

FERRY BOATS ORDINANCE
CITY OF MACKINAC ISLAND, MICHIGAN
Ord. No. _____ Eff. _____

An ordinance amending the City of Mackinac Island Ordinance with respect to ferry boats.

THE CITY OF MACKINAC ISLAND ORDAINS:

DIVISION 1. GENERALLY

Section 1. Repealer.

The previous Ferry Boats Ordinance, No. 445, is hereby repealed and replaced by this ordinance.

Section 2. Definitions.

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

City means the City of Mackinac Island.

Ferry boat means any boat used to transport persons and/or property to and from the City as part of a ferry boat service.

Ferry boat company means any person which owns, controls, operates or manages a ferry boat providing a ferry boat service.

Ferry boat service means the transporting of persons and/or property for pay to or from the City by ferry boat.

Ferry boat season means the period of time between when ice conditions permit ferry boat service to commence in any given calendar year, generally about March 15th, and when the ice conditions require the termination of ferry boat service, generally about January 15th of the following calendar year.

Person means a natural person, corporation, trust, partnership, incorporated or unincorporated association, or other legal entity.

To and from the City of Mackinac Island means to or from the City of Mackinac Island where the ferry boats depart, or are destined to points and places within the State of Michigan, respectively.

Section 3. Declaration of purpose.

The purpose of this ordinance is to:

- (1) Provide fair regulation of ferry service to and from the City in the interest of the public;
- (2) Promote and encourage adequate, economical and efficient ferry service to and from the City;

- (3) Promote and encourage harmony between ferry boat companies and their customers and passengers; and
- (4) Provide for the furnishing of ferry service without unjust discrimination, undue preferences or advantages.
- (5) Provide for the payment of franchise fees to the City.

Section 4. Violations; Penalties.

- (a) Any person or ferry boat company violating any provision of this ordinance shall, upon conviction thereof, be guilty of a misdemeanor. Each day of a violation of this ordinance shall constitute a separate violation.
- (b) In addition to prosecuting a misdemeanor, or as an alternative to prosecuting a misdemeanor, the City may pursue revocation of the franchise of the violating person or ferry boat company as provided in Section 15.
- (c) In addition to prosecuting a misdemeanor, or as an alternative to prosecuting a misdemeanor, the City may file a civil suit seeking injunctive relief pursuant to Section 5.

Section 5. Injunctive Relief.

A violation of any provision of this ordinance by any person or ferry boat company is deemed to be a nuisance per se, causing irreparable harm, and shall constitute grounds for injunctive relief.

Section 6. Majority concurrence required.

Any approval, denial or waiver by the council pursuant to this ordinance shall require the concurrence of a majority of all the elected aldermen.

Section 7. Schedule of services; additional services.

- (a) As a condition of obtaining a franchise to operate a ferry boat service, a ferry boat company must agree to provide at least the minimum schedule of services which shall be determined by the City council annually.
- (b) On or before February 1st of each calendar year a ferry boat company must file its proposed schedule of services with the City council for approval.
- (c) A ferry boat company granted a franchise must provide ferry boat service during the entire ferry boat season and must operate in accordance with its approved schedule of services as is on file with the council. Provided, however:

- (1) Nothing in this ordinance should be interpreted as limiting any ferry boat company from offering ferry boat services in addition to the services contained in its filed schedule of services.
- (2) A ferry boat company is not obligated to provide service on any day when, in the good faith judgment of the ferry boat company, it would be unsafe to provide service because of the weather. All ferry boat companies are required to have adequate boats and equipment to operate during the entire ferry boat season.
- (3) A ferry boat company may at anytime apply to the City council for permission to change its filed schedule of services.

Section 8. Safety regulations; reporting requirement.

- (a) The ferry boats operated in connection with a ferry boat service shall meet all of the safety regulations of the United States Coast Guard. Any person operating a ferry boat in connection with a ferry boat service must provide written evidence of satisfaction of all of the United States Coast Guard regulations prior to the commencement of any ferry boat service.
- (b) Any person operating a ferry boat in connection with a ferry boat service must give notice to the council, in writing, of any violation of the United States Coast Guard regulations of which such person has been informed by the United States Coast Guard, either in writing or by verbal communication.

Section 9. Rates: Filing Requirements.

- (a) On or before February 1st of each year, a ferry boat company shall file with the council, in such form as the council shall prescribe, its complete schedule of rates, fares and charges for all classes or types of passenger tickets for the next ferry boat season. Upon approval of such schedule by the City council, said approved schedule shall remain in effect for the entire next ferry boat season, unless amended by the City council. At any time after approval of a schedule of rates, fares and charges, a ferry boat company may submit a written request to the council to raise or lower any class or type of passenger rates, fares and charges that was previously approved. The council shall consider and act upon said request within 30 days after receipt thereof.
- (b) No ferry boat company shall provide free service for passengers, except for employees of the ferry boat company, owners of the ferry boat company, and non-profit tax-exempt organizations, including but not limited to, schools. Days when no passengers are charged a fare shall be allowed with prior approval of the City council.
- (c) No ferry boat company shall make any charge for passenger tickets that is inconsistent with its complete schedule of rates, fares and charges for classes or types of passenger tickets that are on file with the City at the time of the charge.
- (d) No ferry boat company shall make any unjust or unreasonable discrimination in rates, charges, classifications, promotions, practices, regulations, facilities or services for in connection with ferry boat services, nor subject any person to any prejudice or disadvantage in any respect whatsoever; however, this

shall not be deemed to prohibit the establishment of a graded scale charges or classification of rates to which any customer or passenger coming within such classification shall be entitled.

DIVISION 2. FRANCHISE

Section 10. Franchise; Required.

- (a) The City council may grant a franchise to operate a ferry boat service.
- (b) No person shall operate a ferry boat service nor shall any person provide a ferry boat service in the City without such person having first obtained a franchise therefore from the City.
- (c) No person shall use, occupy or traverse any public place or public way in the City or any extensions thereof or additions thereto for the purpose of establishing or maintaining a ferry boat service or any facility used in conjunction therewith, including, but not limited to, any building, pier, piling, bulkhead, reef, breakwater or other structure in, upon or over the waters in the City limits, without such person having first obtained a franchise therefore from the City.

Section 11. Application; contents; fees; acknowledgement.

- (a) For the ferry boat season commencing in the spring of 2011, the applicant for a franchise to operate a ferry boat service shall be made in writing and delivered to the City clerk not later than April 5th, 2011. For any ferry boat season commencing after December 31st, 2011, the applicant for a franchise to operate a ferry boat service shall be made in writing to the City clerk not later than February 1st preceding the ferry boat season for which the application is made. The application shall include such information as requested by the City council, including but not limited to:
 - (1) The applicant's name, and if other than a single individual, a certified copy of the partnership agreement, articles of association, or articles of incorporation, as the case may be.
 - (2) The applicant's principal place of business.
 - (3) A description of each ferry boat which will be used to provide a ferry boat service.
 - (4) A schedule of ferry boat services proposed to be operated including arrival and departure times to and from the City and the passenger capacity for each scheduled trip.
 - (5) A schedule of proposed rates, fares and charges.
- (b) The application shall be accompanied by an application fee established by ordinance.
- (c) The application must be signed by an individual with authority to legally bind the ferry boat company, and provide that the company, its officers, employees and agents, will operate according to the terms of this ordinance.

Section 12. Issuance; display; transfer.

- (a) Upon the granting of such franchise, the City clerk shall issue a certificate evidencing the existence of such franchise, which must be publicly displayed on all ferry boats providing a ferry boat service.
- (b) No franchise granted under this section may be sold, transferred or assigned unless such transaction is first approved by the council after receipt of a written application therefore, containing the same information as to transferee as would be required of an original applicant.

Section 13. Nonexclusive; term; form.

Any franchise issued pursuant to this ordinance shall be a nonexclusive franchise for a term of years, not to exceed 20 years, as the council may approve and shall be issued in the form to be determined by the council. A grant of a franchise for a term of years shall create no right to a franchise after the expiration of the term of years.

Section 14. Fees; reporting; record.

- (a) During the term of any franchise granted pursuant to this division for the operation of ferry boat service during the ferry boat season, the person granted such franchise shall pay to the City in consideration of the granting of such franchise a monthly franchise fee in the amount of 7% of the gross receipts from all charges for providing a ferry boat service.
- (b) The monthly franchise fee shall be due and payable on the last day of each month in which any ferry boat service is performed. Such franchise fee shall be paid monthly during the existence of the franchise on or before the 15th day of the month following the month for which the franchise fee is due and payable. Such franchise fee shall be paid at the treasurer's office of the City during regular business hours. If the City treasurer's office is closed on the 15th day, then payment may be made during regular business hours on the next following day on which the office is open for business.
- (c) Each payment of the monthly franchise fee shall be accompanied by a statement setting forth in detail the computation of the franchise fee, including the gross receipts for the period for which the payment is made and certified under oath by the franchisee or an officer thereof.
- (d) The City shall have the right to inspect at all reasonable times the customer records of any person granted a franchise under this division from which its franchise fee payments are computed and shall have the right of audit and recomputation of any and all franchise fees paid. No acceptance of any payment shall be construed as a release or as an accord and satisfaction of any claim the City may have for further or additional sums payable as a franchise fee under this section or for the performance of any other obligation under this division.
- (e) The council may examine any and all books, accounts, records and papers of any ferry boat company, and audit the same; and it shall be the duty of any such ferry boat company to furnish to the council, the council's proper officers, employees and representatives, any and all data, in such form as the

council shall require, in relation to the ferry boat company's investment, income, operating expenses and such other statistical data as the council may require.

Section 15. Revocation.

A franchise granted pursuant to this ordinance may be revoked by the City council in the event a franchisee defaults in its performance of the terms and provisions of this ordinance. Such revocation shall not be effective until the franchisee has been advised of the violation and provided with a hearing before the City council. The City council decision shall be based on a preponderance of the evidence.

Section 16. Rights of City; public utility.

Any franchise granted under this division is made subject to all applicable provisions of the Charter of the City and ordinances thereof, and specifically subject to the rights and powers of the City and limitations upon the ferry boat company holding such franchise as are set forth in the Charter, including, but not limited to, chapter IX, section 1, chapter XV and chapter XVI thereof which are herein incorporated by reference, and such ferry boat company shall abide by and be bound by such rights, powers and limitations, and any franchise granted under this division constitutes and shall be considered as a public utility franchise and a ferry boat company shall be deemed to be a public utility.

Section 17. Recourse of franchisee.

Any person granted a franchise pursuant to this division shall have no recourse whatsoever against the City, its officers, boards, commissions, agents or employees for any loss, cost, expense or damage arising out of any provision or requirement of this ordinance or the enforcement thereof.

Section 18. Value.

No franchise granted pursuant to this division shall be given any value by any court or other authority public or private, in any proceeding of any nature or character whatsoever, wherein or whereby the City shall be a party or affected therein or thereby.

Section 19. Severability.

Should any section, clause, or provision of this ordinance be declared to be invalid by a court of record, the same shall not affect the validity of the ordinance as a whole or any part thereof, other than the part so declared invalid.

Section 20. Effective Date.

This ordinance shall become effective twenty (20) days after passage.

Margaret Doud, Mayor

Karen Lennard, Clerk

Adopted: March 16th, 2011

Effective: April 5th, 2011