

## AGENDA

REGULAR MEETING OF THE WEST BRANCH CITY COUNCIL TO BE HELD IN PERSON AND VIRTUALLY AT WEST BRANCH CITY HALL, 121 N. FOURTH ST. ON MONDAY, AUGUST 7, 2023, BEGINNING AT 6:00 P.M.

PLEASE NOTE: All guests and parties in attendance are asked to sign in if they will be making any comments during meetings, so that the City Clerk may properly record your name in the minutes. Public comments are limited to 3 minutes in length while matters from the floor are limited to 10 minutes. All in attendance are asked to silence all cell phones and other electronic devices. Accommodations are available upon request to those who require alternately formatted materials or auxiliary aids to ensure effective communication and access to City meetings or hearings. All request for accommodations should be made with as much advance notice as possible, typically at least 10 business days in advance by contacting City Clerk Lori Ann Clover at (989) 345-0500. [DISCLAIMER: Views or opinions expressed by City Council Members or employees during meetings are those of the individuals speaking and do not represent the views or opinions of the City Council or the City as a whole.] [NOTICE: Audio and/or video may be recorded at public meetings of the City Council.]

- I. Call to order
- II. Roll call
- III. Pledge of Allegiance
- IV. Scheduled Matters from the Floor
  - A. County Update
- V. Public hearing
- VI. Additions to the agenda
- VII. Public comment on agenda items only (limited to 3 minutes)
- VIII. Bids
- IX. Unfinished Business
  - A. Building Department Discussion
  - B. Red E Charging Host Agreement
- X. New Business
  - A. Bills
  - B. Ordinance 23-01 Zoning Changes - enactment
  - C. Annual certification for MDOT
  - D. Irons Park Donation
  - E. MERS Delegate Certification Form
- XI. Approval of the minutes and summary from the special meeting held July 31, 2023.
- XII. Consent Agenda
  - A. Treasurer's Report and Investment Summary
- XIII. Communications
  - A. Michigan Public Policy Survey July 2023
- XIV. Reports
  - A. Mayor

- B. Council
- C. Manager

XV. Public comment any topic

XVI. Adjournment

UPCOMING MEETINGS-EVENTS

August 14 ZBA 6:00 pm

August 15 Planning 6:00 pm

August 16 Airport 12:15 pm

August 21 Council 6:00 pm

August 22 DDA 12:00 pm

## **BUILDINGS AND BUILDING REGULATIONS**

### ***ARTICLE I. IN GENERAL***

#### **Sec. 22-1. Warranties on newly constructed homes.**

- (a) No newly constructed residential home or dwelling shall be sold to any buyer until the seller shall make available to the buyer a written warranty plan equivalent to the Home Owners Warranty Plan approved by the National Association of Home Builders, the Home Owners Warranty Corporation, and/or the Southern Michigan Home Owners Warranty Council.
- (b) The warranty required by this section to be made available to the buyer of a newly constructed home shall warrant against certain structural and construction defects as defined by the Home Warranty Agreement of the Home Owners Warranty Plan.

#### **Secs. 22-2—22-30. Reserved.**

### ***ARTICLE II. BUILDING CODE***

#### ***DIVISION 1. GENERALLY***

#### **Sec. 22-31. The State Construction Code—Building Code—Adopted.**

Pursuant to the provisions of the Home Rule Cities Act (Act. No. 279 of the Public Acts of Michigan of 1909 (MCL 117.1 et seq.), as amended) a certain document, three copies of which are on file in the office of the city clerk for the City of West Branch, being marked and designated as "Michigan Building Code" as promulgated and published by the Michigan Construction Code Commission, be and is hereby adopted as the building code of the City of West Branch and each and all of the regulations, provisions, penalties, conditions and terms of said building code, as amended, are hereby referred to, adopted and made a part of hereof as if fully set out in this article. The City of West Branch specifically assumes responsibility for the administration and enforcement of the Michigan Building Code, as amended.

#### **Sec. 22-32. Penalty.**

Any violation of the Building Code as promulgated by the state construction code commission, as amended, that is designated as a misdemeanor or a municipal civil infraction shall be the same under this section. Properly designated City of West Branch employees may issue appearance tickets for violating this section.

#### **Sec. 22-33. Building Board of Appeals.**

- (a) *Creation and purpose.* A building board of appeals is created for the purpose of hearing and deciding appeals concerning the application or interpretation of the provisions of Article II of this chapter.
- (b) *Appeal authorized.* Any person shall have the right to appeal a decision of the code official to the building board of appeals. An application for appeal shall be based on the rules legally adopted.

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- (c) *Time period for filing an appeal.* An appeal must be filed within 20 days of the date of any order or ruling being appealed. However, if an order required the correction of a cited violation within a shorter period of time, the appeal must be made within such shorter period. The building board of appeals shall not have the power to extend the time limits provided for in this section.
- (d) *Effect of appeal on correction time limits.* An owner, occupant or responsible local agent who has been ordered to correct a violation within a specified period of time shall not be held accountable for any time which elapses between the time of filing an appeal and the time a decision is made by the building board of appeals.
- (e) *Procedure for filing an appeal.* Any person wishing to make an appeal must fill out a claim of appeal form setting forth the order or ruling being appealed. The appellant must file the form with the city at a place to be designated by the board and which shall be noted on the claim of appeals form. The city will send a notice to the appellant regarding the date the appeal will be heard by the board. Notices of the hearing date will be by regular mail sent to the address stated on the claim of appeal. Failure of any owner, occupant or responsible local agent to receive notice will not cause the hearing or the decision of the board to be defective. The city shall notify the occupants of the affected premises of the hearing by regular mail or by placing a notice in the entryway of the dwelling unit. Any person requesting a claim of appeal form shall be notified of the standards for board decisions set out in subsection (h) below.
- (f) *Appeal fee.* An appeal fee established by the city council shall be submitted with any claim of appeal. The building board of appeals may also authorize the return of a fee to an appellant if the board determines that an error by the city caused an unnecessary appeal to be submitted.
- (g) *Meetings.* Meetings of the building board of appeals shall be scheduled as needed. All meetings and notices of meetings of the board shall comply with the Open Meetings Act.
- (h) *Hearing procedures.* At any hearing of the building board of appeals, the following procedures shall be followed:
- (1) Testimony of the appellant, the city and any witnesses shall be recorded.
  - (2) The appellant or authorized agent of the appellant and the city employee who issued the order, notices or ruling shall be present.
  - (3) A quorum of the building board of appeals shall be present.
  - (4) Minutes shall be prepared which identify all parties present, accurately summarize all pertinent statements made, include all evidence and records submitted and show all motions and actions and records of the vote of each member.
- (i) *Decision by the appeals board.* After all evidence and testimony has been presented, the building board of appeals shall affirm, modify or reverse the order or ruling being appealed. Any decision of the board modifying or reversing an order or ruling by the city shall require the concurring vote of a quorum. The decision of the board shall be by resolution. Certified copies of the resolution shall be furnished to the appellant and the code official.
- (j) *Standard for appeals board decisions.* A decision by the building board of appeals shall include the reasons for the decision in the language of the decision. Any decision of the board not complying with this section shall be void. Any decision to reverse or modify any order or ruling to the city shall:
- (1) Include any necessary special conditions to carry out the intent of the provisions being appealed.
  - (2) Determine that the decision is necessary to avoid causing undue hardship to the appellant which is not applicable to others to whom the same provision is applied.
  - (3) Determine that the order or ruling was an incorrect interpretation.
  - (4) Determine that an alternative proposed by an appellant meets the minimum standards for housing.
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- (k) *Abatement.* An appeal shall not stay any enforcement action necessary to abate a condition posing a threat of imminent danger to the life, safety or health of any person or of the public.
  - (l) *Interest conflicts.* No member of the building board of appeals shall speak or vote on any appeal in which the member has any direct personal, professional or financial interest, nor shall any member participate in any matter where participation is prohibited by the city charter, city code, or state law.
  - (m) *Summary of rulings.* The building board of appeals shall report a summary of its findings and rulings to the city council annually. The report shall include a summary of recurrent appeals or recurrent problems along with resultant recommendations for modifications of chapter 22, article II.
  - (n) *Membership, appointments and terms of building board of appeals members.* The building board of appeals for the city shall have the general duties and powers conferred upon it by law and this section. This board shall consist of five members appointed by the mayor. Terms of members shall be for three years. Members first appointed shall consist of two members appointed for three years and three members appointed for two years so as to achieve staggered three-year terms. Members shall be qualified by experience and training to pass on matters pertaining to building construction and shall not be employees of the city. The mayor shall also appoint two alternate members who shall be called by the board chairman to hear appeals during the absence or disqualification of a member. Alternate members shall possess the qualification required for board membership, and shall be appointed for three years or until a successor has been appointed.
  - (o) *Board officers.* Building board of appeals members will annually elect a president, vice-president and such other officers as are deemed desirable by the board.
  - (p) *Board rules of procedures.* The building board of appeals may adopt rules of procedure as required to carry out its responsibilities.
  - (q) *Compliance with board decisions.* It shall be a violation of chapter 22 for an owner, occupant or responsible local agent to fail to comply with special conditions which are a part of a building board of appeals decision modifying or reversing an order or ruling of the city.
- (Ord. No. 191-B-10, § 1, 4-7-03)

#### **Sec. 22-34. Fees.**

Fees for filing appeals shall be set forth in Chapter \_\_\_\_, Section \_\_\_\_\_ of the West Branch City Code.

#### **Sec. 22-35. Rehabilitation Code for Existing Buildings.**

Pursuant to the provisions of the Home Rule Cities Act (Act. No. 279 of the Public Acts of Michigan of 1909 (MCL 117.1 et seq.), as amended) a certain document, three copies of which are on file in the office of the city clerk for the City of West Branch, being marked and designated as "Michigan Rehabilitation Code for Existing Buildings" as promulgated and published by the Michigan Construction Code Commission, be and is hereby adopted as the rehabilitation code of the City of West Branch and each and all of the regulations, provisions, penalties, conditions and terms of said rehabilitation code, as amended, are hereby referred to, adopted and made a part of hereof as if fully set out in this article. The City of West Branch specifically assumes responsibility for the administration and enforcement of the Michigan Rehabilitation Code for Existing, as amended.

#### **Sec. 22-36. Same—Violation.**

That any violation of the Rehabilitation Code as promulgated by the state construction code commission, as amended, that is designated as a misdemeanor or a municipal civil infraction shall be the same under this section. Properly designated City of West Branch employees may issue appearance tickets for violating this section.

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### **Sec. 22-37. Residential Code.**

Pursuant to the provisions of the Home Rule Cities Act (Act. No. 279 of the Public Acts of Michigan of 1909 (MCL 117.1 et seq.), as amended) a certain document, three copies of which are on file in the office of the city clerk for the City of West Branch, being marked and designated as "Michigan Residential Code" as promulgated and published by the Michigan Construction Code Commission, be and is hereby adopted as the Residential Code of the City of West Branch and each and all of the regulations, provisions, penalties, conditions and terms of said residential code, as amended, are hereby referred to, adopted and made a part of hereof as if fully set out in this article. The City of West Branch specifically assumes responsibility for the administration and enforcement of the Michigan Residential Code, as amended.

### **Sec. 22-38. Same—Violation.**

That any violation of the Residential Code as promulgated by the state construction code commission, as amended, that is designated as a misdemeanor or a municipal civil infraction shall be the same under this section. Properly designated City of West Branch employees may issue appearance tickets for violating this section.

## ***ARTICLE II. ELECTRICAL CODE***

### **Sec. 22-39. Electrical code adopted.**

Pursuant to the provisions of the Home Rule Cities Act (Act No. 279 of the Public Acts of Michigan of 1909 (MCL 117.1 et seq.), as amended) a certain document, three copies of which are on file in the office of the city clerk for the City of West Branch, being marked and designated as "The State Construction Code—Electrical Code" as promulgated and published by the Michigan Construction Code Commission, be and is hereby adopted as the electrical code of the City of West Branch and each and all of the regulations, provisions, penalties, conditions and terms of said Electrical Code, as amended, are hereby referred to, adopted and made a part hereof as if fully set out in this article. The City of West Branch specifically assumes responsibility for the administration and enforcement of the State Construction Code—Electrical Code, as amended.

### **Sec. 22-40. Penalty.**

That any violation of the state construction code, as amended, or the electrical code as promulgated by the state construction code commission, as amended, that is designated as a misdemeanor or a municipal civil infraction shall be a municipal civil infraction under this section. Properly designated city employees may issue appearance tickets for violating this section. Any person or business entity found guilty of a municipal civil infraction may be punished by a fine of not less than \$100.00 or more than \$500.00.

### **Secs. 22-40—22-75. Reserved.**

## ***ARTICLE III. MECHANICAL CODE***

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## **Sec. 22-76. The State Construction Code—Mechanical Code—Adopted.**

Pursuant to the provisions of the Home Rule Cities Act (Act No. 279 of the Public Acts of Michigan of 1909 (MCL 117.1 et seq.), as amended) a certain document, three copies of which are on file in the office of the city clerk for the City of West Branch, being marked and designated as "The State Construction Code—Mechanical Code" as promulgated and published by the Michigan Construction Code Commission, be and is hereby adopted as the mechanical code of the City of West Branch and each and all of the regulations, provisions, penalties, conditions and terms of said Mechanical Code, as amended, are hereby referred to, adopted and made a part hereof as if fully set out in this article. The City of West Branch specifically assumes responsibility for the administration and enforcement of the State Construction Code—Mechanical Code, as amended.

## **Sec. 22-77. Penalty.**

Any violation of the State Construction Code, as amended, or the mechanical code as promulgated by the state construction code commission, as amended, that is designated as a misdemeanor or a municipal civil infraction shall be a municipal civil infraction under this article. Properly designated City of West Branch employees may issue appearance tickets for violations [of] this article. Any person or business entity found guilty of a municipal civil infraction may be punished by a fine of not less than \$100.00 or more than \$500.00.

## **Secs. 22-78—22-100. Reserved.**

# ***ARTICLE IV. PLUMBING CODE***

## **Sec. 22-101. The State Construction Code—Plumbing Code—Adopted.**

Pursuant to the provisions of the Home Rule Cities Act (Act. No. 279 of the Public Acts of Michigan of 1909 (MSL 117.1 et seq.), as amended) a certain document, three copies of which are on file in the Office of the City Clerk for the City of West Branch, being marked and designated as "The State Construction Code—Plumbing Code" as promulgated and published by the Michigan Construction Code Commission, be and is hereby adopted as the plumbing code of the City of West Branch and each and all of the regulations, provisions, penalties, conditions and terms of said plumbing code, as amended, are hereby referred to, adopted and made a part hereof as if fully set out in this article. The City of West Branch specifically assumes responsibility for the administration and enforcement of the State Construction Code—Plumbing Code, as amended.

## **Sec. 22-102. Penalty.**

Any violation of the State Construction Code, as amended, or the plumbing code as promulgated by the state construction code commission, as amended, that is designated as a misdemeanor or a municipal civil infraction shall be a municipal civil infraction under this article. Properly designated City of West Branch employees may issue appearance tickets for violating this article. Any person or business entity found guilty of a municipal civil infraction may be punished by a fine of not less than \$100.00 or more than \$500.00.

(Ord. No. 191-B-8, §§ 7, 9, 8-20-01)

## **Secs. 22-103—22-155. Reserved.**

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## **ARTICLE VII. ENERGY CONSERVATION CODE**

### **Sec. 22-156. BOCA National Energy Conservation Code—Adopted.**

Pursuant to the provisions of the Home Rule Cities Act (Act No. 279 of the Public Acts of Michigan of 1909 (MCL 117.1 et seq.), as amended) a certain document, three copies of which are on file in the office of the city clerk, being marked and designated as the BOCA National Energy Conservation Code, 7th edition, 1993, as published by the Building Officials and Code Administrators International, Inc., is hereby adopted as the energy conservation code of the city for the control of buildings and structures as provided in this article; and each and all of the regulations, provisions, penalties, conditions and terms of such BOCA National Energy Conservation Code are hereby referred to, adopted and made a part hereof, as if fully set out in this article.

### **Secs. 22-157—22-180. Reserved.**

## **ARTICLE VIII. RESIDENTIAL BUILDERS AND CONTRACTORS**

### ***DIVISION 1. GENERALLY***

### **Sec. 22-181. Definitions.**

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

*Residential builder* means a person engaged in the construction of residential structures or a combination of residential and commercial structures who, for a fixed sum, price, fee, percentage, valuable consideration, or other compensation, other than wages for his own personal labor only, undertakes with another or offers to undertake or purports to have the capacity to undertake with another for the erection, construction, replacement, repair, alteration, or an addition to, subtraction from, improvement, movement of, wrecking of, or demolition of, a residential structure, or combination of residential and commercial structure, or a person who manufactures, assembles, constructs, deals in, or distributes residential or combination residential and commercial structures which are prefabricated, preassembled, precut, packaged, or shell housing, or a person who erects a residential structure or combination of residential and commercial structure except for his own use and occupancy on his own property.

*Residential maintenance and alteration contractor* means a person who, for a fixed sum, price, fee, percentage, valuable consideration, or other compensation, other than wages for his own personal labor only, undertakes with another for the repair, alteration, or an addition to, subtraction from, improvement of, movement of, wrecking of, or demolition of a residential structure or combination of residential and commercial structure, or building of a garage, or laying of concrete on residential property, or who engages in (i) purchase, (ii) substantial rehabilitation or improvement, and (iii) resale of residential structures, engaging in all the foregoing on the same structures more than twice in any one calendar year, except:

- (1) For his own use or occupancy;



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- (2) The rehabilitation or improvement work as to any such residential type property and structures as may be contracted for with or hired entirely to be done and performed for the owner by a licensed residential builder or licensed residential maintenance and alteration contractor as provided by law; or
  - (3) Work performed by a licensed construction tradesman employed by the owner to perform work for which the tradesman is licensed by the state.

*Residential structure* means and includes, but is not limited to, premises used or intended to be used for residence purposes and related facilities appurtenant thereto, used or intended to be used as an adjunct of residential occupancy.

#### **Sec. 22-182. Builder's registration commission.**

There is hereby created a builder's registration commission, which shall consist of the director of the department of building who shall serve as its chairman, the city clerk and one other member who shall be appointed by the mayor and who shall be a resident of the city.

#### **Sec. 22-183. Investigations; complaints.**

- (a) The builder's registration commission may, upon its motion, and shall, upon the written verified complaint in writing of any person, investigate the actions of any residential builder and/or residential maintenance and alteration contractor or any person who shall assume to act in such capacity within the city.
- (b) The builder's registration commission may consider only those complaints which are presented to it in writing and verified under oath, and which are made within 18 months after completion, occupancy or purchase of a residential structure; provided, however, that complaints presented by the proper authorities charged with enforcement of the city ordinances, codes and regulations governing construction of residential structures shall be considered by the commission only if made by written verified complaint within 60 days after completion, occupancy or purchase of such structure.

#### **Sec. 22-184. Change of address.**

Every registrant under this article shall report to the director of the department of building all changes of members and addresses of persons registered under this article within 30 days after such changes shall occur.

#### **Sec. 22-185. Administration and enforcement of article; rules and regulations.**

- (a) It shall be the duty of the builder's registration commission to administer and provide for the enforcement of all provisions of this article.
- (b) The builder's registration commission is hereby expressly vested with the power and authority to make and enforce any and all rules and regulations not inconsistent with the provisions of this article. Copies of all rules and regulations of the commission shall be sent to all registrants when the license or renewal thereof is delivered to such registrants.

#### **Sec. 22-186. Exemptions.**

This article shall not apply to:

- (1) An authorized representative or representatives of the United States government, the state, or a county, township, city, village, or other political subdivision of this state.

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- (2) Owners of property, with reference to structures thereon for their own use and occupancy.
  - (3) Officers of a court acting within the terms of their office.
  - (4) Any person other than the salesman who shall engage or be engaged solely in the business of performing work and services under contract with a residential builder or a residential maintenance and alteration contractor licensed under this article.
  - (5) Any work or operation on one undertaking or project by one or more contracts, the aggregate contract price for which labor, materials and all other items is less than \$200.00, such work or operations being considered as of a casual, minor or inconsequential nature. This exemption does not apply in any case wherein the work of construction is only a part of a larger or major operation, whether undertaken by the same or a different residential builder and/or residential maintenance and alteration contractor, or in which a division of the operation is made in contracts of amounts less than \$200.00, for the purpose of evasion of this article or otherwise.

**Secs. 22-187—22-210. Reserved.**

## ***DIVISION 2. REGISTRATION***

### **Sec. 22-211. Required.**

No person shall engage in the business of or act in the capacity of a residential builder or residential maintenance and alteration contractor in the city without first obtaining a registration certificate from the director of building.

### **Sec. 22-212. Application.**

Applicants for a building registration certificate required under this article shall file a written sworn application on forms furnished by the director of building, signed by the applicant if an individual; by all partners if a partnership; by all associates if an association; and by the president if a corporation. Such application shall be filed with the director and shall provide the following information:

- (1) The full name and permanent address of the applicant, both business and residence.
- (2) The period of time, if any, during which such applicant has been engaged in the business.
- (3) A description of the type of business entity, i.e., corporation, partnership, sole proprietorship.
- (4) The names, home addresses and titles of all corporation officers, partners or sole owners.
- (5) The applicant's state residential builders' and maintenance and alteration contractors board license, from which a copy may be made for the builder's registration commission records.
- (6) Such other information as to the identity or character of the applicant, or of any of the officers or members of the applicant as the director may deem proper to fulfill the purposes of this article in the protection of the public good.

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**Sec. 22-213. License as residential builder or residential maintenance and alteration contractor required for issuance of certificate.**

No building registration certificate shall be issued to any person unless such person is licensed as a residential builder or residential maintenance and alteration contractor by the state residential builders' and maintenance and alteration contractors' board. If an applicant for a building registration certificate has applied to the state for such license, but has not yet received the license, such applicant may obtain a building registration certificate on condition that the license be obtained within a period of 120 days.

**Sec. 22-214. Classes of certificates.**

- (a) The director of building, upon proper application approved by the builder's registration commission, may issue a residential builder's registration certificate to any applicant who shall qualify therefor, which shall authorize the registrant to engage in the business of or to act in the capacity of a residential builder within the city.
- (b) The director of building may issue a residential maintenance and alteration contractor's certificate to any applicant who shall qualify therefor, according to his qualifications with respect to any one or more of the following crafts and trades: Carpentry, concrete work, garage building, swimming pools, floor laying, lathing, excavation and sewer installation, insulation work, plastering, roofing and siding, masonry work, sheet metal work, tile and marble work, house moving and raising and house wrecking. Such registration certificate, when issued, shall specify the particular crafts and trades for which the registrant has qualified.
- (c) The builder's registration commission shall not require any applicant to pay more than one registration fee, regardless of the number of crafts and trades for which he is registered. Nothing contained in this section shall prohibit a specialty contractor from taking and executing a contract involving the use of two or more crafts or trades, if the performance of the work in the crafts or trades, other than in which he is registered, is incidental and supplemental to the performance of work in the craft for which the specialty contractor is registered.

**Sec. 22-215. Bond.**

- (a) If application for a registration certificate is made by any person whose certificate has been denied, suspended or revoked as a result of disciplinary action for violation of any of the provisions of this article, or of the rules and regulations adopted pursuant thereto, the builder's registration commission may require as a condition precedent to the issuance of a registration certificate to such applicant, or the removal of suspension, that such applicant file or have on file with the commission a bond issued by an approved corporate surety insurer or cash in a sum to be fixed by the commission, based upon the magnitude of the operations of the applicant, not to exceed the sum of \$2,500.00, in which the city shall appear as the insured.
- (b) If the builder's registration commission shall require the filing of a bond or the posting of a cash deposit pursuant to the provisions of this section, every person injured by the unlawful acts or omissions of such applicant may bring an action in a proper court on the bond or a claim against the cash deposit for the amount of the damage he suffered as a result thereof to the extent covered by the bond or cash deposit. The claim of any employee of the applicant for wages shall be a preferred claim against any bond or cash deposit required by order of the commission.

(Code 1981, § 8-315)

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**Sec. 22-216. Fee.**

Registration fees for a residential builder's certificate and a residential maintenance and alteration contractor shall be as required by section 46-1. Such fees are payable to the city treasury.

(Code 1981, § 8-316)

**Sec. 22-217. Expiration and renewal.**

- (a) Each certificate issued pursuant to this article shall be issued for a period of one year, and all certificates shall be renewable on December 1 of each year.
- (b) All applications for renewal of certificates under this article shall be made in proper form accompanied with the proper fee before the date of expiration, and proper submission of such renewal application shall automatically grant such applicant permission to operate pending the actual issuance or refusal of renewal certificates.

**Sec. 22-218. Suspension, revocation or denial—Generally.**

- (a) The builder's registration commission shall have the power to refuse to issue or renew, to suspend or to revoke any certificate issued under the provisions of this article at any time.
- (b) The following causes shall be grounds upon which the builder's registration commission shall have the power to refuse to issue or renew, to suspend or to revoke any certificate issued under the provisions of this article:
  - (1) Suspension or revocation of registrant's residential builder's or residential maintenance and alteration contractor's license issued by the state residential builders' and maintenance and alteration contractors' board or failure to obtain or to renew such license;
  - (2) Abandonment without legal excuse of any construction project or operation engaged in or undertaken by the registrant or applicant;
  - (3) Diversion of funds or property received for prosecution or completion of a specific construction project or operation, or for a specified purpose in the prosecution or completion of any construction project or operation, and their application or use for any other construction project or operation, obligation or purpose;
  - (4) Failure to account for or to remit any moneys coming into the registrant's or applicant's possession which belong to others;
  - (5) Willful departure from or disregard of plans or specifications in any material respect and prejudicial to another, without consent of the owner or his duly authorized representative and without the consent of the person entitled to have the particular construction project or operation completed in accordance with such plans and specifications;
  - (6) Willful or deliberate disregard and violation of the building or other ordinances or regulations of the city or the building laws of the state;
  - (7) Misrepresentation of a material fact by an applicant in obtaining a registration certificate;
  - (8) Making any substantial misrepresentation or making any false promise of a character likely to influence, persuade or induce;
  - (9) Advertising in any manner whatsoever that such residential builder or residential maintenance and/or alteration contractor is registered under this article;

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- (10) Changing his business location without notification to the director of building within 30 days from the date of such change.

**Sec. 22-219. Same—Notice and hearing.**

- (a) The builder's registration commission shall, before refusing to issue or renew, or before suspending or revoking, a registration certificate, and at least ten days prior to the date set for the hearing, notify in writing the applicant or registrant of any charge made, and shall furnish such applicant or registrant with a copy of the complaint and afford such applicant or registrant an opportunity to be heard in person or by counsel in reference thereto. Such written notice shall be served by delivery personally to the applicant or registrant or by mailing such notice by certified mail to the last known business address of such applicant or registrant.
- (b) The hearing on the charges as provided in subsection (a) of this section shall be at such time and place as the builder's registration commission shall prescribe. The commission shall bring before it and take the testimony of any person in the same manner as in judicial proceedings in the civil courts.
- (c) If the builder's registration commission finds that the applicant or registrant is guilty of any violation of any of the provisions of this article, the commission shall, as the case may be, refuse to issue or to renew the registration certificate of the applicant or registrant, or shall suspend or revoke such certificate for such period of time as shall be determined by the commission.

**Sec. 22-220. Same—Appeals.**

- (a) Any person whose registration certificate required by this article is suspended or revoked, or any person whose application for issuance or renewal of a registration certificate required by this article is refused, shall have the right of appeal to the city council, provided that a written request therefor is filed with the clerk or deputy clerk of the board within ten days following such refusal, suspension or revocation by the builder's registration commission.
- (b) The city council shall grant a hearing on the appeal authorized by this section and may affirm or reverse any action of the builder's registration commission.
- (c) The decision of the council at hearings under this section shall be final.

**Secs. 22-221—22-245. Reserved.**

***ARTICLE IX. MOVING OF BUILDINGS***

***DIVISION 1. GENERALLY***

**Sec. 22-246. Administration and enforcement of article.**

The provisions of this article shall be administered and enforced by the department of building.

**Secs. 22-247—22-265. Reserved.**

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## ***DIVISION 2. PERMIT***

### **Sec. 22-266. Required.**

No building or structure shall be moved into or within the city, nor shall any building or structure be removed from one location to another within the city, without a permit from the department of building.

### **Sec. 22-267. Application.**

All applications for the moving or removal of buildings or structures shall be submitted in writing to the department of building and shall contain the following:

- (1) A site plan drawn to scale of the location of the building at its new location, such site plan to show any proposed additions or enlargements.
- (2) Architectural drawings of the elevations as proposed to be reconstructed.
- (3) A brief specification of labor and materials proposed in reconstruction.
- (4) A certificate of deposit of a cash bond with the city treasurer in the amount of \$1,000.00, such bond to guarantee that the structure will be completed in accordance with the site plan, specifications, and architectural drawings within a period of six months from issuance of permit.

### **Sec. 22-268. Fees.**

Fees for building moving or removal permits shall be as specified in section 46-1.

### **Sec. 22-269. Inspections and permit issuance.**

The building official shall cause an inspection to be made of any building or structure at the location from which the building or structure is to be moved. No permit shall be issued unless such inspection discloses that:

- (1) The structural frame of the building is sound and after reconstruction will have substantially the life expectancy of a new structure.
- (2) The proposed exterior finish and appearance of the building will be in reasonable harmony with and will not depreciate the value of existing buildings within the area.
- (3) The building when moved and completed will comply with all applicable provisions of the building code and zoning ordinance of the city.

### **Sec. 22-270. Appeal of denial of permit.**

Any denial of a moving permit by the department of building may be appealed to the construction codes board of appeals as follows:

- (1) Such appeal shall be in writing, shall be filed within ten days of notification of denial by the department of building, and shall be accompanied by such appeal fee as shall be specified from time to time by resolution of the board of appeals.
- (2) The appeal shall state the reasons and grounds for the appeal.

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- (3) A copy of the appeal shall be served upon the department of building at the time of filing with the board of appeals.
  - (4) A hearing date on such appeal shall be set by the board of appeals within ten days after receipt of the appeal, which date shall be not more than 30 days after receipt of the appeal by the board of appeals.
  - (5) Notice of such hearing date shall be served on the appellant by first class mail at least ten days prior to the hearing date, and like notice shall be served on the building department.
  - (6) The decision of the board of appeals shall be in writing and copies thereof shall be served on the appellant and the department of building within ten days after conclusion of the hearing on the appeal.

**Secs. 22-271—22-300. Reserved.**

## **ARTICLE X. FENCES**

### **DIVISION 1. GENERALLY**

#### **Sec. 22-301. Administration and enforcement of article.**

The provisions of this article shall be administered and enforced by the department of building. The zoning board of appeals shall have the authority to permit deviations, variances, and exceptions to the locations, heights, and types of material specified in this article upon a showing that the requirements and provisions of this article impose a practical difficulty based upon the physical circumstances of the petitioner's or neighboring lots. A fee as required by section 46-1 shall be paid to the clerk of the zoning board of appeals to accompany an application for appeal under this article.

#### **Sec. 22-302. Definitions.**

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

*Corner lot* means a lot situated at the intersection of two streets where the interior angle of such intersection is not greater than 135 degrees.

*Fence* means any barrier constructed or reconstructed to partition all or part of a lot, including cyclone or chainlink fences, ornamental or privacy fences, split rail or ranch-type fences, and other similar means of partitioning an area. Height and location requirements specified in this article shall be equally applicable to hedges and shrubbery used to partition an area.

*Front building line* means a line parallel to the front lot line which passes through the supporting member of the principal structure on a lot which is nearest to the front lot line.

*Front lot line* means that boundary of a lot which is along an existing or dedicated street or, where no public street exists, is along a public way. On corner lots, the front lot line is along the street corresponding to the address of the lot.

*Front yard* means the area bounded by the front lot line, the side lot lines, and the front building line of a lot.

*Lot* means a parcel of land which is part of a subdivision, the plat or deed of which has been recorded in the office of the register of deeds of the county.

*Lot line* means the boundary of a lot.

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*Ornamental or privacy fence* means any fence which is opaque and cannot be readily seen through.

*Rear building line* means a line parallel to the rear lot line which passes through the support member of the principal structure on a lot which is nearest to the rear lot line.

*Rear lot line* means that boundary of a lot which is most distant from, and is, or is most nearly, parallel to the front lot line.

*Rear yard* means the area bounded by the rear lot line, the side lot lines, and the rear building line of a lot.

*Side lot line* means the boundaries of a lot which are not the front lot line or the rear lot line.

*Side yard* means the area on both sides of the principal structure on a lot which is bounded by the side lot lines, the rear building line, and the front building line of the lot.

*Split rail or ranch-type fence* means a fence consisting of posts which carry rails which are parallel to the ground.

### **Sec. 22-303. Residential fences—Dimensions.**

- (a) All fences constructed or reconstructed in residential districts or on land used for residential purposes in commercial districts within the city shall be constructed with posts sunk in the soil at least three feet.
- (b) Except as otherwise provided in this article, rear yards may be enclosed by fences of a height above the grade of the two adjoining lots of not less than three feet nor more than six feet, six inches.
- (c) Side yard fences, which are only allowed as set forth in section 22-304, shall be of a height above the grade of the two adjoining lots of not less than three feet nor more than four feet, six inches.
- (d) If a rear yard fence for one lot would also constitute a side yard fence for an adjoining lot (due to the direction in which the two lots face), the maximum height specified in subsection (c) of this section shall be applicable to the entire circumference of the rear yard involved, and such fence shall otherwise comply with all other provisions of this article.
- (e) Split rail or ranch-type fences with no more than two rails may be constructed, in locations specified in section 22-304, at a height above the grade of the two adjoining lots of three feet.
- (f) Ornamental or privacy fences shall be constructed so that the panels are six inches above the existing grade.

### **Sec. 22-304. Same—Location.**

- (a) Rear yards may be enclosed by residential fences, as defined in this article, but no fence shall be constructed in the side or front yard of a residential lot (between the front lot line and the rear building line) except as provided in paragraphs (1), (2) and (3) of this subsection (a). If a rear yard fence for one lot would also constitute a front yard fence for an adjoining lot (due to the direction in which the two lots face), such rear yard fence shall not be allowed to the extent that it would result in the front yard of the adjoining lot being enclosed, on both sides, with front yard fences.
  - (1) A side yard fence shall be allowed along the side lot line on the street side of a corner lot, so long as it is not constructed between the front lot line and the front building line of the corner lot.
  - (2) In the case of a residential building on an interior lot which has a side door, a side yard fence may be constructed between the rear building line and the front building line on this side of the building only, so as to enclose the side door of the building; provided, that no fence shall be constructed in the side yard of adjoining residential lots which have adjacent or abutting driveways without the mutual consent of the lot owners.



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- (3) Front yards may be enclosed by split rail or ranch-type fences, as described in section 22-303(e), so long as the fence is constructed two or more feet from the sidewalk or front lot line, whichever is closest to the front building line. No fence shall be constructed along the side lot line of residential lots which have adjacent or abutting driveways unless a written approval, signed and notarized by the owners of each of the adjacent lots, is filed with the building department.
  - (b) Upon compliance with the location requirements in subsection (a) of this section, residential fences may, upon written mutual consent of the owners of adjoining lots, be constructed on lot lines. Existing fences may also be removed from lot lines upon written mutual consent of the adjoining lot owners. The cost and responsibility of erecting, maintaining, or removing such fences may be shared, by written mutual consent of the owners of the adjoining lots, on such basis as may be agreed upon by the parties. The building department will not be responsible for establishing or locating the correct lot lines between lots.
  - (c) Without the mutual consent of adjoining lot owners, residential fences may, upon compliance with the location requirements of subsection (a) of this section, be constructed wholly upon the petitioner's property; provided, that the complete repair and maintenance of both sides of the fence, and the maintenance of the ground adjacent to the fence, shall be the responsibility of the owner of the lot on which the fence is constructed. Means by which repair and maintenance of the fence and ground area can be performed, without intruding upon adjoining property, must be presented by the petitioner. Properly located ornamental or privacy fences shall be allowed, notwithstanding the presence of any existing fence; provided that, in the event there is no mutual consent of the adjoining lot owners, such fences must be either:
    - (1) Located wholly upon the petitioner's property and be two or more feet from the residential lot line; or
    - (2) Located wholly upon the petitioner's property and constructed so as to be readily removable so that access may be provided to both sides of the fence and the adjacent ground area.
  - (d) Absent mutual consent of the owners of adjoining residential lots, fences shall be constructed so that supporting posts face the lot on which the fence is constructed, except that the supporting posts of an ornamental or privacy fence may be centered with respect to the panels of the fence.

#### **Sec. 22-305. Same—Prohibited materials.**

No person, being the owner, lessee, or an agent of the owner or lessee, of any residential building or lot in the city shall erect or maintain on or about the stairway to the entrance of such building, on or about the exterior building line, upon any fence, upon any portion of the sidewalk adjacent to such building, or upon such residential lot, any railing, fence, guard or other protection on which there is affixed, placed, or in any manner attached, any spike, nail or other sharp pointed instrument of any kind or description. It shall be unlawful to construct or maintain a barbed wire fence partially or wholly around or upon any residential property, or nail or cause barbed wire to be nailed or fastened, in any form, shape or manner, upon a fence in any such residential area.

(Code 1981, § 13-5)

#### **Sec. 22-306. Commercial and industrial fences.**

- (a) Owners of property in commercial or industrial zones may construct fences around such property at their own expense in the manner provided in this section, except that fences for junkyards shall comply with the requirements of the junkyard regulations as contained in this Code.
  - (b) All fences constructed or reconstructed in commercial and industrial zones shall be constructed with posts sunk in the soil to a minimum depth of three feet and of a height above the grade of the two adjoining properties of not less than six feet nor more than eight feet.
  - (c) No industrial or commercial fence shall be constructed whose gates or entrances may obstruct or partially obstruct any street, alley, avenue, lane, sidewalk, public highway or any other public passageway.
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**Sec. 22-307. Materials and maintenance.**

- (a) All fences and the ground adjacent thereto, in any residential, commercial, or industrial areas, shall be maintained in a good state of repair at all times. If such fence is constructed of wood, it shall be kept painted or stained so as to present a good appearance, and wooden posts shall be pressure treated.
- (b) No old or used materials shall be used in the construction of any residential, commercial, or industrial fence, unless such materials shall have first been examined by the department of building and been found to be in sound and usable condition and suitable for fencing purposes.
- (c) No fence, in any zone, shall be electrified, nor have any electrical device attached thereto.

**Secs. 22-308—22-320. Reserved.***DIVISION 2. PERMITS***Sec. 22-321. Required.**

No fence shall be constructed in the city without a permit from the department of building.

**Sec. 22-322. Application.**

All applications for fence permits shall be submitted to the department of building and shall contain the following:

- (1) A plot plan of the premises on which the fence is to be erected, showing the location of any buildings on the land.
- (2) A brief specification of the materials to be used in the construction of the fence.
- (3) A statement showing the height of the proposed fence.
- (4) A sketch showing the precise location of the fence posts proposed to be used with reference to the lot lines of the property and also showing that the posts will be located on the inside of the fence, or centered, unless otherwise specified in a written agreement between the adjoining lot owners.

**Sec. 22-323. Fees.**

Fees for fence permits shall be as established by the City Council.

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**Secs. 22-324—22-350. Reserved.**

## **ARTICLE XI. HOUSING CODE**

### **DIVISION 1. GENERALLY**

#### **Sec. 22-351. Definitions.**

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

*Basement* means a portion of a building located partly underground, but having less than half of its clear floor-to-ceiling height below the average grade of the adjoining ground.

*Bedroom or room occupied for sleeping purposes* means a room characterized by the following traits:

- (1) A room not normally used for the preparation or consumption of food.
- (2) A room so arranged that it is not necessary to go through this room in order to gain access to the principal bathroom of the dwelling unit or any other room with the exception of a secondary bath or toilet room serving that sleeping room only.
- (3) A room with a solid swing-type door with stop mouldings to afford privacy.
- (4) A room with adequate ventilation.
- (5) A room normally with a closet.

*Building code* means the building code adopted in section 22-31.

*Cellar* means a portion of a building located partly or wholly underground, and having half or more than half of its clear floor-to-ceiling height below the average grade of the adjoining ground.

*Department* means the building department.

*Director* means the director of the building department or his authorized representative.

*Duplex* means a detached building, designed for or occupied exclusively by two families living independently of each other.

*Dwelling* means any building which is wholly or partly used or intended to be used for living or sleeping by human occupants; provided, that temporary housing as defined in this section shall not be regarded as a dwelling.

*Dwelling unit* means any room or group of rooms located within a dwelling and forming a single habitable unit with facilities which are used or intended to be used for living, sleeping, cooking, and eating.

*Habitable room* means a room or enclosed floor space used or intended to be used for living, sleeping, cooking, or eating purposes, excluding bathrooms, water closet compartments, laundries, pantries, foyers, or communicating corridors, closets, and storage spaces.

*Investment property* means any dwelling, except:

- (1) A dwelling held by an agency of the city, county, state or federal government;
- (2) A dwelling which has been occupied in whole or in part by the seller or transferor for a six-consecutive-month period within one year immediately prior to the sale or transfer;
- (3) A dwelling held by an estate.

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*Multiple dwelling* means any dwelling containing more than two dwelling units.

*Occupant* means any person, over one year of age, living, sleeping, cooking, or eating in, or having actual possession of, a dwelling unit or rooming unit.

*Operator* means any person who has charge, possession or control of a building, or part thereof, in which dwelling units or rooming units are let.

*Ordinary minimum winter conditions* means the temperature 15 degrees Fahrenheit above the lowest recorded temperature for the previous ten-year period.

*Owner* means any person who, alone or jointly or severally with others, shall have:

- (1) Legal title to any dwelling or dwelling unit, with or without accompanying actual possession thereof; or
- (2) Charge, possession, or control of any dwelling or dwelling unit, as owner or agent of the owner, or as executor, executrix, administrator, administratrix, trustee or guardian of the estate of the owner. Any such person thus representing the actual owner shall be bound to comply with the provisions of this article, and of rules and regulations adopted pursuant to this article, to the same extent as if he were the owner.

*Plumbing* means and includes, but is not limited to, the following supplied facilities and equipment: Gas pipes, gas-burning equipment, water pipes, garbage disposal units, waste pipes, water closets, sinks, installed dishwashers, lavatories, bathtubs, shower baths, installed clothes-washing machines, catchbasins, drains, vents, and any other similar supplied fixtures, together with all connections to water, sewer, or gas lines.

*Roominghouse* means any residence building, or any part thereof, containing one or more rooming units, in which space is let by the owner or operator for more than five or more persons for compensation pursuant to previous arrangements but not generally open to the public or transients.

*Rooming unit* means any room or group of rooms forming a single habitable unit used or intended to be used for living and sleeping, but not for cooking or eating purposes.

*Sale or transfer* means to convey any interest in a dwelling except by lease, mortgage, gift, devise, bequest or lien foreclosure. The sale or transfer shall be deemed to occur upon the transfer of title, the execution of a land contract, or the exercise of an option to purchase a dwelling.

*Structure* means that which is built or constructed.

*Supplied* means paid for, furnished, or provided by or under the control of the owner or operator.

- (b) Whenever the words "dwelling," "dwelling unit," "roominghouse," and "premises" are used in this article, they shall be construed as though they were followed by the words "or any part thereof."

## **Sec. 22-352. Inspections.**

The director, for the purpose of conducting inspections upon the sale, transfer or change of occupancy as is provided in this article, is hereby authorized and directed to make inspections to determine the conditions of dwellings, dwelling units, rooming units and premises located within the city, in order that he may perform his duty of safeguarding the health and safety of the occupants of dwellings and of the general public. For the purpose of making such inspections, the director is hereby authorized to enter, examine, and survey at any reasonable time all dwellings, dwelling units, rooming units and premises. The owner or occupant of every dwelling, dwelling unit or rooming unit, or the person in charge thereof, shall give free access to such dwelling, dwelling unit or rooming unit and its premises, at any reasonable time for the purpose of such inspection, examination and survey. Every occupant of a dwelling or dwelling unit shall give the owner thereof, or his agent or employee, access to any part of such dwelling or dwelling unit, or its premises, at any reasonable time for the purpose of making such repairs or alterations as are necessary to effect compliance with the provisions of this article or with any lawful rule or

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regulation adopted or any lawful order issued pursuant to the provisions of this article. The department shall advise the seller, transferor or the occupant of a dwelling which must be inspected pursuant to the provisions of this article that he has the right to refuse entry to the department without a search warrant.

#### **Sec. 22-353. Notice of violations.**

Whenever the director determines that there are reasonable grounds to believe that there has been a violation of any of the provisions of this article or of any rule or regulation adopted pursuant hereto, he shall give notice of such alleged violation to the person or persons responsible therefor, as provided in this article. Such notice shall:

- (1) Be in writing;
- (2) Include a statement of the violations or the remedial action required;
- (3) Allow a reasonable time for the performance of any act it required;
- (4) Be served upon the owner or his agent, or the occupant, as the case may require.

Provided, that such notice shall be deemed to be properly served upon such owner or agent, or upon such occupant, if a copy thereof is served upon him personally; or if a copy thereof is sent by registered mail to his last known address; or if a copy is posted in a conspicuous place in or about the dwelling affected by the notice; or if he is served with such notice by another method authorized or required under the laws of this state.

#### **Sec. 22-354. Hearings and appeals.**

- (a) Any person affected by any notice which has been issued in connection with the enforcement of any provision of this article, or of any rule or regulation adopted pursuant thereto, may request and shall be granted a hearing on the matter before the enforcement appeal board; provided, that such person shall file in the office of the city clerk a written petition requesting such hearing and setting forth a brief statement of the grounds therefor within ten days after the day the notice was served. Upon receipt of such petition, the enforcement appeal board shall set a time and place for such hearing and shall give the petitioner written notice thereof. At such hearing the petitioner shall be given an opportunity to be heard and to show why such notice should be modified or withdrawn. The hearing shall be commenced not later than ten days after the day on which the petition was filed; provided, that upon application of the petitioner, the enforcement appeal board may postpone the date of the hearing for a reasonable time beyond such ten-day period, if in the judgment of the board the petitioner has submitted a good and sufficient reason for such postponement.
  - (b) After the hearing held pursuant to this section, the enforcement appeal board shall sustain, modify, or withdraw the notice, depending upon its findings as to whether the provisions of this article and of the rules and regulations adopted pursuant hereto have been complied with. If the enforcement appeal board sustains or modifies such notice, it shall be deemed to be an order. Any notice served pursuant to this article shall automatically become an order if a written petition for a hearing is not filed in the office of the city clerk within ten days after such notice is served. After a hearing in the case of any notice suspending any permit required by this article or by any rule or regulation adopted pursuant hereto, when such notice has been sustained by the enforcement appeal board, the permit shall be deemed to have been revoked. Any such permit which has been suspended by a notice shall be deemed to be automatically revoked if a petition for hearing is not filed in the office of the city clerk within ten days after such notice is served.
  - (c) The proceedings at the hearing held pursuant to this section, including the findings and decision of the enforcement appeal board, shall be summarized, reduced to writing and entered as a matter of public record in the office of the city clerk. Such record shall also include a copy of every notice or order issued in connection with the matter.
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### **Sec. 22-355. Emergency orders.**

Whenever the director finds that an emergency exists which requires immediate action to protect the public health, he may, without notice or hearing, issue an order reciting the existence of such an emergency and requiring that such action be taken as he deems necessary to meet the emergency. Notwithstanding the other provisions of this article, such order shall be effective immediately. Any person to whom such order is directed shall comply therewith immediately, but upon petition to the city clerk, shall be afforded a hearing not later than 15 days after the day on which the petition was filed. After such hearing, depending upon the finding as to whether the provisions of this article and of the rules and regulations adopted pursuant hereto have been complied with, such order shall be continued or may be modified or revoked.

### **Sec. 22-356. Exemptions.**

The provisions of this article shall not apply to:

- (1) A sale or transfer by one governmental agency to another;
- (2) A sale or transfer which occurred prior to January 1, 1980;
- (3) A sale or transfer where the seller or transferor and the purchaser or transferee signed a purchase agreement prior to January 1, 1980;
- (4) A sale or transfer of any residential building constructed less than one year prior to the occupation or reoccupation; provided, that the occupancy of such building does not constitute a hazard to the health, safety or welfare of the occupants thereof; or
- (5) A sale or transfer where a certificate of approval concerning the subject premises has been issued within the one year preceding the reoccupation; provided, that such occupancy does not constitute a hazard to the health, safety and welfare of the occupants thereof.

### **Secs. 22-357—22-380. Reserved.**

## ***DIVISION 2. CERTIFICATE OF APPROVAL FOR SALE OF DWELLING***

### **Sec. 22-381. Required.**

It shall be unlawful for any person to occupy or reoccupy or for any owner or agent thereof to aid, abet, assist, cooperate, help or permit the occupation or reoccupation of any building or addition thereto, or part thereof, nor sell or transfer for residential purposes unless:

- (1) A valid certificate of approval is tendered to the purchaser or transferee at the time of the sale or transfer; or
- (2) It is a sale or transfer for the purpose of occupancy by the purchaser of a dwelling which is not held by the seller or transferor as an investment property or held by a governmental agency and:
  - a. The seller or transferor delivers to the purchaser or transferee at least ten days prior to the sale or transfer a valid inspection report; and
  - b. The parties execute a waiver of a tender of a certificate of approval in accordance with the provisions of this article; or

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- (3) It is a sale or transfer of a dwelling which is not to be occupied by the purchaser or transferee and the purchaser or transferee certifies by sworn affidavit that:
- a. He will repair the dwelling;
  - b. The dwelling will never be occupied by him and he will not rent nor allow any person to occupy the property without first obtaining a certificate of approval or a temporary occupancy permit, which shall not exceed six months and may be obtained upon inspection and the absence of any hazardous conditions, except occupancy at the time of the sale or transfer may be continued but in no case for a period longer than 12 months; and
  - c. The required rehabilitation permit will be obtained; or
- (4) It is a sale or transfer of a dwelling by a governmental agency to be occupied by the purchaser or transferee and the purchaser or transferee has received, at least ten days prior to sale or transfer, a copy of a valid inspection report and certifies by sworn affidavit that he will not occupy or allow the dwelling to be rented or otherwise occupied without first obtaining a certificate of approval or a temporary occupancy permit.

A waiver of tender of a certificate of approval as provided in subsection (2) of this section or an affidavit as provided in subsection (3) or (4) of this section shall only be obtainable from the department or other designated city agencies, and shall only be executed by the seller or transferor and the purchaser or transferee in the presence of a representative of the department after any inspection report, waiver or affidavit has been reviewed with the purchaser or transferee by the representative of the department; provided that, any purchaser or transferee executing an affidavit under subsection (3) of this section need not execute such affidavit in the presence of a representative of the department if the purchaser or transferee has executed such an affidavit in the presence of a representative of the department in the previous 12 months. A signed copy of all waivers and affidavits shall be filed with the department.

#### **Sec. 22-382. Effect.**

A certificate of approval is not a warranty or guarantee that there are no defects in the dwelling, nor shall the city be held responsible for defects not noted in the inspection report.

#### **Sec. 22-383. Application and issuance.**

- (a) An application for the certificate of approval shall be filed with the department, and shall contain the minimum following required information:
- (1) The name, address, and telephone number of the seller, transferor, or landlord;
  - (2) The name, address, and telephone number of the purchaser, transferee, or tenant, if known at the time application is made by the seller, transferor, or landlord, or person making application in their behalf;
  - (3) The proposed use to be made of the premises;
  - (4) The address of the premises being sold, transferred, or leased.

Such application shall be accompanied by the fee provided in section 46-1, which shall be paid to the department.

- (b) Upon receipt of the application and fee required by this section, such premises shall be inspected by a representative of the department within ten days and, if approved, a certificate of approval shall be issued.

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- (c) The department shall issue a certificate of approval only after it has inspected the dwelling and found it conforms with the guidelines described in division 3 of this article, provided that, in the absence of any hazardous conditions, a certificate of approval may be issued when an amount of money equal to twice the estimated cost of required repairs is placed in escrow pursuant to departmental guidelines, the certificate to be annotated to indicate this basis for issuance.

#### **Sec. 22-384. Enforcement appeal board.**

There is hereby created an enforcement appeal board to be composed of the city attorney, the president of the city council, the director of the building department, and the city clerk. In the absence or inability of any of the aforementioned parties to be present at a meeting of the board, his deputy may serve or, in the case of the council president, the president pro tem of the city council may serve. The city clerk shall be the secretary of the enforcement appeal board, and all correspondence to the board should be sent to the office of the West Branch City Clerk, City Hall, West Branch, Michigan. The presence of any three of the members of the board shall constitute a quorum for hearing and decision purposes. The enforcement appeal board shall adopt Robert's Rules of Order as its code of parliamentary procedure.

#### **Secs. 22-385—22-400. Reserved.**

### ***DIVISION 3. MINIMUM STANDARDS***

#### **Sec. 22-401. Basic equipment and facilities.**

No person shall occupy as owner-occupant or let to another for occupancy any dwelling unit, for the purpose of living, sleeping, cooking or eating therein, which does not comply with the following requirements:

- (1) Every dwelling unit shall contain a room which affords privacy to a person within such room and which is equipped with a flush water closet, a stall shower or bathtub, a lavatory basin and either a mechanical exhaust fan in good working condition, or an operable window.
  - (2) Every kitchen sink, lavatory basin, laundry tray and tub or shower required under the provisions of subsection (1) of this section shall be properly connected with both hot and cold water lines and all plumbing fixtures within every dwelling unit shall be properly connected to a water and sewer system, if available, approved by the director.
  - (3) Every dwelling and multifamily dwelling shall have heating facilities, and the owner of the heating facilities shall be required to see that they are properly installed, safely maintained and in good working condition, and that they are capable of safely and adequately heating all habitable rooms, bathrooms and toilet rooms located therein to a temperature of at least an average of 70 degrees Fahrenheit with an outside temperature of ten degrees below zero.
  - (4) Every heating or water heating facility and incinerator shall be installed and shall operate in accordance with the requirements of the building code.
  - (5) Every dwelling shall have supplied water-heating facilities which are properly installed, maintained in safe and good working condition, properly connected with the hot water lines required under the provisions of subsection (2) of this section and capable of heating water to such a temperature as to permit an adequate amount of water to be drawn at every required kitchen sink, lavatory basin, bathtub or shower at a temperature of not less than 120 degrees Fahrenheit.
  - (6) Every dwelling unit shall have safe, unobstructed means of egress leading to safe and open space at ground level, as required by the laws of this state and the city.
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- (7) Each apartment, suite or sleeping area of every single or multiple dwelling unit shall be provided with a minimum of one smoke detector capable of sensing visible or invisible products of combustion. The detector shall be approved or listed by a recognized independent testing laboratory and, when actuated, shall provide an alarm suitable to warn the occupant within the individual dwelling unit. A minimum of one smoke detector shall be located in the immediate area of all sleeping quarters. In buildings having basements, an additional smoke detector shall be installed in a location as approved by the director.

#### **Sec. 22-402. Light, ventilation and heating.**

No person shall occupy as owner-occupant or let to another for occupancy any dwelling or dwelling unit, for the purpose of living therein, which does not comply with the following requirements:

- (1) Every one bedroom dwelling unit shall be supplied with a minimum 60-ampere electric service panel and every dwelling unit containing more than one bedroom shall be supplied with a minimum 100-ampere electric service panel. All connected loads to such panels shall be protected with fuses or circuit breakers.
- (2) Every habitable room of every dwelling unit shall contain at least two separate wall type electric convenience outlets, and one wall switched ceiling light fixture or outlet plug. Every water closet compartment or bathroom shall contain at least one wall type electric convenience outlet and one wall-switched light fixture. Laundry rooms, furnace rooms, and other such rooms shall be provided with adequate electric outlets for their purpose. Every such outlet and fixture shall be properly installed, shall be maintained in good and safe working condition, and shall be connected to the electric service panel in a safe manner.
- (3) Every public hall and stairway in every multiple dwelling containing five or more dwelling units shall be adequately lighted at all times. Every public hall and stairway in structures devoted solely to dwelling occupancy and containing not more than four dwelling units may be supplied with conveniently located light switches, controlling an adequate lighting system which may be turned on when needed, instead of full-time lighting.

#### **Sec. 22-403. Safety and sanitary maintenance requirements.**

No person shall occupy as owner-occupant or let to another for occupancy any dwelling or dwelling unit, for the purpose of living therein, which does not comply with the following requirements:

- (1) Every foundation, floor, wall, ceiling, and roof shall be reasonably weathertight, watertight and rodent proof; shall be capable of affording privacy; and shall be kept in good repair. The foundation elements shall adequately support the building at all points.
  - (2) The supporting structural members of every building shall be maintained structurally sound, showing no evidence of deterioration which would render them incapable of carrying the imposed loads in accordance with the provisions of the building code.
  - (3) Every exterior wall shall be free of holes, breaks, loose or rotting boards or timbers, and any other conditions which might admit rain or dampness to the interior portions of the walls or to the occupied spaces of the building.
  - (4) The roof shall be structurally sound, tight, and have no defects which might admit rain, and roof drainage shall be adequate to prevent rainwater from causing dampness in the walls or interior portion of the building.
  - (5) All interior walls, ceilings and floors shall be structurally sound, in good repair, free from defects.
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- (6) Every window, exterior door, and basement hatchway shall be reasonably weathertight, watertight, and rodentproof; and shall be kept in sound working condition and good repair.
  - (7) Every outside stair, every porch, and every appurtenance thereto shall be so constructed as to be safe to use and capable of supporting the load the normal use may cause to be placed thereon; and shall be kept in sound condition and good repair.
  - (8) All interior stairs of every structure shall be maintained in sound condition and good repair by replacing treads and risers that evidence excessive wear or are broken, warped or loose. Every inside stair shall be so constructed and maintained as to be safe to use and capable of supporting a load as required by the provisions of the building code.
  - (9) Every plumbing fixture, plumbing stack, waste and sewer line shall be so installed and maintained as to function properly and shall be kept free from obstructions, leaks and defects to prevent structural deterioration or health hazards. All repairs and installations shall be made in accordance with the provisions of the building code.
  - (10) Every water line, plumbing fixture, vent, and drain shall be properly installed, connected and maintained in working order and shall be kept free from obstructions, leaks and defects and capable of performing the function for which they are designed. All repairs and installations shall be made in accordance with the provisions of the building code.
  - (11) Every water closet compartment floor surface and bathroom floor surface shall be constructed and maintained so as to be reasonably impervious to water and so as to permit such floor to be easily kept in a clean and sanitary condition.
  - (12) Every space heating, cooking and water heating device located in a building or structure shall be properly installed, connected, and maintained, and shall be capable of performing the function for which it was designed in accordance with the provisions of the building code.
  - (13) Every electrical outlet and fixtures shall be installed, maintained and connected to the source of electric power in accordance with the provisions of the building code.
  - (14) Every supplied facility, piece of equipment, or utility which is required under this article shall be so constructed or installed that it will function safely and effectively, and shall be maintained in satisfactory working condition.
  - (15) No owner, operator, or occupant shall cause any service, facility, equipment, or utility which is required under this article to be removed from or shut off from or discontinued for any occupied dwelling let or occupied by him, except for such temporary interruption as may be necessary while actual repairs or alterations are in process, or during temporary emergencies.
  - (16) No owner shall occupy or let to any other occupant any vacant dwelling unit unless it is clean, sanitary, and fit for human occupancy.

#### **Sec. 22-404. Minimum requirements for safety from fire.**

A person shall not occupy as owner-occupant, or shall let to another for occupancy, any structure which does not comply with the applicable provisions of the fire prevention sections of the building code and the following additional requirements for safety from fire:

- (1) A dwelling, multifamily dwelling, dwelling unit, duplex, or rooming unit shall not be located within a building containing any establishment handling, dispensing or storing flammable liquids with a flashpoint of 110 degrees Fahrenheit or lower.
  - (2) All cooking and heating equipment, components, and accessories in every heating, cooking, and water heating device shall be maintained free from leaks and obstructions, and kept functioning properly so
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as to be free from fire, health, and accident hazards. All installations and repairs shall be made in accordance with the provisions of the building code and other laws or ordinances of the city. Portable cooking equipment employing flame is prohibited.

**Sec. 22-405. Residential exterior lighting.**

No direct or reflected glare shall be permitted which is visible from any property or from any public street, road or highway. In particular, any lighting shall be so directed so that direct and indirect illumination from the source of the light shall not cause illumination in excess of one-half of one foot candle when measured at any of the residence's property lines. Any source of light shall be so controlled as not to cause a nuisance across any lot lines.

**Secs. 22-406—22-425. Reserved.**

***ARTICLE XII. PARKING LOTS***

**Sec. 22-426. Defined.**

The term "parking lot" or "parking lots" as used in this article shall be construed to mean and include any place maintained for the outdoor parking of vehicles, except on a street or other publicly owned property, where such parking is permitted upon payment of compensation or is made available solely to patrons or customers of any place of business, or to tenants and visitors in multiple dwelling units.

**Sec. 22-427. Enforcement of article.**

The city engineer shall enforce the provisions of this article and shall have the authority to inspect any parking lot and to cite the owner for a violation of this article.

**Sec. 22-428. Responsibility for compliance.**

It shall be the responsibility of the owner of the property comprising the parking lot area to comply with the requirements of this article.

**Sec. 22-429. Existing parking lots.**

In the case of parking lots existing and in operation on May 28, 1975, which do not comply with the provisions of this article, the owner or operator of the parking lot shall have an additional six months to comply with the provisions of this article; provided, however, that if the city engineer certifies that compliance with the strict terms of this article is impossible or would constitute an unreasonable hardship, the owner or operator may continue his present parking lot until such time as there is a change of use or occupancy requiring a new certificate of occupancy, at which time compliance with the terms of this article shall be required. If the city engineer refuses to issue a certificate as provided in this section, the owner or operator of any such parking lot refused a certificate shall have the right to file a written appeal with the city council within 30 days after notification of such refusal and the city council shall hear and act upon such appeal within 30 days after receipt of the appeal. The city council, after hearing the appeal, shall have the right to either affirm the action of the city engineer or to overrule his action and issue a certificate upon such terms as it shall deem equitable and just.

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#### **Sec. 22-430. Permit.**

- (a) It shall be unlawful to establish, construct, reconstruct, make changes in, or operate a parking lot without a permit. Application for such permits shall be made in writing to the city engineer and shall contain all necessary information to ensure compliance with the provisions of this article, including a description of the location, size, number of vehicles to be accommodated, the zoning classification of the property involved, a description of the proposed surfacing to be installed, and a proposed grading plan of the parking lot. No permit shall be issued without the concurrence of the planning director.
- (b) The fee for a permit under this section shall be as required by section 46-1.

#### **Sec. 22-431. Grading and drainage.**

No parking lot permit shall be issued until a grading and drainage plan for the parking lot is approved by the city engineer or his duly authorized representative. Whenever storm drains are available, the parking lot surface shall be collected from the lot and discharged into such storm drain. The minimum pavement grade of any parking lot shall be 0.4 percent and the maximum pavement grade shall be two percent.

#### **Sec. 22-432. Surface.**

All parking lot surfaces shall be covered with concrete, asphalt, macadam or similar paving; and such surface shall at all times be free of water accumulations and be kept clean and free from chuckholes, dirt and debris. No permit shall be issued until a paving plan for the parking lot is approved by the city engineer or his duly authorized representative.

#### **Sec. 22-433. Driveways.**

No driveway to a parking lot shall be constructed except in full compliance with all ordinances relative to the issuance of permits for driveways. It shall be the duty of the owner or operator of each parking lot to maintain the sidewalk and parkway over which such driveway passes in good condition. Driveways shall be so constructed as to provide adequate, convenient and safe ingress and egress to and from the parking lots they serve. Where driveways provide ingress to or egress from a parking lot abutting a major city thoroughfare, deceleration lanes shall be required when, in the opinion of the appropriate city departments, such lanes are essential for public safety.

#### **Sec. 22-434. Condition of vehicles; unlawful uses.**

It shall be unlawful to park or store in any parking lot any vehicle which is not in a condition ready for use, or to permit the parking of any abandoned, junked or partially disabled vehicle in any such lot. It shall be unlawful to use any parking lot for storage or parking of any vehicle for the purpose of displaying such vehicle for sale, or to use any parking lot or portion thereof as an automobile repair shop.

#### **Sec. 22-435. Other requirements.**

No parking lot shall be established or operated in any place where such establishment or operation would be in violation of the zoning ordinance or any other applicable ordinance of the city. Not more than one vehicle for each 200 square feet of area shall be accepted for parking in any such place. Each parking lot shall be so marked as to show the parking space allotted each vehicle, and shall have sufficient entrances and exits to permit the entrance and egress of vehicles without obstruction to traffic.

## ***ARTICLE XIII. BLIGHT***

### **Sec. 22-456. Definitions.**

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

*Building materials* means and includes, but is not limited to, lumber, bricks, concrete or cinder blocks, plumbing materials, electrical wiring or equipment, heating ducts or equipment, shingles, mortar, concrete or cement, nails, screws, fence posts and fencing materials of either wood or metal, or any other materials used in constructing any structure or fence.

*Junk* means and includes, but is not limited to, parts of machinery or parts of motor vehicles, unused stoves or other appliances stored in the open, remnants of wood, metal or any other material or other cast-off material of any kind whatsoever whether or not such material could be put to any reasonable use.

*Junked automobiles* means and includes any motor vehicle which is not licensed for use upon the highways for a period in excess of ten days, or which does not have license plates attached thereto, and shall also include, whether so licensed or not, any motor vehicle that is inoperative for any reason for a period in excess of ten days.

### **Sec. 22-457. Purpose.**

Consistent with Act No. 344 of the Public Acts of Michigan of 1945, as amended (MCL 125.71 et seq., MSA 5.3501 et seq.), and Act No. 208 of the Public Acts of Michigan of 1949, as amended (MCL 125.941 et seq., MSA 5.3521 et seq.), it is the purpose of this article to prevent, reduce or eliminate blight or potential blight in the city by the prevention or elimination of certain environmental causes of blight or blighting factors which exist or which may in the future exist in the city, and to rehabilitate already blighted areas in the city.

### **Sec. 22-458. Causes of blight or blighting factors.**

It is hereby determined that the following uses, structures, conditions and activities are causes of blight, or blighting factors, which, if allowed to exist, will tend to result in blighting and undesirable neighborhoods, and which if alleviated or remedied will tend to rehabilitate already blighted areas. No person shall maintain or permit to be maintained any of these causes of blight or blighting upon any premises in the city owned, leased, rented or occupied by any such person:

- (1) In any area other than those having a valid junkyard permit or used car license, the storage upon any premises of junk automobiles;
- (2) In any area zoned for residential purposes, the storage upon any premises of any building materials or construction equipment, unless there is in full force and effect a valid building permit issued by the city for construction upon such premises and such materials are intended for use in connection with such construction;
- (3) In any area other than those having a valid junkyard permit, the storage or accumulation of junk, trash, rubbish or refuse of any kind, except domestic refuse stored in such a manner as not to create a nuisance for a period not to exceed 15 days;

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- (4) In any area, the existence of any structure or part of a structure which because of fire, wind or other natural disaster, or physical deterioration, is no longer habitable as a dwelling, nor useful for any other purpose for which it may have been intended;
  - (5) In any area, the existence of any vacant dwelling, commercial building, garage or other outbuilding, unless the same are kept securely locked, with windows kept glazed or neatly boarded up, and otherwise protected to prevent entrance thereto by vandals or unauthorized members of the public; provided, however, that the existence of any vacant boarded-up building for a period in excess of six months shall be deemed to be a cause of blight or a blighting factor;
  - (6) In any area, the existence of any partially completed structure, unless such structure is in the course of construction in accordance with a valid and subsisting building permit issued by the city, and unless such construction is completed within a reasonable time;
  - (7) In any area, a maximum of five single-faced cords of firewood may be stored in the rear or side yard when such firewood is neatly stacked upon supports which maintain a minimum clearance of six inches above the existing grade, and in piles which are not more than five feet in height.

**Sec. 22-459. Elimination of causes of blight or blighting factors.**

- (a) The owner, if known, and the occupant of any premises upon which any one or more of the causes of blight or blighting factors set forth in this article are found to exist shall be notified in writing to remove or eliminate such causes of blight or blighting factors from such premises within ten days after service of notice upon him or them. Such notice may be served personally or by certified mail, return receipt requested, addressed to the owner at the address shown on the latest city tax rolls, and to the occupant at the address of the premises involved.
- (b) If the owner or occupant cannot be served notice under this section personally or by certified mail, a copy of the notice shall be posted in a conspicuous place on the premises and published once in the official newspaper of the city.
- (c) Additional time to comply with the notice under this section may be granted by the enforcement officer where in his opinion bona fide efforts to remove or eliminate the causes of blight or blighting factors are being made.
- (d) Failure of the owner and/or occupants to comply with the notice served pursuant to this section within the time set forth in the notice shall constitute a violation of this Code.

**Sec. 22-460. Enforcement of article.**

This article shall be enforced by the director of building or by such other person as may be designated by the mayor.

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**Secs. 22-461—22-485. Reserved.**

## **ARTICLE XIV. SWIMMING POOLS**

### **DIVISION 1. GENERALLY**

#### **Sec. 22-486. Definitions.**

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

*Aboveground or on-ground pool.* See *Private swimming pool*.

*Barrier* means a fence, a wall, a building wall or a combination thereof which completely surrounds the swimming pool and obstructs access to the swimming pool.

*Hot tub.* See *Private swimming pool*.

*In-ground pool* means any structure that contains water over 24 inches (610 mm) in depth and which is used, or intended to be used, for swimming or recreational bathing in connection with an occupancy in use group R-3 and which is available only to the family and guests of the householder. This includes in-ground, aboveground and on-ground swimming pools, hot tubs and spas.

*Portable swimming pool* means any artificially constructed pool located either above or below grade, intended for swimming or bathing, having a depth of more than two feet at any point, and capable of being normally removed and stored during the winter season.

*Private swimming pool, indoor* means any private swimming pool that is totally contained within a private structure and surrounded on all four sides by the walls of such structure.

*Private swimming pool, outdoor* means any private swimming pool that is not an indoor pool.

*Public swimming pool* means any swimming pool other than a private swimming pool.

*Spa.* See *Private swimming pool*.

The definitions of terms other than those listed in this section shall be as defined by the BOCA codes of 1993.

Cross reference(s)—Definitions generally, § 1-2.

#### **Sec. 22-487. Location generally.**

- (a) There shall be a distance of no less than six feet between the adjoining property line and the outside of the pool wall.
- (b) There shall be a distance of no less than four feet between the outside pool wall and any building located on the same lot.
- (c) No swimming pool shall be located less than 25 feet from any front lot line.
- (d) No swimming pool shall be located less than ten feet from any side street or alley right-of-way.
- (e) No swimming pool shall be located in an easement.

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**Sec. 22-488. Location of portable swimming pools.**

- (a) There shall be a distance of not less than five feet between the adjoining property line and the outside of the wall of the portable swimming pool.
- (b) There shall be a distance of not less than two feet between the outside wall of the portable swimming pool and any building located on the same lot.
- (c) No portable swimming pool shall be located less than 25 feet from any front lot line.
- (d) No portable swimming pool shall be located less than six feet from any side street or alley right-of-way.
- (e) No portable swimming pool shall be located in an easement unless approved by the board of zoning appeals.

**Sec. 22-489. Variance for location.**

- (a) The board of zoning appeals, upon written application by any person desiring to construct a swimming pool and after public hearing, shall have the power to grant variances with regard to the location of swimming pools where an obvious hardship or serious practical difficulty in complying with the provisions of this article is shown by the applicant, except where any such variance would cause a conflict with electrical safety requirements of section 22-514 of this Code.
- (b) The hearing fee, required by section 46-1, on any application under this section shall be payable at the time application for the variance is filed.

**Sec. 22-490. Barrier or fencing requirements.**

All swimming pools, portable swimming pools, hot tubs or spas which are two feet or more in depth (collectively referred to as "swimming pools" in this section) shall be enclosed with a fence or barrier which shall comply with the following:

- (1) The top of the barrier shall be at least 48 inches above finished ground level measured on the side of the barrier which faces away from the swimming pool. The maximum vertical clearance between finished ground level and the barrier shall be two inches measured on the side of the barrier which faces away from the swimming pool. Where the top of the pool structure is above finished ground level, such as an aboveground pool, the barrier shall be at finished ground level, such as the pool structure, or shall be mounted on top of the pool structure. Where the barrier is mounted on top of the pool structure, the maximum vertical clearance between the top of the pool structure and bottom of the barrier shall be four inches.
  - (2) Openings in the barrier shall not allow passage of a four-inch diameter sphere.
  - (3) Solid barriers shall not contain indentations or protrusions except for normal construction tolerances and tolled masonry joints.
  - (4) Where the barrier is composed of horizontal and vertical members and distance between the tops of the horizontal members is less than 45 inches, the horizontal members shall be located on swimming pool side of the fence. Spacing between vertical members shall not exceed 1¾ inches in width. Decorative cutouts shall not exceed 1¾ inches in width.
  - (5) Where the barrier is composed of horizontal and vertical members and distance between the tops of the horizontal members is 45 inches or more, spacing between vertical members shall not exceed four inches. Decorative cutouts shall not exceed 1¾ inches in width.
  - (6) Maximum mesh size for chainlink fences shall be a 1¼-inch square unless the fence is provided with slats fastened at the top or bottom which reduce the openings to not more than 1¾ inches.
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- (7) Where the barrier is composed of diagonal members, such as a lattice fence, the maximum opening formed by the diagonal members shall be not more than 1½ inches.
  - (8) Access gates shall comply with the requirements of subsections (1) through (7) of this section, and shall be equipped to accommodate a locking device. Pedestrian access gates shall open outwards away from the pool and shall be self-closing and have a self-latching device. Gates other than pedestrian access gates shall have a self-latching device. Where the release mechanism of the self-latching device is located less than 54 inches from the bottom of the gate:
    - a. The release mechanism shall be located on the pool side of the gate at least three inches below the top of the gate; and
    - b. The gate and barrier shall not have an opening greater than one-half inch within 18 inches of the release mechanism.
  - (9) Where a wall of a dwelling serves as part of the barrier, one of the following shall apply:
    - a. All doors with direct access to the pool through that wall shall be equipped with an alarm which produces an audible warning when the door and its screen, if present, are opened. The alarm shall sound continuously for a minimum of 30 seconds immediately after the door is opened. The alarm shall have a minimum sound pressure rating of 85 dBA at ten feet and the sound of the alarm shall be distinctive from other household sounds such as smoke alarms, telephones and doorbells. The alarm shall automatically reset under all conditions. The alarm shall be equipped with manual means, such as touchpads or switches, to temporarily deactivate the alarm from a single opening from either direction. Such deactivation shall last for not more than 15 seconds. The deactivation touchpads or switches shall be located at least 54 inches above the threshold of the door.
    - b. The pool shall be equipped with an approved power safety cover.
  - (10) Where an aboveground pool structure is used as a barrier or where the barrier is mounted on top of the pool structure, and the means of access is a fixed or removable ladder or steps, the ladder or steps shall be surrounded by a barrier which meets the requirements of subsections (1) through (9) of this section. A removable ladder shall not constitute an acceptable alternative to enclosure requirements.
  - (11) Barriers shall be located so as to prohibit permanent structures, equipment or similar objects from being used to climb the barriers.
  - (12) The following shall be exempt from the provisions of this section:
    - a. A spa or hot tub with an approved safety cover.
    - b. Fixtures which are drained after each use.

## **Sec. 22-491. Water supply and treatment.**

- (a) *Water supply.* All swimming pools shall be provided with a potable water supply, free of cross connections with the pool or its equipment.
- (b) *Water treatment.*
  - (1) *Public pools.* Public swimming pools shall be designed and installed so that there is a pool water turnover at least once every eight hours. Filters shall not filter water at a rate in excess of three gallons per minute per square foot (0.0020 m<sup>3</sup>/s.m<sup>2</sup>) of surface area. The treatment system shall be designed and installed so that at all times when the pool is occupied, the water is provided with excess chlorine of not less than 0.4 parts per million (ppm) or more than 0.6 ppm, or excess chloramine between 0.7 and 1.0 ppm, or disinfection shall be provided by other approved means. Acidity/alkalinity of the pool

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water shall not be below 7.0 or more than 7.5. All recirculating systems shall be provided with an approved hair and lint strainer installed in the system ahead of the pump.

- (2) *Private pools.* Private swimming pools shall be designed and installed so that there is a pool water turnover at least once every 18 hours. Filters shall not filter water at a rate in excess of five gallons per minute per square foot (00.0034 m<sup>3</sup>/s.m<sup>2</sup>) of surface area. The pool owner shall be instructed in the care and maintenance of the pool by the supplier or builder, including treatment with high-test calcium hypochlorite (dry chlorine), sodium hypochlorite (liquid chlorine) or equally effective germicide and algicide, and the importance of proper pH (alkalinity and acidity) control.
- (c) *Drainage systems.* The swimming pool and equipment shall be equipped to be emptied completely of water and the discharged water shall be disposed of in an approved manner by the director of building so as not to create a nuisance to the adjoining property.

#### **Sec. 22-492. Inspections.**

- (a) The director of building shall have the right at any reasonable hour to inspect any swimming pool for the purpose of determining compliance with this article.
- (b) Inspections during and after construction of any swimming pool shall be made by the director for the purpose of determining that all provisions of this article are being fulfilled and complied with.
- (c) Final inspection and approval of swimming pools shall be required prior to pool usage. All pool installations must be completed, filled with water and the filter system in operation at the time of final inspection.

#### **Sec. 22-493. Nuisances.**

Any improper or incorrect installation, operation, maintenance or use of any swimming pool or portable swimming pool in violation of this article shall constitute a nuisance and the director of building may abate such nuisance by means of any court action.

#### **Secs. 22-494—22-510. Reserved.**

### ***DIVISION 2. CONSTRUCTION REQUIREMENTS***

#### **Sec. 22-511. Construction documents.**

Construction documents shall accurately show dimensions and construction of the pool and appurtenances and properly established distances to lot lines, buildings, walks and fences, as well as details of the water supply system, drainage and water disposal systems, and all appurtenances pertaining to the swimming pool. Detailed construction documents of structures, vertical elevations and sections through the pool showing depth shall be included. The pool structure shall be engineered and designed to withstand the expected forces to which the pool will be subjected.

#### **Sec. 22-512. Walkways.**

All public swimming pools shall have walkways of not less than four feet (1,219 mm) in width extending entirely around the pool. Curbs or sidewalks around any swimming pool shall have a slip-resistant surface for a width of not less than one foot (305 mm) at the edge of the pool, and shall be so arranged as to prevent return of surface water to the pool.

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**Sec. 22-513. Diving boards.**

Diving boards shall be installed in accordance with the provisions of section 421.11 of the BOCA National Building Code, 1993 edition.

**Sec. 22-514. Electrical installations and wiring.**

- (a) All electrical installations and wiring in connection with swimming pools and portable swimming pools shall conform with the National Electrical Code adopted by the city relative to swimming pools.
- (b) No swimming pool, portable swimming pool, diving platform or deck shall be installed within ten feet horizontally of primary overhead wires or within five feet horizontally of secondary overhead wires.

**Sec. 22-515. Filters—Generally.**

- (a) Swimming pool filters shall be capable of maintaining reasonable clarity of the pool water.
- (b) All swimming pool filters shall be equipped with satisfactory means to determine the necessity and frequency of cleaning (backwashing). Each filter system shall be provided with a visual means of determining when the filter has been restored to original cleanliness.
- (c) Pressure filters shall be equipped with an air release at the high point in the swimming pool filter system.
- (d) Operating instructions shall be posted on every swimming pool filter system and all valves shall be properly designated with metal tags indicating their purposes.

**Sec. 22-516. Same—Pressure and sand type.**

Pressure and sand type swimming pool filters shall comply with the following provisions:

- (1) Sand type filter systems shall be designated and installed to operate at a rate not to exceed three gallons per minute per square foot of filter area and to backwash at a minimum rate of 12 gallons per minute per square foot of surface area.
  - (2) Filter tanks shall be fabricated to the latest ASME specifications for noncode pressure vessels, with the exception that standard type dished and flanged heads may be used. Tanks shall be built for a minimum of 50 pounds of working pressure and tested at 150 pounds per square inch.
  - (3) The filter underdrain system shall have a distribution of at least 25 percent of the cross sectional area of the tank evenly distributed over the entire cross sectional area of the tank.
  - (4) Filter tanks shall be supported in a manner to prevent tipping, safety hazards or settling.
  - (5) The influent shall be applied to the filter media surface in a manner which prevents direct discharge against the filter bed surface.
  - (6) Filter media shall be a hard, uniformly graded, silica material, or approved equivalent, with effective particle sizes between 0.35 and 0.80 millimeter in diameter, with uniformity coefficient between 1.2 and 1.75. There shall be no limestone or clay present.
  - (7) Filter media shall be no less than 19 inches in depth with a freeboard which shall permit effective backwashing of the filter media.
  - (8) Graded rock or approved equivalent shall be employed to support the filter media which shall be clean, noncrushed, rounded, noncalcareous material. Supporting material shall be carefully graded by size
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and separately levelled in layers to satisfactorily support the filter media and distribute backwash water. Other equivalent methods or materials may be approved by the director of building.

**Sec. 22-517. Same—Diatomaceous.**

Diatomaceous swimming pool filters shall be designed and installed to operate at a rate not to exceed three gallons per minute per square foot of filter area and shall meet the performance standards for pressure type sand filters set forth in this division.

**Sec. 22-518. Same—Others.**

Filters other than those specified in this division may be approved provided their performance meets the standards set forth in this division for pressure type sand filters.

**Sec. 22-519. Water to be returned through filter system.**

The design of the pool and surrounding area shall be constructed and arranged in such manner that all scum, splash, and deck water shall not return to the pool except through the filter system.

**Sec. 22-520. Recirculating pumps.**

- (a) The recirculating pump shall have sufficient capacity to provide the rated flows of the filter system, without exceeding the head loss at which the pump will deliver such flows. Such pumps shall be of a self-priming design if installed above the pool water line.
- (b) Recirculating pumps shall be equipped on the inlet side of the swimming pool, with an approved type hair and lint strainer, or an approved equal. The basket of the strainer shall be noncorrosive and have an open screen surface of at least four times the cross sectional area of the inlet pipe.

**Sec. 22-521. Piping.**

- (a) Swimming pool piping shall be sized to permit the rated flows for filtering and cleaning without exceeding the maximum head at which the pump will provide such flows. In general, the water velocity in the pool piping shall not exceed ten feet per second. When velocity exceeds ten feet per second, calculations should be provided to show that rated flows are possible with the pump and piping provided.
- (b) The recirculating swimming pool piping and fitting shall meet the following requirements:
  - (1) Vacuum fitting or fittings, if provided in the pool, shall be located in an accessible position or positions below the water line.
  - (2) An outlet or inlet shall be placed at the deepest point in every pool for recirculating the pool water.
  - (3) Pool recirculating piping passing through the pool structure shall be copper tubing (with a minimum wall thickness of type "L"), brass or an approved equal.
  - (4) Filtered water inlets shall be provided in sufficient quantity and shall be properly spaced to provide a maximum circulation of the main body and surface of the pool water. A minimum of two inlets shall be provided.

**Sec. 22-522. Valves.**

- (a) Fullway valves shall be installed throughout the swimming pool to ensure proper functioning of the filtration and piping system.

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- (b) Valves shall be installed wherever necessary for proper operation and maintenance of the swimming pool circulation system.
  - (c) Valves up to and including two inches in size shall be brass. Sizes over two inches may have cast iron or brass bodies.
  - (d) Combination valves may be installed if the materials and design comply with the intent of this article.

**Sec. 22-523. Permit—Required.**

No person shall construct, install, enlarge or alter any swimming pool until construction documents have been submitted and a permit has been obtained from the code official.

**Sec. 22-524. Same—Application.**

An application for a permit to construct a swimming pool or a portable swimming pool shall be filed with and approved by the director of building before any such permit shall be issued. Each application shall be accompanied by a site plan and by plans, specifications and calculations in duplicate drawn to scale and in sufficient detail showing the following:

- (1) Plot plan with elevations and topography at not greater than one foot contours for 50 feet measured radially from all points of the pool walls and all existing principal and accessory buildings within such radius;
- (2) Pool dimensions, depths and volume in gallons;
- (3) Filter system with type and size, filtration and backwash capacities;
- (4) Pool piping layout with all pipe sizes and valves shown and types of materials to be used;
- (5) The rated capacity and head at filtration and backwash, where applicable, flows of the pool pump in gallons per minute with the size and type of motor;
- (6) Disposal system for pool wastes;
- (7) Mechanical and structural data and details;
- (8) The location of sewer lines, any and all water supplies and utilities (electrical, gas, telephone and others) within 25 feet of the pool and walls, water suction lines and private sewage disposal systems within 75 feet of the pool;
- (9) The location of ditches, drains, culverts and watercourses within the plot plan area;
- (10) The method to be employed to clean the pool.

**Secs. 22-525—22-600. Reserved.**

***ARTICLE XV. REGISTRATION AND INSPECTION OF ALL RENTAL DWELLINGS***

**Sec. 22-601. Purpose.**

The purpose of this article is to protect the public health, safety and welfare in buildings intended for human habitation and their accessory structures.

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## Sec. 22-602. Definitions.

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

*Dwelling:* Any building or structure occupied or intended to be occupied, in whole or in part, as a dwelling, residing place, living or sleeping space for one or more humans, whether permanently or transiently.

*Dwelling unit:* A building or structure or portion thereof designed for occupancy by one family for residential purposes as a single housekeeping unit.

*Hotel unit:* A room or group of rooms located within a dwelling which provides sleeping and bathroom accommodations for the exclusive use of a transient person or a transient family.

*Rental dwelling:* Any dwelling building containing a dwelling unit, rooming unit or hotel unit which is not occupied by the owner.

## Sec. 22-603. Registration of rental dwellings.

- (a) *Registry of rental dwelling required.* All rental dwellings shall be registered with the building department. If the owner does not reside within 30 miles of the city, he or she shall designate a responsible local agent who shall be responsible for operating such dwelling in compliance with the law, including this article. All official notices may be served on the responsible agent, and any notice so served shall be deemed to have been served upon the owner of record. Each owner or responsible local agent shall maintain a current list of the number of occupants of each rental dwelling for which he or she is responsible. A rental unit certificate of compliance shall not be issued if the registration provisions of this article are not complied with.
- (b) *Time to register existing rental dwellings.* All rental dwellings existing as of the effective date of this article shall be registered no later than 60 days after the effective date of this article. The city shall order registration prior to that date for any dwelling cited in a notice required by the building code or property maintenance code. Failure to comply with such an order is a violation of this article.
- (c) *Registry of new rental dwellings.* The owner of a new rental dwelling or of any dwelling newly converted to rental dwelling shall register the rental dwelling prior to allowing occupancy of any new rental units.
- (d) *Change in register information.* The owner of rental dwellings already registered with the city or his responsible local agent shall register within 60 days after any change occurs in register information. A new owner of a registered dwelling shall register the dwelling within 60 days of assuming ownership.
- (e) *Register of rental dwellings.* Application for registration shall be made in such form and in accordance with such instructions as may be provided by the building department director and shall include:
  - (1) The address of the rental dwelling.
  - (2) The number of dwelling units, the number of rooming units and the number of hotel units in the dwelling.
  - (3) The name, residence address, business address, business phone number and personal phone number of the owner.
  - (4) The name, residence address, business address, business phone number and personal phone number of the manager and responsible local agent designated by the owner.
  - (5) The address where the owner or responsible local agent will accept notices or orders from the city.
- (f) *Inaccurate or incomplete register information.* It shall be a violation of this article for an owner or a responsible local agent to provide inaccurate information for the registration of rental dwellings or to fail to provide information, required by the city under subsection (e) of this section. In those cases in which the owner or responsible local agent is not a natural person, the information required for the registration shall

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be provided for the organization owning the rental dwelling and for the president, general manager or other chief executive officers of the organization. Where more than one natural person has an ownership interest, the required information shall be provided for each owner.

#### **Sec. 22-604. Certification of rental dwellings.**

- (a) *Certificate of compliance required.* Rental dwellings shall not be occupied without a rental dwelling certificate of compliance or a temporary rental dwelling certificate of compliance.
- (b) *Issuance of certificate of compliance.* The building department shall issue a rental dwelling certificate of compliance for a rental dwelling after the director of the building department finds that the rental dwelling, its units and accessory structures and yards comply with the standards set forth in the currently adopted codes, i.e., building code, the mechanical code, the plumbing code, the electrical code, and the property maintenance code.
- (c) *Temporary certificate authorized.* Where a rental dwelling certificate of compliance is required, the building department may issue a temporary rental dwelling certificate of compliance for the following reasons only:
  - (1) To enable the city to balance compliance inspection work loads; or,
  - (2) To coincide with compliance time periods set forth in a notice citing violations of this article if such periods extend beyond the expiration date of a certificate.

Provided, however, no temporary certificate of compliance shall be issued if there are significant health and safety defects present on the premises constituting an imminent danger to life, health or property.

- (d) *Validity of certificate of compliance.* A rental dwelling certificate of compliance shall be valid for three years for all rental units, unless suspended as set forth below. The building department director may authorize up to eight additional months on the certificate of a dwelling for the sole purpose of balancing inspection workloads for the city.
- (e) *Expiration of certificate of compliance.* Rental dwelling certificates of compliance and temporary rental dwelling certificates of compliance may not be extended beyond their expiration dates except as may be permitted in subsection (c) or (d) above to enable the department of building to balance inspection workloads.
- (f) *Length of time certificate of compliance is valid.* Any new rental dwelling certificate of compliance issued to an owner for a dwelling shall have an expiration date three years from the date of issuance, except that if a temporary rental dwelling certificate has been previously issued, the certificate shall expire three years from the date the temporary certificate was issued.
- (g) *Suspension of certificate of compliance.* The building department director shall suspend a rental dwelling certificate of compliance if the owner or responsible local agent has not complied with a complaint notice. The building department director shall issue a notice of suspended certification to the owner or responsible local agent. The notice of suspended certification will inform the owner or responsible local agent:
  - (1) That the rental dwelling certificate of compliance has been suspended as of the date of the notice.
  - (2) Of the reason for the suspension.
  - (3) That it is unlawful for any rental unit to continue to be occupied for more than six days after the date of suspension of the rental dwelling certificate of compliance.
  - (4) That any rental unit which is vacant at the time of suspension or which becomes vacant during the period of suspension shall not be rented or reoccupied until the rental dwelling certificate of compliance is reinstated or a new rental dwelling certificate of compliance is issued.

Failure to comply with the terms of suspension as set out in this subsection shall be a violation of this article.

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- (h) *Reinstatement of suspended certificate of compliance.* A suspended rental dwelling certificate of compliance shall be reinstated if the building department director determines that a rental dwelling has been brought into compliance with the standards of this article. The city shall notify the owner or responsible agent by regular mail, noting the reinstatement of the rental dwelling certificate of compliance. Reinstatement of the certificate shall not extend or change the expiration date of the certificate. A reinstatement fee and all inspection fees and amounts to be determined by the city council shall be paid by the owner prior to reinstatement of the certificate.
  - (i) *Appeal.* Suspension of a rental dwelling certificate of compliance may be appealed to the building board of appeals as provided for in article II of this chapter.
  - (j) *Notifying tenants of suspended certificate.* The city shall send a copy of a notice of suspended certificate to each dwelling unit within a certified rental dwelling. The copy shall be addressed to occupant and shall be sent by regular mail. Failure of an occupant to receive a copy shall not invalidate any other proceedings authorized by this article.

## **Sec. 22-605. Inspections; search warrant.**

- (a) The city may provide written notice to the owner and/or the responsible local agent of the need to schedule an appointment for any inspection required by this article.
  - (b) Upon receipt from the city of the notice described in subsection (a), the owner and/or responsible local agent shall, within 14 days of the date of that notice, contact the city to schedule the systematic inspection. In the event that the city fails to notify an owner or responsible local agent of the need for an inspection prior to the expiration date of a rental certificate of compliance, it shall be the responsibility of the owner and/or responsible local agent to contact the city to schedule the systematic inspection required by this article.
  - (c) Once a date for an inspection is scheduled, the owner and/or responsible local agent shall do all of the following prior to the date of the scheduled inspection:
    - (1) Inform the tenant or occupant of each dwelling unit scheduled for possible inspection of the date when the inspection is scheduled to occur.
    - (2) Request permission from the tenant or occupant of each dwelling unit scheduled for possible inspection to provide access to the rental unit in the event that the tenant or occupant is not at home when the inspector arrives.
    - (3) Inform the tenant or occupant of each dwelling unit scheduled for possible inspection that the owner or the owner's representative is required to accompany the inspector during the performance of all inspections of rental dwelling units, and that the owner or the owner's representative must provide access to the inspector by unlocking the dwelling unit's door in the event that the tenant is not at home.
  - (d) In all cases where a tenant or occupant has informed the owner or responsible local agent, either orally or in writing, that the tenant will permit the owner or owner's representative to provide access to the inspector with access to the dwelling unit, the owner shall provide access to the dwelling unit in question for purposes of conducting the inspection required by this article.
  - (e) In the event that a tenant who has consented to the inspection informs the owner or responsible local agent that he or she would like to be present during the inspection, but that the time scheduled for the inspection is not convenient, the owner or responsible local agent shall inform the city of the tenant's desire to be present when the inspection occurs. The city shall make a reasonable effort to comply with the tenant's request. In the event that the city, owner, and tenant cannot schedule a mutually convenient time for the inspection, the city shall have the discretion to obtain a search warrant to inspect that dwelling unit pursuant to authority granted by this article and state law.
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- (f) In the event that a tenant or occupant of a unit scheduled for possible inspection informs the owner and/or responsible local agent that he or she will demand that the city obtain a search warrant, the owner shall inform the tenant that the owner or a representative of the owner is required to accompany the inspector during the execution of a search warrant, and is required to provide access to any dwelling unit only after a proper search warrant has been issued by a court of competent jurisdiction. In the event that a search warrant is issued, the city shall make a reasonable effort to inform the tenant of the date of execution of the search warrant if the tenant so requests.
  - (g) In all cases where a court of competent jurisdiction has entered a search warrant authorizing the inspection of a particular dwelling pursuant to MCL 125.527 and the provisions of this article, the owner and/or responsible local agent shall accompany the inspector during the execution of the search warrant and inspection of the named dwelling units, and shall provide access to each dwelling unit described in that search warrant.
  - (h) The city may require the owner and/or responsible local agent of a leasehold to do one or more of the following:
    - (1) Provide the enforcing agency access to the leasehold if the lease provides the owner a right of entry.
    - (2) Provide access to areas other than a leasehold or areas open to public view, or both.
    - (3) Notify a tenant of the city's request to inspect a leasehold, make a good faith effort to obtain permission for an inspection, and arrange for the inspection. If a tenant vacates a leasehold after the city has requested to inspect that leasehold, an owner of the leasehold shall notify the city of that fact within ten days after leasehold is vacated.
    - (4) Provide access to the leasehold if a tenant of that leasehold has made a complaint to the enforcing agency.
  - (i) Neither the city nor the owner may discriminate against an occupant on the basis of whether the occupant requests, permits, or refuses entry to the leasehold. The city shall not discriminate against an owner who has met the requirements of subsection (h), but has been unable to obtain the permission of the occupant.

#### **Sec. 22-606. Appeals.**

A person subjected to the provisions of this article, may appeal to the building board of appeals as provided for in chapter \_\_, article II, section \_\_\_\_\_ of the West Branch City Code.

#### **Sec. 22-607. Penalties; municipal civil infraction.**

Failure to timely register a rental dwelling, or any other violation of this article shall be a municipal civil infraction. The requirements of this article are in addition to, and not in lieu of all other city ordinances, rules and regulations.

The first offense or any subsequent offense shall be subject to a \$500.00 fine and any other costs authorized by the court pursuant to MCL 600.8727, MCL 600.8335, or state law. As authorized by MCL 600.8731, in the event such fine and costs are not timely paid, then may become a lien on the property and be placed on the tax roll, or result in a suit for collection of judgement.

#### **Sec. 22-608. Disclaimer of liability.**

A rental dwelling certificate of compliance is not a warranty or guarantee that there are no defects in the rental dwelling or unit and the city shall not be held responsible for defects not noted in the inspection report.

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This inspection of the land use, exterior posture and interior accessories of the structure is limited to visual inspection only. The city does not guarantee or approve by inference any latent, structural, or mechanical defects thereto, or such other items that are not apparent by such visual inspection.

The city shall not assume any liability to any person by reason of the inspection required by the ordinance or the Code adopted herein or the issuance of a rental dwelling certificate of compliance.

**Secs. 22-609—22-619. Reserved.**

## ***ARTICLE XVI. REGISTRATION, MAINTENANCE AND INSPECTION OF VACANT PROPERTIES***

### **Sec. 22-620. Purpose.**

The purpose of this article is to help protect the health, safety and welfare of the citizens. This article is intended to prevent blight, protect property values and neighborhood integrity, avoid the creation and maintenance of nuisances and to ensure the safe and sanitary maintenance of dwellings and commercial and industrial buildings.

Due to economic conditions, mortgage foreclosures, and increased bankruptcies, many homes and buildings have become vacant and unsupervised. This has caused properties to become attractive nuisances and to invite unwanted activity. There is an increased instance of unsecured or open doors and windows, broken water pipes, flooded basements, theft of metals and other materials, overgrowth of grass, weeds, shrubs, and bushes, illegal dumping, and vermin activity at vacant structures. Vacant properties have a negative impact on surrounding properties and neighborhoods. The city also needs to be able to contact owners for utility shutoff, fire safety and police reasons.

Unlike the city's home certification program, West Branch Code section 22-351, et seq., which is primarily concerned with the safety of various interior components of a residential dwelling at the time of sale, the requirements of this article are primarily directed towards maintaining and protecting the integrity of the exterior area of a vacant property. This article further recognizes that the city has statutory as well as contractual responsibility to protect the city's water and sewer systems and its utilities and infrastructure, as provided in chapter 102 of the City Code.

### **Sec. 22-621. Definitions.**

*Code compliance certificate* is defined as an annual certificate issued by the city or its designee that the structure is in compliance with all City Code requirements and the state construction code.

*Evidence of vacancy* is defined to include any condition that on its own, or combined with other conditions present, would lead a reasonable person to believe that the property is vacant. Such conditions include, but are not limited to: overgrown and/or dead vegetation; unshoveled snow from sidewalks; accumulation of newspapers, circulars, flyers and/or mail; past due utility notices and/or disconnected utilities; accumulation of trash, junk and/or debris; boarded-up windows; abandoned vehicles, auto parts or materials; the absence of or continually drawn window coverings such as curtains, blinds and/or shutters; the absence of furnishings and/or personal items consistent with habitation or occupancy; statements by neighbors, passersby, delivery agents or utility agents, including city employees, that the property is vacant.

*Owner* is defined as one who has legal title and/or the right to possess, use, transfer or convey property, i.e., the owner or successor to title by foreclosure, sheriff's sale or by court order.

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*Vacant property* is defined as a property, building, or structure that remains unoccupied for a period in excess of 30 days, and/or exhibits "evidence of vacancy" as defined herein. Vacant property does not mean property that is temporarily unoccupied while the residents are away on vacation, tending to personal matters or business, or property that is not intended by the owner to be left vacant.

#### **Sec. 22-622. Scope.**

The provisions of this article shall apply to all existing residential, commercial and industrial structures. This article does not relieve any person from compliance with all other city ordinances, the state building code, and all other laws, rules and regulations.

#### **Sec. 22-623. Registry of vacant properties.**

There is hereby created in the City of West Branch a registry of vacant properties.  
(Ord. No. 29-W-35, § 1, 6-6-11)

#### **Sec. 22-624. Vacant properties to be registered annually.**

Owners of real property are required to register all vacant properties within 30 days of the vacancy and to reregister the properties annually thereafter. Structures that are vacant at the time of the enactment of this article must register within 30 days.

#### **Sec. 22-625. Owner's registration form; content.**

Owners who are required to register their properties pursuant to this article shall submit a completed vacant property registration form, as provided by the city or its designee containing the following information:

- (1) The name of the owner of the property.
- (2) A mailing address where mail may be sent that will be acknowledged as received by the owner. If certified mail/return receipt requested is sent to the address and the mail is returned marked "refused" or "unclaimed", or if ordinary mail sent to the address is returned for whatever reason, then such occurrence shall be prima facie proof that the owner has failed to comply with this requirement.
- (3) The name of an individual responsible for the care and control of the property. Such individual may be the owner, if the owner is an individual, or may be someone other than the owner with whom he/she has contracted.
- (4) A current address, phone number, fax, and email address (if fax and email addresses are available) where communications may be sent that will be acknowledged as received by the owner or individual responsible for the care and control of the property. If certified mail/return receipt requested is sent to the address and the mail is returned marked "refused" or "unclaimed", or if ordinary mail sent to the address is returned for whatever reason, then such occurrence shall be prima facie proof that the owner has failed to comply with this requirement.
- (5) Authorization to the city and its designees to access the exterior of the property for inspection purposes.
- (6) Verification that the utilities and the furnace are functioning.

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**Sec. 22-626. Annual registration and safety and blight inspection fee.**

The annual registration and vacant property inspection fees shall be as set by the city in the city's administrative fee resolution, to offset the cost of processing the form, conducting the safety and maintenance inspection and maintaining the records. In addition, in the case where the owner has failed to register, the owner shall be assessed the added cost of the city's, or its designee's, expense in having to determine ownership, which may include, but is not limited to, title search and legal expenses.

**Sec. 22-627. Requirement to keep information current.**

If at any time the information contained in the registration form is no longer valid, the property owner shall within ten days file a new registration form containing current information. There shall be no fee to update the current owner's information.

**Sec. 22-628. Inspections required.**

Owners of vacant buildings who are required to file an owner's registration form under this article must immediately apply and pay for an inspection by the city or its designee to ensure the safety and maintenance of the vacant property; obtain necessary permits; make required repairs; obtain any follow-up inspections from the city or its designee to ensure the building is safe, secure and maintained. The owner or the owner's agent shall certify by affidavit that all water, sewer, electrical, gas, HVAC, plumbing systems, roofing, structural systems, foundations, and drainage systems are sound, operational, or properly disconnected. The owner or the owner's agent shall also certify by affidavit compliance with the requirements of the city's blight ordinance, West Branch Code section 22-456, et seq., and the International Property Maintenance Code, West Branch Code section 22-131, et seq.

**Sec. 22-629. Building inspection; maintenance and security requirements.**

Properties subject to this article shall be maintained and secured to comply with the minimum security fencing, barrier and maintenance requirements of the city's blight ordinance, West Branch Code section 22-456, et seq., and the International Property Maintenance Code, West Branch Code section 22-131, et seq.

Pools, spas, and other water features shall be kept in working order or winterized to ensure that the water remains clear and free of pollutants and debris, or drained and kept dry and free of debris, and must comply with the minimum security fencing, barrier and maintenance requirements of the International Property Maintenance Code, West Branch Code section 22-131, and the city's swimming pool ordinance, West Branch Code section 22-486, et seq.

Vacant properties subject to this article shall be maintained in a secure manner so as not to be accessible to unauthorized persons. Secure manner includes, but is not limited to, the closure and locking of windows, doors (walk-through, sliding and garage), gates and any other opening of such size that it may allow a child to access the interior of the property and/or structure(s). Broken windows must be repaired or replaced within 14 days. Boarding up of open or broken windows is prohibited except as a temporary measure for no longer than 14 days.

**Sec. 22-630. Open property; securing fee.**

Property subject to this article that is left open and/or accessible shall be subject to entry by the city or its designee in order to ensure that the property has not become an attractive nuisance and to ensure that the property is locked and/or secured and in compliance with the city's blight ordinance. The owner of property subject to this article which property is found open or unsecured shall be responsible for paying a securing fee as set by the city in the administrative fee resolution to offset the cost incurred by the city in contacting the owner or

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management company to secure the property, or if the owner and/or management company cannot be contacted or does not secure the property within a reasonable time, not to exceed 24 hours, the cost incurred by the city in securing the property.

(Ord. No. 29-W-35, § 1, 6-6-11)

**Sec. 22-631. Reoccupation of vacant property; notification to city.**

Prior to reoccupation of property that is subject to this article, the owner shall notify the city or its designee that the property has been sold or rented, and to whom.

**Sec. 22-632. Fire damaged property.**

If an occupied building is damaged by fire, the owner has 90 days from the date of the fire to apply for a permit to start construction or demolition. Failure to do so will result in the property being deemed vacant and subject to the requirements of this article.

**Sec. 22-633. Unpaid fees; assessment.**

All fees hereunder that remain unpaid after 14 days' written notice to the owner/management company shall be assessed against the property as a lien and placed on the tax roll.

**Sec. 22-634. Penalties; municipal civil infraction.**

Failure to timely register a vacant property, or any other violation of this article shall be a municipal civil infraction. The requirements of this article are in addition to, and not in lieu of all other city ordinances, rules and regulations as well as the requirements of MCL 125.539(i), which allows for demolition of vacant structures, or nuisance abatement by the city.

The first offense or any subsequent offense shall be subject to a \$500.00 fine and any other costs authorized by the court pursuant to MCL 600.8727, MCL 600.8335, or state law. As authorized by MCL 600.8731, in the event such fine and costs are not timely paid, then may become a lien on the property and be placed on the tax roll, or result in a suit for collection of judgement.

## RED E CHARGING SITE HOST AGREEMENT

This Charging Stations Agreement (the "Agreement") is effective as of \_\_\_\_\_ (the "Effective Date"), and is made and executed by and between Red E Charging, LLC ("Red E Charging"), a Michigan Limited Liability Company with its principal place of business located at 2475 West Grand Blvd, Detroit, MI 48208, and \_\_\_\_\_, ("Site Host"), having its principal place of business located at \_\_\_\_\_. Red E Charging and Site Host may individually be referred to herein as a "Party", and collectively as the "Parties."

### RECITALS

**WHEREAS**, Red E Charging, by installing electric vehicle charging stations ("EV Chargers") at select locations as determined by Site Host (each, a "Site"), and as defined herein, will provide value to Site Host by attracting electric vehicle owners and the public to, and providing additional visibility to, the Site.

**WHEREAS**, Site Host acknowledges the value of Red E Charging's EV Chargers on the Site and desires to grant a license to Red E Charging to install and maintain EV Chargers at the Site, and Red E Charging agrees to install and maintain EV Chargers at the Site, pursuant to the terms set forth herein.

**NOW THEREFORE**, for the mutual promises and covenants set forth below, and for other good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, the Parties agree as follows:

### AGREEMENT

1. **SITE LOCATION:** Site Host hereby grants Red E Charging a license to install and maintain EV Chargers at the Site, as determined in **Exhibit A**, upon which Red E Charging shall install the EV Chargers.

2. **INITIAL INSPECTION:**

2.1. **Early Access.** Beginning on \_\_\_\_\_ ("Initial Inspection Start Date"), Red E Charging shall have a period of up to thirty (30) days during which it will have reasonable, non-exclusive access to the Site for conducting its reviews and inspections to determine, in its sole discretion, that the Site is satisfactory for the EV Chargers' proposed use (the "Inspection Period").

2.2. **Right to Terminate.** If Red E Charging determines, in its sole and absolute discretion, for any reason or for no reason whatsoever, that the Site is unsatisfactory for EV Chargers' proposed use, Red E Charging may, without any liability hereunder, terminate this Agreement upon written notice to Site Host no later than ten (10) business days following the expiration of the Inspection Period.

3. **INSTALLATION AND MAINTENANCE:**

3.1. Upon determination that the Site(s) is satisfactory for the EV Chargers' proposed use pursuant to Section 2.1, parking spaces shall be designated for installation of the EV Chargers ("Designated Parking Spaces"). Before installation, Red E may be responsible for performing any Site Preparation.

For purposes of this Agreement, the term “Site Preparation” shall mean, without limitation, performing any electrical service upgrades, installing conduit runs, running wiring, installing cell repeaters, ensuring cellular coverage and other site work necessary to provide adequate power and connectivity to each of the Designated Parking Spaces according to Red E Charging’s specifications. For purposes of convenience only, Red E Charging may provide contact information of certain operations and maintenance partners (each, a “Red E Service Contractor”), who can assist Site Host with Site Preparation.

3.2. Upon completion of the Site Preparation, Red E Charging shall install the EV Chargers within a reasonable time, to be determined between the Parties.

3.3. Red E Charging shall be responsible for maintaining the EV Chargers and ensuring that the EV Chargers functions properly. These responsibilities include servicing, repairing, modifying, and adjusting EV Chargers. Site Host acknowledges that Red E Charging’s obligations do not include repairing, replacing, monitoring, or servicing anything other than EV Chargers. Where Site Host knows of or becomes aware of any EV Chargers malfunction, Site Host shall promptly notify Red E Charging of such malfunction. Red E Charging shall respond to Site Host within a reasonable time to coordinate a date of service for maintenance. Site Host shall cooperate with Red E Charging so that Red E Charging may remotely diagnose the EV Chargers’ malfunction.

3.4. Red E Charging shall not have any liability for damage to the EV Chargers caused by Site Host’s negligence, recklessness, or willful misconduct, or any third party. Notwithstanding the foregoing, Site Host hereby agrees that it shall maintain, at its sole expense and at all times during the term of this Agreement, the Site and common areas of the Site, including but not limited to public areas, parking spaces, streets, and sidewalks appurtenant to the Designated Parking Spaces in good repair and condition. Site Host agrees that it shall not interfere with, cause, or direct its employees, agents, or any third party to interfere with EV Chargers, Red E Charging’s performance of maintenance services, or any of Red E Charging’s responsibilities under this Agreement. Site Host acknowledges that Red E Charging may, in its discretion and at its sole cost, install security cameras to monitor the Site remotely. All EV Chargers installed in relation to the charging infrastructure shall be maintained in good condition for the entire term of the Agreement.

3.5. Red E Charging shall not be responsible for, and makes no representation or warranty with respect to the following: (i) continuous availability of electrical service to any EV Chargers at the Site; (ii) continuous availability of any wireless or cellular communications network or Internet service provider network or Internet service provider network necessary for the continued operation by Red E Charging; and (iii) availability of or interruption of the EV Chargers attributable to unauthorized intrusions.

4. **EQUIPMENT:** Red E Charging shall install EV Chargers and components (the “EV Chargers”) at the Site. Additional EV Chargers may be installed upon mutual agreement of the Parties. Once the Site Host and Red E Charging have agreed upon the number and power of chargers to be added, Red E Charging has six (6) months to install the chargers at issue, provided that there are no external permitting, utility, hardware or other

requirements beyond Red E Charging's control delaying the installation, despite the reasonable efforts of Red E Charging.

5. **EXCLUSIVE USE:** During the Initial Term or any period of a Renewal Term pursuant this Agreement, Site Host will not permit any other entity or individual other than Red E Charging to provide, maintain, service, or operate any electric vehicle charging stations at the site.
6. **COMMENCEMENT DATE:** The date that the EV Chargers are made available to the public (the "Commencement Date") shall be within six (6) months of finalizing the number and power of EV Chargers, provided that no external permitting, utility or other requirements beyond Red E Charging's control delay the installation, despite the best efforts of Red E Charging. Red E Charging shall provide written notice of the Commencement Date to Site Host for record keeping purposes. In the event of a delay as described herein, Red E Charging shall deliver written notice to Site Host and this notice shall provide the Commencement Date.
7. **TERM:** The initial term of the Agreement shall expire ten (10) years from the Commencement Date (the "Initial Term").
8. **RENEWAL:** This Agreement may be renewed for a successive five (5) year term following the expiration of the Initial Term set forth in Section 7 (the "Renewal Term"). If Site Host wishes to renew this Agreement, Site Host must deliver to Red E Charging a written request to renew no later than thirty (30) days before the expiration of the Initial Term. Red E Charging shall notify Site Host, no later than ten (10) days before the expiration of the Initial Term, whether or not this Agreement shall be renewed, it being understood that Red E Charging may make that decision in its sole discretion. If this Agreement is not renewed, it shall terminate at the end of the Initial Term. Failure by Site Host to deliver a timely notice of renewal may be treated as a final decision not to renew. Following the Renewal Term, any further renewals will be subject to mutual agreement between Red E Charging and Site Host and may be of any duration agreed upon by the Parties. In the event Site Host wishes to sell or transfer the Site while the Agreement is in effect, Site Host shall assign this Agreement to the prospective buyer pursuant to Section 23.
9. **TERMINATION:** This Agreement may only be terminated by the following:
  - 9.1. By a writing signed by both Site Host and Red E Charging that states their intent to terminate this Agreement and the date upon which such termination will take effect.
  - 9.2. By Red E Charging: (1) if Site Host is in material breach of any of its obligations under this Agreement, and has not cured such breach within thirty (30) days of Site Host's receipt of written notice thereof; (2) immediately upon written notice if any of the representations and warranties under Section 17 herein are false; (3) at any time after the thirty sixth (36<sup>th</sup>) month of the Term, the EV Chargers at the Site are performing at an average of fewer than 50 kilowatt hours per month over any period of six (6) consecutive months, Red E Charging shall have the right to terminate this Agreement by providing Site Host written notice at least sixty (60) days in advance of the termination date, which shall specify the effective date of Red E Charging's termination of this Agreement.
  - 9.3. By Site Host, for cause, as outlined below in (a) and (b):



- (a) In the event Site Host has not received payment under the terms of Section 16 of this Agreement, Site Host must provide written notice to Red E Charging notifying Red E Charging that it has not received payment. If Red E Charging has not remitted the payment to Site Host within thirty (30) days of the date of receipt of Site Host's notice, Site Host may terminate the Agreement for cause and without penalty.
- (b) If Red E Charging has failed to properly maintain the EV Chargers, Site Host must provide notice to Red E Charging. This notice shall provide information about the EV Charger(s) requiring maintenance. Within thirty (30) days of receipt of notice from Site Host, Red E Charging shall (i) work to repair or replace the EV Chargers (ii) provide Site Host with a reason why the EV Chargers cannot be repaired or replaced (iii) or provide a reasonable timeframe by which the repair or replacement will occur. In the event that Red E Charging fails to perform the agreed upon maintenance or repair, Site Host may terminate the Agreement.

9.4. By either Party, without cause, upon sixty (60) days written notice to the other Party.

9.5. Upon destruction of the Site, either Party shall terminate the Agreement by furnishing written Notice within thirty (30) days of such destruction.

**10. EFFECT OF TERMINATION:** Upon effective termination of this Agreement, for any reason, the following shall take effect.

- 10.1. The rights and obligations of Site Host and Red E Charging granted under this Agreement shall immediately, automatically, and without consideration terminate.
- 10.2. All outstanding sums owed by either Party to the other hereunder shall become due and payable immediately within fourteen (14) days of the Termination Date.
- 10.3. Site Host shall discontinue using the name, trademarks, service marks, and copyright that may have been consented to pursuant to Section 11 of this Agreement and shall cease from holding itself out as affiliated with Red E Charging.
- 10.4. Site Host shall return to Red E Charging all assets belonging to or associated with Red E Charging, including any and all samples, documents, guidelines, materials, EV Chargers, and intellectual property, or other items which may have been supplied to it or obtained in connection with its performance of this Agreement on the Termination Date.
- 10.5. Site Host shall not be entitled to keep, reproduce, or use any Confidential Information (as defined in Section 12.2), but rather shall immediately return any such Confidential Information to Red E Charging if they so possess.

**10.6.** If Site Host elects to terminate the Agreement during the Term without cause, but after the thirty-sixth (36<sup>th</sup>) month Site Host must reimburse Red E Charging for all costs Red E Charging incurred for installing the EV Chargers on the Site, and all costs for Red E Charging to remove the EV Chargers from the Site.

**10.7.** If Site Host terminates this Agreement during the Term without cause and prior to the end of the thirty-sixth (36<sup>th</sup>) month of the Term, Site Host is responsible to reimburse Red E Charging for the full cost of any EV Rebate that Red E Charging received, all costs Red E Charging incurred for installing the EV Chargers on the Site, and any costs for Red E Charging to remove the EV Chargers from the Site.

## **11. INTELLECTUAL PROPERTY:**

### **11.1. Site Host shall not:**

- a.** Create derivative works based on any of Red E Charging's intellectual property rights, including, without limitation, the EV Chargers, patents, patent applications, patent rights, trademarks, trademark applications, trade names, service marks, service mark applications, copyrights, copyright applications, franchises, licenses, inventories, know-how, trade secrets, customer lists, proprietary processes and formulae, all source and object code, algorithms, architecture, structure, display screens, layouts, inventions, URL links, websites, development tools and all documentation and media constituting, describing or relating to the above, including, without limitation, manuals, memoranda and records (collectively the "Intellectual Property");
- b.** Use Red E Charging's Intellectual Property without Red E Charging's prior written consent;
- c.** Copy, frame or emulate any part or content of the Intellectual Property;
- d.** Reverse engineer any Intellectual Property right;
- e.** Access the Intellectual Property for any improper purpose whatsoever, including, without limitation, in order to build a competitive product or service, or copy any features, functions, interface, graphics or characteristics of Red E Charging's Intellectual Property;
- f.** Use or display any Red E Charging Intellectual Property as a part of Site Host's business or assumed name, or in connection with the business or assumed name of Site Host's affiliates;
- g.** Use or display any Red E Charging Intellectual Property in any manner that violates any law or regulation;
- h.** Use or display any Red E Charging Intellectual Property that is distorted or altered in any way (including discoloring, inverting, stretching, etc.) from the original form provided by Red E Charging;
- i.** Use or display any Red E Charging Intellectual Property in any manner that disparages Red E Charging, or in a manner that is misleading, defamatory, infringing, libelous, disparaging, obscene, or otherwise objectionable by Red E Charging;

- j. Use or display any Red E Charging Intellectual Property in a manner that implies a relationship or affiliation with Red E Charging other than as described under this Agreement.
- k. Use or display any Red E Charging Intellectual Property in a manner that implies any sponsorship or endorsement by Red E Charging
- l. Directly or indirectly, register or apply for, or cause to be registered or applied for, any Red E Charging Intellectual Property that is substantially or confusingly similar to Red E Charging Intellectual Property that is licensed to, connected with or derived from confidential, material or proprietary information imparted to or licensed to Site Host by Red E Charging;
- m. Challenge or assist others to challenge Red E Charging Intellectual Property (except to the extent such restriction is prohibited by law) or the registration thereof by Red E Charging.

11.2. All right, title and interest in the Intellectual Property shall remain, the exclusive property of Red E Charging.

## **12. NONDISCLOSURE OF CONFIDENTIAL INFORMATION:**

12.1. Site Host agrees that, except as required in its duties to Red E Charging, it will not, during its performance of this Agreement and for all times subsequent to the termination of this Agreement, directly or indirectly, use, disseminate, or disclose any "Confidential Information" (as defined below) concerning the business, technology, services provided, plans for expansion, customers, brand partners, vendors, service partners of Red E Charging and will hold any and all such Confidential Information as a fiduciary.

12.2. "Confidential Information" means any and all trade secrets (as defined by Michigan law), software (in source or object code form), reports, plans, specifications, prototypes, designs, research studies, reimbursement studies, information regarding products sold, distributed or being developed by the Red E Charging and any other non-public information regarding the Red E Charging's current and developing technology, information regarding customers, prospective customers, clients, business contacts, prospective and executed contracts and subcontracts, information of a confidential or proprietary nature received from third parties, marketing and/or sales plans, or any other plans and proposals used by the Red E Charging in the course of its business; and any proprietary information regarding the Red E Charging's present or future business plans, financial information, budgets or any intellectual property, whether any of the foregoing is embodied in hard copy, computer-readable form, electronic form or otherwise.

**13. OWNERSHIP OF EV CHARGERS:** All EV Chargers are and shall remain the personal property of Red E Charging, regardless of the manner in which they may be attached to any other property. Site Host shall not permit any levy, lien, or other legal process to be attached to the EV Chargers and shall immediately notify Red E Charging if any of the foregoing shall occur.

- 14. UTILITIES:** Red E Charging agrees to arrange and pay the charges for all utility services provided or used in or at the Site during the Term. Red E Charging shall pay directly to the utility company. In the event that utility services are disrupted and Site Host becomes aware of such disruption, Site Host shall use its best efforts to quickly notify Red E Charging as soon as possible of the disruption.
- 15. USE:** Red E Charging shall use and occupy the Site during the Term for electric vehicle charging services. All use of the Site by Red E Charging shall comply with applicable codes, laws, and ordinances.
- 16. PAYMENT FOR CHARGING SERVICES:** Red E Charging shall share revenue generated from the EV Chargers in the amount of \$0.03 per kilowatt-hour payable semi-annually. If the Term is renewed, during the first Renewal Term, Red E Charging shall pay a revenue share to Site Host in the amount of \$0.03 per kilowatt-hour, payable semi-annually. Payments shall be made via direct deposit unless otherwise agreed to by the Parties. Site Host shall have the right to audit any such reports upon demand.
- 17. SITE HOST REPRESENTATIONS AND WARRANTIES:** Site Host represents and warrants to Red E Charging that:
- 17.1.** Site Host has the appropriate legal authority to execute this Agreement, that it has all requisite Permits, and that it is not bound by any other agreement or commitment which precludes it from complying with the terms and conditions contained herein, and that it will perform under this Agreement in compliance with any applicable laws, rules, regulations, and ordinances.
- 17.2.** Site Host shall not take any action that would impair or interrupt the use of the Site or the EV Chargers.
- 17.3.** Site Host agrees to notify Red E Charging within a reasonable time if (i) it has knowledge of third-parties impairing or misusing the Site or EV Chargers, or (ii) it obtains knowledge of a needed repair to the Site or EV Chargers. If non-electric vehicle motorists repeatedly park in the Designated Parking Spaces thereby impairing use of the Designated Parking Spaces (and EV Chargers), then the Parties shall together determine and implement an appropriate and effective strategy for preventing such impairment, including, without limitation, alternative signage and painted asphalt.
- 17.4.** Site Host shall use best efforts to actively monitor the Site to ensure that use of the EV Chargers is not impaired.
- 17.5.** The Site shall be delivered free of environmental contamination for installation of the EV Chargers.
- 18. CHARGING STATION IDENTIFICATION:** Red E Charging shall identify the charging stations by striping the pavement green and adding an EV Charging image to the Designated Parking Spaces ("Station Identification Work"), as reflected in **Exhibit B**. Site Host shall be responsible for any and all costs associated with implementation the Station Identification Work. Site Host acknowledges that Red E Charging may make any material revisions or additions to the signage depicted in **Exhibit B** in its sole and absolutely discretion.
- 19. INDEMNIFICATION:** Site Host shall indemnify, defend, and hold Red E Charging, its affiliates, and any of their respective present and former directors, officers, members, shareholders, employees, representatives, and

agents, and all of its and their successors and assigns, harmless from and against any and all liabilities, losses, damages, expenses (including attorneys' fees, court costs, and other expenses of litigation), claims, penalties, or fines the Red E Charging may suffer, incur, or become liable for, based on or as a result of the following: (i) Site Host's breach of this Agreement; (ii) claims arising out of Site Host's negligent acts or omissions, recklessness, or willful misconduct; (iii) the loss of life or any injury to persons or property due to conditions existing at the Site, including Designated Parking Spaces, unless any such damages arise out of or relate to Red E Charging's willful misconduct; and (iv) environmental matters.

20. **INSURANCE:** Red E Charging shall carry commercial general liability insurance with limits of not less than the total value of the EV Chargers. A certificate evidencing such insurance may be requested by Site Host.
21. **ENVIRONMENTAL MATTERS:** Red E Charging shall have no liability for any environmental contamination unless caused by Red E Charging, its agents, employees or contractors. In the event of environmental contamination, Site Host agrees that it shall use best efforts to extinguish any and all such contamination on the Site and shall conduct examinations to confirm to that extent.
22. **ENVIRONMENTAL ATTRIBUTES:** As established in Section 13, Red E Charging is the owner of the EV Chargers provided under this Agreement and retains any and all rights to claim environmental attributes associated with the use of the EV Chargers, including, without limitation, carbon offset and other credits.
23. **ASSIGNMENT:** Site Host shall not have the right to assign its interest in this Agreement to any other party, unless the prior written consent of Red E Charging is obtained. Any assignment or attempt to assign this Agreement by Site Host shall be void *ab initio*. Nothing in this Section shall be construed to limit Red E Charging's ability to assign its rights under this Agreement to third parties. Subject to the foregoing, this Agreement shall inure to the benefit of, and be binding upon, Site Host and Red E Charging, their respective legal representatives, successors, and assigns.
24. **BINDING EFFECT:** The Parties have executed and delivered this Agreement with the intent to form a legally binding contract. The Recitals above are incorporated into and made a part of this Agreement.
25. **APPENDICES:** All exhibits attached to this Agreement and referred to herein are hereby incorporated by reference as if fully set forth herein. Any exhibit not annexed hereto may be attached after the Effective Date hereof and which shall thereafter be incorporated by reference herein.
26. **NO THIRD-PARTY RIGHTS:** The provisions of this Agreement are for the exclusive benefit of Red E Charging and Site Host only, and no other party shall have any right or claim against either Party or be entitled to enforce any provisions hereunder against any Party hereto.
27. **RELATIONSHIP OF THE PARTIES:** The relationship between Red E Charging and Site Host is that of independent contractors and not that of employer-employee or principal-agent. Red E Charging shall not be considered the agent or legal representative of Site Host, nor shall Site Host be considered the agent or legal representative of Red E Charging. Neither Site Host nor Red E Charging, nor any of their respective directors, officers, agents, or employees shall have the right, power or authority to assume or undertake any obligation whatsoever or make any representation on behalf of the other unless authorized to do so in writing.

- 28. GOVERNING LAW:** This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan, U.S.A., without regard to principles of conflicts of law.
- 29. SUBMISSION TO JURISDICTION:** Any claims, disputes, or differences arising out of this Agreement, which the Parties cannot resolve amicably shall be submitted to the exclusive jurisdiction of the Wayne County Circuit Court located within the State of Michigan. Site Host and Red E Charging consent and irrevocably agree that all actions or proceedings relating to this Agreement, or any related matter shall be litigated in that court. Site Host and Red E Charging each waive any objection which it may have based on improper venue or forum non conveniens to the conduct of any such action or proceeding in such court. Site Host and Red E charging each waiver personal service of any and all process upon it.
- 30. INJUNCTIVE RELIEF:** Site Host recognizes that the obligations under this Agreement are special, unique and of extraordinary character. Site Host acknowledges the difficulty in forecasting damages arising from the breach of any of the obligations or restrictive covenants and that the non-breaching Party may be irreparably harmed thereby. Therefore, Site Host agrees that Red E Charging shall be entitled to elect to enforce each of the obligations and restrictive covenants by means of injunctive relief or an order of specific performance and that such remedy shall be available in addition to all other remedies available at law or in equity. In such action, Red E Charging shall not be required to plead or prove irreparable harm or lack of an adequate remedy at law or post a bond or any security.
- 31. LIMITATIONS OF LIABILITY:**
- 31.1. Disclaimers of Warranties.** Except as expressly provided herein or prohibited by applicable law, Red E Charging expressly disclaims any representation or warranty made, or that may have been made in connection with this Agreement, whether express, implied, statutory, or otherwise, including without limitation warranties of merchantability, fitness for a particular purpose, title uninterrupted service, and any warranty arising out of a course of performance, dealing or trade usage.
- 31.2. Exclusion of Consequential Damages.** Except as prohibited by applicable law, in no event shall Red E Charging be liable to Site Host for any special, indirect, incidental, exemplary, consequential, or punitive damages, including without limitation for the loss of data, business interruption, or lost profits, that in any way arise out of or relate to this Agreement, regardless of the theory of relief, whether or not Red E Charging has been advised to the possibility of such damages, and regardless of any claim or finding that a remedy suffers, a failure of its essential purpose. Notwithstanding the foregoing, this Section shall not apply with respect to any damages which arise out of or relate to Red E Charging's indemnification obligations under this Agreement.
- 31.3. Limitation of Liability.** Red E Charging's aggregate liability under this Agreement shall not exceed the aggregate payment amount received by Red E Charging pursuant to Section 16 in the twelve (12) calendar months prior to the event giving rise to the liability.
- 32. ENTIRE AGREEMENT:** This Agreement: (i) constitutes the entire agreement between the parties hereto with respect to the subject matter hereof; (ii) supersedes and replaces all prior or contemporaneous communications, representations, understandings, and agreements, either oral or written, between the parties relating to the subject matter hereof; and (iii) may be amended only by written instrument as articulated in Section 33. Each Party represents and warrants that it is not relying on any statements of any other Party made at any time in entering into this Agreement.

33. **AMENDMENT:** This Agreement may not be amended or modified except by a written instrument that clearly sets forth the amendment(s) or modifications and is executed by both Site Host and Red E Charging. The amendment must explicitly state that it is an amendment or modification to this Agreement.
34. **SURVIVAL:** The provisions of Sections 9, 10, 11, 12, 13, 17, 19, 21, 24, 28, 29, 30, 31 and 36 survive termination of this Agreement regardless of the reason for termination.
35. **SEVERABILITY:** If any provision of this Agreement is held illegal, invalid, or unenforceable, all other provisions of this Agreement shall nevertheless be effective, and the illegal, invalid, or unenforceable provision shall be considered modified such that it is valid to the maximum extent permitted by law.
36. **ATTORNEYS' FEES:** If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, either between the Parties or a third-party, Red E Charging shall be entitled to collect from Site Host all costs incurred in such dispute, including reasonable attorneys' fees in addition to any other relief to which Red E Charging may be entitled.
37. **FORCE MAJEURE:** Neither of the Parties hereto shall be responsible for or liable to the other party for any damage or loss of any kind, directly or indirectly, resulting from pandemics, fire, flood, explosion, riot, rebellion, revolution, war, labor trouble (whether or not the fault of either party hereto), requirements or acts of any government or subdivision thereof, or any other similar cause beyond the reasonable control of the Parties (each a "Force Majeure Event"). The occurrence and the termination of any such event shall be promptly communicated to the other party. If after sixty (60) days, Force Majeure events cause default of obligations hereunder by a party, the non-defaulting party may immediately terminate after providing the defaulting party with notice.
38. **HEADINGS:** The section headings used in this Agreement are inserted for the purpose of convenience only and shall not be construed to limit or extend any provision hereof.
39. **WAIVER:** The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.
40. **NO PRESUMPTION AGAINST DRAFTER:** This Agreement shall be construed without regard to any presumption or rule requiring construction against the party drafting the Agreement.
41. **COUNTERPARTS; FACSIMILE OR ELECTRONIC SIGNATURES:** This Agreement may be executed in counterparts, each of which will be considered an original and all of which together will be considered one agreement. Facsimile or electronic signatures will be treated as original signatures.
42. **OTHER DOCUMENTS:** At or after the Effective Date, each of the Parties shall execute such other documents as may be necessary and desirable to the implementation and consummation of this Agreement.
43. **VOLUNTARY AND INFORMED EXECUTION:** The Parties acknowledge and agree that they have fully read, completely understand and voluntarily enter into and execute this Agreement and acknowledge they have been represented and advised by counsel or had ample opportunity to be represented by counsel during the negotiations and drafting of this Agreement.

**44. NOTICES:** All notices or demands shall be in writing and shall be deemed duly served or given only if delivered by prepaid (i) U.S. Mail, certified or registered, return receipt requested, or (ii) reputable, overnight courier service (such as UPS or FedEx) to the addresses of the respective parties as specified in this Section. Copies of such correspondence shall be delivered via email as well as a courtesy if an email address is provided, but email notification does not suffice as effective notice for the purpose of this Agreement. Site Host and Red E Charging may change their respective addresses for notices by giving notice of such new address in accordance with the provisions of this paragraphs.

**If by Site Host, to:**

**Contact Name:** Kevin Kardel  
**Position:** Chief Operating Officer  
**Address:** 2475 West Grand Blvd, Detroit, MI 48208  
**E-mail:** kevin@redecharge.com

**If by Red E Charging, to:**

**Contact Name:**  
**Position:**  
**Address:**  
**E-mail:**

*[The Remainder of this Page is Left Intentionally Blank, Signatures on Following Page]*



**IN WITNESS WHEREOF**, the Parties hereto have each caused an authorized representative to execute this Agreement as of the Effective Date first written above.

RED E CHARGING, LLC

SITE HOST

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**By: Kevin M. Kardel**

**Its: Chief Operating Officer**

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**By:**

**Its:**

## **EXHIBIT A**

### **SITE DEPICTION AND ADDRESS**

## **EXHIBIT B**

### **STATION IDENTIFICATION WORK**





West Branch Area  
Chamber of Commerce

West Branch  
District Library

West Branch City Hall

Charging stations

*ATTACHED IS A  
LIST OF THE  
BILLS TO BE APPROVED  
AT THIS COUNCIL MEETING*

BILLS	\$276,125.48
<i>BILLS AS OF 8/4/23</i>	<i>\$276,125.48</i>
<i>Additions to Bills as of</i>	<i>\$0</i>
<i>Paid but not approved</i>	<i>\$3,277.58</i>
<b>TOTAL BILLS</b>	<b>\$279,403.06</b>

**BILLS ARE AVAILABLE  
AT THE MEETING  
FOR COUNCIL'S REVIEW**

Vendor Name	Amount	Description
BADGER METER	1,081.35	CELLULAR READS JULY
CINTAS	361.08	UNIFORMS
CITY OF WEST BRANCH	773.01	WATER BILLS JULY
CONSUMERS ENERGY	24.06	ELECTRIC
CONSUMERS ENERGY	5,182.51	ELECTRIC
DTE ENERGY	292.68	GAS
EASTMAN, ROBERT	800.00	CEMETERY PLOTS BUY BACK
GREAT LAKES TECH CONSULT LLC	190.00	IT SERVICES
HOME DEPOT	53.66	VARIOUS SUPPLIES
MEDLER ELECTRIC CO	167.28	WWTP SUPPLIES
MML	1,650.00	DUES & LEGAL DEFENSE
MVW & ASSOCIATES INC	1,000.00	ASSESSOR CONTRACT AUGUST
OFFICE CENTRAL	259.97	SUPPLIES
OGEMAW COUNTY EMERGENCY DISPATCH AU	50.00	2 WARRANTS
OGEMAW COUNTY VOICE	102.00	JULY ADS
PARAGON LABORATORIES INC	299.00	WWTP SUPPLIES
PITNEY BOWES INC RENTAL ACCT	34.99	MONTHLY FEE
PREIN & NEWHOF	240.00	WWTP SERVICES
REVIZE	760.00	ANNUAL WEBSITE TECH SUPPORT
SCHMITT TIRE & GAS	70.00	REPAIRS
SELLEY'S CLEANERS	46.00	POLICE DRY CLEANING
STATE OF MICHIGAN	261,400.00	HOUGHTON JOB
TRACTOR SUPPLY CREDIT PLAN	110.25	VARIOUS SUPPLIES
UNITED STATES POSTMASTER	310.00	FIRST CLASS PRESORT FEE
WASTE MANAGEMENT INC	277.94	WWTP DUMPSTERS
WEST BRANCH ACE HARDWARE	338.33	VARIOUS SUPPLIES
WEST BRANCH AUTOMOTIVE	101.37	VARIOUS SUPPLIES
WILTSE, JASON	150.00	BOOT REIMBURSEMENT
<b>TOTAL</b>	<b>276,125.48</b>	

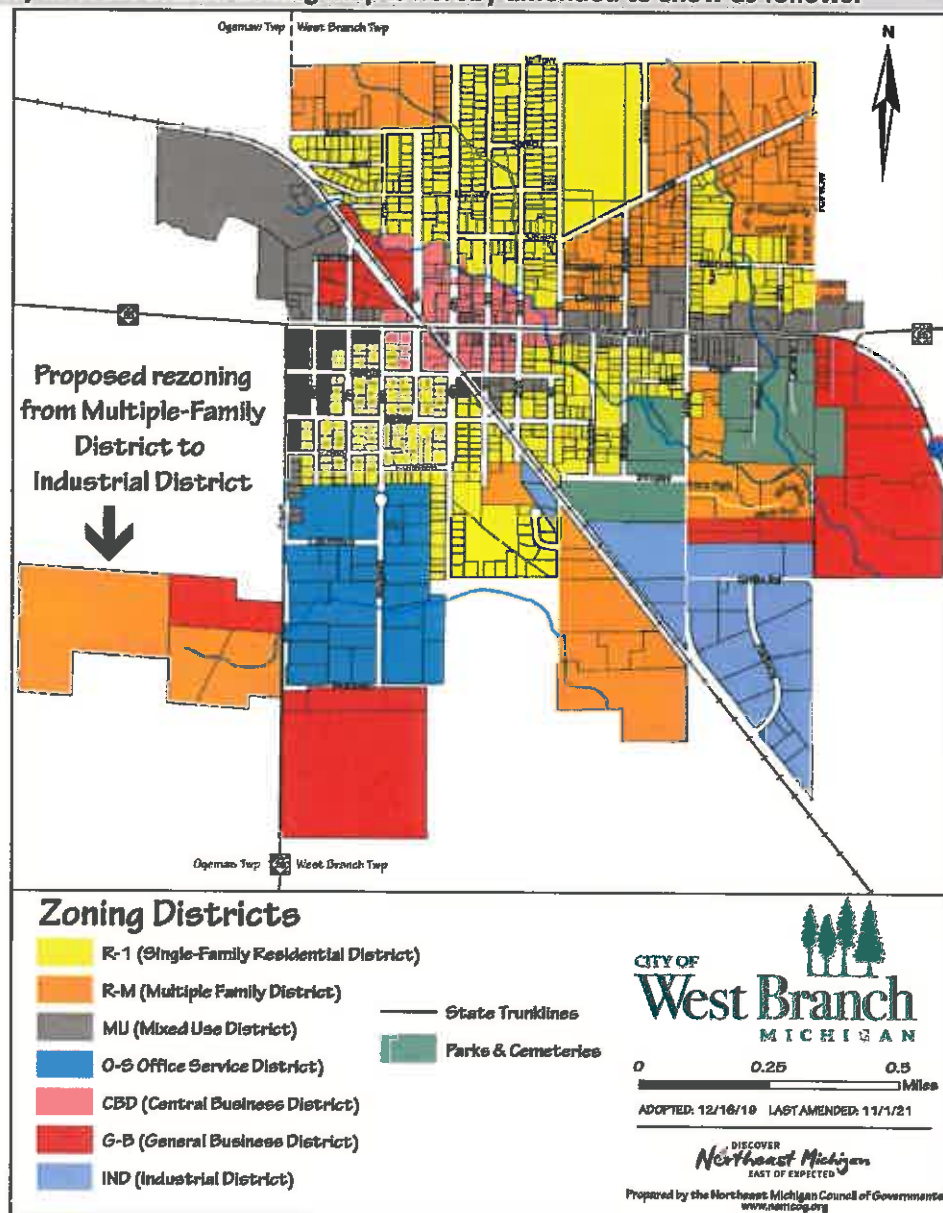
**City of West Branch  
Ordinance No. 23-01 of 2023**

**AN ORDINANCE TO AMEND THE CITY OF WEST BRANCH ZONING MAP TO REZONE PARCELS 052-625-002-01, 052-625-002-02, and 052-625-002-03 FROM MULTIPLE FAMILY DISTRICT TO INDUSTRIAL DISTRICT.**

The City of West Branch, Ogemaw County, Michigan ordains:

**Section 1: Amendments to the Zoning Ordinance.**

**That the City of West Branch Zoning Map is hereby amended to show as follows:**



## **Section 2: Severability**

If any clause, sentence, paragraph or part of this Ordinance shall for any reason be finally adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this Ordinance but shall be confined in its operation to the clause, sentence, paragraph or part thereof directly involved in the controversy in which such judgment is rendered.

## **Section 3: Saving Clause**

The Village of Hillman Zoning Ordinance, except as herein or heretofore amended, shall remain in full force and effect. The amendments provided herein shall not abrogate or affect any offense or act committed or done, or any penalty or forfeiture incurred, or any pending fee, assessments, litigation, or prosecution of any right established, occurring prior to the effective date hereof.

## **Section 4: Effective Date**

The ordinance changes shall take effect upon the expiration of seven days after the publication of the notice of adoption.

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Mayor, City of West Branch

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Clerk, City of West Branch

I, \_\_\_\_\_, Clerk for the City of West Branch, hereby certify that the foregoing is a true and correct copy of Ordinance No. \_\_\_\_ of 2023 of the City of West Branch, adopted by at a meeting of the City Council held on \_\_\_\_\_.

A copy of the complete ordinance text may be inspected or purchased at the West Branch City Hall at 121 N. Fourth St. West Branch, MI.

Adopted: \_\_\_\_\_ Published: \_\_\_\_\_ Effective: \_\_\_\_\_, subject to PA 110 of 2006 as amended.



SPECIAL MEETING OF THE WEST BRANCH PLANNING COMMISSION HELD IN THE COUNCIL CHAMBERS  
OF CITY HALL, 121 NORTH FOURTH STREET, ON TUESDAY, JULY 25, 2023.

Vice Chairperson David called the meeting to order at 6:00 p.m.

Present: Bob David, Yvonne DeRoso, Kara Fachting, Mike Jackson, and Rusty Showalter.

Absent: Josh Erickson and Cori Lucynski

Others officers in attendance: Acting secretary/zoning administrator, John Dantzer

\* \* \* \* \*

All stood for the Pledge of Allegiance.

\* \* \* \* \*

At 6:06 pm Vice Chairperson Bod David opened the public hearing to take comment on the proposed changes to the zoning ordinance which would rezone property ID #s 052-625-002-01, 052-625-002-02, 052-625-002-03 from multi-family to industrial.

C. Edward Liang asked what brought about the need for the rezoning for that area. Secretary/administrator Dantzer explained the property was originally planned for a housing development. The developer the City was working with backed out of the plans due to cost and the City has been unable to find anyone else that was interested in a large scale housing development. Since then, the City was approached by a manufacturing firm looking to expand. The City discussed the next best thing to bringing in more housing was bringing in more jobs. Mr. Liang noted he had no concerns and thought it was a great idea and was in favor of it because it would benefit the community by creating jobs for the area.

A letter was shared from William Carey of the Carey Jaskowski Law Firm on behalf of the Brook of West Branch noting their opposition to the change noting concern for the quality of life for the residents of the Brook and concern that it could negatively impact their property values.

Member Showalter noted he believed it is a great opportunity for growth in the City.

Member DeRoso noted there could be a buffer as part of the agreement with the manufacturing developer.

Member Fachting noted the increased activity could give the residents at the Brook more things to watch as they are sitting out.

No one else wished to speak on the subject.

**MOTION BY DEROSO, SECOND BY JACKSON, TO CLOSE THE PUBLIC HEARING.**

**Yes — David, DeRoso, Fachting, Jackson, Showalter**

**No – None    Absent –Erickson, Lucynski    Motion carried**

\* \* \* \* \*

**MOTION BY DAVID, SECOND BY FACHTING, TO APPROVE THE MINUTES FROM THE MEETING HELD MAY 9, 2023.**

**Yes — David, DeRoso, Fachting, Jackson, Showalter**

**No – None    Absent –Erickson, Lucynski    Motion carried**

\* \* \* \* \*

A sign variance was reviewed for Richard Spies of the West Branch Pharmacy. Mr. Spies was asking for a variance to increase the height from 6' to 8'4" and to allow a total square footage of 40 sf. Zoning Administrator/secretary Dantzer noted there is a grey area in the sign ordinance that deals with message board types signs and monument signs. The ordinance has square footage of each type of sign that is allowed in each district but doesn't state what to do if there is a combination of both types of signs. The board discussed that while the building is in the mixed use district it was in a commercial area and was located adjacent to the general commercial district. They noted they did not see any safety issues nor would it have any negative affect on neighboring properties. It was the consensus to discuss the grey area further during a future update.

**MOTION BY FACHTING, SECOND BY JACKSON, TO APPROVE THE SIGN VARIANCE AS REQUESTED AND ALLOW A TOTAL HEIGHT OF 8'4" AND 40 TOTAL SF OF SIGN.**

**Yes — David, DeRoso, Fachting, Jackson, Showalter**

**No – None    Absent –Erickson, Lucynski    Motion carried**

\* \* \* \* \*

The Commission went over the Masterplan and discussed any changes that needed to be made. Zoning Administrator Dantzer noted they are scheduled for a complete update in 2024.

**MOTION BY FACHTING, SECOND BY JACKSON, THAT THEY DID NOT HAVE ANY UPDATES TO THE MASTERPLAN FOR 2022.**

**Yes — David, DeRoso, Fachting, Jackson, Showalter**

**No – None    Absent –Erickson, Lucynski    Motion carried**

\* \* \* \* \*

Member DeRoso noted she would need to abstain from the vote on the rezoning change due to a conflict of interest.

**MOTION BY JACKSON, SECOND BY SHOWALTER, TO ALLOW MEMBER DEROSO TO ABSTAIN ON THE REZONING CHANGE.**

**Yes — David, DeRoso, Fachting, Jackson, Showalter**

**No – None**

**Absent –Erickson, Lucynski**

**Motion carried**

\* \* \* \* \*

The Commission further discussed the potential change from multi family to industrial for the property noted in the public hearing.

Vice Chairperson David noted he was in favor of the rezoning with a greenbelt barrier. Member Fachting noted her concern that using trees or other types of greenbelts don't always hold up over time. The location of the greenbelt to provide the most protection was discussed and it was determined it made the most sense to have the greenbelt on City owned property which would make keeping up on the greenbelt easier because they would not have to rely on other property owners for the maintenance of it.

The Commission went over the future plans for the manufacturing company and noted there would be a large distance between the Brook and their buildings.

The Commission recommended reaching out to the owners of the Brook to discuss the plans. Secretarty/Administrator Dantzer noted he was working on setting up a meeting.

Member Fachting noted her only concern was the trucks may use jake breaking which is noisy. It was discussed the trucks typically only run during the day and not at night.

**MOTION BY DAVID, SECOND BY JACKSON, TO RECOMMEND TO COUNCIL THE APPROVAL OF THE REZONING WITH A GREEN BELT TO BE REQUIRED BETWEEN THE INDUSTIRAL PROPERTY AND THE BROOK.**

**Yes — David, DeRoso, Fachting, Jackson, Showalter**

**No – None**

**Absent –Erickson, Lucynski**

**Motion carried**

\* \* \* \* \*

The Commission discussed the potential redevelopment of the old bicycle factory located at 201 N. Eighth St. It was noted that the developer did have an application for a Brownfield grant to help with the environmental review.

**MOTION BY FACHTING, SECOND BY JACKSON, TO OFFER THEIR SUPPORT FOR THE BROWNFIELD GRANT FOR THE OLD BICYCLE FACTORY AT 201 N. EIGHT ST.**

**Yes — David, DeRoso, Fachting, Jackson, Showalter**

**No – None**

**Absent –Erickson, Lucynski**

**Motion carried**

\* \* \* \* \*

Vice Chairperson David noted how well the City looked this summer and commended the City staff for their work.

Member DeRoso gave an update on local real estate transactions in town noting the condo off of Fariview was finished and they had an open house, the condo in W. River Park was started, and she was working on a closing for the bicycle factory. She also noted she was looking at trying to develop a county housing commission to work on housing needs.

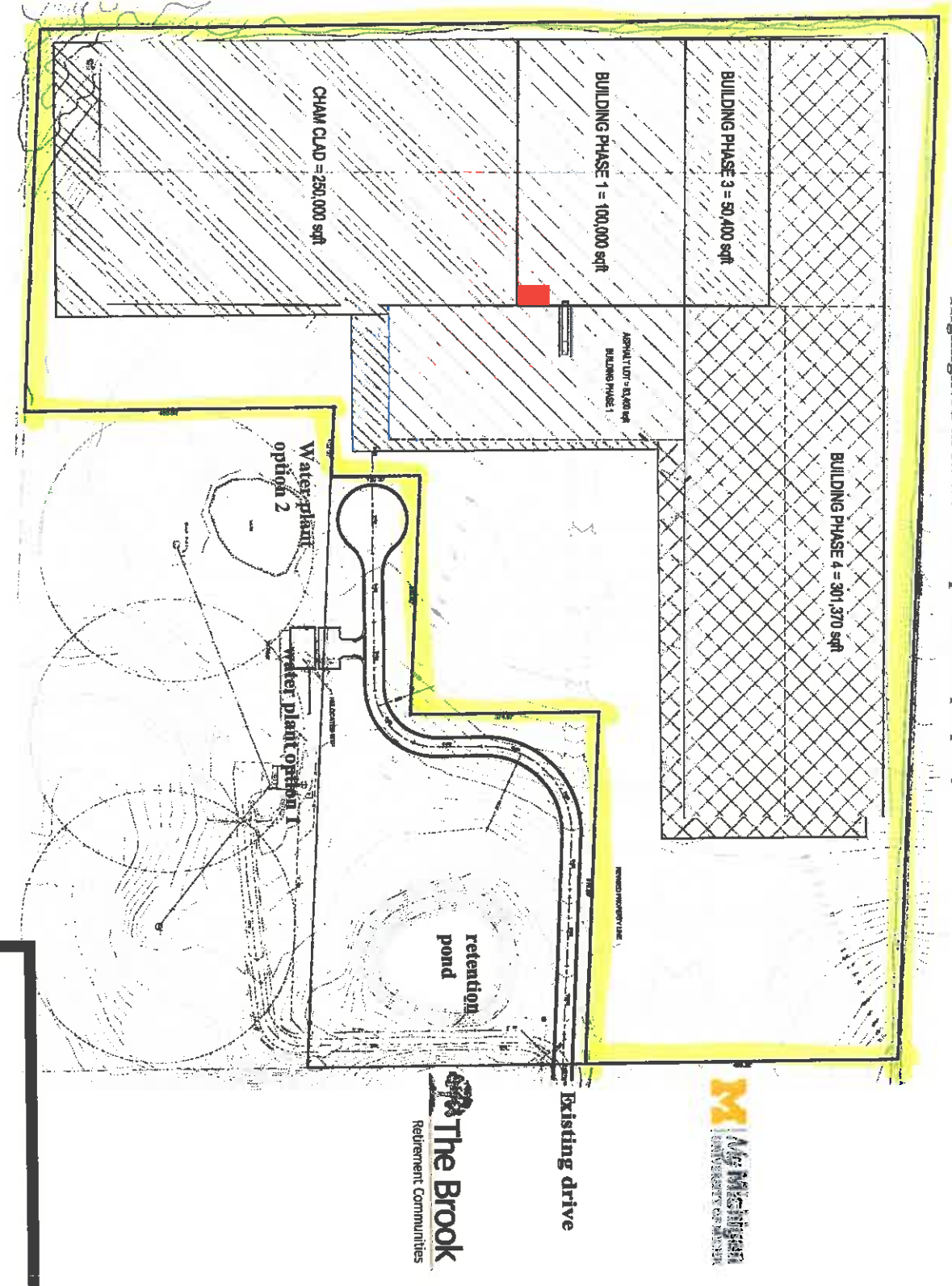
Member Fachting addressed wild turkey concerns within the City.

Secretary/Administrator Dantzer noted he did not have anything to address currently for the regular meeting on Aug 8<sup>th</sup> but did have a special use request that could be held during the time reserved for the second meeting of the month. It was the consensus of the Commission to cancel the Aug 8<sup>th</sup> meeting and only hold a meeting on Aug 22<sup>nd</sup>.

\* \* \* \* \*

Vice Chairperson David closed the meeting at 7:09 pm

Highlighted area would be purchased property





July 21, 2023

John Dantzer, City Manager  
City of West Branch  
121 North Fourth Street  
West Branch, MI 48661

Re: Rezoning of Parcel No. 052-625-002-01; 052-625-002-02 & 052-625-002-03

Dear Mr. Dantzer:

I write the instant correspondence as legal representative of The Brook of West Branch, Inc. and M-30 Limited Partnership. The Limited Partnership owns parcel 052-625-001-10. The Limited Partnership leases the building and properties located on the parcel to The Brook of West Branch. The Brook of West Branch operates an assisted and independent living facility on the parcel. The assisted and independent living facility has operated continuously at this site since May 1, 2003.

Recently, M-30 Limited Partnership received notice that the City of West Branch Planning Commission was recommending adoption of Ordinance 23-01, the purpose of which is to amend the zoning classification of the properties referenced above. From the notice it appears that the Planning Commission will be recommending to the City Council that the three parcels referenced above undergo a zoning reclassification from R-M to IND. Both The Brook of West Branch and M-30 Limited Partnership object to this recommendation. The net result of this recommendation is to encourage industrial development immediately adjacent to senior housing. If the parcels westerly and adjacent to The Brook of West Branch are developed for industrial activity, the quality of life for a substantial number of Ogemaw County senior citizens will be needlessly damaged.

The change of zoning from an R-M District to an IND District without transitional uses or a buffer is simply bad planning. We would encourage the City Council to develop a transitional zoning use over the east half of the parcels affected by the proposed rezoning classification. Separating senior housing from an industrial district is a better option for all concerned.

In addition to the disruption the residents of The Brook of West Branch will suffer (if they are made to live next door to industrial activity), the City of West Branch will also be detrimentally affected. A rezoning to industrial use will have an immediate, and negative, impact on the property values of M-30 Limited Partnership. The negative reduction in value will reduce the assessed value of the M-30 property.

**CAREY JASKOWSKI PLC**

July 21, 2023

Page 2

We urge the City Council to reject the recommendation of the Planning Commission as set forth in the notice referenced above. We would encourage the City Council to return the proposal to the Planning Commission for consideration of a buffer or transition zone between The Brook of West Branch and any property rezoned industrial.

We want the Planning Commission and the City Council to clearly understand our strong objections to the current rezoning proposal. Should the City Council not reject the recommendation of the Planning Commission as set forth in the notice, M-30 Limited Partnership and The Brook of West Branch will take all lawful and reasonable steps to protect their property interests.

Please ensure that this correspondence is submitted into the appropriate record as our objections. Please contact me with any questions you may have.

Sincerely,

**CAREY JASKOWSKI PLC**



William L. Carey  
Attorney at Law  
wcarey@carey-jaskowski.com

WLC:st  
Encls.

cc: Mayor Paul Frechette  
Clients  
File



---

## Sec. 15-311. Buffering regulations.

- (a) *Intent.* The intent and purpose of the buffer zone is to protect residential uses from the negative impacts associated with nonresidential uses where residential and nonresidential uses abut. These negative impacts include noise, debris, odors, dust, dirt, traffic, soil erosion, rainwater runoff and in some cases visible aspects of the abutting use. The buffer zone is also intended to prevent and improve blight in both residential and commercial areas by encouraging improvements to uses that abut residential districts. The objectives of this approach are:
- (1) To give the planning commission and the proponent as much opportunity to achieve the regulations by any suitable means.
  - (2) To encourage business owners to continue to invest in commercial improvements, including relocating on lots where a strict interpretation of the distance requirement cannot be met.
- (b) *When required.* Buffers are required for nonresidential property on the side which abuts residentially-zoned property or any residential use. Buffers are required even when the residentially-zoned adjacent lot is unimproved. A buffer will be required when any nonresidential use is expanded by way of an addition or demolition or a special land use approval is requested or a site plan review is requested. Otherwise, buffers are not required on commercial lots that are already developed as such. A buffer may consist of both physical distance separation and a physical sight, sound and odor separation as described in this chapter by a fence, wall or screen.
- (c) *Criteria.*
- (1) Prior to site plan review by the planning commission, the zoning administrator shall make recommendations, if requested by the developer, as to the character of the buffer that may be required at the site.
  - (2) The planning commission shall determine the character of the buffer based on the following criteria:
    - a. Traffic impact.
    - b. Increased building and parking lot coverage.
    - c. Increased outdoor sales, display and manufacturing area.
    - d. Physical characteristics of the site and surrounding area such as topography, vegetation, etc.
    - e. Visual, noise and air pollution levels.
    - f. Health, safety and welfare of the city.
  - (3) A buffer may consist of any or all of the following:
    - a. *Buffer area distance.* The distance required to be achieved between zones, in addition to the required yard on the side on which a residential district abuts a commercial or industrial districts, shall be according to the following table:

District	Distance Between Residential Zone or Use
I	45'
GC	30'
CBD	20'
O-S	20'



- 
- b. *Landscape screen, fence, or wall.* Continuous rolling screen six feet in height comprised of plant material, screen walls or fences or any combination of these elements is required pursuant to the construction standards in subsection (d) of this section. Wall heights may vary as shown in subsection (d) of this section.

(d) *Construction standards.*

- (1) *Landscape screens and fences.* If a landscape screen or fence is used for all or part of the buffer area, then:
  - a. The equivalent of two shrubs are required per 30 feet of wall or fence with at least 50 percent being 24 inches high at the time of planting and none being less than 12 inches at the time of planting.
  - b. All required plants shall be placed on the side facing the exterior of the nonresidential property.
  - c. Two evergreen trees must be planted for every 30 linear feet.
  - d. Continuous rolling screen at least six feet in height comprised of plant material, screen walls or fences, or any combination of these elements is required.

The planning commission may modify these requirements based on the site plan submitted.

- (2) *Walls.* If a wall is used for all or part of the buffer then, for those districts and uses listed below there shall be provided and maintained on those sides abutting or adjacent to a residential district an obscuring wall as required below.
  - a. Off-street parking area requirements: Four-foot, six-inch-high wall.
  - b. O-S, CBD, G-B district requirements: Four-foot, six-inch-high wall.
  - c. IND district (open storage areas, loading and unloading areas and service areas) requirements: five-foot-high to eight-foot-high wall.

(3) *General standards.*

- a. Required screening fences and walls shall be located on the lot line except where underground utilities interfere or in cases where the planning commission approves another location. The planning commission may approve screening fences and walls to extend to the front lot line. Required screening fences and walls may, upon approval of the planning commission, be located on the opposite side of an alley right-of-way from a nonresidential zone that abuts a residential zone when mutually agreeable to affected property owners. The continuity of the required fences or wall on a given block will be a major consideration of the planning commission in reviewing such request.
- b. Such walls and screening barriers shall have no openings for vehicular traffic or other purposes, except as such openings as may be approved by the zoning administrator. All walls herein required shall be constructed of materials approved by the zoning administrator to be durable, weather resistant, rust proof and easily maintained; and wood or wood products shall be specifically excluded.
- c. Masonry walls shall be erected on a concrete foundation which shall have a minimum depth of 42 inches below a grade approved by the zoning administrator and shall not be less than four inches wider than the walls to be erected.
- d. Masonry walls may be constructed with openings above 32 inches above grade, provided such openings are not larger than 64 square inches, provided that the openings shall be so spaced as to maintain the obscuring character required, and shall not reduce the minimum wall height requirement.

- 
- e. All areas outside of planting beds shall be covered with grass or other living ground cover.
  - f. Buffers are required to extend into the front yard area but shall not be closer to a road right-of-way than 15 feet. The planning commission may require the buffer to extend to the road right-of-way if it deems it necessary to accomplish the intent of this chapter.
  - g. All plantings including grass must be maintained in good healthy condition and must be replaced if they should die at any time.
  - h. Buffer areas must be designed by a person who is a licensed landscaper, certified landscape designer, engineer or architect. A drawing of all required landscaping, top and side profile, must be submitted to the planning commission for review prior to site plan approval.
  - i. The planning commission may require a performance bond, cash, irrevocable letter of credit, or other similar financial assurance satisfactory to the city. All financial deposits must be deposited with the city prior to the issuance of a building permit, in the amount of the planning commission's estimated cost of installing landscaping on a parcel and shall be held until all approved landscaping is installed. If landscaping is not installed in accordance with the approved site plan as determined solely by the city, the deposited financial assurance may be used to install the required landscaping and only any unused portion thereof will be returned.

(Ord. of 12-16-2019, § 3.20)

**PUBLIC ACT 51, SECTION 18j, MCL 247.668j**  
**Annual Certification of Employee-related**  
**Conditions**

CERTIFICATION YEAR 2023

CITY OR VILLAGE NAME City of West Branch

Beginning September 30, 2015, and annually each September 30 thereafter, certification must be made for compliance to Section 18j(1) of Public Act 51 of 1951, MCL 247.668j(1). A local road agency must certify that it has (a) developed an employee compensation plan for its employees as described OR (b) the local road agency must certify that medical benefits are offered to its employees or elected public officials in compliance with the publicly funded health insurance contribution act, 2011 PA 152, MCL 15.561 to 15.569, or, that it does not offer medical benefits to its employees or elected public officials.

☐ Compliance with (1)(a)  
I certify compliance with MCL 247.668j(1)(a).  
Our compensation plan for employees meets the minimum criteria of MCL 247.668j (a)(i - iv).

☒ Compliance with (1)(b)  
I certify compliance with MCL 247.668j(1)(b), and as such, offer one of the following:

☐ I certify that medical benefits are offered to employees or elected public officials in compliance with the publically funded health insurance contribution act, 2011 PA 152; or

☒ I certify that the local road agency has exempted itself from the publically funded health insurance contribution act, 2011 PA 152; or

☐ I certify that medical benefits are not offered to employees or elected public officials.

☐ Non-compliance with (1)(a) or (1)(b)  
I certify that we are not in compliance with MCL 247.668j(1).  
I understand that failure to comply with certification of (a) or (b) of MCL 247.668j(1) may result in the withholding of all or part of the distributions made to this local road agency from the Michigan Transportation Fund.

This form must be signed by the Street Administrator and the Treasurer or Financial Director.

SIGNATURE		SIGNATURE	
PRINTED NAME John Dantzer		PRINTED NAME Michelle Frechette	
TITLE City Manager	DATE 08/08/23	TITLE City Treasurer	DATE 08/08/23

**Due Each September 30**

Return the completed form to:

Michigan Department of Transportation, Financial Operations Division, P.O. Box 30050, Lansing, MI 48909, OR

E-mail to: [MDOT-Outreach@Michigan.gov](mailto:MDOT-Outreach@Michigan.gov), OR

Fax to: (517) 335-1828



121 N. 4<sup>th</sup> St., West Branch, MI 48661 Telephone: 989-345-0500  
Email: cityhall@westbranch.com

Name of Donor (person or group making the donation to the "Donee" aka "The City of West Branch":  
Darlene Weinrich Phone # 989-345-0615

Email Address: \_\_\_\_\_

Address 413 S. Fairview Rd

Type of Donation Would like to donate (tree, bench, money, etc.)

in memory of my husband,  
\* See back Jerry Weinrich

IMPORTANT NOTICE

By signing below, I agree that the item(s) listed above are to be donated to the City of West Branch for public use. I further agree and understand that:

- By accepting the donation, the City is making NO promise to me or my organization whatsoever, other than that the item donated will be used for a public purpose. That means that though the City may choose to repair/maintain the item donated, there is no requirement or agreement that that will be done—instead, decisions on whether donated items will be repaired/maintained will be left to the sole discretion of City administration, and will typically depend on financial and other considerations.
- The Donor also understands that once the donation is made, the gift is irrevocable, and that they have given up all property rights and interest in the donated piece of property.
- The Donor also understands that in cases such as donated benches and/or trees, etc., that placement of such items will be up to the sole discretion of the City DPW Superintendent, and that it is the responsibility of the Donor to contact the DPW Superintendents to make arrangements for such placement, etc.

for  
Irons  
Park  
fishing  
structures  
?  
for  
fishing  
\*

By signing below, I indicate that I have read and understand this document and agree to all of its terms:

Darlene Weinrich 8-3-23

Donor Signature

Date

Staff Action: Date \_\_\_\_\_ Donation Accepted \_\_\_\_\_ Denied \_\_\_\_\_

Please list additional relevant information on next page and/or attach additional pages, though such additional pages and/or attachments are NOT a part of the agreement signed above.

\* I have observed a deck and some small "stands" on the edge of the river for fishing (youth program)?

I would like to donate, if possible, for any improvements to these structures or possibly more to be placed along the edge of the river.

## 2023 Officer and Employee Delegate Certification Form

MERS Annual Business Meeting | September 2023

Please print clearly • Scan and attach this file when you register online • Retain a copy for your records

**IMPORTANT:** If you are not electing/appointing delegates to vote during the MERS Annual Business Meeting, please **DO NOT** submit this form. A **delegate** is **NOT** confirmed to have voting rights until this form has been uploaded with their online registration.

The voting delegate representative must be a MERS member, defined as an **active employee on payroll** who is enrolled in either a MERS Defined Benefit Plan, Defined Contribution Plan or Hybrid Plan.

### 1. Officer (and alternate) delegate information

The officer delegate (or alternate) shall be a MERS member who holds a department head position or above, exercises management responsibilities, and is directly responsible to the legislative, executive, or judicial branch of government.

Officer Delegate name Ken Walters

Officer Alternate name

Officer delegate and alternate listed above were appointed to serve during the 2023 MERS Annual Business Meeting by official action of the governing body (or chief judge for a participating court) on \_\_\_\_\_, 2023.

### 2. Employee (and alternate) delegate information

The employee delegate (or alternate) shall be an employee member who is not responsible for management decisions, receives direction from management and, in general, is not directly responsible to the legislative, executive, or judicial branch of government.

Employee Delegate name Michelle Frechette

Employee Alternate name Lori Ann Clover

Employee delegate and alternate listed above were elected to serve during the 2023 MERS Annual Business Meeting by secret ballot election conducted by an authorized officer on \_\_\_\_\_, 2023.

### 3. Certification

**NOTE:** Certification should be signed by a member of the governing body or chief administrative officer, or the chief judge for a participating court. An electronic signature is permissible.

I certify that the officer delegate and alternate selections are true and correct, and the secret ballot election results for the employee delegate and alternate are true and correct.

Employer/municipality name*	Municipality number*	Email address	
<u>City of West Branch</u>		<u>citymanager@westbranch.com</u>	
Employer address	Employer city	Employer state	Employer zip code
<u>121 W. Fourth St</u>	<u>West Branch</u>	<u>Mi</u>	<u>48661</u>
Printed name	Title of authorized authority*		
<u>John Dantzer</u>	<u>City Manager</u>		
Authorized signature*	Date		

\* Required field

**2**  
ways to  
complete

1. You may complete it electronically (an electronic authorized signature is permissible), then save it and upload it when registering your delegate(s) – OR –
2. You may print it off and complete it, then scan and upload it to your computer for uploading when you register your delegate(s).



# Retirement Conference Delegate FAQs

## Delegate Selection

### **Where do the rules about delegate eligibility and selection come from?**

The rules about who can be an officer or employee delegate are found in the Municipal Employees' Retirement Act (MERA) of 1984, specifically MCL 38.1545. These rules are also found in Section 78 of the MERS Plan Document.

The act reads: "The governing body of each participating municipality shall certify the names of two delegates to the annual meeting. One delegate shall be a member who is an officer of the participating municipality, selected by the governing body of the participating municipality. The other delegate shall be a member who is not an officer of the participating municipality, elected by the member employees of the participating municipality. The election shall be by secret ballot and shall be conducted by an officer of the participating municipality. The election shall be conducted in a manner that affords each member employee an opportunity to vote."

### **Who can be designated as delegates to the MERS Annual Business Meeting?**

Municipalities and courts that participate in the MERS Defined Benefit, Defined Contribution or Hybrid plans can each name two delegates. One of these two delegates must be a participant who is an officer of the municipality/court (Officer Delegate). The other of these two delegates must be a participant who is not an officer of the municipality or court, and who was elected by the participating employees of the municipality (Employee Delegate).

### **Are any employees excluded?**

Yes. A retiree who is rehired in any capacity by the same participating municipality or court from which he or she retired is excluded from eligibility to serve as a delegate.

### **Who can be an Officer Delegate?**

An Officer Delegate must hold a department head position or above, exercise management responsibilities, and report directly to the legislative and/or executive branch of government.

### **Who can be an Employee Delegate?**

An Employee Delegate must **not** be responsible for management decisions, must receive direction from management, and must **not** report directly to the legislative and/or executive branch of government.

### **How are Officer Delegates selected?**

The governing body/chief judge of each participating municipality/court selects an Officer Delegate.



**How are Employee Delegates selected?**

An officer of the participating municipality or court conducts a secret ballot vote of participant employees so that each participant employee (whether employee or management) has the opportunity to vote for an Employee Delegate.

**What if the employer fails to hold this vote or breaks one of the rules listed above?**

The participating municipality or court will not have valid delegates eligible to vote at the MERS Annual Business Meeting.

**How does MERS learn who the delegates are?**

The municipality or court "certifies" (identifies in writing) to MERS on the enclosed MERS Delegate Form who its two delegates are for the Retirement Conference prior to the meeting. This form is uploaded at time of registration to the Retirement Conference site.

**How does MERS know who is who at the Retirement Conference?**

For an in-person conference, MERS pulls the attendee information from the Retirement Conference registration site which houses the submitted delegate form and creates name tags that identify each attendee's municipality or court and their attendance status (e.g., officer delegate/employee delegate/non-voting member/guest). For a MERS virtual conference, attendees register for online sessions via the virtual presentation tool and attendee reports are pulled from that site.

**Can a municipality or court name alternates in case the delegate cannot attend?**

A municipality or court is permitted to include an alternate for each delegate by certifying the alternate on the same MERS Delegate Form. The alternate Delegate may only serve if the primary Delegate cannot attend. The alternate employee delegate must be elected in the same way as described above. MERA (the law establishing MERS) does not require or provide for alternate delegates to be named; MERS permits this as a service to its customers.

## **Delegate Certification**

**Who from the municipality or court is able to certify the delegate form?**

The form is certified by a member of the governing body or chief administrative officer (ex: Board Chair, Mayor, Council President, City Manager, Executive Director) or the chief judge of a participating court.

**Does the municipality or court need Board or Council approval before certifying the delegate form?**

Yes, the governing body must certify the selection of delegates on the MERS Delegate Form.



REGULAR MEETING OF THE WEST BRANCH CITY COUNCIL HELD IN PERSON AND VIA VIDEO CONFERENCE  
IN THE COUNCIL CHAMBERS OF CITY HALL, 121 NORTH FOURTH STREET ON MONDAY, JULY 31, 2023.

Mayor Frechette called the meeting to order at 6:00 p.m.

Present: City Mayor Paul Frechette, Council Members Carol Adair, Joanne Bennett, Mike Jackson, Ellen Pugh, and Cathy Zimmerman.

Absent: Member Rusty Showalter

Other officers present: City Manager John Dantzer, City Clerk Lori Ann Clover, Police Chief Ken Walters, and DPW Supervisor Mike Killackey.

All stood for the Pledge of Allegiance.

\* \* \* \* \*

**MOTION BY FRECHETTE, SECOND BY JACKSON, TO EXCUSE MEMBER SHOWALTER FROM THE MEETING.**

**Yes — Adair, Bennett, Frechette, Jackson, Pugh, Zimmerman**

**No – None**

**Absent – Showalter**

**Motion carried**

\* \* \* \* \*

**MOTION BY BENNETT, SECOND BY PUGH, TO APPROVE PAYMENT OF THE BILLS IN THE AMOUNT OF \$168,245.37.**

**Yes — Adair, Bennett, Frechette, Jackson, Pugh, Zimmerman**

**No – None**

**Absent – Showalter**

**Motion carried**

\* \* \* \* \*

The Red E Charging Host Agreement was discussed briefly, however, the representative was unable to attend the meeting so the item was tabled until the next meeting. The Company was recommended by Consumers. They discussed putting two charging stations in the parking lot off Third St.

\* \* \* \* \*

Manager Dantzer explained that the Planning Commission held a public hearing on July 25<sup>th</sup>. There was a member from the public that appeared in person and they were in favor of the rezoning. There was also a letter enclosed in the Council Packet of a company that was opposed to the rezoning. Manager Dantzer will be meeting with them on Wednesday at 2:00 pm if anyone would like to attend. This Ordinance also includes some kind of buffer between the parcels in question and the next property owner.

**MOTION BY ADAIR, SECOND BY JACKSON, TO INTRODUCE ORDINANCE 23-01 REZONING PARCELS 052-625-002-01, 052-625-002-02, AND 052-625-002-03 FROM MULTIPLE FAMILY DISTRICT TO INDUSTRIAL DISTRICT.**

**Yes — Adair, Bennett, Frechette, Jackson, Pugh, Zimmerman**

**No – None**

**Absent – Showalter**

**Motion carried**

\* \* \* \* \*

**MOTION BY FRECHETTE, SECOND BY BENNETT TO PLACE A HALF PAGE ADD IN THE VOICE IN PARTICIPATION OF THE CHAMBER'S 100 YEAR ANNIVERSARY CELEBRATION.**

**Yes — Adair, Bennett, Frechette, Jackson, Pugh, Zimmerman**

**No – None**

**Absent – Showalter**

**Motion carried**

\* \* \* \* \*

Manager Dantzer explained that they will need additional routes to what has already been approved and they need permission from the City.

**MOTION BY JACKSON, SECOND BY FRECHETTE TO APPROVE RESOLUTION 23-22 MDOT DETOUR ROUTES.**

**Yes — Adair, Bennett, Frechette, Jackson, Pugh**

**No – Zimmerman**

**Absent – Showalter**

**Motion carried**

#### **RESOLUTION 23-22**

WHEREAS, the City of West Branch and the Michigan Department of Transportation have partnered for a Houghton Ave. reconstruction project (JN 201118), and

WHEREAS, this work will require detours on various streets within the City during MDOT's reconstruction of Houghton Ave, and

NOW, THEREFORE IT BE RESOLVED, the City of West Branch hereby approves the use of the following city streets for detours for various stages of the M-55 (Houghton Avenue) reconstruction project (JN 201118) in addition to streets approved under resolution 22-12 passed on May 2, 2022.

Fairview Road between M-55(Houghton Avenue) and State Street  
State Street between Fairview Road and First Street  
Sidney Street from First Street to Third Street  
Third Street from Sidney Street to M-55 (Houghton Avenue)  
Second Street from Sidney Street to M-55 (Houghton Avenue)  
Valley Street from State Street to M-55 (Houghton Avenue)  
Burgess Street from State Street to M-55 (Houghton Avenue)  
Seventh Street from M-55 (Houghton Avenue) to Wright Street

\* \* \* \* \*

Manager Dantzer explained that discussion had taken place about using the ARPA funds for infrastructure projects or at the M-30 property which will no longer happen.

**MOTION BY PUGH, SECOND BY BENNETT TO APPROVE THE USE OF ARPA FUNDS IN THE AMOUNT OF \$215,431.88 ALONG WITH THE \$45,968.12 FROM DDA TO COVER THE DEPOSIT OF \$261,400.00 FOR THE MDOT PROJECT.**

**Yes — Adair, Bennett, Frechette, Jackson, Pugh, Zimmerman**

**No – None**

**Absent – Showalter**

**Motion carried**

\* \* \* \* \*

This change comes as a result of the MML liability review recommendation. Manager Dantzer consulted with Attn. Meihn and he recommended making the change also.

**MOTION BY ADAIR, SECOND BY JACKSON TO APPROVE CHANGES TO THE CITY’S PERSONNEL POLICY TO INCLUDE THE TERM “GENDER IDENTITY” FOR THE PROTECTED CLASSES.**

**Yes — Adair, Bennett, Frechette, Jackson, Pugh, Zimmerman**

**No – None**

**Absent – Showalter**

**Motion carried**

\* \* \* \* \*

**MOTION BY FRECHETTE, SECOND BY BENNETT TO POSTPONE THE MML VOTING DELEGATE DECISION TO THE NEXT MEETING.**

**Yes — Adair, Bennett, Frechette, Jackson, Pugh, Zimmerman**

**No – None**

**Absent – Showalter**

**Motion carried**

\* \* \* \* \*

Barton Beverage is applying for grant funding through EGLE, the Brownfield Site Assessment Application, to help pay for the initial environmental reviews for the old bicycle factory. The City is considered a co-applicant because we have the Brownfield Authority. We would also be entitled to an administration fee for being the grant administrator.

**MOTION BY BENNETT, SECOND BY ADAIR TO APPROVE THE BROWNFIELD SITE ASSESSMENT APPLICATION AND AUTHORIZE MANAGER DANTZER TO SIGN ON BEHALF OF THE CITY.**

**Yes — Adair, Bennett, Frechette, Jackson, Pugh, Zimmerman**

**No – None**

**Absent – Showalter**

**Motion carried**

\* \* \* \* \*

**MOTION BY JACKSON, SECOND BY BENNETT TO APPROVE THE MINUTES AND SUMMARY FROM THE REGULAR MEETING HELD JULY 10, 2023.**

**Yes — Adair, Bennett, Frechette, Jackson, Pugh, Zimmerman**

**No – None**

**Absent – Showalter**

**Motion carried**

\* \* \* \* \*

**MOTION BY ADAIR, SECOND BY PUGH TO RECEIVE AND FILE THE TREASURER’S REPORT AND INVESTMENT SUMMARY; WEST BRANCH POLICE DEPARTMENT JUNE 2023 REPORT; MINUTES FROM THE BOARD OF REVIEW MEETING HELD JULY 17, 2023; MINUTES FROM THE LEPC AND LPT MEETING HELD JULY 17, 2023; MINUTES FROM THE AIRPORT BOARD MEETING HELD JUNE 21, 2023; MINUTES FROM THE OGE MAW COUNTY LAND BANK AUTHORITY MEETING HELD APRIL 12, 2023; MINUTES FROM THE WEST BRANCH PARK AND RECREATION COMMITTEE SPECIAL MEETING HELD JANUARY 30, 2023; MINUTES FROM THE PLANNING COMMISSION MEETING HELD MAY 9, 2023; AND MINUTES FROM THE DDA REGULAR AND SPECIAL MEETING HELD JUNE 27, 2023.**

**Yes — Adair, Bennett, Frechette, Jackson, Pugh, Zimmerman**

**No – None**

**Absent – Showalter**

**Motion carried**

\* \* \* \* \*

Mayor Frechette reported that the Jeep Jam went over very well with participants of which there were 140, and spectators. This brought on the discussion of how MDOT’s Project would hinder events next summer. Manager Dantzer stated that at the last meeting an MDOT representative said they would have through Second St finished by the end of July.

Member Jackson reported that West Branch would be very busy with tourists for the next few weeks with the Bud Bash in Houghton Lake, and the Victorian Art Fair and Ogemaw County Fair coming up in West Branch.

Member Bennett stated that the Mud Boggs in Claire County were exciting to see.

Member Zimmerman clarified that in regards to the changes in the Personnel Policy approved earlier, she did not think that would ever be a problem here as no department head would be discriminating.

Member Pugh reminded Council that this Thursday all profits from the Dairy Queen would be going to the Luke Kartes scholarship funds which awards scholarships to OHHS seniors.

Member Adair asked why Care Link was back on the market as Council had approved a Marihuana Retail License for that address. Manager Dantzer thought they were still working on the purchase.

Mayor Frechette announced that the Ogemaw Commissioners would be holding their first OPIAT Settlement meeting Thursday at 5:00 pm. This Committee is made up of several representatives from community service agencies including law enforcement, attorneys, hospital and other medical personnel, etc.

Manager Dantzer asked if Council Members would be interested in ordering shirts for the MML Conference this year. These are available in short sleeve and long sleeve pullovers in a few different colors. If anyone is interested please reach out to Lori Ann. DTE will be starting their portion of the reconstruction on Houghton Ave this week. The new light poles will be set up for flags and banners just like the ones downtown. They will take approximately three to six months to come in.

Mayor Frechette reported that he has been getting excellent feed back from city residents on seeing the DPW workers out and about and all the extra work they are doing. DPW Supervisor Killackey stated that the extra summer help would only be working for the next couple of weeks as school and college will be starting.

Mayor Frechette adjourned the meeting at 6:41 pm.

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Paul Frechette, Mayor

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Lori Ann Clover, Clerk

**SUMMARY OF THE REGULAR MEETING OF THE WEST BRANCH CITY COUNCIL HELD IN PERSON AND VIA VIDEO CONFERENCE IN THE COUNCIL CHAMBERS OF CITY HALL, 121 NORTH FOURTH STREET ON MONDAY, JULY 31, 2023.**

Mayor Frechette called the meeting to order at 6:00 p.m.

Present: Mayor Frechette, Council Members Adair, Bennett, Jackson, Pugh, and Zimmerman.

Absent: Showalter

Other officers present: Manager Dantzer, Clerk Clover, DPW Supervisor Killackey, and Chief Walters.

All stood for the Pledge of Allegiance.

Council excused Member Showalter from the meeting.

Council approved bills in the amount of \$168,245.37.

Council introduced Ordinance 23-01 Rezoning parcels 052-625-002-01, 02, and 03 from multiple family to industrial.

Council approved a half page add in the Voice in participation of the Chamber's 100 Year Anniversary Celebration.

Council approved Resolution 23-23 MDOT Detour Routes.

Council approved the use of ARPA Funds in addition to the DDA contribution to cover the deposit for the MDOT Project.

Council approved changes to the Personnel Policy to include "gender identity" for the protected classes.

Council postponed the MML Voting Delegate decision.

Council approved the Brownfield Site Assessment Application and authorized Manager Dantzer to sign.

Council approved the minutes and summary from the regular meeting held July 10, 2023.

Minutes from the board of review meeting held July 17, 2023; minutes from the LEPC and LPT meeting held July 17, 2023; minutes from the airport board meeting held June 21, 2023; minutes from the Ogemaw County Land Bank Authority meeting held April 12, 2023; minutes from the West Branch Park and Recreation Committee special meeting held January 30, 2023; minutes from the Planning Commission meeting held May 9, 2023; and minutes from the DDA regular and special meeting held June 27, 2023 as well as the treasurer's report and investment summary and West Branch Police Department June 2023 report were received and filed.

Mayor Frechette, Council Members Jackson, Bennett, Zimmerman, Pugh, and Adair, and Manager Dantzer gave report.

Mayor Frechette adjourned the meeting at 6:41 pm.

Bank Code	Beginning Balance	Total	Total	Ending
Fund Description	08/01/2023	Debits	Credits	08/31/2023
<b>GEN1 GEN1 - GENERAL CHECKING</b>				
101 GENERAL FUND	808,743.23	8,789.48	31,382.59	786,150.12
150 CEMETERY PERPETUAL CARE	41,285.19	0.00	0.00	41,285.19
209 CEMETERY FUND	(6,127.14)	450.00	371.61	(6,048.75)
237 MARIJUANA FUND	4,500.00	0.00	0.00	4,500.00
243 BROWNFIELD REDEVELOPMENT AUTHORITY FU	6,986.20	0.00	0.00	6,986.20
248 DDA OPERATING FUND	368,684.94	0.00	3,176.25	365,508.69
251 INDUSTRIAL PARK FUND	2,190.91	0.00	115.36	2,075.55
276 HOUSING RESOURCE FUND	187,008.98	0.00	0.00	187,008.98
318 SEWER DEBT FUND	85,144.58	2,017.36	0.00	87,161.94
319 WATER DEBT FUND	84,743.18	412.47	0.00	85,155.65
572 PLANT REPLACEMENT FUND (R&I)	2.70	0.00	0.00	2.70
590 SEWER FUND	364,848.02	1,984.16	12,456.71	354,375.47
591 WATER FUND	935,014.76	2,750.16	5,028.28	932,736.64
592 WATER REPLACEMENT FUND	538,170.27	0.00	25,719.25	512,451.02
593 SEWER COLLECTION	284,210.24	498.74	1,813.80	282,895.18
561 EQUIPMENT FUND	(29,501.33)	833.33	3,727.53	(32,395.53)
704 PAYROLL CLEARING	24,496.84	0.00	0.00	24,496.84
705 IRONS PARK ENTERTAINMENT FUND	13,782.37	0.00	0.00	13,782.37
707 YOUTH SAFETY PROGRAM	115.00	0.00	0.00	115.00
GEN1 - GENERAL CHECKING	3,714,298.94	17,735.70	83,791.38	3,648,243.26
<b>M/LST MAJOR/ LOCAL STREETS</b>				
202 MAJOR STREET FUND	725,574.34	0.00	15,031.23	710,543.11
203 LOCAL STREET FUND	456,200.86	5,616.96	524.99	461,292.83
MAJOR/ LOCAL STREETS	1,181,775.20	5,616.96	15,556.22	1,171,835.94
<b>PAY PAYROLL</b>				
704 PAYROLL CLEARING	38,674.88	0.00	0.00	38,674.88
PAYROLL	38,674.88	0.00	0.00	38,674.88
<b>CHEM SAVINGS</b>				
101 GENERAL FUND	459,854.81	0.00	0.00	459,854.81
150 CEMETERY PERPETUAL CARE	1,685.62	0.00	0.00	1,685.62
251 INDUSTRIAL PARK FUND	245.65	0.00	0.00	245.65
571 COLLECTION REPLACEMENT FUND	0.65	0.00	0.00	0.65
591 WATER FUND	26,431.83	0.00	0.00	26,431.83
592 WATER REPLACEMENT FUND	19,792.25	0.00	0.00	19,792.25
593 SEWER COLLECTION	3,185.76	0.00	0.00	3,185.76
561 EQUIPMENT FUND	103,589.11	0.00	0.00	103,589.11
SAVINGS	614,785.68	0.00	0.00	614,785.68
<b>TAX TAXES</b>				
701 TAX AGENCY	298,406.27	28,560.81	290,112.10	36,854.98
TAXES	298,406.27	28,560.81	290,112.10	36,854.98
TOTAL - ALL FUNDS	5,847,940.97	51,913.47	389,459.70	5,510,394.74

CASH SUMMARY BY ACCOUNT FOR WEST BRANCH  
FROM 08/01/2023 TO 08/31/2023  
FUND: ALL FUNDS  
INVESTMENT ACCOUNTS

Fund Account	Description	Beginning Balance 08/01/2023	Total Debits	Total Credits	Ending Balance 08/31/2023
Fund 101	GENERAL FUND				
004.300	CERTIFICATE OF DEPOSIT A	100,000.00	0.00	0.00	100,000.00
004.400	CERTIFICATE OF DEPOSIT B	150,000.00	0.00	0.00	150,000.00
	GENERAL FUND	250,000.00	0.00	0.00	250,000.00
Fund 150	CEMETERY PERPETUAL CARE				
004.300	CERTIFICATE OF DEPOSIT C	112,499.74	0.00	0.00	112,499.74
004.400	CERTIFICATE OF DEPOSIT D	113,500.06	0.00	0.00	113,500.06
	CEMETERY PERPETUAL CARE	225,999.80	0.00	0.00	225,999.80
Fund 251	INDUSTRIAL PARK FUND				
004.300	CERTIFICATE OF DEPOSIT A	100,000.00	0.00	0.00	100,000.00
004.400	CERTIFICATE OF DEPOSIT B	25,000.00	0.00	0.00	25,000.00
	INDUSTRIAL PARK FUND	125,000.00	0.00	0.00	125,000.00
Fund 661	EQUIPMENT FUND				
004.300	CERTIFICATE OF DEPOSIT A	150,000.00	0.00	0.00	150,000.00
004.400	CERTIFICATE OF DEPOSIT B	100,000.00	0.00	0.00	100,000.00
	EQUIPMENT FUND	250,000.00	0.00	0.00	250,000.00
	TOTAL - ALL FUNDS	850,999.80	0.00	0.00	850,999.80





### MPPS Policy Brief

## Michigan local government leaders' views on their employee unions: few changes in relationships or impacts as Right-to-Work comes and goes

By Debra Horner and Thomas Ivacko

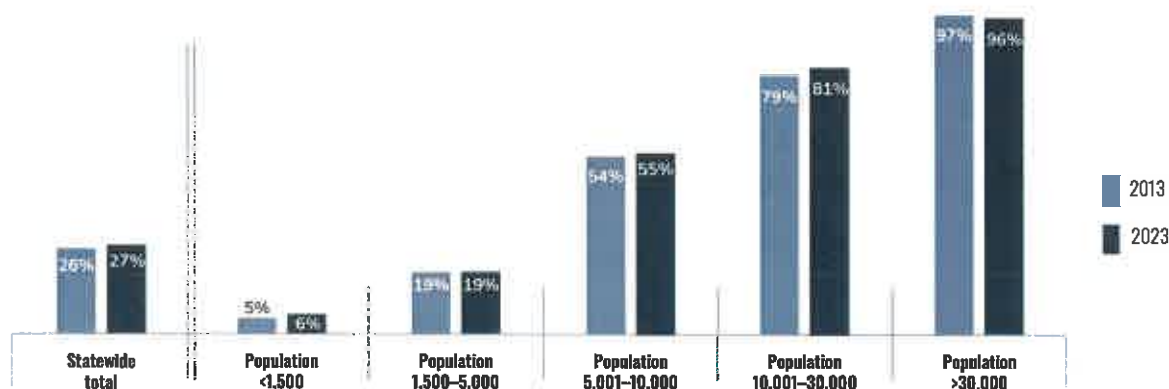
In the early 2010s the Michigan Public Policy Survey (MPPS) asked Michigan local government leaders about their local governments' employee unions.<sup>1</sup> The questions were repeated in 2023, focusing on the impacts of Right-to-Work laws, the governments' relationships with their employee unions, and whether their unions are assets or liabilities to local government performance and fiscal health.

In 2023, just over one-quarter (27%) of Michigan's 1,856 general purpose local governments (counties, cities, townships, and villages) report having employee labor unions, essentially unchanged over the past decade (see *Figure 1*). This percentage is essentially unchanged since the last time the question was asked on the MPPS in 2013, a decade which saw the passage of "Right-to-Work" legislation in 2012 and subsequent federal court cases that prohibit requiring public sector employees' financial support of a union.<sup>2</sup>

Reports on local government union presence have remained remarkably consistent among jurisdictions of all sizes over this period. Just 6% of the state's smallest jurisdictions (those with fewer than 1,500 residents) currently report having one or more employee unions, compared with 5% in 2013. Meanwhile, 96% of Michigan's largest jurisdictions (those with more than 30,000 residents) report having a union in 2023, compared with 97% a decade ago.

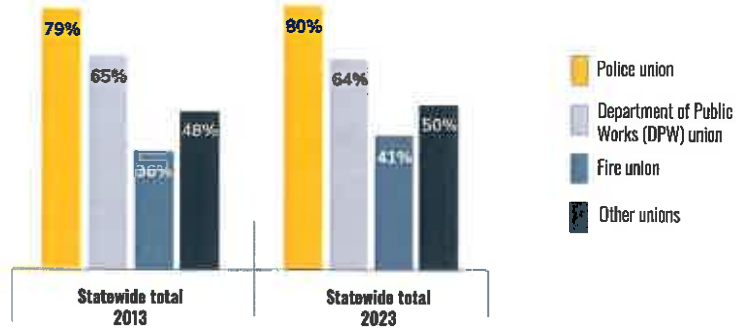
**Figure 1**

Percentage of jurisdictions reporting they have one or more employee labor unions, by population size, 2013 vs. 2023



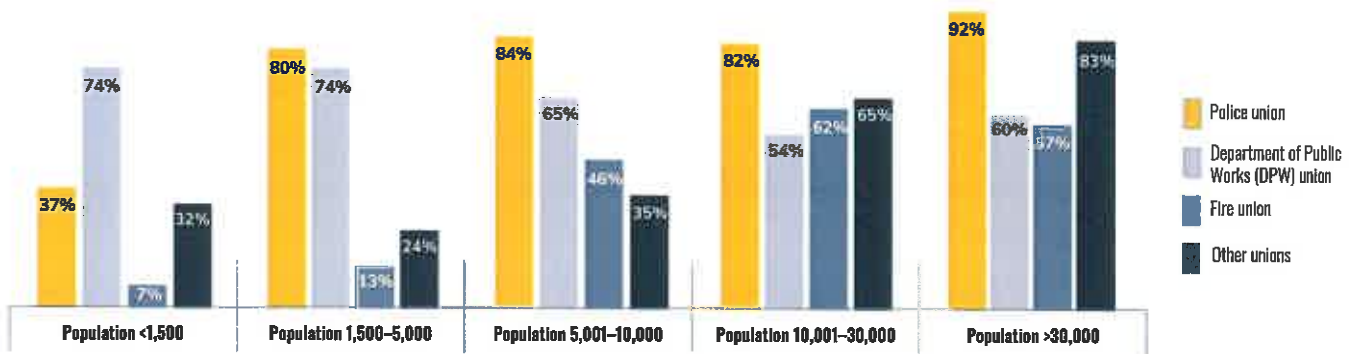
Police unions are the most common type of local government union in Michigan, reported by 80% of jurisdictions in 2023 that have a public sector union of any kind (see *Figure 2a*). Next most common (64%) are unions for Department of Public Works (DPW) employees, followed by fire department unions (41%). Meanwhile, miscellaneous other types of unions are reported by 50% of local governments overall. These percentages are also essentially unchanged since 2013, with some growth only in the percentage with fire department unions, at 41% in 2023 compared to 36% in 2013.

**Figure 2a**  
Percentage of jurisdictions with specific types of employee unions (among jurisdictions with any employee labor unions), 2013 vs. 2023



*Figure 2b* shows how common these different types of unions are when broken down by jurisdiction size. For example, in 2023, police officers' unions are found in 92% of the state's largest jurisdictions that have any kind of union, compared to just 37% of the smallest jurisdictions with unions. By comparison, DPW unions are much more common in smaller jurisdictions than in larger ones, where workers may be more likely to be broken out into various other kinds of unions.

**Figure 2b**  
Percentage of jurisdictions with specific types of employee unions (among jurisdictions with any employee labor unions), 2023, by population size





## Local leaders' 2013 predictions about limited impacts of Right-to-Work laws generally match their retrospective evaluations in 2023

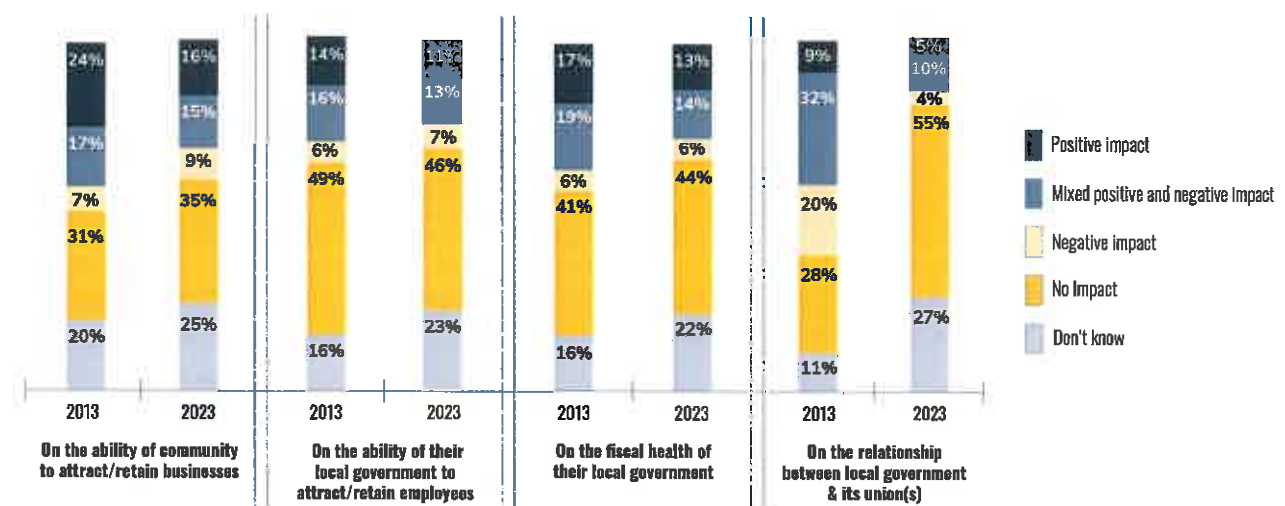
With the repeal of Right-to-Work related to private sector unions in Michigan in March 2023,<sup>3</sup> a decade after its implementation, questions about the laws' impacts on Michigan's economy and workforce have been widely debated.<sup>4</sup> In 2013, Michigan local government leaders anticipated limited local impacts by Right-to-Work; now in 2023 their assessments are generally in line with those predictions. As shown in *Figure 3*, when asked in 2023 for their assessments of the impacts of the law, local government leaders across the state most commonly say Right-to-Work has had no impact on issues such as community business growth (35%), the ability of the local government to attract or retain public sector employees (46%), or the fiscal health of their local government (44%). These percentages are similar to the predictions made by local officials in 2013 about the potential local impacts of Right-to-Work.

The biggest change over the past decade in attitudes about Right-to-Work's impact regards the relationship between the official's local government and its unions. In 2013, 28% statewide predicted the laws would have no impact on local government-union relations, while in 2023 a majority (55%) report there has been no impact. On the other hand, the percentage of officials saying they didn't know how to evaluate this issue more than doubled, from 11% to 27%, perhaps reflecting the complications introduced with the federal court rulings that essentially retain the effect of Right-to-Work status for public sector employees today.

While 10–15% of local leaders in 2023 report Right-to-Work's impact has been mixed across all of these areas, more officials report positive than negative effects on community business growth, public sector employee hiring and retention, and the fiscal health of their local government. Relatively few believe it has had either a positive (5%) or negative (4%) effect on their local government's relationship with its unions.

**Figure 3**

Local officials' predictions regarding the impact of Right-to-Work laws and subsequent assessments of its impacts (among those jurisdictions with employee labor unions), 2013 vs. 2023

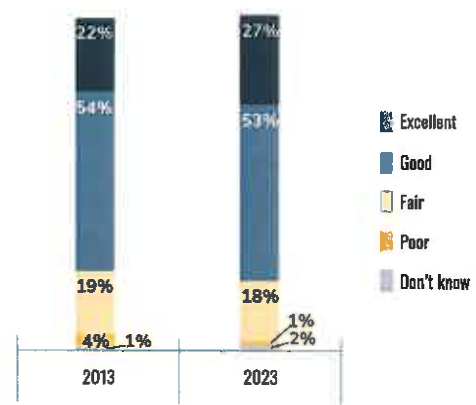


## Local leaders remain generally positive about the relationships between their local governments and employee unions

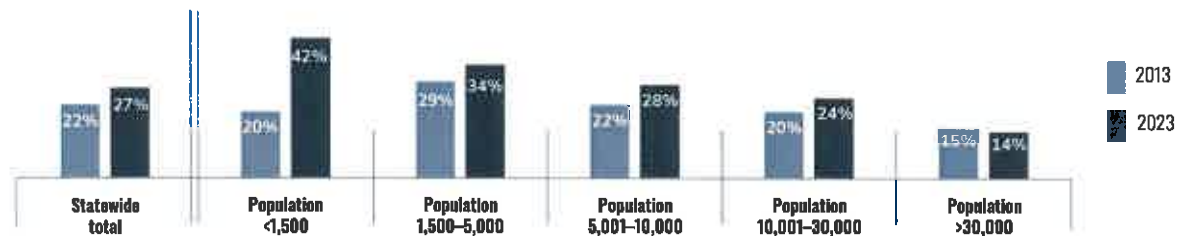
Indeed, a large majority of Michigan's local leaders currently express positive views about the relationship between their jurisdiction's government and its employee labor unions. Statewide, 80% of local leaders from jurisdictions with unions believe their relationship is either "excellent" or "good" (see *Figure 4*). These positive assessments again are similar to views of the relationship between local governments and their unions a decade ago, with a slight increase among those who say relationships are excellent (27% in 2023 compared with 22% in 2013).

Assessments of excellent relations with employee unions have increased in jurisdictions of all sizes except the largest places, where those assessments have simply held steady (see *Figure 5*). Officials from the state's smaller jurisdictions with unionized employees are much more likely to report excellent relations with their unions today (42%), compared with their views in 2013 (20%).

**Figure 4**  
Local officials' assessments of the relationship between their jurisdiction's administration and unions (among those jurisdictions with employee labor unions), 2013 vs. 2023



**Figure 5**  
Percentage of local officials who say the relationship between their jurisdictions' administrations and unions is "excellent" (among those jurisdictions with employee labor unions), 2013 vs. 2023, by population size





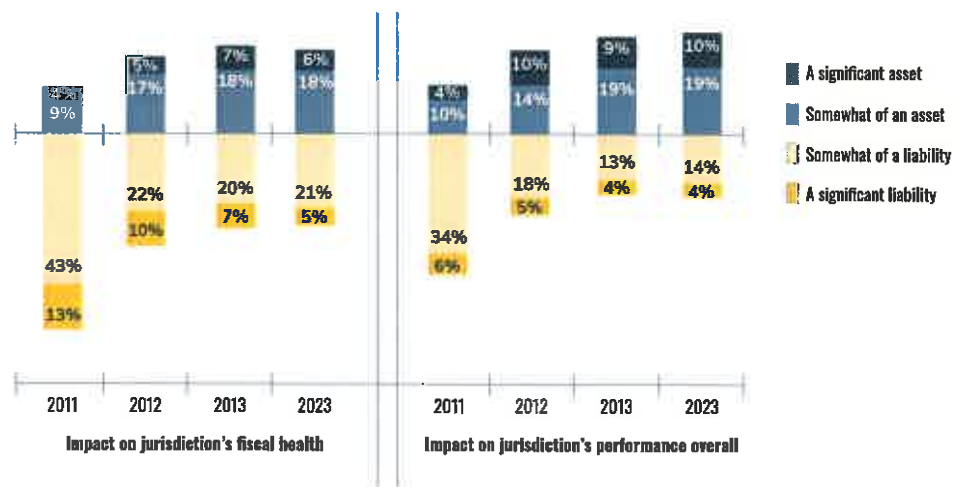
## Local leaders continue to be split on whether employee unions are more of an asset than a liability for fiscal health, while more likely to see them as assets to government performance

In 2023, around a quarter (24%) of Michigan local officials say their employee unions have been assets to their jurisdictions' fiscal health over the past 12 months, remarkably consistent with the 25% who said the same in 2013 (see *Figure 6*). Meanwhile, 26% of officials feel their employee unions have been a liability to the jurisdiction's fiscal health in 2023, essentially equal to the 27% who said the same in 2013.

Local leaders also continue to express more positive than negative assessments when it comes to the unions' effects on the jurisdiction's overall performance. In 2023, 29% of local leaders say their employees' unions have been assets to overall jurisdiction performance over the past year, while 18% say they have been liabilities. Again, this is equivalent to the percentages that said the same in 2013. Attitudes toward local government unions' impacts on fiscal health and performance were significantly lower in 2011, with improvements in 2012 and 2013 possibly due both to the gradual easing of challenges imposed by the Great Recession as well as to a series of union concessions in contract negotiations during that time period.<sup>5</sup>

**Figure 6**

Local officials' assessments of the impacts of unions on fiscal health and jurisdiction performance (among local jurisdictions with employee labor unions), 2011-2023



Note: responses for "neither asset nor liability" and "don't know" not shown

## Notes:

1. Ivacko, T. & Horner, D. (2013, October). Michigan local governments continue seeking, and receiving, union concessions. Center for Local, State, and Urban Policy at the Gerald R. Ford School of Public Policy, University of Michigan. Retrieved from: <https://closup.umich.edu/michigan-public-policy-survey/28/michigan-local-governments-continue-seeking-and-receiving-union-concessions>
2. Wilkinson, M. (2023, March 9). What is Michigan Right-to-Work: How law impacted wages, jobs, unions. *Bridge Magazine*. Retrieved from: <https://www.bridgemi.com/michigan-government/what-michigan-right-work-how-law-impacted-wages-jobs-unions>
3. Hendrickson, C., (2023, March 24). Whitmer repeals right-to-work, reinstates prevailing wage in Michigan. *The Detroit Free Press*. Retrieved from: <https://www.freep.com/story/news/politics/2023/03/24/michigan-right-to-work-prevailing-wage-law-gretchen-whitmer/70042340007/>
4. Beggin, R. & Grzelewski, J. (2022, December 8). Right-to-work: A decade later, law's impact on Michigan remains murky. *The Detroit News*. Retrieved from: <https://www.detroitnews.com/story/business/2022/12/29/right-to-work-a-decade-later-laws-impact-on-michigan-remains-murky/69745714007/>
5. Ivacko, T. & Horner, D. (2013, October).

## Survey Background and Methodology

The data presented in this policy brief come from the Spring 2023 Michigan Public Policy Survey (MPPS). The MPPS is an ongoing census survey of all 1,856 general purpose local governments in Michigan conducted since 2009 by the Center for Local, State, and Urban Policy (CLOSUP) at the University of Michigan's Gerald R. Ford School of Public Policy.

The program is a partnership with the Michigan Municipal League, Michigan Townships Association, and Michigan Association of Counties. The Spring 2023 wave was conducted February 6 – April 17, 2023. Respondents include county administrators, board chairs, and clerks; city mayors, managers, and clerks; village presidents, managers, and clerks; and township supervisors, managers, and clerks from 1,307 jurisdictions across the state, resulting in a 70% response rate by unit. More information is available at <https://closup.umich.edu/michigan-public-policy-survey/mpps-2023-spring>

See CLOSUP's website for the full question text on the survey questionnaire. Detailed tables of the data in this report, including breakdowns by various jurisdiction characteristics such as community population size, region, and jurisdiction type, will be available soon at <http://mpps.umich.edu>

*The survey responses presented here are those of local Michigan officials, while further analysis represents the views of the authors. Neither necessarily reflects the views of the University of Michigan, or of other partners in the MPPS.*



### Regents of the University of Michigan

**Jordan B. Acker**  
Huntington Woods

**Michael J. Behm**  
Grand Blanc

**Mark J. Bernstein**  
Ann Arbor

**Paul W. Brown**  
Ann Arbor

**Sarah Hubbard**  
Okemos

**Denise Ilitch**  
Bingham Farms

**Ron Weiser**  
Ann Arbor

**Katherine E. White**  
Ann Arbor

**Santa J. Ono**  
(ex officio)



**CITY OF WEST BRANCH  
CITY COUNCIL MEETING  
AUGUST 7, 2023**

PLEASE TAKE NOTICE that the West Branch City Council meeting scheduled for Monday, August 7, 2023 at 6:00 pm will be conducted both in person and virtually (online and/or by phone), due to health concerns surrounding Coronavirus/COVID-19 pandemic.

Public comment will be handled by the "Raise Hand" method as instructed below within Participant Controls.

To comply with the Americans with Disabilities Act (ADA), any citizen requesting accommodation to attend this meeting, and/or to obtain this notice in alternate formats, please contact the City Clerk by phone at (989) 345-0500 from 8:00 am-4:30 pm Monday- Friday or by email at [clerk@westbranch.com](mailto:clerk@westbranch.com), at least five business days prior to the meeting.

### **Zoom Instructions for Participants**

**To join the conference by phone:**

1. On your phone, dial the teleconferencing number provided below.
2. Enter the **Meeting ID number** (also provided below) when prompted using your touch-tone (DTMF) keypad.

**Before a videoconference:**

1. You will need a computer, tablet, or smartphone with speaker or headphones. You will have the opportunity to check your audio immediately upon joining a meeting.
2. Details, phone numbers, and links to videoconference or conference call is provided below. The details include a link to "**Join via computer**" as well as phone numbers for a conference call option. It will also include the 9-digit Meeting ID.

**To join the videoconference:**

2. At the start time of your meeting, enter the link to **join via computer**. You may be instructed to download the Zoom application.
3. You have an opportunity to test your audio at this point by clicking on "Test Computer Audio." Once you are satisfied that your audio works, click on "Join audio by computer."

You may also join a meeting without the link by going to [join.zoom.us](https://join.zoom.us) on any browser and entering the Meeting ID provided below.

If you are having trouble hearing the meeting, you can join via telephone while remaining on the video conference:

1. On your phone, dial the teleconferencing number provided below.
2. Enter the **Meeting ID number** (also provided below) when prompted using your touch-tone (DTMF) keypad.
3. If you have already joined the meeting via computer, you will have the option to enter your 2-digit participant ID to be associated with your computer.



**Participant controls in the lower left corner of the Zoom screen:**



Using the icons in the lower left corner of the Zoom screen, you can:

- Mute/Unmute your microphone (far left)
- Turn on/off camera ("Start/Stop Video")
- Invite other participants
- View Participant list – opens a pop-out screen that includes a "Raise Hand" icon that you may use to raise a virtual hand during Call to the Public
- Change your screen name that is seen in the participant list and video window
- Share your screen

Somewhere (usually upper right corner on your computer screen) on your Zoom screen you will also see a choice to toggle between "speaker" and "gallery" view. "Speaker view" shows the active speaker. "Gallery view" tiles all of the meeting participants.

**Meeting Information:**

Topic: West Branch City Council Zoom Meeting

Join Zoom Meeting

<https://us02web.zoom.us/j/88224449063?pwd=eWJONCt5enJxL3dsR244UH02eWVnQT09>

Meeting ID: 882 2444 9063

Passcode: 365063

**One tap mobile**

+13052241968,,88224449063#,,, \*365063# US

+13092053325,,88224449063#,,, \*365063# US

**Dial by your location**

- +1 305 224 1968 US
- +1 309 205 3325 US
- +1 312 626 6799 US (Chicago)
- +1 646 558 8656 US (New York)
- +1 646 931 3860 US
- +1 301 715 8592 US (Washington DC)
- +1 669 900 9128 US (San Jose)
- +1 689 278 1000 US
- +1 719 359 4580 US
- +1 253 205 0468 US
- +1 253 215 8782 US (Tacoma)
- +1 346 248 7799 US (Houston)
- +1 360 209 5623 US
- +1 386 347 5053 US
- +1 507 473 4847 US
- +1 564 217 2000 US
- +1 669 444 9171 US

Meeting ID: 882 2444 9063

Passcode: 365063

Find your local number: <https://us02web.zoom.us/j/88224449063>