

**VILLAGE COUNCIL
VILLAGE OF MACKINAW CITY**
(Emmet and Cheboygan Counties, Michigan)

Council member _____, supported by Council member _____, moved adoption of the following ordinance:

Ordinance No. _____

**AN ORDINANCE TO PROVIDE FOR AND REQUIRE A LICENSE TO
OPERATE A FERRY SERVICE IN THE VILLAGE, TO PROVIDE A FEE
FOR THAT LICENSE, TO REGULATE FERRY SERVICES, AND TO
PROVIDE PENALTIES FOR VIOLATIONS**

The village of Mackinaw City ordains:

Sec. 1. Purpose.

(a) This ordinance is adopted pursuant to Article VII, Section 40 of Michigan's "General Law Village Act," 1895 PA 3, as amended, MCL 67.40, which authorizes the Village to "regulate and license ferries from the village, or a place in the village; require the payment of a reasonable sum for a ferry license; impose reasonable terms and restrictions, in relation to the keeping and management of ferries and the time, manner, and rates of carriage and transportation of persons and property by ferry; provide for the revocation of a ferry license and for the imposition of sanctions for a violation of an ordinance prohibiting unlicensed ferries or regulating ferries established and licensed."

(b) Situated at the apex of Michigan's "Lower Peninsula" at the base of the Mackinac Bridge and a few miles from Mackinac Island, Mackinaw City acts as a gateway to Michigan's "Upper Peninsula" and to Mackinac Island. Ferry service between the Village and Mackinac Island is key to the economic vitality, if not the viability, of the Village and other nearby local governments. Ferry service provides access to between the Village and Mackinac Island that is important to residents, property owners, business owners, employees and other parties in interest in property, businesses, non-profit entities, and governmental agencies on Mackinac Island and the mainland. It also carries tourists and other visitors between the Mackinac Island and the Village. (However, ferry service also results in costs to the Village. For example, Village streets, sidewalks, parking areas, signage and utilities need to be built in quantities, sizes, configurations, and standards to accommodate the periodic influxes of ferry passengers; law enforcement, public works and other personnel are needed to address the traffic, congestion and other results of the ferry service passengers; and, there are increased local business opportunities as a result of the ferry traffic that also enhance the demands on Village government.)

(c) Due to the overall importance of the ferry service to the community as a whole, the Village Council believes a that it is best to take more proactive oversight to ferry operations and to recover some of the costs incurred by the Village as a result of ferry service. The Village also wishes to avoid undue interference with ferry service operations, so the oversight provided by this ordinance is ~~initially~~ fairly minimal.

(d) The Village wishes to:

- (1) Ensure ferry service is fair, efficient, and appropriately accountable to the public;

- (2) Ensure ferry service works harmoniously with other area business and economic development efforts;
 - (3) Ensure ferry service adequately serves the needs, not only of visitors, but of residents and businesses in the greater Straits area community;
 - (4) Avoid undue conflicts between ferry boats and ferry docks and other interests in and users of the waterways and shoreline areas;
 - (5) Encourage competition among ferry services; and
 - (6) Avoid any unjust or illegal discrimination, preferences, advantages or anti-competitive actions among ferry service providers.
- (e) Finally, the Village understands that Mackinac Island has expressed interest in and may have undertaken a more robust regulation of ferry services serving Mackinac Island, whether from the Village or from St. Ignace and the Village does not wish this ordinance to interfere with Mackinac Island's efforts, at least to the extent its efforts do not adversely affect the Village.

Sec. 2. Definitions. The following words, terms and phrases, when used in this ordinance, shall have the meanings provided in this section.

- (a) *Ferry* means the transport of passengers or property to or from the Village and within the Straits of Mackinac, the waters of Lake Huron, or inlets, bays, harbors or other connecting waters of Lake Huron.
- (b) *Ferryboat* means a boat that is used as a ferry or as part of a ferry service.
- (c) *Ferry dock* means any dock, wharf, pier or landing place used for embarking or disembarking passengers or loading or unloading property from a ferryboat.
- (d) *Ferry Service* means a person engaged in ferrying of individuals or property by ferryboat for compensation and includes any person engaged in such service without compensation if that person is ever compensated for such services.
- (e) *Person* means an individual, partnership, corporation, limited liability company, association, trust, or other entity.
- (f) *Village* means the Village of Mackinaw City located in Emmet and Cheboygan Counties, Michigan.
- (g) *Village Manager* means the individual holding the office of Village Manager in the Village or that individual's designee or successor.

Sec. 3. License Required. A license issued by the Village shall be required to operate a ferry, ferry dock, ferryboat or ferry service in the Village. No person shall operate a ferry, ferry dock, ferryboat or ferry service in the Village without first having obtained from the Village a license therefore in accordance with the provisions of this ordinance.

Sec. 4. License Application. Any person desiring a license to operate a ferry, ferry dock, ferryboat or ferry service in the Village shall make file a written application with the Village Clerk that shall contain at least the following information:

- (a) The applicant's name, principal business address, principal telephone number(s), and e-mail address.
- (b) The address(es) from which the applicant intends to do business in the Village.

- (c) If the applicant is not an individual, then the application must be accompanied by:
 - (1) A certified copy of the applicant's articles of incorporation, articles of association, partnership agreement or other appropriate organizational documents;
 - (2) The latest filed annual statement;
 - (3) Any assumed name filings;
 - (4) A list of all officers, all general partners, all members with an interest of 10% or more of the entity, all stockholders with an interest of 10% or more of the entity, and, if any of the aforementioned persons are not individuals, similar information about each of those organizations or entities; and
 - (5) The name(s), addresses, telephone numbers and e-mail addresses of the principal contact individuals for the applicant.
- (d) If the applicant is an individual, then the application shall be accompanied by copies of any assumed name filings.
- (e) A list of the addresses and permanent parcel numbers of any ferry dock(s) and parking area(s) in the Village to be used.
- (f) A list of all ferryboats to be used in the applicant's business in the Village.
- (g) A description of the services to be provided by the applicant including, without limitation, the following:
 - (1) The proposed ferry schedule;
 - (2) The proposed schedule of fares, including any discounts or other incentives;
 - (3) The times of the year during which the applicant will offer services;
 - (4) Any unique characteristics, services or abilities the applicant may have that differentiates the applicant from others providing such services in the Village; and
 - (5) Any other information the applicant believes is needed to fully and completely describe the services the applicant intends to provide and/or the benefits the applicant will provide to the Village and the greater community in the Straits area.
- (h) Drawings showing the site layouts of any premises (e.g., ferry docks, offices, parking areas) within the Village to be used by the applicant, including any changes proposed for the site(s). The drawings shall contain such detail about each premises and nearby premises as is deemed to be needed in conjunction with the particular application.
- (i) The notarized signature of a person authorized by the applicant to sign the application below a statement attesting that:
 - (1) The application and all information accompanying it is true, accurate and complete;
 - (2) The applicant has sufficient financial resources to engage in the business as described in the application and agreeing to confidentially provide evidence of

those resources to a person designated by the Village to review them on the Village's behalf; and

- (3) The person signing on the applicant's behalf has personal knowledge of the information in and accompanying the application and will provide more information if requested by the Village.

Sec. 5. Application Fee. A nonrefundable application fee shall be paid upon filing the application. The application fee shall be in an amount established from time-to-time by resolution of the Village Council and shall be intended to pay the costs incurred by the Village process the application to approval, disapproval or approval with conditions, including, without limitation, costs of any consultants or others retained by the Village, publication costs for any hearings, and costs of time spent by Village staff. If a license is granted, the application fee shall be applied against the license fee.

Sec. 6. Application Review. The Village shall review an application for a license to operate a ferry, ferry dock, ferryboat or ferry service in the Village as follows. Generally, review and action on an application for a license to operate a ferry, ferry dock, ferryboat or ferry service in the Village shall be completed within 90 days of the date on which the application is filed, but it may be delayed by an incomplete application, the need to get additional information, or to address issues the Village Council raises after publicly discussing or holding a public hearing on the application.

- (a) The Village Clerk shall, within 14 days, notify the Village Manager in writing or by e-mail that the application has been filed.

- (b) The Village Manager shall:

- (1) Either alone or with a team of Village staff selected by the Village Manager, review the application to ensure the materials appear facially complete and in compliance with this ordinance.

- (2) Engage such outside consultants in a more thorough review of the application as the Village Manager deems necessary or appropriate to:

- (A) Determine the application is complete;
- (B) Determine what, if any, additional information may be needed to address any concerns and questions the reviewers, Village Council members, or members of the public may have;
- (C) Determine whether the applicant and the resulting license to operate a ferry, ferry dock, ferryboat or ferry service in the Village would meet the requirements and goals of this ordinance;
- (D) Determine whether anything the background(s) of persons involved in the proposed licensed activity indicate a past failure to comply with laws, rules, regulations, licenses or other legal requirements;
- (E) Determine whether the applicant has sufficient resources to provide service as indicated in the application; and
- (F) Ascertain whether or not granting the proposed license is in the best interests of the public health, safety and general welfare.

- (3) Request and, with any assistance the Village Manager wishes to engage, review any additional information provided by the applicant.

(c) When the Village Manager has completed the review provided in subsection (b), the Village Manager shall make a written recommendation to the Village Council to grant the license in accordance with the application, deny the license, or grant the license with specified conditions. The Village Manager's recommendation shall include a written basis and explanation for the recommendation.

(d) The Village President shall initially review the Village Manager's recommendation to determine whether the Village Manager should provide notice of a public hearing before the Village Council at the next meeting at which appropriate notice can be given or whether the Village Council should discuss the Village Manager's recommendation before the public hearing is scheduled.

(e) Before taking any action to grant a license in accordance with an application, deny the license, or grant the license with specified conditions, the Village Council shall hold a public hearing pursuant to not less than 7 days' notice published in a newspaper in general circulation in the Village and posted in the Village Hall which, at a minimum, states the name of the applicant, the type of license the applicant is seeking and the date, time, and place of the hearing. At the hearing any interested person may make verbal or submit written comments on the application in accordance with Village Council procedures for public comments.

(f) After holding the public hearing, the Village Council shall take action on the application and may grant the license in accordance with the application, deny the license, or grant the license with specified conditions. The resolution taking such action shall explain the reasons for it though the Council may simply adopt by reference the recommendation and reasons provided it by the Village Manager.

(g) The Village Council may impose conditions on a license that are reasonably related to ensuring the licensed activities will comply with the purpose, intent and provisions of this ordinance.

(h) A resolution of the Village Council to grant the license in accordance with the application, deny the license, or grant the license with specified conditions shall be final. There is no appeal to any other Village official or body. Any applicant whose application for a license has been denied may not re-apply for an application for at least 180 days.

Sec. 7. License. If a license is approved, the Village Clerk shall issue the license in writing which shall also include any conditions to the license. The licensee shall display the license in all offices of the licensee within the Village and in each ferryboat and on any building or enclosed space on any licensed ferry dock within the Village. The term of a license shall be 3-years. Any application to renew a license shall be made by submitting the same application and using the same procedure as was used in the original license except that the Village Manager may, subject to the Village Council's subsequent objection, allow a licensee to submit less information than was submitted to initially obtain the license.

Sec. 8. License Fee. A licensee shall pay a fee based on the licensee's business activities in the Village as follows.

(a) The fee shall be in an amount or at a percentage of the licensee's ferry gross receipts from any fees the licensee receives (i) for the use or operation of ferry dock within the Village, (ii) from any ferryboat that docks within, from which personal property is loaded or unloaded within the Village, or to which passengers embark or disembark within the Village, (iii) from the parking of any vehicles within the Village, (iv) from any other services provided in connection with the use or operation of a ferry, ferry dock,

ferryboat or ferry service within the Village, and (vi) from any other service provided to ferry passengers embarking or disembarking within the Village or those shipping or receiving property on a ferry that is loaded or unloaded within the Village. The Village Council may set the amount or percentage of the fee from time to time by resolution. However, the fee shall not exceed ____ percent (____%) of the gross fees as provided in this subsection.

(b) Fees shall be paid not later than the 15th day of each calendar month for services provided during the previous calendar month and shall be accompanied by an accounting showing the basis for their calculation.

(c) Fees not paid when due shall result in the immediate, automatic (*i.e.*, without any action by the Village) suspension of any license issued pursuant to this ordinance that shall take effect upon written notification delivered to any office of the licensee located in the Village. Any license so suspended may be reinstated only upon paying the required license fee and escrowing with the Village Treasurer an amount equal to an estimated 2-months of license fees (based on fees anticipated to be due for the months of August and September) which escrow shall remain in place during the term of any license granted pursuant to this ordinance. No interest shall be paid to the licensee on such escrow.

Sec. 9. License Denial, Suspension or Revocation.

(a) The following shall constitute grounds for the Village Council to deny issuance of a license or to suspend or revoke a license issued pursuant to this ordinance.

(1) Any false statement in an application, any materials filed with an application or related to a license, any materials provided in conjunction with and application or license, or any statement related to an application or license made to any Village officials or agents;

(2) A violation of any provision of this ordinance;

(3) A violation of any condition of a license issued pursuant to this ordinance;

(4) The repeated failure during the term of any license to timely pay fees due under this ordinance, even if such failures have been cured and an escrow provided;

(5) A violation by the applicant or licensee, an officer or owner of ten percent or more of the applicant or licensee's entity, or an agent of a licensee of any federal or state law, rule or regulation applicable to the operation of the ferry, ferry dock, ferryboat or ferry service in the Village including, without limitation, those addressing environmental, consumer protection issues and any criminal laws;

(6) Violations of Village ordinances (i) by the applicant or licensee, an officer or owner of ten percent or more of the applicant or licensee's entity, or an agent of a licensee, or (ii) on or within any ferryboat, ferry dock or other premises owned or operated by or on behalf of the licensee;

(7) The failure to timely pay (*i.e.*, on or before the date they can no longer be paid without added interest, penalties, or late payment fees or when notified of a delinquency) any real or personal property taxes, special assessment or any utility fee or charge owed to the Village;

(8) Any failure to provide any information required under this ordinance;

(9) Any condition on any premises within the Village or any ferryboat or ferry dock owned or operated by or on behalf of the applicant or licensee that constitutes a public nuisance; and

(b) Except for an automatic suspension provided in subsection 8(c) of this ordinance, the Village Manager shall, with such consultation and other assistance as may reasonably be needed, investigate any circumstance that may lead to the suspension or revocation of any license issued pursuant to this ordinance and shall make a written recommendation to the Village Council. The Village Manager may, in addition to the written recommendation, submit to the Village Council such other communications and information as the Village Manager deems pertinent to the issues involved.

(c) A copy of the Village Manager's recommendation, together with at least 14 day's prior notice of the meeting at which the Village Council agenda will include consideration of the Village Council's recommendation will be provided to the licensee at its principal address and at an address in the Village at which the licensee has an office. At the meeting, the licensee shall be given an opportunity to be heard as provided in accordance with the Village Council's policy for public comments.

(d) As an alternative to the procedure provided in subsection (c), after receiving the notification from the Village Manager, the licensee may request a hearing by submitting that request in writing to the Village Manager at least 5 days before the Village Council meeting. If the licensee does so, the Village President shall appoint a 3-member committee to hear any reasons the licensee may have as to why the license should not be suspended or revoked as recommended by the Village Manager. That committee may be advised by Village legal counsel and shall be comprised of such persons as the Village President considers are capable by background, experience and expertise of understanding and deciding the issues involved. The committee shall, by a majority vote make a written recommendation to the Village Council concurring or disagreeing with part or all of the Village Manager's recommendation and stating the reasons for the committee's recommendation.

(e) The Village Council shall act upon the recommendation of either the Village Manager or, if one is appointed, the committee acting under subsection (d). At that meeting the applicant or licensee shall be permitted to speak only as provided in the Village Council procedures applicable to public comment at meetings. The actions of the Village Council shall be by resolution and shall be final. Any licensee whose license is revoked shall be ineligible to apply for a new license for at least one year after the revocation.

Sec. 10. Violations.

(a) Violations of this ordinance shall be municipal civil infractions. Any person responsible for a first offense for a violation of this ordinance shall pay a civil fine of \$150. A person responsible for a second offense for a violation of this ordinance shall pay a civil fine of \$250. A person found responsible for a third or subsequent offense shall pay a civil fine of \$1,000. The court shall also order the payment of such costs and assessments as are required to be paid under applicable state law.

(b) The court may issue and enforce any judgment, writ, or order necessary to enforce this ordinance.

Sec. 11. Effective Date. This ordinance shall take effect 20 days after its adoption or upon its publication, whichever occurs later.

YEAS: Council member(s) _____

NAYS: Council member(s) _____

ABSTAIN: Council member(s) _____

ABSENT: Council member(s) _____

CERTIFICATION

As the Clerk of the Village of Mackinaw City, Emmet and Cheboygan Counties, Michigan, I certify this is a true and complete copy of an ordinance adopted by the Mackinaw City Village Council at a regular meeting held on _____, 2011.

Date: _____, 2011

Lana Jaggi, Clerk

Introduced: _____, 2011

Adopted: _____, 2011

Published: _____, 2011

Effective: _____, 2011