

Title 1

GENERAL PROVISIONS

Chapters:

- 1.01 Code Adoption
- 1.04 General Provisions
- 1.08 General Penalty
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Chapter 1.01

CODE ADOPTION

Sections:

- 1.01.010 Adoption
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1.01.010 Adoption. There is hereby adopted the City of Linden Municipal Code as compiled, edited and published by Book Publishing Company, Seattle, Washington. (Ord. 186 '1.01.010, 1992)

1.01.020 Title - Citation - Reference. This code shall be known as the City of Linden Municipal Code and it shall be sufficient to refer to said Code as the City of Linden Municipal Code in any prosecution for the violation of any provision thereof or in any proceeding at law or equity. It shall be sufficient to designate any ordinance adding to, amending, correcting or repealing all or any part or portion thereof as an addition to, amendment to, correction or repeal of the City of Linden Municipal Code. Further reference may be had to the titles, chapters, sections and subsections of the City of Linden Municipal Code and such references shall apply to that numbered title, chapter, section or subsection as it appears in the code. (Ord. 186, '1.01.020, 1992)

1.01.030 Codification authority. This code consists of all the regulatory and penal ordinances and certain of the administrative ordinances of the city of Linden, Michigan, codified pursuant to the provisions of Section 117.56 of the Michigan Compiled Laws and Section 5.7 of the city charter. (Ord. 186 '1.01.030, 1992)

1.01.040 Ordinances passed prior to adoption of the code. The last ordinance included in the initial code is Ordinance 174, passed 1-27-92. The following ordinances, passed subsequent to Ordinance 174, but prior to adoption of this code, are hereby adopted and made a part of this Code: Ordinances 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185 and 186. (Ord. 186 '1.10.040, 1992)

1.01.050 Reference applies to all amendments. Whenever a reference is made to this code as the City of Linden Municipal Code or to any portion thereof, or to any ordinances of the city of Linden, Michigan, the reference shall apply to all amendments, corrections and additions heretofore, now or hereafter made. (Ord. 186 '1.01.050, 1992)

1.01.060 Title, chapter and section headings. Title, chapter and section headings contained herein shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions of any title, chapter or section hereof. (Ord. 186 '1.01.060, 1992)

1.01.070 Reference to specific ordinances. The provisions of this code shall not in any manner affect matters of record which refer to, or are other wise connected with ordinances which are therein specifically designated by number or other wise and which are included within the code, but such reference shall be construed to apply to the corresponding provisions contained within this code. (Ord. 186 '1.01.070, 1992)

1.01.080 Effect of Code on Past Actions and Obligations. Neither the adoption of this code nor the repeal or amendments hereby of any ordinance or part or portion of any ordinance of the city of Linden shall in any manner affect the prosecution for violations of ordinances, which violations were committed prior to the effective date thereof, nor be construed as a waiver of any license, fee, or penalty at said effective date due and unpaid under such ordinances, nor be construed as affecting any of the provisions of such ordinances relating to the collection of any such license, fee, or penalty, or the penalty provision applicable

to any violation thereof, not to affect the validity of any bond or cash deposit in lieu thereof required to be posted, filed or deposited pursuant to any ordinance and all rights and obligations thereunder appertaining shall continue in full force and effect.(Ord. 186 '1.01.080, 1992)

1.01.090 Effective date. This Ordinance shall be published as required by law and shall become effective ten (10) days after its publication. (Ord. 186 '1.01.090, 1992)

1.01.100 Constitutionality. If any section, subsection, sentence, clause or phrase of this code is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of the code. The council hereby declares that it would have passed this code, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases had been declared invalid or unconstitutional, and if for any reason this code should be declared invalid or unconstitutional, then the original ordinance or ordinances shall be in full force and effect. (Ord. 186 '1.01.100, 1992)

Chapter 1.04

GENERAL PROVISIONS

(RESERVED)

Chapter 1.08

GENERAL PENALTY

Sections:

1.08.010 General Penalty.

1.08.010 General Penalty. Pursuant to the authority granted to the city by MSA 5.2082 (10), MCL 117.4i, all penal ordinances of the city of Linden are amended to provide that a person who violates the ordinances may be punishable by imprisonment for not more than ninety days or a fine of not more than five hundred dollars, or both, plus payment of court costs.(Ord. 129 '1, 1986)

Chapter 1.12

## MISDEMEANORS

### Sections:

- 1.12.010 Short title.
- 1.12.020 Scope.
- 1.12.030 Misdemeanor defined.
- 1.12.040 Declaration.

1.12.010 Short title. This chapter shall be known as and may be cited as the AGeneral Welfare Ordinance@ of the city of Linden. (Ord. 23, '1, 1956)

1.12.020 Scope. The ordinance codified in this chapter is supplemental to all other ordinances of the city and does not repeal any ordinance or resolution of the city. (Ord. 23 '2, 1956)

1.12.030 Misdemeanor defined. When any act or omission, not a felony, is punishable according to any statute of the state of Michigan, or any statute of the state of Michigan as hereafter amended by fine, penalty or forfeiture, or imprisonment, in the discretion of the court, such act or omission is a misdemeanor. (Ord. 23 '3, 1956)

1.12.040 Declaration. This chapter is declared to be necessary to promote the general welfare, to provide for the safety and to protect the health of the people of the city, and it is declared to be unlawful for any person to commit a misdemeanor in the city. (Ord. 23 '4, 1956)

Title 2

ADMINISTRATION AND PERSONNEL

Chapters:

<u>2.06</u>	<u>Historic District Study Committee</u>
<u>2.08</u>	<u>Historic District Commission</u>
<u>2.16</u>	<u>City Officers and Employees Generally</u>
<u>2.20</u>	<u>Linden Library Board</u>
<u>2.24</u>	<u>Downtown Development Authority</u>
<u>2.30</u>	<u>Parks and Recreation Commission</u>

Chapter 2.06

HISTORIC DISTRICT STUDY COMMITTEE

Sections:

2.06.010	Creation and Composition
2.06.020	Duties and Powers
2.06.030	Hearings
2.06.040	Report

2.06.010 Creation and Composition. In order to execute the purpose of this Chapter; of Chapter 2.08, Historic District

Commission and Chapter 15.12, Historic Site and Structures, there is created a committee to be called Historic District Study Committee. The Committee shall contain a majority of persons who have a clearly demonstrated interest in or knowledge of historic preservation, and shall contain representation from one or more duly organized local historic preservation organizations.(Ord. 191 '2.06.010, 1992) (Ord. 276 '2.06.010, 2002)

2.06.020 Duties and Powers. The Committee shall do all of the following:

A. Conduct a photographic inventory of resources within each proposed historic district following procedures established or approved by the bureau.

B. Conduct basic research of each proposed historic district and the historic resources located within that district.

C. Determine the total number of historic and non-historic resources within a proposed historic district and the percentage of historic resources of that total. In evaluating the significance of historic resources, the committee shall be guided by the selection of criteria for evaluation issued by the United States Secretary of the Interior for inclusion of resources in the National Register of Historic Places, as set forth in 36 C.F.R., part 60, and criteria established or approved by the bureau, if any.

D. Prepare a preliminary historic district study committee report that addresses at a minimum all of the following:

1. The charge of the committee.
2. The composition of the committee membership.
3. The historic district or districts studied.
4. The boundaries for each proposed historic district in writing and on maps.
5. The history of each proposed historic district.
6. The significance of each district as a whole, as well as a sufficient number of its individual resources to fully represent the variety of resources found within the district, relative to the evaluation criteria.

E. Transmit copies of the preliminary report for review and recommendations to the local planning body, to the bureau, to the Michigan Historical Commission, and to the State Historic Preservation Review Board.

F. Make copies of the preliminary report available to the public. (Ord. 192 '2.06.020, 1992)

2.06.030 Hearings. Not less than 60 calendar days after the transmittal of the preliminary report, the committee shall hold a public hearing in compliance with Act No. 267 of the Public Acts of 1976, as amended, being sections 15.261 to 15.275 of the Michigan Compiled Laws. Public notice of the time, date and place of the hearing shall be given in the manner required by Act No. 267 of the Public Acts of 1976, as amended. Written notice shall be mailed by first-class mail not less than 14 calendar days before the hearing to the owners of properties within the proposed historic district, as listed on the tax rolls of the local unit.(Ord. 192 '2.06.030, 1992)

2.06.040 Report After the date of the public hearing, the committee and the legislative body of the local unit shall have not more than one year, unless otherwise authorized by the Linden City Council, to take the following actions:

A. The committee shall prepare and submit a final report with its recommendations, if any, to the Linden City Council. If the recommendation is to establish a historic district or districts, the final report shall include a draft of a proposed ordinance or ordinances.

B. After receiving a final report that recommends the establishment of a historic district or districts, the Linden City Council, at its discretion, may introduce and pass or reject an ordinance or ordinances. If the Linden City Council passes an ordinance or ordinances establishing one or more historic districts, the Linden City Council shall file a copy of that ordinance or those ordinances, including a legal description of the property or properties located within the historic district or districts, with the register of deeds. If a petition is circulated, and it bears the names of a majority of the property owners approving the district, then the local unit shall not pass the ordinance less than 60 days after the petition is received. (Ord. 276 '2.06.040, 2002)

C. A writing prepared, owned, used, in the possession of, or retained by a committee 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. (Ord 191  
2.06.040, 1992)

## Chapter 2.08

### HISTORIC DISTRICT COMMISSION

Sections:

- 2.08.010 Creation and composition
- 2.08.020 Organization, meetings, regulations and records
- 2.08.030 Duties and powers
- 2.08,040 Advice and guidance to property owners

2.08.010 Creation and composition

A. In order to execute the purposes of this chapter and of Chapter 15.12, Historic Sites and Structures, there is created a commission to be called the historic district commission. The historic district commission, referred as "the commission" shall consist of five members, whose residence is located in the city of Linden, appointed by the city council from a list of persons recommended to the council, initially, by the historic district study committee and then in successive years by the historic district commission. A majority of members shall have a clearly demonstrated interest in or knowledge of historic preservation.

They shall be appointed for terms of office of three years provided that one of the initial members shall be appointed for one year, two for two years and two for three years.(Ord 224, 2.08.010, 1997)

B. A vacancy occurring in the membership of the commission for any cause shall be filled within 60 calendar days from a list of persons recommended by the commission to the city council for the unexpired term. The members of the commission shall serve without compensation. (Ord 224, 2.08.010, 1997)

C. It is mandatory that two of the five commission seats be filled with persons who are property owners in the historic district and/or have operated a business within the historic district for at least one year at the time of appointment. The commission shall include a member, if available, who is a graduate of an accredited school of architecture who has two years of architectural experience or who is an architect registered in the State of Michigan. The commission shall include a member of a local historic society. (Ord. 141 Arts. I, II, 1988)Ord. 95, '4, 1978)(Ord. 192, 1992)(Ord. 224 '2.08.010, 1997)

D. Any member of the commission who misses three meetings per year of the commission may be subject to removal by a majority vote of the city council upon recommendation of the commission. Written notice to the member being considered for removal shall be made at least seven days prior to the city council meeting at which removal will be considered. (Ord 224,



2.08.010, 1997)

2.08.020 Organization, meetings, regulations an records.

A. The historic district commission shall elect from its membership a chairperson and a vice chairperson whose terms of office shall be fixed by the commission. The chairperson shall preside over the commission and have the right to vote. The vice chairperson shall, in case of absence or disability of the chairperson, performs the duties of the chairperson. The city clerk or the clerk=s designate shall record the minutes of the meeting and maintain all records pertaining to proceedings of the historic district commission. At least three members of the commission shall adopt rules for the transaction of its business which shall provide for the time and place of holding regular meetings. They shall provide for the calling of special meetings by the chairperson or at least two members of the commission. A quorum shall exist when a minimum of three members are present. (Ord. 224 '2.08.020, 1997)(Ord. 251, '1, 1999)

B. All meetings of the commission shall be conducted at a public meeting of the commission held in compliance with the Open Meetings Act No. 267 of Michigan Public Acts of 1976, as amended being MCLA 15.261 to 15.275. Public Notice of the time, date and place of the meeting shall be given in the manner as required by Act No. 267 of the Public Act of 1976, as amended. A meeting agenda shall be part of the notice and shall include a listing of each permit application to be reviewed or considered by the commission. The commission shall keep a record, which shall be open to public view, of its resolutions, proceedings and actions. (Ord. 224 '2.08.020, 1997)

C. Concurring affirmative vote of three members shall constitute approval of plans before it for review, or for adoption of any resolution, motion or other action of the commission. (Ord. 224 '2.08.020, 1997)

D. The commission shall submit an annual report of its activities to the city council. (Ord. 95, '5, 1978) (Ord. 224 '2.08.020, 1997)

2.08.030 Duties and powers.

A. It shall be the duty of the commission to review all plans for the construction, addition, alteration, repair, moving, excavation or demolition of structures in a historic district and it shall have the power to pass upon such plans before a permit for such activity can be granted by the building inspector. (Ord. 224 '2.08.030, 1997)

B. The review of plans shall be based on established

preservation standards and guidelines as established by the U.S. Secretary of the Interior in its publication "Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings." The commission shall also consider all of the following:

1. The historical architectural value and significance of the resource and its relationship with the historic value of the surrounding area.

2. The relationship of any architectural features of the resource to the rest of the resource and to the surrounding area.

3. The general compatibility of the design, arrangement, texture, color and materials proposed to be used.

C. The standards developed and used by the commission shall describe criteria related to the general compatibility of exterior design, structural height, mass arrangement, texture and proposed building materials. In addition to the above, it is the intent of this section that the commission shall act as a facilitator in order to work out feasible design and restoration solutions and shall provide guidance to the property owners in its judgement of plans for new construction, rehabilitation, repair, restoration or moving of district resources of little historic value. (Ord. 276 '2.08. 030, 2002)

D. The commission shall have the power to issue a certificate of appropriateness if it approved the plans submitted for its review. The city building inspector shall not issue a building permit except as other wise noted in this section until such certificate of appropriateness has been issued by the commission.

E. The historic district commission shall not review and act upon interior arrangements unless the interior work will cause visible change to the exterior of the resource.

F. The historic district commission may:

1. Carry out, assist and collaborate in studies and programs designed to identify and evaluate additional district resources and historical districts worthy of preservation;

2. Consult with and consider the ideas and recommendations of civic groups, public agencies and citizens interested in historic preservation;

3. Inspect and investigate district resources which it has reason to believe are worthy of preservation;

4. Disseminate information to the public concerning those district resources deemed worthy of preservation, and may encourage and advise;

5. Consider methods other than those provided for in this chapter and in Chapter 15.12 for encouraging and achieving

historic preservation, and make appropriate recommendations to the city council and other bodies and agencies, both public and private;

6. Establish such policies, rules and regulations as it deems necessary to administer its duties as herein provided;

7. Maintain and use its own funds to acquire property or gifts of historic purposes, grants from state or federal governments and to administer such resources and acquisitions in accordance with the purposes provided in this chapter and in Chapter 15.12. (Ord. 95 '6, 1978) (Ord. 192, 1992) (Ord. 224 '2.08.030, 1997)

#### 2.08.040 Advice and guidance to property owners

The historic district commission, upon request of any property owner, shall render advice and guidance with respect to any proposed work in the designated historic district. In rendering such advice and guidance, the historic district commission will be guided by the Secretary of Interior's Standards for Rehabilitation and the provisions of Chapter 15.12.

A. This chapter shall not be construed to limit or prevent a property owner from expanding an existing building or joining adjacent buildings. It is recommended, however, that the materials, textures, colors and details of a building being expanded reflect the existing structure's proportion of openings (width to height relationships), ratio of window area to surrounding wall area and rhythm of solid to void.

B. The commission shall encourage and cooperate with merchants, banks, utilities and other commercial enterprises in the use of local historical material in their advertising and sales promotion, using the commission's collection of materials knowledge and skills. (Ord. 95 '7, 1978)(Ord. 224 '2.08.040, 1997)

### Chapter 2.16

#### CITY OFFICERS AND EMPLOYEES GENERALLY

##### Sections:

2.16.010 Compensation.

2.16.010 Compensation. Pursuant to Section 3.4(B) of the Linden City Charter, the city shall determine the compensation for all city officers and employees by resolution, rather than

by ordinance. (Ord. 148 Art. I, 1989)

Chapter 2.20

LIBRARY BOARD

Sections:

- 2.20.010 Establishment, Purposes
- 2.20.020 Composition, Appointment, Terms of Office
- 2.20.030 At Will
- 2.20.040 Officers
- 2.20.050 Compensation
- 2.20.060 Meetings, Records

2.20.010 Establishment Purposes The Linden Library Board is hereby established. The Library Board shall serve as an advisory board to the council and the Genesee County District Library Board on all matters concerning the operations and maintenance of the Linden Library. The Library Board shall be charged with the operation and development of rules of procedure and use of the library and shall make recommendations to the council and the Genesee County District Library Board on use, maintenance, and improvements to the building, grounds, and furnishings. The Library Board shall have the authority to receive and acquire gifts, donations, appropriations, or property on behalf of the city or Genesee County District Library from persons or firms for library or related uses, subject to approval from the council or the Genesee County District Library Board. The Library Board shall possess such other authority, duties, and responsibilities delegated to it by the council or the Genesee County District Library Board.(Ord. 203 '2.20.010, 1994)

2.20.020 Composition, Appointment, Terms of Office The Library Board shall consist of nine (9) members. Six (5) members of the Board must be residents of the City of Linden. The remaining three (4) members shall be residents of Genesee County. The members of the Library Board shall be appointed by the mayor subject to council approval. The term of office for a member of the Library Board shall be three (3) years, with said terms to be staggered amongst the members in such a manner that, to the extent possible, the terms of an equal number of members shall expire each year. Appointments to fill vacancies for unexpired terms shall be for the period of the unexpired term.(Ord. 203 '2.20.020, 1994)(Ord 319, 2009)

2.20.030 At Will Notwithstanding the designation of terms for board members, all board members shall serve at the pleasure of the council of the City of Linden. Any board member may be removed by the council for any reason whatsoever at anytime during their term of office or at the expiration of their term. (Ord. 203 '2.20.030, 1994)

2.20.040 Officers The Library Board shall elect its president from among the members of the board and may create and fill such other offices as the board may from time to time deem necessary. The terms of officers shall be for one (1) year.(Ord. 203 '2.20.040, 1994)

2.20.050 Compensation The Library Board shall serve without compensation.(Ord. 203 '2.20.050, 1994)

2.20.060 Meetings, Records The board shall adopt rules and regulations for the conduct of its business. The board shall hold regular meetings at least four (4) times each year, subject to the proviso that the president may cancel such meetings if the president determines that there is not business to be considered by the board. A majority of the members of the board in office at the time shall constitute a quorum for the conduct of business. All meetings shall be held in accordance with the Michigan Open Meetings Act, Public Act 267 of 1976, as amended, and a record of the board=s proceedings shall be kept by the board. Such record shall become a public record in accordance with the Freedom of Information Act, Public Act 442 of 1976, as amended. Copies of the minutes shall be submitted to the City Clerk immediately upon approval by the Library Board.(Ord. 203 '2.20.060, 1994)

## Chapter 2.24

### DOWNTOWN DEVELOPMENT AUTHORITY AND DISTRICT BOUNDARIES

#### Sections:

- 2.24.010 Determination of Necessity
- 2.24.020 Definitions
- 2.24.030 Creation of Downtown Development Authority
- 2.24.040 Termination
- 2.24.050 Description of Downtown District
- 2.24.060 Board of Directors
- 2.24.070 Powers of Authority

2.24.080 Fiscal Year; Budget

2.24.010 Determination of Necessity. The City Council hereby determines that it is necessary for the best interests of the public to create a public body corporate which shall operate to halt property value deterioration, eliminate the causes of that deterioration, increase property tax valuation where possible in the business district of the City, and promote economic growth, pursuant amended to Act 197 of the Public Acts of Michigan, 1975, as amended.(Ord 313, 2008)

2.24.020 Definitions. The terms used in this ordinance shall have the same meaning as given to them in Act 197 or as hereinafter provided. As used in this ordinance:

"Act 197" means Act No. 197 of the Public Acts of Michigan of 1975, as amended.

"Authority" means the Downtown Development Authority of the City of Linden created by this ordinance.

"Board" or "Board of Directors" means the Board of Directors of the Authority, the governing body of the Authority.

"Council" or "City Council" means the City Council of the City of Linden.

"Chief Executive Officer" means the Mayor of the City.

"Downtown District" means the downtown district designated by this ordinance, as now existing or hereafter amended, and within which the Authority shall exercise its powers.

"City" means the City of Linden, Michigan.(Ord 313, 2008)

2.24.030 Creation of Downtown Development Authority. There is hereby created, pursuant to Act 197, a Downtown Development Authority for the City. The Authority shall be a public body corporate and shall be known and exercise its powers under the title "Downtown Development Authority of the City of Linden". The Authority may adopt a seal, may sue and be sued in any court of this State and shall possess all of the powers necessary to carry out the purposes of its incorporation as provided by this ordinance and Act 197. The enumeration of powers in this ordinance or in Act 197 shall not be construed as a limitation upon the general powers of the Authority.(Ord 313,2008)

2.24.040 Termination. Upon completion of its purposes, the Authority may be dissolved by the City Council. The property and assets of the Authority, after dissolution and satisfaction of its obligations, shall revert to the City.(Ord 313, 2008)

2.24.050 Description of Downtown District. The Downtown District shall consist of the territory in the City described in Exhibit A, attached hereto and made a part hereof, subject to such changes as may hereinafter be made pursuant to this ordinance and Act 197.(Ord 313, 2008)

2.24.060 Board of Directors. The Authority shall be under the supervision and control of the Board. The Board shall consist of 10 members including the Chief Executive Officer of the City, who shall be appointed and serve in accordance with Act Members of the Board shall serve without compensation, but shall be reimbursed for actual and necessary expenses. The Chairperson of the Board shall be elected by the Board. The Board shall adopt Bylaws governing its procedures subject to the approval of the City Council.(Ord 313, 2008)

2.24.070 Powers of Authority. Except as specifically otherwise provided in this ordinance, the Authority shall have all powers provided by law subject to the limitations imposed by and herein. (Ord. 313, 2008)

2.24.080 Fiscal Year; Budget.

(A) The fiscal year of the Authority shall begin on July 1<sup>st</sup> of each year and end on June 30<sup>th</sup> of the following year, or such other fiscal year as may hereafter be adopted by the City Council.

(B) The Board shall prepare annually a budget and shall submit it to the City Council for approval. The Board shall not finally adopt a budget for any fiscal year until the budget has been approved by the City Council. The Board may, however, temporarily adopt a budget in connection with the operation of any improvements which have been financed by revenue bonds where required to do so by the ordinance authorizing the revenue bonds.

(C) The Authority shall submit financial reports to the City Council at the same time and on the same basis as departments of the City are required to submit reports. The Authority shall be audited annually by the same independent auditors auditing the City and copies of the audit report shall be

filed with the City Council.(Ord. 313, 2008)

Chapter 2.30

PARKS AND RECREATION COMMISSION

Sections:

- 2.30.010 Established, Composition, Terms of Members
- 2.30.020 Organization
- 2.30.030 Control of Parks and Public Grounds
- 2.30.040 Receipts, Donations, Disposition of Funds
- 2.30.050 Initial Appointments of Members

2.30.010 Established; composition; terms of members generally. There is hereby established a Parks and Recreation Commission for the City which shall consist of seven (7) members appointed by the mayor with the consent of the City Council for three (3) year terms as set forth in Section 2.30.50.(Ord 315, 2008)

2.30.020 Organization. The Parks and Recreation Commission shall, on the first meeting of each year elect one (1) of its members chairman and one (1) as secretary. The Commission shall keep a correct record of the proceedings and shall meet at such times as it may determine not less than once each quarter. The meetings of the Parks and Recreation Commission shall be subject to the Open Meetings Act (MCLA 15.261 et seq.)(Ord 315, 2008)

2.30.030 Control of Parks and Public Grounds. The Parks and Recreation Commission shall have the power and the duty to make recommendations regarding all public parks and any lands or lots heretofore or hereafter devised and bequeathed to or purchased by the City for park purposes and shall make recommendations regarding the ornamenting, adorning, laying out and improving of the grounds of such parks and may recommend the adoption of any and all rules necessary for the use of such parks. All recommendations shall be made to the City Council, either directly or through the City Manager. (Ord 315, 2008)

2.30.040 Receipts; donations; disposition of funds. All receipts on account of the city parks, whether arising from rental, fees, donations, sale of any part thereof, or of any lands so willed and devised by any person to the City, shall be exclusively expended and applied under the direction and control of the City Council. All payments of rents, fees, donations or other monies shall be paid at city hall. In the event that any money is paid to a city employee not at city hall or to a member of the Parks and



Recreation Commission, that payment shall be paid over to the appropriate official at city hall as soon as practicable. All such money shall be placed in the general fund of the City. Any recommendations of the Parks and Recreation Commission will be considered prior to such expenditures. (Ord 315, 2008)

2.30.050 Initial appointments of members. The first Parks and Recreation Commission shall consist of seven (7) persons as set forth in section 2.30.010, with three (3) to be appointed for a period of three (3) years, two (2) for a period of two (2) years and two (2) for a period of one (1) year, with all vacancies to be filled for the period of such appointment and at the expiration of such appointments with the vacancies to be filled for a term of three (3) years. (Ord. 315, 2008)

### Title 3

#### REVENUE AND FINANCE

#### Chapters:

3.04 Special Assessment of Public Improvements

3.08 Lost, Unclaimed and Abandoned Property

3.12 Pooling of Debt Retirement Funds

#### Chapter 3.04

SPECIAL ASSESSMENT OF PUBLIC IMPROVEMENTS

Sections:

- 3.04.010 Authority
- 3.04.020 Definitions
- 3.04.030 Initiation of proceedings
- 3.04.040 Filing of report
- 3.04.050 Public Hearing
- 3.04.060 Council determination
- 3.04.070 Completion of improvement before levy
- 3.04.080 Determination of actual cost
- 3.04.090 Preparation of the roll
- 3.04.100 Second public hearing
- 3.04.110 Confirmation of roll
- 3.04.120 Payments of special assessments
- 3.04.130 Collection of fees and interest
- 3.04.140 Special assessments
- 3.04.150 Collection of special assessments
- 3.04.160 Collection by court action
- 3.04.170 Division of land assessed
- 3.04.180 Additional pro rata assessments
- 3.04.190 Reassessment in event of illegality
- 3.04.200 Moneys raised by special assessments
- 3.04.210 Other special assessments

3.04.010 Authority. The making and financing of public improvements by the special assessment method shall be governed by this chapter and Chapter 8 of the city charter. (Ord. 169 '1, 1992)

3.04.020 Definitions. Words and terms used in this chapter shall have the meanings prescribed in this section as follows:

"Costs" means and includes:

1. Surveys, maps, drawings, plans and specifications for a public improvement and all expenses incident to the proceedings for the making and collecting of the special assessments;

2. The issuance of bonds in anticipation of such special assessments, and not to exceed one year's interest on bonds to be issued to finance said improvements;

3. Whenever any property is acquired by condemnation, or otherwise, for the purpose of any public improvement, all or any part of the cost thereof may be included as a part of the cost of such improvement.

"Public improvement" means and includes the reconstruction

in whole or in part of any structure or work as well as the original construction thereof.

Any assessment may be made upon the basis of the estimated cost of the improvement if the actual cost has not been definitely determined. (Ord. 169 '2, 1992)

3.04.030 Initiation of proceedings. Proceedings for making improvements may be initiated by resolution of the city council or by petition filed with the city clerk and signed by the owners of lands having at least fifty percent of the privately owned frontage abutting upon the proposed improvement.

A. Petition Requirements. Said petition must be addressed to the city council, describe the requested public improvement, contain the signatures of the owners of land having at least fifty percent of the privately owned frontage abutting upon the proposed improvement, and contain a brief description of the property owned by the respective signers thereof. The genuineness of the signatures on each petition or part thereof must be verified by the affidavit of the circulation. Any such petition shall not be mandatory upon the council, but shall be advisory only, and in no event shall such petition be deemed jurisdictional.

B. Council Resolution. Irrespective of whether a petition is filed, the city council may determine to make any public improvement and to defray the whole or any part of the cost by special assessments against property especially benefitted thereby. The city council shall, by resolution, declare its intention to do so, stating therein the nature and the route or location of the proposed improvement and the land and premises proposed to be included in the special assessment district and assessed therefor.

C. Preliminary Proceedings. Before determining to make any improvements, any part of the cost of which is to be defrayed by special assessment, the city council shall require the city manager to prepare, or cause to be prepared, and submitted to the city council a report which includes (1) a map or drawing showing the route or location of such proposed special assessment district; (2) plans for special plans and specifications for such proposed improvement; and (3) an estimate of the cost thereof. (Ord. 169 '3, 1992)

3.04.040 Filing of report. Upon receipt of the report of the city manager, if the city council determines to proceed with the improvement, it shall so declare by resolution. The city council, by said resolution shall order the aforesaid report to be filed in the office of the city clerk for public examination, shall determine the necessity of said improvement, shall state

the estimated cost and what portion, if less than all, shall be paid by special assessment and what portion, if any, shall be the general obligation of the city, and shall so designate the district or lands or premises upon which the special assessment shall be levied. (Ord. 169 '4, 1992)

3.04.050 Public hearing. Before finally determining to make said improvement and the special assessments, the city council shall hold a public hearing at a time and place to be fixed by the council. At said hearing, the city council shall hear and consider any objections which may be submitted by any aggrieved person with respect to the making of the improvement and assessing the designated special assessment district of all or, part of the cost of the improvement which the council has proposed to assess.

A. The council shall cause notice of said hearing to be given by the city clerk not less than ten days prior to the date of said hearing, (1) by publication of said notice at least once in a newspaper having general circulation in the city and (2) by sending by first class United States mail, postage fully prepaid, a copy of the notice addressed to each person in whose name and land in the special assessment district is assessed on the last preceding tax assessment role of the city and her/his last known address, and also, (3) if such address is different than the address of the premises in the district, a copy of said notice addressed to occupant of each such premises which has an address served by United States mail.

B. Such notice shall specify the improvement, describe the district, state the estimated cost and the division thereof as between the district and the city at large, and give notice that the report is on file with the city clerk for public examination.

C. Any hearing may be adjourned from time to time without further notice. (Ord. 169 '5, 1992)

3.04.060 Council determination. At the time of the hearing described in section 3.04.050, or any adjournment thereof, which may be without further notice, the council shall hear and consider any objections as are submitted. The council without further notice, may revise, correct, amend or change the report, provided, that no property shall be added to the district until notice is given as provided in Section 3.04.050(A) or by personal service upon the owners and a hearing afforded said owners. However, property may be added without such notice and hearing if the owners thereof shall agree in writing to such addition.

After hearing any objections, the city council may, by

resolution, determine to make the improvements and to defray the whole or any part of the cost of the improvement by special assessment upon the property especially benefitted in proportion to the benefits to the land. By such resolution, the city council shall approve the report, including the map or drawing, plans, specifications and cost estimate as originally presented or as revised, corrected, amended or changed, determine the estimated cost thereof, determine to make the improvement, designate the lands and premises constituting the special assessment district, state what proportion of such cost shall be paid by special assessment upon the property especially benefitted and what portion, if any, shall be the general obligation of the city; and direct the city assessor to prepare a proposed special assessment roll in accordance with the resolution by the city council.(Ord. 169 '6, 1992)

3.04.070 Completion of improvement before tax levy. Any provision of this ordinance to the contrary notwithstanding, the city council may, in its discretion, delay the preparation of the special assessment roll until after the completion of the improvements, in which case a special assessment roll shall then be made in accordance with the actual cost of the improvement. (Ord. 169 '7, 1992)

3.04.080 Determination of actual cost. Upon completion of the improvement and the payment of the cost thereof, the city clerk shall certify to the city manager the total cost of said improvement. The city manager shall forward this report to the city council, who shall by resolution approve or disapprove. If approved, the city council shall direct the city assessor to spread the amount of the exact cost of said improvement upon the special assessment roll. (Ord. 169 '8, 1992)

3.04.090 Preparation of the roll. When the city assessor has completed the proposed assessment roll, he shall report the same to the city council, together with the certificate that the assessment roll conforms to the direction of the city council and provisions of this ordinance and the city charter. The city assessor shall prepare and certify the special assessment roll in which shall be entered and describe all the lands and premises to be assessed, with the names of respective owners, if known, and the amount to be assessed against each such parcel of land or premises. Said amount shall be a relative portion of the whole sum to be levied against all lands and premises in the special assessment district as the benefit to such parcel of land or premises bears to the total benefit to all lands and

premises in the special assessment district. There shall also be entered upon said roll the amount which has been assumed by the city at large, if any. When the assessor has completed the special assessment roll, he/she shall file the same in the office of the city clerk, certifying that it was made pursuant to resolution of the council adopted on the specified date. (Ord. 169 '9, 1992)

3.04.100 Second public hearing. Before confirming any proposed special assessment roll, the city council shall appoint a time and place when it will meet and review the same and hear any objections thereto. The city council shall cause notice of such hearing and the filing of such proposed special assessment roll to be given by the city clerk not less than ten days prior to the date of said hearing by (a) publication at least once in a newspaper having general circulation in the city and (b) by sending by first class United States mail, postage fully prepaid, a copy of said notice addressed to each person in whose name any land is assessed on said roll, at his/her last known address and also, (c) if said address is different than the address of the premises, a copy of said notice addressed to the occupant of each such premises which has an address served by United States mail. The city council shall meet at the appointed time and place at such meeting or any adjourned meeting, (which may be without further notice) shall review the proposed special assessment roll and hear and consider any objections thereto. (Ord. 169 '10, 1992)

3.04.110 Confirmation of roll. After the hearing on the proposed special assessment roll, the city council by resolution may confirm the same, or may correct it as to any matter appearing therein and confirm it as so corrected, or may refer it back to the city assessor for revision; or may annul it and direct a new roll to be made. No original special assessment roll shall be finally confirmed except by the affirmative vote of four members of the city council if prior to such confirmation written objections to the proposed improvement have been filed by owners of property which will be required to bear more than fifty percent of the amount of such special assessment. The city clerk shall endorse the date of confirmation upon each special assessment roll. After confirmation, the special assessment roll and all assessments therein shall be final and conclusive. (Ord. 169 '11, 1992)

3.04.120 Payments of special assessments. Special assessments shall be made payable in one or more installments as

determined by the city council, but said installments may not exceed five in the case of a sidewalk improvement; fifteen in the case of paving or similar street improvements, and twenty in the case of water, storm sewer, sanitary sewer or other improvements. However, in the case of a sidewalk assessment associated with a paving or similar street improvement such installments may not exceed fifteen. The first installment shall be due at such time after confirmation as the city council shall provide and the several subsequent installments shall be due at intervals of twelve months from the due date of the first installment or from such other date as the city council shall determine. The amount of each installment (if more than one) need not be extended upon the special assessment roll until after confirmation. All installments not paid by a date to be fixed by the city council shall bear interest from such date at a rate to be determined by the council. Such accrued interest on all unpaid installments shall be due and payable annually on the due dates of the respective installments. Any one or more installments may be paid at any time before due together with accrued interest on such installments.( Ord. 169 '12, 1992; Ord.179 '12, 1992)

3.04.130 Collection fees and interest. No penalty shall be charged for special assessments paid on or before September 15th. After September 15th, a four percent tax administration fee shall be added to special assessments paid after that date. Should September 15th fall on a Saturday, Sunday, or holiday, the next business day for the city shall be considered the last day for payment without penalty. Special assessments remaining unpaid after September 15th shall be subject to one percent interest per calendar month or any part of a calendar month added until paid. Such charges belong to the city and constitute a charge, and shall be a lien against the property to which the special assessments apply, collectible in the same manner as special assessments which they are added. If summer taxes are collected by the city, collection shall be in accordance with the provisions of Public Acts 1982, No. 333, as amended. (Ord. 169, '13, 1992)

3.04.140 Special assessments. Special assessments and all interest, charges and penalties thereon, from the date of confirmation of the roll and until paid, shall be and remain a lien upon the property assessed of the same character and effect as the lien created for city taxes. No judgement or decree, nor any act of the city council vacating a special assessment shall destroy or impair the lien of the city upon the property

assessed, for such amount of the assessment as may be equitably charged against the same, or as by a regular mode of proceeding might be lawfully assessed thereon. (Ord. 169 '14, 1992)

3.04.150 Collection of special assessments. When any special assessment shall be confirmed, the city assessor shall direct the assessments so made in the special assessment roll to be collected. The clerk shall there upon deliver to the city treasurer said special assessment roll to which the city assessor shall attach his/her warrant commanding the city treasurer to collect from each of the persons assessed in said roll the amount of money assessed to and set opposite his/her name therein. Upon receiving said special assessment roll and warrant, the city treasurer shall proceed to collect the several amounts assessed therein. (Ord. 169 '15, 1992)

3.04.160 Collection by court action. In addition to any other remedies and without impairing the lien thereon, any delinquent special assessment, together with interest and penalties, may be collected in an action of assumpsit in the name of the city against the person assessed, in any court having jurisdiction. If in any such action it shall appear that by reason of irregularities or informalities the assessment has not been properly made against the defendant or upon the premises sought to be charged, the court may, nevertheless, on satisfactory proof that the expense has been incurred by the city, which in a proper charge against the defendant or the premises in question, render judgment for the amount properly chargeable against such defendant or upon such premises. (Ord. 169 '16, 1992)

3.04.170 Division of land assessed. Should any lot, premises or parcel of land be divided after a special assessment has been levied thereon and confirmed and divided into installments, and before the collection of any installment thereof, the city council may require the city assessor to apportion the uncollected amount upon the several parts of said lot, premises or parcel of land so divided. Upon receipt of this special assessment roll apportioned as stated from the assessor, proceedings shall be taken leading to the review and confirmation of the roll as apportioned in the same manner as proceedings are taken for the review and confirmation of the proposed special assessments generally. When the special assessment roll as apportioned shall have been confirmed, it shall be conclusive upon all parties in interest.(Ord. 169 '17, 1992)



3.04.180 Additional pro rata assessments. Additional pro rata assessments may be made when any special assessment roll proves insufficient to pay for the improvement for which it was levied and the expenses incidental thereto, or insufficient to pay the principal and interest on bonds issued in anticipation of such special assessment roll; provided that the additional pro rata special assessment shall not exceed twenty percent of the special assessment as originally confirmed, unless a meeting of the city council be held to review such additional assessment, for which meeting notices shall be published and mailed as provided in the case of review of the original proposed special assessment roll. (Ord. 169 '18, 1993)

3.04.190 Reassessment in event of illegality. Whenever any special assessment roll, in the opinion of the city council, is invalid by reason of irregularity in proceedings, or if any court of competent jurisdiction shall adjudge such assessment to be illegal, the city council shall, whether the improvement has been made or not, or whether any part of the assessment has been paid or not, have power to cause a new assessment to be made for the same purpose for which the former assessment was made. All proceedings of such reassessment and for the collection thereof shall be conducted in the same manner as provided for the original special assessment; and whenever the assessment, or any part thereof, levied upon any premises has been so set aside, if the same has been paid and not refunded, the payment so made shall be applied upon the reassessment and the reassessment shall to that extent be deemed satisfied. (Ord. 169 '19, 1992)

3.04.200 Moneys raised by special assessments. Monies raised by special assessments for any public improvement shall be credited to a special assessment account and shall be used to pay for the costs of the improvement for which the special assessment was levied and of expenses incidental thereto, to repay the principal and interest on money borrowed therefor, and to refund excessive assessments. The excess by which any special assessment proves larger than the actual cost of the improvement and expenses incidental thereto may be placed in the general fund of the city if such excess is less than five percent of the assessment. Should the assessment prove larger than necessary by five percent or more, the entire excess shall be refunded on a pro rata basis to the owners of the property assessed. Said refund shall be made by credit against future unpaid installments in the inverse order in which they are payable to the extent such installments then exist and the

balance of such refunds shall be in cash. No refunds may be made which contravene the provisions of any outstanding evidence of indebtedness secured in whole or in part by said special assessment. (Ord. 169 '20, 1992)

3.04.210 Other special assessments. When any expense shall have been incurred by the city upon or in respect to any single premises, which expense is chargeable against said premises and the owner thereof under the provisions of any ordinance of the city or law or statute of the state of Michigan, and is not of that class required to be pro rated among the several lots, and parcels of land in a special assessment district, an account of the labor, material and service for which such expense was incurred, with a description of the premises upon or in respect to which the expense was incurred, and the name of the owner, if known, shall be reported to the city treasurer, who shall immediately charge and bill the owner, if known. In the event that the treasurer finds that such an amount is not otherwise collectable, he/she shall report the same to the city council which may direct the city clerk to prepare a special assessment roll covering all such charges reported to it, together with a penalty of four percent. Such roll shall be filed with the city clerk, who shall present the same to the city council. Thereafter the same proceedings shall be followed in respect to such special assessment roll as are provided in this chapter and all the provisions of said sections with reference to special assessments generally shall apply to special assessments under this section, insofar as the same may be applicable. (Ord. 169 '21, 1992)

## Chapter 3.08

### LOST, UNCLAIMED AND ABANDONED PROPERTY

#### Sections:

- 3.08.010 Delivery to chief of police
- 3.08.020 Appraisal, record
- 3.08.030 Unclaimed property
- 3.08.040 Return to finder
- 3.08.050 Property to which applicable

3.08.010 Delivery to chief of police. When any person, within the city, finds any lost money, or any lost personal property of any other nature, having an apparent value of ten

dollars or more and the owner of the money or personal property is unknown to the finder, the finder shall, within seven days, deliver the money or personal property to the chief of police. The finder shall further, within thirty days from the date of finding the money or personal property, cause notice to be published in a newspaper circulating within the city that such money or personal property has been found, which notice shall briefly describe the property found, and notify the owner that he may recover the property upon application to the chief of police, making satisfactory identification of himself and the lost property and paying for the cost of the advertisement. If any finder fails to give notice of such finding, as required in this section, within the time limit, he shall forfeit all claims to any property right in the found property which he might otherwise have upon termination of the custody of the police department under the provisions of this chapter. (Ord. 70 Art I, 1974)

3.08.020 Appraisal, record. The chief of police shall designate some member of the department to act as appraiser to examine, appraise and inventory each article of lost money or lost personal property surrendered to the custody of the department. Property found to have little or no intrinsic or commercial value in the opinion of the appraiser shall be inventoried and recorded separately from property found by the appraiser to have intrinsic or commercial value and may be returned immediately to the finder and be left in his custody. A record of property having intrinsic or commercial value, containing a description of the property, a record of the place where found, and the appraiser's estimate of the value shall be made, which book shall be a public record and kept on file in the police department. (Ord. 70 Art II, 1974)

3.08.030 Unclaimed property. Any lost money or lost personal property in the custody of the police department shall be kept for a period of at least six months unless the identity of the owner shall sooner be discovered. If the identity of the owner shall be learned which such property is in the custody of the police department, the department shall notify the owner in writing, which notice shall advise him that unless he shall reclaim the same within thirty days from the date of said notice is given that he shall have forfeited any claim to the return of such money or personal property. Any person making a claim for the return of lost money or personal property shall establish his ownership to the satisfaction of the chief of police and such money or personal property shall be returned to him upon payment of the cost of any advertising by the finder or expenses

of storage incurred by the department. (Ord. 70 Art III, 1974)

3.08.040 Return to finder. After any lost money or lost personal property has been in the custody of the police department for six months and the owner has not been found or has abandoned his claim to the property, and there is no claim of ownership pending against the property, the property may be returned by the chief of police to the finder thereof if the finder has complied with the provisions of this chapter regarding lost property, in all respects. As to any such property remaining in the custody of the police department as to which there are no claims pending and no finder having any rights therein, the chief of police may donate the property, except money, to one or more charitable organizations approved by the city council, and otherwise shall cause such property, except money, to be sold at public auction, reserving the right to reject any or all bids. Notice of the time and place of such sale shall be given by publishing notice thereof in a newspaper of general circulation within the city. Such notice shall set forth a full description of the property. The chief of police is authorized to deliver and convey such property to the successful purchaser upon payment of the full purchase price without any warranty or representation as to title and with the understanding that in the event the rightful owner recovers such property in an action at law against such purchaser that the liability of the city is limited to the amount paid by said purchaser for such property. The proceeds of all such sales and any money which has been held for six months against which there is no claim pending either by any purported owner or by the finder thereof, shall be paid over by the chief of police to the city treasurer to the credit of the general fund. The city may purchase property at any such sale in the same manner as any other bidder. (Ord. 70 Art IV, 1974)

3.08.050 Property to which inapplicable. The provisions of this chapter as to lost property shall not apply to perishable produce which may be sold within twelve hours if unclaimed, nor to lost animals, other than dogs, which may be sold within seventy-two hours if unclaimed. Lost dogs shall be turned over to the Genesee County dog warden. This chapter shall not apply to abandoned motor vehicles which shall be disposed of in accordance with state law. No employee of the city shall be eligible to acquire any property right in any lost money or lost personal property by reason of having found any such money or personal property. (Ord. 70 Art V, 1974)

Chapter 3.12

POOLING OF DEBT RETIREMENT FUNDS

Sections:

- 3.12.010 Debt retirement funds for bonds previously issued
- 3.12.020 Pooling of debt retirement funds, voted bonds,  
non-voted bonds, special assessment bonds

3.12.010 Debt retirement funds for bonds previously issued.

The city has established the following debt retirement funds in connection with bonds previously issued by the city:

1. Hickory Street Michigan Transportation Bonds Debt Retirement Fund;
2. Meadowgreen Lane/Par Court Special Assessment Bonds Debt Retirement Fund;
3. East Rolston Road Special Assessment Bonds Debt Retirement Fund;
4. East Rolston Road City Share Bonds Debt Retirement Fund;
5. North Bridge Street Special Assessment Bonds, Series 1991 Debt Retirement Fund;
6. W. Rolston Special Assessment Bonds Debt Retirement Fund;
7. Yorkshire Special Assessment Bonds Debt Retirement Fund.

The above-referenced debt retirement funds shall be pooled in accordance with the amendments to Act 202, Public Acts of Michigan, 1943.

3.12.020 Pooling of debt retirement funds.

Debt retirement funds created for the following categories of debt may be pooled or combined for deposit or investment purposes only with other debt retirement funds created for the same category of debt. The categories are:

1. Voted bonds;
2. Nonvoted bonds;
3. Special assessment bonds.

Title 4  
(Reserved)

Title 5

BUSINESS LICENSES AND REGULATIONS

Chapters:

<u>5.04</u>	<u>Garage and Yard Sales</u>
<u>5.08</u>	<u>Solicitors, Peddlers, Hawkers, Itinerant Merchants and Transient Vendors</u>
<u>5.10</u>	<u>Licensing of Bed and Breakfast Establishments</u>
<u>5.12</u>	<u>Ice Cream Vendors</u>
<u>5.20</u>	<u>Business Occupancy Permit</u>

Chapter 5.04

GARAGE AND YARD SALES

Sections:

5.04.010	License required
5.04.020	Application
5.04.030	License fee, time limit and renewability
5.04.040	Regulations
5.04.050	Inspections
5.04.060	Nuisance per se
<u>5.04.010</u>	<u>License required. It is unlawful for any person,</u>

firm corporation, merchant, club, charitable institution, hawker or peddler to vend, sell, dispose of or offer to vend, sell, dispose of or display an accumulation of used goods, merchandise or other personal property in a private garage, other outbuilding, yard or anywhere else on private premises within the city without first having paid a license fee therefor, as provided in this chapter. (Ord. 137 '1, 1987)

5.04.020 Application. Application for license to vend, sell, dispose of or display an accumulation of used goods, merchandise or other personal property shall be made in writing to the city clerk. The applications shall contain the name of the applicant, if an individual, the names of partners, if a copartnership, or the names of the principal officers, if a corporation, club, charitable institution, and shall include the location of the place or places where such merchandise, goods or other personal property are to be so displayed and sold. (Ord. 137 '2, 1987)

5.04.030 License fee, time limit and renewability. The license fee to be charged for such application is one dollar. No license fee shall be valid for more than fourteen consecutive days. Such licenses are nonrenewable, and no licensee shall receive more than one such license per residence within any calendar year. Such license shall be posted in the immediate area of such sale. (Ord. 137, '3, 1987)

5.04.040 Regulations. Such sales shall not be operated in any manner which would cause a nuisance or create a fire hazard. (Ord. 137 '4, 1987)

5.04.050 Inspections. The chief of police and the chief of the fire department shall make or cause to be made sufficient inspections to insure the compliance with the provisions of this chapter and other applicable provisions of the city ordinances by the personnel conducting such sales. (Ord. 137 '5, 1987)

## Chapter 5.08

### SOLICITORS, PEDDLERS, HAWKERS, ITINERANT MERCHANTS AND TRANSIENT VENDORS

#### Sections:

5.08.010 Declaration of nuisance

- 5.08.020 Excepted activities
- 5.08.030 License required for excepted activities
- 5.08.040 Identification required

5.08.010 Declaration of nuisance. The practice of going to, in and upon private residences in the City of Linden by solicitors, peddlers, hawkers, itinerant merchants, transient vendors of merchandise and other persons not having been requested or invited to do so by the owner or owners, occupant or occupants of said private residences for the purpose of soliciting orders for the sale of goods, wares and merchandise, for disposing of or peddling or hawking goods, wares or merchandise or for the purpose of seeking or gaining information concerning the owners or occupants of the private residence or neighboring private residences is declared to be a nuisance and punishable as such nuisance as a misdemeanor. (Ord. 143 '1, 1988; Ord. 182 '1, 1992)

5.08.020 Excepted activities. This chapter shall not apply to the sale of goods, wares, and merchandise by religious, charitable or non-profit organizations; solicitations for religious, charitable, or non-profit organizations; and/or canvassing the area by religious, charitable or non-profit organizations between the hours of 8:00 a.m. and 8:00 p.m. (Ord. 143 '2, 1988; Ord. 200 '1, 1994)

5.08.030 License required for excepted activities.

A. Organizations meeting the requirements of Section 5.08.020 shall obtain a license before conducting their operations in the city from the police department. There is no charge for such licenses. The following information is required of applicants for such licenses:

1. The name and address of the applicant;
2. The names and permanent addresses of both the organization and of all persons who will be entering into the activity in the city;
3. A brief description of the organization;
4. The length of time for which a license is being requested (days, dates and hours of operation);
5. A "Letter to Determination of Tax Exemption" or comparable verification of tax-exempt status.
6. In any instance where either Federal law or Michigan law has determined that a license or permission is not required for solicitation, then registration with the Police department is required. There shall be no charge for registration. The same information which is requested in



Section 5.08.030 shall be provided upon registration.

B. The police department shall submit a written report to the city council on each license granted by the department. (Ord. 147 '1, 1988; Ord. 143 '3, 1988; Ord. 182 '2, 1992)

5.08.040 Identification required. It is the responsibility of the organization's members conducting the solicitation to wear or carry identification. A solicitor must identify himself or herself to the occupants of any private residences. Any individual who fails to positively identify himself or herself will be considered to have violated this chapter. (Ord. 147 '2, 1988; Ord. 143 '4, 1988)

## Chapter 5.10

### LICENSING OF BED AND BREAKFAST ESTABLISHMENTS

#### Sections:

- 5.10.010 License required
- 5.10.020 Application
- 5.10.030 Action on application
- 5.10.040 Term of license
- 5.10.050 Guest register
- 5.10.060 Nuisance
- 5.10.070 Termination

5.10.010 License required. Any person or persons, firm, corporation or partnership desiring to operate a Bed and Breakfast establishment in the City of Linden shall first secure from the City of Linden a license to operate that establishment. (Ord. 196 '5.10.010, 1993)

5.10.020 Application. Application for the license shall be made to the city clerk. The application shall contain the name and address of the applicant, the name and address of any partner or shareholder of any firm or corporate applicant, the location and address of the property for which the license is sought, a drawing to scale of the interior of the dwelling unit as well as an approved site plan from the city planning commission, the address and location of any other Bed and Breakfast establishments operated by the applicant and a written description of any food service to be offered to transient tenants. (Ord. 196 '5.10.020, 1993)

5.10.030 Action on application. The city manager shall

have thirty days to either grant or deny the license. Failure to act within thirty days shall constitute a denial. The applicant shall have thirty days to appeal a denial to the city council. Any action of the city council shall be final. (Ord. 196 '5.10.030, 1993)

5.10.040 Term of License. Any license granted under this Chapter shall be for a period of one year unless terminated earlier by the city manager. Renewals shall only be granted pursuant to Section 5.10.030. (Ord. 196 '5.10.040, 1993)

5.10.050 Guest register. Each licensed Bed and Breakfast shall maintain a guest register on the premises. All guests shall be required to register. The city manager or his designate shall be allowed to inspect the register at all reasonable times to determine compliance with this ordinance and the zoning code. (Ord. 196 '5.10.050, 1993)

5.10.060 Nuisance. No licensee shall, by reason of noise, smoke, odor, increased traffic, outdoor lighting or other disruption or disturbance create a nuisance to adjoining or neighboring residential property occupants. (Ord. 196 '5.10.060, 1993)

5.10.070 Termination. Any license granted under this chapter may be terminated by the city manager. Grounds for termination shall be a violation of Section 5.10.050, Section 5.10.060, any state, county or local statute or ordinance or violation of the City of Linden zoning code. (Ord. 196 '5.10.070, 1993)

## Chapter 5.12

### ICE CREAM VENDORS

#### Sections:

5.12.010	Public Purpose
5.12.020	Definitions
5.12.030	License Required; Exceptions
5.12.040	License Application
5.12.050	Insurance
5.12.060	Method of Operation
5.12.070	Hours of Operation
5.12.080	Community Events

5.12.010 Public Purpose. It is hereby declared to be in the best interest of the health, safety and welfare of the citizens of the City of Linden that no person, firm or corporation shall operate a vehicle, cart or push cart on the streets or the sidewalks of the City of Linden for the purpose of selling or dispensing of ice cream, ice cream products or frozen ice treats until the vehicle, cart or pushcart is licensed, a background check has been completed and any person who is operating a motor vehicle used in the sale or dispensing of these products is properly licensed. (Ord 320, 2009)

5.12.020 Definitions. As used in this Ordinance:

1. Ice cream, ice cream products or frozen ice treats:  
for the purpose of regulating the sale of said products on the streets or the sidewalks of the City of Linden and for the licensing and operation of vehicles, carts or push carts used in connection with such sale, means and includes any frozen product made from cream and/or milk of any kind in connection with any other substance; sherbet, ice or any imitation ice cream made of water and milk solids, popsicles or frozen flavored ice or similar items offered for sale.

2. Sexual conduct offense: means any of the following:

(a) Section 335a of the Michigan Penal Code, 1931 PA 328, MCL 750.335a (indecent exposure).

(b) Section 350 of the Michigan Penal Code, 1931 PA 328, MCL 750.350 (leading, taking, carrying away, decoying, or enticing away a child under 14 years of age).

(c) Section 520b of the Michigan Penal Code, 1931 PA 328, MCL 750.520b (first degree criminal sexual conduct).

(d) Section 520c of the Michigan Penal Code, 1931 PA 328 750.520c (second degree criminal sexual conduct).

(e) Section 520d of the Michigan Penal Code, 1931 PA 328, MCL 750.520d (third degree criminal sexual conduct).

(f) Section 520e of the Michigan Penal Code, 1931 PA 328, MCL 750.520e (fourth degree criminal sexual

conduct).

(g) Section 520g of the Michigan Penal Code, 1931 PA 328, MCL 750.520g (assault with intent to commit criminal sexual conduct).

(h) A law of the United States, another state, or a political subdivision of this State or another state substantially corresponding to a violation described in Subdivisions (1) to (7).(Ord 320, 2009)

#### 5.12.030 License Required; Exceptions.

1. No person shall operate or engage in the business or occupation of operating any vehicle, cart or push cart for the purpose of selling ice cream, ice cream products or frozen ice treats on the streets, sidewalks or other public places of the City of Linden without first obtaining a license for the vehicle, cart or push cart. Before a license will be issued for such operation of a vehicle classified as a motor vehicle under the Michigan Motor Vehicle Code, said vehicle must first be properly licensed and equipped under such Code.

2. No license shall be issued upon the application of a person who has been convicted of a sexual conduct offense or has a pending unresolved criminal charge for a sexual conduct offense nor shall such a person be allowed to sell ice cream, ice cream products or frozen ice treats under this Ordinance.

3. This Ordinance does not apply to persons delivering ice cream, ice cream products or frozen ice treats to a retail business engaged in the sale or distribution of said products, to persons distributing such products to persons along a designated route to households or businesses that have previously ordered said products from the vendor.(Ord 320, 2009)

#### 5.12.040 License Application Fees; Transferability; Revocation:

1. Any person desiring to engage in the business of operating vehicles, carts or push carts for the purpose of selling ice cream, ice cream products or frozen ice treats shall, before commencing such operation, apply to the City Clerk for a license and shall pay to the City Clerk, at the time of making such application, fees as established by the City Council, for each such vehicle, cart or push cart to be

licensed. The application shall set forth the following information relative to any person who would be engaged in operating the vehicle, cart or push cart in the City of Linden:

- (a) Full name, address, date of birth, and drivers license number.
- (b) A full list of prior places of employment of the individual.
- (c) A statement of whether the person had ever been convicted of a sexual conduct offence or whether the person has a pending sexual conduct offence.
- (d) A description of the vehicle, cart or push cart which the individual would be responsible to operate.

2. The City Clerk shall forward a copy of the License Application to the Linden Police Department to determine whether the applicant or any other person who would be operating a vehicle, cart or push cart is eligible to operate such a vehicle, cart or push cart under this Ordinance. Upon completion of its investigation the Linden Police Department shall return the Application to the City Clerk. If the Linden Police Department has approved the motor vehicle and has determined that the operators of the vehicle, cart or push cart are eligible to so operate the conveyance under this Ordinance, then the City Clerk shall issue an appropriate license for each vehicle, cart or push cart. Said License shall be displayed in a prominent place when the operator is engaged in the business of selling ice cream, ice cream products or frozen ice treats.

3. Any License issued under this Ordinance is non-transferrable. No person shall operate a vehicle, cart or push cart that has not been approved previously by the Linden Police Department and who did not appear on the Application submitted to the City Clerk and approved by the Linden Police Department.

4. No License shall be issued under this Ordinance for more than one (1) year.

5. No license shall be issued to a person to whom a

license was previously denied or who had a license revoked except by approval of the City Council.

6. Any License issued under this Ordinance may be suspended or revoked if it is determined that a person operating under said License has violated any of the Ordinances of the City of Linden.

7. Every applicant under this Ordinance must be at least eighteen (18) years of age. (Ord 320, 2009)

5.12.050 Insurance. No vehicle, cart or push cart shall be licensed under this Ordinance unless and until the owner thereof files with the City Clerk proof:

1. That any motor vehicle to be operated on the public street which is required to be insured under the Motor Vehicle Code is properly insured.

2. That the business is fully insured for any liability related to the operation of said business in a city street, upon a city sidewalk or in other places open to the public. The minimum limits of liability shall be: \$500,000.00.(Ord 320, 2009)

5.12.060 Method of Operation. The operation of vehicles, carts or push carts under a license issued pursuant to this Ordinance shall be such as not to interfere with the use of the streets by the public, congestive, impede traffic or endanger persons or property of pedestrians or other users of the streets, sidewalks or other public places.(Ord 320, 2009)

5.12.070 Hours of Operation. No vehicle, cart or push cart shall be operated under this Ordinance between 8:00 p.m. and 8:00 a.m. the following day.(Ord 320, 2009)

5.12.080 Community Events. This Ordinance shall not prohibit the sale of ice cream, ice cream products or frozen ice treats at community events approved by the City Council if such sale is approved by the Committee in charge of such event or the City Council prior to the event.(Ord 320, 2009)

## Chapter 5.16

### SALE OF USED CARS ON PRIVATE PROPERTY

Sections:

5.16.010	Public Purpose
5.16.020	Used Car dealers
5.16.030	Residential Properties
5.16.040	Property Zoned Other Than Residential
5.16.050	Display of Motor Vehicle for Sale

5.16.010 Public Purpose. It is hereby deemed to be in the best interests of the citizens of the City of Linden in order to protect the health, safety and welfare of the people and the beauty of the community to regulate the sale of used cars on private property. (Ord 324, 2009)

5.16.020 Used Car Dealers. Used car dealers which are properly licensed and operating in the proper zoning districts of the City are exempt from this Ordinance. (Ord 324, 2009)

5.16.030 Residential Properties. Any owner or occupant of property zoned Residential is allowed to offer for sale with a "for sale" sign displayed thereon and displayed as set forth below a motor vehicle which the owner or occupant has owned for at least six (6) months and that the owner or occupant has had licensed or that the owner or occupant has used for personal transportation for at least six (6) months. (Ord 324, 2009)

5.16.040 Property Zoned Other Than Residential. An owner, occupant or employee of the owner or occupant of property or of a business operated on a parcel of property not zoned residential shall be allowed to offer for sale with a "for sale" sign displayed thereon and displayed as set forth below a motor vehicle which the owner, occupant or employee of said property or business has owned for at least six (6) months and that the owner, occupant or employee has had licensed and that the owner, occupant or employee has used for personal transportation for at least six (6) months. (Ord 324, 2009)

5.16.050 Display of Motor Vehicle for Sale. Any motor vehicle offered for sale pursuant to Section 5.12.03 or 5.12.04 above shall:

- a. Not be parked in a required front lawn area except on a driveway of the property or in a parking lot upon said property;
- b. Not be parked so as to block the clear vision

of the motoring public as to any vehicular or pedestrian traffic;

- c. Not be parked so as to block a public sidewalk.(Ord 324, 2009)

## Chapter 5.20

### BUSINESS OCCUPANCY PERMIT

#### Sections:

5.20.010	Business Occupancy Permit
5.20.020	Application; Checklist
5.20.030	Inspections/Approvals; Zoning Administrator
5.20.040	Inspections/Approvals; Building Official
5.20.050	Inspections/Approvals; Fire Chief
5.20.060	Inspections/Approvals; Police Chief
5.20.070	Temporary Business Occupancy Permit

5.20.010 Business Occupancy Permit. No person, corporation, partnership, LLC or other legal entity shall commence doing business in a commercial structure or in any other building or place in the City of Linden until a properly approved Business Occupancy Permit has been issued by the City of Linden.(Ord 314, 2008)

5.20.020 Application; Checklist. Any person, corporation, partnership, LLC or other legal entity desiring to commence business operations in the City of Linden shall first complete an Application Form as provided by the City of Linden. The form shall be available at the Linden City Hall during regular business hours and in such other manner as determined by the City Manager of the City of Linden. The Application shall be accompanied by a Checklist designed to assist the Applicant in securing all approvals necessary for the issuance of a Business Occupancy Permit. Failure to provide the appropriate forms shall not excuse the requirement that an Occupancy Permit be received prior to conducting business. It is the obligation of the Applicant to secure all approvals prior to issuance of the Business Occupancy Permit. The Application shall be completed in full.(Ord 314, 2008)

5.20.030 Inspections and Approvals; Zoning Administrator. The Zoning Administrator shall inspect the proposed business site to determine whether the applicant secured all necessary permits and completed all necessary applications for the operation of the proposed business at the proposed site; whether the



zoning is appropriate for the proposed use; whether any proposed signs have been approved by the appropriate board; whether the proposed business requires approval of the Historic District Commission; and whether any variances, special use permits or other authorizations are required from the City prior to the commencement of business.(Ord 314, 2008)

5.020.040 Inspections and Approvals; Building Official. The Building Official shall inspect the proposed business site to determine whether any structural changes are necessary to satisfy the appropriate building code; whether the subject property has purchased a sufficient number of sewer units to support the proposed business and all other activities conducted on the premises; whether any proposed alterations to the structure are allowed under the applicable building code; and whether the renovations, if any, are completed in compliance with the applicable building code and local Ordinances. (Ord 314, 2008)

5.020.050 Inspections and Approvals; Fire Chief. The Fire Chief shall inspect the proposed site to determine compliance with the fire related safety standards.(Ord 314, 2008)

5.020.060 Inspections and Approvals; Police Chief. Under certain circumstances, the approval of the Chief of Police may be required if provided for by local Ordinance or State Statute.(Ord 314, 2008)

5.020.070 Temporary Business Occupancy Permit. Under special circumstances as determined by the City Manager, the City Manager may issue a Temporary Business Occupancy Permit. The Temporary Business Occupancy Permit shall expire thirty (30) days after the issuance thereof. The Temporary Business Occupancy Permit shall not be renewed. The Temporary Business Occupancy Permit shall contain specific instructions as to what needs to be completed prior to issuance of a Business Occupancy Permit. A Temporary Business Occupancy Permit shall not be issued if operation of the business would, in the sole discretion of the City Manager, constitute a danger to the health, safety and/or welfare of any citizen.(Ord 314, 2008)

Title 6

ANIMALS

Chapters:

6.04      Animals Generally

Chapter 6.04

ANIMALS GENERALLY

Sections:

6.04.010    Definitions  
6.04.020    Running at large prohibited  
6.04.030    License required  
6.04.040    Impounding animals and fowl  
6.04.050    Vicious animals, yelping animals  
6.04.060    Rabies, quarantine  
6.04.070    Liability of owner for damages  
6.04.080    Parental liability  
6.04.090    Number of animals  
6.04.100    Squirrels, wild birds, nests  
6.04.110    Keeping of farm animals, fowl  
6.04.120    Separation of yards and pens from dwellings

- 6.04.130 Sanitary requirements
- 6.04.140 Nuisance injunction
- 6.04.150 Cruelty to Animals Prohibited

6.04.010 Definitions. The following terms, when used in connection with this chapter, shall have the following meanings:

"Cat" means any feline.

"City" means the city of Linden.

"City council" means the city council of Linden.

"Dog" means any canine.

"Farm animals and fowl" means any horse, cow, goat, rabbit, poultry or other domesticated farm animal or bird.

"Lot" means a parcel of land occupied, or intended to be occupied, as a dwelling, together with accessory buildings and yard.

"Person" means any person, firm, partnership, association or corporation.

"Premises" means an area of private property, including grounds, buildings and appurtenances. For purposes of interpretation and enforcement of this chapter, any common areas of condominium property shall not be considered the premises or private property of a person residing in or having ownership in a condominium unit or units. Common areas include all portions of a condominium project other than the condominium units and the patio areas connected with the condominium units.

"Run at large" means the presence of an animal or fowl at any place except upon the premises of the owner. Provided, however, an animal shall not be considered to be running at large if it is on a leash, or in a vehicle, and under the control of a person physically able to control it.

"Wild animal and bird" means any animal or bird of a kind not ordinarily subject to domestication. (Ord. 131 '1, 1986)

6.04.020 Running at large prohibited. No person owning, possessing or harboring any animal or fowl shall permit the same to run at large. (Ord. 131 '2, 1986)

6.04.030 License required. It is unlawful for any person to own, maintain, keep or harbor any animal within the corporate limits of the city without first obtaining a license therefor when the state requires that such animal be licensed. (Ord. 131 '3, 1986)

6.04.040 Impounding animals and fowl.

A. Every police officer of the city is authorized to pick up, take into possession and impound any animal or fowl running

at large in the city.

B. Upon such impounding, the police department shall immediately notify the owner, harborer or custodian of said animal or bird. The police department and its officers are authorized to return the animal to its owner, harborer or custodian or to deliver the animal to the Genesee County animal control officer or other county officer with similar authority.

C. When an animal is found running at large and its ownership is verified, the police department may, instead of impounding the animal, exercise the option of issuing the owner a written warning upon a first offense or a notice of violation of this chapter upon the second offense. (Ord. 131 '4, 1986)

6.04.050 Vicious animals, yelping animals.

A. No person shall harbor or keep any animal which, by loud, frequent or habitual barking, yelping or howling, shall cause annoyance to the neighborhood and people passing to and fro on the streets.

B. No person shall harbor or keep a wild animal or vicious animal or an animal that has been bitten by any animal known to have been afflicted with rabies, or which shall have bitten any person. (Ord. 131 '5(A, B), 1986).

6.04.060 Rabies, quarantine. Every person owning, keeping or harboring any animal that has been attacked or bitten by any other animal known to be affected with or has symptoms of rabies, or which has bitten any person, or which has or is suspected to have contracted rabies, shall immediately notify the chief of police or the health officer, and upon the demand of either such officer, shall immediately produce or surrender such animal for observation while impounded for a period of ten days; provided, however, that in the discretion of either such officer, such animal may be quarantined for a like period of time on the premises of the owner or person who is keeping or harboring such animal. If at the end of such ten-day period such animal has not developed rabies, it shall be released from impounding or quarantine; if the animal has developed rabies within such period of time, it shall be destroyed. (Ord. 131 '5(C), 1986)

6.04.070 Liability of owner for damages. Nothing in this chapter shall be construed as limiting the common law liability of the owner of an animal for damages committed by it. (Ord. 131 '6, 1986)

6.04.080 Parental liability. The parent or guardian of any

minor under the age of eighteen years claiming ownership of any animal shall be deemed to be the owner of such animal and shall be charged with any violation of this chapter attributable to such animal. (Ord. 131 '7, 1986)

6.04.090 Number of animals. Except as provided in Section 6.04.110, no person who resides on a lot having less than forty thousand square feet in area or in an apartment, condominium or other attached dwelling, shall possess, keep or harbor more than three dogs and/or cats of the age of six months or over at said premises, except where a person has obtained a kennel license therefor from the state of Michigan, or unless such person possessed said animals prior to the effective date of the ordinance codified in this chapter.\* (Ord. 131 '11, 1986)

\* Editor's Note: Effective date of Ord 131 is June 9, 1986.

6.04.100 Squirrels, wild birds, nests.

A. It is unlawful for any person to pursue, injure, capture, kill or destroy or attempt to injure, capture, kill or destroy any squirrel or wild bird within the city, except where hunting is permitted.

B. It is unlawful for any person to rob, tear down, injure or destroy the nest of any wild bird within the city.

C. The provisions of this section shall not apply to English sparrows, starlings or the nests thereof. (Ord. 131 '12, 1986)

6.04.110 Keeping of farm animals, fowl. Any person being owner of, in possession of or control of any horse, cow, goat, rabbit, poultry or any other domesticated farm animal or bird shall provide and maintain a yard, pen, shelter or building for such confinement of said animals and poultry and shall keep such within the confines of said yard, pen, shelter or building. No yard, pen, shelter or building shall be provided or maintained which does not humanely provide adequate space to animals or poultry so confined. Such enclosures shall provide not less than one thousand five hundred square footage of ground for a horse, cow or goat, and not less than twenty-five square footage for rabbits or poultry. (Ord. 131 '13, 1986)

6.04.120 Separation of yards and pens from dwellings. All parts of any yard, pen, shelter or building provided and maintained as provided in Section 6.04.110 shall be not less than two hundred feet from any building used for dwelling purposes. (Ord. 131 '13(b), 1986)

6.04.130 Sanitary requirements. Any person being the owner of, in possession of or having control of any animal or poultry shall keep the yard, pen, shelter or building provided and maintained for the confinement of such animal or poultry, or used for the housing of such animal or poultry, clean, by removing from the premises all manure and waste matter from which odors may arise or may act as vermin harborage, at least once each day. (Ord. 131 '14, 1986)

6.04.140 Nuisance injunction. Any violation of this chapter is a nuisance. In addition to any other relief or penalties provided by this code, the city attorney may apply to a court of competent jurisdiction, upon direction of the city council, for an injunction to prohibit the continuation of any violation of this chapter. Such application for relief may include the seeking of a temporary restraining order, temporary injunction or permanent injunction, as in the discretion of the court having jurisdiction. (Ord. 131 '10, 1986)

6.04.150 Cruelty to Animals Prohibited. No person shall cruelly whip, beat, maltreat, or in any manner torture and animal in the city, whether such animal is owned by himself or another. (Ord 289, 2004)

Title 7  
(Reserved)

Title 8

## HEALTH AND SAFETY

### Chapters:

- 8.04 Garbage and Refuse Disposal
- 8.08 Public Nuisances
- 8.12 Weeds and Noxious Growth Control
- 8.16 Burning Restrictions
- 8.20 Fireworks
- 8.24 Drugs and Narcotics
- 8.28 Littering
- 8.32 Watercraft and Iceboats
- 8.36 Parades or Processions
- 8.40 Placement of Personal Property on Lawns or In Right-  
of- Way
- 8.44 Collection of Service Fees – Police and Fire

### Chapter 8.04

#### GARBAGE AND REFUSE DISPOSAL

### Sections:

- 8.04.010 Purpose and Provisions
- 8.04.020 Regular disposal required
- 8.04.030 Approved containers
- 8.04.040 Placement of containers for collection
- 8.04.050 Exception for underground burial
- 8.04.060 Combustible materials
- 8.04.070 Dumping on another person's property

8.04.010 Purposes of provisions. This chapter is enacted in contemplation of and in conjunction with the letting of a contract for the regular weekly collection of garbage in the city. These provisions are adopted for the purpose of insuring that garbage, trash and refuse shall be placed out of doors for collection in safe, sanitary and not unsightly containers. (Ord. 21 (part), 1955)

8.04.020 Regular disposal required. All householders, whether owner or renters, shall be responsible for the regular, safe, sanitary and inconspicuous disposal of garbage, refuse or trash. Such trash shall be placed for collection regularly, once each week on a day to be designated by the city council. (Ord 21 (part), 1955)



8.04.030 Approved containers.

A. Multiple-use containers used for the storage of refuse shall be made of durable watertight, rust-resistant materials, shall taper from top to bottom, shall be equipped with handles or bails for lifting and shall not exceed thirty-two gallons in capacity.

B. Single-use containers will be disposed of with the refuse contained therein and shall be of sufficiently sturdy material as to prevent breaking or tearing of the container prior to its collection.

C. Every container used for storage of garbage or garbage and rubbish shall be equipped with a tight-fitting cover.

D. The combined weight of a container and its contents shall not exceed fifty pounds.

E. Refuse not placed in a container shall be securely baled, tied, bundled or packaged so as not to exceed thirty-six inches in length and fifty pounds.

F. Commercial and manufacturing concerns may use other containers subject to the approval of the city council. (Ord 91 Sec II, 1976; Ord 21 (part), 1955)

8.04.040 Placement of containers for collection.

Containers for the collection of garbage, refuse or trash shall be placed for collection near the street or alley, whichever is designated by the city council or the garbage collector. All garbage, refuse and trash, excepting combustible materials, which is placed out of doors for collection or for other means of disposal, shall be placed in metal cans or containers which shall be provided with tight-fitting metal lids. (Ord 21 (part), 1955)

8.04.050 Exception for underground burial. Nothing in this chapter shall be construed to prohibit the burial under ground, on private property, of any garbage, refuse or trash. (Ord 21 (part), 1955)

8.04.060 Combustible materials. The city does not accept responsibility for collection and disposal of combustible materials, including rags, papers, cartons, boxes, leaves, grass, brush, wood, etc. Such materials shall not be placed near the street or alley for collection, but shall be disposed of by each householder in a safe, sanitary and reasonable manner, whether by incineration or otherwise. (Ord 21 (part), 1955)

8.04.070 Dumping on another person's property. Any person who dumps, deposits or places any filth, garbage trash or refuse

on the grounds or premises of another, or on any public property, without the specific permission of the owner or responsible public official, as the case might be, is guilty of a misdemeanor. (Ord. 30 '1, 1960)

Chapter 8.08

PUBLIC NUISANCES

Sections:

- 8.08.010 Public nuisance defined
- 8.08.020 Expressed nuisances
- 8.08.030 Dangerous structures prohibited
- 8.08.040 Disabled motor vehicles, equipment and waste materials--Regulated
- 8.08.050 Disabled motor vehicles, equipment and waste materials--Prohibited on streets
- 8.08.060 Vehicle Restoration Permit for the storage, restoration and rebuilding of disabled motor vehicles on private property
- 8.08.070 Disabled motor vehicles, equipment and waste materials--Nuisance
- 8.08.080--bating nuisances

8.08.010 Public nuisance defined. Whatever annoys, injures or endangers the safety, health, comfort or repose of the public, interferes with or destroys or renders dangerous any street, highway or navigable stream, allows accumulation of junk or obnoxious matters on private property, or in any way renders the public insecure in life or property, is a public nuisance. Public nuisances include, but are not limited to, whatever is forbidden by any provisions of this chapter and code and the common and statute laws of this state. (Ord. 40 '1, 1969)

8.08.020 Expressed nuisances. The following are expressly declared to be nuisances, but they are not intended to be a complete list thereof:

- A. Outside privies;
- B. Noxious weeds;
- C. Dangerous Structures;
- D. Open drains and ditches;
- E. Pools of water emitting offensive odors;
- F. Open holes, pits and wells;
- G. Unhoused refrigerators or other boxes with outside latches;
- H. Uncontained trash and garbage;
- I. Structurally unsafe buildings;

J. Unauthorized open trash and grass fires. (Ord. 40 '2, 1969)

8.08.030 Dangerous structures prohibited. No person shall maintain any structure which is unsafe or which is a menace to the health, morals or safety of the public. (Ord. 40 '3, 1969)

8.08.040 Disabled motor vehicles, equipment and waste materials --Regulated. No person shall permit any disabled motor vehicle, equipment or waste materials to be parked, stored, placed or allowed to remain within the city in violation of the provisions of the ordinances of the city. A Disabled motor vehicle means any vehicle which is incapable of being self propelled upon the public streets, or which does not meet the requirements for operation upon the public streets, including a current license. (Ord. 37 '1, 1969)

8.08.050 Disabled motor vehicles, equipment, and waste materials--Prohibited on streets. Disabled motor vehicles, equipment and waste materials shall not be permitted in the rights-of-way of the streets, alleys or highways within the city; provided, however, this shall not apply to towing or transporting of such vehicles, equipment and waste materials; and, provided further, that a reasonable time (not to exceed forty-eight hours from the time of disability) shall be permitted for the removal of a disabled vehicle or equipment in an emergency caused by an accident or sudden breakdown of the vehicle or equipment. (Ord. 37 '2, 1969)

8.08.060 Vehicle Restoration permit for the storage, restoration and rebuilding of disabled motor vehicles on private property.

A. Establishment of Vehicle Restoration Permit. The provisions of Section 8.08.060 of the City of Linden Municipal Code shall not apply to vehicles held for restoration or rebuilding provided that the owner has obtained a "Vehicle Restoration Permit" from the city. Such permit shall be for a period of ninety days renewable in ninety day increments for a period not to exceed three hundred sixty days. Such permit may be renewed by the city manager or his/her designee if in his/her judgment the permit holder has made a good faith effort toward restoring or rebuilding the permitted vehicle.

Only one permit may be issued for each residence at a time. Such permit shall be issued only upon presentation to the city by the owner of such vehicle:

1. Title or registration document;
2. Location where vehicle is to be stored and where

- restoration or rebuilding will be done;
3. Proof of residency at location where vehicle is to be stored;
  4. Statement of intended cost and estimate schedule of such restoration or rebuilding including completion date;
  5. Any other such information required; and
  6. Payment of permit fee.

B. The applicable fee for a vehicle restoration permit to cover the permits processing, administration and investigation shall be established by the city council by resolution.

C. Possession of a valid vehicle restoration permit shall allow the holder to store the permitted vehicle for restoration or rebuilding and one additional disabled vehicle of similar make and model for parts. Such vehicles may be stored in the side and rear yard, not to encroach beyond the main structure's front building face, provided a distance of ten feet from the main structures and three feet from the side and rear lot line is maintained. In addition, said vehicles combined with all other accessory structures shall not exceed twenty-five percent coverage of required rear yard size as delineated in the city's zoning ordinance, plus twenty percent of the non-required yard size. Storage of such vehicles shall be screened from public view from a street and adjoining properties by an enclosure consisting of a wall or fence equal in height to the vehicles, equipment and all materials stored therein; provided that such wall or fence shall not measure less than four feet six inches in height from the surface of the adjacent building footing. Such vehicles shall also be considered adequately screened if the frame or body of such vehicles is completely one hundred percent covered by a properly secured opaque tarp.

D. All restoration or rebuilding work on permit vehicles shall be performed within a completely enclosed accessory structure.

E. Any permit issued hereunder may be terminated immediately by the city manager should he/she determine that a health hazard exists.

8.08.070 Disabled motor vehicles, equipment and waste materials--Nuisance. The presence of a disabled motor vehicle, equipment or waste material on any parcel of land within the city in violation of the terms of this chapter is a public nuisance. (Ord. 37 '4, 1969)

8.08.080 Abating nuisances.

- A. In the event the city manager, the chief of police or

their respective designates, determine that there exists a nuisance within the meaning of this chapter or any ordinance of city, such officer shall cause notice to be served on the owner or occupant of the premises on which said nuisance exists, requiring such person to abate said nuisance within the time specified in the notice. Service of the notice shall be made:

1. By delivering the notice to the owner or occupant personally or by leaving the same at his residence, office or place of business with some person of suitable age and discretion; or

2. By mailing said notice by certified mail to such owner or occupant at his last known address; or

3. If the owner or person is unknown, by posting said notice in some conspicuous place on the premises for five days.

B. In the event such person fails to abate said nuisance in accordance with the notice, the city shall do so and the cost thereof shall be charged against the owner or occupant of the premises and payment thereof shall be enforced as a special assessment.

C. Nothing in this section shall preclude the city from proceeding in circuit court to abate the nuisance without fulfilling the requirements for notice set forth in this section, nor shall the provisions of this section preclude the city from proceeding criminally against anyone creating a nuisance. (Ord. 40 '4, 1969)

## Chapter 8.12

### WEEDS AND NOXIOUS GROWTH CONTROL

#### Sections:

- 8.12.010 Person defined
- 8.12.020 Cutting and removal of grass, weeds and other poisonous or harmful vegetation
- 8.12.030 Abatement by city
- 8.12.040 Exemptions

8.12.010 Person defined. The word "person" means and "include" persons, corporations, partnerships, associations, joint stock companies, societies and all other entities of any kind. (Ord. 132 '6, 1986)

8.12.020 Cutting and removal of grass, weeds and other poisonous or harmful vegetation. It is unlawful for any owner,

lessee or occupant, or any agent, servant, representative or employee of such owner, lessee or occupant having control of any occupied or unoccupied lot or land or any part thereof in the city to permit or maintain on any such lot or land any growth or brush, grass or other vegetation to a height greater than eight inches or any accumulation of dead weeds, grass or brush. It is also unlawful for any such person or persons to cause, suffer or allow poison ivy, ragweed or other poisonous plants, or plants detrimental to health to grow on any such lot or land. Where any person is the owner of vacant land which is over one acre in size, or any property devoted to any use other than agriculture, the requirements of this section shall be satisfied by cutting back at least fifty feet from the property line that abuts a street and by cutting back fifty feet from any side and rear property lines that abut an occupied lot. (Ord. 132 '1, 1986), (Ord. 24, '1, 1999)

8.12.030 Abatement by the city. If the provisions of Sections 8.12.020 are not complied with, the city shall serve either personally, or by certified or regular mail, written notice upon the owner, lessee or occupant, or any person having the care or control of any such lot or land to comply with the provisions of this chapter. If the person upon whom the notice is served fails to cut and remove such weeds, grass or other vegetation within seven days after the personal notice or the posting of certified mail, or if no owner can be found of such lot, the department of public works superintendent shall cause such weeds, grass and other vegetation to be removed and the actual cost of such cutting and removal plus twenty-five percent for inspection and other additional costs in connection therewith, shall be certified by the department of public works superintendent and shall become and be a lien upon the property on which such weeds, grass and other vegetation were located, and shall be assessed and collected in the same manner provided in the city charter for collection of taxes. (Ord. 132 '3, 1986) (Ord. 246' '1, 1999)

8.12.040 Exemptions. Exempted from the provisions of this chapter are flower gardens, vegetable gardens, wetlands and agricultural operations. (Ord. 132 '4, 1986), (Ord. 24', '1, 1999)

## Chapter 8.16

### BURNING RESTRICTIONS

Sections:

- 8.16.010 Public Purpose
- 8.16.020 Burning Prohibited
- 8.16.030 Indoor Fireplaces
- 8.16.040 Cooking, Grilling or Barbecuing
- 8.16.050 Use of Incinerators
- 8.16.060 Recreational Fires
- 8.16.070 Clearing Land
- 8.16.080 State Law
- 8.16.090 Prima Facie Negligence
- 8.16.100 Penalty

8.16.010 Public Purpose. It is hereby deemed to be in the best interests of the health, safety and welfare of the citizens of the city of Linden to restrict and in some instances prohibit the burning of refuse, brush, leaves, wood, waste materials, whether said burning takes place in the open or in an enclosed building, structure or appurtenance. (Ord. 271, '8.16.010, 2001)

8.16.020 Burning Prohibited. Except as provided below, it shall be unlawful for any person to burn any wood or wood products, trash, refuse, leaves, household, commercial or industrial wastes or any other substances, either indoors or outdoors. (Ord. 271, '8.16.020, 2001)

8.16.030 Indoor Fireplaces. Homeowners and occupants are allowed to use an indoor fireplace for its intended and ordinary purpose. An indoor fireplace shall not be used for the burning of trash or refuse. (Ord. 271, '8.16.030, 2001)

8.16.040 Cooking, Grilling or Barbecuing. This ordinance is not intended to prohibit or restrict the use of stoves, grills or barbecue structures except when said activity is conducted in a dangerous manner or in such a manner as to cause unreasonable interference with the use of neighboring properties by the owners or occupants thereof. Whenever a stove, grill or barbecue structure is in use, there shall be a person of reasonable age and ability in attendance thereof. (Ord. 271, '8.16.040, 2001)

8.16.050 Use of Incinerators. No person shall use an incinerator in the city of Linden. (Ord. 271, '8.16.050, 2001)

8.16.060 Recreational Fires. All recreational fires shall be by permit, only. The permit shall be secured from the fire

chief or his designee. The permit may be for a single day or up to a one (1) year period. Recreational fires must be extinguished as provided in the permit and also must be extinguished upon verbal or written order of the city manager, building inspector, fire chief or a police officer. (Ord. 271, '8.16.060, 2001)

8.16.070 Clearing Land. The burning of trees, logs, brush and stumps in rural areas may be allowed under such conditions as are specified in writing by the city fire chief, but tires, plastics, highly flammable, toxic or explosive materials shall not be burned in such fires. (Ord. 271, '8.16.070, 2001)

8.16.080 State Law. Any burning which violates the provisions of the Michigan Air Pollution Control Act, P.A. 348 (1965) and the rules promulgated thereunder, is prohibited. (Ord. 271, '8.16.080, 2001)

8.16.090 Prima Facie Negligence. If a fire prohibited by this ordinance becomes out of control and causes damage to person or property, the person in charge of such fire and the person in control of the premises where the fire originated shall be deemed to be prima facie guilty of negligence. (Ord. 271, '8.16.090, 2001)

8.16.100 Penalty. Any person convicted of violating this ordinance may be guilty of a misdemeanor and imprisoned for not more than ninety (90) days or a fine of not more than five hundred dollars (\$500.00), or both. (Ord. 271, '8.16.100, 2001)

## Chapter 8.20

### FIREWORKS

#### Sections:

8.020.010 Sale, possession, etc., prohibited.

8.020.020 Exceptions

8.020.010 Sale, possession, etc., prohibited. Except as otherwise provided by law, no person, firm, co-partnership or corporation shall offer for sale, expose for sale, sell at retail, keep with the intent to sell at retail, possess, give, furnish, transport, use, explode or cause to explode any of the following without first having obtained a permit for such purposes as provided in 1976 PA 36 and 1978 PA 258 of the state



of Michigan.

A. Any blank cartridge, blank cartridge pistol, toy cannon, toy cane or toy gun in which explosives are used;

B. An unmanned balloon which requires fire underneath to propel it and is not moored to the ground while aloft;

C. Firecrackers, torpedoes, skyrocketes, roman candles, daygo bombs, bottle rockets, whistling chasers, rockets on sticks or other fireworks of like construction;

D. Any fireworks containing any explosive of inflammable compound or any tablets or other device commonly used and sold as fireworks containing nitrates, chlorates, fulminates, oxalates, sulphides of lead, barium, antimony, arsenic, mercury, nitroglycerine, phosphorous, or any compound containing any of these or other modern explosives. (Ord. 104 ArtXXXVIII '1, 1980)

8.20.020 Exceptions. A permit is not required, however, for any of the following:

A. Flat paper caps containing not more than .25 grains of explosive content per cap, in packages labeled to indicate maximum explosive content per cap;

B. Toy pistols, toy cannons, toy canes and toy guns of a type approved by the director of the Department of State Police in which paper caps as described in subsection A of this section are used and which are so constructed that the hand cannot come in contact with the cap when in place for the explosion and which are not designed to break apart or be separated so as to form a missile by the explosion;

C. Sparklers containing not more than .0125 pounds of burning portion per sparkler;

D. Glitter sparklers in paper tubes not exceeding one-eighth inch in diameter;

E. Toy snakes not containing mercury, if packed in cardboard boxes with not more than twelve pieces per box for retail sale and the manufacturer=s name and the quantity contained in each box printed thereon; and toy snake devices;

F. Possession, transportation, sale or use of signal flares of a type approved by the Director of State Police, blank cartridges or blank cartridge pistols specifically for a show or theater, for the training or exhibiting of dogs, for signal purposes in athletic sports, for use by military organizations, or use by railroads, trucks or vehicles for emergency signal purposes. (Ord. 104 ArtXXXVIII '2, 1980)

## Chapter 8.24

### DRUGS AND NARCOTICS

#### Sections:

- 8.24.010 Definitions
- 8.24.020 Dispensing by authorized persons of drugs in original package
- 8.24.030 Possession, sale, etc. prohibited-generally
- 8.24.040 Possession, sale, etc., prohibited-exceptions
- 8.24.050 Possession of drugs-Exception for common carriers engaged in lawful transportation or performance of duties.
- 8.24.060 Fraud and deceit in obtaining drugs or paraphernalia.
- 8.24.070 Fraud and deceit in sale or furnishing prohibited
- 8.24.080 Commitment of addicts
- 8.24.090 Loitering about places where drugs are stored or kept.

8.24.010 Definitions. Words and terms used in this chapter shall have the meanings prescribed in this section as follows:

ACocaine spoon@ means a spoon with a bowl so small that the primary use for which it is reasonably adapted or designed is to hold or administer cocaine, and which is so small as to be unsuited for the typical, lawful use of a spoon. A cocaine spoon may or may not be merchandised on a chain and may not be labeled as a Acocaine@ spoon or Acoke@ spoon.

AControlled substance@ means any drug, substance or immediate precursor enumerated in Sections 7210 through 7220, 1978 PA 368, as amended (commonly known as the Health Code).

AMarijuana@ means all parts of the plant Cannabis Sativa L., whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, except the resin extracted therefrom; fiber, oil or cake, or the sterilized seed of the plant which is incapable of germination.

AMarijuana or hashish pipe@ means a pipe characterized by a bowl which is so small that the primary use for which it is reasonably adapted or designed is smoking of marijuana or

hashish, rather than lawful smoking of tobacco, and which may or may not be equipped with a screen.

A Nonmedical habitual user of narcotic or dangerous drugs@ means any person who uses narcotic or dangerous drugs merely to satisfy a craving for such drugs and who does not have a legitimate medical need for narcotic or dangerous drugs.

A Paraphernalia@ means an empty gelatin capsule, hypodermic syringe or needle, cocaine spoon, marijuana pipe, hashish pipe or any other instrument, implement or device which is primarily adapted or designed for the administration or use of any controlled substance.

A Person@ means any individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association. (Ord. 128 'I, 1986; Ord. 119, 1983; Ord. 96 (part), 1978)

8.24.020 Dispensing by authorized persons of drugs in original package. A manufacturer, wholesaler, apothecary, medical doctor, osteopathic physician, dentist, veterinarian, chiropodist, public or private hospital, sanitarium or institution maintained or conducted in whole or in part for the treatment of a disability, disease, inebriety or drug addiction may purchase, receive, possess, sell, distribute, prescribe, administer or dispense the narcotic and dangerous drugs described in Section 8.24.030(A); provided, he or they have complied with all provisions as required by the United States Internal Revenue Code, as the same now exists or may be hereafter amended, and Act No. 343 of the Public Acts of 1937, and Act No. 204 of the Public Acts of 1943, as such acts have been or shall hereafter be amended; provided, further, that no medical doctor, osteopathic physician or other person specified in this section in any manner authorized to prescribe narcotic or dangerous drugs shall prescribe such drugs for his own use, nor shall any druggist honor such a prescription; provided, further, that all narcotic or dangerous drugs obtained pursuant to this section shall be kept in the original package or container in which they were received; provided, that this requirement should not be construed to apply to any duly licensed medical doctor, osteopathic physician, dentist, veterinarian, chiropodist, or to any authorized persons acting directly under their supervision or control. (Ord. 96 '2, 1978)

8.24.030 Possession, sale, etc. prohibited - generally

A. It is unlawful for any person to possess, sell, offer for sale, distribute, administer, dispense, prescribe or give away any narcotic, narcotics or narcotic drugs as defined in Act

343 of Public Acts of Michigan of 1937, as amended, or any of the hypnotic or dangerous drugs prescribed in Act 204 of the Public Acts of Michigan of 1943, as amended, provided, that nothing contained in this section shall be deemed to prohibit the possession, sale, offer for sale, distributing, administering, dispensing or prescribing of any of the drugs or their derivatives mentioned in this section in the manner and under such circumstances provided in this chapter.

B. It is unlawful for any person to sell, furnish, supply or give away any empty gelatin capsules or hypodermic syringe or needle or other instrument or implement adapted for the use of narcotic or dangerous drugs by subcutaneous injection or intracutaneous injection or any other manner or method of introduction to any person known to be a nonmedical habitual user of narcotic or dangerous drugs.

C. It is unlawful for any person within the city to knowingly or intentionally possess marijuana.

D. It is unlawful for any person to sell, offer for sale, display, furnish, supply or give away any empty gelatin capsule, hypodermic syringe or needle, cocaine spoon, marijuana pipe, hashish pipe or other instrument, implement or device which is primarily adapted or designed for the administration or use of any controlled substance as enumerated in Sections 7210 through 7220, 1979 PA 368, as amended (commonly known as the Public Health Code). (Ord.128 'II(part),1986;Ord.19 '2,1983;Ord. 96 'I,4,1978)

#### 8.24.040 Possession, sale, etc., prohibited - Exceptions.

A. No person shall at any time have or possess a hypodermic syringe or needle or any other instrument or implement adapted for the use of narcotic or dangerous drugs by subcutaneous injection or intracutaneous injection or any other manner or method of introduction and which is possessed for that purpose, unless such possession is authorized by the certificate of a licensed medical doctor or osteopathic physician issued within the period of one year; provided that the prohibition contained in this subsection shall not apply to manufacturers, wholesalers, jobbers, licensed medical technicians, technologists, nurses, hospitals, research teaching institutions, clinical laboratories, medical doctors, embalmers in the normal legal course of their respective business or profession, nor to persons suffering from diabetes, asthma or any other medical condition requiring self-injection.

B. The prohibition contained in Section 8.24.030(D) shall not apply to manufacturers, wholesalers, jobbers, licensed

medical technicians, technologists, nurses, hospitals, research teaching institutions, clinical laboratories, medical doctors, osteopathic physicians, dentists, chiropradists, veterinarians, pharmacists or embalmers in the normal, lawful course of their respective businesses or professions, nor to common carriers or warehousemen or their employees engaged in the lawful transportation of such paraphernalia, nor to public officers or employees while engaged in the performance of their official duties, nor to persons suffering from diabetes, asthma or any other medical condition requiring self injections. (Ord. 128 'II(part), 1986; Ord. 96 '3, 1978)

8.24.050 Possession of drugs - Exception for com-on carriers engaged in lawful transportation or performance of duties. The provisions of this chapter restricting the possession of narcotic or dangerous drugs or barbituric acid or any derivative, compound, preparation or mixture thereof or hypodermic syringes, needles or other implements or instruments adapted to the use of such drugs by means of subcutaneous injection or intracutaneous injection or any other manner or method of introduction or empty gelatin capsules shall not apply to common carriers or warehousemen or their employees engaged in the lawful transportation or storage of such drugs, syringes, needles or capsules or to public officers or employees while engaged in the performance of their official duties nor to temporary incidental possession on the part of employees or agents or persons lawfully entitled to possession. (Ord. 96 '7, 1978)

8.24.060 Fraud and deceit in obtaining drugs or paraphernalia. Any fraud, deceit, misrepresentation, subterfuge, concealment of a material fact or the use of a false name or the giving of a false address for the purpose of obtaining any narcotic or dangerous drugs or barbituric acid or any derivative, compound, preparation or mixture thereof, or hypodermic syringe or needle or other instrument or implement or empty gelatin capsules or false statement on any prescription blank is a violation of this section. No person who obtains the possession of any narcotic or dangerous drugs, hypodermic syringes, needles or other instruments or implements adapted for the use of such drugs or empty gelatin capsules pursuant to the terms of this section shall use the same or permit or authorize their use for any purpose other than that specifically authorized in the prescription or order by means of which such possession was obtained. (Ord. 96 '5, 1978)

8.24.070 Fraud and deceit in sale or furnishing prohibited  
Any fraud, scheme, devise, trick, deceit, misrepresentation, subterfuge or any other form of concealment for the purpose of obtaining money or any other thing of value by the sale, furnishing, supplying or giving away of any substance represented to be a drug as described in Section 8.24.030(A), when the same may or may not be the same, is a violation of this chapter. (Ord. 96 '6, 1978)

8.24.080 Commitment of addicts No person shall unlawfully use or be addicted to the unlawful use of narcotic or dangerous drugs or their derivatives or barbituric acid or derivatives or mixtures, compounds or preparations thereof. Any such unlawful use or addiction is a violation of this chapter. Any nonmedical habitual user of narcotic or dangerous drugs, as defined in Section 8.24.010, who makes voluntary application to the judge of the district court, may, upon the presentment of a certificate executed by a practicing physician in the state of Michigan stating that he is a nonmedical habitual user of narcotic or dangerous drugs, be committed, at the discretion of the court, to any correctional or charitable institution, hospital, sanitarium or institution authorized for the treatment of disease or inebriety or drug addiction. Whenever the medical officer or head of such institution certifies to the committing judge or court that any person so committed has been sufficiently treated or gives any other reason which is deemed by such judge or court to be adequate and sufficient, the court may, in accordance with the terms of commitment, discharge the person so committed or return him to await further action of the court. Any addicted person who does not make voluntary application for treatment as provided in this section shall be deemed to be in violation of this chapter. (Ord. 96 '8, 1978)

8.24.090 Loitering about places where drugs are stored or kept. No person shall knowingly loiter about, frequent or live in any building, apartment, store, automobile, boat, boathouse, airplane or other place of any description whatsoever where narcotic or dangerous drugs, hypodermic syringes, needles or other instruments or implements or empty gelatin capsules are used, sold, dispensed, furnished, given away, stored or kept illegally. (Ord. 96 '9, 1978)

## Chapter 8.28

### LITTERING

Sections:

- 8.28.010 Littering unlawful
- 8.28.020 Public place
- 8.28.030 Private place
- 8.28.040 Sharp, dangerous or broken materials
- 8.28.050 Handbills, newspapers, magazines and other publications

8.28.010 Littering unlawful. It shall be unlawful and a misdemeanor for any person to commit any act specified by this Chapter to constitute Alittering@ within the corporate boundaries of the City of Linden.

8.28.020 Public place. It shall be deemed littering for any person or persons to place , deposit, throw, scatter or leave in any street, alley, park, river, lake or other public place, any refuse, waste, garbage or other noxious or unsightly material, except when placed in an authorized receptacle for same.

8.28.030 Private place. It shall be deemed littering for any person or persons to place, deposit, throw, scatter or leave upon the private property of another, any refuse, waste, garbage or other noxious or unsightly material, except when placed in an authorized receptacle for same and with the permission of the owners or occupant of the property.

8.28.040 Sharp, dangerous or broken materials. It shall be deemed littering for any person or persons to place, deposit, throw, scatter or leave in any public place as specified in 8.28.020 or upon any private property of another, any nails, tacks, screws, glass (whether broken or otherwise), metal shavings, metal or wood scraps or other sharp, dangerous or broken objects.

8.28.050 Handbills, newspapers, magazines and other publications. It shall be deemed littering for any person or persons to deliver to private property or to disseminate in a public place any handbill, newspaper, magazine or other publication if any of the following should occur:

A. If the publisher or publishing company has been advised by the occupant of the property that the occupant does not want delivery of the handbill, newspaper, magazine or other publication and if the item to be delivered has any commercial purpose, whatsoever.

B. If the handbill, newspaper, magazine or other publication is thrown or placed upon the ground, street, sidewalk or driveway upon or abutting property within the City without securing the approval of the owner or occupant of the property targeted for delivery.

C. If the handbill, newspaper, magazine or other publication is placed in a mailbox in violation of Federal postal law or regulations.

D. If the handbill, newspaper, magazine or other publication is placed in a receptacle or attached to a post, mailbox post or stand, tree or other stationary object when it is likely that the owner or occupant of the property targeted for delivery will not retrieve or collect the same. Such a situation may be temporary or long term. It shall be conclusive proof that it is likely that the owner or occupant of the property targeted for delivery will not retrieve or collect the delivered item when any of the following exists:

1. The appropriate receptacle is filled and cannot reasonably be expected to hold the current delivery; or
2. Previously delivered documents by the same publisher or publishing corporation or company remain posted from previous deliveries or are lying upon the street, ground, driveway or sidewalk within fifteen feet of the usual point of delivery.

E. The person or persons guilty of littering under 8.28.050 shall be any of the following:

1. The person making the actual delivery of the handbill, newspaper, magazine or other publication;
2. In the event that the person making the actual delivery of the handbill, newspaper, magazine or other publication is a minor, the person directly responsible for supervision of the minor making said delivery.
3. In the event that the publisher, publishing company or publishing corporation shall have been notified by the owner or occupant of the property targeted for delivery that he or she does not want the handbill, newspaper, magazine or other publication, the publisher, publishing company or publishing corporation.

## Chapter 8.32

### WATERCRAFT AND ICEBOATS

#### Sections:

- 8.32.010 Definitions
- 8.32.020 General provisions
- 8.32.030 Duty of operator in case of accident



8.32.040 Speed limit on Shiawassee River

8.32.010 Definitions. All words and phrases used in this chapter shall be construed and have the same meanings as those words and phrases defined in Act 303, PA 1967, as amended, MSA 18.1287(8). (Ord. 65 'I, 1974)

8.32.020 General provisions. Any person who operates any motorboat, launch, iceboat or other watercraft on any waters lying within the corporate boundaries of the city carelessly and heedlessly in willful or wanton disregard of the rights or safety of others or while under the influence of intoxicating liquor or narcotic drugs, or without due caution and circumspection and at a speed or in a manner so as to endanger or be likely to endanger any person or property, shall be deemed guilty of a misdemeanor. (Ord 29 '1, 1960)

8.32.030 Duty of operator in case of accident. It shall be the duty of the operator of any motorboat, iceboat, launch or other watercraft involved in an accident to immediately render assistance to any persons and watercraft or iceboat involved in such accident and then to proceed as soon as possible to the proper authorities and report such accident. Any person failing to comply with this section shall be deemed guilty of a misdemeanor. (Ord. 29 '2, 1960)

8.32.040 Speed limit on Shiawassee River. On the waters of the Shiawassee River, section 20, town 5 north, range 6 east, city of Linden, Genesee County, it is unlawful, between North Bridge Street and Ripley Road, for the operator of a vessel to exceed a slow - no wake speed. (Ord. 65 'II, 1974)

Chapter 8.36

PARADES AND PROCESSIONS

Sections:

- 8.36.010 Permit required
- 8.36.020 Application
- 8.36.030 Compliance with permit, termination

8.36.010 Permit required. No person or persons shall participate in a parade or procession other than a funeral procession unless a permit therefore has been issued by the City

Clerk at the discretion of the City Council.

8.36.020 Application. Any person or persons desiring a parade permit shall apply for the permit on a form provided by the City Clerk. The form shall be fully completed.

8.36.030 Compliance with permit, termination. Any parade or procession shall be conducted as specified in the permit issued. The Chief of Police may, in his sole discretion, order a parade or procession immediately terminated should he determine that an emergency exists or that the parade or procession as conducted does not comply with the permit issued.

## Chapter 8.40

### UN-CONTAINED TRASH

#### Sections:

- 8.40.010 Public Purpose
- 8.40.020 Declaration of Nuisance
- 8.40.030 Compliance with Chapter 8.04
- 8.40.040 Annual Notice
- 8.40.050 Attempt to Contact Owner
- 8.40.060 Abatement of Nuisance
- 8.40.070 Cost of Abatement
- 8.40.080 Penalty
- 8.40.090 Effective Date

8.40.010 Public Purpose. The City Council of the City of Linden, Michigan does hereby declare that the act of a person or persons removing personal property from a residential or commercial property and placing same in the front lawn or street right-of-way abutting said property as a result of a foreclosure proceeding or eviction without said person or persons complying with Chapter 8.04 of the City of Linden Municipal Code is detrimental to the health, safety and welfare of the citizens of the City of Linden (Ord. 302, 2006).

8.40.020 Declaration of Nuisance. It is hereby declared by the City Council of the City of Linden, Michigan that the placement of personal property in the front yard or in the abutting street right-of-way of a residential or commercial property within the City of Linden and not in compliance with Chapter 8.04 of the City of Linden Municipal Code is a public

nuisance. This Chapter shall take precedence over any other nuisance provisions of the City of Linden Municipal Code.(Ord 302, 2006)

8.40.030 Compliance with Chapter 8.04. Any person or persons removing personal property from a residential or commercial structure as a result of a foreclosure or eviction proceeding shall strictly comply with Chapter 8.04 of the City of Linden Municipal Code. (Ord 302, 2006)

8.04.040 Annual Notice. The City Clerk shall cause to be published in a newspaper of general circulation, in the same manner as other public notices are given by the City of Linden, advising all persons that a violation of any of the above sections is a nuisance and will be immediately remedied by the City of Linden and that any cost incurred by the City of Linden will be charged as a special assessment against the subject property and placed upon the tax rolls for collection. (Ord 302, 2006)

8.40.050 Attempt to Contact Owner. Immediately upon receiving notice that personal property has been placed in the front yard or street right-of-way in violation of the Ordinance the City Manager or his designee shall attempt to determine the current owner of the subject property through a review of the records on file with the City of Linden. The City Manager or his designee shall attempt to contact the owner as determined by the review of the City=s records. The owner shall be advised that abatement of the nuisance shall be completed forthwith.(Ord 302, 2006)

8.40.060 Abatement of Nuisance. The City Manager or his designee shall personally view the alleged nuisance. If within the sole discretion of the City Manager or his designee the nuisance is of a nature and character that requires immediate abatement, then he or she shall immediately take those steps necessary to abate the nuisance.(Ord 302, 2006)

8.40.070 Costs of Abatement. Any and all costs incurred by the City of Linden in abating a nuisance as set forth above shall be the sole responsibility of the owner or owners thereof or any occupants of the subject property. An itemized bill shall be mailed to the owner or owners of the subject property or to the occupants thereof. In the event that the City cannot determine the owner or owners of the property or the occupants, then a copy of the bill may be posted in a conspicuous place on

the subject property. If the bill for abatement of the nuisance is not paid in full within thirty (30) days from the date it is mailed or posted, then the amount due shall become a special assessment against the subject property. The City Treasurer shall collect the amount due as a special assessment. Neither the failure to give the notice as provided in Section 8.40.040 or the failure to submit a bill as provided in Section 8.40.070 shall impair the right of the City to collect the amount due as a special assessment.(Ord 302, 2006)

8.40.080 Penalty. Any person convicted of violating this Ordinance may be guilty of a misdemeanor and shall be imprisoned for not more than ninety (90) days or shall pay a fine of not more than Five Hundred (\$500.00)Dollars, or both.(Ord 302, 2006)

8.04.090 Effective Date. This Ordinance shall become effective ten (10) days after its publication. (Ord 302, 2006)

#### Chapter 8.44

#### COLLECTION OF SERVICE FEES – POLICE AND FIRE

##### Sections:

- 8.44.010 Public Purpose
- 8.44.020 Acts or Occurrences Subject to Fees
- 8.44.030 Collection
- 8.44.040 Other Actions

8.44.010 Public Purpose. It is hereby deemed to be in the best interests of the citizens of the City of Linden that fees be established, charged and collected pursuant to MCLA 41.806a when the City of Linden provides emergency police and/or fire services.(Ord 327, 2010)

8.44.020 Acts or Occurrences subject to Fees. The following acts shall be subject to the assessment of emergency response fees:

- (A) Arrest for OWI or Impaired Driving. The City of Linden shall be reimbursed for the actual costs and expenses for the arrest, charging and prosecution of any person guilty of Operating a Motor Vehicle While Intoxicated or Impaired Driving. No exemption shall be allowed for this sub-section.

- (B) False Alarms. No service fee shall be charged to the owner of a structure or motor vehicle which sounds or activates a "false alarm" as determined by the Chief of the responding department when said "false alarm" is the first such "false alarm" during a calendar year whereby emergency personnel are called to the structure or motor vehicle. Thereafter, for a second "false alarm" during that year, the owner of the structure or motor vehicle shall be charged a fee equal to fifty (50%) percent of the actual costs and expenses for personnel, vehicles and equipment responding. For any third or subsequent "false alarm" during the year the owner of the structure or motor vehicle shall be charged one hundred (100%) percent of the response costs. Whenever a "false alarm" is intentionally activated, the person doing so shall be charged one hundred (100%) percent of the response costs.
- (C) Downed or Dangerous Power Lines, Cable Television Lines or Telephone Lines. The City of Linden shall bill any public utility for the actual cost of responding to a power, cable, telephone or other wire, line or cable which due to any cause, including, but not limited to wind, ice, accident, deterioration or poor maintenance has become dangerous to persons, property, or vehicles within the City of Linden. Actual costs shall include wages of responding personnel, a reasonable charge for vehicles or equipment utilized in the response and replacement cost of materials or supplies expended in the response. The owner of the power line, cable, or telephone line shall be responsible for payment of the charges.
- (D) Gas Leaks. The public utility providing natural gas pursuant to a franchise in the City of Linden shall reimburse the City of Linden for all actual costs incurred by the City of Linden to any reported gas leak should it be determined that there was an actual gas leak. The public utility shall be charged and shall pay to the City of Linden actual costs and expenses including the wages of any City personnel, reasonable charges for vehicles or equipment and the replacement cost of materials and supplies expended in the emergency response.

- (E) Intentionally Caused Hazards. Any person who intentionally creates an emergency situation whereby there is an imminent risk of injury to person or property, including the person intentionally causing the emergency, the City of Linden shall be reimbursed by that person for all expenses associated with the emergency created including the wages of the personnel responding, a reasonable charge for vehicles and equipment and the replacement costs of materials and supplies expended in the emergency response.
- (F) Bomb Threats. In addition to prosecution any person who by any means communicates a "bomb threat" within the City of Linden shall be charged the actual cost of responding to the "bomb threat" including any wages for personnel, a reasonable charge for vehicles and equipment, and the replacement cost for materials and supplies expended in the emergency response.
- (G) Other Emergency Responses. It is also understood that there may occur within the City of Linden some other emergency situation such as a gasoline spill, a major collision or major vehicular accident, an airplane disaster, a railroad collision or derailment or some other unanticipated event requiring the emergency response of the police, fire or other personnel of the City of Linden. In the event that the City of Linden is legally entitled to recoup it's actual expenses related to said emergency response, then the City of Linden is hereby authorized to charge and collect from the responsible party any and all actual costs and expenses related to the response. Actual costs shall include wages of responding personnel, a reasonable charge for vehicles or equipment utilized in the response and replacement cost of materials or supplies expended in the response.

8.44.030 Collection. The Chief of the appropriate department shall determine the responsible party and shall calculate the charges to be billed and shall deliver the information to the City Treasurer for billing purposes. The City Treasurer shall bill the responsible party. In the event that payment is not made within

thirty (30) days of the billing, the City Treasurer shall take appropriate action to collect the amounts due.

8.44.040 Other Actions. The City of Linden, when seeking reimbursement under this Ordinance does not limit or forestall any other actions, civil or criminal, which would properly be instituted based upon the circumstance of the emergency.

## Title 9

### PUBLIC PEACE, MORALS AND WELFARE

#### Chapters:

- 9.04 General Provisions
- 9.08 Offenses By or Against Public Officers and Government
- 9.12 Offenses Against the Person
- 9.14 Offenses of Domestic Violence
- 9.16 Offenses Against the Public Peace
- 9.20 Offenses Against Public Decency
- 9.24 Offenses Against Property
- 9.28 Offenses By or Against Minors
- 9.32 Weapons

#### Chapter 9.04

### GENERAL PROVISIONS

#### Sections:

- 9.04.010 Attempts to violate law prohibited
- 9.04.020 Accessorial liability

9.04.010 Attempts to violate law prohibited. It is unlawful for any person to attempt to commit an offense prohibited by law, and in such attempt to do an act toward the commission of such offense, even though he failed in the perpetration or was intercepted or prevented in the execution of the same. (Ord. 104 Art. XXXIX, 1980)

9.04.020 Accessorial liability. Every person concerned in the commission of an unlawful offense, whether he directly commits the act constituting the offense or procures, counsels,

aids or abets in its commission may be prosecuted, tried and, upon conviction, shall be punished as if he had directly committed such offense. (Ord. 104 Art. XXXX, 1980)

## Chapter 9.08

### OFFENSES BY OR AGAINST PUBLIC OFFICERS AND GOVERNMENT

#### Sections:

- 9.08.010 Resisting arrest
- 9.08.020 Assisting person in custody of police officer
- 9.08.030 Wearing police uniforms
- 9.08.040 Providing intoxicants or tools to prisoners
- 9.08.050 Assisting escape of prisoners
- 9.08.060 False police or fire calls
- 9.08.070 False report of crime

9.08.010 Resisting arrest. It is unlawful for any person to resist any police officer, any member of the police department or any person duly empowered with police authority while in the lawful discharge of his duty, or in any way interfere with or hinder him in the discharge of his duty.(Ord. 104 Art XII '1,1980).

9.08.020 Assisting person in custody of police officer. It is unlawful for any person to offer or endeavor to assist any person in the custody of a police officer, a member of the police department or a person duly empowered with police authority to escape or attempt to escape from such custody.(Ord. 104 Art XII '2, 1980)

9.08.030 Wearing police uniform. It is unlawful for any person other than an official police officer of the city to wear or carry the uniform, apparel, badge, identification card, or any other insignia of office like or similar to, or a colorable imitation of that adopted and worn or carried by the official police officers of the city.(Ord. 104 Art XII '3, 1980)

9.08.040 Providing intoxicants or tools to prisoners. It is unlawful for any person to make available to, present to or place within the reach of any person confined under the authority of the city any intoxicating or malt liquor, or, except as authorized by the Controlled Substance Act of 1971, any controlled substance, or any tool, implement or other thing calculated to aid in the escape of such persons so confined, or



any other person so confined, under authority of the city. (Ord. 104 Art XII '4, 1980)

9.08.050 Assisting escape of prisoners. It is unlawful for any person to assist or aid, or attempt to assist or aid any person confined under the authority of the city to escape from jail, place of confinement or custody.(Ord. 104 Art XII '5, 1980)

9.08.060 False police or fire calls. It is unlawful for any person to knowingly summon, as a joke or prank or otherwise without any good reason therefor, by telephone or otherwise, the police or fire department or any public or private ambulance, to go to any address where the service called for is not needed. (Ord. 104 Art XVIII, 1980)

9.08.070 False report of crime. It is unlawful for any person to knowingly make or file with the police department any false, misleading or unfounded statement or report concerning the commission of any crime occurring within the city. (Ord. 104 Art XX, 1980)

## Chapter 9.12

### OFFENSES AGAINST THE PERSON

#### Sections:

- 9.12.010 Assault and battery
- 9.12.020 Malicious annoyance
- 9.12.030 Prowling

9.12.010 Assault and battery. It is unlawful for any person to commit an assault, or an assault and battery, upon any person.(Ord. 104 Art I, 1980)

9.12.020 Malicious annoyance. It is unlawful for any person to knowingly send or deliver or make, and for the purpose of being delivered or sent, to part with the possession of any letter, postal card or writing containing any obscene language with or without a name subscribed thereto, or signed with a fictitious name, or with any letter, mark or other designation, with the intent to extort or gain any money property of any description belonging to another. (Ord. 104 Art XIX, 1980)

9.12.030 Prowling. It is unlawful for any person to prowl

about any alley or private premises of any other person in the nighttime, without authority or the permission of the owner of such premises. (Ord. 104 Art XXIV, 1980)

## Chapter 9.14

### DOMESTIC VIOLENCE OFFENSES

#### Sections:

- 9.14.010 Definitions
- 9.14.020 Domestic Violence Prohibited
- 9.14.030 Penalties

#### 9.14.010 Definitions.

(A) ADomestic violence@ means the occurrence of any of the following, by a person that is not an act of self-defense:

- (1) Causing or attempting to cause physical or mental harm to a family or household member;
- (2) Placing a family or household member in fear of physical or mental harm;
- (3) Causing or attempting to cause a family or household member to engage in involuntary sexual activity by force, threat of force, or duress; and
- (4) Engaging in activity toward a family or household member that would cause a reasonable person to feel terrorized, frightened, intimidated. Threatened, harassed or molested.

(B) AFamily or household member@ means any of the following:

- (1) A spouse or former spouse;
- (2) An individual with whom the person resides or has resided;
- (3) An individual with whom the person has or has had a dating relationship (dating relationship means frequent intimate associations primarily characterized by the expectation of affectional involvement. Dating relationship does not include a casual relationship or an ordinary fraternization between 2 individuals in a business or social context);
- (4) An individual with whom the person is or has engaged in a sexual relationship;
- (5) An individual to whom the person is related or was formerly related by marriage;
- (6) An individual with whom the person has a child in common; and

(7) The minor child of any of the preceding persons.(Ord.264, '9.14.010, 2000)

9.14.020 Domestic violence prohibited. An individual who commits an act of domestic violence is guilty of a misdemeanor. (Ord.264 '9.14.020, 2000)

9.14.030 Penalties. Any person convicted of domestic violence is subject to imprisonment for not more than 93 days or a fine of not more than Five Hundred (\$500.00) Dollars or both. Any person who is convicted of domestic violence and has been previously convicted of domestic violence in violation of this section or a local ordinance substantially corresponding to this section, or in violation of MCLA 750.81a, 750.82, 750.83, 750.84 or 750.86, may be punished by imprisonment for not more than one (1) year or a fine of not more than One Thousand (\$1,000.00) dollars, or both. An individual who is convicted of domestic violence and who has two (2) or more previous convictions for domestic violence in violation of this section or a local ordinance substantially corresponding to this section, or in violation of MCLA 750.81a, 750.82, 750.83, 750.84 or 750.86, is guilty of a felony punishable by imprisonment for not more than two (2) years or a fine of not more than Two Thousand Five Hundred (\$2,500) dollars or both. In order for the enhanced penalties to apply, prosecution shall be conducted by the Genesee County Prosecuting Attorney. (Ord. 264 '9.14.030, 2000)

## Chapter 9.16

### OFFENSES AGAINST PUBLIC PEACE

#### Sections:

- 9.16.010 Public intoxication
- 9.16.020 Disturbance in public place
- 9.16.030 Noise Disturbances
- 9.16.040 Responsibility for disorderly persons
- 9.16.050 Jostling
- 9.16.060 Annoying conduct
- 9.16.070 Fighting
- 9.16.080 Obstructing public passage
- 9.16.090 Vagrancy
- 9.16.100 Begging
- 9.16.110 Killing, injuring or poisoning animals
- 9.16.120 Disturbance of peace while school is in session
- 9.16.130 Use of profane, indecent or immoral language on

school property

9.16.140 Remaining on school property without permission

9.16.010 Public intoxication. It is unlawful for any person to be drunk or intoxicated or, except as authorized by the Controlled Substance Act of 1971, under the influence of any controlled substance in any public place, and who is either endangering directly the safety of another person or of property, or is acting in a manner that causes a public disturbance. (Ord. 104 Art II, 1980)

9.16.020 Disturbance in public place. It is unlawful for any person to make or excite any disturbance or contention in any public place. (Ord. 104 Art III, 1980)

9.16.030 Noise Disturbances.

(A) Definitions. Terms used in this section have the meanings provided as follows:

- (1) Commercial area@ A parcel; of land zoned for or legally used for business or commercial purposes. A parcel which is zoned C-1, C-2, HBD or I by the City=s Zoning Ordinance, or is legally being devoted to a use which is a principal permitted use in such zoning district is presumed to be such an area.
- (2) Construction noise@ Any noise associated with excavation, demolition, construction, alteration or repair of any building, street, highway or parking area.
- (3) Continuous noise@ Any noise whose level does not vary during a period of at least five minutes.
- (4) Emergency@ Any occurrence or set of circumstances involving actual or imminent physical trauma or property damage which demands immediate action or is necessary to protect the public health, safety and welfare.
- (5) Impulsive noise@ A short burst of sound not exceeding ten seconds in duration.
- (6) Intermittent noise@ Any noise whose level remains constant which goes on and off during a course of at least ten seconds or goes on and off during a period of at least five minutes, but which exceeds ten seconds in duration each time it is on.
- (7) Nighttime@ Unless otherwise specifically noted, means the hours from 10:00 p.m. to 7:00 a.m.
- (8) Noise@ Any sound occurring on either a continuous, intermittent or impulsive basis. It also means the intensity, frequency, duration and character of sound, including sound and vibration of sub-audible frequencies.
- (9) Noise disturbance@ Any sound which endangers or injures the safety or health of humans or animals; annoys or disturbs a

reasonable person or normal sensibilities; and/or endangers or injures personal or real property.

(10) AReal property boundary@ 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.

(11) ATrailer@ Any vehicle with or without motive power, designed for carrying property and persons, or property alone.

(12) ATruck@ Any motor vehicle designed, used or maintained primarily for the transportation of property, including trailer-pulling tractors.

(B) General Prohibition. It is unlawful for any person by shouting, whistling, loud or boisterous or vulgar conduct, the playing of musical instruments, phonographs, radios, televisions, tape players or any other means of sound amplification or the use of power tools, guns or explosive devices to make, create or cause to continue any noise disturbance which disturbs the public peace and quiet across a real property boundary.

(C) Construction sites. It is unlawful for any person to cause noise louder than the noise normally present at that location which no construction is in progress by excavating, demolition, alteration or repair of any building, street, highway or parking area, except between the hours of 7:00a.m and 7:00 p.m., unless as allowed by express permission on a permit for such construction work issued by the city. (Ord 104, Art V, 1980; Ord. 263, 2000)

(D) Loading and Unloading. Loading and unloading of trucks, trailers or other vehicles or the opening, closing or other handling of boxes, crates, containers, building materials or similar objects during the nighttime, in such a manner as to cause a noise disturbance across a residential real property boundary shall be unlawful.

E. Animals and birds. It shall be unlawful to own, possess or harbor 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.

F. Motor vehicles. Any person operating a motor vehicle on a public highway or any place open to the public or responsible

for a parked motor vehicle when said vehicle is the source of music or sound amplification which creates a noise disturbance 50 feet from the motor vehicle is guilty of a misdemeanor. In addition, any person actually causing the vehicle=s sound or amplification system to cause a noise disturbance specified above is also guilty of a misdemeanor. (Ord. 104 Art IV, 1980)(Ord. 264, 2000)

9.16.040 Responsibility for disorderly persons. It is unlawful for any person to permit or suffer any place occupied or controlled by him to be a resort of noisy, boisterous or disorderly persons. (Ord. 104 Art VII, 1980)

9.16.050 Jostling. It is unlawful for any person to be found jostling or roughly crowding a person or persons unnecessarily in a public place. (Ord. 104 Art VIII, 1980)

9.16.060 Annoying conduct. It is unlawful for any person to insult, accost, molest or otherwise annoy, either by word of mouth, sign or motion, any person in any public place. (Ord. 104 Art IX, 1980)

9.16.070 Fighting. It is unlawful for any person to engage in any disturbance, fight or quarrel in a public place. (Ord. 104 Art X, 1980)

9.16.080 Obstructing public passage. It is unlawful for any person to loiter in any public place so as to obstruct the free and uninterrupted passage of the public or in such a way as to prevent other members of the public from going on or making use of said premises. (Ord. 104 Art XI, 1980)

9.16.090 Vagrancy. It is unlawful for any person to be a vagrant. (Ord. 104, Art XIV, 1980)

9.16.100 Begging. It is unlawful for any person to beg in any public place, except for a recognized charitable organization. (Ord. 104 Art XXVIII, 1980)

9.16.110 Killing, injuring or poisoning animals. Any person who willfully and maliciously kills, maims or disfigures any horses, cattle or other beasts or household pets of another, or willfully and maliciously administers poison to any such horses, cattle or other beasts or household pets of another, or exposes any poisonous substance with intent that the same should be taken or swallowed by them is guilty of a misdemeanor. (Ord. 80,

'1, 1976) (Ord. 263, 2000)

9.16.120 Disturbance of peace by while school is in session.

No person, while on public or private grounds adjacent to any building in which a school or any class thereof is in session, of the Linden school district, in the city, shall willfully make or assist in the making of any noise or diversions which disturbs or tends to disturb, the peace, quiet or good order of such school session or class or function thereof. (Ord. 68 '2, 1974)

9.16.130 Use of profane, indecent or immoral language on school property. No person, while in any building or on any lands owned, occupied or otherwise used by a school of the Linden school district in the city shall utter any profane, indecent or immoral language towards any person or while within the hearing of any other person. (Ord. 68 '3, 1974)

9.16.140 Remaining on school property without permission. No person not a student or employee of any school of the Linden school district in the city, or parent or guardian of any student enrolled therein, shall remain within any school, or on any lands during normal school hours without securing the written permission of the principal or person in charge of said school. The term Astudent@ means any person of school age and enrolled in the school at which he or she then is present. (Ord. 68 '4, 1974)

Chapter 9.20

OFFENSES AGAINST PUBLIC DECENCY

Sections:

- 9.20.010 Improper conduct
- 9.20.020 Improper language
- 9.20.030 Public Nudity
- 9.20.040 Annoying conduct by use of telephone
- 9.20.050 Window peeping
- 9.20.060 Prostitution
- 9.20.070 Fortune telling

- 9.20.080 Illegal occupation or business
- 9.20.090 Loitering at a place of illegal occupation  
Or business
- 9.20.100 Possession or transportation of open alcoholic  
beverage containers
- 9.20.110 Nonsupport of family
- 9.20.120 Gambling
- 9.20.130 Fume sniffing

9.20.010 Improper conduct. It is unlawful for any person to engage in any indecent, insulting, immoral or obscene conduct in any public place. (Ord. 104 Art XIII, 1980)

9.20.020 Improper language. It is unlawful for any person to utter vile, profane or obscene language in any public place. (Ord. 104 Art XV, 1980)

9.20.030 Public nudity. It is hereby deemed to be in violation of the community standards of the city and illegal for any person to appear in a public place in an establishment open to the public nude or partially nude as defined below. Such violation shall be a misdemeanor.

A. ADefinition of public nudity@ means knowingly or intentionally displaying in a public place, or for payment or promise of payment by any person, including but not limited to, payment or promise of payment of an admission fee, any individual=s genitals or anus with less than an opaque covering, or a female individual=s breast with less than a fully opaque covering of the nipple and areola. Public nudity does not include any of the following:

1. A woman=s breastfeeding of a baby whether or not the nipple or areola is exposed during or incidental to the feeding;
2. Material defined in MCLA 752.362;
3. Material defined in MCLA 722.673

B. A violation of subsection A above by an establishment licensed to sell beer, wine or other alcoholic beverages shall constitute grounds for the city to seek revocation of or non-renewal of the liquor license through the Michigan Liquor Control Commission or other responsible agency.

9.20.040 Annoying conduct by use of telephone. It is unlawful for any person to telephone any person repeatedly or cause the same to be done for the purpose of harassing such other person or his family, whether or not conversation ensues, or to use any threatening, vulgar, indecent, obscene, immoral or



insulting language over any telephone. (Ord. 104 Art XXI, 1980)

9.20.050 Window peeping. It is unlawful for any person to engage in peeping in the windows of any inhabited place. (Ord. 104 Art XXIII, 1980)

9.20.060 Prostitution. It is unlawful for any person to engage in any act of prostitution. (Ord. 104 Art XXV, 1980)

9.20.070 Fortune telling. It is unlawful for any person to engage in fortune telling or to pretend to tell fortunes for hire, gain or reward. (Ord. 104 Art XVI, 1980)

9.20.080 Illegal occupation or business. It is unlawful for any persons to engage in any illegal or immoral occupation or business. (Ord. 104 Art XXVI, 1980)

9.20.090 Loitering at a place of illegal occupation or business. It is unlawful for any person to knowingly loiter in or about any place where any illegal occupation or business is being conducted, or to loiter in a house of ill fame or prostitution or place where prostitution or lewdness is practiced. (Ord. 104 Art XXVII, 1980)

9.20.100 Possession or transportation of open alcoholic beverage containers.

A. Prohibited. A person shall not transport or possess any alcoholic liquor in a container which is open, uncapped or upon which the seal is broken, within the passenger compartment of a vehicle on the streets, highways, alleys, parks or any public or private property which is open to the general public and not licensed to sell alcoholic liquor for consumption on the premises. If the vehicle does not have a trunk or compartment separate from the passenger compartment, a container which is open, uncapped or upon which the seal is broken shall be encased or enclosed.

B. Alcoholic Liquor Defined. For the purposes of this section, Alcoholic liquor@ means and includes any spiritous, vinous, malt or fermented liquor, liquids and compounds, whether or not medicated, proprietary, patented and by whatever name called, containing one-half of one percent or more of alcohol by volume which are fit for beverage purposes.

C. Exceptions. This section does not apply to any chartered passenger vehicle licenses by the Michigan Public Service Commission. (Ord. 92 'I, 1976; Ord. 85 ' IBIII, 1976)

9.20.110 Nonsupport of family. It is unlawful for any person of sufficient ability who refuses or neglects to support his or her spouse and/or minor children who are dependent upon him or her for support. (Ord. 104 Art XXII, 1980)

9.20.120 Gambling.

A. It is unlawful for any person, or his agent or employee, to directly or indirectly keep or occupy or assist in keeping or occupying any common gambling house or any building or place where gaming is permitted or suffered or to suffer or permit on any premises owned, occupied or controlled by him any apparatus used for gaming or gambling or to use such apparatus for gaming or gambling in any place within the city.

B. It is unlawful for any person to, for hire, gain or reward, keep or maintain a gaming room, or a gaming table, or any game of skill or chance, or partly of skill and partly chance, used for gaming or to knowingly suffer a gaming room, or any such game to be kept, maintained or played on any premises occupied or controlled by him. (Ord. 104 Art XXXVII, 1980)

9.20.130 Fume sniffing. It is unlawful for any person to intentionally smell or inhale fumes into his respiratory or circulatory system for the purpose of causing a condition of intoxication, euphoria, excitement, exhilaration, stupefaction or dulling of the senses or nervous system. This shall not prohibit the inhalation of any anesthesia for medical or dental purposes. (Ord. 104 Art XXIX, 1980)

Chapter 9.24

OFFENSES AGAINST PROPERTY

Sections:

- 9.24.010 Simple larceny
- 9.24.020 Fraudulent procurement of gasoline, oil or other merchandise
- 9.24.030 Fraudulent procurement of food, drink or lodging
- 9.24.040 Failure to return rented property
- 9.24.050 Conversion or embezzlement of money, goods, or property
- 9.24.060 Receiving stolen property
- 9.24.070 Issuance of checks with insufficient funds
- 9.24.080 Entry without permission
- 9.24.090 Destroying or injuring personal property
- 9.24.100 Destroying or injuring city personal property
- 9.24.110 Defacing or damaging school property

- 9.24.120 Destroying or injuring buildings of another
- 9.24.130 Excavations
- 9.24.140 Destroying or injuring signs, billboards and notices on private property
- 9.24.150 Throwing stones or missiles at trains or automobiles
- 9.24.160 Destroying or injuring tombs and memorials of the dead

9.24.010 Simple larceny. Any person who commits the offense of simple larceny, by stealing, of the property of another of the value of one hundred dollars or less, consisting of any money, goods or chattels, or any bank note, bank bill, bond, promissory note, due bill, bill of exchange or other bill, draft, order or certificate, or any book of accounts for or concerning money or goods due or to become due, or to be delivered, or any deed or writing containing a conveyance of land, or any other valuable contract in force, or any receipt, release or defeasance, or any writ, process or public record is guilty of a misdemeanor. (Ord. 77 '1, 1975)

9.24.020 Fraudulent procurement of gasoline, oil or other merchandise. Any person who requests and obtains gasoline, oil or other merchandise at a gasoline service station and leaves the premises without paying for it, except when credit is given therefor by express agreement, with intent to defraud the owner or operator of such gasoline service station out of the pay for the same is guilty of a misdemeanor. (Ord. 77, '2, 1975)

9.24.030 Fraudulent procurement of food, drink or lodging. Any person who patronizes or is put up at any motel, hotel, inn, restaurant, café or bar as a guest and procures any food, drink or accommodation without paying for it except when credit is given therefor by express agreement, with intent to defraud such keeper out of the pay for the same is guilty of a misdemeanor. No conviction shall be had under this section unless complaint is made within thirty days of the time of the violation. (Ord. 77 '3, 1975)

9.24.040 Failure to return rented property. Any person to whom tangible property is delivered on a rental or lease basis under any agreement in writing providing for its return to a particular place at a particular time who refuses or willfully neglects to return such tangible property after the expiration of the time stated in a notice in writing proved to have been

duly mailed by registered or certified mail addressed to the last known address of the person who rented or leased said tangible property and with intent to defraud the lessor, if said tangible property is of the value of one hundred dollars or less, is deemed by so doing to have committed and is guilty of a misdemeanor. (Ord. 100, '1, 1979)

9.24.050 Conversion or embezzlement of money, goods or property. Any person to whom any money, goods or other tangible property having a value of one hundred dollars or less has been delivered who embezzles or fraudulently converts to his own use, or secretes with the intent to embezzle or fraudulently use, such goods, money or other tangible property or any part thereof is deemed by so doing to have committed and is guilty of a misdemeanor. (Ord. 100 '2, 1979)

9.24.060 Receiving stolen property.

A. Any person who buys, receives, possesses, conceals or aids in the concealment of any stolen, embezzled or converted money, goods or property knowing the same to be stolen, embezzled or converted if the property purchased, received, possessed or concealed is of the value of one hundred dollars or less, is guilty of a misdemeanor.

B. A person who is a dealer in or collector of any merchandise or personal property, or the agent, employee or representative of such dealer or collector, who fails to make reasonable inquiry that the person selling or delivering the stolen, embezzled or converted property to the dealer or collector has a legal right to do so, or who buys or receives stolen, embezzled or converted property which has a registration, serial or other identifying number altered or obliterated on an external surface of the property, is presumed to have bought or received the property knowing the property to have been stolen, embezzled or converted. This presumption may be rebutted by proof. (Ord. 134, '1 & 2, 1986)

9.24.070 Issuance of checks with insufficient funds.

A. Any person who, with intent to defraud, makes or draws or utters or delivers any check, draft or order for the payment of money, to apply on account or otherwise, upon any bank or other depository, knowing at the time of such making, drawing, uttering or delivering, that the maker, or drawer, has not sufficient funds in or credit with such bank or other depository, for the payment of such check, draft or order, in full, upon its presentation, or any person who, with the intent to defraud, makes, draws, utters or delivers any check, draft or

order for the payment of money to apply on account or otherwise, upon any bank or other depository and who does not have sufficient funds for the payment for same when presentation for payment is made to the drawee, except where such lack of funds is due to garnishment, attachment, levy or other lawful cause, and such fact was not known to the person who made, drew, uttered or delivered the instrument at the time of so doing, if the amount payable in the check is fifty dollars or less, such person is guilty of a misdemeanor.

B. As against the maker or drawer thereof, the making, drawing, uttering or delivering of a check, draft or order, payment of which is refused by the drawee when presented in the usual course of business, is prima facie evidence of intent to defraud and of knowledge of insufficient funds in or credit with such bank or other depository, provided such maker or drawer has not paid the drawee thereof the amount due thereon, together with all costs and protest fees, within five days after receiving notice that such check, draft or order has not been paid by the drawee. (Ord. 73, '1 & 2, 1975)

9.24.080 Entry without permission. Any person who wilfully enters upon the lands or premises of another in the city, without lawful authority, after having been forbidden so to do by the owner or occupant, an agent or servant of the owner or occupant, a police officer or other law enforcement officer authorized so to do by the owner or occupant, or any person being upon the land or premises of another, upon being notified to depart therefrom by the owner or occupant, an agent or servant of the owner or occupant, or by a police officer or other law enforcement officer authorized so to do by the owner or occupant, who without lawful authority neglects or refuses to depart therefrom, shall be guilty of a misdemeanor. (Ord. 144 '1, 1988)

9.24.090 Destroying or injuring personal property. Any person who willfully and maliciously destroys or injures the personal property of another, the damage resulting from such injury being one hundred dollars or less, is guilty of a misdemeanor. (Ord. 80 '2, 1976)

9.24.100 Destroying or injuring city personal property. Any person who willfully or maliciously destroys or injures the personal property of the city, the damage resulting from such injury being one hundred dollars or less, is guilty of a misdemeanor. (Ord. 80 '3, 1976)

9.24.110 Defacing or damaging school property. No person

shall mark with any substance or in any other manner deface or do damage to the fence, tree, lawn or other fixture situated on lands owned, occupied or otherwise used by a school of the Linden school district in the city. (Ord. 68 '1, 1974)

9.24.120 Destroying or injuring buildings of another. Any person who willfully and maliciously destroys or injures any house, barn or other building of another, or the appurtenances thereof, the damage resulting from such injury being one hundred dollars or less, is guilty of a misdemeanor. (Ord. 80 '4, 1976)

9.24.130 Excavations. It is unlawful for any person to dig or cause to be dug an excavation or partially constructed basement for any building or superstructure and to fail to cover or safely fence the same within a period of three days after such excavation has been commenced. (Ord. 104 Art XXXVI, 1980)

9.24.140 Destroying or injuring signs, billboards and notices on private property. Any person who willfully tears down, destroys or in any manner defaces any signs, billboards or notices on any premises within the city is guilty of a misdemeanor; provided, that such signs, billboards or notices are not in violation of any ordinance of the city or law of the state of Michigan and were placed by the owner of lessee or with consent. (Ord. 80 '5, 1976)

9.24.150 Throwing stones or missiles at trains or automobiles. Any person who throws any stone, brick, or other missile at any passenger or freight train, locomotive or other motor vehicle is guilty of a misdemeanor. (Ord. 80 '6, 1976)

9.24.160 Destroying or injuring tombs and memorials of the dead. Any person other than the burial right owner or his representative, heir-in-law or a person having care, custody or control of a cemetery by virtue of law, contract or other legal right who willfully destroys, mutilates, defaces, injures or removes any tomb, monument, gravestone or other structure or thing placed or designed for a memorial to the dead, or any fence, railing, curb or other thing intended for the protection or for the ornament of any tomb, monument, gravestone or other structure mentioned in this section or of any enclosure for the burial of the dead, or who willfully destroys, mutilates, removes, cuts, breaks or injures any tree, shrub or plant placed or being within any such enclosure is guilty of a misdemeanor. Prosecution under this section may commence upon complaint by the burial right owner or his representative, heir-at-law or

person having care, custody or control of a cemetery, tomb, monument, gravestone or other structure or thing placed or designed for a memorial of the dead or for the protection or ornamentation thereof. (Ord. 80 '7, 1976)

## Chapter 9.28

### OFFENSES BY OR AGAINST MINORS

#### Sections:

- 9.28.010 Contributing to delinquency
- 9.28.020 Jurisdiction of probate court
- 9.28.030 Possession of alcoholic beverages
- 9.28.040 Employment restrictions
- 9.28.050 Curfew
- 9.28.060 Distributing obscene matter to minorsB  
Definitions
- 9.28.070 Distributing obscene mater to minors prohibited
- 9.28.080 Distributing obscene matter to minors  
prohibitedBExceptions
- 9.28.090 Display of obscene matter to minors
- 9.28.100 Misrepresentation as parent, guardian or age of  
minor

9.28.010 Contributing to delinquency. Any person who, by any act or by any word, encourages, contributes toward, causes or tends to cause any minor child under the age of seventeen years to become neglected or delinquent so as to come or tend to come under the jurisdiction of the juvenile division of the probate court, as defined under Section 2 of Chapter 12a of Act No. 288 of the Public Acts of 1939, as added by Act No. 54 of the Public Acts of the First Extra Session of 1944, and any amendments thereto, whether or not such child is, in fact, adjudicated a ward of the probate court, is guilty of a misdemeanor. (Ord. 44, '1, 1969)

9.28.020 Jurisdiction of probate court. For purposes of this chapter, a boy or girl under the age of seventeen years shall be considered to come under the jurisdiction of the probate court if the boy or girl is one:

A. Who has violated any municipal ordinance or law of the state or of the United States; or

B. Who has deserted his home without sufficient cause, or who is repeatedly disobedient to the reasonable and lawful commands of his parents, guardian or other custodian; or

C. Who has repeatedly associated with immoral persons, or who is leading an immoral life, or is found on premises occupied or used for illegal purposes; or

D. Who, being required by law to attend school, willfully and repeatedly absents himself therefrom, or repeatedly violates rules and regulations thereof; or

E. Who habitually idles away his or her time; or

F. Who repeatedly patronizes or frequents any tavern or place where the principal purpose of the business conducted is the sale of alcoholic liquors. (Ord. 44, '2, 1969)

9.28.030 Possession of alcoholic beverages.

A. It is unlawful for any person under the age of twenty-one years to purchase or knowingly possess or transport any beer, wine or other alcoholic liquor, or knowingly possess, transport or have under his control in any motor vehicle, any beer, wine or other alcoholic liquor, unless such person is employed by a licensee under a license issued by the Michigan Liquor Control Commission and possesses, transports or has such alcoholic beverages under his control in a motor vehicle in the course of his employment during regular working hours.

B. It is unlawful for any person, except upon authority of and pursuant to a prescription of a duly licensed physician, to furnish alcoholic liquor to a person under the age of twenty-one years.

C. It is unlawful for any person under the age of twenty-one years to falsely represent himself to be of the age of twenty-one or over when purchasing, offering to purchase, or attempting to purchase or procure beer, wine or other alcoholic beverages, or to give any false information regarding his age to any law enforcement official or to any person selling beer, wine or other alcoholic beverages for the purpose of securing a sale thereof to himself. (Ord. 98 '1 & 2, 1978; Ord. 63, 1973; Ord. 44 '3, 1969)

9.28.040 Employment restrictions. The employment of minor persons shall be restricted to the limitations and provisions of Act 157, Public Acts of 1947, as amended, known as Athe Hittle Juvenile Employment Act.@ (Ord. 44, '4, 1969)

9.28.050 Curfew.

A. It is unlawful for any minor under the age of sixteen years to loiter, idle, wander, stroll or play in or upon the public streets, highways, roads, alleys, parks, playgrounds or other public places, public buildings, places of amusement and entertainment, vacant lots or other unsupervised places between



the hours of 11:00 p.m. and 6:00 a.m. of the following day.

B. The provisions of this section shall not apply to a minor accompanied by his parent(s), legal guardian or other adult person delegated by the parent(s) or legal guardian to accompany such child, or where the minor is upon an emergency errand or legitimate business directed by his parent(s), legal guardian or other adult person having the care or custody of such minor. (Ord. 44 '5, 1969)

9.28.060 Distributing obscene matter to minors Definitions.

Words and terms used in this chapter shall have the meanings prescribed in this section as follows:

A Disseminate@ means to sell, lend, give, exhibit or show or to offer or agree to do the same.

A Erotic fondling@ means touching a person=s clothed or unclothed genitals, pubic area, buttocks, or, if the person is female, breasts, for the purpose of sexual gratification or stimulation.

A Exhibit@ means to do one or more of the following:

1. Present a performance;
2. Sell, give or offer or agree to sell or give a ticket to a performance;
3. Admit a minor to premises where a performance is being presented or is about to be presented.

A Harmful to minors@ means sexually explicit matter which meets all of the following criteria:

1. Considered as a whole, it appeals to the prurient interest of minors as determined by contemporary local community standards;
2. It is patently offensive to contemporary local community standards of adults as to what is suitable for minors;
3. Considered as a whole, it lacks serious literary, artistic, political, educational and scientific value for minors.

A Knowingly@ means having general knowledge of, or reason to know, or a belief or ground for belief which warrants further inspection or inquiry of both:

1. The character and content of any material or performance which is reasonably susceptible of examination by the defendant, and
2. The age of the minor; however; an honest mistake shall constitute an excuse from liability under these provisions if the defendant made a reasonable bona fide attempt to ascertain the true age of such minor.

A Local community@ means the city of Linden.

A Minor@ means a person under eighteen years of age.

ANudity@ means the lewd display of the human male or female genitals or pubic area.

APrurient interest@ means a lustful interest in sexual stimulation or gratification.

AReasonable bona fide attempt@ means an attempt to ascertain the true age of the minor by requiring production of a driver=s license, marriage license, birth certificate or other governmental or educational identification card or paper and not relying solely on the oral allegations or apparent age of the minor.

ASadomasochistic abuse@ means either of the following:

1. Flagellation, or torture, for sexual stimulation or gratification, by or upon a person who is nude or clad only in undergarments or in a revealing or bizarre costume;
2. The condition of being fettered, bound or otherwise physically restrained for sexual stimulation or gratification, of a person who is nude or clad only in undergarments or in a revealing or bizarre costume.

ASexual excitement@ means the condition of human male or female genitals when in a state of sexual stimulation or arousal.

ASexual intercourse@ means intercourse, real or simulated, whether genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex or between a human and an animal.

ASexually explicit matter@ means sexually explicit visual material, sexually explicit verbal material or sexually explicit performance.

ASexually explicit performance@ means a motion picture, exhibition, show, representation or other presentation, which in whole or in part, depicts nudity, sexual excitement, erotic fondling, sexual intercourse or sadomasochistic abuse.

ASexually explicit verbal material@ means a book, pamphlet, magazine, printed matter reproduced in any manner, or sound recording which contains an explicit and detailed verbal description or narrative account of sexual excitement, erotic fondling, sexual intercourse or sadomasochistic abuse.

ASexually explicit visual material@ means a picture, photograph, drawing, sculpture, motion picture film or similar visual representation which depicts nudity, sexual excitement, erotic fondling, sexual intercourse or sadomasochistic abuse, or a book, magazine or pamphlet which contains such a visual representation. An undeveloped photograph, mold or similar visual material may be sexually explicit material notwithstanding that processing or other acts may be required to make its sexually explicit content apparent. (Ord. 121 Art IBIV

and V(part), 1984)

9.28.070 Distributing obscene matter to minors prohibited.

A. A person is guilty of distributing obscene matter to a minor if that person does either of the following:

1. Knowingly disseminates to a minor sexually explicit visual or verbal material that is harmful to minors;
2. Knowingly exhibits to a minor a sexually explicit performance that is harmful to minors.

B. A person knowingly disseminates sexually explicit matter to a minor when the person knows both the nature of the matter and the status of the minor to who the matter is disseminated.

C. A person knows the status of a minor if the person either is aware that the person to whom the dissemination is made is under eighteen years of age or recklessly disregards a substantial risk that the person to whom the dissemination is made is under eighteen years of age.

D. Distributing obscene matter to a minor is a misdemeanor. In imposing the fine authorized for this offense, the court shall consider the scope of the defendant=s commercial activity in distributing obscene matter to minors. (Ord. 121 Art V (part), 1984)

9.28.080 Distributing obscene matter to minors prohibited -  
- Exceptions. Section 9.28.070 does not apply to the dissemination of sexually explicit matter to a minor by any of the following persons:

A. A parent or guardian who disseminates sexually explicit matter to his or her child or ward;

B. A teacher or administrator at a public or private elementary or secondary school which complies with the provisions of Act No. 451 of the Public Acts of 1976, being Sections 380.1 to 380.1853 of the Michigan Compiled Laws, who disseminates sexually explicit matter to a student as part of a school program permitted by law;

C. A licensed physician or certified psychologist who disseminates sexually explicit matter in the treatment of a patient;

D. A librarian employed by a library of a public or private elementary or secondary school which complies with the provisions of Act No. 451 of the Public Acts of 1976, or employed by a public library, who disseminates sexually explicit matter in the course of that person=s employment;

E. Any public or private college or university or any other person who disseminates sexually explicit matter for a

legitimate medical, scientific, governmental or judicial purpose. (Ord. 121 Art VI, 1984)

9.28.090 Display of obscene matter to minors.

A. A person is guilty of displaying obscene matter to a minor if that person possesses managerial responsibility for a business enterprise selling visual matter which depicts sexual intercourse or sadomasochistic abuse and which is harmful to minors, and that person knowingly permits a minor who is not accompanied by a parent or guardian to examine that matter.

B. A person knowingly permits a minor to examine visual matter which depicts sexual intercourse or sadomasochistic abuse and which is harmful to minors if the person knows both the nature of the matter and the status of the minor permitted to examine the matter.

C. A person knows the nature of the matter if the person is either aware of the character and content of the matter or recklessly disregards circumstances suggesting the character and content of the matter.

D. A person knows the status of a minor if the person either is aware that the person who is permitted to examine the matter is under eighteen years of age or recklessly disregards a substantial risk that the person who is permitted to examine the matter is under eighteen years of age.

E. No person having custody, control or supervision of any commercial establishment shall knowingly:

1. Display material which is harmful to minors in such a way that minors, as a part of the invited general public, will be exposed to view such material; provided however, a person shall be deemed not to have displayed material harmful to minors if the material is kept behind devices commonly known as blinder racks so that the lower two-thirds of the material is not exposed to view;

2. Sell, furnish, present, distribute, allow to view or otherwise disseminate to a minor, with or without consideration, any material which is harmful to minors; or

3. Present to a minor or participate in presenting to a minor, with or without consideration, any performance which is harmful to a minor.

F. Displaying obscene matter to a minor is a misdemeanor. (Ord. 121 Art VII, 1984)

9.28.100 Misrepresentation as parent, guardian or age of minor.

A. A person is guilty of facilitative misrepresentation when that person knowingly makes a false representation that he

or she is the parent or guardian of a minor, or that a minor is eighteen years of age or older, with the intent to facilitate the dissemination to the minor of sexually explicit matter that is harmful to minors.

B. A person knowingly makes false representation as to the age of a minor or as to the status of being the parent or guardian of a minor if the person either is aware that the representation is false or recklessly disregards a substantial risk that the representation is false.

C. Facilitative misrepresentation is a misdemeanor. (Ord. 121 Art VIII, 1984)

## Chapter 9.32

### WEAPONS

#### Sections:

- 9.32.010 Definitions
- 9.32.020 Use of firearms
- 9.32.030 Intentionally aiming a firearm without malice
- 9.32.040 Unlawful possession of firearms
- 9.32.050 Reckless use of firearms
- 9.32.060 Recklessly endangering another person
- 9.32.070 Hunting
- 9.32.080 Bow and arrows
- 9.32.090 Knives with blades longer than three inches
- 9.32.100 Switchblade or self-opening knives
- 9.32.110 Carrying concealed knives on one's person or in a vehicle
- 9.32.120 Hurling projectiles from or at a motor vehicle

9.32.010 Definitions. Words and terms used in this chapter shall have the meanings prescribed in this section as follows:

"Firearm" means and includes any weapon from which a dangerous projectile may be propelled by using explosives, gas or air as a means of propulsion. This definition includes all firearms of any nature whatsoever and specifically does include BB guns and Airsoft guns.

"Switchblade or self-opening knife" means a knife containing a blade or blades which can be opened by depressing a button, pressure on the handle, release of a spring or other mechanical contrivance. (Ord 316, 2008)

9.32.020 Use of firearms. It is unlawful for any person other than a duly authorized law enforcement officer in the discharge of

his official duties, to use, fire or discharge any rifle, shotgun, handgun, revolver, pistol or other firearm, within the corporate boundaries of the city, subject to certain exceptions set forth in this chapter.(Ord 316, 2008)

9.32.030 Intentionally aiming a fire arm without malice. It is unlawful for any person to intentionally, without malice, point or aim any firearm at or toward any other person, (Ord. 104 Art XXX, 1980)

9.32.040 Unlawful possession of firearms. It is unlawful for any person under the influence of intoxicating liquor or any exhilarating or stupefying substance to carry, have in possession or under control, or use in any manner or discharge any firearm within the city.(Ord. 104 Art XXXI, 1980)

9.32.050 Reckless use of firearms. It is unlawful for any person to recklessly or heedlessly or wilfully or wantonly use, carry, handle or discharge any firearm without due caution and circumspection for the rights, safety or property of others. (Ord. 104 Art XXXII, 1980)

9.32.060 Recklessly endangering another person. It is unlawful for any person to recklessly engage in conduct which places or may place another person in danger of death or serious bodily injury. Recklessness and danger shall be presumed where a person knowingly points a firearm at or in the direction of another, whether or not either person believes the firearm to be loaded. (Ord. 104 Art XXXIII, 1980)

9.32.070 Hunting. Hunting wild game animals and birds is unlawful in the city, except that a landowner may use a pellet gun on his own property for pest control with respect to rats, coyote, opossum, porcupine, weasel, red squirrel and skunk. (Ord. 135 '3, 1987)

9.32.080 Bow and arrows. It is unlawful for any person to shoot or fire a bow and arrow in the city unless the shooting of a bow and arrow is carried out on private property in a designated practice area where safety is assured. Such practice areas require written permission of the chief of police. A resident may request and obtain a designated practice area designation on his own property by submitting in writing the address, location of target, intended safety zones in the target area, dwelling locations in the surrounding area and a plan for supervision of those engaging in

target shooting. The police chief has a right at any time to revoke such privilege if the requirements of the designated practice area are violated.(Ord 316, 2008

9.32.090 Knives with blades longer than three inches.

A. It is unlawful for any person to be in possession of a knife with a blade more than three inches in length in any of the streets, alleys, parks, boulevards or other public property or schools in the city, or in any theater, amusement park, liquor establishment, store or other private property generally frequented by the public for purposes of education, recreation, amusement, entertainment, sport or shopping.

B. The prohibition contained in subsection A of this section shall not apply to any person in possession of any such knife when it is used or carried in good faith as a tool of honest work, trade, business, sport or recreation when the person in possession of such knife is actively engaged therein or actively engaged in going to or returning from such honest work, trade, business, sport or recreation. (Ord. 123 '1, 1985)

9.32.100 Switchblade or self-opening knives. It is unlawful for any person to sell, offer for sale, keep, possess, use or loan any switchblade or self-opening knife; provided that the prohibition of this section shall not apply to any one-armed person in possession of such a knife in connection with living requirements. (Ord. 123 '2(b), 1985)

9.32.110 Carrying concealed knives on one=s person or in a vehicle. It is unlawful for a person to carry a dagger, dirk or stiletto, except hunting knives adapted and carried as such, concealed on or about his person, or whether concealed or otherwise in any vehicle operated or occupied by him, except in his dwelling house or place of business or on other land possessed by him. (Ord. 123 '3, 1985)

9.32.120 Hurling projectiles from or at a motor vehicle. It is unlawful for any person to wrongfully throw or propel any snowball, missile or object from or at any moving motor vehicle. (Ord. 104 Art XXXV, 1980)

Title 10

VEHICLES AND TRAFFIC

Chapters:

<u>10.04</u>	<u>Pedestrians</u>
<u>10.08</u>	<u>Bicycles and toy vehicles</u>
<u>10.12</u>	<u>Michigan Vehicle Code</u>

#### Chapter 10.04

#### PEDESTRIANS

##### Sections:

- 10.04.010 Obedience to traffic laws
- 10.04.020 Obedience to traffic control devices
- 10.04.030 Use of sidewalks

10.04.010 Obedience to traffic laws. Pedestrians shall obey the instructions of all official traffic control signals, signs and other control devices applicable to vehicular traffic unless otherwise directed by a police officer. (Ord. 74 Art XX, 1975)

10.04.020 Obedience to traffic control devices. Any pedestrian crossing a roadway other than at an intersection or marked crosswalk, will yield the right-of-way to all approaching vehicular traffic. It is not the intent of this section to imply that vehicle operators in the vicinity of such pedestrians will not be required to exercise due caution and courtesy on the part of such pedestrians. (Ord. 74 Art XXI, 1975)

10.04.030 Use of sidewalks. Pedestrians, including groups of pedestrians, will use sidewalks, and where not available, will walk on the left side of the roadway and proceed in the direction facing oncoming traffic. (Ord. 74 Art XXII, 1975)

#### Chapter 10.08

#### BICYCLES AND TOY VEHICLES

##### Sections:

- 10.08.010 Obedience to traffic laws
- 10.08.020 Obedience to traffic control devices
- 10.08.030 Obedience to traffic control devices B Exceptions
- 10.08.040 Registration
- 10.08.050 Number and manner of carrying persons on bicycles
- 10.08.060 Riding on roadways and passing



- 10.08.070 Riding two abreast
- 10.08.080 Use of paths when provided
- 10.08.090 Speed
- 10.08.100 Emerging from alleys or driveways
- 10.08.110 Carrying articles
- 10.08.120 Parking
- 10.08.130 Riding on sidewalks
- 10.08.140 Lights and reflector required
- 10.08.150 Audible signal device required
- 10.08.160 Brakes required
- 10.08.170 Bicycles left unattended
- 10.08.180 Clinging to other vehicles
- 10.08.190 Careless or dangerous riding

10.08.010 Obedience to traffic laws. Every person riding a bicycle upon a roadway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle by the state laws of Michigan declaring rules of the road applicable to vehicles, or by the traffic ordinances of the city applicable to the driver of a vehicle, except as to special regulations in this chapter and except as to those provisions of laws and ordinances which, by their nature, can have no application. (Ord. 74 Art. I, 1975)

10.08.020 Obedience to traffic control devices. Any person operating a bicycle shall obey the instructions of official traffic control signals, signs and other control devices applicable to vehicles, unless otherwise directed by a police officer or except when dismounted to make turns, at which time regulations pertaining to pedestrians apply. (Ord. 74 Art. II, 1975)

10.08.030 Obedience to traffic control devices--Exceptions. Whenever authorized signs are erected indicating that no right or left or U turn is permitted, no person operating a bicycle shall disobey the direction of such sign, except where such person dismounts from the bicycle to make any such turn, in which event such person shall then obey the regulations applicable to pedestrians. (Ord. 74 Art III, 1975)

10.08.040 Registration. For a nominal fee, bicycles may be registered with the police department for the purpose of identification and as a protective service to the owner thereof. (Ord. 74 Art XIX, 1975)

10.08.050 Number and manner of carrying persons on bicycles. A person propelling a bicycle shall not ride other

than astride a permanent and regular seat attached thereto, except that he may stand on the pedals when going uphill. He will not carry any other person, except when the bicycle is equipped with additional firmly fixed seat for that purpose, nor will any person ride a bicycle in any position other than authorized by this chapter. (Ord. 74 Art IV, 1975)

10.08.060 Riding on roadways and passing.

A. Every person operating a bicycle upon a roadway shall ride as near to the right-hand side of the roadway as practicable, exercising due care when passing a standing vehicle or one proceeding in the same direction.

B. No person operating a bicycle shall pass between lines of traffic, but may pass on the left of traffic moving in his direction in the case of a two-way street, or on the left or right of traffic in the case of a one-way street, in an unoccupied lane. (Ord. 74 Art V, 1975)

10.08.070 Riding two abreast. Every person operating a bicycle upon a roadway shall not ride more than two abreast, except on paths or parts of roadways set aside for the exclusive use of such vehicles. (Ord. 74 Art VI, 1975)

10.08.080 Use of paths when provided. Whenever a useable path for bicycles has been provided adjacent to a roadway, bicycle riders shall use such path and shall not use the roadway. (Ord. 74 Art VII, 1975)

10.08.090 Speed. No person shall operate a bicycle at a speed greater than is reasonable and prudent under the conditions then existing. (Ord. 74 Art IX, 1975)

10.08.100 Emerging from alleys or driveways. The operator of a bicycle emerging from an alley, driveway or building shall, upon approaching a sidewalk area extending across any alleyway, yield the right-of-way to all pedestrians approaching on said sidewalk or sidewalk area, and upon entering the roadway shall yield the right-of-way to all vehicles approaching on said roadway. (Ord. 74 Art X, 1975)

10.08.110 Carrying articles. No person operating a bicycle, motorcycle or motor-driven cycle shall carry any package, bundle or article which prevents the driver from keeping both hands upon the handlebars of said vehicle, except when signaling. (Ord. 74 Art XI, 1975)

10.08.120 Parking. No person shall park a bicycle upon a

street other than upon the roadway against the curb or upon the sidewalk in a rack to support the bicycle, or against a building or at the curb in such a manner as to afford the least obstruction to pedestrian traffic. (Ord. 74 Art XII, 1975)

10.08.130 Riding on sidewalks.

A. Whenever any person is riding a bicycle upon a sidewalk, such person shall yield the right-of-way to any pedestrian and shall give audible signal before overtaking and passing such pedestrian.

B. When signs are erected on any sidewalk of a street which prohibits the riding of bicycles thereon by any person, no person shall disobey such signs. (Ord. 74 Arts XIII, XIV, 1975)

10.08.140 Lights and reflector required. Every bicycle, when in use at nighttime shall be equipped with a lamp on the front which shall emit a white light visible from a distance of at least five hundred feet to the front and with a red reflector on the rear which shall be visible from all distances from fifty feet to three hundred feet to the rear when directly in front of lawful upper beams of head lamps on a motor vehicle. A lamp emitting a red light visible from a distance of five hundred feet to the rear may be used in addition to the red reflector. (Ord. 74 Art XV, 1975)

10.08.150 Audible signal device required. No person shall operate a bicycle unless it is equipped with a bell or other device capable of giving a signal audible for a distance of at least one hundred feet except that such vehicle shall not be equipped with nor shall any person use upon such vehicle a siren or whistle. (Ord. 74 Art XVI, 1975)

10.08.160 Brakes required. Every bicycle shall be equipped with a brake which will enable the operator to make the braked wheels skid on dry, level, clean pavement. (Ord. 74 Art XVII, 1975)

10.08.170 Bicycles left unattended. When a bicycle is left unattended in an unenclosed area, either outside a residence or at any other place, it will be secured with a chain and lock or other locking device. (Ord. 74 Art XVIII, 1975)

10.08.180 Clinging to other vehicles.

A. No person riding upon any bicycle shall attach the same of himself to any vehicle or other self-propelled device upon a roadway.

B. Persons riding coasters, sleds, roller skates, scooters

or any other toy will not cling to or attach themselves or the device being ridden onto any vehicle or other self-propelled device. ( Ord. 74 Art XXIII, 1975)

10.08.190 Careless or dangerous riding. It is unlawful and a misdemeanor for any person to ride a bicycle in a careless, dangerous or negligent manner likely to endanger any person or property. (Ord. 212 '1, 1995)

## Chapter 10.12

### MICHIGAN VEHICLE CODE

#### Sections:

10.12.010 Adoption of Michigan Vehicle Code

10.12.020 Effective Date

10.12.010 Adoption of Michigan Vehicle Code, The city of Linden, Michigan, does hereby adopt the MICHIGAN VEHICLE CODE, Act No. 300 of Public Acts of 1949, as amended, being Sections 257.1 to 257.923 of the Michigan Compiled Laws. Specifically included are any and all amendments thereto currently scheduled to be effective on October 1, 1999.(Ord. 250, '1, 1999)

10.12.020 Effective date, The effective date of this chapter is October 1, 1999.(Ord 250, Sec 4, 1999)

Title 11  
(RESERVED)

Title 12

STREETS, SIDEWALKS AND PUBLIC PLACES

Chapters:

<u>12.04</u>	<u>Construction, Maintenance and Repair of Sidewalks</u>
<u>12.08</u>	<u>Sidewalk Use Regulations</u>
<u>12.12</u>	<u>Public Parks</u>
<u>12.16</u>	<u>Community Beach</u>
<u>12.20</u>	<u>Fairview Community Cemetery</u>

Chapter 12.04

CONSTRUCTION, MAINTENANCE AND REPAIR OF SIDEWALKS

Sections:

12.04.010	Definitions
12.04.020	Duty of owner to construct and maintain
12.04.030	Order to constructBResolution
12.04.040	Order to constructBAppeal
12.04.050	Failure to construct or repairBCity action
12.04.060	Sidewalk construction specifications
12.04.070	Permit required

- 12.04.080 Contractor to be qualified
- 12.04.090 Work done by owner
- 12.04.100 Permit revocation

12.04.010 Definitions. Words and terms used in this chapter shall have the meanings prescribed in this section as follows:

ABuilding inspector@ means the Linden building inspector.

ACity clerk@ or Aclerk@ means the Linden city clerk.

ACity council@ means the Linden city council.

ADisrepair of a sidewalk@ means and includes, but is not limited to, the following conditions:

1. Potholes of one inch or more in depth
2. Loosened, crumbling or breaking surfaces;
3. Difference of two inches or more in heights of adjoining sections of sidewalks;
4. Insufficient slope to adequately drain water;
5. Other standards of disrepair established by the building inspector, approved by the city council and available to the city clerk=s office for public inspection. (Ord 140 Sec 4 & 13, 1988)

12.04.020 Duty of owner to construct and maintain.

A. It is the duty of the owner of any premises within the city to construct a sidewalk adjacent to or abutting on any premises belonging to such owner whenever the city council determines that the construction of such sidewalk is necessary for the public health, safety or welfare.

B. It is the duty of the owner of any premises within the city to maintain and keep in good repair any sidewalk abutting or adjacent to any premises belonging to such owner. (Ord 140 Sec 1 & 2, 1988)

12.04.030 Order to constructBResolution. Whenever the city council determines that it is necessary for the public health, safety or welfare that a sidewalk be constructed adjacent to or abutting any premises, or whenever the city council determines that any existing sidewalk is in a state of disrepair, it shall adopt a resolution requiring the construction or repair thereof and shall, in such resolution, direct the owner of the premises adjacent to or abutting the proposed location of the sidewalk to be constructed, or the existing sidewalk, to construct or repair such sidewalk, beginning construction within thirty days of notification and complete the same within a thirty day period. Such resolution may be served upon the owner either personally

or by ordinary mail, addressed to such owner under the name and at the address as is shown upon the city=s latest tax assessment roll. (Ord 140 Sec 3, 1988)

12.04.040 Order to constructBAppeal. The owner of any premises aggrieved by the order to construct or repair a sidewalk may appeal the same, in writing, to the city manager. (Ord 140 Sec 11, 1988)

12.04.050 Failure to construct or repairBCity action. If the owner of such premises fails or refuses to construct or repair such sidewalk abutting or adjacent to the premises owned by such owner within the period of time specified in the resolution referred to in Section 12.04.030, then the building inspector shall proceed to have said sidewalk constructed or repaired. The cost of such construction or repair shall be charged against and shall be a lien upon the premises which said sidewalk abuts or adjoins. If such charges are not paid within ninety days after billing, such charges shall be added to the next tax bill issued by the city and thereafter bear the same interest and penalties as said tax bill. (Ord 140 Sec 5, 1988)

12.04.060 Sidewalk construction specifications. The construction or repair of any sidewalks shall include, but not be limited to, the following specifications:

A. All sidewalks shall be constructed to grade and width established by existing adjoining walks or, in the absence of the foregoing, by the building inspector, and shall be paved with a single course of concrete with a compressive strength of not less than three thousand five hundred pounds per square inch within twenty-eight days of construction.

B. In newly developed areas all sidewalks shall be at least four feet in width but wider sidewalks may be required by the building inspector if the density and development of the area indicates the desirability of such wider sidewalks.

C. Construction of the sidewalk shall be at least four inches in depth, except across driveways where such thickness shall be increased to six inches. Paving joints shall be true to line and graded at intervals consistent with adjoining or abutting sidewalks. One-half-inch expansion joints shall be placed through the sidewalk at least every fifty feet and between sidewalks and other rigid structures.

D. The surface of the sidewalk shall be roughened with a mechanic=s brush to prevent smooth and slippery surfaces, and also be edged with an edging tool.

E. Such other specifications as may be established by the



building inspector from time to time, approved by the city council and available in the clerk=s office for inspection. (Ord 140 Sec 6, 1988)

12.04.070 Permit required. No sidewalk shall be constructed or repaired without a construction permit therefor. Such construction permit shall be obtained from the building inspector and shall contain the date issued, the name of the owner of the property where the sidewalk is to be constructed or repaired, a description of the property and an estimate of the number of square feet of sidewalk to be constructed or repaired. No permit shall be issued unless the contractor has on file with the city clerk a duly executed bond, running to the city, with a bonding company operating under the laws of the state as a surety thereon in the amount of five thousand dollars, such bond to be conditioned on the construction or repair of the sidewalk as required by the terms of this chapter. No such permit shall be required for the construction or repair of any sidewalk pursuant to a contract let by the city and performed under direction of the building inspector. (Ord 140 Sec 7, 1988)

12.04.080 Contractor to be qualified. All sidewalk construction or repair shall be done by experienced and qualified contractors. Such qualifications shall include adequate financial stability, proper equipment and experience in similar construction work. (Ord 140 Sec 8, 1988)

12.04.090 Work done by owner. The city building inspector is authorized to grant a permit to any property owner to construct a sidewalk in front of or adjacent to any real estate owned by him, conditioned that such owner is skillful and competent to construct the same in the manner provided in Section 12.04.060. (Ord 140 Sec 9, 1988)

12.04.100 Permit revocation. The building inspector may revoke any permit issued under this chapter for any violations of these provisions. (Ord 140 Sec 10, 1988)

## Chapter 12.08

### SIDEWALK USE REGULATIONS

#### Sections:

12.08.010 Definitions

- 12.08.020 Sidewalks to be cleared
- 12.08.030 Failure to clear
- 12.08.040 Sidewalk to be maintained
- 12.08.050 Adjacent parking lots
- 12.08.060 Special days and privileges
- 12.08.070 Pedestrian safety
- 12.08.080 Display hours
- 12.08.090 Damaging utility poles
- 12.08.100 Posting prohibited
- 12.08.110 Roller skates, roller blades and skateboards

12.08.010 Definitions. Words and terms used in this chapter shall have the meanings prescribed in this section as follows:

ASidewalk@ means the portion of the street right-of-way designed for pedestrian travel.

The terms Agoods@, Awares@, Amerchandise@ or commodities@ embrace and include new or used automobiles, displayed without license plates, with appropriate markings, stickers or signs, signifying that said automobile or automobiles are only displayed for sale. (Ord 79, Sec I, 1976)

12.08.020 Sidewalks to be cleared.

A. The occupant of any premises, or the owner of any unoccupied premises, is required to keep the sidewalks in front of or adjacent to such premises, so far as is practicable and reasonable, clear from snow, ice, rubbish, excessive dirt or any encumbrance, to facilitate pedestrian use. Whenever any snow or ice has fallen or accumulated, it shall be cleared within twenty-four hours after it has fallen or accumulated.

B. No person shall place, store ro exhibit any goods, wares, merchandise or material upon any public sidewalk in the city.

C. No person owning, building or repairing any house or other building shall permit any lumber, brick, plaster, mortar, earth, clay, sand, stone or other material to remain on the sidewalk after sunset of the day in which it was placed there, without permission, in writing, from the chief of police, subject to any safeguards he may prescribe, (Ord 79 Sec II, 1976)

12.08.030 Failure to clear. If any occupant or owner neglects or fails to clear ice, snow, debris or other obstructions from the sidewalk adjoining his premises within the time limited, or otherwise permits such obstructions to accumulate on such sidewalk, he is guilty of a violation of this

chapter and in addition, the city may cause the same to be cleared and the expenses of removal shall become a debt to the city from the occupant or owner of such premises, and shall be collected as any other debt to the city. (Ord 79 Sec III, 1976)

12.08.040 Sidewalk to be maintained. The occupant of every lot or premises adjoining any street, or the owner of such lot or premises, if the same is not occupied, shall keep all sidewalks adjoining such lot or premises clean and clear of dirt, weeds, refuse and litter, nor shall he permit any tree, shrub or other vegetation to encroach upon or over any sidewalk or in any other manner obstruct the same so that it would interfere with the free passage of persons using such sidewalk. (Ord 79 Sec IV, 1976)

12.08.050 Adjacent parking lots. No person shall construct or maintain any parking lot or space for the parking of motor vehicles adjacent to any sidewalk without first providing guardrails, blocking devices or other suitable installations approved by the city engineer adequately protecting the adjacent sidewalk from any encroachment or obstruction resulting from the parking of motor vehicles in said lot. (Ord 79, Sec V, 1976)

12.08.060 Special days and privileges. The city council has the authority to establish by resolution special days and privileges for the benefit of the city merchants and businesses for displaying and selling merchandise other than in their stores. Except as otherwise provided by such resolution, merchants in the city are permitted to display merchandise, wares, goods, appliances, commodities and moveable advertising signs on the sidewalks, subject to the following conditions and restrictions:

A. Merchants and businesses located on North and South Bridge Streets and on East and West Broad Streets are permitted to display their merchandise, wares, goods, appliances, commodities and moveable advertising signs adjacent to the front of their place of business, on the city sidewalks, providing that there shall be a minimum of eleven feet between the outer edge of the street curb and such display of clear, unobstructed sidewalk for pedestrian traffic.

B. Merchants and businesses located in any area of the city other than as set forth in subsection A of this section are permitted to use the city sidewalk for display, advertising and sale purposes adjacent to their place of business, providing they leave two-thirds or four feet of the outer edge of the sidewalk, whichever is greater, clear and unobstructed for pedestrian traffic. (Ord 79 Sec VI, 1976)

12.08.070 Pedestrian Safety. No merchandise, goods, wares, appliances, commodities, display and advertising signs which have sharp, pointed or cutting edges shall be displayed in such a manner as to endanger the bodies or limbs of pedestrians using city sidewalks. (Ord 79 Sec VII, 1976)

12.08.080 Display hours. All merchandise, wares, goods, appliances, commodities and moveable advertising signs shall be removed from the city sidewalks at the close of each merchant=s businessman=s day, and shall not be left on display overnight. (Ord 79 Sec VIII, 1976)

12.08.090 Damaging utility poles. No person shall hack, cut, mutilate, disfigure or in any manner injure any telegraph, telephone, electric light, railway or fire alarm pole adjacent to any street, sidewalk, alley, park, lane or public place in the city. (Ord 79 Sec IX, 1976)

12.08.100 Posting prohibited. No person shall tack, nail, paste or in any manner attach or affix to any telegraph, telephone, electric light, power or fire alarm pole any advertisement or any advertising matter, sign, notice or placard, adjacent to any street, sidewalk, alley, park, lane or public place in the city. (Ord 79 Sec X, 1976)

12.08.110 Roller skates, roller blades and skateboards. It is unlawful and a misdemeanor for any person to use or ride roller skates, roller blades or skateboards upon the public sidewalks of the city in areas where there are signs prohibiting such use. It is unlawful and a misdemeanor for any person to ride or use roller skates, roller blades or skateboards on public sidewalks in a careless, dangerous or negligent manner likely to endanger any person or property. (Ord 213 Sec 1, 1995)

## Chapter 12.12

### PUBLIC PARKS

#### Sections:

- 12.12.010 Closing hours
- 12.12.020 Unlawful presence

12.12.010 Closing hours. All areas within the city

designated as public parks shall be closed from sunset to sunrise unless otherwise posted.(Ord. 142 Art I, 1988)(Ord. 267 Sec 1, 2001)

12.12.020 Unlawful presence. It is unlawful for any person to loiter, idle, wander, stroll or be in or upon the public parks of the city whenever said parks are closed. (Ord. 142 Art II, 1988) (Ord. 267 Sec. 1, 2001)

## Chapter 12.16

### COMMUNITY BEACH

#### Sections:

- 12.16.010 Care of property and appurtenances
- 12.16.020 Disposal of dangerous objects
- 12.16.030 Rules and regulations
- 12.16.040 Dogs

12.16.010 Care of property and appurtenances. No person shall wilfully and maliciously break down, injure, remove or destroy any tree, bench, diving board, raft, table, beach, building, sign or appurtenance of the Linden community beach. (Ord 32 Sec 1, 1960)

12.16.020 Disposal of dangerous objects. No person shall throw, place, drop or otherwise dispose of any glass, tin or other metal, or any other object of any kind, in the water or on the beach or in any other place where such object could constitute a hazard to bathers or other persons using the premises. (Ord 32 Sec 2, 1960)

12.16.030 Rules and regulations. The city council shall, from time to time, establish the hours for the use of the community beach and make such other rules and regulations as they may deem necessary to control the use thereof and may by such rule or regulation limit the use thereof to bona fide residents of the city and their guests. (Ord 32 Sec 3, 1960)

12.16.040 Dogs. No person or persons as owner, keeper or under whose control a dog or dogs may be, shall allow the same to run at large upon the beach or swim in or enter the water thereof. (Ord 32 Sec 4, 1960)

## Chapter 12.20

FAIRVIEW COMMUNITY CEMETERY

Sections:

- 12.20.010 City authority
- 12.20.020 Rules and regulations
- 12.20.030 Fees and charges
- 12.20.040 Ownership of grave lots
- 12.20.050 Sale of parcels by city
- 12.20.060 Transfer of ownership
- 12.20.070 Care and maintenance
- 12.20.080 Prohibited acts

12.20.010 City authority. Pursuant to Section 10.10 of the City Charter the city by this chapter provides for the operation, regulation and maintenance of Fairview Cemetery. (Ord 170 Sec 1, 1992)

12.20.020 Rules and regulations. The city council shall adopt rules and regulations for the operation of the cemetery. The city council may, from time to time, adopt new or amended rules as the council shall deem necessary. All rules shall be adopted by resolution. No such rules shall conflict with this chapter. (Ord 170 Sec 2, 1992)

12.20.030 Fees and charges. The city council shall set all fees and charges related to the function of the cemetery. All such fees and charges shall be established or amended by resolution. In the event that no fee or charge has been established by resolution, then the cost to be paid shall be the actual cost of the city in providing the service requested. (Ord 170 Sec 3, 1992)

12.20.040 Ownership of grave lots. The following restrictions shall apply to lot and grave space ownership:

A. All cemetery lots shall be evidenced by a cemetery deed. Such cemetery deeds shall be issued by the city clerk. The city clerk shall, upon issuing a cemetery deed, enter into the permanent records of the city the name of the owner as evidenced on the cemetery deed.

B. Each cemetery deed shall specify the section name, lot number and grave number to which it applies. More than one parcel may be evidenced by a single deed. Only one deed shall be outstanding for any parcel.

C. The full name of the owner or owners of a parcel shall appear on the deed. Such name or names shall correspond with

those contained in the permanent records of the city as referred to in subsection A of this section. (Ord 170 Sec 4, 1992)

12.20.050 Sale of parcels by city. Grave sites may be purchased in cash or on contract. The required terms and conditions of any contract for purchase shall be established by the city council by resolution. The following conditions shall apply to any purchase of grave sites:

A. Payment shall be made to the city treasurer. All payments shall be placed in the general fund of the city.

B. Any payments required by contract shall be promptly made. Failure to make any payment when due shall result in immediate forfeiture of any rights under the contract and any payments previously made.

C. No cemetery deed shall be issued until the contract is paid in full.

D. No burial shall be allowed until the contract is paid in full and a cemetery deed issued. (Ord 170 Sec 5, 1992)

12.20.060 Transfer of ownership. Any section, lot or grave may be transferred. The following rules shall apply to such transfer:

A. A transfer of ownership affidavit shall be completed by the current owner. The affidavit shall be signed by the current owner(s), his or her guardian or his or her personal representative, if deceased. The original cemetery deed shall be attached to the affidavit. These documents shall be submitted to the city clerk.

B. The city clerk shall issue a new cemetery deed or deeds as the situation may require. The permanent records of the city shall be changed to correspond with the transfer.

C. In the event that the original cemetery deed is lost, the owners of record are deceased or other complications arise concerning ownership, a transfer of ownership affidavit shall be completed by the person requesting transfer or use of a lot or grave site. The city clerk shall review the information presented. The city clerk may, in his or her sole discretion, either allow a transfer, deny a transfer or request additional documentation prior to consideration. Should the city clerk determine that a transfer or a burial is to be allowed, such action shall be final. Ownership shall be changed on the permanent records of the city. No liability for error shall result in personal liability to the city clerk, the city or any of the agents, employees or contractors. (Ord 170 Sec 6, 1992)

12.20.070 Care and maintenance. The following rules shall apply to the care and maintenance of the cemetery:

A. Care, maintenance and operation of the city cemetery shall be under the supervision and control of the city manager and the sexton.

B. The city reserves the right to enter upon any grave and to perform all work necessary for the care and upkeep of all graves within the cemetery.

C. The owner of the grave, or legal representative, may designate at any time, in writing, who is to be buried at the gravesite.

D. The burial permit shall bear the name of the interred, the location of the gravesite, and any other such information deemed necessary, and shall be signed by the sexton.

E. Foundations for any heavy materials such as markers, monuments, stones, etc. shall be placed by the sexton.

1. Orders for foundations shall be submitted to the city clerk. Fees for services shall be set by resolution of the council and billed by the clerk's office.

2. The sexton shall order and place all foundations.

F. The city shall assume no responsibility for errors in opening graves. Orders by morticians for the opening of graves will be considered as orders from lot owners.

G. All markers, monuments, vaults or mausoleums are subject to the approval of sexton and the council and will be removed if not approved by the same. (Ord 170 Sec 7, 1992)

12.20.080 Prohibited acts. The following acts or activities are prohibited at Fairview Cemetery:

A. Graves shall not be used for any other purpose other than as a place for the remains of human bodies.

B. No interment of any deceased human shall be made in any place other than within cemeteries devoted to that purpose.

C. No person shall deface, injure, disturb, mark, or write upon any marker, monument, headstone, fence or structure in the cemetery.

D. It shall be unlawful for any person to leave or scatter rubbish within the confines of the cemetery.

E. No person shall conduct themselves in a disorderly manner within the limits of the cemetery.

F. Walking or driving through cemetery grounds to property or land outside of the cemetery for the purpose of saving time or distance is strictly prohibited.

G. No vehicle shall be driven in the cemetery at any time at a speed greater than is reasonable and proper, under all circumstances, and in no event in excess of fifteen miles per hour. (Ord 170 Sec 8, 1992)



Title 13

PUBLIC SERVICES

Chapters:

13.04 Water System

13.08 Sewer System

Chapter 13.04

WATER SYSTEM

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13.04.010 Definitions

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ARTICLE II. RATES, RULES AND  
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- 13.04.220 Water Extensions Outside City Limits
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WATER

ARTICLE I. GENERAL PROVISIONS

13.04.010 Definitions. All words and phrases used in this chapter shall have the same respective meaning as like or similar words and phrases in Act No. 94 of the Public Acts of Michigan of 1933, as amended. Other terms are specifically defined as follows:

AWater connection@ means that part of the consumer=s water system between the city=s distribution main and the curb stop box.

AWater extension@ means that part of the consumer=s water supply system extending from the end of the water connection into the premises served and ending at and including the meter shut-off valve.

A Waterworks superintendent@ means the duly appointed officer of the city or his authorized representative and/or representatives. (Ord 17 Sec 4(part); (Ord 16 Sec 21, 1948); (Ord 287, 2005)

13.04.020 Fluoridation. The city council is authorized and directed to institute fluoridation of the water supply of the city to equal one part of fluoride to every one million parts of water and to do all things necessary to carry out this directive. (Ord 108 Sec 1, 1980); (Ord 287, 2005)

## ARTICLE II. RATES, RULES AND REGULATIONS OF SYSTEM

### 13.04.030 Water rates.

A. Determination of Charges, Rules and Regulations. Water rates shall be determined by resolution of the city council and the council may also make such rules and regulations governing the operation of the city water system and the collection of water rates as it deems necessary. Such charges, rules and regulations shall have the same force and effect as ordinances. The rates charged are on file in the office of the city clerk.

B. Billing and Payment. Rates shall be billed to users on a quarterly basis. Billing shall be made by the City on the first day of the quarter, or as shortly thereafter as practical. All bills shall be due and payable on the 25<sup>th</sup> day of the quarter. A penalty of ten percent (10%) shall be added if the bill is not paid or postmarked by the due date.

C. Payment Required for All Services. No free water service shall be rendered by said water supply system to any person, firm or corporation, public or private, or to any public agency or instrumentality. Any service rendered to the city or any of its departments or agencies shall be paid for by the city as the established rate, as the service accrues, and said moneys shall be accounted for in the same manner as other revenues of the water supply system.

D. Fire Hydrants. For fire protection, the city shall pay, out of its general funds, the sum of seventy-five dollars per year for each fire hydrant.

E. Contractor. Building contractors shall pay a water service fee to the city for the use of water service during construction. The fee shall be established by resolution of the city council as provided in sub-section B.

F. Installation costs. The city council shall control all tapping into mains and lines and shall have the right to charge a reasonable fee for the same, and for installations, as may be fixed or approved from time to time by the city council.

G. Connection charges. Connection charges shall be determined by resolution of the city council. The charges shall have the same force and effect of ordinances.

H. Lien. The charges for water, and other services which are under the provisions of Section 21 of Act 94 of the Public Acts of 1933 as amended, are made a lien on all premises served thereby unless notice is given that a tenant is responsible, and are recognized to constitute such lien, and whenever any such charge against any piece of property is delinquent for more than one quarterly billing period, 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. All provisions of the city and of the laws of Michigan applicable to the time and manner of certification and collection of delinquent city taxes levied against real estate in the city shall be applicable to and shall be observed in the certification and collection of charges for water, and other services; provided, however, where notice is given that a tenant is responsible for such charges and service as provided by Section 21, no further service shall be rendered to such piece of property until a cash deposit in an amount as established by resolution of the city council has been made as security for the payment of such charges and services. The city agrees that it will take all steps and perform all acts legally permissible to assure the prompt collection of all such charges for water and other services rendered by the system.

In addition to other remedies provided in this chapter or provided by law, the city shall have the right to shut off and discontinue the supply of water to any premises for the nonpayment, when due, of water bills rendered for water furnished to said premises by the system. The city may also shut off and discontinue water service for the purpose of making any necessary repairs to the system. (Ord 82 Sec I & II, 1976; Ord 75 Sec 3, 1975; Ord 16 Sec 7, 1948; Ord 287, 2005)

13.04.040 Additional rules and regulations. The city council may make such rules and regulations governing the operation of the water supply system and the collection of the service rates as it deems necessary. Such rules and regulations shall have the same force and effect as ordinances. (Ord 16 Sec 9, 1948)

13.04.050 Operating year. The water supply system shall be

operated on the basis of an operating year commencing on July 1<sup>st</sup> to June 30<sup>th</sup>. (Amended and unnumbered, undated ordinance: Ord 16 Sec 10, 1948; Ord 287, 2005)

13.04.060 Deposit of funds. The revenues of the water supply system shall be set aside, as collected, and deposited in a bank duly qualified to do business in Michigan. The revenues shall be maintained in any funds as required by the laws of the State of Michigan. (Ord 287, 2005)

13.04.070 Sale of Bonds. In the event that the city council shall decide to sell bonds to generate funds for repair of the current water system facilities or for the construction of extensions of the existing system or any new facilities for the water system, the said bonds shall be sold in accordance with the then existing State law and an appropriate ordinance shall be adopted for the sale. (Ord 287, 2005)

13.04.080 City Covenants. The city may enter covenants regarding the issuing of any bonds or other forms of indebtedness necessary to repair, extend, construct or otherwise expend funds for the betterment of the water system.

#### ARTICLE III, OPERATION OF SYSTEM

13.04.090 Construction and maintenance of system.

A. The construction, alteration, repair and management of the water system shall be under the supervision and control of the city council.

B. The water supply system of the city shall be operated under the direction and control of the city council, subject to all of the provisions and regulations and conditions set forth in this article. (Ord 17 Sec 1, 1949; Ord 16 Sec 6, 1948)

13.04.100 Office of waterworks superintendent. There is created the office of waterworks superintendent, who shall be appointed by the city council and who, under the direction of the city council, shall have control of the operation and maintenance of the water supply system and shall direct and control all employees of the water supply system who may be authorized or appointed by the city council. The compensation of the waterworks superintendent and all other employees of the water supply system shall be fixed and determined from time to time by resolution, motion or order of the city council and may be changed from time to time at the pleasure of the city council. (Ord 17 Sec 2, 1949)

13.04.110 Collections. The city treasurer is authorized and directed to receive and collect all money payable to the city water supply system, to keep proper records thereof and currently report the same to the city council, and to deposit, allocate and disburse the same pursuant to the city water supply system ordinances and as from time to time directed by the city council. (Ord 17 Sec 5, 1949; Ord 287, 2005)

13.04.120 Application for connection. A property owner, contractor or other person seeking connection to the water system shall first pay the water connection fee in full at the time application is made or at the time a building permit is sought, whichever shall occur first. Payment of the water connection fee shall be noted on the building permit. Main water meters shall be installed only by city employees. A second water meter, for measuring outside water consumption, shall be installed by a properly trained person at the direction and expense of the property owner. At the time a main water meter is installed, written notice thereof shall be delivered to the city treasurer. A copy of the notice shall also be kept by the Department of Public Works.

13.04.130 Water connections. Water connections shall only be installed by the city and upon prepayment of the tap-in fee. The cost for all material and labor involved in tapping the main, laying the copper pipe from the distribution main to the curb stop and box, and the furnishing and placing of the curb stop and box shall be billed after the connection to the water system.

In all cases the water connection shall be constructed of type AK@ copper pipe unless the connection is two inches or greater, in which ductile iron pipe or equivalent pipe may be used. All water connections shall be laid to the depth of five feet under the surface of the street or lowest part of the gutter. No water connection shall be laid in the same trench with a sewer pipe unless supported upon an earth shelf at least one foot above the sewer. The city shall install a brass stopcock with a valve box which shall be placed approximately one foot outside of the street side of the sidewalk and this stopcock shall be under the exclusive control of the city. No person other than an authorized employee of the city shall open or close or otherwise interfere with said stopcock; provided, however, that any licensed plumber may stop and/or open the stopcock in emergency cases when authorized by the waterworks superintendent. In all instances, the installation of a water connection shall be in conformance with the **City of Linden**

**Design Standards and Construction Specifications** in place at the time of connection. (Ord 17 Sec 7, 1949; Ord 287, 2005)

13.04.140 Water extensions. All pipe used in the water extension shall be of the same type as described in Section 13.04.130. All water extensions shall be laid to the minimum depth of four and one-half feet under the surface of the ground.

No water extension shall be placed in the same trench with a sewer pipe unless supported upon an earth shelf at least one foot above the sewer. The entire water extension shall be installed by the owners at his/her expense and shall include a meter shut-off conveniently placed for the future installation of a meter. The water extension shall be protected from damage of every nature and any needed repairs shall be made whenever so notified by the city. Whenever a water extension is frozen it shall be thawed out by the customer at his own expense.

The water extension shall not be covered until inspected and approved by the waterworks superintendent. (Ord 17 Sec 8, 1949)

13.04.150 Water meters. Water furnished from the city water supply system as of July 1, 1977, to each premises shall be measured by a meter or meters. Such water meters shall be furnished and installed by the city and shall remain the property of and under the control of the city. The city shall have access to the meter for the purpose of reading, testing, and repairing. The customer shall provide a suitable place for the installation of the meter and if in the judgement of the city a meter pit should be constructed, such meter pit shall be constructed in accordance with the plans and specifications supplied by the city. No persons other than an authorized employee of the city shall break or injure the seal on, or change the location of, alter or interfere in any way with any meter. The water customer shall be responsible for all damage to the meter or seal caused by any act or negligence of any person other than an employee of the city, including damage by hot water, frost or other cause and the expense to the city caused thereby shall be charged to and collected from the water customer. (Ord 90 Sec 2, 1976; Ord 17 Sec 9, 1949 ; Ord 287, 2005)

A property owner may request the installation of a second or subsequent meter for the purpose of separately measuring water used for outside uses such as lawn or garden watering. Any and all expenses associated with the installation of such a meter shall be the obligation of the property owner and shall be paid in advance to the city prior to the installation of the

meter. The property owner shall make all arrangements for installation of the meter. Upon completion, the property owner shall advise the city that the installation is complete. The city shall inspect the installation to determine whether the installation is proper. **NO** water shall be permitted to flow through the meter until approved by the City of Linden.

A. From and after the effective date of the ordinance, any person seeking a building permit for the construction of a new residential or commercial building shall declare whether an outdoor sprinkler system is to be installed, a second water meter to measure outside water consumption shall be installed. This section shall become effective January 1, 2005 (Ord 291, 2004)

13.04.160 Cross-connectionsBGenerally.

A. Whenever any premises is supplied with water from two or more sources, one of which sources is the city service, the city service must be entirely separate and no physical connection with any other service shall be permitted if there is any possibility that such other source may be or become dangerous to the public health or safety. Wherever cross-connections are permitted or existing, they shall be made to conform with the regulations of the Michigan Advisory Council of Health adopted November 3, 1938, as amended from time to time.

B. The city adopts by reference the water supply cross-connection rules of the Michigan Department of Public Health, and any amendments or updates thereto, being R 325.431 to R 325.440 of the Michigan Administrative Code. (Ord 58 Sec 1, 1973; Ord 17 Sec 10, 1949)

13.04.170 Cross-connectionsBInspections. It is the duty of the city council to cause inspections to be made of all properties served by the public water supply where cross-connection with the public water supply is deemed possible. The frequency of inspections and re-inspections based on the potential health hazards involved shall be as established by the city council and as approved or directed by the by the Michigan Department of Public Health. The city shall also make reasonable rules regarding the installation, maintenance and testing of backflow prevention devices shall be of the responsibility of the property owner. (Ord 58 Sec 2, 1973; Ord 287, 2005)

13.04.180 Cross-connections B Right to enter for inspection.



The representative of the city 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-connection. On request, the owner, lessees or occupants shall provide 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-connection.(Ord 58 Sec 3, 1973)

13.04.190 Cross-connectionBDiscontinuance of service. The city council is authorized and directed to discontinue water service after reasonable notice to any property wherein any connection in violation of Sections 13.04.170 through 13.04.190 of this chapter 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(s) has been eliminated in compliance with the provisions of Sections 13.04.170 through 13.04.210. (Ord 58 Sec 4, 1973; Ord 287, 2005)

13.04.200 Cross-connectionsBPosting unsafe outlets. The potable water supply made available on the properties served by the public water supply shall be protected from possible contamination as specified in Sections 13.04.170 through 13.04.200 of this chapter and by the state and city 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**

(Ord 58 Sec 5, 1973; Ord 302, 2006).

13.04.210 Fire Hydrants. No person shall open or use water from any public or private fire hydrant for any purpose, except for extinguishing fire, unless a written permit from the waterworks superintendent has been issued for such use. (Ord 17 Sec 11, 1949)

13.04.220 Water extensions outside the city limits.

A. Any person or persons applying for water service

outside the city limits shall file an application with the city council setting forth all pertinent data which shall include the following information:

1. Name and address of applicant or applicants;
2. Proposed number and names of customers to be served;
3. Number of taps and type of service required by each proposed customer;
4. Route to be followed;
5. Synopsis of future development.

B. No service shall be provided outside the city limits without a franchise agreement with the municipality wherein the property to be served is situated.

C. Any and all costs associated with providing water service outside the city limits shall be paid by the owner of the property to be served. The costs shall include, but not be limited to the actual costs incurred by the city for administration, engineering, legal and labor associated with extension and connection of water service.

D. Fees for connection and water service outside the city limits shall be established by resolution of the city council in the same manner as set forth for in-city service.

13.04.230 Liability of the city. All parties using water from the city waterworks shall do so at their own risk and the city or employees thereof shall not be liable for any damages occasioned by or growing out of the stoppage of said water, not for any insufficient supply of water, nor for accidents or any damage of any kind caused by or growing out of the use or failure of such water. (Ord 17 Sec 14, 1949)

## Chapter 13.08

### SEWER SYSTEM

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#### ARTICLE I. GENERAL PROVISIONS

13.08.010 Definitions. For purposes of this chapter, the following terms shall have the meanings stated in this section unless the context indicates that a different meaning is intended.

ABOD,@ denotes biochemical oxygen demand, means the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five days at 20 degrees C., expressed in milligrams per liter.

ABuilding drain@ means that part of the lowest horizontal piping of a drainage system which receives the discharge from waste pipes inside the walls of the building and conveys it to the building sewer, beginning five feet outside of the inner face of the building wall.

ABuilding sewer@ means the extension from the building drain to the public sewer or other place of disposal.

ACity@ means the City of Linden, Genesee County, Michigan.

ACity sewer@ means any sewers constructed after the effective date of the ordinance codified in this section (The effective date of Ord 48 is June 24, 1970.) over which the city has or shall have possession, control and operating responsibility.

ACombined sewer@ means a sewer designed to carry both sanitary sewage and storm and surface water.

ACouncil@ means the city council of the City of Linden.

ACounty@ means the County of Genesee, Michigan.

ACounty agent@ means the Genesee County Drain Commissioner.

ACounty sewer@ means the Genesee County Sanitary Sewage Disposal No. 3 or any other sewer constructed by the county and the possession, control and operating responsibility of which is not vested in the city.

AGarbage@ means solid wastes from the domestic and commercial preparation, cooking and dispensing of food, and the handling, storage and sale of produce.

AIndustrial wastes@ means the liquid wastes from industrial, manufacturing processes, trade or business as distinct from sanitary sewage.

ANatural outlet@ means any outlet into a watercourse, pond, ditch, lake or other body of surface or groundwater.

ANormal domestic sewage@ means sanitary sewage with a concentration of 200 mg/l of five day BOD and 200 mg/l of suspended solids.

AOperation and maintenance@ means all work, material, equipment, utilities, administration and other efforts required to operate and maintain the sewage treatment works and sanitary sewer system consistent with insuring adequate treatment to produce an effluent in compliance with the NPDES permit and other applicable state and federal regulations and includes the cost of replacement.

APerson@ means any individual, firm, company, association, society, corporation or group, public or private.

ApH@ means the logarithm of the reciprocal of the weight of hydrogen ions in grams per liter of solution.

AProperly shredded garbage@ means 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, and no particle greater than one-half inch in any dimension.

APublic sewer@ means any county sewer or city sewer located in the city.

AREplacement@ means the replacement in whole or in part of any equipment, machinery and appurtenances in the wastewater transportation or treatment system to insure continuous treatment of wastewater in accordance with the NPDES permit and other applicable state and federal regulations.

AResidential user@ means a user of the sewerage system whose premises or buildings are used primarily as a domicile for one or more person including dwelling units such as detached, semidetached or row houses, mobile homes, apartments or permanent multifamily dwellings (transit lodging is not included as it is considered commercial).

ASanitary sewer@ means a sewer which carries sewage and to which stormwater, surface water and groundwater are not intentionally admitted.

ASewage works@ means all facilities for collecting, pumping, treating and disposing of sewage.

ASewer treatment charges@ means the sum of all applicable user charges, purchases and debt service charges.

ASewer treatment plant@ means any arrangement of devices and structures used for treating sewage.

ASewer@ means a pipe or conduit for carrying sewage.

AShall@ is mandatory; Amay@ is permissive.

AStorm drain@ (sometimes termed Astorm sewer@) means a sewer which carries storm water and surface water and drainage, but excludes sewage and industrial wastes, other than unpolluted cooling water.

ASuspended solids@ means 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.

AUnit@ means that measure of potential sewage production which is equivalent to the quantity of sewage produced by or emanating from a single-family residence occupied by an average family. The number of units assigned to premises of various types is as set forth in Table 13.08.240, Table of Unit Factors.

AUser@ means any premises connected to a public sewer and includes appurtenant land and improvements.

AUser charge@ means a charge levied on users of the treatment works for the cost of operation and maintenance of the District No. 3 sewage disposal system pursuant to section 204(b) of Public Law 92-500 as amended and includes the cost of replacement.

AWatercourse@ means a channel in which a flow of water occurs, either continuously or intermittently. (Ord 156 (part), 1990; Ord 48 Art I Sec 1B34, 1970)

13.08.020 Connection to public sewer required. All premises in the city upon which there exists presently or at any time after the effective date of the ordinance codified in this section (the effective date of Ord. 48 is June 24, 1970), a building or structure in which water is used or is available for use, shall be connected to a public sewer if such public sewer is available to such premises. Such connection shall be made, in the case of premises upon which such a building or structure presently exists, within twelve months after the public sewer becomes available to such premises. Such connection shall be made in the case of future improvement of the premises so as to require connection to a public sewer, as above provided for, to occupancy or use of the building or structure. No part of a new subdivision shall be approved unless the developer or subdivider agrees to install in such subdivision, at his own expense, an approved system of lateral sewers and to connect the same to a public sewer. No such subdivision or portion of such subdivision shall be connected to the public sanitary sewer until laterals have been cleaned of debris and televised at the developer=s expense. A public sewer shall be deemed to be available to any premises if it is located in a right-of-way, easement, highway, street or public way which crosses, adjoins or abuts upon the premises and which right-of-way, easement, highway, street or public way passes not more than two hundred feet distant from the building or structure on such premises in which water is used or is available for use.(Ord48 Art VIII Sec 1, 1970)

13.08.030 Compliance with provisions. Compliance by any owner of any premises or by any other person with any requirements or regulations of the county agent or with the terms of any permit issued by the county agent shall not relieve such owners or other person of the obligation of complying with all requirements and regulations of the city even though the latter may be more restrictive than those of the county agent. (Ord 48 Art VIII Sec 2, 1970)

13.08.040 Payment for connection to system. No premises,

public or private, shall be exempt from payment of the connection charges and sewage disposal and treatment charges established by resolution of the city council. The city shall pay all such charges with respect to city property connected to public sewers. (Ord 48 Art VIII Sec 3, 1970)

13.08.050 Enforcement. The provisions of this chapter are enforceable through the bringing of appropriate action for injunction, mandamus or otherwise, in any court having jurisdiction. Any violation of this Chapter is deemed to be a nuisance per se. (Ord 48 Art VIII Sec 5, 1970)

## ARTICLE II. SEWERS AND CONNECTIONS

13.08.060 Permit required for connection of public sewer to system. Neither the city nor any other person shall connect any public sewer or system of public sewers to any county sewer, or to any city sewer which is connected directly or indirectly to any county sewer, without first obtaining a permit therefor from the city. No person other than the city or a contractor licensed by the city and properly bonded shall connect any building sewer to any city sewer. Written approval from the city shall be required before connection to the city sewer. Each such connection permit shall show the location and extent of the work, information regarding the owner, the contractor and the engineer, and any other pertinent information as shall be determined to be necessary. (Ord48 ArtII Sec 1,1970)

13.08.070 Requirements for infiltration testing. A test for water infiltration into such public sewer or system of public sewers shall be performed by the owner or contractor, after completion thereof, in accordance with procedures established by the county agent. When such party has determined that the public sewer or system meets the following requirements for maximum infiltration, then he shall arrange for results of such tests to be verified by the county agent. Groundwater infiltration at any time shall not exceed two hundred fifty U.S. gallons per inch of pipe diameter per mile of sewer per twenty-four hour period. It shall be the responsibility of the city or other party constructing the sewer or system to make whatever corrections may be necessary to the same to meet the infiltration requirements prior to using the county sewers or the city sewers which connection is made. If, in the opinion of the county agent, groundwater conditions at the time of the test would not provide a conclusive test of the extent of infiltration, then an exfiltration test shall be required. If an infiltration test is determined to be necessary, the maximum

exfiltration rate shall be the same as that permitted for infiltration. This provision shall be enforced by a county agent.(Ord 48 Art II Sec 2, 1970; Ord 288, 2005)

13.08.080 Permit required for connection of building sewer to system. No building sewer shall be directly connected to any county or city sewer by any person without first obtaining a permit therefor from the city. The city treasurer shall collect the city sewer connection charges and permit fees as provided by resolution of the city council. An inspection fee shall be charged by the city to cover the cost of the inspection of the connection and to verify the result of the infiltration test. The party to whom such permits are issued shall be responsible for notifying the city clerk=s office at least twenty-four hours in advance of the date and time when such a connection is to be made so that proper inspection of the same can be made (ord 288, 2005).

13.08.090 Manner of connection. All connections of county sewers or city sewers shall be made in a workmanlike manner and in accordance with the procedures established by the county agent. (Ord 48 Art III Sec 2, 1970)

13.08.100 Requirements for connection.

A. A separate and independent building sewer shall be provided for every building.

B. Building sewers from lateral sewers in the street or the easement to the property line shall be constructed in conformance with the **City of Linden Design Standards and Construction Specifications** in place at the time of the construction or connection to the sanitary sewer, whichever is later. (Ord 288, 2005)

13.08.110 Responsibility for costs and indemnification. 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. (Ord 48 Art III Sec 4, 1970)

13.08.120 Conformation with regulations and standards. The size, slope alignment, material of construction of a building sewer and the methods to be used in excavating, placing of pipe, jointing, testing and backfilling the trench, shall conform to the regulations and standard specifications of the city and other applicable rules and regulations of the state of Michigan. (Ord 48 Art III Sec 6, 1970; Ord 288, 2005)



13.08.130 Elevation of building sewer. Whenever possible, the building sewer should 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, sanitary sewage carried by such building drain shall be lifted by an approved means and discharged to the building sewer. (Ord 48 Art III Sec 7, 1970)

13.08.140 Safety requirements for excavation. All excavation for building sewer installation shall be adequately guarded with barricades and lights so as to protect the public from hazard. Street, sidewalks and other public property disturbed in the course of the work shall be restored in a manner satisfactory to the city.(Ord 48 Art III Sec 8, 1970; Ord 288, 2005)

### ARTICLE III. DISCHARGE INTO SEWERS

13.08.150 Connection of runoff drains to sewer system prohibited.

A. No person shall connect or cause to be connected any downspouts, foundation drains, yard drains, areaway drains, catchbasins, weep tile, perimeter drains or other sources of storm surface runoff or groundwater to any public sewers or to any building sewer or drain which is connected to a public sewer nor shall any person discharge or cause to be discharged any stormwater, surface water, groundwater, roof runoff, subsurface drainage, uncontaminated cooling water or unpolluted industrial process water into any sewer or into any building sewer or drain which is connected to a public sewer.

B. Stormwater and all other unpolluted drainage shall be discharged to such sewers as are specifically designated as storm sewers, or to a natural outlet approved by the county agent and the city. Industrial cooling or unpolluted process waters may be discharged, upon approval of the county agent and the city, to a storm sewer or natural outlet. (Ord 48 Art IV Sec 1 & 2, 1970)

13.08.160 Prohibited discharges.

A. No person shall discharge or cause to be discharged any of the following described water or wastes to any public sewer:

1. Any liquids, solids or gasses which by reason of their nature or quantity are, or may be, sufficient either alone or by interaction to cause fire or explosion or be injurious in any other way to the operation of the POTW. Specifically prohibiting all substances with a closed cup flash point of less

that 140 degrees Fahrenheit.

2. Solid or viscous substances which will or may cause obstruction to the flow in a sewer or other interference with the operation of the wastewater system.

3. Any wastewater having a pH less than 5.0 or higher than 10, or having any other corrosive property capable of causing damage or hazard to structures, equipment, or personnel of the system.

4. Any wastewater containing toxic pollutants in sufficient quantity, either singly, or by interaction to injury to interfere with any wastewater treatment process, constitute a hazard to humans or animals, or to exceed the limitation set forth in Categorical Pretreatment Standards as adopted by Genesee County, Michigan. Toxic pollutants shall include but not be limited to any pollutants that result in toxic gasses, vapors and fumes in quantities that may cause acute worker health and/or safety problems. Toxic pollutants identified as toxic pollutants by Genesee County, Michigan.

5. Any substance which may cause the POTW's effluent or treatment residues, sludges, or scums, to be unsuitable for reclamation and reuse or to interfere with the reclamation process. Prohibited substances include, but are not limited to, petroleum oil, nonbiodegradable cutting oil or mineral oil products in amounts that will interfere with the treatment or pass through the treatment plant. In no case, shall a substance discharged to the POTW cause the POTW to be in non-compliance with sludge use or disposal criteria, guidelines or regulations developed under Section 405 of the Act; any criteria, guidelines, or regulations affecting sludge use or disposal developed pursuant to the Solid Waste Disposal Act, the Clean Air Act, the Toxic Substances Control Act, or State standards applicable to the sludge management method being used.

6. Any substance which will cause the POTW to violate its NPDES and/or other disposal system permits.

7. Any substance with objectionable color not removed in the treatment process, such as, but not limited to, dye wastes and vegetable tanning solutions.

8. Any wastewater having a temperature which will inhibit biological activity in the POTW treatment plan resulting in interference; but in no case, wastewater with a temperature at the introduction into the POTW which exceeds 40NC (104NF).

9. Any wastewater containing any radioactive wastes or isotopes of such half-life or concentration as exceed limits established by the county agency in compliance with applicable State or Federal regulations.

10. Any wastewater which causes a hazard to human life

or creates a public nuisance.

13.08.170 County options on prohibited discharges

A. If any waters or wastes are discharged, or are proposed to be discharged, to the public sewers, which contain the substances or possess the characteristics enumerated in Section 13.18.160, and which in the judgement of the county agent or the city may have a 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 county agent may:

1. Reject the wastes;
2. Require pretreatment 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 sewer charges.

B. If the county agent permits the pretreatment or equalization of waste flows, the design and installation of the plant's equipment shall be subject to the review and approval of the county agent. (Ord 48 Art IV Sec 5, 1970)

13.08.180 Installation of control manholes. When required by the county agent or the city, 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 a manhole, when required, shall be accessible and safely located, and shall be constructed in accordance with plans approved by the county agent. The manhole shall be installed by the owner at his expense, and shall be maintained by him so as to be safe and accessible at all times. (Ord 48 Art IV Sec 6, 1970)

13.08.190 Determination of compliance with requirements. All measurements, tests and analyses of the characteristics of waters and wastes to which reference is made in these regulations shall be determined in accordance with AStandard 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 a building sewer is connected. (Ord 48 Art IV Sec 7, 1970)

13.08.200 Special agreements or arrangements permitted. No statement contained in this article shall be construed as preventing any special agreement or arrangement between the county and the city and any industrial waste of unusual strength or character may be accepted by the county for treatment, subject to payment therefor, by the industrial concern. (Ord 48 Art IV Sec 8, 1970)

13.08.210 Right to enter for inspection. The county agent or other duly authorized employees of the county agent or the city bearing proper credentials and identification shall be permitted to enter upon all properties for the purpose of inspection, observation, measurement, sampling and testing. (Ord 48 Art V Sec 1, 1970)

13.08.220 Nonliability for damage during inspection. While performing the necessary work on private properties referred to in Section 13.08.210, the duly authorized employee of the county or the city shall observe all safety rules applicable to the premises established by the owner or proprietor. However, neither the county nor the city shall be liable for any injury to any person or damage to any property which is claimed to be caused by the authorized employee of the county or the city. (Ord 48 Art V Sec 2, 1970)

13.08.230 Tampering or willful damage to system prohibited. No unauthorized person shall maliciously, wilfully or negligently break, damage, destroy, uncover, deface or tamper with any structure, appurtenance or equipment which is a part of the county or the city system. (Ord 48 Art V Sec 3, 1970)

#### ARTICLE IV. SEWER CHARGES

13.08.240 Connection charges Basis for payment. Each user whose premises are hereafter connected directly to a public sewer shall pay the city's connection charge as established by resolution of the city council based upon the unit factors shown in Table 13.08.240. The city council may from time to time amend or adjust the connection charge and the unit factors by resolution. Any such resolution shall have the same force and effect of ordinances. In the event that the use of a premises which is connected to the sanitary sewer is changed, the city shall assess an additional connection charge if the additional

charge is justified by the unit factors of the new use. (Ord 53(part), 1971; Ord 48 Art VI Sec 1, 1970)

**TABLE 13.08.240  
TABLE OF UNIT FACTORS**

<b>Usage</b>	<b>Unit factors</b>
Auto dealers . . . . .	.40 per 1,000 sq. ft.
Barber shops . . . . .	.08 per chair
Bars . . . . .	.06 per seat
Beauty Shops . . . . .	.30 per booth
Boardinghouses . . . . .	.20 per person
Boarding schools . . . . .	.35 per person
Bowling alleys (no bars or lunch facilities) . . . . .	.20 per alley
Car wash . . . . .	10.00 single production line
Churches . . . . .	.01 per seat
Cleaners (pick up only). . . . .	.06 per employee
Cleaners (pressing facilities) . .	1.25 per press
Clinics (minimum assignment 1.00 unit per profession). . . . .	.65 per doctor
Convalescent homes . . . . .	.30 per bed
Convents . . . . .	.25 per person
Country clubs. . . . .	.10 per member
Drug stores (with fountain service)	.10 per seat
Factories (exclusive of excessive industrial use) . . . . .	.50 per 1,000 sq. ft.
Fraternal organizations (members only) . . . . .	1.25 per hall
Fraternal organizations (Members and rentals). . . . .	2.50 per hall
Grocery stores and supermarkets	1.1 per 1,000 sq. ft.
Hospitals . . . . .	1.40 per bed
Hotels (private baths, 2 persons per room). . . . .	.25 per bed
Laundry (self service). . . . .	.50 per washer
Multiple-family residence . . . . .	1.00 per unit
Motels . . . . .	.25 per bed
Office building . . . . .	.60 per 1,000 sq. ft.
Public institutes (other than hospitals) . . . . .	.40 per employee
Restaurants (dinner and/or drinks) . . . . .	.16 per seat
Roominghouses (no meals). . . . .	.167 per person
Schools (cafeteria, without showers and/or pool) . . . . .	1.5 per classroom
Schools (showers and/or pool) . .	2.0 per classroom
Service stations . . . . .	.30 per pump

Snack Bars, drive-ins . . . . .	.10 per seat and/or stall
Store (other than specifically listed . . . . .)	.20 per employee
Swimming pool . . . . .	3.50 per 1,000 sq. ft.
Theaters (drive-in) . . . . .	.10 per car space
Theaters (inside with air conditioning) . . . . .	.0001 x weekly hours of Operation, X seats
Tourists courts (individual bath units). . . . .	.27 per cubical
Trailer parks (central bath houses) . . . . .	.35 per trailer
Trailer parks (individual bath houses). . . . .	1.00 per unit
Trailer parks (individual baths seasonal only) . . . . .	.50 per unit
Warehouses. . . . .	.10 per 1,000 sq. ft.

13.08.250 Connection charges- Lien. All connection charges and all installments thereof, together with interest, fees and penalties shall constitute a lien upon the premises connected to the sewer, and such lien shall be enforced in the same manner as are liens for city taxes.

(Ord 53 (part), 1971: Ord 48 Art VI Sec 2 & 3, 1970 Ord 288,2005)

13.08.260 Treatment Charges. The city council shall from time to time establish the sewage treatment charge by resolution. Any such resolution shall have the same force and effect of ordinances. The following provisions shall also apply to the treatment of sewage:

A. Any person who is responsible for discharging prohibited materials shall be charged the actual expense incurred by the county agency or the city for the handling, treatment and/or removal of said materials from the system.

B. Any person who is responsible for damage to the system shall be charged the full cost of repairs of the damage. The costs shall include but not be limited to labor, equipment, materials, administrative expenses, interest on borrowed funds, engineering, legal or other professional fees and charges to the county agency or city by other utilities.

C. The above charges, other than debt service charges, are user charges used to pay the cost of operation, maintenance and replacement cost of system. The equality of rates for all user classes of the system shall exist in any future modification of rates for user charges. The rates set by this section are estimated to be sufficient to provide for the expense of

operation, maintaining and replacement of the system as are necessary to preserve the system in good repair and working order. Such rates shall be revised from time to time as may be necessary to produce these amounts. An annual audit shall be prepared. Based on said audit, rates for sewage treatment shall be reviewed annually and revised as necessary by the city council by resolution to meet the system expenses and to insure that all user classes pay their proportionate share of operation, maintenance and replacement costs (Ord 288, 2005).

13.08.270 Treatment Charges - Lien. The charges for sewage treatment and other services which are under the provisions of Section 21 of Act 94 of the Public Acts of 1933 as amended, are made a lien on all premises served thereby unless notice is given that a tenant is responsible, are recognized to constitute such lien, and whenever any such charge is against any piece of property is delinquent for more than one quarterly billing period, 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. All provisions of the city and of the laws of Michigan applicable to the time and manner of certification and collection of delinquent city taxes levied against real estate in the city shall be applicable to and shall be observed in the certification and collection of charges for sewage treatment and other services; provided, however, where notice is given that a tenant is responsible for such charges and services as provided by Section 21, no further water service shall be rendered to such piece of property until a cash deposit in an amount as established by resolution of the city council has been made as security for the payment of such charges and services. The city agrees that it will take all steps and perform all acts legally permissible to assure the prompt collection of all such charges for sewage treatment and other services rendered by the system.

13.08.280 Water Meter for Lawn Systems. A property owner shall have the right to request the installation of a second meter to measure water used for outside purposes such as lawn and garden watering. Any and all costs associated with the purchase of and the installation of the second meter shall be paid by the homeowner. However, the meter shall remain the property of the City of Linden and shall not be damaged or tampered with in any way by any person. Sewer charges shall not

be assessed against water used for outside purposes which is measured by the second meter.

13.08.290 Connection Charges - Payment for risers. In addition to the connection charges, each land owner whose premises are connected directly to the public sewer shall pay for the risers supplied by the city. The rate charged for risers and the installation thereof shall be established by resolution of the city council. Such charges for risers shall be paid in cash at the same time the connection charge is payable and before a connection permit is issued by the city unless an installment arrangement is concluded with the city.

13.08.300 Purchase of individual Meters. Owners of premises which have tap-ins but which are not connected to the public water system may install individual meters. Property owners may purchase such meters from the city and the purchase price as well as the cost of installing the same be borne by property owners. The city shall have access to the meter for the purpose of reading and testing. No person other than authorized employees or agents of the city shall break or injure the seal or alter the same after it is installed. Property owners electing to have their sewage treatment charges determined by individually purchased meters must utilize said method of paying for sewer charges, thereafter.

13.08.310 Right to Change Charges and Make Rules and Regulations. The city council shall have the right to raise and/or lower said charges and may also make such rules and regulations governing the operation of the city sewer system and the collection of said service charges as it shall deem necessary. Such changes in charges, rules and regulations shall have the same effect as ordinances.

13.08.320 Penalty for Late Payment. Rates and charges shall be billed to users on a quarterly basis. Billing shall be made by the city on the first day of the quarter, or as shortly thereafter as practical. All bills shall be due and payable on the 25<sup>th</sup> day of the quarter. A penalty of ten (10%) percent shall be added if the bill is not paid by the due date.



Title 14

TELECOMMUNICATIONS SERVICES

Chapters:

- 14.02 General Provisions
- 14.04 Administration/Enforcement
- 14.08 Grant of Franchise
- 14.12 Regulation of Franchise
- 14.16 Financial/Insurance Provisions
- 14.20 Design and Construction
- 14.24 Service
- 14.28 Operation and Maintenance

Chapter 14.02

GENERAL PROVISIONS

Sections:

- 14.02.010 Short title
- 14.02.020 Intent
- 14.02.030 Definitions
- 14.02.040 Captions
- 14.02.050 Franchise required
- 14.02.060 Establishment of franchise requirements
- 14.02.070 Franchise applications
- 14.02.080 Franchise processing costs
- 14.02.090 Compliance with state and federal laws
- 14.02.100 Separability
- 14.02.110 Address for service of notices; Local office and telephone number
- 14.02.120 Public notice
- 14.02.130 No recourse against grantor
- 14.02.140 Rights reserved to the grantor
- 14.02.150 Rights reserved to a grantee
- 14.02.160 Theft of services and tampering
- 14.02.170 Integration

14.02.010 Short title. This ordinance shall be known and may be cited as AThe City of Linden Telecommunications Services Regulatory Ordinance.@

14.02.020 Intent. The city finds that the development of telecommunications systems and the availability of such services

within the community holds a potential for providing public benefit for residents. Because of the complex and rapidly changing technology associated with telecommunications systems, the city finds that the public convenience, safety and general welfare can best be served by establishing certain regulatory powers vested in the city or such persons as the city shall designate. It is the intent of this ordinance and subsequent amendments to provide for and specify the means to attain the best possible public interest and public purpose associated with the creation and operation of local telecommunications system(s) within the community. The city in addition finds that any and all telecommunication systems wishing to utilize the public streets and right of ways shall be subject to city regulation to the fullest extent possible consistent with law, and that all such telecommunications systems may only offer service within the community under franchise, and any franchise issued pursuant to this chapter shall be deemed to include this finding as an integral part thereof.

14.02.030 Definitions. For the purpose of this ordinance the following terms, phrases, words and their derivations, and those within any franchise agreement awarded under this ordinance, shall have the meaning given herein and in a franchise. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular number, and words in the singular number include the plural number. The word Ashall@ is mandatory and Amay@ is permissive. Words not defined shall be given their common and ordinary meaning. Where there may be a conflict between the definitions herein and those definitions made part of any franchise awarded hereunder, the definitions within a franchise shall prevail.

AA/B switch@ or AInput selector switch@ means any device that enables a viewer to select between off-air broadcast television signals received via antenna and other Voice-Video-Data services delivered to the end user via a AHard Wire@.

AAccess channel@ means a dedicated governmental, educational, or public channel which is carried on the system pursuant to a franchise agreement and provided as a part of a Basic Tier or level of services.

AAct >84" means the Cable Communications Policy Act of 1984.

AAct >92" means the Cable Television Consumer Protection and Competition Act of 1992.

AAnnual gross revenues@ means all revenue derived in any manner or form from the operation(s) of an individual TCS system

and attributable to end users, subscribers or customers utilizing such system within the municipality.

AApPLICANT means a person submitting an application or proposal to the city for a license or franchise (where required) to operate a TCS system under the terms and conditions set forth in this ordinance, and any state regulations.

AApPLICATION@ or APROPOSAL@ are synonymous for the purposes of this ordinance. An APPLICATION@ or APROPOSAL@ means the process by which the applicant submits a request and indicates a desire to be granted a license or franchise (where required) for all, or a part, of the city. An APPLICATION@ or APROPOSAL@ includes all written documentation, and verbal statements and representations, in whatever form or forum, made by an applicant to the city council/franchising authority concerning the construction, rendering of services, maintenance, or any other matter pertaining to the proposed TCS system.

AASSIGNMENT of a franchised TCS Provider=s franchise@ or ATransfer of TCS Provider=s franchise@ means any transaction or action which effectively or actually changes operational or managerial control from one person or entity to another.

AAuxiliary equipment@ means equipment supplied by the TCS Provider (such as a converter, remote control unit, or input selector switch), which enhances or assists in the reception or provision of TCS service.

ABasic cable television service@ means any service tier which includes the retransmission of local television broadcast signals.

ABasic TCS service@ means the entry level or lowest cost level of service made available by a TCS provider to users.

ACable channel@ or ACable television Channel@ or AData channel@ means a portion of the electromagnetic or light frequency spectrum which is capable of delivering a television channel (as Atelevision channel@ is defined by the FCC regulation).

ACable operator@ or Aoperator@ means any person or group of persons who:

- a) provides cable television service over a cable system and directly or through one (1) or more affiliates owns a significant interest (at least ten (10) percent) in such cable system; or
- b) otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system.

ACable service@ means:

- a) the one-way transmission to subscribers of video

- programming, or other programming service; and
- b) subscriber interaction, if any, which is required for the selection of such video programming service.

ACable system@ or ACable television system@ means a facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video, voice or data programming, and which is provided to multiple subscribers within the city. However, such terms do not include the following:

- a) a facility that serves only to retransmit the television signals of one(1) or more broadcast stations; or
- b) a facility that serves only subscribers in one (1) or more multiple unit dwellings under common ownerships, control, or management unless such facility or facilities uses any public rights-of-way; or
- c) a facility or a common carrier which is subject, in whole, or in part, to the provisions of Title II of the Communications Act of 1934, except that such facility shall be considered a cable system (other than for purposes of Section 621(c) of the Act 84 B codified at 47 USC 541) to the extent such facility is used in the transmission of video, voice, or data programming or service directly to subscribers or;
- d) any facilities of any electric utility used solely for operating its electric utility.

AChannel-Video@ means any portion of the system=s frequency bandwidth which is dedicated by system design for the delivery of one(1) Class A Video Signal from the system head end to end users via a hard wire or other means regardless of whether such services are actually provided, including any channel designated for governmental, educational, or public use.

ACharge@ means a one-time or non-regularly occurring cost paid by the subscriber or user, and which is associated with the installation, maintenance, service, or repair of the telecommunications system=s service.

Acity@ means the City of Linden, Michigan, or its lawful successor, which is the lawful legislative body for the City of Linden, Michigan.

ACollection charge@ mans a charge or fee imposed on a customer by a TCS provider for such providers efforts at collecting, or attempting to collect, a past due account.

AConverter@ means any electric, electronic, or other device, separate and apart from the subscriber=s receiver that is capable

of converting or changing signals to a frequency not intended to be susceptible to interference within the television, video, or data receiver of a subscriber, and by an appropriate channel or other type of selector may also permit a subscriber to view or otherwise use signals delivered at designated dial locations, or such other reception and use allocations as may be applicable and required for the practical use of the signal.

ACustomer@ means a subscriber, or actual subscriber, or actual user of the services and/or facilities of the TCS system provided by a TCS provider.

ADBS@ means direct broadcasting satellite.

ADBS provider@ or ADirect Broadcast Satellite provider@ means any person who delivers and/or provides TCS services from a satellite to a subscriber=s residence through the use of a small earth or satellite station.

Decoder@ or ADescrambler@ means a device which enables a subscriber to convert a scrambled signal into a viewable or otherwise useable signal.

ADisaster emergency@ or ADisaster@ or AEmergency@ means an imminent, impending, or actual natural or humanly induced situation wherein the health, safety, or welfare of all, or a representative portion of the residents of the city is threatened. A ADisaster emergency@ (by illustration) may include a snowstorm, flood, tornado, severe thunderstorm, hazardous waste infiltration, petroleum, munitions, or nuclear explosion, or aircraft crash.

ADrop@ means a small branch of cable, or other transmitting medium which connects the terminals on the back of the subscriber=s receiver to the feeder cable or future technical equivalent on the street, easement, right-of-way, or public way.

AEasement@ means and shall include and public easement or other compatible use created by dedication, or by other means, to the city for public utility purposes or any other purpose whatsoever, including cable television, or any other TCS provider. AEasement@ shall include a private easement used for the provision of cable service or any other telecommunications service.

AFCC@ or AFederal Communications Commission@ means the Federal administrative agency, or lawful successor, authorized to oversee cable television and other TCS regulation on a national level.

AFiber optics@ means very thin and pliable cylinders, or strands of glass or plastic, or any future developed technical equivalent, used to carry wide bands of multiple frequencies.

A Franchise or franchise agreement@ means the nonexclusive rights granted pursuant to this ordinance to construct and operate a cable or other telecommunications system along the public way within all of or a specified area in the municipality. Any such authorization, in whatever form granted, shall not mean and include any license or permit required for the privilege of transacting and carrying on a business within the municipality as required by other ordinances and laws of the franchising authority. Franchise and franchise agreement shall both also mean an agreement between the grantor and a grantee, approved by resolution of the city council, containing the specific provisions of a franchise granted, including referenced specifications, franchise applications and other related material.

A Franchise authority@ or A City Council/Franchising Authority@ means the city council for the City of Linden, Michigan. This definition specifically includes the situation wherein the city council in its franchising authority capacity grants a franchise, or renews a franchise, or approves a franchise transfer by an applicant for a TCS franchise, or a franchised TCS provider.

A Franchise Fee@ means the license, use, or rental fee required by the grantor of a grantee in consideration of a limited grant for the use of the public streets and rights-of-way.

A Franchise@ means the initial authorization, or subsequent renewal granted by the city council/franchising authority in order for a person to construct, operate, and maintain a franchised TCS system in all, or part, of the city.

A Franchised TCS provider@ means a person that is awarded a franchise by the city council/franchising authority to construct and operate a franchised TCS system, within all, or part, of the city. The term A franchised TCS provider@ specifically includes the term A cable operator.@

A Franchise expiration@ means the date of expiration, or the end of the term of a franchised TCS provider, as provided under a franchise agreement.

A Grantee@ means any A person@ receiving a franchise pursuant to this ordinance and under the granting franchise ordinance, and its lawful successor, transferee or assignee.

A Grantor or municipality@ means the City of Linden as represented by the city council or any delegate acting within the scope of its jurisdiction.

A Head end@ means the electronic control center, where incoming signals, including those of television broadcast

stations are amplified, modulated, filtered, converted, or in any way processed or converted for redistribution to subscribers. The Ahead end@ processes the TCS system=s return capability and provides interface between the subscriber and any institutional networks or any other networks, transmission, or retransmission facilities.

AHoliday@ means a day in which a substantial portion of the areas workers are exempt from work even though paid, including, but not limited to, all holidays recognized by either the state or federal government.

AHub@ means the satellite or remote receiving, processing and/or transmitting facility, enabling the signal to be extended beyond the physical/electronic capabilities of the TCS electronics and/or serve as a remote switching facility.

AInstitutional network@ means a communications network which is constructed and operated by the TCS provider and which is generally available only to subscribers who are not residential subscribers.

ALate charge@ means a charge which is added to a subscriber=s account or bill for non-payment of a previously due and delinquent account.

AMDS@ means multi-point distribution system.

AMDS provider@ or Amulti-point distribution system provider@ means any person or group of persons who is authorized by the FCC to transmit(via super high frequency) specialized telecommunications programming or data or facsimile transmission to subscriber-selected locations.

AMulti-channel programming service@ or multi-channel service@ means:

- a) the one-way transmission to subscribers of video programming, or other programming service; and
- b) subscriber interaction, if any, which is required for the selection of such video programming or other programing service.

ANormal business hours@ mean the weekday or weekend hours when a TCS provider customer service office is regularly open for processing customer service inquiries, requests, and/or complaints.

AOrdinance@ means this City of Linden Telecommunications Service.

AOther programming service@ means information that a TCS provider (specifically including a cable operator) makes available to all subscribers generally.

APay-per-view@ or APremium channel@ means the delivery over the TYCS system of audio and/or video signals in an



unintelligible form to subscribers for a fee or charge (over and above the charge for standard or basic service) on a per program, or per channel basis where said unintelligible or unusable form for viewing is made intelligible only to subscribers paying a separate fee or charge for the viewing or use of the signals.

APerson@ means any individual, corporation, business trust, estate, trust, partnership, association of two (2) or more persons having a joint common interest, governmental agency, or other legal entity, including the city.

AProposed abandonment of multi-channel service@ or AProposed withdrawal of TCS service@ or Proposed cessation of TCS service@ means the anticipated, contemplated, imminent, or expected (either voluntary or involuntary) disruption, discontinuance, desertion, or removal of a TCS provider=s operation and provision of TCS service from all, or part, of the city for a projected period exceeding three(3) months in duration.

APublic, educational or governmental access facilities@ means:

- a) channel capacity designated exclusively for public, educational or governmental use; and
- b) facilities and equipment for the use of such channel capacity.

APublic way@ means any public street. Public way, public place, or rights-of-way, now laid out or dedicated, and all extensions there of, and additions thereto, in the area served by the TCS provider.

ARate@ means the monthly, bi-monthly, quarterly, semi-annual, annual, or other periodic price by a subscriber in order to receive standard or basic, tiered, clustered, premium, or pay-per-view TCS service.

AREasonable notice@ shall be written notice addressed to a grantee at its principal office or such other office as a grantee has designated to the grantor as the address to which should be transmitted to it, which notice shall be delivered by first class, certified U.S. mail.

AREasonable order@ shall be a written order from the city to a grantee that does not require, in the opinion of a reasonable person, either excessive or extreme response by a grantee which is beyond the intention of a franchise agreement.

AResident@ means any person residing in the city as otherwise defined by applicable law.

AREvocation@, ATermination@, or ANon-renewal@ means an official act by the city whereby the city council/franchising

authority removes, repeals, or rescinds previously approved authorization for a licensed for franchising TCS provider to conduct the running of a TCS system within the city.

ASection@ means any section, subsection or provision of this ordinance.

AService cluster@ means the grouping, aligning, or packaging of one(1) or more TCS programming services by category (such as sports and/or news), or by rate, or by some other identifiable method, and charging a separate price or rate for each service cluster.

AService day@ means any day or other twenty-four (24) hour period, other than a Sunday, in which employees of the TCS provider regularly respond to service requests and calls.

AService outage@ means the loss of picture or sound on all standard or basic subscriber channels, or one (1) or more auxiliary programming channels (including tiers and clusters), and which is not caused by the subscriber=s television receiver or by the subscriber.

AService tier@ means a category of TCS service or other programming service provided by a TCS provider, and for which a separate rate is charged by a TCS provider.

ASMAT@ means a satellite master antenna television system.

ASMATV operator@ or ASatellite master antenna television operator@ means any person or group of persons who:

- a) provides TCS service over an SMATV system; or
- b) otherwise controls or is responsible for, through any arrangement, the management of an SMATV system.

ASMATV system@ means a private TCS system, not crossing any public right-of-way and which is located on private property, and serving private dwellings. TCS programming services are obtained via an earth station, amplification, and a distribution system.

Astandard TCS service@ means the lowest priced or least comprehensive service cluster or service tier available to residential subscribers.

AState@ means the State of Michigan.

AStreet@ means the surface of, and the space above and below a public street, road, highway, land path, public way or place alley, court, boulevard, parkway, drive, or other easement now or hereafter held by the city (including any street, as defined, which is acquired by eminent domain) for the purposes of public travel and shall include other easements or rights-of-way now or hereafter held by the city (including any easements or rights-of-way acquired by eminent domain) which shall, with their proper use and meaning, entitle the city and TCS provider to use thereof for the purpose of installing or transmitting TCS system

transmissions over poles, wires, cable, conductors, ducts, conduits, viaducts, manholes, amplifiers, appliances, attachments, and other property an may ordinarily be necessary and pertinent to a TCS system.

ASubscriber A or AUser@ means a person lawfully receiving TCS service delivered by a TCS provider.

ATCS provider@ means any person or group of person who:  
a) provides electronic communications services(s) over a system of individual or multiple channels and directly or indirectly owns a significant interest in such a system; or  
b) who otherwise controls or is responsible through any arrangement, the management and operation of such a TCS system.

ATCS service@ means any telecommunications service provided as the result of a franchise award subject to this ordinance and those services normally and usually provided by a Acable operator@. ADBS operator@ or Adirect broadcast satellite provider@, MDS provider@ or Amulti-point distribution system provider@, AMDS provider, and ASMATV operator@, and any other future electronic communication service which may utilize any or all of the public rights of way for the distribution and/or transmission of its services to the public.

ATelecommunications Advisory Committee or Commission@ means the Telecommunications Advisory Committee or Commission for the City of Linden, Michigan.

AUSC@ means United States Code.

AUser@ means a person or organization utilizing a telecommunications system and/or its equipment for purposes of production and/or transmission of material, as contracted with receipt thereof in a subscriber capacity.

AUser fee@ means any fee required by the municipality in payment for the private use of the public streets, easements, public ways, or right-of-way, in order to construct, maintain, and operate a TCS information distribution or collection system.

AVideo programming@ means programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

AWork day@ means a day in which the city offices are regularly open for business.

14.02.040 Captions. The section captions utilized throughout this ordinance are intended solely to facilitate reading and reference. Such captions shall not affect the meaning or interpretation of this ordinance.

14.02.050 Franchise Required. No telecommunications system or other information or communications distribution or exchange network shall occupy, wholly or in part, the streets, alleys, or public rights-of-way within the geographical boundaries of the city without first receiving a license or franchise for that purpose following a public hearing.

14.02.060 Establishment of franchise requirements. The grantor may establish appropriate requirements for new franchises or franchise renewals, consistent with law and FCC rules, and may modify the requirements in this ordinance from time to time to reflect changing operational or technical conditions of the telecommunications industry state-of-the-art. Any modification in such requirements shall not be retroactive to franchises then in effect.

14.02.070 Franchise applications. Applicants for a telecommunication system franchise shall submit to the grantor written applications utilizing the format and procedure specified and required by the grantor and shall submit such applications at the time and place designated by the grantor for accepting applications. All applications for a franchise shall include any grantor designated application fee.

14.02.080 Franchise processing costs. For either new or renewal franchise award, a grantee shall bear all reasonable franchising costs which may include, but shall not be limited to: cost of legal notices and necessary publications prior to any public meeting provided for pursuant to a franchise, development and publication of relevant ordinances and franchise agreements, fees, and any cost not covered by the applications fees, incurred by the grantor in its study, preparation of proposal solicitation documents, evaluation of all applications, including, but not limited to, reasonable consultant and attorney fees and grantor staff time.

14.02.090 Compliance with state and federal laws. Notwithstanding any other provisions of this ordinance to the contrary, a grantee shall at all times comply with all laws and regulations of the state and federal government or any administrative agencies thereof. Provided, however, if any such state or federal law or regulation shall require a grantee to perform any service, or shall permit a grantee to perform any service, or shall prohibit a grantee from performing any service, in conflict with the terms of this ordinance or resulting

franchise or of any law or regulation of the Grantor, then as soon as possible following knowledge thereof, a grantee shall notify the grantor of the point of conflict believed to exist between such regulation or law and the laws or regulations of the grantor or this franchise.

14.02.100 Separability.

A. Non-material provisions.

If any provision of this chapter or any resulting franchise agreements(s) is held by any court or by any federal, state or local agency of competent jurisdiction to be invalid as conflicting with any federal, state, or local law, rule or regulation now or hereafter in effect, or is held by such court or agency to be modified in any way in order to conform to the requirements of any such law, rule or regulation, and if said provision is considered nonmaterial by the grantor, said provision shall be considered a separate, distinct and independent part of this chapter and such holding shall not affect the validity and enforceability of all other provisions hereof. In the event that such law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed, so that the provision or thereof which had been held invalid or modified is no longer in conflict with the law, rules and regulations then in effect, said provision shall thereupon return to full force and effect and shall thereafter be binding on the parties hereto, provided that the grantor shall give a grantee thirty(30) days written notice of such change before requiring compliance with said provision.

B. Material provisions.

If any material section of this chapter, as determined by the grantor, is held to be invalid or preempted by federal, state or county regulations or laws, the grantor shall negotiate with a grantee appropriate modifications to a franchise awarded hereunder to provide reasonable relief from such invalidity or preemption, including the payment of liquidated damages. If the parties are unable to reach agreement on such modifications, then the dispute shall be submitted to a mutually agreeable arbitrator, in accordance with state law, who shall determine what modifications and/or liquidated damages area appropriate. The arbitrator=s decision shall be binding on the parties, provided that no decision of the arbitrator shall require the grantor or a grantee to be in violation of any federal or state law or regulation.

14.02.110 Address for service of notices; local office and telephone number. Any telecommunications services franchise grantee shall maintain, within the franchise area throughout the term of its franchise, an address for service of notices by mail. A grantee shall also maintain, within the franchise area, a local office and telephone number for the conduct of matters related to a franchise during normal business hours.

14.02.120 Public notice. Minimum public notice of any public meeting relating to a franchise award shall be by publication at least once in a newspaper of general circulation in the area at least ten(10) days prior to the meeting and by the posting at the offices of the grantor.

14.02.130 No recourse against the grantor. A grantee shall have no recourse whatsoever against the grantor or its officials, boards, commissions, agents, employees or representatives for any loss, costs, expense, or damage arising out of any provision or requirement of a franchise award or because of the enforcement of a franchise.

14.02.140 Rights reserved to the grantor.

X Right of inspection of construction.

The grantor shall have the right to inspect all construction or installation work performed subject to the provisions of a franchise awarded hereunder and to make such tests as it shall find necessary to ensure compliance with the terms of a franchise and other pertinent provisions of law.

X Right of intervention.

The grantor shall have the right of intervention in any suit or proceeding to which a grantee is party, and a grantee shall not oppose such intervention by the grantor.

14.02.150 Rights reserved to a grantee. Should a grantee be dissatisfied with any material decision or ruling of the grantor pertaining to a telecommunications system established hereunder, a grantee may pursue such other remedies as are available, including the bringing of action in any court of competent jurisdiction.

14.02.160 Theft of services and tampering.

A. No person, whether or not an authorized system user of a telecommunications system may intentionally or knowingly damage or cause to be damaged any wire, cable, conduit, equipment or apparatus of a grantee, or commit any act with intent to cause such damage, or to tap, tamper with or otherwise connect any wire or device to a wire, cable, conduit, equipment and

apparatus, or appurtenances of a grantee with the intent to obtain a signal or impulse from the system without authorization from or compensation to a grantee, or to obtain cable television or other communications service with intent to cheat or defraud a grantee of any lawful charge to which it is entitled.

B. Any person convicted of violating any provision of this section and applicable state law shall be subject to punishment of imprisonment for not more than ninety(90) days or a fine of not more than Five Hundred Dollars(\$500) or both, plus payment of court costs. Each day=s violation of this section may be considered a separate offense.

14.02.170 Integration. Any telecommunication franchise awarded by the grantor to a grantee after the effective date of this ordinance shall be subject to all terms and conditions herein provided.

#### Chapter 14.04

#### ADMINISTRATION/ENFORCEMENT

#### Sections:

- 14.04.010 Non-enforcement by the grantor
- 14.04.120 Annual reports
- 14.04.130 Plant survey report
- 14.04.140 Copies of federal and state reports
- 14.04.150 Public reports
- 14.04.160 Complaint file and reports
- 14.04.170 Privacy report
- 14.04.080 Miscellaneous reports
- 14.04.090 Income tax returns
- 14.04.100 Inspection of facilities
- 14.04.110 Business office; records and files
- 14.04.120 Public inspection
- 14.04.130 Failure to report
- 14.04.140 False statements
- 14.04.150 Cost of reports
- 14.04.160 Remedies for franchise violations
- 14.04.170 Procedure for remedying franchise violations
- 14.04.180 Force majeure; Grantee=s inability to perform

14.04.010 Nonenforcement by the grantor. A grantee shall not be relieved of its obligation to comply with any of the provisions of this ordinance or resulting franchise agreement by reason of any failure of the grantor to enforce compliance. Any

failure by grantee to meet all terms and conditions of a franchise, whether so notified by grantor or not, shall constitute grounds for revocation of a franchise awarded hereunder or the denial of a franchise renewal.

14.04.020 Annual reports. As may be required in a franchise awarded hereunder, at the grantor=s sole option, within sixty(60) days after the close of a grantee=s fiscal year, a grantee shall submit a written annual report tot he grantor clerk, in a form approved by the grantor, including but not limited to, such information specified within a franchise awarded subject to this ordinance. Such information may include:

- A. A summary of the previous year=s (or, in the case of the initial report year, the initial year=s) activities in development of the telecommunications system, including, but not limited to, services begun or discontinued during the reporting year, and the number of subscribers or customers for each class of service.
- B. A financial statement certified by an officer of a grantee, including a statement of income, revenues, operating expenses, value of plant, annual capital expenditures, depreciation with an attached depreciation schedule, interest paid, taxes paid, balance sheets, and a statement of sources and application of funds.
- C. A current statement of costs of construction by component categories.
- D. A projected income statement and statement of projected construction for the next two(2)years.
- E. A list of grantee=s officers, members of its board of directors and other principals of a grantee.
- F. A list of stockholders or other equity investors holding five(5) per cent or more of the voting interest in a grantee and its parent, subsidiary and affiliated corporations and other entities, if any.
- G. To the extent that money, other than profits, is paid to a parent subsidiary, or other person affiliated with a grantee, the amounts of such payments and the basis for computation of such amounts (e.g., the basis for computing any management fees or share of Ahome office@ overhead).

14.04.030 Plant survey report. At the grantor=s sole option, the grantee shall upon a request by the grantor, submit to the grantor an annual plant/system survey report which shall be a complete survey of a grantee=s distribution system including a full report thereon. Said report shall include, but not be limited to those matters that in the judgement of the



grantor are necessary for the full regulation of such system. Said report may include: a description and as-built maps of the portions of the franchise area that have been connected to, or have telecommunications services available, and appropriate engineering evaluation including suitable electronic measurements conducted in conformity with such requirements, including supervision, as the grantor may prescribe. Said report shall be in sufficient detail to enable the grantor to ascertain that the service requirements and technical standards of the FCC and/or a franchise are achieved and maintained. As may be required in a franchise awarded here under, and at the grantor's request, but no more often than once per three(3) years, a grantee and the grantor may agree upon the appointment of a qualified independent engineer to evaluate and verify the technical performance of a system built and operated under provisions of this ordinance. The cost of such evaluation shall be borne equally by a grantee and the grantor.

14.04.040 Copies of federal and state reports. A grantee hereunder shall submit to the grantor copies of all pleadings, applications, reports, communications and documents of any kind, submitted by a grantee to, as well as copies of all decisions, correspondence and actions by, any federal, state and local courts, regulatory agencies and other government bodies relating to its operations within the franchise area. A grantee shall submit such documents to the grantor simultaneously with their submission to such courts, agencies and bodies; and within five (5) days after their receipt from such courts, agencies and bodies. A grantee hereunder hereby waives any right to claim confidential, privileged or proprietary rights to such documents unless such confidential rights are confidential by law or by the practices of federal or state agencies. However, proprietary data exempt from public disclosure shall be retained in confidence by the grantor and its authorized agents and shall not be made available for public inspection.

14.04.050 Public reports. A copy of each of a grantee's annual and other periodic public reports and those of its parent, subsidiary and affiliated corporations and other entities, as the grantor requests and is reasonably appropriate, shall be submitted to the grantor within five(5) days of its issuance.

14.04.060 Complaint file and reports. An accurate and comprehensive file shall be kept by a grantee of any and all complaints regarding the system built or operated under

provisions of this ordinance. A procedure which may be detailed within a franchise awarded hereunder may be established by a grantee by the time of installation of the system to remedy complaints quickly and reasonably to the satisfaction of the grantor. A franchise procedure may require a grantee to maintain complete records of a grantee's actions in response to all complaints. Such files and records shall remain open to the public during normal business hours.

A. As may be required in a franchise, a summary of complaints, identifying the number and nature of complaints and their disposition, in a form approved by the grantor, shall be completed for each month and submitted to the grantor by the tenth day of the succeeding month unless provisions of a franchise awarded hereunder provides otherwise.

B. As may be required in a franchise, the results of an annual opinion survey report which identifies satisfaction or dissatisfaction among the users of any telecommunications services offered by a grantee shall be submitted to the grantor no later than two(2)months after the end of a grantee's fiscal year. The surveys required to make said report may be in the form of questionnaires transmitted to users within one or more bills for service.

14.04.070 Privacy report. A grantee shall submit to the grantor an annual report indicating the degree of compliance with the privacy provisions of Chapter 14.28 of this ordinance and all steps taken to assure that the privacy rights of individuals have been protected.

14.04.080 Miscellaneous reports. A grantee shall submit to the grantor such other information or reports in such forms and at such times as the grantor may reasonably request or require.

14.04.090 Income tax returns. As may be required in a franchise awarded hereunder, a grantee shall submit to the grantor copies of all income tax returns and reports which are filed with the local, state or federal governments pertaining to its cable system in the franchise area within five(5) days of the date on which such reports are filed.

14.04.100 Inspection of facilities. A grantee shall allow the grantor to make inspections of any of a grantee's facilities and equipment at any time upon reasonable notice, or, in case of emergency, upon demand without prior notice, to allow grantor to verify the accuracy of any submitted report.

14.04.110 Business office; records and files. A grantee shall maintain an office within the general franchise area and shall keep complete and accurate books and records. AS provided in a franchise awarded hereunder, following reasonable notice, the grantor shall have the right to inspect at any time during normal business hours all books, records, maps, plans, income tax returns, financial statements, service complaint logs, performance test results and other like materials of a grantee which relate to the operation of the telecommunications system.

Access to the aforementioned records shall not be denied by a grantee on the basis that said records contain confidential, privileged, or proprietary information.

14.04.120 Public inspection. All reports subject to public disclosure, shall be available for public inspection at a designated grantor office during normal business hours.

14.04.130 Failure to report. Following reasonable notice from the grantor to a grantee, the refusal, failure or neglect of a grantee to file any of the reports required, or such other reports as the grantor reasonably may request, shall be deemed a material breach of a franchise awarded hereunder, and shall subject a grantee to all remedies, legal or equitable, which are available to the grantor under a franchise awarded hereunder or otherwise.

14.04.140 False statements. Any materially false or misleading statement or representation made knowingly by a grantee in any report required under a franchise awarded hereunder shall be deemed a material breach of a franchise awarded hereunder and shall subject a grantee to all remedies, legal or equitable, which are available to the grantor under a franchise awarded hereunder or otherwise.

14.04.150 Cost of Reports. All usual and normal system reports and records required under this or any section shall be furnished at the sole expense of a grantee.

14.04.160 Remedies for franchise violations.

A. If a grantee fails to perform any obligation under a franchise awarded hereunder, or fails to do so in a timely manner, the grantor may at its option, and in its sole discretion:

- 1) Assess against a grantee monetary damages up to the limits established in a franchise agreement for material franchise violations, which a grantee hereby agrees to pay, said assessment to be levied against the security fund, herein above provided, and collected by the grantor

immediately upon said assessment. The grantor and a grantee agree that the amount of such assessment shall be deemed, without proof, to represent liquidation of damages actually sustained by the grantor by a reason of a grantee=s failure to perform. Such assessment shall not constitute a waiver by the grantor of any other right or remedy it may have under a franchise awarded hereunder or under applicable law, including without limitation, its right to recover from a grantee such additional damages, losses, costs and expenses, including actual attorney fees, as may have been suffered or incurred by the grantor by reason of or arising out of such breach of a franchise awarded hereunder. This provision for assessment of damages is intended by the parties to be separate and apart from the grantor=s right to enforce the provisions of the construction and performance bonds provided for in Chapter 14.16 of this ordinance and is intended to provide compensation to the grantor for actual damages.

2) As may be provided in a franchise awarded hereunder, violations considered by the grantor to have materially degraded the quality of service, order and direct a grantee to issue rebates or reduce its rates and/or charges to users, in an amount solely determined by the grantor and provided for within a franchise awarded hereunder, to provide monetary relief substantially equal to the reduced quality of service resulting from a grantee=s failure to perform.

3) Require, subject to existing federal law and FCC rules, that a grantee cure all defaults and breaches of its obligations hereunder before a grantee is entitled to increase any rate or charge to users hereunder as may be specified within a franchise awarded hereunder.

4) Terminate a franchise awarded hereunder, for any of the causes stated within this ordinance.

5) No remedy shall be imposed by the grantor against a grantee for any violation of this franchise without a grantee being afforded due process of law, as provided within this ordinance.

B. The grantor may, in its sole judgment and discretion, impose any or all of the above enumerated measures against a grantee, which shall be in addition to any and all other legal or equitable remedies it has under this franchise or under any applicable law.

14.04.170 Procedure for remedying franchise violations. In the event that the grantor determines that a grantee has

violated any provision of a franchise awarded hereunder, any rule or regulation promulgated pursuant hereto or any applicable federal, state or local law, the grantor may make a written demand on a grantee as provided within a franchise awarded hereunder, that it remedy such violation. If the violation, breach, failure, refusal or neglect is not remedied to the satisfaction of the grantor within thirty(30)days following such demand, the grantor shall determine whether or not such violation, breach, failure, refusal, or neglect by a grantee was excusable or inexcusable, in accordance with the following procedure:

A. A public hearing shall be held and a grantee shall be provided with an opportunity to be heard upon thirty(30) days written notice to a grantee of the time and place of the hearing provided and the allegations of franchise violations.

B. If, after notice is given and, at a grantor=s option, a full public proceeding is held, the grantor determines that such violation, breach, failure, refusal, or neglect by a grantee was excusable as provided within this ordinance, the grantor shall direct a grantee to correct or remedy the same within such additional time, in such manner and upon such terms and conditions as the grantor may direct.

C. If, after notice is given and, at a grantor=s option, a full proceeding is held, the grantor determines that such violation, breach, failure, refusal or neglect was inexcusable, then the grantor may assess a penalty or remedy in accordance with section 2.16 above.

D. If, after notice is given and, at a grantor=s option, a full public proceeding is held, the grantor declares a franchise awarded hereunder or any renewal thereof breached, the parties may pursue their remedies pursuant to a franchise or any other remedy, legal or equitable.

14.04.180 Force majeure; grantee=s inability to perform. In the event a grantee=s performance of any of the terms, conditions, obligations or requirements of a franchise awarded hereunder is prevented or impaired due to any cause beyond its reasonable control or not reasonably foreseeable, such inability to perform shall be deemed to be excused and no penalties or sanctions shall be imposed as a result thereof, provided a grantee has notified the grantor in writing within thirty(30)days of its discovery of the occurrence of such an event. Such causes beyond a grantee=s reasonable control or not reasonably foreseeable shall include, but shall not be limited to, acts of God and civil emergencies.

## Chapter 14.08

### GRANT OF FRANCHISE

#### Sections:

- 14.08.010 General
- 14.08.020 Franchise territory
- 14.08.030 Use of public streets and ways
- 14.08.040 Duration
- 14.08.050 Franchise nonexclusive
- 14.08.060 Transfer of ownership or control
- 14.08.070 Franchise renewal
- 14.08.080 Police powers
- 14.08.090 Franchise fee
- 14.08.100 Forfeiture or revocation
- 14.08.110 Procedures/termination or expiration
- 14.08.120 Receivership and foreclosure

#### 14.08.010 General.

A. In the event that the grantor shall grant to a grantee a nonexclusive, revocable franchise to construct, operate, and maintain a telecommunications system within a franchise area, a franchise awarded hereunder shall constitute both a right and an obligation to provide the services of a telecommunications system as required by the provisions of this ordinance and a franchise agreement. A franchise agreement shall include those provisions of a grantee=s@application for franchise@ that are finally negotiated and accepted by the Grantor and Grantee.

B. Regarding any franchise granted under, the terms and conditions contained herein shall be consistent with the grantor charter and/or statutory requirements, which are incorporated by this reference as if fully set forth herein.

C. Any franchise granted is hereby made subject to the general provisions of this ordinance or hereafter made effective. Nothing in a franchise awarded hereunder shall be deemed to waive the requirements of the various codes and ordinances of the grantor regarding permits, fees to be paid or manner of construction.

14.08.020 Franchise territory. No franchise granted pursuant to this ordinance shall exclude any area, portion, or part of the city. Any grantee awarded a franchise as provided by this ordinance shall plan, design and construct a system capable of providing services to all residential and commercial

units within the city as provided within a franchise awarded hereunder. The service area shall be the entire incorporated geographical limits of the city. The initial service shall be that portion of the franchise territory scheduled to receive initial service, as stated in a franchise agreement.

14.08.030 Use of public streets and ways. For the purpose of operating and maintaining a telecommunications system in a franchise area subject to the provisions of this ordinance, a grantee may erect, install, construct, repair, replace, reconstruct and retain in, on, over, under, across and along the public streets and ways within a franchise territory such wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances pedestals, attachments and other property and equipment as are necessary and appurtenant to the operation of the cable communications system. Prior to construction or alteration, however, a grantee shall in each case file plans with the appropriate grantor agencies and local utility companies and receive written approval before proceeding.

14.08.040 Duration. The term of any franchise and all rights, privileges, obligations and restrictions pertaining thereto shall be established by a franchise agreement, however, no franchise term may exceed ten(10)years from the effective date of a franchise awarded hereunder. The effective date of a franchise awarded hereunder shall be the date of execution of a franchise agreement by the grantor, subject to prior execution by a grantee.

14.08.050 Franchise nonexclusive. A franchise granted is nonexclusive. The grantor specifically reserves the right to grant, subject to all terms and conditions of this ordinance, such additional franchises for a telecommunications system at any time as it deems appropriate.

14.08.060 Transfer of ownership or control.

A. Transfer of franchise.

Subject to provisions of any effective FCC Rules, any franchise granted hereunder shall be a privilege to be held for the benefit of the public. Said franchise cannot in any event be sold, transferred, leased, assigned or disposed of, including, but not limited to, by forced or voluntary sale, merger, consolidation, receivership, or other means without the prior consent of the grantor, and then only under such conditions as the grantor may establish, and such consent as

required by the grantor shall not be unreasonably withheld; provided, however, that no such authorization shall be required for any such transfer to a parent, subsidiary or subsidiary of a parent of a grantee. If any transfer of a franchise occurs without the prior consent of the grantor, a franchise awarded hereunder may, at Grantor=s sole option, be terminated immediately. No authorization of the grantor shall be required for any mortgage, pledge or other encumbrance of this agreement of a grantee=s cable system as security for monies borrowed.

B. Ownership or control.

A grantee shall notify the grantor within thirty(30)days of any actual or proposed change in, or transfer of, or acquisition by any other party of, control of a grantee. The word Acontrol@ as used herein is not limited to major stockholders but includes actual working control in whatever manner exercised. A rebuttable presumption that a transfer of control has occurred shall arise upon the acquisition or accumulation by any person or group of persons of ten(10) percent of the voting shares of a grantee. Every change, transfer, or acquisition of control of a grantee shall make a franchise awarded hereunder subject to termination unless and until the grantor shall have consented thereto, which consent shall not be unreasonably withheld; provided, however, that no such authorization shall be required for any mortgage, pledge or other encumbrance of the stock of a grantee as security for monies borrowed. For the purpose of determining whether it shall consent to such change, transfer, or acquisition of control, the grantor may inquire into the qualifications of the prospective controlling party and a grantee shall assist the grantor in any such inquiry. In seeking the grantor=s consent to any change in ownership or control, a grantee shall have the responsibility;

1) To show to the reasonable satisfaction of the grantor whether the proposed purchaser, transferee, or assignee (the Aproposed transferee@) which in the case of a corporation, shall include all officers, directors, employees and all persons having a legal or equitable interest in five (5) percent or more of its voting stock, or any of the proposed transferee=s principals:

- a) Has ever been convicted or held liable for acts involving moral turpitude, including, but not limited to, any violation of federal, state or local law or regulations, r is presently under an indictment, investigation or complaint charging such acts;
- b) Has ever had a judgement in an action fro fraud, deceit or misrepresentation entered against it, her,



him, or them by any court of competent jurisdiction;  
c) Has pending any legal claim, lawsuit or  
administrative proceeding arising out of or involving  
a cable system.

2. To establish, to the reasonable satisfaction of the grantor, the financial solvency of the proposed transfer by submitting all current financial data for the proposed transferee which a grantee was required to submit in its franchise application, and such other data as the grantor may request. Financial statements shall be audited, certified and qualified by an independent certified public accountant, approved by the grantor.

3. To establish to the satisfaction of the grantor that the financial and technical capability of the proposed transferee is such as shall enable it to maintain and operate the cable system for the remaining term of a franchise under the existing franchise terms.

C. The grantor agrees that any financial institution having a pledge of a franchise or its assets for the advancement of money for the construction and/or operation of a franchise awarded hereunder shall have the right to notify the grantor that it or its designee, satisfactory to the grantor, will take control and operate the cable television system, in the event of a grantee default in its financial obligations. Further, said financial institution shall also submit a plan for such operation that will ensure continued service and compliance with all franchise requirements during the term the financial institution exercises control over the system. The financial institution shall not exercise control over the system for a period exceeding one year unless extended by the grantor in its discretion and during said period of time it shall have the right to petition the grantor to transfer franchise to another grantee. If the grantor finds that such transfer after considering the legal, financial, character, technical and other public interest qualities of the applicant are satisfactory, the grantor will transfer and assign the rights and obligations of such franchise as in the public interest. The consent of the grantor to such transfer shall not be unreasonably withheld.

D. The consent or approval of the grantor to any transfer of a grantee shall not constitute a waiver or release of the rights of the grantor in and to the streets, and any transfer shall by its terms, be expressly subordinate to the terms and conditions of this ordinance.

E. In the absence of extraordinary circumstances, as determined

by the grantor in its sole judgment, the grantor will not approve any transfer or assignment of a franchise awarded hereunder prior to substantial completion of construction of the proposed system.

F. In no event shall a transfer of ownership or control be approved without the successor in interest becoming a signatory to a franchise agreement.

14.08.070 Franchise renewal. Unless otherwise required by federal law or FCC rules, nothing in any franchise agreement shall require renewal of a franchise by the grantor after the term of a franchise awarded hereunder has expired.

1. Term. The renewal of any franchise shall be set by a franchise agreement but shall not be greater than ten (10) years.

2. Renewal procedure.

a) A franchise renewal procedure may be established within a franchise awarded hereunder. A non-refundable application fee established by the grantor in an amount necessary to cover the costs of processing the request for renewal may be imposed by the grantor.

b) A franchise renewal application when filed shall be available for public inspection at places designated by the grantor. As provided within a franchise awarded hereunder, a public hearing may be held on the application where a grantee's record of compliance with a franchise requirement, its record of satisfactory service, and the terms and conditions proposed for a franchise renewal period shall be reviewed.

c) Following receipt of a request for renewal of a franchise granted hereunder, the grantor shall initiate a review process which shall determine a grantee's past level of overall compliance with a franchise agreement, its level of services, its application of new technology and cooperation with the grantor to best meet the community needs.

d) At a time determined by grantor, grantee will be invited to provide a formal franchise renewal application. The application shall set forth in detail a franchisee's legal, character, financial and other pertinent qualifications sufficient to make a determination to renew or terminate such franchise.

e) Based upon the above criteria, the grantor may, at

its sole option, decide to renew a franchise awarded hereunder under appropriate terms and conditions, or not to renew a franchise awarded hereunder.

f) If the grantor's decision is not to renew a franchise, the grantor may initiate public solicitations for applications for a new franchise. The original grantee shall not be precluded from submitting such an application.

g) In any renewal or public solicitation, the grantor may require additional services, system upgrade or any other conditions it deems feasible and appropriate in the light of the state of the art of the cable communications industry at that time.

#### 14.08.080 Police powers.

A. In accepting a franchise awarded hereunder, a grantee acknowledges that its rights hereunder are subject to the police power of the grantor to adopt and enforce general ordinances necessary to the safety and welfare of the public; and it agrees to comply with all applicable general laws and ordinances enacted by the grantor pursuant to such power.

B. Any conflict between the provisions of this ordinance and any other present or future lawful exercise of the grantor's police powers shall be resolved in favor of the latter, except that any such exercise that is not of general application in the jurisdiction or applies exclusively to any grantee or telecommunications system which contains provisions inconsistent with a franchise shall prevail only if upon such exercise, the grantor finds an emergency exists constituting a danger to health, safety, property or general welfare of such exercise is mandated by law.

#### 14.08.090 Franchise fee.

A. Annual franchise payment. A grantee awarded hereunder shall pay to the grantor an annual fee in an amount as designated in a franchise agreement for the use of the public rights of way. Such payment shall be in addition to any other franchise requirement and commence as of the effective date of a franchise awarded hereunder. At the request of grantor, grantee shall furnish a statement, certified by an officer of a grantee, reflecting the total amounts of annual gross revenues and all payments, deductions and computations for the period covered by the payment.

B. Acceptance by grantor. No acceptance of any payment by the grantor shall be construed as a release or as an accord and

satisfaction of any claim the grantor may have for further or additional sums payable as a franchise fee under this ordinance or for the performance of any other obligation of a grantee.

C. Failure to make required payment. In the event that any franchise payment or recomputed amount is not made on or before the dates specified herein, grantee shall pay as additional compensation;

1. An interest charge, computed from such due date, at the annual rate equal to the commercial prime interest rate in effect upon the due date or as otherwise established within a franchise awarded hereunder.

2. A sum of money equal to five (5) percent of the amount due in order to defray those additional expenses and costs incurred by the grantor by reason of delinquent payment.

D. Payment due the grantor under this provision shall be computed quarterly, for the preceding quarter as of March thirty-first, June thirtieth, September thirtieth, and December thirty-first. Each quarterly payment shall be due and payable no later than thirty (30) days after the dates listed in the previous sentence. Each payment shall be accompanied by a brief report showing the basis for the computation and such other relevant facts as may be required by the grantor.

E. Following the issuance and acceptance of a franchise awarded hereunder, a grantee shall initiate franchise fee payments to the grantor at the intervals and rate specified in a franchise agreement.

#### 14.08.110 Forfeiture or revocation.

A. Grounds for revocation. The grantor reserves the right to revoke any franchise granted hereunder and rescind all rights and privileges associated with a franchise awarded hereunder in the following circumstances, each of which shall represent a default and breach under this ordinance and a franchise grant:

1. If a grantee should default in the performance of any of its material obligations under this ordinance or under such documents, agreements and other terms and provisions entered into by and between the grantor and a grantee.

2. If a grantee should fail to provide or maintain in full force and effect, the liability and indemnification coverages or the security fund or bonds as required herein.

3. If any court of competent jurisdiction, or any federal or state regulatory body by rules, decisions or other action determines that any material provision of a franchise documents, including this ordinance, is invalid or unenforceable prior to the commencement of system

construction.

4. If a grantee should willfully violate any orders or rulings of any regulatory body having jurisdiction over a grantee relative to a franchise unless such orders or rulings are being contested by a grantee in a court of competent jurisdiction.

5. If a grantee ceases to provide services for any reason within the control of the grantee over a telecommunications system, grantee shall not be declared at fault or be subject to any sanction under any provision of this ordinance in any case in which performance of any such provision is prevented for reasons beyond a grantee=s control.

A fault shall not be deemed to be beyond a grantee=s control if committed by a corporation or other business entity in which a grantee holds a controlling interest, whether held directly or indirectly.

6. If a grantee attempts to evade any of the provisions of this ordinance, FCC Rules, a franchise agreement or practices any fraud or deceit upon the grantor.

7. If a grantee=s construction schedule is delayed for more than twelve (12) months later than the schedule contained in a franchise agreement and after due process, the grantor finds the delay was not excusable.

8. If a grantee becomes insolvent, unable or unwilling to pay its debts, or is adjudged as bankrupt.

B. Procedure prior to revocations.

1. The grantor may make written demand that a grantee comply with any requirement, limitation, term, condition, rule or regulation or correct any action deemed cause for revocation. If the failure, refusal or neglect of a grantee continues for a period of thirty (30) days following such written demand, the grantor may immediately initiate franchise revocation procedures and shall cause notice of such action to be served upon a grantee, at least ten (10) days prior to the date of a franchise revocation hearing, a written notice of this intent to request such termination, and the time and place of the meeting, notice of which shall be published at least once, ten (10) days before such meeting in a newspaper of general circulation within a franchise area.

2. The grantor shall hear any persons interested therein, and shall determine, in its discretion, whether or not any failure, refusal or neglect by a grantee was with just cause.

3. If such failure, refusal or neglect by a grantee was with just cause, the grantor shall direct a grantee to comply within such time and manner and upon such terms and conditions as are reasonable.

4. If the grantor shall determine such failure, refusal or neglect by a grantee was without just cause, then the grantor may, by resolution, declare that franchise awarded hereunder to such grantee shall be terminated and security fund and bonds forfeited unless there be compliance by a grantee within such period as the grantor may fix or as established within a franchise.

#### 14.08.110 Procedures/termination or expiration.

A. Disposition of facilities. In the event a franchise expires, is revoked, or otherwise terminated, the grantor may order the removal of the system facilities from a franchise area within a reasonable period of time as determined by the grantor, or require the original grantee to maintain and operate its system until a subsequent grantee is selected and a subsequent or modified telecommunications system becomes operational.

B. Restoration of property. In removing its plant, structures and equipment. A grantee shall refill, at its own expense, any excavation that shall be made by it and shall leave all public ways and places in as good condition as that prevailing prior to a grantee's removal of its equipment and appliances without affecting the electrical or telephone cable wires, or attachments. The grantor shall inspect and approve the condition of the public ways and public places; and cables, wires, attachments and poles after removal. The liability, indemnity and insurance, and the security fund and bonds provided therein shall continue in full force and effect during the period of removal and until full compliance by a grantee with the terms and conditions of this section.

C. Restoration by grantor, reimbursement of costs. In the event of a failure by a grantee to complete any work required by subsection (A) above and/or subsection (B) above, or any other work required by the grantor or a franchise awarded hereunder, the grantor may cause such work to be done and a grantee shall reimburse the grantor the cost thereof within thirty (30) days after receipt of an itemized list of such costs or the grantor may recover such costs through the security fund or bonds provided by grantee. The grantor shall be permitted to seek

legal and equitable relief to enforce the provisions of this section.

D. Extended operation. Upon either the expiration or revocation of a franchise, the grantor may require a grantee to continue to operate the cable communications system for a defined period of time not to exceed twenty-four months from the date of such expiration or revocation. A grantee shall, as trustee for its successor in interest, continue to operate the cable communications system under the terms and conditions of this ordinance and a franchise agreement and to provide the regular user services and any and all of the services that may be provided at that time. The grantor shall be permitted to seek legal and equitable relief to enforce the provisions of this section.

E. Grantor=s right not affected. The termination and forfeiture of any franchise shall in no way affect any of the rights of the grantor under a franchise awarded hereunder or any provision of law.

#### 14.08.120 Receivership and foreclosure.

A. Any franchise awarded hereunder, at the option of the grantor, shall cease and terminate one hundred twenty (120) days after the appointment of a receiver or receivers to trustee or trustees to take over and conduct the business of a grantee whether in a receivership, reorganization, bankruptcy or other action or proceeding unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty days, or unless:

1. Such receivers or trustees shall have, within one hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this ordinance and a franchise granted pursuant hereto, and the receivers or trustees within said one hundred twenty (120) days shall have remedied all defaults under a franchise awarded hereunder; and
2. Such receivers or trustees shall, within said one hundred twenty (120) days, execute an agreement duly approved by the court having jurisdiction in the premises, whereby such receivers or trustees assume and agree to be bound by each and every term, provision and limitation of a franchise herein granted.

B. In the case of a foreclosure or other judicial sale of the system, plant, property and equipment of a grantee, or any part thereof, including or excluding a franchise, the grantor may serve notice of termination upon a grantee and the successful bidder at such sale, in which event a franchise herein granted and all rights and privileges of a grantee hereunder shall cease and terminate thirty (30) days after service of such notice, unless:

1. The grantor shall have approved the transfer of a franchise awarded hereunder, as and in the manner in this ordinance provided, and
2. Such successful bidder shall have covenanted and agreed with the grantor to assume and be bound by all terms and conditions of a franchise awarded hereunder.

#### Chapter 14.12

#### REGULATION OF FRANCHISE

##### Sections:

- 14.12.010 Regulatory authority
- 14.12.020 Regulatory responsibility
- 14.12.030 Public usage of the system
- 14.12.040 Reservation by grantor
- 14.12.050 Uniform rates
- 14.12.060 Rate change procedure
- 14.12.070 Annual review of performance
- 14.12.080 System and services review
- 14.12.090 Public benefit capacity management

14.12.010 Regulatory authority. The grantor shall exercise appropriate regulatory authority under the provisions of this ordinance and applicable law. If a franchise area served by a telecommunications system also serves other contiguous or neighboring communities, the grantor may, at its sole option, participate in a joint regulatory agency, with delegated responsibility in the are of telecommunication services and related communication services.

14.12.020 Regulatory responsibility. The grantor, acting alone or acting jointly with other grantors, may exercise or delegate the following regulatory responsibility:

A. Administering and enforcing the provisions of a telecommunications system franchise(s).



- B. Coordination of the operation of government and educational system usage.
- C. Providing technical, programming and operational support to public agency users, such as government departments, schools and health care institutions.
- D. Establishing procedures and standards for the public use and sharing of the public facilities, if provided for in a franchise agreement.
- E. Planning expansion and growth of public benefit telecommunications services.
- F. Analyzing the possibility of integrating telecommunications services with other local, state or national telecommunications networks.
- G. Formulating and recommending long-range telecommunications policy.

14.12.030 Public usage of the system. If so specified in a franchise agreement, the grantor may require that a portion of the telecommunications system capacity and associated facilities and resources be designated for the development and use by the public or in the public interest. In furtherance of this purpose, the grantor may establish a commission, public operation or other entity to receive and allocate facilities, support funds and other considerations provided by a grantee and/or others. Such public corporation, if established, may be delegated the following responsibilities;

- A. Receive and utilize or reallocate for utilization, system capacity, facilities, funding and other support provided specifically for public usage of the telecommunications system.
- B. Review the status and progress of each service developed for public benefit.
- C. Reallocate resources on a periodic basis to conform with changing priorities and public needs.
- D. Report to the grantor annually on the utilization of resources, the new public services developed and the benefits achieved for the community and its residents.

14.12.0040 Reservation by grantor. The grantor reserves

the right, at its discretion, from time to time, to determine if the entity described in section 14.12.030 is performing its purpose in a manner satisfactory to the grantor, and if it is not, the grantor may receive and reallocate all or a portion of the system=s capacity, operations appropriation and capital appropriation, including any facilities and equipment purchased previously with such appropriation, to another entity. A new entity shall be required to comply in all respects with the legal responsibilities described in section 14.12.030.

14.12.050 Uniform rates.

A. A grantee shall establish service rates that must be applied uniformly to all users in the franchise area for its services in accordance with a franchise agreement.

B. Service user rates shall be effective for a minimum of one (1) year from the services commence, or in the event of new construction, until two (2) years after grantee has completed all construction proposed in its application, whichever is longer or as otherwise may be required by a franchise awarded hereunder.

14.12.060 Rate change procedure.

A. A grantee subject to provisions of this ordinance may not increase any rate or charge for any of its services without first filing notice of such proposed increased rate or charge with the grantor clerk and all affected system users. Such advance notice of a proposed change in user fees shall be subject to provision=s of a grantor=s rate regulation ordinance(s) which ordinance(s) and provisions by this reference shall be considered fully set forth herein.

B. A grantee subject to provisions of this ordinance may not increase or modify any rate, charge, or service which is not subject to grantor=s rate regulation ordinance(s) without first filing notice of such proposed increase, or modification with the grantor clerk at least thirty (30) days in advance of the proposed effective date of such increase or modification. Such notice shall state the nature of the increase or modification and provide the reason such increase or modification is deemed necessary by the grantor.

C. Notwithstanding the provisions of paragraph A. & B. of this section, a grantee and the grantor recognize that cable

television tier I services, as defined within a franchise agreement, shall provide information vital to the community through the use of dedicated channels providing governmental, educational and public access programming. Therefore, a grantee subject to this ordinance and franchise awarded hereunder shall not modify or repackage its cable television tier I programming services without the advance approval of the grantor or as otherwise provided within a franchise.

D. Notwithstanding that certain rates and charges for a grantor=s services may be exempt from grantor regulation at the time of adoption of this ordinance, the grantor herein expressly reserves the right to revise this ordinance in the future to incorporate any additional rate or service regulatory rights that may result from future changes in Federal or State law and/or FCC rules and regulations.

E. Any cable television franchise awarded hereunder may provide a procedure by which a grantee may request a modification of cable television programming services within a tier I, or for an increase or modification of any rate charge or service not subject to provisions of a grantor=s cable television rate regulation ordinance. Such a procedure may provide that:

1. The grantor may, by affirmative action by its legislative body, require a grantee to appear before it to show cause pursuant to criteria hereinafter set out as to why the grantor=s rates, charges or services should be increased or modified.
2. If the grantor should so act, the grantor clerk shall be required to give notice of said hearing to grantee not less than thirty (30) days prior to the scheduled date for said hearing.
3. In the event the grantor shall determine that such a hearing should take place, then said hearing shall be conducted in the following manner:
  - a) The grantor=s legislative body shall conduct a full and complete public hearing regarding continued applicability of deregulation of a grantee=s rates and charges.
  - b) At the show cause hearing provided herein, it shall be the grantor=s responsibility to determine whether or not a grantee has established reasonable rates or services for subscribers and if such proposed increase or modification of rates or services are reasonable or lawful. In making such determination, grantor shall

consider and give due weight to a grantee's expenses, a reasonable grantee return on the cost of the property used in this service, depreciation, obsolescence, taxes, risks of the business and the value of service to the customer. A copy of such decision will be served upon a grantee.

F. If, after the hearing, the grantor finds existing rates to be unjust, unreasonable or in violation of the law, a copy of such decision along with its conclusions and findings supporting its decision will be served upon a grantee.

G. The cost of publication of notice of the public hearing shall be borne by a grantee.

14.12.070 Annual review of performance. At the grantor's sole option, within ninety (90) days of the first anniversary of the effective date of each franchise, and each year thereafter throughout the term of a franchise awarded hereunder, the grantor and the grantee shall meet publicly to review the performance, quality of service and rates of a telecommunications system. The reports required in Chapter 14.24. Of this ordinance regarding user complaints, the records of performance tests and the opinion survey report shall be utilized as the basis for review. In addition, any user may submit complaints during the review meetings, either orally or in writing, and these shall be considered.

A. Within thirty (30) days after the conclusion of system performance review meetings, the grantor shall issue findings with respect to the adequacy of system performance and quality of service. If inadequacies are found, the grantor shall direct a grantee to correct the inadequacies within a reasonable period of time.

B. Failure of a grantee, after due notice, to correct the inadequacies shall be considered a material breach of a franchise awarded hereunder and the grantor may, at its sole discretion, exercise any remedy within the scope of this ordinance considered by the grantor to be appropriate.

14.12.080 System and services review. To provide for technological, economic and regulatory changes in the state of the art of telecommunications, to facilitate renewal procedures, to promote the maximum degree of flexibility in a telecommunications system, and to achieve a continuing, advanced

modern system, the grantor and a grantee shall comply with the following system and services review provisions:

A. At the grantor=s sole option, the grantor and a grantee shall hold a performance and compliance system and services audit session on or about the third anniversary date of a franchise agreement or renewal. Subsequent performance and compliance audits shall be scheduled by the grantor each three (3) years thereafter.

B. Sixty (60) days prior to the scheduled system audit, a grantee shall submit a report to the grantor indicating the following:

1. All system services that are being provided on an operational basis, excluding tests and demonstrations, to other municipalities within the United States with populations above fifty thousand (50,000), that are not provided to the grantor.

2. A plan for provision of such services, or a justification indicating why such services are not feasible for the grantor=s franchise area.

C. Topics for discussion and review at the system and services audit sessions shall include, but shall not be limited to services provided, rate structure, free or discounted services, application of new technologies, system performance, programming, users= complaints, rights of privacy, amendments to a franchise awarded hereunder, construction processes, developments in the law and regulatory constraints.

D. Either the grantor or a grantee may select additional topics for discussion at any review session.

E. Not later than sixty (60) days after the conclusion of each system and services audit, the grantor shall issue findings, including specifically a listing of any services not then being provided to the grantor that are considered technically and economically feasible.

14.14.090 Public benefit capacity management.

A. Intent. It is the intent of the grantor to ensure that wherever possible, access and community services required within a franchise agreement shall be managed in the best public interest so that such services will be free of censorship, open to all residents and available for all forms of public

expression, community information and debate of public issues. Pursuant to these objectives, the grantor may delegate the responsibility for public benefit capability management to a nonprofit entity, which may include, but not be limited to, any of the following:

1. A nonprofit corporation.
2. A management commission or committee, appointed by the grantor, and representing a broad spectrum of the community.
3. An established nonprofit entity with special capability, such as a local or regional school system or community college.

B. Functions: The entity designated to manage public benefit capability shall have the following functions:

1. Responsibility for public benefit usage and management as may be required within a franchise.
2. To assure that the public benefit access is made available to all residents of a franchise area on a nondiscriminatory, first-come, first-served basis.
3. To assure that no censorship or control over public benefit system use is imposed, except as such control may relate to compliance with existing FCC rules as may regard the prohibition of material that is obscene, or contains commercial advertising, or conducts a lottery.
4. To devise, establish and administer all rules, regulations, and procedures pertaining to the use and scheduling of the public benefit use system.
5. To prepare, in conjunction with a grantee, such regular or special reports as may be required or desirable.
6. To hire and supervise staff.
7. To make all purchases of materials and equipment that may be required.
8. To develop additional sources of funding, such as foundation or federal or state grants.
9. To perform such other functions relevant to the public benefit use of the system as may be appropriate.
10. Establishment of budgets on an annual basis, and utilization of funds and resources received from the grantor or the public benefit usage entity designated in section 14.12.030.

C. Public benefit usage rules. The management entity, in cooperation with a grantee, shall develop a set of rules for the use of the public benefit use of the system which shall be promptly forwarded to the grantor. The rules shall be prepared in cooperation with a grantee and confirmed by a contractual

agreement between the access management entity and a grantee. The rules shall, at a minimum, provide for:

1. Access on a first-come, first-served, nondiscriminatory basis for all residents of a franchise area.
2. Prohibition of advertising for commercial or political purposes, as defined by the FCC.
3. Prohibition of any presentation of lottery information or obscene or indecent material.
4. Public inspection of the log of public benefit users, which shall be retained by a grantee for a period of two (2) years.
5. Procedures by which individual or groups who violate any rule may be prevented from further access to public benefit use of the system.
6. Free public benefit use of the system, facilities and technical support as are provided for in the public benefit user rules or a franchise.

D. Public benefit use reports. The Management entity shall provide a report to the grantor, at least annually, indicating the type of public benefit services accomplished, the number of individuals or community groups that have utilized such system services, and the community benefit of such utilization.

#### Chapter 14.16

#### FINANCIAL AND INSURANCE PROVISIONS

##### Sections:

- 14.16.010 Construction bond
- 14.16.020 Performance bond
- 14.16.030 Security fund
- 14.16.040 Employer bonding
- 14.16.050 Indemnification
- 14.16.060 Insurance

##### 14.16.010 Construction bond.

A. Within thirty (30) days after the granting of a franchise subject to provisions of this ordinance, a grantee shall file with the grantor a bond(s) in the amount specified in a franchise agreement in favor of the grantor and any other person who may claim damages as a result of the breach of any duty by a grantee assured by such bond.

B. Such bond as contemplated herein shall be in the form approved by the grantor and shall, among other matters, cover the cost of removal of any properties installed by a grantee in the event said grantee shall default in the performance of its franchise obligation.

C. In no event shall the amount of said bond be construed to limit the liability of a grantee for damages.

D. The grantor, at its sole option, may waive this requirement, or permit the consolidation of the bond with a security fund as specified in sections 14.16.010 and 14.16.020.

#### 14.16.020 Performance bond.

A. In addition to the bond set forth above, a grantee shall, at least thirty (30) days prior to the commencement of operation, file with the grantor a performance bond in the amount specified in a franchise agreement in favor of the grantor and any other person who may be entitled to damages as a result of any occurrence in the operation or termination of the telecommunications system operated under a franchise agreement, and including the payments required to be made to the grantor hereunder.

B. Such bond as contemplated herein shall be in the form approved by the grantor and shall among other matters cover the cost of removal of any properties installed by a grantee in the event said grantee shall default in the performance of its franchise obligation.

C. In no event shall the amount of said bond be construed to limit the liability of a grantee for damages.

#### 14.16.030 Security fund.

A. Within thirty (30) days after the effective date of a franchise awarded hereunder, a grantee shall deposit into a bank account, established by the grantor and maintain on deposit through the term of this franchise, the sum specified in a franchise agreement, as security for the faithful performance by it of all the provisions of a franchise awarded hereunder, and compliance with all orders, permits and directions of any agency of the grantor having jurisdiction over its acts or defaults under this ordinance and the payment by a grantee of any claims,



liens and taxes due the grantor which arise by reason of the construction, operation or maintenance of the system. The security fund may be assessed by the grantor for purposes including, but not limited to, the following:

1. Failure of a grantee to pay the grantor sums due under the terms of a franchise awarded hereunder.
2. Reimbursement of costs borne by the grantor to correct franchise violations not corrected by a grantee, after due notice.
3. Monetary remedies or penalties assessed against a grantee due to default or violation of franchise requirements.

B. At the grantor's sole option, some portion of the security fund may be provided in the acceptable form of an irrevocable letter of credit, in lieu of a cash deposit.

C. Within thirty (30) days after notice to it that any amount has been withdrawn by the grantor from the security fund pursuant to subsection A of this section, a grantee shall deposit a sum of money sufficient to restore such security fund to the original amount.

D. If a grantee fails to pay to the grantor any franchise fee or taxes due and unpaid, or fails to pay to the grantor, any damages, costs or expenses which the grantor shall be compelled to pay by reason of any act or default of a grantee in connection with this franchise, or fails after thirty (30) days notice of such failure by the grantor, to comply with any provision of a franchise awarded hereunder which the grantor reasonably determines can be remedied by an expenditure of the security, the grantor may immediately withdraw the amount thereof, with interest and any penalties, from the security fund. Upon such withdrawal, the grantor shall notify a grantee of the amount and date thereof.

E. The security fund deposited pursuant to this section shall become the property of the grantor in the event that a franchise awarded hereunder is revoked for cause by reason of the default of a grantee in accordance with the procedures of section 14.16.030. A grantee, however, shall be entitled to the return of such security fund, or portion thereof, as remains on deposit at the expiration of the term of a franchise awarded hereunder, provided that there is then no outstanding default on the part of a grantee.

F. The rights reserved to the grantor with respect to the security fund are in addition to all other rights of the grantor whether reserved by this contract or authorized by law, and no action, proceeding or exercise of a right with respect to such security fund shall affect any other right the grantor may have.

14.16.040 Employer bonding. When requested by the grantor, a grantee shall provide adequate bonding for employees that enter users= residences and/or perform fiduciary duties with respect to subscriber funds.

14.16.050 Indemnification.

A. A grantee shall by acceptance of a franchise granted herein indemnify, defend and hold harmless the grantor, its officers, boards, communication agents and employees from any and all claims, suits, judgments for damages in any way arising out of or through or alleged to arise out of or through:

1. The act of the grantor in granting this franchise; and
2. The acts or omissions of a grantee, its servants, employees or agents.

Both such indemnifications shall cover such claims arising in tort, contracts, violations of statutes, ordinances or regulations or otherwise.

B. In the event any such claims shall arise, the grantor shall tender the defense thereof to a grantee; provided, however, that the grantor in its sole discretion may participate in the defense of such claims at its expense.

14.16.060 Insurance.

A. A grantee shall maintain throughout the term of a franchise insurance in amounts as set forth within a franchise or as follows:

1. Worker=s compensation insurance. In such coverage as may be required by the worker=s compensation insurance and safety laws of the State of Michigan and amendments thereto.
2. Comprehensive general liability. Comprehensive general liability insurance, including, but not limited to, coverage for bodily injury and property damage shall be maintained at the sum(s) specified in a franchise

agreement.

3. Comprehensive automobile liability. Comprehensive automobile liability including, but not limited to, non-ownership and hired car coverage as well as owned vehicles with coverage for bodily injury and property damage shall be maintained at the sum(s) specified in a franchise agreement.

B. A grantee shall furnish the grantor with copies of such insurance policies and certificates of insurance.

C. Such insurance policies provided herein shall name the grantor, its officers, boards, commissions, agents and employees as additional insured and shall contain the following endorsement:

It is hereby understood and agreed that this insurance policy may not be canceled by the surety or the intention not to renew be stated by the surety until thirty(30) days after receipt by the grantor by registered mail written notice of such intention to cancel or not renew.

D. The minimum amounts set forth in a franchise agreement for such insurance shall not be construed to limit the liability of a grantee to the grantor under a franchise issued hereunder to the amounts of such insurance.

## Chapter 14.20

### DESIGN AND CONSTRUCTION

#### Sections:

- 14.20.010 System design
- 14.20.020 Geographical coverage
- 14.20.030 Cablecasting facilities
- 14.20.040 System construction schedule
- 14.20.050 Remedies for delay in construction
- 14.20.060 Undergrounding of system components
- 14.20.070 New development under grounding
- 14.20.080 Undergrounding at multiple-dwelling units
- 14.20.090 Street occupancy
- 14.20.100 Construction and technical standards
- 14.20.110 Areawide interconnection

14.20.010 System design. A telecommunications system shall

be constructed in accordance with the design requirements contained in a franchise agreement.

14.20.020 Geographical coverage. A grantee shall design and construct a system in such a manner as to have an initial capability to provide service and pass every residential and commercial unit, school and public agency within the area of a franchise. Service shall be provided to users in accordance with the schedules and line extension policies specified in a franchise agreement. System construction and provision of service shall be nondiscriminatory, and shall not delay or defer service to any section of a franchise area on the grounds of economic preference.

14.20.030 Cablecasting facilities. Where practical, a grantee shall provide cablecasting facilities in accordance with the requirements of a franchise agreement.

14.20.040 System construction schedule.

A. A grantee shall comply with the requirements of the system construction schedule contained in a franchise agreement.

B. Service need not be provided where power and telephone utilities are not available.

C. A grantee shall provide a detailed construction plan indicating progress schedule, area construction maps, test plan and projected dates for offering service. In addition, a grantee shall update this information on a monthly basis, showing specifically whether schedules are being met and the reasons for any delay.

D. Failure to begin construction within one (1) year after award of a franchise shall be grounds for franchise revocation, at the option of the grantor.

14.20.050 Remedies for delay in construction.

A. The grantor may, at its sole option, apply any or all of the following remedies in connection with delays in system construction:

1. Reduction in the duration of a franchise on a month-for-month basis for each month of delay exceeding three (3) months.

2. Forfeiture of bonds and/or assessment of monetary damages up to the maximum limit specified in a franchise agreement, levied against a security fund for delays

exceeding six (6) months.

3. Termination of a franchise awarded hereunder for delays exceeding twelve (12) months.

B. Any penalties applied shall be in accordance with the procedures contained in Chapter 14.04.

14.20.060 Undergrounding of system components. The undergrounding of a grantee's distribution system shall be installed underground at a grantee's cost where existing utilities are already underground. Previously installed aerial distribution systems shall be underground or relocated in concert, and on a cost-sharing basis, with other utilities, when such other utilities may convert from aerial to underground construction.

14.20.070 New development undergrounding.

A. In cases of new construction or property development where utilities are to be placed underground, upon request by a grantee, the developer or property owner shall give a grantee reasonable notice of the particular date on which open trenching will be available for a grantee's installation of conduit, pedestals and/or vaults, and laterals to be provided at a grantee's expense. A grantee shall also provide specifications as needed for trenching.

B. Costs of trenching and easements required to bring service to the development shall be borne by the developer or property owner; except that if a grantee fails to install its conduit, pedestals and/or vaults, and laterals within five (5) working days of the date the trenches are available, as designated in the notice given by the developer or property owner, then should the trenches be closed after the five-day period, the cost of new trenching is to be borne by a grantee.

14.20.080 Undergrounding at multiple-dwelling units. In cases of multiple-dwelling units serviced by aerial utilities, a grantee shall make every effort to minimize the number of individual aerial drop cables, giving preference to undergrounding of multiple drop cables between the pole and the dwelling unit. The burden of proof shall be upon a grantee to demonstrate why undergrounding of drop cables is technically or economically unfeasible.

14.20.090 Street occupancy.

A. A grantee shall utilize existing poles, conduits and other facilities whenever possible, and shall not construct or install any new, different, or additional poles, conduits or other facilities whether on public property or on privately owned property until the written approval of the grantor is obtained, which approval shall not be unreasonably withheld. However, no location of any pole or wire holding structure of a grantee shall be a vested interest and such poles or structures shall be removed or modified by a grantee at its own expense whenever the grantor determines that the public convenience would be enhanced thereby.

B. A grantee shall notify the grantor at least ten (10) days prior to the intention of a grantee to commence any construction on any streets. The grantor shall cooperate with a grantee in granting any permits required, providing such grant and subsequent construction by a grantee shall not unduly interfere with the use of such streets and that proposed construction shall be done in accordance with the pertinent provisions of the ordinances of the grantor.

C. All transmission lines, equipment and structures shall be so installed and located as to cause minimum interference with the rights and reasonable convenience of property owners and at all times, shall be kept and maintained in a safe, adequate and substantial condition, and in good order and repair. A grantee 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. Suitable barricades, flags, lights, flares or other devices shall be used at such time and places as are reasonably required for the safety of all members of the public. Any poles or other fixtures placed in any public way by a grantee shall be placed in such a manner as not to interfere with the usual travel on such public way.

D. A grantee shall, for the entire term of a franchise, at its own expense, and in a manner approved by the grantor, restore to grantor standards and specifications any damage or disturbance caused to public or private property as a result of its operations or construction on its behalf.

E. Whenever, in case of fire or other disaster, it becomes necessary in the judgment of the grantor to remove any of a grantee's facilities, no charge shall be made by a grantee

against the grantor for restoration and repair, unless such acts amount to gross negligence by the grantor.

F. A grantee shall have the authority to trim trees on public property at its own expense as may be necessary to protect its wires and facilities, subject to the supervision and direction of the grantor. Trimming of trees outside of public easements and on private property shall require written consent of the property owner.

G. A grantee at its expense shall protect, support, temporarily disconnect, relocate or remove any property of a grantee when, in the opinion of the grantor, the same is required by reason of traffic conditions, public safety, street vacation, freeway or street construction, change or establishment of street grade, installation of sewers, drains, water pipes, power line, signal line, transportation facilities, tracks, or any other types of structure or improvements by governmental agencies whether acting in a governmental or a proprietary capacity, or any other structure or public improvement, including, but not limited to, movement of buildings, redevelopment or any general program under which the grantor shall undertake to cause any such properties to be located beneath the surface of the ground. A grantee shall in all cases have the privilege, subject to the corresponding obligation, to abandon any property of grantee in place. Nothing hereunder shall be deemed a taking of the property of a grantee and a grantee shall be entitled to no surcharge by reason of anything hereunder.

H. Upon failure of a grantee to commence, pursue or complete any work required by law or by the provisions of a franchise awarded hereunder to be done in any street, within the time prescribed and to the satisfaction of the grantor, the grantor may, at its option, cause such work to be done and a grantee shall pay to the grantor the cost thereof in the itemized amounts reported by the grantor to a grantee within thirty (30) days after receipt of such itemized report.

I. A grantee shall make no paving cuts or curb cuts unless absolutely necessary, and then only after written permission has been given by the grantor.

J. The grantor reserves the right to require conduit for underground distribution systems consistent with its normal procedure.

14.20.100 Construction and technical standards.

A. Construction standards.

1. Compliance with safety codes. All construction practices shall be in accordance with all applicable sections of the Occupational Safety and Health Act and any amendments thereto as well as all state and local codes where applicable.

2. Compliance with electrical codes. All installation of electronic equipment shall be of a permanent nature, durable and installed in accordance with the provisions of the Basic BOCA Electrical Code as amended.

3. Antenna and towers. Antenna supporting structures (towers) shall be designed for the proper loading as specified in Electronics Industry Association=s specifications.

4. Compliance with aviation requirements. Antenna supporting structures (tower) shall be painted, lighted, erected and maintained in accordance with all applicable rules and regulations of the Federal Aviation Administration and all other applicable state or local codes and regulations.

5. Construction standards and requirements. All of a grantee=s distribution system and equipment, including, but not limited to, the antenna site, head-end and distribution system towers, house connections, structures, poles, wire, cable, coaxial cable, fiber optic cable, fixtures and appurtenances shall be installed, located, erected, constructed, reconstructed, replaced, removed, repaired maintained and operated in accordance with good engineering practices, performed by experienced maintenance and construction personnel so as not to endanger or interfere with improvements the grantor may deem proper to make, or to interfere in any manner with the rights of any property owner, or to unnecessarily hinder or obstruct pedestrian or vehicular traffic.

6. Safety, nuisance requirements. A grantee shall at all times employ care and shall install and maintain in use commonly accepted methods and devices preventing failures and accidents which are likely to cause damage, injury or nuisance to the public.

B. Technical standards. A telecommunications system created or built as a direct result of the award of a franchise hereunder shall meet all technical and performance standards



specified by law, FCC Rules, or specifications contained in a franchise.

C. Test and compliance procedure. If so required in a franchise awarded hereunder, a grantee shall submit, within sixty (60) days after the effective date of a franchise award, a detailed test plan describing the methods and schedules for testing the system on an ongoing basis to determine compliance with the provisions of a franchise. Such tests shall be those necessary to measure compliance with existing Federal law or FCC rules. The tests for basic subscriber television services shall be performed at intervals no greater than every twelve (12), on a minimum of ten(10)subscriber television receivers, located throughout the service area. At least six (6) of these locations shall be at the far end of the distribution trunk cables. The tests shall be witnessed by representatives of the grantor, and written test reports shall be submitted to the grantor. If more than ten(10) per cent of the locations tested fail to meet the performance standards, a grantee shall be required to indicate what corrective measures have been taken, and the entire test shall be repeated for at least ten (10) different locations.

D. Special tests: At any time after commencement of service to subscribers, the grantor may require additional tests, full or partial repeat tests, different test procedures, or tests involving a specific user=s terminal. Requests for such additional tests will be made on the basis of complaints received or other evidence indicating an unresolved controversy or significant noncompliance, and such tests shall be limited to the particular matter in controversy. The grantor shall endeavor to so arrange its requests for such special tests so as to minimize hardship or inconvenience to grantee or to the user.

#### 14.20.110 Areawide interconnection.

A. Interconnection required. A grantee shall, to the best of its ability, attempt to accomplish an interconnect of any public benefit system capacity with other telecommunication systems in adjacent area, upon the directive of the grantor.

B. Interconnection procedure. Upon receiving a directive of the grantor to explore the possibility of an interconnect, a grantee shall initiate negotiations with other systems. The cost of such an interconnect, if accomplished, shall be borne by both grantees in a proportion to the level of effort and expense expended by both, or all parties. In the case of regional or

state-wide interconnection, the same principle shall apply.

C. Relief. A grantee may be granted reasonable extensions of time to interconnect or the grantor may, at the request of a grantee, withdraw its directive to seek an interconnect.

D. Cooperation required. A grantee shall cooperate with any interconnection corporation, regional interconnection authority or city, county, state and federal regulatory agency which may be hereafter established for the purpose of regulating, financing or otherwise providing for the interconnection of telecommunication systems beyond the boundaries of a franchise territory.

E. Initial technical requirements to assure future interconnection capability.

1. All telecommunications systems of similar type receiving a franchise to operate within a franchise territory shall make every effort to use the same frequency allocations for commonly provided signals so far as is technically and economically feasible.

2. A grantee who provides public benefit services shall install and operate equipment that is compatible throughout the area so that services may be shared by various systems

#### Chapter 14.24

### SERVICE

#### Sections:

- 14.24.010 Services to be provided
- 14.24.020 Basic subscriber television service
- 14.24.030 Basic subscriber radio service
- 14.24.040 Institutional service
- 14.24.050 Additional subscriber service
- 14.24.060 Local organization channel(s)
- 14.24.070 Government access channel(s)
- 14.24.080 Educational access channel(s)
- 14.24.090 Public access channel(s)
- 14.24.100 Public access channel(s)-closed circuit
- 14.24.110 Leased access channel
- 14.24.120 Universal connection

14.24.010 Services to be provided. A grantee shall provide, as a minimum, the services specified within a franchise. Services shall not be reduced without prior approval of the grantor.

14.24.020 Basic subscriber television service. Basic subscriber television service shall include all FCC required services, distant television broadcast signals, imported non-broadcast signals and the provision of all other franchise required PEG access channel signals. This service shall be provided to all users at the established monthly subscription rates.

14.24.030 Basic subscriber radio service. Basic subscriber radio service shall include the provision of all audio services designated in a franchise agreement, including broadcast FM radio and cablecast FM signals. This service shall be provided to all users at the established monthly subscription rates.

14.24.040 Institutional service. If specified in a franchise agreement, the Ainstitutional service@ shall include the provision of transmission and/or reception services to institutional users, on a leased channel basis at established rates. Services may include the distribution of video or non-video signals.

14.24.050 Additional subscriber services. Additional user services, not included in the services specified above, may be provided subject to the terms and conditions specified within a franchise.

14.24.060 Local organization channel(s). As may be required by a cable television franchise agreement awarded hereunder, a grantee may operate studios of professional quality, dedicated for the purpose of providing cablecast programming responsive to local needs and interests. Where required by a franchise, the emphasis for required local origination channel(s) shall be on providing programming that is unavailable to viewers on broadcast television channels.

14.24.070 Government access channel(s). As may be required by a cable television franchise, a grantee shall provide the number of channels specified in a franchise agreement, including all necessary interface equipment and cabling to permit operation, for the use of the grantor at no charge to the grantor. A grantee shall provide advice and technical expertise to aid in the utilization of these channels.

14.24.080 Educational access channel(s). As may be required by a cable television franchise, a grantee shall provide the number of channels specified in a franchise

agreement including all necessary interface equipment and cabling to permit operation, for the use of the local educational institutions at no charge. A grantee shall, at no cost, provide advice and technical expertise to aid in the utilization of these channels.

14.24.090 Public access channel(s). As may be required within a cable television franchise, a grantee shall provide the number of channels specified in a franchise agreement including all necessary interface equipment and cabling to permit operation, to be available to the public at no charge. The public access channel(s) shall be managed and operated by the access channel manager, as described in Chapter 14.12 of this ordinance. A grantee shall make available for programmers of the public access channel the facilities and support listed in a franchise agreement.

14.24.100 Public access channel(s) closed circuit. As may be required within a cable television franchise, if the cable communications system includes a closed-circuit institutional network, a grantee shall make at least three (3) two-way channels available for local government, educational and public use at no charge. The public access two-way channels shall be managed and operated by the public benefit services entity.

14.24.110 Leased access channel. As may be required within a cable television franchise, a grantee shall make available for lease, on a nondiscriminatory basis and consistent with existing FCC rules or law, the number of channels specified in a franchise agreement. All leased channel service revenues shall be included in gross revenues subject to a franchise fee.

14.24.120 Universal connection. The grantor may require within a franchise awarded hereunder that all dwelling units within a franchise area shall be connected physically to a telecommunications system by a grantee by means of drop cables terminating at each dwelling unit, whether or not the dwelling unit's occupants desire to utilize the telecommunications services provided by a grantee, provided that no such universal connector shall be made in residential homes without the written permission of the property owner. The cost and charges shall be determined by the grantor at the time such connection is required. A grantee shall be entitled to recover the incremental cost of providing a universal connection.

## Chapter 14.28

### OPERATION AND MAINTENANCE

#### Sections:

- 14.28.010 Open books and records
- 14.28.020 Records required
- 14.28.030 Maintenance and complaints
- 14.28.040 Rights of individuals
- 14.28.050 Continuity of service mandatory
- 14.28.060 Grantee rules and regulations
- 14.28.070 Tenant rights

#### 14.28.010 Open books and records.

A. A grantee shall manage all of its operations in accordance with a policy of totally open book and records. The grantor shall have the right to inspect at any time during normal business hours, all books, records, maps, plans, financial statement, service complaint logs, performance test results and other like materials of a grantee which relate to the operation of a franchise awarded hereunder and are maintained at the office within a franchise territory.

B. If any of such books or records are not kept in the local office, or upon reasonable request not made available in the grantor, and if the grantor shall determine that an examination of such records is necessary or appropriate to the performance of any of grantor=s duties, expenses necessarily incurred in making such examination shall be paid by a grantee.

14.28.020 Records required. A grantee shall at all times maintain:

A. A record of all complaints received and interruptions or degradation of service for the preceding three (3) years.

B. A full and complete set of plans, records and Aas-built@ maps showing the exact location of all cable communication system equipment installed or in use in a franchise territory, exclusive of user service drops.

#### 14.28.030 Maintenance and complaints.

A. A grantee shall maintain an office in the franchise area which shall be open during all usual business hours, have publicly listed toll-free telephone, and be so operated to receive user complaints and requests for repairs or adjustments on a twenty-four-hour a day basis. A written log shall be maintained listing all complaints, the name and address of the user and the disposition of each complaint.

B. A grantee shall render efficient service, make repairs promptly and interrupt service only for good cause and for the shortest time possible. Such interruptions, insofar as possible, shall be preceded by notice and shall occur during period of minimum use of the system. A written log shall be maintained for all service interruptions.

C. A grantee shall maintain a repair force of technical personnel capable of responding to user complaints, system outages, or requests for service within twenty-four (24) hours after receipt of the complaint or request. No charge shall be made to a user in the event of a system outage, or repair is the result of problem with the grantee=s system.

D. A grantee shall furnish each user, at the time service is installed, written instructions that clearly set forth procedures, furnish information concerning the procedures for making inquiries or complaints, including the name, address and local telephone number of the employee or employees or agent to whom such inquiries or complaints are to be addresses and furnish information concerning the grantor office responsible for administration of a franchise with the address and telephone number of the office.

#### 14.28.040 Rights of individuals.

A. A grantee shall not deny service, deny access , or otherwise discriminate against any person on the basis of race, color, religion, national origin, occupation, age or sex. A grantee shall comply at all times with all other applicable federal, state and local laws and regulations, and all executive and administrative orders relating to non-discrimination which are hereby incorporated and made part of this ordinance by reference.

B. A grantee shall strictly adhere to the equal employment opportunity requirements of the FCC, state and local regulations, as amended from time to time.

C. No signals of a Class IV cable communications channel shall be transmitted from a user terminal for purposes of monitoring individual cable television viewing patterns or practices without the express written permission of the user. The request for such permission shall be contained in a separate document with a prominent statement that the user is authorizing the permission in full knowledge of its provision. Such written permission shall be for a limited period of time not to exceed one year, which shall be renewable at the option of the user. No penalty shall be invoked for a user's failure to provide or renew such an authorization. The authorization shall be revocable at any time by the user without penalty of any kind whatsoever. Such authorization is required for each type of classification of Class IV cable television activity planned; provided however, that a grantee shall be entitled to conduct system wide or individually addressed Asweeps@ for the purpose of verifying system integrity, controlling return-path transmission, or billing for pay services.

D. A grantee, or any of its agents or employees, shall not, without the specific written authorization of a user, sell or otherwise make available to any party:

1. Lists of names and addresses of such subscribers, or;
2. Any list which identifies the viewing or other telecommunications habits of individual users.

E. Fairness of accessibility: The entire system of a grantee shall be operated in a manner consistent with the principle of fairness and equal accessibility of its facilities, equipment, channels, studios and other services to all citizens, businesses, public agencies and other entities having a legitimate use for the network; and no one shall be arbitrarily excluded from its use; allocation of use of said facilities shall be made according to the rules or decisions of a grantee and any regulatory agencies affecting the same.

14.28.050 Continuity of service mandatory.

A. It shall be the right of all users to continue receiving service insofar as their financial and other obligations to a grantee are honored. In the event that a grantee elects to overbuild, rebuild, modify or sell the system, or the grantor gives notice of intent to terminate or fails to renew the franchise, a grantee shall act so as to ensure that all system users receive continuous, uninterrupted service regardless of

the circumstances.

1. In the event of a change of franchise, or in the event a new operator acquires the system, a grantee shall cooperate with the grantor, new franchisee or operator in maintaining continuity of service to all system users. During such period, a grantee shall be entitled to the revenues for any period during which it operate the system.

B. In the event a grantee fails to operate the system for seven (7) consecutive days without prior approval of the grantor or without just cause, the grantor may, at its option, operate the system or designate an operator until such time as a grantee restores service under conditions acceptable to the grantor or a permanent operator is selected. If the grantor is required to fulfill this obligations for a grantee, a grantee shall reimburse the grantor for all costs or damages in excess of revenues from the system received by the grantor that are the result of a grantee=s failure to perform.

14.28.060 Grantee rules and regulations. A grantee shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable a grantee to exercise its rights and perform its obligations under a franchise, and to assure uninterrupted service to each and all of its customers. Provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the provisions hereof or applicable state and federal laws, rules and regulations. Such rules, regulations, terms and conditions shall be submitted to the grantor for its review.

14.28.070 Tenant rights . A grantee shall be required to provide service to tenants in individual units of a multiple-housing facility with all services offered to other dwelling units within a franchise area, so long as the owner of the facility consents in writing, if requested by a grantee, to the following:

1. To a grantee=s providing of the service to units of the facility;
2. To reasonable conditions and times for installation, maintenance, and inspection of the system on the facility premises;.
3. To reasonable conditions promulgated by a grantee to protect a grantee=s equipment and to encourage widespread use of the system, and;



4. To not discriminate in rental charges, or otherwise,  
between tenants who receive cable service and those who do  
not.

(Ord. 209, 1995)

Title 15

BUILDING AND CONSTRUCTION

Chapters:

<u>15.04</u>	<u>Building Code Adopted</u>
<u>15.06</u>	<u>Fire Code Adopted</u>
<u>15.08</u>	<u>Housing and Rental Rules and Regulations</u>
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Chapter 15.04

BUILDING CODE ADOPTED

Sections:

- 15.04.010 Adoption of building code
- 15.04.020 Additions, insertions, and changes
- 15.04.030 Repealing clause
- 15.04.040 Savings clause
- 15.04.050 Floodplain Management Provisions; State of Michigan Construction Code

15.04.010 Adoption of building code. That a certain document, three (3) copies of which are on file in the office of the city clerk, being marked and designated as A2009 Michigan Building Code@ including the 2009 Michigan Residential Code, and the 2009 Michigan Rehabilitation Code for Existing Buildings", as published, by the Michigan Department of Consumer Industry & Industry Services, is hereby adopted as the building code of the city of Linden, Genesee County, Michigan; for the control of buildings and structures as herein provided; and each and all of the regulations, provisions, penalties, conditions and terms of said 2009 MICHIGAN BUILDING CODE including the 2009 MICHIGAN RESIDENTIAL CODE and the 2009 MICHIGAN REHABILITATION CODE FOR

EXISTING BUILDINGS are hereby referred to, adopted and made part hereof, as if fully set out in this ordinance. (Ord 199 Sec 15.04.010, 1994)(Ord 236 Sec 15.04.010, 1998)(Ord 290,2004), (Ord 329, 2011)

15.04.020 Additions, insertions, and changes. The following sections are revised as follows:

A. Section 101.1 Title: These regulations shall be known as the Building Code of the city of Linden, hereinafter referred to as Athis code@.

B. Section 112.3.1 Fee schedule: A fee for each plan examination, building permit and inspection shall be paid in accordance with Resolution No. 404 adopted May 12, 1997 or as amended.

C. Section 116.4 Violation penalties: Any person who shall violate a provision of this code or shall fail to comply with any of the requirements thereof or who shall erect, construct, alter or repair a building or structure in violation of an approved plan or directive of the code official, or of a permit or certificate issued under the provisions of this code shall be guilty of a misdemeanor punishable by a fine of not more than five hundred (\$500.00) dollars or by imprisonment not exceeding ninety (90) days, or both such fine and imprisonment. Each day that a violation continues shall be deemed a separate offense.

D. Section 117.2 Unlawful Continuance: Any person who shall continue any work in or about the structure after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe conditions shall be liable to a fine of not less than one hundred (\$100.00) or more than five hundred (\$500.00) dollars.(Ord 199 Sec 15.04.020, 1994)

15.04.030 Repealing clause. All other ordinances of the city of Linden or parts of ordinances in conflict herewith are hereby repealed. (Ord 199 Sec 15.04.030, 1994)

15.04.040 Savings clause. Nothing in the ordinance or in the building code hereby adopted shall be construed to affect any suit or proceeding pending in any court or any rights acquired or liability incurred, or any cause or causes of action acquired or existing, under any act or ordinance hereby repealed as cited in by Section 15.04.030 of this chapter; nor shall any just or legal right or remedy of any character be lost, impaired or affected by this ordinance. (Ord 199 Sec 15.04.040, 1994)

15.04.050 Agency Designated; Code Appendix  
Enforced; Designation of Flood Prone Hazard Areas

(A) AGENCY DESIGNATED. 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 Linden is hereby designated as the enforcing agency to discharge the responsibility of the City of Linden under Act 230, of the Public Acts of 1972, as amended, State of Michigan.

The City of Linden assumes responsibility for the administration and enforcement of said Act through out the corporate limits of the community adopting this ordinance.

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

(C) DESIGNATION OF REGULATED FLOOD PRONE HAZARD AREAS. The Federal Emergency Management Agency (FEMA) Flood Insurance Study (FIS) entitled Genesee County, Michigan (All Jurisdictions) and dated 9/25/09 and the Flood Insurance Rate Map (FIRM) panel numbers of 26049C; 0408D; 0409D; 0416D, and 0417D dated September 25, 2009 are adopted by reference for the purposes of administration of the Michigan Construction Code, and declared to be a part of Section 1612.3 of the Michigan Building Code, and to provide the content of the "Flood Hazards" section of the Table R301.2(1) of the Michigan Residential Code. (Ord 325, 2009)

Chapter 15.06

FIRE CODE ADOPTED

Sections:

- 15.06.010 Adoption of fire code
- 15.06.020 Revisions
- 15.06.030 Repealing clause
- 15.06.040 Savings clause

15.06.010 Adoption of fire code . A certain document, three (3) copies of which are on file in the office of the City Clerk of the City of Linden, being marked and designated as the *International Fire Code*, 2006 Edition, including Appendix

Chapters as published by the International Code Council, be and is hereby adopted as the Fire Code of the City of Linden, in the State of Michigan regulating and governing the safeguarding of life and property from fire and explosion hazards arising from the storage, handling and use of hazardous substances, materials and devices, and from conditions hazardous to life or property in the occupancy of buildings and premises as herein provided; providing for the issuance of permits and collection of fees therefore; and each and all of the regulations, provisions, penalties, conditions and terms of said Fire Code on file in the office of the City of Linden and hereby referred to, adopted and made part hereof, as if fully set out in the Ordinance, with the additions, insertions, deletions and changes, if any prescribed in Section 15.06.020 of the City of Linden Municipal Code.(Ord 312, 2008)

15.06.020 Revisions. The following sections are hereby revised:

A. Section 101.1: These regulations shall be known as the Fire Code of the City of Linden, hereinafter referred to "this code".

B. Section 109.3: Any person who shall violate a provision of this code or shall fail to comply with any of the requirements thereof under the provisions of this code shall be guilty of a misdemeanor punishable by a fine of not more than five hundred (\$500.00) dollars or by imprisonment not exceeding ninety (90) days, or both such fine and imprisonment. Each day that a violation continues shall be deemed a separate offense.(Ord 312, 2008)

15.06.030 Repealing Clause. All ordinances or parts of ordinances in conflict herewith are hereby repealed. (Ord 312, 2008)

15.06.040 Saving Clause. That if any section, subsection, sentence, clause or phrase if this ordinance is, for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The City of Linden hereby declares that it would have passed this ordinance, and each section, subsection, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, and phrases be declared unconstitutional.(Ord 312, 2008)

#### Chapter 15.08

#### HOUSING AND RENTAL RULES AND REGULATIONS

Sections:

- 15.08.010 Definitions and construction
- 15.08.020 Inspection of dwellings, dwelling units, rooming units and premises
- 15.08.030 Notice of violations
- 15.08.040 Request for hearing
- 15.08.050 Findings and determination
- 15.08.060 Record of hearing proceedings and further appeal
- 15.08.070 Issuance of and compliance with emergency orders
- 15.08.080 Promulgation of rules and regulations by health officer
- 15.08.090 Minimum standardsBBasic equipment and facilities
- 15.08.100 Minimum standardsBLight, ventilation and heating
- 15.08.110 General requirements for safe and sanitary maintenance of dwellings and dwelling units
- 15.08.120 Minimum requirements for space, use and location
- 15.08.130 Responsibilities of owners and occupants
- 15.08.140 Requirements for rooming houses
- 15.08.150 Certificate of compliance for rental properties
- 15.08.160 Certificate of compliance for single-family, owner-occupied dwellings
  
- 15.08.170 Designation of unfit dwellings and condemnation procedure
- 15.08.180 ViolationBpenalty

15.08.010 Definitions and construction.

A. Definitions. The following definitions shall apply in the interpretation and enforcement of this chapter:

ABasement@ means a portion of a building located partly underground, but having less than half of its clear floor-to-ceiling height below the average grade of the adjoining ground.

ACellar@ means a portion of a building located partly or wholly underground, and having half or more than half of its clear floor-to-ceiling height below the average grade of the adjoining ground.

ADwelling@ means any building which is wholly or partly used or intended to be used for living or sleeping by human occupants; provided, that temporary housing, as defined in this section, shall not be regarded as a dwelling.

ADwelling unit@ means any room or group of rooms located within a dwelling and forming a single habitable unit with facilities which are used or intended to be used for living, sleeping, cooking and eating.

AExtermination@ means the control and elimination of insects, rodents or other pests by eliminating their harborage places; by removing or making inaccessible materials that may serve as their food; by poisoning, spraying, fumigating, trapping or by any other recognized and legal pest elimination methods approved by the health officer.

AGarbage@ means the animal and vegetable waste resulting from the handling, preparation, cooking and consumption of food.

AHabitable room@ means a room or enclosed floor space used or intended to be used for living, sleeping, cooking or eating purposes, excluding bathrooms, water closet compartments, laundries, pantries, foyers or communicating corridors, closets and storage spaces.

AHealth officer@ means the legally designated health authority of the city or his authorized representative, such an authorized representative to be referred to for purposes of this chapter as the Ahousing inspector@.

AHousing inspector@ means, for purposes of this chapter, the authorized representative of the health officer of the city, and the two titles are used interchangeably in this chapter.

AInfestation@ means the presence, within or around a dwelling, of any insects, rodents or other pests.

AMultiple dwelling@ means any dwelling containing more than two dwelling units.

AOccupant@ means any person, over one year of age, living, sleeping, cooking or eating in, or having actual possession of, a dwelling unit or rooming unit.

AOperator@ means any person who has charge, care or control of a building, or part thereof, in which dwelling units or rooming units are let.

AOrdinary minimum winter conditions@ means the temperature of fifteen degrees Fahrenheit above the lowest recorded temperature for the previous ten-year period.

AOwner@ means any person who, alone or jointly or severally with others:

1. Has legal title to any dwelling or dwelling unit with or without accompanying actual possession thereof; or
2. Has charge, care or control of any dwelling or dwelling unit, as owner or agent of the owner, executor, executrix, administrator, administratrix, trustee or guardian of the estate of the owner. Any such person thus representing the actual owner shall be bound to comply with the provisions of this chapter, and of rules and regulations adopted pursuant thereto, to the same extent as if he were the owner.

APlumbing@ means and includes all of the following supplied facilities and equipment: gas pipes, gas-burning equipment,

water pipes, garbage disposal units, waste pipes, water closets, sinks, installed dishwashers, lavatories, bathtubs, shower baths, installed clothes-washing machines, catch basins, drains, vents and any other similar supplied fixtures, together with all connections to water, sewer or gas lines.

A`Rooming house` means any dwelling, or that part of any dwelling containing one or more rooming units, in which space is let by the owner or operator to three or more persons who are not husband or wife, son or daughter, mother or father, or sister or brother of the owner or operator.

A`Rooming unit` means any room or group of rooms forming a single habitable unit used or intended to be used for living and sleeping, but not for cooking or eating purposes.

A`Rubbish` means combustible and noncombustible waste materials, except garbage; and the term includes the residue from the burning of wood, coal, coke and other combustible material, paper, rags, cartons, boxes, wood, excelsior, rubber, leather, tree branches, yard trimmings, tin cans, metals, mineral matter, glass, crockery and dust.

A`Supplied` means paid for, furnished or provided by or under the control of the owner or operator.

A`Temporary housing` means any tent, trailer or other structure used for human shelter which is designed to be transportable and which is not attached to the ground, to another structure or to any utilities system on the same premises for more than thirty consecutive days.

B. Meaning of Certain Words. Whenever the words `Adwelling`, `A rooming house`, `A rooming unit` and `A premises` are used in this chapter, they shall be construed as though they were followed by the words `or any part thereof.` (Ord 67 Sec 1, 1974)

#### 15.08.020 Inspection of dwellings, dwelling units, rooming units and premises.

A. The health officer or other officer designated by the city council is authorized and directed to make inspections to determine the condition of dwellings, dwelling units, rooming units and premises located within the city in order that he may perform his duty of safeguarding the health and the safety of the occupants of dwellings and of the general public.

B. For the purpose of making such inspections the health officer is authorized to enter, examine and survey, at all reasonable times, all dwellings, dwelling units, rooming units and premises. The owner or occupant of every dwelling, dwelling unit and rooming unit, or the person in charge thereof, shall give the health officer access to such dwelling, dwelling unit



or rooming unit and its premises at all reasonable times for the purpose of determining what alterations or repairs may be necessary to effect compliance with the provisions of this chapter or with any lawful rules or regulations adopted or any lawful order issued pursuant to the provisions of this chapter. (Ord 67 Sec 2, 1974)

15.08.030 Notice of violations.

A. Whenever the health officer determines that there are reasonable grounds to believe that there has been a violation of any provision of this chapter or of any rule or regulation adopted pursuant thereto, he shall give notice of such alleged violation to the person responsible therefore, as provided in subsections B and C of this section.

B. Such notice shall:

1. Be put in writing;
2. Include a statement of the reasons why it is being issued;
3. Allow a reasonable time for the performance of any act it requires;
4. Be served upon the owner or his agent, or the occupant, as the case may require; provided, that such notice shall be deemed to be properly served upon such owner or agent, or upon such occupant, if a copy thereof is sent by registered mail to his last known address; or if a copy thereof is posted in a conspicuous place in or about the dwelling affected by the notice; or if he is served with such notice by any other method authorized or required under the laws of this state.

C. Such notice may contain an outline of remedial action which, if taken, will effect compliance with the provisions of this chapter and regulations adopted pursuant thereto. (Ord 67 Sec 3, 1974)

15.08.040 Request for hearing.

A. Any person affected by any notice which has been issued in connection with the enforcement of any provision of this chapter or of any rule or regulation adopted pursuant thereto, may request and shall be granted a hearing on the matter before the health officer, provided that such person shall file in the office of the health officer a written petition requesting such hearing and setting forth a brief statement of the grounds therefore, within ten days after the day the notice was served.

Upon receipt of such petition the health officer shall set a time and place for such hearing and shall give the petitioner written notice thereof. At such hearing the petitioner shall be given an opportunity to be heard and to show why such notice should be modified or withdrawn.

B. The hearing shall be commenced not later than ten days after the day on which the petition was filed; provided, that upon application of the petitioner, the health officer may postpone the date of the hearing for a reasonable time beyond a ten-day period, if in his judgment the petitioner has submitted a good and sufficient reason for such postponement. (Ord 67 Sec 4, 1974)

15.08.050 Findings and determination.

A. After such hearing the health officer shall sustain, modify or withdraw the notice, depending upon his finding as to whether the provisions of this chapter and of the rules and regulations adopted pursuant thereto have been complied with. If the health officer sustains or modifies such notice, it shall be deemed to be an order.

B. Any notice served pursuant to Section 15.08.040 of this chapter shall automatically become an order if a written petition for a hearing is not filed in the office of the health officer within ten days after such notice is served. After a hearing in the case of any notice suspending any permit required by this chapter, or by any rule or regulation adopted pursuant thereto, when notice has been sustained by the health officer, the permit shall be deemed to have been revoked. Any such permit which has been suspended by a notice shall be deemed to be automatically revoked if a petition for hearing is not filed in the city office within ten days after such notice is served. (Ord 67 Sec 5, 1974)

15.08.060 Record of hearing proceedings and further appeal.

The proceedings at such hearing, including the findings and decision of the health officer, shall be summarized, reduced to writing and entered as a matter of public record in the city office. Such record shall also include a copy of every notice or order issued in connection with the matter. Any person aggrieved by the decision of the health officer may, by written request to the housing appeal board and without payment of a fee, have the entire matter heard by it on his original petition. The housing appeal board shall consist of three city residents who shall be appointed by the mayor with the approval of the city council who shall serve for staggered, three-year terms, respectively. Any person aggrieved by the decision of the housing appeal board may seek relief therefrom in any court of competent jurisdiction, as provided by Michigan law. (Ord 67 Sec 6, 1974)

15.08.070 Issuance of and compliance with emergency orders.

Whenever the health officer finds that any emergency exists which requires immediate action to protect the public health, he

may, without notice or hearing, issue an order reciting the existence of such an emergency and requiring that such action be taken as he deems necessary to meet the emergency. Notwithstanding the other provisions of this chapter, such order shall be effective immediately. Any person to whom such order is directed shall comply therewith immediately, but upon petition to the health officer shall be afforded a hearing as soon as possible. After such hearing, depending upon his finding as to whether the provisions of this chapter and of the rules and regulations adopted pursuant thereto have been complied with, the health officer shall continue such order in effect, or modify it, or revoke it. (Ord 67 Sec 7, 1974)

15.08.080 Promulgation of rules and regulations by health officer. The health officer is hereby authorized to make and, after a public hearing has been held in accordance with the laws governing the conduct of public hearings by the health officer of the city, to add such written rules and regulations as may be necessary for the proper enforcement of the provisions of this chapter; provided, that such rules and regulations shall not be in conflict with the provisions of this chapter. The health officer shall file a certified copy of all rules and regulations which he may adopt with the city clerk. Such rules and regulations shall have the same force and effect as the provisions of this chapter and the penalty for violation thereof shall be the same as the penalty for violation of the provisions of this chapter. (Ord 67 Sec 8, 1974)

15.080.90 Minimum standardsBbasis equipment and facilities. No person shall occupy as owner-occupant or let to another for occupancy any dwelling or dwelling unit, for the purpose of living, sleeping, cooking or eating therein, which does not comply with the requirements of subsections A through H of this section.

A. Every dwelling unit shall contain a kitchen sink in good working condition and properly connected to a water and sewer system approved by the health officer.

B. Every dwelling unit shall contain a room which affords privacy to a person within said room and which is equipped with a flush water closet and lavatory basin in good working condition and properly connected to a water and sewer system approved by the health officer.

C. Every dwelling unit shall contain, within a room which affords privacy to a person within said room, a bathtub or shower in good working condition and properly connected to a water and sewer system approved by the health officer.

D. Every kitchen sink, lavatory basin and bathtub or shower required under this section shall be properly connected with both hot and cold water lines.

E. Every dwelling unit shall be supplied with adequate rubbish storage facilities, type and location of which are approved by the health officer.

F. Every dwelling unit shall have adequate garbage disposal facilities or garbage storage containers, type and location of which are approved by the health officer.

G. Every dwelling shall have supplied water heating facilities which are properly installed, are maintained in safe and good working condition, are properly connected with the hot water lines required under the provisions of subsection D of this section and are capable of heating water to such a temperature as to permit an adequate amount of water to be drawn at every required kitchen sink, lavatory basin, bathtub or shower at a temperature of not less than one hundred twenty degrees Fahrenheit. Such supplied water heating facilities shall be capable of meeting the requirements of this subsection when the dwelling or dwelling unit heating facilities required by the provisions of section 15.08.100E of this chapter are not in operation.

H. Every dwelling unit shall have safe, unobstructed means of egress leading to safe and open space at ground level, as required by the laws of this state and the city. (Ord 67 Sec 9, 1974)

15.08.100 Minimum standardsLight, ventilation and heating.

No person shall occupy as owner-occupant or let to another for occupancy any dwelling or dwelling unit, for the purpose of living therein, which does not comply with the requirements set forth in subsections A through G of this section.

A. Every habitable room shall have at least one window or skylight facing directly to the outdoors. The minimum total window area, measured between stops, for every habitable room shall be ten percent of the floor area of such room. Whenever walls or other portions of structures face a window of any such room and such light-obstructing structures are located less than three feet from the window and extend to a level above that of the ceiling of the room, such a window shall not be included as contributing to the required minimum total window area. Whenever the only window in a room is a skylight-type window in the top of such room, the total window area of such skylight shall equal at least fifteen percent of the total floor area of such room.

B. Every habitable room shall have at least one window or

skylight which can easily be opened, or such other device as will adequately ventilate the room. The total of openable window area in every habitable room shall be equal to at least forty-five percent of the minimum window area size or minimum skylight-type window size, as required in subsection A of this section, except where there is supplied some other device affording adequate ventilation and approved by the health officer. An approved system of mechanical ventilation or air conditioning may be used in lieu of openable windows. Such system shall provide not less than four air exchanges per hour.

C. Every bathroom and water closet compartment shall comply with the light and ventilation requirements for habitable rooms contained in subsections A and B of this section, except that no window or skylight shall be required in adequately ventilated bathrooms and water closet compartments equipped with a ventilation system which is kept in proper working condition and approved by the health officer.

D. Every habitable room of each dwelling shall contain at least two separate floor or wall-type electric convenience outlets, or one such convenience outlet and one supplied ceiling-type electric light fixture; and every water closet compartment, bathroom, laundry room, furnace room and public hall shall contain at least one supplied ceiling or wall-type electric light fixture. Every such outlet and fixture shall be properly installed, shall be maintained in good and safe working condition and shall be connected to the source of electric power in a safe manner.

E. Every dwelling shall have heating facilities which are properly installed, are maintained in safe and good working condition and are capable of safely and adequately heating all habitable rooms, bathrooms and water closet compartments in every dwelling unit located therein to a temperature of at least sixty-eight degrees Fahrenheit at a distance three feet above floor level under ordinary minimum winter conditions.

F. Every public hall and stairway in every multiple dwelling containing five or more dwelling units shall be adequately lighted at all times. Every public hall and stairway in structures devoted solely to dwelling occupancy and containing not more than four dwelling units may be supplied with conveniently located light switches, controlling an adequate lighting system which may be turned on when needed, instead of full-time lighting.

G. Every basement or cellar window used or intended to be used for ventilation, and every other opening to a basement which might provide an entry for rodents, shall be supplied with a screen or such other device as will effectively prevent their entrance. (Ord 67 Sec 10, 1974)

15.08.110 General requirements for safe and sanitary maintenance of dwellings and dwelling units. No person shall occupy as owner-occupant or let to another for occupancy any dwelling or dwelling unit, for the purpose of living therein, which does not comply with the requirements set forth in subsections A through I of this section.

A. Every foundation, floor, wall, ceiling and roof shall be reasonably weathertight, watertight and rodent-proof; shall be capable of affording privacy; and shall be kept in good repair.

1. The foundation elements shall adequately support the dwelling at all points;

2. Every exterior wall, including the skirting around the base of the dwelling, shall be free from holes, breaks, loose or rotting boards or timber;

3. The roof shall be tight and have no defects which will admit water.

B. Every window, exterior door and basement hatchway shall be reasonably weathertight, watertight and rodent-proof; and shall be kept in sound working condition and good repair.

C. Every stairway, inside or outside of the dwelling, and every porch, shall be kept in a safe condition and sound repair as follows:

1. Every flight of stairs and every porch floor shall be free of holes, grooves and cracks which are large enough to constitute possible accident hazards;

2. No flight of stairs shall have more than one inch of settlement from its intended position or shall be separated from its supporting structures;

3. No flight of stairs or porch shall have rotting, loose or deteriorating supports;

4. Every stair tread shall be strong enough to bear a live load of at least one hundred pounds per square foot without danger of breaking;

5. All stairways more than six risers high shall be equipped with handrails not less than thirty inches nor more than thirty-four inches high, measured vertically from the nose of the tread to the top of the rail. Stairways more than forty-four inches wide shall be equipped with two handrails, one on each side. On exterior unenclosed stairways where only one handrail is required, it shall be placed on the outside edge of the stairway.

D. Every plumbing fixture and water and waste pipe shall be properly installed and maintained in good sanitary working condition, free from defects, leaks and obstructions.

E. Every water closet compartment floor surface and bathroom floor surface shall be constructed and maintained so as

to be reasonably impervious to water and so as to permit such floor to be easily kept in a clean and sanitary condition.

F. Every supplied facility, piece of equipment or utility which is required under this chapter shall be so constructed or installed that it will function safely and effectively, and shall be maintained in satisfactory working condition.

G. No owner, operator or occupant shall cause any service, facility, equipment or utility which is required under this chapter to be removed from or shut off from or discontinued for any dwelling or dwelling unit occupied by him, except for such temporary interruption as may be necessary while actual repairs or alterations are in process, or during temporary emergencies when discontinuance of service is approved by the health officer.

H. No owner shall occupy or let to any other occupant any vacant dwelling unit unless it is clean, sanitary and fit for human occupancy, and unless it is in compliance with all the applicable provisions of this code.

I. Every nondwelling structure and fence shall be kept in a reasonably good state of maintenance and repair or shall be removed. (Ord 67 Sec 11, 1974)

15.08.120 Minimum requirements for space, use and location.

No person shall occupy or let to another for occupancy any dwelling or dwelling unit, for the purpose of living therein, which does not comply with the requirements set out in subsections A through F of this section.

A. Except as otherwise provided in this section, every dwelling unit shall contain at least one hundred fifty square feet of floor space for the first occupant thereof and at least one hundred additional square feet of floor space for every additional occupant thereof, the floor space to be calculated on the basis of total habitable room area.

B. Except as otherwise provided in this section, in every dwelling unit of two or more rooms, every room occupied for sleeping purposes shall contain at least seventy square feet of floor space for the first person, an additional fifty square feet of floor space for the second person, an additional forty square feet of floor space for the third person and an additional thirty square feet of floor space for the fourth person and each additional person.

C. No dwelling or dwelling unit containing two or more sleeping rooms shall have such room arrangements that access to a bathroom or watercloset compartment intended for use by occupants of more than one sleeping room can be had only by going through another sleeping room; nor shall room arrangements be such that access to a sleeping room can be had only by going

through another sleeping room or a bathroom or water closet compartment.

D. At least one-half of the floor area of every habitable room shall have a ceiling height of at least seven feet; and the floor area of that part of any room where the ceiling height is less than five feet shall not be considered as part of the floor area in computing the total floor area of the room for the purpose of determining the maximum permissible occupancy thereof.

E. No basement space or cellar space shall be used as a habitable room or dwelling unit unless:

1. The floor and walls are impervious to leakage of underground and surface runoff water and are insulated against dampness;

2. The total of window area in each room is equal to at least the minimum window area sizes as required in Section 15.08.100A of this chapter;

3. The total openable window area in each room is equal to at least the minimum as required in Section 15.08.100B of this chapter, except where there is supplied some other device affording adequate ventilation and approved by the health officer;

4. The ceiling height throughout the unit is at least seven feet;

5. It is separated from heating equipment, incinerators or other equally hazardous equipment by a standard partition;

6. Access can be gained to the unit without going through the furnace room;

7. Two independent means of egress are provided from every basement containing more than one dwelling unit. If rooming units are provided in a basement, two exits shall be provided if ten or more persons occupy such rooming units.

F. The city council finds that healthful and sanitary conditions in relation to space generally prevail in single-family owner-occupied dwellings. Therefore, the provisions of subsections A and B and C of this section shall not apply to single-family owner-occupied dwellings. For the purpose of this subsection, a A single-family owner-occupied dwelling@ means a dwelling containing no more than one dwelling unit in which the owner thereof resides, and a A family@ means a group of persons related by blood or marriage within and including the degree of first cousins. (Ord 67 Sec 12, 1974)

15.08.130 Responsibilities of owners and occupants.

A. Every owner of a dwelling containing two or more



dwelling units shall be responsible for maintaining a clean and sanitary condition in the shared or public areas of the dwelling and premises thereof.

B. Every occupant of a dwelling or dwelling unit shall keep in a clean and sanitary condition that part of the dwelling, dwelling unit and premises thereof which he occupies and controls.

C. Every occupant of a dwelling or dwelling unit shall dispose of all his rubbish in a clean and sanitary manner by placing it in the rubbish containers required by Section 15.08.090 of this chapter.

D. Every occupant of a dwelling or dwelling unit shall dispose of all his garbage and any other organic waste which might provide food for rodents, in a clean and sanitary manner, by placing it in the garbage disposal facilities or garbage storage containers required Section 15.08.090F of this chapter.

It shall be the responsibility of the owner to supply such facilities or containers for all dwelling units in a dwelling containing more than four dwelling units and for all dwelling units located on premises where more than four dwelling units share the same premises. In all other cases it shall be the responsibility of the occupant to furnish such facilities or containers.

E. Every occupant of a dwelling or dwelling unit shall be responsible for hanging all screens or screen doors and double or storm doors and windows, except where the owner has agreed to supply such service to his tenants.

F. Every occupant of a dwelling containing a single dwelling unit shall be responsible for the extermination of any insects, rodents or other pests therein or on the premises; and every occupant of a dwelling unit in a dwelling containing more than one dwelling unit shall be responsible for such extermination whenever his dwelling unit is the only one infested. Notwithstanding the foregoing provisions of this subsection, whenever infestation is caused by failure of the owner to maintain a dwelling in a rat-proof or reasonably insect-proof condition, extermination shall be the responsibility of the owner. Whenever infestation exists in two or more of the dwelling units in any dwelling, or in the shared or public parts of any dwelling containing two or more dwelling units, extermination thereof shall be the responsibility of the owner.

G. Every occupant of a dwelling unit shall keep all plumbing fixtures therein in a clean and sanitary condition and shall be responsible for the exercise of reasonable care in the proper use and operation thereof.

H. Every owner shall maintain every dwelling and all the

parts thereof, including but not limited to plumbing, heating, ventilating and electrical wiring, in good repair. The roof shall be so maintained as not to leak and the rainwater shall be drained and conveyed therefrom through proper drainage. (Ord 67 Sec 13, 1974)

15.08.140 Requirements for rooming houses. No person shall operate a rooming house, or shall occupy or let to another for occupancy any rooming unit in any rooming house, except in compliance with the provisions of every section of this chapter except the provisions of Sections 15.08.090 and 15.08.130.

A. No person shall operate a rooming house unless he holds a valid rooming house permit issued by the health officer in the name of the operator and for the specific dwelling or dwelling unit. The operator shall apply to the health officer for such permit, which shall be issued by the health officer upon compliance by the operator with the applicable provisions of this chapter and of any rules and regulations adopted pursuant thereto. This permit shall be displayed in a conspicuous place within the rooming house at all times. No such permit is transferable. Every person holding such a permit shall give notice in writing to the health officer within twenty-four hours after having sold, transferred, given away, or otherwise disposed of ownership of, interest in or control of any rooming house. Every rooming house permit shall expire at the end of one year following its date of issuance, unless sooner suspended or revoked as provided in this section.

B. Any person whose application for a permit to operate a rooming house has been denied may request and shall be granted a hearing on the matter before the health officer, under the procedure provided by Sections 15.08.030 through 15.08.070, inclusive, of this chapter.

C. Whenever upon inspection of any rooming house the health officer finds that conditions or practices exist which are in violation of any provision of this chapter or of any rule or regulation adopted pursuant thereto, the health officer shall give notice in writing to the operator of such rooming house that unless such conditions or practices are corrected within a reasonable period, to be determined by the health officer, the operator's rooming house permit will be suspended. At the end of such period the health officer shall re-inspect such rooming-house, and if he finds such conditions or practices have not been corrected, he shall give notice in writing to the operator that the latter's permit has been suspended. Upon receipt of notice of suspension, such operator shall immediately cease operation of such rooming house, and no person shall occupy for

sleeping or living purposes any rooming unit therein.

D. Any person whose permit to operate a rooming house has been suspended, or who has received notice from the health officer that his permit is to be suspended unless existing conditions or practices at his rooming house are corrected, may request and shall be granted a hearing on the matter before the health officer under the procedure provided by Sections 15.08.030 through 15.08.070, inclusive, of this chapter; provided, that if no petition for such hearing is filed within ten days following the day on which such permit was suspended, such permit shall be deemed to have been automatically revoked.

E. At least one flush water closet, lavatory basin and bathtub or shower, properly connected to a water and sewer system approved by the health officer and in good working condition, shall be supplied for each eight persons or fraction thereof residing within a rooming house, including members of the operator=s family wherever they share the use of the said facilities; provided, that in a rooming house where rooms are let only to males, flush urinals may be substituted for not more than one-half the required number of water closets. All such facilities shall be so located within the dwelling as to be reasonably accessible from a common hall or passageway to all persons sharing facilities. Every lavatory basin and bathtub or shower shall be supplied with hot water at all times. No such facilities shall be located in a basement except by written approval of the health officer.

F. The operator of every rooming house shall change supplied bed linen and towels therein at least once each week and prior to letting of any room to any occupant. The operator shall be responsible for the maintenance of all supplied bedding in a clean and sanitary manner.

G. Every room occupied for sleeping purposes by one person shall contain at least seventy square feet of floor space, and every room occupied for sleeping purposes by more than one person shall contain at least fifty square feet of floor space for each occupant thereof.

H. Every rooming unit shall have safe, unobstructed means of egress leading to safe and open space at ground level, as required by the laws of this state and the city.

I. The operator of every rooming house shall be responsible for the sanitary maintenance of all walls, floors and ceilings and for maintenance of a sanitary condition in every other part of the rooming house; and he shall be further responsible for the sanitary maintenance of the entire premises where the entire structure or building is leased or occupied by the operator.

J. Every provision of this chapter which applies to rooming houses shall also apply to hotels, except to the extent that any such provision may be found in conflict with the laws of this state or with the lawful regulations of any state board or agency. (Ord 67 Sec 14, 1974)

15.08.150 Certificate of compliance for rental properties.

A. No owner, agent or person in charge of a dwelling or dwelling unit shall allow any person to occupy the same as a tenant or lessee or for a valuable consideration unless said dwelling or dwelling unit has been inspected as of the first change in occupancy after the effective date of the ordinance codified in this chapter\* and thereafter as of the first occupancy after a change in ownership of every or every twenty-four months, whichever occurs first and determined to be in compliance with all of the applicable provisions of Sections 15.08.010 through 15.08.140, 15.08.170 and 15.08.180 of this chapter, as amended from time to time, and the applicable provisions of the city zoning code, as amended from time to time (hereinafter referred to in this section as minimum housing standards) as evidenced by a certificate of compliance issued by the housing inspector as provided in this section.

B. Upon request of the owner, agent or other person authorized to rent a dwelling or dwelling unit (hereinafter referred to in this section as the applicant) and payment of the inspection fee, the housing inspector will be available at an appointed time within forty-eight hours agreed upon by himself and the applicant, or later, if the applicant requests, to inspect such dwelling or dwelling unit. If such inspection establishes that the dwelling or dwelling unit complies with all of the minimum housing standards, he shall issue a certificate of compliance for said dwelling or dwelling unit, indicating the maximum number of occupants who may lawfully occupy it under the provisions in compliance with the minimum housing standards. One copy of the certificate shall be handed to or mailed to the applicant and a second copy for the information of the tenant or lessee shall be posted by the housing inspector on the inside of the main entrance door of the certified premises or in a conspicuous place nearby and shall not be removed by or at the direction of anyone other than the tenant.

C. If said dwelling or dwelling unit does not comply with the minimum housing standards, the housing inspector shall furnish the applicant with a written list of the specific violations of this code which would have to be corrected before a certificate of compliance or a list of violations, as above provided.

D. No applicant, tenant or occupant shall permit the occupancy of any dwelling or dwelling unit by a greater number of persons than that specified in the certificate of compliance.

E. Any applicant who is delayed in correcting violations necessary to entitle him to a certificate of compliance and who has a valid contract in writing with a qualified person for the performance of work and the furnishing of the materials to correct such violation, may petition the health officer in writing for a temporary waiver of compliance. No fees shall be required. The petition shall be on a form provided by the housing appeals officer and shall contain the information therein requested and reasonably necessary to his decision, and shall include a written and signed statement by the person under contract to correct the violation, specifying the anticipated date of beginning and completion of the work. If, after the hearing, the housing appeals officer finds that (1) the delay in the correction of the violation is reasonable, taking into consideration the availability of qualified persons to do the work and the current work load, and (2) the work can reasonably be undertaken and completed while the premises are occupied or that appropriate provision has been made for housing the tenant elsewhere during the necessary period when the dwelling or dwelling unit will not be habitable because of the work of correcting the code violation, the health officer shall issue a temporary waiver of compliance expiring on the date when the corrective work should be completed. Applicant shall, on or before said date, request a re-inspection and pay the re-inspection fee. The housing inspector shall re-inspect the dwelling or dwelling unit and issue the certificate of compliance or list any remaining violations, as above provided.

F. Any applicant who deems himself aggrieved by the decision of the health officer may, by written request to the housing appeal board and without the payment of a fee, have the entire matter heard by it on his original petition. After hearing the applicant, his witnesses, his counsel (if any), the health officer or his designate and any witnesses he may produce, and his counsel (if any), the housing appeal board shall, if it finds the existence of all the required prerequisites to the granting of a temporary waiver of compliance by the health officer, direct him to issue such a waiver.

G. The following fees shall apply to inspections under this section:

1. Inspection under subsection B, five dollars;
2. First re-inspection under subsection C, five dollars;
3. Second and subsequent re-inspection under

subsections C through E, ten dollars.

H. The inspections provided for in this section shall not be mandatory until January 1, 1975.

I. The housing inspector shall maintain a registry of rental property owners and premises.

J. The owners of rental dwellings and dwelling units shall register their names and places of residence or usual places of business and the location of the premises regulated by this section with the housing inspector or his designate. The registrations provided for in this subsection shall be made prior to January 1, 1975.

K. If the premises are managed or operated by an agent, the agent=s name and place of business shall be placed with the name of the owner in the registry. (Ord 67 Sec 18, 1974)

15.08.160 Certificate of compliance for single-family, owner-occupied dwellings.

A. No single-family dwellings shall be sold to another who intends to occupy the same unless the seller shall transfer to the buyer a valid certificate of compliance issued by the housing inspector certifying that said dwelling complies with applicable provisions of this chapter, as amended from time to time, and the applicable provisions of the city zoning code, as amended from time to time. The certificate of compliance herein provided for shall have been obtained by the seller within six months prior to the date of sale. In the event the seller does not have a valid certificate of compliance, he shall so inform the buyer. The transfer of a valid certificate of compliance herein provided for may be waived by mutual agreement of the parties; provided, that such waiver is accompanied by a list of existing violations prepared and signed by the housing inspector and dated not more than six months prior to the date of sale. The notice of violations shall be attached to and made a part of the waiver of certificate of compliance herein provided for. Such a waiver shall be in writing and shall be in the following form:

WAIVER OF CERTIFICATE  
OF COMPLIANCE  
NOTICE: DO NOT SIGN IN  
BLANK. DO NOT SIGN  
WITHOUT READING

(Name of seller) proposes to sell certain real estate  
located at (street address) and described more

particularly as follows:           (insert legal description)           and           (name of buyer)           proposes to purchase the same.

          (Name of seller)           is unable to transfer to           (name of buyer)           a valid certificate of compliance as required by Section XIX of the Linden Housing and Rental Ordinance (Section 15.08.160 of the Linden City Code).

Therefore, it is understood that the seller's liability to so transfer a valid certificate of compliance means that the property proposed to be sold is not in compliance with the Linden Housing and Rental Ordinance (Chapter 15.08 of the Linden City Code) and contains defects which must be corrected, such defects being listed on the notice of violation attached hereto.

It is further understood that the buyer in signing the waiver acknowledges the fact that the property to be purchased by him is in violation of the Linden Housing and Rental Ordinance (Chapter 15.08 of the Linden City Code) and contains certain defects which must be corrected and that in the event a sale is consummated, the buyer will be required to correct said defects and will be subject to the fines and penalties provided in the Linden Housing and Rental Ordinance (Chapter 15.08 of the Linden City Code) for failure to do so unless a variance is obtained. It is also understood that the occupancy of the premises by the buyer without correction of the defects or obtaining the necessary variance is a violation of the Linden Housing and Rental Ordinance (Chapter 15.08 of the Linden City Code) and subjects the buyer to the fines and penalties therein provided.

It is finally understood and agreed that the parties do hereby waive the transfer of a valid certificate of compliance by the seller to the buyer as required by the Linden Housing and Rental Ordinance (Chapter 15.08 of the Linden City Code).

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_, IN THE PRESENCE OF :

- (Name of Seller)
- (Name of Seller)
- (Name of Buyer)
- (Name of Buyer)

The form set forth in this subsection shall be secured from the city clerk's office and a copy thereof, fully executed by all parties, shall be returned to said office for filing following consummation of the sale.

B. Upon request of the owner, agent or other person authorized to sell such a dwelling (hereinafter referred to in this section as the applicant) and payment of the inspection fee, the housing inspector will be available at an appointed time within forty-eight hours agreed upon by himself and the applicant, or later, if the applicant requests, to inspect such dwelling. If such inspection establishes that the dwelling complies with all of the minimum housing standards, he shall issue a certificate of compliance for said dwelling.

C. If said dwelling does not comply with said minimum housing standards, the housing inspector shall furnish the applicant with a written list of the specific violations of this code which would have to be corrected before a certificate of compliance may be issued or a list of violations, as above provided.

D. Any applicant who is delayed in correcting violations necessary to entitle him to a certificate of compliance may petition the health officer in writing for temporary waiver of compliance. No fees shall be required. The petition shall be on a form provided by the health officer and shall contain the information therein requested and reasonably necessary to his decision, and shall include a written and signed statement by the person under contract to correct the violation, specifying the anticipated date of beginning and completion of the work. If, after the hearing, the health officer finds that (1) the delay in the correction of the violation is reasonable, taking into consideration the availability of qualified persons to do the work and the current work load, and (2) the work can reasonably be undertaken and completed while the premises are occupied or that appropriate provision has been made for housing the tenant elsewhere during the necessary period when the dwelling or dwelling unit will not be habitable because of the work of correcting the code violation, the health officer shall issue a temporary waiver of compliance expiring on the date when the corrective work should be completed. The applicant shall, on or before said date, request a re-inspection and pay the re-inspection fee. The housing inspector shall re-inspect the dwelling or dwelling unit and issue the certificate of compliance or list any remaining violations, as above provided.

E. Any applicant who deems himself aggrieved by the decision of the health officer on his appeal may, by written



request to the housing appeal board and without the payment of a fee, have the entire matter heard by it on his original petition. After hearing the applicant, his witnesses, his counsel (if any), the health officer or his designate and any witnesses he may produce, and his counsel (if any), the housing appeal board shall, if it finds the existence of all the required prerequisites to the granting of a temporary waiver of compliance by the health officer, direct him to issue such a waiver.

F. The following fees shall apply to inspections under this section:

1. Inspection under subsection B, twenty dollars;
2. First re-inspection under subsection C, ten dollars;
3. Second and subsequent re-inspection under subsections C through E, ten dollars.

G. The inspections provided for in this section shall not be mandatory until January 1, 1975. (Ord 159 Art. I, 1990; Ord 67 Sec 19, 1974)

15.08.170 Designation of unfit dwellings and condemnation procedure. The designation of dwellings or dwelling units as unfit for human habitation and the procedure for the condemnation and placarding of such unfit dwellings or dwelling units shall be carried out in compliance with the requirements set out in subsections A through E of this section.

A. Any dwelling or dwelling unit which has been found to have any of the following defects shall be condemned as unfit for human habitation and shall be so designated and placarded by the health officer:

1. One which is so damaged, decayed, dilapidated, unsanitary, unsafe or vermin-infested that it creates a serious hazard to the health or safety of the occupants or of the public;
2. One which lacks illumination, ventilation or sanitation facilities adequate to protect the health or safety of the occupants or of the public;
3. One which because of its general condition or location is unsanitary or otherwise dangerous to the health or safety of the occupants or of the public.

B. Any dwelling or dwelling unit condemned as unfit for human habitation, and so designated and placarded by the health officer, shall be vacated within a reasonable time as ordered by the health officer. Any owner or operator may summarily evict tenants of any dwelling or dwelling unit deemed unfit for habitation.

C. No dwelling or dwelling unit which has been condemned

and placarded as unfit for human habitation shall again be used for human habitation until written approval is secured from, and such placard is removed by, the health officer. The health officer shall remove such placard whenever the defect or defects upon which the condemnation and placarding action were based have been eliminated.

D. No person shall deface or remove the placard from any dwelling or dwelling unit which has been condemned as unfit for human habitation and placarded as such, except as provided in subsection C of this section.

E. Any person affected by any notice or order relating to the condemnation and placarding of a dwelling or dwelling unit unfit for human habitation may request and shall be granted a hearing on the matter before the health officer, under the procedure set forth in Sections 15.08.030 through 15.08.070, inclusive, of this chapter. (Ord 67 Sec 15, 1974)

#### 15.08.180 Violation--Penalty.

A. Every person who violates or assists in the violation of any provision of this chapter is guilty of a misdemeanor punishable, if the offense is not willful, by a fine of not less than ten dollars or more than one hundred dollars, and in default of payment thereof by imprisonment in the county jail for one day for each and every day that such violation has continued; and if the offense is willful, by imprisonment in the county jail for ten days for each and every day that such violation continues, and by a fine of not less than fifty dollars and not more than two hundred fifty dollars or by both such fine and imprisonment in the discretion of the court. The owner of any dwelling, or of any building or structure upon the same lot with a dwelling, or of the said lot where any violation of this chapter or a nuisance exists, who has been guilty of such violation or of creating or permitting the existence of such nuisance, and any person who violates or assists in violating any provision of this chapter shall also jointly and severally for each such violation and each such nuisance be subject to a civil penalty of fifty dollars to be recovered for the use of the health department in civil action brought in the name of the city by the health officer or by such other appropriate public official as the mayor may designate. Such persons shall also be liable for all costs, expenses and disbursements paid or incurred by the health department, by any of the officers thereof or by an agent, employee or contractor of the same, in the removal of any such nuisance or violation. Any person who, having been served with a notice or order to remove any such nuisance or violation, shall fail to comply with said notice or order within five days after such service or

shall continue to violate any provision or requirement of this chapter in the respect named in said notice or order, shall also be subject to a civil penalty of two hundred fifty dollars. For the recovery of any such penalties, costs, expenses or disbursements, an action may be brought in the circuit court for the county or any court of competent civil jurisdiction. In case the owner, lessee or other person having control of such dwelling does not reside within the state or cannot after diligent effort be served with process therein, the same being duly made to appear to satisfaction of the court, an order may be entered by the court for the publication of notice to the owner not served in a newspaper of general circulation published in the county once each week for two successive weeks, requiring such owner to appear and defend such suit, if he desires, within one week after the last publication of such notice, and upon filing due proof of the publication of such notice, such action may proceed in or against the dwelling or structure upon the same lot with the dwelling, and the lot involved, and in person against any other person duly served in said proceeding, if there be such person. The existence of a nuisance in or upon such dwelling structure on the same lot with a dwelling or on such lot, which the owner thereof has created or permitted to exist, and any violation of this chapter as to such dwelling structure and lot of which the owner has been guilty shall in such proceeding subject such dwelling structure and lot respectively, to a penalty of fifty dollars which shall be a lien thereon until paid, and any violation of an order made or a notice given by the health officer permitted or committed by the owner of a dwelling structure on the same lot with a dwelling on such lot, shall in such proceeding subject the dwelling structure and lot respectively to a penalty of two hundred fifty dollars, which penalty shall be a lien thereon until paid.

B. Whenever any person has been found guilty, after the effective date of the ordinance codified in this chapter in connection with any dwelling in which the person is not residing, and the person has failed to correct the violation within ninety days after having been found guilty, and after a final determination of guilt, the city council may correct or cause to be corrected any violation upon which the person has been found guilty and the costs of such repairs shall be paid by such person within ninety days or such costs shall become a lien upon the real property; and in the case that the dwelling is one in which the person has not resided for a period of six months, and there has been no other occupancy for such period, the city council shall have the option of repairing the property or removing such property, and the costs of such removal or repair shall be paid by such person within thirty days or such costs

shall become a lien upon the real property. Notwithstanding any other provision in this chapter, the term Adwelling,@ for the purpose of this chapter is defined as residential real property. The liens shall be enforced in the manner prescribed in the charter or by the laws of this state providing for the enforcement of tax liens or by an ordinance passed by the city council.

C. Except as otherwise specified in this section, the procedure for the prevention of violation of this chapter or for the vacation of premises unlawfully occupied or for other abatement of nuisance in connection with a dwelling, shall be in accordance with the existing practice and procedure. In case any dwelling, building or structure is constructed, altered, converted or maintained in violation of any provision of this chapter or of any order or notice of the health officer or such other appropriate public official as the mayor may designate, or in the case a nuisance exists in any such dwelling, building or structure or upon the lot on which it is situated, the health officer or such other appropriate public official as the mayor may designate, may institute any appropriate action or proceeding to prevent such lawful construction, alteration, conversion or maintenance, to restrain, correct or abate such violation or nuisance, to prevent the occupation of said dwelling, building or structure, or to prevent any illegal act, conduct or proceeding the health officer may be a petition of complaint, duly verified, setting forth the facts, apply to the circuit court for the county, or to any judge thereof, for an order granting the relief for which the action on proceeding is brought, or for an order enjoining all persons from doing or permitting to be done any work in or about such dwelling, building, structure or lot, or from occupying or using the same for any purpose until the entry of final judgment or order. In case any notice or order issued by said health officer or such other appropriate public official as the mayor may designate, is not complied with, the health officer may apply to the circuit court or to any judge thereof for an order authorizing him to execute and carry out the provisions of said notice or order, or to abate any nuisance in or about such dwelling, building or structure or the lot upon which it is situated. In no case shall the health department, health officer or such other appropriate public official as the mayor may designate, or any officer or employee thereof of the city, be liable for the costs in any action or proceeding that may be commenced in pursuance of this chapter. The actions, proceeding and authority of the health officer shall at all times be treated as prima facie just and legal.

D. If the occupant of a dwelling fails to comply with the provisions of this chapter after due and proper notice from the health officer, such failure to comply shall be deemed sufficient cause for the summary eviction of such tenant by the owner and the cancellation of his lease.

E. Every fine or penalty imposed by judgment upon the owner of a dwelling or of a structure on the same lot with a dwelling, or of a lot, shall be a lien upon the real property in relation to which the penalty is imposed from the time of the recording of a certified copy of the judgment in the office of the registrar of deeds of the county in which said dwelling is situated, subject only to taxes, assessments and water rates and to such mortgage and mechanics= liens as may exist thereon prior to such recording. The health officer or such other appropriate public official as the mayor may designate, upon the entry of the judgment, shall record a copy, and such copy upon recording shall be indexed by the registrar of deeds in the index of mechanics= liens.

F. If any civil action or proceeding instituted by the health officer and plaintiff or petitioner may record in the office of the registrar of deeds of the county where the property is affected by such action or proceeding is situated a notice of the pendency of such action or proceeding. The notice may be recorded at the time of the commencement of the action or proceeding, or at any time afterwards before final judgment or order, or at any time after the service of any notice or order issued by the health officer or by such other appropriate public official as the mayor may designate. Such notice shall have the same force and effect as the notice of pendency of action affecting real estate. Each registrar of deeds with whom such notice is recorded shall index it to the name of each person specified in a direction subscribed by the city attorney. Any such notice may be vacated upon the order of a judge of the court in which such action or proceeding was instituted or is pending, or upon the consent in writing of the city attorney. The registrar of deeds of the county where such notice is recorded, upon the presentation and recording of such consent or of a certified copy of such order, shall proceed in the same manner as is provided by law for processing a real estate mortgage discharge. (Ord 67 Sec 16, 1974)

#### Chapter 15.12

#### HISTORIC SITES AND STRUCTURES

Sections:

- 15.12.010 Purpose
- 15.12.020 Definitions
- 15.12.030 Creation and boundaries of historic district
- 15.12.040 Procedure for review of plans
- 15.12.050 Demolition or moving of historic structures
- 15.12.060 Yard Variance
- 15.12.070 Acceptance of gift or grant
- 15.12.080 Exceptions
- 15.12.090 Elimination of historic district
- 15.12.100 Alteration or additions to historic district
- 15.12.110 Severability
- 15.12.120 Penalties

15.12.010 Purpose. Historical preservation is hereby declared to be a public purpose. No structure shall be constructed, altered, repaired, moved or demolished within the historic districts described in Section 15.12.030 unless such action complies with the requirements set forth by this ordinance, and by Act No. 169 of the Public Acts of 1970. The purpose of this ordinance is to:

- a. Safeguard the heritage of the city by preserving historic sites and districts which reflect elements of its cultural, social, economic, political and architectural history;
- b. Stabilize and improve property values in such districts;
- c. Foster civic beauty;
- d. Strengthen the local economy; and
- e. Promote the use of historic districts for the education, pleasure and welfare of the citizens of the city and the state of Michigan. (Ord 193, Sec 15.12.010, 1992)

15.12.020 Definitions.

A. AAddition@ shall mean any construction which increases the height or floor area of an existing district resource or adds to it (as a porch or attached garage).

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

C. ABureau@ means the Bureau of History of the Michigan Department of State.

D. ACertificate of appropriateness@ means the written approval of the Historic District Commission of a permit application for work that is appropriate and that does not

adversely affect a resource.

E. ACommission@ shall mean the Historic District Commission created by this ordinance.

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

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

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

I. AHistoric@ shall mean the age of the district resource, however, there is no age limit implied by the use of Ahistoric@ rather, the term shall apply to any district resource that is significant to the overall appearance of a historic district and that plays a role in the evolutionary growth of a historic district streetscape.

J. AHistoric district@ means an area, or group of areas not necessarily having contiguous boundaries, that contains one resource or a group of resources that are related by history, architecture, archaeology, engineering, or culture created by the city for the purpose of preservation. The city may establish more than one such historic district. For purpose of clarification, however, a historic district may also consist of a single district resource unrelated to its surroundings in historical, architectural or archaeological significance and so designated by this ordinance.

K. AHistoric District Commission@ shall mean the member body created by the city for the purpose of execution of this ordinance.

L. AHistoric District Study Committee@ shall mean a permanent body established by the council pursuant to Section 15.12.030 to conduct activities of a historic district study committee on a continuing basis.

M. AHistoric preservation@ shall mean the identification, evaluation, protection, establishment, rehabilitation, restoration or reconstruction of district resources of historic, engineering, architectural, cultural or archeological significance.

N. AHistoric Resource@ means a publicly or privately owned building, structure, site, object, feature, or open space that is significant in the history, architecture, archaeology, engineering, or culture of this state or a community within this state, or of the United States.

1. A site shall mean a district resource that is related to important historical events, a prehistoric or historic occupation or activity, an institution or organization, or a district resource that is ruined or vanished, where the location itself maintains historical or archeological value regardless of the value of any existing district resources. Examples : Historic marker, commemorative plaque, archeological site.

2. A building shall mean a residential, commercial, industrial, or institutional district resource created to shelter any form of human activity. Examples : House, courthouse, jail barn, church, theater, hospital, office building.

3. A structure shall mean a district resource made up of interdependent and interrelated parts in a definite pattern of organization, often reflective of an engineering design. Examples Bridge, dam, water tower, bell tower.

4. An object shall mean a district resource of functional, aesthetic, cultural, historical, architectural, archeological, or scientific value that may be, by nature of design, movable, yet related to a specific setting or environment. Examples : Statue, fountain, lighting fixture, sun dial.

5. An open space shall mean undeveloped land, a naturally landscaped area, or a formal or man-made landscaped area that provides a connective link or a buffer between other resources.

6. A feature shall mean prominent or distinctive aspect, quality or characteristic of designated historic district. Examples : Landscaped boulevard, brick paving, tree lined street.

O. AHonorary designation@ shall mean recognition of important historical events, institutions or organizations related to district resources where the district resources themselves are not necessarily historically significant.

P. ANew construction@ shall mean planned district resources that are to be constructed or placed within a designated historic district. Such planned new construction, because it will have a significant effect on the overall appearance of a historic district, and because it will play a role in the evolutionary growth of a historic district=s streetscape, shall be treated as Ahistoric@ by the Historic District Commission the same as older, existing district resources.

Q. ANotice to proceed@ shall mean the written permission to issue a permit for work that is inappropriate and that



adversely affects a resource pursuant to a finding under Section 15.12.040(G).

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

S. APreservation standards@ shall mean the guidelines and principles which shall be considered by the historic commission in assessing the appropriateness of activities which will affect district resources included in designated historic districts. General preservation standards for initial use by the commission are included as part of this ordinance. However, it will be the duty of the commission to develop more specific standards.

T. AProposed historic district@ means an area or group of areas not necessarily having contiguous boundaries, that has delineated boundaries and that is under review by a committee for the purpose of making a recommendation as to whether it should be established as a historic district or added to an established historic district.

U. AReconstruction@ shall mean the process of reproducing by new construction the exact form and detail of a vanished district resource or part thereof, as it appeared at a specific time.

V. AREhabilitation@ shall mean the revitalization of a district resource through the introduction of modern mechanical systems, structural elements, and decorative features. Such modern improvement, however, should be sympathetic to the district resource=s original style, size, color, texture, and should be reversible.

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

X. AResource@ shall mean one or more publicly or privately owned historic or non-historic buildings, structures, sites, objects, features, or open spaces located within a historic district.

Y. ARestoration@ shall mean the process of accurately recovering the form and details of a district resource as it appeared at a particular period of time by removing later work, replacing missing elements, and enhancing original work.

Z. AWork@ shall mean the construction, addition, alteration, repair, moving, excavation or demolition. (Ord 193

Sec 15.12.020, 1992)

15.12.030 Creation and boundaries of Historic District.

The land area described in Appendix A of the ordinance codified in this section and the map attached thereto (which is on file in the clerk=s office) is included within the historic district.

The boundaries of the historic district created by this chapter are and shall be identical with the historic district submitted to and approved by the Michigan State Historical Commission. (Ord 95 Sec 3, 1978)

15.12.040 Procedure for the review of plans.

A. As required by the City of Linden Zoning Ordinance of 1996, as amended, application for a building permit to construct, alter, repair, move or demolish any structure must be made to the building inspector. Plans shall be submitted showing the structure in question and also showing its relation to adjacent structures, if the structure in question is in the historic district. Upon the filing of such application, the building inspector shall immediately notify the commission of receipt of such application and shall transmit it together with accompanying plans and other information to the commission immediately.

B. The commission shall meet within sixty (60) days after notification by the building inspector of the filing, unless otherwise mutually agreed upon by the applicant and commission, and shall review the plans according to the duties and powers specified herein. In reviewing the plans, the commission may confer with the applicant for the building permit.

C. The commission shall approve or disapprove such plans and, if approved, shall issue a certificate of appropriateness, which is to be signed by the chairman, attached to the application for a building permit and immediately transmitted to the building inspector. The chairperson shall also stamp all prints submitted to the commission signifying its approval.

D. If the commission disapproved of such plans, it shall state its reasons for doing so and shall transmit a record of such action and reasons therefore in writing to the building inspector and to the applicant. The commission must advise what it thinks is proper if it disapproved of the plans submitted. The applicant, if he so desires, may make modifications to his plans and shall have the right to resubmit his application at any time after so doing, or may elect to begin the appeals process as outlined in Section 15.12.040(E). The failure of the commission to approve or disapprove of such plans within sixty days from the date of application for the building permit,

unless otherwise mutually agreed upon by the applicant and the commission, shall be deemed to constitute approval and the building inspector shall proceed to process the application without regard to a certificate of appropriateness,

E. The commission shall file certificates of appropriateness and denials of application for permits with the building inspector. A permit shall not be issued until the commission has acted as prescribed by this ordinance. If a permit application is denied, the decision shall be binding on the building inspector. A denial shall be accompanied by a written explanation by the commission of the reasons for the denial, and, if appropriate, a notice that an application may be resubmitted for commission review and suggested changes have been made. The denial shall advise the applicant of his or her rights to appeal within sixty (60) days to the state historic preservation review board and to the circuit court in Genesee County.

F. If an application is for work that will adversely affect the exterior of a resource the commission considers valuable to the city, state of Michigan or the United States of America, and the commission determines that the alteration or loss of that resource will adversely affect the public purpose of the city, state of Michigan or the United States of America, the commission shall attempt to establish with the owner of the resource an economically feasible plan for preservation of the resource.

G. Work within a historic district shall be permitted through the issuance of a notice to proceed by the commission if any to the following conditions prevail or if the proposed work can be demonstrated by a finding of the commission to be necessary to substantially improve or correct any of the following conditions:

1. The resource constitutes a hazard to the safety of the public or to the structures occupants.

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

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

owner.

4. Retaining the resource is not in the interest of the majority of the community. (Ord 193 Sec 15.12.040, 1992)

15.12.050 Demolition or Moving of Historic Structures.

A. The demolition or moving of structures or objects of historic or architectural worth shall be discouraged and avoided if alternate solutions can be found. The commission may issue a Notice to Proceed for demolition or for moving a structure but shall be guided by the conditions set forth in Section 15.12.040(G) in exercising its judgement in granting such a notice.

1. The building inspector deems such structure to be a hazard to public safety or health and repairs are impossible;

2. Such a structure is a deterrent to a major improvement program which will be of substantial benefit to the community;

3. Retention of such a structure would cause undue financial hardship to the owner, which would be defined as a situation where more funds than is reasonable would be required to retain the structure;

4. The retention of such structure would not be in the interest of the community as a whole.

B. In case (A) above, if approval for demolition is granted, such notice shall not become effective until ninety days after the date of such issuance in order to provide a period of time within which it may be possible to relieve a hardship or to cause the property to be transferred to another owner who will retain the structure, This period of time may be increased or decreased if mutually agreed upon by both the petitioner and the commission.

15.12.060 Yard variances. Due to peculiar conditions of design and constructions in historic neighborhoods where structures were often built close to lot lines, it is in the public interest to retain a neighborhood=s historic appearance by making variances to normal yard requirements. Where it is deemed that such variances will not adversely affect neighboring properties, the commission may recommend to the Zoning Board of Appeals that such variances to standard yard requirements be made. (Ord 193 Sec 15.12.060, 1992)

15.12.070 Acceptance of gift or grant. The council may accept grants from the State or Federal Government for historic restoration purposes; it may accept public or private gifts for historic purposes; and may appoint the Historic District

Commission to administer on its behalf the grants and gifts for the purposes herein provided. The city treasurer shall be custodian of the funds of the Historic District Commission and authorized expenditures shall be created to the city finance director by the secretary or other officer designated by the Historic District Commission. The commission shall annually report to the council any money it shall receive or expend.

15.12.080 Exceptions.

A. Nothing in this ordinance shall be construed to prevent ordinary maintenance or repair of any structure within the Historic District; nor shall anything in this ordinance be construed to prevent the construction, alteration, repair, moving or demolition of any structure under a permit issued by the building inspector prior to the passage of the ordinance. Exceptions to strict construction of the provisions of this ordinance may be granted only by resolution of the city council.

B. Deliberate or irresponsible neglect of an historic structure resulting in serious physical deterioration or health and safety hazards shall constitute demolition by neglect and shall be a violation of this ordinance. Upon the finding by the commission that a historic resource within a historic district or proposed historic district such to the commission=s review and approval is threatened with demolition by neglect, the commission may do either the following:

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

2. If the owner does not make repairs within a reasonable time, the commission or its agents may enter the property and make such repairs as are necessary to prevent demolition by neglect. The cost of the work shall be charged to the owner, and may be levied by the local unit as a special assessment against the property. The commission may enter the property for purposes of this section upon obtaining an order from the circuit court. (Ord 193 Sec 15.12.080, 1992)

15.12.090 Elimination of Historic District.

A. Before establishing, modifying or eliminating a historic district, a Historic District Study Committee appointed by the city council shall, except in considering the elimination of a historic district, comply with the procedures set forth in Section 15.12.030 and shall consider any previously written committee reports pertinent to the proposed action.

B. If the commission has made a determination to eliminate a historic district, a committee shall follow the procedure set forth in Section 15.12.040 for issuing a preliminary report,

holding a public hearing and issuing a final report but with the intent of showing one or more of the following:

1. The historic district has lost those physical characteristics that enabled establishment of the district.
2. The historic district was not significant in the way previously defined.
3. The historic district was established pursuant to defective procedures. (Ord 193, Sec 15.12.090, 1992)

15.12.100 Alteration or Additions to Historic District. Groups of property owners petitioning the council for inclusion and designation as a historic district under this ordinance must have the support of fifty-one percent of the properties in the petitioning district. (Ord 193 Sec 15.12.100, 1992)

15.12.110 Severability. If any provision, section, subsection, sentence, clause, phrase, or word contained in this ordinance for any reason is held to be unconstitutional by any court, such decision shall not affect the validity of the remaining provisions, sections, subsections, clauses, phrases or words of this ordinance. (Ord 193 Sec 15.12.110, 1992)

15.12.120 Penalties. Any person who shall violate the provisions of this ordinance in any particular or who fails to comply with any of the regulatory measures or conditions of the historic district commission adopted pursuant hereto, shall upon conviction thereof, be fined in a sum not to exceed \$500 and/or ninety (90) days in jail. Each day such violation continues shall be deemed a separate offense. (Ord 193, Sec 15.12.120, 1992)

## Chapter 15.24

### DANGEROUS BUILDING

Sections:

- 15.24.010 Definitions
- 15.24.020 Maintenance of dangerous building prohibited
- 15.24.030 Notice to owners
- 15.24.040 Appointment of Hearing Officer
- 15.24.050 Hearing
- 15.24.060 Action by city council
- 15.24.070 Appeal from decision or order of city council
- 15.24.080 Placarding and vacating; abatement of rent
- 15.24.090 Demolition or repair by city
- 15.24.100 Fees for actions

15.24.120 Boarding up of buildings on notice by building official

15.24.130 Demolition or correction without prior notice or hearing

15.24.010 Definitions.

A. Generally. For the purposes of this ordinance, words and terms used herein shall have the meanings ascribed to them in the Section, unless indicated to the contrary.

B. Hearing Officer. As used in this ordinance the term Officer or Hearing Officer shall mean the Hearing Officer provided for in Section 15.24.040.

C. Dangerous Building. As used in this ordinance, the term Dangerous Building shall mean any building, dwelling, dwelling unit or structure which falls under on or more of the following:

1. Is a Dangerous Building, as described and defined in Section 139 of the Housing Law, being Act 167 of the Public Acts of 1917, as amended [MSA Sec. 5.2891(19); MCL Sec. 125.539].

2. Because of damage by fire or wind or because of its dilapidated condition, is dangerous to the life, safety or general health and welfare of the occupants or the people of the city.

3. Has light, air or sanitation facilities which are inadequate to protect the health, safety or general welfare of human beings who live or may live therein.

4. Has inadequate means of egress.

5. Has parts thereof which are so attached that they may fall and injure persons or damage property.

6. Is vacant and open, at door or window, leaving the interior exposed to the elements or accessible to entrance by trespassers or animals, or open to casual entry.

7. Has been damaged or vandalized or has deteriorated to such an extent as to be unfit or unsuitable for occupancy and which has not been made habitable or safe, to the standards of this article and other ordinances of the city within (30)days after notice is given by the building official to the last known owner or person having the right to possession thereof.

8. Is hazardous to the safety, health or welfare of the public by reason of inadequate maintenance, dilapidation, obsolescence or abandonment.

9. Is in such a condition as to constitute a nuisance.

10. Is boarded up or unoccupied for a period of more than

180 consecutive days and is not listed as being available for sale, lease or rent with a real estate broker, except when the owner has notified the city of its intentions to keep the building unoccupied and continuously maintains the property and grounds, or if the building is classified as a second home, vacation home, hunting cabin or is to be occupied by the owner or a member of the owner=s family part of the year.

The term ADangerous Building@ shall also include any, sign, fence, shed, lean-to, cellar or other structure which has become so rotted, burned, broken, infirm, or dilapidated as to be likely to fall over or collapse and injure persons or damage property.(Ord 255, 2000)

D.Designated Enforcement Official . As used in this ordinance, the term :Designated Enforcement Official@ shall mean the building inspector.

E.Owner . As used in this ordinance, the term AOwner@ shall mean the owner, occupant, lessee or any other person with an interest of record in a dangerous building to the property on which a dangerous building is located, or any building or property which the city is investigating to determine whether a violation of this ordinance exists.

F.City . As used in this ordinance, the term ACity@ shall mean the City of Linden, Genesee county, Michigan.

15.24.020 Maintenance of dangerous building prohibited.

A. It shall be unlawful for any owner(s) to keep, own, occupy or maintain any dangerous building within the city.

B. The city finds that any dangerous building located within the city constitutes a public nuisance, in addition to any other penalty or liability provided for in this ordinance, any person who keeps, owns, occupies or maintains a dangerous building shall be liable for maintaining a public nuisance.

C. The city may enter upon property for the purposes of making surveys, measurements, inspections, examinations, tests, borings, samplings, taking photographs, videotaping, conducting an environmental inspection, or for any other purpose reasonably necessary to carry out the provisions of this ordinance. If reasonable efforts to enter have been obstructed or denied, the city may commence civil action in circuit court for an order



permitting entry, and restraining or enjoining further obstruction or denial of access. The complaint shall state the facts making the entry necessary, the date or dates on which entry is sought, and the duration of the entry. The court shall permit entry by the city upon such terms as justice and equity require. (Ord 255, 2000)

15.24.030 Notice to owners

A. When the whole or any part of any building is found to be in a dangerous or unsafe condition (as defined in Section 15,24.010(C), the designated enforcement official shall issue a notice of the dangerous or unsafe condition. The notice shall be served on the owner(s) by either certified mail or personal service. A copy of said notice should also be posted in a conspicuous place on the building.

B. Such notice shall be directed to the owner(s), as well as any other party with an interest in the building or the property on which the building is located known to be the designated building official.

C. The notice shall identify the condition or conditions for which the building has been found to be dangerous or unsafe, specify that permit or permits for the performance of work to correct such violations be obtained from the city building official and the time within which the violation shall be corrected. If the owner(s) finds that the work cannot be completed within the time specified, or for any other reason, the owner(s) may appeal to the hearing officer, to show cause why the structure should not be ordered to be demolished or otherwise made safe. If the owner(s) do not complete correction of the violation or complete demolition within the time specified by the notice, then the designated enforcement official shall send the owner(s), a second notice, stating the date on which the owner(s) shall appear before the hearing officer to show cause why the structure should not be ordered to be demolished or otherwise made safe. This notice shall be served on the owner(s) in the manner prescribed in Section 15.24.030(A).

D. The designated enforcement official shall file a copy of the notice provided for in this section with the hearing officer. Ord 255, 2000)

15.24.040 Appointment of hearing officer.

A. For the purpose of carrying out the provisions of this article, a hearing officer shall be appointed by the city council upon the recommendation of the Mayor.

B. The hearing officer shall be paid on a per diem basis for conducting hearings on a pro-rated amount for a partial day.

C. The hearing officer may not be a city employee. (Ord 255, 2000)

15.24.050 Hearing.

A. At the time and place fixed in the notice given pursuant to section 15.24.030, the hearing officer shall conduct the hearing referred to in such notice. Both the city and the owner(s) may be represented by counsel at this hearing. The hearing officer may take the testimonies of the designated enforcement official, the owner(s), occupant, lessee or agent of the property and any interested party, as well as any other evidence relevant. The use of pictures, video tapes or other recording devices shall be permitted to present evidence in hearing. The hearing officer shall render findings of facts, which shall include but not be limited to:

- (1) Evidence of relevant building and building regulations;
- (2) The condition or state of repair of the building, dwelling or structure;
- (3) The estimated cost of repair or demolition of the building, dwelling or structure;
- (4) The equalized assessed value of the building, dwelling or structure;
- (5) Recommendation regarding the action that should be taken with respect to the building.

On the basis of the hearing officer's findings, the hearing officer shall render a decision, either closing the proceedings or ordering the dangerous building to be demolished or otherwise made safe.

B. If it is determined by the hearing officer that the building, dwelling or structure is unfit for human habitation or is a dangerous building and should be demolished or otherwise made safe, the hearing officer shall so order, fixing a time in the order for the owner(s) to comply therewith.

C. A copy of the findings and order of the hearing officer shall be served on the owner(s), in the manner prescribed in

section 15.24.030(A). (Ord 255, 2000)

15.24.060 Action by city council.

A. If, pursuant to section 15.24.050. The hearing officer issues an order to demolish or otherwise make safe a dangerous building, and the owner(s) neglects or refuses to comply with such order, or if the owner(s) failed to appear to the hearing, the hearing officer shall file a report of the findings and a copy of the order with the city council and request that the city take the necessary action to demolish or otherwise make safe the dangerous building.

B. The city council shall fix a date for hearing, reviewing the findings and order of the officer and shall give notice to the owner(s), in the manner prescribed in section 15.24.030(A), of the time and place of the hearing. At the hearing, the owner(s) shall be given the opportunity to show cause why the building should not be demolished or otherwise made safe and the city council shall either approve, disapprove or modify the order of the officer. (Ord 255, 2000)

15.24.070 Appeal from decision or order of city council.

Any owner(s) grieved by a final decision of the city council under section 15.24.060 may appeal the decision or order to the circuit court by filing a petition for an order of superintending control within twenty-one(21) days from the date of decision. (Ord 255, 2000)

15.24.080 Placarding and vacating: abatement of rent.

A. If an order to demolish a dangerous building is affirmed by the city council and no appeal is taken within the time prescribed by section 15.24.070, or if an appeal is taken and the order affirmed by the court, and the owner(s) fail to comply with the order by demolishing the dangerous building or making it safe, the designated enforcement official shall post, in a conspicuous place or places on the dangerous building, a placard baring the following words: ACONDEMNED AS UNFIT FOR HUMAN OCCUPANCY. No person shall deface or remove such placard, except the designated enforcement official, as provided for in this section.

B. A dangerous building which has been placarded under this section shall be vacated within a reasonable time, as required by the designated enforcement official. No owner or operator shall let any person for human occupancy and no person

shall occupy nor permit anyone to occupy any such dangerous building which has been placarded by the building official, after the date on which the designated enforcement official has required such building to be vacated, until written approval is secured from, and such placard is removed by, the designated enforcement official. The designated enforcement official shall remove such placard whenever the defect or defects upon which the condemnation and placarding action was based, have been eliminated.

C. If pursuant to the provisions of this section, a dangerous building has been ordered vacated by the designated enforcement official and there is no compliance with the order in the time specified, the designated enforcement official may petition the appropriate court to obtain compliance, and the court may order the occupants to vacate or demolish the dangerous building forthwith.

D. If any dangerous building is occupied after it has been ordered vacated under this section, no rent shall be recoverable for the period of occupancy.(Ord 255, 2000)

#### 15.24.090 Demolition or repair by city

A. If no appeal is filed within the time prescribed by section 15.24.070, or if a final order to demolish a dangerous building or make it safe is affirmed by the court, and such order is not fully obeyed, the city may demolish such dangerous building or take whatever steps necessary to make it safe. The cost of such work shall constitute both a personal liability of the owner(s) and be a lien against the real property on which the dangerous building is located and shall be reported to the assessing officer of the city who shall assess the cost against the property on which the dangerous building is or was located.

B. The owner(s) shall be notified of the amount of the cost referred to in subsection (A) by first-class mail at the address shown on the record.

C. If the amount in subsection(A) is not paid within thirty(30)days after mailing by the assessor of the notice of the amount thereof, the assessor shall add the same to the next tax roll of the city; and the same shall be collected in the same manner in all respects as provided by law for the collection of taxes.

D. As an additional method of recovering the amount referred to in subsection(A) above, the amount may be recovered by lawsuit against the persons referred to in subsection(B).

E. Interest shall accrue as provided for taxes and judgments by law. (Ord 255, 2000)

15.24.100 Fees for actions.

A. The city council may, by resolution, establish reasonable fees for covering the costs of actions taken with regard to this ordinance.

B. All costs incurred in enforcement of this ordinance may be assessed against the owner(s) and be collected either personally from the owner(s) or shall be a lien against the real property and shall be reported to the assessing officer of the city who shall assess the costs against the property on which the building or dwelling was located.

C. The owner(s) or any party in interest in whose name the property appears upon the last local tax assessment record shall be notified of the amount of the costs referred to in subsection(B) by first class mail at the address shown on the record. If such person(s) fails to pay the same within thirty (30) days after mailing by the assessor of the notice of the amount thereof, the assessor shall add the same to the next tax roll of the city, and the same shall be collected in the same manner in all respects as provided by law for collection of taxes and/or may be collected by suit at law. Interest shall accrue as provided for taxes and judgments by law.(Ord 255, 2000)

15.24.110 Boarding up of buildings on notice by building official.

Whenever a building is a dangerous building under section 15.24.010(C)(6) for a period of five(5) days after notice of said condition has been issued in accordance with section 15.24.030, the city may board up the building or take such other actions as may be feasible and necessary to protect the health, safety and welfare of the city. The costs and their recovery shall be governed by section 15.24.100, except that the cost to be recovered for boarding up the building shall be in the actual amount expended for the particular work done. (Ord 255, 2000)

15.24.120 Demolition or correction without prior notice or hearing.

If a building is so dangerous that it poses an immediate threat to health or safety, the building may be demolished or otherwise made safe without prior notice or hearing. Such danger includes but is not limited to conditions which pose the immediate threat of collapse which pose the immediate threat of collapse of the building. Section 15.24.090 and 15.24.100 shall apply to recoupment of city costs, except that the notice requirements of

section 15.24.030 and 15.24.060 shall not apply. (Ord 255, 2000)

15.24.130 Repeal: savings clause: severability.

All other ordinances, resolutions or orders, or parts thereof, in conflict with the provisions of this ordinance are, to the extent of such conflict, repealed. Each section of this ordinance and each subdivision of any section hereof is hereby declared to be independent, and the finding or holding of any section or subdivision thereof to be invalid or void shall not be deemed or held to affect the validity of any other section or subdivision of this ordinance. (Ord 255, 2000)

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