

Chapter 30

ELECTIONS*

Sec. 30-1. Initiatory, referendary or recall petitions; prohibitions.

***Cross references**—Administration, ch. 2; village council, § 2-31 et seq.
State law references—Michigan Election Law, MCL 168.1 et seq., MSA 6.1001 et seq.; village elections, MCL 63.1 et seq., MSA 5.1230 et seq.

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village elections, MCL 63.1 et seq., MSA 5.1230 et seq.

Sec. 30-1. *Initiatory, referendary or recall petitions; prohibitions.*

It shall be unlawful for any person to affix another's signature or to swear to any statement false in any material particular, or to induce any person not qualified as an elector to sign any initiatory, referendary or recall petition; or to take the oath of another to any such petition not knowing him to be the identical person he represents himself to be or knowing that the petition or any part of the petition is false or fraudulent in any material particular; or to falsely represent that the petition is sponsored by others than the true sponsors.
(Ord. No. 74, § 20.460, 9-13-1982)

***State law reference**-Recall, MCL 168.951 et seq., MSA 6.1951 et seq.

AN ORDINANCE TO PROVIDE FOR THE ELECTION DATE FOR THE OFFICES OF VILLAGE PRESIDENT AND VILLAGE TRUSTEES PURSUANT TO THE ELECTION CONSOLIDATION LAWS (PA 286-300 OF 2004) AND THE GENERAL VILLAGE ACT (PA 3 OF 1895)

The Village of Lexington, Sanilac County, Michigan ordains:

Section 30-2 *Elected Village Offices:*

The following village officers shall be elected: a president and six {6} trustees. The president and trustees shall constitute the council.

Section 30-3 *Village Regular Election Date:*

Village elections shall be held at the September primary election held on the first Tuesday after the second Monday in September in an odd year.

Section 30-4 *Village President. Term of Office*

The president shall be elected at the September primary election for a term of four {4} years and until a successor is elected and qualified.

Section 30-5 *Village Trustees; Terms of Office; Staggered Terms*

Three {3} Village trustees shall be elected at each biennial Village election for a term of four {4} years and until their successors are elected and qualified.

Section 30-6 *Extensions of Term of Office;*

1. The election of the Village President shall be scheduled at the first September primary held in an odd year after completion of the current term.
2. The election to office for the positions held by the three {3} Trustees with terms expiring March of 2005 shall be scheduled at the next September primary date in an odd year. The three {3} remaining Trustees with terms expiring March of 2006 shall be elected at the September primary date held in an odd year upon **completion of the current term.**

Section 30-7 Repeal

All ordinance and parts of ordinances inconsistent with the provisions of this Ordinance are hereby repealed.

Section 30-8 Severability

Should a portion of this Ordinance be found invalid for any reason, such holding shall not be construed as affecting the validity of the remaining portions of this Ordinance.

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Chapter 34

ENVIRONMENT

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Section 34-1.01-34-6.04

Cross References-Animals, ch. 6 buildings and building regulations, ch. 10 dangerous buildings § 10-31 et seq.; parks and recreation, ch. 42 planning, ch. 50 solid waste, ch. 54; streets, sidewalks and other public places, ch.62; utilities, ch.70

State Law References -Natural Resources and Environmental Protection Act, MCL

324.101 et seq., MSA 13A. 101 et seq.; general authority to adopt ordinances for safety and general welfare, MCL 67.1(z), MSA 5.1285, (z)

Chapter 34, Article I Section 34-1-34-17

ENVIRONMENT

Sec. 34-1 DEFINITIONS:

(1) *Street trees*: "Street trees" are herein defined as trees, shrubs, bushes, and all other woody vegetation on land lying between property lines on either side of all streets, avenues, or rights-of-way within the Village.

(2) *Park trees*: "Park trees" are herein defined as trees, shrubs, bushes and all other woody vegetation in public parks, on public property, and on all areas owned by the Village or to which the public has free access as a park.

(3) *Large trees*: "Large trees" are defined as those obtaining a height of fifty (50) feet or more.

(4) *Medium trees*: "Medium trees" are defined as those obtaining a height of more than twenty-five (25) feet but less than fifty (50) feet.

(5) *Small trees*: "Small trees" are defined as those obtaining a height of less than twenty-five (25) feet.

Sec. 34-2 CREATION AND ESTABLISHMENT OF A VILLAGE TREE BOARD

There is hereby established a village tree board for the Village of Lexington. The Village of Lexington Environmental Committee shall serve as the village tree board. Members of the board shall serve without compensation.

Sec. 34-3 DUTIES AND RESPONSIBILITIES

It shall be the responsibility of the Board to study, investigate counsel, develop, update and recommend to Village Council a plan for the care, preservation, pruning planting, replanting removal or disposition of street trees and park trees.

The board, when requested by the Village Council, shall consider, investigate, make findings, report and recommend upon any special matter or question coming within the scope of its duties and responsibilities.

Sec. 34-4 STREET TREES SPECIES TO BE PLANTED

The species set forth in this section shall constitute the official street tree species for Lexington. No species other than those included in this section may be planted as street trees without approval of the Village Tree Board.

Sec. 34-5 STREET TREES SPECIES TO BE PLANTED

A listing of appropriate trees allowed as Village street trees will be reviewed and provided yearly by the Village Tree Board. The Village Tree Board will also be able to utilize their own good discretion in the allowance of trees placed on Village properties. No person shall plant a street tree without the approval of the Village Tree Board.

Sec. 34-6 PARK TREES SPECIES TO BE PLANTED

A listing of appropriate trees allowed as Village streets will be reviewed and provided yearly by the Village Tree Board. The Village Tree Board will also be able to utilize their own good discretion in the allowance of trees placed on Village properties. No person shall plant a street tree without the approval of the Village Tree Board.

Sec. 34-7 SPACING

The spacing of street trees will be in accordance with the three (3) size classes in Section 1 and no trees may be planted closer together than the following: Small trees, thirty (30) feet (9.1m); medium trees, forty (40) feet (12.2m); large trees, fifty (50) feet (16.20m), except as approved in writing by the Village Tree Board.

Sec. 34-8 DISTANCE FROM CURB AND SIDEWALK

The distance trees may be planted from curbs or curblines and sidewalks will be in accordance with the three (3) size classes defined in Section 1 and no trees may be planted closer to any curb or sidewalk than the following: Small trees two (2) feet; medium trees, three (3) feet, and large trees, five (5) feet.

The only exception to this will be when so authorized by the Village Council during Village streetscape projects which benefit the entire community. Then some discretion will be allowed, but only under an Urban Forester or Landscape Architect's approval.

Sec. 34-9 DISTANCE FROM STREET CORNERS AND FIREPLUGS

No street tree shall be planted closer than thirty-five (35) feet to any street corner, measured from the point of nearest intersecting curbs or curb lines. No street tree shall be planted closer than ten (10) feet to any fireplug. Again certain discretion will be allowed when so authorized by the Village Council.

Sec. 34-10 UTILITIES -STREET TREES

No street trees other than those defined as small trees in Section 1 of this ordinance may be planted under or within ten (10) lateral feet of any overhead utility wire, or over or within ten (10) lateral feet of any underground water line, sewer line, transmission line or other utility.

Sec. 34-11 TREE TOPPING

It shall be unlawful for any person or entity (except those hired by Detroit Edison) to top any street tree or park tree without the written consent of the Village Tree Board and approval of the Village Council. Topping is defined as the severe cutting back of limbs to stubs larger than three (3) inches in diameter within the tree's crown to such a degree so as to remove the normal canopy and disfigure the tree. Trees severely damaged by storms or other causes, or certain trees under utility wires or other obstructions where pruning practices are impractical may be exempted from the provisions of this section by a determination of the Village Tree Board.

Sec. 34-12 PRUNING, CORNER CLEARANCE

Every owner of any tree overhanging any street right-of-way within the Village shall prune the branches so that such branches shall not obstruct the light from any street lamp or obstruct the view of any street intersection and so that there shall be a clear space of either (8) feet above the surface of the street or sidewalk. Said owners shall remove all dead, diseased or dangerous trees, or broken or decayed limbs that constitute a menace to the safety of the public. The Village shall have the right to prune any tree or shrub on private property when it interferes with the proper spread of light along the street from a street light, or interferes with the visibility of any traffic control device or sign or impacts pedestrian travel or snow removal.

Sec. 34-13 REMOVAL OF STUMPS

All stumps of street trees and park trees shall be removed below the surface of the grounds so that the top of the stump shall not project above the surface of the ground.

Sec. 34-14 RECOVERY OF VALUE OF LOST STREET TREES OR PARK TREES

(1) Whenever the Village Tree Board shall determine that any street tree or park tree has been impaired, damaged or broken in a manner which will cause immediate or future removal of the tree and that such removal is deemed premature and untimely based on the condition, vigor, location, kind and age of the tree and the Board shall have knowledge of the person causing said damage, then the Board shall recommend to the council that the responsible person shall be assessed the value of the tree as determined by the use of the Michigan Forestry and Parks Association Shade Tree Evaluation Chart, or, at the election of the Board, by appraisal.

(2) the Village Tree Board shall determine that any street tree or park tree has been severed, destroyed or removed, and that such severing, destruction or removal is deemed premature and untimely based on the condition, vigor, location, kind and age of the tree, and the Board shall have knowledge of the person causing said damage, then the Board shall recommend to the council that the responsible person shall be assessed the value of the tree as determined by use of the Michigan Forestry and Parks Association Shade Tree Evaluation Chart, or, at the election of the Board, by appraisal.

(3) This section shall not be constructed in such a way that the value received by the Village shall be less than the actual cost of the removal of the trees and replacement with a tree determined comparable by the Village Tree Board, such replacement tree to be not less than three (3) inches in diameter measured at the height of six (6) inches above ground. The village Tree Board shall not be restricted in its choice as to the replacement planting site.

(4) It shall be the duty of the Police Department, having knowledge of any such damage or destruction to street trees or park trees and having knowledge of the person or persons causing said damage to immediately report this to the Village Manager.

(5) It shall be the duty of the Village Tree Board to notify the Village Council of any damage to street trees or park trees for which recovery should be sought under the provisions of this section.

Sec. 34-15 APPEAL TO VILLAGE COUNCIL

A person may appeal any ruling or order of the Village Tree Board to the Village Council, who shall hear the matter and affirm, reverse or amend the decision of the Village Tree Board.

Sec. 34-16 PENALTY

Any person who violates this ordinance shall be responsible for a Grade B municipal civil infraction and subject to the fines as determined by the Village of Lexington Council. Any such fine shall be separate from the recovery of value provided in this section. The maximum amount of the fine herein provided shall in no way limit the amount of the value which may be recovered under the provisions of this section.

Sec. 34-17 SEVERABILITY

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holdings shall not affect the validity of the remaining portions of this ordinance.

ARTICLE I. IN GENERAL

Sees. 34-1-34-30. Reserved.

ARTICLE II. NOISE

Sec. 34-31. Enforcement.

This article shall be enforced by the village business manager and his designees. (Ord. No. 76, § 1, 9-13-1982)

Sec. 34-32. *Declaration of policy.*

It is determined and declared that the making, creating or maintaining of loud, unnecessary, unnatural or unusual noises, which are prolonged or sustained in duration, by reason of the hour of the day or night, place or use, impair and are a detriment to the public health, comfort, convenience, safety, welfare and enjoyment to the residents of the village and is declared to be a nuisance; and it is determined and declared to be necessary and in the public interest for the prohibitions and provisions as set forth in this article to be enacted, all of which are in pursuance and for the purpose of securing and promoting the public health, comfort, convenience, safety, welfare and enjoyment and for the peace and quiet of the residents of the village. (Ord. No. 76, § 1, 9-13-1982)

Sec. 34-33. *Unlawful to make noise.*

It is declared to be unlawful for any person to make, create or continue or cause to be made, created or continued any loud unnecessary, unnatural or unusual noise that annoys, disturbs, injures, endangers or impairs the comfort, repose, health, peace, convenience, safety, welfare or enjoyment of the residents of the neighborhood in which the noise originates. (Ord. No. 76, § 2, 9-13-1982)

Sec. 34-34. *Acts violating article.*

The following acts among others are declared to be loud, disturbing, annoying, injurious and unnecessary noises and are in violation of this article; but this enumeration shall not be deemed to be exclusive:

- (1) Radios, phonographs, loudspeakers and televisions. The playing, using or operating or permitting to be played, used or operated any radio receiving set, phonograph, loudspeaker, television or musical instrument in such manner as to cause unnecessary or objectionable noise penetrating more than a reasonable distance from the room, building, structure, place or vehicle from which the noise emanates shall be prima facie evidence of a violation of this section.

(2) Yelling, shouting, loud talking. Yelling, shouting, hooting, whistling, singing or loud talking on the public streets or places or on private property as to annoy or disturb the quiet, comfort, repose, welfare or enjoyment of persons in any office, dwelling, hotel or other type of residence or any persons in the vicinity.

(3) Animals. The keeping of any animal that, by causing frequent or long-continued noises, shall disturb the quiet, comfort, repose, welfare or enjoyment of any persons in the vicinity.

(4) Whistles. The blowing of any locomotive whistles or whistles attached to any stationary boiler or air compressor of any kind or of any sirens except to give notice of the time to begin or stop work or as a warning of fire or danger, or upon the request of proper village authorities.

(5) Exhaust and motor idling.

a. The discharge into the open air of the exhaust of any steam engine, stationary internal combustion engine, motorboat, or motor vehicle except through a muffler or other device that will effectively prevent loud or explosive noises from the engine, or the permitting of the motors in motor vehicles to idle in the warming up process or the unnecessary racing of motors, particularly the idling or racing of truck motors, whether diesel or gasoline powers, either on the public street, public ways or public places or on private property. The operation of any such motor vehicle or machine between the hours of 11:00 p.m. and 6:00 a.m. the following morning in such a manner as to cause unnecessary or objectionable noise penetrating more than a reasonable distance from the room, building, structure, vehicle or place from which the noise emanates, whether on public property or on private property shall be prima facie evidence of a violation of this section.

b. All internal combustion engines must be equipped with an adequate muffling device to eliminate effectively all unnecessary or excessive exhaust noise, and it shall be unlawful to operate a motor vehicle equipped with a muffler from which one or more baffles have been removed. Further, prolonged idling or operating or excessive racing of any type of engine, particularly trucks, operating at any location, either on public or private property, may not be done when such operation causes unnecessary or excessive noise. It shall be unlawful to operate a motor vehicle at any time on the streets of the village with the so-called cut-out open.

(6) Defect in vehicle or load. The use of any motor vehicle, motorcycle or other vehicle so out of repair, so loaded or in such manner as to create loud and unnecessary grating, grinding, pounding, rattling or other disturbing noises.

(7) Loading, unloading, opening boxes. The creation of loud and excessive noise in connection with loading and unloading of any vehicle or the opening or destruction of bales, boxes, crates and containers between the hours of 11:00 p.m. and 6:00 a.m. the following morning.

(8) Construction or repairing of buildings. The erection (including excavating), demolition, alteration or repair of any building other than between the hours of 6:00 a.m. and 11:00 p.m. each weekday that is attended by loud, continuous or unusual noises penetrating more than a reasonable distance outside the property lines of the property from which the noise originates except in case of urgent necessity in the interest of public health and safety, and then only with a permit from the village business manager or his designee, which permit may be granted for a period not to exceed three days or less while the emergency continues, which permit may be renewed for periods of three days or less while the emergency continues. If the village business manager or his designee should determine that the public health, safety, quiet, repose, welfare or convenience of the residents of the village will not be impaired by the erection, demolition, alteration or repair of any building or the excavation of streets, highways or public places between the hours of 11:00 p.m. and 6:00 a.m. of any weekday, and if he shall further determine that loss would otherwise result to any party in interest, he may grant permission for such work to be done between the hours of 11:00 p.m. and 6:00 a.m. of the following morning upon application being made at the time the permit for the work is awarded or during the progress of the work.

(9) Schools, courts, churches, hospitals. The creation of any excessive noise on any street adjacent to any school, institution of learning, church or court while such buildings are being used, or adjacent to any hospital, that unreasonably interferes with the operation and use of such institution or buildings or which disturbs or unduly annoys patients in such hospitals, provided conspicuous signs are displayed in such streets indicating the location of such school, institution of learning, church, court or hospital.

(10) Pile drivers, hammers, automatic screw machine, compressed air pumps. The operation between the hours of 10:00 p.m. and 6:00 a.m. of the following morning of any type of noisy machine such as a pile driver, steam or power shovel, drop forge, pneumatic hammer or chisel or riveting machine, electric drill, drill press, punch press, steam or electric hoist, automatic screw machine, compressed air engine, air compressor, power saw or other appliance, the use of which is attended by loud, continuous or unusual noises shall be mulled so as not to become objectionable due to intermittence, beat frequency or shrillness. Noise as measured at the street or property line may not exceed 60 decibels; however, in the event of an emergency that affects the public health or safety, the village business manager or his designee or the council may issue a special permit for a limited time only for the use of any such equipment or appliances as may be necessary.

(11) Blowers. The operation of any noise-creating blower or power fan unless the noise from such blower and/or fan is mulled sufficiently to deaden such noise and not cause unnecessary or objectionable noise penetrating more than a reasonable distance from the nearest point on the property, either public or private, where such noise is created.

(12) Sound trucks and sound amplifying equipment.

a. The term "sound trucks and sound amplifying equipment" means any machine or device for the amplification of the human voice, music or any other sound. It shall not be construed as including standard automobile radios when used and heard

only by occupants of the vehicle in which installed, or warning devices on authorized emergency vehicles or horns or other warning devices on other vehicles used only for traffic safety purposes. Sound trucks and sound amplifying equipment with qualifications as described shall be prohibited at all times.

b. The village council, by a majority vote of the members present, may, for good cause shown, waive the prohibition provision of this section and grant a permit to operate sound trucks and sound amplifying equipment under such terms and conditions as they may prescribe when, in their opinion, the granting of such permit will not be disturbing, annoying or injurious. (Ord. No. 76, § 3, 9-13-1982; Ord. of 9-10-1990)

Sees. 34-35-34-65. Reserved.

ARTICLE III. NUISANCES*

***State law references**-Authority to abate nuisances, MCL 67.1(c), MSA 5.1285, (c); nuisance abatement, MCL 600.2940, MSA 27A.2940; public nuisances, MCL 600.3801 et seq., MSA 278.3801 et seq.

Sec. 34-66. Listed.

Each of the following listed conditions and circumstances is declared to be a nuisance within the meaning of this article; however this enumeration shall not be deemed to be exclusive:

(1) Whatever is dangerous or injurious to human life, health, habitation or comfort.

(2) Whatever causes or has a tendency to cause the air, food, water or other drink in any place or manner in the village to be injurious to or to endanger the health, safety, welfare or comfort of any person or of the public.

(3) Whatever building, erection, structure, cellar is overcrowded or not provided with adequate means of ingress or egress or for the disposal of human excreta, or for obtaining a reasonable necessary amount of clean water for use on the premises; or is unfit for human habitation, or is not sufficiently supported, ventilated, drained, cleaned or lighted.

(4) Any building, structure or premises not maintained according to the ordinances of the village, or any building, structure or premises maintained in a manner dangerous to human life, health or habitation, or maintained in a manner that affords insufficient safety to the public or any person.

(5) Any and all conditions, premises, buildings or structures that harbor or are conducive to the harboring or breeding of insects, vermin, rats or other rodents.

(6) All ponds of stagnant water.

(7) All cellars and foundations of and excavations for houses, the bottoms of which contain stagnant or putrid water.

(8) All dead and putrefied animals lying about the roadways, lanes, streets, alleys, vacant lots or yards, or upon the surface of the ground or not buried in the ground a sufficient depth.

(9) All methods of human excreta disposal, except toilets or water closets properly maintained and connected with a sanitary sewer or septic tank or privies that have been constructed and are being maintained in accordance with law and the provisions of this Code and are screened against flies and which are maintained in compliance with health measures, or other disposal system authorized by and maintained in accordance with the provisions of law and this Code.

(10) All choked or clogged sewers and house drains.

(11) All unreasonable accumulations of garbage, ashes or refuse.

(12) All pigpens and stables, except those permitted under this article.

(13) All wells, cisterns and reservoirs from which water for drinking or other domestic purposes may be obtained which are not constructed or maintained in accordance with the provisions of the ordinances of the village relating to plumbing, or of this article and show pollution.

(Ord. No. 75, § 35.310, 9-13-1982)

Sec. 34-67. *Right of entry.*

The village business manager or his designee shall have the right to enter private property at any reasonable hour of the day or night for the purpose of making a sanitary or health survey of the premises, obtaining a sample of water used on the premises, or collecting other data and material pertaining to public health, and enforcing the provisions of this article; and it shall be unlawful for any person to resist or attempt to prevent the village business manager or his designee from carrying out the purposes set forth in this article; however, the village business manager or his designee shall have in his possession and carry upon his person at all times

while carrying out the duties outlined in this section sufficient credentials identifying himself or showing his official capacity or relationship to the village, which credentials shall include a picture of the bearer and a brief description of his appearance indicating his age, height, weight, race, complexion, color of hair and eyes and sex, and which credentials shall be exhibited by the bearer on demand to any person in charge of any premises which the village business manager or his designee is about to enter.

(Ord. No. 75, § 35.302, 9-13-1982)

Sec. 34-68. *Rules and regulations.*

The village business manager or his designee is authorized to prepare such reasonable rules and regulations which he deems necessary to carry out and enforce the provisions of this article, subject to the approval of the mayor. (Ord. No. 75, § 35.304, 9-13-1982)

Sec. 34-69. *Unlawful to cause nuisance.*

It shall be unlawful for any person to cause, create, continue or maintain, or aid in causing, creating, continuing or maintaining any nuisance within the village. Any person responsible for violating the provisions of this article in connection with a nuisance shall be liable for Grade B civil infraction penalties. Each day that such nuisance occurs shall be a separate violation. Such person shall also be liable for the reasonable expense of correcting the conditions causing such nuisance. (Ord. No. 75, § 35.309, 9-13-1982; Ord. No. 99-4, § 4, 8-29-1999)

Sec. 34-70. *Village business manager to correct conditions, or condemn.*

(a) The village business manager or his designee, if satisfied upon examination that a building, tenement, room or cellar in the village occupied as a dwelling place, or any other place where human beings reside, congregate, work or have access to, has become, by reason of its being inhabited or used, unclean or unfit for use as stated in this article, or is likely to become a nuisance, or to be the cause of sickness to tenants, occupants or to those who have access to the place, shall give notice in writing to such occupant or owner of the premises or post in a conspicuous location upon the entrance of such premises such notice condemning the place as being unfit for human habitation or use, and shall demand the occupant or owner of the premises to put such place in a sanitary and habitable condition within a reasonable time. If the occupant or owner shall fail or refuse to comply with the terms of the notice within the time specified, the village business manager or his designee may declare the premises a nuisance and make and file a complaint against such occupant or owner, or both, or he may cause condition of the premises to be corrected at the owner's expense, or he may do whatever is reasonably necessary to abate the nuisance at the expense of the owner.

(b) The reasonable cost and expense incurred by the village business manager or his designee in repairing the premises and abating such nuisance shall be determined by the village business manager or his designee, and the amount thus determined shall be charged to the owner of the premises involved and shall be due and payable forthwith. A bill covering such amounts shall be mailed by the village treasurer to the owner of such premises at his last known post office address, demanding payment of the amount due. If the amount is not paid to the village on or before December 21 of the calendar year in which the amount became due, the amount shall be assessed against the property as a miscellaneous assessment in accordance with the provisions of the ordinances of the village and shall become and be a lien on the property from the date such assessment is created until full payment is made.

(c) If such premises are vacated, the village business manager or his designee may, in his discretion, refuse to permit and shall condemn the use of any premises for human habitation declared by him to be a nuisance; and such premises shall not again be occupied as a human habitation until they are put in a sanitary and habitable condition. The village business manager or his designee shall have the power, and he is authorized and empowered to condemn any premises declared by him to be a nuisance that are occupied as a residence by any tenant or lessee and may order the premises vacated until repaired or the conditions corrected to make them habitable. (Ord. No. 75, § 35.313, 9-13-1982)

Sec. 34-71. *Unlawful to occupy condemned premises.*

It shall be unlawful for any person to occupy or use such premises condemned by the village business manager or his designee until put in a sanitary and habitable condition in accordance with law and this Code and satisfactory to the village business manager or his designee. (Ord. No. 75, § 35.314, 9-13-1982)

Sec. 34-72. *Unlawful to remove condemnation sign.*

It shall be unlawful for any unauthorized person to remove any sign or notice posted on any premises condemning the use of the premises as a human habitation or declaring the premises to be a nuisance. (Ord. No. 75, § 35.315, 9-13-1982)

Sec. 34-73. *Owners and occupants responsible for premises being kept clean.*

All persons who own, manage, lease, rent or occupy any premises whatsoever shall be equally responsible for keeping the premises in a clean and habitable condition and shall take all necessary precautions to prevent any nuisance or other condition detrimental to public health from arising on the premises, and particularly to take all reasonable precautions to prevent rodents and vermin, including rats, bedbugs and cockroaches from being attracted to or existing on the premises. (Ord. No. 75, § 35.316, 9-13-1982)

Sec. 34-74. Owner to keep dwelling in habitable condition.

(a) Every building or portion of a building being used as a dwelling, home or residence shall be kept by the owner or landlord in a clean, neat and habitable condition in order to prevent the premises from becoming a nuisance. It shall be unlawful for any such owner or landlord to allow a dwelling to become dilapidated or permit weeds or other vegetation to grow and trash, rubbish or refuse to accumulate on the property to such an extent that a nuisance is created that is injurious to the health, safety or welfare of the occupants of the dwelling or of the inhabitants of the village.

(b) If the owner has leased or rented the premises to another person and the duty to keep the premises in a proper condition rests upon such renter, tenant or lessee, the obligation of this article shall fall upon such renter, tenant or lessee. (Ord. No. 75, § 35.317, 9-13-1982)

Sec. 34-75. Vacant commercial buildings; duty to maintain.

The owner or other person legally responsible shall have the duty to maintain any empty, unused or unrented commercial building in a neat, clean and structurally sound manner to prevent the premises from becoming a nuisance; such vacant buildings shall be kept securely locked at all times. It shall be the owner's responsibility to keep the building free from all signs or posters not specifically authorized by such owner. All authorized posters or signs, if placed on the windows, must be on the inside. (Ord. No. 75, § 35.318, 9-13-1982)

Sec. 34-76. Weeds, solid waste and similar items.

(a) It shall be unlawful for the owner or occupier of any land in the village to permit noxious weeds, overgrown lawns, in excess of eight inches, dead grass, dead trees, brush, filth, garbage, trash, refuse, debris or any items that could cause poisoning or irritation to human beings or tend to decrease the value of neighboring property to accumulate or exist upon property so owned or occupied.

(b) All lands in the village shall be made to fully comply with the provisions of subsection (a) of this section on or before May 15, June 15, July 15, August 15 and September 15 of each year.

(c) In the event of the failure of any owner or occupier of any land in the village to comply with subsections (a) and (b) of this section, the village shall be authorized to take the necessary steps to cut, destroy and remove the weeds, overgrown lawn, dead grass, dead trees, brush, filth, garbage, trash, refuse or debris from the premises and take any other steps necessary to bring the land in full compliance with subsections (a) and (b) of this section, and to assess all costs incurred in so doing against the property, such assessment to become a lien against the property and collected in the same manner that other taxes are levied and collected.

(d) In addition to assessment advanced by the village for costs of remediation under subsection (c) of this section, the owners and/or occupiers of properties in violation of this section shall be liable for Grade A civil infraction penalties. Each day of such violation shall be a separate violation of this section. (Ord. of 8-9-1993, §§ 1-3; Ord No. 99-4, § 4, 8-29-1999; Ord. No. 99-6, §§ 1-3, 9-2-1999)

Sec. 34-77. *Notice to remedy conditions.*

Upon the discovery of prohibited conditions existing, as set out in this article, the village business manager or his designee shall notify the owner of the property of such condition and require that it be remedied within ten days. Such notice may be given in person or by registered mail, addressed to the last known address of the owner. (Ord. No. 75, § 35.319, 9-13-1982)

Sec. 34-78. *Remedying condition at expense of property owner.*

Should the owner fail to remedy a nuisance condition after notice by the village business manager or his designee, the village business manager or his designee shall remedy the condition or abate the nuisance or cause the same to be done by personnel of the village or outside personnel, if necessary. Upon completion of such work, the village business manager or his designee shall determine the reasonable cost and bill the owner. Upon failure of the owner to remit to the village treasurer the amount of such charge within 30 days from the date of such notice, the amount of the bill shall be certified to the village council, who shall order such charges transferred to the miscellaneous special assessment roll to become a lien upon the property, which lien may be enforced in any manner allowable under the law. (Ord. No. 75, § 35.320, 9-13-1982)

Sec. 34-79. *Abatement of nuisance.*

The village business manager or his designee shall have the authority and is empowered at any time to order the complete abatement of any nuisance in the village; and any powers conferred by this article upon him to make complaint against an alleged violator shall not prevent such village business manager or his designee from filing injunctive proceedings in the circuit court or exercising any other available remedies to abate a nuisance he may deem necessary, each and all such powers and remedies being cumulative and not exclusive. (Ord. No. 75, § 35.321, 9-13-1982)

Secs. 34-80--34-105. *Reserved.*

ARTICLE IV. OPEN BURNING

Sec. 34-106. Definitions

The following definitions shall apply in the interpretation of this section.

"*Construction and demolition waste*" means building waste materials, including but not limited to waste shingles, insulation, lumber, treated wood, painted wood, wiring, plastics, packaging, and rubble that results from construction, remodeling, repair, and demolition operations on a house, commercial or industrial building, or other structure.

"*Commercial district*" any district or area within the Village zoned to allow business to participate in commercial activities, including areas with the following zoning designations C-1, C-2, CBD.

"*Open burning*" means kindling or maintaining a fire where the products of combustion are emitted directly into the ambient air without passing through a stack or a chimney. This includes burning in a burn barrel, patio wood-burning unit or other similar device.

"*Patio wood-burning unit*" means a chimney, patio warmer, or other portable wood-burning device used for outdoor recreation and/or heating.

"*Recreation fire*" means the outdoor burning of logs, brush, and other similar materials for the purpose of food preparation or recreation, recreation fires may include campfires or bonfires.

"*Refuse*" means any waste material, including waste resulting from the processing, handling, preparation, sale or consumption of food. Refuse does not include tree or bush trimming debris, yard debris and/or lawn/grass clippings..

"*Smudge fire*" means the burning of wet combustibles which emits a dense smoke.

"*Tree or bush trimming debris*" means debris associated with trimming of trees and/or bushes, but does not include yard debris or lawn/grass clippings.

"*Village*" means the Village of Lexington.

"*Yard debris*" means debris generally associated with cleaning and maintaining a residential property, such as leaves, twigs and branches. Yard debris does not include lawn/grass clippings.

Sec. 34-107 thru 34-112 *are repealed and held in reserve.*

Sec. 34-113. Violation Penalty

(a) Any person who violates any provision of this Article shall be responsible for a civil infraction.

(b) If the fire department is summoned to or extinguishes a burn taking place in violation of this Article, the Village shall impose a fire run fee against the person or persons responsible for the violation equal to the amount charged to townships as stated in their contracts.

Sec. 34-114. General Prohibition on Open Burning.

Open burning is prohibited in the Village unless specifically permitted by this Article.

Sec. 34-115. Approved Burning I No Burning Permit Required

The following types of open burning are approved within the Village and do not require a permit:

(a) Recreation fires in residential districts which are not on the beach and which:

- (1) are in a container with a cover;
- (2) are in a defined containment area;
- (3) are contained within a fireplace or patio-wood burning unit; or
- (4) are contained within a fire pit.

Recreation fires under this section shall not exceed an area of three feet by three feet by three feet and must be attended at all times by an adult.

(b) Barbecuing grilling using charcoal, propane, or natural gas so long as the fire is contained.

(c) With prior written approval from the Village Manager, employees of the Department of Public Works, Lexington Municipal Mobile Home Park, or Fire Department may conduct controlled burns.

Sec. 34-116. Approved Burning I Burning Permit Required

(a) The following types of open burning are permitted in residential or commercial districts if a burning permit is obtained prior to the burning:

(1) Recreation fires on the beach. Lakefront property owners may obtain a burning permit, valid for sixty days, to hold recreation fires on the beach.

(i) If a permit is obtained as provided herein, prior to starting any recreation fire on the beach, Central Dispatch must be called and provide authorization to burn for that particular day. If Central Dispatch does not provide authorization for a particular day, recreation fires on the beach are not permitted.

(ii) Recreation fires on the beach shall not exceed four feet in height or four feet in diameter from any two opposing points.

(iii) All recreation fires on the beach must be attended by an adult at all times.

(2) Burning of tree or bush trimming debris on lots with over 100 foot widths and an area over 12,000 square feet.

(i) Such burning is permitted only in December.

(ii) Burning of tree or bush trimming debris is limited to a maximum area of six feet in height by six feet in diameter from any two opposing points.

(iii) All burning of tree or brush trimming debris must be attended by an adult at all times.

(b) Any person who conducts or allows burning in violation of this section is responsible for a Grade B Civil Infraction.

Sec. 34-117. *Burning of Yard Debris*

(a) Burning of yard debris is allowed to take place in December and only after issuance of burning permit.

(1) Burning of yard debris under this section shall not exceed an area of three feet by three feet by three feet and must be attended at all times by an adult.

(b) If the Village, in its sole determination, has arranged for satisfactory alternatives for leaf pick up, the Village Council may suspend issuance of burning permits for the purpose of burning leaves.

Sec. 34-118. *Prohibited Burning*

The following open burning is prohibited in the Village:

(a) Burning of refuse, construction and demolition waste, and/or lawn/grass clippings.

(b) Burning of any substance which causes dense smoke, emits foul or obnoxious odors, or emits hazardous or toxic by-products.

(c) Burning in any area within 20 feet of a street or building, except recreational and controlled defoliation fires conducted by the Department of Public Works or Fire Department with the prior approval of the Village Manager.

(d) Smudge fires.

(e) Any burning within in the Village in violation of this section is a Grade C civil infraction.

Sect. 34-119. *Commercial Burning*

- (a) Open burning is prohibited in all commercial or industrial districts unless within a State approved incinerator or unless otherwise specifically provided for herein.
- (b) Any burning in violation of this section is a Grade D civil infraction.

ILLICIT DISCHARGE

AND

CONNECTION ORDINANCE

CHAPTER 341 ENVIRONMENT, SECTION 34 -120 TO END.

VILLAGE OF LEXINGTON, COUNTY OF SANILAC, MICHIGAN

ADOPTED BY THE LEXINGTON VILLAGE COUNCIL JANUARY 22, 2007

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AN ORDINANCE to regulate non-storm water discharges to the storm water drainage system to the maximum extent practicable as required by federal and state law; to establish methods for controlling the introduction of pollutants into the storm water drainage system in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process; to provide for payment or reimbursement of costs and expenses incurred by the Village of Lexington associated with noncompliance; to provide for the inspection, sampling, and monitoring of storm water and other discharges; and to provide penalties for violations of the ordinance.

The Village of Lexington ordains:

ARTICLE I GENERAL

SECTION 1.01 STATUTORY AUTHORITY AND TITLE

This Ordinance is adopted in accordance with the General law Village Act, as amended, being Public Act 3 of 1895 as amended; the Drain Code of 1956, as amended, being MCI 280.1, et seq.; the land Division Act, as amended, being MCI 560.1, et seq.; the Revenue Bond Act, as amended, being MCI 141.101, et seq.; the Natural Resources and Environmental Protection Act, as amended, being MCI 324.101, et seq.; Section 401(p) of the Federal Water Pollution Control Act (also known as the Clean Water Act), as amended, being 33 USC 1342(p) and 40 CFR Parts 9, 122, 123, and 124; and other applicable state and federal laws.

The Village of Lexington shall administer, implement, and enforce the provisions of the ordinance. Any powers granted, or duties imposed, upon the Village may be delegated in writing by the Council of the Village to persons or entities acting in the beneficial interest of, or in the employ of the Village.

SECTION 1.02 FINDINGS

The Village of Lexington finds that:

- (1) Illicit discharges contain pollutants that will significantly degrade the water bodies and water resources of the Village of Lexington, thus threatening the health, safety, and welfare of the citizenry.
- (2) Illicit discharges enter the storm water drainage system through either direct connections (e.g., wastewater piping either mistakenly or deliberately connected to the storm drains) or indirect connections (e.g., infiltration into the storm drain system or spills connected by drain inlets).
- (3) Establishing the measures for controlling illicit discharges and connections contained in this Ordinance and implementing the same will address many of the deleterious effects of illicit discharges.

(4) Any condition caused or permitted to exist in violation of any of the provisions of this Ordinance is a threat to public health, safety, and welfare, and is declared and deemed a nuisance.

SECTION 1.03 PURPOSE

It is the purpose of this Ordinance to establish minimum storm water management requirements and controls to accomplish, among others, the following objectives:

(1) To regulate the contribution of pollutants to the storm water drainage system and water bodies by storm water discharges by any user.

(2) To prohibit illicit discharges and connections to the storm water drainage system and Water bodies.

(3) To establish legal authority to carry out all inspection, surveillance, and monitoring procedures necessary to ensure compliance with this Ordinance.

(4) To provide appropriate remedies for failure to comply with this Ordinance.

SECTION 1.04 APPLICABILITY AND GENERAL PROVISIONS

This Ordinance shall apply to all discharges entering the storm water drainage system and waterbodies generated on any developed and undeveloped lands.

SECTION 1.05 DEFINITIONS

For the purpose of this Ordinance, the following words and phrases shall have the meanings respectively ascribed to them by this section, unless the context in which they are used specifically indicates otherwise:

Authorized Enforcement Agency: The Village of Lexington, and/or any persons or agencies designated to act as the Authorized Enforcement Agency by the Village of Lexington.

Best Management Practices (BMPs): Structural devices or nonstructural practices that are designed to prevent pollutants from entering storm water flows, to direct the flow of storm water, or to treat polluted storm water flows. BMPs may include, but shall not be limited to, those described in the Michigan Department of Environmental Quality Guidebook of BMPs for Michigan watersheds. Equivalent practices and design criteria that accomplish the purposes of this Ordinance (including, but not limited to, minimizing storm water runoff and preventing the discharge of pollutants into storm water) shall be as determined by the Village of Lexington Engineer.

Clean Water Act: The Federal Water Pollution Control Act, 33 USC Section 1251 et seq., as amended, and the applicable regulations promulgated there under.

Discharge: means the introduction (intentionally or unintentionally, and directly or indirectly) of any liquid, substance, pollutant, or other material into a storm water drainage system or water body.

Discharger: Any person who directly or indirectly discharges storm water from any premises. Discharger also includes any employee, officer, director, partner, contractor, or other person who participates in, or is legally or factually responsible for, any act or omission that is, or results in, a violation of this Ordinance.

Drain: Any and all conduits, facilities, measures, areas, and structures that serve to convey, catch, hold, filter, store, and/or receive storm water or groundwater, either on a temporary or permanent basis.

Drainage: The collection, conveyance, or discharge of groundwater and/or surface water.

Drainage way: A drain, water body, or floodplain.

EPA: The U.S. Environmental Protection Agency (EPA).

Floodplain: The area, usually low lands, adjoining the channel of a river, stream, or watercourse or lake, or other body of standing water, that has been or may be covered by floodwater.

Hazardous Materials: Any solid, liquid, semisolid, or gaseous substance or material that because of its quantity, quality, concentration, or physical, chemical, or infectious characteristics may cause or significantly contribute to an increase in mortality or an increase in serious irreversible illness or serious incapacitating but reversible illness, or may pose a substantial present or potential hazard to human health or the environment if improperly treated, stored, transported, disposed of, or otherwise managed.

Illicit Connection: Any method, means, or conduit for conveying an illicit discharge into a water body or a storm water drainage system.

Illicit Discharge: Any discharge to a water body or a storm water drainage system that does not consist entirely of storm water, that is not authorized by the terms of an NPDES permit, or that is not an authorized discharge as defined by this Ordinance.

Michigan Department of Environmental Quality.

National Pollutant Discharge Elimination System (NPDES) Permit: A permit issued by the EPA or a state under authority delegated pursuant to the Clean Water Act that authorizes the discharge of pollutants to waters of the United States.

Non-Storm Water Discharge: Any discharge to the storm water drainage system or a water body that is not composed entirely of storm water.

Person: An individual, firm, partnership, association, public or private corporation, public agency, instrumentality, or any other legal entity.

Pollutant: The term pollutant includes, but is not limited to, the following: any dredged spoil, solid waste, vehicle fluids, yard wastes, animal wastes, agricultural waste products, sediment, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological wastes, radioactive materials, hazardous materials, wrecked or discharged equipment, rock, sand, cellar dirt, and industrial, municipal, commercial, and agricultural waste, or any other contaminant or other substance defined as a pollutant under the Clean Water Act. Pollutant also includes properties or characteristics of water, including, but not limited to, pH, heat, TSS, turbidity, color, BOD, COD, toxicity, and odor.

Premises: Any building, structure, lot, parcel of land, or portion of land, or property, whether improved or unimproved, including adjacent sidewalks and parking strips.

Property Owner: Any person having legal or equitable title to premises or any person having or exercising care, custody, or control over any premises.

State of Michigan Water Quality Standards: All applicable state rules, regulations, and laws pertaining to water quality, including the provisions of Section 3106 of Part 31 of 1994 PA 451, as amended.

Storm Water Drainage System: Storm sewers, conduits, curbs, gutters, catch basins, drains, ditches, pumping devices, parking lots, roads, or other man-made channels that are designed or used, singly or together in combination with one another, for collecting or conveying storm water.

Storm Water Pollution Prevention Plan: A document, that describes the BMPs and activities to be implemented by a person or business to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to storm water, a storm water drainage system, and/or a water body to the maximum extent practicable.

Storm Water Runoff (or Storm Water): The runoff and drainage of precipitation resulting from rainfall, snowmelt, or other natural event or process. Toxic Material: Any pollutant or combination of pollutants that is or can potentially be harmful to the public health or the environment, including, without limitation, those listed in 40 CFR 401.15 as toxic under the provisions of the Clean Water Act, or listed in the Critical Materials Register promulgated by the Michigan Department of Environmental Quality, or as otherwise provided by local, state, or federal laws, rules, or regulations.

Wastewater: Any water or other liquid, other than uncontaminated storm water, discharged from a premises. The term includes any water that has in any way been used and degraded or physically or chemically altered.

Water Body: A river, lake, stream, creek, or other watercourse or wetlands.

ARTICLE II. PROHIBITIONS AND AUTHORIZATIONS

SECTION 2.01 PROHIBITED DISCHARGES

(1) It is unlawful for any person to discharge, or cause to be discharged, to a storm water drainage system or water body any substance or material, including, but not limited to, pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standards, other than storm water or an authorized discharge. This prohibition includes the commencement, conducting, or continuance of any illicit discharge by any person to a storm water drainage system or water body.

(2) Any person discharging storm water shall effectively prevent pollutants from being discharged with the storm water, except in accordance with BMPs.

(3) The Authorized Enforcement Agency is authorized to require dischargers to implement pollution prevention measures, using Storm Water Pollution Prevention Plans and BMPs, as determined necessary by the Authorized Enforcement Agency to prevent or reduce the discharge of pollutants to a storm water drainage system or water body.

(4) The discharge prohibitions of this section shall not apply to any non-storm water discharge authorized under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the EPA, provided the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the storm water drainage system.

SECTION 2.02 PROHIBITED ILLICIT CONNECTIONS

(1) It is unlawful for any person to construct, use, maintain (or to allow the construction, use, maintenance or continued existence of) an illicit connection.

(2) This prohibition expressly includes, without limitation, illicit connections made prior to the effective date of this Ordinance, and regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.

SECTION 2.03 AUTHORIZED DISCHARGES

The following non-storm water discharges are permissible, but only if they do not result in a violation of State of Michigan water quality standards and provided that they are undertaken in compliance with any applicable or required BMPs:

- (1) Water supply line flushing.
- (2) Landscape irrigation runoff.
- (3) Diverted stream flows.
- (4) Rising groundwater.
- (5) Uncontaminated groundwater infiltration to storm drains.
- (6) Uncontaminated pumped groundwater.
- (7) Discharges from potable water sources.
- (8) Foundation drains.
- (9) Air conditioning condensate.
- (10) Irrigation water.
- (11) Springs.
- (12) Water from crawl space pumps.
- (13) Footing drains and basement sump pumps.
- (14) Lawn watering runoff.
- (15) Waters from non-commercial car washing.
- (16) Flows from riparian habitats and wetlands.
- (17) Residential swimming pool water and other de-chlorinated swimming pool water, provided that any filter backwash water that is present is treated.
- (18) Residual street wash water.
- (19) Discharges or flows from emergency fire fighting activities.
- (20) Discharges specifically authorized in writing by the Authorized Enforcement Agency as being necessary to protect public health, welfare, and safety or the environment.

SECTION 2.04 STORAGE OF HAZARDOUS OR TOXIC MATERIALS IN DRAINAGEWAY

Except as permitted by law, it shall be unlawful for any person to store or stockpile, within a drainageway, any hazardous or toxic materials, unless adequate protection and/or containment has been provided so as to prevent any such materials from entering a storm water drainage system or water body.

ARTICLE III. INSPECTION, MONITORING, REPORTING, AND RECORD KEEPING

SECTION 3.01 INSPECTION AND SAMPLING

The Authorized Enforcement Agency may inspect and/or obtain samples from any discharger's premises as necessary to determine compliance with the requirements of this Ordinance. Upon request, the discharger shall allow properly identified representatives of the Authorized Enforcement Agency to enter the premises of the discharger at all hours necessary for the purposes of such inspection or investigation, including, but not limited to, smoke/dye testing,

televising pipes, sampling, and excavation. The Authorized Enforcement Agency shall provide the discharger reasonable advance notice of the need for such access, if possible and consistent with protection of public health and safety and the environment. The properly identified representatives may place on the discharger's premises the equipment or devices used for such sampling or inspection. Unreasonable delays in allowing access to a premises is a violation of this Ordinance.

SECTION 3.02 STORM WATER MONITORING FACILITIES

If directed in writing to do so by the Authorized Enforcement Agency, a discharger of storm water runoff from any premises used for commercial or industrial purposes shall provide and operate equipment or devices for the monitoring of storm water runoff to provide for inspection, sampling, and flow measurement of each discharge to a water body or a storm water drainage system, as specified by the Authorized Enforcement Agency. The Authorized Enforcement Agency may require a discharger to provide and operate such equipment and devices if it is necessary or appropriate for the inspection, sampling, and flow measurement of discharges in order to determine whether adverse effects from, or as a result of, such discharges may occur. All such equipment and devices for the inspection, sampling, and flow measurement of discharges shall be installed and maintained at the discharger's expense in accordance with applicable laws, ordinances, and regulations.

SECTION 3.03 ACCIDENTAL DISCHARGES

Any discharger who accidentally discharges into a storm water drainage system or a water body any substance other than storm water or an authorized discharge shall immediately notify the Authorized Enforcement Agency of the discharge. If the notification is given orally, a written report concerning the discharge shall be filed with the Authorized Enforcement Agency within 5 days. The written report shall specify all of the following:

- (1) The composition of the discharge and the cause thereof.
- (2) The exact date, time, and estimated volume of the discharge.
- (3) All measures taken to clean up the discharge, all measures taken or proposed to be taken to mitigate any known or potential adverse impacts of the discharge, and all measures proposed to be taken to reduce and prevent any recurrences.
- (4) The names and telephone numbers of the individual making the report, and (if different) the individual who may be contacted for additional information regarding the discharge.

SECTION 3.04 RECORD KEEPING REQUIREMENT

Any person that violates any requirement of this Ordinance or that is subject to monitoring under this Ordinance shall retain and preserve for no less than three years any and all books, drawings, plans, prints, documents, memoranda, reports, correspondence, and records, including records on magnetic or electronic media, and any and all summaries of such records relating to monitoring, sampling, and chemical analysis of any discharge or storm water runoff from any premises connected with the violation or subject to monitoring.

ARTICLE IV. ENFORCEMENT

SECTION 4.01 SANCTIONS FOR VIOLATION

(1) Violation; Municipal Civil Infraction. Except as provided by Section 4.01 (6), and notwithstanding any other provision of the Village of Lexington laws, ordinances, and regulations to the contrary, a person who violates any provision of this ordinance (including, without limitation, any notice, order, permit, decision or determination promulgated, issued or made by the Authorized Enforcement Agency under this Ordinance) is responsible for a municipal civil infraction, subject to payment of a civil fine of not more than [\$10,000] per day for each infraction and not more than [\$10,000] per day for each infraction, plus costs and other sanctions.

(2) Amount of Fines. The following factors shall be considered by a court in determining the amount of a municipal civil infraction fine following the issuance of a municipal civil infraction citation for a violation of this Ordinance: the type, nature, severity, frequency, duration, preventability, potential and actual effect, and economic benefit to the violator (such as delayed or avoided costs or competitive advantage) of a violation; the violator's recalcitrance or efforts to comply; the economic impacts of the fine on the violator; and such other matters as justice may require. A violator shall bear the burden of demonstrating the presence and degree of any mitigating factors to be considered in determining the amount of a fine. However, mitigating factors shall not be considered unless it is determined that the violator has made all good faith efforts to correct and terminate all violations.

(3) Authorized Local Official. Notwithstanding any other provision of the Village of Lexington laws, ordinances, and regulations to the contrary, the following persons are designated as the authorized local officials to issue municipal civil infraction citations (directing alleged violators to appear in district court) for violations of this Ordinance (in addition to any other persons so designated by the Authorized Enforcement Agency): the Manager or his/her designee, and any police officer.

(4) Other Requirements and Procedures. Except as otherwise provided by this section, the requirements and procedures for commencing municipal civil infraction actions; issuance and service of municipal civil infraction citations; determination and collection of court-ordered fines, costs and expenses; appearances and payment of fines and costs; failure to answer, appear, or pay fines; disposition of fines, costs and expenses paid; and other matters regarding municipal civil infractions shall be as set forth in Act No. 236 of the Public Acts of 1961, as amended.

(5) Any person who (1) at the time of a violation knew or should have known that a pollutant or substance was discharged contrary to any provision of this Ordinance, or contrary to any notice, order, permit, decision or determination promulgated, issued or made by the Authorized Enforcement Agency under this Ordinance; or (2) intentionally makes a false statement, representation, or certification in an application for, or form pertaining to a permit, or in a notice, report, or record required by this Ordinance, or in any other correspondence or

communication, written or oral, with the Authorized Enforcement Agency regarding matters regulated by this Ordinance; or (3) intentionally falsifies, tampers with, or renders inaccurate any sampling or monitoring device or record required to be maintained by this Ordinance; or (4) commits any other act that is punishable under state law by imprisonment for more than 90 days; shall, upon conviction, be guilty of a misdemeanor punishable by a fine of up to \$500 per violation, per day, or imprisonment for up to 90 days, or both in the discretion of the court.

(6) Any person who aids or abets another person in a violation of this Ordinance shall be subject to the sanctions provided in this section.

SECTION 4.02 FAILURE TO COMPLY; COMPLETION

The Authorized Enforcement Agency is authorized, after giving reasonable notice and opportunity for compliance, to correct any violation of this Ordinance or damage or impairment to the storm water drainage system caused by a discharge and to bill the person causing the violation or discharge for the costs of the work to be reimbursed. The costs reimbursable under this section shall be in addition to fees, amounts or other costs and expenses required to be paid to the Authorized Enforcement Agency under other sections of this Ordinance.

SECTION 4.03 EMERGENCY MEASURES

If emergency measures are necessary to respond to a nuisance; to protect public safety, health, and welfare; and/or to prevent loss of life, injury, or damage to property, the Authorized Enforcement Agency is authorized to carry out or arrange for all such emergency measures. Property owners shall be responsible for the cost of such measures made necessary as a result of a violation of this Ordinance, and shall promptly reimburse the Village of Lexington for all of such costs.

SECTION 4.04 COST RECOVERY FOR DAMAGE TO STORM WATER DRAINAGE SYSTEM

Any person who discharges to a storm water drainage system or a water body, including, but not limited to, any person who causes or creates a discharge that violates any provision of this Ordinance, produces a deposit or obstruction or otherwise damages or impairs a storm water drainage system, or causes or contributes to a violation of any federal, state, or local law governing the Village of Lexington, shall be liable to and shall fully reimburse the Village of Lexington for all expenses, costs, losses or damages (direct or indirect) payable or incurred by the Village of Lexington as a result of any such discharge, deposit, obstruction, damage, impairment, violation, exceedence or noncompliance. The costs that must be reimbursed to the Village of Lexington shall include, but shall not be limited to, all of the following:

(1) All costs incurred by the Village of Lexington in responding to the violation or discharge, including, expenses for any cleaning, repair or replacement work, and the costs of sampling, monitoring, and treatment, as a result of the discharge, violation, exceedence or noncompliance.

(2) All costs to the Village of Lexington of monitoring, surveillance, and enforcement in connection with investigating, verifying, and prosecuting any discharge, violation, exceedence, or noncompliance.

(3) The full amount of any fines, assessments, penalties, and claims, including natural resource damages, levied against the Village of Lexington, or any Village of Lexington representative, by any governmental agency or third party as a result of a violation of applicable laws or regulations that is caused by or contributed to by any discharge, violation, exceedence, or noncompliance.

(4) The full value of any Village of Lexington staff time (including any required overtime), consultant and engineering fees, and actual attorney fees and defense costs (including the Village of Lexington) legal counsel and any special legal counsel), associated with responding to, investigating, verifying, and prosecuting any discharge, violation, exceedence or noncompliance, or otherwise enforcing the requirements of this Ordinance.

SECTION 4.05 COLLECTION OF COSTS; LIEN

(1) Costs incurred by the Village of Lexington pursuant to Sections 4.02, 4.03, 4.04, and 4.06(1) shall constitute a lien on the premises, which shall be enforceable in accordance with Act No. 94 of the Public Acts of 1933, as amended from time to time, or as otherwise authorized by law. Any such charges that are delinquent for 6 months or more may be certified annually to the Village of Lexington Treasurer, who shall enter the lien on the next tax roll against the premises, the costs shall be collected, and the lien shall be enforced in the same manner as provided for in the collection of taxes assessed upon the roll and the enforcement of a lien for taxes. In addition to any other lawful enforcement methods, the Village of Lexington shall have all remedies authorized by Act No. 94 of the Public Acts of 1933, as amended, and by other applicable laws.

(2) The failure by any person to pay any amounts required to be reimbursed to the Village of Lexington as provided by this Ordinance shall constitute an additional violation of this Ordinance.

SECTION 4.06 SUSPENSION OF ACCESS TO THE STORM WATER DRAINAGE SYSTEM

(1) Suspension due to illicit discharges in emergency situations. The Authorized Enforcement Agency may, without prior notice, suspend access to the storm water drainage system to any person or premises when such suspension is necessary to stop an actual or threatened discharge that presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the storm water drainage system or a water body. If the person fails to comply with a suspension order issued in an emergency, the Authorized Enforcement Agency may take such steps as deemed necessary to prevent or minimize damage to the storm water drainage system or the environment, or to minimize danger to persons, and bill the person for the costs to the Village of Lexington in taking such steps.

(2) Suspension due to the detection of illicit discharge. Any person discharging to the storm water drainage system in violation of this Ordinance may have their access to the system terminated, if the Authorized Enforcement Agency determines that such termination would abate or reduce an illicit discharge. The Authorized Enforcement Agency will notify a violator of the proposed termination of its access. It shall be unlawful for any person to reinstate access of the storm water drainage system to a premises terminated pursuant to this section without the prior written approval of the Authorized Enforcement Agency.

SECTION 4.07 APPEALS

Any person to whom any provision of this Ordinance has been applied may appeal in writing to Village of Lexington, not later than 30 days after the action or decision being appealed. Such appeal shall identify the matter being appealed, and the basis for the appeal. The Village of Lexington shall consider the appeal and make a decision whereby it affirms, rejects, or modifies the action being appealed. In considering any such appeal, the Village of Lexington may consider the recommendations of the Authorized Enforcement Agency and the comments of other persons having knowledge or expertise regarding the matter. In considering any such appeal, the Village of Lexington may grant a temporary variance from the terms of this Ordinance so as to provide relief, in whole or in part, from the action being appealed, but only upon finding that the following requirements are satisfied:

- (1) The application of the Ordinance provisions being appealed will present or cause unnecessary hardship for the person appealing; provided, however, that unnecessary hardship shall not include the need for a property owner to incur additional reasonable expenses in order to comply with the Ordinance; and
- (2) The granting of the relief requested will not prevent accomplishment of the goals and purposes of this Ordinance, nor result in less effective management of storm water runoff.

SECTION 4.08 JUDICIAL RELIEF

With the approval of the Village of Lexington, the Authorized Enforcement Agency may institute legal proceedings in a court of competent jurisdiction to seek all appropriate relief for violations of this Ordinance or of any permit, order, notice or agreement issued or entered into under this Ordinance. The action may seek temporary or permanent injunctive relief, damages, penalties, costs, and any other relief, at law or equity, that a court may order. The Authorized Enforcement Agency may also seek collection of fines, penalties and any other amounts due to the Village of Lexington that a person has not paid.

SECTION 4.09 CUMULATIVE REMEDIES

The imposition of a single penalty, fine, order, damage, or surcharge upon any person for a violation of this Ordinance, or of any permit, order, notice or agreement issued, or entered into under this Ordinance, shall not preclude the imposition by the Village of Lexington, the Authorized Enforcement Agency, or a court of competent jurisdiction of a combination of any or

all of those sanctions and remedies or additional sanctions and remedies with respect to the same violation, consistent with applicable limitations on penalty amounts under state or federal laws or regulations. A criminal citation and prosecution of a criminal action against a person shall not be dependent upon and need not be held in abeyance during any civil, judicial, or administrative proceeding, conference, or hearing regarding the person.

ARTICLE V. PERFORMANCE AND DESIGN STANDARDS

SECTION 5.01 RESPONSIBILITY TO IMPLEMENT BEST MANAGEMENT PRACTICES (BMP)

The owner or operator of a premises used for commercial or industrial purposes shall provide, at the owner or operator's own expense, reasonable protection from an accidental discharge of prohibited materials or other wastes into the storm water drainage system or water body through the use of structural and nonstructural BMPs. Further, any person responsible for a premises that is, or may be, the source of an illicit discharge may be required to implement, at the person's expense, additional structural and nonstructural BMPs to prevent the further discharge of pollutants to the storm water drainage system or water body. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of storm water associated with industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this section.

ARTICLE VI. OTHER MATTERS

SECTION 6.01 INTERPRETATION

Words and phrases in this Ordinance shall be construed according to their common and accepted meanings, except those words and phrases defined in Section 1.05 shall be construed according to the respective definitions given in that section. Technical words and technical phrases not defined in this Ordinance, but which have acquired particular meanings in law or in technical usage, shall be construed according to such meanings.

SECTION 6.02 CATCH-LINE HEADINGS

The catch-line headings of the articles and sections of this Ordinance are intended for convenience only, and shall not be construed as affecting the meaning or interpretation of the text of the articles or sections to which they may refer.

SECTION 6.03 SEVERABILITY

The provisions of this Ordinance are hereby declared to be severable, and if any part or provision of this Ordinance should be declared invalid or unenforceable by any court of competent jurisdiction, such invalidity or unenforceability shall not affect any other part or provision of this Ordinance.

SECTION 6.04 OTHER ORDINANCES

This Ordinance shall be in addition to other ordinances of the Village of Lexington and shall not be deemed to repeal or replace other ordinances, or parts thereof; provided that in the event of any inconsistency or conflict between this Ordinance and any other provision of any other ordinance, the provisions of this Ordinance shall control.

SECTION 6.05 EFFECTIVE DATE

This Ordinance shall become effective January 28, 2007, following the publication of a summary of its provisions in a local newspaper of general circulation.

This Ordinance was adopted January 22, 2007, by the Lexington Village Council and made effective January 28, 2007. Clerk

Chapters 35-37

RESERVED

Chapter 38

OFFENSES AND MISCELLANEOUS PROVISIONS **ARTICLE I. IN GENERAL**

Sec. 38-1 State law, Misdemeanors
Sec. 38-2 Preservation of Public Property
Secs. 38-3-38-35 Reserved

ARTICLE II. OFFENSES INVOLVING PUBLIC SAFETY

Sec. 38-36 Firearms, Discharging Limited
Sec. 38-37 Use of Certain Weapons Prohibited
Sec. 38-38 Hunting
Secs. 38-39-38-70 Reserved

ARTICLE III. OFFENSES INVOLVING PUBLIC PEACE AND ORDER

Sec. 38-71 Curfew for Minors
Sec. 38-72 Begging and Soliciting Alms by Accosting or Forcing Oneself Upon the
Company of Another
Sec. 38-73 Anti-Loitering
Sec. 38-74 Open Intoxicants
Sec. 38-75 Penalty
Sec. 38-76 Repeal
Secs. 38-75-105 Reserved

ARTICLE IV. OFFENSES INVOLVING PUBLIC MORALS

Sec. 38-106 Public Nudity

OFFENSES AND MISCELLANEOUS PROVISIONS § 38-70

ARTICLE I. IN GENERAL

Sec. 38-1. *State law, misdemeanors.*

Every act prohibited by state law as a misdemeanor is prohibited and whoever violates the provisions of this section within the village shall, upon conviction, be punished by the same penalty provided by state law, except that the penalty shall, in no case, exceed a fine of \$500.00, or imprisonment for 90 days, or both:

(Ord. No. 74, § 20.464, 9-13-1982)

Sec. 38-2. *Preservation of public property.*

It shall be unlawful for any person to, in any manner, interfere with or hinder the use of any public building or any public property whatsoever. (Ord. No. 74, § 20.458, 9-13-1982)

Secs. 38-3-38-35. *Reserved.*

ARTICLE II. OFFENSES INVOLVING PUBLIC SAFETY

Sec. 38-36. *Firearms; discharging limited.*

It shall be unlawful for any person to discharge any firearm or other instrument producing a like effect and noise within the village except in the lawful defense of his person or property, or as otherwise permitted by law. (Ord. No. 39, § 2, 2-6-1956; Ord. No. 74, § 20.456, 9-13-1982)

State law reference-Authority to prohibit discharge of firearms preserved, MCL 123.1104, MSA 5.3415(4).

Sec. 38-37. *Use of certain weapons prohibited.*

No person shall use any slingshots, airguns or other similar devices.
(Ord. No. 39, § 1, 2-6-1956)

State law references-Dangerous weapons, MCL 750.224 et seq., MSA 28.421 et seq.; use Of BB guns, MCL 752.891 et seq., MSA 13.1321 et seq.

Sec. 38-38 Hunting

No person shall pursue, hunt, kill, snare, net, search for, shoot at, stalk, or lie in wait for any game, animal, or bird with an air gun, B-B gun, firearm, bow and arrow, or any other thrown or propelled device within in the Village limits, except Law Enforcement for the purpose or dispatching a rodent or injured animal; however, nothing contained in this section shall be construed so as to prevent the carrying of firearms, through the Village to hunting territory by those licensed or authorized to do so.
(Ord. NO. 39, § 2, 2-6-1956)

Cross reference – Animals chap 6

Secs. 38-39-38-70 Reserved

ARTICLE III. OFFENSES INVOLVING PUBLIC PEACE AND ORDER

Sec. 38-71. Curfew for minors.

(a) No minor under the age of 18 years shall loiter, idle, wander, stroll or play in or upon the public streets, highways, roads, alleys, parks, public buildings, places of amusement and entertainment, vacant lots or other unsupervised places, or pleasure ride or park in automobiles between the hours of 11:00 p.m. and 6:00 a.m. of the following day; however, the provisions of this subsection do not apply when the minor is:

- (1) Accompanied by his parent, guardian or other adult person having the lawful care and custody of the minor.
- (2) Upon an emergency errand directed by his parent or guardian or other adult person having the lawful care and custody of such minor.
- (3) Returning directly home from a school activity, entertainment, recreational activity or dance.
- (4) Returning directly home from lawful employment that makes it necessary to be in the places referenced in this section during the proscribed period of time.
- (5) Attending or traveling directly to or from an activity involving the exercise of first amendment rights of free speech, freedom of assembly or free exercise of religion.
- (6) In a motor vehicle with parental consent for normal travel in interstate commerce.

(b) It is unlawful for the parent, guardian or other adult person having the care and custody of a minor under the age of 18 years to violate the provisions of subsection (a) of this section.

(c) Every parent, guardian or adult who is found to be in violation of this section shall be responsible for Grade A civil infraction penalties. Each violation of the provisions of this section shall constitute a separate offense. (Ord. No. 29, §§ I, II, 11-2-1943; Ord. No. 99-4, § 3, 8-29-1999)

State law reference—Curfew, MCL 722.751 et seq., MSA 28.342(1) et seq.

Sec. 38-72. Begging and soliciting alms by accosting or forcing oneself upon the company of another.

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

Accosting means approaching or speaking to someone in such a manner as would cause a reasonable person to fear imminent bodily harm or the commission of a criminal act upon his person, or upon property in his immediate possession.

Ask, beg or solicit means and includes, without limitation, the spoken, written or printed word or such other acts as are conducted in furtherance of the purpose of obtaining alms.

OFFENSES AND MISCELLANEOUS PROVISIONS § 38-105

Forcing oneself upon the company of another means continuing to request, beg or solicit alms from a person after that person has made a negative response, blocking the passage of the individual addressed or otherwise engaging in conduct that could reasonably be construed as intended to compel or force a person to accede to demands.

(b) *Exceptions.* Except when performed in the manner and locations set forth in subsections (c) and (d) of this section, it shall not be unlawful to ask, beg or solicit money or other things of value.

(c) *Location.* It shall be unlawful for any person to solicit money or other things of value:

(1) On private property if the owner, tenant or lawful occupant has asked the person not to solicit on the property, or has posted a sign clearly indicating that solicitations are not welcome on the property;

(2) Within 15 feet of the entrance to or exit from any public toilet facility;

(3) Within 15 feet of an automatic teller machine, provided that when an automated teller machine is located within an automated teller machine facility, such distance shall be measured from the entrance or exit of the automated teller machine facility;

(4) Within 15 feet of any pay telephone, provided that when a pay telephone is located within a telephone booth or other facility, such distance shall be measured from the entrance or exit of the telephone booth or facility;

(5) In any public transportation vehicle, or in any bus or subway station, or within 15 feet of any bus stop or taxi-stand;

(6) From any operator of a motor vehicle that is in traffic on a public street; however, this subsection (c)(6) shall not apply to services rendered in connection with emergency repairs requested by the owner or passengers of such vehicle;

(7) From any persons who are waiting in line for entry to any building, public or private, including but not limited to any residence, business or athletic facility; or

(8) Within 15 feet of the entrance or exit from a building, public or private, including but not limited to any residence, business or athletic facility.

(d) *Manner.* It shall be unlawful for any person to solicit money or other things of value:

(1) By accosting another; or

(2) By forcing oneself upon the company of another.

(Ord. No. 74, § 20.452, 9-13-1982)

State law reference-Begging, MeL 750.167(1)(h), MSA 28.364, (l)(h).

Secs. 38-73-38-105. Reserved.

Sec. 38-73. Loitering and Emergency Curfew Ordinance.

(a) *Purpose.* The purpose of this ordinance shall be to prohibit the gathering of people in public places for unlawful or mischievous purposes; to prohibit persons from loitering or standing in, near, or upon public or private places, unless for a valid, proper, peaceful and lawful purpose; to establish emergency curfew regulations and authority for use in times of civil disturbances and disorder; and to provide authority to obtain police assistance from adjoining municipalities, pursuant to agreements with such municipalities, in times of civil disorder.

(b) *Regulations.*

(1) No person or persons shall collect or congregate in crowds, nor arrange, encourage or abet the collection of persons or crowds for illegal, violent, destructive or mischievous purposes on any street, alley, sidewalk, park, ground or other place open to public use.

(2) No person or persons shall incite any disturbance, violence or damage to persons or property nor aid or abet the assemblage of persons where such gathering is likely to cause such public or private disturbance, violence, damage or riot.

(3) No person or persons shall, either individually or with others, stand, loiter, stroll or collect in groups for any unlawful, violent, destructive or mischievous purpose or without cause, nor in any manner which would intentionally inconvenience or interfere with others lawfully, peacefully and properly occupying any place, either public or private, in the Village of Lexington; and no such person or persons shall refuse to leave any such place upon the request of any person having lawful supervision or control of said place. The foregoing places shall include, among others, any and all schools, hospital and governmental or municipal properties.

(4) No person or persons shall loiter in or about any place where liquor is sold, nor any pool room, billiard hall, amusement hall, gambling house or disorderly house, or wander about the streets of the Village of Lexington without any lawful means of support or without being able to furnish a legal and truthful reason for his or her presence in the particular location, or without identifying, upon request his or her legal place of residence.

(5) Emergency curfew regulations shall be put into effect as provided in Section 38-73(b)(6) hereof by order of the Village President (or in his or her absence, any two members of the Village Council) at any time such President or Village Council members shall determine that any of the following conditions exist in the Village:

(A) Violation of law or creation of disorder, disturbance, destruction or rioting by groups or gangs of persons.

(B) Emotional, volatile, threatening and hostile conduct or action by any group, crowd or gang of persons within the Village.

(C) Public demonstrations threatening the peace, health or general welfare of the people within the Village.

(6) Upon issuance of such an emergency curfew order by the Village President or members of the Village Council as provided in Section 38-73(b)(5) hereof, no person shall be upon the streets or in any public place within the Village between the hours of 10 p.m. and 6 a.m. unless he or she is in the performance of his or her lawful employment; or can justify the necessity of his or her presence in the street or public place by some other lawful and adequate reason.

(7) The Village President (or in his or her absence, any two (2) members of the Village Council), after making such emergency curfew order, may request the assistance of the police of any other municipality pursuant to any agreement heretofore or hereafter made with such municipality for such purpose by the Village of Lexington Council.

(c) *Penalty.* All violations of this Ordinance shall be civil infractions, and upon conviction thereof, shall be punishable by a fine of not less than Fifty (\$50.00) Dollars nor more than Five Hundred (\$500.00) Dollars.

.01 No Exemption From Compliance. The imposition of any sentence shall not exempt an offender from compliance with the provisions of this Ordinance.

.02 Other Appropriate Relief. The foregoing penalties shall not prohibit the Village from seeking injunctive relief against a violator or such other appropriate relief as may be provided by law.

.03 Each Day A Separate Offense. A separate offense shall be deemed committed upon each day during or when a violation occurs or continues.

.04 Rights and Remedies are Cumulative. The rights and remedies provided herein are cumulative and in addition to any other remedies provided by law.

REPEAL

The provisions of this Ordinance are hereby declared to be severable. If any clause, sentence, paragraph, rule, regulation, section or subsection is declared void or inoperable for any reason by any Court, it shall not affect any other part or portion thereof, other than the part declared void or inoperable.

Amended ordinance number 59 section 20.650-20-653 of Aug. 11, 1975

An ordinance to prohibit the possession and /or transportation of open intoxicants.

THE VILLAGE OF LEXINGTON ORDAINS:

Sec. 38-74 PROHIBITION AND EXCEPTION

A person shall not transport or possess any alcoholic beverage in a container which is open, uncapped, or upon which the seal is broken, on a highway, alley, beach, or any public or private property which is open to the general public and is not licensed to sell alcoholic liquor for consumption on the premises. Exceptions may be granted for Village approved events.

Sec. 38-75 PENALTY

Anyone found violating this ordinance is guilty of a misdemeanor punishable by a fine up to \$500 and/or imprisonment up to 90 days.

Sec. 38-76 REPEAL

Any ordinance or parts of ordinances inconsistent with the provision of this ordinance are hereby repealed.

Reference 1998, Act 58, Imd. Eff. Apr. 14, 1998 436.1915

Secs. 38-77-34-105 Reserved

ARTICLE IV. OFFENSES INVOLVING PUBLIC MORALS

Sec. 38-106. Public nudity.

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

Bottomless means less than completely and opaquely covered human genitalia, human buttocks, or human pubic area, that being the lower part of the hypogastric region that from puberty on is normally covered with fine, soft, short hairs, whether or not such area is shaven or otherwise depilated.

Knowingly means being aware of the character of the matter or live conduct.

Obscene live conduct knowingly means the:

- (1) Performance of acts, or simulated acts, of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, or any sexual acts prohibited by law;
- (2) Actual or simulated touching, caressing, or fondling of the breasts, buttocks, anus or genitals;
- (3) Actual or simulated displaying of the pubic hair, anus, vulva or genitals;
- (4) Permitting by a licensee of any person to remain in or upon the licensed premises who exposes to public view any portion of his genitals or anus; and
- (5) Displaying of films or pictures depicting acts, the live performance of which was prohibited by subsections (1) through (4).

Topless means less than completely and opaquely covered female breasts below a point immediately above the top of the areola.

(b) It shall be unlawful for any person to knowingly and in a lewd and obscene manner be topless and/or bottomless in any establishment licensed by the state liquor commission to sell and/or serve intoxicating beverages or in any other establishment within the corporate limits of the village.

(c) It shall be unlawful for any owner, operator, employer, agent or any employee of any business or establishment within the corporate limits licensed by the state liquor commission or in any other establishment within the corporate limits of the village to permit any person to appear in the presence of the patrons of the establishment in a lewd, obscene, topless and/or bottomless manner or to permit any person to serve food or beverages while appearing in such manner.

(d) It shall be unlawful for any owner, operator, employer, agent or any employee of any business or establishment to permit or for any person to engage in any of the following conduct in any such establishment within the corporate limits licensed by the state liquor commission or in any other establishment within the corporate limits of the village:

(1) The performance of acts, or simulated acts, of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, or any other sexual acts prohibited by law;

(2) The actual or simulated touching, caressing or fondling of the breast, buttocks, anus or genitals;

(3) The actual or simulated displaying of the pubic hair, anus, vulva or genitals; and

(4) The displaying of films or pictures depicting acts, the live performance of which is prohibited by this section.

(Ord. No. 61, §§ 1-4, 3-22-1977)

***State law reference**-Authority to prohibit public nudity, MCL 67.1 (aa), MSA 5.1285, (aa).

Chapters 39-41

Reserved

Chapter 42

PARKS AND RECREATION*

Article I. In General

Secs. 42-1—42-30. Reserved.

Article II. Parks and Recreation Committee

- Sec. 42-31. Established; membership; terms; compensation.
- Sec. 42-32. Officers.
- Sec. 42-33. Voting.
- Sec. 42-34. Authority and duties.
- Sec. 42-35. Financing and reports.

***Cross references**—Environment, ch. 34; streets, sidewalks and other public places, ch. 62.

State law references—Public recreation systems authorized, MCL 123.51 et seq., MSA 5.2421 et seq.; authority to establish and regulate use of public parks, MCL 67.6, MSA 5.1290; referendum required to sell park, MCL 67.4, MSA 5.1288.

ARTICLE I. IN GENERAL

Secs. 42-1 thru 42-30. Reserved

ARTICLE II. PARKS AND RECREATION COMMITTEE*

*Cross reference(s) – Boards and commissions, § 2-151 et seq.

Sec. 42.31. Established; membership; terms; compensation.

There is established a parks and recreation committee, shall be governed by a board consisting of at least one member of council and four to six village residents, each serving two year staggered terms. Members shall be nominated by the Village President and confirmed by the Village Council. No member shall receive any salary or other compensation for his services. Members may be reimbursed for actual and necessary expenses incurred in the performance of official duties, after approval by the Village Council.

(Ord. No. 112 § 1—3, 12-13-1993)

Sec 42-34. Authority and duties.

The parks and recreation committee may recommend fees and/or rentals for various facilities and equipment to the Village Council and, upon approval, shall cause such fees and/or rentals to be collected.

Additionally, the committee shall perform the following duties:

1. Organize recreational activities.
2. Insure adequacy of parks.
3. Develop plans for facilities that enhance recreational activities.
4. Prepare and submit to the village manager a proposed annual budget.
5. Report to the village manager the state of parks and recreational activities on an annual basis, minimally.
6. Hold regular committee meetings.
7. Elect committee officers and appoint subcommittees chaired by a committee member.

(Ord. No. 112 § 6, 12-13-1993)

Sec. 42-35. Financing and reports.

All funds raised by facilities under the jurisdiction of the parks and recreation committee shall be placed in a separate fund to be used for the operation, maintenance, improvement, construction and purchase of parks and recreational facilities. The committee shall provide monthly reports to the village council regarding all activities including receipts and expenditures. The committee shall follow the fiscal and purchasing policies approved by Lexington village council.

Amended and approved by Council: 11/23/2015

Publication Date: 12/9/2015

Effective Date: 12/9/2015

Amended and approved by Council November 23, 2009

Publication Date: November 30, 2009

Effective Date: November 30, 2009

Chapters 43—45

RESERVED

Chapter 46

PEDDLERS AND SOLICITORS*

Article I. In General

Secs. 46-1-46-30. Reserved.

Article II. Peddlers

Division 1. Generally

- Sec. 46-31. Definitions.
- Sec. 46-32. Duties of police.
- Sec. 46-33. Use of streets.
- Sec. 46-34. Restrictions on sale of food.
- Secs. 46-35-46-55. Reserved.

Division 2. License

- Sec. 46-56. Required.
- Sec. 46-57. Excepted activities.
- Sec. 46-58. Application.
- Sec. 46-59. Fee.
- Sec. 46-60. Investigation of applicant; issuance.
- Sec. 46-61. Exhibition.
- Sec. 46-62. Record of licenses issued, reports of violations.

***Cross references**-Businesses, ch. 14; streets, sidewalks and other public places, ch. 62.
State law references-Authority to license and regulate peddlers and hawkers, MCL
67.1(h), MSA 5.1285, (h); transient merchants, MCL 445.371 et seq., MSA 19.691 et seq.

Chapter 46 PEDDLERS AND SOLICITORS

ARTICLE I. *In General*

Sec. 46-1-46-30 *Reserved*

ARTICLE II. *Peddlers*

DIVISION 1. GENERALLY

Sec. 46-31. *Definitions.*

LICENSE ISSUED FOR SPECIAL EVENTS ONLY

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

- (1) *Authorized officer* includes any Lexington police officer and all Village of Lexington administrative officers and their designees.
- (2) *Established competing business* is a Village business engaged in sales of substantially similar products/services at a permanent location, whether they own or lease the property or otherwise have a written agreement with the Village of Lexington to be in this location.
- (3) *Exempt organizations* shall mean any recognized nonprofit organizations or societies making sales for charitable, educational, religious, fraternal, labor, political groups or for public purpose. Arts/crafts vendors operating with consent of the organization sponsoring clients approved by the village council; provided the duration of their event is less than seven days.
- (4) *Licensee shall* mean a person or business authorized under this article to sell in the village as a peddler/solicitor or transient merchant.
- (5) *Peddler* shall mean any person who travels about by foot, wagon, automotive vehicle or any other type of conveyance, from place to place, or from street to street, selling his/her product/service. The word "peddler" shall include the words "hawker" and "huckster."
- (6) *Person* shall mean any person, firm, association, corporation, limited liability company, partnership, corporation or other business entity, regardless of whether a resident of the village or not.
- (7) *Product and or service*, shall mean goods, wares, merchandise, flowers, food items, meats, fish, vegetables, fruit, garden truck, farm products, etc., or work done for others as an occupation or business.
- (8) *Removable* stand means a non-motorized cart, kiosk, or other unit capable of being pushed by one person, with at least two functional wheels, and must be self-contained and capable of mobility at all times.

(9) *Solicitor* shall include any person traveling about by foot, wagon, automotive vehicle or any other type of conveyance, from place to place, from house to house or from street to street, engaged in the business of taking orders, making contracts for the purchase of products/service for future delivery or any person who shall employ a representative, agent, or crew to engage in such activity. The word solicitor shall also include the "canvasser."

(10) *Transient* merchant means any person, whether as owner, employee, agent, or consignee, who engages in a temporary business from a stationary location on commercially -zoned private property to sell and deliver a product/service, display examples and take orders or make contract for the purchase of a products/service for future delivery, and who, in furtherance of such purpose, hires, leases, uses or occupies any building, structure, motor vehicle, tent, railroad boxcar, or boat, public rooms in hotels, motels, lodging houses, apartments, shops, etc., for the exhibition and sale of such product/service, either privately or at public auction. The person so engaged shall not be relieved from complying with the provisions of this section merely by reason of associating temporarily with any local dealer, trader, merchant or auctioneer, or by conducting such transient business in connection with, as a part or, or in the name of any local dealer, trader, merchant or auctioneer.

(11) *Veteran* shall mean any veteran qualifying for a state peddler's license issued by the county clerk pursuant to Public Act NO 359 of 1921 as amended (Mel 35.441 et seq.) who has provided a copy of said license to the Village of Lexington clerk.

Sec. 46-32. Duties of police.

Police officers of the village shall require any person seen peddling, and who is not known by such officers to be duly licensed, to produce his peddler's license and shall enforce this article against any person found to be violating any of the provisions of this article.
(Ord. No. 81, § 11, 2-13-1984)

Sec. 46-33. Use of streets.

No peddler shall have any exclusive right to any location in the public streets or be permitted a stationary location or be permitted to operate in any congested area where his operations might impede or inconvenience the public. For the purpose of this article, the judgment of a police officer, exercised in good faith, shall be deemed conclusive as to whether the area is congested or the public impeded or inconvenienced.
(Ord. No. 81, § 9, 2-13-1984)

Sec. 46-34. Restrictions on sale of food.

(a) No licensee shall sell or offer for sale any unsound, unripe or unwholesome food or drink or defective, faulty or deteriorated article of food.

(b) No licensee shall make a sale of food or drink to any person under the age of 12 years on any property nearer the traveled portion of any street than the side of the public sidewalk nearest to the pavement, or, where no public sidewalk exists, nearer than ten feet from the outer edge of such pavement.

Where streets are unpaved, this restriction shall be deemed to apply to that portion of the street set aside for or used by vehicular traffic.

(Ord. No. 81, § 6(c), (e), 2-13-1984)

Secs. 46-35--46-55. *Reserved.*

DIVISION 2. LICENSE

Sec. 46-56. *Required.*

(a) No person shall engage in the business of peddling within the village without first obtaining a license. Military veterans with valid permits issued by the county clerk who become licensed by the village prior to soliciting shall be exempt from paying required fees. The veteran must be the actual person selling the goods or wares. Failure to comply with license provisions will result in ticketing and order to cease operation and immediate removal from the premises.

(b) Any person who engages in the business of hawking, peddling or vending according to the provisions of this article, without a license, or who shall violate any of the provisions of this article, shall be subject to the penalties for a Grade C civil infraction. Each day or part of a day that a person shall hawk, peddle or vend without a valid license shall be considered a separate violation of this article.

(Ord. No. 81, § 2, 2-13-1984; Ord. No. 99-4, § 2, 8-29-1999)

Sec. 46-57. *Excepted activities.*

(1) *Exemptions* from license fee only any established competing business which sells a product/service at a permanent location within the Village with the written consent of organizations sponsoring events approved by village council; or is a veteran of exempt organization (as defined in section 46-31) shall be exempt from payment of licensing fees only. Responsible for the cost of utilities if any used, supervisory, clean up costs, processing fees, and investigation fee. All vendors must apply for peddler's license. All other provisions of this article apply.

(2) *Other exemptions.* The following shall be exempt from this division in its entirety:

(a) Newspaper salespersons or delivery persons.

(b) Persons traveling on an established route at the request, expressed or implied of their customers.

(c) Salespersons calling on business establishments.

(d) Any person under 18 years of age when engaged in peddling on foot in the neighborhood of their residence under the direct supervision of any school or recognized charitable or religious organization.

Sec. 46-58. *Application.*

Applicants for a license under this ordinance must file with the village clerk a sworn application in writing, on a form to be furnished by the village clerk, which form shall contain the following information for each occurrence:

- (1) The name of the applicant, the business, and other identifying information;
- (2) The applicant's address, both legal and local;
- (3) A brief description of the nature of the business and the goods or wares to be sold and, in the case of products of farm or orchard, whether produced or grown by the applicant;
- (4) If employed, the name and address of the employer, together with credentials establishing the exact relationship;
- (5) The length of time for which the right to do business is desired;
- (6) If a vehicle is to be used, a description of the vehicle, together with the license number or other means of identification;
- (7) A photograph of the applicant, taken within 60 days immediately prior to the date of filing of the application, which picture shall be AT LEAST two inches by two inches showing the head and shoulders of the applicant in a clear and distinguished manner;
- (8) A statement as to whether or not the applicant has been convicted of any crime and, if so, the nature of the offense and the punishment or penalty assessed.
- (9) The number of the applicant's sales or use tax license.
- (10) Peddlers must follow all building codes and requirements and must obtain permits when required.
- (11) Other license requirements. A copy of the county health certificate approval must be submitted prior to issuance of a license by the village if applicable. In addition, it will be the obligation of the licensee to obtain any other required licenses from the county and/or state.

Sec. 46-59. Fee.

At the time of filing the application for a license required by this ordinance, a fee, which shall be from time to time set by the village council and a schedule of which shall be available at the village clerk's office for examination, shall be paid to the village clerk to cover the cost of processing, investigation, supervision, and clean up. The fee is required for each separate sponsored event of four (4) consecutive days or less.

(Ord. No. 81, §§ 4(b), 7, 2-13-1984; Ord. of 5-14-1990)

Sec. 46-60. Investigation of applicant; issuance.

(a) Upon receipt of the application for a license required by this ordinance, the original shall be referred to the police department, who shall cause such investigation of the applicant's moral character to be made using a professional agency that specializes in personal background investigations for the protection of the public good.

(b) If as a result of such investigation the applicant's character or business responsibility is found not to have good moral character, the officer shall endorse on such application his disapproval and his reasons for disapproval and return the application to the village clerk, who shall notify the applicant that his application is disapproved and that no license will be issued.

(c) If as a result of such investigation the applicant is found to be of good moral character, the officer shall endorse on the application his approval and return such application to the village clerk, who shall, upon payment of the prescribed license fee, issue a license.

(d) No license to peddle prepared food in the village shall be issued under this division except to the person holding a current food handler's certificate issued the county and person in direct contact with end user. Every applicant shall be 16 years of age or over.

(e) Such license shall contain the signature of the issuing officer and shall show the:

- (1) Name and address of the licensee;
- (2) Class of license issued and the kind of goods or wares to be sold under the license;
- (3) Amount of fee paid, the date of issuance and the length of time the license shall be operative; and
- (4) License number and other identifying description of any vehicle used in such peddling.

The village clerk shall keep a permanent record of all licenses issued for three years. All applicants must provide proof of insurance in an amount as determined by the village council before a license is issued. No licensee shall sell their goods or wares in the village or within 200 feet of a permanent village business that sells the same goods or wares. No licensee shall sell their goods or wares in the area or adjoining area of a village approved event without written permission of the organization conducting the event. No truckload style events shall be conducted on public property. Truckload style events held on private property must have the written permission of the property owner and not to exceed four consecutive days more than twice a year. Written authorization must be granted by the village or designated organization to sell goods or wares on village property.

(Ord. No. 81, §§ 5, 6(a), 2-13-1984}

Sec. 46-61. *Exhibition.*

Peddlers are required to exhibit their licenses at the request of any resident of the village.

(Ord. No. 81, § 10, 2-13-1984)

Sec. 46-62. *Record of licenses issued, reports of violations.*

The police department shall report to the village clerk all convictions for violations of any of the provisions of this ordinance, and the village clerk shall maintain a record for each license issued and record the reports of violations in such record. All vendors license for Village Parks will only be issued for Council approved events.

(Ord. No. 81, § 12, 2-13-1984)

Chapter 50

PLANNING

Article I. In General

Sec. 50-1-50-30 *Reserved*

Article II. *Planning Commission*

Sec. 50-31 Established

Sec. 50-32 Membership

Sec. 50-33 Compensation

Cross References -Any ordinance adopting or amending the comprehensive plan saved from repeal § 1-12(a) (8) any ordinance dedicating, accepting or vacating any plat or subdivision saved from repeal, § 1-12(a)(12); the Village's zoning ordinance saved from repeal, § 1-12(a)(14); any ordinance rezoning property saved from repeal, § 1-12(a)(15); administration, ch. 2; buildings and building regulations, ch. 10; community development, ch. 26; environment, ch. 34; special assessments, ch. 58; streets, sidewalks and other public places, ch. 62; utilities, ch. 70

***State Law Reference** -Municipal Planning, MCL 125.31 et seq., MSA 502991 et seq.

PLANNING

ARTICLE I. IN GENERAL

Secs. 50-1-50-30 Reserved

ARTICLE II. PLANNING COMMISSION

Sec 50-31 *Established*

There is established a Village Planning Commission to be known as "The Village Planning Commission of Lexington."

(Ord. No. 70 § 1, 11-9-1981)

State law reference -Authority to create planning commission, MCL 125.32, MSA 5.12992.

Sec. 50-32 *Membership.*

(a) The planning commission shall consist of the village president, and one member of the council to be selected by it as ex officio members, plus (5) persons who shall be appointed by the village president and confirmed by the council.

(b) The terms of ex officio members shall correspond to their respective official tenures. The term of each appointed member shall be three years or until his successor takes office .

(c) The council may remove a member of the planning commission for misfeasance, alfeasance, or nonfeasance in office upon written charges and after a public hearing. Vacancies occurring otherwise than through the expiration of term shall be filled for the unexpired term in the same manner as original appointments are made.

(Ord. No 70 § 2, 11-9-1981; Ord. of 12-14-1981)

State law reference -Planning commission membership, MCL 125.3801, MSA 5.2993. To comply with the Michigan Planning Enabling Act of 2008 .

Sec. 50-33 Compensation

- (a) Each member of the Planning Commission shall be paid a sum of \$25 per Regular meeting of the Planning Commission actually attended by him/her during his/her term of office up to two (2) per month.

Approved by Council October 25, 2010

Published October 31, 2010

Effective October 25, 2010

***Cross reference** -Board and commissions, § 2-151 et seq.

PLANNING

ARTICLE I. IN GENERAL

Secs. 50-1-50-30

Reserved

ARTICLE II. PLANNING COMMISSION

Sec 50-31 Established

There is established a Village Planning Commission to be known as "The Village Planning Commission of Lexington."

(Ord. No. 70 § 1, 11-9-1981)

State law reference – Authority to create planning commission, MCL 125.32, MSA 5.12992.

Sec. 50-32 Membership.

- (a) The planning commission shall consist of the village president, and one member of the council to be selected by it as ex officio members, plus (7) to (9) persons who shall be appointed by the village president and confirmed by the council. Two commission members may be individuals who not qualified electors of the Village.
- (b) The terms of ex officio members shall correspond to their respective official tenures. The term of each appointed member shall be three years or until his successor takes office.
- (c) The council may remove a member of the planning commission for misfeasance, malfeasance, or nonfeasance in office upon written charges and after a public hearing. Vacancies occurring otherwise than through the expiration of term shall be filled for the unexpired term in the same manner as original appointments are made.
(Ord. No 70 § 2, 11-9-1981; Ord. of 12-14-1981)
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Cross reference – Board and commissions, § 2-151 et seq.

Chapters 51-53 *RESERVED*

Chapter 54

SOLID WASTE*

Article I. In General

Secs. 54-1—54-30. Reserved.

Article II. Municipal Collection and Disposal Service

- Sec. 54-31. Definitions.
- Sec. 54-32. Purpose and intent.
- Sec. 54-33. Scope.
- Sec. 54-34. Method of collection.
- Sec. 54-35. Storage and receptacles.
- Sec. 54-36. Industrial, commercial and multiple-family garbage and rubbish.
- Sec. 54-37. Rates, charges, penalty.
- Sec. 54-38. Removal by village.
- Sec. 54-39. Incineration.

***Cross references**—Buildings and building regulations, ch. 10; environment, ch. 34; utilities, ch. 70.

State law references—Solid waste management, MCL 324.11501 et seq., MSA 13A.11501 et seq.; recycling and related subjects, MCL 324.16101 et seq., MSA 13A.16101 et seq.; littering, MCL 324.8901 et seq., MSA 13A.8901 et seq.

ARTICLE I. IN GENERAL

Secs. 54-1—54-30. Reserved.

ARTICLE II. MUNICIPAL COLLECTION AND DISPOSAL SERVICE***Sec. 54-31. Definitions.**

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

Garbage means the putrescible and vegetable wastes resulting from the handling, preparation, cooking and consumption of food.

Residential dwelling means any room or combination of rooms in which one or more people are residing. When a structure is being utilized by more than one person or family as a multiple dwelling, the village business manager shall determine whether or not it shall be assessed as more than one inhabited dwelling.

Rubbish means the miscellaneous waste material resulting from housekeeping and ordinary mercantile enterprises, trades, manufacturers, offices and stores, including ashes, cartons, tin cans, metal, small packing boxes and wastepapers, excluding discarded materials from building construction or repair or refuse from industrial plants.

(Ord. No. 104, § 1, 10-30-1991)

Cross reference—Definitions generally, § 1-2.

Sec. 54-32. Purpose and intent.

It is the intent of the village council that this article be liberally construed for the purpose of providing a sanitary and satisfactory method of collecting and disposing of municipal wastes. The village business manager is authorized to make such rules and regulations as from time to time appear to him to be necessary to carry out this intent; however, such rules must not conflict with this article or other ordinances of the village.

(Ord. No. 104, § 2, 10-30-1991)

Sec. 54-33. Scope.

Except in those cases where sleeping rooms are rented, it is the intent of this article to assess all structures used as multiple dwellings. Anyone protesting the village business manager's determination may within 20 days following receipt of his billing protest the ruling to the village council, who is empowered to make a determination.

(Ord. No. 104, § 1, 10-30-1991)

***State law reference**—Local solid waste disposal facilities, MCL 324.4301 et seq., MSA 13A.4301 et seq.

Sec. 54-34. Method of collection.

Garbage and rubbish shall be collected by village-approved contractors or village personnel at such times and pursuant to rules and regulations established by the village business manager. Such rules and regulations shall be published in a newspaper of general circulation in the village at least once before such rules and regulations become effective, and as often as the village business manager shall deem necessary.

(Ord. No. 104, § 3, 10-30-1991)

Sec. 54-35. Storage and receptacles.

(a) The owner, occupant or lessor, or their agent, of every premises where garbage and rubbish accumulate shall cause to be provided on the premises sufficient and proper receptacles. Receptacles that are broken, without handles, or that otherwise fail to comply with the requirements of this article may be collected as rubbish. All garbage shall be stored in a receptacle complying with the provisions for garbage receptacles of this article. All rubbish shall be stored in a receptacle complying with the provisions for rubbish receptacles in this article. Rubbish may be stored outside rubbish receptacles for a period not exceeding seven days, subject to the provisions of this article. Nothing contained in this section shall prevent any person required to provide for the removal of garbage and rubbish at his expense from using commercial dumpsters for that purpose provided such dumpsters have tightfitting covers and are maintained in good working order and in a sanitary condition.

(b) The receptacles for garbage and rubbish shall be kept on the premises in the rear within an approved distance of the rear entrance to the dwelling or premises. Up to three containers shall be placed at the curb on pickup days, readily accessible to the collectors. Where approved liners are used, it will only be necessary to place the liner and contents at the curb, securely bound at the top.

(c) Garbage receptacles shall be of substantial approved construction, free of holes, with proper handles and a tightfitting cover and shall have a capacity of not less than ten gallons or more than 30 gallons; and no single receptacle shall weigh more than 60 pounds when full. Garbage receptacles shall be adequate in size and number to hold one week's accumulation. All garbage receptacles shall be maintained in a sanitary condition.

(d) Rubbish receptacles shall be made of metal or plastic with handles, in good condition, and shall weigh no more than 60 pounds when full. Rubbish containers not complying with these requirements may be collected as rubbish without notice, except that garbage receptacles may be used as rubbish containers.

(e) Accumulations of rubbish larger than can be contained in a receptacle shall be securely tied in compact bundles not to exceed 60 pounds in weight and four feet in length and placed in a location designated by the village business manager.

(f) Empty containers shall not be left at the curb more than 12 hours.

(g) Ashes will be removed only when placed in rubbish containers and shall not be hot or smoking.

(h) No person shall move, disturb, damage or destroy any garbage or rubbish receptacle or the contents of any garbage or rubbish receptacle or rubbish bundle except as otherwise provided in this article.

(i) No person shall include any waste in his garbage or rubbish that is subject to special disposal requirements by state or federal regulations.
(Ord. No. 104, § 4, 10-30-1991)

Sec. 54-36. Industrial, commercial and multiple-family garbage and rubbish.

The owners, managers, occupants or other responsible parties for all industrial and commercial firms and all multiple-family dwellings shall make satisfactory arrangements for the disposal of garbage and rubbish at their own expense in full compliance with all other provisions of this article regarding the storage and accumulation of garbage and rubbish and all other applicable local, state and federal laws. For purposes of this section, the term "multiple-family dwelling" shall mean a structure with three or more residential dwellings. The owners, managers, occupants or other responsible parties for commercial firms and multiple-family dwellings, but excluding industrial firms, may contract with the village for the disposal of garbage and rubbish subject to the following requirements:

- (1) All contracts shall be for a period of one year, consideration for which shall be paid in advance.
- (2) All contracts shall be subject to the rules, regulations and limits set forth in this article, including the limit of three containers of garbage and/or rubbish per week.
- (3) Fees for contract service shall be established by council resolution in the same manner as rates for noncontract residents are set.

(Ord. No. 104, § 5, 10-30-1991)

Cross reference—Businesses, ch. 14.

Sec. 54-37. Rates, charges, penalty.

(a) The rates for garbage and rubbish collection shall be established by council resolution and amended at such times as deemed necessary by the village council to defray the cost of collection and administration.

(b) Statements shall be rendered at such times and in such manner as shall be established by resolution of the village council.

(c) All charges for garbage and rubbish services shall be payable on or before the due date shown on the statement. If any garbage or rubbish charges shall not be paid on or before the due date shown on the statement, there shall be added to the amount shown on such statement a collection fee of ten percent. Such collection fee shall be charged to the account of the customer and added to the next succeeding statement, and payment shall be enforced in the same manner as the original charges.

(d) The charges for garbage and rubbish service are made a lien on all premises served by the service. Whenever any such charge against any premises shall be delinquent as of May 1, the village official in charge of collection shall certify such delinquency to the village assessor; and such charges shall be entered upon the next tax roll as a charge against such premises and shall be collected and the lien enforced in the same manner as special assessments against such premises.

(Ord. No. 104, § 6, 10-30-1991)

Sec. 54-38. Removal by village.

If any person shall violate section 54-35, the village, after giving three days' written notice of its intention to do so, may cause the removal of garbage or accumulated rubbish or other waste material and charge the cost to the owner, occupant or lessee of such premises. If such charges are not paid within 30 days after the owner, occupant or lessee of the premises is served with a written notice of the amount of such charges, the village shall levy a special assessment for the amount of such charges against the parcel or real estate from which such paper, rubbish or other waste material was removed. The collection of such charges or the levying of such special assessment shall in no manner affect the liability of the owner, occupant or lessee for criminal prosecution for violation of the provisions of this article or to the criminal penalties provided in this article.

(Ord. No. 104, § 7, 10-30-1991)

Sec. 54-39. Incineration.

No burning shall be permitted on private property outside of a building or structure unless the following conditions prevail:

- (1) No such fire shall be ignited within ten feet of any existing building or within two feet of any property line, and in no case shall a fire be permitted to burn between the hours of 9:00 p.m. and 7:00 a.m.
- (2) No burning shall be done at any time or place when wind conditions will create or be apt to create a nuisance to anyone or the property of anyone in the vicinity.

(Ord. No. 104, § 8, 10-30-1991)

Chapters 55—57

RESERVED

Chapter 58

SPECIAL ASSESSMENTS*

Article I. In General

Secs. 58-1—58-30. Reserved.

Article II. Local Improvements

- Sec. 58-31. Definitions.
- Sec. 58-32. Authority to assess.
- Sec. 58-33. Initiation of special assessment projects.
- Sec. 58-34. Initiation by petition.
- Sec. 58-35. Survey and report.
- Sec. 58-36. Determination on the project; notice.
- Sec. 58-37. Hearing on necessity.
- Sec. 58-38. Deviation from plans and specifications.
- Sec. 58-39. Limitations on preliminary expenses.
- Sec. 58-40. Special assessment roll.
- Sec. 58-41. Assessor to file assessment roll.
- Sec. 58-42. Meeting to review special assessment roll; objections in writing.
- Sec. 58-43. Changes and corrections in assessment roll.
- Sec. 58-44. Objection to assessment.
- Sec. 58-45. Special assessment; when due.
- Sec. 58-46. Partial payments; when due.
- Sec. 58-47. Delinquent special assessments.
- Sec. 58-48. Creation of lien.
- Sec. 58-49. Additional assessments, refunds.
- Sec. 58-50. Additional procedures.
- Sec. 58-51. Collection of special assessments.
- Sec. 58-52. Special assessment accounts.
- Sec. 58-53. Contested assessments.
- Sec. 58-54. Reassessment for benefits.
- Sec. 58-55. Combination of projects.
- Sec. 58-56. Division of parcels.
- Sec. 58-57. Deferred payments of special assessments.
- Sec. 58-58. Reconsideration of petitions.

***Cross references**—Any ordinance levying or imposing any special assessment saved from repeal, § 1-12(a)(9); community development, ch. 26; planning, ch. 50; streets, sidewalks and other public places, ch. 62.

ARTICLE I. IN GENERAL

Secs. 58-1—58-30. Reserved.

ARTICLE II. LOCAL IMPROVEMENTS***Sec. 58-31. Definitions.**

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

Cost, when referring to the cost of any local public improvement, shall include the cost of services, plans, condemnation, spreading of rolls, notices, advertising, financing, construction, legal fees, interest on special assessment bonds for not to exceed one year, and all other costs incident to the making of such improvement, the special assessments for and the financing of the improvement.

Local public improvement means any public improvement of such a nature as to benefit especially any real property or properties within a district in the vicinity of such improvement. (Ord. No. 55, § 1, 4-29-1974)

Cross reference—Definitions generally, § 1-2.

Sec. 58-32. Authority to assess.

The whole or any part of the cost of any local public improvement may be defrayed by special assessment upon the lands specially benefited by the improvement in the manner provided in this article.

(Ord. No. 55, § 2, 4-29-1974)

State law reference—Authority to assess local improvements or repairs by special assessment, MCL 68.31, MSA 5.1370(1).

Sec. 58-33. Initiation of special assessment projects.

Proceedings for the making of local public improvements within the village, their tentative necessity, and the determination that the whole or any part of the expense shall be defrayed by special assessment upon the property especially benefited; provided that all special assessments levied shall be in proportion to the benefits derived from the improvements and may be commenced by resolution of the council, with or without a petition.

(Ord. No. 55, § 3, 4-29-1974)

Sec. 58-34. Initiation by petition.

Local public improvements may be initiated by petition signed by property owners whose aggregate property in the proposed district was assessed for not less than 51 percent of the total assessed value of the privately owned real property located in the district, all shown by

***State law reference**—Special assessment procedures to be as established by ordinance, MCL 68.32, MSA 5.1370(2).

the last preceding general tax records of the village. Such petition shall contain a brief description of the property owned by the respective signatories; and if it shall appear that the petition is signed by at least 51 percent as stated in this section, the clerk shall certify such fact to the council. The petition shall be addressed to the council and filed with the clerk and shall in no event be considered directory but is advisory only.

(Ord. No. 55, § 4, 4-29-1974)

Sec. 58-35. Survey and report.

Before the council shall consider the making of any local improvement, the council shall cause to be prepared a report, which shall include necessary plans, profiles, specifications and detailed estimates of cost, an estimate of the life of the improvement, a description of the assessment district, and such other pertinent information as will permit the council to decide the cost, extent and necessity of the improvement proposed and what part or proportion should be paid by special assessments upon the property especially benefited and what part, if any, should be paid by the village at large. The council shall not finally determine to proceed with the making of any local public improvement until such report has been filed, nor until after a public hearing has been held by the council for the purpose of hearing objections to the making of such improvement.

(Ord. No. 55, § 5, 4-29-1974)

Sec. 58-36. Determination on the project; notice.

(a) After receiving the report required in section 58-35 for making any local public improvement as requested in the resolution of the council, and the council has reviewed the report, a resolution may be passed tentatively determining the necessity of the improvement, setting forth its nature, prescribing what part or proportion of the cost of such improvement shall be paid by special assessment upon the property especially benefited, determination of benefits received by affected properties, and what part, if any, shall be paid by the village at large; designating whether to be assessed according to frontage or other benefits, placing the complete information on file in the office of the village clerk, where it may be found for examination; and directing the village clerk to give notice of public hearing on the proposed improvement, at which time and place opportunity will be given interested persons to be heard. Such notice shall be given by one publication in a newspaper published or circulated within the village and by first class mail addressed to each owner of or person in interest in property to be assessed as shown by the last general tax assessment roll of the village. The publication of notice shall be made at least seven full days prior to the hearing, and the mailing of notice shall be made at least ten full days prior to the date of the hearing. The hearing required by this section may be held at any regular, adjourned or special meeting of the council.

(b) The notice shall include a statement that appearance and protest at the hearing in the special assessment proceedings is required in order to appeal the amount of the special assessment to the state tax tribunal, and that an owner or party in interest, or his agent, may appear in person at the hearing to protest the special assessment or may file his appearance

or protest by letter and his personal appearance shall not be required. The notice shall further include a statement that the owner or any party having an interest in the real property may file a written appeal of the special assessment with the state tax tribunal within 30 days after the confirmation of the special assessment roll if that special assessment was protested at the hearing held for the purpose of confirming the roll.

(Ord. No. 55, § 6, 4-29-1974)

State law reference—Notice by mail required, MCL 211.741, MSA 5.3534(1).

Sec. 58-37. Hearing on necessity.

At the public hearing on the proposed improvement, all persons interested shall be given an opportunity to be heard, after which the council may modify the scope of the local public improvement in such a manner as they shall deem to be in the best interest of the village as a whole; provided that if the amount of work is increased or additions are made to the district, another hearing shall be held pursuant to notice prescribed in section 58-36. If the determination of the council shall be to proceed with the improvement, a resolution shall be passed approving the necessary profiles, plans, specifications, assessment district and detailed estimates of cost, and directing the assessor to prepare a special assessment roll in accordance with the council's determination and report the roll to the council for confirmation.

(Ord. No. 55, § 7, 4-29-1974)

Sec. 58-38. Deviation from plans and specifications.

No deviation from original plans or specifications as adopted shall be permitted by any officer or employee of the village without authority of the council by resolution. A copy of the resolution authorizing such changes or deviation shall be certified by the village clerk and attached to the original plans and specifications on file in the clerk's office.

(Ord. No. 55, § 8, 4-29-1974)

Sec. 58-39. Limitations on preliminary expenses.

The council shall specify the provisions and procedures for financing a local public improvement. No contract or expenditure, except for the cost of preparing necessary profiles, plans, specifications and estimates of cost, shall be made for the improvement, nor shall any improvement be commenced until the special assessment roll to defray the costs shall have been made and confirmed.

(Ord. No. 55, § 9, 4-29-1974)

Sec. 58-40. Special assessment roll.

The assessor shall make a special assessment roll of all lots and parcels of land within the designated district benefited by the proposed improvement and assess to each lot or parcel of land the proportionate amount benefited. The amount spread in each case shall be based upon the detailed estimate of cost as approved by the council.

(Ord. No. 55, § 10, 4-29-1974)

Sec. 58-41. Assessor to file assessment roll.

When the assessor shall have completed the assessment roll, he shall file it with the village clerk for presentation to the council for review and certification by it.

(Ord. No. 55, § 11, 4-29-1974)

Sec. 58-42. Meeting to review special assessment roll; objections in writing.

Upon the receipt of the special assessment roll, the council, by resolution, shall accept the assessment roll and order it to be filed in the office of the village clerk for public examination, shall fix the time and place the council will meet to review such special assessment roll, and shall direct the village clerk to give notice of a public hearing for the purpose of affording an opportunity for interested persons to be heard. The notice shall be given by publication once, at least seven days (full) prior to the date of the hearing, in a newspaper published or circulated within the village and by first class mail addressed to each owner of or person in interest in property to be assessed as shown by the last general tax assessment roll of the village, mailed at least ten days prior to the date of hearing. The hearing required by this section may be held at any regular, adjourned or special meeting of the council. At this meeting, all interested persons or parties shall present in writing their objections, if any, to the assessments against them. The assessor shall be present at every meeting of the council at which a special assessment is to be reviewed.

(Ord. No. 55, § 12, 4-29-1974)

Sec. 58-43. Changes and corrections in assessment roll.

The council shall meet at the time and place designated for the review of a special assessment roll and at such meeting, or a proper adjournment of such meeting, shall consider all objections submitted in writing. The council may correct the roll as to any special assessment or description of any lot or parcel of land or other errors appearing in the roll; or it may, by resolution, annul the assessment roll and direct that new proceedings be instituted. The same proceedings shall be followed in making a new roll as in the making of the original roll. If after hearing all objections and making a record of such changes as the council deems justified the council determines that it is satisfied with the special assessment roll and that assessments are in proportion to benefits received, it shall thereupon pass a resolution reciting such determinations, confirming such roll, placing it on file in the office of the village clerk, and directing the village clerk to attach his warrant to a certified copy of the roll within ten days, therein commanding the assessor to spread and the treasurer to collect the various sums and amounts appearing on the roll as directed by the council. The roll shall have the date of confirmation endorsed on it and shall from that date be final and conclusive for the purpose of the improvement to which it applies unless contested in the manner provided in chapter 8, section 34 of Public Act No. 3 of 1895 (MCL 68.34, MSA 5.1370(5)), and subject to adjustment to conform to the actual cost of the improvement, as provided in section 58-49.

(Ord. No. 55, § 13, 4-29-1974)

Sec. 58-44. Objection to assessment.

If at or prior to the final confirmation of any special assessments more than 50 percent of the number of owners of privately owned real property to be assessed for an improvement, or in the case of paving or similar improvements more than 50 percent of the number of owners of frontage to be assessed for any such improvement shall object in writing to the proposed improvement, the improvement shall not be made by proceedings delineated by this article without a five-sixth vote of the members of the council; but this section shall not apply to sidewalk construction.

(Ord. No. 55, § 14, 4-29-1974)

Sec. 58-45. Special assessment; when due.

All special assessments, except such installments as the council shall make payable at a future time as provided in this article, shall be due and payable upon confirmation of the special assessment roll.

(Ord. No. 55, § 15, 4-29-1974)

Sec. 58-46. Partial payments; when due.

The council may provide for the payment of special assessments in annual installments. Such annual installments shall not exceed 30 in number, the first installment being due upon confirmation of the roll or on such date as the council may determine and deferred installments being due annually thereafter, or in the discretion of the council, may be spread upon and made a part of each annual village tax roll thereafter until all are paid. Interest shall be charged on all deferred installments at a rate not to exceed seven percent per annum, commencing on the due date of the first installment, or 60 days after the date of confirmation if the first installment is not due upon confirmation, and payable on the due date of each subsequent installment. The full amount of all or any deferred installments, with interest accrued to the date of payment, may be paid in advance of its due date. If the full assessment or its first installment shall be due upon confirmation, each property owner shall have 60 days from the date of confirmation to pay the full amount of the assessment, or the full amount of any installments, without interest or penalty. Following the 60-day period, the assessment or its first installment shall, if unpaid, be considered as delinquent; and the same penalties shall be collected on such unpaid assessments or first installments as are provided by law to be collected on delinquent general village taxes. Deferred installments shall be collected without penalty until 60 days after their due date, after which time such installments shall be considered as delinquent; and such penalties on the installments shall be collected as are provided by law to be collected on delinquent general village taxes. After the council has confirmed the roll, the village treasurer shall notify by mail each property owner on the roll that the roll has been filed, stating the amount assessed and the terms of payment. Failure on the part of the village treasurer to give the notice or of such owner to receive the notice shall not invalidate any special assessment roll of the village or any assessment on the roll, nor excuse the payment of interest or penalties.

(Ord. No. 55, § 16, 4-29-1974)

Sec. 58-47. Delinquent special assessments.

Any assessment remaining unpaid on the first Monday of March following the date when it became delinquent shall be reported as unpaid by the treasurer to the council. Any such delinquent assessment, together with all accrued interest, shall be transferred and reassessed on the next annual village tax roll in a column headed "Special Assessment" with a penalty of four percent upon such total amount added, and when so transferred and reassessed upon the tax roll shall be collected in all respects as provided for the collection of village taxes.

(Ord. No. 55, § 17, 4-29-1974)

Sec. 58-48. Creation of lien.

Special assessments and all interest, penalties and charges on the assessments from the date of confirmation of the roll shall become a debt to the village from the persons to whom they are assessed, and, until paid, shall be and remain a lien upon the property assessed, of the same character and effect as the lien created by general law for state, county and village taxes; and the lands upon which the assessments are a lien shall be subject to sale, the same as are lands upon which delinquent village taxes constitute a lien.

(Ord. No. 55, § 18, 4-29-1974)

State law reference—Special assessment to be lien from date of confirmation of roll levying same, MCL 68.33, MSA 5.1370(4).

Sec. 58-49. Additional assessments, refunds.

The village clerk shall, within 60 days after the completion of each local or special public improvement, compile the actual cost of the improvement and certify the cost to the assessor, who shall adjust the special assessment roll to correspond with the cost. Should the assessment prove larger than necessary by less than five percent, that fact shall be reported to the council, which may place the excess in the village treasury or make a pro rata refund according to the assessment. If the assessment exceeds the amount necessary by five percent or more, the entire excess shall be credited to owners of property as shown by the village assessment. No refunds of special assessments may be made that impair or contravene the provision of any outstanding obligation or bond secured in whole or part by such special assessments. In the case of assessments due in installments, the council may order the refund given by credit against the installments last coming due. When any special assessment roll shall prove insufficient to meet the cost of the improvement for which it was made, the council may make an additional pro rata assessment; but the total amount assessed against any one parcel of land shall not exceed the benefits received by that lot or parcel of land.

(Ord. No. 55, § 19, 4-29-1974)

Sec. 58-50. Additional procedures.

In any case where the provisions of this article may prove to be insufficient to carry out fully the making of any special assessment, the council shall provide by ordinance any additional steps or procedures required.

(Ord. No. 55, § 20, 4-29-1974)

Sec. 58-51. Collection of special assessments.

If bonds are issued in anticipation of the collection of special assessments, all collections of each special assessment roll or combination of rolls shall be set in a separate fund for the payment of the principal and interest on the bonds so issued in anticipation of the payment of such special assessments, and shall be used for no other purpose.

(Ord. No. 55, § 21, 4-29-1974)

Sec. 58-52. Special assessment accounts.

Moneys raised by special assessment to pay the cost of any local improvements shall be held in a special fund to pay such cost or to repay any money borrowed for such costs. Each special assessment account must be used only for the improvement project for which the assessment was levied, expenses incidental to the project, including the repayment of the principal and interest on money borrowed for the project, and to refund excessive assessment, if refunds are authorized.

(Ord. No. 55, § 22, 4-29-1974)

Sec. 58-53. Contested assessments.

An action may not be instituted for the purpose of contesting or enjoining the collection of special assessment unless:

- (1) Within 45 days after the confirmation of the special assessment roll, written notice is given to the council indicating an intention to file such an action and stating the grounds on which it is claimed that the assessment is illegal; and
- (2) The action is commenced within 90 days after the confirmation of the roll.

(Ord. No. 55, § 23, 4-29-1974)

State law reference—Similar provisions, MCL 68.34, MSA 5.1370(4).

Sec. 58-54. Reassessment for benefits.

Whenever the council shall deem any special assessment invalid or defective for any reason whatever, or if any court of competent jurisdiction shall have adjudged such assessment to be illegal for any reason whatever, in whole or in part, the council shall have power to cause a new assessment to be made for the same purpose for which the former assessment was made, whether the improvement or any of its parts has been completed and whether any part of the assessment has been collected or not. All proceedings on such reassessment and for its collection shall be made in the manner as provided for the original assessment. If any portion of the original assessment shall have been collected and not refunded, it shall be applied upon the reassessment; and the reassessment shall to that extent be deemed satisfied. If more than the amount reassessed shall have been collected, the balance shall be refunded to the person making such payment.

(Ord. No. 55, § 24, 4-29-1974)

Sec. 58-55. Combination of projects.

The council may combine several districts into one project for the purpose of effecting a saving in the costs. There shall be established for each district separate funds and accounts to cover the cost of the project.

(Ord. No. 55, § 25, 4-29-1974)

Sec. 58-56. Division of parcels.

Should any lots or lands be divided after a special assessment has been confirmed and divided into installments, the assessor shall apportion the uncollected amounts upon the several lots and lands so divided and shall enter the several amounts as amendments upon the special assessment roll. The village treasurer shall, within ten days after such apportionment, send notice of such action to the persons concerned at their last known address by first class mail. The apportionment shall be final and conclusive on all parties unless protest in writing is received by the village treasurer within 20 days of the mailing of the notice.

(Ord. No. 55, § 26, 4-29-1974)

Sec. 58-57. Deferred payments of special assessments.

The council may provide for the deferred payment of special assessments from persons who, in the opinion of the council and assessor, by reason of poverty are unable to contribute toward the cost of the assessments. In all such cases, as a condition to the granting of such deferred payment, the village shall require mortgage security on the real property of the beneficiary payable on or before his death, or, in any event, on the sale or transfer of the property.

(Ord. No. 55, § 27, 4-29-1974)

State law reference—Deferment of certain special assessments for elderly or disabled persons, MCL 211.763, MSA 5.3536(3).

Sec. 58-58. Reconsideration of petitions.

If the council shall fail to make any public improvement petitioned for under the provisions of section 58-34 during the calendar year during which any petition is filed, such petition shall be reconsidered by the council prior to March 1 of the succeeding calendar year for the purpose of determining whether such improvement should be made during such calendar year.

(Ord. No. 55, § 28, 4-29-1974)

Chapters 59—61

RESERVED