

**TITLE XI: BUSINESS REGULATIONS**

Chapter

- 110. **BUSINESS AND TRADE LICENSES**
- 111. **PEDDLERS AND TRANSIENT MERCHANTS**
- 112. **PAWNBROKERS**
- 113. **GOING-OUT-OF-BUSINESS SALES**
- 114. **TAXICABS**
- 115. **DEALERS OF PRECIOUS METALS AND GEMS**
- 116. **[RESERVED]**
- 117. **[RESERVED]**
- 118. **[RESERVED]**
- 119. **CIRCUSES, CARNIVALS, SHOWS AND EXHIBITIONS**
- 120. **[RESERVED]**
- 121. **[RESERVED]**
- 122. **ADULT ENTERTAINMENT ESTABLISHMENTS**
- 123. **TELECOMMUNICATIONS**



## CHAPTER 110: BUSINESS AND TRADE LICENSES

### Section

- 110.01 Business licenses required
- 110.02 State license not exemption
- 110.03 Application for license
- 110.04 License year
- 110.05 State license laws; compliance prerequisite
- 110.06 Compliance with code
- 110.07 Payment of fees
- 110.08 Exemption
- 110.09 Refusal to issue license; revocation, causes
- 110.10 Notice of suspension or revocation
- 110.11 Hearing by City Commission
- 110.12 Renewal of license
- 110.13 Carrying license; display; requirements
- 110.14 Expired or duplicate license; display
- 110.15 Licenses nontransferable
- 110.16 Provisions complementary and supplemental
- 110.17 Penalty fee
- 110.18 License fee and bond schedule

### § 110.01 BUSINESS LICENSES REQUIRED.

No person shall, directly or indirectly, operate, conduct, maintain or manage any business or premises for which any license or permit is required by any provision of this chapter or code without first procuring a license or permit from the City in the manner prescribed in this chapter.

(Ord. 619-11-09, passed 11-2-09)

### § 110.02 STATE LICENSE NOT EXEMPTION.

The fact that a license or permit has been granted to any person by the state to engage in the operation, conduct, maintenance or management of any business or premises shall not exempt such person from the necessity of procuring a license or permit from the City if such license is required by this code.

(Ord. 619-11-09, passed 11-2-09)

### § 110.03 APPLICATION FOR LICENSE.

Each person required to procure a license from the City shall make application for the license to the City Clerk in the form and manner prescribed by the City Clerk and shall state under oath the facts required for, or applicable to, the granting of the license, including the following:

(A) The full names, business addresses and residence addresses of all owners, proprietors, officers, managers and local employees of applicant's business or the names and addresses of each officer if the applicant is a corporation.

(B) The place or places in the City where it is proposed to maintain applicant's business, and the length of time during which it is proposed the business will be conducted.

(C) The nature, character and quality of the goods, wares, merchandise or services to be sold or offered for sale by the applicant in the City.

(D) The nature and kind of business which the applicant proposes to conduct and the manner of operating it.

(E) A list of all assumed, trade or firm names under which the applicant intends to do business.

(F) The nature and character of advertising done or proposed to be done in order to attract customers.

(G) Whether or not the applicant or person conducting or managing applicant's business has been convicted of a crime, misdemeanor or the violation of any provision of this code or other ordinance of the City, and if so, full particulars of each conviction or violation.

(Ord. 619-11-09, passed 11-2-09)

### § 110.04 LICENSE YEAR.

The license year shall terminate on December 31 at 12:00 midnight next after the issuance of the

## Big Rapids - Business Regulations

license. In all cases where the provisions of this code permit the issuance of licenses for periods of less than one year, the expiration date shall be indicated on the face of the license.

(Ord. 619-11-09, passed 11-2-09)

### **§ 110.05 STATE LICENSE LAWS; COMPLIANCE PREREQUISITE.**

No license or permit required by this chapter or code shall be issued to any person who is required to have a license or permit from the state until such person shall submit evidence of the state license or permit and proof that all fees for it have been paid.

(Ord. 619-11-09, passed 11-2-09)

### **§ 110.06 COMPLIANCE WITH CODE.**

No license shall be granted to any applicant therefore until the applicant has complied with all of the provisions of this chapter and code pertaining to the business for which application is made, nor shall any license be granted where the approval of any officer of the City is required prior to the issuance thereof until such approval is made.

(Ord. 619-11-09, passed 11-2-09)

### **§ 110.07 PAYMENT OF FEES.**

No license shall be issued until the fees set forth in § 110.18 shall be paid by the applicant to the City Clerk.

(Ord. 619-11-09, passed 11-2-09)

### **§ 110.08 EXEMPTION.**

No license fee shall be required from any person exempt from payment of the fee by state or federal law. Such persons shall comply with all other provisions of this chapter. The City Clerk shall, in all such cases, issue to such persons licenses which are clearly marked as to said exemption and the reason therefore.

(Ord. 619-11-09, passed 11-2-09)

### **§ 110.09 REFUSAL TO ISSUE LICENSE; REVOCATION, CAUSES.**

Licenses requested under this chapter may be refused by the City Clerk or City Manager and

licenses issued may be suspended or revoked by the City Clerk or City Manager at any time, for any of the following causes:

(A) Fraud, misrepresentation or false statement contained in the application for license.

(B) Fraud, misrepresentation or false statement made in the operation of a business.

(C) Any violation of this code.

(D) Conducting a business in an unlawful manner or in such manner as to constitute a breach of the peace or to constitute a menace to the health, morals, safety or welfare of the public.

(E) The failure or inability of an applicant to meet and satisfy the requirements and provisions of this code.

(Ord. 619-11-09, passed 11-2-09)

### **§ 110.10 NOTICE OF SUSPENSION OR REVOCATION.**

Written notice of suspension or revocation stating the cause or causes therefor shall be delivered to the licensee personally or mailed to the address stated in the application for license.

(Ord. 619-11-09, passed 11-2-09)

### **§ 110.11 HEARING BY CITY COMMISSION.**

(A) Any person whose license is revoked or suspended or any person whose request for a license is refused shall have the right to a hearing before the City Commission provided a written request therefore is filed with the City Clerk within ten days following the delivery or mailing of notice of revocation or suspension or within ten days following such refusal.

(B) The City Commission may reverse any refusal to issue a license or any suspension or revocation of a license, and the City Commission may grant or reinstate any license. No person shall operate any business when the license or permit has been suspended, revoked, or canceled.

(Ord. 619-11-09, passed 11-2-09)

**§ 110.12 RENEWAL OF LICENSE.**

Unless otherwise provided herein, an application for renewal of a license shall be considered in the same manner as an original application.  
(Ord. 619-11-09, passed 11-2-09)

**§ 110.13 CARRYING LICENSE; DISPLAY; REQUIREMENTS.**

No licensee shall fail to carry any license issued in accordance with the provisions of this chapter or code upon his person at all times when engaged in the operation, conduct or maintenance of any business for which the license was granted; except that where such business is operated, conducted or maintained at a fixed place or establishment, said license shall be displayed at all times in some conspicuous place in his place of business; and he shall produce the same for examination when applying for a renewal thereof or when requested to do so by any City police officer or by any person representing the issuing authority.  
(Ord. 619-11-09, passed 11-2-09)

**§ 110.14 EXPIRED OR DUPLICATE LICENSE; DISPLAY.**

No person shall display any expired, suspended, or revoked license or any license for which a duplicate has been issued.  
(Ord. 619-11-09, passed 11-2-09)

**§ 110.15 LICENSES NONTRANSFERABLE.**

No license or permit issued under the provisions of this code shall be transferable, unless specifically so provided herein.  
(Ord. 619-11-09, passed 11-2-09)

**§ 110.16 PROVISIONS COMPLEMENTARY AND SUPPLEMENTAL.**

The general provisions of this chapter, together with other relevant provisions of any other chapter of this code, or the general provisions hereafter authorized, or required by state law, and any and all thereof relative to licenses, permits, businesses, premises or anything connected therewith, shall each

be construed to be complementary and supplemental to each other so far as relevant, and where not otherwise provided or inconsistent herewith, constitute a part of the regulations and conditions applicable generally to any particular license or permit in the same manner as though these provisions were fully written into each separate chapter.  
(Ord. 619-11-09, passed 11-2-09)

**§ 110.17 PENALTY FEE.**

Any business requiring a yearly business license will be charged a penalty fee of 25% of the normal fee after 15 days from date of license expiration; 50% after 30 days and double the license fee after 60 days if such business was in business on December 31 preceding the license year.  
(Ord. 619-11-09, passed 11-2-09)

**§ 110.18 LICENSE FEE AND BOND SCHEDULE.**

(A) Schedule established. The fee required to be paid and the amount of any bond required to be posted to obtain any license to engage in the operation, conduct, or carrying on of any trade, profession, business or privilege for which a license is required by the provisions of this code shall be as hereinafter provided in this chapter. No license shall be issued to any applicant unless he first pays to the City Clerk the fee and posts a bond in the amount required for the type of license desired.

(B) Fees for licenses. Fees for licenses shall be as prescribed in the following schedule under the business, trade, occupation, or privilege to be licensed. Bonds, where required, shall be in the amounts listed beneath the license fee prescribed for such business.

(C) License fee and bond schedule.

Type of Business	Fee
Circus, Menagerie, Carnival, Exhibition, Side Show (Chapter 119)	
First day	\$100
Each subsequent day	\$50
Bond, conditioned to indemnify the City or others for any property damage and clearing premises	\$3,000

**Big Rapids - Business Regulations**

<b>Type of Business</b>	<b>Fee</b>		
		<b>Dealers in Precious Metals and Gems (Chapter 115)</b>	
Pawnbrokers and Secondhand Dealers (Chapter 112)		Per day	\$50
		Per week	\$75
Pawnbrokers - Annual fee	\$200	Annual fee	\$100
Bond	\$3,000		
Secondhand Dealers	\$50	<b>Other Merchants</b>	
Junk Dealers	\$50	Per day	\$35
Antique Dealers	\$50	Per week	\$50
		Per month	\$75
Peddlers (Chapter 111)		Per six month	\$100
Per day	\$20	Per year	\$200
Per week	\$50		
Per month	\$75	<b>Going out of Business (Chapter 113)</b>	
Per year	\$100	(Set by State Law)	
		First 30 days of the sale	\$50
Under 16 years of age	\$0	Renewal for 30 days	\$50
Subject to restriction of the use of such streets as may be designated by the Director of Public Safety.		(Ord. 619-11-09, passed 11-2-09; Am. Ord. 624-05-10, passed 5-17-10; Am. Ord. 632-11-10, passed 11-1-10; Am. Ord. 642-12-11, passed 12-5-11)	
Taxicabs (Chapter 114)			
Annual fee	\$100		
Whenever more than one taxicab license is issued to the same licensee, the licensee shall pay \$25 per annum for each taxicab excluding the first.			
Driver's permit			
Annual fee	\$25		
Renewal fee	\$20		
Background Check	Current cost of doing the check		
Each licensee shall satisfy § 114.04 by depositing with the City Clerk one or more policies of insurance as required by said section, with the policy limits of \$100,000 per person and \$300,000 per occurrence for personal injury and \$100,000 per occurrence for property damage liability.			
Transient merchants (Chapter 111)			
Farm Products — Produce			
Per day	\$5		
Per month	\$25		
Per year	\$30		
Christmas Tree Sales - for the sale season (approximately one month)			
	\$25		

## CHAPTER 111: PEDDLERS AND TRANSIENT MERCHANTS

### Section

- 111.01 Definitions
- 111.02 License required
- 110.03 Fees required
- 111.04 Veteran's exemption
- 111.05 Closing out sales
- 111.06 License requirements for employees, agents, consignees or unincorporated firms or associations
- 111.07 Hours in residential areas
- 111.08 Exempt activities

### § 111.01 DEFINITIONS.

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

**PEDDLER.** Any person who goes about from place to place, selling or offering for sale, goods, wares, merchandise and all kinds of property, traveling on foot or in vehicles, and selling from house to house without prior specific invitation or appointment from the resident, or by crying his wares from the street. Such term shall include "hawker", "solicitor" and "huckster."

**TRANSIENT MERCHANT.** Any person engaged temporarily in the retail sale of goods, wares or merchandise, in any place in this City and who, for the purpose of conducting such business, occupies or uses any lot, building, truck, trailer, stall, room, tent, canopy or structure of any kind.

(1) Such term shall include: "itinerant merchants," "itinerant vendors" and persons engaged in selling goods, wares or merchandise at retail in this City and who are not on the tax rolls of this City; and

(2) Any person who commences a business of selling goods, wares and merchandise at retail within the City after the first day of January in any year and who is not assessed on the tax roll for that year and who occupies or uses the licensed premises for a period of less than 180 days shall be

deemed a **TRANSIENT MERCHANT** within the meaning of this chapter.  
(Ord. 616-11-09, passed 11-2-09)

### § 111.02 LICENSE REQUIRED.

It shall be unlawful for any person to engage in business as a peddler, route salesman or transient merchant in the City without first having procured a license from the Clerk as herein provided. A person, persons, or company applying for a business license under this section shall complete an Authorization to Obtain a Criminal History Report form, and submit it along with the current fee for obtaining such report, to the City Clerk for processing. No license shall be granted except upon approval of the Director of Public Safety.  
(Ord. 616-11-09, passed 11-2-09)

### § 111.03 FEES REQUIRED.

An application for a license under this chapter shall be accompanied by a fee as set forth in § 110.18. Persons under the age of 16 years of age, where all proceeds are retained by the person, shall be exempt from the license fee. No adult or business shall hire or subcontract such persons in an attempt to evade the provisions of this chapter.  
(Ord. 616-11-09, passed 11-2-09)

### § 111.04 VETERANS EXEMPTION.

Every honorably discharged member of the Coast Guard, soldier, sailor or Marine of the military or naval service of the United States, who is a resident of this state and a veteran of any war in which the United States of America has been or is a participant, shall have the right to hawk, vend or peddle his own goods, wares and merchandise within this City, by procuring a license for that purpose as herein prescribed. Application for such license shall be made to the City Clerk in the form and manner

prescribed in this chapter and upon presentation to the City Clerk of a certificate of honorable discharge from the Coast Guard, Army, Navy, or Marine Corps of the United States, which certificate shall show that the applicant is a veteran of any war in which the United States has been or shall be a participant, a veteran's license shall be issued by the Clerk to the applicant without cost. Such license shall be personal to the licensee and any assignment or transfer thereof shall be void.

(Ord. 616-11-09, passed 11-2-09)

#### **§ 111.05 CLOSING OUT SALES.**

No transient merchant shall advertise, represent or hold out to the public any sale as being the sale of a bankrupt's stock, creditor's, administrator's, executor's sale or closing out sale; or sale of merchandise damaged by fire, water or otherwise unless at the time of making application for a license as herein required, he states under oath all the facts relative to the sale he proposes to conduct, including the name and addresses of the persons from whom the merchandise to be sold was purchased and a full description of all of the goods, wares and merchandise to be sold. The Clerk shall thereupon issue the license for the type of sale specified in the application.

(Ord. 616-11-09, passed 11-2-09)

#### **§ 111.06 LICENSE REQUIREMENTS FOR EMPLOYEES, AGENTS, CONSIGNEES OR UNINCORPORATED FIRMS OR ASSOCIATIONS.**

A transient merchant license may be issued to a person carrying on the business of peddler or transient merchant in the City through employees. Such employees shall carry a duplicate license issued to the person. If the business of peddler or transient merchant is carried on through agents who are not employees, but consignees or by an unincorporated firm or association, each person so conducting the business of peddler or transient merchant shall be required to have a separate license.

(Ord. 616-11-09, passed 11-2-09)

#### **§ 111.07 HOURS IN RESIDENTIAL AREAS.**

No person shall engage in selling door-to-door in residential areas prior to 9:00 a.m. or after 8:30

p.m., or sunset, whichever is earlier, on any weekday or Saturday, or at any time on Sunday, New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day or Christmas.

(Ord. 616-11-09, passed 11-2-09)

#### **§ 111.08 EXEMPT ACTIVITIES.**

Persons engaged in the following described activities are exempt from the duty of applying for license under this section:

(A) The sale of goods, wares or merchandise, or solicitations on behalf and solely for the benefit of any recognized charitable or religious purpose.

(B) Commercial travelers employed by wholesale houses, who take or seek to take the orders from merchants for goods, wares or merchandise and other personal property for the purpose of resale by the merchant.

(C) Persons selling or delivering tangible personal property or services through or for a permanent business located within the City.

(D) Persons selling at events for which a blanket license has been obtained.

(E) Persons selling or distributing newspapers.

(F) Persons who sell, at their permanent residence in the City, works of art or crafts made or created by such person or a member of such person's immediate family.

(G) Persons selling tangible personal property at a garage, basement or yard sale held at one of the person's premises, if permitted under the terms of the Zoning Code.

(H) Persons conducting and selling admissions to or for theatricals, shows, rides, sports and games, concerts, circuses, carnivals or any other public amusement where no sales of other products are involved.

(I) A person who distributes handbills or flyers for a commercial purpose, advertising an event, activity, good or service that is offered to the resident for purchase at another permanent business located within the City.

(J) A persons soliciting orders by sample, brochures or sales catalogue (cosmetics, kitchen



ware, jewelry, etc.) for future delivery, or making sales on residential premises pursuant to an invitation issued by the owner or legal occupant of the premises.  
(Ord. 616-11-09, passed 11-2-09)



## CHAPTER 112: PAWNBROKERS AND SECONDHAND DEALERS

### Section

- 112.01 Definitions
- 112.02 License required
- 112.03 License fee
- 112.04 Pawnbroker bonds
- 112.05 Sunday pawnbroker operations prohibited
- 112.06 Acceptance of property from certain persons prohibited
- 112.07 Records required; contents; inspection
- 112.08 Destruction or defacing of pawned property
- 112.09 Revocation of license
- 112.10 Penalty

### **Cross-reference:**

*Dealers of Precious Metals and Gems, see Ch. 115*

### **§ 112.01 DEFINITIONS.**

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

**ANTIQUÉ DEALER.** A person, corporation, limited liability company, member or members of a copartnership or firm specializing in appraising, buying and selling antiquities, antiques, and collectables.

**PAWNBROKER.** A person, corporation, limited liability company, member, or members of a copartnership or firm, who loans money on deposit, or pledge of personal property, or other valuable thing, other than securities or printed evidence of indebtedness, or who deals in the purchasing of personal property or other valuable thing on condition of selling the same back again at a stipulated price.

**SECONDHAND DEALER OR JUNK DEALER.** Any person, corporation, limited liability company, member, or members of a copartnership or firm whose principal business is that of purchasing, selling, exchanging, storing, or receiving second hand articles of any kind, scrap metals, cast iron, old iron, old steel, tool steel, aluminum, copper, brass, lead pipe or tools, or lighting and plumbing fixtures,

but excluding sellers of donated goods. Secondhand dealer or junk dealer does not include a scrap processor, an automotive recycler, or a junkyard that deals principally in industrial scrap and is licensed by a city, village, or county.

(Ord. 623-05-10, passed 5-17-10; Am. Ord. 631-11-10, passed 11-1-10; Am. Ord. 635-1-11, passed 2-7-11)

### **§ 112.02 LICENSE REQUIRED.**

(A) No person shall engage in the business of a pawnbroker, secondhand dealer, junk dealer or antique dealer without first procuring a license from the City of Big Rapids signed by the Mayor with the approval of the Director of Public Safety.

(B) A person, persons or company applying for a pawnbroker license shall complete an authorization to obtain a criminal history report form, and submit it along with the current fee for obtaining the report, to the City Clerk for processing. The Director of Public Safety shall review and consider the criminal history prior to approving or disapproving the pawnbroker license. Any person, persons or company disapproved by the Director of Public Safety for a pawnbroker license shall be entitled to a meeting with the Director of Public Safety and the opportunity to be heard on the reason for disapproval.

(C) The license shall designate the particular place in the City where the license holder shall carry on the business, and no person shall carry on the business in any place other than the one designated in the license.

(D) The license period shall be for one year from January 1 to December 31, unless sooner revoked for cause, and shall not be transferable. If a license is issued for a partial year, the license fee amount will be pro-rated from the date of issuance of the license to December 31.

(Ord. 623-05-10, passed 5-17-10; Am. Ord. 631-11-10, passed 11-1-10; Am. Ord. 635-1-11, passed 2-7-11)

**§ 112.03 LICENSE FEE.**

No pawnbroker, secondhand dealer, or junk dealer license shall be issued without first paying an annual license fee in the amount established by the City in Chapter 110, § 110.18.  
(Ord. 623-05-10, passed 5-17-10; Am. Ord. 631-11-10, passed 11-1-10)

**§ 112.04 PAWNBROKER BONDS.**

(A) Before any pawnbroker license is issued, the applicant shall furnish a surety bond with at least two sureties, or a cash bond in the penal sum of \$3,000 conditioned on the faithful performance of the duties and obligations pertaining to the conduct of the business and for the payment of all costs and damages incurred by any violation of the statute. The bond shall be approved and kept on file by the City Clerk.

(B) Any person aggrieved by the action of a licensed pawnbroker shall have a right of action on the bond for the recovery of damages or to enforce any lawful right. The bond shall remain in force for 90 days after the expiration or cancellation of the license. Any cash bond posted with the City shall be returned to the license holder without interest 90 days after the expiration or cancellation of the license, or after termination of any action against the bond, whichever is later.  
(Ord. 623-05-10, passed 5-17-10; Am. Ord. 631-11-10, passed 11-1-10)

**§ 112.05 SUNDAY PAWNBROKER OPERATIONS PROHIBITED.**

No pawnbroker license shall authorize any business to be transacted by a pawnbroker on Sunday.  
(Ord. 623-05-10, passed 5-17-10)

**§ 112.06 ACCEPTANCE OF PROPERTY FROM CERTAIN PERSONS PROHIBITED.**

A licensed pawnbroker or secondhand dealer shall not accept, receive for pawn, purchase, or acquire any article from a person under 18 years of age, or a person the pawnbroker or secondhand dealer suspects stole the article.  
(Ord. 623-05-10, passed 5-17-10)

**§ 112.07 RECORDS REQUIRED; CONTENTS; INSPECTION.**

(A) A licensed pawnbroker or secondhand dealer shall keep a record in English, at the time the pawnbroker or secondhand dealer receives any article of personal property or other valuable thing by way of pawn or purchase in the course of business, that includes a description of the article, a sequential transaction number, any amount of money loaned on or paid for the article, the name, residence, general description, and driver license number, official state identification card number, or government identification number of the person from whom the article was received, and the day and hour when the article was received. The record, the place where the business is conducted, and all articles of property in the place of business are subject to examination at any time by the attorney of the governmental unit, local police agency, county prosecuting attorney, and the department of state police.

(B) Upon receipt of any article of personal property or other valuable thing by way of pawn, purchase, or trade, the pawnbroker or secondhand dealer shall make a permanent record of the transaction on a form provided by the pawnbroker or secondhand dealer that substantially complies with the form described in MCL 446.205(4). Each record shall be completed legibly in duplicate by the pawnbroker or secondhand dealer in the English language, and shall contain all of the information required by MCL 446.205(4). The pawnbroker or secondhand dealer shall retain a record of each transaction and, within 48 hours after the property is received, shall send one copy of the record of transaction to the Big Rapids Department of Public Safety.  
(Ord. 623-05-10, passed 5-17-10)

**§ 112.08 DESTRUCTION OR DEFACING OF PAWNED PROPERTY.**

(A) A pawnbroker shall not deface, scratch, obliterate, melt, separate, or break into parts any article or thing received in pawn, or otherwise cause or allow to be done by others, anything that destroys the identity of the article or thing, or makes identification of the article or thing more difficult.

(B) A pawnbroker shall not accept by way of pledge, pawn, purchase or exchange any article or thing that customarily bears a manufacturer's serial number or other identifying insignia unless the serial number or insignia is plainly visible.  
(Ord. 623-05-10, passed 5-17-10)

**§ 112.09 REVOCATION OF LICENSE.**

Upon the conviction of any person doing business as a pawnbroker, secondhand dealer, or junk dealer under this chapter, or upon the conviction of any clerk, agent, or employee of a pawnbroker, secondhand dealer, or junk dealer upon any charge of violating a provision of this chapter or corresponding state law, the license of the pawnbroker, secondhand dealer, or junk dealer shall be revoked by the City Clerk after notice to the license holder and an opportunity to be heard by the City Clerk. No part of the license fee shall be returned after revocation, and no license for a pawnbroker, secondhand dealer, or junk dealer shall be issued to the person for one year from the date of revocation.

(Ord. 623-05-10, passed 5-17-10; Am. Ord. 631-11-10, passed 11-1-10)

**§ 112.10 PENALTY.**

The violation of any provision of this chapter shall be a misdemeanor punishable by a fine of up to \$500 and jail of up to 90 days.

(Ord. 623-05-10, passed 5-17-10)



## CHAPTER 113: GOING-OUT-OF-BUSINESS SALES

### Section

- 113.01 Definitions
- 113.02 Exemptions from chapter provisions
- 113.03 License required
- 113.04 Application requirements
- 113.05 Issuance of license
- 113.06 License fee
- 113.07 Display of license
- 113.08 Advertisement

sale of goods, or the sale of goods which have been damaged by fire, smoke, water or otherwise, who acquired the goods for the account of others as a result of fire or other casualty.

(B) The provisions of this chapter shall not apply to sheriffs, constables, or other public or court officers, or to any other person acting under the license, direction or authority of any court, state or federal, selling goods, wares or merchandise in the course of their official duties.

(Ord. 618-11-09, passed 11-2-09)

### § 113.01 DEFINITIONS.

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

**GOING-OUT-OF BUSINESS SALE.** Any sale, whether described by such name or by any other name such as, but not limited to, "closing out sale", "liquidation sale", "lost-our-lease sale", "forced to vacate sale", held in such a manner as to indicate a belief that upon disposal of the stock of goods on hand, the business will cease and discontinue at the premises where the sale is conducted.

**GOODS.** All goods, wares, merchandise and other personal property, excepting, choses in action and money.

**PERSON.** Includes a person, firm, corporation, partnership, association or two or more persons having a joint or common interest.

**REMOVAL SALE.** Any sale held in such a manner as to induce a belief that upon disposal of the stock of goods on hand, the business will cease and discontinue at the premises where the sale is conducted, and thereafter will be moved to and occupy another location.

(Ord. 618-11-09, passed 11-2-09)

### § 113.02 EXEMPTIONS FROM CHAPTER PROVISIONS.

(A) This chapter shall not apply to any sales by a person regularly engaged in insurance or salvage

### § 113.03 LICENSE REQUIRED.

Pursuant to the provisions of Act No. 39 of the Public Acts of Michigan of 1961 (MCL 442.211 et seq.), as amended, a license issued by the City Clerk shall be obtained by any person before selling or offering to sell any goods at a sale to be advertised or held out by any means to be one of the following kinds:

(A) Going-out-of-business sale.

(B) Removal-of-business sale.

(C) Sale of goods damaged by fire, smoke or otherwise.

(Ord. 618-11-09, passed 11-2-09)

### § 113.04 APPLICATION REQUIREMENTS.

A person desiring to conduct a sale regulated by this chapter shall make a written application to the City Clerk setting forth and containing the following information:

(A) Any applicant for a license under this chapter shall file an application in writing and under oath with the City Clerk setting out the following facts and information regarding such a proposed sale:

(1) The name and address of the applicant for the license, who must be the owner of the goods to be sold, and in addition, if the applicant is a partnership, corporation, firm or association, the name and the position of the individual filing such application;

(2) The name and style in which such sale is to be conducted, and the address where the sale is to be conducted;

(3) The dates and period of time during which the sale is to be conducted;

(4) The name and address of the person who will be in charge and responsible for the conduct of the sale;

(5) A full explanation with regard to the condition or necessity, which is the occasion for the sale, including a statement of the descriptive name of the sale and the reasons why the name is truthfully descriptive of the sale. Going-out-of-business applications shall also contain a statement that the business will be discontinued at the premises where the sale is to be conducted upon termination of the sale. If the application is for a license to conduct a removal sale, it shall also contain a statement that the business will be discontinued at the premises where the sale is to be conducted upon termination of the sale, in addition to the location of the premises to which the business is to be moved. If the application is for a license to conduct a sale of goods damaged by fire, smoke, water or otherwise, it shall also contain a statement as to the time, location and cause of the damage;

(6) A full, detailed, and complete inventory of the goods that are to be sold, which inventory shall:

(a) Itemize the goods to be sold and contain sufficient information concerning each item, including make and brand name, if any, to clearly identify it;

(b) List separately any goods, which were purchased during a 60-day period immediately prior to the date of making application for the license;

(c) Show the cost price of each item in the inventory together with the name and address of the seller of the items to the applicant, the date of the purchase, the date of the delivery of each item to the applicant and the total value of the inventory at cost;

(d) In no case exceed 200% of the total value of merchandise upon which personal property tax was paid by the applicant or his predecessor as evidence by a copy of the last personal property tax receipt issued;

(e) A statement that no goods will be added to the inventory after the application is made or during the sale and that the inventory contains no goods received on consignment.

(B) Any person making a false statement in the application provided for in this section shall be in violation of this chapter.  
(Ord. 618-11-09, passed 11-2-09)

### § 113.05 ISSUANCE OF LICENSE.

(A) A license shall be issued hereunder on the following terms:

(1) (a) A license to conduct a sale issued pursuant to this chapter shall not be issued or valid for a period of more than 30 days from the start of the sale, and the sale may be conducted only during the period set forth in the license.

(b) The license may be renewed not more than twice for a period not to exceed 30 days for each renewal upon affidavit of the licensee that the goods listed in the inventory have not been disposed of and that no new goods have been or will be added to the inventory previously filed pursuant to this article, by purchase, acquisition or consignment or otherwise. The application for renewal of the license shall be made not more than 13 days prior to the time of the expiration of the license and shall contain a new inventory of goods remaining on hand at the time the application for renewal is made, which new inventory shall be prepared and furnished in the same manner and form as the original inventory. No renewal shall be granted if any goods have been added to the stock listed in the inventory since the date of the issuance of the license. A fee of \$50.00 shall accompany an application for the license and for the renewal of a license.

(2) The license shall authorize only the one type of sale described in the application at the location named therein.

(3) The license shall authorize only the sale of goods and merchandise described in the inventory attached to the application; no person shall order any goods for the purpose of selling and disposing of the same under any sale authorized by this chapter. Any unusual purchase or additions to the stock within 60 days prior to the filing of the application hereunder shall be presumptive evidence that the purchases and additions were in contemplation of the sale authorized by this chapter.



(4) Any license herein provided for shall not be assignable or transferable.

(B) No license under this chapter shall be issued to any person:

(1) To conduct a sale in the trade name or style of a person in whose goods the applicant for the license has acquired a right or title thereto within six months prior to the time of making application for such a license.

(2) To conduct a sale, other than sale of goods damaged by fire, smoke, or otherwise on the same premises within one year from the conclusion of a prior sale of the nature covered by this act.

(C) Divisions (B)(1) and (2) above shall not apply to any person who acquired right or title in goods as an heir, devisee or legatee or pursuant to a court order of a court of competent jurisdiction.

(D) No license under this chapter shall be issued unless all personal property taxes due or which will become due by the time of the sale from the business seeking the license have been paid or until arrangements satisfactory to the city treasurer have been made for payment of said taxes from the proceeds of the sale.

(Ord. 618-11-09, passed 11-2-09)

**§ 113.06 LICENSE FEE.**

Any applicant for a license under this chapter shall submit to the City Clerk with his application a license fee, as prescribed in § 110.18.

(Ord. 618-11-09, passed 11-2-09)

**§ 113.07 DISPLAY OF LICENSE.**

A copy of the application for a license to conduct a sale under this chapter, including the inventory filed herewith, shall be posted in a conspicuous place in the sales room or place where the inventoried goods are to be sold, so that the public may be informed of the facts relating to the goods before purchasing same, but the copy need not show the purchase price of the goods. The duplicate copy of a license shall be attached to the front door of the premises where the sale is conducted in such a manner that it be clearly visible from the street.

(Ord. 618-11-09, passed 11-2-09)

**§ 113.08 ADVERTISEMENT.**

Any advertisement or announcement published in connection with any sale outlined under this chapter shall conspicuously show on its face the number of license issued by the City Clerk and the date of its expiration.

(Ord. 618-11-09, passed 11-2-09)



## CHAPTER 114: TAXICABS

### Section

- 114.01 Business license required
- 114.02 Application for license
- 114.03 Taxicab registration
- 114.04 Maintenance and inspection of vehicles
- 114.05 Insurance
- 114.06 Cancellation of insurance
- 114.07 License and registration transfers
- 114.08 Revocation of registration
- 114.09 Rate schedule
- 114.10 Compliance with laws, ordinances
- 114.11 Report of accidents
- 114.12 Taxicab driver's permit
- 114.13 Driver permits; display
- 114.14 Driver permit transfer
- 114.15 Lost articles
- 114.16 Cruising prohibited; taxicab stands
- 114.17 Consumption of alcohol or use of impairing substances or drugs while on duty
- 114.18 Passengers; conveyance required, exception
- 114.19 Rules and regulations
- 114.20 Number of licenses

### § 114.01 BUSINESS LICENSE REQUIRED.

No person, persons, or company shall engage in the business of operating or causing to be operated, directly or indirectly, any taxicab upon streets, alleys, or public ways in the City of Big Rapids without first procuring a taxicab business license. No license shall be issued unless the Director of Public Safety shall indicate approval in writing upon the face of the application.  
(Ord. 617-11-09, passed 11-2-09)

### § 114.02 APPLICATION FOR LICENSE.

(A) Application for a license shall be made to the City Clerk in the form and manner required by the Clerk and in accordance with the provisions of this Code. The license term shall be as specified in § 110.04, and the fees therefore shall be as provided in § 110.18.

(B) A person, persons, or company applying for a taxicab business license shall complete an Authorization to Obtain a Criminal History Report form, and submit it along with the current fee for obtaining such report, to the City Clerk for processing.  
(Ord. 617-11-09, passed 11-2-09)

### § 114.03 TAXICAB REGISTRATION.

(A) No taxicab shall be operated within the City without the issuance of a registration certificate through the City Clerk's office.

(B) Prior to issuing the registration certificate, the following information shall be obtained on a taxicab registration application:

(1) The vehicle description owned or leased by the licensed taxicab company.

(2) Proof of insurance for the vehicle as specified in § 114.04 of this chapter.

(3) Proof of inspection of the vehicles by a licensed motor mechanic approved by the City's Department of Public Safety as provided in § 114.19 of this chapter.

(4) Authorization to issue a registration certificate from the City's Department of Public Safety.  
(Ord. 617-11-09, passed 11-2-09)

### § 114.04 MAINTENANCE AND INSPECTION OF VEHICLES.

(A) Prior to registration being issued for the use and operation of any vehicle as a taxicab, the vehicle shall be thoroughly examined and inspected, at the expense of the taxicab company, by a licensed mechanic who is approved by the City Department of Public Safety. The mechanic shall certify that the vehicle can be safely operated, that it is equipped with all required safety devices, and that it is in a

clean and sanitary condition. Approval shall be certified to the City Clerk on a form provided by the Clerk for that purpose.

(B) Each vehicle licensed under this chapter shall be reinspected by a licensed mechanic, at the expense of the taxicab company, each year prior to reissuance of its registration. However, the Director of Public Safety may require that it be inspected semiannually due to a vehicle's age and/or condition.

(C) In the event that the City receives a complaint regarding the condition of a taxicab, the licensee shall be notified of the nature of the complaint and may be required to present the taxicab at the Department of Public Safety for re-inspection or have the taxicab re-inspected and recertified by a licensed mechanic approved by the Department of Public Safety. Failure to comply within 24 hours of the notice shall result in suspension of the taxicab's registration.

(Ord. 617-11-09, passed 11-2-09)

#### **§ 114.05 INSURANCE.**

(A) Before any taxicab is registered and a license issued, the applicant shall furnish to the City Clerk one or more policies of insurance, insuring the vehicle for taxicab use, prepaid for at least the period of the license, issued by a responsible insurance company providing indemnity for the insured in the amounts specified in § 110.18 and agreeing to pay, within the limits of said amounts on behalf of the insured, all sums which the insured shall become obligated to pay by reason of liability imposed upon the insured by law, for damages because of bodily injury, including death, at any time resulting there from or for damages to property, or both, sustained by any person other than the employees of the insured and caused by accident and arising out of the ownership, maintenance, or use of said licensed taxicab.

(B) The minimum amount of said insurance coverage as to any one licensed taxicab shall be:

(1) Personal injury protection; bodily injury: \$100,000 per person and \$300,000 per occurrence.

(2) Property damage of \$100,000 per occurrence.

(Ord. 617-11-09, passed 11-2-09)

#### **§ 114.06 CANCELLATION OF INSURANCE.**

Every such insurance policy or bond shall contain a clause obligating the insurer to give the City Clerk at least ten days written notice before the cancellation, expiration, lapse, or other termination of the insurance.

(Ord. 617-11-09, passed 11-2-09)

#### **§ 114.07 LICENSE AND REGISTRATION TRANSFERS.**

A taxicab company license may not be transferred. When the ownership of any taxicab shall change, by operation of law or otherwise, the taxicab registration pertaining to such taxicab shall become void. A taxicab company that ceases using a registered taxicab shall notify the City Clerk, and its registration shall be withdrawn. Any transfer, or attempt to transfer, a taxicab company license or taxicab registration to any person shall automatically revoke the license or registration.

(Ord. 617-11-09, passed 11-2-09)

#### **§ 114.08 REVOCATION OF REGISTRATION.**

Upon receiving information that any of the requirements for registrations of a taxicab are no longer met, the City Clerk shall notify the taxicab company by registered mail, and the registration shall be revoked. Operation of taxicab after the registration has been revoked shall be a violation of this chapter.

(Ord. 617-11-09, passed 11-2-09)

#### **§ 114.09 RATE SCHEDULE.**

A schedule of rates and charges shall be on file in the office of the City Clerk, open to public inspection. The schedule of rates shall be conspicuously posted in each taxicab and illuminated at night so as to be readily visible to any passenger.

(Ord. 617-11-09, passed 11-2-09)

#### **§ 114.10 COMPLIANCE WITH LAWS, ORDINANCES.**

Each taxicab licensed under this article shall be operated in accordance with the laws of this state and this code, and with due regard for the safety, comfort and convenience of passengers and for the safety of

the general public. No taxicab shall be operated at a rate of speed greater than that established by state law or City law. A violation of this section may result in the suspension or revocation of the taxicab license. (Ord. 617-11-09, passed 11-2-09)

#### **§ 114.11 REPORT OF ACCIDENTS.**

All accidents arising from or in connection with the operation of taxicabs, which result in death of or injury to any person or in damage to any property, shall be reported within 20 hours from the time of occurrence to the Director of Public Safety. (Ord. 617-11-09, passed 11-2-09)

#### **§ 114.12 TAXICAB DRIVER'S PERMIT.**

No person shall drive a taxicab unless a taxicab driver's permit is first procured. No permit shall be granted except upon approval of the Director of Public Safety. The application for a driver's permit shall be accompanied by two photographs of the applicant in the form and manner prescribed by the Director of Public Safety. The Director of Public Safety shall cause the applicant's fingerprints to be taken, unless the same are on file, and the fingerprints shall be placed in the non-criminal identification files of the Department of Public Safety. Any person applying for a taxicab driver's license shall complete an Authorization to Obtain a Criminal History Report form, and submit it along with the current fee for obtaining such report, to the City Clerk for processing. The fees for the driver's permit shall be as specified in § 110.18. (Ord. 617-11-09, passed 11-2-09)

#### **§ 114.13 DRIVER PERMITS; DISPLAY.**

The permit issued to a taxicab driver shall be conspicuously displayed on the inside of the taxicab and illuminated at night so as to be readily visible to any passenger. (Ord. 617-11-09, passed 11-2-09)

#### **§ 114.14 DRIVER PERMIT TRANSFER.**

No person having a taxicab driver permit shall allow any other person to use or attempt to use such permit for any purpose. No person shall use or have in his/her possession while operating a taxicab in the City any taxicab driver permit which has been issued to any other person. (Ord. 617-11-09, passed 11-2-09)

#### **§ 114.15 LOST ARTICLES.**

Every driver of a taxicab shall search the interior of such taxicab at the termination of each trip for any article, which may have been left in the taxicab by a passenger. Any article found therein shall immediately be returned to the passenger owning it, if the owner be known; otherwise, it shall be deposited with the owner of the taxicab at the conclusion of the driver's tour of duty. The owner of the taxicab shall make a report of the finding of such article within 24 hours thereafter to the Director of Public Safety. (Ord. 617-11-09, passed 11-2-09)

#### **§ 114.16 CRUISING PROHIBITED; TAXICAB STANDS.**

No taxicab driver shall cruise in search of passengers at any time, and whenever a taxicab is not engaged by a customer, the driver shall proceed at once by the most direct route to the garage where the taxicab is housed or the taxicab stand customarily occupied by the taxicab. The area designated for taxicabs to park or stand to await fares shall be the area bounded by State Street, Warren Avenue, Elm Street and Pine Street. Taxicabs shall not utilize an on-street parking space as a taxicab stand on Michigan Avenue, Maple Street, and Elm Street between 8:00 a.m. and 6:00 p.m. Taxicabs can park or stand on private business property to await fares with the permission of the property owner. (Ord. 617-11-09, passed 11-2-09; Am. Ord. 675-06-14, passed 6-2-14)

#### **§ 114.17 CONSUMPTION OF ALCOHOL OR USE OF IMPAIRING SUBSTANCES OR DRUGS WHILE ON DUTY.**

A taxicab driver shall not drink any intoxicating beverage or use any illegal substances or drugs while on duty, nor shall he/she operate a taxicab with a blood alcohol content of 0.01% or more by weight of alcohol or while impaired by use of legal or illegal substances or drugs. (Ord. 617-11-09, passed 11-2-09)

#### **§ 114.18 PASSENGERS; CONVEYANCE REQUIRED, EXCEPTION.**

A driver or owner of a taxicab shall not refuse or neglect to convey any orderly person or persons upon request by signal or telephone call, unless the taxicab is previously engaged. When a taxicab has

been engaged by a passenger, no additional passengers shall be received therein except with the express consent of the first passenger. No person other than passengers for hire, except employees or members of the immediate family of any person licensed hereunder to engage in business of operating a taxicab, shall be transported therein. (Ord. 617-11-09, passed 11-2-09)

#### **§ 114.19 RULES AND REGULATIONS.**

(A) The Director of Public Safety is hereby empowered, subject to approval by the City Commission, to make such rules and regulations regarding the dress and conduct of drivers, the maintenance and marking of taxicabs, the location and maintenance of taxicab stands, as may be necessary in the interest of providing safe and orderly service to passengers, and no person shall fail to comply with any such rule or regulation. The Director of Public Safety may require periodic reports to be submitted by drivers in order to assist in the enforcement of such rules and regulations or the provisions of this chapter.

(B) The Director of Public Safety may from time to time designate portions of the streets of the City to be used as taxicab stands, in addition to those areas designated by ordinance. (Ord. 617-11-09, passed 11-2-09; Am. Ord. 675-06-14, passed 6-2-14)

#### **§ 114.20 NUMBER OF LICENSES.**

The City Commission may limit the number of taxicab licenses that may be issued in accordance with the population and need of the City. (Ord. 617-11-09, passed 11-2-09)

## CHAPTER 115: DEALERS OF PRECIOUS METALS AND GEMS

### Section

- 115.01 Purpose
- 115.02 Definitions
- 115.03 Application by a dealer
- 115.04 Fees
- 115.05 Issuance of certificate of registration
- 115.06 Posting of certificate of registration
- 115.07 Hours of operation
- 115.08 Recordkeeping
- 115.09 Penalty for violation

### **Cross-reference:**

*Pawnbrokers and Secondhand Dealers, see Ch. 112*

### **§ 115.01 PURPOSE.**

This Chapter shall establish the procedure for the City of Big Rapids to issue a certificate of registration to a dealer in precious metals and gems as required by The Precious Metal and Gem Dealer Act, MCL 445.481 et seq. (Ord. 636-1-11, passed 2-7-11)

### **§ 115.02 DEFINITIONS.**

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

**AGENT OR EMPLOYEE.** A person who, for compensation or valuable consideration, is employed either directly or indirectly by a dealer.

**DEALER.** Any person, corporation, partnership, or association, which, in whole or in part, engages in the ordinary course of repeated and recurrent transactions of buying or receiving precious items from the public within this state.

**GOLD.** Elemental gold having an atomic weight of 196.967 and the chemical element symbol of Au, whether found by itself or in combination with its alloys or any other metal.

**JEWELRY.** An ornamental item made of a material that includes a precious gem.

**LOCAL POLICE AGENCY.** The Department of Public Safety for the City of Big Rapids.

**PLATINUM.** Elemental platinum having an atomic weight of 195.09 and the chemical element symbol of Pt, whether found by itself or in combination with its alloys or any other metal.

**PRECIOUS GEM.** A diamond, alexandrite, ruby, sapphire, opal, amethyst, emerald, aquamarine, morganite, garnet, jadeite, topaz, tourmaline, turquoise or pearl.

**PRECIOUS ITEM.** Jewelry, a precious gem, or an item containing gold, silver, or platinum. Precious items do not include the following:

(1) Coins, commemorative medals, and tokens struck by, or in behalf of, a government or private mint.

(2) Bullion bars and discs of the type traded by banks and commodity exchanges.

(3) Items at the time they are purchased directly from a dealer registered under this chapter, a manufacturer, or a wholesaler who purchased them directly from a manufacturer.

(4) Industrial machinery or equipment.

(5) An item being returned to or exchanged at the dealer where the item was purchased and which is accompanied by a valid sales receipt.

(6) An item which is received for alteration, redesign, or repair in a manner that does not substantially change its use and returned directly to the customer.

(7) An item which does not have a jeweler's identifying mark or a serial mark and which the dealer purchases for less than \$5.00.

(8) Scrap metal which contains incidental traces of gold, silver, or platinum which are recoverable as a byproduct.

(9) Jewelry which a customer trades for other jewelry having a greater value, and which difference in value is paid by the customer.

**SILVER.** Elemental silver having an atomic weight of 107.869 and the chemical symbol of Ag, whether found by itself or in combination with its alloys or any other metal.  
(Ord. 636-1-11, passed 2-7-11)

### § 115.03 APPLICATION BY A DEALER.

No dealer shall conduct business in the City of Big Rapids unless the dealer has first obtained a certificate of registration from the City.

(A) A dealer who applies for a certificate of registration shall complete an application form as provided by the City Clerk's Office, which at a minimum, shall contain the following information:

(1) Name, home address, phone number, copy of driver's license, date of birth, and right thumb print (print to be affixed to the application by the Public Safety Department or City Clerk's Office). Applications for more than one establishment shall be made on separate application forms.

(2) The name, address, telephone number, and hours of the dealer's business. If the dealer's business is a corporation, an updated copy of the articles of incorporation must be provided, or if the dealer's business is a limited liability company, an updated copy of the articles of organization must be provided, or if the dealer's business is a partnership, a valid certified copy of the assumed name certificate from the county clerk must be provided.

(3) The name, address, date of birth and right thumbprint of each employee or agent of the dealer. Within 24 hours after hiring a new employee, and before that employee makes any transactions, the dealer shall forward to the Department of Public Safety the name, address and thumbprint of the new employee.

(B) The dealer shall also submit a signed statement indicating that he has read and understands the provisions of Public Act No. 95 of 1981 (MCL 445.481 et seq.), as amended, as provided to him by the City Clerk's Office or Department of

Public Safety, and further that the dealer has informed his agents or employees, and will immediately inform all new agents or employees, as to the provisions of the Public Act 95 of 1981, as amended.

(C) The dealer shall submit a signed statement that neither he or she nor any of his or her agents or employees has been convicted of a felony under Public Act No. 95 of 1981 (MCL 445.481 et seq.), as amended, or under section 535 of Public Act No. 328 of 1931 (MCL 750.535), as amended, within the five-year period preceding the date of the application, or convicted of a misdemeanor under such laws within a one-year period preceding the date of this application.

(D) The dealer shall submit proof of proper zoning approval permits for the site on which the business will be operated.  
(Ord. 636-1-11, passed 2-7-11)

### § 115.04 FEES.

The dealer shall pay a fee as established by Chapter 110, § 110.18 of this code.  
(Ord. 636-1-11, passed 2-7-11)

### § 115.05 ISSUANCE OF CERTIFICATE OF REGISTRATION.

The Public Safety Director or designee shall be responsible for reviewing all applications for a certificate of registration. Upon receipt of the application and the completion of its investigation, the Public Safety Department will return the application and a signed certificate of registration to the City Clerk's Office, if the applicant is qualified to receive it. The signed certificate of registration will be issued to the dealer.  
(Ord. 636-1-11, passed 2-7-11)

### § 115.06 POSTING OF CERTIFICATE OF REGISTRATION.

The certificate of registration shall be posted by the dealer in a conspicuous place at the location where transactions will occur or at the dealer's place of business within the City.  
(Ord. 636-1-11, passed 2-7-11)



**§ 115.07 HOURS OF OPERATION.**

No dealer shall conduct business as provided in this chapter between the hours of 9:00 p.m. and 8:00 a.m.

(Ord. 636-1-11, passed 2-7-11)

**§ 115.08 RECORDKEEPING.**

The dealer, or his or her agents/employees, shall maintain a permanent record of each transaction, on a record of transaction form per subsection (6) of the Act No. 95 of the Public Acts of 1981, as amended, being MCL 445.481 through MCL 445.492.

(Ord. 636-1-11, passed 2-7-11)

**§ 115.09 PENALTY FOR VIOLATION.**

Any person violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined in an amount not to exceed \$500, or be imprisoned for a period of not more than 90 days, or both such fine and imprisonment in the discretion of the court.

(Ord. 636-1-11, passed 2-7-11)



**CHAPTER 116: [RESERVED]**



**CHAPTER 117: [RESERVED]**



**CHAPTER 118: [RESERVED]**





**CHAPTER 119: CIRCUSES, CARNIVALS, SHOWS AND EXHIBITIONS**

Section

- 119.01 Show license
- 119.02 Circus, carnival, exhibition defined
- 119.03 Animal shows and exhibitions
- 119.04 Investigation
- 119.05 Right of entry
- 119.06 Order to cease operations
- 119.07 Insurance or bond
- 119.08 Hours of operations
- 119.09 Bond required and forfeiture of bond
- 119.10 Fees

chapter, and for which an admission fee is charged, without first obtaining a license, therefor, to be known as an "Exhibition License."

(B) The provisions of this section shall not be applicable to any fair held under the direct management and supervision of any recognized agricultural association or society, nonprofit association or corporation, at which are exhibited agricultural or industrial products, principally. (Ord. 615-11-09, passed 11-2-09)

**§ 119.01 SHOW LICENSE.**

No person shall advertise, sponsor, organize, conduct, or operate a circus, carnival, menagerie, exhibition, or show without first obtaining a license from the City Clerk's Office and paying the required fee. (Ord. 615-11-09, passed 11-2-09)

**§ 119.02 CIRCUS, CARNIVAL, EXHIBITION DEFINED.**

As used in this chapter, **CIRCUS, CARNIVAL, MENAGERIE** or **EXHIBITION** means any amusement enterprise which is operated other than in a permanent building or structure, wherein, as part of the amusement attractions, Ferris wheels, merry-go-rounds, or other similar or like mechanically operated devices are used, or where sideshows, concessions, games of skill or chance, animal exhibits or other similar or like amusements or entertainment features are provided. (Ord. 615-11-09, passed 11-2-09)

**§ 119.03 ANIMAL SHOWS AND EXHIBITIONS.**

(A) No person shall conduct any dog or pony show or menagerie, without first obtaining a license therefore. Such license shall be known as an "Animal Show License." No person shall conduct any panorama, exhibition of statuary or painting, or any other exhibition, not otherwise licensed under this

**§ 119.04 INVESTIGATION.**

(A) The City Clerk shall forward a copy of the application to the Director of Public Safety.

(B) The Director of Public Safety shall investigate the qualifications and background of the applicant and furnish a written report to the City Clerk accompanied by a recommendation as to whether the license should be granted or refused. As part of the investigation, the Director of Public Safety shall determine whether or not the applicant has been convicted of any crime involving moral turpitude, gambling, narcotics, sexual offense or has previously violated any of the provisions of this section.

(C) The Fire Marshal shall inspect the location to determine whether the proposed location is free from fire hazards and either approve or disapprove the application. (Ord. 615-11-09, passed 11-2-09)

**§ 119.05 RIGHT OF ENTRY.**

The operator or person in charge of any circuses, carnivals, shows, and exhibitions shall, at all times, open each and every portion of their operations for inspection by the Police Division, Fire Division or any other City department engaged in the enforcement of this chapter or in the carrying on of any inspection for such purpose. (Ord. 615-11-09, passed 11-2-09)

**§ 119.06 ORDER TO CEASE OPERATIONS.**

The Director of Public Safety shall close down the operation of any circus, carnival, menagerie, exhibition, or show upon the revocation of the license to operate or in the event of a serious mishap pending inspection by the appropriate agency. (Ord. 615-11-09, passed 11-2-09)

**§ 119.07 INSURANCE OR BOND.**

A person shall not operate a circus or carnival unless the owner or operator shall have obtained security against the owner's or operator's liability for injuries suffered by persons attending the carnival or riding amusement rides by one of the following methods:

(A) By obtaining a policy of insurance in an amount not less than \$1,000,000 insuring the owner or operator against liability for injuries suffered by persons attending the carnival or an amusement ride;

(B) By obtaining a bond in an amount not less than \$1,000,000 with the aggregate amount of the surety and the bond not exceeding the face amount of the bond;

(C) The liability limits of subsections (a) and (b) of this section may be reduced to \$50,000 if there is only one amusement ride, which is designed primarily for use by small children. (Ord. 615-11-09, passed 11-2-09)

**§ 119.08 HOURS OF OPERATIONS.**

No person shall hold or operate circuses, carnivals, shows, menagerie, or exhibitions between the hours of 11:00 p.m. and 8:00 a.m. (Ord. 615-11-09, passed 11-2-09)

**§ 119.09 BOND REQUIRED AND FORFEITURE OF BOND.**

No license shall be issued until a cash bond is posted in an amount established in § 110.18, to ensure that the licensee will comply with all of the laws of the state and the ordinances of the City in connection with the operation of the activity, and that the licensee shall cease operation on or before the expiration of the license and shall remove all equipment, paraphernalia, debris, advertisements and litter which are attributable to the activity or its

concessionaries. The bond posted by an applicant under this article shall be forfeited if the applicant has not restored to its prior condition the area as affected by the activity for which the bond was posted, including the site, roads and road rights-of-way and surrounding areas, both public and private, three days from the conclusion of the licensed activity or from expiration of the license, whichever comes first. (Ord. 615-11-09, passed 11-2-09)

**§ 119.10 FEES.**

When an application is made for a license required under the terms of this chapter, a fee shall be paid in an amount established under Chapter 110, § 110.18 of the Code of Ordinances. (Ord. 615-11-09, passed 11-2-09)

**CHAPTER 120: [RESERVED]**



**CHAPTER 121: [RESERVED]**

[Text continues on Page 40]



## CHAPTER 122: ADULT ENTERTAINMENT ESTABLISHMENTS

### Section

- 122.01 Definitions
- 122.02 Licenses
- 122.03 Application for license
- 122.04 Standards for issuance of license
- 122.05 Fee
- 122.06 Display of license or permit
- 122.07 Renewal of license or permit
- 122.08 Revocation or suspension of license
- 122.09 Physical layout of adult entertainment establishment
- 122.10 Responsibilities of the operator
- 122.99 Penalty

### § 122.01 DEFINITIONS.

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

**ADULT BOOKSTORE.** An establishment that has as a substantial portion of its stock-in-trade and offers for sale, for any form of consideration, any one or more of the following:

(1) Books, magazines, periodicals or other printed matter, or photographs, films, movies, motion pictures, video cassettes, slides, or other visual representations that are characterized by an emphasis on the depiction or description of specified sexual activities or specified anatomical areas;

(2) Instruments, devices, or paraphernalia designed for use as part of or in connection with specified sexual activities.

**ADULT MOTION PICTURE THEATER.** An establishment, where, for any form of consideration, films, motion pictures, videos, slides, or other photographic reproductions are shown and in which a substantial portion of the total presentation is devoted to the showing of material characterized by an

emphasis on the depiction or description of specified anatomical areas or specified sexual devices.

**MASSAGE PARLOR.** An establishment or place which is primarily in the business of providing massage services and which is not a myotherapy establishment regulated by Chapter 121 of this Code of Ordinances.

**SPECIFIED ANATOMICAL AREAS.** Specified anatomical areas means and includes any one or more of the following:

(1) Less than completely covered human genitals, pubic region, buttocks, anus, or female breasts below a point immediately above the top of the areola; or

(2) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

**SPECIFIED SEXUAL ACTIVITIES.** Includes any one or more of the following:

(1) The fondling or erotic touching of human genitals, pubic region, buttocks, anus, or female breasts;

(2) Human sex acts, normal or perverted, actual or simulated, including but not limited to intercourse, oral copulation, and sodomy;

(3) Human masturbation, actual or simulated;

(4) Human excretory functions as part of or as related to any of the activities described above; and

(5) Physical violence, bondage, mutilation, or rape, actual or simulated, as part of or as related to any of the activities described above.

**SUBSTANTIAL PORTION.** A use or activity accounting for more than 20% of any one or more of the following: stock-in-trade, display space, floor





space, or viewing time, movie display time, or entertainment time measured per month.  
(Ord. 413-12-96, passed 12-16-96)

### § 122.02 LICENSES.

(A) *Requirement.* From and after the effective date of this chapter, no adult bookstore, adult motion picture theater or massage parlor, hereinafter referred to as adult entertainment establishments, shall be operated or maintained in the City without first obtaining a license to operate issued by the City.

(B) *Limitation.* A license may be issued only for one adult entertainment establishment located at a fixed and certain place. Any person, partnership, or corporation which desires to operate more than one adult entertainment establishment must have a license for each.

(C) *Nontransferability.* No license or interest in a license may be transferred to any person, partnership, or corporation.

(D) *Exclusions.* All private schools and public schools located within the City are exempt from obtaining a license hereunder when instructing pupils in sex education as part of its curriculum or when instructing students at Ferris State University as part of its curriculum.  
(Ord. 413-12-96, passed 12-16-96) Penalty, see § 122.99

### § 122.03 APPLICATION FOR LICENSE.

(A) Any person, partnership, or corporation desiring to secure a license shall make application to the City Clerk. The application shall be dated by the City Clerk. A copy of the application shall be distributed promptly by the City Clerk to the Department of Public Safety and to the applicant.

(B) The application for a license shall be upon a form provided by the City Clerk. An applicant for a license, which shall include all partners or limited partners of a partnership applicant, and all officers and directors of a corporate applicant and all stockholders including more than 5% of the stock of a corporate applicant, or any other person who is interested directly in the ownership or operation of the business, shall furnish the following information under oath:

- (1) Name and address, including all aliases.
  - (2) Date of birth.
  - (3) Social security number.
  - (4) Michigan vehicle operator's license number.
  - (5) Written proof that the individual is at least 18 years of age.
  - (6) All residential addresses of the applicant for the past three years.
  - (7) The applicant's height, weight, color of eyes and hair.
  - (8) The business, occupation, or employment of the applicant for five years immediately preceding the date of application.
  - (9) Whether the applicant previously operated in this or any other county, city, or state under an adult entertainment establishment license or similar business license; whether the applicant has ever had such a license revoked or suspended, the reason therefor, and the business entity or trade name under which the applicant operated that was subject to the suspension or revocation.
  - (10) All criminal statutes, whether federal or state, or city ordinance violation convictions, forfeiture of bond, or pleadings of nolo contendere on all crime charges, except minor traffic violations.
  - (11) Fingerprints and two portrait photographs at least two inches by two inches of the applicant.
  - (12) The address of the adult entertainment establishment to be operated by the applicant.
  - (13) If the applicant is a corporation, the application shall specify the name of the corporation, the date and state of incorporation, the name and address of the registered agent, and the name and address of all shareholders owning more than 5% of the stock in said corporation and all officers and directors of the corporation.
- (C) Within 21 days of receiving an application for a license the City Clerk shall notify the applicant whether application is granted or denied.

(D) Whenever an application is denied, the City Clerk shall advise the applicant in writing of the reasons for such action. If the applicant requests a hearing within ten days of receipt of notification of denial, a public hearing shall be held within 30 days thereafter before the Commission, as hereinafter provided.

(E) Failure or refusal of the applicant to give any information relevant to the investigation of the application or his or her refusal or failure to appear at any reasonable time and place for examination under oath regarding said application or his or her refusal to submit to or cooperate with any investigation required by this chapter shall constitute an admission by the applicant that he or she is ineligible for such license and shall be grounds for denial thereof by the City Clerk.  
(Ord. 413-12-96, passed 12-16-96)

**§ 122.04 STANDARDS FOR ISSUANCE OF LICENSE.**

(A) To receive a license to operate an adult entertainment establishment, an applicant must meet the following standards:

(1) If the applicant is an individual:

(a) The applicant shall be at least 18 years of age.

(b) The applicant shall not have been convicted of or pleaded nolo contendere to a felony or any crime involving moral turpitude, prostitution, obscenity, or other crime of a sexual nature in any jurisdiction within five years immediately preceding the date of the application.

(c) The applicant shall not have been found to have previously violated this chapter or a substantially similar ordinance within five years immediately preceding the date of the application.

(2) If the applicant is a corporation:

(a) All officers, directors, and stockholders required to be named under § 122.03(B) shall be at least 18 years of age.

(b) No officer, director, or stockholder

required to be named under § 122.03(B) shall have been convicted of or pleaded nolo contendere to a felony or any crime involving moral turpitude, prostitution, obscenity, or other crime of a sexual nature in any jurisdiction within five years immediately preceding the date of the application.

(c) No officer, director, or stockholder required to be named under § 122.03(B) shall have been found to have previously violated this chapter or a substantially similar ordinance within five years immediately preceding the date of the application.

(3) If the applicant is a partnership, joint venture, or any other type of organization where two or more persons have a financial interest:

(a) All persons having a financial interest in the partnership, joint venture, or other type of organization shall be at least 18 years of age.

(b) No person having a financial interest in the partnership, joint venture, or other type of organization shall have been convicted of or pleaded nolo contendere to a felony or any crime involving moral turpitude, prostitution, obscenity, or other crime of a sexual nature in any jurisdiction within five years immediately preceding the date of the application.

(c) No person having a financial interest in the partnership, joint venture, or other type of organization shall have been found to have violated any provision of this chapter or a substantially similar ordinance within five years immediately preceding the date of the application.

(B) No license shall be issued unless the City Department of Public Safety has investigated the applicant's qualifications to be licensed. The results of that investigation shall be filed in writing with the City Clerk no later than 14 days after the date of the application.  
(Ord. 413-12-96, passed 12-16-96)

**§ 122.05 FEE.**

A license fee of \$250 shall be submitted with the application for a license. If the application is denied, one-half of the fee shall be returned.  
(Ord. 413-12-96, passed 12-16-96)

**§ 122.06 DISPLAY OF LICENSE OR PERMIT.**

The license shall be displayed in a conspicuous public place in the adult entertainment establishment.

(Ord. 413-12-96, passed 12-16-96) Penalty, see § 122.99

**§ 122.07 RENEWAL OF LICENSE OR PERMIT.**

(A) Every license issued pursuant to this chapter will terminate at the expiration of one year from the date of issuance, unless sooner revoked, and must be renewed before operation is allowed in the following year. Any operator desiring to renew a license shall make application to the City Clerk. The application for renewal must be filed not later than 60 days before the license expires. The application for renewal shall be filed in triplicate with and dated by the City Clerk. A copy of the application for renewal shall be distributed promptly by the City Clerk to the City Department of Public Safety and to the business operator. The application for renewal shall be upon a form provided by the City Clerk and shall contain such information and data, given under oath or affirmation, as is required for an application for a new license.

(B) A license renewal fee of \$250 shall be submitted with the application for renewal. In addition to the renewal fee, a late penalty of \$100 shall be assessed against the applicant who files for a renewal less than 60 days before the license expires. If the application is denied, one-half of the total fees collected shall be returned.

(C) If the City Department of Public Safety is aware of any information bearing on the operator's qualifications, that information shall be filed in writing with the City Clerk.

(Ord. 413-12-96, passed 12-16-96)

**§ 122.08 REVOCATION OR SUSPENSION OF LICENSE.**

(A) The City Commission can revoke or suspend a license or permit for any of the following reasons:

(1) Discovery that false or misleading information or data was given on any application or material facts were omitted from any application.

1997 S-1

(2) The operator or any employee of the operator has violated any provision of this chapter or any rule or regulation adopted by the City Commission pursuant to this chapter, provided, however, that in the case of a first offense by an operator where the conduct was solely that of an employee, the penalty shall not exceed a suspension of 30 days if the Commission shall find that the operator had no actual or constructive knowledge of such violation and could not by the exercise of due diligence have had such actual or constructive knowledge.

(3) The operator becomes ineligible to obtain a license or permit or the operator is convicted of or pleads nolo contendere to any felony or any crime involving moral turpitude, prostitution, obscenity, or other crime of a sexual nature.

(4) Any cost or fee required to be paid by this chapter is not paid.

(5) Any intoxicating liquor or cereal malt beverage is served or consumed on the premises of the adult entertainment establishment.

(6) The operator fails to maintain a special use permit for the site as required by the zoning ordinance or fails to comply with conditions of the special use permit.

(B) The Commission, before revoking or suspending any license or permit, shall give the operator at least ten day's written notice of the charges against the operator and the opportunity for a public hearing before the City Commission, as hereinafter provided:

(1) Before the City Commission revokes or suspends a license issued herein, the City Commission shall cause written notice to be sent by certified mail to the licensee or applicant affected, at the address stated in the license or application, informing such person of the right to a hearing upon request.

(2) If the licensee does not request a hearing within 14 days of the date the notice was sent, the license may be forthwith revoked or suspended. If the licensee requests a hearing before the City Commission regarding the proposed revocation or suspension, the hearing shall be held with 21 days after the date of the written request.

(3) Any license issued by the City may be immediately suspended by the City Manager or duly appointed City official if it is determined that the licensee has violated or someone at or upon the licensed location has violated this chapter or state law and that continued operation under the license is contrary to the public health, safety, and welfare. A licensee shall have the right to a hearing before the City Commission on any license suspension by the City Manager and notice thereof shall be given in accordance with divisions (B)(1) and (2) of this section.

(4) Both the City and the licensee shall be afforded a reasonable opportunity to present evidence on the issue at the hearing. Action taken by the City Commission shall be final and any fees hereunder shall not be refunded to the applicant or licensee.

(C) The transfer of a license or any interest in a license shall automatically and immediately revoke the license.

(D) Any operator whose license is revoked shall not be eligible to receive a license for one year from the date of revocation. No location or premises for which a license has been issued shall be used as an adult entertainment establishment for six months from the date of revocation of the license. (Ord. 413-12-96, passed 12-16-96)

**§ 122.09 PHYSICAL LAYOUT OF ADULT ENTERTAINMENT ESTABLISHMENT.**

Any adult entertainment establishment having available for customers, patrons, or members any booth, room, or cubicle for the private viewing of any adult entertainment must comply with the following requirements:

(A) *Access.* Each booth, room, or cubicle shall be totally accessible to and from aisles and public areas of the adult entertainment establishment and shall be unobstructed by any door, lock, or other control-type devices.

(B) *Construction.* Every booth, room or cubicle shall meet with the following construction requirements:

(1) Each booth, room, or cubicle shall be separated from adjacent booths, rooms, and cubicles, and any non-public areas by a wall.

(2) Each booth, room, or cubicle have at least one side totally open to a public lighted aisle so that there is an unobstructed view at all times of anyone occupying same.

(3) All walls shall be solid and without any openings, extended from the floor to a height of not less than six feet and be light colored, non-absorbent, smooth textured, and easily cleanable.

(4) The floor must be light colored, non-absorbent, smooth textured, and easily cleanable.

(5) The lighting level of each booth, room, or cubicle, when not in use shall be a minimum of ten foot candles at all times, as measured from the floor.

(C) *Occupants.* Only one individual shall occupy a booth, room, or cubicle at any time. No occupant of same shall engage in any type of sexual activity, cause any bodily discharge, or litter while in the booth. No individual shall damage or deface any portion of the booth. (Ord. 413-12-96, passed 12-16-96) Penalty, see § 122.99

**§ 122.10 RESPONSIBILITIES OF THE OPERATOR.**

(A) The operator shall maintain a register of all employees, showing the name and aliases used by the employee, home address, age, date of birth, sex, height, weight, color of hair and eyes, phone numbers, social security numbers, date of employment and termination, and duties of each employee. The above information on each employee shall be maintained in the register on the premises for a period of three years following termination.

(B) Daily hours of operation of any adult entertainment establishment shall be limited to the period of time from 8:00 a.m. to 2:00 a.m.

(C) The operator shall make the register of employees available immediately for inspection by police upon demand of a member of the City Department of Public Safety at all reasonable times.

(D) No merchandise or pictures of the products or entertainment on the premises shall be displayed in window areas or any areas where they can be viewed from a public sidewalk adjacent to the establishment.

(E) Any individual viewing booths, entertainment rooms, or similar cubicles designed or used for

individuals to view specified anatomical areas or to view specified sexual activities shall not be completely enclosed from the common areas, hallways, or other areas of the adult entertainment business.

(F) No employee or patron under 18 years of age shall be allowed on the premises of an adult entertainment establishment.

(G) No intoxicating liquor or cereal malt beverage shall be served or consumed on the premises of an adult entertainment establishment.

(H) The operator shall maintain the premises in a clean and sanitary manner at all times.

(I) Every act or omission by an employee constituting a violation of the provisions of this chapter shall be deemed the act or omission of the operator, if such act or omission occurs either with the authorization, knowledge, or approval of the operator, or as a result of the operator's negligent failure to supervise the employee's conduct, and the operator shall be punishable for such act or omission in the same manner as if the operator committed the act or caused the omission.

(J) Any act or omission of any employee constituting a violation of the provisions of this chapter shall be deemed the act or omission of the operator for purposes of determining whether the operator's license shall be revoked, suspended, or renewed.

(K) No employee of an adult entertainment establishment shall allow any minor to loiter around or to frequent an adult entertainment establishment or to allow any minor to view adult entertainment as defined herein.

(L) The operator shall maintain at least ten foot candles of light in the public portions of the establishment, including aisles, at all times measured from the floor. However, if a lesser level of illumination in the aisles shall be necessary to enable a patron to view the adult entertainment in a booth, room, or cubicle adjoining an aisle, a lesser amount of illumination may be maintained in such aisles, provided, however, that at no time shall there be less than one foot candle of illumination in the aisles, as measured from the floor.

(M) The operator shall insure compliance of the establishment and its patrons with the provisions of this chapter.

(Ord. 413-12-96, passed 12-16-96) Penalty, see § 122.99

#### § 122.99 PENALTY.

(A) *Terms.* Any person convicted under this chapter shall be subject to a maximum penalty of 90 days in jail, or an equal amount of time of community service, or any combination thereof not exceeding 90 days, plus \$500 fine, plus actual costs of prosecution, plus mandatory restitution to victims.

(B) *Continuing violations.* In addition to the penalty provided in division (A) of this section, any condition caused or permitted to exist in violation of the provisions of this code, or any ordinance, shall be deemed a new and separate offense for each day that such condition continues to exist.

(Ord. 413-12-96, passed 12-16-96)

## CHAPTER 123: TELECOMMUNICATIONS

### Section

123.01	Purpose
123.02	Conflict
123.03	Definitions
123.04	Permit required
123.05	Issuance of permit
123.06	Constructive/engineering permit
123.07	Conduit or utility poles
123.08	Route maps
123.09	Repair of damage
123.10	Establishment and payment of maintenance fee
123.11	Modification of existing fees
123.12	Savings clause
123.13	Use of funds
123.14	Annual report
123.15	Cable television operators
123.16	Existing rights
123.17	Compliance
123.18	Reservation of police powers
123.19	Authorized city officials
123.20	Municipal civil infraction

### § 123.01 PURPOSE.

The purposes of this chapter are to regulate access to and ongoing use of public rights-of-way by telecommunications providers for their telecommunications facilities while protecting the public health, safety, and welfare and exercising reasonable control of the public rights-of-way in compliance with the Metropolitan Extension Telecommunications Rights-of-Way Oversight Act (Act No. 48 of the Public Acts of 2002) (“Act”) and other applicable law, and to ensure that the City qualifies for distributions under the Act by modifying the fees charged to providers and complying with the Act.

(Ord. 499-10-02, passed 10-21-02)

### § 123.02 CONFLICT.

Nothing in this chapter shall be construed in such a manner as to conflict with the Act or other applicable law.

(Ord. 499-10-02, passed 10-21-02)

### § 123.03 DEFINITIONS.

(A) The terms used in this chapter shall have the following meanings:

(1) **ACT.** The Metropolitan Extension Telecommunications Rights-of-Way Oversight Act (Act No. 48 of the Public Acts of 2002), as amended from time to time.

(2) **CITY.** The City of Big Rapids.

(3) **CITY COMMISSION.** The City Commission of the City of Big Rapids or its designee. This section does not authorize delegation of any decision or function that is required by law to be made by the City Commission.

(4) **CITYMANAGER.** The City Manager or his or her designee.

(5) **PERMIT.** A non-exclusive permit issued pursuant to the Act and this chapter to a telecommunications provider to use the public rights-of-way in the City for its telecommunications facilities.

(B) All other terms used in this chapter shall have the same meaning as defined or as provided in the Act, including without limitation the following:

(1) **AUTHORITY.** The Metropolitan Extension Telecommunications Rights-of-Way Oversight Authority created pursuant to Section 3 of the Act.

(2) **MPSC.** The Michigan Public Service Commission in the Department of Consumer and Industry Services, and shall have the same meaning as the term “Commission” in the Act.

(3) **PERSON.** An individual, corporation, partnership, association, governmental entity, or any other legal entity.

(4) **PUBLIC RIGHT-OF-WAY.** The area on, below, or above a public roadway, highway, street, alley, easement or waterway. Public right-of-way does not include a federal, state, or private right-of-way.

(5) **TELECOMMUNICATION FACILITIES OR FACILITIES.** The equipment or personal property, such as copper and fiber cables, lines, wires, switches, conduits, pipes, and sheaths, which are used to or can generate, receive, transmit, carry, amplify, or provide telecommunication services or signals. Telecommunication facilities or facilities do not include antennas, supporting structures for antennas, equipment shelters or houses, and any ancillary equipment and miscellaneous hardware used to provide federally licensed commercial mobile service as defined in section 332(d) of part I of title III of the Communications Act of 1934, chapter 652, 48 Stat. 1064, 47 U.S.C. 332 and further defined as commercial mobile radio service in 47 CFR 20.3, and service provided by any wireless, two-way communication device.

(6) **TELECOMMUNICATIONS PROVIDER, PROVIDER AND TELECOMMUNICATIONS SERVICES.** Those terms as defined in Section 102 of the Michigan telecommunications act, 1991 PA 179, MCL 484.2102. Telecommunications provider does not include a person or an affiliate of that person when providing a federally licensed commercial radio service as defined in Section 332(d) of 47 U.S.C. 332 and further defined as commercial mobile radio service in 47 CFR 20.3, or service provided by any wireless, two-way communication device. For the purpose of the Act and this chapter only, a provider also includes all of the following:

(a) A cable television operator that provides a telecommunications service.

(b) Except as otherwise provided by the Act, a person who owns telecommunication facilities located within a public right-of-way.

(c) A person providing broadband internet transport access service. (Ord. 499-10-02, passed 10-21-02)

#### § 123.04 PERMIT REQUIRED.

(A) *Permit required.* Except as otherwise provided in the Act, a telecommunications provider using or seeking to use public rights-of-way in the City for its telecommunications facilities shall apply for and obtain a permit pursuant to this chapter.

(B) *Application.* Telecommunications providers shall apply for a permit on an application

form approved by the MPSC in accordance with Section 6(1) of the Act. A telecommunications provider shall file one copy of the application with the City Clerk, one copy with the City Manager, and one copy with the City Attorney. Applications shall be complete and include all information required by the Act, including without limitation a route map showing the location of the provider's existing and proposed facilities in accordance with Section 6(5) of the Act.

(C) *Confidential Information.* If a telecommunications provider claims that any portion of the route maps submitted by it as part of its application contain trade secret, proprietary, or confidential information, which is exempt from the Freedom of Information Act, 442, MCL 15.231 to 15.246, pursuant to Section 6(5) of the Act, the telecommunications provider shall prominently so indicate on the face of each map.

(D) *Application fee.* Except as otherwise provided by the Act, the application shall be accompanied by a one-time non-refundable application fee in the amount of \$500.00.

(E) *Additional information.* The City Manager may request an applicant to submit such additional information which the City Manager deems reasonably necessary or relevant. The applicant shall comply with all such requests in compliance with reasonable deadlines for such additional information established by the City Manager. If the City and the applicant cannot agree on the requirement of additional information requested by the City, the City or the applicant shall notify the MPSC as provided in Section 6(2) of the Act.

(F) *Previously issued permits.* Pursuant to Section 5(1) of the Act, authorizations or permits previously issued by the City under Section 251 of the Michigan telecommunications act, 1991 PA 179, MCL 484.2251 and authorizations or permits issued by the City to telecommunications providers prior to the 1995 enactment of Section 251 of the Michigan telecommunications act but after 1985 shall satisfy the permit requirements of this chapter.

(G) *Existing providers.* Pursuant to Section 5(3) of the Act, within 180 days from November 1, 2002, the effective date of the Act, a telecommunications provider with facilities located in a public right-of-way in the City as of such date, that has not previously obtained authorization or a permit under Section 251 of the Michigan telecommunications act, 1991 PA 179, MCL 484.2251, shall submit to the City an application for a permit in accordance with the

submitting an application under this subsection is not required to pay the \$500 application fee required under division (D) above. A provider under this subsection shall be given up to an additional 180 days to submit the permit application if allowed by the Authority, as provided in Section 5(4) of the Act. (Ord. 499-10-02, passed 10-21-02)

#### **§ 123.05 ISSUANCE OF PERMIT.**

(A) *Approval or denial.* The authority to approve or deny an application for a permit is hereby delegated to the City Manager. Pursuant to Section 15(3) of the Act, the City Manager shall approve or deny an application for a permit within 45 days from the date a telecommunications provider files an application for a permit under § 123.04(B) of this chapter for access to a public right-of-way within the City. Pursuant to Section 6(6) of the Act, the City Manager shall notify the MPSC when the City Manager has granted or denied a permit, including information regarding the date on which the application was filed and the date on which permit was granted or denied. The City Manager shall not unreasonably deny an application for a permit.

(B) *Form of permit.* If an application for permit is approved, the City Manager shall issue the permit in the form approved by the MPSC, with or without additional or different permit terms, in accordance with Sections 6(1), 6(2) and 15 of the Act.

(C) *Conditions.* Pursuant to Section 15(4) of the Act, the City Manager may impose conditions on the issuance of a permit, which conditions shall be limited to the telecommunications provider's access and usage of the public right-of-way.

(D) *Bond requirement.* Pursuant to Section 15(3) of the Act, and without limitation on division (C) above, the City Manager may require that a bond be posted by the telecommunications provider as a condition of the permit. If a bond is required, it shall not exceed the reasonable cost to ensure that the public right-of-way is returned to its original condition during and after the telecommunications provider's access and use. (Ord. 499-10-02, passed 10-21-02)

#### **§ 123.06 CONSTRUCTIVE/ENGINEERING PERMIT.**

A telecommunications provider shall not commence construction upon, over, across, or under the public rights-of-way in the City without first obtaining a construction or engineering permit as required for construction within the public rights-of-way. No fee shall be charged for such a construction or engineering permit. (Ord. 499-10-02, passed 10-21-02)

#### **§ 123.07 CONDUIT OR UTILITY POLES.**

Pursuant to Section 4(3) of the Act, obtaining a permit or paying the fees required under the Act or under this ordinance does not give a telecommunications provider a right to use conduit or utility poles. (Ord. 499-10-02, passed 10-21-02)

#### **§ 123.08 ROUTE MAPS.**

Pursuant to Section 6(7) of the Act, a telecommunications provider shall, within 90 days after the substantial completion of construction of new telecommunications facilities in the City, submit route maps showing the location of the telecommunications facilities to both the MPSC and to the City. The route maps should be in paper or electronic format unless and until the MPSC determines otherwise, in accordance with Section 6(8) of the Act. (Ord. 499-10-02, passed 10-21-02)

#### **§ 123.09 REPAIR OF DAMAGE.**

Pursuant to Section 15(5) of the Act, a telecommunications provider undertaking an excavation or construction or installing telecommunications facilities within a public right-of-way or temporarily obstructing a public right-of-way in the City, as authorized by a permit, shall promptly repair all damage done to the street surface and all installations under, over, below, or within the public right-of-way and shall promptly restore the public right-of-way to its preexisting condition. (Ord. 499-10-02, passed 10-21-02)



**§ 123.10 ESTABLISHMENT AND PAYMENT OF MAINTENANCE FEE.**

In addition to the non-refundable application fee paid to the City set forth in § 123.04(D), a telecommunications provider with telecommunications facilities in the City's public rights-of-way shall pay an annual maintenance fee to the Authority pursuant to Section 8 of the Act. (Ord. 499-10-02, passed 10-21-02)

**§ 123.11 MODIFICATION OF EXISTING FEES.**

In compliance with the requirements of Section 13(1) of the Act, the City hereby modifies, to the extent necessary, any fees charged to telecommunications providers after November 1, 2002, the effective date of the Act, relating to access and usage of the public rights-of-way, to an amount not exceeding the amounts of fees and charges required under the Act, which shall be paid to the Authority. In compliance with the requirements of Section 13(4) of the Act, the City also hereby approves modification of the fees of providers with telecommunications facilities in public rights-of-way within the City's boundaries, so that those providers pay only those fees required under Section 8 of the Act. The City shall provide each telecommunications provider affected by the fee with a copy of this chapter, in compliance with the requirement of Section 13(4) of the Act. To the extent any fees are charged telecommunications providers in excess of the amounts permitted under the Act, or which are otherwise inconsistent with the Act, such imposition is hereby declared to be contrary to the City's policy and intent, and upon application by a provider or discovery by the City, shall be promptly refunded as having been charged in error. (Ord. 499-10-02, passed 10-21-02)

**§ 123.12 SAVINGS CLAUSE.**

Pursuant to Section 13(5) of the Act, if Section 8 of the Act is found to be invalid or unconstitutional, the modification of fees under § 123.11 shall be void from the date the modification was made. (Ord. 499-10-02, passed 10-21-02)

**§ 123.13 USE OF FUNDS.**

Pursuant to Section 10(4) of the Act, all amounts received by the City from the Authority shall be used by the City solely for rights-of-way related purposes. In conformance with that requirement, all funds

received by the City from the Authority shall be deposited into the Major Street Fund and/or the Local Street Fund maintained by the City under Act No. 51 of the Public Acts of 1951. (Ord. 499-10-02, passed 10-21-02)

**§ 123.14 ANNUAL REPORT.**

Pursuant to Section 10(5) of the Act, the City Manager shall file an annual report with the Authority on the use and disposition of funds annually distributed by the Authority. (Ord. 499-10-02, passed 10-21-02)

**§ 123.15 CABLE TELEVISION OPERATORS.**

Pursuant to Section 13(6) of the Act, the City shall not hold a cable television operator in default or seek any remedy for its failure to satisfy an obligation, if any, to pay after November 1, 2002, the effective date of this Act, a franchise fee or similar fee on that portion of gross revenues from charges the cable operator received for cable modem services provided through broadband internet transport access services. (Ord. 499-10-02, passed 10-21-02)

**§ 123.16 EXISTING RIGHTS.**

Pursuant to Section 4(2) of the Act, except as expressly provided herein with respect to fees, this chapter shall not affect any existing rights that a telecommunications provider or the City may have under a permit issued by the City or under a contract between the City and a telecommunications provider related to the use of the public rights-of-way. (Ord. 499-10-02, passed 10-21-02)

**§ 123.17 COMPLIANCE.**

The City hereby declares that its policy and intent in adopting this chapter is to fully comply with the requirements of the Act, and the provisions hereof should be construed in such a manner as to achieve that purpose. The City shall comply in all respects with the requirements of the Act, including but not limited to the following:

(A) Exempting certain route maps from the Freedom of Information Act, 1976 PA 442, MCL 15.231 to 15.246, as provided in Section 4(c) of this chapter;

(B) Allowing certain previously issued permits to satisfy the permit requirements hereof, in accordance with Section 4(f) of this chapter;

(C) Allowing existing providers additional time in which to submit an application for a permit, and excusing such providers from the \$500 application fee, in accordance with Section 4(g) of this chapter;

(D) Approving or denying an application for a permit within 45 days from the date a telecommunications provider files an application for a permit for access to and usage of a public right-of-way within the City, in accordance with § 123.05(A) of this chapter;

(E) Notifying the MPSC when the City has granted or denied a permit, in accordance with § 123.05(A) of this chapter;

(F) Not unreasonably denying an application for a permit, in accordance with § 123.05(A) of this chapter;

(G) Issuing a permit in the form approved by the MPSC, with or without additional or different permit terms, as provided in § 123.05(B) of this chapter;

(H) Limiting the conditions imposed on the issuance of a permit to the telecommunications provider's access and usage of the public right-of-way, in accordance with § 123.05(C) of this chapter;

(I) Not requiring a bond of a telecommunications provider which exceeds the reasonable cost to ensure that the public right-of-way is returned to its original condition during and after the telecommunications provider's access and use, in accordance with § 123.05(D) of this chapter;

(J) Not charging any telecommunications providers any additional fees for construction or engineering permits, in accordance with § 123.06 of this chapter;

(K) Providing each telecommunications provider affected by the City's right-of-way fees with a copy of this chapter, in accordance with § 123.11 of this chapter;

(L) Submitting an annual report to the Authority, in accordance with § 123.14 of this chapter; and

(M) Not holding a cable television operator in default for a failure to pay certain franchise fees, in accordance with § 123.15 of this chapter. (Ord. 499-10-02, passed 10-21-02)

#### **§ 123.18 RESERVATION OF POLICE POWERS.**

Pursuant to Section 15(2) of the Act, this chapter shall not limit the City's right to review and approve a telecommunication provider's access to and ongoing use of a public right-of-way or limit the City's authority to ensure and protect the health, safety, and welfare of the public.

(Ord. 499-10-02, passed 10-21-02)

#### **§ 123.19 AUTHORIZED CITY OFFICIALS.**

The City Manager or his or her designee is hereby designated as the authorized City official to issue municipal civil infraction citations for violations of this chapter.

(Ord. 499-10-02, passed 10-21-02)

#### **§ 123.20 MUNICIPAL CIVIL INFRACTION.**

A person who violates any provision of this chapter or the terms or conditions of a permit is responsible for a municipal civil infraction, and shall be subject to a fine of up to \$500 and costs of prosecution. Each day a violation continues shall constitute a separate violation. Nothing in this § 123.20 shall be construed to limit the remedies available to the City in the event of a violation by a person of this chapter or permit.

(Ord. 499-10-02, passed 10-21-02)

