

CHAPTER 4: PUBLIC AREA REGULATION

Article 1: USE OF PUBLIC AREAS

Section 4101. Definitions. The following defined places constitute "public areas" for purposes of this Code.

4101.1 "Street" means any right-of-way, including an alley, which has been dedicated in the Plat of the City to public use, or which is now or hereafter acquired by the public by prescription, and which is designed for vehicular traffic. This definition includes the full extent of the right-of-way as platted or acquired by prescription, regardless of whether the right-of-way is paved or unpaved.

4101.2 "Sidewalk" means any concrete or paved way used by the general public for pedestrian traffic.

4101.3 "Park" means any area dedicated as a public park in the Plat of the City, any area now or hereafter designated as a public park in any master plan adopted by the City, or any area currently used by the general public as a municipal park of the City.

4101.4 "Beach" means any area within a City park adjacent to a body of water, which is used by the general public for swimming, sunbathing, and similar recreational pursuits.

4101.5 "Property under Marina Authority Jurisdiction" means the Borwell Yacht Basin-Frankfort Municipal Marina, and the Charles J. Kibby Memorial Launching Ramp, as those areas are defined in the Frankfort Marina Authority Rules and Regulations.

Section 4102. Obstructions. No person shall encroach, place any obstruction, or permit any obstruction to remain on a public area in a manner which interferes with or endangers vehicles or pedestrian traffic, or which interferes with the vision of any motorist unless a permit has been obtained under Article 4 of this Chapter; nor shall any person obstruct with his/her body vehicular or pedestrian traffic in a public area; provided that this section shall not apply to a peace officer or other public employee acting in the course of his/her official duty.

Section 4103. Bicycles, Roller Skates, Skateboards, Rollerblades, etc.

4103.1 No roller skates, skateboards, rollerblades, coasters, toy vehicles, or any similar devices shall be ridden or used on any sidewalk bordering Main Street between Michigan Avenue and Ninth Street, or on any sidewalk in any park.

4103.2 No bicycles, roller skates, skateboards, rollerblades, coasters, toy vehicles, or any similar devices shall be ridden or used in a public area in a manner which interferes with vehicular or pedestrian traffic or in a manner which endangers property.

Section 4104. Motorized Vehicles; Sidewalks, Parks and Beaches. No person shall operate or park any motorized vehicle, motorcycle, moped, or snowmobile, on or in any sidewalk, park, or beach, except in designated areas.

Section 4105. Recreational Vehicles.

4105.1 “Recreational vehicle” means a vehicular-type structure, primarily designed as temporary living quarters for recreational, camping, or travel use, which either has its own motive power or is mounted on or drawn by another vehicle which is self-powered, including the following:

- a) A travel trailer, which is a vehicular portable structure, mounted on wheels, of such a size or weight as not to require special highway movement permits when drawn by a vehicle, primarily designed and constructed to provide temporary living quarters for recreational, camping, or travel use.
- b) A camping trailer, which is a vehicular portable structure mounted on wheels and constructed with collapsible partial sidewalls of fabric, plastic, or other pliable material which fold for towing by another vehicle and unfold at the campsite to provide temporary living quarters for recreational, camping, or travel use.
- c) A motor home, which is a vehicular structure built on a self-propelled motor vehicle chassis, primarily designed to provide temporary living quarters for recreational, camping, or travel use.
- d) A truck camper, which is a portable structure designed to be loaded onto, or affixed to, the bed or chassis of a truck, constructed to provide temporary living quarters for recreational, camping, or travel use. Truck campers are of 2 basic types:
 - (i) A slide-in camper, which is a portable structure designed to be loaded onto and from the bed of a pickup truck, constructed to provide temporary living quarters for recreational, camping, or travel use.
 - (ii) A chassis-mount camper, which is a portable structure designed to be affixed to a truck chassis, and constructed to provide temporary living quarters for recreational, camping, or travel use.
- e) A single sectional mobile home used only to provide temporary living quarters for recreational, camping, or travel use. “Recreational vehicle” does not include a mobile home used as a permanent dwelling, residence, or living quarters.

4105.2 No person shall park any recreational vehicle in any public parking area other than streets, between the hours of 2:00 a.m. and 5:00 a.m., except as provided in Section 4105.3.

4105.3 Each owner of a boat moored overnight at the Frankfort Municipal Marina is entitled to park one motor home or truck camper in specially designed parking spaces at the Marina. Permits for such parking shall be issued by the Marina Manager at no additional charge. However, recreational vehicles parked under such permits may not be used for overnight shelter.

Section 4106. Camping. Except for special events authorized by the Council, no person shall remain overnight or erect tents or other temporary overnight shelter in any park, beach, or public parking area.

Section 4107. Fish Disposal. No person shall dispose of fish offal, fish parts, or whole fish, in any public area, except in marked containers in a City fish-cleaning facility.

Section 4108. Animals.

Section 4108.1. No person shall permit any animal owned by him/her or in his/her custody to be in any public area, unless on a leash or rope not over six (6) feet in length.

Section 4108.2. No owner or person having custody of any dog or other animal shall permit the animal to defecate on any public area, unless the defecation is removed immediately.

Section 4109. Improper Use of Facilities. No person shall intentionally deface, tamper with or remove any structures, equipment, or facilities located in a public area, or use such structures, equipment or facilities for purposes for which they were not designed.

Section 4110. Trees, Shrubs, and Plants. No person shall cut down, destroy, or damage any tree, shrub or plant within any public area without written permission from the City Superintendent. No person shall fasten any article to any tree, shrub, or plant within any public area without written permission from the City Superintendent.

Section 4111. Public Disturbances. No person shall intentionally disturb or interfere unreasonably with the enjoyment of others of any public place.

Section 4112. Vending. Except for special events authorized under Section 4113, no person shall engage in the business of sale or delivery of goods in any park or beach. This Section does not apply to sale of goods in the course of operation of the City Marina.

Section 4113. Special Event Permits. The City may authorize use of a designated public area or City-owned facility on the following conditions.

4113.1 Any person or non-profit enterprise, as that term is defined in Section 6103.2 of this Code, wishing to use a public area or facility shall submit a written application to the Superintendent at least 45 days prior to the date for which the use is requested. The application shall contain:

- a) the name, address, and telephone number of the applicant, or if the applicant is not a natural person, the name, address, and telephone number of the person who will be in charge of the event;
- b) the nature of the event;
- c) the facility requested;
- d) the date and hours of the event;
- e) the number of people expected to attend;
- f) the insurance coverage which will be provided for the event;
- g) any other information which the Superintendent may reasonably request.

4113.2 The Superintendent may issue a permit if he/she finds:

- a) That the proposed event will not unreasonably interfere with or detract from the general public enjoyment of the public area or the primary use of the City-owned facility.
- b) That the proposed event will not unreasonably interfere with or detract from the promotion of public health, welfare, safety and recreation.
- c) That the proposed event is not reasonably anticipated to incite violence, crime or disorderly conduct.
- d) That the proposed event will not entail unusual, extraordinary or burdensome expense or police operation by the City.
- e) That the facilities desired have not been reserved for other use at the day and hour requested in the application.

The Superintendent may impose reasonable conditions on the permit.

4113.3 Within ten (10) days after receipt of an application, the Superintendent shall notify an applicant in writing of his or her decision. The applicant shall have the right to appeal an adverse decision to the City Council, within twenty one (21) days of the Superintendent's decision. The Council shall hear the appeal within thirty (30) days of the date of filing the appeal or at the next regularly scheduled meeting.

4113.4 The person or persons to whom a permit is issued shall be liable for any loss, damage or injury arising out of the event and, to that end, shall provide the Superintendent, at least fifteen (15) days prior to the event, evidence of a general liability policy covering the event, in the amount of \$1,000,000, naming the City as an additional insured. The Superintendent may waive the insurance requirement if the nature and size of the event are such that the event exposes the City to no significant additional liability.

4113.5 The Superintendent shall have the authority to revoke a permit upon a finding of violation of any rule or ordinance or condition of the permit. Notice of the revocation shall be served as provided by Section 1201.

Section 4114. Enforcement. In addition to remedies prescribed in Chapter 3 of this Code, any person violating this Article may be ejected from the public area by duly authorized City officials.

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Article 2: PROPERTY UNDER MARINA AUTHORITY JURISDICTION

Section 4201. Rules and Regulations. In addition to the provisions of this Code, all property under Marina Authority jurisdiction shall be governed by rules and regulations promulgated by the Frankfort Marina Authority, and approved by the DNR and ratified by the Council.

Section 4202. Penalties. All violations of Marina Authority rules and regulations shall be punishable in the same manner as violations of other sections of this Chapter.

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Article 3. SIDEWALK, CROSSWALKS, AND TREE-TRIMMING

Section 4301. Sidewalk: Construction Standards. All sidewalks shall be constructed of Portland cement upon a proper foundation. All sidewalks shall be constructed according to lines and grades established by the Superintendent.

Section 4302. Sidewalks: Mandatory Construction

4302.1 The Council may by resolution order that sidewalks be constructed or repaired. Such resolution shall specify the points of terminus and width of such sidewalk, the grade, and the manner of the construction.

4302.2 Within five (5) days after passage of such resolution, the Superintendent shall give notice, in accordance with Section 1201 of this Code, to the owner of any lot or premises adjacent to which the sidewalk is to be constructed or repaired, requiring the owner to construct or repair such sidewalk or any portion thereof within thirty (30) days from the date of the notice.

4302.3 If any owner shall fail to comply with the terms of the notice, the Superintendent shall have authority to perform the construction or repair.

Section 4303. Sidewalks: Special Assessments

4303.1 When any sidewalk has been constructed or repaired by the City pursuant to Section 4302, the Superintendent shall report to the Council the cost of the work, and the proportion of such cost allocated to each lot or premises.

4303.2 Upon receipt of said report, the Council shall take the entire amount reported and direct the Assessor to levy a special assessment therefor upon the appropriate premises or lot, according to the procedure established by City Charter. The amount assessed shall become a lien upon said lot or premises, and may be collected by suit or in the same manner as City property taxes.

4303.3 Nothing in this Section shall be construed to prevent any property owner and City from entering into an agreement for the construction of sidewalks upon such conditions, and with such cost allocations, as the Council may by resolution authorize.

Section 4304. Crosswalks. All crosswalks shall be constructed and kept in repair by the City under the direction of the Street Administrator at such time, in such manner, and in such places as the Street Administrator may determine.

Section 4305. Trees and Shrubs: Duty of Owner

4305.1 No person shall plant trees, bushes or shrubs or other plants within the public right-of-way without written permission of the City Superintendent. Ownership of such trees, bushes, shrubs or other plants located within the public right-of-way shall remain with the City.

4305.2 Every owner of any tree, shrub, or plant located within ten (10) feet of the streets or alleys of the City shall trim the branches so that such branches do not obstruct the light from any street lamp or the view of any street intersection, and so that there exists a clear space of twelve (12) feet above the surface of the street or alley.

4305.3 Every such owner shall remove all dead, diseased, or dangerous trees, or broken or decayed limbs of trees which constitute a danger to the safety of the public.

4305.4 No trees, bushes, shrubs, or plants located within ten feet of the right-of-way of any street or alley on any corner lot within the City shall be permitted to grow to a height of more than three (3) feet above the surface of the roadway, in order that the view of the driver of a vehicle approaching the street intersection shall not be obstructed.

4305.5 If any owner does not comply with this Section, the Superintendent may issue a corrective order as provided by Section 3403. Should the owner fail to comply with this order, the City may perform the necessary work. The cost of the work may be collected by suit or in any other manner permitted by law.

Section 4306. Maintenance of Driveways Intersecting Streets or Sidewalks: Duty of Owner

4306.1 Every owner of property on which there is located a driveway which intersects a street, alley, or sidewalk, shall maintain the driveway and keep it in good repair, so that no dirt, sand, gravel or other material washes onto the adjacent street, alley, or sidewalk.

4306.2 If any owner does not comply with this Section, the Superintendent may issue a corrective order as provided by Section 3403. Should the owner fail to comply with this order, the City may perform the necessary maintenance or repairs, and the cost of cleanup or repair of any washout which occurs after a corrective order issued, may be collected by suit or in any other manner permitted by law.

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Article 4. EXCAVATIONS AND OBSTRUCTIONS

Section 4401. Permits: When Required

4401.1 No person shall do any of the following without first obtaining a permit as provided in this Article:

- a) Make or cause to be made any excavation or opening in or under the surface or pavement of any street, sidewalk, or any other public place;
- b) Place any obstruction on any part of any street, sidewalk, or public place;
- c) Occupy any part of any street, sidewalk, or public place for the purpose of construction, maintenance, or repair of property immediately adjacent thereto;
- d) Make or cause to be made any opening in or through any curb of any street or public place; or
- e) Construct a driveway which connects to any street or alley.

4401.2 This Article shall not apply to a City official or employee acting in the course of his/her employment, to a person acting under contract with the City, or to any person acting in any emergency under contract with the City, or to any person acting in an emergency to preserve property or the public safety, if the emergency has been reported to the Police Department, and permission obtained from the Department to make the excavation or obstruction.

Section 4402. Permits: Application and Issuance. Any person desiring a permit shall make application to the Superintendent. The application shall state the name and address of the applicant, the location and nature of the work, the date of commencement and date of completion, and other data as may reasonably be required by the Superintendent. On receipt of such application, the Superintendent shall investigate, and if satisfied that such work is necessary, shall issue the permit; provided that the Superintendent may impose those conditions necessary to protect the public health and safety.

Section 4403. Deposit for Repairs. Before any permit is issued, the Superintendent may require a deposit to cover the cost of repair or re-paving made necessary by the work. The sum so deposited shall be paid to the Clerk and be used solely for the purpose of paying for the repairing and re-paving. After completion of the repair or re-paving, the Superintendent shall certify to the Clerk the cost of the work, and the amount of any surplus remaining from the amount deposited shall be returned to the applicant.

Section 4404. Mandatory Repairs; Costs.

4404.1 After the completion of the work, all trenches and excavations shall be promptly back-filled and thoroughly settled by mechanical compaction, and all excess material promptly removed from the job. After proper settlement has occurred, the City will repave the openings. The cost of such re-paving shall be charged to the person to whom the permit was granted and may be collected by suit.

4404.2 Each person opening or excavating any street, for one year after such opening or excavation, shall keep the same filled and in repair. Should such person fail to do so, the Superintendent shall issue a corrective order as provided by Section 3403, ordering the person to make repairs within ten days, and if said person shall still fail to make such repairs the Superintendent shall cause such repairs to be made, and the cost of the same shall be charged to the person to whom the permit was granted.

Section 4405. Revocation of Permit. If any person receiving a permit under this Article shall fail to comply with the conditions imposed by the Superintendent, the Superintendent may revoke the permit. Notice of the revocation shall be served as provided by Section 1201.

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Article 5. VENDING MACHINES, DISPLAY MERCHANDISE, NEWSRACKS, AND OTHER SIDEWALK OBSTRUCTIONS.

Section 4501. Declaration.

The City of Frankfort declares that the uncontrolled placement of newsracks, vending machines, display merchandise, and other similar obstructions on streets and sidewalks presents a hazard to the safety and welfare of people using the streets and sidewalks and creates an aesthetically displeasing environment.

Section 4502. Definitions.

4502.1 "Display Merchandise" means any product or sample of a product which is offered for sale to the public.

4502.2 "Newsrack" means any vending machine whose purpose is to dispense newspapers, magazines, or other communicative material.

4502.3 "Vending Machine" means any self-service or coin operated structure whose purpose is to dispense any product. Examples of vending machines are telephones, pop and cigarette machines, pinball machines, amusement devices, scales, and newsracks.

Section 4503. Placement of Vending Machines, Display Merchandise, and Sidewalk Obstructions

4503.1 No person shall place any vending machine or display merchandise in any public area, as defined by Section 4101, without the permission of the City Council, except that newsracks may be placed on public areas under Section 4504.

4503.2 No person shall place any vending machine or display merchandise on private property so that it protrudes more than 36 inches into the sidewalk, as defined by Section 4101.2, or into any paved area within any street right-of-way, except that newsracks may be placed under Section 4504, and display merchandise may be placed on the sidewalk or within a street right-of-way for special events, such as the annual street sale, which are authorized by the Council, in such locations and under such conditions as the Council may prescribe.

Upon written application, the Council may also permit the placement of display merchandise which protrudes more than 36 inches into the sidewalk or a paved area within the street right-of-way, if the Council determines that one of the following conditions exists:

- a. There are practical difficulties or unnecessary hardships resulting from the physical characteristics of the property in question which make it unfeasible to carry out the strict letter of this section. Increased financial return to the applicant shall not be considered just cause for a permit under this section.
- b. There are exceptional or extraordinary circumstances or conditions which apply to the property in question which do not apply to other properties in the vicinity and which have not resulted from acts of the applicant subsequent to the adoption of this section.

Any permit granted under this section shall:

- c. Not be contrary to the public interest or the general intent and purpose of this section.
- d. Not permit the establishment of a use, condition, or activity which is prohibited by another chapter of this Code.
- e. Not cause substantial adverse affect to properties located in the immediate vicinity.
- f. Relate only to property that is described in the application for the permit.
- g. Not allow placement prohibited by Section 4503.4.

In granting a permit, the Council may specify, in writing, such other conditions regarding the placement of merchandise that will, in the Council's judgment, be reasonably necessary to further the intent of this section and protect the public interest. Breach of any such conditions will automatically invalidate the permit. Each permit shall be valid for two (2) years from the date granted or until the applicant no longer occupies the property, whichever occurs first.

4503.3 No more than two (2) vending machines shall be placed in front of any business establishment having a width of one hundred (100) feet or less, measured along the sidewalk or street right-of-way. Groups of vending machines shall be placed at least one hundred fifty (150) feet apart.

4503.4 No vending machine, newsrack, display merchandise, or other object which protrudes more than one inch above the level of the surrounding sidewalk shall be placed:

- a. within fifteen (15) feet of any fire hydrant, fire or police alarm box, or other emergency facility;
- b. within fifteen (15) feet of marked crosswalks or driveways;
- c. within thirty (30) feet of the curb intersection of any two streets, except as provided in Section 4503.5;

- d. within three (3) feet of any area improved with lawn, flowers, shrubs, or trees, except as provided in Section 4503.5;
- e. within five (5) feet of the door of any building;
- f. so as to reduce the width of the sidewalk or other clear space for pedestrian access to less than four (4) feet.

If there is a conflict between section 4503.2 and this section, this section shall control.

4503.5 The City has planted trees within the sidewalk at varying intervals on Main Street between Third and Sixth Streets. The owner or occupant of property adjoining the sidewalk in which a tree has been planted may plant flowers or place other decorative landscaping material within a circle extending twelve inches from the tree, unless the City landscapes or otherwise improves this area.

Other seasonal landscaping devices such as portable planters or flower boxes, may be placed on sidewalks with the permission of the Council, in places where the Superintendent determines they do not constitute a hazard to pedestrian or vehicular traffic.

4503.6 All portable objects, including vending machines and newsracks, and all landscaping materials, which do not meet the requirements of this section shall be removed by the person responsible for their placement within 30 days after the effective date of this ordinance. If the responsible person fails to do so, the City may remove the object at the person's expense. This provision shall not apply to existing light and utility poles, fire hydrants, public mailboxes, or other similar objects which serve a public function.

Section 4504. Procedure for Placement of Newsracks

4504.1 Permit Required. No person shall place, maintain, or operate any newsrack which is located completely or partially on, in, or above any public area, as defined by Section 4101, without a permit.

4504.2 Applications for Permits. Applications for newsrack permits shall be made on forms supplied by the Superintendent and shall contain the name and address of the applicant, the proposed specific location of each newsrack, and the name, address, and telephone of a local agent for the applicant. All applications shall be granted or denied within seven (7) days after their receipt by the Superintendent. The Superintendent shall grant a permit if the proposed location complies with the restrictions of Section 4505.

4504.3 Fees. When a permit is granted, the applicant shall pay an initial permit fee of \$25.00. A permit is valid for one (1) year and may be renewed automatically upon payment of a renewal fee of \$15.00, so long as the newsrack complies with all provisions of this article.

4504.4 Denial of Application. If an application is denied, it shall be denied in writing with a statement of reasons for the denial.

4504.5 Conditions of the Permit. As a condition of all permits, the person to whom the permit is granted shall agree to indemnify the City and its officers and employees against any loss or damage sustained by any person as a result of the installation, use, or maintenance of the newsrack for which the permit is granted, and shall maintain liability insurance naming the City as an additional insured in an amount of \$10,000 per person and \$20,000 per occurrence. The holder of the permit shall furnish a copy of the liability insurance policy to the City within thirty days after the permit is issued and shall furnish evidence of insurance annually thereafter.

4504.6 Standards for Maintenance and Installation of Newsracks. Any newsrack which rests completely or partially on, in, or above any public area shall comply with the following standards:

- a. No newsrack shall exceed five (5) feet in height, 30 inches in width or 30 inches in depth.
- b. No newsrack shall be used for advertising or publicity purposes other than for the display, sale, or purchase of the newspaper or periodical sold in it.
- c. Each newsrack shall be equipped with a coin return mechanism to permit a person using the machine to secure an immediate refund in the event he or she is unable to receive the publication paid for. The coin return mechanism shall be maintained in good working order.
- d. Each newsrack shall have affixed to it in a readily visible place a notice setting forth the name and address of the distributor and a telephone number to call to report a malfunction or to secure a refund if the coin return mechanism malfunctions.
- e. Each newsrack shall be maintained in a neat and clean condition and in good repair, including:
 - 1) being reasonably free of dirt, grease, chipped or peeling paint, rust, or corrosion;
 - 2) the plastic or glass parts unbroken and reasonably free of cracks, dents, or blemishes;
 - 3) the structural components unbroken.

Section 4505. Location of Newsracks

4505.1 Any newsrack which rests completely or partially on, in, or above any public area shall comply with the provisions of this section.

4505.2 No newsrack shall be placed so as to project into the roadway of any street, as defined by Section 1.030 of the Uniform Traffic Code.

4505.3 No newsrack shall be chained, bolted, or otherwise attached to any fixture, except to other newsracks.

4505.4 All newsracks shall be anchored so as to prevent their overturn.

4505.5 No newsrack shall be placed in any location prohibited by Section 4503.4, except that if compliance with these restrictions would prohibit the placement of any newsracks for a distance of 150 feet, the City Superintendent shall designate an area within that distance on which newsracks may be placed.

4505.6 Newsracks may be placed next to each other, but no group of newsracks shall extend for a distance of more than four (4) feet along a curb, and a space of at least fifty (50) feet shall separate each group of newsracks.

Section 4506. Removal of Newsracks. If any newsrack violates any provision of this article, or if the conditions of any permit are not met, the Superintendent may issue a corrective order pursuant to Section 3303, giving the holder of the permit seven (7) days to remedy the violation. If the violation is not corrected within seven (7) days, the City may remove the newsrack.

Section 4507. Revocation. If a newsrack is removed pursuant to section 4506, or if more than three corrective orders are issued pursuant to Section 4506 to any holder of a permit, all permits held by that entity shall be revoked.

Section 4508. Abandonment of Newsracks. In the event that any newsrack remains empty for a period of 30 continuous days, it shall be considered abandoned and may be treated in the same manner as provided by section 4506 for newsracks violating the provisions of this article.

Section 4509. Judicial Review. Any person aggrieved by any decision of the Council or Superintendent under this article may appeal the decision to the Circuit Court by filing a petition for an order of superintending control within sixty (60) days from the date of decision.

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Article 6. MICHIGAN CONSOLIDATED GAS FRANCHISE ORDINANCE

Section 4601. Grant of Gas Franchise and Consent to Laying of Pipes, Etc. Subject to all the terms and conditions mentioned in this ordinance, and in conformance with City Charter requirements, consent is hereby given to Michigan Consolidated Gas Company, a corporation organized under the laws of the State of Michigan (the "Company"), and to its successors and assigns, to lay, maintain, operate, and use gas pipes, mains, conductors, service pipes, and other necessary equipment in the highways, streets, alleys, and other public places in the City of Frankfort, Benzie County, Michigan, and a franchise is hereby granted to the Company, its successors and assigns, to transact local business in said City of Frankfort for the purposes of conveying gas into and through and supplying and selling gas in said City of Frankfort and all other matters incidental thereto.

Section 4602. Gas Service and Extension of System. If the provisions and conditions herein contained are accepted by the Company, as in Section 6 hereof provided, then the Company shall furnish gas to applicants residing therein in accordance with applicable laws, rules and regulations; and provided further that such initial installation and any extensions shall be subject to the Main Extension provisions, the Area Expansion Program provisions (if and where applicable), and other applicable provisions now or from time to time hereafter contained in the Company's Rules and Regulations for Gas Service as filed with the Michigan Public Service Commission or successor agency having similar jurisdiction.

Section 4603. Use of Streets and Other Public Places. The Company, its successors and assigns, shall not unnecessarily obstruct the passage of any of the highways, streets, alleys, or other public places within said City of Frankfort and shall within a reasonable time after making an opening or excavation, repair the same and leave it in as good condition as before the opening or excavation was made. The Company, its successors and assigns, shall use due care in exercising the privileges herein contained and shall be liable to said City of Frankfort for all damages and costs which may be recovered against the City of Frankfort arising from the default, carelessness, or negligence of the company or its officers, agents, and servants.

No road, street, alley, or highway shall be opened for the laying of trunk lines or lateral mains except upon application to the Street Administrator or the City of Frankfort or other authority having jurisdiction in the premises, stating the nature of the proposed work and the route. Upon receipt of such application, it shall be the duty of the Street Administrator or the City Council, or such other authority as may have jurisdiction, to issue a permit to the Company to do the work proposed.

Section 4604. Standards and Conditions of Service; Rules, Regulations and Rates. The Company is now under the jurisdiction of the Michigan Public Service Commission to the extent provided by statute; and the rates to be charged for gas, and the standards and conditions of service and operation hereunder,

shall be the same as set forth in the Company's schedule of rules, regulations, and rates as applicable in the several cities, villages, and townships in which the Company is now rendering gas service, or as shall hereafter be validly prescribed for the City of Frankfort under the orders, rules, and regulations of the Michigan Public Service Commission or other authority having jurisdiction in the premises.

Section 4605. Successors and Assigns. The words "Michigan Consolidated Gas Company and "the Company", wherever used herein, are intended and shall be held and construed to mean and include both Michigan Consolidated Gas Company and its successors and assigns, whether so expressed or not.

Section 4606. Effective Date; Term of Franchise Ordinance; Acceptance by Company. This ordinance shall take effect on August 23, 1996, and shall continue in effect for a period of thirty (30) years thereafter, subject to revocation at the will of the City of Frankfort at any time during said thirty (30) year period; provided, however, that when this ordinance shall become effective the City Clerk shall deliver to the Company a certified copy of the ordinance accompanied by written evidence of publication and recording thereof as required by law, and the Company shall, sixty (60) days after receiving the above mentioned documents, file with the City Clerk its written acceptance of the conditions and provisions hereof.

Section 4607. Effect and Interpretation of Ordinance. All ordinances and resolutions, and parts thereof, which conflict with any of the terms of this ordinance are hereby rescinded. In the case of conflict between this ordinance and any such ordinances or resolutions, this ordinance shall control. The catch line headings which precede each Section of this ordinance are for convenience in reference only and shall not be taken into consideration in the construction or interpretation of any of the provisions of this ordinance.

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Article 7. BASIC CABLE TV REGULATION

Section 4701. Definitions. For purposes of this Article:

4701.1 "Act" shall mean the Communications Act of 1934, as amended (and specifically as amended by the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. 102-385), and as may be amended from time to time.

4701.2 "FCC" shall mean the Federal Communications Commission

4701.3 "FCC Rules" shall mean all rules of the FCC promulgated from time to time pursuant to the Act.

4701.4 "Basic cable service" shall mean "basic service" as defined in the FCC Rules, and any other cable television service which is subject to rate regulation by the City pursuant to the Act and the FCC Rules.

4701.5 "Associated equipment" shall mean all equipment and services subject to regulation pursuant to 47 CFR §76.923;

4701.6 "Increase" in rates shall mean an increase in rates or a decrease in programming or customer services.

All other words and phrases used in this Article shall have the same meaning as defined in the Act and FCC Rules.

Section 4702. Purpose; Interpretation. The purpose of this Article is to: 1) adopt regulations consistent with the Act and the FCC Rules with respect to basic cable service rate regulation, and 2) prescribe procedures to provide a reasonable opportunity for consideration of the views of interested parties in connection with basic cable service rate regulation by the City. This Article shall be implemented and interpreted consistent with the Act and FCC Rules.

Section 4703. Rate Regulations Promulgated by FCC. In connection with the regulation of rates for basic cable service and associated equipment, the City of Frankfort shall follow all FCC Rules.

Section 4704. Filing; Additional Information; Burden of Proof

4704.1 A cable operator shall submit its schedule of rates for the basic service tier and associated equipment or a proposed increase in such rates in accordance with the Act and the FCC Rules. The cable operator shall include as part of its submission such information as is necessary to show that its schedule of rates or its proposed increase in rates complies with the Act and the FCC Rules. The cable operator shall file ten (10) copies of the schedule or proposed increase with the City Clerk. For purposes of this Article, the filing of the cable operator shall be deemed to have been made when at

least ten (10) copies have been received by the City Clerk. The City Council may, by resolution or otherwise, adopt rules and regulations prescribing the information, data and calculations which must be included as part of the cable operator's filing of the schedule of rates or a proposed increase.

4704.2 In addition to information and data required by rules and regulations of the City pursuant to Section 4(a) above, a cable operator shall provide all information requested by the City Superintendent in connection with the City's review and regulation of existing rates for the basic service tier and associated equipment or a proposed increase in these rates. The City Superintendent may establish deadlines for submission of the requested information and the cable operator shall comply with such deadlines.

4704.3 A cable operator has the burden of proving that its schedule of rates for the basic service tier and associated equipment or a proposed increase in such rates complies with the Act and the FCC Rules including, without limitation, 47 USC 543 and 47 CFR 76.922 and 76.923.

Section 4705. Proprietary Information

4705.1 If this Article, any rules or regulations adopted by the City pursuant to Section 4(a), or any request for information pursuant to Section 4(b) requires the production of proprietary information, the cable operator shall produce the information. However, at the time the allegedly proprietary information is submitted, a cable operator may request that specific, identified portions of its response be treated as confidential and withheld from public disclosure. The request must state the reason why the information should be treated as proprietary and the facts that support those reasons. The request for confidentiality will be granted if the City determines that the preponderance of the evidence shows that non-disclosure is consistent with the provisions of the Freedom of Information Act, 5 U.S.C. §552. The City shall place in a public file for inspection any decision that results in information being withheld. If the cable operator requests confidentiality and the request is denied, (1) where the cable operator is proposing a rate increase, it may withdraw the proposal, in which case the allegedly proprietary information will be returned to it; or (2) the cable operator may seek review within five working days of the denial in any appropriate forum. Release of the information will be stayed pending review.

4705.2 Any interested party may file a request to inspect material withheld as proprietary with the City. The City shall weigh the policy considerations favoring non-disclosure against the reasons cited for permitting inspection in light of the facts of the particular case. It will then promptly notify the requesting entity and the cable operator that submitted the information as to the disposition of the request. It may grant, deny or condition a request. The requesting party or the cable operator may seek review of the decision by filing an appeal with any appropriate forum. Disclosure will be stayed pending resolution of any appeal.

4705.3 The procedures set forth in this section shall be construed as analogous to and consistent with the rules of the FCC regarding requests for confidentiality including, without limitation, 47 CFR 0.459.

Section 4706. Public Notice; Initial Review of Rates. Upon the filing of ten (10) copies of the schedule of rates or the proposed increase in rates pursuant to Section 4704.1 above, the City Clerk shall publish a public notice in a newspaper of general circulation in the City which shall state that: 1) the filing has been received by the City Clerk and (except those parts which may be withheld as

proprietary) is available for public inspection and copying, and 2) interested parties are encouraged to submit written comments on the filing to the City Clerk not later than seven (7) days after the public notice is published. The City Clerk shall give notice to the cable operator of the date, time, and place of the meeting at which the City Council shall first consider the schedule of rates or the proposed increase. This notice shall be mailed by first-class mail at least three (3) days before the meeting. In addition, if a written staff or consultant's report on the schedule of rates or the proposed increase is prepared for consideration of the City Council, then the City Clerk shall mail a copy of the report by first-class mail to the cable operator at least three (3) days before the meeting at which the City Council shall first consider the schedule of rates or the proposed increase.

Section 4707. Tolling Order. After a cable operator has filed its existing schedule of rates or a proposed increase in these rates, the existing schedule of rates will remain in effect or the proposed increase in rates will become effective after thirty (30) days from the date of filing under Section 4704.1 above unless the City Council (or other properly authorized body or official) tolls the thirty (30) day deadline pursuant to 47 CFR §76.933 by issuing a brief written order, by resolution or otherwise, within thirty (30) days of the date of filing. The City Council may toll the thirty (30) day deadline for an additional 90 days in cases not involving cost-of-service showings and for an additional 150 days in cases involving cost-of-service showings.

Section 4708. Public Notice; Hearing on Basic Cable Service Rates Following Tolling of 30-Day Deadline. If a written order has been issued pursuant to Section 7 and 47 CFR §76.933 to toll the effective date of existing rates for the basic service tier and associated equipment or a proposed increase in these rates, the cable operator shall submit to the City any additional information required or requested pursuant to Section 4704 of this Article. In addition, the City Council shall hold a public hearing to consider the comments of interested parties within the additional 90 day or 150 day period, as the case may be. The City Clerk shall publish a public notice of the public hearing in a newspaper of general circulation within the City which shall state: 1) the date, time, and place at which the hearing shall be held, 2) interested parties may appear in person, by agent, or by letter at such hearing to submit comments on or objections to the existing rates or the proposed increase in rates, and 3) copies of the schedule of rates or the proposed increase in rates and related information (except those parts which may be withheld as proprietary) are available for inspection or copying from the office of the Clerk. The public notice shall be published not less than fifteen (15) days before the hearing. In addition, the City Clerk shall mail by first-class mail a copy of the public notice to the cable operator not less than fifteen (15) days before the hearing.

Section 4709. Staff or Consultant Report; Written Response. Following the public hearing, the City Superintendent shall cause a report to be prepared for the City Council which shall (based on the filing of the cable operator, the comments or objections of interested parties, information requested from the cable operator and its response, staff or consultant's review, and other appropriate information) include a recommendation for the decision of the City Council pursuant to Section 4710. The City Clerk shall mail a copy of the report to the cable operator by first-class mail not less than twenty (20) days before the City Council acts under Section 4710. The cable operator may file a written response to the report with the City Clerk within ten (10) days after the report is mailed to the cable operator, the City Clerk shall forward it to the City Council.

Section 4710. Rate Decisions and Orders. The City Council shall issue a written order, by resolution or otherwise, which in whole or in part, approves the existing rates for basic cable service and associated equipment or a proposed increase in such rates, denies the existing rates or proposed increase, orders a rate reduction, prescribes a reasonable rate, allows the existing rates or proposed increase to become effective subject to refund, or orders other appropriate relief, in accordance with the FCC Rules. If the City Council issues an order allowing the existing rates or proposed increase to become effective subject to refund, it shall also direct the cable operator to maintain an accounting pursuant to 47 CFR §76.933. The order specified in this Section shall be issued within 90 days of the tolling order under Section 4707 in all cases not involving a cost-of-service showing. The order shall be issued within 150 days after the tolling order under Section 4707 in all cases involving a cost-of-service showing.

Section 4711. Refunds; Notice. The City Council may order a refund to subscribers as provided in 47 CFR §76.942. Before the City Council orders any refund to subscribers, the City Clerk shall give at least seven (7) days written notice to the cable operator by first-class mail of the date, time, and place at which the City Council shall consider issuing a refund order and shall provide an opportunity for the cable operator to comment. The cable operator may appear in person, by agent, or by letter at such time for the purpose of submitting comments to the City Council.

Section 4712. Written Decisions; Public Notice. Any order of the City Council pursuant to Section 4710 or Section 4711 shall be in writing, shall be effective upon adoption by the City Council, and shall be deemed released to the public upon adoption. The Clerk shall publish a public notice of any such written order in a newspaper of general circulation within the City which shall: 1) summarize the written decision, and 2) state that copies of the text of the written decision are available for inspection or copying from the office of the Clerk. In addition, the City Clerk shall mail a copy of the text of the written decision to the cable operator by first-class mail.

Section 4713. Rules and Regulations. In addition to rules promulgated pursuant to Section 4704, the City Council may, by resolution or otherwise, adopt rules and regulations for basic cable service rate regulation proceedings (including, without limitation, the conduct of hearings), consistent with the Act and the FCC Rules.

Section 4714. Failure to Give Notice. The failure of the City Clerk to give the notices or to mail copies of reports as required by this Article shall not invalidate the decisions or proceedings of the City Council.

Section 4715. Additional Hearings. In addition to the requirements of this Article, the City Council may hold additional public hearings upon such reasonable notice as the City Council, in its sole discretion, shall prescribe.

Section 4716. Additional Powers. The City shall possess all powers conferred by the Act, the FCC Rules, the cable operator's franchise, and all other applicable law. The powers exercised pursuant to the Act, the FCC Rules, and this Article shall be in addition to powers conferred by law or otherwise. The City may take any action not prohibited by the Act and the FCC Rules to protect the public interest in connection with basic cable service rate regulation.

Section 4717. Failure to Comply; Remedies. The City may pursue any and all legal and equitable remedies against the cable operator (including, without limitation, all remedies provided under a cable operator's franchise with the City) for failure to comply with the Act, the FCC Rules, any orders or determinations of the City pursuant to this Article, any requirements of this Article, or any rules or regulations promulgated hereunder. Subject to applicable law, failure to comply with the Act, the FCC Rules, any orders or determinations of the City pursuant to this Article, any requirements of this Article, or any rules and regulations promulgated hereunder, shall also be sufficient grounds for revocation or denial of renewal of a cable operator's franchise.