

**PORTLAND TOWNSHIP**  
**CODE OF ORDINANCES**

**Updated December 31, 2022**

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# PORTLAND TOWNSHIP CODE OF ORDINANCES

## PART 1 GENERAL PROVISIONS

### Article 1: Construction of the Code

#### Sec. 1.1.01: How Code designated and cited

The Ordinances embraced in the following parts and sections shall constitute and be designated the “Portland Township Code of Ordinances” and may be so cited.

**State Law Reference- Authority to codify ordinances, MCL 41.186.**

#### Sec. 1.1.02: Definitions and rules of construction

It is the legislative intent of the township board, in adopting this code, that all provisions and sections of this Code be liberally construed to protect and preserve the peace, health, safety and welfare of the inhabitants of the township. In the construction of this Code and any amendment thereto, the following rules shall be observed, unless the context clearly indicates otherwise:

**Code.** The term “this Code” or “Code” or shall mean the Portland Township Code of Ordinances, as designated in Sec. 1.1.01.

**Computation of time.** The time within which an act is to be done, as provided in this Code or in any order issued pursuant to this Code, when expressed in days, shall be computed by excluding the first day and including the last, except that if the last day is Sunday or a legal holiday, it shall be excluded; and when the time is expressed in hours, the whole of Sunday or a legal holiday from midnight to midnight, shall be excluded.

**Construction.** The particular shall control the general.

**County.** The term “the county” or “this county” shall mean the County of Ionia in the State of Michigan.

**Gender.** A word importing the masculine gender only shall extend and be applied to females and to firms, partnerships, and corporations as well as to males. A word importing the feminine gender only shall extend and be applied to males and to firms, partnerships, and corporations as well as to females.

**Legal holiday.** Legal holidays includes all those holidays observed by the Township, County, State and or United States.

**Month.** The word “month” shall be construed to mean a calendar month.

**Number.** Unless the context clearly indicates to the contrary, words used in the singular number shall include the plural number and words used in the plural number shall include the singular number.

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

**Officer, department, commission, etc.** Whenever any officer is referred to by title only, such reference shall be construed as if followed by the words “of Portland Township, Michigan.” Whenever, by the provisions of this Code, any officer of the township is assigned any duty or empowered to perform any act or duty, reference to such officer shall mean and include such officer or his deputy or authorized subordinate.

**Or, and.** “Or” may be read “and” and “and” may be read “or” if the sense requires it.

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

**Person.** The word “person” includes a firm, joint venture, partnership, corporation, trust, club association or organization of natural persons, or any similar entity, or a combination of and of them, as well as a natural person, either incorporated or unincorporated, howsoever operating or named, and whether acting by themselves or by a servant, agent or fiduciary and includes all legal representatives, heirs, successors and assigns thereof.

**Planning Commission.** The term “Planning Commission” shall mean the Portland Township Planning Commission.

**Preceding, following.** The words “preceding” and “following” when used by way of reference to any title, part, article or section of any ordinance of the township, shall be construed to mean the title, part or section next preceding or next following that in which such reference is made, unless some other title, part, article, or section is expressly designated in such reference.

**Property.** The word “property” shall include real and personal property.

**Public Place.** The term “public place” shall mean any place to or upon which the public resorts or travels, whether such place is owned or controlled by the Township or any

agency of the state or is a place to or upon which the public resorts or travels by custom or by invitation ,express or implied. The term “public place “ shall include any street, alley , park , public building, and place of business or assembly open to or frequented by the public, and any other place which is open to the public view, or to which the public has access.

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

**Shall, may.** The word “shall” shall be mandatory. The word “may” shall be permissive.

**Sidewalk.** The word “sidewalk” shall mean that portion of a street, between the curblines or lateral lines and the right-of-way lines, which is intended for the use of pedestrians.

**Signature, subscription.** The words “signature” and “subscription” include a mark when a person cannot write.

**State.** The term “the state” or “this state” shall be construed to mean the State of Michigan.

**Street, highway and alley.** The word “street” or “highway” shall mean the entire width, subject to an easement for public right-of-way or owned in fee by the city, county or state, of every way or place, of whatever nature, whenever any part thereof is open to the use of the public, as a matter of right, for purposes of public travel. The word “alley” shall mean any such way or place providing a secondary means of ingress and egress from a property.

**Tense.** Words used in the present or past tense include the future as well as the present and past.

**Township.** The word “Township” shall mean Portland Township, Ionia County Michigan.

**Township Board.** The term “Township Board” shall mean the Board of Trustees of Portland Township, Ionia County Michigan.

**Week.** The word “week” shall be construed to mean seven days.

**Words to be given their ordinary meaning.** Unless otherwise defined by this Code, words and phrases are to be given their ordinary meaning.

**Written, in writing.** The term “written” or “in writing” may include any form of reproduction or expression of language.

**Year.** The word “year” shall be construed to mean a calendar year.

**Sec. 1.1.03: Section catchlines and other headings**

The catchlines of the several sections of this Code printed in boldface type are intended as mere catchwords to indicate the contents of the sections and shall not be deemed or taken to be the titles of such sections, nor as any part of the sections, nor, unless expressly so provided, shall they be so deemed when any of such sections, including the catchlines, are amended or reenacted. No provision of the Code shall be held invalid by reason of deficiency in any such catch line or in any heading or title to any part, article, or division.

**Sec. 1.1.04: Certain ordinances not affected by this Code**

Nothing in this Code or the ordinance adopting this Code shall affect any ordinance when not inconsistent with this Code and all such ordinances are hereby recognized as continuing in full force and effect to the same extent as if set out at length in this Code. Such ordinances are on file in the Township clerk’s office.

**Sec. 1.1.05: Code does not affect prior offenses, rights, etc**

- (a) Nothing in this Code or the ordinance adopting this Code shall affect any offense or act committed or done, or any penalty or forfeiture incurred, or any contract or right established or accruing before the effective date of this code.
- (b) The adoption of this Code shall not be interpreted as authorizing or permitting any use or the continuance of any use of a structure or premises in violation of any ordinance of the Township in effect on the date of adoption of this Code.

**Sec. 1.1.06: Severability**

Should any provision or section of this Code be held unconstitutional or invalid, such holding shall not be construed as affecting the validity of any of the remaining provisions or sections, it being the intent of the township board that this Code shall stand, notwithstanding the invalidity of any provision or section thereof. The provisions of this section shall apply to the amendment of any section of this Code, whether or not the wording of this section is set forth in the amendatory ordinance.

## **Article 2: Amendments**

### **Sec. 1.2.01: Amendments to Code**

- (a) Amendments to any of the provisions of this Code shall be made by amending such provisions by specific reference to the section number of this Code in the following language: “That section \_\_\_\_\_ of the Portland Township Code of Ordinances, is hereby amended to read as follows: ...” The new provisions shall then be set out in full as desired.
- (b) If a new section not heretofore existing in the Code is to be added, the following language shall be used: “That the Portland Township Code of Ordinances is hereby amended by adding a section, to be numbered \_\_\_\_\_, which said section reads as follows:...” The new section shall then be set out in full as desired.
- (c) As soon as reasonably possible subsequent to adoption of an amendment pursuant to this section the Clerk shall amend the Amendment Comparative Table in the Appendix to this Code, App-1, and the State Law Comparative Table, App 2, if necessary.

### **Sec. 1.2.02: Supplementation of Code**

- (a) By contract or by Township personnel, supplements to this Code shall be prepared and printed whenever authorized or directed by the township board. A supplement to the Code shall include all substantive permanent and general parts of ordinances adopted during the period covered by the supplement and all changes made thereby in the Code. The pages of a supplement shall be so numbered that they will fit properly into the Code and will, where necessary, replace pages which have become obsolete or partially obsolete, and the new pages shall be so prepared that, when they have been inserted, the Code will be current through the date of the adoption of the latest ordinance included in the supplement.
- (b) In preparing a supplement to this Code, all portions of the Code which have been repealed shall be excluded from the Code by the commission thereof from reprinted pages.
- (c) When preparing a supplement to this Code, the codifier (meaning the person, agency or organization authorized to prepare the supplement) may make formal, nonsubstantive changes in ordinances and parts of ordinances included in the supplement, insofar as it is necessary to do so to embody them into a unified code. For example, the codifier may:
  - (1) Organize the ordinance material into appropriate subdivisions;
  - (2) Provide appropriate catchlines, headings, and titles for sections and other subdivisions of the Code printed in the supplement, and make changes in such catchlines, headings and titles;

- (3) Assign appropriate numbers to sections and other subdivisions to be inserted in the Code and, where necessary to accommodate new material, change existing section or other subdivision numbers;
- (4) Change the words “this ordinance” or words of the same meaning to “this part,” “this article,” “this division,” “this section,” etc., as the case may be, or to “sections \_\_\_\_\_ to \_\_\_\_\_” (inserting section numbers to indicate the sections of the Code which embody the substantive sections of the ordinance incorporated into the Code); and
- (5) Make other nonsubstantive changes necessary to preserve the original meaning of the ordinance sections inserted into the Code; but in no case shall the codifier make any change in the meaning or effect of ordinance material included in the supplement or already embodied in the Code.

### **Article 3: Penalties**

#### **Sec. 1.3.01: General penalty for violation of Code; continuing violations**

- (a) Unless another penalty is expressly provided by this Code for any particular provision or section, every person convicted of a violation of any provision of this Code shall be punished by a fine of not more than \$500.00, or by imprisonment for not more than 90 days, or by both such fine and imprisonment. Each act of violation and every day upon which any such violation shall occur shall constitute a separate offense.
- (b) In addition to the penalties provided in subsection (a), the township may enjoin or abate any violation of this Code by appropriate action or revoke any license pursuant to this Code.

**State Law Reference- Sanctions for violating ordinances, MCL 41.183**



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## **PART 4 - SUBDIVISION OF LAND**

### **Article 1: General**

#### **Sec. 4.1.01: Legal Basis; Purpose**

The provisions of this Part are enacted pursuant to Public Act 288 of 1967, as amended, the Subdivision Control Act of 1967. ("Act 288") This Part is intended to provide for the proper and orderly subdivision of land in the Township, to provide for adequate and essential public improvements and utilities, and to promote the public health, safety and welfare.

#### **Sec. 4.1.02: Fee Schedule**

Any person filing a plat pursuant hereto shall pay fees established from time to time by resolution of the Township Board, and until the fee is paid the plat shall not be considered or reviewed.

#### **Sec. 4.1.03: Definitions**

All terms herein shall have the meanings and definitions given by Act 288.

#### **Sec. 4.1.04: Scope and Conflict**

The provisions of this Part apply to all platted subdivisions of land within the Township. Where this Part provides a standard stricter than that required by Act 288, this Part shall control.

#### **Sec. 4.1.05: Certification of Plats and Drawings**

All plats and drawings submitted hereunder shall be prepared and sealed by a registered surveyor and/or engineer, as applicable.

## **Article 2: Preliminary Plat Application and Review Procedures**

### **Sec. 4.2.01: Submission of Plats**

The Proprietor of any land proposed to be subdivided shall submit 10 copies of a preliminary plat, together with supplementary documents, containing the information required by Act 288 and this Part, to the Township Zoning Administrator who shall forward the plans to the Commission for its next meeting.

### **Sec. 4.2.02: Preliminary Plat; Required Information**

The following information shall be submitted for tentative approval of the preliminary plat. Maps shall be at a scale of not more than 100 feet to one inch.

- (1) The name or title of the proposed subdivision.
- (2) Legal description of the proposed plat.
- (3) The name, address and telephone number of the Proprietor, developer, record owner and subdivider.
- (4) A statement of the intended use for the proposed plat and showing land intended to be dedicated or set aside for public use or for the common use of property owners in the subdivision, and stating the location, dimensions and purpose of such land.
- (5) A small scale vicinity map showing location of project within the Township, and the name and location of abutting subdivisions.
- (6) The location, dimensions and approximate grade and radius of proposed and existing streets, alleys and highways included in the plat.
- (7) The location of all existing features affecting the subdivision, such as railroads, buildings, trees, ditches, watercourses and other physical features.
- (8) Location and size of all existing and proposed public water, sanitary sewer and storm drainage pipes, equipment, fire hydrants, catch basins and other facilities.
- (9) Location of utility and drainage easements.
- (10) If the proposed plat is contiguous to other lands owned by the applicant, a map showing the street layout and access for subsequent development.
- (11) If the proposed subdivision is not to be served by public sewer and water systems, a written statement from the Ionia County Health Department regarding the suitability of the soils for on-site septic systems.
- (12) Location and dimension of lots, radii of all curves and approximate location of all setback lines. Lot width shall be shown for each lot, at the required setback line.
- (13) When any part of the subdivision lies within or abuts a floodplain area:
  - a. The floodplain, as established by the state department of natural resources, shall be shown within a contour line.
  - b. The contour line shall intersect the sidelines of the lots.
  - c. The sidelines shall be dimensioned to the traverse line from the street line and the established floodplain (contour) line.

- d. The floodplain area shall be clearly labeled on the plat with the words "floodplain area."
- (14) Two copies of any proposed covenants and deed restrictions to be imposed upon the use of property in the subdivision or a statement in writing that none are proposed. If common areas are to be reserved for use by the residents of the subdivision, copies of an agreement indicating how the area will be maintained shall be submitted.
- (15) Property lines, dimensions, and building setback distances and all structures, lot lines and wetlands within one hundred (100) feet of the site.
- (16) Existing and proposed topographic elevations at two (2) foot intervals on the site and to a distance of fifty (50) feet outside the boundary lines of the site.
- (17) Direction of storm water drainage and how storm water runoff will be handled as well as a statement describing where storm water will be ultimately discharged such as a creek, stream, lake or wetland.
- (18) Location of abutting streets, rights-of-way, service drives, curb cuts, and access easements serving the site, as well as driveways opposite the site and driveways within one hundred (100) feet on either side of the site. Also driveway width, curb radii and design of proposed deceleration lanes.
- (19) Street lighting, if any, including the type of fixture as well as method of shielding illumination from adjacent properties and roadways.
- (20) Location and type of significant existing vegetation, water courses, and water bodies including county drains and manmade surface drainage ways, floodplains, and wetlands.
- (21) Location of existing and proposed slopes which are twelve (12) percent or greater, which may be altered by the development or the construction of buildings within the development.
- (22) Zoning and use of the proposed subdivision and on adjacent properties.

**Sec. 4.2.03: Preliminary Plat; Tentative Approval Procedure**

- (1) Preliminary plats shall be referred to the Planning Commission, which shall consider the preliminary plat and make a recommendation to the Township Board. Such consideration and recommendation shall take place following a public hearing by the Planning Commission on the preliminary plat. For such hearing, at least ten days notice shall be given by ordinary mail, sent to the owners of or parties in interest in the lands within 300 feet of the lands to be included in the plat, as the names of such owners and other parties are given in the current Township tax assessment rolls. The preliminary plat, together with minutes showing the action of the Planning Commission thereon, shall be referred to the Township Board not more than 60 days after submission of the preliminary plat. Such time period may be extended with the consent of the applicant. If no action is taken within 60 days, the preliminary plat shall be deemed to have been approved by the Planning Commission.

- (2) The Township Board shall approve or disapprove the preliminary plat not later than 90 days after the preliminary plat was first submitted by the proprietor. A resolution approving a plat shall state: (i) the nature and character of the improvements that will be required to be made by the Proprietor; (ii) the periods of time within which the respective improvements must be completed; and (iii) any conditions relating thereto. If the preliminary plat is not approved, the Township Board shall set forth in writing its reasons for rejection. The Township Board shall record its approval or disapproval on the plat and return one copy to the Proprietor.
- (3) Tentative approval under this section shall confer upon the Proprietor, for a period of one year, approval of lot sizes, lot orientation and street layout. The duration of such tentative approval may be extended by the Township Board.

**Sec. 4.2.04: Preliminary Plat; Final Approval Procedure**

- (1) Following tentative approval of the preliminary plat by the Township Board, the Proprietor shall:
  - a. Submit the preliminary plat to all other reviewing authorities as required by Act 288.
  - b. Submit a list of all such authorities to the Township Clerk, certifying that the list shows all approving authorities as required by Act 288.
  - c. Submit all approvals to the Township Clerk after they have been secured.
- (2) Following a determination that all required approvals have been secured, the Clerk shall forward the approved copies of the preliminary plat, together with all communications from the reviewing agencies, to the Township Board as soon as possible prior to the next regularly scheduled meeting.
- (3) The Township Board shall, at its next regularly scheduled meeting or within 20 days following submission of the required materials shall:
  - a. Consider and review the preliminary plat and approve it if the Proprietor has met all conditions specified for approval of the preliminary plat.
  - b. Instruct the Township Clerk to notify the Proprietor of approval or rejection in writing.
- (4) Final approval of the preliminary plat under this section shall confer upon the Proprietor for a period of two years from the date of approval, the rights granted under Act 288. This period may be extended by the Township Board.

## **Article 3: Final Plat Application and Review Procedure**

### **Sec. 4.3.01: Requirements**

- (1) Final plats shall be prepared and submitted as provided in Act 288.
- (2) A written application for approval and all recording and other Township and State fees shall accompany all final plats.
- (3) The Proprietor shall submit proof of ownership of the land included in the final plat in a form satisfactory to the Township.
- (4) The Township may require such other information as it deems necessary to establish whether the proper parties have signed the plat.

### **Sec. 4.3.02: Procedure; Final Plat**

- (1) The final plat shall be submitted not less than 20 days prior to the next regular meeting of the Township Board. For any plat submitted thereafter, the applicant shall pay an additional fee established by resolution, for the cost of calling a special meeting to comply with Section 167 of Act 288, unless the Proprietor waives compliance with Section 167.
- (2) The Township Board shall examine the final plat at the next regularly scheduled meeting or within 20 days after submission of the plat, and the Board shall either approve or disapprove the plat.

### **Sec. 4.3.03: Improvements and Facilities**

- (1) Before final approval of a plat, all required improvements shall be completed, or security shall be given as provided in Section 4.3.04.
- (2) Monuments shall be set in accordance with Act 288 and the rules of the State Department of Treasury.
- (3) Upon completion of all required improvements, one complete copy of as-built engineering plans for all required public improvements and utilities shall be filed with the Township Clerk coincident with the submission of the final plat.

### **Sec. 4.3.04: Security for Completion**

- (1) In lieu of completion of some or all required improvements, the Township Board may give final plat approval conditioned upon the proprietor providing a financial guaranty for performance as provided in this section.
- (2) Security shall be in an amount equal to the total estimated cost for completion of the improvement, including reasonable contingencies. Security shall not be required for an improvement for which security has been furnished to another governmental agency.
- (3) Security shall remain in force for a time to be specified by the Township Board.



- (4) Security shall be in the form of an irrevocable bank letter of credit issued by a bank, in a form satisfactory to the Township, or in the form of cash escrow or certified check. A performance bond in form satisfactory to the Township, from a surety company authorized to do business in the State of Michigan and acceptable to the Township, may be substituted in lieu of such security only if the applicant can satisfy the Township that an irrevocable letter of credit, cash escrow or certified check cannot reasonably be made available.
- (5) The proprietor may request periodic reductions in the amount of security as public improvements are completed. Township staff may approve such reductions, to an amount estimated to be equal to the remaining cost of improvements, plus a reasonable contingency.

**Sec. 4.3.05: Certificates on Final Plat**

The final plat shall include proper certificates for the Township Clerk to certify the approval of the plat by the Township Board, and the acceptance on behalf of the public of all dedications shown thereon by the governmental body having jurisdiction over such dedication.

## **Article 4: Improvements and Regulations**

### **Sec. 4.4.01: General**

The following standards shall apply to all subdivisions within the Township.

### **Sec. 4.4.02: Lots**

- (1) All lots shall face upon, and have direct access to, a public or private street.
- (2) The side lines of lots shall be approximately at right angles or radial to the street upon which the lots face.
- (3) All lots shall conform to the requirements of this Part for the zone in which the plat is located. This Part shall not be construed as providing for lots smaller than as specified in Part 3, Zoning. If public water and sewer are available, the provisions of Part 3, Zoning, shall override Section 186 of Act 288.
- (4) Corner lots for residential use shall have the minimum required frontage on both streets adjacent to the lot.
- (5) The depth of a lot shall not exceed four times the width. The depth of a lot shall be measured along a horizontal line located midway between the side lot lines and connected to the front and rear lines, or the two front lines of a through lot. The width of the lot shall be measured between the side lot lines parallel to the front lot line at the minimum required front setback line.
- (6) Corner lots shall have sufficient extra width so as to permit appropriate building setback from both streets or orientation to both streets. Lots abutting pedestrian mid-block crosswalks shall be treated as corner lots.
- (7) Lots in subdivisions bounded by existing streets shall only have access from internal streets constructed to serve the subdivision and not directly to such existing streets. The Planning Commission and Township Board may waive this requirement if it is determined that there is no practical way to provide an internal access street due to insufficient lot depth, topography or other natural features of the land to be subdivided.
- (8) Greenbelts or landscaped screen plantings shall be located between a residential subdivision and adjacent major arterial streets or railroad rights-of-way. The proposed subdivision plat shall show the location of said greenbelts. The greenbelt shall contain plantings of sufficient size and number to provide a visual screen for subdivision residents. The greenbelt may contain an earthen berm in conjunction with plantings.

### **Sec. 4.4.03: Usable Land**

All land shall be platted such that it is usable for building lots or required improvements. Land may be platted for common or public areas if adequate provision is made for continued maintenance of such areas, unless such provision for continued maintenance is waived or deemed unnecessary by the Township. For private streets and other areas under

the control of a subdivision property owners association or similar organization, the Township may require a recorded agreement whereby the Township may maintain the area and charge the cost thereof as a lien against all properties in the subdivision if the association fails to adequately maintain the areas.

**Sec. 4.4.04: Dedication**

Streets and other land areas may be dedicated to the public. Any street not dedicated to the public shall comply with the design standards of the private road provisions of Section 3.4.21 of Part 3, Zoning, and shall include easements for public utilities within the street and at least fifteen feet on either side thereof.

**Sec. 4.4.05: Street Names**

Street names shall be approved by the Ionia County Road Commission before printing on the final plat. All streets which are extensions of existing streets must carry the names of such existing streets.

**Sec. 4.4.06: Street Alignment and Layout**

- (1) The subdivision layout shall conform to the Master Plan of the Township.
- (2) All proposed public and private streets shall be continuous and in alignment with existing, planned or platted streets insofar as practicable. Where streets in new subdivisions are extensions of existing streets, the platted streets shall be at least as wide as the existing streets that are being extended.
- (3) If streets are to be dedicated to the public, a sufficient number of streets shall extend to the boundary of the subdivision so as to provide sufficient access to adjoining property and to future development on contiguous land.
- (4) No dead end street or street terminating in a cul-de-sac shall provide access to more than 75 dwelling units.
- (5) Intersections of public or private streets shall be at angles of 90 degrees, or as close to such angle as possible, but in no case more than 30 degrees from perpendicular.

**Sec. 4.4.07: Street Design Standards**

Public streets, intersections, and cul-de-sacs in plats shall conform to the design, drainage, grade, layout, right-of-way width and construction requirements of the Ionia County Road Commission.

**Sec. 4.4.08: Sidewalks**

- (1) Except as otherwise provided in this section, sidewalks at least five feet wide, on both sides of the street, shall be provided for and installed in all plats. A plat shall include right-of-way of sufficient width so as to accommodate such sidewalks.

- (2) Such sidewalks shall be laid out and constructed when streets and other public improvements are made, unless the Planning Commission and Township Board approve an arrangement for subsequent sidewalk construction, as lots are improved. With any such approval for subsequent sidewalk construction, conditions and time deadlines may be imposed.
- (3) The following are exceptions from Section 4.4.08(1):
  - a. Sidewalks are required on only one side of the street if the other side clearly cannot be developed and if there are no existing or anticipated uses that would generate pedestrian trips on that side.
  - b. In residential subdivisions, sidewalks are required on one side only of a street intended primarily to provide access to abutting properties if the average lot width on the street is greater than or equal to 100 feet.
  - c. In residential subdivisions, no sidewalks are required adjacent to streets intended primarily to provide for access to abutting properties if the average lot width on the street is greater than or equal to 150 feet. Provided, however, that a sidewalk shall be required on one side of the street for such portions of any street located within 1,500 feet of a school site which would be on a walking route to the school.
- (4) Also in their discretion, the Planning Commission may recommend and the Township Board may approve the waiving, in whole or in part, of the sidewalk requirements of this section. In considering whether to recommend and approve such waiver, the Planning Commission and Township Board shall consider and make findings upon the following factors:
  - a. Whether the installation of sidewalks would be a reasonably appropriate plat improvement, giving consideration to the convenience of pedestrians, the amount of available land and other applicable circumstances.
  - b. The likelihood that pedestrians will make reasonable use of sidewalks in the plat, currently and in the future.
  - c. Whether there are other sidewalks already installed on adjacent or nearby lands.
  - d. The effect of topography, landscaping, location of streets and other improvements and the effect, if any, of other physical aspects of the platted lands.

**Sec. 4.4.09: Street Lighting**

Adequate street lights may be required to be provided.

**Sec. 4.4.10: Public Utilities**

- (1) Public electricity, telephone, and gas service shall be furnished to each lot in the subdivision.
- (2) All utilities shall be installed and maintained underground and in appropriate easements.
- (3) Utility easements shall be provided along rear lot lines, and also along side lot lines when necessary. The total width of such easements shall be not less than ten feet.
- (4) When a proposed subdivision is to be served by a publicly-owned or privately-owned public water system, fire hydrants and other required water system appurtenances shall be provided by the subdivider.
- (5) If there is no existing or available publicly-owned water supply system, the subdivider may be required to install a privately-owned public water supply system for drinking and fire protection purposes for the common use of the lots within the subdivision in accordance with the requirements of the Safe Drinking Water Act, Act 399 of the Public Acts of Michigan of 1977, as amended, or successor statute of like import, and with the requirements of this Code.

**Sec. 4.4.11: Natural Features**

The landscape shall be preserved in its natural state, insofar as practical, by removing only those areas of vegetation or making those alterations to the topography which are reasonably necessary to develop the site in accordance with the requirements of this Part. A development shall respect the natural resources of the Township as recommended in the Township's Master Plan.

**Sec. 4.4.12: Drainage**

An adequate storm drainage system, including the necessary storm sewers, drain inlets, manholes, culverts, bridges, and other appurtenances, shall be provided in accordance with the requirements of the Township and the County Drain Commissioner. Such facilities shall be designed and constructed so as to have no adverse affect on adjoining lands, or upon lots within the subdivision.

## **Article 5: Variance**

### **Sec. 4.5.01: When Granted**

A variance from the provisions of this Part may be granted as follows:

- (1) If the Proprietor demonstrates that literal enforcement of this Part is impractical, or will impose undue hardship in the use of the land because of special or peculiar conditions pertaining to the land, the Township Board, upon recommendation of the Planning Commission, may permit a variance or variances which are reasonable and within the general policy and purpose of this Part. The Township may attach conditions to the variance.
- (2) A petition for a variance shall be submitted along with the preliminary plat. Notice that request for a variance has been received shall be included in the notice of public hearing on the preliminary plat provided in Section 4.2.03, and the variance shall be considered during the process of considering the preliminary plat. If a request for a variance arises because of unforeseen circumstances after preliminary plat review, a request for a variance may be submitted, and a recommendation made by the Planning Commission to the Township Board after public hearing following notice given in accordance with Section 4.2.03.

## **Article 6: Enforcement**

### **Sec. 4.6.01: Transmission of Plat to County or State**

No plat shall be transmitted to any county or state approving authority for official action until each plat shall have been, in the first instance, approved by the Township Board in accordance with the requirements of this Part.

### **Sec. 4.6.02: Recording Requirement**

No person shall sell or convey any lot in any plat by reference thereto until such plat has been duly recorded in the office of the Ionia County Register of Deeds.

### **Sec. 4.6.03: Sales Agreements, when voidable**

Any sale or option or contract to sell, contrary to the provisions of this Part, shall be voidable at the option of the buyer or person contracting to purchase, or their successors in interest, within two years after the execution of the sales agreement. Such agreements, however, shall be binding upon the vendor, his or her assigns, heirs or devisees.

### **Sec. 4.6.04: Building Permits, when issued**

No building permit shall be issued, and no public sewer or water service shall be provided for any dwelling or other structure located on a lot or plot subdivided or sold in violation of these regulations. The fact that final plat approval has not been received from the State of Michigan shall not prevent a building permit from being granted for not more than three buildings, or for the maximum number of land divisions which would be permitted under Act 288 without plat approval, whichever is less. No building may be occupied or used, however, until all required improvements have been completed, and necessary utilities installed.

### **Sec. 4.6.05: Violations, Nuisance Per Se**

Any act or failure to act done in violation of the provisions of this Part is hereby declared to be a nuisance per se.

**Sec. 4.6.06: Violations, Misdemeanor**

Any person, firm, or corporation which violates, disobeys, omits, neglects, or refuses to comply with any of the provisions of this Part shall be subject, upon conviction, to a fine of not less than twenty-five dollars (\$25.00) no more than one hundred dollars (\$100.00) and the costs of prosecution or by imprisonment for not more than ninety (90) days, or by both fine and imprisonment, in the discretion of the court. Each day such violation continues shall be deemed a separate offense. The imposition of any such sentence shall not exempt the offender from compliance with the requirements of this Part.

**Sec. 4.6.07: Violations; Injunction**

In addition to any other available remedy, the Township may in its discretion bring an action in its own name to restrain or prevent any violation of this Part or any continuance of such violation. In such case the person found violating any provision of this Part shall pay the Township's costs and expenses in enforcing the provisions of this Part, including its attorneys' fees.



## **Article 7: Division of Platted Lots**

### **Sec. 4.7.01: Prohibition**

No lot or other parcel of land located within a recorded plat shall be further partitioned or divided or a building permit issued for a partitioned or divided lot unless such partition or division is first approved by the Township Board as provided in this article. No partition or division of a lot may result in the creation of a lot that does not satisfy the particular minimum lot dimension requirements of Part 3, Zoning.

### **Sec. 4.7.02: Approval of Lot Splits**

- (1) Any proprietor or property owner who desires to partition or split a lot, outlot, or other parcel of land located in a recorded plat shall apply to the Township Clerk. The application shall include a detailed statement of the reasons for the requested partition or division, sketch, map or maps prepared to scale showing the proposed division or partition and all adjoining lots, streets, and parcels of land, and a statement from the Ionia County Health Department indicating the effect of the proposed division or partition upon the safe operation of necessary septic tanks and wells.
- (2) The Township Clerk shall transmit the application and report from the Ionia County Health Department to the Planning Commission, which shall make a recommendation to the Township Board.
- (3) In reviewing the application, the Planning Commission and Township Board shall consider whether the request is consistent with this Code, all Township Ordinances, Act 288, and other State laws and is consistent with the general public welfare.
- (4) Upon receiving the recommendation of the Planning Commission, the Township Board shall either approve or reject the application.
- (5) The Township Board may condition its approval of a division or partition upon such reasonable conditions as shall be deemed desirable by the Township Board.

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## **PART 5**

### **LAND DIVISION**

#### **Article 1: General Provisions**

##### **Sec. 5.1.01: Legal Basis, Purpose**

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

##### **Sec. 5.1.02: Definitions**

For purposes of this Part, certain terms and words used herein shall have the meaning set forth herein. Additionally, where terms and words are set forth in the State Land Division Act, those terms and words shall have the definitions ascribed to them in the State Land Division Act, except as set forth within this Section.

- A. "Administrator" - the Zoning Administrator or his/her designee.
- B. "Assessor"- The Portland Township Assessor
- C. "Applicant" - a natural person, firm, association, partnership, corporation, or combination of any of them that holds an ownership interest in land whether recorded or not.
- D. "Divided" or "Division" - the partitioning or splitting of a parcel or tract of land by the proprietor thereof or by his or her heirs, executors, administrators, legal representatives, successors or assigns, for the purpose of sale or lease of more than one year, or of building development that results in one or more parcels of less than 40 acres or the equivalent, and that satisfies the requirements of Section 108 and 109 of the State Land Division Act. "Divide" or "Division" does not include a property transfer between two or more adjacent parcels if the property taken from one parcel is added to an adjacent parcel; and any resulting parcels shall not be considered a building site unless the parcel conforms to the requirements of the State Land Division Act.
- E. "Exempt split" or "exempt division" - the partitioning or splitting of a parcel or tract of land by the proprietor thereof, or by his or her heirs, executors, administrators,

legal representatives, successors or assigns, that does not result in one or more parcels of less than 40 acres or the equivalent.

- F. "Forty acres or the equivalent" - either 40 acres, a quarter-quarter section containing not less than 30 acres, or a government lot containing not less than 30 acres.
- G. "Governing body" - the Township Board of Portland Township, Ionia, County, Michigan.
- H. "Planning Commission"- The Portland Township Planning Commission.
- I. "Township" - the Township of Portland, Ionia County, Michigan.

## **Article 2: Application and Procedure**

### **Sec. 5.2.01: Prior Approval Requirement**

Land in the Township shall not be divided without the prior review and approval of the Assessor or the Township Board in accordance with this Part and the State Land Division Act; provided that the following shall be exempted from this requirement:

- A. A parcel proposed for subdivision through a recorded plat pursuant to the State Land Division Act.
- B. A lot in a recorded plat proposed to be divided in accordance with the State Land Division Act, this Code, and any applicable Portland Township ordinance.
- C. An exempt split as defined in this Part, or other partitioning or splitting that only results in parcels of 20 acres or more where each parcel is not accessible (as defined in the State Land Division Act) and either the parcel was in existence on March 31, 1997, or resulted from exempt splitting under the State Land Division Act.

### **Sec. 5.2.02: Application for Land Division Approval**

Proposed land divisions, for the purpose of sale, lease for more than one year, or for building development, requires an applicant to file all of the following with the Administrator for review and approval by the Assessor:

- A. A completed application form for division designated by the Administrator or Assessor.
- B. Proof of fee ownership of the land proposed to be divided or written consent to the application signed by the fee owner of the land.
- C. A tentative parcel map showing the parent parcel or parent tract which is the subject of the application, and the area, parcel lines, public utility easements, and the manner of proposed access for each resulting parcel. A tentative parcel map shall include:
  - 1. Proposed boundary lines and the dimensions of each parcel;
  - 2. An accurate legal description of each resulting parcel;
  - 3. The location, dimensions and nature of proposed ingress to and egress from any existing public or private road or easement;

4. The location of any public or private street, driveway or utility easement to be located within any resulting parcel;
  5. The location of any existing buildings or other existing land improvements on the parent parcel or parent tract.
- D. Proof that all standards of the State Land Division Act and this Part have been met.
  - E. If requested by the Assessor or Administrator, the history and specifications of any previous divisions of land of which the proposed division was a part sufficient to establish the parcel to be divided was lawfully in existence as of March 31, 1997, the effective date of the State Land Division Act.
  - F. If transfer of division rights is proposed in the land transfer, detailed information about the terms and availability of the proposed division rights transfer.
  - G. The required fee as may from time to time be established by resolution of the Township Board for land division reviews pursuant to this Ordinance to cover the costs of review of the application and administration of this Ordinance and the State Land Division Act.

**Sec. 5.2.03: Procedure for Review of Applications for Land Division Approval**

- A. Upon receipt of a land division application package, the Administrator or Assessor shall first determine whether the application package conforms to the requirements of this Ordinance and the State Land Division Act. If not, the Administrator or Assessor shall return the same to the applicant for completion and refile in accordance with this Ordinance and the State Land Division Act. If the application does conform the Assessor shall, within forty-five (45) days of receipt of a complete application the Assessor shall either approve or deny the application and shall promptly notify the applicant of the decision and reasons for any denial.
- B. Any person or entity aggrieved by the decision of the Assessor may, within 30 days of said decision, appeal the decision to the Township Board which shall consider and resolve such appeal by a majority vote of said Board at its next regular meeting or session affording sufficient time for a 10 day written notice to the Applicant of the time and date of said meeting. The Township Board may affirm, modify or reverse the decision of the Assessor and its decision shall be final.

- C. Approval of a land division shall be effective for 180 days from the date of approval by the Assessor or Township Board, after which it shall be revoked unless, within such period, there is recorded with the Ionia County Register of Deeds office and filed with the Administrator or Assessor a conveyance of the approved land division or survey evidencing same.
- D. The Administrator or Assessor shall maintain an official record of all approved and accomplished land divisions or transfers.

## **Article 3: Standards and Effectiveness**

### **Sec. 5.3.01: Standards for Approval of Land Division**

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

- A. The proposed land division, including all resulting parcels, complies with all requirements of the State Land Division Act and this Part including, but not limited to, accessibility as defined and required by Part 3, Zoning, this Code, or any other ordinances or where it is necessary for the protection of the health, safety and general welfare of the public.
- B. The ratio of depth to width of any parcel created by the division does not exceed a four (4) to one (1) ratio. A greater depth to width ratio than that required by this subsection may be permitted if the resulting parcel(s) exhibit exceptional topographic or physical conditions or would be compatible with surrounding lands. The depth to width ratio requirements of this subsection shall not apply to parcels larger than 10 acres and shall not apply to the remainder of the parent parcel or parent tract retained by the proprietor. In the event that Part 3, Zoning specifies a depth to width ratio for a particular area which differs from that set forth within this sub-section, the ratio contained in Part 3, Zoning shall control.  
Amended 3-23-2016
- C. Each parcel created by the proposed division(s) shall have the minimum width as established by Part 3, Zoning, for the zoning district in which the resulting parcel(s) is (are) located.
- D. Each parcel created by the proposed division(s) shall have the minimum area as established by the Part 3, Zoning, for the zoning district in which the resulting parcel(s) is (are) located.

### **Sec. 5.3.02: Limited Effect of Land Division Approval**

Approval of a land division is not a determination that the created or resulting parcels comply with other provisions of this code, other laws, ordinances of the Township or applicable regulations. The Township and its officers and employees shall not be liable for approving a land division if building permits for construction on the parcels are subsequently denied because of inadequate water supply, sewage disposal facilities or otherwise, and any notice of approval shall include a statement to that effect.



## **Article 4: Enforcement**

### **Sec. 5.4.01: Consequences of Noncompliance with Land Division Approval Requirement**

Any parcel created contrary to any provision of this Part or the State Land Division Act shall not be eligible for any building permits or zoning approvals including, but not limited to, special land use approval or site plan approval, and shall not be recognized as a separate parcel on the assessment roll. In addition, violation of this Part shall subject the violator to the penalties and enforcement actions set forth in Section 5.4.02 of this Part, and as may otherwise be provided by law.

### **Sec. 5.4.02: Penalties**

Any person who violates any of the provisions of this Part shall be deemed guilty of a misdemeanor and shall be punished by a fine not more than \$500.00 or by imprisonment in the county jail for not to exceed 90 days or by both such fine and imprisonment. Any person who violates any of the provisions of this Part shall also be subject to civil action, legal or equitable proceedings arising from the violation.

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**PART 6**

**FIRE**

**Article 1: General Provisions**

**Secs. 6.1.01 - 6.1.15: Reserved**

**Article 2: Definitions**

**Secs. 6.2.01 - 6.2.15: Reserved**

**Article 3: Burning for clearing and disposal of refuse material.**

**Sec. 6.3.01: Permit; When Required**

- (a) No person shall set an open fire in the township for the purpose of clearing land and or disposing of yard waste, refuse and/or waste material by burning without first obtaining a permit to do so from the Portland Fire District as herein provided.
- (b) No person shall set an outdoor fire not contained in a burner or pit that is constructed of such material and in such a manner as to prevent the spreading of fire therefrom, without first obtaining a permit to do so from the Portland Fire District as herein provided.

**Sec. 6.3.02: Request for Permit**

The request for permit to set an open fire within the township shall be made in writing as prescribed by the Portland Fire District.

**Sec. 6.3.03: Permits**

Any permits issued under this Article shall be issued by the Portland Fire District, and signed by the Chief of the Portland Fire District or his designee.

**Sec. 6.3.04: Fees-Reserved**

**Sec. 6.3.05: Regulations**

Any person who is granted a permit to set an open fire under this Article shall have sufficient persons constantly in charge of said fire so as to prevent the spreading thereof.

**Sec. 6.3.06: Conditions Creating Fire Emergency**

- (a) Whenever there occurs in the Township conditions creating serious fire hazards, the Township Supervisor, or in his absence, the Township Clerk, shall determine whether a period of public emergency exists, and if so shall impose a fire ban during the same.
- (b) The Portland Fire District shall not issue a permit under this Article during such period of public emergency.
- (c) The Township Supervisor, or in his absence, the Township Clerk, shall declare the end of such period of public emergency when the conditions creating serious fire hazards have abated.

**Sec. 6.3.07: Penalties**

Any person convicted of any provision of this Article shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500.00), and or sentenced to not more than ninety (90) days imprisonment.

## **Article 4: Fire and Emergency Medical Service Charges**

### **Section 6.4.01: Purpose**

This ordinance is adopted for the purpose of providing financial assistance to the Township in the operation of fire and emergency medical services from both residents and nonresidents receiving direct benefits from fire and emergency medical services. The charges established herein are designed and intended to provide for full funding of the Township's fire and emergency services taking into consideration funding contributed to these services by the Township through other means.

### **Section 6.4.02: Establishment of Charges**

- (a) Township Charge: The Township will charge fees to recipients of fire and emergency medical services provided within the Township.
- (b) Charges for Fire and Emergency Medical Service: The charges billed to each recipient of fire and emergency medical services shall be in accordance with the fee schedule attached hereto as Exhibit A and as it may be amended from time to time and adopted by resolution of the Township Board.
- (c) Exemptions: The following shall be exempt from the fire charges:
  - 1. Fire involving Township buildings, grounds and/or property
  - 2. False alarms
  - 3. Fires caused by railroad trains which are the specific statutory responsibility of railroad companies
  - 4. Fire service performed outside the jurisdiction of the Township under a mutual aid contract with an adjoining municipality
- (d) Amendment of Fees. The fees set forth in the fee schedule attached hereto as Exhibit A, or as may be amended from time to time by resolution of the Township Board, reflect a reasonable estimate of the proportional cost to the Township of providing fire and emergency medical service to the respective recipients.

### **Section 6.4.03: Multiple Recipients**

More than one recipient may be served in a single incident. If property protection is involved, the owner of the property and all persons benefited by the fire or emergency medical services shall be jointly and severally liable for payment of the full charge. If

property protection is not involved, all those persons benefited by the fire and emergency medical services shall be jointly and severally liable for the payment of the full charge. If a recipient disagrees with the determination of charges, that determination may be appealed to the Township Board.

**Section 6.4.04: Billing and Collection**

- (a) Charges Due: The Township will bill each recipient served. All charges are due and payable upon mailing and shall be paid within thirty (30) days.
- (b) Collection: The Township, through an elected official or employee, may proceed in small claims court and/or through its attorneys in district court or through a collection bureau to collect any fire or emergency medical service charges remaining unpaid thirty (30) days after the date of billing. For any amounts that remain unpaid after sixty (60) days, the Township may impose a late charge of one and one-half percent (1 ½ %) per month, or a fraction thereof, plus court costs and collection expenses, including attorney fees. The Township shall have any and all other remedies provided for by law for the collection of said charges.

**Section 6.4.05: Non-exclusive Charge**

The fire or emergency medical service charges shall not be the exclusive means available to the Township to defray the costs and expenses of equipping and maintaining fire and emergency medical services, but may be supplemented through general taxation after a vote of the electorate approving the same or by a special assessment district established under Michigan statutes or by contribution from the general funds of the Township in its sole discretion.



**Exhibit A**

**PORTLAND TOWNSHIP**

**FIRE AND EMERGENCY MEDICAL SERVICE CHARGE FEE SCHEDULE**

The Township will bill each recipient served by or with fire and emergency services, including ambulance service at the rates listed below. All charges are due and payable upon mailing and shall be paid within thirty (30) days.

Fire Service \$500.00 per run

Ambulance and Other Emergency Medical Service \$550.00 per run

Collection: The Township, through an elected official or employee, may proceed in small claims court and/or through its attorneys in district court or through a collection bureau to collect any fire or emergency medical service charges remaining unpaid thirty (30) days after the date of billing. For any amounts that remain unpaid after sixty (60) days, the Township may impose a late charge of one and one-half percent (1 1/2 %) per month, or a fraction thereof, plus court costs and collection expenses, including attorney fees. The Township shall have any and all other remedies provided for by law for the collection of said charges.

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## **PART 7 - NUISANCES**

### **Article 1: General Provisions**

#### **Section 7.1.01: Public Nuisance Defined and Prohibited**

Whatever annoys, injures or endangers the safety, health, welfare, comfort or repose of the public; offends public decency or aesthetic sensibilities; interferes with, obstructs or renders dangerous any street, highway, navigable lake or stream; or in any way renders the public insecure in life or property is hereby declared to be a public nuisance. Public nuisances shall include, but not be limited to, whatever is forbidden by any provision of this Ordinance. No person shall commit, create or maintain any public nuisance.

#### **Section 7.1.02: Nuisances Per Se**

The following acts, apparatus, accumulations and activities are hereby declared to be public nuisances:

- A. No person shall maintain or permit to remain on premises owned or occupied by him; or throw, place or leave; or permit the throwing, placing or leaving on the premises of another, including any roadway, any of the following substances: organic refuse, food wastes, dead animals, fish, animal bones, hides, rotten soap, grease, tallow, offal, food containers or wrappings, cans, bottles, jars, crockery, garbage, discarded furniture, cartons, boxes, crates, rags, discarded clothing, bedding, floor covering, wallpaper, waste paper, newspapers or magazines, discarded appliances, rubbish, excrement, rot, construction debris, including but not limited to, lumber, bricks, block, plumbing or heating materials, roofing materials, concrete, cement, electrical materials or siding; yard debris or rubbish, including but not limited to, industrial waste, unclean or nauseous fluids or gases, in any of the following locations:
- (1) Any public street, highway, lane, road, alley, public place, square, sidewalk or any lands within the boundaries of Portland Township owned by Portland Township, County of Ionia, State of Michigan or other municipal corporation.
  - (2) Any river, lake, stream or other body of water.
  - (3) Any private place or premises where in the opinion of the Township or its agent the specified substances constitute a dangerous condition; or are detrimental to the public health, safety or welfare; or offend aesthetic sensibilities; or may cause sickness; or attract flies, insects, rodents or vermin.

- B. The emission of noxious fumes or gas, smoke, ashes or soot in such quantities as to render occupancy of property dangerous or uncomfortable to a person of ordinary sensibilities.
- C. The keeping of explosives, flammable liquids or other dangerous substances stored in any manner or in any amount contrary to the provisions of any statute or applicable administrative regulation of the State of Michigan.
- D. All dangerous, unguarded excavations or dangerous, unguarded machinery in any public place, or so situated, left or operated on private property as to attract the public.
- E. The owning, driving or moving upon the public streets and alleys of a truck or other motor vehicle which is constructed or loaded so as to permit any part of its load or contents to be deposited upon any street, alley, sidewalk or other public or private place, or which deposits from its wheels, tires, or other parts unto the street, alley, sidewalk or other public or private place, dirt, grease, sticky substances or foreign matter of any kind. Provided, however, that under circumstances determined by the Township or its agent to be in the public interest, the Township may grant persons temporary exemption from the provisions of this subsection conditioned upon cleaning and correcting the violating condition as specified by the Township or its agent and execution of an agreement by such person to reimburse the Township for any extraordinary maintenance expenses incurred by the Township in connection with such violation.
- F. The keeping of bees unless permitted by the zoning ordinance and the Michigan Right to Farm Act, 1981 PA 93, when such keeping results in the disturbance of the safety, comfort and repose of one or more persons, or shall render one or more persons insecure in the use of his or her property.
- G. The keeping of horses or livestock unless permitted by the zoning ordinance and the Michigan Right to Farm Act, 1981 PA 93 or the failure to keep horses or livestock within sufficient fences, barricades or restraints to keep such animals from entering the public way or the property of another.
- H. The keeping, either inside or outside of any building, structure, or dwelling, in a place accessible to children, any abandoned, unattended, unused or discarded icebox, refrigerator or any air tight container of any kind which has a snap latch or other locking device thereon, without first removing the snap latch or other locking device, or the doors, from such icebox, refrigerator or other such air tight container.
- I. Abandoning, leaving, keeping or maintaining a junk or abandoned motor vehicle, as provided in Article 2 of this Part.

### **Section 7.1.03: Abatement; notice, authority of officers**

Whenever any public nuisance described in Section 7.1.01 or 7.1.02 shall exist upon Township property or upon the property of another municipal corporation within the boundaries of the Township, said public nuisance may be abated by the Township or its agent without notice and the cost of abatement charged as provided in Section 7.1.05 of this Article. Except as provided in Article 2 of this Part for junk or abandoned motor vehicles, whenever any such public nuisance shall exist on private premises within the Township, the Township or its agent may give notice in writing by certified mail with return receipt requested, and addressed to the owner or occupant of the property where the public nuisance exists or to the person(s) otherwise responsible for said public nuisance. Said notice shall specify the location and nature of the public nuisance and shall indicate that such owner or occupant or person otherwise responsible is required to repair, tear down, abate or otherwise remove the public nuisance within 30 days of the receipt of the notice. Following the issuance of said notice, the Township or its agent may proceed to initiate civil or criminal proceedings permitted by law to abate the nuisance.

Amended 10-12-2022

If the Township intends to abate the nuisance by entering the property and causing the work to be done to repair, tear down, abate or otherwise remove the nuisance and charge the cost, thereof, to the property owner, the Township shall advise the owner or occupant that a hearing may be requested within the 30 day period pursuant to Section 7.1.04 of this Article. If no hearing is requested in the time allotted or following a hearing held pursuant to Section 7.1.04 of this Article, said nuisance may then be repaired, torn down, abated or otherwise removed by the Township or its agent and the cost thereof charged as provided in Section 7.1.05 of this Article. If the actual owner or occupant of the premises is unknown or cannot be located, notice may be given by posting a copy of said notice upon a conspicuous part of the property where the public nuisance is located and by mailing a copy of said notice by certified mail with return receipt requested, and addressed to the owner or party in interest at the address shown on the Township tax records, at least 10 days before further action by the Township or its agent.

Amended 6-12-2019

### **Section 7.1.04: Hearing**

If, after notice provided under Section 7.1.03 of this Article the recipient of said notice requests a hearing as therein provided, a hearing shall be held before a hearing officer appointed by the Township to determine the applicability of this Part to the property in question. The appointed hearing officer shall make a decision with written findings of fact based upon his investigation and evidence presented at the hearing as to whether the condition in question violates the provisions of this Article. If the appointed hearing officer determines that the condition violates the provisions of this Article, he shall order the person requesting the hearing or owner or occupant of the premises in question to repair, tear down, abate or otherwise remove the nuisance in question within a reasonable time but not less than five (5) days. If the public nuisance is not repaired, torn down, abated or otherwise removed within the period allowed by the order, the Township or its agent may

repair, tear down, abate or otherwise remove said public nuisance and charge the cost thereof as provided in Section 7.1.05 of this Part.

**Section 7.1.05: Public Nuisances; Emergency Abatement; Costs**

The Township or its agent may act to abate a public nuisance without giving notice as specified in Section 7.1.03, if the public health, safety or welfare requires immediate action. The cost of abating such nuisance shall be charged as specified in Section 7.1.06.

**Section 7.1.06: Abatement; Costs**

All expenses incurred by the Township or its agent in repairing, tearing down, abating or otherwise removing a public nuisance under this Part shall be charged to the person responsible therefor, the occupant of the land in question or the person who appears as owner or party in interest upon the last local tax assessment records of the Township. If said person fails to pay said charge within 30 days after a statement therefor is mailed to him, the amount of expenses incurred by the Township in repairing, tearing down, abating or otherwise removing the public nuisance may be paid from the Township general fund and the amount thereof assessed against the lands on which said expenditures were made on the next general assessment roll of the Township and shall be collected in the same manner as other taxes are collected. The Township shall have a lien upon such lands for such expense, said lien to be enforced in the manner prescribed by the general laws of the State providing for the enforcement of tax liens.

**Section 7.1.07: Penalties**

Violations of the provisions of this Part shall constitute a municipal civil infraction. Any person who is found responsible or admits responsibility for a municipal civil infraction shall be subject to a civil fine and costs. The civil fines are set forth in Part 8 of this Code of Ordinances unless otherwise specified. Further, the judge or district court magistrate shall summarily tax and determine the costs of the action, which are not limited to the costs taxable in ordinary civil actions and may include all expenses, direct and indirect, including attorney fees, to which the plaintiff has been put in connection with the municipal civil infraction, up to the entry of judgment. However, in no case shall costs of more than \$500.00 be ordered. Each violation shall be considered a separate offense.

## **Article 2: Junk or Abandoned Motor Vehicles, Trailer Coaches and Watercraft**

### **Section 7.2.01: Definitions**

A motor vehicle is hereby defined as any wheeled vehicle which is self-propelled or intended to be self-propelled. Trailer coach is hereby defined as every vehicle primarily designed and used as temporary living quarters for recreational, camping, or travel purposes and drawn by another vehicle. Watercraft is hereby defined as any contrivance used or capable of being used for navigation upon water, whether or not capable of self-propulsion, including foreign and domestic vessels, passenger or other cargo-carrying vessels, and privately owned recreational watercraft. Junk or abandoned motor vehicles, trailer coaches and watercrafts for purposes of this section, shall include:

- (1) any motor vehicle, trailer coach or watercraft which has remained on the premises of another for a period of 48 continuous hours, or more, without the consent of the owner or occupant of the property or for a period of 48 continuous hours or more after the consent of the owner or occupant of the property has been revoked; or
- (2) any motor vehicle or portion thereof which, for a period of 30 consecutive days or more does not have an engine in running condition, four inflated tires, and a battery; or
- (3) any motor vehicle, trailer coach or watercraft which, for a period of 72 hours or more does not have attached current license plates or current registration; or
- (4) any motor vehicle, trailer coach or watercraft which is in fact abandoned by its owner; or
- (5) any motor vehicle, trailer coach or watercraft which is for any reason not operable and not repairable.

### **Section 7.2.02: Abandonment Prohibited**

No person shall abandon a motor vehicle, trailer coach or watercraft or part thereof on the premises of another.

### **Section 7.2.03: Storage Prohibited**

No person shall store, maintain, keep, leave, or authorize the storage, maintenance, keeping or leaving of any abandoned or junk motor vehicle, trailer coach or watercraft or part thereof on any private property under his ownership, tenancy or control.

### **Section 7.2.04: Exceptions**



The following motor vehicles, trailer coach or watercraft shall not be deemed junk or abandoned vehicles or watercraft for purposes of this section: vehicles, trailer coaches or watercraft stored within a fully enclosed building, vehicles, trailer coaches or watercraft kept as stock in trade by a regularly licensed dealer in motor vehicles, trailer coaches or watercraft, or vehicles, trailer coaches or watercraft stored by a licensed junk dealer. The Township or its agent may, upon written application, exempt from this section for any reasonable period of time any historic or classic vehicle, trailer coaches or watercraft, any vehicle, trailer coaches or watercraft in a process of restoration or repair, or any vehicle, trailer coach or watercraft which, by reason of special circumstances, is deemed by the Township or its agent not to be a junk or abandoned vehicle, trailer coach or watercraft.

#### **Section 7.2.05: Abatement**

The Township or its agent may remove any junk or abandoned motor vehicle, trailer coach or watercraft or part thereof from the property of the Township or other municipal corporation within the boundaries of the Township without notice and may dispose of said vehicle, trailer coach or watercraft in the Township dump or otherwise dispose of said vehicle, trailer coach or watercraft. The Township or his agent may remove or cause to be removed any junk or abandoned motor vehicle, trailer coach or watercraft or part thereof from any unenclosed private property after having notified the vehicle, trailer coach or watercraft owner and/or lienholder, if known, and the property owner or occupant of such property in writing of his intention to do so at least 48 hours prior to such removal. If the vehicle, trailer coach or watercraft owner and/or lienholder cannot be determined, a copy of said notice shall be placed upon the vehicle, trailer coach or watercraft at least 48 hours prior to removal. The Township or its agent may dispose of said vehicle, trailer coach or watercraft at the Township dump or may otherwise dispose of said vehicle, trailer coach or watercraft. The cost of hauling away and disposing of a junk or abandoned motor vehicle, trailer coach or watercraft may be charged as provided in Section 7.1.06 of this Part. The removal of a junk or abandoned motor vehicle, trailer coach or watercraft by the Township or its agent shall not excuse or relieve any person of the obligations imposed by Sections 7.2.02 or 7.2.03 of this Article nor from the penalties for violation thereof imposed by Section 7.1.07.

## Article 3: Noise

### Section 7.3.01: Unlawful Noise Prohibited

It shall be unlawful, and it shall be deemed a public nuisance, for any person to unreasonably make, continue or cause to be made or continued any noise that annoys or disturbs the quiet, comfort or repose of a reasonable person of normal sensitivities, or that injures or endangers the health, peace or safety of the public within the Township.

### Section 7.3.02: Enumerated Unlawful Noises

The following acts, among others, are declared to be unlawful noises in violation of this Article, and are deemed to be public nuisances per se, but this enumeration shall not be deemed to be exclusive, namely:

- (1) **Radios, phonographs and musical instruments.** Operating, playing or permitting the operating or playing of any radio, phonograph, television set, amplified or unamplified musical instrument, drum, loudspeaker, tape recorder or other sound-producing device, in such a manner or with such volume at any time or place so as to annoy or disturb the quiet, comfort or repose of a reasonable person of normal sensitivities in any office, dwelling, hotel, hospital or residence. The operation of any such set, instrument, phonograph, machine or device in such a manner as to be plainly audible on real property or in a dwelling unit other than that from which the noise originates or emanates shall be prima facie evidence of a violation of this section.
- (2) **Shouting and whistling.** Yelling, shouting, hooting, whistling, singing or making any other loud noises on the public streets, sidewalks, bike pathways or other streets or paths located within the Township, between the hours of 11:00 p.m. and 7:00 a.m. the following day, or the making of any such noise at any time or place so as to annoy or disturb the quiet, comfort or repose of a reasonable person of normal sensitivities in any office, dwelling, hotel, hospital or residence.
- (3) **Construction.** Operating or permitting the operation of any tools or equipment used in construction, excavation, demolition, alteration or repair of any building, street or highway, between the hours of 9:00 p.m. and 7:00 a.m. the following day, such that the sound therefrom is plainly audible in any dwelling, hotel, hospital, office or residence, or on any residential property other than the property from which the noise emanates or originates, unless a variance therefor is first obtained from the Township or his agent in accordance with Section 7.3.05 of this Article.
- (4) **Engines.** Operating or permitting the operation of any steam engine or internal combustion engine, whether stationary or mobile, so as to annoy or disturb the quiet, comfort or repose of a person of normal sensitivities in any office, dwelling,

hotel, hospital or residence. This subsection shall not prohibit the operation of any mechanically powered saw, sander, drill, grinder, lawn or garden tool, snowblower or similar device used outdoors in residential areas between the hours of 7:00 a.m. and 9:00 p.m. the same day, nor shall it prohibit the operation of a state-licensed motor vehicle in a manner expressly permitted by state law.

- (5) **Animals.** A person shall not keep or harbor an animal, bird or fowl which, by barking, howling, meowing, squawking, or producing any other sound made frequently, repeatedly or for a continued duration, annoys, endangers, injures, or unreasonably disturbs the quiet, comfort or repose of a person of normal sensitivities who is located off of the premises occupied by the animal.
- (6) **Recreational Vehicles.** The operation of any race track, proving ground, testing area or obstacle course for motor vehicles, motorcycles, boats, racers, automobiles or vehicles of any kind or nature in any area of the Township where the noise emanating therefrom would be unreasonably disturbing and upsetting to other persons in the vicinity unless otherwise permitted by the zoning ordinance and approved by the appropriate Township Board or Planning Commission.

#### **Section 7.3.03: "Person" Defined**

In addition to its normal meaning, the term "person" as used in this section means a person who causes or makes an unlawful noise; or a person who is in control of the property or premises from which an unlawful noise originates or emanates; or a person who owns the property or premises from which an unlawful noise originates or emanates.

#### **Section 7.3.04: Exceptions**

The provisions of this section shall not apply to the emission of sound for the purpose of alerting persons to the existence of an emergency or the emission of sound in the performance of emergency work. This section shall not apply to agricultural or related seasonal type or work that is of a timely nature, such as crop planting, tending crops and harvesting crops or timbering.

#### **Section 7.3.05: Variance**

The Township or its agent may grant an applicant a variance of this section to permit construction noises during hours otherwise prohibited hereunder, after notice and hearing, upon a showing that compliance with this section would constitute an unreasonable hardship on the applicant, on the community or on other persons.

(Updated 7.3.02 with # 5, 6 and 7.3.04 2<sup>nd</sup> sentence 10-22-13)

## **Article 4: Dangerous Buildings**

### **Section 7.4.01: Unlawful Conduct**

It is unlawful for any owner, agent or other person in control thereof to keep or maintain any building or dwelling or part thereof which is a dangerous building as defined in this Article.

### **Section 7.4.02: Definitions**

- A. As used in this Article, "Dangerous Building" shall mean any building or structure which has one or more of the following defects or is in one or more of the following conditions:
- (1) Any door, aisle, passageway, stairway or other means of exit does not conform to the state, county or Township Fire Code or the state, county or Township Building Code enforced within the Township.
  - (2) Any portion of the building or structure is damaged by fire, wind, flood, or by any other cause so that its structural strength or stability is appreciably less than it was before such catastrophe and does not meet the minimum requirements of the Housing Law of the State of Michigan, Act No. 167 of the Public Acts of 1917, as amended, or the state, county or Township Building Code enforced within the Township for a new building or structure, purpose or location.
  - (3) Any part of the building or structure is likely to fall or to become detached or dislodged, or to collapse and injure persons or damage property.
  - (4) Any portion of the building or structure has settled to such an extent that its walls or other structural portions have materially less resistance to wind than is required in the case of new construction by the Housing Law of the State of Michigan, Act No. 167 of the Public Acts of 1917, as amended, or the state, county or Township Building Code enforced within the Township.
  - (5) The building or structure or any part of the building or structure, because of dilapidation, deterioration, decay, faulty construction, or the removal or movement of some portion of the ground necessary for the support or for other reason, is likely to partially or completely collapse or some portion of the foundation or underpinning of the building or structure is likely to fall or give away.
  - (6) The building structure, or any part of the building or structure is manifestly unsafe for the purpose for which it is used.

- (7) The building or structure is damaged by fire, wind, or flood, or is dilapidated or deteriorated and becomes an attractive nuisance to children who might play in the building or structure to their danger, or becomes a harbor for vagrants, criminals, or immoral persons, or enables persons to resort to the building or structure for committing a nuisance or an unlawful or immoral act.
- (8) A building or structure used or intended to be used for dwelling purposes, including the adjoining grounds, which because of dilapidation, decay, damage, faulty construction or arrangement, or otherwise, is unsanitary or unfit for human habitation, or is in a condition that the state, county or Township Building Inspector, Code Enforcement Officer or health officer of the state or county determines is likely to cause sickness or disease or is likely to injure the health, safety, or general welfare of the people living in the dwelling.
- (9) A building or structure is vacant, dilapidated, and open at door or window, leaving the interior of the building exposed to the elements or accessible to entrance by trespassers.
- (10) A building or structure remains unoccupied for a period of 180 consecutive days or longer, and is not listed as being available for sale, lease, or rent with a real estate broker licensed under Article 25 of the Occupational Code, Act 299 of the Public Acts of 1980, as amended, being Sections 339.2501 to 339.2515 of the Michigan Compiled Laws. For purposes of this subsection "building or structure" includes, but is not limited to, a commercial building or structure. This subsection does not apply to either of the following:
  - (a.) A building or structure as to which the owner or agent does both of the following:
    - (1) Notifies the Ionia County Sheriff's Department that the building or structure will remain unoccupied for a period of 180 consecutive days. The notice shall be given to the local law enforcement by the owner or agent not more than thirty (30) days after the building or structure becomes unoccupied.
    - (2) Maintains the exterior of the building or structure and adjoining grounds in accordance with this Ordinance, the Housing Law of the State of Michigan, Act No. 167 of the Public Acts of 1917, as amended, and the state, county or Township Building Code enforced within the Township.

(b.) A secondary dwelling of the owner that is regularly unoccupied or a period of 180 days or longer each year, if the owner notifies the Ionia County Sheriff's Department that the dwelling will remain unoccupied for a period of 180 consecutive days or more each year.

An owner who has given the notice prescribed by this subsection shall notify the Ionia County Sheriff's Department not more than thirty (30) days after the dwelling no longer qualifies for this exception. As used in this subsection, "secondary dwelling" means a dwelling such as a vacation home, hunting cabin, or summer home, that is occupied by the Owner or a member of the Owner's family during part of a year.

- B. "Enforcing Agency" and "Township" shall mean the Township of Portland.
- C. "state, county or Township Building Code" shall mean the State Construction code administered and enforced in the Township pursuant to the Stille-Derouette-Hale Single State Construction Commission Act, Act No. 230 of 1972, as amended.
- D. "Code Enforcement Officer" shall mean any officer designated by the Township Board as the officer responsible for enforcing the Portland Township Code of Ordinances.

**Section 7.4.03: Notice; Contents; Hearing Officer; Filing of Notice with Hearing Officer; Service**

- A. Notice Requirement. Whenever the Township, through its Code Enforcement Officer, determines that the whole or any part of any building or structure is a dangerous building, as defined in Section 7.4.02, the Township Building Inspector or Code Enforcement Officer shall issue a notice that the building or structure is a dangerous building.
- B. Parties Entitled to Notice. Such notice shall be served on each owner of or party in interest in the building or structure in whose name the property appears on the last local tax assessment records.
- C. Contents of Notice. The notice shall specify the time and place of a hearing to be held before a Hearing Officer concerning whether the building or structure is a dangerous building, at which time and place the person to whom the notice is directed shall have the opportunity to show cause why the Hearing Officer should not order the building or structure to be demolished or otherwise made safe, or properly maintained.
- D. Service of Notice. The notice shall be in writing and shall be served upon the person to whom the notice is directed personally, or by certified mail with return

receipt requested, and addressed to the owner or party in interest at the address shown on the tax records, at least ten (10) days before the date of the hearing described in the notice. If any person to whom a notice is directed is not personally served, in addition to mailing the notice, a copy thereof shall be posted upon a conspicuous part of the building or structure.

#### **Section 7.4.04: Hearing Officer**

The Hearing Officer shall be appointed by the Township Supervisor with the approval of the Township Board. The Hearing Officer may be removed at the discretion of the Township Board. The Hearing Officer shall be a person who has expertise in housing matters including, but not limited to, an engineer, architect, building contractor, building inspector, or member of a community housing organization. An elected official or employee of the Township shall not be appointed as a Hearing Officer.

#### **Section 7.4.05: Hearing; Testimony; Decision; Order; Nonappearance or Noncompliance; Review; Order to Show Cause; Cost**

- A. Filing of Notice. The Township shall file a copy of the notice that the building or structure is a dangerous building with the Hearing Officer.
- B. Hearing Testimony and Decision. The Hearing Officer shall take testimony of the Code Enforcement Officer or other person requested by the Enforcing Agency, the owner of the property, and any interested party. Not more than five (5) days after completion of the hearing, the Hearing Officer shall render his/her decision either closing the proceedings or ordering the building or structure to be demolished, otherwise made safe, or properly maintained.
- C. Order; Compliance with Order. If it is determined by the Hearing Officer that the building or structure should be demolished or otherwise made safe or properly maintained, the Hearing Officer shall so order, fixing a time in the order for the owner or party in interest to comply therewith. If the building or structure is a dangerous building under Section 7.4.02.A of this Article, the order may require the owner or agent to maintain the exterior of the building and adjoining grounds owned by the owner of the building, including but not limited to, the maintenance of lawns, trees, and shrubs.
- D. Noncompliance with Order. If the owner or party in interest fails to appear or neglects or refuses to comply with the order issued under Section 7.4.05.C, the Hearing Officer shall file a report of the findings and a copy of the order with the Township Board not more than five (5) days after noncompliance by the owner, and request that the necessary action be taken to enforce the order. A copy of the findings and order of the Hearing Officer shall be served on the owner or party in interest in the manner prescribed in Section 7.4.03 of this Article.

#### **Section 7.4.06: Enforcement Hearing**

The Township Board shall fix a date, not less than thirty (30) days after the hearing prescribed in Section 7.4.05 for a hearing on the findings and order of the Hearing Officer and shall give notice to the owner or party in interest in the manner prescribed in Section 7.4.03 of the time and place of the hearing. At the hearing, the owner or party in interest shall be given the opportunity to show cause why the order should not be enforced. The Township Board shall either approve, disapprove, or modify the order. If the Township Board approves or modifies the order, the Township Board shall take all necessary action to enforce the order. If the order is approved or modified, the owner or party in interest shall comply with the order within sixty (60) days after the date of the hearing under this Section. In the case of an order of demolition, if the Township Board determines that the building or structure has been substantially destroyed by fire, wind, flood, or other natural disaster, and the cost of repair of the building or structure is greater than the state equalized valuation of the building or structure, the owner or party in interest shall comply with the order of demolition within twenty-one (21) days after the date of the hearing under this Section.

#### **Section 7.4.07: Implementation and Enforcement of Remedies**

- A. Implementation of Order by Township. In the event that the owner or party in interest does not comply with the decision of the Township Board, the Township Board may in its discretion, contract for the demolition, making safe, or maintaining the exterior of the building or structure or grounds adjoining the building or structure.
- B. Reimbursement of Costs. The cost of the demolition, of making the building safe, or of maintaining the exterior of the building, structure or grounds adjoining the building or structure, incurred by the Township to bring the property into conformance with this Article shall be reimbursed to the Township by the owner or party in interest in whose name the property appears.
- C. Notification of Costs; Lien for Unpaid Costs. The owner or party in interest in whose name the property appears on the last local tax assessment records shall be notified by the assessor of the amount of the cost of the demolition, of making the building safe, or maintaining the exterior of the building, structure or grounds adjoining the building or structure, by first class mail at the address shown on the records. If the owner or party in interest fails to pay the cost within thirty (30) days after mailing by the assessor of the notice of the amount of the cost, the Township shall have a lien for the cost incurred by the Township to bring the property into conformance with this Article. The lien shall not take effect until notice of the lien is filed or recorded as provided by law. A lien provided for in this subsection does not have priority over previously filed or recorded liens or encumbrances. The lien



for the cost shall be collected and treated in the same manner as provided for property tax liens under the General Property Tax act, Act 206 of the Michigan Public Acts of 1893, as amended, being Sections 211.1 to 211.157 of the Michigan Compiled Laws.

- D. Court Judgment for Unpaid Costs; Lien. In addition to other remedies under this Article, the Township may bring an action against the owner of the building or structure for the full cost of the demolition, of making the building safe, or of maintaining the exterior of the building, structure or grounds adjoining the building or structure. The Township shall have a lien on the property for the amount of the judgment obtained pursuant to this Subsection. The lien provided for in this subsection shall not take effect until notice of the lien is filed or recorded as provided by law. The lien does not have priority over previously filed or recorded liens and encumbrances. The lien provided for in this subsection shall be collected and treated in the same manner as provided for property tax liens under the General Property Tax act, Act 206 of the Michigan Public Acts of 1893, as amended, being Sections 211.1 to 211.157 of the Michigan Compiled Laws.
- E. Enforcement of Judgment. A judgment in an action brought pursuant to Section 7.4.07.D may be enforced against any assets of the owner including, but not limited to, the building or structure.
- F. Lien for Judgment Amount. The Township shall have a lien for the amount of a judgment obtained pursuant to Section 7.4.07.D of this Section against the owner's interest in all real property located in this State that is owned in whole or in part by the owner of the building or structure against whom the judgment is obtained. A lien provided for in this subsection does not take effect until notice of the lien is filed or recorded as provided by law and the lien does not have priority over previously filed or recorded liens and encumbrances.

#### **Section 7.4.08: Judicial Review**

An owner or party in interest aggrieved by any final decision or order of the Township Board under Section 7.4.06 may appeal the decision or order to the circuit court by filing a petition for an order of superintending control within twenty-one (21) days from the date of the decision.

## **Article 5: Junk Yards**

### **Sec. 7.5.01: License**

No person shall hereinafter own, maintain or operate within the township a junk yard, or place for the dismantling, wrecking, and or disposing of refuse materials of automobiles, without first having secured a license to do so from the township clerk. Any person allowing two or more junk automobiles upon property owned by him or under his control shall be deemed to be carrying on the business of storing junk automobiles.

### **Sec. 7.5.02: Application for License**

The application for license to operate a junk yard, or place for the dismantling, wrecking, and or disposing of refuse materials of automobiles, shall be made to the township board by the owner or authorized agent in writing on forms to be furnished by the Township Board and shall contain the following:

- (a) The full name, and address of the owner or operator;
- (b) A description of the site or sites, including the dimensions thereof and the street address;
- (c) The name and address of the title owners of said site or sites;
- (d) Whether the person making application for a license is currently engaged in conducting such business in any other location;
- (e) the trade name under which the business is to be conducted;
- (f) If the applicant is a corporation, the name, age, and address of its executive officer and the principal stock holders;
- (g) If required by the State of Michigan, a permit issued by the State Department of Transportation pursuant to 1966 PA 219.

Said application shall be subscribed and sworn to by the applicant and filed with the township clerk. The clerk shall immediately refer the application to the Supervisor of the Township, who may, if he so elects, call a special meeting of said township board to consider the said application, or he may delay such consideration until the next regular meeting of the Township Board. The Township Board shall cause an investigation to be made as to the suitability of the site and fitness of the applicant as to character and ability to conduct such business. If, in the opinion of the Township Board, the person making application is a proper person, the place to be used is suitable and zoned for such business, and such establishment does not otherwise violate the law, said board may authorize the granting of a license by the Township Board upon the payment of the license fee and provided in this Article. The Township Board, may in its discretion, refuse to grant the license provided for in this Article. All officers charged with making the investigation as provided for in this section shall have free access to all parts of the premises for which license has been applied, and a refusal to give such access by any person in charge of such premises shall be sufficient cause for a denial of said license.

**Sec. 7.5.03: Licenses**

- (a) The Township Board shall, as a condition precedent to the issuance of a license under this Article, require the applicant erect a cyclone fence at least six (6) feet in height in such a manner as to effectively screen junk automobiles from the view of the general public and any surrounding property owners, whether or not such property owners are adjoining property owners.
- (b) Prior to the issuance of a license to any applicant, such applicant shall furnish the Township Board with a notarized statement from all residents and property owners within a distance of two (2) miles of the proposed site, indicating that said property owners and residents have no objections to the granting of such a license.
- (c) Every license provided for in this article shall be issued by the Township Clerk and shall be on forms approved by the Township Board; said license shall be signed by the Township Clerk and countersigned by the Township Supervisor.
- (d) All licenses issued hereunder shall expire on the 1<sup>st</sup> day of July of each year following the issuing thereof.
- (e) No license issued under this resolution shall be transferable.
- (f) Separate licenses shall be required for each separate location.
- (g) No license shall issue until ten (10) days shall have elapsed from the date of the application for such license if filed with the township clerk.
- (h) Each license issued shall be conspicuously displayed at all times at the sites licensed.

**Sec. 7.5.04: License Fee**

The license fee for such operation is one hundred dollars (\$100.00) for each site licensed as a Junkyard or Place for the Dismantling, Wrecking, and/or Disposing of Refuse Materials of Automobiles for each year or fraction thereof, for each separate location in which said business is carried on or conducted.

**Sec. 7.5.05: Regulations**

Any person who shall be granted a license to operate any junk yard or place for the dismantling, wrecking and or disposing of refuse materials of automobiles shall:

- (a) Operate such establishment so as not to create a nuisance by reason of excessive noise or disagreeable odors or fumes;
- (b) Keep all junk, automobiles or parts thereof within the areas specifically licensed.
- (c) Refrain from burning any material which by reason of excessive smoke or bad odor is offensive or may tend to be offensive to the surrounding neighborhood. No fire shall be allowed to continue unattended or to be lighted in violation of

any rule, regulation or law of the state or this Code or any ordinance of the township;

- (d) Not load or unload iron or other heavy material between 9:00 p.m. in the evening and 6:00 a.m. in the morning;
- (e) Store all material of combustible nature so as not to create a fire hazard and such material shall not be permitted to accumulate in excess, but shall be disposed of promptly;
- (f) Upon vacating any site or upon abandonment of such business for any reason, remove all junk, automobiles, parts thereof, or other waste material from said premises;
- (g) Not obstruct, or cause to be obstructed the sidewalks, street, alleys or rights of way;
- (h) Not place or cause to be placed outside the property licensed any articles, automobiles, parts, wheels, tin, iron, or metal or other waste materials of any kind or nature.

**Sec. 7.5.06: Exhibition of goods on demand**

Every person licensed under the provisions of this Article shall, upon demand of the Supervisor, any law enforcement officer, or any township officer, exhibit all goods bought or received and give the description of the person selling the same.

**Sec. 7.5.07: Posting of Name of Business and Owner**

Any person owning, operating or using a junk yard or place for the dismantling, wrecking and or disposing of refuse materials of automobiles shall post in a conspicuous place in or upon his shop, store, wagon, vehicle, barn or other place of business a sign having his name and occupation legibly inscribed thereon.

**Sec. 7.5.08: Hours of Operation, Sales to minors, intoxicated persons or thieves**

No person shall purchase, or receive by sale, barter or exchange or otherwise any article mentioned in this Article from any persons between the hours of 9 p.m. and 7 a.m. or from any person who at the time is intoxicated, or from any habitual drunkard, or from any person known to said licensee to be a thief, or an associate of thieves, or a receiver of stolen property, or from any minor under the age of twenty one years, without the written consent of a parent or guardian.

**Sec. 7.5.09: Granting and Revoking of License**

No person known to be a thief or an associate of thieves, an habitual drunkard, a receiver of stolen property, nor any person incapable of keeping the records and making the reports herein provided for shall be deemed to be a suitable person to receive a license and any person to whom a license may have been granted may have his license revoked by the

township board on good cause shown and after reasonable notice and opportunity to be heard before such Township Board.

**Sec. 7.5.10: Premises Subject to Inspection**

All places of business and sites upon which a license herein provided for has been issued, as aforesaid, shall be kept neat and orderly and subject to the inspection of any law enforcement officer or township officer at all times.

**Sec. 7.5.11: Suspension and Revocation**

The Township Board may suspend or revoke any license with or without a hearing for failure of the license to comply with any of the provisions of this resolution.

**Sec. 7.5.12: Enforcement**

The Township Supervisor or his designate shall be responsible for the enforcement of this Article. The Township Supervisor shall be further empowered to make any investigation in regard to a violation of this Article and sign any criminal complaints was allowed by law necessary to enforce any provision of this Article.

**Sec. 7.5.13: Conflicting Provisions**

In the event any provision of this Article conflicts with state law, state law shall prevail. In the event any provision of this Article conflicts with Part 3, Zoning, Part 3 shall prevail.

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## PART 8 - MUNICIPAL CIVIL INFRACTIONS.

### Sec. 8.1.01. Short Title.

This Part shall be known and may be cited as the “Municipal Civil Infraction Part.”

### Sec. 8.1.02. Definitions.

For the purpose of the provisions of this Part, the following words and phrases shall be construed to have the meanings herein set forth, unless it is apparent from the context that a different meaning is intended:

- 1) **Act** means Act No. 236 of the Public Acts of 1961, as amended.
- 2) **Authorized Township Official** means a police officer, code enforcement officer, zoning administrator or other personnel of the Township of Portland authorized by this Part or any ordinance or resolution to issue municipal civil infraction citations or municipal civil infraction violation notices.
- 3) **Bureau** means the Township of Portland Municipal Ordinance Violations Bureau as established by this Part.
- 4) **Municipal Civil Infraction Action** means a civil action in which the defendant is alleged to be responsible for a municipal civil infraction.
- 5) **Municipal Civil Infraction Citation** means a written complaint or notice prepared by an authorized Township official, directing a person to appear in Court regarding the occurrence or existence of a municipal civil infraction violation by the person cited.
- 6) **Municipal Civil Infraction Violation Notice** means a written notice prepared by an authorized Township official, directing a person to appear at the Township of Portland Municipal Ordinance Violations Bureau and to pay the fine and costs, if any, prescribed for the violation by the schedule of civil fines adopted by the Township, as authorized under Sections 8396 and 8707(6) of the Act, being MCL 600.8396 and 600.8707(6) respectively.
- 7) **Repeat Offense** means any second or subsequent violation of the same ordinance, for which the person is found responsible or admits responsibility, committed by the person within any 12 month period (unless some other period is specifically provided by this Part or any ordinance). Amended 10-12-22
- 8) **Township** means Portland Township, a general law Township, Ionia County, Michigan.

- 9) **Warning Letter** means correspondence prepared by an authorized Township official advising the recipient of a municipal civil infraction and directing the person to correct the alleged violation.

**Sec. 8.1.03. Designation of Authorized Township Officials.**

The following personnel of the Township of Portland have the authority to issue municipal civil infraction citations and municipal civil infraction violation notices pursuant to this Part:

- 1) Township Supervisor; and
- 2) Zoning Administrator; and
- 3) Any other person as may from time to time be designated by the Township by resolution.

**Sec. 8.1.04. Warning Letters and Municipal Civil Infraction Action Commencement.**

Prior to commencing a municipal civil infraction action, an authorized Township official may send a warning letter by regular or certified mail advising the recipient of an alleged municipal civil infraction and directing that the alleged violation be corrected within thirty (30) days of the date the warning letter was issued. If the authorized Township official determines that the recipient has made substantial progress to correct the violation within the first thirty (30) days, the period to correct the violation may be extended in writing, provided that the extension does not exceed an additional thirty (30) days. In the event the violation is not corrected within the specified time, the authorized Township official may commence a municipal civil infraction action as permitted by this Part. Nothing in this Section shall be construed to require a warning letter prior to commencing a municipal civil infraction action.

A municipal civil infraction action may be commenced upon the issuance by an authorized Township official of (1) a municipal civil infraction citation directing the alleged violator to appear in court; or (2) a municipal civil infraction violation notice directing the alleged violator to appear at the Township of Portland Municipal Ordinance Violations Bureau.

**Sec. 8.1.05. Municipal Civil Infraction Citations: Issuance and Service.**

Municipal civil infraction citations shall be issued and served by authorized Township officials as follows:

- 1) The time for appearance specified in a citation shall be within a reasonable time after the citation is issued.
- 2) The place for appearance specified in a citation shall be the 64A District Court.



- 3) Each citation shall be numbered consecutively and shall be in the form approved by the state court administrator. The original citation shall be filed with the Court; the first copy shall be retained by the Township; the third (3rd) copy shall be issued to the alleged violator.
- 4) A citation for a municipal civil infraction signed by an authorized Township official shall be treated as made under oath if the violation alleged in the citation occurred in the presence of the official signing the complaint and if the citation contains the following statement immediately above the date and signature of the official: "I declare under the penalties of perjury that the statements above are true to the best of my information, knowledge and belief."
- 5) An authorized Township official who witnesses a person commit a municipal civil infraction shall prepare and subscribe, as soon as possible and as completely as possible, an original and required copies of a citation.
- 6) An authorized Township official may issue a citation to a person if:
  - a) Based upon investigation, the official has reasonable cause to believe that the person is responsible for a municipal civil infraction; or
  - b) Based upon investigation of a complaint by someone who allegedly witnessed the person violate this Code, a violation of which is a municipal civil infraction, the official has reasonable cause to believe that the person is responsible for a municipal civil infraction and if the Township attorney approves in writing the issuance of the citation.
- 7) Municipal civil infraction citations shall be served by an authorized Township official as follows:
  - a) Except as provided by subsection 7) b), below, an authorized Township official shall personally serve the third (3rd) copy of the citation upon the alleged violator.
  - b) If the municipal civil infraction action involves the use or occupancy of land, a building or other structure, a copy of the citation does not need to be personally served upon the alleged violator, but may be served upon an owner or occupant of the land, building or structure by posting the copy of the citation on the land or attaching the copy to the building or structure. In addition, a copy of the citation shall be sent by first class mail to the owner of the land, building or structure at the owner's last known address.

**Sec. 8.1.06. Municipal Civil Infraction Citations Contents.**

A. A municipal civil infraction citation shall contain the name of the plaintiff, the name and the address of the defendant, the municipal civil infraction alleged, the place where the defendant shall appear in court, the telephone number of the court, and the time at or by which the appearance shall be made.

B. The municipal civil infraction citation shall inform the defendant that he or she may do one of the following:

- 1) Admit responsibility for the municipal civil infraction by mail, in person, or by representation, at or by the time specified for appearance.
- 2) Admit responsibility for the municipal civil infraction “with explanation” by mail by the time specified for appearance or, in person, or by representation.
- 3) Deny responsibility for the municipal civil infraction by doing either of the following:
  - a) Appearing in person for an information hearing before a judge or district court magistrate, without the opportunity of being represented by an attorney, unless a formal hearing before a judge is requested by the Township.
  - b) Appearing in court for a formal hearing before a judge, with the opportunity of being represented by an attorney.
  - c) The citation shall also inform the defendant of the following:
    - i) If the defendant desires to admit responsibility “with explanation” in person or by representation, the defendant must apply to the Court in person, by mail, by telephone, or by representation, within the time specified for appearance and obtain a scheduled date and time for an appearance.
    - ii) If the defendant desires to deny responsibility, the defendant must apply to the court in person, by mail, by telephone or by representation within the time specified for appearance and obtain a scheduled date and time to appear for a hearing, unless a hearing date is specified on the citation.
    - iii) A hearing shall be an informal hearing unless a formal hearing is requested by the defendant or the Township.
    - iv) At an informal hearing the defendant must appear in person before a judge or district court magistrate, without the opportunity of being represented by an attorney.
    - v) At a formal hearing the defendant must appear in person before a judge with the opportunity of being represented by an attorney.

- 4) The citation shall contain a notice in boldfaced type that the failure of the defendant to appear within the time specified in the citation or at the time scheduled for a hearing or appearance is a misdemeanor and will result in the entry of a default judgment against the defendant on the municipal civil infraction.

#### **Sec. 8.1.07. Municipal Ordinance Violations Bureau.**

A. **Bureau Established.** The Township hereby establishes a Municipal Ordinance Violations Bureau (*Bureau*) as authorized by Section 8396 of the Act to accept admissions of responsibility for municipal civil infractions in response to municipal civil infraction violation notices issued and served by authorized Township officials, and to collect and retain civil fines and costs as prescribed by this Part or any other ordinance.

B. **Location, Supervision, Rules And Regulations.** The bureau shall be located at the Township Hall, and shall be under the supervision and control of the Township Supervisor. The Supervisor, subject to the approval of the Township Board, shall adopt rules and regulations for the operation of the Bureau.

C. **Disposition Of Violations.** The Bureau may dispose only of municipal civil infraction violations for which a fine has been scheduled and for which a municipal civil infraction violation notice (as compared with a citation) has been issued. The fact that a fine has been scheduled for a particular violation shall not entitle any person to dispose of the violation at the Bureau. Nothing in this Part shall prevent or restrict the Township from issuing a municipal civil infraction citation for any violation or from prosecuting any violation in a court of competent jurisdiction. No person shall be required to dispose of a municipal civil infraction violation at the Bureau and may have the violation processed before a court of appropriate jurisdiction. The unwillingness of any person to dispose of any violation at the Bureau shall not prejudice the person or in any way diminish the person's rights, privileges and protection afforded by law.

D. **Bureau Limited To Accepting Admissions Of Responsibility.** The scope of the Bureau's authority shall be limited to accepting admissions of responsibility for municipal civil infractions and collecting and retaining civil fines and costs as a result of those admissions. The Bureau shall not accept payment of a fine from any person who denies having committed the offense or who admits responsibility only with explanation, and in no event shall the Bureau determine, or attempt to determine, the truth or falsity of any fact or matter relating to an alleged violation.

E. **Municipal Civil Infraction Violation Notices.** Municipal civil infraction violation notices shall be issued and served by authorized Township officials under the same circumstances and upon the same persons as provided for citations. In addition to any other information required by this Part or other ordinance, the notice of violation shall indicate

- 1) the time by which the alleged violator must appear at the Bureau;
- 2) the methods by which an appearance may be made;
- 3) the address and telephone number of the Bureau;
- 4) the hours during which the Bureau is open, the amount of the fine scheduled for the alleged violation, and;
- 5) the consequences of failing to appear and paying the required fine within the required time.

**F. Appearance Payment Of Fines And Costs.** An alleged violator receiving a municipal civil infraction violation notice shall appear at the Bureau and pay the specified fine and costs at or by the time specified for appearance in the municipal civil infraction violation notice. An appearance may be made by mail, in person, or by representation.

**G. Procedure When Admission Of Responsibility Is Not Made Or Fine Not Paid.** If an authorized Township official issues and serves a municipal ordinance violation notice and if an admission of responsibility is not made and the civil fine and costs, if any, prescribed by the schedule of fines for the violation are not paid at the Bureau, a municipal civil infraction citation may be filed with the District Court and a copy of the citation may be served by first-class mail upon the alleged violator at the alleged violator's last known address. The citation filed with the court does not need to comply in all particulars with the requirements for citations as provided by Section 8705 and 8709 of the Act, but shall consist of a sworn complaint containing the allegations stated in the municipal ordinance violation notice and shall fairly inform the alleged violator how to respond to the citation.

**Sec. 8.1.08 Penalties for Violations of Civil Infractions.**

A. Unless specifically designated elsewhere in the Code, the penalty for civil infractions shall be the amount as provided by this Part, plus any costs, damages, expenses and other sanctions, as authorized under Part 87 of the Act, and any other applicable laws.

B. Unless otherwise specified, the fine for a municipal civil infraction shall be as follows:

<b>Offense (Violation)</b>	<b>Fine</b>
Failure to comply with any provision of the Ordinance.	Not less than \$100.00 plus costs.

<b>Offense (Violation)</b>	<b>Fine</b>
First Repeat Offense.	Not less than \$250.00 plus costs.
Second (or any subsequent Repeat Offense.	Not less than \$500.00 plus costs.

C. Unless a violation of this Code is specifically designated as a civil infraction, the violation shall be deemed a misdemeanor in accordance with Section 1.3.01.

D. A violation includes any act that is prohibited or made or declared to be unlawful or an offense by this Code; and any omission or failure to act where the act is required by this Code.

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

F. If the defendant in a municipal civil infraction action is determined responsible for a municipal civil infraction, the judge or district court magistrate, in addition to any fine, costs, and assessment imposed under section 8727 of the Act, as amended, may assess additional costs incurred in compelling the appearance of the defendant, which costs shall be returned to the general fund of the Township.

G. All costs ordered by the court shall be in addition to the fines ordered under Section 8.1.08.B of this Part and may include all expenses, direct and indirect, to which the Township has been put in connection with the municipal civil infraction in accordance with Section 8727 of the Act, provided that costs of no more than \$500.00 shall be ordered.

H. In addition to any remedies available at law, the Township may bring an action for an injunction or other process against a person to restrain, prevent, or abate any violation of this Part or this Code.

**Sec. 8.1.09. Failure to Appear Penalty.**

A person served with a municipal civil infraction citation as provided herein who fails to appear within the time specified in the citation or at the time scheduled for hearing or appearance is guilty of a misdemeanor, punishable by a fine of not more than five hundred (\$500.00) dollars. Failure to appear will also result in the entry of a default judgment on the municipal civil infraction.

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## **PART 9 - CABLE TELEVISION SYSTEMS**

### **Article 1: General**

#### **Sec. 9.1.01: Purpose**

The purpose of this Ordinance is to regulate the construction, maintenance, and operation of Cable Television Systems in the Township of Portland, Ionia County, Michigan and to provide for the granting of franchises for the construction, maintenance and operation of Cable Television Systems.

#### **Sec. 9.1.02: Definitions**

- (a) Basic Service means any service tier which includes the re-transmission of local television broadcast signals.
- (b) Board means the Board of Trustees of the Township of Portland.
- (c) CATV Commission means the advisory body created pursuant to this Ordinance to recommend measures in connection with the enforcement and development of this Ordinance.
- (d) “Cable Communications System” also referred to as “cable system,” means a system of antennas, fiber optic cables, transmitters and receivers, coaxial cables and amplifiers, towers, microwave or other wireless transmission links, cablecasting studios, and any other conductors, converters, equipment or facilities, designed and constructed for the purpose of producing, receiving, amplifying, storing, processing, switching, or distributing audio, video, digital or other forms of electronic or electrical signals sold or distributed to subscribers.
- (e) Franchise is a non-exclusive, limited authorization awarded by ordinance for the construction, maintenance, and operation of a CATV system in the Township.
- (f) Grantee is any holder of a CATV franchise granted pursuant to this Ordinance.
- (g) Gross Revenues means all amounts earned or accrued by Grantee or any entity in any way affiliated with Grantee, in whatever form and from all sources which are in connection with or attributable to the operation of the Cable Television System within Township or Grantee’s provision within Township of Cable Services. Such Gross Revenues shall include the following:
  - A. Gross Revenues shall include, without limitation, all subscriber and customer revenues (including those for basic cable services; additional tiers; premium services; pay per view; program guides; deposits net of any deposits returned to subscribers in the applicable time period; installation,



disconnection or service call fees; fees for the provision, sale, rental or lease of converters, remote controls, additional outlets and other customer premises equipment), revenues from the use of leased access channels, advertising revenues (national, regional or local); leased access rentals, commissions, per inquiry fees and all other moneys or consideration received from home shopping services, entities providing programming used on The Cable Television System or the like.

- B. Gross Revenues, shall include amounts earned or accrued during a period regardless of whether (1) received or not; (2) the amounts are to be paid in cash, in trade, or by means of some other benefit to Grantee or any entity in any way affiliated with Grantee; (3) the goods or services with which the revenue is associated are provided at cost or the revenue amount can be matched against an equivalent expenditure; (4) the amounts are characterized, separately identified, or accounted as being for goods, services, or fees to be paid to units of government or government agencies; or (5) the amounts are initially recorded or received by Grantee or by an entity in any way affiliated with Grantee. However, Gross Revenues shall exclude uncollected accounts during the period, computed on a fair basis consistently applied.
  - C. Gross Revenues shall be computed at the level where first received from an entity not in any way affiliated with Grantee and shall not be net of (1) any operating expense; (2) any accrual, including without limitation, any accrual for commission; or (3) any other expenditure.
  - D. Advertising Revenues, Tower Rental revenues, Home Shopping Network revenues or other revenues whose source cannot be specifically identified with a particular subscriber shall be allocated among the units of government served by Grantee from the cable system “headend” serving Township in proportion to the number of subscribers in each.
- (h) Person is any individual, firm, partnership, association, corporation, company or organization.
  - (i) School System shall mean each of the intermediate public school districts within the boundaries of the Township.
  - (j) Subscriber is any person who contracts with the Grantee for, or is in any manner provided with, cable services.
  - (k) Township means the Township of Portland.
  - (l) Transfer or Transferred shall mean any form of sale, conveyance, assignment, lease, sublease, merger, pledge, deed, grant, mortgage, transfer in trust, encumbrance or

hypothecation in whole or in part, whether voluntary or involuntary, other than to secure indebtedness, of any right, title or interest of Company in or to this Franchise or to The Cable Television System, excluding, however, the replacement of portions of the Cable Television System in the course of ordinary operation and maintenance.

- (m) User is any person who is provided the use of the Grantee's CATV System, channels, equipment or facilities.

**Sec. 9.1.03: Cable Television Commission**

The Board may, by resolution, establish a five-member Cable Television Commission which shall be advisory in nature and which shall make recommendations to the Board on matters pertaining to the enforcement of this Ordinance and on such other matters as may be requested by the Board.

## **Article 2: Franchise; New Developments; Waiver; Transfer of Rights**

### **Sec. 9.2.01: Franchise Required**

No person shall install, construct, maintain or otherwise operate a CATV system in the Township without first having obtained a franchise.

### **Sec. 9.2.02: Franchise Issuance**

- (a) The Board may grant one or more franchises for the construction and operation of a CATV system in the Township after consideration of the applicants for such franchise as may be before it. Any franchise shall be granted subject to this and other Ordinances of the Township and applicable State and Federal laws.
- (b) The Township specifically reserves the right to grant, at any time, such additional franchises for a CATV System as it deems appropriate. Additional franchises shall not be deemed to modify, revoke, terminate or damage any rights previously granted to any other Grantee.
- (c) In the event a License Application is filed proposing a License Territory which overlaps in whole or in part an existing area, a copy shall be served by the applicant by certified mail upon the current licensed Grantee or Grantees. Proof that a copy of the License Application has been served upon the current Grantee(s) shall be provided to the Township. No application for overlapping License Territory shall be processed until proof of service has been furnished in the Township, and no such application shall be granted without public hearing on the request. It is not the intent of this Ordinance to either require or prohibit overbuilding.
- (d) Applications for a new, renewed or amended franchise shall be made in such form as the Township may prescribe by resolution, consistent with the terms of this Ordinance, and Federal or State law; and shall be accompanied by a non-refundable application review fee as the Township may prescribe by resolution.
- (e) Any franchise or franchise renewal and the rights, privileges, authority and responsibilities established shall take effect and be in force from and after final acceptance, and shall not continue in force and effect for a period established by the franchise not to exceed fifteen (15) years from the date of execution, only if within thirty (30) days after the date of the granting of a franchise, the Grantee files with the Township Clerk its unconditional acceptance of the franchise, all required letters of credit, construction bonds and insurance certificates, and pays to the Township Clerk all reasonable costs incurred by the Township in preparing, considering the Cable TV Ordinance, and awarding the franchise or renewal, including legal, engineering, technical, publication, public hearing and other expenses. If a Grantee fails to comply with this subsection, it shall acquire no rights, privileges, or authority whatsoever.

- (f) Grantees shall, within sixty (60) days after the execution of a franchise, apply to the Federal Communications Commission, any State agency, and any appropriate utility companies for all necessary pole line agreements, authorizations or registrations for the construction of a Cable System, and for all permits then normally available. Failure of a Grantee to timely apply for such pole line agreements, authorizations or registrations shall render the franchise null and void and forfeit the Grantee's security.

**Sec. 9.2.03: Liability**

- (a) A Grantee shall indemnify and hold harmless the Township at all times during the life of a franchise and will pay all damages and penalties which the Township may be required to pay as a result of granting franchise to Grantee.
- (b) A Grantee shall at all times during the life of a franchise carry and require its contractors and subcontractors to carry public liability, property damage, worker's disability, and vehicle insurance in such form and amount as shall be determined by the Township. All required insurance coverage shall provide for thirty (30) day notice to the Township in the event of material alteration or cancellation of such coverage prior to the effective date of such material alteration or cancellation. Failure of the Grantee to provide appropriate insurance certificates to the Township within sixty (60) days after the execution of a franchise shall render the franchise null and void.
- (c) A Grantee shall pay and, through acceptance of a franchise, specifically agrees to pay all reasonable expenses incurred by the Township in defending itself with regard to all damages, penalties, or other claims resulting from granting the franchise, the acts of the Grantee, its employees, contractors, and subcontractors.
- (d) In all instances where Township seeks to obtain indemnification, or any other payment or expenses pursuant to this section, Township shall notify Grantee within ten (10) days or within sufficient time to legally respond if less than ten days, of the receipt of any claim for which it believes Grantee is obligated under the section. Township shall fully cooperate with Grantee in the defense of such claim and shall make available its employees, representatives and records as reasonably necessary to the defense. Township shall not settle or compromise the claim in any way without the written permission of Grantee. Township may employ its own legal representatives at its own expense.

**Sec. 9.2.04: New Developments**

- (a) Grantee may improve, upgrade and expand its cable television system and cable television services in order to incorporate new developments in the state-of-the-art. Grantee shall not implement or provide services other than cable television services without the express prior consent and approval of the Township; provided, however, that such approval will not be unreasonably withheld.
- (b) In addition to those matters required in a franchise, Grantees recognize:
  - A. It recognizes and agrees that the Township shall in no way be bound to renew or extend the franchise at the end of any franchise term except as set forth in the U.S. Cable Communications Policy Act of 1984, as amended, or as otherwise provided in Federal or State law, rules, or regulations.
  - B. A franchise is a bilateral contract between the Grantee and the Township. To the extent that this Ordinance is an exercise of the police power of the Township, it may be changed or modified without Grantee's consent. Acceptance of a franchise shall not be deemed a waiver of any rights or defenses by a Grantee.
  - C. A Grantee shall at all times comply with all laws and regulations of the State and Federal government or any administrative agency unless released by law. However, if any such State or Federal law or regulation shall require a Grantee to perform any service, or shall permit a Grantee to perform any service, or shall prohibit a Grantee from performing any service, in conflict with the terms of the franchise or of any law or regulation of the Township, then as soon as possible, a Grantee shall notify the Township of the point of conflict believed to exist between such regulation or law and the laws or regulations of the Township or franchise.
  - D. If any provision of the franchise is held by any court of competent jurisdiction to be invalid as conflicting with any Federal or State law, rule or regulation now or hereafter in effect, or is held by such court to be modified in any way in order to conform to the requirements of any law, rule or regulation, said provision may be considered a separate, distinct and independent part of the franchise, and such holding shall not affect the validity and enforceability of all other provisions. In the event that such law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed, so that the provision which had been held invalid or modified is no longer in conflict with the law, rules or regulations, said provision shall return to full force and effect and shall be binding on the parties.

- E. If the Township determines that a material provision of a franchise is affected by action of a court or of the State or Federal government, the Township shall have the right to modify any of the provisions to such reasonable extent as may be necessary to carry out the full intent and purpose of the franchise.

**Sec. 9.2.05: Guaranty of Parent**

The effectiveness of a franchise is expressly conditioned upon the execution and delivery to the Township by each parent of the Grantee of an unconditional guaranty of the timely performance of all obligations of the Grantee, said guaranty to be in a form acceptable to the Township.

**Sec. 9.2.06: Acceptance of Agreement and Incorporation of Application and Ordinance by Reference**

Upon execution of a franchise by Grantee, Grantee agrees to be bound by all of its terms and conditions and accepts unconditionally the franchise and promises to comply with and abide by all of their terms, provisions and conditions. The Grantee also agrees to provide all services set forth in its application and proposal, to provide cable television services within the confines of the Township of Portland and by its acceptance of the franchise, the Grantee specifically grants and agrees that its application and proposal is thereby incorporated by reference and made a part of this agreement. In addition, the Grantee specifically agrees that this Ordinance of the Township of Portland is incorporated by reference and made a part of the franchise. In the event of a conflict between the application and proposal of the Grantee, and the Ordinance and the Franchise, that provision which provides the greatest benefit to the Township, in the opinion of the Board, shall prevail.

**Sec. 9.2.07: Waiver**

A Grantee agrees not to oppose intervention by the Township in any suit or proceeding to which the Grantee is a party. A Grantee agrees to abide by all provisions of this Ordinance and its franchise and further agrees that it will not at any future time set up as against the Township any claim that the provisions of this Ordinance or its franchise are unreasonable, arbitrary, or void.

**Sec. 9.2.08: Transfer of Rights**

- (a) Prior approval of the Township shall be required where ownership or control of more than forty (40%) percent of the right of control of a Grantee is acquired by a person or group of persons acting in concert, none of whom already owns or controls forty (40%) percent or more of the right of control, singularly or collectively, of the Grantee. This subsection shall not be deemed to restrict the transfer by bequest or descent of stock of the Grantee or the assignment of the franchise as security for loans.

- (b) A rebuttable presumption that a transfer of control has occurred shall arise upon the acquisition or accumulation by any person or group of persons of forty (40%) percent of Grantee.
- (c) No initial franchise nor any part or portion thereof granted hereunder may be sold, transferred or assigned until the facilities, equipment and personnel which the Grantee has agreed to provide and install pursuant to the franchise are one hundred (100%) percent completed and operational for a minimum period of two (2) years.
- (d) Grantee shall not transfer, sell or assign any portion of its interest in the franchise or in its CATV System without prior approval of the Township. The Grantee shall have the responsibility:
  - A. To show to the satisfaction of the Township whether the proposed purchaser, transferee, or assignee (the “proposed transferee”), which, in the case of a corporation, shall include all officers, directors, employees and all persons having a legal or equitable interest in five (5%) percent or more of its voting stock, or any of the proposed transferee’s principals:
    - (1) has ever been convicted or held liable for acts involving moral turpitude (including, but not limited to, fraud, misrepresentation to any Federal or State agency, violation of any securities law), or is presently under an indictment, investigation or complaint charging such acts;
    - (2) has ever had a judgment in an action for fraud, deceit or misrepresentation entered against it, her, him, or them by any court of competent jurisdiction;
    - (3) has pending any legal claim, lawsuit or administrative proceeding arising out of or involving a CATV System which is not of a routine nature and may have a material impact on the operation of the cable system.
  - B. To establish to the satisfaction of the Township the financial solvency of the proposed transferee by submitting all current financial data for the proposed transferee and such other appropriate data as the Township may reasonably request.
  - C. To establish to the satisfaction of the Township that the financial standing of the proposed transferee is such that the proposed transferee shall be able to maintain and operate the Cable System for the remaining term of the franchise.

- (e) Any proposed transferee shall execute an agreement, in a form and containing conditions approved by the Township, that it will assume and be bound by all of the provisions, terms and conditions of the franchise and all applicable Federal, State and local laws and further, that the transferee shall be liable and obligated under said documents.
- (f) Nothing in any approval by the Township of an authorization of any transfer or assignment of any ownership interest shall be construed to waive or release any rights of the Township in and to the streets, public ways and public places of the Township or as a release of any of the Township's police powers, or as an exercise of eminent domain.
- (g) The occurrence of any event which constitutes either an act of bankruptcy by the Grantee as defined in the Federal Bankruptcy Act; or placement of the Grantee into receivership or the issuance of any order to the Grantee or any of its stockholders by a government agency or court of competent jurisdiction to divest any interest related to the CATV System or the entry of any judgment against the Grantee which, in the opinion of the Township, impairs the Grantee's credits or Grantee's failure to meet its financial obligations on a continuing basis, shall be deemed an unauthorized transfer and assignment under the provisions of this subsection and shall be deemed a material breach and default of the franchise and subject the Grantee to the revocation and termination provisions of the franchise.
- (h) The occurrence of an unauthorized transfer or assignment may, at the option of the Township, terminate the franchise and accelerate all of the obligations and rights thereunder, including but not limited to the right of the Township to purchase the Cable System. The Grantee shall notify the Township of any occurrence which constitutes an unauthorized transfer and of the entry of any judgment against it within twenty-four (24) hours of knowledge of such occurrence. From and after any of the occurrences enumerated, the Grantee shall not make, execute or enter into any deed, deed of trust, mortgage, contract, conditional sales contract or any loan, lease, pledge, sale, pole agreement or any other agreement or hypothecation concerning any of the facilities or property, real or personal, of the CATV System without the written approval of Township, such approval not to be unreasonably withheld.

**Sec. 9.2.09: Review, Renewal, Termination & Cancellation**

- (a) To provide for technological, economic, and regulatory changes in the state of the art of cable communications, to facilitate renewal procedures, to promote the maximum degree of flexibility in the CATV System and to achieve a continuing, advanced, modern system for the Township, the Township and the Grantee shall comply with the following provisions:



- A. Prior to the granting of or renewal of a franchise, or at any other time as the Township deems necessary, a public hearing shall be held for the purpose of reviewing and commenting on, among other items, the following: services, rate structure, free or discounted services, application of new technologies, system performance, services provided, programming, subscriber complaints, user complaints, rights of privacy, amendments to the franchise, underground processes, and developments in the law. Either the Township or the Grantee may select additional topics for discussion at any regular or special review hearing.
  - B. Public notice of the public hearing shall be given by advertisement twice in a newspaper of general circulation at least one (1) week prior to the public hearing and at the sole expense of the Grantee. In addition, if the Grantee's CATV system is completed, Grantee shall televise notice of the public hearing at least one (1) week prior to the public hearing on at least one (1) of the channels referred to in Section 9.05.01(j) of this Ordinance.
- (b) After holding a public hearing, the Township may take such actions as it deems appropriate, including the grant or denial of a franchise or franchise renewal, by written decision and based upon the factors outlined below if applicable:
- (1) Technical developments and performance of the Grantee's CATV System;
  - (2) Local programming (i.e. access channels and local origination);
  - (3) Additional services if offered by the Grantee;
  - (4) Cost of service;
  - (5) Performance of all obligations of Grantee as prescribed by franchise and ordinance including, but not limited to, programming, facilities, equipment and personnel available to subscribers and users for all forms of community communications;
  - (6) Cable industry performance nationwide;
  - (7) Comments from residents and representatives of the community and community organizations.
- (c) Absent a timely request from Grantee to renew a franchise, the franchise shall terminate at the end of its initial or renewal term.

### **Sec. 9.2.10: Purchase Option**

The Township may exercise an option to purchase the CATV System at the expiration, termination or revocation of the franchise. The purchase price to be paid by the Township shall be the fair market value of the System as a going concern.

### **Sec. 9.2.11: Removal**

- (a) Upon expiration, termination or revocation of a franchise, if the franchise is not renewed and if neither the Township nor an assignee purchase the CATV System, the Grantee may remove any underground cable from the streets which has been installed in such a manner that it can be removed without trenching or other opening of the streets along the extension of cable to be removed. The Grantee shall not remove any underground cable or conduit which requires trenching or other opening of the streets along the extension of cable to be removed, except as hereinafter provided. The Grantee shall remove, at its sole cost and expense, any underground cable or conduit by trenching or opening of the streets along the extension thereof or otherwise which is ordered to be removed by the Township based upon a determination, in the sole discretion of the Township, that removal is required in order to eliminate or prevent a hazardous condition or promote future utilization of the streets for public purposes. Any order by the Township to remove cable or conduit shall be mailed to the Grantee not later than thirty (30) calendar days following the date of expiration of the franchise. A Grantee shall file written notice with the Township Clerk not later than thirty (30) calendar days following the date of expiration, termination or revocation of the franchise of its intention to remove cable intended to be removed and a schedule for removal by location. The schedule and timing of removal shall be subject to approval and regulation by the Township. Removal shall be completed not later than twelve (12) months following the date of expiration of the franchise. Underground cable and conduit in the streets which is not removed shall be deemed abandoned and title thereto shall be vested in the Township.
- (b) Upon expiration, termination or revocation of a franchise, if the franchise is not renewed and if neither the Township nor an assignee purchase the System, the Grantee, at its sole expense, shall, unless relieved of the obligation by the Township, remove from the streets all above-ground elements of the Cable Television System, including but not limited to amplifier boxes, pedestal mounted terminal boxes, and cable attached to or suspended from poles, which are not purchased by the Township or its assignee.
- (c) The Grantee shall apply for and obtain such encroachment permits, licenses, authorizations or other approvals and pay such fees and deposit such security as required by applicable ordinance of the Township, shall conduct and complete the work of removal in compliance with all such applicable ordinances, and shall

restore the streets to the same condition they were in before the work of removal commenced. The work of removal shall be completed not later than one (1) year.

## Article 3: Construction

### Sec. 9.3.01: Construction Provisions

(a) Service Availability and Line Extensions. All existing residential households within the Cable Service Territory will be provided with access to service from the System as set forth in the Schedule of Service Areas as stated in each Franchise, provided that access to service can be provided from streets or Public Property and all such permission as may be required from property owners is reasonably and timely available without cost to Grantee, and that service to multiple dwelling units need be provided only on terms acceptable to Grantee. In addition to construction set forth in the Franchise, areas with occupancy densities of more than [twenty-five (25) homes] per mile which are contiguous to the system will be provided with access to service to the extent service is economically feasible and technically possible. In areas with less than twenty- five (25) homes per mile, service shall be offered in conformance with Grantee's service extension policies.

(b) Construction Requirements. Grantee shall make use of existing poles and other facilities available to Grantee. Grantee may erect its own poles and install its own conduit, with approval of the Township, which approval shall not be unreasonably withheld. All poles and conduit installed within the Cable Service Territory shall be made available for attachment or use by Grantee, at just and reasonable rates.

In case of new construction or property development where utilities are to be placed underground, the developer or property owner shall give Grantee reasonable notice of not less than thirty (30) days prior to such construction or development, and of the particular date on which open trenching will be available for Grantee's installation of conduit, pedestals and/or vaults, and laterals to be provided at Grantee's expense. Grantee shall also provide specifications as needed for trenching. Easements required to bring service to the development shall be provided by the developer or property owner.

(c) Construction Codes and Permits. Grantee shall obtain any required permits from Township before commencing construction involving the opening or disturbance of any street or public property. The Township shall cooperate with the Grantee and use its best efforts in granting any permits required. Grantee shall arrange its lines, cables and other appurtenances, on any street or public property, in such a manner as to cause no unreasonable interference with the usual and customary use of said street or public property of any person.

(d) Repair of Streets and Public Property. Any and all streets or public property which are disturbed or damaged during the construction, operation or maintenance of the System shall be promptly repaired by Grantee, at its expense and to the condition, or substantially similar condition, prior to the disturbance or damage.

- (e) Movement of Facilities. In the event it is necessary to temporarily move or remove any of Grantee's wires, cables, poles, or other facilities placed pursuant to this Franchise, in order to lawfully move a large object, vehicle, building or other structure over the streets of Township, upon thirty (30) days prior notice by Township to Grantee, Grantee shall move at the expense of the person requesting the temporary removal such of his facilities as may be required to facilitate such movements. Grantee may require such expense payments be made in advance of performing any work.

**Sec. 9.3.02: Condition of Street Occupancy**

- (a) The poles, wires, and appurtenances of a Grantee's system shall be located, erected, and maintained upon existing utility facilities wherever feasible. A Grantee shall use underground equipment in all cases where other utilities use underground equipment and in all cases where Township ordinance requires underground installation.
- (b) A Grantee shall be allowed, subject to appropriate regulation, to set its own poles, anchors, guys, and similar facilities within public rights-of-way within the Township when necessary and upon the securing of permits from the Township.
- (c) All facilities erected by a Grantee within the Township shall be so located as to cause minimum interference with the proper use of public rights-of-way and public places and to cause minimum interference with the rights and convenience of adjoining property owners.
- (d) In case of disturbance or damage to any street, sidewalk, alley, public way, or other public property, a Grantee shall at its own expense promptly and in a manner acceptable to the Township replace, repair, and otherwise restore such disturbance or damage.
- (e) If, at any time during the term of a franchise, the Township shall properly elect to undertake public building or construction, altering the grade, alignment, or location of any street, sidewalk, alley, or public way, a Grantee promptly shall, upon reasonable notice from the Township, remove and relocate its facilities at Grantee's expense in a manner acceptable to the Township.
- (f) A Grantee shall at all times employ ordinary care and shall install and maintain industry standards and services for preventing failures and accidents which would cause damage, injuries, or nuisance to the public.

### **Sec. 9.3.03: Technical Standards**

- (a) Each Grantee shall construct, install and maintain its Cable Television System in a manner consistent and in compliance with all applicable laws, ordinances, construction standards, governmental requirements, and technical standards equivalent to those established by the Federal Communications Commission. Each Grantee shall, upon request, provide to the Township written reports of the Grantee's annual proof of performance tests conducted pursuant to Federal Communications Commission standards and requirements.
- (b) Each Grantee shall at all times comply with the National Electrical Safety Code (National Bureau of Standards); National Electrical Code (National Bureau of Fire Underwriters); applicable Federal, State and local regulations; and codes and other ordinances of the Township. In the event of conflict amongst any such codes, regulations, and ordinances, the most protective requirements shall apply.
- (c) In any event, the CATV System shall not endanger or interfere with the safety of persons or property within the Township or other areas where the Grantee may have equipment located.
- (d) All working facilities, conditions, and procedures, used or occurring during construction of the Cable Television System shall comply with the standards of the Occupational Safety and Health Administration.
- (e) Construction, installation and maintenance of a Cable Television System shall be performed in an orderly and workmanlike manner, and in close coordination with public and private utilities serving the Township following accepted industry construction procedures and practices and working through existing committees and organizations.
- (f) All cable and wires shall be installed, where possible, parallel with electric and telephone lines, and multiple cable configurations shall be arranged in parallel and bundled with due respect for engineering consideration.
- (g) Any antenna structure used in the Cable Television System shall comply with construction, marking and lighting of antenna structures, required by the United States Department of Transportation.
- (h) RF leakage shall be checked at reception locations for emergency radio services to prove no harmful interference signal combinations are possible. Radiation shall be measured adjacent to any proposed aeronautical navigation or communication radio sites to prove no harmful interference to air navigational reception.
- (i) A Grantee shall develop an adequate preventive maintenance policy for inspection by the Township.

#### **Sec. 9.3.04: Maps, Records., and Reports**

- (a) A Grantee, upon request by the Township, shall provide the Township with current maps of its existing and proposed installations.
- (b) A Grantee, upon request by the Township, shall file with the Township Clerk a copy of its annual financial reports, including its annual income statement applicable to its operations within the Township, a balance sheet, and a statement of its properties devoted to CATV operations. A Grantee shall submit such other reasonable information as may be requested by the Township with respect to its property and revenues, expenses or operations within the Township.
- (c) A Grantee shall, upon the request of the Township, furnish a current listing of its users, officers, owners, partners, shareholders, bondholders, and those of any guarantor.
- (d) An accurate and comprehensive file shall be kept by the Grantee of all subscriber and user service complaints regarding the Cable System. A procedure shall be established by the Grantee by the time of installation of the system to quickly and reasonably remedy complaints to the satisfaction of the Township. Complete records of Grantee's actions in response to all service complaints shall be kept for a period of one (1) year.
- (e) A current independent polling service opinion survey report which identifies satisfaction and dissatisfaction among subscribers and users with cable services, facilities, equipment and personnel offered by the Grantee shall be submitted to the Township on or before March 31st every third year.
- (f) Grantee shall submit to the Township such other information or reports in such form and at such times as the Township may reasonably request.
- (g) Subject to the privacy rights of Section 9.6.02 of this Ordinance and to Federal and State laws and regulations, a Grantee shall keep open books and records. The Township shall have the right to inspect at any time during normal business hours all books, records, maps, plans, income tax returns, financial statements, service complaint logs, performance test results and other like materials of the Grantee which relate to the operation of the CATV System. Access to the aforementioned records shall not be denied by the Grantee on the basis that the records contain proprietary information.
- (h) A Grantee shall allow the Township to make inspections of any of the Grantee's facilities and equipment at any time upon one (1) day notice or, in case of emergency, upon demand without notice.

- (i) The refusal, failure, or neglect of the Grantee to file any of the records or reports required to be provided to the Township under this Section shall be deemed a material breach of the franchise, and shall subject the Grantee to all penalties and remedies, legal or equitable, which are available to the Township under the franchise or the ordinance.
- (j) Any material false or misleading statement or representation knowingly made by the Grantee in any report required under the franchise shall be deemed a material breach of the franchise, and shall subject the Grantee to all penalties and remedies, legal or equitable, which are available to the Township.

**Sec. 9.3.05: Construction, Performance Bond and Letter of Credit**

- (a) A Grantee shall, within thirty (30) days of the execution of the franchise, file with the Township Clerk, an irrevocable letter of credit, corporate surety bond, or the equivalent, which is acceptable to the Township with a company authorized to do business in the State of Michigan in the amount of One Hundred Thousand Dollars (\$100,000.00), and also the Grantee shall obtain and maintain, at its cost and expense, an irrevocable letter of credit, corporate surety bond, or the equivalent, which is acceptable to the Township with a company authorized to do business in the State of Michigan in the amount of Four Hundred Thousand Dollars (\$400,000.00). The purpose of the irrevocable letter of credit, corporate surety bond, or the equivalent is to guarantee the timely construction and full activation of the CATV system. The irrevocable letter of credit, corporate surety bond, or the equivalent shall be for the purpose of allowing recovery by the Township of any and all damages, loss or costs suffered by the Township resulting from the failure of the Grantee to satisfactorily complete and fully activate the CATV System throughout the Township.
- (b) At that point in time when the Grantee can show to the satisfaction of Township that energized trunk cable passes seventy-five percent (75%) of homes within the area to be served in the Township, the Grantee may have the irrevocable letter of credit, corporate surety bond, or the equivalent terminated after written approval from the Township and subject to subsection (c) below.
- (c) When the CATV System is completed to the satisfaction of the Township, the irrevocable letter of credit, corporate surety bond, or the equivalent may be reduced to Ten Thousand Dollars (\$10,000.00) and maintained for the duration of the franchise to secure Grantee's obligations under the franchise.
- (d) The irrevocable letter of credit, corporate surety bond, or the equivalent, shall contain the following endorsement:



“It is hereby understood and agreed that this bond or letter of credit may not be canceled by the surety or holder. Should the surety or holder decide that this shall not be renewed, this decision shall be evidenced to Portland Township in writing not less than sixty (60) days prior to the expiration of the bond or letter of credit.”

## Article 4: Rates and Fees

### Sec. 9.4.01: Rates

The provisions hereafter shall be subject to applicable Federal or State laws, rules or regulations.

- (a) The Township expressly reserves the right, upon reasonable notice and opportunity for comment by Grantee, to regulate whatever rates for the provision of cable services and service charges that the Township is not preempted from regulating by law. The Township may adopt by resolution procedural guidelines for regulating rates subject to the U.S. Cable Communication Policy Act of 1984, as amended.
- (b) The Grantee may not deny, delay, interrupt or terminate existing cable service or the use of existing channels, facilities and equipment to subscribers or users because the Township denies a request for a rate or service charge increase unless such delay, interruption or termination is approved by the Township.
- (c) No rate or service charge of any kind that the Township lawfully regulates shall be charged or collected from subscribers or users by a Grantee without the written approval of Township. Violation of this subsection shall be a material breach of the franchise.
- (d) Grantees may request rate or service charge increases at any time. However, initial rates and service charges for regulated services shall remain in force for a minimum of thirty-six (36) months from and after the date of execution of an initial franchise unless otherwise released by the Township.
- (e) Grantee shall file with the Township on or before December 31st of each year a full schedule of all subscriber and user rates and service charges.
- (f) Subscribers and users shall be notified of all increases in rates and service charges at least thirty (30) days before the effective date. Notice shall be filed with the Township Clerk before the effective date.
- (g) Grantees shall not discriminate on the basis of age, race, creed, color, religion, national origin, sex or marital status. Nothing in this Ordinance shall be construed to prohibit the reduction or waiving of charges in conjunction with city-wide promotional campaigns for the purpose of attracting subscribers or users, or the establishment of bulk rates for apartments, condominiums and commercial customers.

- (h) Grantees shall provide subscriber with itemized bills. Grantees may not require subscribers to pay for any cable service more than one (1) month in advance. Grantees shall require no other advance payment other than those required for security deposits. This subsection shall not be construed to prohibit an advance payment for installation of services.
- (i) In the event that a subscriber fails to pay as properly due and owing a rate or service charge, a Grantee may disconnect the subscriber's service outlet, upon giving ten (10) days written notice.
- (j) If a Grantee collects a deposit or advance charge of any service or equipment requested by a subscriber or user, the Grantee shall provide such service or equipment within five (5) days of the collection of the deposit or charge or it shall refund such deposit or charge within two (2) days. Nothing in this subsection shall be construed:
  - A. to relieve Grantees of any responsibility to subscribers or users under any contractual agreements into which it enters with them or
  - B. as limiting a Grantee's liability for fines or penalties which may be imposed under this Ordinance or any franchise for violation or breach of any of their provisions or
  - C. as limiting a Grantee's liability for damages because of its failure to provide the service for which the deposit or charge was made.
- (k) In the event that a subscriber terminates any cable service prior to the end of a prepaid period, the immediate effective pro rata portion of any prepaid rate which represents payment for services which are no longer to be rendered shall be refunded promptly, but in no case more than forty-five (45) days after receipt of the request for termination.
- (l) A Grantee shall not charge a security deposit greater than the equipment's actual cost to the Grantee. Any security deposit collected by a Grantee shall be returned to the subscriber upon termination of service by the subscriber and return of such equipment undamaged, with allowance for reasonable wear and tear, and payment of any outstanding balance due and payable.
- (m) On or after the effective date of this Ordinance, basic service shall be subject to up to a fifteen percent (15%) discount for Township residents who submit a written request and who qualify for the property tax exemption available under MCL 211 .7u or who meet one of the following qualifications:
  - A. Head of household and age 65 or over; or

- B. Head of household and handicapped. A person is considered handicapped for these purposes if the person is receiving supplemental security income payments from the Social Security Administration because of disability under Title 16 of the Social Security Act.

The Grantee shall have the right to verify a subscriber's eligibility for the exemption as a precondition to receiving the discounted basic cable service rate. For purposes of this subsection, basic service shall consist of at least thirty (30) full service channels.

**Sec. 9.4.02: Franchise Fee Payments by Grantee**

- (a) A Grantee shall pay to the Township for use of its streets, public places and other facilities, as well as for their maintenance, improvements, and supervision, a monthly computed franchise fee in an amount of zero (0) to five (5) percent of the gross revenue received by Grantee. Payments due the Township under the terms of this subsection shall be paid on or before the 25th day of the month following each calendar quarter. The Township shall be furnished a certificate with each payment reflecting the gross revenue, deductions and computations for the period covered by the payment. The maximum allowable franchise fee shall be reviewed upon any Federal Communications Commission amendments relating to the regulation of and allowable rate revisions.
- (b) Franchise fee payments shall be in addition to any other tax, charge, fee, or payment due the Township by a Grantee.
- (c) Not less than annually, a Grantee shall provide the Township with an unqualified opinion of an independent certified public accountant certifying the accuracy of the monthly franchise fee payments paid within the preceding twelve (12) months. Said certification shall be prepared in accordance with generally accepted accounting standards as established by the Financial Accounting Standards Board (FASB).

## **Article 5: General Capabilities and Services**

### **Sec. 9.5.01: General Capability**

In furtherance of the general policy that the services provided be innovative and modern, a Grantee will actively pursue a continuous policy of incorporating new technical developments as economically feasible into the system to reflect the "state of the art." Further, should a Grantee, its parent, its subsidiary or a related company provide a service to any other community which it or they service within the State of Michigan, the same service shall be provided in the Township. Township may waive this requirement upon an affirmative demonstration by the Grantee that such service would be impractical or unfeasible in the Township due to population, density or other relevant factors.

Each CATV System shall, at minimum:

- (a) Distribute in color and in stereo all television signals which it so receives;
- (b) Make available to subscribers, upon request, an RF switch (an A-B switch) permitting conversion from cable to antenna reception; and
- (c) Have at least 36 activated television channels (five hundred fifty 550 megahertz) on a cable system capable of carrying 77 television channels or a combination of video, FM, audio or digital information.
- (d) Fiber optic technology shall be used whenever financially and technically feasible in the subscriber and institutional networks.
- (e) Provide adequate facilities, equipment and personnel for public, educational and governmental access channels, including equipment to program the government access channel from the Township Hall.
- (f) A Grantee may sell or use for program origination any unused access channels to provide local information, entertainment, and advertising under rules approved by the Township.
- (g) At the request of the Board, the cable system shall be interconnected with other cable systems within or contiguous to the Township so as to enable each cable system to carry and cablecast the public, educational, and governmental access programming of the other cable systems. Interconnection of cable systems may be done by direct cable connection, microwave link, satellite, or other appropriate method.
- (h) A Grantee shall, without charge for installation, maintenance, or service, make installations of its CATV system and provide basic service to the Township Hall, police stations, fire stations, other public buildings, each

public and parochial school, and each public library in the Township. Installations, including five multiple outlets, shall be made at reasonable locations in each building as shall be required by the Township and schools.

- (i) In the event of an emergency or other urgent community need, a Grantee shall, upon request of Township, make available its facilities to the Township for the duration of the emergency. Each Cable Television System shall include an emergency alert capability which will permit the Township in times of emergency, to override by remote control, the audio and video of all channels simultaneously. Each Cable Television System shall include the capability to activate and control the emergency alert from the Township headquarters for Civil Defense, Disaster and Emergency Services.
- (j) Every Cable Television Franchise issued pursuant to this Ordinance shall provide for sufficient channels as may be determined by the Township for public, educational and Township access channels, capable of carrying digital, video and audio transmissions pursuant to the provisions of the Cable Communications Policy Act of 1984, Section 611 (47 USC 531).
- (k) This Ordinance shall not be construed to limit the authority of the Grantee to make payments in support of the use of public, educational and governmental access channels.
- (l) Use of facilities and equipment for public, educational and governmental access upon the Cable Television System shall be made available, without rental, or other like charges whatsoever, for use during reasonable hours in connection with the production of public, educational and governmental access programming to be cablecast upon the Cable Television System. Personnel for training and assistance shall be available during normal business hours. First-time users shall not be required to make a deposit; however, Grantee may charge any user its cost of repairing any equipment damaged by abuse or negligence and may demand payment and a deposit of an equal amount prior to re-issuing equipment to the same user. A Grantee shall establish such reasonable rules and procedures, designed to promote the utilization of such public, educational and governmental access programming and subject to the approval of the Township, which approval shall not be unreasonably withheld.
- (m) Grantee shall make all reasonable efforts to coordinate the cablecasting of public, educational and/or governmental access programming upon the CATV System at the same time and upon the same channel designations as such programming is cablecast upon other cable television systems within the area.

### **Sec. 9.5.02: Service to Customers**

- (a) A CATV System shall be designed for operation twenty-four (24) hours per day and shall endure service interruptions only for good cause and for a reasonable time. Interruptions of service shall be for the shortest possible time.
- (b) A Grantee shall maintain an office either in the Township or within a municipality contiguous with the Township which shall be open to the general public during normal business hours. Office hours shall be no less than 8:30 a.m. to 5:30 p.m., Monday through Friday, and extended hours one evening per week and Saturdays if the demand and use so warrant.
- (c) Grantee shall have a publicly listed, local, telephone number. A Grantee shall employ an operator, maintain a telephone answering device, or otherwise be able, twenty-four (24) hours per day, each day of the year, to receive subscriber calls. A written log shall be maintained by a Grantee listing all service complaints, their disposition, and all service interruptions affecting five (5) or more subscribers. Said log shall be available for inspection by the Township upon reasonable notice.
- (d) A Grantee shall maintain an installation and repair service capable of making installations within seven (7) days and repairs within forty-eight (48) hours after a request.
- (e) Upon failure of a Grantee to remedy a loss of service within twenty-four (24) hours of receipt of notification of such loss, the Grantee shall rebate one-thirtieth (1/30) of the regular monthly charge to each subscriber so affected, for each twenty-four (24) hours or fraction thereof, until service is restored unless restoration is prevented by cause beyond the control of the Grantee upon notice to Grantee identifying the loss by channel, date and time.
- (f) Any change made by a Grantee in its programming (channels carried), except those of an emergency nature beyond Grantee's control, shall not become effective until the Grantee has notified its subscribers at least thirty (30) days in advance. Notification must be made in writing to each subscriber.
- (g) The Township may regulate provisions for the handicapped, including closed captioned programming equipment, bills and notices in large type or Braille. Such regulation shall be made after notice to Grantee and a public hearing by the Board.

### **Sec. 9.5.03: Parental Lock-Out**

The Grantee shall at no charge and upon written request, if technically feasible, install a trap which allows a "parental guidance" or "lock-out" device which permits the subscriber, at subscriber's option, to eliminate comprehensible video and audio reception of any channel.

**Sec. 9.5.04: Continuity of Service**

It shall be the right of all subscribers to receive all available services insofar as their financial and other obligations to the Grantee are honored. In the event that the Grantee elects to overbuild, rebuild, modify or sell the CATV System or the Township terminates, revokes or fails to renew the Franchise within a reasonable time, or the Township elects to purchase the CATV System, the Grantee shall do everything in its power to ensure that all subscribers receive continuous, uninterrupted service regardless of the circumstances for a period of time not to exceed six (6) months, during which time the relative rights and obligations of the parties as reflected in this Ordinance shall continue in full force and effect. In the event of purchase by the Township, or a change of Grantee, the current Grantee shall cooperate with the Township in maintaining continuity of service to all subscribers subject to the conditions and qualification of the immediately preceding sentence. In the event that interruption of service is required by the Grantee for modification, repairs or the like, the interruption shall be as brief as possible and at times when the viewing audience is at a minimum. Records of such interruptions shall be kept.



## **Article 6: Rights; Liability for Libel**

### **Sec. 9.6.01: Right of Privacy**

A Grantee shall not transmit any signal to or from any dwelling or any other building without the express authorization of the owner of said dwelling or other building. Where said owner has leased said dwelling or other building or a portion thereof, said express authorization shall be obtained from the lessee and not from the owner. No personally identifiable subscriber information shall be made public without the specific written permission of the subscriber.

### **Sec. 9.6.02: Rights of Residents**

- (a) An owner or operator of an apartment building, condominium, nursing home, or any other rental facility may not interfere with or charge a fee for the installation of cable facilities for the use of a lessee of said property or premises, except that such owner or operator may require:
  - A. Installation to conform to reasonable conditions necessary to protect the safety, appearance and functioning of the premises;
  - B. The Grantee, occupant, or tenant to pay for the installation, operation or removal of such facilities;
  - C. The Grantee, occupant or tenant to agree to indemnify the owner or operator for any damages caused by installation, operation or removal of such facilities.
- (b) It shall be unlawful for the Grantee to reimburse or offer to reimburse any person, or for any person to demand or receive reimbursement from a Grantee, for the placement upon the premises of such person of Grantee's facilities necessary to connect such person's premises to the distribution lines of Grantee to provide cable service to said premises.
- (c) A landlord may not discriminate in the amount of rent charged to tenants or occupants who receive cable services and to those who do not.
- (d) A Grantee may not take actions which would diminish or interfere with the privilege of any tenant or other occupant of any such building to use or avail himself of master or individual antenna equipment.

**Sec. 9.6.03: Liability of the Grantee in Libel Action**

The Grantee or its agents shall not, in an action for slander or for publishing a libel, be held liable in damages for or on account of any defamatory matter uttered, telecast, cablecast, or published over the facilities of the Grantee by any person whose utterance, telecast, cablecast, or publication is not, under the provisions of any law of the United States or any regulation, ruling or other of the Federal Communications Commission, subject to censorship or control by the Grantee.

## **Article 7: Miscellaneous**

### **Sec. 9.7.01: Severability**

If any law, ordinance, regulation or court decision shall render any provision of this Ordinance invalid, the remaining provisions of the Ordinance shall remain in full force and effect.

### **Sec. 9.7.02: Conflict Provision**

In the event of any conflict between this Ordinance and other ordinances or the franchise agreement, this Ordinance shall control.

### **Sec. 9.7.03: Governing Law**

This Ordinance and franchises granted pursuant hereto shall be construed pursuant to the laws of the State of Michigan.

### **Sec. 9.7.04: Effective Date**

This Ordinance shall take effect one day after its publication in a newspaper of general circulation in the Township of Portland.

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## **PART 10 - LIQUOR CONTROL**

### **Article 1: General Provisions**

#### **Sec. 10.1.01: Purpose**

An Ordinance to secure the public peace, health and safety of the residents and property owners of the Township of Portland, Ionia County, Michigan (the "Township"), a municipal corporation, for the regulation of alcoholic liquor traffic within the Township through the enforcement of the Michigan Liquor Control Code of the State of Michigan within the Township; to provide penalties, for the violation of this Ordinance; and to repeal all ordinances and parts of ordinances in conflict with this Ordinance.

#### **Sec. 10.1.02: Liquor Control Code of the State of Michigan**

All alcoholic liquor traffic, including, among other things, the manufacture, sale, offer for sale, storage for sale, possession and/or transportation thereof within the Township shall comply with the provisions of the Michigan Liquor Control Code of 1998, being Public Act 58 of 1998, as amended, (MCL 436.1101 *et seq.*) and the rules and regulations of the Michigan Liquor Control Commission (collectively the "Code").

#### **Sec. 10.1.03: Enforcement**

For the purpose of the enforcement of the Code within the Township, there is hereby established a Liquor Control Enforcement Officer ("Enforcement Officer") with full power, authority, and duty to see that the provisions of the Code are enforced within the Township.

The Township Board shall appoint the Enforcement Officer and, in its discretion, any other personnel the Township Board deems necessary to ensure that the provisions of the Code are enforced within the Township. The Enforcement Officer and other appointed personnel, if any, shall be paid such compensation as determined by the Township Board.

The Enforcement Officer shall be available at all times to investigate complaints received under this Ordinance and enforce the provisions hereof.

#### **Sec. 10.1.04: Inspection**

The Enforcement Officer shall inspect, no less than monthly, all liquor establishments licensed under the Code and report the results of all inspections promptly to the Township Board.

The Enforcement Officer shall further promptly investigate all complaints received by the Township or the Enforcement Officer concerning violations of the Code or improper operations and practices concerning alcoholic traffic within the Township and report the same to the

Township Board and, where appropriate under the Code, to the Michigan Liquor Control Commission, for appropriate proceedings against the violator.

The Enforcement Officer shall carry appropriate identification issued by the Township Clerk clearly identifying him or her as the Township Liquor Control Inspector and shall present said identification card to the owner or manager of every place inspected by them, when making an inspection, upon demand for identification by such owner or manager.

The Enforcement Officer shall have the right to inspect any place in the Township where alcoholic liquor is manufactured, sold, offered for sale, kept for sale, possessed or transported, or where the Enforcement Officer suspects the same is being manufactured, sold, offered for sale, kept for sale, possessed or transported within the Township.

Whenever possible, all inspection reports shall be made on liquor law enforcement forms furnished by the Michigan Liquor Control Commission.

#### **Sec. 10.1.05: Appropriation**

For the purpose of carrying out the provisions of this ordinance, the Township Board hereby appropriates the revenue for Liquor Inspections submitted by the State of Michigan for such use, and is hereby authorized and directed to annually appropriate such an amount as will, in its discretion, be sufficient to maintain and operate such Liquor Control Enforcement for the ensuing fiscal year of the Township.

#### **Sec. 10.1.06: Penalties**

Any person, other than persons required to be licensed under the Code, who shall violate any of the provisions of this Ordinance shall be guilty of a misdemeanor punishable by imprisonment in the county jail not more than 90 days or by a fine of not more than \$500 or both, in the discretion of the court.

Any licensees who shall violate any of the provisions of the Code, or who shall violate any of the provisions of this Ordinance, and any person who shall prohibit or interfere with the duties of the Enforcement Officer as authorized by the Township shall be guilty of a misdemeanor, punishable by imprisonment in the county jail not more than 90 days or by a fine of not more than \$500 or both, in the discretion of the court. Each day that a violation continues to exist shall constitute a separate offense.

It is the intent of the Township Board that the court, in imposing punishment under the provisions of this Ordinance, should discriminate between casual or slight violations and habitual sales of alcoholic liquor or attempts to commercialize violations of this Ordinance or the Code.

## **Article 2: Miscellaneous**

### **Sec. 10.2.01: Severability**

Should any provision or part of this Ordinance be declared by any court of competent jurisdiction to be invalid or unenforceable, the same shall not affect the validity or enforceability of the balance of this Ordinance, which shall remain in full force and effect.

### **Sec. 10.2.02: Effective Date and Repealer**

This ordinance shall take effect on the 20<sup>th</sup> day of July, 2010 (30 days after publication). All ordinances or parts of ordinances in conflict with any of the provisions of this ordinance are hereby repealed.