead who has custody or control of the minor.
4. *Illegal Drugs* means controlled substances obtained without a legal prescription.
5. *Juvenile Delinquent* means those minors whose behavior interferes with the rights of others or menaces the welfare of the community.

B. Parental Duties.

1. It is the continuous duty of the parent of any minor to exercise reasonable control to prevent the minor from committing any delinquent act.
2. Included (without limitation) in this continuous duty of reasonable parental control are the following parental duties:
 - a. To keep illegal drugs or illegal firearms out of the home and legal firearms locked in places that are inaccessible to the minor;
 - b. To know the curfew ordinance of the City of New Buffalo and to require the minor to observe it,
 - c. To require the minor to attend regular school sessions and to forbid the minor to be absent from class without parental or school permission,
 - d. To arrange proper supervision for the minor when the parent must be absent;
 - e. To take the necessary precautions to prevent the minor from maliciously or willfully damaging or destroying any real, personal, or mixed property which belongs to the City of New Buffalo, or is located in the City of New Buffalo;

- f. To forbid the minor from keeping stolen property, illegally possessing firearms or illegal drugs, or associating with known juvenile delinquents, and to seek help from appropriate governmental authorities or private agencies in handling or controlling the minor, when necessary.

C. Notification of Parents; Record of Notification.

1. Whenever a minor is arrested or detained for the commission of any delinquent act within the City of New Buffalo, the parent of the minor shall be immediately notified by the City of New Buffalo, advising the parent of such arrest or detention, the reason therefore, and the parent's responsibility under this ordinance.
2. A record of such notifications shall be kept by the City of New Buffalo Police Department.

D. Parental Violation and Penalty.

1. If a minor commits a delinquent act, the parent shall be guilty of a violation of this ordinance if it is proven that any act, word, or non-performance of parental duty by the parent encouraged, contributed toward, caused, or tended to cause the commission of the delinquent act by the minor.
2. Any parent who violates the provisions of this ordinance, in addition to the other provisions of this ordinance, is responsible for a civil infraction, subject to payment of a civil fine of not less than Fifty (\$50.00) Dollars or more than Five Hundred (\$500.00) Dollars, plus costs and other sanctions, for each infraction. Repeat offenses shall be subject to an increased civil fine as follows:
 - a. The fine for any offense which is a first repeat offense shall be not less than Two Hundred Fifty (\$250.00) Dollars, plus costs and other sanctions.
 - b. The fine for any offense which is a second repeat offense or any subsequent repeat offense shall be not less than Five Hundred (\$500.00) Dollars, plus costs and other sanctions.

A repeat offense means a second (or any subsequent) violation of this ordinance

- (i) Committed by a person within any six (6) month period and
- (ii) For which the person admits responsibility or is determined to be responsible.

Each day on which any violation of this ordinance continues constitutes a separate offense and shall be subject to penalties or sanctions as a separate offense.

- E. Restitution. In addition to any civil penalty imposed pursuant to this ordinance, the Court may order the parent to pay restitution to a victim of the minor's conduct. The amount of the restitution ordered pursuant to this ordinance shall not exceed \$2,500.00.
- F. Severability. The provisions of this ordinance are severable, and if any clause, sentence, word, section or provision is declared void or unenforceable for any reason by any court of competent jurisdiction, it shall not affect the remainder of the ordinance, which shall continue in full force and effect.

Chapter 13 - PARADES AND MARCHES

Section 13-1. Permit - Required.

It shall be unlawful to conduct a parade or march without first obtaining a permit therefore from the City Clerk.

Section 13-2. Same - Application.

Any legally constituted group, charitable and/or nonprofit corporation may obtain a permit for the holding of a parade or march by applying to the City Clerk at least thirty (30) days prior to the holding of any such event.

Section 13-3. Same - Issuance; fee.

The City Council will issue a permit as required by this Chapter when a legally constituted group pays a fee of one dollar (\$1.00); provided, however, that no fee shall be required to be paid by any political subdivision of the County, City, or state and, provided further, that no fee shall be required to be paid for such a permit by any patriotic organization such as the American Legion, Veterans of Foreign Wars, and similar organizations.

Section 13-4. Same - Contents.

Permits required by this Chapter shall specify the name of the legally constituted group seeking to hold a parade or march and further, such permit will specify the date and time for the holding of such event for which such permit is sought.

Section 13-5. Same - Effective period.

A permit issued by the City Council under the provisions of this Chapter shall be effective for a period not to exceed twenty-four (24) hours for any day for which it is issued.

Chapter 14 - PARKS AND RECREATION

ARTICLE I. IN GENERAL.

Section 14-1. Damaging, removing, etc., park property; depositing refuse in parks, playgrounds, and recreational areas.

It shall be unlawful for any person to interfere with, damage, harm, remove, or deface any park property, including fences, trees, turf, or equipment in any of the parks, recreational areas, or playgrounds of the City, or to otherwise remove, destroy, or injure any property therein, or to leave or deposit any filth, rubbish, dirt, waste paper, tin cans, bottles, trash, or other refuse within any park, recreational area, or playground except in such containers as shall be provided for such purposes.

Section 14-2. Beach use regulated.

No person shall use the bathing beach maintained by the City in what is known as the New Buffalo City Park for any purpose other than bathing, except as otherwise expressly provided by this Chapter. Operators of personal watercraft and wind-surfboards shall be allowed to beach their craft along that portion of the beach measuring one-hundred (100) feet west of the City limit boundary, provided that no refueling of personal watercraft shall be allowed. No other vessels or watercraft, except personal watercraft and wind-surfboards, shall be allowed to beach in the above mentioned area.

Section 14-3. Picnics, etc., restricted to designated areas.

Except as otherwise expressly provided in this Section, it shall be unlawful for any person to picnic, dine, eat, or drink at, near, or upon the City bathing beach. Eating, picnicking, drinking, dining, or cooking will be allotted only in zones designated for such purposes.

Section 14-4. Possession of glass, bottles, cans, etc., prohibited on beach.

It shall be unlawful for any person to have in their possession or under their control while using the City beach for bathing purposes as permitted by this Chapter, any glass, bottle, can, metal kitchen utensil, or any object likely to hurt or injure persons lawfully using such beach.

Section 14-5. Animals on City beach and park. [Ord. 180, 9/22/2008]

Except as otherwise provided herein, it shall be unlawful for any person to have in their possession, under their control, or allow to run at large, any animal on the City beach or parks.

This section shall not act as a prohibition for dogs in the possession of, or under the control of, their adult owner in an area designated by the City Council as a City Dog Park.

Section 14-6. Reserved. [Ord. 124, 9/15/1999; Ord. 168, Section 2: "Section 14-6 of the Code of Ordinances of the City of New Buffalo is repealed." (3/28/2007)]

Section 14-7. Alcoholic beverages prohibited. [Ord. 155, 2/1/2006]

It shall be unlawful for any person to have in their possession or to consume any alcoholic beverages of any kind in any City, park, beach, recreational area or property owned by the City unless a special event permit has been issued by resolution of the City Council. Only philanthropic, charitable, religious, patriotic, institutional, non-profit and/or similar organizations may obtain Council approval for a special event permit, and such organizations may only do so for charitable or fund raising purposes and no other. It shall be lawful for established, nationally-chartered service clubs to serve alcohol at meetings and work projects that may be held on City property, provided that such alcohol is not sold.

Section 14-8. Swimming near and diving off breakwater prohibited.

It shall be unlawful for anyone to swim within fifty (50) feet on either side of the breakwaters. It shall also be unlawful to dive off of the breakwaters into either the harbor or lakeward side.

Section 14-9 through Section 14-20. Reserved.

ARTICLE II. PARK AND RECREATION BOARD

Section 14-21. Created. [Ord. 160, 8/29/2006]

There is hereby created a Park and Recreation Board of and for the city.

Section 14-22. Composition; appointment and terms of members; filling vacancies. [Ord. 164, 1/16/2007]

The Park Board shall consist of seven resident electors of the city. The initial Board shall be appointed by the Mayor with the consent and approval of the majority of the City Council within thirty days following the effective date of the ordinance from which this article derives. The initial appointments to the Park and Recreation Board shall provide for staggered terms. Thereafter, all such appointments to fill expired positions on the Board shall be for a period of three years. In addition, the City Council may appoint one (1) resident elector as an alternate member who shall serve a three-year term. Appointments to fill vacancies on the Board shall be for a period of time equivalent to the unexpired term of that office. Appointments to fill expired positions on such Board shall be made by the Mayor with the consent of the majority of the City Council at the regular organizational meeting of the City Council following the regular city election. Appointments to fill vacancies in office shall be made in like manner but shall be made within sixty days of the date such vacancy occurs.

[Ord. 164, Section 2: All ordinances inconsistent with the provisions of this ordinance are hereby repealed.]

Section 14-23. Compensation of members; members not to be employees of the city. [Ord. 160, 8/29/2006]

Members of the Park and Recreation Board shall serve without compensation and shall not be employees of the City.

Section 14-24. Organization; officers; quorum. [Ord. 160, 8/29/2006]

The members of the Park and Recreation Board shall within twenty days after their appointment in the first instance, and thereafter annually within twenty days following the regular organizational, meeting of the City Council following the regular city election, organize and elect one of their members chairperson, one of their members vice-chairperson, and one of their members secretary. The Board may elect such other officers as it may deem advisable and expedient. A majority of the Board shall constitute a quorum for the transaction of business.

Section 14-25. Meetings; rules of procedure. [Ord. 160, 8/29/2006]

The Park and Recreation Board shall establish by general rule the time and place for holding all regular and special meetings of such board and the manner of giving notice thereof. The Board is also authorized to establish by general rule procedures for the transaction of the business of such Board.

Section 14-26. Removal of members. [Ord. 160, 8/29/2006]

The City Council shall have the power and authority to remove any member of the Park and Recreation Board for malfeasance, misfeasance, misconduct or neglect of duty after having given such member notice and an opportunity to be heard.

Section 14-27. Powers and duties - Policies, rules and regulations concerning city parks, playgrounds and recreation areas. [Ord. 160, 8/29/2006]

The Park and Recreation Board shall study and formulate policies as to the maintenance, control and regulation of all City parks, recreational areas and playgrounds. It shall also make recommendations to the City Council as to ways of improving, planning, and developing outdoor and indoor recreational, educational and social facilities and programs for the community. The reasonableness and necessity of any such policy, rule or regulations appertaining to any city park, recreational area, playground, recreation program or construction shall be determined by the City Council after a review of the recommendation of the Park and Recreation Board.

Section 14-28. Same - Gifts, appropriations, bequests, etc. [Ord. 160, 8/29/2006]

The Park and Recreation Board is hereby empowered and authorized to solicit, receive and acquire gifts, appropriations, bequests, donations or endowments of money, funds or property from any person, which shall be immediately turned over to the City Council and shall be used for the creation, improvement, maintenance and operations of the city parks and recreation programs.

Section 14-29. Same - Budget. [Ord. 160, 8/29/2006]

On or before March 1st of each year, the Park and Recreation Board shall submit to the City Manager a proposed budget showing in detail the amount of money which, according to the judgment of the Board, may be necessary for park and recreation purposes, and the supervision, maintenance and operation thereof during the ensuing fiscal year, which fiscal year shall correspond to that of the City. The proposed budget submitted and recommended by the Park and Recreation Board may be increased, modified or adopted by the City Council in its sole discretion, as the City Council may deem advisable and expedient.

[Ord. 160, Section 2: All ordinances inconsistent with the provisions of this ordinance are hereby repealed.]

Chapter 15 - SOLID WASTE DISPOSAL AND RECYCLING

ARTICLE I. IN GENERAL

Section 15-1. Depositing, etc., slops, filthy substances, refuse, etc., on sidewalk, street, etc.

No person shall throw, deposit, cause, or permit to be thrown or deposited, or permit to pass through any sink spout, upon any sidewalk, street, alley, or public park or other public places within the City any slops, filthy water, urine, carrion, or filthy substance, or any metal cans, metal ware, ashes, refuse, garbage, or rubbish of any kind or description.

ARTICLE II. SOLID WASTE

Section 15-2. Definitions.

For the purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them by this Section:

Ashes. The residue from the burning of wood, coal, coke, or other combustible materials.

Garbage. Putrescible animal and vegetable wastes resulting from the handling, preparation, cooking, and consumption of food.

Recyclables. Nonputrescible solid wastes (excluding ashes), consisting of both combustible and noncombustible wastes, such as paper, cardboard, metal cans, glass, plastics and similar materials which can be recycled into other useable products.

Rubbish. Nonputrescible solid wastes (excluding ashes), consisting of both combustible and noncombustible wastes, such as paper, cardboard, metal cans, wood, glass, bedding, crockery, and similar materials.

Yard Waste. Natural solid wastes resulting from the maintenance of lawns and trees, including but not limited to leaves, tree limbs, brush, pine needles, pine cones, and grass clippings.

Section 15-3. Contract for collection generally.

The City Council may contract with any person for the collection of refuse, garbage, rubbish, yard waste, and recyclables in the City. Such contract shall be for a term specified by the City Council and the Council shall advertise for the letting of bids for the purpose of collecting-refuse, garbage, rubbish, yard waste, and recyclables at least thirty(30) days prior to the entering into of any contract for this purpose.

Section 15-4. Same - Bond required.

The person entering into any contract as provided for in Section 15-3 shall, before such contract shall become binding upon the City, file with the City Clerk a bond in the amount of at least one-thousand dollars (\$1,000.00) with sufficient surety in the discretion of the City Council, conditioned for the faithful performance of such contract. Should default occur on such bond, the City shall have an action against the principal and the surety on such bond, or any of them, for recovery of any cost or expense suffered by the City as a result of such default, together with all costs of such action.

Section 15-5. Power of City Manager to make regulations.

The City Manager shall have the authority to make regulations concerning the days of collection, type, and location of waste containers and such other matters pertaining to the collection, conveyance, and disposal of refuse as he/she shall find necessary, and to change or modify the same after notice, as required by law; provided, that such regulations are not contrary to the provisions of this Chapter or any contract entered into by the City Council pursuant to Section 15-3.

Section 15-6. Fees and charges generally.

The costs for the collection of refuse, garbage, rubbish, yard waste, and recyclables shall be borne by the owners or occupants of any building or premises. Service fees for the collection of refuse, garbage, rubbish, yard waste, and recyclables shall be established by resolution by the City Council from time to time as deemed necessary to defray the cost, thereof, and shall be assessed against the owners or buildings concurrently with the billing for water and sanitary sewer charges levied against the premises located within the City.

Such charges shall be billed and collected, subject to and in accordance with the same terms and conditions respecting payment, as are provided for water bills including the penalty provided therein for late payment.

The title holder of record of any unoccupied building or premises shall be liable for a monthly ready-to-serve charge for the collection of refuse, garbage, rubbish, yard waste, and recyclables, even though such building or premises may not require such service on a continuous twelve (12) month basis. The ready-to-serve charge shall be established by resolution by the City Council from time to time as deemed necessary.

Any delinquent charges for the regular service fee or a ready-to-serve charge shall become a lien against the property served and may be collected in the same manner as provided by this Code and other water and sanitation ordinances of the City or Sections of this Code.

Section 15-7. Separation of garbage and rubbish.

Garbage and rubbish shall each be placed and maintained in separate containers, in a manner prescribed by the City.

Section 15-8. Reserved. [Ord. 106, 10/2/1996]

Section 15-9. Placing raw refuse, etc., in prohibited places.

It shall be unlawful to place and/or scatter, any raw refuse, garbage, or rubbish in any sewer, ravine, drainage ditch, or catch basin throughout the City, or in the harbor, Galien River, or Lake Michigan within the City. It shall also be unlawful to allow raw refuse, garbage, and weeds to accumulate on any public or private parcel of property within the City, except for those areas designated for the collection refuse, garbage, rubbish, yard waste, and recyclables by the City.

Section 15-10. Appeals to City Council.

Any person aggrieved by a regulation pursuant to the provisions of this Article or fee charged hereunder shall have the right of appeal to the City Council, which shall have the authority to confirm, modify, or revoke any such regulation or fee.

ARTICLE III. WEEDS AND OTHER NOXIOUS VEGETATION

Section 15-11. Duty of property owners to cut and destroy. [Ord. 147, 10/20/2004]

Each owner of property within the City shall be responsible for cutting and destroying any Canada thistles, milkweeds, wild carrots, oxeyedaisies, ragweed, poison ivy, tall grass and any other noxious vegetation growing or situated on any area of their property and adjacent curb lawn rights-of-way within the City. The above described vegetation shall be cut and destroyed and such property shall remain free of such vegetation thereafter and during the growing season.

Section 15-12. Notice to property owners to cut and destroy; removal by City upon failure of owner to comply with notice.

The City shall give written notice to the owner of any property containing vegetation described in Section 15-11 by first class mail to such owner as taken from the tax rolls, and such owner shall be given notice and shall have ten (10) days from and after such notice to remove the noxious vegetation from the property and adjoining rights-of-way. In the event such owner does not cut and destroy the noxious vegetation on their property within the ten (10) days as required, the City may enter such premises and cut and destroy such noxious vegetation. This notice shall suffice as notice for the entire growing season. In the event said noxious vegetation is again allowed to grow to a height of nine (9) inches or more, the City shall have the right to remove said vegetation without additional notification.

Section 15-13. Responsibility of property owner for City expense. [Ord. 182, 12/16/2008]

In the event the City is required to cut and remove the noxious vegetation from any property, as provided by the preceding Section, the City shall thereafter bill the owner of such property for the expense of cutting and removing/destroying such noxious vegetation and the owner of such property shall be responsible for the expense of cutting and removing/destroying the same. In addition to the owner of such property being responsible for the expense of cutting and removing/destroying such noxious vegetation that owner of such property shall be penalized by a fine not exceeding \$200 for the first offense, a fine not exceeding \$350 for the second offense, and a fine not exceeding \$500 for each subsequent offense.

Section 15-14. Procedure for collection and cutting expense when owner fails to pay upon being billed.

In the event any property owner does not pay to the City the expense of cutting and destroying noxious vegetation, after being billed as provided by the preceding Section, the expense of so cutting and destroying shall be added to the tax bill of the owner of such property and shall become a lien against said property, and shall be collected in a like manner as taxes are collected.

ARTICLE IV. UNLAWFUL REMOVAL OF MATERIALS SET OUT FOR RECYCLING COLLECTION.

Section 15-15. Purpose.

This Article is designed to prevent the unauthorized collections of recyclable materials which are set out as part of a designated recycling program. Unauthorized collection or scavenging may reduce the volumes of materials collected as part of a designated program and thereby threaten the economic viability of the authorized program. Scavenging may also cause confusion among participating residents and thereby disrupt the publicity and educational processes of an authorized program. This Article is also designed to insure that a designated recycling program will be implemented in an orderly fashion to avoid adverse effects on the public health, welfare, safety, and environment.

Section 15-16. Definitions.

"Authorized recycling program" shall mean a program for the collection and recycling of recyclable materials which is instituted, sponsored, authorized, or controlled by the City.

"Recyclable materials" shall mean all items of refuse designated by the City Manager or any contractual agreement in effect within the City to be part of an authorized recycling program and which are intended for transportation, processing, and remanufacturing or reuse.

"Scavenging" shall mean the unauthorized collection of recyclable materials that have been set out by residents of the City specifically for participating in curbside recycling programs.

Section 15-17. Designation of items.

Items designated for recycling shall be listed by the City Manager or within any contractual agreement to be part of an authorized recycling program.

Section 15-18. Ownership of recyclable materials.

Ownership of recyclable materials set out for the purpose of participating in curbside recycling programs shall remain with the person who set out the materials until removed by the authorized collector. Until the recyclable materials are removed by the authorized collector, the person who set out the materials is totally responsible for their proper preparation, handling, and storage. Ownership and responsibility for the proper handling of the recyclable materials shall vest in the authorized collector upon removal thereof by the collector.

Section 15-19. Unauthorized collection.

It shall be unlawful for any person who is not authorized by the City, county, or authorized contractor to take or collect recyclable material set out for authorized collection programs within the City.

Chapter 16 - SEWERS AND SEWAGE DISPOSAL

ARTICLE I. IN GENERAL

Section 16-1. Definitions.

Unless the context specifically indicates otherwise, the meaning of terms used in this ordinance shall be as follows:

- A. B.O.D. (denoting biochemical oxygen demand) shall mean the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five (5) days at twenty (20) degrees Centigrade, expressed in milligrams per liter.
- B. Building drain shall mean that part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste, and other drainage pipes inside the walls of the building and conveys it to the building sewer, beginning five (5) feet outside the inner face of the building wall.
- C. Building sewer shall mean the extension from the building drain to the public sanitary sewer main, or other place of disposal, whether on public or private property.
- D. Combined sewer shall mean a sewer receiving both surface runoff and sewage.
- E. Garbage shall mean solid wastes from the domestic and commercial preparation, cooking, and dispensing of food, and from the handling, storage, and sale of produce.
- F. Industrial wastes shall mean the liquid wastes from industrial manufacturing processes, trade, or business as distinct from sanitary sewage.
- G. Natural outlet shall mean any outlet into a watercourse, pond, ditch, lake, or other body of surface or ground water.
- H. Person shall mean any individual, firm, company, association, society, corporation, or group.
- I. pH shall mean the logarithm of the reciprocal of the concentration of hydrogen ions in grams per liter of solution.
- J. Properly shredded garbage shall mean the wastes from the preparation, cooking, and dispensing of food that have been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than one-half (1/2) inch in any dimension.
- K. Public sewer shall mean a sewer main located in a public street or right-of-way in which all owners of abutting properties have equal rights and is controlled by a public authority and includes all sewers in the City, but shall not include a building sewer or any connection thereto which serves only one (1) building or owner unless it is in the public streets or rights-of-way.
- L. Sanitary sewer shall mean a sewer which carries sewage and to which storm, surface, and ground waters are not intentionally admitted.
- M. Sewage shall mean a combination of the water carried wastes from residences, business buildings, institutions, and industrial establishments, together with such ground, surface, and storm waters as may be present.
- N. Sewage treatment plant shall mean any arrangement of devices and structures used for treating sewage and specifically the treatment plant serving the City and its residents and located in New Buffalo Township.

- O. Sewage works shall mean all the facilities for collecting, pumping, treating, and disposing of sewage and includes all such facilities in the City.
- P. Sewer shall mean a pipe or conduit for carrying sewage.
- Q. Shall is mandatory, May is permissive.
- R. Slug shall mean any discharge of water, sewage, or industrial waste which in concentration of any given constituent or in quantity of flow exceeds for any period of duration longer than fifteen (15) minutes more than five (5) times the average twenty-four (24) hour concentration of flows during normal operation.
- S. Storm drain (sometimes called "storm sewer") shall mean a sewer which carries storm and surface water and drainage, but excludes sewage and industrial wastes, other than unpolluted cooling water.
- T. Superintendent shall mean the Joint Board of the District or its authorized deputy, agent, or representative.
- U. Suspended solids shall mean solids that either float on the surface of, or are in suspension in water, sewage, or other liquids and which are removable by laboratory filtering.
- V. Watercourse shall mean a channel in which a flow of water occurs, either continuously or intermittently.
- W. Galien River Sanitary District or "District" shall mean that unit or district as established through contracts by and between Berrien County, Chikaming Township, New Buffalo Township, and the City of New Buffalo, dated as of October 13, 1971, as amended.
- X. Local units shall mean one or more of the following governmental units: Chikaming Township, New Buffalo Township, City of New Buffalo.
- Y. Berrien County Sewage Disposal System No. 7 or "System No. 7" shall mean the sewage disposal system established by the County of Berrien, pursuant to Act No. 185 of Michigan Public Acts of 1957, as amended, by contracts, dated as of January 8, 1976, as amended April 29, 1976, and as may be further amended, between the County and the Local units.

Section 16-2. Operation of system as public utility.

The complete sewer and sewage disposal system of the City, including all main and lateral sewers, sewage treatment plant, intercepting and collecting sewers, and all works, instrumentalities, or properties used or useful in the collection, treatment, and disposal of sewage and industrial wastes, as now existing or as hereafter added to, extended, or improved, shall be operated and maintained on a public utility basis, as authorized by law, particularly Act No. 94, Public Acts of 1933, as amended, and Section 123.243, Compiled Laws of Michigan, 1948, being Act No. 320, Public Acts of 1927, Section 3, as amended. The area to be served by said system is hereby divided into two parts as follows:

- A. Service Area No. 1, to consist of the area served by collecting sewers financed by the three-hundred seventy-five thousand dollar (\$375,000.00) General Obligation Bonds, and all extensions thereto.
- B. Service Area No. 2 to consist of the area served by collecting sewers financed in part by the one-million, three-hundred thirty-five thousand dollar (\$1,335,000.00) Berrien County Sewage Disposal System No. 7 Bonds (City of New Buffalo portion) (Hereinafter the "1975 Bonds") issued through Berrien County and financed in part by governmental grants.

Section 16-3. Fiscal or operating year of system.

The City sewage disposal system shall have an operating or fiscal year commencing on the first (1st) July of each year and ending on the thirtieth (30th) June of the following year.

Section 16-4. Management, supervision, and control of system generally.

Subject to the provisions of the Sewage Disposal System Contract dated January 8, 1976, between Berrien County and the City of New Buffalo and the Townships of Chikaming and New Buffalo, regarding the part of the system to be financed by the 1975 Bonds and related governmental grants, the complete sewage disposal system of the City, as defined in Section 16-1, shall be and remain under the management, supervision, and control of the City Council which may employ or designate such persons, in such capacities as it deems advisable, to carry on the efficient management and operation of such system. The City Council may make such rules, orders, and regulations as it deems advisable and necessary to assure the efficient management and operation of such system.

Section 16-5. Rates and charges generally. [Ord. 176, 4/15/2008]

The rates to be charged for sewer and sewage disposal service furnished by the City system shall be prescribed by resolution of the City Council, from time to time, and such rates and charges shall be collected for the use of and the service rendered by such sewage disposal works from the owners or occupants for each lot, parcel, or real estate or building that is connected with or uses such works by or through any part of the sewage system of the City.

- A. Industrial wastes. In the event a lot, parcel, or real estate or building discharges sewage in the form of industrial waste, either directly or indirectly, into the public sewage system of the City, and the City finds it is not practicable to attempt to measure such wastes by meter, it shall measure the same in such manner and by such method as it may find practical in the light of the conditions and attendant circumstances of the case in order to determine the rates and charges according to the corresponding rates provided in this Chapter. If the City finds that it is practicable to attempt to measure such wastes by meter, then the owner of the property shall install and maintain a meter acceptable to the City upon ten (10) days notice.
- B. Special rates and charges in certain cases. In order that the sewer rates and charges may be justly and equitably adjusted to the service rendered, the City shall have the right to base its charges not only on volume, but also on the strength and character of the sewage and wastes discharged, either directly or indirectly into the City's public sewer system in such manner and by such method as it may find practical, in the light of the conditions and attending circumstances of the case in order to determine the proper charges. Such charges shall, where deemed necessary, be adjusted on a flat rate basis by the month of the year.
- C. Service to City. The City shall be subject to the terms of this Chapter and the City shall pay for the services rendered it by the public sewer system and sewage treatment works.
- D. Charges to be billed concurrently with water billing. Such ready-to-serve charges and sewer service charges shall be billed concurrently with the water billing period as such billing practices may be established by the City Council from time to time.
- E. Sewer service fee billing. Each property owner shall be responsible for the sewer service fees for each of their properties. The City shall not transfer responsibility for any sewer service fees to a tenant.
- F. Free service prohibited. No free service shall be rendered by the sewage disposal system to any person, firm, or corporation, public or private, or to any public agency or instrumentality.
- G. Service outside City. The City Council shall also establish rates for supplying sewage disposal service to premises located outside the City, which rates shall not be less but may be more than the rates provided for service furnished to premises within the City.

- H. Billing and collection generally. Sewage disposal rates shall be billed and collected, subject to the same terms and conditions respecting payment, as are provided for water bills. Such rates shall be shown in a separate item on each water bill, except in such cases where there is no water connection, in which event a separate sewage disposal bill shall be sent. Billing shall be under the supervision and direction of the Water Department of the City.
- I. Lien for charges. The charges for sewage disposal service which are, under the provisions of Section 21 of Act No. 94, Public Acts of 1933, as amended, made a lien on all premises served thereby are hereby recognized to constitute such lien, and whenever any such charge against any piece of property shall be delinquent for six (6) months, the City officials in charge of the collection thereof shall certify to the tax assessing officer of the City the fact of such delinquency, whereupon such charge shall be entered upon the next tax roll as a charge against such premises and shall be collected and the lien thereof enforced in the same manner as general City taxes against such premises are collected and the lien thereof enforced.
- J. Additional collection remedies; shutting off water for nonpayment. In addition to other remedies provided, the City shall have the right to shut off and discontinue the supply of water to any premises for the nonpayment of sewer and sewage disposal rates, when due, or civil action may be brought in court in the name of the City for payment.

Section 16-6. Mandatory sewer connections. [Ord. 176, 4/15/2008]

Public sanitary sewage systems are essential to the health, safety and welfare of the people of the state and the City. Septic tank disposal systems are subject to failure due to soil conditions or other reasons. Failure or potential failure of septic tank disposal systems poses a threat to the public health, safety, and welfare, presents a potential for ill health, transmission of disease, mortality, and potential economic blight and constitutes a threat to the quality of surface and subsurface waters of the state and City. The connection to available public sanitary sewer systems at the earliest, reasonable date is a matter for the protection of the public health, safety, and welfare and necessary in the public interest which is declared as a matter of legislative determination.

Structures in which sanitary sewage originates located in the City in the area served by the system for which there is an available public sanitary sewer of the system shall not be used or occupied, after the effective date hereof, unless said structures are connected to the sewage disposal system; provided, that structures within the City in which sanitary sewage is originating on the effective date hereof or in which sanitary sewage originates before availability of the system or any part thereof to serve said structures shall be connected to said system within ninety (90) days after publication of a notice by the City of the availability of the system in a newspaper of general circulation in the City, to be designated by the City Council. Plats for premises in the area served by the system subdivided into three (3) or more lots or parcels, after the effective date hereof, shall not be approved on behalf of the City and none of said lots or parcels shall be improved by the erection of a structure thereon unless lateral sewers to serve all of said lots or parcels and to connect same to the system are available as part of the system or shall be installed at private cost (or the estimated cost thereof deposited with the City) in the manner, size, and location approved by the City. Where a structure in which sanitary sewage originates has not been connected to an available public sanitary sewer within the time period provided above, the City shall require the connection to be made forthwith after notice, which may be by first class or certified mail or posting on the property, to the owner of the property on which the structure is located. The notice shall give the approximate location of the public sanitary sewer system which is available for connection of the structure involved and shall advise the owner of the requirements and of the enforcement provisions of this Chapter and other applicable law. The term "available public sanitary sewer" shall be construed to mean a public sanitary sewer system, whether publicly or privately financed, located in a right-of way, easement, highway, street, or public way which crosses, adjoins, or abuts upon the premises and passing not more than two-hundred (200) feet at the nearest point from a structure in which sanitary sewage originates, provided that in the event a state agency shall require connection to the system, the aforesaid restriction of two-hundred (200) feet shall be inapplicable and the term "available public sanitary sewer" shall include the public sanitary sewer system at the nearest point from a structure in which sanitary sewage originates. The term "structure in which sanitary sewage originates" or "structure" shall be construed to mean a building in which toilet, kitchen, laundry, bathing, or other facilities which generate water-carried sanitary sewage, are used or are available for use for household, commercial, industrial, or other purposes.

Section 16-7. Disposition of revenues; budget for system.

The revenues of the sewage disposal system derived from the collection of such rates as are established by and under Section 16-4 are hereby ordered to be set aside as collected in an institution specified by the City Council, in a separate depository fund to be designated the "sewage disposal system receiving fund" (hereinafter referred to as the receiving fund), and the revenues in such fund are pledged for the purpose of the following funds, and shall be transferred from the receiving fund periodically in the manner and at the times hereinafter specified:

- A. Out of the revenues in the receiving fund, there shall be first set aside, monthly, into a separate depository fund designated the "operation and maintenance fund," a sum sufficient to provide for the payment of the next month's current expenses of administration and operation of such system, and such current expenses for the maintenance thereof as may be necessary to preserve the same in good repair and working order.

A budget, showing in detail the estimated costs of administration, operation, and maintenance of the sewage disposal system for the next ensuing fiscal year shall be prepared by the City Manager at the same time as he/she is required by the City Charter to prepare the annual City budget, which budget shall be approved by the City Council. The amounts transferred into the operation and maintenance fund during each year shall not exceed the amount set forth in such budget, unless approved by a two-thirds (2/3) vote of the City Council.

- B. Out of the revenues remaining in the receiving fund after provision has been made for expenses of operation and maintenance of the sewage disposal system, there shall be next set aside, monthly, into the "debt retirement fund" of the City, all the remaining revenues of such system, the money so set aside into such fund to be allocated and set aside on the books and records of the City and used and applied solely and only for the payment of the principal of and interest on the general obligation sewage disposal system bonds in the aggregate principal amount of three-hundred seventy-five thousand dollars (\$375,000.00) referred to in Section 16-2 of this Chapter, provided that moneys not required for said payment of principal and interest on said bonds may be used for any other purpose connected with the system.

Section 16-8. Books and records; audits.

The City Council shall cause to be maintained and kept proper books of record and account, in which shall be made full and correct entries of all transactions relating to the sewage disposal system. Such books of record and account shall be audited annually by a certified public accountant, to be designated by the City Council, and a certified copy of such audit shall be filed with the City Clerk.

ARTICLE II. RULES AND REGULATIONS.

Section 16-9. Use of public sewers required.

- A. It shall be unlawful for any person to place, deposit, or permit to be deposited in any unsanitary manner upon public or private property within the City or in any area under the jurisdiction of said City, any human or animal excrement, garbage, or other objectionable waste.
- B. It shall be unlawful to discharge to any natural outlet or drain within the City or in any area under the jurisdiction of said City any sewage or other polluted waters, except where suitable treatment has been provided in accordance with subsequent provisions of this ordinance or the requirements of law.
- C. Except as hereinafter provided, it shall be unlawful to construct or maintain any privy, privy vault, septic tank, cesspool, or other facility intended or used for the disposal of sewage in the City.
- D. Structures in which sewage originates shall be connected to any available sanitary sewer in accordance with the provisions of Section 16-6.
- E. Any industry or structure discharging process flow to the sanitary sewer, storm sewer, or receiving stream shall file the material listed below with the Joint Board of the District. The District may require each person who applies for or receives sewer service, or through the nature of the enterprise creates a potential environmental problem, to file the material listed below:
 - 1. File a written statement setting forth the nature of the enterprise, the source and amount of water used, the amount of water to be discharged, with its present or expected bacterial, physical, chemical, radioactive, or other pertinent characteristics of the wastes.
 - 2. Provide a plan map of the building, works, or complex with each outfall to the surface waters, sanitary sewer, storm sewer, natural watercourse, or ground waters noted, described and the waste stream identified.
 - 3. Sample test and file reports with the District and the appropriate state agencies on appropriate characteristics of wastes on a schedule, at locations and according to methods approved by the Joint Board.
 - 4. Place waste treatment facilities, process facilities waste streams, or other potential waste problems under the specific supervision and control of persons who have been certified by an appropriate state agency as properly qualified to supervise such facilities.
 - 5. Provide a report on raw materials entering the process or support systems, intermediate materials, final products, and waste by-products as those factors may affect waste control.
 - 6. Maintain records and file reports on the final disposal of specific liquid, solid, sludges, oils, radioactive materials, solvents or other wastes.
 - 7. If any industrial process is to be altered so as to include or negate a process waste or potential waste written notification shall be given to the District and be subject to approval.

Section 16-10. Private sewage disposal.

- A. Where a public sanitary or combined sewer is not available under the provisions of Section 16-9, the building sewer shall be connected to a private sewage disposal system complying with the regulations of the City and of the Berrien County Health Department.
- B. As such time as a public sewer becomes available to a property served by a private sewage disposal system, as provided in Section 16-9, a direct connection shall be made to the public sewer in compliance with this Chapter, and any septic tanks, cesspools, and similar private sewage disposal facilities shall be abandoned and filled with suitable material.
- C. The owner shall operate and maintain the private sewage disposal facilities in a sanitary manner at all times, at no expense to the City.
- D. No statement contained in this Chapter shall be construed to interfere with any additional requirements that may be imposed by the City or the Berrien County Health Department.

Section 16-11. Building sewers and connections.

- A. No unauthorized and unlicensed person shall uncover, make any connections with or opening into, use, alter, or disturb any public sewer or appurtenance thereof without first obtaining a written permit from the District.
- B. There shall be two (2) classes of building sewer permits: (1) For residential and commercial service, and (2) For service to establishments producing industrial wastes. In either case the owner or their agent shall make application on a special form furnished by the City. The permit application will be supplemented by any plans, specifications, or other information considered pertinent in the judgment of the Superintendent. A permit and inspection fee for an industrial building sewer permit shall be paid to the City Treasurer at the time the application is filed.
- C. All costs and expense incident to the installation and connection of the building sewer shall be borne by the owner. The owner shall indemnify the City from any loss or damage that may directly or indirectly be occasioned by the installation of the building sewer.
- D. A separate and independent building sewer shall be provided for every building; except where a building stands at the rear of another on an interior lot and no private sewer is available or can be constructed to the rear building through an adjoining alley, court, yard, or driveway, the building sewer from the front building may be extended to the rear building and the whole considered as one (1) building sewer.
- E. Old building sewers may be used in connection with new buildings only when they are found, upon examination and test by the Superintendent, to meet all requirements of this Chapter.
- F. The size, slope, alignment, materials of construction of a building sewer, and the methods to be used in excavation, placing of the pipe, jointing, testing, and backfilling the trench, shall all conform to the requirements of the building and plumbing code or applicable rules and regulations of the City. In the absence of code provisions or in amplification thereof, the materials and procedures set forth in appropriate specifications of the A.S.T.M. and W.P.C.F. Manual of Practices No. 9 shall apply.
- G. Whenever possible, the building sewer shall be brought to the building at an elevation below the basement floor. In all buildings in which any building drain is too low to permit gravity flow to the public sewer, sewage carried by such building drain shall be lifted by an approved means and discharged to the building sewer.
- H. No person shall make connection of roof downspouts, exterior foundation drains, areaway drains, or other sources of surface runoff or ground water to a building sewer or building drain which in turn is connected directly or indirectly to a public sanitary sewer.

- I. The connection of the building sewer into the public sewer shall conform to the requirements of the building and plumbing code or other applicable rules and regulations of the City, or the procedures set forth in appropriate specifications of the A.S.T.M. and W.P.C.F. Manual of Practice No. 9. All such connections shall be made gas-tight and watertight. Any deviation from the prescribed procedures and materials must be approved by the District before installation.
- J. The applicant for the building sewer permit shall notify the District when the building sewer is ready for inspection and connection to the public sewer. The connection shall be made under the supervision of the Superintendent or his/her representative.
- K. All excavations for building sewer installation shall be adequately guarded with barricades and lights so as to protect the public from hazard. Streets, sidewalks, parkways, and other public property disturbed in the course of the work shall be restored in a manner satisfactory to the Superintendent.

Section 16-12. Use of public sewers and rates and liens.

- A. No person shall discharge or cause to be discharged any storm water, surface water, ground water, roof runoff, subsurface drainage, uncontaminated cooling water, or unpolluted industrial process waters into any sanitary sewer.
- B. Storm water and all other unpolluted drainage shall be discharged to such sewers as are specifically designated as combined sewers or storm sewers, or to a natural outlet approved by the appropriate state and county agency. Industrial cooling water or unpolluted process waters may be discharged, upon the approval of the appropriate state or county agency, to a storm sewer or natural outlet.
- C. Except as hereinafter provided by specific limits, no person shall discharge or cause to be discharged any of the following described waters or wastes to any public sewer:
 - 1. BOD in excess of three-hundred (300) milligrams per liter (mg/l).
 - 2. COD in excess of four-hundred fifty (450) mg/l.
 - 3. Chlorine demand in excess of fifteen (15) mg/l.
 - 4. Color, as from but not limited to dyes, inks, vegetable tanning solutions, shall be controlled to prevent light absorbency which would interfere with treatment plant processes or that prevent analytical determinations.
 - 5. Explosive liquid, solid, or gas, gasoline, benzene, naphtha, fuel oil, or other flammable liquid shall not be admitted.
 - 6. Garbage not properly shredded { greater than one-half (1/2) inch } shall not be allowed.
 - 7. Grease, oils, wax, fat, whether emulsified or not, in excess of fifty (50) mg/l, or other substances which may solidify or become viscous at temperatures between thirty-two (32) degrees Fahrenheit, and one-hundred fifty (150) degrees Fahrenheit shall not be admitted to the sanitary sewer.
 - 8. Industrial wastes in concentrations above limitations set forth by appropriate state agencies to comply with federal guidelines for protection of treatment plant and receiving water course shall not be allowed to enter sanitary sewers in sufficient quantity to impair the operation of the sewage treatment processes.
 - 9. Inert suspended solids (such as but not limited to Fullers earth, lime slurry, and lime residues) or of dissolved solids (such as but not limited to sodium chloride and sodium sulfate) in unusual concentrations shall not be allowed.

10. Noxious or malodorous gas, such as but not limited to hydrogen sulfide, sulfur dioxide, or oxides of nitrogen and other substances capable of producing a public nuisance shall not be allowed.
 11. pH less than five and a half (5.5) and greater than nine and a half (9.5) shall not be allowed.
 12. Radioactive wastes or isotopes of such half-life or concentration which may exceed limits established by applicable state and federal regulations, shall not be allowed.
 13. Suspended solids in excess of three-hundred fifty (350) mg/l.
 14. Temperature of wastes less than thirty-two (32) degrees Fahrenheit and greater than one-hundred fifty (150) degrees Fahrenheit shall not be allowed.
 15. Waters or wastes containing substances, which are not amenable to treatment, only to such degree that the sewage treatment plant effluent cannot meet the requirements of other agencies having jurisdiction over discharge to the receiving waters.
- D. If any waters or wastes are discharged or are proposed to be discharged to the public sewers, which waters contain the substances or possess the characteristics enumerated in subsection D of this Section, and which in the judgment of the District, may have deleterious effect upon the sewage works, processes, equipment, or receiving waters, or which otherwise create a hazard to life or constitute a public nuisance, the District may:
1. Reject the wastes.
 2. Require pre-treatment to an acceptable condition for discharge to the public sewers.
 3. Require control over the quantities and rates of discharge.
 4. Require payment to cover the added cost of handling and treating the wastes not covered by existing taxes and/or sewer charges under the provisions of Section 16-9 of this Chapter.
- E. If the District permits the pre-treatment or equalization of waste flows, the design and installation of the plants and equipment shall be subject to the review and approval of the Superintendent and subject to the requirements of all applicable codes, ordinances, and laws.
- Grease, oil, and sand interceptors shall be provided when, in the judgment of the District, they are necessary for the proper handling of liquid wastes containing grease in excessive amounts or any flammable wastes, sand, or other harmful ingredients except that such interceptors shall not be required for private living quarters or dwelling units. All interceptors shall be of a type and capacity approved by the District, and accessible for cleaning and inspection.
- F. Where preliminary treatment or flow equalizing facilities are provided for any waters or wastes, they shall be maintained continuously in satisfactory and effective operation, by the owner at their expense.
- G. When required by the District, the owner of any property serviced by a building sewer carrying industrial wastes shall install a suitable control manhole together with such necessary meters and other appurtenances in the building sewer to facilitate observation, sampling, and measurement of the wastes. Such manhole, when required, shall be accessibly and safely located, and shall be constructed in accordance with plans approved by the Superintendent. The manhole shall be installed by the owner at his expense and shall be maintained by the owner so as to be safe and accessible at all times.
- H. All measurements, tests and analysis of the characteristics of waters and wastes to which reference is made in this Chapter shall be determined in accordance with the most recent edition of "Standard Methods for the Examination of Water and Sewage" and shall be determined at the control manhole provided for or upon suitable samples taken at said control manhole. In the event that no special manhole has been required, the control manhole shall be considered to be the nearest downstream manhole in the public sewer to the point at

which the building sewer is connected. Sampling shall be carried out by customarily accepted methods to reflect the effect of constituent upon the sewage works and determine the existence of hazards to life, limb, and property. The particular analysis involved will determine whether a twenty-four (24) hour composite of all outfalls of a premise is appropriate or whether grab sample or samples should be taken.

- I. No statement contained in this Chapter shall be construed as preventing any special agreement or arrangement between the District and any industrial concern whereby an industrial waste of unusual strength or character may be accepted by the District for treatment, subject to payment therefore, by the industrial concern.
- J. The City is party to a Sanitary Sewage Disposal System Agreement dated October 13, 1971, and an Amendment to Sanitary Sewage Disposal System Agreement dated February 17, 1976, among the City of New Buffalo, Township of Chikaming, and Township of New Buffalo, as contracting parties and a Second Amendment to Sanitary Sewage Disposal Agreement, dated December 19, 1978, in which the County of Berrien has joined with the contracting parties. The Agreement and Amendments create the District and place the System under the control and management of the District. Exhibit A to the Second Amendment sets forth rates, fees, and charges to be imposed upon and collected from the users of the System and provides for review of said rates, fees, and charges from time to time and the automatic incorporation of all such current or changed user rates and charges in this Chapter without formal amendment thereof. Said rates, fees, and charges, from time to time, in effect as provided in said Agreement and Amendments, are hereby approved and adopted and all users of the System of the District in the City shall pay said rates, fees, and charges for use of and connection to any public sewer available to a user as provided within this Chapter. No free service shall be furnished by the System to the City or to any person, firm, corporation, public or private, or to any public agency or instrumentality. Rates, fees, and charges for services furnished by the System shall be billed and collected in accordance with the provisions of this Chapter.
- K. If any rates, fees, and charges are not paid on or before the due date then a penalty of ten percent (10%) shall be added thereto in accordance with the provisions of this Chapter.
- J. Rates, fees, and charges for services furnished by the System to any premises shall be a lien thereon also in accordance with the provisions of this Chapter.

Section 16-13. Protection from damage.

No unauthorized person shall maliciously, willfully, or negligently break, damage, destroy, uncover, deface, or tamper with any structure, appurtenance, or equipment which is a part of the municipal sewage works. Any person violating this provision shall be subject to immediate arrest under charge of disorderly conduct.

Section 16-14. Powers and authority of inspectors.

The Superintendent and other duly authorized employees of the District bearing proper credentials and identification shall be permitted to enter upon all properties for the purposes of inspection, observation, measurement, sampling, and testing in accordance with the provisions of this Chapter. The Superintendent or his/her representatives shall have no authority to inquire into any processes including metallurgical, chemical, oil, refining, ceramic, paper, or other industries beyond that point having a direct bearing on the kind and source of discharge to the sewers or waterways or facilities for waste treatment.

Section 16-15. Penalties and enforcement.

- A. Any person found to be violating any provision of this Chapter except Section 1613 shall be served by the Superintendent with written notice stating the nature of the violation and providing a reasonable time limit for the satisfactory correction thereof. The offender shall, within the period of time stated in such notice, permanently cease all violations.

- B. Any person who shall continue any violation beyond the time limit provided for in Section 16-15 (1), shall be guilty of a municipal civil infraction and upon conviction thereof subject to the penalties provided in Section 1-6 of this Code. Each day in which any such violation shall continue shall be deemed a separate offense.
- C. Any person violating any of the provisions of this Chapter shall become liable to the City for any expense, loss, or damage occasioned by the System or District by reason of such violation.
- D. The provisions of this Chapter shall be enforceable through the bringing of appropriate action for injunction, mandamus, superintending control, or otherwise, in any court having jurisdiction. Any violation of this ordinance is deemed to be a nuisance per se.

Chapter 17 - SPECIAL ASSESSMENT IMPROVEMENTS

ARTICLE I. IN GENERAL.

Section 17-1. Definitions.

For the purposes of this Chapter, the following words and phrases shall have the meanings respectively ascribed to them by this Section.

Cost. The word "cost" shall include the expense of survey, spreading of roll, notice, advertising, printing, financing, legal, engineering, construction, condemnation, and all other costs incidental to the making of the improvement.

Engineer. The engineer specifically employed for work on the improvement.

Improvement. Any public betterment.

Lot or parcel of land. Any subdivision lot or portion thereof as officially platted or any unplatted parcel of land as may be described on any official record.

Manager, Assessor, Clerk, Treasurer. Whenever reference is made to the City Manager, Assessor, Clerk, or Treasurer, it shall mean those persons duly appointed to such offices or positions in the City.

Owner. The last recorded title holder of any lot or parcel of land, or the person whose name is last listed upon the City tax roll as the owner of a certain lot or parcel of land.

ARTICLE II. ADVISORY PETITIONS.

Section 17-2. Generally; effect.

The City Council, in order to ascertain whether or not a reasonable number of property owners to be assessed desire any particular improvement to be made, may request and receive a petition therefor, or may receive such a petition voluntarily presented, but in either event, such petition shall be advisory only and shall not be jurisdictional.

Section 17-3. Contents.

All advisory petitions shall be addressed to the City Council and contain a brief description of the improvement sought to be made and shall be signed by property owners only, whose signatures shall be followed by a brief description of the property owned by them. The signatures on such petitions shall be verified by the oath of one (1) or more of the circulators of such petition, before filing.

Section 17-4. Filing; verification; referral to City Manager; Council presentation.

Advisory petitions shall be filed with the City Clerk who shall check them for signatures and correctness and if they are found to be in order, he/she shall refer them to the City Manager who shall present them to the City Council at its next regular or special meeting called for that purpose, together with his/her recommendations.

ARTICLE III. IMPROVEMENT PROCEDURE GENERALLY.

Section 17-5. Initiatory resolution.

When, by both the provisions of the City Charter and the laws of the state, the City Council shall have power to make a public improvement by special assessment, it shall, by resolution, set forth the improvement intended to be made and direct the City Manager to prepare a report, with the assistance of the engineer, containing any information it may request concerning such improvement.

Section 17-6. Preparation of plans and specifications, etc.

The City Manager shall request the engineer, if one is retained, to prepare, or cause to be prepared, plans and specifications of the improvement to be made, an estimate of the life of the improvement and the cost thereof, and plats of the lands affected thereby, and such other information as the Council may have requested.

Section 17-7. Report and recommendations of City Manager.

The City Manager shall prepare his/her report and include in it a schedule of all property affected by the proposed improvement, listing the assessed valuation, tax delinquencies, whether land is vacant or improved, and pertinent information on such parcels as are owned by public authorities, and such other information as the Council may have requested, and shall present it to the Council along with the plans and specifications of the engineer, together with his/her recommendation as to what proportion of the cost should be paid by special assessment and what part, if any, should be a general obligation of the City, the number of installments in which the assessment should be spread and the lands which should be included in the special assessment district.

Section 17-8. Public Hearing - Notice.

After the filing of the report and plans and specifications referred to in Sections 17-6 and 17-7 the Council shall, by resolution, order the same filed with the City Clerk and provide for a public hearing before them on the improvement to be made, which hearing shall be not less than one (1) week after notice thereof has been given by first class mail to the owner of each lot or parcel of land affected thereby at their address or the last address shown on the last tax roll of the City and by publication at least once in a newspaper of general circulation in the City, to be designated by the Council.

Section 17-9. Same - Conduct, etc.; objections and changes.

At the time and place specified in the notice for the public hearing, as provided in Section 17-8, the Council shall meet and hear any person to be affected by the proposed public improvement. The hearing may be adjourned from time to time by the Council and the Council may make any changes in the proposed work or assessment which shall seem reasonable or proper in view of any objections, or for any other reason which may appear to be for the best interests of the City; provided, that if the improvements intended to be made are enlarged upon or additions made to the district to be assessed, the same shall not be done until after another hearing is held pursuant to notice as required by original hearings.

Section 17-10. Resolution of determination.

After the public hearing, as provided for in Sections 17-8 and 17-9, the Council may, by resolution, determine to make the improvement and defray the whole or any part of the cost of the improvement by special assessment upon the property especially benefited in proportion to the benefits derived, or to be derived, and designate whether it is to be assessed according to frontage or other basis. By such resolution the Council shall approve the plans and specifications for the improvements, the rate of interest to be charged on installments not to exceed fifteen percent

(15%) per annum, designate the district or land and premises upon which special assessments shall be levied, direct the Assessor to prepare a special assessment roll in accordance with the Council's determination, and designate the name by which such assessment roll shall be known and referred.

Section 17-11. Special assessment roll - Preparation, etc.

The City Assessor shall thereupon prepare a special assessment roll, as referred to in the preceding Section, including all lots and parcels of land within the special assessment district designated by the Council, and shall assess to each such lot or parcel of land such relative portion of the whole sum to be levied against all the lands in the special assessment district as the benefit to such lot or parcel of lands bears to the total benefits to all lands in such district. There shall also be entered upon such roll the amount which has been assessed to the City at large.

Section 17-12. Same - Certificate of Assessor; filing and presentation to Council.

When the City Assessor shall have completed the special assessment roll referred to in the two (2) preceding Sections, the Assessor shall attach thereto, or endorse thereon, his/her certificate to the effect that such roll has been prepared by him/her pursuant to a resolution of the Council (giving the date of adoption of same) and that in making the assessments therein he/she has, as near as may be, according to his/her best judgment, conformed in all respects to the directions contained in such resolution and the City Charter and the provisions of this Article. Thereupon, the Assessor shall file such special assessment roll with the City Clerk who shall present the same to the Council.

Section 17-13. Same - Filing for examination by public; notice of hearing for review.

Upon receipt of the special assessment roll, as provided in the preceding section, the Council shall order it filed in the office of the City Clerk for public examination, and shall by resolution fix the time and place when the Council will meet and review such roll, which meeting shall be held not less than one (1) week after notice thereof specifying the purpose, time, and place has been given by first class mail to the owner of each lot or parcel of land affected thereby at their address or the address shown on the last tax roll of the City, and by publication at least once in a newspaper of general circulation in the City, to be designated by the Council.

Section 17-14. Same - Written objections generally.

Any person deeming themselves aggrieved by the special assessment roll may file their objections thereto in writing with the City Clerk prior to the close of the hearing thereon, as provided for by this Chapter, which written objections shall specify in what respect they deem themselves aggrieved.

Section 17-15. Same - Hearing for review generally; consideration of objections.

The Council shall meet and review the special assessment roll provided for by this Article at the time and place appointed or at an adjourned date therefor and shall consider any written objections thereto.

Section 17-16. Same - Corrections and changes.

The Council may correct the special assessment roll provided for by this Article as to any assessment or description or any lot or parcel of land or other errors appearing therein. Any changes made in such roll shall be noted in the Council minutes.

Section 17-17. Same - Confirmation generally; referral for revision or annulment.

After hearing and review, as provided for by this Article, the Council may confirm such special assessment roll with such corrections as may have been made, if any, or may refer it back to the City Assessor for revision or may annul it and any proceedings in connection therewith.

Section 17-18. Same - Certificate of confirmation; effect of confirmation.

The City Clerk shall endorse the date of confirmation upon each special assessment roll and upon confirmation such roll shall be final and conclusive.

Section 17-19. Four-fifths (4/5) vote of Council required upon majority objection to improvement.

If, at or prior to final confirmation of any special assessment, more than fifty percent (50%) of the number of owners of privately owned real property to be assessed for any improvement, or in the case of paving or similar improvements more than fifty percent (50%) of the number of owners of frontage to be assessed for any such improvement, shall object in writing to the proposed improvement, the improvement shall not be made by proceedings authorized by this Chapter without a four-fifths (4/5) vote of the members of the Council; provided, that this section shall not apply to sidewalk construction.

Section 17-20. Special contractual procedure.

In the event that all persons or property owners to be affected by any proposed improvement agree that such proposed improvement be made and that a special assessment be levied in connection therewith, the City may, in lieu of the procedure set forth in this Chapter, enter into a written contract with all of the persons or property owners affected thereby, which contract when properly approved and executed shall operate as a complete special assessment procedure and the assessment shall be made in accordance with such contract.

ARTICLE IV. SIDEWALK PROCEDURE.

Section 17-21. Duty of abutting owners relative to sidewalk construction and maintenance general.

Sidewalks, except crosswalks, shall be built and maintained by the owners of platted lands within the City in the public streets adjacent to and abutting upon such lots and premises according to plans and specifications approved by an engineer.

Section 17-22. Initiatory resolution for construction, etc.

When, in the opinion of the Council, any sidewalk needs to be constructed, rebuilt, or repaired, it shall by resolution direct the City Manager to prepare a report, with the assistance of an engineer, containing any information it may request concerning such work.

Section 17-23. Preparation of plans and specifications, etc.

Upon being informed of the resolution provided for by Section 17-22, the City Manager shall request the engineer to prepare or cause to be prepared plans and specifications for the work to be done, a schedule of the lands affected and such other information as the Council may have requested.

Section 17-24. Report and recommendations of City Manager.

The City Manager shall prepare his/her report and include in it a schedule of all property affected by the work proposed to be done pursuant to the provisions of this Chapter, and pertinent information on such parcels as are owned by public authorities, and such other information as the Council may have requested, and shall present it to the Council along with the plans and specifications of the engineer, together with his/her recommendation as to what part, if any, should be a general obligation of the City, the number of installments in which the assessment should be spread, and the lands which should be included in the special assessment district.

Section 17-25. Resolution of determination; notice of work to be done.

After reviewing the plans and specifications and the report of the City Manager, as provided by this Chapter, the Council shall, if it so desires, determine by resolution that the work be done, setting forth the details concerning it, prescribe a form of notice and direct the City Clerk to give such notice by first class mail to the owner of each lot or parcel of land affected thereby at their address or the address shown on the last tax roll of the City and by publication at least once in a newspaper of general circulation in the City, to be designated by the Council.

The notice provided for in the preceding paragraph shall specify the extent of the work to be done, describe the property affected by the work and require the owner to perform the work promptly in accordance with the plans and specifications of the engineer and designate a time within which the same shall be done.

Section 17-26. Alternate procedure for initiation by City.

When, in the opinion of the City Manager, any sidewalks need to be constructed, rebuilt, or repaired, he/she may request the engineer to prepare or cause to be prepared, plans and specifications of the work needed to be done, and a schedule of the lands affected, and the Manager shall submit such information, along with his/her report and recommendations, to the Council, in the same manner as though the Council had requested it.

Section 17-27. Work done by City - Resolution ordering work, etc.

If, at the expiration of the time limit specified in the notice provided for by Section 17-25, within which the work must be done, any owner has not complied with the requirements thereof, the Council shall, by resolution, order such sidewalk to be constructed, rebuilt, or repaired under the direction of the City Manager by the proper department or agency of the City, or may do the work by contract or by hire.

Section 17-28. Same - Duties of City Manager generally.

The City Manager shall take all steps necessary to carry out the direction of the Council in performing work ordered under the provisions of this Chapter. He/she shall keep, or cause to be kept, and accurate record of the expenses in connection therewith, and upon completion of the work to be performed, shall submit a report of the work done and of all expenses in connection therewith to the Council.

Section 17-29. Same - Resolution as to assessment of costs, etc.

The Council shall, by resolution, after examination of the City Manager's report, as provided for by this Chapter, determine what amount or part of each such expense shall be charged and the person, if known, against whom, and the premises upon which the same shall be levied as a special assessment. By such resolution, the Council shall determine the number of installments in which the assessment may be paid, determine the rate of interest to be charged on installments, not to exceed fifteen percent (15%) per annum, designate the district or land and premises upon which special assessment shall be levied, direct the City Assessor to prepare a special assessment roll in accordance with the Council's determination, and designate the name by which such assessment roll shall be known and referred.

Section 17-30. Same - Special assessment roll - Preparation, etc.

The City Assessor shall, upon being informed of the resolution provided for by the preceding Section, prepare a special assessment roll including all lots and parcels of land within the special assessment district designated by the Council and shall assess to each lot or parcel of land such sums as may have been directed by the Council.

Section 17-31. Same - Same - Certificate of Assessor; filing and presentation to Council.

When the City Assessor shall have completed the assessment roll provided for by the preceding section, he/she shall attach thereto and endorse thereon his/her certificate to the effect that such roll has been made by him/her pursuant to a resolution of the Council (giving the date of adoption of same) and that in making the assessment therein the Assessor has, as near as may be, according to his/her best judgment, conformed in all respects to the directions contained in such resolution and the City Charter and the provisions of this Article. Thereupon, the Assessor shall file such special assessment roll with the City Clerk who shall present the same to the Council.

Section 17-32. Same - Same - Filing for public examination; notice of hearing for review.

Upon receipt of the special assessment roll, as provided in the preceding section, the Council shall order it filed in the office of the City Clerk for public examination, and shall, by resolution, fix the time and place when the Council will meet and review such roll, which meeting shall be held not less than one (1) week after notice thereof, specifying the purpose, time, and place, has been given by first class mail to each owner of each lot or parcel of land affected thereby at their address or the address shown on the last tax roll of the City, and by publication at least once in a newspaper of general circulation in the City, to be designated by the Council, or by posting notice thereof for the same length of time in three (3) public places within the City.

Section 17-33. Same - Same - Hearing for review generally; consideration of objections.

The Council shall meet and review the special assessment roll provided for by this Article at the time and place appointed or at an adjourned date therefor and shall consider any written objections thereto.

Section 17-34. Same - Same - Corrections and changes.

The Council may correct the special assessment roll provided for by this Article as to any assessment or description of any lot or parcel of land or other errors appearing therein. Any changes made in such roll shall be noted in the Council minutes.

Section 17-35. Same - Confirmation.

After hearing and review, as provided for by this Article, the Council shall confirm such special assessment roll with such corrections as may have been made and the City Clerk shall endorse the date of confirmation thereon and, upon confirmation, such roll shall be final and conclusive.

Section 17-36. Alternate proceeding under general improvement procedure.

The Council may, if it so desires, disregard the proceedings under this Chapter and proceed entirely under the improvement procedure provided in Article III of this Chapter, either as an individual improvement program or in conjunction with any other improvement program.

ARTICLE V. SINGLE LOT PROCEDURE

Section 17-37. Report of City Manager.

When any expense shall have been incurred by the City upon or in respect to any single lot or parcel of land, which expense is chargeable against such lot or parcel of land and the owner thereof, by any City Charter provision, or any provision of this Code or other ordinance of the City, or any state or federal laws, and is not of that class required to be prorated among several lots or parcels of land in a special assessment district, the amount of labor and material or any other expense or service for which such expense was incurred, with a description of the lot or parcel of land upon or in respect to which the expense was incurred, and the name of the owner, if known, shall be reported by the City Manager to the Council.

Section 17-38. Resolution of determination.

After reviewing the report of the City Manager, as provided for by the preceding Section, the Council may, if it so desires, determine by resolution what amount or part of each such expense shall be charged, and the person, if known, against whom and the premises upon which the same shall be levied as a special assessment. By such resolution the Council shall determine the number of installments in which the assessment may be paid, determine the rate of interest to be charged on such installments, not to exceed fifteen percent (15%) per annum, designate the land and premises upon which the special assessment shall be levied, direct the City Assessor to prepare a special assessment roll in accordance with the Council's determination, and designate the name by which such assessment roll shall be known and referred to, and as often as the Council shall deem expedient, require notice of the several amounts so reported and determined to be given by the City Clerk, by first class mail sent to the last known address of the owner as shown on the assessment roll of the City, and by publication.

Section 17-39. Special assessment roll - Preparation, etc.

The City Assessor shall, upon being informed of the resolution provided for by the preceding Section, prepare a special assessment roll, including all lots and parcels of land within the special assessment district designated by the Council, and shall assess to each such lot or parcel of land such sums as may have been directed by the Council.

Section 17-40. Same - Certificate of Assessor; filing and presentation to Council.

When the City Assessor shall have completed the special assessment roll provided for by the preceding section, he/she shall attach thereto and endorse thereon his/her certificate to the effect that such roll has been made by the Assessor pursuant to a resolution of the Council (giving the date of adoption of same) and that in making the assessments therein the Assessor has, as near as may be, according to his/her best judgment, conformed in all respects to the directions contained in such resolution and the City Charter and the provisions of this Article. Thereupon, the Assessor shall file such special assessment roll with the City Clerk who shall present the same to the Council.

Section 17-41. Same - Filing for public examination; notice of hearing for review.

Upon receipt of the special assessment roll as provided by Section 17-39, the Council shall order it filed in the office of the City Clerk for public examination and shall, by resolution, fix the time and place when the Council will meet and review such roll, which meeting shall be held not less than one (1) week after notice thereof, specifying the purpose, time and place, has been given by first class mail to the owner of each lot or parcel of land affected thereby at their address of the address shown on the last tax roll of the City, and by publication at least once in a newspaper of general circulation in the City, to be designated by the Council, or by posting notice thereof for the same length of time in three (3) public places within the City.

Section 17-42. Same - Hearing for review generally; consideration of objections.

The Council shall meet and review the special assessment roll provided for by this Article at the time and place appointed or at an adjourned date therefor and shall consider any written objections thereto.

Section 17-43. Same - Corrections and changes.

The Council may correct the special assessment roll provided for by this Article as to any assessment or description of any lot or parcel of land or other errors appearing therein. Any changes made in such roll shall be noted in the Council minutes.

Section 17-44. Same - Confirmation.

After hearing and review, as provided for by this Article, the Council shall confirm such special assessment roll with such corrections as may have been made and the City Clerk shall endorse the date of confirmation thereon, and upon confirmation such roll shall be final and conclusive.

ARTICLE VI. LIEN GENERALLY

Section 17-45. Created and established.

Special assessments and all interest and charges thereon, from the date of confirmation of the special assessment roll, shall be and remain a lien upon the property assessed of the same character and effect as the lien created by general law for state and County taxes or by the City Charter for City taxes until paid.

Section 17-46. Character and effect.

All liens referred to in the preceding Section shall be of the same character and effect as the lien created by the City Charter for taxes and shall include accrued interest and penalties.

Section 17-47. Destruction or impairment.

No judgment or decree, nor any action of the Council vacating a special assessment, shall destroy or impair the lien of the City upon the premises assessed for such amount of the assessment as may be equitably charged against the same, or as by regular mode of proceeding, might have been lawfully assessed thereon.

Section 17-48. Effect of failure of owner to receive notice.

Failure of any owner to receive any notice required to be sent under the provisions of the City Charter and this Chapter shall not invalidate any special assessment or special assessment roll.

Section 17-49. Personal liability of owner.

In addition to the property tax lien created under the provisions of this Chapter, any special assessment levied by the City shall constitute a debt owed to the City from the owner of the lot or parcel of land assessed and may be collected in the same manner as any contracted debt, or in the same manner as provided by law for the collection of personal property taxes.

ARTICLE VII. INSTALLMENTS AND COLLECTION OF LIEN.

Section 17-50. Maximum number and minimum amount of installments.

Annual installments shall not exceed thirty (30) in number, as the Council may determine at the time of confirmation of the special assessment roll, and in the event a division of assessment operates to make any installment less than ten dollars (\$10.00), the City Assessor shall reduce the number of installments so that each installment shall be above and as near to ten dollars (\$10.00) as possible.

Section 17-51. Due dates.

All special assessments levied under the provisions of this Chapter shall become due upon confirmation of the special assessment roll and if in annual installments, the Council shall determine the first installment to be due upon confirmation of the roll, and deferred installments to be due annually thereafter, or in the discretion of the Council they may be spread upon and made a part of each annual City tax roll thereafter until all are paid.

Section 17-52. First installment spread.

The first installment of any special assessment shall be spread upon a special City tax roll in a column headed "Special Assessment," or upon the next annual tax roll at the discretion of the Council, and if spread on a special tax roll may be paid any time within three (3) months from the date of confirmation without penalties, and if unpaid on or before such three (3) months period, it shall be added and made a part of the following first (1st) of July tax roll together with interest as provided.

Section 17-53. Annual installment spread.

Annual installments shall be spread thereafter either on a special assessment roll or on the annual City tax roll, as may have been directed by the Council, in the same manner and subject to the same provisions as provided for first installments.

Section 17-54. Notice to pay - Publication.

The special assessment roll shall be transmitted by the City Clerk to the City Treasurer for collection immediately after confirmation and in the event it is not a part of the annual tax roll, the City Treasurer shall give notice by publication at least once in a newspaper of general circulation in the City that such special assessment roll (describing it) has been filed in the City Treasurer's office and specifying when and where payments may be made thereon.

Section 17-55. Same - Notice by mail.

The City Treasurer may mail statements of the several assessments to the respective owners as indicated by the records of the City Assessor, of the several lots or parcels of land assessed, stating the amount of the assessment and the manner in which it may be paid; provided, however, that failure to mail any such statement shall not invalidate the assessment or entitle the owner to any extension of time within which to pay the assessment.

Section 17-56. Collection of fees and penalties.

After the confirmation of any special assessment roll, the same collection fees shall be collected on delinquent special assessments and upon delinquent installments of such special assessments beginning on the first (1st) day of the fourth (4th) month following the due date, as are provided by the City Charter for the collection of delinquent City taxes.

Section 17-57. Contested assessments.

Except and unless notice is given to the Council in writing of an intention to contest or enjoin the collection of any special assessment for the construction of any pavement, sewer, or other public improvement, or the construction of any sidewalk, within thirty (30) days after the date of the meeting of the Council at which it is finally determined to proceed with the making of the improvement in question, which notice shall state the grounds on which the proceedings are to be contested, no suit or action of any kind shall be instituted or maintained for the purpose of contesting or enjoining the collection of such special assessments, and regardless of whether or not any public improvement is completed in any special assessment district, no owner of real property located in such district shall be entitled to commence any suit or action for the purpose of contesting or enjoining the collection of any such special assessments after they have received the benefits for the substantial completion of that portion of such public improvement for which they are assessed.

ARTICLE VIII. REBATES, REASSESSMENTS, AND ADDITIONAL ASSESSMENTS.

Section 17-58. Certification, etc., of actual cost of improvement.

The City Manager shall, within sixty (60) days after the completion of each local or special public improvement, compile the actual cost thereof and certify the same to the City Assessor who shall adjust the special assessment roll to correspond therewith.

Section 17-59. Additional assessments.

When any special assessment roll shall prove insufficient to pay the cost of the improvement for which it was made, the Council may make an additional pro rata assessment, but the total amount assessed against any one (1) parcel of land shall not exceed the value benefits received by such lot or parcel of land.

Section 17-60. Excess assessments and refunds generally.

Should any assessment under the provisions of this Chapter prove larger than necessary by five percent (5%) or less, the same shall be reported to the Council which may place the excess in the City treasury or make a refund thereof pro rata according to assessment. If the entire excess shall be credited to owners of property as shown by the City assessment roll upon which the assessment has been levied, the refund shall be pro rata according to assessment.

Section 17-61. Refund procedure on installments.

Any excess refund where payment in full has not been received shall be made by credit against future unpaid installments in the inverse order in which they are payable to the extent such installments exist and the balance of such refund shall be made in cash.

Section 17-62. Refunds restricted.

No refunds of special assessments may be made which impair or contravene the provisions of any outstanding obligation or bond secured in whole or in part by such special assessment.

Section 17-63. Illegal or invalid assessments.

Whenever the Council shall deem that any special assessment is invalid or defective for any reason whatsoever, or if any court of competent jurisdiction shall have adjudged such assessment to be illegal, for any reason whatsoever, in whole or in part, the Council shall have the power to cause a new assessment to be made for the same purpose for which the former assessment was made, whether the improvement or any part thereof has been completed or not, and whether any part of the assessment has been collected or not.

Section 17-64. Proceedings on reassessment.

All proceedings on reassessments and for the collection thereof shall be made in the same manner as provided in an original assessment and if any portion of the original assessment shall have been collected and not refunded, it shall apply upon the reassessment and the reassessment shall to that extent be deemed satisfied. If more than the amount reassessed shall have been collected, the balance shall be refunded to the persons making such payments.

ARTICLE IX. MISCELLANEOUS PROVISIONS AND RESTRICTIONS.**Section 17-65. Assessment limited to value of benefits.**

The total amount assessed against any lot or parcel of land shall not exceed the value of benefits received from the improvement.

Section 17-66. Money to be held in special fund.

Except as otherwise provided in the City Charter, and this Chapter, monies raised by special assessments to pay the cost of any local improvement shall be held in a special fund to pay such cost or to repay any monies borrowed therefor.

Section 17-67. Use of funds restricted.

The funds in each special assessment account shall be used only for the improvement project for which the assessment was levied except as otherwise provided in the City Charter.

Section 17-68. Reduction for prepayment.

Any borrowing of money for the construction of improvements enumerated in this Chapter shall be reduced in the total sum prepaid by affected property owners; provided, however, that owners prepaying their share of any special assessment shall nevertheless remain liable to pay interest attributable to their share of the special assessment if prepayment is made after the sale of any bonds or the borrowing of any monies for the construction of any improvement enumerated in this Chapter.

Chapter 18 - STREETS AND SIDEWALKS

ARTICLE I. IN GENERAL

Section 18-1. Encroachments and obstructions generally.

It shall be unlawful for any person to place or cause to be placed any encroachment or obstruction upon any sidewalk, street, alley, lane, or public grounds within the City, which shall in any manner prevent or obstruct the full and free passage of the whole or any part thereof.

Section 18-2. Building materials on sidewalks, etc.

It shall be unlawful for any person to place or cause to be placed any material for building purposes upon any sidewalk, street, alley, lane, or public grounds within the City; provided, however, that the City Manager and/or the City Council are authorized to grant permission in writing to place and keep building materials in any of the places mentioned as aforesaid. Any such permission shall not extend to a period beyond four (4) months from the time of granting the same, and said materials shall be stored in a neat and orderly fashion, and if such materials are the waste product of construction they shall be stored in a suitable container; provided further, that such permission shall not authorize the obstruction of any sidewalk or crosswalk, and no more than one-half (1/2) the driveway opposite any lot.

Any such permission may be revoked by the Manager and/or Council if said materials accumulate beyond a reasonable amount, or if said person shall refuse, neglect, or fail to observe the limits and conditions prescribed in this Section. Any person to whom such permission is granted, as aforesaid, shall cause all building materials and rubbish arising from same to be removed at or before the time limited by this Section.

Section 18-3. Obstruction of gutters, ditches, etc.

It shall be unlawful for any person to obstruct with any sand, gravel, dirt, rubbish, filth, leaves, limbs, or other substances, or to build a structure restricting the free flow thereof, any sluice, gutter, ditch, ravine, or water course in the City on, in front of, or adjoining any lot or premises owned or occupied by such person.

Section 18-4. Removal of snow, ice, etc., from sidewalks.

No person, who shall be the owner of any lot or premises in the City, or who shall be in possession of such lot or premises, shall for the space of twenty-four (24) hours permit any snow, ice, or other obstruction to remain upon the sidewalk in front of or adjoining such lot or premises.

Section 18-5. Certain signs and awnings prohibited.

No person shall construct or place any sign or awning across a sidewalk, street, avenue, alley, public thoroughfare, or other right-of-way or upon any part thereof, supported by any one (1) or more posts placed on any sidewalk or outside of same in any street, avenue, alley, public thoroughfare, or other right-of-way in the City.

Section 18-6. Landscaping, Shrubs and Trees. [Formerly Ord. 185, 7/7/2009; Ord. 199, 12/19/2012]

- A. **Trees on personal property overhanging a right-of way - danger of falling:** The owner of any lot or parcel of property within the City shall be responsible for all trees upon their property, and shall remove, or cause to be removed, any tree or limb which, due to age, illness, or other damage, poses a distinct threat of falling or collapsing onto an improved right-of-way. The City Manager or designated personnel shall make the final determination as to whether or not any tree poses such a threat.
- B. **Landscaping, shrubs or trees on personal property overhanging a right-of way - obstruction:** The owner of any lot or parcel of property fronting any improved right-of-way within the City shall trim, or cause to be trimmed, the branches from all trees and shrubs upon their property overhanging the street and sidewalk so as to leave a clear height of eight (8) feet above surface of the sidewalk and surface of the street unobstructed by branches of such trees and shrubs.
- C. **Elective planting and removing landscaping, shrubs or trees in a right-of-way:** It shall be unlawful for any party to plant or remove any tree or shrub in a right-of-way except in compliance with this Ordinance.
1. The City, or a contractor performing work approved by the City, may plant or remove trees and shrubs in the right-of-way at the discretion of the City Manager or designated personnel, in accordance with the "Landscaping, Shrub and Tree Planting and Removal Policy", which may be established from time to time by the City Council.
 2. No person shall plant or remove any landscaping, shrub or tree in the right-of-way without written permission to do so. Such permit shall be issued by the City Manager or designated personnel. The planting and removing of landscaping, shrubs or trees in the right-of-way shall be in accordance with the "Landscaping, Shrub and Tree Planting and Removal Policy ", which may be established from time to time by the City Council. The cost of said planting or removing shall be borne by the person who obtained the permit.
- D. **Responsibility for disposal of debris from private tree and shrub removal:**
1. The owner of any lot or parcel of property within the City shall remove or cause to be removed debris from a tree or shrub when the tree or shrub from said lot or parcel is being removed in-whole, or a substantial part thereof. It is not the intention of this Ordinance that the City serve as a tree service to dispose of tree debris relating to the removal of trees and shrubs from private property.
 2. Debris from a tree or shrub left on a right-of-way from a tree or shrub which is being removed in-whole, or a substantial part thereof, shall not be in conformance with the "Yard Waste Collection Policy" of the City.
- E. **Penalties.** The owner (as shown on the assessor's records) of private property subject to this chapter is responsible for compliance. Each violation of this chapter shall be a civil infraction punishable by a civil fine as provided in Section 1-6 of the City Code of Ordinances, plus costs and all other remedies available pursuant to the City Code of Ordinances or by statute. Each day of violation shall be a separate violation. Subject to the provisions of Chapter 2 of the City Code of Ordinances, failure to timely pay the civil fine as provided herein shall result in a civil action by the City in a court of competent jurisdiction. Should the City receive a judgment and should the judgment not be satisfied within sixty (60) days of service upon the defendant, the City may, upon thirty (30) days written notice, submit a copy of said judgment to both the City Treasurer and County Treasurer for said costs to be added to the tax bill of the defendant. The cost of enforcement and prosecution shall be the actual amount of attorney fees and costs of enforcement. An itemized bill of fees and costs given under oath shall be prima facie evidence of the attorney fees and costs.

Section 18-7 Sidewalks Required for New Construction. [Ord. 138, 12/24/2002; Ord. 148, 3/16/2005; Ord. 189, 11/21/2012]

- A. Each owner of property on a public street within the City of New Buffalo is required to construct a sidewalk in accordance with the specifications of the City of New Buffalo if any of the following conditions exist:
1. The owner of a vacant lot or parcel applies for a building permit to build a 100% new structure.
 2. The owner of a lot or parcel applies for a building permit to build an addition to a main structure, if said proposed construction is to comprise more than 30% of the floor area of the building, as it existed prior to the construction permit.
 3. The owner of a lot or parcel applies for a permit to repair any damage to a structure, if said proposed construction is to comprise more than 30% of the floor area of the building, as it existed prior to the damage. The Building Official shall determine the percentage of damage.
- B. An appeal by the owner of property on a public street required to construct a sidewalk may be made to the City Council if a sidewalk cannot be built due to topography, unusual expense, or other documented problem which will preclude sidewalk construction. Said appeal will be made to the Building Official who shall report the appeal and his recommendation to the City Council. The City Council shall then grant or deny the appeal.

Section 18-8. Additional penalties.

In addition to the penalties prescribed in Section 1-6 of this Code, if any person shall refuse, neglect, or fail to comply with the requirements of Section 18-1, 18-2, 18-3, 18-4, 18-5, or 18-6 of this Chapter, it shall be the duty of the City Manager, upon receiving notice from the Ordinance Enforcement Officer of such refusal, neglect, or failure, to remove and/or abate, or cause to be abated and/or removed, the specific offense, whether or not the property owner, possessor, or occupant of such premises has been notified by the Ordinance Enforcement Officer, Chief of Police, or any police officer as to the unlawfulness of such offense. The City Manager shall also keep an account of the expense thereof, and bill the property owner or possessor of the lot or parcel for the abatement and/or removal specific offense. If the property owner or possessor does not pay the bill within thirty (30) days of the date of mailing of such bill by regular mail, the City Manager shall submit the expense, adding to the same ten percent (10%), to the City Assessor to be collected as a special assessment or lien thereon.

ARTICLE II. OPENINGS AND EXCAVATIONS.

Section 18-9.00. Permit required. [Formerly Ord. 195, 5/31/2012; Ord. 198, 12/19/2012]

- A. Any person desiring to construct a street, avenue, or other public thoroughfare across any platted but unopened right-of-way within the City shall first obtain a written permit therefore from the City Manager. Such a permit may only be granted if approved by the City Council after first receiving a recommendation from the Planning Commission. The construction of any street, avenue, or other public thoroughfare by any person across any platted but unopened right-of-way shall also meet with the requirements of Section 10, Structures to Have Access, of Title XI, Special Provisions, of Appendix A of this Code, that being the Zoning Ordinance of the City. Such permits, when granted, shall be forwarded to the Street Department Superintendent upon approval.
- B. It shall be unlawful for any gasfitter, plumber, sewer digger, mason, or other person, except the Street Department Superintendent or Water Department Superintendent and employees of the City under the direction of the Street Department Superintendent or Water Department Superintendent, to dig any trench or make any other excavation in or under, or to remove any earth from any street, alley, sidewalk or public place in the City, or to contract for such work to be undertaken or direct any person to perform such work for the purpose of laying, moving or repairing any gas or water pipes, or for the construction, laying, repairing or attaching any private drain to any public storm sewer, or for the purpose of laying any underground fixture for conducting fluids for drainage, or for the purpose of attaching or detaching any such sanitary or storm sewer, gas or water pipe, or for any other purpose what so ever, without first obtaining a permit therefore or being in the employ of the City or of such person having such permit.

Section 18-9.01. Application. [Ord. 198, 12/19/2012]

Any person desiring to dig, excavate or trench in any street, alley, sidewalk or public place in the City shall make an application to the City Manager for a permit to do so. The permit shall show the location of the excavation and state the purpose of the excavation.

Section 18-9.02. Permit Fees. [Ord. 198, 12/19/2012]

Permit fees for street opening permits shall be as set by resolution of the City Council from time to time.

Section 18-9.03. Bond and Warranty. [Ord. 198, 12/19/2012]

- A. Before any permit is issued under this article, the applicant for the permit shall deposit with the City cash or a performance bond executed by the applicant and a surety company authorized to do business in this state, in the penal sum of not less than Five Thousand Dollars (\$5,000.00). The condition of the performance agreement and warranty shall be that the person bound there under shall make such excavations in a workmanlike manner and that he will comply with the terms of this article and the general laws, and save harmless the City from any and all liability caused by or arising from his work, or by any unfaithful or inadequate work done by virtue of his permit; and that he will fill or cause to be filled all openings which he may make in streets, alleys or public places in accordance with the requirements of this article and the dictates of good workmanship; and he will warranty work for a period of one (1) year to the satisfaction of the City.
- B. The cash deposit or bond shall be held for one (1) year from date of completion as accepted by the City so as to enforce the warranty on the work.

Section 18-9.04. Insurance. [Ord. 198, 12/19/2012]

- A. Before any permit is issued under this division and in addition to the required cash or bond, the applicant for a permit shall place on file with City a properly executed certificate of insurance indicating that the applicant is insured for public liability in the sum of not less than One Million Dollars (\$1,000,000.00) for each occurrence, and a certificate of insurance for property damage in the sum of not less than One Million Dollars (\$1,000,000.00) for each occurrence. Each certificate shall state that the applicant is insured for underground hazard.
- B. Any person acting as a subcontractor for the holder of the permit shall be required to file a certificate of insurance with the City as provided in subsection (A) of this section.
- C. The holder of a permit shall not employ as a subcontractor any person who has not filed a proper certificate of insurance with the City.

Section 18-9.05. Issuance. (Continued.) [Ord. 198, 12/19/2012]

- A. The City Manager upon application being made and upon receipt of the cash or bond, permit fee, certificate of insurance as required in this division and approval by the Street and Water Department Superintendents shall issue a permit to the person making application therefore.
- B. Whenever the contemplated work involves connection with the public sewer system of the City, the permit shall be issued only to a contractor having necessary licenses.
- C. Wherever the work involves installations or construction work other than service connections and repair thereto, detailed plans shall be submitted to the City for review before the permit is issued.

Section 18-9.06. Completion of work. [Ord. 198, 12/19/2012]

- A. Upon the completion of any major work, the person holding the permit under this division shall file with the City Manager a copy of the completed work, showing in detail the location of all pipes, manholes and other appurtenances in all public streets and alleys in the City.
- B. Upon completion of the work, the permit shall be immediately returned to the City Manager, properly signed and showing date of completion.

Section 18-10.00. Performance of work; restoration. [Ord. 198, 12/19/2012]

Any person to whom an excavation permit has been issued under this article shall promptly complete the work and restore the street, alley, sidewalk or other public place in a good and workmanlike manner safe and convenient for public use.

Section 18-10.01. Separation of top dressing in unpaved streets. [Ord. 198, 12/19/2012]

Where an excavation or a trench is made, in an unpaved street or alley, the top dressing shall be kept separate from the rest of the excavation and shall be used on the top of the backfilling to provide a firm and solid surface level with the surrounding surface of the street in a manner approved and acceptable to the department of public works director. Additional top dressing, if needed, must be similar in type.

Section 18-10.02. Surface for paved or concrete streets or sidewalks. [Ord. 198, 12/19/2012]

Where an excavation is made in a paved or concrete street or alley or where it is necessary to remove sidewalks or driveways, the person holding the permit shall provide for placing a satisfactory surface of gravel or other suitable material and maintaining the surface at the level of the adjacent street, sidewalk or ground until such time as permanent pavement or concrete is placed.

Section 18-10.03. Backfilling material. [Ord. 198, 12/19/2012]

When suitable material for backfilling is not secured from an excavation, other satisfactory excavated material shall be used for backfilling the excavation. Care shall be exercised in compacting the backfill in order to avoid settlement. The surface of a trench shall be maintained in a satisfactory condition at the by the person to whom the permit was issued for thirty (30) days after completion of the backfilling.

Section 18-10.04. Barricades. [Ord. 198, 12/19/2012]

Any person to whom a permit has been issued under this article shall provide for the erection and maintenance of strong and substantial barriers around such excavation. Barricades provided for in this section shall be protected by necessary signal lights conforming to the Michigan Manual of Uniform Traffic Control Devices from one-half hour before sunset until one-half hour after sunrise, and during such other times as may be necessary to protect the public. Such barricades shall be maintained from the time the work is started until the excavation has been entirely completed and made safe for public use.

Section 18-10.05. Cost of restoration. [Ord. 198, 12/19/2012]

The person holding the permit under this article shall restore the pavement, concrete or ground to the satisfaction of the City. The person holding the permit under this article shall bear all costs related to such.

Section 18-11.00. Reserved. [Ord. 198, 12/19/2012]

ARTICLE III. NUMBERING BUILDINGS

Section 18-12. Duty of owners, etc.; plan.

All buildings situated or hereafter erected and located on any of the streets, avenues, and public highways, except alleys, within the City shall be numbered by the owners or occupants thereof according to the plan now on file with the City Clerk.

Section 18-13. Changing numbers.

Numbers of buildings as required by this Chapter shall not be changed without the consent of the City Council, and it shall be the duty of the City Council to adjust numbers or renumber the streets of the City from time to time as the same may be required.

Section 18-14. Size and location.

Each of the figures of each number required by this Chapter shall be at least three (3) inches in length being so marked as to be easily and distinctly read. Such number shall be placed on, above, or immediately to the side of the front entrance door or else at some other or more conspicuous place on the front of the building to serve the purpose for which it is intended.

Section 18-15. Plat of streets, etc., showing numbers.

For the purpose of facilitating a correct enumeration, a plat of all streets, avenues, and public highways within the City showing the proper numbers of all lots or houses fronting upon all such streets and highways, except alleys, shall be prepared and kept on file in the office of the City Clerk, which plat shall be open during the office hours of the City Clerk to the inspection of any owner or occupant of any building desiring to know the proper numbering of his buildings.

Section 18-16. Penalty for failure to number buildings.

Any person being the owner or occupant of any building now erected or that may hereafter be erected in the City, who shall, for thirty (30) days after notice by the Ordinance Enforcement Officer of the proper numbering of such building, neglect or refuse to number any building owned or occupied by him, in conformity with the provisions of this Chapter and with the plan for numbering buildings as provided by this Chapter, shall be subject to the penalties provided by Section 1-6 of this Code and a similar penalty for every thirty (30) days thereafter that he shall neglect or refuse to number such building.

ARTICLE IV. VACATIONS

Section 18-17. Vacations of rights-of-way.

The following rights-of-way are hereby vacated. (Unless specified otherwise all changes in direction are at perpendicular, ninety degree (90°) angles.)

- A. Alleys: a sixteen (16) foot wide alley within Block 2 of the Marquette Subdivision to the Village (now City) of New Buffalo from the southeastern edge of Indiana Street (vacated) southeast to the northwestern edge of Detroit Street (vacated); a sixteen (16) foot wide alley within Block 3 of the Marquette Subdivision to the Village (now City) of New Buffalo from the southeastern edge of Detroit Street (vacated) southeast to the northwestern edge of Clay Street; a sixteen (16) foot wide alley within Block 4 of the Marquette Subdivision to

the Village (now City) of New Buffalo from the boundary of Block 53 of the Original Town plat of the Village (now City) of New Buffalo southeast to the northwestern edge of Clay Street; a sixteen (16) foot wide alley within Block 6 of the Marquette Subdivision of the Village (now City) of New Buffalo from the southeastern edge of Clay Street southeast one-hundred six (106) feet; a twelve (12) foot wide alley within Block 6 of the Marquette Subdivision of the Village (now City) of New Buffalo from the southwestern edge of Thompson Street (vacated) southwest one-hundred twenty-six (126) feet; a twelve (12) foot wide alley within Block 7 of the Marquette Subdivision of the Village (now City) of New Buffalo from the northeastern edge of Thompson Street (vacated) northeast to the southwestern edge of Townsend Street; a sixteen (16) foot wide alley within Block 7 of the Marquette Subdivision of the Village (now City) of New Buffalo from the northwestern edge of Clay Street two-hundred sixty-four (264) feet northwest.

- B. Barker Street: from the northwestern edge of the National Rail Passenger Corporation right-of-way northwest to the southeastern edge of Oselka Drive; also from the northwestern edge of Oselka Drive northwest to the southeastern edge of Water Street (vacated); also from the northwestern edge of Madison Avenue northwest to the southeastern edge of the CSX right-of-way.
- C. Barton Street: from the northwestern edge of the National Rail Passenger Corporation right-of-way northwest to the southeastern edge of Oselka Drive; also from the northwestern edge of Oselka Drive northwest to the southeastern edge of Water Street; also from the Northeast corner of Block 2 of the Marquette Subdivision to the Village (now City) of New Buffalo Southeast seven-hundred twenty-six (726) feet, thence Northeast thirty-three (33) feet thence N 30°05'50" W 135.34 feet, thence Northeast thirty-three (33) feet to the Westerly line of Block 53 of the Original Town plat of the Village (now City) of New Buffalo, thence Northwest to the Northwestern corner of Block 44 of the Original Town plat of the Village (now City) of New Buffalo, thence sixty-six (66) feet Southwest to the point of origin; also from the northwestern edge of Madison Avenue northwest to the southeastern edge of the CSX right-of-way. [Scrivener's error correction per City Council resolution October 16, 2001.]
- D. Biddle Street: from the northwestern corner of the Biddle Street and Buffalo Street intersection, then northeast to the northeastern corner of the Biddle Street and Buffalo Street intersection, then two-hundred twenty-five and eight-tenths (225.8) feet southeast, then sixty-six (66) feet southwest to the southwestern edge of Biddle Street, then two-hundred seventy-one and seven-tenths (271.7) feet northwest to the point of origin.
- E. Clinton Street: from the northwestern edge of Michigan Street (vacated) northwest to the City Limit boundary.
- F. Detroit Street: from the northeastern edge of Barker Street northeast to the northwestern edge of Whittaker Street; also from the southwestern corner of Block 158 of the Virginia Addition to the Village (now City) of New Buffalo thirty-three (33) feet southeast, then northeast to a point eighty (80) feet northeast of the northeasterly line of Lyns Street (vacated), then thirty-three (33) feet northwest to the northwestern edge of Detroit Street, then southwest four-hundred ten (410) feet to the point of origin.
- G. Franklin Street: from the northwestern edge of Clay Street northwest to the southeastern edge of Detroit Street.
- H. Griffith Street: from the northwestern edge of Clay Street northwest to the southeastern edge of Detroit Street.
- I. Harrison Street: from the northwestern edge of the National Rail Passenger Corporation right-of-way northwest to the southeastern edge of Water Street; also from the southeastern edge of the CSX right-of-way southeast to the end of the right-of-way.
- J. Hollis Street: from the southwestern edge of Townsend Street southwest to the City Limits. [Ord. 102 7/18/1995]
- K. Indiana Street: from the northeastern edge of Barker Street northeast to the northwestern edge of Barton Street.
- L. Jefferson Street: from the southwestern edge of Whittaker Street southwest to the southwestern edge of Harrison Street.

- M. Lyns Street: from the southeastern edge of Buffalo Street southeast to the northwestern edge of Detroit Street.
- N. Marshall Street: from the northwestern edge of Michigan Street (vacated) northwest to the southeastern edge of Buffalo Street; also from the northwestern edge of Buffalo Street northwest to the City Limits boundary.
- O. Mayhew Street: from the northwestern edge of the National Rail Passenger Corporation right-of-way northwest to the southeastern edge of Oselka Drive; also from the northwestern edge of Oselka Drive northwest to the southeastern edge of Water Street (vacated); also from the northwestern corner of Block 9 of the Original Town plat of the Village (now City) of New Buffalo thirty-three (33) feet southwest to the center of the Mayhew Street right-of-way, then one-hundred ninety-eight (198) feet southeast, then thirty-three (33) feet northeast to the southeastern edge of said Block 9, the one-hundred ninety-eight (198) feet northwest to the point of origin; also from the southeastern edge of the CSX right-of-way southeast to the end of the right-of-way.
- P. Merchant Street: from the City Limit boundary northeast to the southwestern edge of Monroe Street.
- Q. Michigan Street: from the City Limit boundary northeast to the southwestern edge of Monroe Street; also from the northeastern edge of Thompson Street northeast to the southwestern edge of Townsend Street; also from the southeastern corner of Block 86 of the Virginia Addition to the Village (now City) of New Buffalo southwest two-hundred sixty-four (264) feet to the southwestern corner of Block 4 of the Original Town plat of the Village (now City) of New Buffalo, then thirty-three (33) feet southeast to the center of the Michigan Street right-of-way, then two hundred sixty-four (264) northeast to the southwestern edge of Kinzie Street, then thirty-three (33) feet north west to the point of origin.
- R. Monroe Street: from the northwestern corner of Block 372 of the Virginia Addition to the Village (now City) of New Buffalo ten (10) feet southwest, then southeast one-hundred thirty-two (132) feet, then northeast ten (10) feet to the southwestern edge of said Block 372, then one-hundred thirty-two (132) feet northwest to the point of origin.
- S. Norton Street: from the southwestern corner of Block 49 of the Original Town plat of the Village (now City) of New Buffalo northeast thirty-three (33) feet to the center of the Norton Street right-of-way, then northwest one-hundred thirty-five and a half (135.5) feet, then southeast thirty-three (33) feet to the southeastern edge of Norton Street, then one-hundred thirty-five and a half (135.5) feet southeast to the point of origin.
- T. Smith Street: from the northwestern edge of the National Rail Passenger Corporation right-of-way northwest to the southeastern edge of Oselka Drive; also from the northwestern edge of Oselka Drive northwest to the southeastern edge of Water Street (vacated); also from the northwestern edge of Madison Avenue northwest to the southeastern edge of the CSX right-of-way.
- U. Taylor Street: from the northwester edge of Water Street northwest to the harbor.
- V. Thompson Street: from the northwester edge of Water Street northwest to the harbor; also from the northeastern corner of Block 29 of the Original Town plat of the Village (now City) of New Buffalo southeast three-hundred ninety-six (396) feet, then northeast thirty-three (33) feet to the center of the Thompson Street right of-way, then southeast sixty-six (66) feet to the northwestern edge of Michigan Street, then thirty-three (33) feet northeast to the northwestern corner of Block 35 of the Original Town plat of the Village (now City) of New Buffalo, then four hundred twenty-nine (429) feet northwest to the northwestern corner of Block 30 of the Original Town plat of the Village (now City) of New Buffalo, then sixty-six (66) feet southwest to the point of origin; also from the southeastern edge of Clay Street southeast to the northwestern edge of Washington Street.
- Also between Blocks 306 and 307 (from the southeastern edge of Tulacz Street southeast to the northwestern edge of Hollis Street (vacated). [Ord. 102, 7/18/1995].
- W. Townsend Street: from the northwester edge of Water Street northwest to the harbor.
- X. Water Street: from the northeastern edge of Willard Street northeast to the centerline of Barton Street.

- Y. Willard Street: from the northwestern edge of North Drive northwest to the southeastern edge of Lake Drive; also from the southeastern edge of the CSX right of-way southeast to the end of the right-of-way.
- Z. A portion of 11th Street between Clay Street and Bell Avenue. [Ord. 119, 12/29/1998]
- AA. Farmer Street between Clay Street and Detroit Street. [Ord. 122, 3/14/1999]
- BB. Virginia Street between Clay Street and Indiana Street. [Ord. 122, 3/14/1999]
- CC. Rose Street from Clay Street 146 ft. North of Detroit Street. [Ord. 122, 3/14/1999]
- DD. Ontario Street between Clay Street and Detroit Street. [Ord. 122, 3/14/1999]
- EE. Detroit Street between Farmer Street and Ontario Street. [Ord. 122, 3/14/1999]
- FF. Hollis Street between Townsend Street and Taylor Street. [Ord. 123, 5/11/1999]

ARTICLE V. PERMITS FOR TELECOMMUNICATIONS COMPANIES TO USE PUBLIC RIGHTS-OF-WAY

Section 18-18. Purpose. [Ord. 139, 10/16/2002]

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.

Section 18-19. Conflict. [Ord. 139, 10/16/2002]

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

Section 18-20. Terms Defined. [Ord. 139, 10/16/2002]

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 New Buffalo.

City Council means the City Council of the City of New Buffalo 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.

Section 18-21. Permit Required. [Ord. 139, 10/16/2002; Ord. 195, 5/31/2012]

- 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 copies of the application and distribute a copy to the Street Department Superintendent, the Water Department Superintendent, and the Superintendent of the Galien River Sewer Authority. 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.

Section 18-22. Issuance of Permit. [Ord. 139, 10/16/2002]

- 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 4(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.

Section 18-23. Construction/ Engineering Permit. [Ord. 139, 10/16/2002]

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 18, Article II, Section 18-9B 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.

Section 18-24. Conduit or Utility Poles. [Ord. 139, 10/16/2002]

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.

Section 18-25. Route Maps. [Ord. 139, 10/16/2002]

Pursuant to Section 6(7) of the Act, a telecommunications provider shall, within 90 days after the substantial completion of construction of new telecommunications facilities in the City, submit route maps showing the location of the telecommunications facilities to both the MPSC and to the City. The route maps should be in (paper or electronic) format unless and until the MPSC determines otherwise, in accordance with Section 6(8) of the Act.

Section 18-26. Repair of Damage. [Ord. 139, 10/16/2002]

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.

Section 18-27. Establishment and Payment of Maintenance Fee. [Ord. 139, 10/16/2002]

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.

Section 18-28. Modification of Existing Fees. [Ord. 139, 10/16/2002]

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.

Section 18-29. Savings Clause. [Ord. 139, 10/16/2002]

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.

Section 18-30. Use of Funds. [Ord. 139, 10/16/2002]

Pursuant Section 10(4) of the Act, all amounts received by the City from the Authority shall be used by the City solely for rights-of-way related purposes. In conformance with that requirement, all funds received by the City from the Authority shall be deposited into the Major Street Fund and/or the Local Street Fund maintained by the City under Act No. 51 of the Public Acts of 1951.

Section 18-31. Annual Report. [Ord. 139, 10/16/2002]

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.

Section 18-32. Cable Television Operators. [Ord. 139, 10/16/2002]

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.

Section 18-33. Existing Rights. [Ord. 139, 10/16/2002]

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.

Section 18-34. Compliance. [Ord. 139, 10/16/2002]

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.

Section 18-35. Reservation of Police Powers. [Ord. 139, 10/16/2002]

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.

Section 18-36. Severability. [Ord. 139, 10/16/2002]

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.

Section 18-37. Authorized City Officials. [Ord. 139, 10/16/2002]

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.

Section 18-38. Municipal Civil Infraction. [Ord. 139, 10/16/2002]

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 Sections 1-6 through 1-8 of the Municipal Code. Nothing in this Section 18-38 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.

ARTICLE VI. VACATION OF STREETS

Section 18-39. Initiation of Proceedings. [Ord. 163, 11/14/2006]

Proceedings for the vacation, discontinuance or abolishment of any street, alley, public ground, or part thereof, may be initiated by the City Council, or by the owners of more than two-thirds of the property abutting the part of the street, alley or public ground to be vacated subject to the procedures as set forth in this Chapter.

Section 18-40. Petition. [Ord. 163, 11/14/2006]

The City of New Buffalo or owner of an interest in any real estate abutting on any street, alley or public ground who may desire to vacate said street, alley or public ground, or any part thereof, shall petition the City Council for the vacation of said street, alley or public ground, or any part thereof in the manner hereinafter provided herein. Such petition shall be on such form as may be prescribed by the City and shall be submitted with the following:

- A. A "Vacation Petition" with supporting affidavits on forms provided by the City Clerk signed by the owners of more than two-thirds of the property abutting on the street, alley or public ground to be vacated;
- B. A legal description of the area to be vacated prepared by a licensed surveyor;
- C. For each petitioner, a title report indicating ownership and providing a legal description of the property owned by the petitioner;
- D. Proof of payment of the Vacation Petition Application Fee as established by Section 18-40 (no fee if the City petitions);
- E. Any additional information or material that the City Manager determines is reasonably necessary prior to its consideration of the requested vacation.

Upon receipt of the required application materials, the City Clerk shall distribute copies of said materials to each member of the City Planning Commission for preparation of the Planning Commission Report defined in Section 18-42.

Section 18-41. Fee. [Ord. 163, 11/14/2006]

The party proposing, recommending or petitioning for the vacation, discontinuance or abolishment of any street, alley, public ground or part thereof shall pay to the City Treasurer a fee as from time to time set by the City Council. Until all fees have been paid in full, no action shall be taken on the petition or application. Under no condition shall such fee or any part thereof be refunded for failure of such vacation, discontinuance or abolishment to be approved by the City Council.

Section 18-42. Planning Commission-Hearing and Notice. [Ord. 163, 11/14/2006]

Upon receiving a qualifying petition and fees, the Planning Commission shall appoint a time, not less than 4 weeks thereafter, when they will meet and hear objections thereto; notice of such meeting with a copy of said resolution shall be published for not less than four weeks before the time appointed for such meeting, in one of the newspapers of the City. In addition, the City Clerk shall mail a notice of the meeting, including a copy of the resolution, to the respective owners of all property abutting upon any land directly affected by this proposed action. This notice shall be sent by first class mail to the addresses of the owners as shown on the last assessment roll, at least fourteen days in advance of the date set for the hearing. In addition to the date, time and location of the meeting described herein, the notice published and mailed as required herein shall include the following:

- A. A statement that a request to vacate the subject property will be considered by the City;
- B. A statement of the time and place of the public hearing before the City;
- C. A location description in non-legal language along with a vicinity map that identifies the subject property proposed to be vacated;
- D. A statement that the vacation file is available for viewing at New Buffalo City Hall; and
- E. A statement of the right of any person to submit written comments to the City prior to or at the public hearing and to appear before the City at the hearing to give comments orally.

Section 18-43. Appraisals and Appraisal Fees. [Ord. 163, 11/14/2006]

The City Planning Commission is authorized to obtain appraisals from qualified, independent appraisers as part of preparing the Planning Commission Report on the requested vacation as defined in Section 18-45. Applicants are responsible for the cost of such appraisals. Payment for said appraisal must be made prior to the City taking any action on the Vacation Application.

Section 18-44. City Planning Commission Report. [Ord. 163, 11/14/2006]

- A. Contents. The Chair of the City Planning Commission shall prepare a report containing the following information:
 - 1. All pertinent application materials submitted by the applicant;
 - 2. All comments regarding the vacation received in the planning department prior to distribution of the staff report;
 - 3. An analysis of the requested vacation in relation to the provisions of this chapter and the applicable provisions of the comprehensive plan;
 - 4. A recent appraisal of the subject property obtained by the City at the applicant's expense; and
 - 5. A recommendation on the vacation.
- B. Distribution. Prior to the hearing to be conducted by the City Council, the Chair of the City Planning Commission shall distribute the "Planning Commission Report" defined above to each member of the City Council and the applicant.

Section 18-45. City Council Hearing Notice. [Ord. 163, 11/14/2006]

After receiving a report from the City Planning Commission, the City Council shall hold a public hearing and follow the same procedure for notice as set forth in Section 18-42.

Section 18-46. City Council Public Hearing Procedures. [Ord. 163, 11/14/2006]

In addition to the Planning Commission's public hearing,

- A. The City Council shall hold a public hearing on each requested vacation. The hearing shall be open to the public.

- B. At the outset of the hearing, the Chair of the City Planning Commission shall provide a Planning Commission Report prepared pursuant to Section 18-44; said report shall contain the recommendation of the Planning Commission on the requested vacation.
- C. Any interested person may participate in the public hearing in either or both of the following ways:
 - 1. By submitting written comments to the City Council either by delivering the comments to the City Clerk prior to the hearing or by giving the comments directly to the City Council at the hearing; and
 - 2. By appearing in person (or through a representative) at the hearing and making oral comments directly to the City Council. The City Council may reasonably limit the extent of these oral comments to facilitate the orderly and timely conduct of the hearing.

Section 18-47. Objections/Vote Required. [Ord. 163, 11/14/2006]

If any such objection shall be filed, the street, alley or public ground or any part thereof, shall not be vacated or discontinued, except by a concurring vote of four members of the City Council.

Section 18-48. Criteria for Granting Street Vacation. [Ord. 163, 11/14/2006]

The decision on a vacation application is a legislative determination. The City Council may, in its discretion, vacate a street, alley or public easement governed by this chapter if it determines that vacation is in the public interest and that:

- A. The street, alley or public easement is not currently necessary for travel or other street purposes, nor likely to be in the future; and
- B. No property will be denied all access as a result of the vacation.

The City Council may consider any other fact or issue it deems relevant when deciding whether to vacate a street, alley or public easement.

Section 18-49. Right to Reserve Easements. [Ord. 163, 11/14/2006]

In vacating a street, alley or public easement governed by this chapter, the City Council may reserve for the City any easements or the right to exercise and grant any easements for the following purposes: (1) Public utilities and services; (2) Pedestrian trail or sidewalk purposes; and/or (3) Any other type of easement relating to the City's right to control, use and manage rights-of-way.

Section 18-50. Voluntary Agreement between City and Applicant. [Ord. 163, 11/14/2006]

At any time prior to the City Council's final decision on the vacation, the applicant and City Planning Commission may enter into a voluntary agreement containing special terms that would apply to the vacation if the application is approved. The Planning Commission will advise the City Council of the terms contained in the voluntary agreement. The City Council may vacate a street, alley or easement pursuant to such an agreement, subject to such agreement.

Section 18-51. Final Decision. [Ord. 163, 11/14/2006]

- A. Following the public hearing, the City Council shall, by motion approved by a 4/5th vote of the entire membership in a roll call vote, either:
1. adopt a resolution granting the vacation; or,
 2. adoption a resolution denying the vacation; or,
 3. adopt a resolution of intent to vacate, subject to specified conditions to be completed within 90 days.
- B. The City shall require the following as conditions, if a vacation is approved:
1. Monetary compensation to be paid to the City in the amount of the full appraised value for the subject property, if the subject property or portions thereof were acquired at public expense.
 2. The applicant's full compliance with all required proceedings in a court of competent jurisdiction under the Land Division Act, MCL 560.101, et seq., as amended (Subdivision Control Act), to effectuate the transfer of title and plat modification resulting from the vacation with a Judgment to be entered within one year from the date of the City Council's final action or the vacation will be null and void.
- C. Within fifteen working days of the City Council's decision, the City Clerk shall mail a copy of the notice of decision to the applicant.

Section 18-52. Title. [Ord. 163, 11/14/2006]

Title to the subject property shall pass in accordance with the laws of the State of Michigan governing title to vacated rights-of-way.

Section 18-53. Vacation Petition File Content and Availability. [Ord. 163, 11/14/2006]

The City Clerk shall compile a Vacation Petition File for each petition that contains all information pertinent to the proposed vacation. This file shall be a public record. It shall be available for inspection and copying in the City Hall offices of the City of New Buffalo during regular business hours.

Chapter 19 - WATER

ARTICLE I. IN GENERAL.

Section 19-1. Contamination and pollution generally.

It shall be unlawful for any person to do any act, or to allow to be done any act, that may contaminate or pollute or contribute to the contamination or pollution of the water supply wells or intake, or the water system in general of the City. A violation of this Section shall be considered a misdemeanor and subject to the penalties prescribed in Section 1-7 of this Code.

Section 19-2. Constructing or maintaining possible source of contamination, etc. within two-hundred (200) feet of municipal wells.

It shall be unlawful for any person to construct or maintain, or permit to be constructed or maintained, within a radius of two-hundred (200) feet from any of the municipal water wells or intakes within the City from which the City draws its water supplies, any source of possible contamination or pollution to such wells and intakes. A violation of this Section shall be considered a misdemeanor and subject to the penalties prescribed in Section 1-7 of this Code.

ARTICLE II. MUNICIPAL WATER SERVICE.

Section 19-3. Applications for service.

Applications for water service shall be filed with the City Clerk upon a form to be supplied by the Clerk. Such application shall state the name of the applicant and the premises to be served.

Section 19-4. Municipal water service fee billing. [Ord. 176, 4/15/2008]

Each property owner shall be responsible for municipal water service fees for each of their properties. The City shall not transfer responsibility for any municipal water service fees to a tenant.

Section 19-5. Disposition of revenues derived; "water system fund account."

All revenues and monies derived from the operation of the water system shall be paid to and held by the City Treasurer separate and apart from all other funds of the City and all of such sums and all other funds and monies incident to the operation of such system, as may be delivered to the Treasurer, shall be deposited in a separate fund designated the "water system fund account," and the Treasurer shall administer such fund in every respect in a manner provided by the laws of the state and all other laws pertaining thereto.

Section 19-6. Records and accounts; annual audit.

The City Treasurer shall establish a proper system of accounts and shall keep proper records, books, and accounts in which complete and correct entries shall be made of all transactions relative to the City water system and at regular annual intervals the City Council shall cause to be made an audit by an independent auditing concern of the books to show the receipts and disbursements of the City water system.

Section 19-7. Applicability of rates, etc.

Every person, firm or corporation, whether private, public or municipal, who or which are serviced by the City department or connected to the water mains of the City shall pay for such service. The rates and fees shall be set from time to time by resolution of the City Council as they deem necessary and proper.

Section 19-8. Tap-in and connection charges.

There is hereby established a tap-in and connection charge for each user requesting a connection to the City water mains. The amount of the tap-in and connection charges shall be set by resolution of the City Council.

Section 19-9. Ready-to-serve charge.

The owner of each building or parcel of real estate which is connected to the water mains of the City with a service connection ready to be used shall pay to the City a ready-to-serve charge for each such service connection to such water mains, whether or not water is turned on in such connection. The amount of the ready-to-serve charge shall be set by resolution of the City Council. This section shall not apply in the case of demolished buildings where the service connection is not ready to be used.

Section 19-10. Metered rates generally.

Water shall be metered on each service connection as soon as the water connection is installed and turned on.

Section 19-11. Water furnished to City - Generally.

The City shall pay out of the appropriate general funds of the City a reasonable cost for the value of the water furnished to the City on the basis of the schedule of rates adopted by the City Council.

Section 19-12. Same - Fire hydrant charges.

The City shall pay out of its general fund to the Water Department of the City a sum per month per hydrant for each fire hydrant within the City serviced by the Water Department. Said sum shall be set by resolution of the City Council, and may be discontinued for any time period at the Council's discretion.

Section 19-13. Bills and billing generally; penalty for late payment. [Ord. 176, 4/15/2008]

Bills for water service provided for by this Chapter shall be sent to each person charged therefor at a regular date set from time to time by resolution of the City Council, except as provided in Section 19-10. All such bills shall become due and payable at a regular date set from time to time by resolution of the City Council. Ten percent (10%) of each bill shall be added thereto on each water service bill or ready-to-serve charge which is not paid before a date set from time to time by resolution of the City Council.

Section 19-14. Billing duty for municipal water service. [Ord. 176, 4/15/2008]

It is hereby made the duty of the City Manager to direct the City Clerk and/ or City Treasurer to render bills for municipal water service and all other charges in connection therewith and to collect all monies due therefrom. The City Manager shall be responsible for directing the City Clerk and/ or City Treasurer to notify between the fifteenth day of April, 2008, and the fifteenth day of June, 2008, the owners of property which have a tenant responsible for a municipal water service and/ or sewer service that when said tenant discontinues use of said services, or no later

than the fifteenth day of April, 2009, they shall be transferred to the property owner who shall be responsible from that point forward.

Section 19-15. Shutting off water in event of nonpayment; collection procedures generally; charges a lien, etc.; shutting-off and turning-on charges. [Ord. 176, 4/15/2008]

The payment of charges for water service or ready-to-serve charges may be enforced by shutting off the use's supply or by an action of assumption instituted in the name of the City against such user or person connected to the City water mains.

All delinquent sums due the City for water service charges or ready-to-serve charges shall become a lien against the property served by the City water system and the City Council shall have power to order such delinquent charges to be spread on the City tax roll as a charge against the several properties so delinquent, to be collected as part of the next City tax thereon.

The remedies provided in this section for enforcing the payment of water charges are hereby declared to be cumulative, and not alternative, and the use of one (1) remedy shall not constitute a bar to the use of any other remedy.

Whenever it becomes necessary to shut off the water service for any reason, a charge will be made to such delinquent user for shutting off and for turning on such water supply.

Section 19-16. Service outside City.

Whenever the City municipal water system supplies water to a user beyond the corporate limits of the City, such user shall pay for such water one and one-half (1 1/2) times the prevailing water rates.

Section 19-17. Revision of rates and charges.

All of the rates and charges for water service fixed by this Chapter shall be revised by resolution from time to time as may be necessary by the City Council to produce the required amount of revenue to maintain and repair the water system of the City and discharge the bonded indebtedness of such system.

Section 19-18. Tampering with water system prohibited. [Ord. 195, 5/31/2012]

No person, except authorized employees of the Water Department, Fire Department, or Street Department, and then only in the legitimate discharge of their duties, shall open or close any main valve or fire hydrant, or remove the cover for any valve or hydrant, nor shall any person interfere with or damage in any manner any building, machine, pipe, or fixture of the Water Department. The use of fire hydrants as a source of water supply, except by employees as above mentioned, is strictly prohibited, unless written permission is obtained from the Water Department, and this applies to all hydrants, municipally or privately owned, within or outside of the corporate limits of the City, supplied with water through the City mains.

Section 19-19. Emergency Reduction of Water Use. [Ord. 143, 4/16/2003; Ord. 195, 5/31/2012]

The City Manager, or in his absence the Water Department Superintendent or the Street Department Superintendent, hereafter collectively referred to as City Manager, is authorized to impose temporary restrictions upon the use of water from the city water system, in the manner provided in this section.

Temporary restrictions may be implemented when one or more of the following conditions exist, and when the restrictions are necessary to protect the health, safety and welfare of the public, or to protect the water system from damage or failure:

- (1) The user demand for water may exceed the sustained delivery capability of the system.
- (2) The system is operating at such high volume, or such low main pressures, that insufficient capacity or reserve remains to safely respond to an increase in demand created by a fire, water main failure, system malfunction, or other emergency.
- (3) Any other condition or situation, extant or reasonably anticipated, that may expose or threaten the system, its operating flows, residual pressures, or integrity to the point that the system is jeopardized or the public safety endangered.

Any temporary restrictions so implemented shall remain in effect until rescinded by the City Manager or until the next meeting of the City Council. The City Council may continue, amend, modify or suspend such restrictions by resolution at that time.

Temporary restrictions shall take effect when posted at City Hall. The City Manager shall give prompt notice to local newspapers and radio stations of the temporary restrictions and the reasons for their implementation and shall take any other measures as he or she deems reasonable to notify the public. Notice of the termination of those temporary restrictions shall be given in the same manner.

The City may discontinue water service to any premises without prior notice in the event that such usage is in violation of any temporary restrictions.

ARTICLE III. CROSS CONNECTIONS.

Section 19-20. Cross connection rules adopted by reference.

The City hereby adopts by reference the Water Supply Cross Connection rules of the Michigan Department of Public Health being R 325.431 to R 325.440 of the Michigan Administrative Code. The purpose of said regulations are to protect the public water supply where cross connections with the public water supply is deemed possible. A complete copy of said regulations shall be kept in the office of the City Clerk and shall be there available for public use and inspection.

Section 19-21. Cross connection inspections.

It shall be the duty of the Water Department Superintendent to cause inspections to be made of all properties served by the public water supply where cross connections with the public water supply are deemed possible. The frequency of inspections and re-inspection based on potential health hazards involved shall be as established by the Superintendent and as approved by the Michigan Department of Public Health.

Section 19-22. Right of entry for inspections.

The representative of the Water Department shall have the right to enter at any reasonable time, any property served by a connection to the public water supply system of the City for the purpose of inspecting the piping system or systems thereof for cross connections. On request, the owner, lessee, or occupant of any property so served shall furnish to the inspection agency any pertinent information regarding the piping system or systems on such property. The refusal of such information or refusal of access, when requested, shall be deemed evidence of the presence of cross connections.

Section 19-23. Discontinuance of water for violation.

The City Water Department is hereby authorized and directed to discontinue water service after reasonable notice to any property wherein any connection in violation of this Article exists and to take such other precautionary measures deemed necessary to eliminate any danger of contamination of the public water supply system. Water service to such property shall not be restored until the cross connection has been eliminated in compliance with the provisions of this Article.

Section 19-24. Labeling unsafe water.

The potable water supply made available on the properties served by the public water supply shall be protected from possible contamination as specified by this Chapter and by the state Plumbing Code. Any water outlet which could be used for potable or domestic purposes and which is not supplied by the potable system must be labeled in a conspicuous manner as: "WATER UNSAFE FOR DRINKING."

Section 19-25. Supplementary to codes.

This Chapter does not supersede the state Plumbing Code, but is supplementary to it.

Chapter 20 - UTILITY FRANCHISES

ARTICLE I. CABLE TELEVISION

Section 20-1. Definitions.

- A. 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.
- B. Associated equipment shall mean all equipment and services subject to regulation pursuant to 47 CFR S 76.923.
- C. Basic cable service or basic service shall mean basic service as defined in the F.C.C. rules, and any other cable television service which is subject to rate regulation by the City pursuant to the Act and the F.C.C. rules.
- D. Cable operator or company shall mean the firm and/or corporation which is granted a non-exclusive franchise for the establishment and operation of a community antenna television system in the City, or anyone who succeeds the company in accordance with the provision contained herein.
- E. City is the City of New Buffalo, Michigan.
- F. City channel shall mean a channel on the system which is reserved for use by the City of New Buffalo or for public access.
- G. City Council is the Council of the City of New Buffalo, Michigan.
- H. Community antenna television system, C.A.T.V., or system shall mean any facility that receives over the air or by other means, and amplifies or otherwise modifies, the signals broadcast by television or radio stations as well as signals containing other information, and distributes such signals by cable and/or other means to the public.
- I. Company channel shall be a channel on the system which is reserved for the carriage of program material originated by the company or by another person.
- J. F.C.C. shall mean the Federal Communication Commission.
- K. F.C.C. rules shall mean all rules of the F.C.C. promulgated from time to time pursuant to the Act.
- L. Franchise shall mean the grant of authority to the company to operate a C.A.T.V. system in the City of New Buffalo.
- M. Gross revenues shall mean the total revenues received by the company from all services to the City.
- N. Increase shall mean an increase in rates or a decrease in programming or customer services.
- O. Public ways shall mean streets, avenues, highways, boulevards, concourses, driveways, bridges, tunnels, parks, parkways, waterways, alleys, all other public rights-of-way, and public grounds or waters within or belonging to the City of New Buffalo.
- P. Subscriber shall mean a purchaser of any service delivered over the system to an individual dwelling unit, where the service is not to be utilized in connection with a business, trade, or profession.

Section 20-2. Grant of franchise permit.

- A. There is hereby granted to the company, Michiana Cablevision Corporation, a non-exclusive franchise permit for the occupation or use of the public ways within the City for the construction, operation, and maintenance of a C.A.T.V. system.
- B. This permit shall remain effective until December 31, 2001, unless sooner revoked as herein provided in Section 3 hereof. The company shall give, not later than twenty-four (24) months prior to expiration of permit, notice of application for renewal to the City and, for at least seven (7) months, the City may deal only with the existing operator and must make a decision to renew the franchise or reject it within twelve (12) months. Only after the renewal application is rejected, within this time period, may the City entertain other applicants. [Ord. 121, 2/16/1999]

The renewal application may be denied if:

1. There has been a material change in the operator's ability to provide the required services and facilities.
 2. The operator failed to comply materially with the law or franchise agreement.
 3. The technical quality of the signal does not meet F.C.C. standards.
 4. The system and services to be provided do not meet the community's need.
 5. The proposals made by the operator are otherwise not reasonable.
- C. Nothing in the franchise shall affect the right of the City to grant to any other person a franchise to occupy and use the public ways for the construction, operation, and maintenance of C.A.T.V. or similar facilities, within the City. The City shall give the company no less than two (2) weeks notice of the hearing date of any application for any additional franchise to another. Notice contained in this franchise shall not prohibit the company from appearing before the City Council and being heard on any application for any additional franchise to another.

Section 20-3. Revocation of franchise permit.

- A. The franchise permit granted herein shall be subject to the rights reserved by the City unto itself through its Charter, Chapter 13, Section 13.7 through Section 13.16 respectively, and herein included by this reference, with values as in Section 13.15 of Chapter 13 of the City Charter to be set by fair market value as appraised at the time of revocation, less any values as attributable to the franchise itself.
- B. Any franchise granted hereunder shall be subject to all applicable state and federal laws, including rules and regulations established by the F.C.C.

Section 20-4. Limitation of franchise.

- A. This franchise applies only to the operation of a C.A.T.V. system as provided herein, and does not take the place of any other franchise, license, or permit which might be required by federal, state, and local law.
- B. In the operation of its system, the company shall not deprive an inhabitant of any building, by contract or otherwise, of any existing right to use an individual or master antenna for the purpose of receiving television signals.

Section 20-5. Change of ownership.

The company shall not sell or transfer its system to another, nor transfer any rights under this franchise to another without approval by the City Council, provided that no sale or transfer shall be effective until the vendee, assignee, or lessee has filed with the appropriate office of the City, a written instrument, or instruments, properly executed, setting forth the terms and conditions of such sale, assignment or lease, the same to include an acceptance of the terms of this franchise and an agreement to perform all conditions thereof not less than ninety (90) days before such transfer or sale, approval or disapproval by the City shall not be unreasonably withheld. During such time period, the company shall continue to maintain quality service and perform in good faith in accordance with the terms of the franchise. The City Council shall treat any such transfer requests with due haste and care so as not to unnecessarily hinder the operations of the company and the Council shall determine approval or disapproval within ninety (90) days of said written notice. The provisions of this Section shall not apply to the collateral assignment of this franchise for financing purposes.

Section 20-6. Construction and installation of system.

Subject to the provisions and restrictions of this franchise and this Code or any other ordinance of the City, the company shall have the right to:

- (1) Construct, erect, operate, and maintain in, upon, along, across, above, over, and under the public ways, poles, cables, underground conduits, manholes, and other conductors and fixtures necessary for the maintenance and operation of a C.A.T.V. system within the City.
- (2) Lease, rent, or in any other lawful manner, obtain the use of towers, poles, lines, cables, and other equipment and facilities from any and all holders of public licenses and franchises within the limits of the City including but not limited to Ameritech and Indiana and Michigan Electric Company, and to use company's distribution system shall be those erected and maintained by Ameritech, Indiana and Michigan Electric Company, or any others, or the City, when and where applicable, providing mutually satisfactory rental arrangements can be entered into with said utilities or City.
- (3) No tower shall be placed or constructed without the prior approval of the City.

Section 20-7. Conditions on public way occupancy.

- A. All transmissions and distribution structures, lines, and equipment erected by the company within the City shall be so located as to cause minimum interference with the rights and reasonable convenience of property owners who adjoin any of the said public ways.
- B. In case of disturbances of a public way or paved area, the company shall, at its own cost and expense, replace and restore such public way or paved area in as good a condition as it was in before the work involving such disturbance was done.
- C. If, at any time during the period of this franchise, the City shall lawfully elect to alter or change the grade or any public way, the company, upon reasonable notice by the City, shall remove and relocate its poles, wires, cables, underground conduits, manholes, and other fixtures at its own expense.
- D. Any poles or other fixtures placed in any public way by the company shall be placed in such a manner as not to interfere with the usual travel on such public way.
- E. The company shall, upon request of any person holding a building-moving permit issued in the City, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary raising or lowering of wires shall be paid by the person requesting the same, and the company shall have the authority to require such payment in advance. The company shall be given not less the forty-eight (48) hours advance notice to arrange for such temporary wire changes. The City or any other non-profit organization, including historical societies, shall be exempt from any charges.

- F. The company shall, after giving notice to the City, have the authority to trim trees upon and hanging over public ways and places in the City so as to prevent the branches of such trees from coming in contact with the wires and cables of the C.A.T.V. system.
- G. In all sections of the City where all existing cable or other like facilities of utility companies are presently or subsequently placed underground, the company shall place its cables or other like facilities underground.

Section 20-8. Safety requirements.

- A. The company shall at all times employ ordinary care and shall install and maintain in use, commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public.
- B. The company shall install and maintain its cables, fixtures, and other equipment in accordance with all applicable federal, state, and local laws, ordinances, codes, rules, and regulations, and in such manner that they will not interfere with any installations of the City or of a public utility serving the City.
- C. All structures and all lines, equipment, and connections in, over, under, and upon the public ways or places in the City, wherever situated or located, shall at all times be kept and maintained in a safe, suitable condition and in good order and repair.

Section 20-9. Erection, removal, and common use of poles.

- A. Poles or other wire holding structures shall be erected by the company only with prior approval of the City Council.
- B. Where a public utility serving the City desires to make use of the poles or other wire holding structures of the company, but agreement therefore with the company cannot be reached, the City may require the company to permit such use for reasonable and just compensation, provided that such use would not unduly interfere with the company's operation.

Section 20-10. Rights reserved to the City.

- A. The City shall have the right to install and maintain free of charge upon the poles and cables of the company any wire and pole fixtures necessary for a police or fire alarm system, on the condition that such wire or pole fixtures do not interfere with the C.A.T.V. operation of the company, and that such installation shall be installed in a safe manner, in conformance with state and City regulations.
- B. At the expiration of this franchise or upon its revocation, as provided for herein, the City shall have the right to require the company to remove, at its own expense, all portions of the C.A.T.V. system from all public ways and places within the City.

Section 20-11. Maps, plats, and reports.

The company shall, on or before the first (1st) day of April of each year, file with the City Clerk, true and accurate maps or plats showing the location of all existing cables, whether leased or owned outright. Attached to such maps or plats shall be a list by address of current subscribers.

Section 20-12. Carriage of signals.

- A. The company shall comply with all rules and regulations of the F.C.C. with respect to the reception, carriage and distribution of signals.
- B. Minimum channel complement shall include all V.H.F. channels significantly viewed, public, community, and education channels as required by the F.C.C.
- C. The company shall transmit and deliver over City channels, the signals designated therefore by the City Council.

Section 20-13. Signal quality requirements.

- A. The company shall operate facilities capable of distributing color television signals, free from ghost images, interference, or distortions, and accompanied with proper sound, to produce good pictures on state-of-the-art television sets in good repair without interfering with other electrical or electronic systems.
- B. For purposes of this section, the standards to be applied in determining whether or not the company is producing a good picture or transmitting signals of adequate strength to produce same are those acceptable standards as set forth in the rules and regulations of the F.C.C. relative to C.A.T.V. systems.
- C. The company shall demonstrate by instruments or otherwise to subscribers, upon request, that a signal of adequate strength and quality is being delivered. Such demonstration shall be made by taking a standard production state-of-the-art television set with a screen of sufficient area as to clearly demonstrate the relative merit of the delivered signal.

Section 20-14. Operation and maintenance of system.

- A. The company shall maintain an office in the area which shall be open during all normal business hours, have listed local telephone, and be so operated that complaints and requests for repairs or adjustment may be received at anytime, twenty-four (24) hours per day.
- B. The company shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Such interruptions, insofar as is possible, shall be preceded by notice, and shall occur during periods of minimum use of the system.
- C. The company agrees to use its best efforts to restore service to individual customers within twenty-four (24) hours of interruption and in the event of a general outage caused by an act of God or acts beyond the control of the company, to use its best efforts to restore service within five (5) days and in such event to notify the City Clerk of anticipated restoration of service so that citizens and customers may be properly informed.
- D. Should it be impossible or impractical to correct any malfunctions within twenty-four (24) hours or less, then each subscriber whose television reception is so disrupted shall receive a rebate from the company in the amount of one-thirtieth (1/30) of such subscriber's monthly charge for every additional twenty-four (24) hour period that such subscriber's television reception is so disrupted, unless said disruption in service was entirely beyond its control.
- E. Any rebate made to any subscriber under this section, in any month, shall not exceed said subscriber's normal monthly fee paid to the company.
- F. Complaint procedures shall be given to each new subscriber by the company at the time of initial subscription to the C.A.T.V. system. In the instance of existing subscribers, changes in complaint procedures shall be included with the next monthly billing.

Section 20-15. Rates.

- A. Purpose and interpretation. The purpose of this Section is to adopt regulations consistent with the Act and the F.C.C. rules with respect to basic cable service rate regulation, and to 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 Section shall be implemented and interpreted consistent with the Act and F.C.C. rules.
- B. Rate regulations promulgated by F.C.C. In connection with the regulation of rates for basic cable service and associated equipment, the City shall follow all F.C.C. rules.
- C. Filing, additional information, and burden of proof.
1. 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 F.C.C. 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 F.C.C. rules. The cable operator shall file ten (10) copies of the schedule or proposed increase with the City Clerk. For purposes of this Section, 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.
 2. In addition to information and data required by rules and regulations of the City pursuant to subsection C (1) of this Section, 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.
 3. A cable operator has the burden of proof 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 F.C.C. rules including, without limitation, 47 USC S 543 and 47 CFR SS 76.922 and 76.923.
- D. Proprietary Information.
1. If this Section, any rules, or regulations adopted by the City pursuant to subsection C (2) of this Section, or any request for information 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 non-disclosure is consistent with the provision of the Freedom of Information Act, 5 USC S 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 withdrawal 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.
 2. Any interested party may file a request to inspect material withheld as proprietary with the City. The City shall weigh the policy considerations favoring a non-disclosure 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.

3. The procedures set forth in this section shall be construed as analogous to and consistent with the rules of the F.C.C. regarding requests for confidentiality including, without limitation, 47 CFR S 0.459.
- E. Public notice and initial review of rates. Upon the filing of ten (10) copies of the schedule of rates or the proposed increase in rates pursuant to subsection C (1) of this Section, 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.
- F. 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 subsection C (1) of this Section above unless the City Council (or other properly authorized body or official) tolls the thirty (30) day deadline pursuant to 47 CFR S 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 (30) day deadline for an additional ninety (90) days in cases not involving cost-of-service showing and for an additional one-hundred fifty (150) days in cases involving cost-of-service showings.
- G. Public notice, hearing on basic cable service rates following, tolling of thirty (30) day deadline. If a written order has been issued pursuant to subsection F of this Section and 47 CFR S 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 subsection C of this Section. In addition, the City Council shall hold a public hearing to consider the comments of interested parties within the additional ninety (90) day or one-hundred fifty (150) 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, and that 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 that 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.
- H. Staff or consultant report and 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 subsection H (1) of this Section. 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.
- I. 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 F.C.C. 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 S 76.933. The order specified in this Section shall be issued within ninety (90) days of the tolling order under subsection F of this Section in all cases not involving a cost-of-service showing.

- J. Refunds and notice. The City Council may order a refund to subscribers as provided in 47 CFR S 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.
- K. Written decision and public notice. Any order of the City Council pursuant to subsections I and J of this Section 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 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.
- L. Rules and regulations. In addition to rules promulgated pursuant to subsection C of this Section, 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 the F.C.C. rules.
- M. Failure to give notice. The failure of the City Clerk to give the notices or to mail copies of reports as required by this section shall not invalidate the decisions or proceedings of the City Council.
- N. Additional hearing. In addition to the requirements of this section, the City Council may hold additional public hearings upon such reasonable notice as the City Council, in its sole discretion, shall prescribe.
- O. Additional powers. The City shall possess all powers conferred by the Act, the F.C.C. rules, the cable operator's franchise, and all other applicable law. The powers exercised pursuant to the Act, the F.C.C. rules, and this Chapter shall be in addition to powers conferred by law or otherwise. The City may take any action not prohibited by the Act and the F.C.C. rules to protect the public interest in connection with basic cable service rate regulation.
- P. Failure to comply and remedies. The City may pursue any and all legal and equitable remedies against the cable operator (including, without limitation, all remedies provided under a cable operator's consent agreement with the City) for failure to comply with the Act, the F.C.C. rules, any orders or determinations of the City pursuant to this Section, any requirements of this Section, or any rules or regulations promulgated hereunder. Subject to applicable law, failure to comply with the Act, the F.C.C. rules, any orders or determinations of the City pursuant to this Section, any requirements of this Section, or any rules and regulations promulgated hereunder, shall also be sufficient grounds for revocation or denial of renewal of a cable operator's consent agreement.

Section 20-16. Capacity and commencement of system.

- A. The company shall extend the installation of cable amplifiers and related equipment throughout the City as rapidly as is practicable.
- B. Within one (1) year from the date of certification from the F.C.C., the company shall be capable of providing basic service on a regular basis to all residences in the City.
- C. Initial channel capacity of the system shall be no less than fifty-four (54) channels, and two (2) channels in addition to the local channels reserved in the basic line up are to be designated for City use.
- D. The company shall provide basic service to one (1) outlet on each floor of all existing or future police and fire stations, the City Hall, and all public and private schools located within the City without any charge therefore.

- E. In the event of an emergency situation, the City may interrupt signals otherwise being distributed by the company for the delivery of signals necessitated by such emergency.
- F. No person, firm, or corporation in the company's franchise area shall be arbitrarily refused service. For unusual circumstances, such as weather conditions affecting requirements for the underground cable construction of service to subscribers, service may be made available on the basis of an installation payment by the prospective subscribers to the company, to reimburse the company for its costs. This Section is in the interest of not unfairly burdening existing subscribers with higher than normal incidental costs of said installation.

Section 20-17. Liability insurance and indemnification.

- A. The company shall maintain throughout the term of its franchise liability insurance insuring the City and the company with regard to all damages for which the City and/or the company may be liable, including, but not limited to, damages arising from the installation, operation, maintenance, or removal of the company's C.A.T.V. system, whether or not any act or omission complained of is authorized, allowed, or prohibited by the franchise.
- B. The company, by its acceptance of this franchise, agrees to indemnify the City and hold the City harmless from all claims, demands, penalties, and expenses (including reasonable attorney fees) which the City may be required to pay as a result of the company's acts or negligence in the installation, operation, or maintenance of the C.A.T.V. system authorized herein. Further, following the receipt of notice of the City of the filing or assertion of any such claim or demand against the City and/or company, the company will promptly assume responsibility and prosecute to a conclusion the adjustment and settlement of any such claim or demand and the defense of any legal action filed incident thereto. Within fifteen (15) days after the presentation to or the filing with the City of any such claim or demand, whether by legal action or otherwise, the City shall notify the company's representative thereof. The company shall carry and pay the cost of the following liability insurance in support of its undertaking to hold the City harmless from loss sustained by either on account of the acts or negligence of the company, in at least the amounts indicated below, for injury to or death of persons and injury to or destruction of property.
- C. The liability insurance referred to in this Section shall be in the following amounts:
 - 1. Five-hundred thousand dollars (\$500,000.00) for personal injury or death to any one (1) person, with a limit of one million dollar (\$1,000,000.00) for personal injury and property damage combined resulting from any one (1) accident;
 - 2. Five-hundred thousand dollars (\$500,000.00) for property damage resulting from any one (1) accident, with a limit of one million dollar (\$1,000,000.00) for personal injury and property damage combined resulting from any one (1) accident;
 - 3. Five-hundred thousand dollars (\$500,000.00) for all other types of liability.

Section 20-18. Bond.

The company shall, within thirty (30) days of the grant of a franchise to it pursuant to this Chapter, file with the City Clerk, and at all times thereafter maintain in full force and effect for the term of the franchise, and its expense, a corporate surety bond, or such other surety arrangement as the Council may approve, in the amount of twenty-five thousand dollars (\$25,000.00), conditioned upon the faithful performance by such cable communications company of its obligations under its franchise as herein set forth, and upon the further condition that if such cable communications company shall fail to comply with any one (1) or more provisions of the Chapter, there shall be recoverable jointly and severally from the principle and surety of such bond any damages or loss suffered by the City as a result thereof, including the full amount of any compensation indemnification, or cost of removal of any property of such cable communications company as provided in Chapter plus attorney's fees and costs, up to the full amount of the bond, said condition to be a continuing obligation for the duration of any franchise granted under this Chapter and any renewal thereof and thereafter until such cable communications company has liquidated all of its

obligations with the City which may have arisen under the franchise or from the exercise of any privilege or right granted thereby. Any bond provided under this section shall provide that at least thirty (30) days prior notice of any intention not to renew, to cancel or to make a material change therein shall be filed with the City Clerk. Nothing herein shall be construed to excuse faithful performance by any cable communications company or in any way to limit its liability for damages or otherwise.

Section 20-19. Financial records and reports.

The company shall keep full, true, accurate, and current books of accounts reflecting its investment and its operations under this franchise, which financial books and records shall be kept and maintained by the company and shall be made available for inspection and copying by the City's independent auditor or his authorized representative, at all reasonable times at the company's normal place of business, with reasonable prior notice, during regular business hours.

Section 20-20. Publication and preparation costs.

The company shall assume the cost of publication and preparation of this franchise as such publication is required by law and as such preparation by cost. The bill for publication and preparation costs shall be presented to the company by the appropriate City officials upon the company's filing of its acceptance of this franchise and the said publication and preparation costs shall be paid at that time by the company.

Section 20-21. Annual franchise fee. [Ord. 121, 2/16/1999]

In consideration of the granting and exercise of a franchise to use the streets of the franchise area for the purpose of operating a cable television system for the use and benefit of the subscribers therein, the grantee shall pay yearly to the City during the entire time of any franchise granted pursuant to this ordinance, an annual franchise fee equal to 5% of the grantee's yearly gross revenues derived from all cable services provided by grantee within the City, or \$250.00, whichever is greater. Any franchise payments to the City by grantee shall not be in lieu of any occupation, income, license or property tax or similar levy, assessment or charge which would otherwise apply to and be payable by grantee.

ARTICLE II. ELECTRICAL POWER

Section 20-22. Granting of franchise.

The Indiana and Michigan Power Company, its successors and assigns (hereinafter called grantee) are hereby granted the right, privilege, franchise, and authority to acquire, construct, maintain, and operate in, above, under, across, and along the streets, thoroughfares, alleys, bridges, and public places (as the same now exist and may hereafter be laid out) of the City, lines for the transmission and distribution of electric energy, either by means of overhead or underground conductors, with all the necessary or desirable appurtenances for the purpose of supplying electric energy to the City and inhabitants thereof, and persons or corporations beyond the limits thereof, for light, heat, power, or any other purposes or purpose for which electric energy is now or may hereafter be used, and the transmission of the same within, through or across said City, subject to such reasonable regulations as the City Council shall prescribe from time to time.

Section 20-23. Use of rights-of-way.

All of the grantee's towers, masts, and poles shall be so placed on either side of the highways, streets, alleys, and bridges as not to unnecessarily interfere with the use thereof for highway, street, and alley purposes. All of the grantee's wires carrying electricity shall be securely fastened to as not to endanger or injure persons or property in said highways, streets, and alleys. All work performed by said grantee in said highways, streets, and alleys shall be done so as to minimize interference with the use thereof, and when completed, the same shall be left in as good condition as when work was commenced. The grantee shall have the right to trim trees if necessary in the conducting of such business, subject, however, to the supervision of the highway authorities. Said lines and appurtenances shall be constructed so as to interfere as little as possible with the proper lawful use of the streets, alleys, and public places. The installation of all poles, conduits, and appurtenances shall be according to industry standards and shall be subject in such reasonable regulations as shall be prescribed by said City Council from time to time.

Section 20-24. Time period; revocation of franchise; rights of City.

The rights, privileges, and franchise hereby granted shall be in force and effect until September 13, 2018, but revocable at the will of the City Council unless approved by vote of the electors. The rights, privileges, and franchise hereby granted shall not be construed to be exclusive and the City Council hereby reserves the power to grant similar rights, privileges, and franchises to any other person or persons, firms, or corporations.

Section 20-25. Hold harmless agreement.

Said grantee shall at all times keep and save the City free and harmless from all loss, costs, and expenses to which it may be subject by reason of the negligent construction and maintenance of the structures hereby authorized. In case any action is commenced against the City on account of the permission herein granted, said grantee shall, upon notice, defend the City and save it free and harmless from all loss, cost, and damage arising out of such negligent construction and maintenance.

Section 20-26. Restoration of rights-of-way.

Whenever said grantee shall begin the erection of any lines or equipment it shall promptly and diligently prosecute the work to completion and leave the streets, alleys, and public places where such work is done in as good condition of repair as before such work was commenced.

Section 20-27. Binding effect.

Whenever in this franchise, reference is made to the City or the grantee, it shall be deemed to include the respective successors or assigns, of either and all rights, privileges, and obligations herein contained by or on behalf of the City, or by or on behalf of said grantee, shall be binding upon and inure to the benefit of the respective successors of assigns of the City or of said grantee, whether so expressed or not.

ARTICLE III. NATURAL GAS

Section 20-28. Grant of franchise.

Permission is hereby granted to Michigan Gas Company, a Michigan corporation, and to its successors and assigns, to construct, operate, and maintain in the public streets, highways, alleys, and other public places in the City, all needed and proper natural gas pipes, mains, conductors, service pipes, and other apparatus and facilities requisite for the manufacture, transmission, and distribution of natural gas for all purposes to the City, and the inhabitants thereof, and for conducting natural gas elsewhere to supply neighboring cities, villages, and other territories supplied with natural gas by said grantee, subject, however, to all applicable Sections of this Code or any other ordinance of the City presently and hereafter in force.

Section 20-29. Conditions.

The conditions of the foregoing grant are as follows:

- (1) Said pipes, mains, services, and appurtenances shall be constructed so as to interfere as little as possible with the proper lawful use of the streets, alleys, and public places. The location of all pipes, mains, services, and appurtenances shall be subject to such reasonable regulations as shall be prescribed from time to time by said City. All of said mains, pipes, conductors, and other appurtenances and devices shall be laid, maintained, repaired, or renewed by the company in accordance with the standard rules of the Michigan Public Service Commission for the maintenance, construction, and operation of natural gas plants, transmission, and distribution systems and the company herein shall, upon request, subject to the rules and regulations of the company, as approved by the said Michigan Public Service Commission, connect all service pipes of consumers and prospective consumers with the mains and pipes of the company in all avenues, streets, and alleys where any of such mains or pipes are laid or to which they are or may be extended.
- (2) Whenever the company shall begin the erection of any pipes, mains, services, and appurtenances or equipment, it shall promptly and diligently prosecute the work to completion and leave the streets, alleys, and public places where such work is done in as good condition of repair as before such work was commenced. If the Company shall fail to complete such restoration within thirty (30) days after the completion of the erection of any pipe, main, service, appurtenance, or equipment to the reasonable satisfaction of the City, then the City may, at its option, cause such restoration to be done and the company shall, in such event, pay to the City the cost thereof in the itemized report to the company. Should the company elect to move a pipe or main because of street construction or the placement of municipal utilities, the company shall move the pipe or main at its sole expense, provided, however, if the pipe or main is located at its proper location in the right-of-way as specified by the applicable City, County, and local standards and a municipal engineer certifies, in the exercise of reasonable engineering judgment, that it is necessary that such main or pipe be moved for such construction or placement of utilities to proceed, then such main or pipe shall be moved at the expense of the company or its third-party contractor. In the event that such moving expenses shall be borne, in whole or in part by public funds, then the company's share in such expense shall be diminished by the amount.
- (3) The company herein shall save and keep the City harmless from any and all claims for damages to persons or property by reason of the construction, maintenance, and operation of said plant and system and the use of the streets, avenues, alleys, and public places by the company in the City including attorney fees and expenses expended in connection therewith, and shall reimburse the City for its reasonable cost or expense for repairing any and all depressions or defects which may exist or develop in that portion or portions of the streets, avenues, alleys, or public places over any tunnel or excavation, provided that said City shall first have notified the company of such depressions or defects and the company shall have failed to repair the same for the period of ten (10) days after such notice.

Section 20-30. Rules, regulations, and rates.

The rules and regulations applicable to the service, the quality of the natural gas furnished, and the rates charged therefor by the grantee herein, its successors and assigns, shall be as fixed from time to time by the Michigan Public Service Commission or other such state authority as shall have jurisdiction of the subject matter, reserving, however, the right of the City to object thereto.

Section 20-31. Regulation of streets, alleys, and public places.

Nothing in this grant shall be construed to alienate the title of the public in and to any street, highway, alley, or public place, or any portion thereof, neither shall anything herein be construed in any manner as a surrender by the City of its legislative power with respect to the subject matter hereof, or with respect to any other matter whatsoever, nor as in any manner limiting the right of said City to regulate the use of any street, avenue, highway, or public place within its jurisdiction.

Section 20-32. Right to acquire.

The City reserves the right, as required by its Charter, to acquire by purchase or condemnation to terminate this franchise agreement and acquire all of the property of the company in the streets and highways in the City elsewhere as provided by Section 4-f of the Home Rule City Act (Act 279 of 1909), as amended, and Sections 13.15 and 13.16 of the City Charter. If the City and the grantee cannot agree on a purchase price (and before any condemnation proceedings are begun) within thirty (30) days of a written notice of intent to purchase, sent by the City to the grantee, the City and the grantee shall submit their differences to a board of appraisers, one (1) to be selected by each of the parties, and the third by the two (2) thus selected, who shall appraise the fair market value of the franchise and the property of grantee in the streets and highways in the City and elsewhere. The fair market value as shall be determined by the board of appraisers, shall exclude all value of such franchise, except that the grantee shall be entitled to the return of the proportionate amount for the unused period of any compensation paid to the City for such franchise.

Section 20-33. Assignment of franchise.

The grantee shall not assign this franchise to any person, firm, or corporation without the prior approval of the City Council and unless the assignee is, in the option of the management of Michigan Gas Company, financially able to carry out the grantee's obligations under this franchise and is authorized by the Michigan Public Service Commission, or such other state authority as shall then have jurisdiction of the subject matter so to do.

Section 20-34. Franchise not exclusive.

The rights, privileges, and franchise hereby granted shall not be construed to be exclusive and the City hereby reserves the power to grant similar rights, privileges, and franchises to any other person or person, firm, or corporation.